

**TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**MINUTES OF BOARD MEETING**

**APRIL 9, 2013**

President Tony Hysmith called the meeting to order at 10:01 A.M. in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Tony Hysmith, President; Wayne Hinkle, David Neal, Jane Gray Sowell, and Robert Starkey. Board members absent from the meeting were W. T. Patterson, Vice President; and Anita Taylor.

Staff members present were Robert Gribble, Executive Director; Benton McDonough, Assistant General Counsel; Adrian Chick, Assistant General Counsel; and Lisa Mosby, Administrative Assistant.

**ADOPTION OF AGENDA:**

A motion was made by Robert Starkey to approve the Agenda as printed.

Seconded by David Neal

Adopted by voice vote

**APPROVAL OF MINUTES:**

A motion was made by Wayne Hinkle to approve the Minutes of the March 12, 2013 Board Meeting.

Seconded by Robert Starkey

Adopted by voice vote

**AGREED ORDER:**

**ADRIAN CHICK, ASSISTANT GENERAL COUNSEL**

**Docket No. 12.21-12.399A**

- Respondent: Rick W. Greene, Sneedville, Tennessee
- Funeral Director License No. 4695 and Embalmer License No. 4256

The State was represented by Assistant General Counsel Adrian Chick. Counsel for the Respondent was Attorney Paul J. Bruno.

A motion was made by Wayne Hinkle to approve the Agreed Order as presented to the Board.

Seconded by Robert Starkey

Adopted by voice vote

Member(s) noted as voting to the contrary of the voice vote conclusion: Jane Gray Sowell

**LEGAL REPORT:**

**BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL**

Abbreviations:

GPL – General Price List

CPL – Casket Price List

OBCPL – Outer Burial Container Price List

SFGSS – Statement of Funeral Goods and Services Selected

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**1. Case No.: L13-FUN-RBS-2013000801**

**Complaint:**

- On September 27, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- T.C.A. 62-5-316 - Unrenewed License
  - o The establishment license for the Respondent expired on June 30, 2012, and was not renewed prior to the inspection.
  - o During that period of time, the Respondent conducted fifteen (15) funeral services while in possession of an invalid license.
  - o Note: The Respondent has since renewed their establishment license.

**Response:**

- Respondent sincerely apologized.
- Respondent states that the manager at the time was in poor health and was in the process of being replaced when the establishment license expired.
- Respondent assures the Board that this will not happen again.

**History:**

- No prior complaints.

**Recommendation:**

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

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

Seconded by David Neal

Adopted by voice vote

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**2. Case No.: L13-FUN-RBS-2013000821**

**3. Case No.: L13-FUN-RBS-2013000822**

**Complaint:**

- On August 28, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Licensing
  - o Respondent #3, who is neither a licensed funeral director nor an apprentice, has been meeting with families of deceased individuals in arrangement conferences without the benefit of a licensed funeral director being present in the room at the time the meeting was taking place.
  - o Funeral directors employed by this establishment stated that they would occasionally check in during the arrangement conferences, but did not stay with the Respondent during the entire arrangement process, a practice that has taken place for two (2) years.
  - o Contracts are completed by Respondent #3 and signed off by a licensed funeral director.
- Utilization of Crematory
  - o The latest inspection report for the crematory utilized by this establishment was not available for inspection.
- Funeral Rule
  - o On one (1) SFGSS, the description of merchandise must be supplied on the contract prior to the family of the deceased signing the document.
  - o On one (1) SFGSS, the reason for embalming was not provided.

**Response:**

- An attorney responded on behalf of Respondent #2.
  - o Respondent asks that this complaint be dismissed because the law only requires a licensed funeral director to be on the premises and not necessarily in the presence of a funeral director.
  - o Respondent states that licensed funeral directors would go in and out of meetings while Respondent #3 met with the families and were on the premises; furthermore, Respondent states that Respondent #3 was registered to sell preneed funeral contracts and therefore was qualified to meet with these families.
- Another employee provided letters stating that Respondent #3 met with families and thought that under the instruction of a licensed funeral

- director, he could present funeral expenses to families on a contract and have a licensed funeral director sign the contract at the conclusion of the meeting.
- The employee noted that they made the families aware of their presence on the premises during the arrangement conferences and allowed Respondent #3 to carry out the arrangements, merchandise selection and payment schedule.
  - Further, this employee has signed a statement admitting that they know this practice is now wrong.

**History:**

- Respondent #2 – Two (2) closed complaints.
  - o Complaint No. 2009012811 – Discrepancies on price lists and SFGSS.
    - Presented: September 8, 2009.
    - Decision: Consent Order with \$250.00 civil penalty.
    - Status: Closed – April 14, 2010.
  - o Complaint No. 2007063761 – Funeral Rule violations and failure to provide funeral director's license and embalmer's license during inspection.
    - Presented: August 14, 2007.
    - Decision: Consent Order with \$350.00 civil penalty.
    - Status: Closed – October 12, 2007.
- Respondent #3 – No prior complaints.

**Recommendation:**

- Respondent #2 – Consent Order with \$750.00 civil penalty and authorization for hearing.
- Respondent #3 – 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 Robert Starkey

Adopted by voice vote

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**4. Case No.: L13-FUN-RBS-2013000921****Complaint:**

- On May 2, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Cremation

- A funeral director failed to sign the cremation authorization form in two (2) files reviewed by the field representative.
- The latest inspection report for the crematory utilized by this establishment was not available for inspection.
- Final Disposition
  - Respondent's cremation authorization forms state that the crematory operator may inter, inurn, or entomb the cremated remains if not claimed within 120 days; however, state law requires that to read 180 days.
- Funeral Director's License
  - The current funeral director's license of one (1) employee was not available for inspection.
- Embalmer's License
  - The current embalmer's license of one (1) employee was not available for inspection.
- Changes
  - Following a review of fifteen (15) SFGSS, it was discovered that the Respondent's name listed at the top of the document referred to the establishment by a name other than the exact name listed on the establishment application approved by the Board.
- Funeral Rule
  - A review of nine (9) SFGSS shows that the merchandise and a description of that merchandise were not shown on the contract prior to the consumer signing the contract.

