

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MAY 10, 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; Clark McKinney, Vice President; Paula Bridges, Wayne Hinkle, Jill Horner, Tony Hysmith and W. T. Patterson.

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

ADOPTION OF AGENDA:

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

Seconded by Paula Bridges

Adopted by voice vote

APPROVAL OF MINUTES:

President Eugene Williams said the minutes of the April 12, 2011 meeting were not available today but will be ready for review at the next board meeting.

GRANT SIGNATORY AUTHORITY TO EXECUTIVE DIRECTOR REGARDING CONSENT ORDERS:

Benton McDonough, Assistant General Counsel, requested the Board grant signatory authority for the Executive Director to accept Consent Orders on behalf of the Board.

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

Seconded by Wayne Hinkle

Adopted by voice vote

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

1. Case No.: L11-FUN-RBS-2011004081

On January 13, 2011, the Board Office received Quarterly Reports of Apprenticeship Training regarding the Respondent for October – December 2009; January – March 2010; April – June 2010; and July – September 2010. These reports were filed beyond the sixty (60) day time line for which credit was sought. The range for late filing of these Quarterly Reports is from 43 days to 318 days, with an average of 180 days. These are violations of Rule 0660-04-.02.

Response: Respondent states that they gave their quarterly reports to the secretary of the establishment who was then supposed to mail the reports to the state office. The secretary has been fired for work irregularities.

Respondent states that they were looking through the secretary's desk and found the reports which she was supposed to have turned in. Respondent states that they called the Board Office and explained what had occurred. The Respondent states that the Board told them to go ahead and send in the documents, but they would have to be reviewed for a determination as whether they would be accepted for filing.

Respondent states they accept full responsibility as it was their duty to turn in the documents. Respondent states that when they began their apprenticeship, they received a letter from the Board stating that such quarterly reports should be completed and mailed to the state in a "timely manner" in order to receive credit for that quarter. Only after the Respondent received a letter dated January 14, 2011, were they aware of the rule change from "timely manner" to "within sixty (60) days of completing the quarter" to receive credit. Respondent states they did not receive any prior correspondence from Board stating that the quarterly reports were delinquent. Had that occurred, Respondent stated that they would have cleared up that issue quickly.

History: No prior complaints.

Recommendation: Consent Order with civil penalty of \$500.00, agreement that no credit will be granted for the time period affected if there is a late filing of any future apprentice reports and authorization for hearing.

A motion was made by Tony Hysmith to **ACCEPT** the reports for October – December 2009 and January – March 2010, to **DENY** the reports for April – June 2010 and July – September 2010 and authorization for hearing.

Seconded by Paula Bridges

Adopted by voice vote

2. Case No.: L11-FUN-RBS-2011001221

Complainant states that the Respondent handled the cremation services for their mother on April 13, 2010. They met with the funeral director to make necessary arrangements for a direct cremation. All of the paperwork was completed with the knowledge that the complainant was experiencing financial difficulties. Complainant states that they have attempted to collect their mother's cremains on several occasions. They left the funeral home believing everything was taken care of and they were waiting for a response from the funeral home regarding when they could retrieve their mother's cremains. Instead of receiving a letter to pick up the cremains, the Complainant states that they received a letter from the Respondent stating that they owed \$1,500.00. Complainant states that they continued to make payments as finances would allow and even sent a letter with one of the payments asking when they could collect the cremains. Complainant states that their mother's body was in the establishment from April 14, 2010 – May 6, 2010, without being cremated due to financial difficulties that were addressed and agreed to. Complainant states that they believe their mother's remains were treated with utmost disrespect by allowing her to remain in a cooler for such a long period of time.

Response: Respondent states that this is a case of an adult child not wanting to pay for services. The Complainant came in on April 14, 2010, to make final arrangements. After completing the information needed and signing the cremation authorization form, the Complainant stated they needed to obtain the funds to settle the account. The Complainant never returned.

Respondent states that they called Complainant daily with no result; they wrote a certified letter on April 28, 2010, stating it was imperative they contact the Respondent, no response. Respondent wrote another certified letter on May 6, 2010; this time, Complainant called and said they would send half the money (\$3,039.00 was owed), but they only sent \$500. Finally, on June 10, 2010, the Complainant called the Respondent and told them they were having financial difficulties, but this was the first time Respondent had ever heard of this. Respondent agreed to reduce the bill to \$1,500.00, and Complainant stated they would pay \$100 per month; however, Respondent states they did not hear from the Complainant, and they received \$40.00 on July 6, 2010, and \$20.00 on September 1, 2010, and \$40.00 on November 12, 2010. At 12:45 P.M. on January 24, 2011, with an outstanding balance of \$2,616.24, the Complainant received their mother's cremains.

