

**TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**MINUTES OF BOARD MEETING**

**MARCH 11, 2014**

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

Board members present: Robert Starkey, President; Anita Taylor, Vice President; Robert P. Helms, Wayne Hinkle, David Neal, W. T. Patterson and Jane Gray Sowell.

Staff present: Robert Gribble, Executive Director; Adrian Chick, Assistant General Counsel; 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 David Neal to approve the Minutes of the December 10, 2013 Board Meeting.

Seconded by Robert P. Helms

Adopted by voice vote

A motion was made by Anita Taylor to approve the Minutes for the January 3, 2014 Teleconference Meeting.

Seconded by Wayne Hinkle

Adopted by voice vote

A motion was made by Jane Gray Sowell to approve the Minutes for the January 14, 2014 Board Meeting.

Seconded by Wayne Hinkle

Adopted by voice vote

A motion was made by Wayne Hinkle to approve the Minutes for the February 11, 2014 Teleconference Meeting.

Seconded by David Neal

Adopted by voice vote

**FORMAL HEARING:**

**Docket No. 12.21-122519A**

**Complaint No. 2010010191**

- Respondent: Harold Dean Limburg, Greeneville, Tennessee  
Funeral Director License No. 2769 and Embalmer License No. 3376

The formal hearing was conducted by Administrative Law Judge Leonard F. Pogue, III. The State was represented by Assistant General Counsel Adrian Chick. The Respondent was represented by Attorney Thomas Wood Smith.

President Robert Starkey recused himself from participating in this formal hearing. Vice President Anita Taylor became chair for the formal hearing.

After hearing the testimony, the Board found Mr. Limburg guilty of immoral conduct (engaged in sexual acts with an individual under the age of consent who was particularly vulnerable at the time), and decided to suspend both the funeral director and embalmer licenses of Mr. Limburg for a period of six (6) months, assess a civil penalty of \$1,000, and assess all hearing costs to the Respondent.

A motion was made by Robert P. Helms and seconded by David Neal to designate Vice President Anita Taylor as the person to act for the Board in the event that either a petition to the Board for reconsideration of the Final Order or a petition to the Board for a stay of the Final Order was filed regarding this case. The motion was adopted by voice vote.

Note: W. T. Patterson departed the meeting after the conclusion of the formal hearing at 4:50 p.m.

**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-2013024301****2. Case No.: L13-FUN-RBS-2013024302****Complaint:**

- On November 26, 2013, a field representative conducted an inspection of the Respondent establishment.
- The funeral director's license and embalmer's license for Respondent #1 expired on October 31, 2013 and was not renewed until November 5, 2013.
- During that time, Respondent #1 was an employee of Respondent #2 and served in the capacity of Funeral Director for one (1) deceased family, while in possession of an expired funeral director's license.

**Response:**

- No response received.

**Recommendation:**

- Respondent #1 – Consent Order with \$500.00 (\$250.00 for no response & \$250.00 for funeral directing on expired license) civil penalty and authorization for hearing.
- Respondent #2 – Consent Order with \$500.00 (\$250.00 for no response & \$250.00 for allowing an individual to direct funerals on expired license) civil penalty and authorization for hearing.

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

Seconded by David Neal

Adopted by voice vote

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**3. Case No.: L13-FUN-RBS-2013024041****Complaint:**

- Complainant's father passed away on October 18, 2013.
- Prior to his death, the family met with Hospice to make arrangements, and a gentleman by the name of Gary (whom none of the family members knew) informed the family that he had legal documents reflecting their father's wishes to be cremated.
- Once the decedent passed away, the coroner and "Gary" showed up with a document and a blank piece of paper with their father's signature.

- The next day, the Complainant contacted the Respondent establishment (where the decedent's body was located for several days) where the decedent had a burial policy.
- After many attempts at contacting the establishment, the complainant spoke with an individual who was very rude and informed the Complainant that the decedent was in a freezer.
- The employee then told the Complainant she had no say over her father's cremation, so the Complainant contacted another local funeral establishment and asked them to take possession of the decedent's body.
- They tried to contact the Respondent funeral establishment again, and this time the Respondent informed them that there actually was no burial policy with the establishment, but another individual is now overseeing the final arrangements for the decedent.
- The Complainant believes this individual has committed fraud and finds ways to allow individuals to appoint him as executor over their estate and take their money.
- The Complainant states that this person is a local banker.

**Response:**

- The decedent's body was taken to the Respondent establishment, where he had a pre-need policy that would be covered by an insurance policy.
- The decedent asked a local well-known banker to act as the executor of his estate and made plans to be cremated and intentionally wrote his children out of his will.
- The Complainant and her sisters turned against the executor, and the Respondent was stuck in the middle.
- The Complainant asked a cousin who was a funeral director in Kentucky to take possession of the body, and the Respondent released the body to the cousin and charged nothing for services rendered or for charges incurred while storing the body.

