

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

AUGUST 13, 2013

President Tony Hysmith called the meeting to order at 10:00 a.m. in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

Board members present: Tony Hysmith, President; W. T. Patterson, Vice President; Wayne Hinkle, David Neal, Robert Starkey, and Anita Taylor.

Board member(s) absent: Jane Gray Sowell.

Staff present: Robert Gribble, Executive Director; Benton McDonough, Assistant General Counsel; Genesis Johnson, Administrative Secretary; and Lisa Mosby, Administrative Assistant.

ADOPTION OF AGENDA:

A motion was made by Wayne Hinkle 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 July 9, 2013 Board Meeting.

Seconded by Robert Starkey

Adopted by voice vote

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

1. Case No.: L13-FUN-RBS-2013009951

Complaint:

- On May 21, 2013, a field representative attempted to conduct a routine inspection of the Respondent establishment.
- The most recent inspection at this establishment prior to this attempt was on May 14, 2012.
- Upon attempting to enter the establishment, the field representative found the front entrance of the establishment locked with a sign which read:
"Tennessee State Government Seizure"
"Property seized for non-payment of
Tennessee state taxes levy."
- The field representative found additional signs posted around the establishment, including one sign found posted on the establishment's hearse parked under a carport.
- The field representative called a number listed on the notice and spoke to an employee with the Department of Revenue with knowledge of the situation.
- The employee informed the field representative that no human remains were found in the establishment at the time of the seizure.
- The field representative took additional pictures and completed his report.

Response:

- No response received.

Recommendation:

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

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

Seconded by W. T. Patterson

Adopted by voice vote

2. Case No.: L13-FUN-RBS-2013010301

3. Case No.: L13-FUN-RBS-2013010302

Complaint:

- On or around mid-May, 2013, Respondent #3 contacted Robert Gribble regarding Respondent #2 running an advertisement in which Respondent #3 was referred to as a funeral specialist, licensed preneed agent, and notary" on behalf of Respondent #2.
- Mr. Gribble informed the caller that "calling oneself a 'funeral specialist' without being a licensed funeral director would likely violate Tennessee funeral statutes and rules.

- On two (2) separate occasions (May 18, 2013 and June 8, 2013), Respondent #2 ran the advertisement calling Respondent #3 a “funeral specialist, licensed preneed agent, and notary”.
- On May 22, 2013, legal counsel reviewed the LinkedIn page of Respondent #3, and found the individual referring to themselves as a “funeral director” for the last seven (7) years. However, this individual has never been a licensed funeral director in the State of Tennessee.
- Furthermore, upon further investigation on May 31, 2013, it was determined that the Respondent had changed their title to “funeral director apprentice” on their profile; however, this individual’s apprentice registration expired on July 31, 2008, and was never renewed.

Response:

- Respondent #2 – No response received.
- Respondent #3 – No response received.

Recommendation:

- Respondent #2 – Consent Order with \$1,000.00 civil penalty plus \$250.00 for no response for total civil penalty of \$1,250.00 and authorization for hearing.
- Respondent #3 – Consent Order with \$1,250.00 civil penalty plus \$250.00 for no response for total civil penalty of \$1,500.00 and authorization for hearing.

A motion was made by Anita Taylor to accept Counsel’s recommendation.

Seconded by David Neal

Adopted by voice vote

4. Case No.: L13-FUN-RBS-2013012001**Complaint:**

- On April 19, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- Funeral Rule – 0660-11-.06
 - o The low end range for caskets on the CPL was inconsistent with the low end range on the GPL.
 - o The low to high end range on the OBCPL was inconsistent with the low to high end range on the GPL.
 - o Titling language on the OBCPL was incorrect as the document was titled “Vault Price List” as opposed to the “Outer Burial Container Price List”.
 - o The direct cremation with alternative container (cardboard) price on the GPL was inconsistent with the CPL.
 - o Direct cremation high-end range must be added to the GPL.

- Immediate burial high-end range must be added to the GPL.
- Immediate burial with casket (St. Joseph 20 gauge) that was offered to the consumer must be added to the CPL.
- The description of the merchandise selected was not included on two (2) of the Statements of Funeral Goods and Services Selected reviewed by the field representative.
- The reason for embalming was not included on ten (10) Statements of Funeral Goods and Services Selected reviewed by the field representative.

Response:

- No response received.

