

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

APRIL 10, 2012

President Clark McKinney 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 Clark McKinney, President; Tony Hysmith, Vice President, Wayne Hinkle, W. T. Patterson, Robert Starkey and Anita Taylor. Note: Board member Jane Gray Sowell arrived at 10:06 A.M. during the discussion of Case No. 1 of the Legal Report.

Staff members present were Robert Gribble, Executive Director; Benton McDonough, Assistant General Counsel; and Lisa Mosby, Licensing Technician.

ADOPTION OF AGENDA:

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

Seconded by Wayne Hinkle

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by W. T. Patterson to approve the Minutes of the March 13, 2012, Board Meeting.

Seconded by Wayne Hinkle

Adopted by voice vote

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

1. Case No.: L11-FUN-RBS-2011029621

Complaint:

- On September 27, 2011, and October 4, 2011, an ad appeared in the local newspaper stating that the Respondent was offering a discount of 10% on Pre-Arrangement Packages, and up to 5% on cremation packages.
- The ad went on to state that the Respondent was the county's only family owned facility, which is not true, as other funeral homes are owned by families.
- The ad states that Respondent has the county's lowest funeral costs.

- Complainant believes Respondent is selling pre-need services for less than at-need services, which is a violation.
- Complainant also believes Respondent is guilty of inaccurate or dishonest advertising.

Response:

- Pre-need Discounts
 - o Respondent provided the Statement of Funeral Goods and Services Selected with 10% discount at need for Norman Lee Miller.
 - o Respondent states there is no violation since their General Price List, dated September 15, 2011, clearly states a 10% discount is available on package services, and the GPL was approved by attorney Scott Gilligan.
- Dishonest or Inaccurate Advertising
 - o This is not the case, since the ad was discussed with Mr. Gilligan prior to running the ad.
 - o After discussing the matter with Mr. Gilligan, he requested that we add an asterisk with the "Represents 10% discount over itemized basis for same services with the exclusion of basic services."
 - o Respondent then provided a copy of an ad published by the Complainant in which the Complainant stated that their funeral home was, "Increasingly preferred by families of our community since 1988.
- Lower Prices
 - o Respondent stated a spreadsheet submitted by the Complainant is in no way indicative of who has the lower prices.
 - o Respondent compared General Price Lists effective in 2011, and it demonstrates that the Respondent's basic service charge of \$1,995.00 is clearly lower than other competitors.
- Inspections
 - o Respondent points out that they were not written up for pre-need violations when state inspections took place in October 2011.

History:

- One (1) closed complaint, not related; and, one (1) open complaint, related.

Recommendation:

- Letter of Warning.

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

Seconded by Robert Starkey

Adopted by voice vote

Note: Jane Gray Sowell was present but did not vote regarding this complaint due to not arriving at the meeting until this case was in the process of being presented by the Assistant General Counsel.

2. Case No.: L11-FUN-RBS-2011030111

Complaint:

- Complainant states that she went to retrieve her brother's cremains from the Respondent on October 20, 2011.
- Complainant states that an employee of the Respondent gave her the cremains and she went to run several errands.
- When the Complainant returned home, she and her husband discovered that she was given the cremains of another individual, not her brother's cremains.
- After contacting her sister and brother regarding the issue, she called the Respondent to explain she was given the wrong cremains.
- The employee stated that she shouldn't tell anyone about this, as it would hurt their business.
- The employee informed the Complainant that they would come to her home and provide her with the right cremains of her brother.
- An employee of the Respondent came to exchange the cremains and told the Complainant that the person who gave her the wrong cremains had only been working a few months and he was fired for his incompetence, but the Complainant states that she later found this to be a lie, as the first employee is the grandson of the owner of the establishment.
- The brother's cremains lacked a cremation certificate with the box and Complainant had to make two trips to the funeral home to get a copy of the certificate which was a Photostat copy.
- The employees were very rude to the Complainant and she states that the first employee who had reportedly been fired followed her out to the parking lot to explain his relationship to the owner of the establishment.
- Complainant states that they are having a difficult time as they are not sure whether the cremains are actually those of her brother, and they had to borrow the money in order to pre-pay for the services of her brother (\$1,653.00).
- Complainant states that they are poor people, and her brother did not have insurance.
- Complainant is asking to be reimbursed the full amount of \$1,653.00.
- Complainant included a copy of a note from the Respondent apologizing for the error.