**Recommendation:**

- Dismiss.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**4. Case No.: L13-FUN-RBS-2013024421****Complaint:**

- On Tuesday, July 9, 2013, Respondent failed to inform the Complainant when they were removing the remains of the Complainant's son, as requested by Complainant.

- Complainant brought clothes for the decedent and family photos and when they asked the Respondent about the time of cremation, the Respondent replied, "Just pick a time and say it was done!" which the Complainant found offensive.
- Assuming the cremation would be first thing in the morning, the Complainant planned a memorial for the decedent on Friday, July 12, 2013, at 8:00 in the morning.
- On July 15<sup>th</sup>, the family loaded into the car after learning that the cremains were ready to be retrieved; however, upon entering the establishment, the employee who assisted in funeral arrangements told them she would have to look at the log to make sure the cremation occurred – then the Complainant's husband paid the final bill and took the cremains to the car.
- While reviewing the cremation documents, the Complainant realized that the cremation took place on the 10<sup>th</sup>, after the establishment received one-third (1/3) down and before the Complainant brought the decedent's clothes and family photos.
- Complainant cannot understand why they were not contacted about retrieving the remains earlier.
- Complainant cannot understand why they were lead to believe he was not cremated until later in the week.

**Response:**

- No response received.

**Recommendation:**

- Consent Order with \$250.00 civil penalty for failure to respond and authorization for hearing.

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

Seconded by Robert P. Helms

Adopted by voice vote

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**5. Case No.: L13-FUN-RBS-2013024971****Complaint:**

- On October 3, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- 0660-11-.06 – Funeral Rule
  - o A review of five (5) contracts indicates that the Respondent has been charging \$225.00 for "Dressing, Casketing, and

Cosmetology”; however, a General Price List in effect at the time reflects a charge of \$200.00 for those services.

**Response:**

- Respondent failed to respond to the complaint.

**Recommendation:**

- Consent Order with \$500.00 civil penalty (includes failure to respond) and authorization for hearing.

A motion was made by Robert P. Helms to accept Counsel’s recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

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**6. Case No.: L13-FUN-RBS-2013024981**

**7. Case No.: L13-FUN-RBS-2013024982**

**Complaint:**

- On December 12, 2013, a field representative conducted a routine inspection of the Respondent establishments.
  - o Upon a random sampling of files, it was determined that one (1) file pertaining to the decedent Thomas Lee Littleton lacked a Cremation Authorization form.
  - o The field representative was able to locate a blank Cremation Authorization form in the file.

**Response:**

- Respondent #6 & #7 – The Cremation Authorization form was mistakenly placed in another file.
- Respondents provided a copy of the form filled out.

**Recommendation:**

- Respondent #6 – Consent Order with \$250.00 civil penalty and authorization for hearing.
- Respondent #7 – Consent Order with \$250.00 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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**8. Case No.: L14-FUN-RBS-2014000881**

**Complaint:**

- On January 22, 2014, the Board received a complaint against the Respondent establishment.
- The Complainant stated that they had not received a copy of their mother's death certificate after more than a month.
- The Respondent informed the Complainant that the hospital had yet to respond to their request for the death certificate.
- The Complainant then contacted the hospital and learned that the ER doctor notated in the decedent's file that the primary care physician would be responsible for signing the death certificate.
- The Complainant believes they were not treated fairly by the Respondent and has been lied to for more than four weeks.

**Response:**

- The Respondent typed up the death certificate and delivered it to the hospital.
- After making several attempts to contact the doctor who pronounced the decedent dead, the Respondent learned that the doctor was an ER doctor and was unwilling to sign the death certificate.
- On January 22, 2014, the Respondent was able to contact the primary care physician and obtain their signature on the death certificate.
- Respondent then attempted to contact the Complainant to no avail, but was able to deliver the document to a family representative.

**Recommendation:**

- Dismiss.

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

Seconded by David Neal

Adopted by voice vote

**CASES RE-PRESENTED TO THE BOARD**

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- 9. Case No.: L13-FUN-RBS-2013013641**
  - 10. Case No.: L13-FUN-RBS-2013013642**
  - 11. Case No.: L13-FUN-RBS-2013013643**
  - 12. Case No.: L13-FUN-RBS-2013013644**
  - 13. Case No.: L13-FUN-RBS-2013013645**

**Complaint:**

- On July 11, 2013, the Board received a complaint, supported by six (6) various affidavits or depositions, encompassing the five (5) Respondents referenced above.

