

**CERTIFIED TRUE COPY**

PETER VERNIERO  
ATTORNEY GENERAL OF NEW JERSEY

**FILED WITH THE BOARD  
OF MORTUARY SCIENCE**  
ON July 16, 1997

By: John DeCicco  
Deputy Attorney General  
Division of Law, 5th Floor  
124 Halsey St., PO Box 45029  
Newark, New Jersey 07101  
Tel: 201-648-2894

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MORTUARY SCIENCE

IN THE MATTER OF THE SUSPENSION )  
OR REVOCATION OF THE LICENSE )  
AND REGISTRATION OF: )  
)  
LLOYD A. WIMBERG )  
LICENSE NO. JP3050 )  
)  
AND )  
)  
THE WIMBERG FUNERAL HOME )  
REGISTRATION NO. JB00024 )  
)  
TO PRACTICE MORTUARY SCIENCE AND )  
TO OPERATE A REGISTERED MORTUARY )  
IN THE STATE OF NEW JERSEY )

Administrative Action  
  
NOTICE OF HEARING  
NOTICE TO FILE ANSWER

TO: LLOYD A. WIMBERG and  
The Wimberg Funeral Home  
400 Liverpool Avenue  
Egg Harbor City, New Jersey 08215

TAKE NOTICE that a Complaint, copy annexed hereto, has been made to the New Jersey State Board of Mortuary Science to consider the matter of the suspension or revocation of your license to practice mortuary science and the registration of your funeral home. The Board requires each of you to file Answers to the above charges within ten (10) days from service of the Complaint. You may file an Answer by mail to the address below.

An admission that the Complaint is correct will indicate that you do not contest the charges stated, thus rendering unnecessary

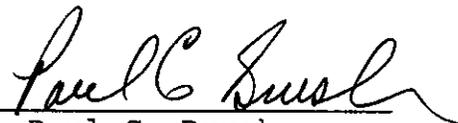
any hearing in this proceeding. Your case will then be presented to the State Board of Mortuary Science together with any written matter you may submit with your plea in mitigation of penalty, for a determination as to whether your license and registration be suspended or revoked or lesser sanctions imposed and whether monetary penalties shall be assessed and, if so, the amount thereof pursuant to the authority conferred upon the Board by N.J.S.A. 45:1-14 et seq. and the Director pursuant to N.J.S.A. 56:8-1 et seq.

A denial of the Complaint will result in a formal hearing being conducted before the New Jersey State Board of Mortuary Science at a time and place to be specified by the Board. You may appear at the hearing either in person or by attorney or both and you shall be afforded an opportunity to make a defense to any or all of the charges.

Failure to respond to the Notice of Hearing and Notice to File an Answer or failure to appear as set forth herein will result in the matter being considered in your absence and a judgment by default.

NEW JERSEY STATE BOARD  
OF MORTUARY SCIENCE

By: \_\_\_\_\_



Paul C. Brush  
Executive Director

Dated: July 16, 1997

KINDLY ADDRESS AN ORIGINAL AND ONE COPY OF ALL  
CORRESPONDENCE TO:

PAUL C. BRUSH  
New Jersey State Board of Mortuary Science  
124 Halsey Street, 6th Floor  
Newark, New Jersey 07101

WITH A COPY TO:

PETER VERNIERO  
ATTORNEY GENERAL OF NEW JERSEY  
Attention:

John DeCicco, DAG  
Division of Law, 5th Fl.  
124 Halsey St., PO Box 45029  
Newark, New Jersey 07101

PETER VERNIERO  
ATTORNEY GENERAL OF NEW JERSEY

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TO PRACTICE MORTUARY SCIENCE )  
AND TO OPERATE A REGISTERED )  
MORTUARY IN THE STATE OF )  
NEW JERSEY )

Administrative Action

COMPLAINT

PETER VERNIERO, Attorney General of New Jersey, by John DeCicco, Deputy Attorney General, with offices located at the Division of Law, 5th Floor, 124 Halsey Street, Newark, New Jersey 07101, on the basis of information and belief, by way of Complaint says:

GENERAL ALLEGATIONS

1. Complainant, Peter Verniero, the Attorney General of New Jersey, is charged with enforcing the laws of the State of New Jersey, pursuant to N.J.S.A. 52:17A-4 and is empowered to initiate administrative disciplinary proceedings against persons licensed by

the State Board of Mortuary Science pursuant to N.J.S.A. 45:1-14 et seq.

