

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

DAVID W. WACHHOLZ, WACHHOLZ
FAMILY FUNERAL HOME AND
WACHHOLZ FAMILY FUNERAL HOMES,
RESPONDENTS.

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FINAL DECISION AND ORDER

ORDER 0000 535

Division of Enforcement Case File # 07 FDR 004

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

David W. Wachholz
c/o Wachholz Family Funeral Home
453 East Park Street
Montello, WI 53949

Wachholz Family Funeral Home
181 South Main Street
P.O. Box 263
Markesan, WI 53946

Wachholz Family Funeral Homes
175 North Douglas Street
P.O. Box 158
Ripon, WI 54971

Wisconsin Funeral Directors Examining Board
P.O. Box 8935
Madison, WI 53707-8935

Wisconsin Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Funeral Directors Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent David W. Wachholz was licensed in the state of Wisconsin as a Funeral Director, license number 77-4490. This license was first granted to him on 07/10/1979 and it expired on 12/14/2009.

2. The most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) for Mr. Wachholz is c/o Wachholz Family Funeral Home, 453 East Park Street, Montello, WI 53949.

3. Respondent Wachholz Family Funeral Home is licensed in the state of Wisconsin as a Funeral Establishment, license number 78-1491. This license was first granted on 08/16/1974 and is current through 05/31/2011.

4. The most recent address on file with the Department for Wachholz Family Funeral Home (license number 78-1491) is 181 South Main Street, P.O. Box 263, Markesan, WI 53946.

5. Respondent Wachholz Family Funeral Homes is licensed in the state of Wisconsin as a Funeral Establishment, license number 78-2104. This license was first granted on 02/20/1997 and is current through 05/31/2011.

6. The most recent address on file with the Department for Wachholz Family Funeral Homes (license number 78-2104) is 175 North Douglas Street, P.O. Box 158, Ripon, WI 54971.

7. Wachholz Family Funeral Home no longer owns a funeral home located in Montello, Wisconsin. The main business offices are now located in Ripon, Wisconsin, with a mailing address as indicated above. Mr. Wachholz continues to have a controlling ownership interest in both Wachholz Family Funeral Home establishments (license numbers 78-1491 and 78-2104).

8. Beginning in 2007 the Department received an allegation that Mr. Wachholz was performing his duties as a funeral director while under the influence of alcohol. Mr. Wachholz has subsequently ceased practicing as a funeral director and his license is currently in "expired" status. The Department's investigation revealed Mr. Wachholz is not fit to practice as a funeral director due to his abuse of alcohol.

9. The Department's investigation also revealed that Mr. Wachholz was convicted of misdemeanor Battery on or about 11/29/2007 and misdemeanor Operating While under Influence (2nd) on or about 03/15/2009. Mr. Wachholz failed to notify the Department of these convictions within 48 hours of the judgments of conviction as is required by Wis. Admin. Code § RL 4.09(2). Mr. Wachholz was also convicted of a forfeiture Operating While under Influence on or about 03/17/2008.

10. Wis. Admin. Code § RL 4.09(2) states, in part, "A holder of any of the credentials set forth in s. RL 4.07 who is convicted of a felony or misdemeanor in this state or elsewhere shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction."

11. In resolution of this matter, David W. Wachholz, Wachholz Family Funeral Home, and Wachholz Family Funeral Homes consent to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Funeral Directors Examining Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 445.13.
2. The Wisconsin Funeral Directors Examining Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44 (5).
3. By the conduct described in paragraphs 8-9 of the Findings of Facts, Respondents David W. Wachholz, Wachholz Family Funeral Home, and Wachholz Funeral Homes have violated:
 - a. Wis. Admin. Code § RL 4.09(2) by failing to report convictions to the department within 48 hours of the judgment of convictions; and
 - b. Wis. Admin. Code §§ FD 3.02(4) and FD 3.02(10) by performing funeral director duties while under the influence of alcohol and by failing to respect the feelings of individuals involved in the grieving process.