**Response:**

- Cremation
  - Manager was unaware that a funeral director had not signed the cremation authorization forms.
  - Respondent is able to obtain a copy of the current inspection for the crematory utilized by this establishment upon request, and a hard copy will now be maintained in the establishment.
- Final Disposition
  - Respondent will change the documents to read 180 days as opposed to 120 days.
- Funeral Director and Embalmer
  - The manager was unaware that the current licenses were not posted at the establishment and has now posted both.
- Changes
  - Manager unaware that the name on the fifteen (15) SFGSS was different than that listed on the establishment application.
  - Respondent has corrected this oversight.
- Funeral Rule
  - Although the customer was in possession of a GPL at the time the contract was signed, Respondent will now provide a description of

the merchandise on the SFGSS prior to the customer signing the document.

**History:**

- Two (2) closed complaints.
  - o Complaint No. 199902071
    - Presented: Not presented as lack of jurisdiction.
    - Decision: Dismissed.
    - Status: Dismissed – December 29, 1999.
  - o Complaint No. 2005025421 – Unlicensed activity; lack of burial transit permit; lack of written documentation for cremation.
    - Presented: August 9, 2005.
    - Decision: Consent Order with \$1,000.00 civil penalty.
    - Status: Closed – December 1, 2005.

**Recommendation:**

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

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

Seconded by David Neal

Adopted by voice vote

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**5. Case No.: L13-FUN-RBS-2013000931****Complaint:**

- On June 30, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Funeral Rule
  - o Upon reviewing several SFGSS, it was determined that the Respondent failed to include a description of the merchandise selected.
  - o The lack of description on the contracts appeared to occur only when a family selected some type of service that involved cremation.
- Crematory
  - o The cremation authorization form of one (1) individual failed to include the telephone number of the crematory utilized by this establishment.

**Response:**

- No response was received.

**History:**

- Nine (9) complaints; seven (7) closed and two (2) dismissed.
  - o Complaint No. 2001004391 – Funeral director not available when said he would be, limousine family chose not available, refund check sent to wrong address, death certificate not filed timely.
    - Presented: October 9, 2001.
    - Decision: Dismiss.
    - Status: Dismissed – October 9, 2001.
  - o Complaint No. 2000031971 – Miscommunication regarding items family should bring to funeral home, family felt harassed regarding insurance papers, memorial cards appeared improper, different chapel used than selected, chosen music not played.
    - Presented: August 15, 2000.
    - Decision: Dismiss.
    - Status: Dismissed – August 15, 2000.
  - o Complaint No. 2011003871 – Complainant states that competitor has inaccurate information regarding complainant on their website and causing them to lose business.
    - Presented: July 12, 2011.
    - Decision: Letter of Warning.
    - Status: Closed – August 25, 2011.
  - o Complaint No. 2007073121 – Unprofessional conduct.
    - Presented: November 13, 2007.
    - Decision: Close.
    - Status: Closed – November 14, 2007.
  - o Complaint No. 2005005131 – Complainant charged additional amount of \$3,695.40 to checking account even though they did not sign any agreement to this charge. Complainant asks that money be returned.
    - Presented: April 12, 2005.
    - Decision: Close.
    - Status: Closed – April 12, 2005.
  - o Complaint No. 2004212991 – Complainant feels as though funeral home is trying to take advantage of them and has fraudulently mishandled policies.
    - Presented: January 11, 2005.
    - Decision: Close.
    - Status: Closed – January 11, 2005.
  - o Complaint No. 2002094091 – Complainant feels establishment unprofessional when embalming her aunt and could not find policy for coverage. Feels estate should be reimbursed for embalming.
    - Presented: August 12, 2003.
    - Decision: Close.
    - Status: Closed – August 12, 2003.
  - o Complaint No. 949403 – Complainant charged for items they did not select.
    - Presented: N/A

- Decision: N/A
- Status: Closed.
- Complaint No. 946792 – Violation of Title 56 (burial insurance).
  - Presented: N/A.
  - Decision: N/A.
  - Status: Closed.

**Recommendation:**

- Consent Order with \$500.00 civil penalty plus \$250.00 for no response for a total civil penalty of \$750.00 and authorization for hearing.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

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**6. Case No.: L13-FUN-RBS-2013000941****Complaint:**

- On June 30, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Funeral Rule
  - After reviewing a SFGSS, it was determined that eleven (11) contracts failed to provide a description of the merchandise selected by the consumer.

**Response:**

- No response received.

**History:**

- Five (5) closed complaints.
  - Complaint No. 200503591 – Complainants feel deceived into buying insurance policy instead of crematory policies like they wanted.
    - Presented: December 13, 2005.
    - Decision: Dismiss.
    - Status: Dismissed – December 14, 2005.
  - Complaint No. 2006038731 – Business cards indicating licensed funeral director in Tennessee when individual is not.
    - Presented: November 14, 2006.
    - Decision: \$500.00 Consent Order
    - Status: Closed – February 15, 2007.
  - Complaint No. 2009004341 – Complainant says Respondent giving false and misleading advertising and compromising ability to properly services families and policies.



- Presented: June 9, 2009.
- Decision: Dismiss.
- Status: Dismissed – June 23, 2009.
- Complaint No. 2010030951 – Complainant not able to get corrected death certificate.
  - Presented: March 8, 2011.
  - Decision: Dismiss.
  - Status: Dismissed – March 10, 2011.
- Complaint No. 2011026661 – Competitor claims Respondent advertising pricing without itemizing.
  - Presented: March 13, 2012.
  - Decision: \$750.00 Consent Order.
  - Status: Closed – May 22, 2012.

