

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MARCH 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: Eugene Williams, President; Clark McKinney, Vice President; Wayne Hinkle, Jill Horner, Tony Hysmith and W. T. Patterson.

Board member absent: Paula Bridges

Staff members present: Robert Gribble, Executive Director; Benton McDonough, 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 Clark McKinney to approve the minutes of the December 14, 2010 Board Meeting.

Seconded by Jill Horner

Adopted by voice vote

A motion was made by Wayne Hinkle to approve the minutes of the February 8, 2011 Board Meeting.

Seconded by W. T. Patterson

Adopted by voice vote

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

- 1. Case No.: L10-FUN-RBS-2010003841**
- 2. Case No.: L10-FUN-RBS-2010003781**

Complainant states that they signed to have father's remains cremated. Upon reviewing the release form, Complainant noticed a section checked for jewelry. Complainant asked the funeral home director about having jewelry (amethyst ring and gold crucifix) returned to them. Complainant was told they would receive the jewelry along with the cremains. When Complainant went to retrieve the cremains, they were told there was no jewelry with the body. Complainant states they spoke with Medical Examiner's Office and the individual who transported the body to the funeral home. Both parties informed the Complainant that jewelry was present.

Response: Respondent states that no jewelry was received with the body and no document accompanied the body informing the funeral home of any jewelry being present.

NOTES:

- These cases were originally presented in October and November of 2010. During these presentations, the Board asked that these cases be investigated further.
- On February 17, 2011, the investigations were completed and returned to Assistant General Counsel.
- Based upon interviews conducted and affidavits provided by a Medical Examiner, it was determined that jewelry in the form of a ring and a necklace were in-fact present on the body during the examination. The Medical Examiner stated that he attempted to remove the ring from the decedent's finger during the examination; however, the decedent's hands were too swollen.
- Furthermore, the Medical Examiner noted this finding in his "ME-1" report and stated that he believed the individual who performed the cremation likely didn't see the jewelry and allowed the jewelry to enter the crematory with the body.
- Furthermore, the individual charged with transferring the body from the Medical Examiner's Office to the funeral establishment provided a statement informing us that they too had seen jewelry present on the body at the time of delivery.

Complaint History:

- 1) One (1) unrelated open complaint.
- 2) Five (5) closed complaints, not related.

Recommendation:

- 1) Consent order with \$1,500 civil penalty (\$1,000 for unprofessional conduct and \$500 for investigative costs) and authorize formal hearing.
- 2) Consent order with \$1,000 civil penalty (\$500 for unprofessional conduct and \$500 for investigative costs) and authorize formal hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

3. Case No.: L11-FUN-RBS-2011000031

On October 21, 2010, a letter was sent to the Respondent requesting a copy of the required ten (10) hours of Continuing Education for the time period of November 1, 2008 through October 31, 2010.

Response: After a complaint was opened, the Respondent provided written confirmation by way of a letter dated January 19, 2011. The Respondent stated that they were unaware of the fact that their documentation was not sent to the Board for approval. Accompanying this correspondence were receipts for completion of Continuing Education. These receipts were dated October 5, 2010; October 6, 2010 and October 17, 2010; they contained the required ten (10) hours of continuing education.

Complaint History: None

Recommendation: Letter of Instruction for Respondent to answer all correspondence from Board in a timely fashion.

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

Seconded by Tony Hysmith

Adopted by voice vote

4. Case No.: L10-FUN-RBS-2010017051

Complainant alleges the Respondent committed forgery and fraud when accessing funds to cover the decedent's funeral.

Response: Respondent states that the deceased had a funeral plan which provided for \$8,000 in coverage. The Respondent states that the insurance company sent the \$8,000 minus \$420 for administrative fees and another \$4,500 minus \$245 in administrative fees.

NOTES:

- This complaint was originally presented on October 12, 2010, at which time the Board requested a more thorough investigation.
- The investigation was completed in December 2010, and returned to the Assistant General Counsel.
- The Respondent informed the investigator that the decedent had two (2) policies which totaled \$12,500.00.
- After the insurance company applied a handling fee of \$665.00, the Respondent received a total of \$11,835.00.

- The decedent's funeral cost \$8,380.54, leaving a difference of \$3,554.46 that was given to the decedent's beneficiary.
- The investigation found no wrong doing on the part of the Respondent.

