

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee For
Review of Administrative
Rules (JCR-AR)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ 97hrJCR-AR_Crule_98-057

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

98-057 - FUNERAL DIR. EXAM. BD
PRACTICES

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

JUL 10

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS EXAMINING
FUNERAL DIRECTORS : BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 98-057

TO: Senator Robert Welch, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
1 East Main Street
Room 201
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the FUNERAL DIRECTORS EXAMINING BOARD is submitting in final draft form proposed rules relating to the practice of funeral directors.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P. O. BOX 8935
MADISON, WISCONSIN 53708-8935
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Administrative Rules in Final Draft Form

Funeral Directors Examining Board

Rule: Chapters FD 1 to 5

Relating to: Examinations, Renewal, Unprofessional Conduct

Clearinghouse Rule: No. 98-057

Regulatory Boards

Accounting; Architects; Landscape Architects; Professional Geologists; Professional Engineers; Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers; Marriage and Family Therapists and Professional Counselors; and Veterinary.

**STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 98-057
FUNERAL DIRECTORS : (s. 227.19 (3), Stats.)
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

The Funeral Directors Examining Board amends and repeals existing rules in Chapters FD 1 to 5. The amendments relate to statutory authority; form, style and placement of provisions in the rules; conflicts or duplication of existing rules; the adequacy of references to related statutes, rules and forms; and the clarity, grammar, punctuation and use of plain language. Language is being added concerning accommodations for persons with disabilities. Provisions relating to passing scores of the licensing examinations, examination reviews and dishonest acts by examination candidates are also amended.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 19, 1998. There were no appearances at the public hearing nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS EXAMINING
FUNERAL DIRECTORS : BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 98-057)

PROPOSED ORDER

An order of the Funeral Directors Examining Board to *renumber and amend* FD 2.12; to *amend* FD 1.02, 1.10 (1), (2) and (3), 2.02 (1), 2.09, 2.10 (2), 3.02 (4), (7), (11) and (13), 4.03 (7), 4.04 (2) (intro.) and 5.01; to *repeal and recreate* FD 1.03 and 1.10 (1) and (2); to *create* FD 1.035, a Note following FD 1.08, a Note following FD 2.01 and a Note following FD 5.02 (1) (b), relating to the practice of funeral directors.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 445.04, 445.045 and 445.06, Stats.

Statutes interpreted: s. 445.03 (2) (a), Stats.

The Funeral Directors Examining Board amends and repeals existing rules in Chapters FD 1 to 5. The amendments relate to statutory authority; form, style and placement of provisions in the rules; conflicts or duplication of existing rules; the adequacy of references to related statutes, rules and forms; and the clarity, grammar, punctuation and use of plain language. Language is being added concerning accommodations for persons with disabilities. Provisions relating to passing scores of the licensing examinations, examination reviews and dishonest acts by examination candidates are also amended.

TEXT OF RULE

SECTION 1. FD 1.02 is amended to read:

FD 1.02 EXAMINATION APPLICATIONS. Applications for taking the examination for a funeral director or embalmer must be on file at least 30 days before the date of the examination. The board may accept applications after the 30-day limit if the circumstances warrant such procedure.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 2. FD 1.03 is repealed and recreated to read:

FD 1.03 EXAMINATION GRADE. (1) To pass the initial licensure examination each applicant shall receive a grade determined by the board to represent minimum competence to practice. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing grade for the examination at that point which represents minimum acceptable competence in the profession.

(2) The release of grades or the issuance of a funeral director license may be denied if the board determines that an applicant violated the rules of conduct of the examination or otherwise acted dishonestly.

SECTION 3. FD 1.035 is created to read:

FD 1.035 EXAMINATION REVIEW. (1) An applicant who fails the state board examination may request a review of that examination by filing a written request with the board within 30 days of the date on which the examination results were mailed.

(2) Examination reviews are by appointment only.

(3) The time for review shall be limited to 4 hours.

(4) An applicant may not be accompanied during the review by any person other than the proctor.

(5) An applicant shall be provided with a copy of the questions, a copy of the applicant's answer sheet and a copy of the master answer sheet.

(6) An applicant may review the examination in the presence of a proctor. An applicant shall be provided with a form on which to write comments, questions or claims of error regarding any items in the examination. Bound reference books shall be permitted. An applicant shall not remove any notes from the area. Notes shall be retained by the proctor and made available to the applicant for use at a hearing, if desired. The proctor shall not defend the examination nor attempt to refute claims of error during the review.

(7) An applicant may not review the examination more than once.

