

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

FEBRUARY 8, 2011

President Eugene Williams 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 Eugene Williams, President; Jill Horner, Wayne Hinkle, Paula Bridges, Tony Hysmith and W. T. Patterson. Board member absent: Clark McKinney, Vice President.

Staff members present were Robert Gribble, Executive Director; Benton McDonough, Assistant General Counsel; and Jimmy Gossett, Administrative Assistant.

INTRODUCTION OF NEW BOARD MEMBER:

President Eugene Williams introduced and welcomed new board member W. T. Patterson from Camden to serve as a representative for West Tennessee.

ADOPTION OF AGENDA:

A motion was made by Tony Hysmith to approve the agenda as printed.

Seconded by Jill Horner

Adopted by voice vote

APPROVAL OF MINUTES:

President Eugene Williams said the minutes of the December 14, 2010 meeting were not available today but will be ready for review at the March 8, 2011 meeting.

ADOPTION OF ROBERT'S RULES OF ORDER:

A motion was made by Tony Hysmith that the rules contained in the current edition of *Robert's Rules of Order* shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with statutes and any special rules of order the Board may adopt.

Seconded by Paula Bridges

Adopted by voice vote

CONFLICT OF INTEREST STATEMENTS:

Each Board member signed a Conflict of Interest Statement as is done on an annual basis at the January meeting.

PETITION FOR STAY OF FINAL ORDER:

A Petition for Stay of Final Order was requested by Thomas J. Long, Esq., Long Law Firm, PLLC, Collierville, Tennessee, regarding Docket No. 12.21-105387A, respondents Alfred Thomas Tacker and Bartlett Funeral Home, Inc. The attorney's letter stated the Respondents are appealing this matter to the Davidson County Chancery Court and requested a stay for the payment of the \$1000 civil penalty and hearing costs which were assessed by the Board.

A motion was made by Tony Hysmith to DENY the Stay of Final Order.

Seconded by Jill Horner

Adopted by voice vote

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

Abbreviations:

TCA – Tennessee Code Annotated

FTC – Federal Trade Commission

GPL – General Price List

CPL – Casket Price List

OBCPL – Outer Burial Container Price List

SFGSS – Statement of Funeral Goods and Services Selected

1. Case No.: L10-FUN-RBS-2010026101

Respondent's license expired on June 30, 2010, and has not been renewed. Respondent signed two (2) death certificates as the "funeral director" after the license had expired.

Response: Respondent states it has been a slow year, and they have been short on funds. Respondent's mother is suffering from Alzheimer's, and they are currently the only caretaker for their mother. Respondent states that they overlooked the renewal.

Note – The Respondent has yet to renew their license.

History: None

Recommendation: Consent Order with a \$1000 civil penalty and authorization for a hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

2. Case No.: L10-FUN-RBS-2010007301

Complainant used respondent funeral home for services following their brother's murder. Complainant paid in full (\$4,959.00) and then filed a claim with the Tennessee Claims Commission to reimburse their costs as the decedent was the victim of a homicide. When Complainant called the commission to inquire about the claim, the Claims Commission informed the Complainant that the money had already been given to the decedent's estranged wife, who provided evidence (via a SFGSS) that she actually paid the \$4,959.00 for the decedent's funeral. Complainant provided a copy of the SFGSS that has Complainant's name on it and one SFGSS with the estranged wife's name on it. The manager who signed off on the SFGSS no longer works for the funeral establishment.

Response: Respondent states that their funeral establishment did not make any profit above the \$4,959.00 that was required to cover the services rendered. Respondent states that the individual who signed off on the SFGSS as manager of the funeral home no longer works there.

History: Seven (7) complaints closed, none related.

Recommendation: Consent Order with \$500 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation and additionally Legal to seek action against the funeral director in this matter as well.

Seconded by Wayne Hinkle

Adopted by voice vote

3. Case No.: L10-FUN-RBS-2010017571

Following a routine inspection, the following violations were found:

- Incomplete crematory authorization forms.
- Cremation authorization form was not present in the file of the decedent.
- On four (4) of the SFGSS, the reason for embalming was not listed.
- On five (5) of the SFGSS, they lacked an itemized listing of the prices.

Response: Respondent states it was an oversight on their part, and this will not happen again.