**Recommendation:**

- Consent Order with \$500.00 civil penalty plus \$250.00 for no response for a total civil penalty of \$750.00 and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**7. Case No.: L13-FUN-RBS-2013000951****Complaint:**

- On July 10, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Funeral Rule
  - Following a review of SFGSS, it was determined that on seven (7) separate occasions, the Respondent failed to provide a description of the merchandise on the contract prior to the consumer signing the contract.
  - Furthermore, the Respondent failed to provide the reason for embalming on the SFGSS on six (6) separate occasions.
- Cremation
  - Respondent failed to provide the latest inspection report and current license for the crematory utilized by this establishment.
  - On one (1) occasion, the Respondent failed to have a licensed funeral director sign the cremation authorization form.

**Response:**

- Funeral Rule

- Respondent states that establishment is using new software which leads to several clerical errors and incomplete documentation in the files.
- Cremation
  - As for the crematory violations, Respondent states that these were oversights on the part of the manager.
  - Respondent has reviewed all SFGSS and made sure all documents are up to date.

**History:**

- One (1) closed complaint.
  - Complaint No. 2007054431 – Lacking permanent identification device.
    - Presented: June 5, 2007.
    - Decision: \$250.00 Consent Order.
    - Status: Closed – August 16, 2007.

**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 David Neal

Adopted by voice vote

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**8. Case No.: L13-FUN-RBS-2013000971****Complaint:**

- On August 6, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Funeral Rule
  - GPL – the low end range on the CPL is inconsistent with the GPL.
  - GPL – under immediate burial with casket selected from funeral home, the low end price is inconsistent with the price on the CPL.
- Final Disposition
  - Respondent's cremation authorization forms state that a crematory operator may inurn, inter or entomb the cremains if unclaimed after 120 days; however, state law requires that time be listed at 180 days.
- Changes

- Respondent was given a warning when inspected on September 2, 2010, and citation on September 13, 2011, for signage not being in compliance with name provided on the establishment application form approved by the Board.
- Respondent was given extended amount of time to correct this violation, but has failed to make this correction.

**Response:**

- Funeral Rule
  - Low end range on CPL changed to match the GPL and the immediate burial with casket selected from funeral home is now priced consistently with price on CPL.
- Final Disposition
  - All cremation authorization forms have been changed to 180 days.
- Changes
  - The name on the sign was pointed out in 2010, and a new sign was ordered.
  - After waiting a year for the sign, the new sign was installed with the correct spelling in September 2012.
  - A photo of the new sign was provided by Respondent.

**History:**

- Three (3) closed complaints.
  - Complaint No. 2005039321 – Licensing issues with establishment.
    - Presented: December 13, 2005.
    - Decision: \$500.00 Consent Order
    - Status: Closed – January 10, 2006
  - Complaint No. 2006030421 – Funeral home not honoring contract.
    - Presented: September 12, 2006.
    - Decision: Dismiss.
    - Status: Dismissed – September 18, 2006.
  - Complaint No. 2011027901 – Violations with SFGSS, business cards, and stationary.
    - Presented: March 13, 2012.
    - Decision: \$250.00 Consent Order.
    - Status: Closed – May 4, 2012.

**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 Robert Starkey

Adopted by voice vote

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**9. Case No.: L13-FUN-RBS-2013001171****Complaint:**

- On May 22, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Licensing
  - o A SFGSS signed and dated on January 12, 2012, was signed by an individual who was not a licensed funeral director.
- Business Card
  - o A business card listed two individuals as "Proprietors & Owners", but failed to indicate that they were not licensed funeral directors or embalmers.
- Embalmer's License
  - o The embalmer's license for one individual was not available for inspection.
- Funeral Rule
  - o GPL
    - Casket price range on GPL incorrect when compared to CPL.
    - Direct Cremation on GPL lacked price range.
    - Immediate Burial on GPL lacked price range.
    - Direct Cremation with container provided by customer had incomplete disclosure.
    - Immediate Burial with container provided by customer lacked disclosure.
  - o CPL
    - No alternative container for direct cremation listed on CPL.
    - Cloth-covered casket offered as option on Immediate Burial but not listed on CPL.
    - Two (2) caskets offered for sale in selection room not listed on CPL.
  - o OBCPL
    - Venetian Outer Burial Container must include description on OBCPL.
    - Price of Doric Tiara sample displayed in selection room was incorrect when compared to price on OBCPL.

- Price of Wilbert Cameo Rose was incorrect when compared to OBCPL.
- Athenian Vault offered for sale in selection room not listed on OBCPL.
- Concrete Box offered for sale in selection room not listed on OBCPL.
- Wood Box offered for sale in selection room not listed on OBCPL.
- SFGSS
  - Four (4) contracts did not provide reason for embalming when fee for embalming was charged.
  - Four (4) contracts did not provide description of merchandise selected.
- Crematory
  - The latest inspection report and license for crematory utilized by this establishment was not available for inspection.
- Permanent Identification
  - One (1) body failed to contain a permanent identification device.
- Immoral or Unprofessional Conduct
  - The field representative observed a body in a casket in the preparation room.
  - When he inquired, he found that the body had been there for five (5) months following funeral services in December 2011.
  - The decedent's family could not or would not pay the funeral bill; therefore, the Respondent kept the body in the preparation room and told the field representative that they were not sure how long they would keep the body in the room.
  - Upon examining the body, the field representative found that the body was beginning to show signs of deterioration and provided pictures to reflect this finding.
  - Upon leaving the funeral establishment, the field representative was contacted by a licensed funeral director on staff and informed that the body would be buried later that day at a local cemetery.
  - The field representative witnessed the burial and confirmed that it was the same decedent as viewed earlier in the preparation room.

