

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**Before the
State Of Wisconsin
Funeral Directors Examining Board**

In the Matter of Disciplinary Proceedings Against
Jason R. Schneider and Schneider Funeral Home &
Life Tributes, Respondents

FINAL DECISION AND ORDER

Order No. 0005323

Division of Legal Services and Compliance Case Nos. 15 FDR 009, 15 FDR 012 and 15 FDR 026

The State of Wisconsin, Funeral Directors Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Funeral Directors Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 23 day of May, 2017.

Marc Eernisse (du)

Member

Funeral Directors Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Jason R. Schneider and Schneider Funeral Home &
Life Tributes, Respondents

DHA Case No. SPS-16-0071
DLSC Case Nos. 15 FDR 009
15 FDR 012
15 FDR 026

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Jason R. Schneider
Schneider Funeral Home & Life Tributes
N4507 Sheehan Lake Lane #B
Campbellsport, WI 53073

Wisconsin Funeral Directors Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Renee M. Parton
Department of Safety and Professional Services
Division of Legal Services and Compliance
P. O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Complaint against Respondents Jason R. Schneider and Schneider Funeral Home & Life Tributes (Respondents). The Complaint alleged that Respondents' credentials were subject to disciplinary action pursuant to Wis. Stat. §§ 445.13(1) and 445.105(4) because Respondents: (1) engaged in unprofessional conduct pursuant Wis. Admin. Code § FD 3.02(5) by refusing to comply with a duly authorized request for information by the Wisconsin Funeral Directors Examining Board (Board) in a timely manner; (2) engaged in

unprofessional conduct pursuant Wis. Admin. Code § FD 3.02(6) by providing the services of funeral directing in a manner which falls below minimal standards established by statute, rule or practice in the profession; and (3) engaged in unprofessional conduct pursuant to Wis. Admin. Code § FD 3.02(10) by failing to demonstrate respect for the sanctity of human remains or for the feelings of individuals involved in the grieving process.

The Division served Respondents on December 15, 2016, by sending a copy of the Notice of Hearing and Complaint to their addresses on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondents failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on January 18, 2017.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondents' failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondents to be in default and issued a Notice of Default and Order on January 18, 2017. Consistent with the notice, the Division filed a recommended proposed decision and order on February 7, 2017.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-28 are set forth in the Division's Complaint against Respondents filed in this matter.

1. Respondent Jason R. Schneider is licensed by the State of Wisconsin as a funeral director, having license number 5485-77, first issued on August 6, 2002 and expired as of December 15, 2015.

2. The most recent address on file with the Department for Respondent Schneider is 123 South Street, Post Office Box 246, Plymouth, Wisconsin 53073.

3. During the course of the Department's investigation into these matters, it was determined that Respondent Schneider's current address is N4507 Sheehan Lake Lane #B, Campbellsport, Wisconsin 53010.

4. Respondent Schneider Funeral Home & Life Tributes (Schneider Funeral Home) is permitted by the State of Wisconsin as a funeral establishment, having permit number 434-78, first issued on July 1, 1944 and current through May 31, 2017.

5. The most recent address on file with the Department for Respondent Schneider Funeral Home is 123 South Street, Post Office Box 246, Plymouth, Wisconsin 53073.

6. During the course of the Department's investigation into these matters, it was determined that Respondent Schneider Funeral Home is no longer operating at the address on

file. Since February 2, 2016, Wittkopp Funeral and Cremation Services, LLC is operating at 123 South Street, Plymouth, Wisconsin 53073.

15 FDR 009

7. On or about July 8, 2015, the Department received a complaint from J.W., a Funeral Director, alleging that a distraught family had contacted him on July 2, 2015, regarding a family member who had died on June 27, 2015.

8. A local embalmer had transferred the deceased to Schneider Funeral Home sometime between June 27, 2015 and July 2, 2015. The family attempted to contact Respondent Schneider for four days to make funeral arrangements, but Respondent Schneider never answered.