History: One (1) closed complaint, not related.

Recommendation: Letter of Warning

A motion was made by Tony Hysmith to issue a Consent Order with \$250 civil penalty and authorization for a hearing.

Seconded by Jill Horner

Adopted by voice vote

4. Case No.: L10-FUN-RBS-2010027791

Complainant would like an apology and a \$625.00 refund that was not on the original financial agreement.

Response: Respondent states that on August 20, 2010, they met with the Complainant regarding services the Respondent could provide, and states that they quoted the Complainant a pre-tax price of \$1850.00 which included a \$650.00 discount from the General Price List. Respondent further states that they discussed numerous options regarding cemeteries in their area and informed the Complainant that one particular cemetery would cost an extra \$2000.00 (which includes a grave site and outer burial container). Respondent states that the Complainant informed them that the \$2000.00 extra would be too much, and they finally agreed upon a free burial in the city cemetery for \$1850.00. Upon completion of the SFGSS, Respondent found that the decedent was not a citizen of Tennessee and thus not eligible for free burial at the city cemetery. Respondent states that they began calling other funeral homes to see if they were aware of other free burials and came to find out that the Complainant wound up purchasing a grave site at the cemetery they discussed for the additional \$2000.00. Respondent states that they called the Complainant and informed them that while the Complainant bought a grave site; they also had to purchase an outer burial container as it was a cemetery rule at that particular cemetery. Respondent states that Complainant was upset and asked them for an apology and a refund of \$625.00 as the funeral home gave them improper information. Respondent states that they did nothing wrong because the Complainant informed them that they did not want to go the route of the \$2000.00 burial at the cemetery.

History: One (1) closed complaint, not related.

Recommendation: Close. It appears no statutes / rules were violated.

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

Seconded by Wayne Hinkle

Adopted by voice vote

5. Case No.: L10-FUN-RBS-2010027841

Following a routine inspection, the following violations were found:

- Latest inspection report for crematory used was not available.
- Three (3) cremation authorization forms were incorrect as they were not signed by the authorizing agents / funeral directors.
- Preparation room and equipment was not properly sanitized (soiled linen towels, dirty instruments on soiled linen, trash piled up, desk and preparation room cluttered).

Response: Respondent has corrected the issues and apologizes for these oversights.

History: Eight (8) closed complaints, three (3) with TCA and FTC violations.

Recommendation: Consent Order with \$250 civil penalty and authorization for a hearing.

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

Seconded by Tony Hysmith

Adopted by voice vote

6. Case No.: L10-FUN-RBS-2010027881

Following a routine inspection, the following violations were found:

- Three (3) of eight (8) SFGSS revealed a \$75.00 overcharge for "other preparation of the body."
- The funeral home charged \$100.00 in all three cases. All three decedents were embalmed and charged \$400.00 for embalming; however, the GPL lists a \$25.00 charge for cosmetics and \$75.00 for washing and disinfecting if the body is not embalmed.
- Two (2) SFGSS revealed an overcharge. One (1) lists a charge of \$895.00 for "Forwarding Remains" and a \$95.00 charge for "Transferring Remains to the Funeral Home." The GPL states "Removal of Remains" as included under "Forwarding Remains". Also, a casket was purchased from the funeral home, so forwarding remains should be \$895.00 and the \$95.00 shouldn't have been charged because it's included. There is a charge of \$54.00 for "Transfer of Remains to Funeral Home," and a charge of \$1050.00 for direct cremation. The GPL says "Removal of Remains" is included in direct cremation and \$54.00 shouldn't be charged for "Transfer of Remains."
- The price for direct cremation on the GPL is not in agreement. The high end of \$2000.00 does not agree with other numbers. The Shaker Pine Cremation Container is \$1800.00 and does not agree with the price in the

CPL. Cremation with Memorial Service Only is \$1300.00. The charge for both items individually adds up to \$1200.00. The provider charged more for the package offering than the included items individually.

- The copy of the crematory license expired on June 30, 2010.