Complaint History: No history of complaints.

Recommendation: Close.

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

Seconded by Wayne Hinkle

Adopted by voice vote

5. Case No.: L10-FUN-RBS-2010029991

Complainant states that they resigned from Respondent's establishment on September 15, 2010. On that day they entered the establishment at approximately 12:00 p.m. through the back door to the establishment's lounge for families of the deceased. Complainant states that there was a family in the lounge at that time and that as Complainant entered the room, the manager "jumped all over the Complainant" about purchasing a white pedestal to place beside a casket and that Complainant was not allowed back into the building. Complainant states that the family was very displeased with the manager's actions. Complainant states that on a different date and time, she was texting back and forth with another employee, and that other employee later sent her messages asking her out on dates even though she was married with three (3) children. Complainant says she didn't say anything to Respondent about it, but then the other employee showed Respondent the text messages and accused the Complainant of starting the text messages. Complainant states they then showed the Respondent their own phone log to prove they did not initiate the texting.

Response: Respondent states the Complainant resigned in August of 2010, not September. As for the altercation between the manager and the Complainant in front of the family in September 2010, Respondent states that they apologized to the family and reprimanded both employees for being immature. As for the texts, the other employee filed a complaint against the Complainant first; the Complainant then filed a counter-complaint against the other employee regarding these texts. Respondent states that they told both employees to cease all communication after work.

Complaint History: None.

Recommendation: Dismiss.

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

Seconded by Jill Horner

Adopted by voice vote

6. Case No.: L10-FUN-RBS-2010030491

On September 10, 2010, during a routine inspection, it was discovered that the funeral director's license had expired on June 30, 2010. This director remained as a constant employee and manager of record during this time without benefit of a license through September 1, 2010.

The establishment's license was not available for inspection at this time and the latest inspection report for the crematory used by this establishment was not available for review. Also the establishment could not reduce the documents to the required 8.5"x11" size paper.

Response: Respondent stipulates that certain documents were not available for the field representative to inspect on the day of the examination. The manager in question has since resigned.

Complaint History: One (1) closed complaint with related violations; one (1) open complaint with related violations.

Recommendation: Consent Order with \$750 civil penalty and authorize formal hearing.

A motion was made by W. T. Patterson to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

7. Case No.: L10-FUN-RBS-2010031051

On September 2, 2010, during a routine examination, it was discovered that the funeral director's license of this manager had expired on June 30, 2010 and was not renewed until August 30, 2010. (**Note** - This is the same manager as in Complaint No. 6). From July 1, 2010 – August 28, 2010, the establishment handled a total of six (6) cases. The manager for this establishment only provided a copy of one (1) case that the establishment had handled during this time period; however, the manager from another location brought the remaining five (5) cases. The manager of this establishment was unfamiliar with the five (5) new cases presented.

Upon further examination, the field representative determined that both funeral directors were using different General Price Lists (GPL) for the same establishment. Upon reviewing one Statement of Funeral Goods and Services Selected (SFGSS), the field representative found that the establishment

overcharged by \$50.00 for one embalming. Also listed is a charge of \$1,000.00 for two limos. The GPL lists the limo price of \$250.00 within a 100 mile radius. When asked about this, the manager stated that the family did not want the limo that was provided by the funeral establishment, so the establishment rented two (2) limos from a local provider who charged \$1,000.00. This was marked as a cash advance. However, there is no place provided for the manager to note cash advances on the SFGSS.

The field representative noted that he did not have access to a complete file folder. Both managers stated that they keep their files at their homes and did not provide a complete file upon inspection.

Response: The funeral director has recently resigned.

Complaint History: Two (2) closed complaints, not related; two (2) open complaints, not related.

Recommendation: Consent Order with \$1,000 civil penalty and authorize formal hearing.

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

Seconded by Tony Hysmith

Adopted by voice vote

8. Case No.: L10-FUN-RBS-2010030931

During a routine examination, the field representative found that fifteen (15) people were listed on the establishment's homepage as "non-licensed funeral directors." This violates T.C.A. 62-5-314, which states: "*The name of any living person who has not been licensed as provided in this chapter shall not be shown or displayed upon any funeral establishment, or used alone, in, as part of or in connection, association, combination or together with the name or title of any person, firm, corporation or other form of enterprise engaged in undertaking or embalming, on any card, sign, stationery or other printed or written instrument or device, in any announcement or advertisement or in any manner so as to give or tend to give the impression that the person is licensed or entitled to practice either as a funeral director or embalmer.*"

Upon reviewing the GPL, the field representative found that under "other preparation of the body", the Respondent lists a price range of \$50.00 - \$1,000.00 for "preparation of a donor – trade embalmer rates – cash advances."