Notes: In a letter written to the Complainant by the Respondent on May 6, 2010, the Respondent states that the decedent has not been cremated as of yet due to the Complainant's failure to contact the Respondent. Respondent informs the Complainant that, "If we have not heard from you within 7 days, we have no choice but to place your mother as unclaimed property with the County, and you will have to deal with the county for final disposition."

History: No prior complaints.

Recommendation: Letter of Instruction regarding Tenn. Code Ann. § 62-5-317(a)(7) and (b)(11) and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

3. Case No.: L11-FUN-RBS-2011001781

The Complainant provided a copy of a newspaper article with the photos of employees of the funeral home and their titles / interests.

Response: The Respondent states that they are a new funeral establishment and feel that it is necessary to advertise as aggressively as possible. They state that the owner of the funeral home is not a licensed funeral director, but they have used this individual in some of their advertising; however, they always identify this individual as an "owner" and not as a licensed funeral director. Respondent has asked the Vice President of Community Relations to clarify all future advertisements and will add a disclaimer with all personnel who are not a licensed funeral director that clearly indicates that person is not licensed as a funeral director.

History: Two (2) closed complaints that are possibly related. Three (3) open complaints, with two (2) possibly related.

Recommendation: Consent Order with \$250.00 civil penalty and authorization for hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

4. Case No.: L11-FUN-RBS-2011002031

Complainant states that they are unable to get a clear answer from the funeral home or estranged family members regarding the disposition of their loved one's remains.

Response: Respondent states that the decedent and the other individuals who perished in the house fire were buried in a cemetery adjacent to the funeral home and not cremated.

History: Three (3) closed complaints, not related; Five (5) open complaints related to the same issue.

Recommendation: Request for Investigation.

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

Seconded by W.T. Patterson

Adopted by voice vote

5. Case No.: L11-FUN-RBS-2011002041

The Complainant states that the Respondent had possession of their daughter's body for services. There were four (4) potted flowers lined in front of the casket, the ROTC carried the flowers out to the limousine, and someone took photos of those flowers in front of the limousine. But the Complainant states that they did not think about the flowers until the following week when they wanted to know who to send thank you notes to regarding the flowers. The Complainant called the Respondent and the Respondent said they would check on the flowers. After a few days, the Complainant did not hear from the Respondent, so they called again. This continued for several days before the Complainant was able to speak to the Respondent who informed the Complainant that they were not aware of who gave the flowers or even where the flowers wound up. The Complainant stated that they either wanted new flowers similar to what can be seen in photos or the monetary equivalent to the flowers' worth.

Response: Respondent states that they were contacted by another relative of the deceased to plan services. This individual was not the mother of the deceased. However, this relative came by and paid the Respondent for the services; therefore, Respondent states they were working for this relative, not for the decedent's mother. Respondent states that on the day of the services, they saw the four (4) plants in question; however, all of the plants, cards, and register book went to this relative who had paid for the services, not the mother of the decedent. The decedent's mother (Complainant) called asking about the plants. The Respondent stated that they called the relative who paid for the services and this relative informed the Respondent that they had taken the register book, cards, and one plant. The Respondent asked this relative if the Respondent could pay to replace the three missing plants and the relative told them "no". Respondent then considered this issue closed.

History: No prior complaints.

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.: L11-FUN-RBS-2011002111

Complainant states after making several phone calls to the Respondent regarding obtaining a death certificate, and staff members telling the Complainant that they sent the death certificate to the doctor's office, one staff member stated, "You know how young doctor's can be. Probably out partying and drinking and got hung-over for the New Year!"

Complainant stated his wife passed away on December 5, 2010, and he still had not obtained a copy of the death certificate as late as January 24, 2011. Complainant finally got results after contacting personnel at the hospital.

The staff members at the hospital found that the funeral home had actually placed the name of the wrong doctor on the death certificate. One staff member of the hospital agreed to meet a staff member of the funeral home to obtain the corrected death certificate. Complainant states that he went to the Office of Vital Records and completed a form for certified copies. Complainant believes Respondent was negligent when they placed the wrong doctor's name on the death certificate and unprofessional in their approach to business.

Response: Respondent states that they did nothing wrong, and placed the information that was provided by the decedent's husband on the death certificate, and that death certificate was then sent to the doctor.