- 5) Following a fire on April 17, 2012, Respondent #9 continued to accept dead human bodies for cremation services with knowledge that the establishment lacked proper refrigerated facilities to store these bodies.
  - a. Respondents deny the allegations and aver that after the April 2012 fire, Respondents transported or caused to be transported dead human bodies which were to be cremated to other cremation establishments.
  - b. After the fire, bodies were sent to Phillips-Robinson, Memorial Crematory, Lawrence Funeral Home and West Harpeth Crematory.
  
- 6) For a time, Respondent #9 stacked boxes containing putrefying remains in an unrefrigerated back room at the establishment of Respondent #13.
  - a. Respondents deny allegations that they stacked boxes containing putrefying remains in an unrefrigerated back room at the establishment of Respondent #13.
  
- 7) Respondent #13 had a refrigeration unit that only held three (3) human bodies.
  - o For this reason, Respondent #9 had an employee move stacks of boxes containing dead human bodies into a small building or barn where they remained for days, resulting in an overpowering stench of decomposing bodies.
    - a. Respondents admit that Respondent #13 had a refrigeration unit that only held three (3) human bodies.
    - b. Respondents deny that any boxes of human bodies have ever been placed in the "small building or barn" at Respondent #13 for any reason other than for a period when a large cooler in an adjacent structure was used.
    - c. Respondents deny that they ever left bodies unrefrigerated for days.
    - d. Without admitting the allegations of this complaint, Respondents acknowledge that bodies sometimes smell, dependent on the circumstances of death and the status of decomposition upon arrival to Respondents' possession.
  
- 8) On occasion, Respondent #9 had employees place numerous boxes containing dead human bodies in stacks in a van for the purpose of hiding them from State of Tennessee field representatives.
  - a. Respondents admit that they transport human bodies in a van.



- b. Respondents specifically deny that they ever “placed human bodies in stacks in a van for the purpose of hiding them from the State of Tennessee field representatives.”
  - c. Respondents further deny that they have intentionally deceived State of Tennessee field representatives and deny remaining allegations in this paragraph.
- 9) Respondent #9 moved dead human bodies around on what employees called a “church truck.”
  - o As many as six or seven boxes with stacked, smoldering bodies were witnessed by an employee.
    - a. Respondents deny stacking bodies six or seven boxes tall, as the weight from the bodies would cause the boxes to collapse.
    - b. Furthermore, to stack the boxes that high would require heavy machinery, as the boxes would be about 14 feet tall.
    - c. Respondents deny any insinuation that was intended by the use of the term “smoldering bodies.”
    - d. Respondent states that the inspections are unannounced; therefore, they would not have time to move bodies around prior to the field representative making an appearance.
- 10) Respondent #9 routinely substituted cheaper merchandise for merchandise specified in pre-need contracts.
  - a. Respondents deny this allegation and argue that if Respondents provided the customer merchandise which was different than the merchandise specified in the pre-need contract, Respondents so advised the customer, obtained their consent and provided “like kind and quality” merchandise.
- 11) Pre-need contracts often called for the purchase of Batesville brand caskets, which are generally regarded as the best available.
  - o On behalf of Respondents #11 and #12, Respondent #9 purchased and substituted less expensive Southern Craft brand caskets for the Batesville caskets without customers’ knowledge, and then retained the difference in prices for their personal benefit.
    - a. Respondents deny these allegations; specifically, that they engage in any business practices intended to defraud customers.

- b. Respondents admit that they sometimes give customers a casket which is different than the casket designated in the pre-need contract; however, only with the customer's consent.
- c. Respondents argue that they may offer a different casket of like kind and quality if the designated casket is discontinued or the casket company has gone out of business.
- d. Also, the family of the deceased may choose a different casket.
- e. Respondents specifically assert that if the family of the deceased chooses a less expensive casket, the family may choose to be given a refund for the difference in amount or a credit to use towards other merchandise.
- f. No Respondent retained any difference in price for their own personal benefit.

12) Respondent #9 cheated customers by using names for caskets that were ordinarily sold by Batesville Casket Company, such as "Primrose."

- a. Respondents deny the allegations that they have ever cheated their customers in any way.
- b. Respondents admit that they name and rename caskets as is customary in the industry; however, Respondents specifically deny that they engage in any business practices intended to deceive their customers.

13) Respondent #9 ordered cheaper poplar caskets, painted them with a cherry stain, and then sold them as though they were the more expensive cherry wood models without revealing the difference in quality or price to the customers.

- a. Respondents deny that they ever painted or stained caskets for any reason.
- b. They are aware that some casket companies make caskets out of poplar wood, which is stained a cherry color by the manufacturer.
- c. Otherwise, when a casket is displayed, a description of the material from which a casket is made is attached in accordance with the law.

