

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

December 8, 2009

President David Murphy called the meeting to order at 10:00 A.M. in the Second Floor Conference Room of the Andrew Johnson Tower, Nashville, Tennessee.

Board members present were David Murphy, President, Dennis Hamilton, Vice President, Paula Bridges, Wayne Hinkle, Jill Horner, Eugene Williams and Clark McKinney.

Staff members present were Robert Gribble, Executive Director, Adrian Chick, Assistant General Counsel and Jimmy Gossett, Administrative Assistant.

ADOPTION OF AGENDA:

A motion was made by Clark McKinney to approve the Agenda as printed.

Seconded by Wayne Hinkle

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Dennis Hamilton to approve the Minutes of the October 13, 2009 Board Meeting.

Seconded by Eugene Williams

Adopted by voice vote

LEGAL REPORT:

ADRIAN CHICK, ASSISTANT GENERAL COUNSEL

1. Case No.: L09-FUN-RBS-2009015431

An inspection on July 24, 2009 revealed that the prices of five caskets on display in the selection room were inconsistent with prices on the Casket Price List.

Response: The Respondent apologizes for the error and states that it was inadvertent and will not happen again.

Complaint History: None

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Jill Horner

Adopted by voice vote

2. Case No.: L09-FUN-RBS-2009015971

An inspection on July 24, 2009 revealed that the prices of five caskets on display in the selection room were inconsistent with prices on the Casket Price List.

Response: The Respondent apologizes for the error and states that it was inadvertent and will not happen again.

Complaint History: None

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

3. Case No.: L09-FUN-RBS-2009016031

This complaint was opened regarding an advertisement in the yellow pages under the heading "funeral directors". The business named in the ad is not a licensed establishment. The advertisement offers full service funerals, cremation and cemetery services.

Response: The Respondent states that the business name is not a separate entity, but rather a registered company mark. To avoid confusion, the Respondent will have the ad removed from future listings.

Complaint History: None

Recommendation: Consent Order assessing civil penalty of \$500 and authorization for hearing.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

4. Case No.: L09-FUN-RBS-2009016061

This complaint is based upon an advertisement under the heading “funeral directors” for a certain cemetery, offering the following:

- Multiple and Single Grave Lots;
- Mausoleum Crypts;
- Pre-need Financing Available; and
- At-Need Arrangements Available

Response: The Respondent states that the previous advertisement was under only the cemetery heading and did not know that the new listing was under the funeral director heading until receiving the complaint. The publisher has been contacted about the error.

Complaint History: None

Recommendation: Close without further action.

A motion was made by Dennis Hamilton to accept Counsel’s recommendation.

Seconded by Paula Bridges

Adopted by voice vote

5. Case No.: L09-FUN-RBS-2009015731

6. Case No.: L09-FUN-RBS-2009015741

This complaint was filed by a competitor and alleges that the Respondent establishment ran a radio advertisement that included false information. The complainant alleges that the advertisement was false in three ways:

- The ad states that the Respondent establishment is the “lowest cost in the area, and while their costs are lower, you won’t have to compromise service because of value”. – The complainant states that, based on the fee charged for basic services of funeral director and staff, the Respondent does not offer the lowest price in the area.
- The ad states that “unlike other community funeral homes, the Respondent has always returned overpayments on insurance benefits to the family, which was their policy even before state law mandated it” – The complainant says this has always been the complainant’s policy too.

- The ad states that the Respondent is the only local, family owned funeral home. – The complainant states that it too is a local, family owned funeral establishment.

Response: The Respondent points to several areas in which it believes it is less expensive than other area funeral establishments. The Respondent points to a previous disciplinary action against the complainant for charges in excess of those listed on price lists, and the Respondent furnished some information to support its position that the Respondent is the only locally-owned funeral establishment.

Complaint History: None related.

Recommendation: Close with Letter of Caution. Respondent's statements regarding "returning overpayments on insurance benefits" may constitute unprofessional conduct.

A motion was made by Dennis Hamilton to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

7. Case No.: L09-FUN-RBS-2009020361

This complaint was opened regarding whether a particular establishment was managed by a licensed funeral director. The issue has been resolved.

Recommendation: Close without further action.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Jill Horner

Adopted by voice vote

8. Case No.: L09-FUN-RBS-2009014971

This complaint alleges that the Respondent establishment advertised goods and services without an itemization of the prices.

Response: Respondent states that it has immediately removed the advertisement from circulation and corrected them by adding required prices.

Complaint History: None

Recommendation: Close with Letter of Warning.