Notes: A letter was written by the decedent's daughter stating that she made all of the funeral arrangements for her mother and paid for all of the services. The Complainant is not legally married to the decedent and has no right to give any input on these arrangements. The decedent's daughter states that she was happy with the services provided.

History: Numerous Complaints.

Recommendation: Close.

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

Seconded by Wayne Hinkle

Adopted by voice vote

7. Case No.: L11-FUN-RBS-2011002551

This complaint is based upon a routine examination:

- Examination of the file of one (1) decedent revealed a failure to retain a copy of authorization for cremation in the file of the decedent as required.
- In two (2) instances, it was discovered on the Statement of Funeral Goods and Services Selected (SFGSS) that Respondent charged purchasers for “Direct Cremation” in addition to a fee for “Basic Services of Funeral Director and Staff.” Direct Cremation already includes “Basic Services of Funeral Director and Staff”; therefore, this is duplicate charge.
- Based upon a review of the SFGSS in both cases, it appears neither case involved a “Direct Cremation” as several additional items were charged.
- One decedent received “Viewing and Visitation” and “Graveside Services.”
- The other decedent received a “Memorial Service”
- If these other items were selected, it was not a direct cremation and should not have been charged in addition to basic services fees.
- The SFGSS was submitted on the wrong size paper.

Response: The cremation authorization is now in the file of the deceased and Respondent is capable of reducing paperwork to 8 ½ X 11 but was unaware they could have it done on their fax machine. The direct cremation charge with additional basic services was a misunderstanding, cremation should have been placed on another line and this would have been the charge for cremation which would have been in addition to the charges for the other services and merchandise.

History: Four (4) closed complaints, two (2) with TCA violations.

Recommendation: Consent Order with \$1,500.00 civil penalty and authorization for hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

8. Case No.: L11-FUN-RBS-2011002581

This complaint is based upon a routine examination:

- The Respondent’s establishment license was invalid from December 1, 2010 – December 5, 2010. However, the establishment did not receive a death call until December 7, 2010.
- The SFGSS in three (3) instances lists charges for limousine (not under cash advance).
- Limousine is 1 of 16 items required to be listed on the General Price List (GPL) if offered, and limousine is not listed on the GPL.
- Respondent admits they mistakenly left limousine off the GPL and they charge \$400 per limousine.

- The SFGSS lists varying charges for limousine with no further written explanation.
- SFGSS in two (2) instances lists charges for Outer Burial Container with no description / itemization as to the outer burial container purchased.
- SFGSS in one (1) instance lists charge of \$200 for Transfer of Remains to Funeral Home and \$1,145 for Direct Cremation; however, GPL lists transfer from place of death (within 50 miles) as included in Direct Cremation Fee.
- The \$200.00 charge for transfer of remains to funeral home is a duplication of charges for the same item.
- Additionally, the statement lists a charge of \$395.00 for funeral ceremony.
- “Other preparation of the body” on the GPL lists separate fee for “Bathing and disinfecting remains with or without embalming” - \$250.00.
- When a body is embalmed, bathing and disinfecting is included in the process and the fee for embalming is \$850.00.
- A separate fee for this item would only be permissible when the body is not embalmed.
- “Forwarding of Remains” and “Receiving of Remains” on the GPL must include the required item – “Basic Services of Funeral Director and Staff”. This is a specific item which must be listed as such rather than “Service of Staff” or “Minimum Services of Staff” as currently listed for those items.
- Underneath Immediate Burial on the GPL, the casket listed in item “B” bears no specific description nor does the price between item A – “Immediate Burial with Casket provided by purchaser” (\$1,250.00) and the price for item B – “Immediate Burial with 20 gauge non-protective casket (\$2,750.0) calculate with any casket (\$1,500.00) on the CPL.
- Failure to show price range on the GPL for Direct Cremation.
- Underneath Direct Cremation on the GPL, Item “B” – Instead of listing the required “alternative container” the line item lists “casket selected” but appears to accurately calculate the “cardboard alternative container (\$150.00) from CPL into the price (\$995.00 + \$150.00 = \$1,145.00).
- Additionally, the last sentence of the required disclosure under “Direct Cremation” must be corrected.
- Providers are required to use the “identical wording” given in the funeral rule.
- On the SFGSS, the word “Basic” must be inserted in front of “Services of Funeral Director and Staff” and the word “Other” in front of “Preparation of the Body”.
- There is currently no line item for “Use of facilities and staff for Memorial Service.”

Note: Board President Eugene Williams exited the meeting.