2. The State Board of Mortuary Science is charged with the duty and responsibility of regulating the practice of mortuary science in the State of New Jersey pursuant to N.J.S.A. 45:7-32 et seq. and N.J.S.A. 45:1-14 et seq.

3. Respondent, Lloyd A. Wimberg, is licensed to practice mortuary science in the State of New Jersey and holds License No. JP3050 (hereinafter "respondent Wimberg"). Respondent Wimberg Funeral Home is located at 400 Liverpool Avenue, Egg Harbor City, New Jersey 08215 and is a registered mortuary holding Registration No. JB00024 (hereinafter "respondent Funeral Home").

4. Respondent Wimberg is the owner and manager of respondent Funeral Home, and in accordance with N.J.A.C. 13:36-4.1 et seq., is responsible for the management and control of all activities of the registered mortuary.

5. All licensed practitioners of mortuary science are required to maintain full and accurate records of all funerals which they conduct or in which they participate in any manner. N.J.A.C. 13:36-1.8.

6. The records referred to in the previous paragraph are to be kept electronically or otherwise, on an annualized basis for six (6) years and each funeral is to be designated by a number assigned consecutively in the order of arrangement at the time said funeral arrangements are made. N.J.A.C. 13:36-1.8(b).

7. Licensees of the Board who operate registered mortuaries are required by law to provide itemized written statements of funeral goods and services, referred to as "Statements of Funeral Goods and Services Selected" to any consumers who arrange funerals, whether or not prepaid or at need, which statements, among other things, shall contain the signature of the licensee who made the arrangement and the licensee's license number and the signature of the person making the arrangements and the date of the arrangements. Said goods and services documents are also required to specifically set forth various categories of goods and services and the prices for each good and service, in the manner specifically described in the regulations of the Board. N.J.A.C. 13:36-1.9 and N.J.A.C. 13:36-9.8. It is an unfair or deceptive practice to fail to comply with the foregoing provisions and violations thereof are deemed professional misconduct. N.J.A.C. 13:36-9.2 and N.J.A.C. 13:36-9.3.

8. To prevent unfair and deceptive acts or practices, funeral directors shall retain and make available for inspection by the Board, true and accurate copies of all statements of funeral goods and services selected as required by N.J.A.C. 13:36-9.8 for at least six (6) years from the date on which the statement was signed by both the licensee and the consumer, in accordance with N.J.A.C. 13:36-1.9. See also, N.J.A.C. 13:36-9.18.

9. In selling or offering to sell funeral goods and funeral services to the public, any cash advance items as described in that portion of the "Funeral Statement of Goods and Services" referred

to as "Category V-Cash Disbursements" shall reflect the actual cost to the funeral provider, and hence to the consumer, and shall not be increased by the funeral provider by any markups of the cost to be borne by the consumer.

10. On May 8, 1997, pursuant to a Demand for Inspection and Subpoena issued by the Office of the Attorney General, inspectors from the Division of Consumer Affairs, visited respondent Funeral Home for purposes of conducting an inspection and for purposes of reviewing respondents' records for all funerals arranged in July, August, September and October, 1996. Upon demanding inspection of said files, the investigators were advised that respondents had only arranged seven (7) funerals during the months of July, August, September and October, 1996. The seven (7) funeral files referred to were made available to the investigators by respondents.

11. On a date subsequent to May 8, 1997, it was determined that in fact, respondents had arranged thirty-one (31) and not seven (7) funerals as previously represented upon the Demand for Inspection for the files encompassing that period.

12. As a result of the events described in the preceding two (2) paragraphs, a subpoena was prepared and served upon respondents by the Office of the Attorney General demanding production, by name and date of death, of the funeral arrangements for the remaining twenty-four (24) persons not previously accounted for on May 8, 1997. On June 18, 1997, respondents alleged under oath that, to the extent that said files exist, they were being produced to the Office of the Attorney General in response to the subpoena.

COUNT ONE

1. Complainant repeats each and every allegation contained in the General Allegations of this Complaint and the other Counts of this Complaint as if fully set forth herein.

2. On or about October 17, 1996, respondent Wimberg and respondent Funeral Home made an at-need funeral arrangement for H.G. As part of that funeral arrangement, respondents charged the family of H.G. \$650 for flowers as a "cash disbursement".

3. In fact, the actual cost of the flowers to respondents was \$190.80. This resulted in an overcharge to the family of H.G. of approximately \$460.

4. Respondents charged \$660 as a cash disbursement to pay for the cost of the cemetery. In fact, the actual cemetery cost was \$475 and not \$660.