Recommendation:

- Consent Order with \$500.00 civil penalty plus \$250.00 for no response for total civil penalty of \$750.00 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

5. Case No.: L13-FUN-RBS-2013011741

Complaint:

- On September 11, 2012, the Respondent placed an order in the amount of one thousand five hundred twenty-one dollars and ninety-one cents (\$1,521.91) with the Complainant's business.
- This order included 900 peace dove imprinted fans, 800 cross imprinted fans, 800 serenity imprinted fans and 40 inch roman columns.
- On April 19, 2013, the Complainant sent a letter to the Respondent demanding payment for the past due charges. The Complainant made clear that they would file a complaint with the Board in the event the Respondent did not pay the remaining charges.
- On June 10, 2013, the Complainant sent another statement to the Respondent.
- On June 14, 2013, this complaint was received by the Board.

Response:

- No response received.

Recommendation:

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

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

Seconded by Wayne Hinkle

Adopted by voice vote

6. Case No.: L13-FUN-RBS-2013011991

Complaint:

- On April 2, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- Utilization of Crematory – TCA 62-5-107
 - o The current license and latest inspection report of the crematory that the establishment uses were not available for inspection.
- Cremation Authorization Form – TCA 62-5-107
 - o Respondent failed to provide the cremation authorization form for Johnny J. Reeves.
- Changes – Rule 0660-01-.03
 - o The establishment failed to submit an establishment manager change to the State Board Office.
- Issuance of License – TCA 62-5-306
 - o The current funeral director's license for three (3) individuals was not available for inspection.
- Funeral Rule – 0660-11-.06
 - o GPL – The low end range inconsistent with the low end range on the Outer Burial Container Price List.
 - o CPL – Respondent uses a catalogue in lieu of selection room for the consumer to select goods. The catalogue was not available for review and comparison with the CPL.
 - o OBCPL – Respondent uses a catalogue in lieu of a selection room for the consumer to select goods. The catalogue was not available for review and comparison with the OBCPL.
 - o GPL – Under direct cremation, the Batesville minimal container (a heavy cardboard container) being sold to the consumer for \$145.00 on the SFGSS must be added to the range on the GPL.
 - o CPL – Under alternative container, the Batesville minimal container (a heavy cardboard container) being sold to the consumer for \$145.00 on the SFGSS must be added to the CPL.
 - o SFGSS – The SFGSS of Evelyn H. Crouse and Diana Lynn Springer Smith contained items not included on any price list.
 - o SFGSS – The reason for embalming was omitted on the SFGSS of Ada A. Hurt and James R. Davenport.
 - o SFGSS – A description of the merchandise and services selected was not included on the SFGSS of Gene A. Pryor, William S. Elliot, or Rodney D. Davis.

Response:

- The Respondent apologizes for the oversight of the crematory license and inspection report, and has enclosed those documents with the response.
- Respondent apologizes for failing to provide a cremation authorization form for Johnny J. Reeves, and has enclosed that document with the response.
- The Respondent was unaware of the requirement to notify the Board of any change in the identity of the establishment manager. Respondent apologizes for this oversight.
- The three (3) individuals lacking a funeral director's license do not currently act as funeral directors at this establishment location.
- Respondent admits to the violations of the Funeral Rule, and has taken steps to remedy this issue.

Recommendation:

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

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

Seconded by Robert Starkey

Adopted by voice vote

7. Case No.: L13-FUN-RBS-2013012041**Complaint:**

- Utilization of Crematory – TCA 62-5-107
 - o The file of Charles Gilbreth Carter, Jr., was missing the signature of a licensed funeral director on the Cremation Authorization Form.
- Licensing Requirement – TCA 62-5-303
 - o An unlicensed employee of the establishment met with the field representative during the inspection. When the inspection began, the field representative reviewed the documents and made notations on his notepad. The field representative asked for a copy of the cremation authorization form that was not signed and the unlicensed individual said they would have to go down the street as their copier could not reduce the size. Prior to leaving, the employee asked if the lack of a signature on the cremation authorization form would result in a citation, and the field representative informed them that they were not sure yet. When the employee returned, they provided the cremation authorization form which contained the funeral director's signature. When pressed about this matter, the employee admitted that they signed the manager's name without the manager's prior approval.