Response:

- 1) Respondent regrets this oversight regarding their licensure, but there were no funeral arrangements conducted during the lapse in licensure.

- 2) When the new GPL was prepared, the charge for the limousine was inadvertently omitted from the new GPL.
 - a. Also, when Respondent secures limousine services from a third party, Respondent informs the family of the rate charged by the third party.
 - b. After the inspection, the Respondent listed such charges by third party vendors or private limousine services as a "cash advance item" listed by the name of the limousine company.
- 3) The violations related to the SFGSS and the "Outer Burial Container" have been corrected.
- 4) When the arrangement conference began, the family initially planned a traditional funeral service, but they later went with a more affordable choice of cremation.
 - a. Unfortunately, when the Respondent met with them on the second occasion, they accidentally charged the family for two items "use of the hearse" and "transfer of remains."
 - b. A refund check has been given to the family in that case.
- 5) The GPL has been corrected to reflect "bathing and disinfecting remains without embalming."
- 6) GPL – Statement or wording of Remains and of Remains has been reworded to state, "Basic Services of Funeral Director and Staff."
- 7) GPL – Immediate Burial Casket Price List in item "B" has been corrected.
- 8) GPL has been corrected to reflect range of prices that were lacking.

History: No prior complaints.

Note: Board President Eugene Williams returned to the meeting.

Recommendation: Consent Order with \$750.00 civil penalty and authorization for hearing.

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

Seconded by Tony Hysmith

Adopted by voice vote

9. Case No.: L11-FUN-RBS-2011002591

This complaint is based upon a routine examination:

- Upon reviewing documents in a customer's file and reviewing the Cremation Authorization Form, the field representative realized that the person who signed as "Funeral Director in Charge" likely forged the signature of the funeral director's name. When the funeral director was confronted with this information, he admitted that his wife probably signed his name on the form.

- On the GPL under “Immediate Burial” – Item #12 lists “Other preparation of remains for identification” as an included item in the \$1,830.00 charge. This is a violation of the Funeral Rule by including the language, “for identification of remains.”

Response: The Respondent stated that he had injured his hand in a farming accident, and he was unable to hold a pen to sign his name. Respondent had his wife, who is the office manager and an apprentice funeral director, sign his name for him.

The Respondent was unaware that he could not charge someone if he needed to prepare a body so that an individual could come in and identify the body. The Respondent apologizes for this action and has made corrections to the GPL.

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

Recommendation: Consent Order with \$500.00 civil penalty and authorization for hearing.

A motion was made by Jill Horner to issue a consent order with a \$250 civil penalty and an authorization for a hearing.

Seconded by Clark McKinney

Adopted by voice vote

10. Case No.: L11-FUN-RBS-2011002601

This complaint is based upon a routine examination:

- The field representative found that one file failed to contain a copy of the cremation authorization form.
- The Respondent failed to list individually each of the goods and services included in “Cremation with Memorial Service Package.”
- Respondent failed to properly itemize the services chosen on the SFGSS.
- The field representative found a handwritten SFGSS in a file; however, the services were not properly itemized.
- The field representative found a handwritten SFGSS lacking itemization of the services chosen and no description of the casket or outer burial container purchased. Also, there is a \$295.00 for “use of equipment”; however, it is not clear what this charge covers.
- On two SFGSS, it was discovered that the Respondent lists a charge of \$1595.00 for “Basic Services of Funeral Director and Staff”, but the price of this item on the GPL at the time of the examination was \$1795.00. Also, it was determined that on all the files that were randomly selected for review, all but two of them charged the lesser amount of \$1595.00 for this service.

- On one SFGSS, Respondent fails to itemize the casket purchased or disclose the reason for embalming. The word “none” is listed on the disclosure line for embalming but \$995.00 was charged for embalming, and the death certificate states that the individual was embalmed.

Response: Respondent states that they failed to state the correct service charge and placed the discounted amount on the “Total” line of the SFGSS, instead of listing a service discount at the end of the SFGSS. Respondent believed it was okay to list any price there as long as it did not exceed the GPL. As for the contracts not itemized properly in the “professional services” box, the Respondent has reviewed those contracts and will begin listing the full price and discounting at the end of the contract along with itemizing each charge listed. Regarding the failure to obtain a cremation authorization form, the form was in the file and must have been overlooked by the field representative. As for the violation on Cremation Packages, the “basic services of funeral director and staff” has been added to those packages. Respondent has changed all computer generated contracts to properly reflect the GPL.

History: Six (6) closed complaints, four (4) having related TCA violations.