Response: The owner copied the GPL from other establishments and misread the \$75.00 charge regarding embalmed bodies. Software puts in charges automatically, but it's up to the staff of the funeral home to go back and take off services not actually rendered. That was not done in this case. The incorrect range on the GPL has been corrected. As for the Shaker Pine, direct cremation with container provided by the purchaser is \$950.00. When you add the fee for the Shaker Pine container of \$858.00, the total is \$1808.00 which is just \$8.00 over which is acceptable. Cremation with memorial service is \$1300.00 which is correct and reflects the \$1050.00 fee for direct cremation with cardboard container and \$250.00 fee for the memorial service. The GPL was corrected when casket prices increased, but we did not correct the CPL at the same time. The inspection took place on August 17, 2010, and a copy of the crematory license expired on June 30, 2010. We have obtained a new copy of the license. We have mailed the reimbursements on five (5) of the files that we overcharged.

History: One (1) closed with related violations.

Recommendation: Consent Order with \$500 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to issue a Consent Order with \$1000 civil penalty, conduct a re-inspection of the establishment and authorization for a hearing.

Seconded by Jill Horner

Adopted by voice vote

7. Case No.: L10-FUN-RBS-2010027901

During a routine inspection, the following violations were found:

- Invalid licenses – The funeral director's and embalmer's licenses expired on June 30, 2010, and they were not reinstated until July 16, 2010. From July 1, 201 through July 15, 2010, the establishment handled seven (7) death calls.

Response: Respondent states that they sent the renewal in on June 25, 2010, received a call twelve (12) days later that the renewal had been received, and paid \$400 in late fees. Respondent further states that they will use next day delivery from now on.

History: One (1) closed, not related.

Recommendation: Consent Order with \$500 civil penalty and authorization for a hearing.

A motion was made by Jill Horner to issue a Consent Order with a \$700 civil penalty and authorization for a hearing.

Seconded by Tony Hysmith

Adopted by voice vote

8. Case No.: L10-FUN-RBS-2010027921

During a routine inspection, the following violations were found:

- Invalid Licenses. The funeral director's and embalmer's licenses expired on June 30, 2010, and they were not reinstated until July 16, 2010. From July 1, 2010 through July 15, 2010, the establishment handled five (5) death calls.
- Found an overcharge of \$70.00 on one SFGSS. The establishment charged \$1590.00 for Direct Cremation, but the GPL lists this service for \$1520.00 when an alternative container is included. Also, the establishment charged the same person \$175.00 for a combination shipping unit / air tray even though the funeral director could provide no reason for this charge.
- \$1520.00 for direct cremation plus \$100.00 for cremation container in another case. The GPL lists the price at \$1520.00 for direct cremation with container, making this a \$100 overcharge.

Response: Respondent states that they sent in their renewal on June 25, 2010 and sent refund checks in the amounts of \$240.00 and \$100.00 to the customers.

History: Two (2) closed complaints, not related.

Recommendation: Consent Order with \$750 civil penalty and authorization for a hearing.

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

Seconded by Jill Horner

Adopted by voice vote

9. Case No.: L10-FUN-RBS-2010027941

Based upon a routine inspection, the following violations were found:

- The establishment’s license expired on June 30, 2010 and was not reinstated until August 15, 2010. During this time, the respondent accepted 17 death calls.
- A SFGSS was signed by an apprentice as “funeral director,” no licensed funeral director’s signature appears on the cremation authorization. It was found that a licensed funeral director’s signature was added at a later date.
- The SFGSS lists \$2190.00 for direct cremation and other charges relating to funeral services and \$1995.00 for Basic Services of Funeral Director and Staff and \$195.00 for “Transfer of Remains to the Funeral Home” both of which are covered under Direct Cremation under the GPL. It was later determined that a direct cremation did not occur, so the charges of \$2190.00 for a direct cremation should not have been included on the SFGSS.

Response: Respondent purchased the business on June 23, 2010, and they were not aware that the license would soon expire. Additionally, Respondent believed they had sixty (60) days to apply for a change of ownership.

The apprentice signed the SFGSS in error and that will not happen again.

The final issue – The family wound up not doing a direct cremation as originally anticipated; however, no changes were made to the SFGSS. The family has since been contacted and their money refunded.

History: One (1) closed, not related.

Recommendation: Consent Order with \$500 civil penalty and authorization for a hearing.

A motion was made by Paula Bridges to authorize a hearing and for it to occur as soon as possible.