SECTION 4. A Note following FD 1.08 is created to read:

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 5. FD 1.10 (1) and (2) are repealed and recreated to read:

FD 1.10 REQUIREMENTS FOR RENEWAL; RESTORATION OF LICENSES. (1) To renew a funeral director license a licensee shall, by January 1 of each even-numbered year following initial licensure, provide all of the following to the board:

(a) An application for renewal on a form provided by the department.

(b) Evidence that the licensee has, during the biennial period immediately preceding application, completed the continuing education requirements specified in s. FD 4.03.

(c) A fee in the amount required under s. 440.08 (2) (a), Stats.

(2) A licensee who fails to meet the requirements of sub. (1) by the renewal date shall cease and desist from practicing as a funeral director. A licensee who fails to meet the requirements of sub. (1) and who applies for renewal less than 5 years after the expiration date of his or her license may renew by furnishing the following to the board:

(a) An application for renewal on a form provided by the department.

(b) Evidence that the licensee has completed at least 15 hours of continuing education during the previous 2 year licensure period as required under s. 445.06, Stats., and s. FD 4.03.

(c) The renewal fee specified in s. 440.08 (2) (a) and (3) (a), Stats.

SECTION 6. FD 1.10 (1), (2) and (3) are amended to read:

FD 1.10 (1) A funeral director who files an application for renewal of a license less than 30 days after the expiration of the applicant's last license, may renew the license by payment of the fees under s. 440.08 (2) and (3) (a) ~~1~~, Stats., and by furnishing proof of completion of at least 15 hours of continuing education during the previous 2 year licensure period under s. 445.06, Stats., and s. FD 4.03.

(2) A funeral director who files an application for renewal of a license 30 days or more after the expiration of the applicant's last license, but within 5 years after the expiration date, may renew the license by payment of the fees under s. 440.08 (2) and (3) (a) ~~2~~, Stats., and by furnishing proof of completion of at least 15 hours of continuing education during the previous 2 year licensure period under s. 445.06, Stats., and s. FD 4.03.

(3) A funeral director who files an application for renewal more than 5 years after the ~~renewal~~ expiration date of his or her license may be reinstated by filing with the board an application and fees ~~under~~ specified in s. 440.08 (2) and (3) (a) ~~2~~, Stats., ~~and the~~ The board may also require demonstration of competence by various methods, including, but not limited to,

written or oral examination, documentation of funeral directing work in other jurisdictions, or documentation of current education or experience in the field. Any examination or education required under this section shall not be more extensive than the educational or examination requirements for an initial credential from the board.

SECTION 7. A Note following FD 2.01 is created to read:

Note: Funeral directors must comply with the standards adopted by the Federal Trade Commission and set forth in 16 CFR 453.

SECTION 8. FD 2.02 (1) is amended to read:

FD 2.02 (1) "Funeral arrangements" means the provision of information or advice on selection and cost of merchandise, facilities, equipment or personal services provided for final ~~deposition~~ disposition of a dead human body in the course of formulating a contractual agreement between a funeral director or funeral home and client.

SECTION 9. FD 2.09 is amended to read:

FD 2.09 COMMISSIONS PROHIBITED. Paying Except as provided in s. 445.125 (3m), Stats., paying or accepting a commission or a salary based upon the selling price or number of funeral services sold shall be considered unethical and is therefore prohibited.

SECTION 10. FD 2.10 (2) is amended to read:

FD 2.10 (2) All post-mortem procedures shall be performed and all preparation rooms, equipment, instruments and supplies in funeral establishments shall be maintained in compliance with the terms and conditions set forth in the United States occupational safety and health administration requirements standard for occupational exposure to ~~blood-borne~~ blood-borne pathogens under 29 CFR 1910.1030. In cases of HIV infection, after the body has been prepared in accordance with s. ~~HSS 316.04~~ HFS 136.04, the usual and customary procedures may be followed for restoration and cosmetology. Following embalming and body preparation, no special precautions need to be observed during visitation.

SECTION 11. FD 2.12 is renumbered FD 1.11 and as renumbered FD 1.11 (2) is amended to read:

FD 1.11 (2) RECOGNIZED FUNERAL ESTABLISHMENT. For purposes of renewal of licenses under s. ~~455.06~~ 445.06, Stats., "recognized funeral establishment" means any building or part of a building used and held out to the public as being used in the care and preparation for burial and transportation of dead human bodies or for holding or conducting of funeral services.