Recommendation: Consent Order with \$750.00 civil penalty and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

11. Case No.: L11-FUN-RBS-2011002621

During the examination of this establishment, which took place on December 17, 2010, the following violations were discovered:

- The establishment’s license expired on October 31, 2010, and had not been renewed before the examination took place.
- During this time, the establishment performed four (4) funeral services.

Response: No response was provided by the Respondent.

History: Two (2) closed complaints, none related.

Recommendation: Consent Order with a \$750.00 civil penalty (\$500.00 plus \$250.00 for not responding) and authorization for hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

12. Case No.: L11-FUN-RBS-2011002671

During a routine inspection, the following violations were found:

- The current funeral director license for the establishment manager was not available for inspection.
- This establishment has not applied for either a new establishment license nor appeared before the Board for an extension of time since the ownership change date.
- On the General Price List –
 - a) The high end range for a direct cremation on the GPL is inconsistent with the CPL.
 - b) The price for direct cremation with a corrugated cardboard container on the GPL is inconsistent with the price on CPL.
 - c) The price on the GPL is inconsistent with the price of the CPL for a St. Joseph 20 gauge non-sealer casket for an immediate burial.

Response: No response received.

History: One (1) closed complaint with related violations. Two (2) open complaints with related violations.

Recommendation: Consent Order with \$500.00 civil penalty and authorization for formal hearing.

Notes: This Respondent has received seven (7) complaints against their establishments recently. Through discussions between the Assistant General Counsel and the Respondent's attorney, we have been able to close those seven (7) cases totaling \$6,250.00. In exchange for their cooperation, Assistant General Counsel informed the Respondent's counsel that he would make this Board aware of their cooperation, the fact that the establishments are in a transitional period as new ownership is taking over all of their funeral homes, and that he would recommend a more lenient civil penalty.

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

Seconded by Paula Bridges

Adopted by voice vote

13. Case No.: L11-FUN-RBS-2011006631

During a routine inspection, the following violations were found:

- The Respondent failed to notify the Board of a change in ownership. The Board was notified by letter of the change in ownership on November 23,

2010; however, by the time this examination took place on March 11, 2011, no change of ownership application had been filed with the Board.

- In a SFGSS, there was a charge of \$1,095.00 relating to “Other preparation of the Body” with the description, “cremation with container after funeral services.” This is an erroneous listing and the funeral rule specifically states referencing the SFGSS the provider must “list all of the individual goods and services the consumer will purchase, together with the price for each item.”
- CPL shows an “oversize casket” with a specific description, but fails to list a price for the casket. If a casket is listed, the price must be clearly shown. In this case, only a range of prices was shown, \$3,500.00 - \$6,500.00.
- The Respondent’s SFGSS cover page, the GPL, letterhead, and business cards all refer to the name of the establishment by a name other than the name as it is listed on the application which has been approved by the Board.
- When the field representative asked to see the files of the establishment, the funeral director informed him that they are in the possession of the previous funeral director and that she only recently took over the daily operations of the funeral home.

Response: No response.

History: Two (2) closed complaints, one (1) related. Three (3) open complaints, two (2) related.

Recommendation: Consent Order with a \$500.00 civil penalty (\$250.00 for the violations and \$250.00 for no response) and authorization for hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

14. Case No.: L11-FUN-RBS-2011006641

During a routine inspection on March 2, 2011, the following violations were found:

- Failure to notify Board as required of change in ownership and failure to apply for change in ownership.
- CPL shows an “oversize casket” with a specific description, but fails to list a price for the casket. If a casket is listed, the price must be clearly shown. In this case, only a range of prices was shown, \$3,500.00 - \$6,500.00.
- The Respondent’s SFGSS coverage, the GPL, letterhead, and business cards all refer to the name of the establishment by a name other than the

name as it is listed on the application which has been approved by the Board.

Response: No response was received.

History: None.

Recommendation: Consent Order with a \$500.00 civil penalty (\$250.00 for the violations and \$250.00 for no response) and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

15. Case No.: L10-FUN-RBS-2010010191

This case was originally presented on November 9, 2010. During that meeting, Legal related to the Board that this individual had, "pled guilty to Aggravated Statutory Rape" a Class D Felony. This information was incorrect and the individual actually received pre-trial diversion for two years. Pre-trial Diversion is defined as: "A program in which a defendant essentially is put on probation for a set period of time and his or her case does not go to trial during that time. If the defendant meets the conditions set by the court, then the charge(s) will be dismissed."

Response: No response at this time.

