

**TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**MINUTES OF BOARD MEETING**

**AUGUST 9, 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; Wayne Hinkle, Jill Horner, Tony Hysmith and W. T. Patterson. Board member absent: Paula Bridges.

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 Clark McKinney to approve the agenda as printed.

Seconded by Tony Hysmith

Adopted by voice vote

**APPROVAL OF MINUTES:**

During review and discussion, Jill Horner requested that the word "guidelines" be changed to "suggestions" on Page 21 of the Minutes from the July 12, 2011 Board Meeting.

A motion was made by W. T. Patterson to make this change to the Minutes.

Seconded by Jill Horner

Adopted by voice vote

Then, Jill Horner then made a motion to approve the Minutes of the July 12, 2011 Board Meeting.

Seconded by Wayne Hinkle

Adopted by voice vote

**LEGAL REPORT:****BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL**

1. **Case No.: L11-FUN-RBS-2011004571**
2. **Case No.: L11-FUN-RBS-2011004572**
3. **Case No.: L11-FUN-RBS-2011004573**

This complaint was filed by a consumer. On February 25, 2011, the Complainant's father passed away, and his family chose the Respondent's establishment to conduct the final arrangements. The Complainant believes a fraudulent claim has been processed and paid against his father's four (4) life insurance policies. Complainant states that his father made him the beneficiary of two (2) of the life insurance policies in 2009; however, the Complainant states that his family still believed his grandmother was the beneficiary of the decedent's policies, as she originally took out the policies.

On February 28, 2011, Complainant states that he called the life insurance company to file a claim. Complainant states that he went to pick out a tombstone for his father's grave and stopped by his uncle's house to discuss some business, that's when the Respondent came through the door in a hurry with a handful of papers and asked the Complainant to sign several documents. Complainant states that he was not aware of what he was signing and thought his grandmother was the primary payer while he was the secondary payer.

After this interaction, the Complainant states that he called the insurance company unsure of what he signed and the insurance company told him to go back to the funeral home and make sure the Respondent filled out the proper amount of \$1,633.00. The Complainant attempted to contact the Respondent on several occasions to no avail, so he went to the funeral home and waited to speak with the Respondent funeral director. While waiting, the Complainant saw his uncle, aunt, and the Respondent funeral director enter the establishment, and meet in the arrangement room. Complainant states that he felt ambushed and his family said he should never have been changed to the beneficiary, and the Complainant states that he changed his mind and wanted to negate those papers he signed. Complainant states that the Respondent funeral director said "you signed the papers and it's too late." It was at that time that the Complainant states that he felt tricked into signing those documents and the Respondent stated, "You \_ \_ \_ , I don't appreciate that." Complainant states that he quickly contacted the insurance company and informed them of this event.

**NOTE:** Because there is a disagreement regarding what occurred with these policies, the insurance company has provided the proceeds to the court and will allow the court to determine the status of the policies in an interpleader action.

**Response:** Respondent states that she oversaw the funeral arrangements for the decedent in this case. She met with the decedent's son (Complainant), three

brothers, one sister, and mother regarding payment for the services, and that's when the Complainant informed her that he would be paying for the services. Respondent states that she was aware of three (3) policies taken out in the decedent's name...in 1985 (\$4,500.00), 1987 (\$3,000.00), and 1989 (\$2,000.00), by the decedent's mother; however, the family soon learned that the decedent had changed the beneficiary on the 1987 and 1989 policies to the decedent's son. Respondent states that the Complainant never informed her that he was the new beneficiary on these policies.

The next day, after realizing that the Complainant was now the beneficiary, the Respondent contacted the Complainant's aunt and uncle and found the Complainant at his uncle's house. The Respondent decided to stop by the uncle's house and have the Complainant sign documents. Respondent states that she explained what the Complainant was signing and he seemed satisfied with the situation.

Several days later, the Respondent states that she received several phone calls from the Complainant; however, she was not able to answer any phone calls as she was meeting with various families throughout the day. The Respondent later drove to Nashville to file a claim with the insurance company in person. While filing the claim, the Respondent received a text stating that the Complainant had been at the funeral home waiting on the Respondent, so the Respondent contacted the Complainant's aunt and uncle and a police officer to meet her at the funeral home. When the Respondent arrived at the funeral home, another family was already present for a visitation, so the Respondent took the aunt and uncle through the basement so as not to interfere with the visitation. The Respondent, the Complainant, and the aunt and uncle all met in the arrangement room located in the basement. The Respondent states they discussed everything and the Complainant was fine with everything, and he said that he absolutely was in agreement that his grandmother should get to keep the life insurance proceeds for the policy for which she was the beneficiary because she had been the person who had paid for it all these years.

Following this meeting, the Respondent states that she left the room and heard the Complainant talking to his uncle about a lawsuit he was involved in against Shoney's. After this meeting, the Complainant started calling again and complaining and contradicting himself. The Respondent states that the Complainant has posted many false statements about the establishment on Facebook. Respondent states that the Complainant continued calling the funeral home and said he would keep calling until his concerns were addressed. Respondent does not understand the Complainant's accusations and states that she thought everything was fine after they met.

**NOTE:** The uncle, aunt, and police officer, who were all present for the meeting in the arrangement room of the funeral home, have provided notarized statements saying that the actions portrayed by the Complainant did not actually

happen as the Complainant describes. All three (3) individuals state that all parties present were professional and courteous. Also, none of the parties cursed, as the Complainant stated they had.

**Complaint History:** Four (4) closed complaints against the establishment, none related. Also, no funeral complaints have been filed against the funeral director / embalmer.

**Recommendation:** Dismiss each case against all three (3) Respondents

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

Seconded by Clark McKinney

Adopted by voice vote

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**4. Case No.: L11-FUN-RBS-2011004591**

**5. Case No.: L11-FUN-RBS-2011004592**

The Respondent was assessed a civil penalty of Two Thousand Two Hundred and Fifty Dollars (\$2,250.00) in case 201002101, and One Thousand Seven Hundred and Fifty Dollars (\$1,750.00) in case 201002151. Check number 1180 was written on the bank account of the establishment and signed by the establishment manager. However, the check was returned unpaid by the bank for Insufficient Funds.

Additionally, check number 1181 was written on the establishment bank account and signed by the establishment manager. However, this check was also returned unpaid by the bank for Insufficient Funds.

**Response:** Respondent provided two (2) cashier's checks for the \$2,250.00 civil penalty and \$1,750.00 civil penalty. Additionally, the Respondent provided a \$40.00 check to cover collection fees. Respondent states they regret the checks being returned, but they had a customer give them a check that was returned for insufficient funds as well.

**Complaint History:** Three (3) closed complaints against the establishment, one (1) related; three (3) closed and (1) open against the funeral director.

**Recommendation:** Consent Order with \$500.00 civil penalty (to be paid with certified funds) and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**6. Case No.: L11-FUN-RBS-2011004991**

This complaint relates to a routine examination.

Cremation Inspection Report -

- The Respondent failed to maintain a copy of the latest crematory inspection report as required for The Directors Cremation Service, located in Pineville, Kentucky, which is the primary crematory utilized by this establishment.
- A copy of the crematory inspection report presented at inspection shows an inspection date of November 12, 2009; however, the field representative was able to ascertain a more recent inspection date of September 2, 2010.

General Price List –

- The casket price range listing of \$995.00 does not agree with the lowest casket price on the Casket Price List.
- The CPL starts at \$1,745.00.
- “Forwarding of Remains,” “Receiving of Remains,” and “Direct Cremation” must all include the required item of “Basic Services of Funeral Director and Staff.”

**Response:** Respondent states that in the past, the crematory has always sent copies of inspection reports to the Respondent; however, the Respondent claims they were not aware that the crematory changed this process. In the future, Respondent states they will ask the crematory for their latest reports.