Seconded by W. T. Patterson

A roll call vote was directed by President Eugene Williams, and the voting was recorded as follows:

<u>BOARD MEMBER</u>	<u>VOTE</u>
Paula Bridges	Yes
Wayne Hinkle	Yes
Jill Horner	No
Tony Hysmith	No
W.T. Patterson	Yes
Eugene Williams	No

Three (3) recorded as “Yes” and three (3) recorded as “No”. The motion failed.

A motion was then made by Wayne Hinkle to issue a Consent Order with a \$2200 civil penalty and authorization for a hearing.

Seconded by Paula Bridges

Adopted by voice vote

10. Case No.: L10-FUN-RBS-2010028201

Cremation authorization forms were not filled out completely.

Response: Respondent received 133 permits that appeared to be completely filled out. Respondent states that they have provided a completed copy for each file from their files. Respondent believes they have all of the necessary documents and a licensed funeral director signing off on all of the copies.

History: One (1) closed complaint, not related.

Recommendation: Letter of Warning.

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

Seconded by Jill Horner

Adopted by voice vote

11. Case No.: L10-FUN-RBS-2010028211

During a routine inspection, the following violations were found:

- In seven (7) cases, the body of the decedent was cremated prior to the County Health Department issuing the Permit for Cremation. In six (6) of the cases, the body was cremated one (1) day prior to receiving the proper permit. However, in one (1) case, the body was cremated fifteen (15) days prior to receiving the required permit.
- Use of names of unregistered persons.
- Establishment was not being run by a licensed funeral director.
- Applicant or holder of license knowingly permitting unlicensed person to engage in funeral directing.
- Aiding or abetting unlicensed person to practice in funeral business.
- Operator of crematory has not received all required documents.

Response: No response was received.

History: Five (5) closed complaints with two (2) having related TCA violations; two (2) open complaints with one (1) having related TCA violations.

Recommendation: Close. This matter has already been adjudicated in a prior administrative hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

12. Case No.: L10-FUN-RBS-2010028221

No signature of a licensed funeral director certifying the cremation.

Response: Respondent has provided the board with a few chosen cremation permits that show the signature of a licensed funeral director. Respondent states that they can provide the board with all of these permits if requested. Respondent states that it fills out every document completely and correctly and cannot understand why the health department gave incomplete copies to the board.

History: One (1) is open and related.

Recommendation: Letter of Warning.

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

Seconded by Tony Hysmith

Adopted by voice vote

13. Case No.: L10-FUN-RBS-2010028251

Based upon a routine inspection, the following violations were found:

- Use of names of unregistered persons.
- Establishment being managed by unlicensed funeral director.
- Applicant or holder of license knowingly permitting unlicensed person to engage in funeral directing.
- Aiding or abetting unlicensed person to practice in funeral business.
- Operator of crematory has not received all required documents.

Response: In regards to the documents being signed by unlicensed personnel, our establishment has erred. The permit does not specify that a signature must be that of a licensed director. We will be sure that only licensed directors sign off on these permits.

History: None

Recommendation: Consent Order with \$1000 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

14. Case No.: L10-FUN-RBS-2010028271

Following a routine inspection, the following violations were found:

- In two (2) situations, the establishment cremated a body prior to receiving a cremation permit.
- Use of names of unregistered persons.
- Use of an unlicensed funeral director who is engaging in funeral directing.
- Establishment knowingly permitted an unlicensed individual to practice funeral directing.

Response: One of the cremation dates was clerical error on the part of the registrar's office and they applied the wrong date. I received the doctor's verification on December 22, 2009. The cremation occurred on December 23, 2009, but the registrar entered December 28, 2009. On the second cremation, I had a busy day on March 10, 2010, and was unable to contact the Health Department before they closed. I received authorization from the medical examiner on March 10, 2010. The cremation occurred on March 10, 2010, but I did not receive the Health Department's Cremation Permit until March 11, 2010.

History: One (1) closed with TCA violations.

Recommendation: Consent Order with \$1000 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by W. T. Patterson

Adopted by voice vote

15. Case No.: L10-FUN-RBS-2010028481

Applications for cremation permits were not completed properly.