A motion was made by Dennis Hamilton to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

9. Case No.: L09-FUN-RBS-2009023011

This complaint was filed by a consumer and alleges the following:

- The complainant's brother, husband, and father-in-law had to assist getting the body on the stretcher during removal;
- The family was told that the ashes would be furnished within a couple of days, but it took four business days;
- The complainant had to call the establishment to find out that the ashes were ready for pickup and that the death certificates and obituaries were ready;
- The Respondent charged a fee of \$380 for processing the insurance policies that the complainant was not informed of;
- This complaint alleges that the Respondent establishment advertised goods and services without an itemization of the prices

Response: Respondent states that a law enforcement officer had been requested to assist with the removal, but that the family members indicated a desire to assist, so the law enforcement officer did not assist. Respondent states that cremation was accomplished as soon as possible considering that approval had to be obtained from the medical examiner's office and the health department and all families are advised that up to six weeks may be required to obtain death certificates. The insurance processing fee is charged by the insurance company, not the establishment. The insurance company has offered to issue a new check without the processing fee if the complainant returns the first check.

Complaint History: None related.

Recommendation: Dismiss. Respondent did not violate any statutes or rules.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

10. Case No.: L09-FUN-RBS-2009023471

This complaint was filed by a family member and alleges that the funeral establishment took too long to obtain the death certificate. The date of death was September 1, 2009. The certificate of death was signed by the physician on September 12, 2009 and filed on September 21, 2009.

Response: Respondent states that of the twenty days, the death certificate was only with the Respondent three days.

Complaint History: None related.

Recommendation: Dismiss. Respondent did not violate any statutes or rules.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

11. Case No.: L09-FUN-RBS-2009021461

An inspection on September 11, 2009 revealed the following violations:

TCA 62-5-107 – A cremation authorization form lacks the signature of a funeral director;

Rule 0660-06-.02 – The Casket Price List does not list a "cremation container" referenced on the General Price List; and

Rule 0660-06-.02 – The price range for outer burial containers on the General Price List does not match the outer burial containers listed on the Outer Burial Container Price List

Response: Respondent states that the Casket Price List does contain some containers that could be considered "alternative containers". Respondent agrees that an outer burial container is not listed on the Outer Burial Container Price List. Respondent does not specifically mention the lack of funeral director's signature on the cremation authorization form.

Complaint History: Some prior FTC violations.

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

A motion was made by Jill Horner to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

**ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR**

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
OCTOBER 13, 2009 – DECEMBER 7, 2009**

Establishments

J. O. Patterson Mortuary Memphis, TN	Reapplication
Henry Louis Smith Funeral Directors Nashville, TN	Name Change

Individuals

Mark Anthony Higgins Mosheim, TN	Funeral Director
Connor Lewis Kilpatrick Nashville, TN	Funeral Director
Glenda J. Kirkpatrick Ripley, TN	Funeral Director
Jamie Ray Mandrell Clarksville, TN	Funeral Director
Terrance Christopher Jensen Memphis, TN	Embalmer Reapplication
Cynthia Jones Savoy Brentwood, TN	Embalmer Reapplication
Leslie Kay Dunn Bartlett, TN	Funeral Director and Embalmer
William Douglas Huffman Bowling Green, KY	Funeral Director and Embalmer
Mark R. Aaroen Johnson City, TN	Funeral Director and Embalmer Reciprocity

Wesley Nathan Price
Knoxville, TN

Funeral Director and Embalmer
Reapplication

CLOSED ESTABLISHMENT REPORT:

No establishments have reported closing since the last board meeting.

DISCIPLINARY ACTION REPORT:

The Board has previously authorized each Consent Order and Civil Penalty. The Consent Orders have been signed and unless noted, the Civil Penalty has been paid by the Respondent. The Executive Director requests the Board's acceptance of the following Consent Orders.

Complaint No. 2009014271

Violation: Neither a General Price List, Casket Price List or Outer Burial Container List were available at the time of inspection, the current licenses of multiple funeral directors and embalmers were not available, and a copy of the latest inspection report and a copy of the current license of crematory that the funeral home uses was not present for inspection

Action: \$500 Civil Penalty

Complaint No. 2009013111

Violation: A copy of the latest inspection report of crematory that the funeral home uses was not present for inspection, a funeral director and an embalmer licenses were not available for inspection and several aspects of the establishment's price lists did not comply with the Funeral Rule