Respondent has revised the GPL so the GPL and CPL now match. Respondent states they inadvertently failed to change both lists when they ceased selling the \$995.00 casket.

They have changed the wording from “necessary” to “basic” on the GPL.

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

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

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

Seconded by Jill Horner

Adopted by voice vote

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**7. Case No.: L11-FUN-RBS-2011005201**

After the Complainant's son passed away, they were told that he would be cremated and that they could have their son's cremated remains, but his wife would pay for the cremation. Complainant was told that their son's cremains would be at the Respondent's funeral establishment. The Complainant and their family made several calls regarding final arrangements; the family was told that there would be no service at the funeral home, no notice on the internet, and no obituary in the newspaper.

The Complainant called other funeral establishments at that point to make new arrangements, and they called Respondent at least three (3) times a day to ask when they could pick up their son's cremated remains. The Respondent released the cremains eleven (11) days after his death and charged the Complainant \$397.50. The entire family has been upset by this treatment.

**Response:** Respondent received their first call regarding the decedent on February 10, 2011, from the local hospital emergency room. Upon arriving at the hospital, Respondent states that they called the decedent's sister-in-law to inform them that the body was being released from the hospital. Respondent was then told that the body was to be cremated, so the Respondent knew embalming was not necessary. The widow and her sister came to the Respondent's establishment on February 11, 2011, to discuss final arrangements. The widow explained that the decedent wanted to be cremated, she would give the cremains to her mother-in-law, and she requested that no memorial service be held, no obituary be printed, and no public announcement be made on the internet or radio. The widow then signed all of the paperwork required for a cremation. Respondent then contacted the medical examiner's office and was granted permission to cremate on February 11, 2011 at 12:05 p.m.

The decedent's family then wanted to view the body, but changed their mind after the Respondent suggested that they not. Respondent later received a call from the Medical Examiner's Office stating that an autopsy would take place after considerable pressure from the decedent's sister. The Respondent retrieved the body from the crematorium later that day, and the Medical Examiner's Office took custody of the body after midnight of that same day.

The Respondent received numerous phone calls from the decedent's family over that weekend regarding when the body would be returned and cremated. Respondent states that the family also called the Medical Examiner's Office, the Sheriff's Department, and several other funeral homes regarding the decedent's death.

An obituary appeared in the local newspaper on Tuesday, February 15, 2011, stating that a memorial service would take place on Saturday, February 19, 2011, and the decedent's widow was not listed in the obituary as the surviving spouse. Due to the decedent's family getting involved in the final arrangements, the widow had second thoughts about the cremation, and the cremation had to be

put on hold until a final decision was reached by the widow. The body was cremated on February 16, 2011, and the decedent's family was told to stop calling the funeral home, as the Respondent would contact the family when the widow gave permission to release the cremains to the family.

Respondent believes they did everything correctly and acted at the direction of the decedent's surviving spouse, who had legal standing to make final arrangements. The Respondent released the cremains to the decedent's family with a \$397.50 charge for mileage and storage accumulated during this time. This travel and storage were unnecessary as the local sheriff deemed the death a suicide due to a self-inflicted gunshot wound to the head, which was later confirmed by the autopsy. The cremains were released to the step-father of the decedent on Monday, February 21, 2011, at 5:00 p.m.

**NOTE:** An additional letter was sent from the local sheriff on behalf of the Respondent stating that the decedent passed away due to a self-inflicted gunshot wound, and that the decedent's family caused problems for the widow, the Medical Examiner's Office, the Sheriff's Department, and the Respondent.

A third letter was provided by the decedent's widow. She states that the decedent shot himself in front of her when he learned that he would have to pay child support for their son. She states that she and the Respondent received harassing phone calls and text messages throughout this ordeal from the Complainant. The widow states that the \$397.50 was for mileage and storage incurred by the Respondent that went over and above the charges for her husband's cremation.

**Complaint History:** None

**Recommendation:** Dismiss.

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

Seconded by Clark McKinney

Adopted by voice vote

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## **8. Case No.: L11-FUN-RBS-2011001821**

This complaint was filed by a former employee of the Respondent. Complainant states that Respondent terminated their employment on January 29, 2011. Complainant states they were released from employment because they instructed a relative to use an out of state funeral home that allows the Complainant to act as independent licensee. Complainant states that the Respondent had previous knowledge from previous deaths of the Complainant's family members and others that call on him directly for funeral services, that the

Complainant buries his own dead utilizing an out of state funeral home and makes these arrangements as an independent contractor. Complainant states that the Respondent told him he would pay him a percentage of the contract price for casket and merchandise if he provided funeral services to the Complainant's aunt through the Respondent's funeral establishment.

**Response:** Respondent's attorney states that the Complainant's employment was terminated because he instructed people to use funeral establishments other than the Respondent's. Respondent understands that the Complainant's family members may want to use another funeral establishment; however, he will not continue to employ someone who instructs others to use another funeral home.

**Complaint History:** Seven (7) closed complaints and four (4) open complaints.

**Recommendation:** Close. This Respondent has reached an agreement in other related cases.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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- 9. Case No.: L11-FUN-RBS-2011005421
  - 10. Case No.: L11-FUN-RBS-2011005422
  - 11. Case No.: L11-FUN-RBS-2011005423

Upon a routine examination, it was discovered that an employee of the establishment had invalid licenses a funeral director and embalmer which expired on October 31, 2010, and were not reinstated until December 17, 2010. The funeral director acted as a funeral director for one (1) customer, A. J. Williams, and acted as embalmer for one (1) customer, J. E. Morris.

Additionally, the field representative reviewed the Statement of Funeral Goods and Services Selected for the decedent, T. R. Hanvy, dated December 14, 2010. The SFGSS lists "cremation" as \$775.00 under the sub heading "Special Charges," in addition to charges for "basic Services of Funeral Director & Staff," "Embalming," "Facilities & Staff for Visitation," "Facilities & Staff for Chapel Service," "Removal within 50 Miles," "Oak Rental Casket," "Register Book / Cards," and "Cash Advances." This was not a direct cremation and should have been noted under cash advances.

**Response:** Respondent apologizes for not renewing their licenses in a timely manner. The Respondent states that his Continuing Education credits had not been received, and he acted in his capacity as a funeral director and an embalmer because he believed he had a sixty (60) day grace period to provide



his continuing education credits prior to revocation. Respondent states that he took courses from Practicum Strategies and faxed his certificates of completion to the Board Office. Respondent states that he spoke with Board staff who told him they received the fax and someone would contact him if further information was needed to reinstate the licenses. Respondent states that he never heard back from anyone; and he was not aware that his licenses were invalid until the field representative informed of such. Respondent apologizes and states that he never intended to practice without a valid license. Respondent states that he will make continuing education and license renewal a top priority going forward.

**Complaint History:** There is no complaint history on any of the Respondents.

**Recommendation:** #9 – Letter of Warning, #10 / #11 – Consent Order with \$250 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

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**12. Case No.: L11-FUN-RBS-2011005941**

**13. Case No.: L11-FUN-RBS-2011005942**

Funeral director's license expired on June 30, 2010, and has not been reinstated. The establishment has routinely operated in violation of state law with an unlicensed person declared to be the manager. From July 1, 2010 until the exam date on February 7, 2011, this establishment has overseen three (3) funeral services:

- M. A. Henderson – Signature of Respondent appears on the Certificate of Death and Cremation Authorization Form.
- K. M. Carrethers – Respondent states that another funeral director worked in a trade capacity to make funeral arrangements and worked this funeral, but the unlicensed funeral director is still listed as a licensed funeral director manager for the funeral home listed on the SFGSS.
- E. Boleyjack – Respondent states that a gentleman from Nashville, whose name she cannot remember, worked as funeral director for this funeral service.