- Funeral Rule 0660-11-.06
 - o Seven (7) files lacked a sufficient description of “other preparation of the body” such that the consumer could identify this item charged on the GPL. It appears that an overcharge is occurring since the GPL implies that “if” the body is embalmed, the charge for “other preparation of the body” is included in the price of embalming.
 - o GPL – under direct cremation with corrugated cardboard container, the price is inconsistent with high end range on the GPL for direct cremation and also with the CPL.
 - o CPL – Establishment uses a catalogue in lieu of a casket selection room for review by the consumer before purchasing merchandise. The catalogue was not available for comparison with the CPL.
 - o OBCPL – establishment uses a catalogue in lieu of a casket selection room for review by the consumer before purchasing merchandise. The catalogue was not available for comparison with the OBCPL.
 - o GPL – under preparation of the body, cosmetic services, dressing and casketing the deceased or bathing and disinfecting the body when there is no embalming with the price of \$150.00 must be added.
 - o GPL – under immediate burial using a St. Joseph 20 gauge non-protective casket, price on the CPL is inconsistent with the price on the GPL.

Response:

- No response received from Respondent.

Recommendation:

Consent Order with \$1,000.00 civil penalty plus \$250.00 for no response for total civil penalty of \$1,250.00 and authorization for hearing.

A motion was made by Anita Taylor to accept Counsel’s recommendation.

Seconded by W. T. Patterson

Adopted by voice vote

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- 8. Case No.: L12-FUN-RBS-2012000721
 - 9. Case No.: L12-FUN-RBS-2012016811
 - 10. Case No.: L12-FUN-RBS-2012004941
 - 11. Case No.: L11-FUN-RBS-2011021281
 - 12. Case No.: L12-FUN-RBS-2012014481
 - 13. Case No.: L12-FUN-RBS-2012014482

14. Case No.: L12-FUN-RBS-2012024601

15. Case No.: L12-FUN-RBS-2012024602

16. Case No.: L13-FUN-RBS-2013006821

- These complaints have previously been presented to the Board or changed to a status of litigation monitoring and addressed through a bankruptcy proceeding between the Department and this Respondent funeral establishment.
- An agreement was reached between the parties, including the Department's promise to make a good faith effort to present and close these complaints within sixty (60) days of the final order being entered.
- The final order was entered on July 19, 2013; therefore, counsel recommends that these cases be closed due to the agreement reviewed by counsel for the Department and the agreement reached between the two parties.

Complaint:

- Respondent #8

- o On December 7, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- o The Respondent failed to provide a copy of the latest inspection report for the crematory utilized by this establishment.
- o Two (2) of the files reviewed did not contain a cremation authorization form following cremation of the decedents.
- o The license of a funeral director was not available for inspection.
- o The license of an embalmer was not available for inspection.
- o The name of the Respondent's president is listed on the establishment website and gives the impression that he is a licensed funeral director when that is not the case.
- o Another individual is listed as an "apprentice funeral director and embalmer"; however, they have not been an apprentice since May 2010.
- o This same individual provided business cards with the title "funeral director and embalmer" with a notation as "student".
- o The Respondent's GPL and CPL are inconsistent regarding the price of immediate burial.
- o The Respondent is providing documents to the public identifying the Respondent by a name other than the exact name listed on the establishment application approved by the Board.
 - This complaint was originally presented on May 8, 2012, and a consent order with a \$1500 civil penalty was issued.

- **Respondent #9**
 - o Establishment license expired on March 1, 2012 and not renewed until March 21, 2012.
 - o During this time, seven (7) funeral services were conducted on an invalid license.
 - o The owner of this establishment used business cards recognizing the owner as "Owner and CEO" but made no indication that this person was not a licensed funeral director.
 - This matter was placed on a status of litigation monitoring.
- **Respondent #10**
 - o On January 4, 2012, a field representative conducted a routine inspection of the Respondent establishment.
 - o The Respondent registered with the Board as a sole proprietor on their original establishment application; however, when the Respondent applied for a preneed seller registration, they listed their status as an LLC.
 - As of January 4, 2012, no change of ownership form was provided to the Board.
 - o The sign on the front of the establishment listed a preneed package starting at \$4,955.00, but the sign failed to include a correct line item listing and the publication was missing the price for each service included.
 - o The establishment website lists two (2) individuals who are unlicensed personnel and fails to provide their title as "non-licensed", but the website does list them as "President" and "Vice-President".
 - o The physical address listed on the Respondent's preneed seller application lists a different business address than that listed on their initial application and various price lists.
 - This case was originally presented on July 10, 2012, and a consent order with \$1,000.00 civil penalty was issued.
- **Respondent #11**
 - o On June 21, 2011, a field representative conducted a routine inspection of the Respondent establishment.
 - o During the inspection, nine (9) files were found to contain insufficient information on the cremation authorization forms.
 - The forms were not signed and dated, and all of the contact information for the crematorium used was not present.
 - o Additionally, the Respondent does not have the same name on the price lists and its establishment application form that was approved by the Board.

