

**STATE OF WISCONSIN  
FUNERAL DIRECTORS EXAMINING BOARD**

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**IN THE MATTER OF RULEMAKING :  
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE  
FUNERAL DIRECTORS : CR 19-163  
EXAMINING BOARD :**

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**I. THE PROPOSED RULE:**

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

**II. REFERENCE TO APPLICABLE FORMS:**

N/A.

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

This rule project renumbers several definitions to place them within s. FD 1.013, making clear that the definitions apply throughout chs. FD 1 to 4 and 6. Section FD 1.055 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.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Funeral Directors Examining Board held a public hearing on January 22, 2020. No testimony was received.

## **VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

**Comment 2. b.:** In s. FD 1.075 (2) (b) and 2.03 (1r) (b), replace “Other preparation” with “Preparing” to achieve a form consistent with the other subunits.

**Response:** “Other preparation” is a term of art used within the funeral director profession to refer to tasks other than embalming, or in the alternative to embalming, that are necessary to prepare a body for burial; as opposed to cosmetic work done in preparation for visitation of the body. The terminology “other preparation” is also used in the FTC’s funeral director rule to refer to these tasks. Replacing this term with “preparing” could create confusion among the users of the FD code. Therefore, the board rejects this comment.

**Comment 2. c.:** In s. FD 1.075 (2) (c), consider inserting “funeral” prior to “services” so as to use the defined term that, under the changes in SECTION 8, will apply to all administrative code chapters governing funeral directors. Note that while the new definition of “funeral services” under SECTION 8 requires that a body be present, s. FD 1.075 (2) (c) would only authorize an apprentice to conduct funeral services under supervision when a body is not present.

**Response:** In order to be considered a “funeral service” under the proposed rule, a dead human body must be present. The board believes it would be contradictory to refer to a service where a dead human body is not present as a “funeral service.” Therefore, the board rejects this comment.

**Comment 2. e.:** In s. FD 1.03 (1r), the board should consider creating an additional paragraph similar to s. FD 1.075 (2) (c) that specifies that a funeral director apprentice may conduct services where a dead human body is not present when under the supervision of a licensed funeral director. As drafted, the two provisions appear inconsistent.

**Response:** It is specified in FD 1.075, the section of the rules specifically enumerating the tasks an apprentice may perform, that a funeral director apprentice may conduct services where a dead human body is not present when under the supervision of a licensed funeral director. Adding an identical provision in FD 2.03 would be redundant. Further, FD 2.03 (2) already provides that “any other dealings on behalf of the establishment” must be performed under the supervision of a licensed funeral director. This would include performing services where a dead human body is not present. Therefore, the board rejects this comment.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

## **VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A.**

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 19-163)

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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 1.055 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.

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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., states that, “[e]ach examining board...[s]hall 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 that, “[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 chs. FD 1 to 4 and 6. Section FD 1.055 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 that 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 un-embalmed 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 license. 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, prepare a dead human body for burial, make 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.Hereth@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.

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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 1.055 is amended to read:

**FD 1.055** In addition to s. FD 1.05, the applicant must provide evidence of completion of aan in-person 16-hour certification class approved by the board.

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 embalming.
- (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) and (2) are renumbered FD 1.013 (1m) and (3) and are 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.

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

SECTION 8. FD 2.03 (1) is repealed.

SECTION 9. 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 embalming.

SECTION 10. 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 11. 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.

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(END OF TEXT OF RULE)

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This Proposed Order of the Funeral Directors Examining Board is approved for  
submission to the Governor and Legislature.

Dated 1-24-2020

Marc A. Eernunse  
Chair



## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date December 17, 2019</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) FD 1 and 2</p>	
<p>4. Subject Licensure and standards of practice for funeral directors and funeral director apprentices.</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input checked="" type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input checked="" type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (If checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule 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, in addition to inconsistencies within the FD suite.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the department website for 14 days to solicit economic impact comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No governmental units participated in the development of the EIA.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule will be to provide clarity to stakeholders regarding the tasks that may be performed by funeral director apprentices and the required level of supervision. Alternatively, if the rule is not implemented, the funeral director rules will continue to contain provisions that are inconsistent with both statutory requirements, as well as internally within the rules.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is that the rules will be clarified to remove confusing inconsistencies within the rules and will provide stakeholders with greater clarity as to the tasks funeral director apprentices may complete and the required level of supervision.</p>	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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17. Compare With Approaches Being Used by Federal Government

The federal government does not regulate which tasks may be completed by funeral director apprentices, nor the level of supervision that a licensed funeral director must provide to the apprentice.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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).

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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))

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19. Contact Name

Jon Derenne, Administrative Rules Coordinator

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20. Contact Phone Number

(608) 266-0955

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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