History: None. In the initial complaint presented in November 2010, we asked that authorization for a hearing be granted so that the Board might revoke this individual's license. We are once again recommending that this action be granted with the knowledge that this individual was granted pre-trial diversion instead of pleading guilty to Aggravated Statutory Rape.

Recommendation: Authorization for Hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

16. Case No.: L11-FUN-RBS-2011002691

During a routine inspection, the following violations were found:

- The current license of the crematory used by this establishment was not available for inspection.
- The latest inspection report of the crematory used by this establishment was not available for inspection.
- The ventilation fan in the preparation room does not work.
- A deceased infant was dressed and casketed; however, there was no permanent Identification device attached.
- Use of equipment and staff for graveside service must be added to the GPL with the price.
- The GPL does not have the price as required for a limousine.
- The low end range for caskets on the CPL does not agree with the low end range on the GPL.
- The low end range on the OBCPL does not agree with the low end range for Outer Burial Containers on the GPL.
- The high end range for direct cremation on the CPL is inconsistent with the high end range on the GPL.
- Underneath direct cremation on the GPL with container, type of container must be added and specified.
- The price for an alternative container on the CPL is inconsistent with the GPL.
- There is one alternative container listed on the CPL that is omitted from the GPL. The Alternative Container priced at \$295.00 must be added to the GPL.
- One casket in the casket selection room available for sale to the consumer was priced inconsistently with the CPL. The unit is a 32 oz. Aegean Copper; the unit in the casket selection room is priced at 5,595 and listed on the Casket Price List as \$5,500.
- Four (4) caskets in the casket selection room are available for sale to the consumer but were not listed on the CPL. They are:
 - 20 Gauge Blue Ocean Mist \$2,395
 - 18 Gauge Coral Mist \$2,750
 - 20 Gauge Coppertone \$1,495
 - 18 Gauge Black Pearl \$2,750

Response: No response was received from the Respondent.

History: One (1) closed complaint with related violations and one (1) closed complaint that is not related. One (1) open complaint with related violations and one (1) open complaint not related.

Recommendation: Consent Order with \$1,500.00 civil penalty and authorization for hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

17. Case No.: L11-FUN-RBS-2011002701

A routine inspection revealed:

- There is no licensed embalmer on staff at this funeral home; this establishment uses a trade embalmer.
- When the field representative requested to see a copy of the trade embalmer's license, the funeral home owner directed them to a copy of the license that had an expiration date of June 30, 2010. The examination took place on January 19, 2011.
- When the field representative asked to see a current license, the funeral home owner called the trade embalmer who then faxed over a copy of the current license.
- During the time of June 30, 2010 – January 19, 2011, the funeral home owner did not have a current copy of the embalmer's license; therefore, the funeral establishment was cited for violations on September 19, 2010, November 7, 2010, and December 22, 2010, dates upon which the trade embalmer performed embalming procedures at this establishment.
- The CPL presented at inspection as being the current CPL has three (3) different effective dates shown on it. There should have been only one (1) effective date for this price list. It appears that the funeral director leaves all of the old dates on the CPL and adds the new "effective dates."

Response: Respondent states that they have many licenses displayed on the wall, but it was their fault for not realizing that particular license had expired. As for the CPL, Respondent states that they do not change their CPL that often. When a casket is ordered by a client, they write the date, casket description and price on the list.

History: Two (2) closed complaints with TCA and FTC violations.

Recommendation: Consent Order with \$250.00 civil penalty and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

18. Case No.: L11-FUN-RBS-2011002731

An inspection revealed the following:

- The establishment license expired on October 31, 2010, and was not reinstated until November 23, 2010.

- From November 1, 2010 – November 23, 2010, establishment handled six (6) calls without having a valid license.
- Two (2) caskets found in the casket selection room do not appear on the CPL, one was an 18 gauge metal called the “Psalm”, and the other was dubbed a “wood” casket.
- One (1) of the sixteen (16) items required by the Funeral Rule is the “other preparation of the body.”
- Any line item included as one of the required sixteen (16) must show a specific price. The listing under “other preparation of the body” for “specialized supplies / plastic sleeves / apparel” shows “at cost.” Provider must list a specific price if it is going to list this item.

Response: Respondent states that the minute they realized their license had expired, they made every attempt to remedy the situation. Respondent states that they attempted to renew their license on the internet, but they were unable to do so. Therefore, they sent in the application accompanied by their late fee. Only one (1) funeral service was provided by the Respondent prior to the realization that the license had expired, and the check cleared their bank on November 24, 2010. Respondent states this was not a “violation” or the intent of the statute governing renewals but a mere oversight on their part.