**Response:**

- Respondent's manager stated that these violations occurred prior to his time on staff and forwarded the pertinent documents to the previous manager, who later responded to the violations.
- The previous manager was replaced in May 2012.

- The manager stated that the field representative provided two findings of concern:
  - o Issues with price lists – which have been corrected.
  - o An unlicensed employee signing SFGSS, which later lead to the dismissal of this manager.
- Manager states that she was not made aware of the other violations.
- As for the failure to bury the deceased individual found in the preparation room, the manager states that she informed one of the funeral directors that the body should be buried, but the funeral director asked for more time for the family to raise the appropriate funds.
- The manager states that she was only told of two (2) violations and would like a letter from the Respondent stating that she was never made aware of the additional violations.

**History:**

- Seven (7) closed complaints, one (1) open complaint.
  - o Complaint No. 2012023281 – Funeral services conducted after expiration of establishment license.
    - Presented: December 11, 2012.
    - Decision: \$300.00 Consent Order.
    - Status: Closed – February 4, 2013.
  - o Complaint No. 2010021631 – Price list errors and funeral director license not available for inspection.
    - Presented: November 9, 2010.
    - Decision: \$1,000.00 Consent Order.
    - Status: Closed – January 12, 2011.
  - o Complaint No. 2008019901 – Funeral services conducted after establishment license expired and errors on CPL and SFGSS.
    - Presented: March 10, 2009.
    - Decision: \$1,450.00 Consent Order
    - Status: Closed – June 11, 2009.
  - o Complaint No. 2007049761 – Crematory and Funeral Rule violations.
    - Presented: April 10, 2007.
    - Decision: \$500.00 Consent Order
    - Status: Closed – June 6, 2007.
  - o Complaint No. 2006031961 – Failure to address previously issued warnings and possible forgery.
    - Presented: August 8, 2006.
    - Decision: Close.
    - Status: Closed – August 18, 2006.

- Complaint No. 2006023321 – Unlicensed activity.
  - Presented: August 8, 2006.
  - Decision: Dismiss.
  - Status: Dismissed – August 17, 2006.
- Complaint No. 2005041581 – Violation of various statutes and rules.
  - Presented: January 10, 2006.
  - Decision: \$1,000.00 Consent Order.
  - Status: Closed – June 7, 2006.
- Complaint No. 2004198491 – Purchased policies from another funeral home and consumer not happy with way situation being handled.
  - Presented: June 21, 2005.
  - Decision: Close.
  - Status: Closed – June 29, 2005.

**Recommendation:**

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

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**10. Case No.: L13-FUN-RBS-2013001211****Complaint:**

- On July 16, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Change of Ownership
  - Board lists this establishment as a "sole proprietorship" and lists the name of the owner; however, the owner passed away in 2007 and has been replaced by another individual, but Respondent failed to provide notice of this change.
- Crematory
  - Neither the current license nor the latest inspection report for the crematory utilized by this establishment was available for inspection.
  - A licensed funeral director failed to sign the cremation authorization form of one (1) customer.
- Funeral Rule
  - Respondent failed to provide a description of the merchandise selected on four (4) SFGSS.

- Respondent failed to provide the reason for embalming on two (2) SFGSS where charges for embalming were recorded.
- GPL – High end range for direct cremation is inconsistent with the CPL.
- GPL – direct cremation with fiberboard container, price inconsistent with CPL.
- CPL – under alternative containers, the fiberboard box is inconsistent with the GPL.

**Response:**

- Respondent states that the paperwork was available, but they were unable to find and provide it during the field representative's inspection.

**History:**

- Three (3) closed complaints.
  - Complaint No. 2005024991 – Various rules and statutory violations.
    - Presented: August 9, 2005.
    - Decision: Letter of Warning.
    - Status: Closed – October 17, 2005.
  - Complaint No. 2008013711 – Cremation document signed by unlicensed individual, cremation authorization form not retained, price discrepancies.
    - Presented: August 12, 2008.
    - Decision: \$350.00 Consent Order.
    - Status: Closed – October 14, 2008.
  - Complaint No. 2009010011 – License and inspection report of crematory not provided, pricing discrepancies.
    - Presented: June 9, 2009.
    - Decision: \$250.00 Consent Order.
    - Status: Closed – July 13, 2009.

**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 Wayne Hinkle

Adopted by voice vote

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**11. Case No.: L13-FUN-RBS-2013001271**
**Complaint:**

- On July 5, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Public Areas



- The chapel where services are conducted, the arrangement office and the main hallways all had noticeable leaks and water damage.
- Cremation
  - The latest inspection report for the crematory utilized by this establishment was not available for inspection.
- Permanent Identification
  - Upon checking one deceased human remains already dressed and casketed, it was determined that the Respondent failed to affix a permanent identification device to the body.
- Funeral Rule
  - SFGSS – One (1) SFGSS could not be located at the time of the inspection showing a reason for embalming or description of the merchandise selected.

**Response:**

- Public Areas
  - Respondent admits there are issues with the roof and it needs to be repaired; however, they are unable to pay the cost to have the roof replaced at this time.
  - Furthermore, Respondent attempted to allow other establishments to use this location for their funeral services, but one establishment used the location without paying what the two businesses agreed upon.
- Cremation
  - Respondent has since displayed the inspection report for the crematory utilized by this establishment.
- Permanent Identification
  - Respondent was not aware that their embalmer failed to affix a permanent identification to the decedent, but they have taken steps to address this issue in the future.
- Funeral Rule
  - The decedent's paperwork was not at the funeral home during the inspection as a funeral director was meeting off site with the family and had yet to return the file to the establishment.

**History:**

- Six (6) closed complaints.
  - Complaint No. 2006022391 – Funeral Rule violations.
    - Presented: August 8, 2006.
    - Decision: \$250.00 Consent Order.
    - Status: Closed – September 19, 2006.
  - Complaint No. 2008021021 – Operating on invalid establishment license, written disclosures not filled out correctly, Funeral Rule violation, and SFGSS not completed.
    - Presented: October 14, 2008.
    - Decision: \$700.00 Consent Order.

