

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MARCH 10, 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, 710 James Robertson Parkway, 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.

President David Murphy introduced and welcomed new board member Clark McKinney, a representative for Middle Tennessee.

ADOPTION OF AGENDA:

A motion was made by Dennis Hamilton to approve the agenda as printed.

Seconded by Eugene Williams

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Wayne Hinkle to approve the minutes of the February 10, 2009 Board Meeting.

Seconded by Clark McKinney

Adopted by voice vote

APPROVAL OF MINUTES OF TELECONFERENCE:

A motion was made by Jill Horner to approve the minutes of the February 19, 2009 Teleconference Meeting.

Seconded by Paula Bridges

Adopted by voice vote

**LEGAL REPORT:
ADRIAN CHICK, ASSISTANT GENERAL COUNSEL**

Assistant General Counsel Chick announced to the Board that a formal hearing against Family Mortuary, Inc., and Clarence Eugene (C. E.) Overstreet, both of Chattanooga, Tennessee, had previously been scheduled to be held today (March 10, 2009). Counsel Chick read the charges and stipulation of facts against the establishment and the owner. He then informed the Board that the owner, Mr. Overstreet, has been sent a copy of the charges and that he, Mr. Overstreet, has agreed to and signed an "Agreed Order" for the revocation of the establishment license of Family Mortuary, Inc., in Chattanooga to become effective March 15, 2009.

Counsel's recommendation to the Board was to accept the "Agreed Order" in lieu of proceeding with a formal hearing at a later time.

Paula Bridges made a motion to proceed with a formal hearing.

Seconded by Wayne Hinkle

After further discussion with Counsel Chick, Paula Bridges withdrew her previous motion and Wayne Hinkle withdrew his second.

Counsel again recommended the Board accept the "Agreed Order."

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

Seconded by Clark McKinney

Adopted by voice vote

1. Case No.: L09-FUN-RBS-2009002251

This complaint was filed by a surviving spouse and alleges that the respondent establishment was disrespectful in failing to dress the deceased with a tie that she provided and that it took eight (8) days to close the grave.

Response: The Respondent states that the grave was in fact closed, but that it had settled due to nearly ten (10) inches of rain during the previous month. As soon as the Respondent became aware of the settlement, it had additional dirt added to the grave. The Respondent states that there was no tie with the clothing, and that according to the decedent's son-in-law, it may have fallen out while the clothes were being delivered to the funeral establishment.

Complaint History: Two unrelated, both closed.

Recommendation: Dismiss. Considering the unusual amount of rain during the previous month, the fact that the grave settled cannot fairly be attributed to the establishment that first closed the grave. The evidence is inconclusive regarding the decedent's tie.

President David Murphy recused himself from this case; Vice President Dennis Hamilton presided over these proceedings.

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

Seconded by Eugene Williams

Adopted by voice vote

2. Case No.: L09-FUN-RBS-2009001451

This complaint was filed by a consumer that claims she requested assurance from the Respondent that it would honor a preneed policy executed in 2007. Complainant became concerned after seeing for sale signs at the establishment, and has received no documentation from the Respondent as requested.

Response: None requested.

Complaint History: Numerous.

Recommendation: Transfer complaint to Burial Services.

A motion was made by Paula Bridges to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

3. Case No.: L08-FUN-RBS-2008019901

An inspection on August 19, 2008 revealed that:

- Tenn. Code Ann. § 62-5-316 - the establishment served seven (7) families during a time that the establishment license was invalid due to non-renewal.
- FTC Rules – the price for alternative container charged is higher than listed on the casket price list.

Response: No response received.

Complaint History: Several complaints involving FTC violations. Latest Consent Order paid was 200704976 (\$500 for similar violations).

Recommendation: Consent order assessing civil penalty of \$700 (\$100 for each service conducted without valid establishment license), an additional \$750 civil penalty regarding FTC rules, and authorization for a hearing.

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

Seconded by Jill Horner

Adopted by voice vote

4. Case No.: L08-FUN-RBS-2008027731

This Respondent is a funeral director that was manager of an establishment. An employee of the establishment reports that on October 27, 2008, the Respondent scheduled a meeting with a customer to make arrangements for a preneed plan, advising the customer that the establishment's preneed sales agent would be available at that time. Upon arrival, the customer was told that the agent was not available, but that he (Respondent) would accept the \$2,500 check for the preneed contract. The next morning, the Respondent deposited the check into an unrelated burial association account that only he had access to. The establishment has another account that preneed funds are normally deposited to. Minutes after making the deposit, the Respondent withdrew \$1,000 cash, apparently for his own use.