The caskets not on the CPL were new acquisitions and had just been placed in the show room. They had not had sufficient time to upgrade the CPL. The Respondent totally eliminated the specialized supplies / plastic sleeves / apparel, etc., “at cost” from their GPL. Respondent believes the late penalty instituted against the expired license should be punishment enough, and they ask that no further civil penalties be affixed.

History: Two (2) closed with TCA violations.

Recommendation: Consent Order with \$500.00 civil penalty and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

19. Case No.: L11-FUN-RBS-2011002751

A routine inspection revealed the following:

- The Respondent failed to retain a copy of the authorization for cremation in the file of a decedent on two (2) occasions.
- Forwarding of Remains, Receiving of Remains, Immediate Burial, and Direct Cremation on the GPL are all required to include the specific item

“Basic Services of Funeral Director and Staff.” The Respondent substituted language for this statement which violates the Funeral Rule.

- A required disclosure for the OBCPL appears also on this provider’s CPL. The disclosure is only for the OBCPL and must be removed from the CPL.
- A copy of inspection report for crematory used by this establishment was dated May 27, 2009, but this examination took place on January 26, 2011. The statute requires provider to obtain and maintain a copy of the latest regularly schedule inspection. The latest inspection report for that crematory actually took place on July 12, 2010.

Response: Respondent admits all of the violations and apologizes for those violations. Respondent states that those errors have been addressed.

History: Two (2) closed complaints with TCA violations.

Recommendation: Consent Order with \$250.00 civil penalty and authorization for hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

ADMINISTRATIVE MATTERS:

ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF APRIL 12, 2011 – MAY 9, 2011

Individuals

Jessica Maria Boddie
Memphis, TN

Funeral Director/Embalmer

David James Plunk
Dresden, TN

Funeral Director/Embalmer

Dillion Bradley Wines
Newport, TN

Funeral Director/Embalmer

CLOSED ESTABLISHMENT REPORT:

Three (3) establishments have reported closing since the last board meeting:

- **T.H. Hayes & Sons, 680 South Lauderdale Street, Memphis, TN;**
- **Trinity Funeral Care, 954 Jackson Avenue, Memphis, TN; and**

- **Mayes Family Services of Mooresburg, 208 Calvary Church Road, Mooresburg, 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. 2009016171

Violation: Failed to obtain and maintain a copy of the latest inspection report of the crematory that the funeral home uses, charging a family more for a casket than price shown on the Casket Price List and multiple aspects of the establishment's price lists do not comply with the Funeral Rule

Action: \$250 Civil Penalty

Complaint No. 2010026071

Violation: Failed to keep the preparation room in an orderly manner, used a name on establishment's sign besides establishment name registered with the Board and failed to provide the reason for embalming on multiple statements

Action: \$500 Civil Penalty

Complaint No. 2010031061

Violation: Failed to obtain and maintain a copy of the current license from the crematory that the funeral home uses

Action: \$500 Civil Penalty

Complaint No. 2011000012

Violation: Used the title of licensed funeral director and embalmer on the establishment's web site for an individual who was yet to be licensed in the State of Tennessee

Action: \$500 Civil Penalty

Complaint No. 2010030961

Violation: Used a trade embalmer with an expired license on multiple occasions, aided and abetted an unlicensed individual to practice within the funeral business and failed to properly maintain the preparation room in an orderly manner

Action: \$1000 Civil Penalty

Complaint No. 2010034232

Violation: Engaged in funeral directing with an expired license on multiple occasions

Action: \$250 Civil Penalty

Complaint No. 2010034233

Violation: Engaged in embalming with an expired license on multiple occasions
Action: \$250 Civil Penalty

Complaint No. 2009024101

Violation: Failed to have at least one full-time person duly licensed for the practice of funeral directing responsible for management and supervision of the establishment, failed to notify Board in a timely manner of changing funeral director in charge (manager), license of funeral director not available for inspection, failed to obtain and maintain a copy of the latest inspection report of the crematory that the funeral home uses and multiple aspects of the establishment's price lists do not comply with the Funeral Rule
Action: \$2500 Civil Penalty

Complaint No. 2010021621

Violation: Knowingly permitted an unlicensed individual to engage in the practice of funeral directing under the licensee and aided and abetted an unlicensed person to practice within the funeral profession
Action: \$500 Civil Penalty