Response:

- When the Complainant came to the establishment to retrieve her brother's cremains, there was only one employee present in the establishment.
- This employee made a mistake and gave the family the wrong cremains.
- Another employee took the correct cremains to the Complainant the next day and told her how sorry they were for the mistake.
- The Respondent states that they have provided services for this family in the past, and they are very sorry for the mistake.

History:

- Seven (7) closed complaints, none related.

Recommendation:

- Consent Order with \$1,000.00 civil penalty and authorization for hearing.

A motion was made by Jane Gray Sowell to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

3. Case No.: L11-FUN-RBS-2011030571

Complaint:

- Complainant's father passed away and the Emergency Medical Technicians notified the Respondent establishment where the decedent and his wife had a burial policy.
- The decedent had not even been deceased for fifteen minutes when a member of the Respondent's staff called regarding who would be paying for the funeral.
- She was rude, disrespectful, and called six times before the family got to the funeral establishment.
- Respondent only sent one individual to remove the decedent's body, and he needed the help of the EMTs.
- The family got to the funeral establishment and met with the employee who had previously called them on numerous occasions.
- The Complainant states that they told the employee that their cousin would pay for the entire funeral.
- The employee then asked for the name and phone number of the cousin and stated that they wanted the services paid in full.
- Complainant and her sister then decided to transport the decedent's body to a different funeral establishment, and the employee then demanded that the Complainant pay \$190.00 for transporting the decedent.

Response:

- Respondent wants to apologize for any misunderstanding that might have occurred.
- It would never be their intent to cause a misunderstanding or cause any hurt feelings.

History:

- One (1) open related complaint; one (1) closed unrelated complaint.

Recommendation:

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

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

Seconded by Robert Starkey

Adopted by voice vote

4. Case No.: L11-FUN-RBS-2011031051**Complaint:**

- On November 9, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Statement of Funeral Goods and Services Selected
 - o Charges listed on the SFGSS were not itemized.
 - o The SFGSS for Linda Atkins bears a line item description of three items under the sub-heading of "Cash Advances".
 - o No itemization was provided for the \$1,260.00 charge.
- Statement of Funeral Goods and Services Selected
 - o The SFGSS for Terry Goldberg bears a line item description of two items under the sub-heading "Merchandise," on line item designated for urns.
 - o No itemized description is provided for the \$455.00 charge.
- Statement of Funeral Goods and Services Selected
 - o The SFGSS for James Shubert bears a line item description of two items, under the sub-heading "Automotive Equipment."
 - o No itemized description is provided for the \$300.00 charge.
- Casket Price List
 - o A casket bears a price tag with a higher price than is listed on the CPL for the casket.
 - o The price card affixed to the casket read "Newport Cremation Casket - \$1,950.00"

- The CPL presented at inspection lists the price of the “Newport” at \$1,750.00.

Response:

- The error on the CPL was corrected during the inspection, but the other violations have been turned over to the corporate office in order to make adjustments.

History:

- Five (5) closed complaints, one (1) not related and four (4) with other TCA and rules violations.

Recommendation:

- Consent Order with \$1,000.00 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

5. Case No.: L11-FUN-RBS-2011031061

Complaint:

- On November 8, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Statement of Funeral Goods and Services Selected
 - On the SFGSS of Alaric Johnson, the Respondent lists a charge of \$1,000.00 for line item “Basic Services of Funeral Director & Staff,” and a charge of \$2,000.00 for line item “Direct Cremation.”
 - The mandatory disclosure that must accompany the “Basic Services of Funeral Director & Staff” on the GPL reads: “This fee for our basic services and overhead will be added to the total cost of the funeral arrangements you seek. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains).”
 - Under the subheading “Direct Cremation” on the GPL, the disclosure reads, “Our charge for a direct cremation includes: Basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; transportation to crematory; necessary authorizations; and cremation.”
 - The Respondent lists a price of \$1,865.00 for a “Direct Cremation” on their GPL, and the GPL states that “transportation to crematory” is already

- included; however, they charged for it again in the case of the decedent, Alaric Johnson.
- The manager explained to the field representative that they provided embalming, a viewing, and a memorial service at another location. Based upon this information, a Direct Cremation did not take place.
 - General Price List
 - Receiving of Remains from another Funeral Home – listed at \$2,275.00, but exceeds the itemized total for the items listed as included.
 - Outer Burial Container Price List
 - The required disclosure language on the OBCPL does not comply, as the Respondent changed the FTC language.