Under the Funeral Rule, if the establishment charges more for embalming a donor, they must list the specific price. Embalming and other preparation are both categories that a funeral provider must state the price for on the GPL. On

the listing that states, "trade embalmer rates – cash advances," this language violates the Funeral Rule as it is being used for an item that should be included under "Other Preparation. The Respondent stated that they gave a price range because they were afraid some donor cases would be more extensive than others and would require additional time.

On the SFGSS for one selected case, there is a charge of \$2,190 which is listed on the GPL as a "Full Package Offering." The Respondent stated that the decedent's family had a visitation and funeral at the church, and was later cremated.

In addition to the package above, the funeral home charged:

- \$495.00 for embalming
- \$150.00 for casketing and dressing
- \$395.00 for limousine
- \$150.00 for lead vehicle
- \$386.00 for cash advances
- \$895.00 for Rental Casket (Note: On CPL, there is a \$695.00 charge for an oak casket with a \$200.00 charge for a separate insert).
- \$995.00 for "Cremation and permits" (When asked about the price for a cremation, Respondent stated that it only costs \$300.00 to cremate a body, but they accidentally charged the price for a direct cremation at \$995.00. The field representative informed the Respondent that there are duplicate charges in this case).

Four (4) of the sixteen (16) items required by the Funeral Rule are "Forwarding of remains to another funeral home", "Receiving of remains from another funeral home", "Direct cremation", and "Immediate burial". Each of these items is required to include the specific item "Basic Services of Funeral Director and Staff". The current GPL lists "necessary services of staff". This language does not refer to or define any specific required item and must be corrected.

Response: Respondent states that the fifteen (15) names on the website and other stationary have been changed. On the GPL – Other preparation of body has been itemized and the range has been taken off under donor cases. As for the overcharge, that was a huge oversight and those prices have been corrected, \$300 for crematory, \$25 for permit, \$220 for transportation to and from crematory for total price of \$545. Furthermore, the family has been refunded the money they were overcharged. Respondent believes they only made minor changes to language that was recommended by field representatives in prior examinations. They have gone back and made changes recommended this time around as well.

Complaint History: None

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

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

Seconded by W. T. Patterson

Adopted by voice vote

9. Case No.: L10-FUN-RBS-2010030951

The family was given copies of the death certificate shortly after the death of their family member. However, the death certificate was incorrect, and the family requested a corrected copy. The family filed this complaint after three (3) months of waiting without the death certificate being corrected.

Response: Respondent states that the Complainant (father of the decedent) signed off on the death certificate information prior to the information being provided to the Health Department. Respondent states that several days after providing services, the Complainant called and wanted the marital status of the decedent changed from "divorced" to "never married." Respondent explained that the Complainant had provided his signature that everything on the death certificate was correct. The Respondent informed Complainant that the changes could be made, but it may take anywhere from 60 to 90 days, depending on the workload at the Health Department. Respondent stated that they contact the Health Department on a regular basis; however, the changes to the death certificate have not been made yet. The Respondent provided a letter sent by the decedent's mother thanking the Respondent for their hard work and for providing the services at a lower cost than is noted in their GPL. The decedent's mother sent a check to pay for the difference between what the Respondent typically charges and what they actually charged the Complainant in this case.

Complaint History: Three (3) closed complaints, not related.

Recommendation: Dismiss

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

Seconded by Wayne Hinkle

Adopted by voice vote

10. Case No.: L10-FUN-RBS-2010030961

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

- The embalmer's license for the trade embalmer used by this establishment expired on June 30, 2010, and was not renewed until August 30, 2010.

- During this time, the embalmer handled eight (8) embalmings on an expired license.
- Because of this expired license, the establishment knowingly permitted an unlicensed individual to engage in the profession or business of funeral directing or embalming.
- Likewise, the Respondent aided and abetted an unlicensed individual to practice within the funeral business.
- Also, the Respondent utilized the outside services of a trade embalmer that the Respondent knew to be in violation of any statute or rule pertaining to the Board.
- The preparation room was not maintained in an orderly manner and was not free of clutter.

