

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

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| 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 1.076 and 1.077; to amend FD 1.02 (5); and to create FD 1.013 (6) and (7), 1.065 (3), and 1.078., relating to apprenticeship requirements and procedures.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 445.095, 445.06, 445.07, and 445.10, Stats.

Statutory authority: ss. 15.08 (b), 227.11 (2) (a), and 445.03 (2), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. provides “[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. provides “[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.”

Section 445.03 (2), Stats., provides that “[t]he examining board may make and enforce rules ... establishing professional and business ethics for the profession of funeral directors and for the general conduct of the business of funeral directing, and for the examination and licensing of funeral directors and the registration of apprentices [and] conduct a school of instruction to apprise funeral directors of the most recent scientific knowledge and developments affecting their profession...”

Related statute or rule:

None.

Plain language analysis:

The Funeral Directors Examining Board is updating the rules governing their practice based upon updated statute modifications which reflected process clarifications requirements for renewal, terms of apprenticeships, and renewal of funeral director and apprentice licenses. This revision also includes a comprehensive review that improves usability and conformity with current state statute, industry practice, and rule drafting standards.

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

None.

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:

N/A

Comparison with rules in adjacent states:

Illinois:

Illinois states as one of the requirements for the funeral director and embalmer license that an applicant completes a twelve-month internship within the past 5 years, for which an intern license needs to be issued. The requirements for the intern license include proof of mortuary science education and a signed certification of acceptance for an internship by an actively licensed funeral director and embalmer in good standing. [IL Admin. Code 1250.120].

During the internship, the intern needs to submit 12 case reports every 3 months. Upon completion of the internship, the sponsor must complete a report stating that the intern has satisfactorily completed the requirements. The intern license may only be renewed twice. [IL Admin. Code 1250.130]

Illinois does not have a special criterion for regular license renewals. [IL Admin. Code 1250.200]

Iowa:

In order to obtain a license to practice mortuary science in Iowa, an applicant must have completed a one-year internship under the direct supervision of a preceptor. If the internship is interrupted, it must be completed within 24 months of the date it commenced. Extension of an internship will be evaluated by the board depending on the length of time that has lapsed since the beginning of the internship and the experience attained by the intern. The preceptor must present two reports to the board: the first after six months of the start date of the internship, and the second at the end of the internship.

Additionally, the intern must present to the board a report upon completion of the internship. [625 IAC 101.3 (1) and (2)]

Iowa only requires completion of continuing education to renew funeral director licenses. [645 IAC 101.7 (3)]

Michigan:

Michigan requires completion of one year of resident training before conferring full licensure to practice mortuary science. Up to 6 months of resident training may be waived if the applicant has completed a bachelor's degree from an accredited college or university. [MI Admin. Code R 339.18921 (2)]

A resident trainee must notify the department of any changes in supervisor or training location. The resident trainee license may only be renewed twice. [MI Admin. Code R 330.189.23 (2) and (4)]

In order to receive credit for the resident training, the trainee must submit a report to the department stating that a minimum of 5 embalmments must be performed during the previous 6 months. [MI Admin. Code R 339.18927 (1)]

Michigan does not have a special criterion for regular license renewals.

Minnesota:

Minnesota requires applicants who are pursuing a license in mortuary science to complete a registered internship under the direct supervision of an individual who is currently licensed to practice mortuary science. The internship shall be a minimum of 2,080 hours within a three-year period unless 520 hours are waived upon completion of a practicum in mortuary science through the program of mortuary science of the University of Minnesota or an approved similar program. Any changes in the internship registration must be reported immediately to the commissioner. Registration must be renewed annually if the exceed one calendar year. [Minn. Stats. 149A Sub. 6]

Minnesota does not have a special criterion for regular license renewals.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of FD 1, as modified by changes in State Statute. The updated provisions were reviewed in conjunction with current rules relating to the updated State of Wisconsin funeral director reporting and renewal process, as well as clarification of apprenticeship guidelines. The Board provided necessary input and feedback to establish any additional language changes or updates needed in addition to those enacted by state statute. The proposed rules were developed by obtaining input and feedback from the Funeral Directors Examining Board.