Response: No response received.

Complaint History: None.

Recommendation: Consent Order for the voluntary revocation of Respondent's funeral director license and embalmer license and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

5. Case No.: L08-FUN-RBS-2008023931

This complaint was filed by decedent's brother who claims that the obituary contained "false and incorrect" information, although the complainant does not specify what was incorrect or false. The complainant alleges that the Respondent establishment should have run a second obituary to correct the information that the complainant believes was incorrect. The funeral arrangements were made by the decedent's two sons.

Response: The Respondent states that it obtained information through the sons, who are next of kin, and followed all of their requests in regards to donation of the body to medical science.

Complaint History: None.

Recommendation: Dismiss; this complaint is without merit.

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

Seconded by Paula Bridges

Adopted by voice vote

6. Case No.: L08-FUN-RBS-2008024501

An inspection on October 23, 2008 revealed that:

- FTC Rules – Required disclosure language not present on the outer burial container price list; and
- Tenn. Code Ann. § 62-5-313 – Soiled linen was lying around the prep room, trash can was not covered, and blood stains were on the floor.

Response: The Respondent states that problem with the disclosure language was that it had an extra sentence, which was immediately removed, and the staff has been instructed to place lids on the trash container. The stains on the floor are very difficult to remove, and the floor has to be painted each year.

Complaint History: Some closed FTC related violations but none exactly the same.

Recommendation: Letter of Warning.

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

Seconded by Eugene Williams

Adopted by voice vote

7. Case No.: L08-FUN-RBS-2008023041

This complaint was filed by the granddaughter of decedent and alleges that the Respondent establishment will not present her with written documentation showing the amount paid to the establishment from preneed insurance policies. Based upon telephone conversations with the insurance companies, the complainant has reason to believe that the policies paid out more than what is claimed by the Respondent.

Response: The Respondent states that the complainant is not the next of kin, and was not the person who the Respondent dealt with regarding the deceased. The actual next of kin received an itemized statement of goods and services. The Respondent notified the next of kin of the amount received from insurance. The next of kin signed a statement that she was happy with the Respondent.

Complaint History: Numerous.

Recommendation: Legal has requested written documentation from the funeral establishment on two occasions since early February, 2009, but the Respondent has yet to provide this information. Legal requests an authorization for hearing.

A motion was made by Paula Bridges to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

8. Case No.: L08-FUN-RBS-2008019461

An inspection on August 19, 2008 revealed the following violations:

- FTC Rules – Required disclosure language is missing from the Casket Price List;
- FTC Rules – Low to high range for caskets on the General Price List do not match prices on the Casket Price List;
- FTC Rules – The low end range for immediate burial on the General Price List is incorrect;
- FTC Rules – Immediate burial with cloth covered casket not included on the General Price List;
- FTC Rules – Casket Price List does not have required caption and business info;
- FTC Rules – Prices on two caskets in selection room are different than prices on the Casket Price List;
- FTC Rules – On the General Price List, the price for traditional funeral service package is inconsistent with itemized costs;
- FTC Rules – On twenty (20) Statements of Funeral Goods and Services Selected, the Respondent charged a fee of \$300 for use of preparation room *in addition* to an embalming fee of \$485;
- FTC Rules – On the Statements of Goods and Services Selected, the merchandise is not described as required; and
- FTC Rules – Two caskets are listed on the Casket Price List without prices.

Response: No response received.

Complaint History: Several complaints involving FTC violations.

Recommendation: Consent order assessing civil penalty of seven hundred fifty dollars (\$750) for each of the twenty (20) instances in which customers were charged in

violation of FTC rules (total civil penalty of fifteen thousand dollars (\$15,000), and authorization for hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

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

**REPORT OF LICENSES ISSUED FEBRUARY 10, 2009 – MARCH 9, 2009 BY
EXECUTIVE DIRECTOR AS PER BOARD AUTHORITY**

LICENSEE REPORT:

Establishments

Kilgore Funeral Home, LLC Tullahoma, TN	New Establishment
Trinity Funeral Care Memphis, TN	New Establishment
Burns – Short Funeral & Cremation Services Nashville, TN	Location Change

Individuals

Margie Beasley White Memphis, TN	Funeral Director
Ryan Trent Garrison Maryville, TN	Funeral Director Reapplication

CLOSED ESTABLISHMENT REPORT:

Closed Establishments:

One (1) establishment has reported closing since the last board meeting:

- Johnson – Blackwell Funeral Home, 402 South Shepherd Street, Winchester, TN

DISCIPLINARY ACTION REPORT:

The Board has previously authorized this Consent Order and Civil Penalty. The Consent Order has been signed and the Civil Penalty paid by the Respondent. The Executive Director requests the Board's acceptance of it.

