

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

OCTOBER 14, 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 Helms, Wayne Hinkle, David Neal, W. T. Patterson, Jane Gray Sowell and Anita Taylor.

Staff present: Robert Gribble, Executive Director; Anthony Glandorf, Chief Counsel of the Regulatory Boards Division; Lisa Mosby, Administrative Manager; and DePrey Flournoy, Administrative Secretary.

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 Jane Gray Sowell to approve the Minutes of the August 12, 2014 Board Meeting.

Seconded by Wayne Hinkle

Adopted by voice vote

President Starkey announced that the September 9, 2014 Minutes will be presented for review/approval at the next board meeting.

LEGAL REPORT:

ELLERY RICHARDSON, 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.: L14-FUN-RBS-2014020291**Complaint:**

- Complainant did not find out that his father passed away until a year later.
- When he called the funeral home, the funeral home remembered the service and stated that they tried to get in touch with complainant but couldn't.
- He states that the funeral home must not have tried to get in touch with him because he has lived in the same house for 48 years and the deceased's first wife is in the phone book. Their numbers have not changed for decades.
- Decedent wanted to be buried at another cemetery next to his mother.

Response:

- The deceased's step-daughter contacted Respondent, who arranged a free service, provided a free casket and vault, and arranged a free grave space from the city.
- The step-daughter told Respondent that the deceased had two sons, but she did not know where they lived or how to contact them. They put the arrangements on the local radio station and on Respondent's webpage.

Recommendation:

- Consent Order with civil penalty of \$500 and authorization for a hearing

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

Seconded by Jane Gray Sowell

Adopted by voice vote

2. Case No.: L14-FUN-RBS-2014020331**3. Case No.: L14-FUN-RBS-2014020332****Complaint:**

- Complainant purchased an old funeral home building from Respondent and is operating under a separate name. The former funeral home has been out of business for 6 or 7 years.
- Respondent still lists the former funeral home in the phone book, and members of the public who call are put through to the new funeral home.
- Complainant also discovered that Respondent is doing this for another closed funeral home they bought and renamed. Respondent has listings in the phone book for both closed funeral homes. Those numbers are forwarded to Respondent's current funeral homes.

Response:

- A Board representative previously issued a Notice of Violation for this issue. In response, Respondent instructed the telephone company to alter the listings.
- Respondent kept the listing for the other closed funeral home so that members of the public who have pre-need policies with the closed funeral home will be connected to the funeral home that holds those policies.
- Respondent purchased the assets of these funeral homes, which included \$110,500 for the goodwill associated with the names.
- Complainant knowingly selected a very similar name for their new funeral home, which is causing the problems they have. Respondent also argues that this is misleading and causes confusion for the public.

Recommendation:

- Consent Order with civil penalty of \$250 and authorization for a hearing.

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

Seconded by Robert Helms

Adopted by voice vote

4. Case No.: L14-FUN-RBS-2014021361

Complaint:

- Complainant attaches an article about Respondent funeral home, which does not disclose whether the employees/owners/operators mentioned are licensed funeral directors or not.

Response:

- Respondent states that they advertise with the magazine on a regular basis. The magazine mistakenly left off of their first ad the note that stated who was licensed as a funeral director and who was not. This mistake led to the same mistake in subsequent ads.
- The magazine, unfamiliar with the state requirements, did not realize the gravity of leaving that notation off.
- Respondent shows proof that the ads have been corrected and that they have contacted all the advertising companies they use to ensure the problem won't happen again.

Recommendation:

- Consent order with civil penalty of \$250 and authorization for a hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

5. Case No.: L14-FUN-RBS-2014021441

Complaint:

An inspection of the Respondent establishment noted the following violations:

- Respondent's copier does not allow the 8.5 x 11 inch paper size the Board requires for all filings. This is a repeat violation.
- Respondent did not have a copy of the latest crematory inspection report or license for the crematory Respondent uses. This is a repeat violation.
- Inconsistencies between the general price list and the casket price list. Repeat violation.

No Response

Recommendation:

- Consent Order with civil penalty of \$750 (\$500 penalty plus \$250 for no response) and authorization for a hearing.

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

Seconded by David Neal

Adopted by voice vote

6. Case No.: L14-FUN-RBS-2014021451

Complaint:

Complainant alleges unprofessionalism and incompetence

- Respondent told complainant that his son's grave was a double depth, but it is not.
- Respondent did not put the deceased's full name on the death certificate. Respondent told complainant it would take 6 weeks to amend the death certificate. After six weeks, complainant called and was told that he needed to fill out an affidavit for the amendment. Complainant wishes he was told at the beginning that he needed to fill out the affidavit.

Response:

- Respondent filled in the information on the death certificate with complainant before the death certificate was made. When complainant requested an amendment, Respondent had an affidavit prepared and waiting for complainant to sign when they received the complaint.