5. Respondents unlawfully received \$645 not due and owing to them by marking up or falsifying the costs of the flowers and the cemetery. By so doing, respondent violated the provisions of N.J.A.C. 13:36-9.14 which requires licensees to charge the actual cost of goods or merchandise purchased by consumers in the category of "cash disbursements".

6. Respondents' actions in appropriating \$645 not due and owing to them is an unlawful conversion of these monies to their own use. Aside from violation of 13:36-9.14, said violations constitute fraud, deception and misrepresentation, contrary to N.J.S.A. 45:1-21(b) and professional misconduct contrary to N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure

to comply with the provision of any act or regulation administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions, respondents have demonstrated that they are incapable of discharging the functions of a licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

COUNT TWO

1. Complainant repeats each and every allegation contained in the General Allegations of this Complaint and the other Counts of this Complaint as if fully set forth herein.

2. The files produced pursuant to the subpoena served on respondents concerning the thirty-one (31) funeral arrangements made by them in July, August, September and October, 1996 reveal that they do not contain full and accurate records of all funerals which were arranged and conducted during that period of time contrary to N.J.A.C. 13:36-1.8.

3. Respondents' actions in failing to maintain full and accurate records of all funerals which were conducted during the period of July, August, September and October, 1996 constitutes professional misconduct, contrary to N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure to comply with the provision of any act or regulation administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions, respondents have demonstrated that they are incapable of discharging the functions of a licensee or of a registered mortuary in a manner

consistent with the public health, safety and welfare, in violation of N.J.S.A. 45:1-21(a).

COUNT THREE

1. Complainant repeats each and every allegation contain in the General Allegations of this Complaint and the other Counts of this Complaint as if fully set forth herein.

2. The files produced by respondents pursuant to subpoena encompassing the period July, August, September and October, 1996 and the thirty-one (31) funerals arranged by respondents during that period of time were not designated by numbers assigned consecutively at the time the funeral arrangements were made. In fact, said files were not designated by any file number. This omission is a violation of N.J.A.C. 13:36-1.8(b).

3. Respondents' failure to assign numbers consecutively at the time that funeral arrangements were made constitutes professional misconduct contrary to N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure to comply with the provisions of any act or regulations administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions respondents have demonstrated that they are incapable of discharging the functions of a licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

COUNTS FOUR THROUGH FOURTEEN

1. Complainant repeats each and every allegation contained in the General Allegations of this Complaint and the allegations of the other Counts of this Complaint as if fully set forth herein.

2. In the months of July, August, September and October, 1996, which were the subjects of the demand for inspection and subpoenas issued to respondents in this matter, respondents failed to provide consumers with the Requisite "Statement of Funeral Goods and Services Selected", as required by law.

COUNT FOUR THROUGH COUNT FOURTEEN

<u>COUNT</u>	<u>DECEASED</u>	<u>DATE OF DEATH</u>
Four	F.A.R.	7/13/96
Five	D.L.B.	7/20/96
Six	A.C.M.	8/16/96
Seven	E.F.	8/24/96
Eight	M.C.M.	9/11/96
Nine	W.A.M.	9/21/96
Ten	M.S.	10/4/96
Eleven	J.S.	10/4/96
Twelve	V.L.	10/17/96
Thirteen	J.D.Sr.	10/19/96
Fourteen	E.L.G.	10/22/96

3. In the case of V.L. referred to as Count Twelve above, there are no records whatsoever of the funeral being handled by respondents.

4. By their actions in failing to provide the requisite "Statements of Funeral Goods and Services Selected" referred to in Counts Four through Fourteen, respondents have violated the provisions of N.J.A.C. 13:36-1.9, N.J.A.C. 13:36-9.8, 9.12 and 9.16(b)(2). Violations of the foregoing regulations constitute unfair and deceptive practices constituting professional misconduct in violation of N.J.A.C. 13:36-9.2 and 9.3.

5. By their conduct, respondents have engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure to comply with any act or regulation administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions, respondents have demonstrated that they are incapable of discharging the functions of a Board licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

6. Each and every instance of misconduct set forth in Counts Four through Fourteen, as more specifically set forth above, constitutes separate violations of N.J.S.A. 45:1-21(e), N.J.S.A. 45:1-21(h), N.J.S.A. 45:1-21(i), N.J.A.C. 13:36-1.9, N.J.A.C. 13:36-9.8, 9.12 and 9.16(b)(2) and N.J.A.C. 13:36-9.2 and 9.3.