Response: We received six (6) incomplete permits from the Board. These permits must have been received from the Health Department as they are incomplete. All of the documents were signed by a licensed funeral director or embalmer. No cremations were performed prior to the obtainment of the proper

signatures. Upon completion of the cremations, the completed permits were signed and dated then returned to the local health department via facsimile. We then spoke with the Health Department who said they failed to file the final completed copies of the permits due to an equipment malfunction.

History: Five (5) closed with one (1) possibly related.

Recommendation: Letter of Warning

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

Seconded by Jill Horner

Adopted by voice vote

16. Case No.: L10-FUN-RBS-2010028491

The complaint contains the following allegations:

- The individual signing off as "person in charge of cremation" is an apprentice.
- The funeral director knowingly permitted an unlicensed individual to sign off as the "funeral director."
- The establishment aided and abetted an unlicensed individual in funeral directing.
- In one instance, the cremation permit did not have a signature for "person in charge of cremation."

Response: The apprentice signed off on two (2) cremation permits as "person in charge of cremation." She is a certified crematory operator and was under the supervision of a licensed funeral director at all times. As for the cremation permit without the proper signature, the field representative must have made a copy of an incomplete cremation permit because our original permit has the proper signature of our crematory operator. The county health department faxed us an original permit with the required signature on it. We have enclosed that permit.

History: None

Recommendation: Letter of Warning

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

Seconded by Jill Horner

Adopted by voice vote

17. Case No.: L10-FUN-RBS-2010028511

The cremation permit was missing the signature of the person “in charge of the cremation.”

Response: The matter has been reviewed, and the Respondent has provided all of the cremation permits in question that were completed on the date of the cremation.

History: One (1) closed, not related.

Recommendation: Letter of Warning

A motion was made by Tony Hysmith to accept Counsel’s recommendation.

Seconded by Jill Horner

Adopted by voice vote

18. Case No.: L10-FUN-RBS-2010028521

The complaint contains the following allegations:

- A field representative found that an apprentice signed a cremation permit as the “person in charge of the cremation.”
- Six (6) cremation permits lacked the proper signature for a person “in charge of the cremation.”
- A funeral director allowed an unlicensed individual to act as a funeral director.
- The establishment aided and abetted an unlicensed individual in the practice of funeral directing.

Response: Respondent states that they checked their files and found all of the cremation permits completed and properly filled out. However, the Respondent admits that an apprentice did sign off on one cremation permit by mistake.

History: None

Recommendation: Letter of Warning

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

Seconded by Jill Horner

Adopted by voice vote

19. Case No.: L10-FUN-RBS-2010028551

The complaint contains the following allegations:

- Respondent failed to fill out a cremation permit completely. No signature for the “person in charge of cremation.”

Respondent: After reviewing their files and conferring with the county health department, the Respondent believes the permit was issued prior to the cremation taking place.

History: None

Recommendation: Letter of Warning

A motion was made by Tony Hysmith to accept Counsel’s recommendation.

Seconded by Paula Bridges

Adopted by voice vote

20. Case No.: L10-FUN-RBS-2010028761

The complaint contains the following allegations:

- On two (2) separate occasions, a non-licensed individual signed off as the “person in charge of cremation.”
- This individual, who was an apprentice, but an unlicensed funeral director, engaged in the practice of funeral directing without being properly licensed.
- By knowingly permitting this unlicensed employee to certify that the cremations took place by signing as the “person in charge of cremations”, the establishment aided and abetted the unlicensed individual in the practice of funeral directing.

Response: While the Respondent does not believe that the Tennessee law requires a licensed funeral director to perform cremations or prepare the paperwork for a cremation, Respondent will make every effort to ensure that the certification portion of the form is executed only by a licensed funeral director.

History: Three (3) closed complaints with non-related TCA violations.

Recommendation: Letter of Warning

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

Seconded by W. T. Patterson

Adopted by voice vote

21. Case No.: L10-FUN-RBS-2010028771

The complaint contains the following allegations:

- On twelve (12) separate occasions, the respondent failed to complete the cremation permit to certify that a cremation had taken place.
- Respondent failed to complete and return the permit to the appropriate personnel at the county health department.

Response: Respondent sent a copy of all twelve (12) permits completely filled out that they keep in their files. Respondent believed they were faxing these permits to the proper party at the health department; however, they will send them certified mail from now on.