- Status: Closed – December 2, 2008.
- Complaint No. 2009016141 – Inspection report and license of crematory not available for inspection, embalmer's license not available, price discrepancies.
  - Presented: January 10, 2010.
  - Decision: \$500.00 Consent Order.
  - Status: Closed – August 16, 2011.
- Complaint No. 2010021191 – Preneed registration violation.
  - Presented: September 28, 2010.
  - Decision: Close.
  - Status: Closed – October 26, 2010.
- Complaint No. 2010021211 – Leaks and water damage in preparation room, arrangement office, chapel and errors on price lists.
  - Presented: November 9, 2010.
  - Decision: \$750.00 Consent Order.
  - Status: Closed – March 2, 2011.
- Complaint No. 2011013801 – Preparation room unsanitary with leaks and water damage, discrepancies on price lists, license and inspection report of crematory used not available for inspection.
  - Presented: October 12, 2011.
  - Decision: \$500.00 Consent Order.
  - Status: Closed – September 14, 2012.

**Recommendation:**

- Consent Order with \$250.00 civil penalty and within thirty (30) days provide a timeline and plan of action for repairing the leaking roof, and authorization for hearing.

A motion was made by David Neal to accept Counsel's recommendation.

Seconded by Jane Gray Sowell

Adopted by voice vote

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**12. Case No.: L13-FUN-RBS-2013001281****Complaint:**

- On July 10, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Funeral Rule
  - OBCPL
    - On the OBCPL, the Respondent listed the Wilbert Monticello Vault at \$1,325.00; however, on the SFGSS in fourteen (14)

instances, Respondent charged consumers \$1,375.00, creating an overcharge of \$50.00 each or a total of \$700.00.

**Response:**

- At annual price change time, Respondent states that they go to great lengths to remain accurate on their price lists.
- The price in Respondent's computer system was incorrect and they changed the pricing on the price lists.
- Respondent sent out apology letters and refunds to the customers by July 12, 2012.

**History:**

- One (1) closed complaint; one (1) open complaint.
  - o Complaint No. 2007089591 – Lack of identification tag and Funeral Rule violations.
    - Presented: February 12, 2008.
    - Decision: \$350.00 Consent Order.
    - Status: Closed – July 1, 2008.
  - o Complaint No. 2012026861 – License and inspection report of crematory not available for inspection, licensing violations, and funeral director / embalmer licenses expired.
    - Presented: March 12, 2013.
    - Decision: \$250.00 Consent Order.
    - Status: Open.

**Recommendation:**

- Letter of Warning.

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

Seconded by David Neal

Adopted by voice vote

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**13. Case No.: L13-FUN-RBS-2013001361****Complaint:**

- On July 11, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Change of Ownership
  - o The Board has this establishment listed as owned by a person other than the current owner.

- There has been an unreported change of ownership that took place on October 26, 2010.

**Response:**

- Respondent incorporated a new business in 2010, but never changed the name of the establishment from its original name with the Board.
- The shareholders of the corporation are actually the same and there has been no change of ownership.
- Responsible parties have remained the same.

**History:**

- Eight (8) closed complaints.
  - Complaint No. 2010001471 – Unprofessional Conduct
    - Presented: July 2011.
    - Decision: Close.
    - Status: Closed – July 19, 2011.
  - Complaint No. 2009021181 – Unprofessional Conduct – failure to pay for services rendered.
    - Presented: July 2011.
    - Decision: Close.
    - Status: Closed – July 19, 2011.
  - Complaint No. 2009005351 – Latest inspection report of crematory not available for inspection, no identification tag, price discrepancies on GPL.
    - Presented: June 9, 2009.
    - Decision: \$2,000.00 Consent Order.
    - Status: Closed – July 19, 2011.
  - Complaint No. 2008003521 – Latest inspection report of crematory not available for inspection, Funeral Rule violations.
    - Presented: July 8, 2008.
    - Decision: \$600.00 Consent Order.
    - Status: Closed – July 19, 2011.
  - Complaint No. 2007054461 – Latest inspection report of crematory not available for inspection, no identification tag on body, Funeral Rule violations.
    - Presented: July 10, 2007.
    - Decision: \$500.00 Consent Order.
    - Status: Closed – June 27, 2008.
  - Complaint No. 2006001131 – No identification tag on body.
    - Presented: March 14, 2006.
    - Decision: Dismiss.
    - Status: Dismissed – March 23, 2006.
  - Complaint No. 2010006961 – No identification tag on body, Funeral Rule violations on GPL, CPL, SFGSS.
    - Presented: July 2011.
    - Decision: Close.
    - Status: Closed – July 19, 2011.

- Complaint No. 2011030111 – Complainant received wrong cremains from Respondent. They notified Respondent, received correct cremains, but are not comfortable that they received the correct cremains.
  - Presented: April 10, 2012.
  - Decision: \$1,000.00 Consent Order.
  - Status: Closed – June 26, 2012.

**Recommendation:**

- Letter of Warning.

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

Seconded by Robert Starkey

Adopted by voice vote

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**14. Case No.: L13-FUN-RBS-2013001381****Complaint:**

- On July 20, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Changes
  - GPL, CPL, OBCPL are viewed by the public and fail to refer to the funeral establishment by the exact name listed on the establishment application approved by the Board.
- Crematory
  - The latest inspection report and license of the crematory utilized by this establishment was not available for inspection.
- Funeral Rule
  - GPL – use of facilities and staff for viewing must be corrected.
  - GPL – alternative container for direct cremation disclosure not correct.
  - SFGSS – prices on OBCPL and SFGSS do not match on two (2) contracts where a Wilbert concrete outer burial container was selected.
  - SFGSS – On one (1) occasion, Respondent failed to provide a reason for embalming.
- Paper Size
  - Copier used by establishment was unable to produce the required paper size at the time of inspection.
  - SFGSS copies were submitted to the field representative on legal size paper.