9. On July 2, 2015, J.W. successfully contacted Respondent Schneider; however, Respondent Schneider was unable to assist with the removal of the body from Respondent Schneider Funeral Home.

10. Respondent Schneider gave J.W. the security code to enter Schneider Funeral Home and retrieve the deceased.

11. The Division subsequently opened Case Number 15 FDR 009 for investigation on September 8, 2015.

15 FDR 012

12. On or about September 14, 2015, the Department received a complaint regarding Respondents Schneider and Schneider Funeral Home. According to the complaint, on June 24, 2015, family members of the deceased met with Respondent Schneider at Schneider Funeral Home to arrange to have the decedent cremated and make funeral arrangements for a memorial service scheduled for June 26, 2015 and for the remains to be transferred to Arlington Cemetery in Washington, D.C.

13. On or about July 4, 2015, the family still had not received certified copies of the death certificate. The family contacted Respondent Schneider who told them he would follow up.

14. By July 13, 2015, the family had not received the death certificate and was having trouble reaching Respondent Schneider.

15. On July 16, 2015, the family contacted Respondent Schneider who told the family the death certificate was still not available.

16. On July 16, 2015, the family contacted another funeral director for assistance. The funeral director, S.S., contacted Respondent Schneider, who told S.S. the body was still in the cooler at Schneider Funeral Home.

17. On July 21, 2015, S.S. removed the deceased from Respondent Schneider Funeral Home and had the body cremated.

18. The Division subsequently opened Case Number 15 FDR 012 for investigation on October 6, 2015.

15 FDR 026

19. On or about December 16, 2015, the Department received a complaint alleging that Respondent Schneider had failed to follow through on having the date of death etched on a headstone. The etching was included as part of a prepaid funeral trust set up with Schneider Funeral Home.

20. According to the complaint, the decedent died on November 7, 2013, after which the family placed numerous telephone calls to Respondent Schneider, and each time Respondent Schneider responded that the etching would be done by the end of the month.

21. The family contacted Respondent Schneider one last time to inform him that they were going to file a complaint, at which time, Respondent Schneider offered to send the family a certified check for \$150 by November 28, 2015, to cover the cost of the etching.

22. Respondent Schneider never sent the check to the family and as of the date of the complaint, two years after the death, the etching was still not completed. The Division subsequently opened Case Number 15 FDR 026 for investigation on March 22, 2016.

23. On March 14, 2016, the Department attempted to reach Respondents at their telephone number of record. The telephone number was not in service.

24. On March 29, 2016, the Department, on behalf of the Board, sent a letter to Respondents' address of record via certified mail, requesting that they respond to the allegations in the complaints.

25. On April 4, 2016, the letter was returned to the Department by the U.S. Postal Service with a forwarding address for Respondent Schneider.

26. On April 8, 2016, the Department, on behalf of the Board, sent a letter to Respondents' forwarding address via certified mail, requesting that they respond to the allegations in the complaints.

27. Respondent Schneider signed for the certified letter on April 9, 2016.

28. No response has been received to the Department's letter.

Facts Related to Default

29. The Complaint and Notice of Hearing in this matter were served on Respondents on December 15, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondents: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Funeral Directors

Examining Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.”

30. Following the expiration of the 20-day time period to file an Answer, on January 4, 2017, the ALJ scheduled a prehearing conference for January 18, 2017, at 11:30 am. Notice of this prehearing conference was sent to both parties, with instructions that Respondents provide to the ALJ a telephone number at which they could be reached for the conference no later than January 13, 2017. Respondents failed to provide a telephone number.

31. On January 11, 2017, the Division received a letter from Respondent Jason Schneider indicating, among other things, that he did not wish to pursue this matter. The letter was forwarded to the Division of Hearing and Appeals on January 11, 2017, and states, among other things, that during the relevant time period Respondent Schneider was struggling with alcohol and depression issues.