14) Respondent #9 purchased inferior caskets from Tetrick in the Tri-Cities area of Tennessee, many of which were damaged and some of which had holes in the welds.

- Respondent #9 had a body shop they used to repair these damages, and cheaper caskets were substituted for more expensive models purchased by families.
  - a. Respondents admit that they made a one-time purchase of caskets from Tetrick in the Tri-Cities area, but deny any of the caskets were damaged or had holes in the welds.
  - b. Respondents specifically deny that they substituted these caskets for more expensive models purchased by the families.

15) Pre-need contracts often called for the purchase of Wilbert brand vaults, a superior brand of vaults, or the Monticello model of Wilbert brand vaults which to place caskets within; however, Respondent #9 purchased and substituted Eagle brand vaults for the more expensive vaults without customers' knowledge.

- To carry out this scheme, Respondent #9 painted the cheaper vaults and placed liners in them to create the appearance of the more expensive and requested Wilbert brand vaults; Respondent #9 would then retain the difference in costs under the pre-need contracts for their personal benefit.
  - a. Respondents admit that pre-need contracts often call for the purchase of Wilbert brand vaults or the Monticello model of the Wilbert brand vaults that are always superior to all other brands of vaults.
  - b. Respondents deny that they purchased and substituted Eagle brand vaults for the more expensive vaults without the customer's knowledge.
  - c. Respondents admit that they sometimes give customers a vault which is different than the vault designated in the pre-need contract, but only with the customer's consent, and they may offer a different vault of like kind and quality if the designated vault is discontinued, the vault company has gone out of business, or Respondent no longer utilizes a particular company.
  - d. Respondents deny ever placing liners in vaults and assert that if the family of the deceased chooses a less expensive vault, the family may choose to be given a refund for the difference in amount or a credit to use towards other merchandise.
  - e. Furthermore, Respondent #9 never retained any difference in price for their personal benefit.

16) From 1996 through 2004, Batesville operated a program called "Total Casket Protection."

- o This was a form of insurance intended to ensure the family of a decedent would have the particular casket they ordered, which often resulted in refunds at the time of delivery, which were to be returned to the purchasing family; however, Respondent #9 kept these refunds for personal benefit rather than tendering the money to the families.
  - a. Respondents admit that Batesville Casket Company operated a program called "Total Casket Protection," but lack sufficient information to admit or deny when Batesville operated the program.
  - b. Respondents deny that the program was a form of insurance intended to insure that the family of a decedent would have the particular casket they ordered and specifically deny that rebates were to be returned to the purchasing family.
  - c. Respondents argue that the program was a consumer program for the funeral home, providing an incentive for funeral homes to purchase Batesville caskets.
  - d. Batesville guaranteed that the funeral home would get the casket at the time of need for the same amount listed on the pre-need contract.

17) On multiple occasions, Respondent #9 accepted checks as payment for funerals, endorsed the checks, and then wrote off the amounts as bad debts without placing the funds in a trust so that they would be available when the need for the funds arose.

- a. Respondents deny that Respondent #9 accepted checks as payment for funerals, endorsed the checks, and then wrote off the amounts as bad debts without placing the funds in a trust so that no funds would be available for future need.

18) Respondent #9 instructed employees to place cash payments for services in an envelope and place that envelope in that Respondent's desk drawer.

- a. Respondents deny that Respondent #9 instructed employees to place cash payments for services in an envelope and place that envelope in that Respondent's desk drawer.

- 19) Respondent #9 pocketed funds for funerals without placing them in the establishment account and marking them off as bad debt.
- a. Respondents deny Respondent #9 pocketed funds for funeral without placing them in the establishment account and marking them off as bad debt.
  - b. Specifically, they deny it is a business practice to place money in the drawer.
- 20) Respondent #9 converted customers' refunds from pre-need contracts for Respondent's personal benefit rather than refund the customers' money.
- o The prices on the date of death are those charged under pre-need contracts.
  - o When the funds invested under a pre-need contract yielded a return greater than the Fair Market value of the items and services purchased to be rendered under the contract, Respondent #9 simply increased the costs in order to keep all of the money.
    - a. Respondents deny Respondent #9 converted customers' refunds from pre-need contracts for Respondent's personal benefit rather than refund the customers' money.
- 21) Respondent #9 sent fraudulent documents to Forethought via interstate wire transfer.
- o Respondent did so for the purpose of deceiving customers and depriving families of the refunds to which they were entitled.
    - a. Respondents deny Respondent #9 sent fraudulent documents to Forethought via interstate wire transfer.
    - b. Specifically, Respondents deny that they "converted customers' refunds from pre-need contracts" for the benefit of the Respondents or that they used any "tactics" to trick their customers.
    - c. Respondents aver that customers are given a refund when the "funds invested under a pre-need contract yield a return greater than the current general price list for the items purchased and services to be rendered under the contract."
    - d. Respondents further assert that they sold merchandise for the price listed in their GPL, which is regulated by the federal disclosure requirements.
    - e. Respondents deny Respondent #1 sent fraudulent documents to Forethought via interstate wire transfer.