Additionally, the Respondent failed to provide a copy of the funeral director's license for the two (2) individuals who oversaw final arrangements for K. M. Carrethers and E. Boleyjack.

Respondent failed to present a copy of the crematory's license, failed to describe on the SFGSS the casket sold for \$2,195.00 to K. Carrethers, and a required disclosure does not appear on the General Price List.

**Response:** No response received.

**Complaint History:** #12 – Four (4) closed complaints; three (3) related, one (1) unrelated. Two (2) open complaints, one (1) related, one (1) unrelated. #13 – Two (2) open complaints; one (1) related, one (1) unrelated.

**Recommendation:** #12 – Consent Order with a \$2,000 civil penalty and agreement by Respondent to appoint a licensed funeral director within ten (10) days and agree to inspection every six (6) months for next two (2) years, with costs paid by Respondent and authorization for hearing.

#13 – Consent Order with \$1,000 civil penalty and agree not to practice funeral directing until license is reinstated and authorization for hearing.

A motion was made by Wayne Hinkle to issue a Cease and Desist letter to the establishment.

Seconded by W. T. Patterson

After discussion, both the motion and second were withdrawn to allow Legal to explore other avenues for recommendation to the Board.

After a brief recess, the Assistant General Counsel restated the recommendation for the establishment to be a Consent Order with a \$2,000 civil penalty and agreement by Respondent to appoint a licensed funeral director within ten (10) days and agree to an inspection every six (6) months for next two (2) years, with costs paid by Respondent and authorization for hearing.

The Assistant General Counsel made a new recommendation for #13 regarding the funeral director – issue a Cease and Desist Order until funeral director's license is reinstated. After granted a new funeral director's license, a Consent Order with a \$1,000 civil penalty be issued 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

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- 14. Case No.: L11-FUN-RBS-2011006431
  - 15. Case No.: L11-FUN-RBS-2011006432
  - 16. Case No.: L11-FUN-RBS-2011006433
  - 17. Case No.: L11-FUN-RBS-2011006434
  - 18. Case No.: L11-FUN-RBS-2011006435

**Complaint Against Respondents #14 / #15 / #16:** On February 14, 2011, a field representative conducted a routine inspection of Respondent #16 (establishment). During this inspection, the field representative found that the funeral director and embalmer licenses for Respondent #14 and #15 had expired on December 31, 2010, and were not renewed until February 14, 2011. Respondent #14 / #15 signed as funeral director / embalmer on the Death Certificate of A. S. Warren, Sr. on January 13, 2011. Licenses for Respondent #14 / #15 were not available for inspection.

**Response from Respondents #14 / #15 / #16:** Respondent states that in 2008, he was told that his license would be renewed on time as long as his forms and fees were postmarked by December 31<sup>st</sup>. The Respondent believed this to be the case when he went to renew his license at the end of 2010 and stated that he assumed the licenses were properly renewed when his check cleared on January 10, 2011. Respondent states he did not receive notice from the State until January 28, 2011, that his licenses had been suspended. Respondent states he was not working as a funeral director / embalmer from December 3, 2010 – February 20, 2011, due to hospitalization for MRSA. Respondent states his name appeared on death certificates because he attempted to help his wife with paperwork while confined to his home, and he signed his name on the documents.

**Complaint Against Respondent #17:** During a routine examination of Respondent #17 on February 17, 2011, it was discovered that Respondent #14 and #15 was practicing in the funeral industry without a valid license. One (1) death certificate (Ms. V. L. Lester) prepared by Respondent #17 was signed by Respondent #14 / #15 while his licenses were expired.

**Response from Respondent #17:** Upon learning that Respondent #14 / #15 had an expired license, Respondent #17 immediately ceased using his services until his licenses were restored. Respondent states that his establishment strives to do the right thing at all times, and would never knowingly do anything to jeopardize their good will with the Funeral Board.

**Complaint Against Respondent #18:** During a routine examination of Respondent #18 on February 17, 2011, it was discovered that Respondent #14 and #15, acting as a trade embalmer, was practicing in the funeral industry without a valid license. Two (2) death certificates (G. L. Parks and R. D. Carter) were signed by Respondent #14 / #15 while practicing on an expired license.

**Response from Respondent #18:** Respondent #18 stated that he immediately ceased using Respondent #14 / #15 when he learned of his invalid licenses. Respondent #18 states that he only uses Respondent #14 / #15 when he is out of town.

**Complaint History:**

- #14 – None.
- #15 – None.
- #16 – One (1) open, not related.
- #17 – Three (3) closed and one (1) open, none related.
- #18 – None.

**Recommendation:**

- #14 – Letter of Warning
- #15 – Consent Order with \$750 civil penalty and authorization for hearing.
- #16 – Letter of Warning
- #17 – Letter of Warning
- #18 – Letter of Warning

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

The motion failed due to a lack of a second.

After further discussion, a motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Jill Horner

Adopted by voice vote

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**19. Case No.: L11-FUN-RBS-2011006611**

Based upon a routine examination, the following violations were discovered: After reviewing the files of P. D. Lilly and W. Lewis, it was determined that the Respondent failed to retain a copy of the Authorization for Cremation that bears the signature of the funeral director in the file of the deceased. After contacting the crematory, a copy of the Cremation Authorization Form was faxed over bearing the signature of the funeral director.

The Respondent charged customers more for outer burial containers than the Outer Burial Container Price List reflects. The OBCPL shows a price of \$950.00 for the "12 Gauge London", but a charge of \$995.00 was found on the SFGSS for J. Cody, B. Alexander, and C. Horner. The OBCPL shows a price of \$700.00 for a "Metal Box", but a charge of \$795.00 was found on the SFGSS for B. Hensley and T. Wilford.

**Response:** Respondent provided documentation of refunds being provided to those five (5) individuals, and they provided a corrected OBCPL as well.

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

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

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

Seconded by W. T. Patterson

Adopted by voice vote

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**20. Case No.: L11-FUN-RBS-2011006621**

During a routine evaluation on March 4, 2011, the following violations were discovered: The Respondent's SFGSS does not have the name as approved by the Board on the establishment application. The business cards for one employee do not have the proper name of the establishment when compared to the required name listed on the establishment application approved by the Board. The ventilation fan in the preparation room was not operating.

**Response:** Respondent has enclosed a copy of their corrected contracts with the proper name of the establishment. They have removed the business cards of the employee until new corrected cards can be obtained. The motor to the ventilation fan was replaced on March 10, 2011, and the Respondent was not aware that the fan was not working until this evaluation took place. The fan is functioning properly now, and Respondent enclosed a statement showing when the repairs were made.

**Complaint History:** None.

**Recommendation:** Consent Order with \$250.00 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

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**21. Case No.: L11-FUN-RBS-2011003771**

During a routine examination on December 15, 2010, the following violations were discovered: The Respondent's establishment license expired on October 31, 2010. The license was invalid from October 31, 2010 – December 7, 2010. The Respondent's business remained open during this time, and the Respondent performed sixty-six (66) cremations during this period without a valid license.

**Response:** Respondent states that they were unaware that their license had expired and immediately issued a check for payment of the renewal fee in order to renew their license.

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

**Recommendation:** Consent Order with \$3,300.00 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

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**22. Case No.: L11-FUN-RBS-2011007741**

**23. Case No.: L11-FUN-RBS-2011007742**

**24. Case No.: L11-FUN-RBS-2011007743**

The Complainant states that her husband passed away in an accident on December 23, 2010. Complainant met with Respondent on December 24, 2010, to discuss final arrangements available to her after she decided to donate her husband's tissue. While there, the Complainant authorized the Respondent to take possession of the decedent's body, but she had yet to determine final arrangements. On December 25, 2010, the Complainant received a call from her brother-in-law telling her that he was coming over to assist her in making final arrangements. The Complainant was unclear as to how the brother-in-law would know that final arrangements had not been made unless he contacted the funeral home. The spouse then contacted the Respondent who admitted to having a conversation with her brother-in-law and telling him that final arrangements were not made. The Complainant then told the Respondent not to discuss any matters with anyone unless she gave him permission first. The Complainant states that she heard rumblings regarding a memorial service for her husband planned by the husband's family for December 26, 2010. She verified this information in a conversation she had with someone on March 2, 2011. The Complainant believes the Respondent was very unprofessional in providing information to her husband's family, and this action caused her additional grief.