32. At the prehearing conference held on January 18, 2017, the Division provided a telephone number for Respondents. The ALJ attempted to contact Respondents at the number provided by the Division, but was informed by the person who answered the telephone on behalf of the business that Respondent Schneider was no longer a part of the business and that the business had changed names.

33. On January 18, 2017, the ALJ issued a Notice of Default and Order finding that Respondents were in default and requiring the Division to serve no later than February 7, 2017, a recommended proposed decision and order.

34. The Division timely filed its recommended proposed decision and order.

35. Respondents did not file a response to either the Notice of Default and Order or to the Division’s submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the January 18, 2017 Notice of Default and Order, Respondents are in default for failing to appear at the telephone conference held on January 18, 2017. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondents on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Wis. Stat. §§ 445.13(1) and 445.105(4)

The Division alleges that Respondents are subject to discipline pursuant to Wis. Stat. § 445.13(1), which states:

Subject to the rules promulgated under s. 440.03(1), the examining board may... limit, suspend or revoke a license of a funeral director, a certificate of registration of an apprentice or a permit of an operator of a funeral establishment and reprimand a funeral director, apprentice or operator of a funeral establishment for any violation of 15 USC 45 and 57, of this chapter or of any rule of the department of health services or the examining board, for unprofessional conduct, including misrepresentation or fraud in obtaining the license, permit or certificate of registration, or for any violation of this chapter or any rule of the examining board by an agent authorized by the funeral director or operator of the funeral establishment under s. 445.125(3m) (b) 2. a.

The Division alleges that Respondents are also subject to discipline pursuant to Wis. Stat. § 445.105(4), which states:

Violations of this chapter or any rules or regulations of the examining board committed by any person, or an officer, agent or employee with the knowledge or consent of any person operating such funeral establishments shall be considered sufficient cause for reprimand or for limitation, suspension or revocation of such funeral establishment permit.

Wisconsin Admin. Code § FD 3.02 provides a list of violations that are unprofessional conduct by a funeral director. Respondent Jason Schneider engaged in unprofessional conduct in several respects. First, pursuant to Wis. Admin. Code § FD 3.02(5), Respondent Schneider engaged in unprofessional conduct when he refused to comply with a duly authorized request for information by the Board in a timely manner. There is a rebuttable presumption that a person who takes more than 30 days to provide information requested by the Board has not acted in a timely manner. The undisputed facts establish that on March 14, 2016, the Department attempted to reach Respondents at their telephone of record but were unsuccessful. On March 29, 2016, the Department, on behalf of the Board, sent a certified letter to Respondents' address of record requesting they respond to the allegations of three complaints made against Respondents. On April 4, 2016, the letter was returned to the Department with a forwarding address for Respondent Schneider. On April 8, 2016, the Department, on behalf of the Board, sent a certified letter to Respondents' forwarding address requesting a response to the allegations in the three complaints. Respondent Schneider signed for the certified letter on April 9, 2016. The Department had not received a response to the aforementioned letters or phone call when the Complaint was filed on December 15, 2016. Respondents' failure to respond to a request for information by the Board within 30 days of the request constitutes unprofessional conduct pursuant to Wis. Admin. Code § FD 3.02(5).

Second, pursuant to Wis. Admin. Code § FD 3.02(10), Respondent Schneider engaged in unprofessional conduct when he failed to demonstrate respect for the sanctity of human remains or for the feelings of individuals involved in the grieving process. The undisputed facts establish that on numerous occasions from June 27, 2015 through November 27, 2015, Respondent Schneider could not be reached by families of the deceased in Respondent Schneider's care to finalize arrangements. Specifically, with respect to DLSC Case No. 15 FDR 009, a distraught

family had contacted J.W., a Funeral Director, regarding a family member who had died on June 27, 2015. A local embalmer had transferred the deceased to Schneider Funeral Home sometime between June 27, 2015 and July 2, 2015. The family attempted to contact Respondent Schneider for four days to make funeral arrangements, but Respondent Schneider never answered. On July 2, 2015, J.W. successfully contacted Respondent Schneider but Schneider was unable to assist with the removal of the body from Respondent Schneider Funeral Home and gave J.W. the security code to enter Schneider Funeral Home and retrieve the deceased.