- There was a mix-up with the paperwork, and the grave was not fully dug down to double depth. Once the mix-up was caught, the grave was dug double depth prior to interment.

Recommendation:

- Close with a Letter of Warning.

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

Seconded by Anita Taylor

Adopted by voice vote

7. Case No.: L14-FUN-RBS-2014022981

Complaint:

- Complainant alleges that Respondent would not give the family the death certificate. Complainant asked on July 3, 2014 and July 10, 2014. Respondent stated that the death was being investigated by the coroner, and it may take six months to a year before the death certificate will be released.
- On September 11, 2014 complainant went to the coroner, who stated that there was no investigation and that the death certificate was released on June 30, 2014.
- The coroner called Respondent, who verified that it received the death certificate on June 30, 2014 and that three copies were given to one member of the family, who told Respondent to withhold all copies and information about the death certificate to anyone else.

Response:

- The coroner released the death certificate on June 30, 2014, and Respondent promptly filed it. Respondent states that the local health department is generally slow in filing death certificates. The health department stated that the death certificate would have to be referred to the medical examiner due to the cause of death.
- Respondent gave copies of the death certificate to the informant and purchaser. The health department gave out other death certificates due to the number of family members who requested them. The health department would not give complainant a copy because of discrepancies on her birth certificate; the health department could not verify her identity.

Note: The Certificate of Death was signed by the physician on June 30, 2014 and filed on July 31, 2014.

Recommendation:

- Hold complaint until next meeting.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

8. Case No.: L14-FUN-RBS-2014023141

Complaint:

- Complaint alleges that complainant's pricing on Respondent's list is not the correct price.
- Complainant submitted additional information stating that he sent Respondent the wrong information and wishes to withdraw the complaint.

Response:

- Respondent, in its advertising, gives the prices of other area funeral homes for comparison.
- Respondent states that before they ran their mailing, they obtained accurate price lists from area establishments.

Recommendation:

- Dismiss.

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

Seconded by Robert Helms

Adopted by voice vote

9. Case No.: L14-FUN-RBS-2014023151

10. Case No.: L14-FUN-RBS-2014023152

11. Case No.: L14-FUN-RBS-2014023153

Complaint:

- Respondent establishment's license expired on June 30, 2014 and was not renewed until August 12, 2014, operating forty-three (43) days without a license.
- Respondent funeral director and embalmer licenses expired on June 30, 2014 and were renewed on September 4, 2014.

- Respondents conducted at least one service and one embalming while unlicensed, which was on August 9, 2014. Respondent was unable to produce any documentation of this service; he stated that the family took all documentation with them and hasn't paid yet.
- Health department staff expressed frustration over Respondent's failure to file death certificates in a timely manner. Particularly, the death certificate for a decedent with a date of death of September 23, 2013 was not filed until June 5, 2014.
- The price lists are not accurate and do not meet FTC requirements. Respondent uses a casket catalogue instead of a casket price list, which does not have any price information.

Response:

- Respondent states that he paid his renewal fees prior to any work for the August 9, 2014 service.
- Respondent admits to not having documentation for the August 9, 2014 funeral.
- For the price lists, Respondent states that he only sells one line of vault to keep prices down, and all his caskets and vaults are \$1,600.

Recommendation:

- For Respondent Establishment: Consent Order with civil penalty of \$750 and authorization for a hearing.
- For Respondent Funeral Director: Consent Order with civil penalty of \$250 and authorization for a hearing.
- For Respondent Embalmer: Consent Order with civil penalty of \$250 and authorization for a hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

RE-PRESENTS

12. CASE NO.: L13-FUN-RBS-2013015521

13. CASE NO.: L13-FUN-RBS-2013015691

The only authorized discipline was for failure to respond to the complaint. There was a miscommunication as to when the response was received. Therefore, the recommendation is to close the complaints.

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

Seconded by Anita Taylor

Adopted by voice vote

14. CASE NO.: L10-FUN-RBS-2010035151

Audit showed a missing file, which was subsequently found. There were additional price list inconsistencies that have been corrected. The recommendation is to reduce the civil penalty to \$500 from the original \$1,500.

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

Seconded by David Neal

Adopted by voice vote

FINAL ORDER DESIGNATION

The current practice for litigating cases is to have the Board sign the Administrative Law Judge's Final Order. Sometimes, this order is not ready for signature until at least the next Board meeting, if not later. Tenn. Code Ann. § 4-5-318(c) states that "the agency shall establish which agency members, officials or employees may sign final orders rendered by the agency." To expedite the closing of cases, Assistant General Counsel requested that the Board designate both the President and the Executive Director and grant either one of them the authority to sign any Final Order rendered by an Administrative Law Judge. That way, the Board President or the Executive Director could sign a Final Order rendered by the agency and expedite the closing of cases.