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

This rule will be posted for economic comments for 14 days.

Fiscal Estimate and Economic Impact Analysis:

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

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.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dana Denny, 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 608-261-4463; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dana Denny, 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.

TEXT OF RULE

SECTION 1. FD 1.013 (6) and (7) are created to read:

FD 1.013 (6) “Apprentice” has the meaning in s. 445.01 (2), Stats.

(7) “Funeral establishment” has the meaning in s. 445.01 (6), Stats.

SECTION 2. FD 1.02 (5) is amended to read:

(5) Evidence of completion of 1 year of apprenticeship under s. 445.095, Stats., ~~and s. FD 1.077~~. In addition to the requirements under this chapter and s. 445.095, Stats., eligibility for a funeral director license shall require an apprentice to present affidavits from the licensed funeral directors under whom the apprentice has worked to verify that during the apprenticeship the apprentice completed all of the following:

- (1) Assisted in embalming for burial or shipment at least 25 dead human bodies.

(2) Assisted in preparing 25 dead human bodies for burial or transportation, other than by embalming.

(3) Assisted in at least 25 funeral services during the apprenticeship.

SECTION 3 FD 1.065 (3) is created to read:

FD 1.065 (3) An apprentice who transfers from one licensed funeral director to another during their apprenticeship, as well as the supervising funeral director, shall abide by the procedures outlined under s. 445.095 (3r).

SECTION 4. FD 1.076 is repealed.

SECTION 5. FD 1.077 is repealed.

SECTION 6. FD 1.078 is created to read:

FD 1.078 Semiannual apprentice reporting requirements. All apprentices shall provide semiannual reports to the examining board as required by s. 445.095 (3g). The funeral director-employer and apprentice are required to submit a copy of the Apprentice Semi-Annual Report every 6 months. This form may be obtained from the DSPS Funeral Director Apprentice website at <https://dsps.wi.gov/Pages/Professions/FuneralDirectorApprentice/Default.aspx>.

SECTION 7. 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)

Chapter FD 1

LICENSES AND PERMITS

FD 1.01 Authority and intent. This chapter is adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 (2) (a), 440.08 (3) (b), and 445.03 (2) (a), Stats., to clarify and establish licensure criteria for funeral directors, funeral director apprentices, and funeral establishments.

FD 1.013 Definitions; generally. As used in chs. FD 1 to 4 and FD 6:

- (1) "Board" means the funeral directors examining board.
- (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.
- (2) "Funeral director" means a person as defined in s. 445.01 (5), Stats.
- (3) "Funeral services" means the ceremonies held in conjunction with the disposition of a dead human body where the body is present, including visitations, religious rites, and graveside services.
- (4) "Personal supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.
- (5) "Supervision" means regularly to coordinate, direct and inspect the practice of another
- (6) "Apprentice" has the meaning in s. 445.01 (2), Stats.
- (7) "Funeral establishment" has the meaning in s. 445.01 (6), Stats.

FD 1.02 Applications. An applicant for a funeral director's license shall submit all of the following:

- (1) A completed application.
- (2) Required fee under s. 440.03 (9) (a), Stats.
- (3) Evidence of completion of at least 24 semester credits of instruction in a recognized college or university meeting the requirements of s. FD 1.04.
- (4) Evidence of completion of 9 months or more instruction in a prescribed course in mortuary science meeting the requirements of s. FD 1.05.
- (5) Evidence of completion of 1 year of apprenticeship under s. 445.095, Stats., ~~and s. FD 1.077.~~ In addition to the requirements under this chapter and s. 445.095, Stats., eligibility for a funeral director license shall require an apprentice to present affidavits from the licensed funeral directors under whom the apprentice has worked to verify that during the apprenticeship the apprentice completed all of the following:
 - (1) Assisted in embalming for burial or shipment at least 25 dead human bodies.
 - (2) Assisted in preparing 25 dead human bodies for burial or transportation, other than by embalming.
 - (3) Assisted in at least 25 funeral services during the apprenticeship.
- (6) If the applicant has a pending criminal charge or conviction record, all documentation necessary for the board to determine whether the circumstances substantially relate to the practice of funeral director, subject to ss. 111.321, 111.322, and 111.335, Stats.
- (7) Evidence of passage of the National Board Examination of the International Conference of Funeral Service Examining Boards.
- (8) Evidence of passage of the Wisconsin jurisprudence examination for funeral directors.

FD 1.03 Examination grade. The passing grade on each licensure examination shall be determined by the board to represent minimum competence to practice. The board may adopt the recommended passing score of the examination provider.

FD 1.04 College instruction. To meet the requirement of 24 semester credits of instruction specified in s. 445.045 (1) (d), Stats., an applicant shall submit to the board an official transcript of courses from a regionally accredited college showing that the applicant has completed at least 24 semester credit hours in the following areas:

- (1) English or Communication Skills.
- (3) Social Sciences.
- (4) Natural Sciences.
- (5) Business Studies.
- (6) Electives.

FD 1.05 Mortuary school. The candidate shall have satisfactorily completed 9 months or more instruction in a prescribed course in mortuary science, either before or after completing the 1 year apprenticeship required under s. 445.095, Stats., offered by an educational institution accredited by the American board of funeral service education or otherwise deemed to be equivalent by the funeral directors examining board.

FD 1.055 Certification class requirement. Prior to beginning the 1 year apprenticeship required under s. 445.095, Stats., the applicant shall provide evidence of completion of an in-person 16-hour certification class approved by the board, unless the applicant has already completed the course in mortuary science requirement in s. FD 1.05, in which case the certification course is not required.

FD 1.056 Certification class content.

- (1) The 16-hour certification class shall contain the following instructional topics:
 - (a) Funeral director apprentice expectations.
 - (b) Funeral ethics and etiquette.
 - (c) Understanding funeral services, gatherings, and various types of dispositions.
 - (d) Laws, rules, and regulations of funeral service.
 - (e) Workplace safety and Occupational Safety and Health Administration requirements.
 - (f) Introduction to funeral service: notification of death, transfers, and arrangements.
 - (g) Embalming, dressing, and casketing.
 - (h) Grief and psychology of funeral services.
- (2) Following the instructional presentation of the material under sub. (1), a written examination, approved by the board, shall be administered.
- (3) The written examination shall cover each of the topics under sub. (1) and be included within the 16-hour class requirement.
- (4) A passing score of 75 percent on the written examination shall be considered as having successfully completed the certification class.

FD 1.065 Changes in apprenticeship assignment.

- (1) Whenever any licensed funeral director discharges an apprentice the funeral director shall within 5 days notify in writing the funeral directors examining board, giving the name and address of the apprentice, and the date of discharge.
- (2) Whenever any apprentice leaves his or her apprenticeship at a funeral establishment, the funeral director and apprentice shall within 5 days notify in writing the funeral directors examining board, giving the name and address of the apprentice and date of the apprentice leaving the apprenticeship.
- (3) An apprentice who transfers from one licensed funeral director to another during their apprenticeship, as well as the supervising funeral director, shall abide by the procedures outlined under s. 445.095 (3r).

FD 1.075 Supervision of apprentices.

- (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 embalming.
 - (c) Conducting services where a dead human body is not present.
- (3) Under this section, when an apprentice is in the preparation room, the apprentice shall be within the line of sight of the supervising funeral director.
- (4) The board may recognize the supervision of up to 2 apprentices at a funeral establishment that employs less than 3 full-time funeral directors.
- (5) Except as provided in sub. (4), the board may recognize the supervision of additional apprenticeships at a funeral establishment provided the establishment employs at least one full-time funeral director per apprentice.