Response: Respondent states that they were not aware that the trade embalmer was late in renewing their license. They have used this individual for several years, and this is the first time they have had any issues with that person.

Complaint History: One (1) closed complaint with TCA violation.

Recommendation: Consent Order with \$1,000 civil penalty and authorization for formal hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

11. Case No.: L10-FUN-RBS-2010030991

12. Case No.: L10-FUN-RBS-2010030992

Based upon a routine inspection on August 19, 2010, the field representative found:

- The funeral director's license expired on June 30, 2010, and it was not renewed until July 9, 2010. The funeral director oversaw one (1) cremation during this time on July 1, 2010. This same individual's embalmer license expired on June 30, 2010, and was not renewed until July 9, 2010. There is no indication that any embalmings took place during this same time.
- This individual serves as the manager of these two entities.
- Additionally, another employee of the Respondent had an embalmer's license expire on June 30, 2010, and it was not renewed until July 9, 2010.
- By allowing these individuals to work on expired licenses, the Respondent aided and abetted unlicensed individuals in the practice of funeral directing and/or embalming.

Response: Respondent states that the ten (10) day delinquency of the licenses was an oversight. When the matter was brought to their attention on July 9, 2010, the matter was resolved immediately and the licenses were renewed online that day.

Complaint History: None

Recommendation:

- 11) Consent Order with \$500 civil penalty and authorization for formal hearing.
- 12) Consent Order with \$500 civil penalty and authorization for formal hearing.

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

Seconded by Jill Horner

Adopted by voice vote

13. Case No.: L10-FUN-RBS-2010031061

Based upon a routine examination on September 29, 2010, the field representative found:

- The funeral establishment did not have a copy of the current inspection or license for the crematorium used. Upon review, the field representative found that the establishment's current copy expired on June 30, 2009, fourteen (14) months prior to this examination.
- During that time, the Respondent had two (2) cremations.
- During the previous examination, the field representative gave a Warning to this same Respondent.
- Furthermore, the field representative found that the Respondent's GPL had an error – Immediate Burial on the GPL was listed at \$1,300.00; however, when the items included in the "Immediate Burial" were itemized, the price came to \$1,225.00. This constitutes a \$75.00 error.

Response: Respondent gave a response by sending in a copy of the current inspection report and license of the crematorium used by the establishment.

Complaint History: Two (2) closed complaints, one (1) related.

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

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

Seconded by Wayne Hinkle

Adopted by voice vote

14. Case No.: L10-FUN-RBS-2010031081

During a routine examination, the field representative found:

- A copy of the license presented at the examination for the crematory used was expired.
- Also, on one Statement of Funeral Goods and Services Selected (SFGSS), the Respondent provided a "Reason for Embalming" as "family preference"; however, the deceased had not been embalmed due to a direct cremation taking place.

Response: Respondent states that they have discussed ways to comply with Tenn. Code Ann. § 62-5-107, which requires the establishment to have a copy of the latest inspection report and license for the crematory they use. Respondent states that up to this point, they have always relied on the crematory director to fax a copy of those documents to the establishment. As for providing a "Reason for Embalming," the Respondent states that their software program always states "family preference" and one of the employees is supposed to type to the side of that, "none." However, due to an oversight, that was not done in this case.

Complaint History: One (1) complaint closed with related violations.

Recommendation: Letter of Warning.

A motion was made by Clark McKinney to accept Counsel's recommendation, and for Counsel to include "acceptable reasons" for embalming in the Letter of Warning.

Seconded by W. T. Patterson

Adopted by voice vote

15. Case No.: L10-FUN-RBS-2010031091

During a routine examination, the field representative found:

- In six (6) random files reviewed, the Cremation Authorization form lacked the address and phone number of the crematory where cremations were to take place.
- When asked for a current copy of the crematory license, the Respondent provided a copy with an expiration date of June 30, 2010.
- When asked for a copy of the latest inspection report of the crematory, the Respondent failed to provide a copy. (**Note** - The latest inspection

report and license of the crematory were faxed over during the examination).