- This complaint was originally presented on November 8, 2011, and a consent order with a \$500.00 civil penalty was issued.
- **Respondent #12**
- **Respondent #13**
 - On March 9, 2012, another funeral establishment was contacted by the Respondent to remove the remains of Timothy Brian Page at Metro General Hospital in Nashville, Tennessee.
 - The remains were embalmed and delivered to the Respondent, but the Complainant never received payment.
 - These complaints were never presented to the Board, but were placed in the status of litigation consent monitoring due to the bankruptcy.
- **Respondent #14**
- **Respondent #15**
 - The Complainant filed a complaint after seeing a billboard posted by the Respondent funeral establishment.
 - Complainant states that the prices on the sign that represents the Complainant's funeral home are inaccurate and implies that their prices are higher than they actually are.
 - The sign is false advertising toward the Complainant's funeral home.
 - Sign states that Complainant's service charge plus the memorial package is \$5,685.00, which is not accurate according to the complainant.
 - Complainant's service charge clearly states on the GPL that it is \$5,150.00 and their memorial package is listed on their price list as \$300.00, which would total \$5,450.00.
 - These complaints were never presented to the Board, but were placed in the status of litigation consent monitoring due to the bankruptcy.
- **Respondent #16**
 - Field representative conducted a routine inspection on February 7, 2013.
 - The copy of the crematory license utilized by the Respondent and presented at inspection expired on June 30, 2012 (over seven months prior), and the copy of the crematory inspection presented is dated January 25, 2011 (over two years prior).
 - Respondent arranged for the cremation services of two decedents without obtaining valid documents required by statute.
 - Various discrepancies with General Price List.

- This matter was never presented to the Board.

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

NOTIFICATION OPTIONS:

Notification Options are now available on the Board website for licensees and the interested public regarding the following areas:

- New or Amended Statutes – New or Updated Rules
- Changes to Fees – Rulemaking Hearing Related to Fees
- Significant Changes Impacting the Licensee – Changes to Policies

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
 DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
 JULY 9, 2013 – AUGUST 12, 2013**

Establishments

Harold Ford Funeral Chapel
 Memphis, TN

Type of Change(s)

New Establishment

Whispering Winds Crematory
 Winchester, TN

Change of Ownership

Final Care Cremation Services
 Sparta, TN

Name Change

Individuals

Jane Elizabeth Brawner
 Gallatin, TN

Type of License(s)

Funeral Director/Embalmer

Michael Allen Darnell
 Jonesborough, TN

Funeral Director/Embalmer

Jacob Keith Gasperson

Funeral Director/Embalmer

Fall Branch, TN

Clinton Houston Moss
Brighton, TN
Funeral Director/Embalmer

Jose Antonio Perez
Calhoun, GA
Funeral Director/Embalmer

DyKeshia LaDahl Weston
Memphis, TN
Funeral Director/Embalmer

Randall Lee Kimbro
Burns, TN
Funeral Director/Embalmer
Reapplication

Christopher W. Lea
Brownsville, TN
Funeral Director

James Michael Hall
Fayetteville, 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 JULY 1, 2013 – JULY 31, 2013**

Respondent: Birchette Mortuary, Inc., Johnson City, TN
Violation: Funeral director failed to sign and date a cremation authorization form, failed to maintain a copy of the crematory's current license and results of the latest regularly scheduled inspection which the funeral home uses and multiple aspects of the establishment's contract did not comply with the Funeral Rule including the failure to provide a description of the merchandise selected by the consumer prior to signing the contract and failure to provide a reason for embalming
Action: \$500 Civil Penalty

Respondent: Hanceville Funeral Home, Hanceville, AL
Violation: Conducted committal and interment services of the decedent without employing the services of a funeral director licensed to conduct services in Tennessee
Action: \$350 Civil Penalty

OPEN COMPLAINT REPORT:

As of August 12, 2013 there were 115 open complaints.

A motion was made by Anita Taylor to accept the Executive Director's Report.

Seconded by David Neal

Adopted by voice vote

ADJOURN:

A motion was made by Wayne Hinkle to adjourn.

Seconded by David Neal

Adopted by voice vote

The meeting was adjourned by President Tony Hysmith at 10:39 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director