Regarding DLSC Case No. 15 FDR 012, family members of the deceased met with Respondent Schneider to make arrangements for cremation and for a memorial service scheduled for June 26, 2015. Additionally, the family wanted assistance with transferring the remains to Arlington Cemetery in Washington, D.C. Respondent Schneider had not delivered copies of the death certificate 20 days after the scheduled memorial service. On July 16, 2015, the family contacted another Funeral Director, S.S., for assistance. S.S. discussed the matter with Respondent Schneider on July 17, 2015. Respondent Schneider indicated the body had not yet been cremated and that S.S. could pick up the body from the cooler at Respondent Schneider Funeral Home & Life Tributes.

With respect to DLSC Case No. 15 FDR 026, after November 7, 2013, family members of the deceased began contacting Respondent Schneider in regards to having the date of death etched on the deceased's headstone. The family had prepaid for this etching. The etching was not completed nor was the family reimbursed for more than two years after the death.

The circumstances surrounding DLSC Case Nos. 15 FDR 009, 012, and 026 demonstrate Respondent Schneider's unprofessional conduct as a Funeral Director and his lack of respect for not only the sanctity of human remains in his possession but also for the individuals involved in the grieving process. This conduct is unacceptable for a Funeral Director who is responsible for guiding a family through a difficult time. In Respondent Schneider's letter to the Department, received on January 11, 2017, he admits to providing less than satisfactory services, which he attributed, in part, to his depression and alcohol problems. Therefore, the aforementioned undisputed facts and Respondent's own admission constitute unprofessional conduct pursuant to Wis. Admin. Code § FD 3.02(10).

Third, given the aforementioned findings of unprofessional conduct pursuant to Wis. Admin. Code §§ FD 3.02(5) and (10), Respondent Schneider provided services of funeral directing in a manner which fell below minimal standards established by statute, rule or practice in the profession pursuant to Wis. Admin. Code § FD 3.02(6). Further, the Board previously found that similar situations constituted unprofessional conduct. *See In the Matter of Disciplinary Proceedings Against Robert E. Borton, et al.*, ORDER0004844 (Aug. 2, 2016); *In the Matter of Disciplinary Proceedings Against Jeffrey Van Calligan*, ORDER0000174 (May 11, 2010); *In the Matter of Disciplinary Proceedings Against David J. Betts, et al.*, ORDERLS0911101FDR (Nov. 10, 2009); *In the Matter of Disciplinary Proceedings Against David W. Wachholz, et al.*, ORDER0000535 (Nov. 9, 2010); *In the Matter of Disciplinary Proceedings Against Kenton D. Boettcher, et al.*, ORDER LS0605161FDR (May 16, 2006).

Based on the facts of this case, Board precedent and that Respondents have made no argument to the contrary, I conclude that Respondent Schneider engaged in unprofessional conduct pursuant to Wis. Admin. Code §§ FD 3.02(5), (6) and (10). As a result, Respondent

Schneider is subject to discipline pursuant to Wis. Stat. § 445.13(1). Accordingly, Respondent Schneider Funeral Home & Life Tributes is subject to discipline pursuant to Wis. Stat. § 445.105(4) because Respondent Schneider is the owner and responsible licensed funeral director of Respondent Schneider Funeral Home & Life Tributes.

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent Jason Schneider's right to renew his funeral director license be revoked and Respondent Schneider Funeral Home & Life Tributes' funeral establishment permit be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law.

"Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

Even though Respondent Schneider's license is currently expired, it is appropriate and necessary to impose discipline. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after expiration by simply paying the application renewal fee and a late renewal penalty of \$25. Under subparagraph (b), the Department is empowered with the ability to promulgate rules requiring credential holders who have failed to renew the credential for five years to complete additional requirements to restore their licenses. *See* Wis. Stat. § 440.08(3)(b). Read together, these provisions have been interpreted by the Department to mean that credential holders retain a right to automatically renew their credentials within five years of expiration by simply paying the required fees. Thus, Respondent Schneider has an automatic right to renew his license until December 14, 2020.