**Response:** Respondent states that on December 24, 2010, he met with the Complainant and her brother. The parties discussed burial and cremation options, and the Respondent told the Complainant to think about the options and inform him of her decision. The Complainant then authorized the Respondent to take possession of the body and authorized the Respondent to place an announcement in the newspaper and on the radio that final arrangements were incomplete. As the Complainant was leaving, she informed the Respondent that if she chooses cremation, there will be a difference of opinion from the

decedent's family. On December 26, 2010, Respondent states that the decedent's brother called the funeral home to ask about final arrangements. The Respondent told the brother that no arrangements had been made at that point and that the Complainant was trying to decide between burial and cremation. The brother told the Respondent that they were opposed to cremation, but the Respondent informed the brother that this decision was left up to the Complainant, not the family. Later that day, the Complainant called the Respondent to determine where her brother-in-law had obtained information regarding final arrangements. The Respondent informed the Complainant that he told the brother the arrangements were incomplete because he felt the decedent's mother deserved to know the status of the arrangements. After this conversation, the decedent's family's minister called the Respondent regarding a possible memorial service by the family, but the Respondent told him it was up to the Complainant regarding final arrangements. Respondent states that he received hundreds of calls regarding the status of the final arrangements, and they had to tell the callers that final arrangements were incomplete. Respondent states that the Complainant decided on cremation on December 27, 2010, and did not come in to sign the appropriate documents until Tuesday, December 28, 2010, due to inclement weather.

**Complaint History:**

#22 – None.

#23 – None.

#24 – One (1) closed, not related.

**Recommendation:**

#22 – Dismiss

#23 – Dismiss

#24 – Dismiss

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

Seconded by Clark McKinney

Adopted by voice vote

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**25. Case No.: L11-FUN-RBS-2011007931**

During a routine inspection on March 18, 2011, the following violations were discovered: On the establishment's web site, one employee is listed as the Pre-need Director; however, this individual is not listed with the State Board as a funeral director or preneed sales agent as the site implies to the public. The web site does not provide the same name for the establishment as has been approved by the Board on their establishment application.

On the General Price List – under immediate burial, the high end range must be added. Under direct cremations, the low end range on the GPL is inconsistent with the direct cremation with container provided by the purchaser on the GPL. On the SFGSS, one (1) contract selected for review has a charge for embalming which is inconsistent with the GPL.

Additionally, the establishment could not furnish documents on the paper size required.

**Response:** Respondent states that they were not aware that placing the employee's name on the web site as a pre-need director was a violation. Respondent states that they have removed all titles on the web site following this complaint. As for the name being incorrect on the web site, the Respondent states they have changed the name on the web site to reflect what is on their establishment application.

On the General Price List, Respondent states that under immediate burial, they had forgotten to include the high range when their new price increase occurred on February 1, 2011. Respondent states that this was an oversight that has been corrected. Under direct cremation, the Respondent states that this was another oversight that has since been corrected. As for the overcharge for embalming, the Respondent states that he put in the wrong number that day while filling out the SFGSS. Respondent states that he contacted the decedent's family and informed them of the overcharge, and it will be corrected when the insurance company pays the funeral bill.

Respondent states that he nor his wife were in the establishment that day, and the only person working was a part-time employee who was not trained to use the office equipment. Respondent states that had he or his wife been in the establishment that day, they could have easily provided the documents on the proper size paper.

**Complaint History:** None.

**Recommendation:** Letter of Warning.

A motion was made by Clark McKinney to issue a Consent Order with a \$250.00 civil penalty and authorization for hearing.

Seconded by Jill Horner

Adopted by voice vote

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**26. Case No.: L11-FUN-RBS-2011008341**

A field representative went to conduct a routine inspection of Respondent's establishment on June 8, 2010. Upon arriving, the field representative



determined that the only licensed funeral director was placed in a nursing home on June 1, 2010, and was informed that two (2) local licensed funeral directors would provide services.

On October 22, 2010, the field representative went back to re-inspect the establishment. Unlicensed personnel stated that the only licensed funeral director was still in the nursing home. A licensed funeral director from another local funeral home had been meeting with families and taking care of funeral services, but this individual only came in periodically during the week. The field representative then left the establishment and visited the local county health department to review the "Monthly Report of Funeral Directors." While the October report was not yet due to be submitted to the health department, the field representative found that four (4) cases had been handled by the funeral home since June 1, 2010, when the funeral director was admitted to the nursing home. The field representative then visited the nursing home and learned that the funeral director had been a patient of the nursing home continuously since June 1, 2010.

**Response:** Respondent apologizes for their funeral director being in the nursing home, but a new licensed funeral director is now on staff full-time until the original funeral director is well enough to return. The Respondent apologizes for a licensed funeral director not being present during the inspection, but the part-time funeral director was not paged to come to the establishment during the inspection. The establishment now has a full-time licensed funeral director that will handle issues on a daily basis until the original licensed funeral director can return.

**Complaint History:** Four (4) closed complaints, none 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 W. T. Patterson

Adopted by voice vote

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- 27. Case No.: L11-FUN-RBS-2011008351
  - 28. Case No.: L11-FUN-RBS-2011008352
  - 29. Case No.: L11-FUN-RBS-2011008353
  - 30. Case No.: L11-FUN-RBS-2011008354
  - 31. Case No.: L11-FUN-RBS-2011008355

Respondent #27 – On February 28, 2010, the Funeral Director and Embalmer licenses for Respondent #30 / #31 expired. This individual did not meet the

requirements for reinstatement of either license until October 25, 2010. During this time period, the individual remained in continuous employment with this establishment and performed licensed activity without a license. Respondent #30 / #31 signed off as a licensed funeral director for ten (10) funeral purchase agreements. Respondent #30 / #31 signed off as the funeral director authorizing agent for cremations eight (8) times. Respondent #30 / #31 signed on two (2) application permits at the health department as funeral director of this establishment. In three (3) instances, there was no signature of a licensed funeral director on the cremation authorization form.

Respondent #28 – Respondent #30 / #31 signed off as the funeral director representing the funeral home on one (1) funeral purchase agreement.

Respondent #29 – Respondent #30 / #31 signed as funeral director on eight (8) cremation authorization forms. Respondent #30 / #31 signed two (2) application permits with the Health Department as a licensed funeral director for the establishment. Three (3) cremation authorization forms were never signed by a licensed funeral director.

Respondent #30 – Respondent #30 / #31 signed off as a licensed funeral director on ten (10) funeral purchase agreements, signed off as the funeral director authorizing agent for cremations eight (8) times and signed on two (2) application permits with the health department as funeral director of this establishment.

**Response:**

Respondent #27 – Respondent learned of their employee's licenses expiration date of February 28, 2010, in late April or early May 2010. Respondent immediately asked her to begin work toward the renewal. Respondent states they regret this lapse in her licensure, and its consequences.

Respondent #28 – Respondent states that it is inexcusable for this employee to perform any duties requiring a funeral director's license on an invalid license and Respondent regrets this occurred. Respondent advised the employee to cease her licensed activities at that time in late April or early May, but Respondent believes they did not succeed in their communication. Respondent did not terminate her employment because they felt her license would be reinstated soon. Respondent apologizes for this occurrence.

