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OF MORTUARY SCIENCE

ON August 12, 1997

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Attorney for Lloyd A. Wimberg and The Wimberg Funeral Home

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)

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

Administrative Action

ANSWER

LLOYD A WIMBERG and THE WIMBERG FUNERAL HOME, by way of Answer to the

Complaint filed herein, say:

FIRST COUNT

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.

7. Admitted in part. Respondents admit the first two sentences. Respondents deny the third sentence. Respondents acknowledge that it shall be a violation of the rules to engage in unfair or deceptive acts or practices as defined in the regulations, or to fail to comply with the preventive requirements specified therein, but contends that such failure to comply with such preventive requirements may (emphasis added) be deemed to be professional misconduct. N.J.A.C. 13:36-9.2
8. Admitted.
9. Admitted.
10. Denied. The inspection of May 8, 1997 was not pursuant to a subpoena. Mr. Robert DeSevo and Mr. Michael Carlucci arrived at the funeral home on May 8, 1997 to conduct a full inspection. At that time, they inspected Mr. Wimberg's license and the license of the Wimberg Funeral Home. They reviewed a copy of his Statement of Funeral Goods and Services Selected. They also inspected his General Price List, Casket Price List and Outer Burial Container Price List. They inspected his stationary. They inspected his General Manager sign. They then conducted a full inspection of his facilities and noted his compliance in all respects on a checklist sheet they carried for the inspection. This included a full inspection of the preparation room. They then reviewed in detail a series of files including the HG file (date of death October 17, 1996) as well as seven other files located by Mr. Wimberg when the investigators requested for the first time additional files. There was no subpoena at that time for any files. Those files reviewed at the inspection of May 8, 1997 also included matters with dates of death of September 5, 1996, October 21, 1996; February 8, 1997; October 26, 1996; November 7, 1996; November 3, 1996; October 29, 1996; July 20, 1996; and August 14, 1996. At the conclusion of the inspection, a subpoena for a full copy of the HG file was presented, acknowledged as received that day, and supplied

May 22, 1997.

11. It is admitted that a subpoena was subsequently served on June 5, 1997 returnable on June 18, 1997, with an adjourned date of June 27, 1997, which identified 24 files, two of which had been previously found and produced at the time of the inspection before any subpoena was issued.
12. It is admitted that the subpoena referred to in the answer to paragraph 11 above, resulted in files being searched for, located and produced, to the extent available, on the adjourned return date of June 27, 1997.

COUNT ONE

1. Respondents repeat the answers to each allegation of the General Allegations and the other Counts of this Complaint as if fully set forth herein.
2. Admitted in part. Respondents estimated the cost for flowers and when the actual cost of the flowers was determined made a reimbursement to the family within days of the funeral. The date of death was October 17, 1996. The reimbursement to the family was October 22, 1996.
3. Admitted in part. See number 2.
4. Admitted in part. The estimated cost of the cemetery was \$600. The actual cost of the cemetery ended up being \$475 and a refund was made for the difference on October 22, 1996.
5. Denied. Respondents estimated the cost of the flowers and the cemetery and made reimbursement when the actual costs became known.
6. Denied. See number 5.

COUNT TWO

1. Respondents repeat the answers to each allegation of the General Allegations and the other Counts of this Complaint as if fully set forth herein.

2. Admitted.
3. Respondents contend that failing to maintain the full and accurate records of all funerals conducted during the period in question may be determined to be professional misconduct. However, Respondents strongly contend that any failure to comply with the recordkeeping provisions does not demonstrate that they are incapable of discharging functions of a licensee or a registered mortuary consistent with the public health, safety and welfare. Specifically, the recordkeeping violations charged were only one part of the inspection conducted of Mr. Wimberg and the Wimberg Funeral Home. Mr. Wimberg and the Wimberg Funeral Home were found in full compliance with respect to the inspection of the premises and the inspection of the goods, wares and items used in the rendition of the professional and occupational service in conducting funerals.

COUNT THREE

1. Respondents repeat the answers to each allegation of the General Allegations and the other Counts of this Complaint as if fully set forth herein.
2. Admitted. Respondents did not properly identify files by a file number. They maintained files by name of decedent. This was not in accordance with regulations and has been corrected. All files have now been properly designated by the appropriate chronological file number and this practice is now incorporated as part of Respondents' practice for all funerals.
3. Denied. Respondents do not believe the failure to assign numbers consecutively should be deemed professional misconduct and certainly does not feel that it demonstrates incapacity to discharge the functions of a licensee or of a registered mortuary consistent with the public health, safety and welfare. Mr. Wimberg and earlier generations of the Wimberg's have conducted funerals in Egg Harbor City as the Wimberg Funeral Home since 1881 in a

manner consistent with the public health, safety and welfare. They have now taken actions to fully comply with all recordkeeping requirements and ask that this mitigation be accepted as a good faith attempt to react to the charges in an appropriate manner.

