

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
SCOTT K. BRAINARD AND :
BRAINARD FUNERAL HOME, :
RESPONDENTS. :

0005540

Division of Legal Services and Compliance Case No. 16 FDR 007

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

Scott K. Brainard
522 Adams St.
Wausau, WI 54403

Brainard Funeral Home
522 Adams St.
Wausau, WI 54403

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

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

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 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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Scott K. Brainard (DOB 06/01/1951) is licensed by the State of Wisconsin as a funeral director, having license number 3977-77, first issued on February 28, 1973 and current through December 14, 2017. Respondent Brainard's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 522 Adams Street, Wausau, Wisconsin 54403.

2. Respondent Brainard Funeral Home is permitted by the State of Wisconsin as a funeral establishment, having permit number 1169-78, first issued on December 12, 1961 and current through May 31, 2019. This permit was expired from June 1, 2017 through June 26, 2017. Respondent Brainard Funeral Home's most recent address on file with the Department is 522 Adams Street, Wausau, Wisconsin 54403.

3. Respondent Brainard is identified in Department records as the funeral director in charge of Respondent Brainard Funeral Home.

4. On June 2, 2016, the Department received a complaint alleging that Respondents were advertising C.D.-H. as a funeral director when C.D.-H. was a funeral director apprentice. Division of Legal Services and Compliance Case No. 16 FDR 007 was subsequently opened for investigation.

5. The Department's investigation substantiated that Respondents identified C.D.-H. as a funeral director in a yellow pages telephone directory advertisement.

6. Respondents performed six funeral services between June 1, 2017 and June 26, 2017.

7. In resolution of this matter, Respondents 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 this matter pursuant to Wis. Stat. § 445.13, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent Scott K. Brainard violated Wis. Stat. § 445.105(1) and Wis. Admin. Code § FD 1.08(1) by conducting, maintaining, managing and operating a funeral establishment that did not hold a current permit issued by the board.

3. By the conduct described in the Findings of Fact, Respondent Scott K. Brainard violated Wis. Stat. § 445.12(4) by publishing, or causing to be published, a false, misleading or fraudulent advertisement.

4. By the conduct described in the Findings of Fact, Respondent Scott K. Brainard violated Wis. Admin. Code § FD 3.02(9) by engaging in misleading or deceptive conduct in the conduct of business or the profession.

5. As a result of the above violations, Scott K. Brainard and Brainard Funeral Home are subject to discipline pursuant to Wis. Stat. § 445.13(1) and Wis. Stat. § 445.105(4).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Scott K. Brainard is REPRIMANDED.
3. Respondent Brainard Funeral Home is REPRIMANDED.
4. Within 90 days from the date of this Order, Respondent Scott K. Brainard shall pay one-half of the COSTS of this matter in the amount of \$236.
5. Within 90 days from the date of this Order, Respondent Brainard Funeral Home shall pay one-half of the COSTS of this matter in the amount of \$236.
6. Payment of costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

7. In the event Respondents violate any term of this Order, Respondents' credentials (numbers 3977-77 and 1169-78), or Respondents' right to renew their credentials, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondents have complied with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

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

WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD

by:

Marc Ferrisse
A Member of the Board

11/28/17
Date

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

SCOTT K. BRAINARD AND
BRAINARD FUNERAL HOME,
RESPONDENTS.

:
:
:
:
:
:

STIPULATION

0005540

Division of Legal Services and Compliance Case No. 16 FDR 007

Respondents Scott K. Brainard and Brainard Funeral Home and the Division of Legal Services and Compliance, Department of Safety and Professional Services, stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondents consent to the resolution of this investigation by Stipulation.

2. Respondents understand that by signing this Stipulation, Respondents voluntarily and knowingly waive the following rights:

- the right to a hearing on the allegations against Respondents, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondents;
- the right to call witnesses on Respondents' behalf and to compel their attendance by subpoena;
- the right to testify on Respondents' own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondents under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondents are aware of Respondents' right to seek legal representation and have been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondents agree to the adoption of the attached Final Decision and Order by the Wisconsin Funeral Directors Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the Board's order, if adopted in the form as attached.


5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondents, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

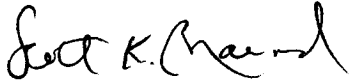
7. Respondents are informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



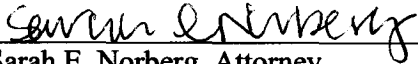
Scott K. Brainard, Respondent
522 Adams St.
Wausau, WI 54403
License no. 3977-77

Sept 28, 2017
Date



Brainard Funeral Home, Respondent
By: Scott K. Brainard
522 Adams St.
Wausau, WI 54403
Permit no. 1169-78

Sept. 28, 2017
Date



Sarah E. Norberg, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

10.2.17
Date