**Response:**

- No response.

**History:**

- Five (5) closed complaints.
  - o Complaint No. 2009005111 – Inspection report for crematory not available for inspection, embalmer license not available, Funeral Rule violations on GPL.
    - Presented: June 9, 2009.
    - Decision: \$550.00 Consent Order.
    - Status: Closed – July 23, 2009.
  - o Complaint No. 2007071541 – Various violations of statutes and rules.
    - Presented: October 9, 2007.
    - Decision: \$600.00 Consent Order.
    - Status: Closed – June 11, 2009.
  - o Complaint No. 2006034871 – Inspection report for crematory not available for inspection, Funeral Rule violations.
    - Presented: November 14, 2006.
    - Decision: \$500.00 Consent Order.
    - Status: Closed – December 15, 2006.
  - o Complaint No. 2005024781 – Embalmer license not available for inspection, preneed statute violations, Funeral Rule violations.
    - Presented: September 22, 2005.
    - Decision: \$500.00 Consent Order.
    - Status: Closed – January 10, 2006.
  - o Complaint No. 2004203011 – Complainant charged for services they did not receive.
    - Presented: May 10, 2005.
    - Decision: Letter of Warning.
    - Status: Closed – October 17, 2005.

**Recommendation:**

- Consent Order with \$500.00 civil penalty plus \$250.00 for no response for a total civil penalty of \$750.00 and authorization for hearing.

A motion was made by David Neal to accept Counsel's recommendation.

Seconded by Jane Gray Sowell

Adopted by voice vote

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**15. Case No.: L13-FUN-RBS-2013001421****Complaint:**

- On July 24, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Crematory

- One (1) cremation authorization form was not signed by a licensed funeral director.
- Preparation Room
  - Preparation room needs to be cleaned
    - Personal effects of the deceased remained on the counters;
    - Towels and aprons not put away;
    - Opened products left out on counters;
    - Embalming table had soiled laundry, instruments need to be cleaned, and surfaces need to be cleaned and disinfected.
- Funeral Rule
  - GPL – consumer’s right of selection disclosure must be corrected.
  - GPL – OBCPL disclosure must be corrected.
  - GPL – immediate burial with casket selected from funeral home priced at \$1,895.00, which is inconsistent with CPL price of \$2,890.00.
  - GPL – Traditional funeral service without limousine, the individual prices do not add up to the total package cost making the prices inconsistent.
  - GPL – Traditional funeral service with limousine / family car, individual prices do not add up to the total package cost making the price inconsistent.
  - GPL – Direct Cremation with cremation casket selected from our funeral home the price is inconsistent with the CPL.

**Response:**

- Establishment went through abrupt change the week prior to inspection.
- All issues were addressed quickly following the inspection.
- Random audit of files conducted, preparation room thoroughly cleaned and new management has implemented checks and balance system to ensure proper cleaning and disinfection.
- GPL has been reviewed and all changes requested have been completed.

**History:**

- Four (4) closed complaints.
  - Complaint No. 2009010001 – Funeral Rule violations with price discrepancies on price lists.
    - Presented: September 8, 2009.
    - Decision: \$750.00 Consent Order.
    - Status: Closed – October 7, 2009.
  - Complaint No. 2006001151 – Funeral Rule violations.
    - Presented: March 14, 2006.

- Decision: \$500.00 Consent Order.
- Status: Closed – August 9, 2006.
- Complaint No. 2005024901 – Violations of various rules and statutes.
  - Presented: August 9, 2005.
  - Decision: \$500.00 Consent Order.
  - Status: Closed – January 5, 2006.
- Complaint No. 948862 – Cemetery violations.
  - Presented: N/A
  - Decision: N/A
  - Status: Closed – N/A

**Recommendation:**

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

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

Seconded by David Neal

Adopted by voice vote

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**16. Case No.: L13-FUN-RBS-2013001431**

**17. Case No.: L13-FUN-RBS-2013001432**

**Complaint:**

- On August 16, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Licensing
  - The funeral director license of one individual, who is the listed manager of this establishment, expired on June 30, 2012, and was not renewed until July 8, 2012.
  - Furthermore, this individual's embalmer license expired on June 30, 2012, and was not renewed until July 8, 2012.
  - The establishment conducted two (2) funeral services while this individual was in possession of expired licenses.
  - During the inspection, the funeral director and embalmer licenses of this same individual were not available for inspection.
- Funeral Rule
  - GPL – Under Direct Cremation, the low to high end range of prices on the CPL was inconsistent with the GPL.



- GPL – On the SFGSS, the cost of the services must be consistent with the GPL; however, one file was charged a price for Direct Cremation that was inconsistent with the GPL.
- SFGSS – On all SFGSS, merchandise and its description must be added before the contract is signed by the consumer; however, it was determined that Respondent failed to do this on two (2) occasions.

**Response:**

- Licensing
  - Respondent stated that he did not provide funeral services / embalming services to any customers while his funeral director and embalmer licenses were invalid.
  - Respondent states that he allowed licensed funeral directors and embalmers to provide these services, but he was unaware that the establishment was not allowed to provide services while his licenses were invalid.
  - Respondent could not provide a copy of his licenses during the inspection due to the expiration.
- Funeral Rule
  - The price ranges on the price lists were unintentional and steps have been taken to address these violations in the future.

**History:**

- Respondent #16 – Two (2) closed complaints, one (1) dismissed complaint.
  - Complaint No. 2011028441 – Three (3) files lacked cremation authorization forms, Funeral Rule violations – errors on SFGSS.
    - Presented: March 13, 2012.
    - Decision: \$500.00 Consent Order.
    - Status: Closed – May 25, 2012.
  - Complaint No. 2008013671 – Funeral Rule violations, overcharging of items and apprentice signing SFGSS.
    - Presented: August 12, 2008.
    - Decision: \$500.00 Consent Order.
    - Status: Closed – September 29, 2008.
- Respondent #17 – No prior complaints.