- f. Specifically, the Respondents deny that they created or forwarded any fraudulent documents, utilized wire transfers or engaged in deceitful business practices.

22) On one (1) occasion, Respondent #9 accepted a restored 1951 Ford motor vehicle, with an estimated value of between \$20,000 to \$25,000, as a payment-in-kind from a husband and wife for their funerals.

- o No funeral funds were placed in trust for these pre-need funerals.
- o The purported price of the two (2) funerals was far less than the estimated value of the motor vehicle.
- o Two (2) contracts were drafted for the funerals and then charged off as bad debt.
  - a. Respondents admit that Respondent #1 accepted a restored 1951 Ford motor vehicle, but never had the car appraised and therefore neither admit nor deny the allegation as to the vehicle's value.
  - b. Respondents aver that the "husband and wife" were the grandparents of Respondent #9's wife who were concerned about paying for the funeral and asked Respondent #9 if he would take the car as payment.
  - c. Also, the grandparents asked that the car be used in their funerals and Respondent #9 agreed to take the car in exchange for two (2) funerals as a favor to his family.
  - d. Respondent #9 took possession of the car and executed a sworn statement stating that the couple's funerals were then paid in full.
  - e. Funds could not have been placed in trust because Respondent #9 never sold the car, as he was saving it to use in the funerals and no funds exchanged hands.
  - f. Respondents deny the charge of the funerals being written off as bad debt, and Respondent #9 stored the car for years and has since returned the car to the family.

23) When a competing funeral home generously provided additional space to the Respondents for embalming purposes after the April 17, 2012, fire, an assistant of Respondent #9 solicited business from a grieving family on the premises of the generous funeral home on the same day that they brought their deceased loved one to that establishment for services.

- a. Respondents admit that a competing funeral home generously provided Respondents additional space for embalming purposes after the fire on April 17, 2012, but

deny that any of the employees solicited business from a grieving family on the premises of the establishment.

- b. Respondents aver that the manager for Respondent #11 received a call from a “price shopper” who inquired about funeral services and prices.
- c. As requested, the manager met the family at the location of Respondent #13, where they discovered that the family had also contacted the competing funeral establishment.
- d. Respondents deny solicitation of any kind took place.

24) Respondent #9 knowingly submitted falsified apprenticeship forms to the State of Tennessee on behalf of the Respondent’s daughter.

- o These falsified documents included quarterly reports and records of time not actually spent with the daughter’s sponsor.
  - a. Respondents deny that Respondent #9 knowingly submitted falsified apprenticeship forms to the State of Tennessee on behalf of the Respondent’s daughter.
  - b. The Complainant who provided this information worked primarily as an embalmer at the Respondent establishments and waited on very few families during the time these allegations took place.
  - c. The daughter of Respondent #1 worked primarily under Respondent #1 and the manager of the establishment, rather than with the complainant.

25) After Respondent #9 accused the Complainant of violating a non-compete agreement, Respondent #9 instructed an agent of Respondent #13 to attend the May 8, 2013, burial services where Complainant was to say a prayer, as previously expressly requested by the deceased.

- o This agent took a photograph of the Complainant just as the mourning family bowed their heads to pray and just before a family member was to read a passage.
- o The family members witnessed this profoundly disrespectful conduct, and the decedent’s husband cries every night because of what occurred at his beloved wife’s funeral.
  - a. Respondents admit that they filed suit against the main complainant in this case for violating a non-competition agreement.
  - b. Respondents deny that they instructed an agent of Respondent #13 to attend the May 8, 2013, burial service.

- c. Respondents aver that an agent of Respondent #13 always attends services which occur at the cemetery.

**Recommendation:**

- Respondent #9 – Consent Order with one (1) year suspension of funeral directors license and authorization for hearing.
- Respondent #10 – Consent Order with one (1) year suspension of embalmer license and authorization for hearing.
- Respondent #11 – Consent Order with \$3,000.00 civil penalty and authorization for hearing.
- Respondent #12 – Consent Order with \$3,000.00 civil penalty and authorization for hearing.
- Respondent #13 – Consent Order with \$3,000.00 civil penalty and authorization for hearing.