Complaint No. 2009013091

Violation: Failed to obtain and maintain a copy of the current license from the crematory that the funeral home uses and multiple aspects of the establishment's price lists do not comply with the Funeral Rule
Action: \$350 Civil Penalty

Complaint No. 2010034231

Violation: Funeral director and embalmer employed by the establishment practicing with an expired license on multiple occasions
Action: \$750 Civil Penalty

Complaint No. 2010030491

Violation: Funeral director continued in capacity as establishment manager on an expired license, failed to obtain and maintain a copy of the current license and inspection report from the crematory that the funeral home uses and unable to submit documents on required size paper
Action: \$750 Civil Penalty

Complaint No. 2010030501

Violation: Remained a constant employee and establishment manager and engaged in the practice of funeral directing with an expired license
Action: \$500 Civil Penalty

Complaint No. 2010018811

Violation: Found discrepancies between General and Casket Price Lists and statement showed charging family for an outer burial container even though the individual was cremated
Action: \$500 Civil Penalty

Complaint No. 2010001331

Violation: Conducted business on expired establishment license, failed to obtain and maintain a copy of the latest inspection report of the crematory that the funeral home uses and multiple aspects of the establishment's price lists do not comply with the Funeral Rule
Action: \$500 Civil Penalty

Complaint No. 2010031051

Violation: Funeral director employed by establishment continued in the capacity of manager and conducted funerals on multiple occasions with an expired license and the establishment used two separate price lists for distribution to the public
Action: \$1000 Civil Penalty

Complaint No. 2010030091

Violation: Failed to provide a Statement of Funeral Goods and Services Selected until after the conclusion of the funeral services and back-dated documents prior to providing them to the consumer
Action: \$2000 Civil Penalty

Complaint No. 2010030121

Violation: Failed to provide consumer with a Statement of Funeral Goods and Services Selected until nine days after the date of the funeral services
Action: \$1000 Civil Penalty

Complaint No. 2010006971

Violation: Duplication of charges which resulted in an overcharge of more than a thousand dollars to the consumer, charge for a flower car exceeded posted amount on price list and multiple aspects of the establishment's price lists do not comply with the Funeral Rule

Action: \$2500 Civil Penalty

Complaint No. 2010034201

Violation: Multiple embalming procedures were conducted and operation of an establishment with an expired license

Action: \$1000 Civil Penalty

Complaint No. 2010030991

Violation: Funeral director employed by establishment continued in the capacity of manager and conducted funerals on multiple occasions with an expired license and embalmers employed by establishment remained employees of establishment on expired licenses

Action: \$500 Civil Penalty

Complaint No. 2010030992

Violation: Funeral director employed by establishment continued in the capacity of manager and conducted funerals on multiple occasions with an expired license and embalmers employed by establishment remained employees of establishment on expired licenses

Action: \$500 Civil Penalty

Complaint No. 2010021591

Violation: Engaged in the practice of funeral directing without being properly licensed

Action: \$500 Civil Penalty

Complaint No. 2010021541

Violation: Aided and abetted an unlicensed person to engage in the profession of funeral directing, advertised using a name other than the establishment name registered with the Board and multiple aspects of the establishment's price lists do not comply with the Funeral Rule

Action: \$1000 Civil Penalty

Complaint No. 2010027201

Violation: Falsely answered a question on application regarding the conviction of or entered a plea of guilty or nolo contendere to either a felony or a misdemeanor involving moral turpitude

Action: Revocation of Apprentice Funeral Director Registration

A motion was made by Clark McKinney to approve the Executive Director's request for the Board's acceptance of the above listed Consent Orders.

Seconded by W. T. Patterson

Adopted by voice vote

OPEN COMPLAINT REPORT:

As of May 6, 2011 there were 109 open complaints.

INDIVIDUAL APPLICATIONS:

**Brian Keith Cooper
Columbia, TN**

**Funeral Director and Embalmer
Reapplication**

The applicant has gone back to mortuary college and upgraded from a diploma to an associate degree and requests that the Board excuse him from the continuing education requirement part for reapplication of a license.

Upon examination of Tennessee Code Annotated § 62-5-305(a) "Every person not previously licensed in this state as a funeral director, desiring to engage in the practice of funeral directing, shall make application to the board, along with a nonrefundable fee as set by the board" and Tennessee Code Annotated § 62-5-601(e) "The board, for good cause, shall have the power to excuse licensees from the continuing education requirements set forth in this chapter." A motion was made by Wayne Hinkle and seconded by Clark McKinney, to approve the reapplications of Brian Keith Cooper for licensure as a funeral director and an embalmer.

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 12:21 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director