**Recommendation:**

- Respondent #16 – Consent Order with \$250.00 civil penalty and authorization for hearing.

- Respondent #17 – 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 David Neal

Adopted by voice vote

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**18. Case No.: L13-FUN-RBS-2013001441**

**19. Case No.: L13-FUN-RBS-2013001442**

**20. Case No.: L13-FUN-RBS-2013001443**

**Complaint:**

- On August 15, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Licensing
  - o The funeral director license for the manager of record expired on June 30, 2012, and was not renewed until July 12, 2012.
  - o During this twelve day period, this individual remained as manager during a time while eleven (11) funeral services were performed by the establishment.
- Identification Device
  - o One (1) deceased human remains was in the chapel, dressed and casketed for services to begin; however, there was no identification device attached to the body.
- Records
  - o Upon request to review the records of two (2) customers, the field representative noted that all of the statements for these two (2) individuals were not available for review.
- Funeral Rule
  - o The reason for embalming was not provided on two (2) Statements of Funeral Goods and Services Selected.

**Response:**

- The manager failed to fulfill their continuing education requirements.
- Manager sent their license renewal several weeks in advance of the expiration date, but they were unaware of their CE shortage until receiving notice from the Board.
- Respondent states that they met the obligations on July 7, 2012, but their license was not renewed until July 12, 2012.

**History:**

- Respondent #18 – Three (3) closed complaints, one (1) dismissed complaint.

- Complaint No. 2007054581 – Licensing and Funeral Rule violations.
    - Presented: June 5, 2007.
    - Decision: Recommendation of \$500.00 Consent Order, but Board chose \$250.00.
    - Status: Closed – August 14, 2007.
  - Complaint No. 2007089581 – No identification tag on deceased, Funeral Rule violations.
    - Presented: January 8, 2008.
    - Decision: \$350.00 Consent Order.
    - Status: Closed – February 14, 2008.
  - Complaint No. 2009024111 – Inspection report not available for review, price discrepancies on GPL, CPL, OBCPL, SFGSS.
    - Presented: April 13, 2010.
    - Decision: \$250.00 Consent Order.
    - Status: Closed – June 3, 2010.
  - Complaint No. 2012004821 – Harassment and offering discount for sex.
    - Presented: August 14, 2012.
    - Decision: Dismiss.
    - Status: Dismissed – August 16, 2012.
- Respondent #19 – One (1) closed complaint.
    - Complaint No. 2007054551 – Licensing violations.
      - Presented: June 13, 2007.
      - Decision: \$500.00 Consent Order.
      - Status: Closed – June 27, 2008.
  - Respondent #20 – No prior complaints.

**Recommendation:**

- Respondent #18 – Consent Order with \$1,100.00 civil penalty and authorization for hearing.
- Respondent #19 – Consent Order with \$500.00 civil penalty and authorization for hearing.
- Respondent #20 – Dismiss.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**21. Case No.: L12-FUN-RBS-2012023811**
**Complaint:**

- This complaint was filed by a consumer and originally heard during the Board's February 12, 2013 meeting.
- October 16, 2012
  - o The decedent passed away following open heart surgery and was taken to the Respondent funeral establishment.
- October 17, 2012
  - o The decedent's husband and children went to make arrangements, but there was an issue obtaining the insurance policy, so the arrangements remained incomplete.
- October 18, 2012
  - o The decedent's family went to the funeral establishment to fix the decedent's nails and hair, and the family was led to the chapel where the decedent was on a table with a sheet draped over the body.
  - o The drain alley still had blood puddles in it and there appeared to be blood clots hanging out of the drain hose at the foot of the table; furthermore, the only place where the family could wash up was the public restroom.
- October 19, 2012
  - o The family arrived two (2) hours prior to receiving friends.
  - o There was very minimal makeup applied to the decedent's face, there was no mascara, the lipstick stopped at the nose line, and dark bruises were evident.
  - o There was no make-up applied to cover the trauma to the decedent's neck, there was blood soaked cotton covering the site where the blood was drained, there was a suture lying on the decedent's blouse, no undergarments were under the blouse, the cotton covering the surgical incision was very visible, the decedent's underwear was not pulled up completely, the daughters asked that the make-up be re-applied, and the Complainant killed at least six (6) gnats that came out of the casket during the viewing.
  - o The daughters applied mascara to the decedent, and the employee didn't even offer to provide this service, and a niece went to a local store to purchase a scarf to cover up the decedent's neck.
  - o The funeral home was too warm and the decedent's color actually darkened in the six (6) hours while the family was there.
- October 20, 2012
  - o There was very little organization from the Respondent.
  - o The employees almost pushed the casket off the stand as they were moving the casket from the viewing room to the chapel.
  - o No one was directing traffic causing the daughters to be last in line to the cemetery.
  - o Also, the Complainant touched the decedent's body and found it to be soft which she thought was odd for a body that had been embalmed.