Jane Gray Sowell recused herself from participating in these matters.

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

Seconded by Robert P. Helms

Adopted by voice vote

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**14. Case No.: L13-FUN-RBS-2013017481**

**Complaint:**

- A consumer recently appeared at the Complainant's place of business to check on the status of pre-need direct cremation arrangements they made in December 2008.
- She presented Complainant with a paid cash receipt in the amount of \$1,515.00 signed by the Respondent, a SFGSS, a Change of Policy / Certificate / Annuity Ownership to the Forethought Trust Form and the Group Enrollment Form to Forethought.
- She advised that at the time the pre-need arrangements were made, she paid cash to the Respondent who folded the money and placed it in his pants pocket.
- Complainant has no record, whatsoever, of this transaction and confirmed with the consumer that she had not received any policy information in the mail from Forethought Life Insurance Company.
- Complainant contacted Forethought and other carriers utilized by it during this time frame and again found no record of this transaction.
- Complainant acknowledged the payment made directly to the Respondent and committed to honor the contract.

**Response:**



- The consumer appeared at the Complainant funeral home in December, 2008 and paid cash in the amount of \$1,515.00 for pre-need direct cremation arrangements.
- The cash was delivered to the Respondent, who then drafted and provided the consumer a paid cash receipt, a SFGSS, a Change of Policy / Certificate / Annuity Ownership to the Forethought Trust Form, and the Group Enrollment Form for Forethought.
- Respondent denies any allegation, insinuation or accusation that he acted illegally, inappropriately, or in a manner unbecoming the profession in any manner whatsoever.
- Complainant fails to actually accuse Respondent of anything.
- The complaint is vague and ambiguous and leaves it unclear what is being alleged and who Complainant is blaming for the apparent failure to properly store records and comply with applicable laws and regulations.
- Complaint only states that Complainant believes it is appropriate to report this matter to the Board because Respondent was involved in the transaction, merely insinuating and leaving it to the imagination of the reader to conclude Respondent has done something wrong.
- Complainant is just as likely responsible for these actions.
- One may easily conclude that Respondent delivered the cash and documentation to the owner as he was instructed to do, and the owner failed to process the pre-need order and cash and properly file the documentation.
- There is no express allegation in this complaint, and it was standard business practice at Complainant establishment during Respondent's employment to do exactly what is described in the Complaint, as far as drafting documents and accepting cash from clients.
- Respondent was then instructed to deliver the contracts and cash directly to the owner and was advised that the owner would take care of it from there.
- Whether the owner properly processed and stored the documentation and deposited the cash from the point of delivery is unknown at this time.
- Complainant is to blame for this failure to properly file the pre-need paperwork, not the Respondent.
- Respondent created and executed all necessary documents and provided copies of them to the consumer, just as he was supposed to do.
- The complaint says only that that Complainant does not have a record of the transaction at this time, but does not affirmatively state Respondent failed to ever provide a record or the cash to the owner at any time.
- What the owner did with the documents and cash and why he failed to process them or invest the cash is left for the owner to explain.
- Acceptance of cash for services was common practice and openly encouraged.
- When the owner first hired Respondent, the first thing the owner told the Respondent was, "checks are fine, but cash is divine."

- The owner would routinely come to the Respondent and tell him that he needed cash and he did not care how he got it.
- Had Respondent not provided the appropriate paperwork to the consumer, it may have been more difficult to convince Complainant to uphold its end of the contract.
- To the extent Complainant communicated any of the false allegations now asserted against the Respondent in this complaint, the Complainant is possibly liable for slander and tortious interference with prospective business relationships, but those allegations are outside the jurisdiction of this board.
- Respondent denies all of these allegations of impropriety and respectfully requests this complaint be dismissed immediately.

**New Recommendation:**

- Consent Order with voluntary revocation of license and authorization for hearing.

Jane Gray Sowell recused herself from participating in this matter.

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

Seconded by Robert P. Helms

Adopted by voice vote

Note: The Board recessed at 5:45 p.m. and reconvened at 5:51 p.m.

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**15. Case No.: L11-FUN-RBS-2011026431**

**16. Case No.: L11-FUN-RBS-2011026432**

**Complaint:**

- The Complainant's husband passed away on August 1, 2011.
- Respondent #15 performed his cremation, and his ashes were supposed to be placed in a black heavy plastic container to be mailed to Orlando, Florida.
- The ashes were supposed to arrive in four (4) to five (5) days, but Respondent #16 stated that someone forgot to mail them. It took approximately two (2) weeks for the ashes to arrive.
- When the church in Orlando opened the box, they found ashes in a plastic bag without the proper container.
- The church called the decedent's mother to come retrieve the ashes, as the church could not place the ashes in a vault without a container, so the decedent's mother was forced to purchase an urn.
- Complainant then called Respondent #16 and told him about the ashes at the church, and Respondent #16 stated that someone must have tampered with the container.