Respondent #29 – Respondent states that they have no adequate explanation as to why this employee was working on an expired license. It was this Respondent's belief that the employee was told to cease all activity as a licensee, but the employee did not understand this communication.

Respondent #30 / #31 – Respondent states that she never received a letter stating that her license was due for renewal but understands that this is ultimately her responsibility. Respondent states that she immediately sent money to renew

her license, once she was aware of the status. Respondent states that she was then told that she would have to complete an additional ten (10) hours of continuing education. Respondent states that her employer was aware of her status the entire time and told her to continue working as she had in the past. Respondent states that a meeting was held each day in which she was informed what her tasks would be for that day. She states that she offered to work as an administrative assistant until her licenses were renewed, but she was told to continue her prior tasks. Respondent believes she made an honest mistake, but she believed she was doing the proper thing by following the orders of her employer. Respondent states that she has since left employment of that employer, and she is now working in bereavement and grief counseling. Respondent states that she hopes to keep her license up and work part-time.

**Complaint History:**

- #27 – Three (3) closed complaints, none related
- #28 – One (1) closed complaint, not related
- #29 – None
- #30 – None
- #31 – None

**Recommendation:**

- #27 – Consent Order with \$250 civil penalty and authorization for hearing.
- #28 – Consent Order with \$250 civil penalty and authorization for hearing.
- #29 – Consent Order with \$250 civil penalty and authorization for hearing.
- #30 / #31 – Consent Order with \$1,000 civil penalty and authorization for hearing.

A motion was made by Jill Horner to issue a Consent Order to Respondents 27, 28 and 29 with an increased civil penalty of \$500 each and authorization for a hearing and accept Counsel's recommendation on Respondents 30 and 31.

Seconded by Tony Hysmith

Adopted by voice vote

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**32. Case No.: L11-FUN-RBS-2011008361**

**33. Case No.: L11-FUN-RBS-2011008362**

**34. Case No.: L11-FUN-RBS-2011008363**

The establishment license expired on June 30, 2010, and was not renewed until August 30, 2010. During this expired time, the establishment conducted six (6) funeral services. Additionally, the licenses for two (2) separate funeral directors expired on June 30, 2010, and were not renewed until August 30, 2010. One (1) of these individuals served as the manager in charge of the establishment during the time his funeral director license was invalid.

**Response:** No response received.

**Complaint History:** Two (2) closed complaints with unrelated TCA violations against the establishment.

No previous complaints against either funeral director.

**Recommendation:**

- #32 – Consent Order with \$750 civil penalty and authorization for hearing.
- #33 – Consent Order with \$750 civil penalty and authorization for hearing.
- #34 – Consent Order with \$750 civil penalty and authorization for hearing.

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

Seconded by Jill Horner

Adopted by voice vote

**35. Case No.: L11-FUN-RBS-2011008371**

**36. Case No.: L11-FUN-RBS-2011008372**

During a routine inspection, Respondent #36 was observed meeting with the family of a deceased individual regarding final arrangements; however, this individual was neither a licensed funeral director or registered as an apprentice. Furthermore, there was no licensed funeral director on the premises during this observation.

Upon reviewing the SFGSS of Ms. C. Williams, the field representative found that the customer was charged \$4,220.00 for a “traditional funeral service package”; however, this same package is listed on the GPL for \$3,795.00.

Two (2) caskets in the casket selection room were not consistent with the Casket Price List. One (1) other casket was not even listed on the CPL.

<b>Casket</b>	<b>Casket Price List</b>	<b>Casket Selection Room</b>
18 Ga. Primrose	\$2,895.00	\$3,105.00
18 Ga. Franklin Blue	\$2,725.00	\$2,795.00
18 Ga. Blue Gold	Not Listed	\$2,895.00

Preparation room had not been cleaned following the preparation of a deceased human remains from the night before. The embalmer had left without cleaning the preparation room of clutter and soiled items. Cosmetics and other items were left open and around various areas of the room. The gurney appeared to have transported the deceased still had soiled bedding with a pillow, hospital

pad, and bloody apron thrown to the side. There was clutter in general throughout the room, and a trash container was left uncovered.

**Response:** No response was received.

**Complaint History:** #35 – Two (2) closed complaints and one (1) open complaint with TCA violations.

#36 – None.

**Recommendation:** #35 – Consent Order with \$2,750.00 civil penalty and authorization for hearing.

#36 – Consent Order with \$1,000.00 civil penalty and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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### **37. Case No.: L11-FUN-RBS-2011008381**

Two (2) containers holding the cremated remains of D. V. Barr and D. C. Cramer failed to contain a permanent identification device inside the cremated remains as required.

The signage in front of the establishment does not agree with the license as issued by the State Board.

In the preparation room – Significant clutter, products left out uncovered, soiled linen left out from a previous embalming, instruments used for embalming left on a dirty soiled towel and preparation room not properly secured to avoid unauthorized entry.

**Response:** Respondent states that they had changed their system so that an identification label was placed on the bottom of the urn instead of inside the urn with the cremains. The field representative informed the Respondent that a permanent identification device must be inside the urn with the cremated remains. Therefore, the Respondent states that they have changed their process so that an identification device will be placed inside the urn with the cremains. Respondent has contracted with a sign company to change the sign to comply with the State Board, and the Respondent is now in compliance.

Preparation room went through a major overhaul, the lighting was replaced and the room was thoroughly cleaned, and the instruments are now organized and stored in a proper container after use.

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

**Recommendation:** Consent Order with \$350.00 civil penalty and authorization for hearing.

A motion was made by Tony Hysmith to issue a Consent Order with a \$750 civil penalty and authorization for a hearing.

Seconded by Wayne Hinkle

Adopted by voice vote

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**38. Case No.: L11-FUN-RBS-2011009791**

**39. Case No.: L11-FUN-RBS-2011009792**

**40. Case No.: L11-FUN-RBS-2011009793**

On February 8, 2009, the Complainant's daughter was found murdered in her car. The Complainant was too distraught to make funeral arrangements, so she asked the funeral home to provide the same services for her daughter that they provided for her husband fifteen (15) months earlier when he succumbed to cancer. The Respondent provided an invoice to the Complainant showing her the services provided to her and the document she signed; however, the Complainant does not remember signing any document. Complainant believes the Respondent could have turned the invoice in to the State of Tennessee due to the fact that her daughter was the victim of a violent crime; however, the Complainant states that the Respondent chose to charge the bill to the Complainant. Eventually, the State paid \$6,000 towards the \$8,000 bill – this money was paid in December 2009.

The Complainant tried to make payments of \$50.00 per month toward the funeral bill; this was due to the fact that her money was still tied up in court proceedings related to her husband's estate. Complainant states that the Respondent called after some time regarding the Complainant paying more than \$50.00 per month, then Complainant states that the Respondent left her a nasty message stating that she still owed money on the account, but she's not even trying to pay it off. Complainant then wrote a letter to the Respondent instructing him about her income situation and demanded that he stop calling her. Respondent turned the claim over to a collection agency which harmed the Complainant's credit score. Complainant states that shortly after the State paid \$6,000 towards the invoice, the Complainant's boyfriend quit working for the Respondent, and the Complainant's mother moved her pre-need contract to a competing funeral home. Shortly after the boyfriend's mother moved her pre-need contract, the

Respondent filed suit against the Complainant for the remaining \$2,000 owed to the funeral home. Complainant states that the Respondent was wrong to lose his temper with her, and the Complainant believes the Respondent used personal / business vendettas to get back at the Complainant's boyfriend and his family.

**Response:** Complainant entered Respondent's business in a distraught state due to the loss of her daughter. Because of this, Respondent states that he gave her boyfriend the rest of the day off to be with her. Respondent states that the unfortunate side of this business is that he must profit from another individual's loss, and he has to get paid in order to pay his bills. Respondent states that he normally asks the family to make a down payment of half the funeral bill; however, he did not do that in this case because he felt the Complainant had already been through a lot. He requested that the Complainant to pay \$235 per month for 36 months to pay the bill.