~~**FD 1.076 Terms of apprenticeship.**~~

- ~~(1) An apprenticeship shall not exceed 4 years from the time of first registration unless a one year extension is granted by the board. After 4 years from the time of first registration or, if an extension is granted, after the expiration of the extension, the apprenticeship may not be continued unless the apprentice again completes an approved certification class under s. FD 1.055.~~
- ~~(2) If, under this section, the apprentice retakes and successfully completes the board approved certification class, an additional 4-year period, subject to a board extension, shall begin.~~
- ~~(3) If an apprentice does not continue under the requirements of this chapter, the apprenticeship shall terminate.~~
- ~~(4) The provisions of this section shall be suspended while a registered apprentice is an active member of the military of the United States.~~

~~**FD 1.077 Licensure eligibility.** In addition to the requirements under this chapter and s. 445.095, Stats., eligibility for a funeral director license shall require an apprentice to present affidavits from the licensed funeral directors under whom the apprentice has worked to verify that during the apprenticeship the apprentice completed all of the following:~~

- ~~(1) Assisted in embalming for burial or shipment at least 25 dead human bodies.~~
- ~~(2) Assisted in preparing 25 dead human bodies for burial or transportation, other than by embalming.~~

~~(3) Assisted in at least 25 funeral services during the apprenticeship.~~

FD 1.078 Semiannual apprentice reporting requirements.

All apprentices shall provide semiannual reports to the examining board as required by s. 445.095 (3g). The funeral director-employer and apprentice are required to submit a copy of the Apprentice Semi-Annual Report every 6 months. This form may be obtained from the DSPS Funeral Director Apprentice website at <https://dsps.wi.gov/Pages/Professions/FuneralDirectorApprentice/Default.aspx>.

FD 1.08 Permits.

- (1) Before opening for business, and every 2 years thereafter, a funeral establishment operator shall obtain a permit from the board through application upon a form furnished by the board. An original permit may not be granted to an operator of a funeral establishment without an inspection. No permit may be granted to a funeral establishment which does not meet requirements in s. 445.01, Stats.
- (2) Prior to granting a permit to a licensed funeral establishment following a change in ownership, the board shall review the application to determine if an inspection is necessary.
- (3) A funeral establishment permit is not transferable from one premises to another or from one operator to another.

Note: Application forms are available on the department's website at <https://dsps.wi.gov/pages/Home.aspx>, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266-2112.

FD 1.09 Preparation rooms.

- (1) Every installation used for embalming operations must contain a floor area of not less than 100 square feet per embalming table and must be used solely for this purpose. It must be isolated by walls or adequate partitions. The walls and furniture must be constructed of material that is easily washed and disinfected. The installation must be equipped with hot and cold running water supply under pressure and in a quantity sufficient for the operations performed therein as well as for cleaning the room. Waste water must flow into the main sewer if available or into an adequate septic tank. Hand washing facilities should be easily accessible.
- (2) All preparation rooms in funeral establishments must be equipped with adequate sanitary facilities so that no health hazards are produced as a result of embalming operations performed therein.
- (3) All preparation rooms shall be equipped with a ventilating system capable of expelling gases or fumes to the outside at a point so as not to create a nuisance, and shall also be equipped with a hard surface, metal or porcelain top embalming table, a set of essential embalming instruments and a supply of disinfectants.

FD 1.10 License renewal and reinstatement procedures.