- The field representative asked for a copy of the trade embalmer's license; however, this was not available upon request. (**Note** - A copy of this license was faxed over during the examination).
- Required disclosures of the Statement of Funeral Goods and Services Selected (SFGSS) did not comply with the Funeral Rule.
- GPL – Ranges listed on the GPL for caskets and outer burial containers do not agree with prices listed on the CPL & OBCPL.
- GPL – “Basic Services of Funeral Director and Staff” is required to be included in “Forwarding of Remains,” “Receiving of Remains,” and “Immediate Burial.” Provider's GPL lists in those three (3) items the terminology “necessary services of staff.” This terminology is not recognized by the Funeral Rule. These items must be corrected.

Response: Respondent states that the cremation authorization did not have the address and phone number of the crematory. They acknowledge that they did not have the latest inspection report or license of the crematory used, nor did they have the latest copy of the trade embalmer's license. Respondent states that they have not changed their GPL in four (4) years, and that the GPL has not been a problem in the past. Regardless of this fact, the Respondent states that they have made the changes recommended by the field representative.

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

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

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

Seconded by Clark McKinney

Adopted by voice vote

16. Case No.: L10-FUN-RBS-2010031211

Following a routine inspection, the following violations were found:

- The latest inspection report for the crematory used by this establishment was not available for inspection.
- There are no full-time employees serving as funeral directors that are employed by this establishment. The manager is a part-time employee and has another full-time job with the State of Tennessee.
- The commode in the preparation room is broken where drainage occurs and is in need of repair for leakage.
- The trash container was full and uncovered in the preparation room.

- GPL – under “Direct Cremation” high-end range is inconsistent with the CPL.
- GPL – under “Direct Cremation” with a cloth white satin casket must be added.
- GPL – Immediate burial high-end range is inconsistent with the CPL.
- GPL – Immediate burial with Aurora 170 Charcoal Casket must be added along with the concrete box (outer burial container) and must be consistent with the CPL and OBCPL.
- CPL – the heading “Alternative Container” must be added.
- Establishment license expired on June 30, 2010 and has continued to operate and has conducted several services since the license expired.

Response: Respondent states that they now have two (2) full-time employees who are licensed funeral directors and two (2) part-time employees and that one (1) of the full-time employees who is licensed is now the manager. The Respondent has received the latest crematory inspection report and the commode has been repaired. The garbage in the preparation room has been properly disposed, and the garbage collection company had been between pick-ups when the examination took place. The issues with the CPL and GPL have been corrected.

Complaint History: Five (5) closed complaints; three (3) complaints had TCA violations. Two (2) complaints remain open with TCA violations.

Recommendation: Consent Order with \$1,000 civil penalty and authorization for formal hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

17. Case No.: L10-FUN-RBS-2010032561

Complainant, who is the mother of the deceased, complained that the funeral director failed to put a proper obituary in the paper and stated that the funeral director attempted to trip her during a meeting and would not let her sit where she wanted to during the funeral service.

Response: During the arrangement conference, an apprentice funeral director asked the decedent’s wife if she would like an obituary placed in the paper. She informed the Respondent that this would not be necessary at the time. The mother of the deceased then called the Respondent and asked that an obituary be placed and the decedent’s wife then agreed. There was a name misspelled, but the name was provided by the decedent’s wife who was unsure as to the proper spelling of the name. Respondent stated that during funeral services the

family typically sits on the left side and the pallbearers to the right. However, decedent's wife wanted to speak at his funeral, so she requested she be seated to the right with her niece and brother, so as to keep her composure, the decedent's mother was seated with the remainder of the family on the left side. As for the funeral director attempting to trip the decedent's mother, Respondent states that there was no animosity between the funeral director and the decedent's mother. Furthermore, Respondent states that the funeral director is in the early stages of Parkinson's disease and cannot always control their movements. Respondent provided a letter written by the decedent's wife stating that she was very happy with the services provided, and she would recommend the Respondent's business to anyone.

Complaint History: None

Recommendation: Dismiss

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-2010033121

Complainant, who is a competitor / relative of the Respondent, believes that the sign in front of Respondent's business is misleading the public. Complainant states that the Respondent putting their name as "owner" of the funeral establishment is misleading because the funeral home is actually owned by a limited liability company.

Response: Respondent states that they are related to the Complainant, and put their name on the sign because they did not want there to be any confusion on the part of the public believing that the funeral home was owned by the Complainant / relative.

Complaint History: Three (3) closed, unrelated; one (1) open, unrelated.