Response:

- Statement of Funeral Goods and Services Selected
 - Respondent wants to apologize for not itemizing the SFGSS correctly; this was not their intent.
- General Price List
 - Respondent has corrected the errors on the GPL.
- Outer Burial Container Price List
 - Respondent has corrected the disclosure language on the GPL.

History:

- No prior complaints.

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 Jane Gray Sowell

Adopted by voice vote

6. Case No.: L11-FUN-RBS-2011031231

7. Case No.: L11-FUN-RBS-2011031232

Complaint:

- On December 5, 2011, the Board received a complaint from the Complainant, a physician who works as a medical examiner.
- The Complainant stated that on November 7, 2011, they released the remains of Jeraldine Waynet Coppage to the Respondent.
- An original signed certificate of death, signed by the Complainant, was released to the funeral home with the remains.

- On December 2, 2011, an employee of the Complainant received a copy of the filed certificate of death from the Vital Records Section of the Tennessee Department of Health.
- Complainant states that it was immediately evident that this was not the original signed death certificate released with the remains on November 7, 2011.
- Also, the Complainant states that neither did they sign line 26a.

Response:

- Respondent #7, the establishment manager, provided a response in this case.
- The Respondent stated that when death certificates are typed and ready to be sent out to be certified, Respondent #7 reviews the certificate to make sure there are no issues.
- Respondent states that the signature of the funeral director does not match their signature on the death certificate in question.
- Respondent #7 believes the death certificate was typed incorrectly and was re-typed and signed for the Complainant and Respondent #7 to keep the error from being found by Respondent #7.
- Respondent #7 states that they assume the staff member completed this action thinking this would not be noticed since it was a pending death certificate, and not the final death certificate.
- Respondent #7 states that the typing of death notices and certificates is something they are extremely particular with, and with their signature not being on this certificate, they realize it was probably done with no malice, but for protection of the employee so that Respondent #7 could not find the error.
- Respondent #7 states that they have taken steps to correct the issue and regret this occurred.

History:

- Respondent #6 - One (1) closed complaint, not related.
- Respondent #7 – No prior history.

Recommendation:

- Respondent #6 – Consent Order with \$1,000.00 civil penalty and authorization for hearing.
- Respondent #7 – Consent Order with \$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-2011031241

9. Case No.: L11-FUN-RBS-2011031242

Complaint:

- On November 23, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Funeral establishment (Respondent #8)
 - o Fixed Place of Business
 - During the inspection, it was determined that the Respondent had a crematory service on the same property as the funeral establishment.
 - On the web site, they advertise about the animal crematory and the services that they provide along with the human crematory and its services.
 - The crematory service has an animal retort that has been added since the last inspection performed in 2010.
 - The animal retort and human retort are housed in the same building with no separating walls and only one refrigeration unit.
 - The field representative learned that the refrigeration unit was not used on the animals; however, nothing prevents this from happening, as they are side-by-side, parallel with no wall, approximately three (3) feet apart.
 - o Use of Names of Unregistered Individuals
 - The funeral establishment has cards issued to two (2) employees without a specific title.
- Crematory (Respondent #9)
 - o Fixed Place of Business
 - During the inspection, it was determined that the Respondent had a crematory service on the same property as the funeral establishment.
 - On the web site, they advertise about the animal crematory and the services that they provide along with the human crematory and its services.
 - o Use of Names of Unregistered Individuals
 - The funeral establishment has cards issued to two (2) employees without a specific title.

Response:

- Respondent states that the funeral “business” is under attack from many angles, the most disappointing of which is the Funeral Board.
- Archaic regulations stifle growth and certainly do not protect funeral directors or the public from those seeking to dismantle a business based on trust and tradition.
- As a businessman, the Respondent has extended their base of services so that they may assist those in need with the full array of services connected with the loss of a loved one – human or pet – whether the family’s choice is burial or cremation, including all merchandise from cemetery lots to markers and all the necessities in between and after the death.
- The Pet Care Service handles the final disposition of the “extended family” pets.