- (1) RENEWAL WITHIN 5 YEARS. A credential holder shall renew the license by paying the renewal fee specified in s. 440.08 (2), Stats., and attesting to completion of the continuing education required under s. FD 4.03. If the credential is not renewed before its expiration date, the credential holder shall pay a late renewal fee.
- (2) RENEWAL AFTER 5 YEARS. A credential holder who has failed to renew a license within 5 years after the renewal date holds an expired license and may not reapply for the license using the initial application process. This subsection does not apply to license holders who have unmet disciplinary requirements or whose credentials have been surrendered or revoked. An applicant who holds an expired funeral director's license shall submit all of the following:
 - (a) A completed application.
 - (b) The renewal and late fees specified in s. 440.08 (2) and (3) (a), Stats.
 - (c) Evidence of passage of the Wisconsin jurisprudence examination for funeral directors.

(d) Evidence of one of the following:

1. Current licensure as a funeral director if the applicant holds an active license in good standing as a funeral director in another state.
 2. If the applicant's funeral director's license has expired for more than 5 but less than 10 years and the applicant does not hold an active license in good standing as a funeral director in another state, attestation to the completion of 30 hours of continuing education approved by the board. The continuing education courses shall have been completed within the 4 years prior to application for licensure under this subsection and shall include a minimum of 10 hours of in-person instruction.
 3. If the applicant's funeral director's license has expired for 10 years or more and the applicant does not hold an active license in good standing as a funeral director in another state, the applicant shall provide evidence of passage of the National Board Examination of the International Conference of Funeral Service Examining Boards within 12 months prior to application for a license under this subsection and attestation to the completion of 30 hours of continuing education approved by the board. The continuing education courses shall have been completed within the 4 years prior to application for licensure under this subsection and shall include a minimum of 10 hours of in-person instruction.
- (3) REINSTATEMENT. A credential holder who has unmet disciplinary requirements and failed to renew the credential within 5 years or whose credential has been surrendered or revoked may apply to have the license reinstated in accordance with all of the following:
- (a) Evidence of completion of the requirements in sub. (2) if the credential has not been active within the last 5 years.
 - (b) Evidence of completion of disciplinary requirements, if applicable.
 - (c) Evidence of rehabilitation or change in circumstances, warranting reinstatement of the credential.

FD 1.11 Renewal of Wisconsin licenses of out-of-state funeral directors.

- (1) INTENT. The intent of the board in adopting this section is to clarify the board's interpretation of s. 445.06, Stats., that a licensee seeking renewal of a funeral director's license who is doing business at a legally operating funeral establishment in a jurisdiction outside the state of Wisconsin and who meets all other requirements for license may obtain a funeral director's license.
- (2) RECOGNIZED FUNERAL ESTABLISHMENT. For purposes of renewal of licenses under s. 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.

FD 1.12 General reciprocity. A person licensed as a funeral director in another state may obtain a license under this chapter if the applicant holds a valid funeral director's license in good standing from another state having requirements determined by the board to be substantially equivalent to the requirements prescribed in s. 445.045, Stats., and this chapter. An applicant for a license under this chapter shall submit all of the following:

- (1) A completed application for licensure.
- (2) The fee specified under s. 440.05 (2), Stats.
- (3) If the applicant has an arrest or conviction record, documentation necessary for the board to determine whether the circumstances substantially relate to the practice of funeral director, subject to ss. 111.321, 111.322, and 111.335, Stats.
- (4) Verification of a valid license in good standing from any state of licensure.
- (5) Evidence of passage of the Wisconsin jurisprudence examination for funeral directors.

Note: Applicants must complete the "Application for Funeral Director Credential" to apply for a license and the "Application for Examination" to take the Wisconsin jurisprudence examination for funeral directors. Application forms are available at <http://dsps.wi.gov/Licenses-Permits/FuneralDirector/FDIRforms>.

FD 1.13 Reciprocity for service members, former service members, and spouses of service members or former service members.

(1) As used in this section:

(a) “Former service member” has the meaning provided in s. 440.09 (1) (a), Stats.

(b) “Service member” has the meaning provided in s. 440.09 (1) (b), Stats.

(c) “Spouse” has the meaning provided in s. 440.09 (1) (c), Stats.

(2) A funeral director's license shall be granted to a service member, former service member, or spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09 (2), Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.