SECTION 12. FD 3.02 (4), (7), (11) and (13) are amended to read:

FD 3.02 (4) Performing of any funeral ~~or embalming duty during the planning or conducting of services~~ director duty while under the influence of alcohol or controlled substances. ~~(Controlled substances are listed in ch. 464 961, Stats.)~~

(7) Disclosing confidential information ~~gained~~ obtained in the performance of official duties ~~outside of family members or official persons performing duly authorized duties.~~

(11) Failing to provide to the depositor, within 15 working days of receipt of a payment, written confirmation of receipt and deposit of payment made pursuant to a funeral trust agreement in accordance with s. 445.125 ~~(2) (1) (b)~~, Stats. Such written confirmation shall include the name of the bank, savings bank, trust company, savings and loan association or credit union, the account number, the date of deposit, and a copy of the deposit slip or other documentary evidence of a payment deposited.

(13) Engaging in inappropriate sexual contact with clients of the funeral establishment ~~when acting as a grief counselor.~~

SECTION 13. FD 4.03 (7) is amended to read:

FD 4.03 (7) No more than 10 hours of the 15-hour requirement may be acquired through participation in ~~non-contract~~ non-contact home study programs.

SECTION 14. FD 4.04 (2) (intro.) is amended to read:

FD 4.04 (2) (intro.) An application for a continuing education program shall ~~be approved if the application includes the~~ include all of the following:

SECTION 15. FD 5.01 is amended to read:

FD 5.01 QUALIFICATIONS. (intro.) A person licensed as a funeral director in another state may obtain a license as a funeral director under this chapter if the applicant meets all of the following criteria:

(1) Has met requirements in another state substantially equal to those in this state;

(2) Has never been disciplined by the licensing authority in any other state, territory or country for any misconduct or violations which ~~evidence~~ demonstrate lack of competence to practice as a funeral director in Wisconsin as determined by the board;

(3) Is not under any current investigation and is not a party in a proceeding involving a complaint against the applicant which relates to the applicant's practice as a funeral director;

(4) Does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats.

(5) Has satisfactorily completed 9 months or more of instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American board of funeral service education or deemed to be equivalent by the board; ~~and,~~

(6) ~~Completes the~~ Passes the board's examination on Wisconsin law ~~with a score of at least 75. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing grade for the examination at that point which represents minimum acceptable competence in the profession.~~

SECTION 16. A Note following FD 5.02 (1) (b) is created to read:

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(END OF TEXT OF RULE)

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.

Dated _____

Agency _____

Chairperson
Funeral Directors Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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7/9/98

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-057

AN ORDER to renumber and amend FD 2.12; to amend FD 1.02, 1.10 (3), 2.02 (1), 2.09, 2.10 (2), 3.02 (4), (7), (11) and (13), 4.03 (7), 4.04 (1) (a) 4. and (b) and 5.01; to repeal and recreate FD 1.03 and 1.10 (1) and (2); and to create FD 1.035, a Note following FD 1.08, a Note following FD 2.01 and a Note following FD 5.02 (1) (b), relating to the practice of funeral directors.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

04-15-98 RECEIVED BY LEGISLATIVE COUNCIL.
05-12-98 REPORT SENT TO AGENCY.

RNS:AS;jt;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 98-057

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. In s. FD 1.10 (3), “in” after “specified” should be underscored.
- b. In s. FD 3.02 (11), the term “savings bank” should be added to the list of financial institutions. [See s. 445.125 (1) (b), Stats.]

4. Adequacy of References to Related Statutes, Rules and Forms

In s. FD 1.10 (3), in the cite to s. 440.08 (2) and (3) (a) 2., Stats., “2.” should be stricken because there is no such subdivision in sub. (3) (a).

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. FD 1.035, it is not clear what the procedure is following an examination review. Section FD 1.035 (6) refers to a possible hearing following an examination review.
- b. In s. FD 2.10 (2), a hyphen should be inserted between “blood” and “borne.” Also, “,” after “blood borne pathogens” should be replaced with “under.”
- c. Section FD 4.04 (1), as drafted, could be interpreted as requiring a program to meet only one of the criteria in pars. (a), (b), (c) and (d). It appears, though, that the drafter intends that the program meet the criteria in both pars. (a) and (b) and one of the criterion in pars. (c)

and (d). The subsection should be redrafted. Also, sub. (1) (intro.) should clarify that the form must include information demonstrating that the program meets the criteria listed.

d. It appears that s. FD 4.04 (2) (intro.) should be amended to indicate that the information listed in pars. (a) to (d) must be included in the application instead of providing that an application must be approved if that information is included.

e. In s. FD 5.01 (intro.), after "the applicant," a phrase such as "meets all of the following criteria" should be inserted. This clarification is needed because "and" in sub. (5) is deleted.

f. In s. FD 5.01 (6), "Successfully" should be deleted because it is redundant.