- Also, Complainant states that her husband had an insurance policy and the Complainant keeps receiving phone calls from the insurance company stating that they need a certified death certificate.
- Complainant called Respondent #15 and found that they had yet to send the insurance claim, which had been in the Respondent's possession for a month.
- Complainant states that Respondent #16 informed her that they had not heard anything from the insurance company regarding paperwork.
- Complainant called the insurance company again who informed her of the particular forms that were needed from the Respondents.
- Complainant's continued attempts to contact the Respondents and her calls were not returned so she filed this complaint.
- Shortly after filing the complaint, Respondent #16 came to her residence to fill out the paperwork.
- Complainant called the insurance company and was informed that the company received death certificate, but not the form necessary from the Respondents.

**Response:**

- Respondent states that the statements regarding the delay in mailing the cremains were correct and that the cremains were not mailed until August 17, 2011, arriving in Orlando on August 22, 2011.
- Respondent states the cremains were mailed in a plastic bag within a temporary container of cardboard, not the container the Complainant believed they would be mailed in.
- Respondent states they use both cardboard and plastic containers, and the Respondent states the only way the church would have known the cremains were in a plastic bag would be if they opened the container.
- Respondent states they always seal cremains in a plastic bag inside temporary containers, and the idea that the Respondent mailed the cremains in a plastic bag alone would not be correct.
- As for the insurance policy, the Respondent states that they offered to file the paperwork for no charge and took an assignment on the amount owed the funeral home through Express Funeral Funding.
- Respondent states that the insurance company mails claim forms and they could not be obtained via fax or online.
- Furthermore, Respondent states that they received the necessary forms and called the Complainant on September 12<sup>th</sup>, offering to drive to her house to fill out the paperwork.
- The documentation was sent to Express Funeral Funding on the 13<sup>th</sup> and Respondent contacted the company following the Complainant's call on the 21<sup>st</sup>, to which the insurance company stated all documents had been sent to the insurance company to finalize the claim.
- Respondent admits that the timing of events was not good and the Respondent will no longer mail cremains in cardboard temporary containers, all will be mailed in poly temporary containers.

**Original Recommendation:**

- Respondent #15 – Consent Order with \$250.00 civil penalty and authorization for hearing.
- Respondent #16 – Consent Order with \$250.00 civil penalty and authorization for hearing.

**New Recommendation:**

- Respondent #15 – This consent order has been signed and paid.
- Respondent #16 – Close. This individual is no longer licensed as a funeral director and their license is invalid.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**17. Case No.: L11-FUN-RBS-2011031241**

**18. 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 #17)
  - 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 website, 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.
- Crematory (Respondent #18)
  - 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 website, they advertise about the animal crematory and the services that they provide along with the human crematory and its services.

**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.

**Original Recommendation:**

- Respondent #17 –A consent order and 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:
- Respondent #18 - A consent order and 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:

**Recommendation:**

- Respondent #17 – Close – Counsel discussed these allegations with an expert in funeral law and the expert believed the allegations were very unlikely to be successful.  
Respondent #18 – Close – Counsel discussed these allegations with an expert in funeral law and the expert believed the allegations were very unlikely to be successful.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**LEGISLATIVE UPDATE:**  
**ROBERT GRIBBLE, EXECUTIVE DIRECTOR**

**LEGISLATIVE UPDATE**  
**108<sup>TH</sup> GENERAL ASSEMBLY**  
**BILLS INTRODUCED AFFECTING TCA TITLE 62**

|                                       |  |
|---------------------------------------|--|
| <a href="#">HB1380</a><br>by Forgyety | <b>Funeral Directors and Embalmers</b> - As introduced, codifies requirements for the inspection of funeral establishments presently |
|---------------------------------------|--|

|                                       |  |
|---------------------------------------|--|
|                                       | enforced pursuant to board rules; authorizes unannounced inspections of establishments by a licensed funeral director and embalmer acting on behalf of the board.  |
| <a href="#">HB0250</a><br>by Lamberth | <b>Funeral Directors and Embalmers</b> - As introduced, prohibits certain licensees in the funeral services industry from affiliating or engaging in other arrangements with certain health care institutions and organizations. |

For current information:

<http://wapp.capitol.tn.gov/apps/billsearch/billsearchadvanced.aspx?terms=keyword%20or%20bill&searchtype=all>

### **PRESENTATION OF CONSENT ORDER:**

#### **Case No.: FUN-RBS-2011032191**

- Respondent: Carl R. Points, Columbia, Tennessee  
Funeral Director License No. 5122

Assistant General Counsel Adrian Chick presented a Consent Order for the Board's consideration regarding Complaint No. 2011032191.