The same reasons justifying discipline in cases in which the respondents are currently credentialed apply to this case as Respondent Schneider may renew his permit at any time. *See In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, LS-0002317 (Feb. 26, 2013), *citing In the Matter of the Disciplinary Proceedings Against Paul S. George, Dean K. George, and George Auction Services*, LS-9804151-AUC (Nov. 18, 1999).

Revocation is necessary to protect the public from other instances of misconduct and to deter other credential holders from engaging in similar conduct. Funeral directors are licensed to care for the deceased while guiding families through the grieving process. These duties necessitate a considerable amount of trust and responsibility. Contrary to this, Respondent Schneider disregarded the public's trust and disregarded his responsibilities to families trying to make the final arrangements for their loved ones.

Further, Respondents have demonstrated a lack of respect for the Board's authority. Respondents failed to cooperate throughout the Department's investigation and in this proceeding. Thus, the Board cannot assure the public of Respondents' competency, and as such, Respondents are not fit to be a funeral director or funeral establishment. Therefore, revocation of Respondent Schneider's right to renew his license and Respondent Schneider Funeral Home & Life Tributes' permit is an appropriate response to their disrespect for the law, the public welfare, and the licensing authority governing their profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is not likely in this case, as Respondents refused to cooperate during the investigation process with the Board which granted their credentials. Having obtained no information during the investigation from Respondents, the Board cannot ascertain whether rehabilitative measures might be effective. Moreover, revocation in this case is necessary to deter other licensees from refusing to cooperate with the Board as it relates to a disciplinary matter and for serious incidents of unprofessional conduct. Licensees need to know this conduct will not be tolerated.

In light of the facts of this case and the factors set forth in *Aldrich*, I find revocation of Respondent Schneider's ability to renew his funeral director license and Respondent Schneider Funeral Home & Life Tributes' funeral establishment permit are warranted.

Costs

As a result of Respondents' credentials being revoked by the Board, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondents. *See* Wis. Stat. § 440.22(2). In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Board has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts are particularly relevant to the instant case. The Division proved every count it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Additionally, Respondents' conduct and violations are serious. Respondents engaged in serious incidents of unprofessional conduct by failing to respond to the Board, not performing funeral services up to the minimal standards and failing to show respect for human remains and families involved in the grieving process. Respondents did not cooperate with the Department's investigation or with the hearing proceedings. As a result, the Division sought a revocation of Respondent Schneider's right to renew his funeral director license and revocation of Respondent Schneider Funeral Home & Life Tributes' funeral establishment permit. Revocation of a license equates to the general absence of mitigating factors in this case. Further, Respondents made no argument concerning whether costs should be assessed against them. Finally, the Department is a program revenue

agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in favor of requiring Respondents to pay the costs of this proceeding which resulted in significant discipline rather than spreading the costs among all funeral directors and funeral establishments in Wisconsin.

I find that all of the costs of this proceeding should be assessed against Respondents and that the amount of costs be determined pursuant to Wis. Admin. Code § SPS 2.18.

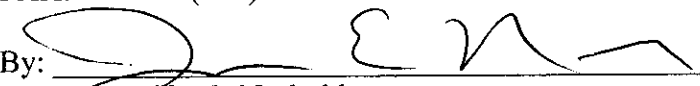
ORDER

Accordingly, it is hereby ORDERED that Respondent Jason R. Schneider's right to renew his funeral director license (no. 5485-77) is REVOKED, and Respondent Schneider Funeral Home & Life Tributes' funeral establishment permit (no. 434-78) is REVOKED, effective on the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that should Respondents ever apply for a credential with the Department in the future, Respondents shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Madison, Wisconsin on March 9, 2017.

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By: 
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Administrative Law Judge