History: None

Recommendation: Letter of Warning

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Jill Horner

Adopted by voice vote

22. Case No.: L10-FUN-RBS-2010028781

During a routine inspection, it was discovered that twenty-one (21) files reviewed all had proper documentation for the person "in charge of the cremation." However, in one (1) case, it was discovered that the cremation took place on December 24, 2009, but the local or deputy registrar did not apply their signature until December 28, 2009. Likewise, the application for a cremation permit was not granted until December 28, 2009.

Response: Respondent states that they spoke to the Medical Examiner's Office who told them that because the Medical Examiner signed and approved the death certificate and cremation permit, the Respondent may commence the cremation process. Due to Christmas break, the health department was not going to open until December 28, 2009. The decedent's family requested that the cremains be prepared by December 27, 2009, for an out of town service.

History: One (1) complaint, not related.

Recommendation: Consent Order with \$1000 civil penalty and authorization for a hearing.

A motion was made by Paula Bridges to issue a Letter of Warning.

Seconded by Wayne Hinkle

Adopted by voice vote

Board member(s) recorded as voting contrary to the majority conclusion: Jill Horner and Tony Hysmith

23. Case No.: L10-FUN-RBS-2010028791

On sixteen (16) separate occasions, the Respondent failed to properly complete the cremation permit by failing to sign as the “person in charge of cremation.”

Response: Respondent states that the violation occurred because too many copies of the permits were made. Respondent states that one (1) copy was to remain in the respondent’s files while the original copy was to be returned to the state with the appropriate signatures. It was discovered that the crematory operator failed to properly sign both copies of the cremation permit. Respondent states that the copy which was returned to the state was the one without the appropriate signatures. Respondent found the original copy in each file along with required signatures, and has presented each of those copies to the board’s staff attorney.

History: None.

Recommendation: Letter of Warning

A motion was made by Tony Hysmith to accept Counsel’s recommendation.

Seconded by Paula Bridges

Adopted by voice vote

24. Case No.: L10-FUN-RBS-2010028561

The complaint contains the following allegations:

- Respondent failed to properly document the “person in charge of the cremation” on the cremation permit.
- Respondent allowed an apprentice to sign off as the “person in charge of the cremation.”
- By allowing the apprentice to sign these documents, the Respondent allowed an unregistered person to act as a funeral director.
- Furthermore, by knowingly permitting the apprentice to act as the funeral director, the Respondent aided and abetted an unlicensed person to practice within the funeral profession.

Response: Respondent states that they were unaware that a licensed funeral director had to sign the cremation permit as the “person in charge of the cremation.” Respondent admits that they were aware that the statute prohibits the use of an unregistered name. Respondent has taken steps to ensure a licensed director signs off on each cremation permit.

History: One (1) open and one (1) closed, neither related.

Recommendation: Letter of Warning

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

Seconded by W. T. Patterson

Adopted by voice vote

25. Case No.: L10-FUN-RBS-2010028601

The complaint contains the following allegations:

- Respondent failed to properly document who was "in charge of the cremation" in eight (8) separate cases and allowed an unlicensed individual to sign off as the "person in charge of the cremation" in one (1) case.
- By knowingly allowing the unlicensed individual to complete the cremation permit, the Respondent aided and abetted the unlicensed individual in the practice of funeral directing.

Response: Respondent states that they found that some paperwork was not filled out completely. This paperwork was completed under the supervision of another manager who is no longer employed by the establishment. This will not be a problem in the future.

History: Two (2) closed, not related.

Recommendation: Letter of Warning

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Jill Horner

Adopted by voice vote

26. Case No.: L10-FUN-RBS-2010030121

Complainant states she was not given the SFGSS until after burial. The SFGSS is dated August 16, 2010, and the funeral was held on August 7, 2010. Complainant believes the funeral director lied and deceived her because the Complainant was unaware of how expensive the services would be, and the Respondent post-dated / pre-dated documents.

Response: The respondent states that the Complainant is not upset with the services provided but the amount of money they were charged. Respondent

states that Complainant saw an advertisement in the newspaper for funeral services with another establishment whose prices were less expensive than the Respondent provided, and Complainant believes the Respondent should not charge greater than that advertisement. Respondent states that they had numerous conversations with the Complainant regarding the services being provided and their prices, including that Complainant’s son would need an extra-large casket and embalming would cost more due to the decedent’s size. Furthermore, Respondent stated that the services cost more because the decedent had significant wounds that needed to be repaired before a public viewing could occur. Similarly, the Respondent provided the Complainant with a packet to explain the services available at the funeral home.