**Response:**

- October 17, 2012
  - o Decedent's family met with Respondent's employee to discuss final arrangements, but they were not sure how they planned on paying for the funeral until they located an insurance policy later that afternoon.
- October 18, 2012
  - o Family arrived to fix the decedent's hair.
  - o The decedent was placed in the chapel because the Respondent employee believed it was a better environment for the family to provide hair care to the decedent.
  - o Respondent employee explained to the family that the decedent was in the chapel and that the body was covered with a sheet.
  - o The sheet was placed to cover the drain tube, and Respondent admits that they should have lifted the sheet to see if the drain tube was dirty.
- October 19, 2012
  - o Respondent employee did not provide the initial cosmetics application; however, she believed the person who did the cosmetics did a good job.
  - o Employee wishes she had looked over everything to make sure all details were properly addressed.
  - o Family said they were not happy with the lipstick so the employee offered to try and fix that.
  - o While the employee was working on the lipstick, the family asked that she cover the bruises on the decedent's face as well.
  - o Employee states that this was a difficult case as the decedent's entire arm was exposed due to her wearing short sleeves.
  - o Employee was unaware of the difference in color in the hand and the arm, but stated that this difference could be due to the amount of make-up applied on the arm.
  - o The employee did not offer to apply mascara to the decedent as no one asked her to do that, and she would have gone out and purchased a scarf if the family had made her aware of the condition of the decedent's neck.
  - o The family gave the employee very specific instructions that they would view the decedent's body and then close the casket for the funeral service as the decedent had requested; however, the family asked the employee to leave the casket open as they informed her that the decedent looked so nice.
  - o As for the temperature in the establishment, the employee states that she was unaware that the family was uncomfortable with the temperature in the establishment.
- October 20, 2012

- When moving the casket to the chapel, the employee was unaware of any issues during the transportation, and nothing out of the ordinary of moving the casket had occurred.
- As for the transportation to the grave site, the employee states that some family members preferred to walk while others drove to the grave site, but they allowed any family member who wished to drive to the grave site to park their cars behind the hearse.
- The employee states that she worked very hard to address the concerns of the family and asked on numerous occasions whether the family needed any assistance; however, she regrets that there may have been some issues with leakage from the decedent's body caused by the presence of edema.

**NOTE:**

- On November 19, 2012, the Board received a letter from the manager of the Respondent establishment stating that they were refunding the family one thousand three hundred and sixty-five dollars (\$1,365.00), the total cost of embalming and dressing the decedent.

**History:**

- Three (3) closed complaints, none related.
  - Complaint: 950878 – Alleged to have changed name on cemetery lot paperwork.
    - Presented: N/A
    - Determination: Close.
    - Status: Closed – November 30, 1998.
  - Complaint: 950794 – Alleged solicitation.
    - Presented: October 19, 1998.
    - Determination: Close.
    - Status: Closed – March 1, 2000.
  - Complaint: 2005025341 – Preneed violations.
    - Presented: August 9, 2005.
    - Determination: Consent Order with \$500.00 civil penalty
    - Status: Closed – January 10, 2006.

**Recommendation:**

- Letter of Warning.

**Final Determination by the Board:**

- Contact family who filed complaint and send Letter of Warning to Respondent if the family is satisfied with the refund.

**New Recommendation:**

- After speaking with the family, counsel has determined that the family is not satisfied with the response. Therefore, a consent order with a \$1,000.00 civil penalty and authorization for a hearing is appropriate.

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

Motion failed for lack of a second.

After further discussion, another motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Jane Gray Sowell

Adopted by voice vote

Note: The Board recessed at 11:34 A.M. and reconvened at 11:43 A.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  
 MARCH 12, 2013 – APRIL 8, 2013**

**Establishments**

Bills-McGaugh Funeral Home & Crematory  
 Lewisburg, TN

**Type of Change(s)**

Name

**Individuals**

Rhonda Lois Bowers  
 Decatur, TN

**Type of License(s)**

Funeral/Director/Embalmer

Rosemary Rivenbark Harrison  
 Rockvale, TN

Funeral Director/Embalmer

Kelsey Leann Powers  
 Loretto, TN

Funeral Director/Embalmer

Bradley Ryan Price  
 Surgoinsville, TN

Funeral Director/Embalmer

Jason Kirk Schmittou  
 Westmoreland, TN

Funeral Director/Embalmer

Rebecca Kathleen Smith

Funeral Director/Embalmer

Chattanooga, TN	Reciprocity
Kurt Daniel Bass Gordonsville, TN	Funeral Director
Blake Alan Carroll Hohenwald, TN	Funeral Director
Natilee Brooke Fanning Elora, TN	Funeral Director
Anthony Roshad Greene-Cannon Antioch, TN	Funeral Director
Moreland Kelvin Wilson Chattanooga, TN	Funeral Director

**DISCIPLINARY ACTION REPORT:**

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED  
BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE  
PERIOD OF MARCH 1, 2013 – MARCH 31, 2013**

Respondent: Berry Funeral Home, Knoxville, TN  
Violation: Statement of Funeral Goods and Services Selected failed to provide a description of the merchandise selected by the consumer prior to their signing the contract  
Action: \$250 Civil Penalty

**OPEN COMPLAINT REPORT:**

As of April 9, 2013 there were 121 open complaints.

A motion was made by David Neal and seconded by Wayne Hinkle to accept the Executive Director's Report.

Adopted by voice vote

**INDIVIDUAL APPLICATION:**

**Matthew Kenneth Mardis** **Funeral Director/Embalmer**  
**Olive Branch, MS**

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



Adopted by voice vote

**Britt Estes Brown**  
**London, KY**

**Funeral Director/Embalmer**  
**Reciprocity**

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

Adopted by voice vote

**Ashley Nicole Taylor-Gosell**  
**Cleveland, TN**

**Funeral Director/Embalmer**  
**Reciprocity**

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

Adopted by voice vote

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**REINSTATEMENT OF SUSPENDED LICENSES:**

- George M. Baker, Jr. – Funeral Director License No. 4695 and Embalmer License No. 4556

Upon motion by Wayne Hinkle and seconded by David Neal, the Board approved the reinstatement of Mr. Baker's Funeral Director and Embalmer licenses.

Adopted by voice vote

**ADJOURN:**

A motion was made by David Neal to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

The meeting was adjourned by President Tony Hysmith at 12:22 P.M.

Respectfully submitted,

*Robert B. Gribble*

Robert B. Gribble, CFSP  
Executive Director