Complaint No. 2008024411

Violation: Multiple cremation authorization forms missing from the decedents' files and whenever the forms were submitted to the field representative, two of the three lacked the required signature of a funeral director

Action: \$250 Civil Penalty

A motion was made by Eugene Williams to approve the Executive Director's request for the Board's acceptance of the above listed Consent Order.

Seconded by Clark McKinney

Adopted by voice vote

OPEN COMPLAINT REPORT:

As of March 6, 2009, there were 68 open complaints.

ELITE CME, INC. – REVIEW APPROVAL AS CE PROVIDER

On January 9, 2009, the Board received verification from a licensee that he had completed his CE requirements for license renewal on January 5, 2009 through Elite Continuing Education in Ormond Beach, Florida. It was determined that the approval for the courses the licensee had taken expired on December 31, 2008 and had not been renewed by Elite. Therefore, credit could not be issued. The licensee was notified, who in turn contacted the provider. The provider, Elite, issued new verification of completion of courses the licensee did not take, per his own admission.

On January 12, 2009, Executive Director Robert Gribble and Administrative Assistant Jimmy Gossett contacted Elite Continuing Education, spoke with Todd Mowl, and explained what had happened. Mr. Mowl immediately checked into the problem and discovered an error on the part of two (2) employees. According to a letter later received from the provider, Elite CME, Inc., has taken actions and "checks and balances have been strengthened to help insure that errors such as these never occur again."

A motion was made by Paula Bridges for Assistant General Counsel Chick send a Letter of Warning to Elite CME, Inc., regarding this matter.

Seconded by Eugene Williams

Adopted by voice vote

DENIAL OF INDIVIDUAL LICENSE:

Kerry B. Smith of Tullahoma, TN appeared before the Board for consideration of his reapplication for licensure as a funeral director. Mr. Smith’s license had been surrendered in 1986 due to a “confusion of preneed sales.” After the interview, the Board discussed tabling the request for licensure until further investigation could be done and information gathered within 60 days or so on the circumstances surrounding the “surrendering of the license.” Mr. Smith did not want the request tabled or pursued through further means; but instead, requested that the Board make a decision at this meeting without the benefit of any additional information.

Dennis Hamilton made a motion to deny the reapplication pursuant to Tenn. Code Ann. § 62-5-317(a)(4) which authorizes the Board to refuse to issue a license if the applicant has been guilty of immoral or unprofessional conduct.

Seconded by Paula Bridges

President David Murphy directed a roll call vote.

<u>BOARD MEMBER</u>	<u>VOTE</u>
Paula Bridges	Yes
Dennis Hamilton	Yes
Wayne Hinkle	Yes
Jill Horner	No
Clark McKinney	No
David Murphy	Yes
Eugene Williams	No

By a vote of 4-3, the reapplication for a funeral director’s license of Kerry B. Smith was DENIED by the Board.

ESTABLISHMENT’S CHANGE OF NAME:

Ms. Rosemary Leonard appeared before the Board representing Wilson County Memorial Park and Chapel in Lebanon, Tennessee, and requested a change of name to Lawrence Family Funeral Home.

Clark McKinney recused himself.

After the interview of Ms. Leonard and consideration of Tenn. Code Ann. § 62-5-314, Dennis Hamilton made a motion to approve the license.

Mr. Hamilton’s motion died for lack of a second.

Paula Bridges made a motion that the manager appear before the Board at the next meeting for consideration of this establishment name change.

Seconded by Eugene Williams

Adopted by voice vote

APPROVAL OF ESTABLISHMENT LICENSE:

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

**DOUGHTY – STEVENS FUNERAL HOME
1125 TUSCULUM BOULEVARD
GREENEVILLE, TN**

Change of Ownership

New Ownership: Corporation

New Owner: Paxus Services (Tennessee), Inc., of Boerne, Texas

Adopted by voice vote

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

**MOSHEIM CHAPEL OF DOUGHTY – STEVENS FUNERAL HOME
230 MAIN STREET
MOSHEIM, TN**

Changes of Ownership and Name

New Ownership: Corporation

New Owner: Paxus Services (Tennessee), Inc., of Boerne, Texas

Adopted by voice vote

ADJOURN:

A motion was made by Paula Bridges to adjourn.

Seconded by Eugene Williams

Adopted by voice vote

The meeting was adjourned by President David Murphy at 11:40 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director