From February 2009 through January 2010, the Complainant paid a total of \$700.00; furthermore, had she followed through on the agreement, she would have paid \$2,585.00 by this same point. Respondent states that Complainant changed her address, phone number, and failed to return any of his messages. At some point, Respondent states that he filed papers with the State for payment from Victims of Violent Crimes Compensation Fund and received \$5,300.00.

Since May 2009, Respondent states that he has had no contact with the Complainant. He states that he wrote letters to her informing her that she was not following their agreement, and she wrote back informing him that she did not have any money and for him to quit contacting her. Finally, Respondent states that he had no choice but to turn the matter over to a collection agency.

In addressing the issue of the Complainant's boyfriend, Respondent states that he was not upset that the boyfriend's family used a competing funeral home and had used that competitor for some time. Respondent states that he hired Complainant's boyfriend in 2007 and explained that the boyfriend would have to take night shifts every once in awhile like every other employee. The boyfriend explained that he was the only caretaker for his mother, and that would keep him from working any night shifts; however, Respondent states that he spoke to the boyfriend's family who informed him that all family members take turns caring for his mother.

Addressing the allegations that the Respondent used profanity while speaking to the Complainant, the Respondent states that he cannot answer this question because he has no idea what she is talking about or when he ever acted this way. Finally, Respondent would like to say that he has never personally received a complaint against his license and this is a case where the Complainant promised to pay a funeral bill and has failed to do so. Respondent states that he

is just trying to collect a debt and has not treated her any differently than any other customer in her situation.

**Complaint History:** #38 – Seven (7) closed complaints and one (1) open complaint, none related.

#39 – None

#40 – None

**Recommendation:** Dismiss each complaint against Respondents 38, 39 and 40.

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

Seconded by Jill Horner

Adopted by voice vote

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#### **41. Case No.: L11-FUN-RBS-2011010021**

A field representative conducted an evaluation at Respondent's establishment on March 21, 2011. This establishment is a crematory that contains a human retort and a pet retort. The pet retort is located within ten (10) feet of the human retort, and the Respondent uses the same processing station to pulverize human and animal remains following cremations. The crematory was granted an establishment license in September 2004 with the knowledge that human and pet cremations would take place there. The latest inspection conducted on March 21, 2011, did not result in any known violations. Although there was no documentation showing a commingling of cremains from pets and humans, such a risk does exist when using the same processing station for both humans and pets.

**Response:** Respondent's attorney admits that the pet crematory and human crematory are located within ten (10) feet of each other in the same building, and they admit that the Respondent uses the same processing station to pulverize human and animal remains. Respondent states that they could purchase a new processing station for approximately \$2,500.00 - \$6,200.00, and use separate processing stations for humans and pets. Respondent states that they will install this additional processing station within sixty (60) days of this complaint being determined. The human and pet retorts were installed at the same time in 2004. On June 30, 2004, Respondent faxed a document to the Board stating that the establishment would conduct both human and pet cremations. Additionally, the Respondent provided letters of support from members of the funeral industry in favor of this facility providing cremations for humans and animals. Respondent states that prior evaluations by Board personnel have turned up no violations with the knowledge that the Respondent was providing both human and pet cremations under the same roof. Respondent states that the latest inspection stated that while there is an opportunity for cremains of pets and humans to be



commingled, there is no evidence that such commingling ever took place. Respondent states that they have expended a significant amount of resources in the installation of these retorts, and they would incur considerable expense to construct an additional facility for the pet retort.

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

**Recommendation:** Consent Order with \$1,000 civil penalty and authorization for hearing due to the Respondent using the same processing station for human and pet remains.

Letter of Instruction stating that if the Respondent wishes to continue the pet cremations on the same premises, they have ninety (90) days to do the following:

- There must be a separate entrance from the outside to the pet crematory;
- There must be separate phone lines and addresses as well;
- Separate signage;
- The funeral establishment must have its own physical address, separate from the animal crematory / pet memorialization business, evidenced by a letter of approval from the local zoning authority;
- At a minimum, there must be a solid wall (barrier) between the proposed funeral establishment and the animal crematory / pet memorialization business; and
- Each of the following must be for the sole use of the funeral establishment and separate from any activity other than that incidental to the care and preparation of dead human bodies:
  - 1) Telephone line(s);
  - 2) Logos;
  - 3) Internet web site;
  - 4) Advertisements;
  - 5) Brochures;
  - 6) Business cards; or
  - 7) Other written medium that is likely to be viewed by the public.

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

Seconded by Wayne Hinkle

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

<u>BOARD MEMBERS</u>	<u>YES / NO</u>
PAULA BRIDGES	Yes
WAYNE HINKLE	Yes
JILL HORNER	No
TONY HYSMITH	Yes
CLARK MCKINNEY	Yes

W. T. PATTERSON	Yes
EUGENE WILLIAMS	Yes

The motion passed with a 5 to 1 affirmative vote.

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**42. Case No.: L11-FUN-RBS-2011013811**

A field representative visited this establishment on March 15, 2011. During this visit, the field representative did not issue a citation or warning, but he did observe the following:

- A single door opens from the outside of the establishment and enters a viewing lounge adjacent to the rooms housing each retort.
- The pet retort and processing room is to the left with a viewing window for the family if necessary, while the human retort and processing room is to the right with a viewing window for the family if necessary.
- An arrangement office is in another room with the pet caskets / urns in this same building.
- There is no selection room for human caskets / urns.
- Each room is self-contained with a separate processing station, retort for both pets and humans.
- Only the human side has any refrigeration unit.

**Response:** The Respondent states that the Board was made aware of the dual use of the facility for human and pet cremations prior to issuing the license, and any concerns should have been raised before the license was issued. Respondent states that they took extra care in separating the human and pet cremations by placing an entire room (viewing lounge) between both rooms. Respondent states that their facility has separate processing stations, separate processing drums, separate doors to the rooms, separate supply storage areas, separate wash basins, separate urn fillers, separate desks for paperwork, separate pick up vehicles, separate folding cot, separate towel holders, and separate soap dispensers.

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

**Recommendation:** Letter of Instruction stating that if the Respondent wishes to continue the pet cremations on the same premises, they have ninety (90) days to do the following:

- There must be a separate entrance from the outside to the pet crematory;
- There must be separate phone lines and addresses as well;
- Separate signage;
- The funeral establishment must have its own physical address, separate from the animal crematory / pet memorialization business, evidenced by a letter of approval from the local zoning authority;

- At a minimum, there must be a solid wall (barrier) between the proposed funeral establishment and the animal crematory / pet memorialization business; and
- Each of the following must be for the sole use of the funeral establishment and separate from any activity other than that incidental to the care and preparation of dead human bodies:
  - 1) Telephone line(s);
  - 2) Logos;
  - 3) Internet web site;
  - 4) Advertisements;
  - 5) Brochures;
  - 6) Business cards; or
  - 7) Other written medium that is likely to be viewed by the public.

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

Seconded by Clark McKinney

Adopted by Voice vote

Member(s) noted as voting contrary of the voice vote conclusion: Jill Horner

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**43. Case No.: L11-FUN-RBS-2011013821**

A field representative visited this establishment on March 15, 2011. During this visit, the field representative did not issue a citation or warning, but he did observe the following:

- A single door opens from the outside of the establishment into an office adjacent to the Casket Selection Room.
- There is an arrangement office located within the Casket Selection Room.
- Adjacent to the Casket Selection Room is a wide single door to the human crematory.
- Within the crematory section of the building, there are two (2) sections separated by a wall and another single door.
- One section contains a human retort with a separate processing station.
- The second section contains a pet retort with a separate processing station and a refrigeration unit for pets only.
- If human refrigeration is required, the unit used for this purpose is in another location of the funeral home.