History: One (1) complaint is open, not related.

Recommendation: Consent Order and \$1000 civil penalty and authorization for a hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

ADMINISTRATIVE REPORTS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

Financial Recap
Board of Funeral Directors and Embalmers
Fiscal Year July 1, 2009 – June 30, 2010

The following data was obtained on December 20, 2010, from the Assistant Commissioner’s Office for Regulatory Boards of the Tennessee Department of Commerce and Insurance.

Beginning Balance – July 1, 2009	\$ 69,404.00
Net Revenue (Earnings) for July 1, 2009 – June 30, 2010	\$941,870.00
Total Funds Available	<u>\$1,011,274.00</u>
Expenditures July 1, 2009 – June 30, 2010	\$428,748.00
Cost Backs (Cost Allocations charged to the Board from Administration and Investigations)	\$152,249.00
Total Expenditures, Including Cost Backs	<u>\$ 580,997.00</u>
Beginning Balance – July 1, 2010	\$ 430,277.00

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
DECEMBER 14, 2010 – FEBRUARY 7, 2011**

Establishments

Claiborne Funeral Home New Tazewell, TN	Ownership Change
Littlebrook Cremation Company Maryville, TN	Ownership Change

Individuals

Marsha McGee Chance Marion, AR	Funeral Director
Addie Lou Chase Huntingdon, TN	Funeral Director
Richie Lavelle Conner Murfreesboro, TN	Funeral Director
Barbara Dedmon Flores Brownsville, TN	Funeral Director
Cheryl Franklin Key Chattanooga, TN	Funeral Director
Charian LaMon Harrison Memphis, TN	Funeral Director
Martha Sue Henderson Cleveland, TN	Funeral Director
Terry Lynn Loudin Newcomb, TN	Funeral Director
Nathan Dexter Manning Jefferson City, TN	Funeral Director
Amy McGill Millsaps Loudon, TN	Funeral Director
Michael Kenneth Neal Doyle, TN	Funeral Director
Tommy Demetrius Nelson	Funeral Director

Murfreesboro, TN

John Taylor Saul Lenoir City, TN	Funeral Director
Alison Vickery Shackelford Selmer, TN	Funeral Director
Christopher David Stephens Franklin, TN	Funeral Director
Marcus Duane Tacker Memphis, TN	Funeral Director
Lisa Shackelford Thomas Savannah, TN	Funeral Director
Lewis Bradley Tuttle Lafayette, TN	Funeral Director
Rebecca McGill Willis Loudon, TN	Funeral Director
Anthony H. White Livingston, TN	Embalmer
Christopher Dean Peterson Clarksville, TN	Funeral Director/Embalmer
Kaitlyn Leanne McAdams Maynardville, TN	Funeral Director/Embalmer
Jacob Kimble Smith Knoxville, TN	Funeral Director/Embalmer Reciprocity

Disciplinary Action Report:

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

Complaint No. 2009012561

Violation: Engaging in the conduct of funeral directing during a time that the license was expired

Action: \$250 Civil Penalty

Complaint No. 2010025771

Violation: Failure to obtain and maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses

Action: \$250 Civil Penalty

Complaint No. 2010025881

Violation: Failure to provide license of the funeral director and embalmer for inspection and multiple aspects of the establishment's price lists do not comply with the Funeral Rule

Action: \$1000 Civil Penalty

Complaint No. 2010028751

Violation: Failure to properly complete all required paperwork prior to cremation

Action: \$250 Civil Penalty

Complaint No. 2010027831

Violation: Engaging in the conduct of funeral directing and manager of a funeral establishment during a time that the individual's license was expired

Action: \$250 Civil Penalty

Complaint No. 2010025891

Violation: Failure to obtain and maintain a copy of the current license of the crematory that the funeral home uses and incorrect language on Outer Burial Container Price List

Action: \$250 Civil Penalty

Complaint No. 2010021631

Violation: Failure to provide license of the funeral director for inspection and several aspects of the establishment's price lists do not comply with the Funeral Rule