COUNTS FOUR THROUGH FOURTEEN

1. Respondents repeat the answers to each allegation of the General Allegations and the other Counts of this Complaint as if fully set forth herein.
2. Respondents' practice was to routinely supply a Statement of Funeral Goods and Services Selected. Respondents do not believe that failure to have a copy in the file means that they failed to give a copy to the family representative of the decedent. Therefore, this allegation is denied. Respondents will attempt to gather more specific information. There is a Statement of Funeral Goods and Services Selected for E.F. in the file which is signed by Respondent Lloyd A. Wimberg.
3. Admitted. Respondents will continue to search for this file and will produce it if and when it is found.
4. Again, Respondents indicate that it was routine practice to provide the family member with a Statement of Funeral Goods and Services Selected and believe they did so in the cases referred to in Counts Four through Fourteen. Therefore, Respondents believe that their Statement of Funeral Goods and Services Selected complies with N.J.A.C. 13:36-1.9 as prepared by Respondents. In addition, Respondents believe that the Statement of Funeral Goods and Services Selected was given to the family representative at the conclusion of the discussion of arrangements as required by N.J.A.C. 13:36-9.8 and that the general provisions on legal and cemetery requirements as required by N.J.A.C. 13:36-9.12 were provided on the Statement of Funeral Goods and Services Selected and the other required purchases information required by N.J.A.C. 13:36-9.16(b)(2) and that, therefore, there was no

professional misconduct under these sections.

5. Respondents deny that these recordkeeping violations, in light of the overall conduct of Respondents' professional activities, should rise to the level of professional misconduct and believe that they have demonstrated that they are capable of discharging the functions of a board licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare over many years.
6. This paragraph sets forth a legal conclusion rather than a factual allegation and does not require an answer. However, to the extent an answer is required, the allegations are denied and petitioner is left to his proofs.

COUNT FIFTEEN THROUGH TWENTY-FOUR

1. Respondents repeat the answers to each allegation of the General Allegations and the other Counts of this Complaint as if fully set forth herein.
2. Respondents admit that when they gave the Statement of Funeral Goods and Services Selected to the family representatives of the ten (10) decedents referred to in paragraph 2, they failed to obtain the signature of the family representative and also failed to sign it as well with the exception of L.M., B.A.A. and E.F. which contain a signature of Respondent Lloyd A. Wimberg.
3. Respondents acknowledge that a failure to obtain the signature of a family member and failure to sign as a licensee is a violation of the regulations but in the overall context of Respondents' mortuary activities, do not believe that it should be professional misconduct. There was no intent to be unfair or to deceive the family representatives and the family representatives in fact received the Statement of Funeral Goods and Services Selected even though they did not sign. Respondents have now taken actions to fully comply with all recordkeeping requirements and ask that this mitigation be accepted as a good faith attempt

to react to the charges in an appropriate manner.

4. Respondents deny that these recordkeeping violations, in light of the overall conduct of Respondents' professional activities, should rise to the level of professional misconduct and believe that they have demonstrated that they are capable of discharging the functions of a board licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare over many years.
5. This paragraph sets forth a legal conclusion rather than a factual allegation and does not require an answer. However, to the extent an answer is required, the allegations are denied and petitioner is left to his proofs.

COUNT TWENTY FIVE

1. Respondents repeat the answers to each allegation of the General Allegations and the other Counts of this Complaint as if fully set forth herein.
2. Denied generally. Respondents' practice was to retain copies of the Statements of Funeral Goods and Services Selected. It has maintained them for the requisite six year period. Respondents believe that the failure to have Statement of Funeral Goods and Services Selected in certain of the files is because of misfiling and sloppy recordkeeping which has now been rectified. Respondents have admitted that they do not have within their files copies of the Statement of Funeral Goods and Services Selected for those deceased referred to in Counts Four through Fourteen except for EF for which there is a Statement of Funeral Goods and Services signed by Respondent Lloyd A. Wimberg.
3. Respondents acknowledge that failure to maintain the records could be deemed to be professional misconduct but in light of the overall conduct of Respondents' professional activities, do not believe it should rise to the level of professional misconduct and believe that they have demonstrated that they are capable of discharging the functions of a board

licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare.

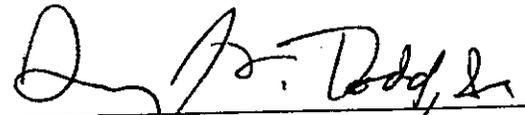
WHEREFORE, Respondents request the entry of an Order:

1. Permitting the continued licensing of Respondent Lloyd A. Wimberg;
2. Permitting the continued registration of Respondent Wimberg Funeral Home;
3. Assessment of monetary penalties in a fair and appropriate manner based upon this being a first offense with Respondents having engaged in appropriate mitigation;
4. Imposing appropriate and reasonable costs of investigation;
5. And issuance of an appropriate reprimand for any violations found.

TODD & GEMMEL, P.A.

Dated: August 6, 1997

By:



Daryl F. Todd, Sr., Esquire
Attorneys for Respondents Lloyd A. Wimberg
and The Wimberg Funeral Home