#### COUNT FIFTEEN THROUGH TWENTY-FOUR

1. Complainant repeats each and every allegation contained in the General Allegations of this Complaint and the allegations of the other Counts of this Complaint as if fully set forth herein.

2. For the period July, August, September and October, 1996, respondents failed to have consumers sign the requisite "Statement

of Funeral Goods and Services Selected", as required by law. Moreover, respondents themselves failed to sign said "Statement of Funeral Goods and Services Selected" as required by law.

COUNT FIFTEEN THROUGH COUNT TWENTY-FOUR

<u>COUNT</u>	<u>DECEASED</u>	<u>DATE OF DEATH</u>
Fifteen	L.M.	6/10/96
Sixteen	C.J.W.	7/20/96
Seventeen	B.A.A.	8/7/96
Eighteen	W.C.	8/20/96
Nineteen	M.C.M.	8/25/96
Twenty	C.R.J.	8/28/96
Twenty-One	M.L.G.	8/28/96
Twenty-Two	M.M.	9/1/96
Twenty-Three	F.Z.	9/24/96
Twenty-Four	O.K.	10/4/96

3. By respondents' actions in failing to have the consumers sign the "Statement of Funeral Goods and Services Selected" as set forth in Counts Fifteen through Twenty-Four, and by respondents' failure to have an appropriate licensee sign said "Statement of Funeral Goods and Services Selected", in these same Counts, respondents have violated the provisions of N.J.A.C. 13:36-1.9, N.J.A.C. 13:36-9.8, 9.12 and 9.16(b)(2). Violations of the foregoing regulations constitute unfair and deceptive practices constituting professional misconduct in violation of N.J.A.C. 13:36-9.2 and 9.3.

4. By their conduct respondents have engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure to comply with any act or regulation administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions respondents have demonstrated that they are incapable of discharging the functions of a Board licensee and of a registered mortuary in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

5. Each and every instance of misconduct set forth in Counts Fifteen through Twenty-Four, as more specifically set forth above, constitutes a separate violation of N.J.S.A. 45:1-21(e), N.J.S.A. 45:1-21(h), N.J.S.A. 45:1-21(i), N.J.A.C. 13:36-1.9, N.J.A.C. 13:36-9.8, 9.12 and 9.16(b) (2) and N.J.A.C. 13:36-9.2 and 9.3.

#### COUNT TWENTY FIVE

1. Complainant repeats each and every allegation contained in the General Allegations of this Complaint and the other Counts of this Complaint as if fully set forth herein.

2. During the months of July, August, September and October, 1996, respondents failed to retain copies of Statements of Funeral Goods and Services Selected as required by N.J.A.C. 13:36-9.8, for at least six (6) years from the date on which the statements were to have been completed, in conformity with N.J.A.C. 13:36-1.9. Said conduct constitutes a violation of N.J.A.C. 13:36-9.18.

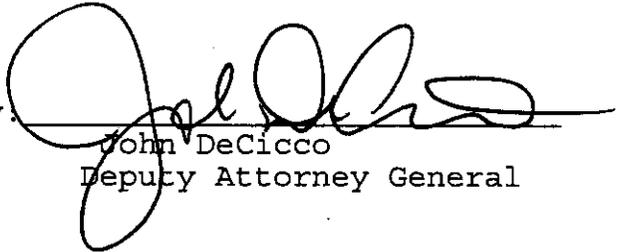
3. Respondents' failure to maintain the records required by N.J.A.C. 13:36-9.18, constitutes professional misconduct contrary to N.J.S.A. 45:1-21(e). By their actions, respondents have

demonstrated that they are incapable of discharging the functions of a licensee of the Board and of a registered mortuary in a manner consistent with the public health, safety and welfare, in violation of N.J.S.A. 45:1-21(i).

**WHEREFORE**, Complainant demands the entry of an Order against respondents, including the following:

1. The suspension or revocation of the license of respondent Lloyd A. Wimberg;
2. The revocation or suspension of the registration of the Wimberg Funeral Home;
3. Monetary penalties against each respondent for each and every separate unlawful act as set forth in this Complaint;
4. Payment of all costs of investigation; and
5. Such other and further relief as the Board of Mortuary Science shall deem just and appropriate.

PETER VERNIERO  
ATTORNEY GENERAL OF NEW JERSEY

By: 

John DeCicco  
Deputy Attorney General

Dated: July 16, 1997