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

Seconded by W. T. Patterson

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 SEPTEMBER 9, 2014 – OCTOBER 13, 2014

<u>Establishment(s)</u>	<u>Type of Action(s)</u>
Cremation Center of Chattanooga Chattanooga, TN	New Establishment
Dusty Rose Mortuary, LLC Memphis, TN	New Establishment
Smoky Mountain Cremation Center Pigeon Forge, TN	New Establishment
Hardeman County Funeral Services, Inc. Bolivar, TN	Change of Ownership
<u>Individual(s)</u>	<u>Type of License(s)</u>
Kenneth Wayne Barrett, Jr. Coalmont, TN	Funeral Director/Embalmer
Samuel Lee Ronk, III Alamo, TN	Funeral Director/Embalmer

CLOSED ESTABLISHMENT REPORT:

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

- Mid-South Funeral Care, LLC, 413A Franklin Street, Clarksville, TN.

DISCIPLINARY ACTION REPORT:

REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF SEPTEMBER 1, 2014 – SEPTEMBER 30, 2014

Respondent: Barlow Funeral Home, Covington, TN
 Violation: Failed to honor financial obligations to a supplier with whom they conduct business in a timely manner
 Action: \$250 Civil Penalty

Respondent: Barlow Funeral Home, Covington, TN

Violation: Unprofessional conduct (casket that contained a deceased human remains leaked a substantial amount of bodily fluids and emitted a distinct and offensive odor)

Action: \$1,000 Civil Penalty

Respondent: Samuel Leon Cagle, Lexington, TN

Violation: Immoral or unprofessional conduct (forged the signature of a medical examiner on a certificate of death and filed it with the Department of Health)

Action: \$1,000 Civil Penalty

Respondent: Michelle Gant-Curtis, Nashville, TN

Violation: Either gave or tended to give the impression in paid advertisements and on a LinkedIn page that the person was licensed to practice as a funeral director or an embalmer and failed to respond within the time specified after receiving notice of an open complaint

Action: \$1,500 Civil Penalty

Respondent: Davis-Campbell-McClain Funeral Home, Nashville, TN

Violation: Signage and advertisements referenced the funeral establishment by a name other than the exact name approved by the Board

Action: \$500 Civil Penalty

Respondent: Walter Roscoe Davis, Nashville, TN

Violation: Funeral director served as the manager of a funeral establishment while its signage and advertisements referenced the funeral establishment by a name other than the exact name approved by the Board

Action: \$250 Civil Penalty

Respondent: Parsons Mortuary, Inc., Parsons, TN

Violation: Misrepresentation or fraud in the conduct of the business of the funeral establishment (manager of the establishment forged the signature of a medical examiner on a certificate of death and filed it with the Department of Health)

Action: \$500 Civil Penalty

Respondent: Austin Thompson, Jr., Ripley, TN

Violation: Engaged in the practice of funeral directing and served as an establishment manager while funeral director license was expired

Action: \$250 Civil Penalty

Respondent: Thompson's Mortuary, Ripley, TN

Violation: Engaged in the operation of a funeral establishment while the funeral director license of the person managing, supervising and responsible for the funeral establishment was expired

Action: \$250 Civil Penalty

OPEN COMPLAINT REPORT:

As of October 13, 2014 there were 61 open complaints.

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

Seconded by Wayne Hinkle

Adopted by voice vote

INDIVIDUAL APPLICATION:

**Seanna Rae Hamm
Senatobia, MS**

Funeral Director/Embalmer

Upon motion by Wayne Hinkle and seconded by Jane Gray Sowell, based upon application record, this individual was approved for licensure.

Adopted by voice vote

**Jami Renee Lawson
Norton, VA**

**Funeral Director/Embalmer
Reciprocity**

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

Adopted by voice vote

**Suzanne L. Merkel
Nashville, TN**

**Apprentice Funeral Director
Apprentice Embalmer**

Upon motion by Jane Gray Sowell and seconded by Wayne Hinkle, based upon application record, this individual was approved for apprentice registration.

Adopted by voice vote

ESTABLISHMENT APPLICATION:

**AFFORDABLE FUNERALS & CREMATION SERVICES
116 ALLEN AVENUE**

JACKSON, TN 38301

New Establishment

Ownership: Sole Proprietor

**Owner(s): Lloyd A. (L. A.) Springfield, 257 Williamson Road, Denmark, TN
38391-1828**

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

Adopted by voice vote

Board member(s) recorded as an abstention from voting: Jane Gray Sowell

ADJOURN:

A motion was made by Anita Taylor to adjourn.

Seconded by David Neal

Adopted by voice vote

The meeting was adjourned by President Robert Starkey at 10:59 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director