ORDER

IT IS ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that effective the date of this Order:

1. The license offer of David W. Wachholz to **VOLUNTARILY SURRENDER** his license as a funeral director (# 77-4490), including the right to renew said license, shall be, and hereby is, **ACCEPTED**.
2. David W. Wachholz is prohibited from receiving compensation from any of the Wachholz Family Funeral Home establishments for any services performed. David W. Wachholz may collect a distribution, dividend, or draw from the Wachholz Family Funeral Home establishments as owner and may reside in a residence attached to or adjacent to any of the Wachholz Family Funeral Home establishments. David W. Wachholz may perform routine maintenance of the residence and property appurtenant. Such routine maintenance may include, but is not limited to, lawn mowing and repairs.
3. The Funeral Directors Examining Board retains jurisdiction to review any future application by David W. Wachholz for any license within the jurisdiction of the Board by him or any corporation in which he owns an interest. No such license shall be granted absent proof of rehabilitation that is satisfactory to the Board, in its sole discretion. In determining if rehabilitation has occurred, the Board may rely upon the contents of this investigation file, and may request any information from Mr. Wachholz that it deems relevant. All indicia of licensure still in the possession of Mr. Wachholz shall be surrendered within fifteen (15) days of the date of signing of this Order.
 - a. Should David W. Wachholz submit an application for any license within the jurisdiction of the Board, he shall provide releases of medical and other information for all service providers pertaining to his alcohol addiction to the Department of Regulation & Licensing Division of Enforcement within his application. David W. Wachholz shall submit

his medical records and other information for all service providers pertaining to his alcohol addiction at least sixty (60) days prior to any appearance before the Board to reinstate his license.

4. The licenses of the Wachholz Family Funeral Home and Wachholz Family Funeral Homes (# 78-1491 and # 78-2104) shall be, and hereby are **LIMITED** to prohibit them from employing Mr. Wachholz in any capacity, whether licensed or unlicensed, and whether paid or unpaid. Further, they are prohibited from allowing Mr. Wachholz to have control of day-to-day operations. Such control shall be vested in the funeral director(s)-in-charge, who shall be licensees in good standing. These limitations may be removed upon transfer of all ownership interest from Mr. Wachholz to other individuals or organizations, or upon the granting of a license in good standing to Mr. Wachholz by the Board.

a. David W. Wachholz is specifically prohibited from meeting with or otherwise speaking to any client or potential client of Wachholz Family Funeral Home and Wachholz Family Funeral Homes (license # 78-1491 and # 78-2104) regarding funeral preparations, funeral pre-planning, or any other funeral related services unless the Board grants Mr. Wachholz a license in good standing. This paragraph also applies to clients or potential clients of any other corporation or entity that provides funeral services in which David W. Wachholz owns an interest. This paragraph does not prohibit David W. Wachholz from attending visitations or funerals of friends or family members provided by Wachholz Family Funeral Home and Wachholz Family Funeral Homes, or any other corporation or entity that provides funeral services in which David W. Wachholz owns an interest.

5. Respondents David W. Wachholz, Wachholz Family Funeral Home, and Wachholz Funeral Homes shall pay the **COSTS** of this disciplinary matter, in the amount of **ONE THOUSAND ONE HUNDRED NINETY DOLLARS** (\$1,190.00) within six (6) months of the date of signing of this Order.

6. All payments and submissions required by this Order shall be mailed, delivered or otherwise transmitted to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

7. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a **SUMMARY SUSPENSION** of Respondents Wachholz Family Funeral Home and Wachholz Funeral Homes licenses (# 78-1491 and # 78-2104). The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondents fail to timely submit payment of the costs as ordered and as set forth above, the Respondents' licenses (numbers 77-4490, 78-1491, and 78-2104) may, in the discretion of the board or its designee, be **SUSPENDED**, without further notice or hearing, until Respondents have complied with payment of the costs.

IT IS FURTHER ORDERED, that file, 07 FDR 004 be, and hereby is, closed.

8. This Order is effective on the date of its signing.

Dated this 9th day of November, 2010.

WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD

By: David Olson