**Response:** Respondent states that they have invested resources in their crematories in order to meet the needs of bereaved families. The pet crematory enables them to serve families who expect a high level of service. These cremation facilities are located separately and operated independently. Respondent states that they will ensure the separation of these two facilities is

maintained by keeping the door between them closed at all times, and adding signage to this effect.

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

**Recommendation:** Letter of Instruction stating that if the Respondent wishes to continue the pet cremations on the same premises, they have ninety (90) days to do the following:

- There must be a separate entrance from the outside to the pet crematory;
- There must be separate phone lines and addresses as well;
- Separate signage;
- The funeral establishment must have its own physical address, separate from the animal crematory / pet memorialization business, evidenced by a letter of approval from the local zoning authority;
- At a minimum, there must be a solid wall (barrier) between the proposed funeral establishment and the animal crematory / pet memorialization business; and
- Each of the following must be for the sole use of the funeral establishment and separate from any activity other than that incidental to the care and preparation of dead human bodies:
  - 1) Telephone line(s);
  - 2) Logos;
  - 3) Internet web site;
  - 4) Advertisements;
  - 5) Brochures;
  - 6) Business cards; or
  - 7) Other written medium that is likely to be viewed by the public.

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

Seconded by Wayne Hinkle

Adopted by Voice vote

Member(s) noted as voting contrary of the voice vote conclusion: Jill Horner

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#### **44. Case No.: L11-FUN-RBS-2011013831**

A field representative visited this establishment on March 22, 2011. During this visit, the field representative did not issue a citation or warning, but he did observe the following:

- A single door opens from the outside of the establishment into an office.
- The office then opens into a warehouse facility.
- There are several garage doors leading from the warehouse to the outside.
- The warehouse contains the following:

- a) Two (2) human retorts
  - b) Two (2) human processing stations
  - c) One (1) refrigeration unit with the body capacity of thirty (30) humans only.
  - d) One (1) pet retort with a separate processing station and two (2) refrigeration units for pets only.
  - e) One (1) additional refrigeration unit for humans only is in the crematory building; however, it is situated on the pet retort processing side.
  - f) This refrigeration unit is no more than five (5) feet from the pet retort. Note – On the date of this inspection, there was a human body in this particular refrigeration unit.
- There are no walls or partitions within the warehouse space, but the two (2) refrigeration units are placed back to back separating the pet processing side and retort from the human processing side and retort.

**Response:** Respondent's attorney responded to these allegations. An additional refrigeration unit is located in close proximity to the pet retort, but that has been the case for three (3) years now, and the issue has never been addressed in past inspections. The Respondent is willing to move the additional refrigeration unit away from the pet retort, and locate it in the area where the human retorts are located. The pet retort was installed in its current location in 2005. There have been four (4) inspections since 2006 in which no violation was noted regarding the pet retort. The field representatives have noted just how clean the facility was and the fact that there appeared to be no evidence of commingling of the cremains of pets and humans. Respondent states that the Board has been aware of the pet retort since 2005, and the Respondent has expended a significant amount of resources in the installation of these retorts. Respondent states that they would incur great expense to construct an additional facility for the pet retort.

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

**Recommendation:** Letter of Instruction stating that if the Respondent wishes to continue the pet cremations on the same premises, they have ninety (90) days to do the following:

- There must be a separate entrance from the outside to the pet crematory;
- There must be separate phone lines and addresses as well;
- Separate signage;
- The funeral establishment must have its own physical address, separate from the animal crematory / pet memorialization business, evidenced by a letter of approval from the local zoning authority;
- At a minimum, there must be a solid wall (barrier) between the proposed funeral establishment and the animal crematory / pet memorialization business; and

- Each of the following must be for the sole use of the funeral establishment and separate from any activity other than that incidental to the care and preparation of dead human bodies:
  - 1) Telephone line(s);
  - 2) Logos;
  - 3) Internet web site;
  - 4) Advertisements;
  - 5) Brochures;
  - 6) Business cards; or
  - 7) Other written medium that is likely to be viewed by the public.

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

Seconded by Wayne Hinkle

Adopted by Voice vote

Member(s) noted as voting contrary of the voice vote conclusion: Jill Horner

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#### **45. Case No.: L11-FUN-RBS-2011013841**

The field representative conducted a routine inspection on March 25, 2011. During this inspection, the field representative found the crematory in the back portion of a local funeral home. The crematory facility has an office, a viewing area, one (1) human retort, and one (1) human cooler that can hold up to six (6) human bodies. Also located in a separate portion of the crematory building is the preparation room for the funeral home. Adjacent to the human retort is an animal retort. On the date of this inspection, the animal retort was inoperable as there was no gas supply line connected to the retort. The cremation facility performs cremations for the funeral home and other funeral establishments.

**Response:** Respondent's attorney responded to this complaint. While there is only one (1) processing station in the establishment, this station has only been used for human remains, and the Respondent states that they will purchase a new processing station in the event it is necessary for pet remains. Both human and pet retort were installed in 2009.

Respondent states that the manager of the facility came before the Board in January 2010 to answer questions regarding the pet retort. Respondent believes legal counsel determined that the Respondent would be "grandfathered in" in the event rules later prohibited such activity. Respondent notes that there was no evidence found during the inspection to lead one to believe there was any commingling of human and pet remains. The Board has been aware of the pet retort since November 2009, and this fact was presented to the Board prior to the establishment license being granted. The respondent has expended a significant

amount of resources in the installation of these retorts, and it would be considerable expense to construct an additional facility for the pet retort.

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

**Recommendation:** Letter of Instruction stating that if the Respondent wishes to continue the pet cremations on the same premises, they have ninety (90) days to do the following:

- There must be a separate entrance from the outside to the pet crematory;
- There must be separate phone lines and addresses as well;
- Separate signage;
- The funeral establishment must have its own physical address, separate from the animal crematory / pet memorialization business, evidenced by a letter of approval from the local zoning authority;
- At a minimum, there must be a solid wall (barrier) between the proposed funeral establishment and the animal crematory / pet memorialization business; and
- Each of the following must be for the sole use of the funeral establishment and separate from any activity other than that incidental to the care and preparation of dead human bodies:
  - 1) Telephone line(s);
  - 2) Logos;
  - 3) Internet web site;
  - 4) Advertisements;
  - 5) Brochures;
  - 6) Business cards; or
  - 7) Other written medium that is likely to be viewed by the public.

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

Seconded by Wayne Hinkle

Adopted by Voice vote

Member(s) noted as voting contrary of the voice vote conclusion: Jill Horner

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**46. Case No.: L11-FUN-RBS-2011010191**

The Complainant is another funeral home owner who filed this complaint when the Respondent failed to release the body of O. Price. The decedent's daughter came in and discussed funeral arrangements. The Complainant called the Respondent and explained that the daughter had signed the release form and both parties agreed to meet the next morning at eight o'clock. The next morning, the Complainant met with the Respondent's manager and the son of the owner of the establishment. The son demanded \$1,300.00 before he would release the body for work already completed. Complainant stated that he had not discussed

that with the owner of the establishment, and the owner then stated that she didn't care about any release forms, the body would remain at the establishment until they paid \$1,300.00. The Complainant left Respondent's establishment and received a call from the decedent's daughter, inquiring about the status of her mother's body. The decedent's daughter informed the Complainant that she only had her mother's body with the Respondent because she had a preneed funeral contract with the establishment; however, that policy lapsed in 2010. The daughter wound up staying with the Respondent's establishment.