Recommendation: Dismiss

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

Seconded by Clark McKinney

Adopted by voice vote

19. Case No.: L10-FUN-RBS-2010033151

Based upon a routine examination that was conducted, the field representative found the following violations:

- The manager of record for this establishment stated that they only worked for the Respondent a few hours each day. They also work for another funeral home and only provided this information on their license renewal. They mentioned nothing regarding working for the Respondent.
- The Respondent could not produce the required 8.5"x11" size paper.
- GPL – Under "preparation of the body," prices need to be itemized.
- GPL – Under "direct cremation with rigid cardboard container," price is inconsistent with CPL.
- GPL – Under "direct cremation with rigid cardboard container reinforced lined," is inconsistent with the CPL.
- GPL – The Respondent uses a catalogue instead of a Casket Selection Room, and the catalogue was not available for comparison to the CPL.

Response: There has been no change in management for well over a year. The manager of record is available to the Respondent at any hour of any day, but his work hours do vary. While the manager is not always there, Respondent is never without a licensed funeral director to attend to a family. There are four (4) licensed funeral directors.

By mistake, while the manager was filling out their renewal, the manager put their only employment as working for the other funeral home and failed to include their employment with Respondent. The Respondent asks that the Board amend this renewal information. The copier does have the capability to reduce documents down to 8.5"x11" size paper; however, the employee mistakenly believed this was not possible.

The casket selection catalogue was in use by another funeral director at the time the field representative asked to review it, and the director was unable to leave an arrangement conference to bring the catalogue to the facility before the field representative left. The conference was at the family's residence. The changes have been made to the CPL and GPL.

Complaint History: Three (3) closed complaints, two (2) of which have related violations.

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

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

Seconded by W. T. Patterson

Adopted by voice vote

20. Case No.: L10-FUN-RBS-2010033161

During a routine examination, the field representative found the following violations:

- The current funeral director's license was not available for review.
- The current embalmer's license was not available for review.
- The establishment could not produce the required 8.5"x11" paper.

Response: Respondent did respond to the complaint filed against them; however, they did not address any of the issues that led to the complaint.

There was a previous complaint filed against one of the Respondent's employees in the past, but they gave no response to the allegations currently brought before this Board.

Complaint History: Ten (10) closed complaints, five (5) of which had violations. One (1) complaint remains open with violations.

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

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

Seconded by Jill Horner

Adopted by voice vote

21. Case No.: L10-FUN-RBS-2010034201

During a routine examination, the field representative found that the funeral establishment's license expired on June 30, 2010, and was not renewed until August 11, 2010. The establishment is an embalming service only and during the time that the license was invalid, there were approximately eleven (11) bodies embalmed at this location.

Response: Respondent admits to the violation and apologizes for the oversight.

Complaint History: None.

Recommendation: Consent Order with \$1,000 civil penalty and authorization for formal hearing.

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

Seconded by Tony Hysmith

Adopted by voice vote

22. Case No.: L10-FUN-RBS-2010034231

23. Case No.: L10-FUN-RBS-2010034232

24. Case No.: L10-FUN-RBS-2010034233

The fees for renewal of the funeral director and embalmer licenses of the establishment's funeral director / embalmer were not received until August 26, 2010. Both licenses were invalid from July 1, 2010 – August 25, 2010. During this period, the individual served as funeral director for six (6) families and performed four (4) embalmings. The same individual acted as "funeral director in charge" (manager) of the establishment and signed two (2) cremation authorization contracts in the capacity as funeral director.

Response: Respondent states that they were informed of the expired licenses on August 10, 2010, and that they called the Board office on August 11, 2010. Respondent states that when they called the office, they were informed that the renewal forms had been sent out in May to their old address in another state. The respondent said that they had received every other correspondence from the Board at their new address, with the exception of the renewal forms.

Respondent states that on August 12, 2010, they sent the Board a check in the amount of five hundred and fifty dollars (\$550.00) and that after sending the check, they received a letter stating they owed four hundred dollars (\$400.00) in late fees. They then sent in a check for the late fees. Respondent states that they do not understand how they received every other correspondence at their new address, except the renewal forms, and stated that they would never knowingly work without a valid license.

Complaint History: One (1) closed unrelated against the funeral home; no complaints against the funeral director / embalmer.

Recommendation:

22) Consent Order with \$750 civil penalty and authorization for formal hearing.