- Pets can be anything a person loved and cared for, and are therefore willing to pay to bury or cremate.
- Losing a pet can be as devastating as losing a human loved one.
- Housing the pet retort in the same building as the human retort was a practical decision, as was locating the pet cemetery in the human cemetery, though that was a decision made long before the Respondent purchased that cemetery.
- Proximity is only irrelevant to an unethical person, and Respondent states that they are ingrained with a code of ethics that will not allow them to commingle the remains of animals and humans.
- Both retorts are clearly marked and equipment for each process is separated.
- Pet refrigeration is in another building but is rarely used because pets are usually cremated immediately upon arrival.
- This violation is encouraging me to commit fraud by hiding a service that I provide.
- Building a wall within the building to physically separate the two retorts is an option, but ventilation and employee safety issues will need to be researched.
- As for the violations regarding the business cards, the titles were not listed on the cards because one individual has multiple responsibilities within the business, and the other person had their own cards printed when they retired from the business.
- Business cards will be reprinted with "Office Manager" as the title on one card, and the other person had the name of the funeral establishment removed from their card following retirement.

History:

- Respondent #8 – One (1) closed complaint with related TCA violation.
- Respondent #9 – Two (2) closed complaints, not related.

Recommendation:

Respondent #8 – Consent Order with \$250.00 civil penalty and authorization for hearing regarding business cards. Also, a Letter of Instruction stating: In the event you wish to continue providing pet cremations on the same premises as human cremations, the following changes should be made within ninety (90) days of receipt of this letter:

- a. There must be a separate entrance from the outside to the pet crematory;
- b. There must be separate signage for both businesses;
- c. The funeral establishment must have its own physical address, separate from the animal crematory or pet memorialization business, and this must be evidenced by a letter of approval from the local zoning authority;
- d. At a minimum, there must be a solid wall (barrier) between the proposed funeral establishment and the animal crematory or pet memorialization business; and
- e. Each of the following must be for the sole use of the proposed funeral establishment and separate from any activity other than that incidental to the care and preparation of dead human bodies:
 - a. Telephone line(s);

- b. Logo(s);
- c. Internet web site(s);
- d. Advertisement(s);
- e. Brochure(s);
- f. Business cards; or
- g. Other written material likely to be viewed by the public.

Respondent #9 – Consent Order with \$250.00 civil penalty and authorization for hearing regarding business cards. Also, a Letter of Instruction stating: In the event you wish to continue providing pet cremations on the same premises as human cremations, the following changes should be made within ninety (90) days of receipt of this letter:

- a. There must be a separate entrance from the outside to the pet crematory;
- b. There must be separate signage for both businesses;
- c. The funeral establishment must have its own physical address, separate from the animal crematory or pet memorialization business, and this must be evidenced by a letter of approval from the local zoning authority;
- d. At a minimum, there must be a solid wall (barrier) between the proposed funeral establishment and the animal crematory or pet memorialization business; and
- e. Each of the following must be for the sole use of the proposed funeral establishment and separate from any activity other than that incidental to the care and preparation of dead human bodies:
 - a. Telephone line(s);
 - b. Logo(s);
 - c. Internet web site(s);
 - d. Advertisement(s);
 - e. Brochure(s);
 - f. Business cards; or
 - g. Other written material likely to be viewed by the public.

President Clark McKinney recused himself from participation in the proceedings of Cases #8 and #9 and turned the chair over to Vice President Tony Hysmith for these cases.

A motion was made by Jane Gray Sowell to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

10. Case No.: L11-FUN-RBS-2011031251

Complaint:

- On October 18, 2011, a field representative conducted a routine inspection of the Respondent establishment.

- During the inspection, it was determined that fifteen (15) bodies had been cremated during the calendar year.
- The Respondent provided the correct name, telephone number and address of the crematory used on one (1) cremation authorization form; however, the remaining fourteen (14) cremation authorization forms lacked the correct name, telephone number and address of the crematory used.

Response:

- The Respondent states that the name, telephone number, and address of the crematory have been added to the cremation authorization form.
- A computer program purchased three (3) years ago unintentionally omitted the required crematory information on the cremation authorization form.

History:

- Three (3) prior complaints, none related.

