

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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IN THE MATTER OF THE DISCIPLINARY :  
 PROCEEDINGS AGAINST :

: FINAL DECISION AND ORDER

JOHN B. KLEMMER, : LS03051311FDR  
 D/B/A HERITAGE NEW BERLIN :  
 FUNERAL HOME, :  
 RESPONDENT. :

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**Division of Enforcement Case No. 02 FDR 029**

The parties to this action for the purposes of Sec. 227.53 are:

John B. Klemmer  
 D/B/A Heritage New Berlin Funeral Home  
 16880 W. National Avenue  
 New Berlin, WI 53151

Division of Business Licensure & Regulation  
 Funeral Directors Examining Board  
 P.O. Box 8935  
 Madison, WI 53708 8935

Department of Regulation & Licensing  
 Division of Enforcement  
 P.O. Box 8935  
 Madison, WI 53708 8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of the matter, subject to the approval of the Funeral Directors Examining Board (Board). The Board has reviewed the Stipulation Agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent John B. Klemmer (Klemmer), d/b/a Heritage New Berlin Funeral Home of 16880 W. National Avenue, New Berlin, WI 53151, is and was at all time material to the complaint licensed as a funeral director (78 3391), and had been so licensed under the provisions of ch. 458, Wis. Stats., since July 12, 1955, and was the designated funeral director in charge of Heritage New Berlin Funeral Home.

2. On September 16, 2002, an investigator of the Department went to Heritage New Berlin Funeral Home, New Berlin, Wisconsin, to conduct an inspection of the subject funeral home pursuant to a funeral establishment application, which requires new funeral establishments to obtain and be issued a permit prior to the establishment being used and held out to the public as being used in the care and preparation for burial or transportation of dead human bodies or for holding or conducting of funeral services. "Funeral Establishment" does not include a building or part of a building that is erected under s. 157.11(1) for holding or conducting funeral services if dead human bodies are not cared for or prepared for burial or transportation in the building.

3. The subject establishment inspection was scheduled in advance of the investigator's arrival. Upon the investigator's arrival at the establishment he was directed to the preparation room by the maintenance man, at which time the maintenance man indicated that there was a body in the preparation room, which was on the preparation table, awaiting cremation by him.

4. The subject funeral establishment contained an on premise crematory, "Cremation Specialist," which was a separate company from Heritage Funeral Home, which also used the subject funeral establishment. The crematory and preparation room are accessed from separate doors from inside of the garage.

5. It was determined that there was a body in the crematory at that point, that after that body was fully cremated, the body in the preparation room would then be cremated.

6. John I. Klemmer, son of Respondent, and one of Heritage New Berlin Funeral Home's partner or corporate officers, indicated in pertinent part that, there were a total of four cremations done by Cremation Specialists prior to the establishment receiving its permit, and that two (2) of the cremations took place days earlier as part of their initial startup and training by a technician from Matthews Cremation Group, the company that the retort was purchased from; that both of those bodies had been delivered to Cremation Specialist in cremation containers from two of their other funeral homes and were kept overnight in the room where the retort is located; that while doing the first cremation as part of their initial training, the other body awaiting to be cremated may have been pushed into the preparation room for a short period of time.

7. John T. Klemmer indicated further and in pertinent part that; on the date of the inspection, Cremation Specialist was doing two cremations that day, that the two bodies were brought to the crematory earlier that day from their other facilities, one in a cremation container and the other in a cremation casket; that while the first cremation of the body in the casket was being done, an electrician came to change a ground wire on the retort - who was not scheduled to work that day - and asked that the body waiting in the retort room to be cremated, be moved because he was not comfortable having the body in the retort room while he worked there; that the body was placed in the preparation room while the electrician did the work, and that it is apparent that the body was not taken out of the embalming room upon the electrician finishing his work.

8. During the time of the inspection, the investigator conversed telephonically with John T. Klemmer and indicated to Klemmer that it appeared that the funeral home was already operating as a funeral establishment because they were using the preparation room and doing cremation out of it, and expressed surprise that the funeral establishment was operating without first being inspected, and or granted a permit. John T. Klemmer responded, "I just did it anyway."

#### CONCLUSIONS OF LAW

1. The Wisconsin Funeral Directors Examining Board has jurisdiction to act in this matter pursuant to

2. The Wisconsin Funeral Directors Examining Board is authorized to enter into the attached Stipulation pursuant to Sec. 227.44(5), Wis. Stats.
  
3. Respondent John B. Klemmer has, as designated funeral director in charge of Heritage New Berlin Funeral Home, violated secs. FD 3.02(1),(6), (10), Wis. Adm. Code. Unprofessional conduct. (1) violating or aiding or abetting a violation of any state or federal law substantially related to the practice of funeral directing, by violating, aiding or abetting the violation of sec. HFS 135.05(1)(f), Wis. Adm. Code, Preparation and funeral. (f) no one other than the licensed funeral director and registered apprentice funeral director shall be allowed in the embalming room during the embalming except at the request of or with the permission of the immediate family of the deceased. Apart from these exceptions, the preparation of human corpses for final disposition shall be entirely private. (Emphasis added); FD 3.02(6) providing and performing the services of funeral directing or embalming in a manner which falls below minimal standards established by statute, rule or practice in the profession, and (10) failing to demonstrate respect for the sanctity of human remains or for the feelings of individuals involved in the grieving process by utilizing the prep room for storing bodies for cremation, for using and operating the crematory prior to being inspected and granted an establishment permit; and for having a deceased body in the presence of an electrician, in preparation for cremation.
  
4. Respondent John B. Klemmer has, by operating out of the establishment and by storing bodies in the preparation room for final disposition by cremation, violated, aided or abetted the violation of sec. 445.105(1), Wis. Stats, Funeral establishment permits. (1) no person shall conduct, maintain, manage or operate a funeral establishment unless a permit for such establishment has been issued by the Examining Board and is conspicuously displayed in such funeral establishment. In case of funeral services held in any private residence, church or lodge hall, no permit shall be required.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondent John B. Klemmer is suspended for a period of 30 days, commencing on April 1, 2003, through April 30, 2003, or commencing effectively the first (1<sup>st</sup>) day of the following month, following adoption of the Final Decision and Order by the Board; and shall pay the amount of \$2,000.00 part assessment of costs to be paid within 30 days of the effective date of the Board's Order adopting the Final Decision and Order.
  
2. On or before the effective date of the Board's Ordered Suspension, Respondent Klemmer shall submit all funeral directors/permits/licenses previously issued to him to the Department's monitor.

Marlene Meyer  
Monitor  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708 8935

3. The part assessment of costs shall be payable by cashier's check or money order made payable to the Dept. of Regulation and Licensing (identified as "costs" along with case #), and submitted to the Department's monitor, supra.

4. During the period of ordered suspension, Respondent shall not be on the premises of any "Heritage Funeral Homes," or any funeral establishments owned/operated by him or Heritage Funeral Homes, in any professional capacity; and he shall not participate directly or indirectly in the business of funeral directing as defined in sec. 445.01(5), Wis. Stats., nor funeral arrangements and services as defined in secs. FD 2.02(1) – (2), Wis. Adm. Code.

- a. Respondent shall be allowed to be only on the premises of Heritage Funeral Homes, Tebo Peppey Klemmer & Scheuerell, 6615 W. Oklahoma Avenue, Milwaukee, Wisconsin, to be allowed access to his woodwork shop, and personal office to engage in non funeral related activities.

FUNERAL DIRECTORS EXAMINING BOARD

By: Roy Pfeffer

5-13-03

On behalf of the Board

Date