23) Consent Order with \$250 civil penalty and authorization for formal hearing.

24) Consent Order with \$250 civil penalty and authorization for formal hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

25. Case No.: L11-FUN-RBS-2010002391

An establishment had not yet been approved by the Board for an establishment license. However, signage for the establishment, name, phone number, and address were printed on the entrance door to the building. Furthermore, the sign was attached to the outer part of the brick building where the business is located, giving the appearance that the establishment was open for business. Respondent took no action to cover the sign or present language such as “future home of...” in order to dispel any belief by the general public that Respondent was in business.

Response: Respondent states that they have been in the funeral business for almost five (5) decades and believed they were following the rules for establishing a fixed place of business within a complex by providing professional signage beside the establishment. Respondent stated that when an individual called their business, the Respondent informed the caller that they were not open for business at the moment.

Complaint History: None

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

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

Seconded by Wayne Hinkle

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

Mr. Gribble reported on Legislative Bills affecting the Board of Funeral Directors and Embalmers. He also announced that a copy of the new 2010 Edition of the Tennessee Funeral Laws had been mailed to each funeral establishment.

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
FEBRUARY 8, 2011 – MARCH 7, 2011**

Establishments

Baskerville Chapel Milan
Milan, TN

New Establishment

Davis Funeral Home
Wartburg, TN

New Establishment

Cornersville Funeral Home
Cornersville, TN

Ownership Change

London Funeral Home
Lewisburg, TN

Ownership Change

Individuals

Norman Patrick Taylor
Bristol, TN

Funeral Director

Jody Lynn Manis
Friendsville, TN

Funeral Director
Reapplication

Tony Byron Conant
Kingsport, TN

Funeral Director/Embalmer

Jennifer Bowen Ellis
Waverly, TN

Funeral Director/Embalmer

Abigail Lee Lemley
Springfield, TN

Funeral Director/Embalmer

Christi Moon Robbins
Oliver Springs, TN

Funeral Director/Embalmer

John Harvey Smith
Murfreesboro, TN

Funeral Director/Embalmer

CLOSED ESTABLISHMENT REPORT:

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

- **Disyal Funeral Home, 400 East Market Street, Lebanon, TN**

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. 2010028251

Violation:

Allowed unlicensed person to sign cremation authorization form as "person in charge", aiding and abetting unlicensed individual in the practice of funeral directing and failure to properly complete cremation authorization form

Action: \$1000 Civil Penalty

Complaint No. 2010017571

Violation: Failed to provide reason for embalming and lacked an itemized listing of the prices on several Statements of Funeral Goods and Services Selected

Action: \$250 Civil Penalty

Complaint No. 2010025901

Violation: Failed to obtain and maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses, failed to properly complete the authorization forms for all cremations, failed to keep establishment in working order as air quality control was inadequate and public areas were not cared for and multiple aspects of the establishment's price lists and contract do not comply with the Funeral Rule

Action: \$500 Civil Penalty

Complaint No. 2010026061

Violation: Failed to obtain and maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses, failed to present proper authorization form signed by authorizing agent or funeral home, using an establishment name other than the exact name approved by the Board, co-mingled cremated human remains and gave the cremains to the wrong surviving family members, failed to attach a permanent identification device, failed several times to properly disclose reason for embalming and files had charges that were inconsistent with the price lists

Action: \$1000 Civil Penalty and Suspension of funeral director license for six (6) months

Complaint No. 2010021211

Violation: Unrepaired water damage in the preparation room and arrangement office, the reason for embalming and the description of the merchandise sold was missing several contracts and multiple aspects of the establishment's price lists and contract do not comply with the Funeral Rule

Action: \$750 Civil Penalty

Complaint No. 2010025911

Violation: Statement of Funeral Goods and Services Selected contained price discrepancies, failed to maintain a separate record of the location and manner of final disposition of remains from the crematory and failed to provide a proper

receipt for delivery of deceased human remains to the crematory
Action: \$500 Civil Penalty

Complaint No. 2010025851

Violation: Failed to provide the reason for embalming on several Statements of Funeral Goods and Services Selected, failed to provide proper pricing on the General Price List and Casket Price List and failed to clean and properly sanitize the instruments, tables and other equipment in the preparation room
Action: \$500 Civil Penalty

OPEN COMPLAINT REPORT:

As of March 4, there were 130 open complaints.