Action: \$1000 Civil Penalty

Complaint No. 2010024001

Violation: Placing an advertisement that was false and/or misleading

Action: \$500 Civil Penalty

Complaint No. 2010025471

Violation: Failure to provide a sink with appropriate drainage in the preparation room

Action: \$250 Civil Penalty

Complaint No. 2010027801

Violation: Allowed two funeral directors including the establishment manager to practice with expired licenses

Action: \$250 Civil Penalty

Complaint No. 2009003651

Violation: Cremation authorization forms lacked required information and multiple aspects of the establishment's price lists do not comply with the Funeral Rule

Action: \$500 Civil Penalty

Complaint No. 2009012641

Violation: Multiple aspects of the establishment's price lists do not comply with the Funeral Rule and failure to respond to the Board's correspondence regarding an open complaint within the specified time

Action: \$1250 Civil Penalty

Complaint No. 2010021511

Violation: Funeral director served as the establishment manager and on numerous occasions engaged in the practice of funeral directing with an expired license, multiple aspects of the establishment's price lists do not comply with the Funeral Rule and failure to respond to the Board's correspondence regarding an open complaint within the specified time

Action: \$1750 Civil Penalty

Complaint No. 2010021011

Violation: Failure to honor a financial obligation to a supplier in a timely manner, wrote a check with insufficient funds to the same supplier and failure to respond to the Board's correspondence regarding an open complaint within the specified time

Action: \$2250 Civil Penalty

Complaint No. 2010026531

Violation: Unreasonably delayed the filing of a decedent's certificate of death and violated a rule promulgated by the Board

Action: \$500 Civil Penalty

Complaint No. 2010026081

Violation: Failure to provide current license of an embalmer for inspection, failure to provide a cremation authorization form, failure to provide a Casket Price List and an Outer Burial Container Price List for inspection, not stating the reason for embalming on the Statement of Funeral Goods and Services Selected and not providing a required disclosure for the consumer's right on the General Price List

Action: \$750 Civil Penalty

Complaint No. 2010002881

Violation: Multiple cremation files did not contain the required authorization form and several caskets in the selection room were either not listed or the price not listed correctly on the Casket Price List

Action: \$500 Civil Penalty

Complaint No. 2010025861

Violation: Failure to provide proper pricing on multiple price lists

Action: \$250 Civil Penalty

Complaint No. 2010027861

Violation: Conducting business on an expired establishment license, a funeral director and an embalmer were in possession of expired licenses, aiding and abetting an unlicensed individual to practice in the funeral business, failure to obtain and maintain a copy of the latest inspection report of the crematory that the funeral home uses, failure to attach a permanent identification device to a deceased human remains and failure to submit documents to the Board on the required size paper

Action: \$1000 Civil Penalty

Complaint No. 2010025821

Violation: Failure to obtain and maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses, failure to disclose the address and phone number of the crematory on the cremation authorization form and failure to provide an itemized listing of the services selected on the Statement of Funeral Goods and Services Selected

Action: \$500 Civil Penalty

Complaint No. 2010026031

Violation: Failure to promptly surrender custody of a dead human body upon the expressed order of the person legally entitled to such body

Action: \$1000 Civil Penalty

OPEN COMPLAINT REPORT:

As of February 4, 2011, there were 137 open complaints.

ESTABLISHMENT APPLICATION:

**FRANKLIN FAMILY FUNERAL SERVICE & CREMATIONS
105 SOUTHEAST PARKWAY, SUITE 105
FRANKLIN, TN**

New Establishment

Ownership: Sole Proprietorship

Owner: Kerney C. McNeil

After review and discussion with Mr. Kerney C. McNeil, a motion was made by Paula Bridges that the application be put on hold until all qualifications set by the Board have been met, and that a field representative shall conduct a re-inspection of the proposed establishment prior to the application coming back before the Board.

Seconded by Wayne Hinkle

Adopted by voice vote

WORK SESSION:

The Board members requested that a Work Session be noticed on the March 8, 2011, Agenda to be held that day subsequent to the conclusion of the board meeting.

ADJOURN:

A motion was made by Paula Bridges to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

The meeting was adjourned by President Eugene Williams at 12:57 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director