**Response:** Respondent states that they received the remains of O. Price on April 11, 2011, and her daughter came to the establishment on April 13, 2011, to make final arrangements for a funeral on April 16, 2011. The family decided to reschedule the service for another date, and on April 17, 2011, the Complainant called demanding that the body be released to their establishment. The Complainant came to the establishment the next day, and Respondent believed the decedent's daughter would be there as well to pay the accumulating charges. Respondent called her and she returned their call on April 18, 2011, to straighten things out. On April 19, 2011, the daughter came to the business along with clothes for her mother to be buried in. The daughter apologized for the misunderstanding, and stated that she did not wish to file a complaint. The daughter then finalized the arrangements, and the funeral services were carried out by the Respondent.

**Complaint History:** Five (5) closed complaints, not related.

**Recommendation:** Consent Order with \$1,000.00 civil penalty and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**47. Case No.: L11-FUN-RBS-2011004741**

**48. Case No.: L11-FUN-RBS-2011020381**

Check number 1666 was written on the personal bank account of the Respondent and signed by the Respondent to pay the renewal fee of his funeral director license. His license was renewed on February 28, 2011, with a new expiration date of February 28, 2013. The check was returned unpaid by the bank for "Insufficient Funds".

At a later date, the Respondent's employer found the Respondent embezzling money from the employer's business. The Respondent admitted to embezzling a



total of ten thousand ninety-two dollars and eighty-four cents (\$10,092.84). Both parties have reached a settlement in this case through a settlement agreement.

**Response:** No response received.

**Complaint History:** No prior complaints.

**Recommendation:** Voluntary Revocation of Funeral Director's license and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

The Board recessed for lunch at 12:40 P.M.

The Board reconvened for business at 2:00 P.M.

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

**LICENSEE REPORT:**

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE  
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF  
JULY 12, 2011 – AUGUST 8, 2011**

**Establishments**

J. E. Herndon Funeral Home 2595 James Road Memphis, TN	New Establishment
Click Funeral Home and Cremations Middlebrook Chapel 9020 Middlebrook Pike Knoxville, TN	Name and Location Changes
Standefer-Reed Funeral Home 50 May Road Dunlap, TN	Name Change

**Individuals**

Lydia Rainell Martin Crossville, TN	Funeral Director/Embalmer
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William L. Terry  
Coldwater, MS

Funeral Director

**CLOSED ESTABLISHMENT REPORT:**

There was no establishments reported closing since the last board meeting.

**DISCIPLINARY ACTION REPORT:**

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED  
BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE  
PERIOD OF JULY 12, 2011 – AUGUST 8, 2011**

Respondent: Harold Hays Brummitt, McKenzie, TN  
Violation: Unprofessional conduct – treated a member of the public in a disrespectful manner by using conversation characterized by irreverence  
Action: \$750 Civil Penalty

Respondent: T. Scot Carter, Cleveland, TN  
Violation: Filing of Quarterly Reports of Apprenticeship Training beyond the allotted time  
Action: Shall not receive credit for the time period(s) affected and shall serve the remaining amount of time necessary to complete training as required by law

Respondent: Christian Funeral Directors, Memphis, TN  
Violation: Failed to provide an itemized written statement at the conclusion of funeral arrangements, charged for services that were neither provided nor requested and failed to file an application for a change of ownership within the allotted time  
Action: \$2000 Civil Penalty plus \$200 Administrative Costs and must submit Change of Ownership Application with the required fees within thirty days

Respondent: Gary L. Crider, Dalton, GA  
Violation: Filing of Quarterly Reports of Apprenticeship Training beyond the allotted time  
Action: Shall not receive credit for the time period(s) affected and shall serve the remaining amount of time necessary to complete training as required by law

Respondent: Jared Lee Howard, Jonesborough, TN  
Violation: Filing of Quarterly Reports of Apprenticeship Training beyond the allotted time

Action: Shall not receive credit for the time period(s) affected and shall serve the remaining amount of time necessary to complete training as required by law

Respondent: Memorial Funeral Chapel, Elizabethton, TN  
Violation: Immoral or unprofessional conduct – willfully failed to pay for services received and paid for merchandise with worthless checks, misrepresentation or fraud in the conduct of the business of the funeral establishment, failed on multiple occasions to obtain and maintain a copy of the current licenses and latest inspection reports of the crematory that the funeral home uses, failed on multiple occasions to affix a permanent identification device to a deceased human remains and multiple aspects of the establishment's price list did not comply with the Funeral Rule

Action: \$12,750 Civil Penalty and agree that the establishment license shall be suspended for six (6) months in addition to any other lawful discipline should the establishment be found to have willfully failed to respond to a complaint within a period of the next two years

Respondent: J. A. Stalcup, Jr., Elizabethton, TN  
Violation: Immoral or unprofessional conduct – willfully failed to pay for services received and paid for merchandise with a worthless check on multiple occasions and misrepresentation or fraud in the conduct of the business of the funeral establishment

Action: \$3500 Civil Penalty and agree that his licenses as a funeral director and an embalmer shall be suspended for six (6) months in addition to any other lawful discipline should licensee be found to have willfully failed to respond to a complaint within a period of the next two years

**OPEN COMPLAINT REPORT:**

As of August 5, 2011 there were 105 open complaints.

At the conclusion of the Executive Director's Report, a motion was made by Clark McKinney to accept it.

Seconded by W. T. Patterson

Adopted by voice vote

**ESTABLISHMENT APPLICATIONS:**

**COMPANION FUNERAL & CREMATION SERVICE**

**2415 GEORGETOWN ROAD NW  
CLEVELAND, TN**

**New Establishment**

**Ownership: Partnership**

**Owner(s): Robert Cody and wife, Shelli B. Cody, of Cleveland, TN**

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

Adopted by voice vote

Member(s) noted as voting contrary of the voice vote conclusion: Jill Horner

**CHRISTIAN FUNERAL DIRECTORS SOUTH EAST  
3626 NEW GETWELL ROAD  
MEMPHIS, TN**

**New Establishment**

**Ownership: Corporation**

**Owner(s): Christian Funeral Directors, Inc., Memphis, TN**

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

The Executive Director was given administrative authority to approve this license subject to receipt of original documents needed and a letter from the local zoning authority indicating that parking and sewer requirements had been met.

Adopted by voice vote

**CHRISTIAN FUNERAL DIRECTORS, INC.  
2615 OVERTON CROSSING STREET  
MEMPHIS, TN**

**Changes of Name and Ownership**

**Ownership: Corporation**

**Owner(s): Christian Funeral Directors, Inc., Memphis, TN**

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

The Executive Director was given administrative authority to approve license subject to receipt of original documents needed.

Adopted by voice vote

**INDIVIDUAL APPEARANCE:**

**Matthew Kenneth Mardis  
Olive Branch, Mississippi**

**Former Apprentice Funeral Director,  
Apprentice Embalmer and Student**

This individual appeared before the Board for the sole purpose of obtaining approval to sit for the Tennessee Laws, Rules and Regulations Examination. The applicant had been advised that he should be prepared to answer questions concerning his failure to file a "Quarterly Report of Apprenticeship Training" for each of the following periods: 1) July – September 2008, 2) October – December 2008, 3) January – March 2009, and 4) April 1, 2009 – April 23, 2009.

Upon motion by Jill Horner, this individual's request to be approved to sit for the Tennessee Laws, Rules and Regulations Examination was Denied. A request by Mr. Mardis may be brought back before the Board for review contingent upon prior receipt of sworn affidavits from Lee T. Murphy and Chambliss J. Davidson, his funeral director and embalmer supervisors, and any further documentation from Mr. Mardis that the Board might review to sufficiently confirm the completion of his apprenticeship.

Seconded by Clark McKinney

Adopted by voice vote

**ADJOURN:**

A motion was made by Clark McKinney to adjourn.

Seconded by Jill Horner

Adopted by voice vote

There being no further business, the meeting was adjourned at 3:25 P.M.

Respectfully submitted,

*Robert B. Gribble*

Robert B. Gribble, CFSP  
Executive Director