Recommendation:

- Consent Order with \$1,400.00 civil penalty and authorization for hearing.

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

Seconded by Anita Taylor

Adopted by voice vote

11. Case No.: L11-FUN-RBS-2011031281

Complaint:

- On October 31, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- License of Embalmer
 - o The current license of the Respondent's embalmer was not available for inspection.
- Misleading, deceptive or unfair, acts or practices
 - o General Price List – The low-end range is inconsistent with the Outer Burial Container Price List.
 - o General Price List – Under direct cremation, the range of prices must be added.
 - o General Price List – Direct cremation with container provided by the purchaser must be added.
 - o General Price List – Direct cremation with alternative container (heavy cardboard) must be added.
 - o General Price List – Under immediate burial, range of prices must be added.

- General Price List – Under immediate burial, with casket provided by purchaser must be added.
- Changes
 - The Statement of Funeral Goods and Services Selected must refer to the funeral establishment by the name listed on the establishment application approved by the Board.

Response:

- License of Embalmer
 - The embalmer's license is now on file for inspection.
- Misleading, deceptive or unfair, acts or practices
 - To solve the issues with these findings, Respondent states that they have reverted back to the pre-2011 price sheet, which was previously found to be in compliance.
- Changes
 - Respondent states that last year, the company fixed this problem by purchasing new contracts with the correct name of the establishment; however, due to a misunderstanding with staff at that location, the location employees continued to use the old contracts with the wrong name printed on them.
 - The contracts have since been changed, and the employees at the location now understand which contracts to use.

History:

- Two (2) closed complaints, one (1) with related violations, one (1) with unrelated violations.

Recommendation:

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

President Clark McKinney recused himself from participation in the proceedings of this case and turned the chair over to Vice President Tony Hysmith for this case.

A motion was made by Robert Starkey to accept Counsel's recommendation.

Seconded by Anita Taylor

Adopted by voice vote

12. Case No.: L11-FUN-RBS-2011031291

Complaint:

- On November 15, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Statement of Funeral Goods and Services Selected

- The Respondent failed to disclose a cash advance markup (crematory fee from third party) on the SFGSS.
- A fee of \$500.00 was incorrectly listed as a “Direct Cremation” when such was not the case.
- The purchaser was charged a “One Day Funeral Package” for \$2,395.00, Appalachian Oak Rental Casket for \$795.00; and “Direct Cremation” for \$500.00.
- Crematory Inspection Report
 - Respondent failed to maintain a copy of the latest crematory inspection report for the crematory utilized by this establishment.

Response:

- Statement of Funeral Goods and Services Selected
 - Respondent admits that the fees were not properly depicted on the SFGSS and states that this was unintentional.
- Inspection Report
 - Respondent admits that a copy of the latest inspection report was unintentionally not on file.

History:

- Two (2) closed complaints, one (1) with related violations, one (1) with different violations.

Recommendation:

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

A motion was made by Tony Hysmith for a Consent Order with \$500.00 civil penalty and authorization for hearing with evidence provided to counsel's satisfaction regarding compliance with the statutes and rules pertaining to the Statement of Funeral Goods and Services Selected.

Seconded by Wayne Hinkle

Adopted by voice vote

13. Case No.: L11-FUN-RBS-2011031301**Complaint:**

- On November 16, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Current License of Funeral Director
 - The current license of two (2) funeral directors was not available for inspection.
- Current License of Embalmer
 - The current license of one (1) embalmer was not available for inspection.
- License of Crematory Facilities

- The license of the crematory utilized by this Respondent was not available for inspection.
- Misleading, deceptive or unfair, acts or practices
 - General Price List – Under immediate burial, the high-end range needs to be corrected.
 - General Price List – Under immediate burial, with cloth covered casket, the price is inconsistent with the Casket Price List.
 - Casket Price List – This Respondent uses a catalogue form in lieu of a Casket Selection Room for the consumer to select merchandise.
 - Twelve (12) caskets need to be added to the catalogue.
 - Outer Burial Container Price List – This Respondent uses a catalogue form in lieu of a Casket Selection Room for the consumer to select merchandise.
 - Twelve (12) outer burial containers need to be added to the catalogue.