INDIVIDUAL APPLICATIONS:

**Bobby Dale Reed
Paducah, KY**

**Funeral Director and Embalmer
Reciprocity**

Upon motion by Wayne Hinkle and seconded by Jill Horner, based upon application record, this individual was approved for licensure.

Adopted by voice vote

**Brad Chandler Geren
Cookeville, TN**

Funeral Director

Jill Horner recused herself from all proceedings regarding this application.

The applicant sought approval of application for licensure as a funeral director. The applicant was an apprentice funeral director registered with the Board in the process of fulfilling their apprenticeship and educational requirements on or before December 31, 2007. However, the applicant had not completed all requirements to become licensed by the Board as a funeral director on or before December 31, 2010. Furthermore, the applicant had not timely met the exemption of Tenn. Code Ann. 62-5-312(c) nor the requirement of Tenn. Code Ann. § 62-5-305(b)(6), which states: *“Has successfully completed a program of study in funeral service education consisting of no less than thirty (30) semester hours, forty-five (45) quarter hours or the equivalent from a school accredited by the American Board of Funeral Service Education and evidenced by an official transcript.”*

After review of the record, discussion and consultation with Assistant General Counsel, Wayne Hinkle made a motion to Deny the application for licensure as a funeral director.

Motion was seconded by W. T. Patterson.

A roll call vote was requested by President Eugene Williams.

<u>BOARD MEMBER</u>	<u>VOTE</u>
Wayne Hinkle	Yes
Tony Hysmith	Yes
Clark McKinney	Yes
W. T. Patterson	Yes
Eugene Williams	Yes

The motion passed; licensure was Denied to the applicant. It is duly noted that the reason for Denial of Licensure was for the lack of the applicant satisfying the statutory educational requirements and had nothing to do with the lack of the applicant's good moral character.

**Anthony Wayne South
Joelton, TN**

Funeral Director

The applicant sought approval of application for licensure as a funeral director. The applicant was an apprentice funeral director registered with the Board in the process of fulfilling their apprenticeship and educational requirements on or before December 31, 2007. However, the applicant had not completed all requirements to become licensed by the Board as a funeral director on or before December 31, 2010. Furthermore, the applicant had not timely met the exemption of Tenn. Code Ann. 62-5-312(c) nor the requirement of Tenn. Code Ann. § 62-5-305(b)(6), which states: *"Has successfully completed a program of study in funeral service education consisting of no less than thirty (30) semester hours, forty-five (45) quarter hours or the equivalent from a school accredited by the American Board of Funeral Service Education and evidenced by an official transcript."*

After review of the record, discussion and consultation with Assistant General Counsel, Wayne Hinkle made a motion to Deny the application for licensure as a funeral director.

Motion was seconded by W. T. Patterson.

A roll call vote was requested by President Eugene Williams.

<u>BOARD MEMBER</u>	<u>VOTE</u>
Wayne Hinkle	Yes
Jill Horner	Yes
Tony Hysmith	Yes

Clark McKinney	Yes
W. T. Patterson	Yes
Eugene Williams	Yes

The motion passed; licensure was Denied to the applicant. It is duly noted that the reason for Denial of Licensure was for the lack of the applicant satisfying the statutory educational requirements and had nothing to do with the lack of the applicant's good moral character.

ESTABLISHMENT APPLICATIONS:

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

**New Establishment
Ownership: Sole Proprietorship
Owner(s): Kerney C. McNeil**

Based upon the application record, Wayne Hinkle made a motion to approve the establishment license.

Seconded by W. T. Patterson

A roll call vote was requested by President Eugene Williams.

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

Motion passed; establishment license approved.

**ADVANTAGE FUNERAL & CREMATION SERVICES, FRANKLIN-
STRICKLAND-PINKARD-BRYAN-SMITH FUNERAL DIRECTORS
1724 McCALLIE AVENUE
CHATTANOOGA, TN**

**Change of Ownership
Ownership: Limited Liability Company
New Owner(s): SCI Tennessee Funeral Services, LLC, of Houston, Texas**

Upon motion by Jill Horner and seconded by Wayne Hinkle, based upon application record, the establishment was approved for licensure.

Adopted by voice vote

ADJOURN:

A motion was made by Clark McKinney to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

There being no further business, the meeting was adjourned by President Eugene Williams at 12:36 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director