Jane Gray Sowell recused herself from participating in this matter.

A motion was made by Wayne Hinkle to accept the Consent Order as presented.

Seconded by David Neal

Adopted by voice vote

### **RULES AND RULEMAKING HEARING:**

Assistant General Counsel Benton McDonough presented Proposed Rules for Military Applicants as required by Public Chapter 122 of the Public Acts of 2013.

A motion was made by Robert P. Helms to move forward with rules regarding military applicants.

Seconded by Wayne Hinkle

Adopted by voice vote

Assistant General Counsel Benton McDonough presented an Economic Impact Statement regarding the Board's Rulemaking Hearing held on November 14, 2012.

A motion was made by Wayne Hinkle to adopt the Economic Impact Statement.

Seconded by Jane Gray Sowell

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  
 JANUARY 14, 2014 – MARCH 10, 2014**

| <b><u>Establishments</u></b>                       | <b><u>Type of License(s)</u></b> |
|--|----------------------------------|
| Johnson – Arrowood Funeral Home<br>Church Hill, TN | Name and Ownership Changes       |

| <b><u>Individuals</u></b>               | <b><u>Type of License(s)</u></b>         |
|---|--|
| Caleb Andrew Leach<br>Speedwell, TN     | Funeral Director/Embalmer                |
| Kristen Nichol Norris<br>Kingsport, TN  | Funeral Director/Embalmer                |
| Jasmine Penny Zervas<br>Alexandria, TN  | Funeral Director/Embalmer                |
| Kristen Marie Norton<br>Clarksville, TN | Funeral Director/Embalmer<br>Reciprocity |
| Kris M. Vanover<br>Barbourville, KY     | Funeral Director/Embalmer<br>Reciprocity |
| William Kent Bailey<br>Somerville, 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  
 JANUARY 1, 2014 – FEBRUARY 28, 2014**



Respondent: Collierville Funeral Home, Collierville, TN  
Violation: An individual whose funeral director license was expired acted in the capacity of a funeral director on behalf of the establishment  
Action: \$250 Civil Penalty

Respondent: Memphis Funeral Home and Memorial Gardens, Memphis, TN  
Violation: An individual whose funeral director license was expired acted in the capacity of a funeral director on behalf of the establishment  
Action: \$250 Civil Penalty

Respondent: David W. Murphy, Martin, TN  
Violation: Practiced funeral directing and acted as an establishment manager while funeral director license was expired  
Action: \$250 Civil Penalty

Respondent: David W. Murphy, Martin, TN  
Violation: Practiced embalming while embalmer license was expired  
Action: \$250 Civil Penalty

Respondent: Murphy Funeral Home, Inc., Martin, TN  
Violation: An individual whose funeral director and embalmer licenses were expired acted in the capacity of a funeral director, firm manager, and an embalmer on behalf of the establishment  
Action: \$700 Civil Penalty

Respondent: Patton Funeral Home, Cleveland, TN  
Violation: Failure to keep all surfaces, instruments, tables, fixtures and equipment in the preparation room cleaned and sanitized and all waste and soiled clothing properly disposed of, caskets failed to bear concise wording in a conspicuous location describing the material of which the receptacle is manufactured, and failed to comply with multiple aspects of the Funeral Rule  
Action: \$250 Civil Penalty

Respondent: Spring Hill Funeral Home & Cemetery, Nashville, TN  
Violation: An individual whose funeral director and embalmer licenses were expired acted in the capacity of a funeral director and firm manager on behalf of the establishment  
Action: \$350 Civil Penalty

**The following individual has had their license suspended in accordance with Tenn. Code Ann. § 36-5-706 or Tenn. Code Ann. § 56-1-313**

**Board of Funeral Directors and Embalmers**

James R. Daniels

Fernandina, FL

**OPEN COMPLAINT REPORT:**

As of March 10, 2014 there were 99 open complaints.

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

Seconded by David Neal

Adopted by voice vote

**INDIVIDUAL APPLICATION:**

**Dennis R. Murphy  
Memphis, TN**

**Funeral Director/Embalmer  
Reciprocity**

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

Adopted by voice vote

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**ADJOURN:**

A motion was made by Wayne Hinkle to adjourn.

Seconded by David Neal

Adopted by voice vote

The meeting was adjourned by President Robert Starkey at 6:37 p.m.

Respectfully submitted,

*Robert B. Gribble*

Robert B. Gribble, CFSP  
Executive Director