Response:

- Licenses of Funeral Director and Embalmer
 - Respondent states they have been open for a short amount of time, and they are still in the construction phase of their establishment.
 - Respondent states they still have old records that are being put in place and they misplaced their current licenses during this move.
- Utilization of Licensed Crematory Facility
 - Respondent states that due to the fact that they are a new establishment, all previous cremations would have originated at their previous location.
- Misleading, deceptive or unfair, acts or practices
 - Respondent believes this was an oversight on their part, and their casket sales representative added some new pages when updating their casket catalogue.
 - As for the Outer Burial Container Price List, the Respondent believes these items are currently listed on their OBCPL, and it was an oversight if this page was missing.

History:

- No prior complaints.

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

Complaint:

- On November 2, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Utilization of Crematory Facilities
 - o The latest inspection report for the crematory utilized by this Respondent was not available for inspection.
 - o All cremation authorization forms must be signed by a licensed funeral director.
- Preparation Room
 - o The last body was embalmed on October 29, 2011.
 - o As of November 2, 2011, the room had not been cleaned in any manner.
 - Soiled and dirty linen present.
 - Blood splatter not cleaned up.
 - Soiled instruments on counters.
 - Numerous bags of garbage.
 - Materials used neither properly stored nor covered by lids.

Response:

- Utilization of Crematory Facilities
 - o The Respondent had a copy of what they believed to be the last official inspection report from the crematory used.
 - o The crematory faxed the latest inspection report prior to the conclusion of the inspection.
 - o Respondent believes they did have cremation authorization forms signed by licensed funeral directors.
 - o The field representative saw an "in-house" copy of the cremation authorization form and the original signed copy was sent to the crematory.
 - o The crematory used will not perform a cremation unless they receive a complete cremation authorization form.
 - o Respondent has enclosed a signed copy.
- Preparation Room
 - o Respondent states that this matter as an owner is not only unexplainable, but hurtful.
 - o After forty (40) years in the business, it is beyond the Respondent that they allowed such a matter like this to occur.
 - o Respondent met with all parties responsible for the maintenance of the preparation room, and all of the matters mentioned in the citation have been addressed and corrected.

History:

- Three (3) closed complaints, one (1) with related TCA violations.

Recommendation:

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

A motion was made by Robert Starkey to accept Counsel's recommendation.

Seconded by W. T. Patterson

Adopted by voice vote

15. Case No.: L11-FUN-RBS-201102031

Complaint:

- This complaint was originally presented to the Board on May 10, 2011.
- The decedent and four (4) other individuals perished in a fire that broke out in their residence.
- Complainant states that they are unable to get a clear answer from the funeral home or estranged family members regarding the disposition of decedent's remains.
- The Respondent allowed the step-father (who lost his wife in the fire) to make final arrangements for his step-son too, even though the step-son's biological father was still alive and known to the parties involved.

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, not cremated.

History:

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

Original Decision:

- Request for Investigation.
- Following an investigation, it was determined that the Respondent allowed the step-father of the decedent to make final arrangements for the decedent instead of the decedent's biological father who was alive and well in the same small town.

Recommendation:

Because the Respondent failed to contact the decedent's next of kin (biological father), and the Respondent had knowledge that the step-father was not the next of kin, issue a consent order with a \$1,000.00 civil penalty and authorization for hearing.

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

Seconded by Robert Starkey

Adopted by voice vote

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
MARCH 13, 2012 – APRIL 9, 2012**

Individuals

Nathanial Isiah Barnwell Mount Juliet, TN	Funeral Director/Embalmer
Brent Jason Buchanan Bristol, TN	Funeral Director/Embalmer
Molly Roseann Hallowell Nashville, TN	Funeral Director/Embalmer
Randell Ted Hargis Horn Lake, MS	Funeral Director/Embalmer
Sara Kaitlyn Kilgore Tullahoma, TN	Funeral Director/Embalmer
Kyle Robert Pete Memphis, TN	Funeral Director/Embalmer

CLOSED ESTABLISHMENT REPORT:

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

- **J. E. Herndon Funeral Home, 1781 Winchester Road, Memphis, TN**

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED BY
THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD
OF MARCH 13, 2012 – APRIL 9, 2012**

Board of Funeral Directors and Embalmers

Respondent: Baxter Brothers Funeral Home, Columbia, TN
Violation: Establishment operated while the funeral director's license of the manager was invalid, failed to retain cremation authorization forms,