Action: \$350 Civil Penalty

Complaint No. 2009012921

Violation: An unlicensed employee of the establishment engaged in conduct that constitutes funeral directing, the date of birth was missing on the permanent identification device affixed to the deceased, the latest inspection report of crematory that the funeral home uses was not present for inspection, several aspects of the establishment's price lists did not comply with the Funeral Rule, the reason for embalming and a description of merchandise were not provided as required on the Statement of Funeral Goods and Services Selected

Action: \$1000 Civil Penalty

Complaint No. 2009013081

Violation: A copy of the cremation authorization was not provided to the authorizing agent, a copy of the current license and latest inspection report of crematory that the funeral home uses was not present for inspection, several aspects of the establishment's prices lists did not comply with the Funeral Rule and the reason for embalming was not provided as required on Statement of Funeral Goods and Service Selected

Action: \$250 Civil Penalty

Complaint No. 2009013171

Violation: Two funerals were conducted during the period the establishment license was invalid due to failure of timely renewal

Action: \$250 Civil Penalty

Complaint No. 2009014401

Violation: The sign in front of the establishment contained a name different than the name registered and approved by the Board, several aspects of the establishment's price lists did not comply with the Funeral Rule and the reason for embalming was not provided as required on Statements of Funeral Goods and Services Selected

Action: \$250 Civil Penalty

Complaint No. 2009012791

Violation: Two cremation authorization forms lacked a signature of the funeral director as required

Action: \$250 Civil Penalty

Complaint No. 2009014241

Violation: The current license for the crematory used was not available for inspection and the price of three caskets listed on the Casket Price List was not accurate

Action: \$350 Civil Penalty

Complaint No. 2009012751

Violation: A copy of the current license of the crematory that the funeral home uses was not available for inspection, a cremation file lacked a cremation authorization form, price lists used by the establishment contained a name different than the name registered and approved by the Board, multiple preneed funeral contracts and Statements of Funeral Goods and Services Selected contained charges that exceeded the price of the items on the General Price List and several other aspects of the establishment's price lists did not comply with the Funeral Rule

Action: \$1500 Civil Penalty

OPEN COMPLAINT REPORT:

As of December 4, 2009, there were 106 open complaints.

APPROVAL OF INDIVIDUAL LICENSE:

**Joyce L. Williams
Hohenwald, TN**

Funeral Director and Embalmer

Upon motion by Eugene Williams and seconded by Wayne Hinkle, based upon application record, this individual was approved for licensure:

Adopted by voice vote

APPROVAL OF ESTABLISHMENT LICENSES:

**HIGH POINT FUNERAL CHAPEL
3788 SUMMER AVENUE
MEMPHIS, TN**

**Change of Ownership
Ownership: Corporation
New Owner(s): HPC Services, Inc., of Cordova, TN**

Upon motion by Dennis Hamilton and seconded by Eugene Williams, based upon application record, this establishment was approved for licensure:

Adopted by voice vote

**MID-SOUTH MORTUARY SERVICE
3788 SUMMER AVENUE
MEMPHIS, TN**

**Changes of Name and Ownership
Ownership: Corporation
New Owner(s): HPC Services, Inc., of Cordova, TN**

Upon motion by Dennis Hamilton and seconded by Eugene Williams, based upon application record, this establishment was approved for licensure:

Adopted by voice vote

**MUSIC CITY MORTUARY
2409 KLINE AVENUE
NASHVILLE, TN**

**Change of Ownership
Ownership: Corporation**

New Owner(s): Murphy Enterprises Unlimited, Inc., of Nashville, TN

Upon motion by Wayne Hinkle and seconded by Clark McKinney, based upon application record, this establishment was approved for licensure:

Adopted by voice vote

**WHITE-MAHON FUNERAL HOME
225 WEST HARPER STREET
TROY, TN**

Change of Ownership

Ownership: Corporation

New Owner(s): White & Ranson, Inc., Union City, TN

Upon motion by Eugene Williams and seconded by Wayne Hinkle, based upon application record, this establishment was approved for licensure:

Adopted by voice vote

ELECTION OF BOARD OFFICERS FOR 2010:

President:

Clark McKinney made a motion to nominate Dennis Hamilton as President.

The motion was seconded by Paula Bridges.

By voice vote, Dennis Hamilton was elected President of the Board for 2010.

Vice President:

Jill Horner made a motion to nominate Eugene Williams as Vice President.

The motion was seconded by David Murphy.

By voice vote, Eugene Williams was elected Vice President of the Board for 2010.

ADJOURN:

A motion was made by Paula Bridges to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

There being no further business, the meeting was adjourned by President David Murphy at 11:02 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director