

Clearinghouse Rule 19-163

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS
FUNERAL DIRECTORS : EXAMINING BOARD
EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Funeral Directors Examining Board to repeal FD 1.015 (title) and (intro.), 1.056 (1) (i), 2.02 (title) and (intro.), and 2.03 (1); to renumber FD 1.015 (2) and (3), to renumber and amend FD 2.02 (1) and (2); to amend FD 1.056 (1) (intro) and 2.03 (2); to repeal and recreate FD 1.075 (1) and (2); and to create FD 2.03 (1g) and (1r) relating to licensure and standards of practice for funeral directors and funeral director apprentices.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 445.095, Stats.

Statutory authority: Sections 15.08 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., “[e]ach examining board...Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2) (a), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..”

Related statute or rule:

Section 445.01, Stats., defines funeral directors and funeral director apprentices.

Plain language analysis:

This rule project renumbers several definitions to place them within s. FD 1.013, making clear that the definitions apply throughout the FD suite. Section FD 1.056 is also revised

to clarify that the 16-hour certification course for apprentices must be completed in-person.

The rule project revises s. FD 1.075 to clarify that apprentices may only embalm a dead human body, conduct funeral services, and make funeral arrangements while under the personal supervision of a licensed funeral director, and may only make removals of dead human bodies and other preparations of a dead human body for burial, not including embalming, while under the supervision of a licensed funeral director.

Section FD 2.03 is revised to reflect that making funeral arrangements, embalming, and conducting funeral services may only be performed by a licensed funeral director or an apprentice under the personal supervision of a licensed funeral director. Additionally, s. FD 2.03 is amended to provide that only a licensed funeral director, or an apprentice under the supervision of a licensed funeral director, may make removals of dead human bodies or make other preparations of a dead human body for burial, not including embalming.

Summary of, and comparison with, existing or proposed federal regulation:

The federal government does not regulate the tasks that can be performed by funeral director apprentices or the level of supervision a licensed funeral director must exercise over apprentices.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

Mr. Dan Christianson gave public testimony on the scope statement at the Funeral Director Examining Board's August 27, 2019 meeting. Mr. Christianson expressed his opposition to the board's requirement that applicants for reinstatement with a license that has been expired for 10 years or more must provide evidence of passage of the National Board Examination of the International Conference of Funeral Service Examining Boards within the last 12 months.

The board considered Mr. Christianson's testimony, but did not choose to pursue the changes sought. Requiring passage of the national board is an objective measure to ensure that an individual who has not practiced in over 10 years is competent to serve as a funeral director.

Comparison with rules in adjacent states:

Illinois: Illinois code requires funeral director interns to participate in funeral arrangements, preparation and embalming of dead human bodies, and removals of dead human bodies. A licensed funeral director must direct and supervise the intern when performing these procedures. (IL Admin Code s. 1250.130 (a) and (b)). Illinois requires a representative of the funeral establishment be present for final disposition in a

cemetery, but the representative need not be a licensed funeral director or intern. (IL Admin Code s. 1250.180).

Iowa: Iowa code requires a funeral director's license to make removals of dead human bodies, embalming, conducting funeral arrangements and funeral services including supervision of visitation and viewing, funeral and memorial ceremonies, and committal and final disposition services. (IAC 645-110.2 (1)).

A registered intern may provide these same services under the direct supervision of a licensee. (IAC 645-110.2 (2)). The actual transportation of an unembalmed dead human body can be delegated to unlicensed staff if the funeral director has ensured the body is in a leakproof container and all body orifices are secured so as to retain all secretions. (IAC 645-110.4(3))

Michigan: Resident trainees may learn the practice of embalming or funeral directing under the instruction and personal supervision of a holder of a licensee. Instruction and personal supervision are not defined by statute or rule. (MCL 339.1801 (f)).

Minnesota: A license is required to remove dead human bodies from the place of death for compensation, to prepare a dead human body for burial, makes funeral arrangements, or supervise a funeral, memorial service, or graveside service. (Minn. Stats. 149A.20 (1)).

Interns and students officially registered for a practicum or clinical through a program of mortuary science accredited by the American Board of Funeral Service Education may perform these tasks provided that they are registered with the commissioner and act under the direct and exclusive supervision of a licensee. (Minn. Stats. 149A.01 (3) (d)). Direct supervision means overseeing the performance of an individual, where the supervisor is available to observe and correct, as needed, the performance of the individual. (Minn Stats. 149A.02 (13a)).

Summary of factual data and analytical methodologies:

As part of the board's review of its rules under s. 227.29, Stats., the board determined it was necessary to clarify the tasks that funeral director apprentices may perform, and under what level of supervision. Failure to do so would result in the rules remaining inconsistent with state statute, and inconsistent within the FD suite.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted for 14 days on the department website to solicit economic impact comments. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereh@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the hearing scheduled for 9:30 AM on January 22, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. FD 1.015 (title) and (intro.) are repealed.

SECTION 2. FD 1.015 (2) and (3) are renumbered FD 1.013 (4) and (5).

SECTION 3. FD 1.056 (1) (intro) is amended to read:

FD 1.056 (1) (intro.) The 16-hour certification class shall contain the following in-person instructional topics:

SECTION 4. FD 1.056 (1) (i) is repealed.

SECTION 5. FD 1.075 (1) and (2) are repealed and recreated to read:

FD 1.075 (1) Apprentices may engage in the following activities only when under the personal supervision of a licensed funeral director:

- (a) Making funeral arrangements.
- (b) Embalming a dead human body.
- (c) Conducting funeral services.

(2) Apprentices may engage in the following activities only when under the supervision of a licensed funeral director:

- (a) Making removals of dead human bodies.
- (b) Other preparation of a dead human body for burial, not including the embalming of the body.
- (c) Conducting services where a dead human body is not present.

SECTION 6. FD 2.02 (title) and (intro.) are repealed.

SECTION 7. FD 2.02 (1) is renumbered FD 1.013 (1m) and is amended to read:

FD 1.013 (1m) “Funeral arrangements” means the provision of information or advice, at the time of need, on selection and cost of merchandise, facilities, equipment or personal services provided for final disposition of a dead human body; in the course of formulating a contractual agreement between a funeral director or funeral home and client.

SECTION 8. FD 2.02 (2) is renumbered FD 1.013 (3) and is amended to read:

FD 1.013 (3) “Funeral services” means the ceremonies held in conjunction with the disposition of the dead human body, where the body is present, and including visitation, religious rites, ~~memorials~~ and graveside services.

SECTION 9. FD 2.03 (1) is repealed

SECTION 10. FD 2.03 (1g) and (1r) are created to read:

FD 2.03 (1g) The following tasks may only be performed by licensed funeral directors or funeral director apprentices under the personal supervision of a licensed funeral director:

- (a) Making funeral arrangements.
- (b) Embalming a dead human body.
- (c) Conducting funeral services.

(1r) The following tasks may only be performed by licensed funeral directors or funeral director apprentices under the supervision of a licensed funeral director:

- (a) Making removals of dead human bodies.
- (b) Other preparation of a dead human body for burial, not including the embalming of the body.

SECTION 11. FD 2.03 (2) is amended to read:

FD 2.03 (2) Any other dealings on behalf of the establishment, ~~including the conducting of funeral services~~, shall be performed only by or under the supervision of licensed funeral directors.

SECTION 12. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