- failed to make available for inspection a copy of an embalmer's license and failed to retain a copy of the Statement of Funeral Goods and Services Selected
- Action: \$750 Civil Penalty
- Respondent: Marcus Tyrone Baxter, Columbia, TN
- Violation: Practiced as funeral director and acted as the manager of an establishment while funeral director's license was invalid
- Action: \$500 Civil Penalty
- Respondent: Angela Elaine Campbell, Elgin, South Carolina
- Violation: Immoral or unprofessional conduct, misrepresentation or fraud in the conduct of the business of the funeral establishment and violation of statutes pertaining to the prearrangement of a funeral (received payment on multiple occasions for a single premium prearranged insurance policy but instead submitted an application much later for a three year pay policy, forged a policyholder's name on an insurance application and used her own address for all premium notices and correspondence pertaining to the policies)
- Action: Revocation of funeral director's license
- Respondent: Foster & Lay Funeral Home, Tracy City, TN
- Violation: Multiple aspects of the establishment's prices lists and contract did not comply with the Funeral Rule
- Action: \$250 Civil Penalty
- Respondent: Heritage Funeral Home & Cremation Services, LLC, Columbia, TN
- Violation: Establishment gave or tended to give the impression that an individual associated was licensed to practice as a funeral director or embalmer when the individual was not actually licensed
- Action: \$250 Civil Penalty
- Respondent: High's, Inc., McMinnville, TN
- Violation: Provided an incorrect name, address and phone number of a crematory to the authorizing agent and failed to maintain a copy of the current license and latest inspection report for the crematory which the funeral home used
- Action: \$250 Civil Penalty
- Respondent: Weaver Funeral Home, Knoxville, TN
- Violation: An aspect of the establishment's prices list did not comply with the Funeral Rule
- Action: \$500 Civil Penalty

OPEN COMPLAINT REPORT:

As of April 9, 2012 there were 132 open complaints.

A motion was made by Robert Starkey to accept the Executive Director's Report.

Seconded by Wayne Hinkle

Adopted by voice vote

INDIVIDUAL APPLICATION:

**Eugene Lee Burgin, Jr.
Memphis, TN**

**Funeral Director/Embalmer
Reciprocity**

Upon motion by Robert Starkey and seconded by Anita Taylor, based upon application record, this individual was approved for licensure.

Adopted by voice vote

ESTABLISHMENT APPLICATION:

**NEPTUNE SOCIETY
1187 OLD HICKORY BOULEVARD, SUITE 100
BRENTWOOD, TN**

New Establishment

Ownership: Corporation

**Owners: Neptune Management Corporation, a California corporation, 1250
South Pine Island Road, Suite 500, Plantation, Florida 33324-4419**

A motion was made by Wayne Hinkle to approve the establishment application.

Seconded by Jane Gray Sowell

President Clark McKinney announced there would be roll call vote, and the board members voted as follows:

<u>BOARD MEMBERS</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
WAYNE HINKLE	X		
TONY HYSMITH		X	
CLARK McKINNEY	X		
W. T. PATTERSON		X	
JANE GRAY SOWELL		X	
ROBERT STARKEY		X	
ANITA TAYLOR			X

Motion failed, two (2) Yes, four (4) No, and one (1) present but not voting.

After discussion and the Assistant Legal Counsel advising the Board that the applicant appeared to have met all requirements, Jane Gray Sowell made a motion to reconsider the application.

Seconded by Wayne Hinkle

Adopted unanimously by voice vote

After further discussion, Wayne Hinkle made a motion to approve the application.

Seconded by Robert Starkey

President Clark McKinney announced there would be roll call vote, and the board members voted as follows:

BOARD MEMBERS	YES	NO
WAYNE HINKLE	X	
TONY HYSMITH		X
CLARK McKINNEY	X	
W. T. PATTERSON	X	
JANE GRAY SOWELL		X
ROBERT STARKEY	X	
ANITA TAYLOR	X	

Motion adopted, five (5) Yes and two (2) No.

ADJOURN:

A motion was made by Anita Taylor to adjourn.

Seconded by Tony Hysmith

Adopted by voice vote

There being no further business, the meeting was adjourned at 12:11 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director