

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

APRIL 14, 2015

President Robert Starkey called the meeting to order at 10:05 a.m. in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

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

Staff present: Robert Gribble, Executive Director; Ellery Richardson, Assistant General Counsel; Shilina Brown, Assistant General Counsel; Regina Oldham, Paralegal; Roy Bozeman, Investigator; Lisa Mosby, Administrative Manager; and DePrey Flournoy, Administrative Secretary.

ADOPTION OF AGENDA:

A motion was made by Jane Gray Sowell 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 March 10, 2015 Board Meeting.

Seconded by Robert Helms

Adopted by voice vote

FORMAL HEARING:

Docket No. 12.09-130510J

Case No. L14-FUN-RBS-2014028541

- **Respondent: Snow Funeral Home, 1382 Florida Street, Memphis, TN 38106**

Establishment License No. 344

A formal hearing was held pursuant to the Administrative Procedures Act against Respondent Snow Funeral Home following formal charges being authorized by the Board. Respondent does not have a fixed place of business following a fire

at the establishment on December 24, 2013, that resulted in complete destruction of the funeral home. Respondent has not and did not have a building or facility at the location of the funeral home. Respondent conducted at least 59 funerals in 2014. Additionally, Respondent did not have available for inspection the following items: an establishment license; any funeral director license; any embalmer license; any price list including general price list, casket price list, outer burial price list, or a Statement of Funeral Goods and Services Selected; crematory license; or crematory inspection report. Respondent stated that it has been working diligently to erect a building. Peter Showers, Jr, the establishment manager, stated that he had a temporary trailer, but it was vandalized and he had to remove it. The Department, on behalf of the Board, filed formal charges against the Respondent and sought relief for the following violations of the statute and funeral board rules in the formal hearing: TENN. CODE. ANN. 62-5-313, TENN. CODE. ANN. 62-5-306, TENN. CODE. ANN. 62-5-107, Tenn. R. & Reg. 0660-6-.02, Tenn. R. & Reg. 0660-11-.04(1), Tenn. R. & Reg. 0660-11-.04(2), Tenn. R. & Reg. 0660-11-.04(3), Tenn. R. & Reg. 0660-11-.07(1), and Tenn. R. & Reg. 0660-11-.07(2).

Following the conclusion of the formal hearing, the Board made the following findings of fact and conclusions of law: (1) Respondent Snow Funeral Home did not have a fixed place of business and is in violation of TENN. CODE. ANN. § 62-5-313 [Requirement for Operation], by failing to have a fixed place of business or establishment devoted to the care and preparation of dead human bodies on the date of the inspection by the field representative; (2) Respondent violated TENN. COMP. R. & REGS. 0660-11-.07(1) [Records], by not having all records subject to inspection by the Federal Trade Commission made available to the Board; (3) Respondent violated TENN. COMP. R. & REGS. 0660-11-.07(2), by not submitting any records kept by the licensee in the normal course of business; (4) Respondent violated TENN. CODE. ANN. §§ 62-5-306 and 308, by not having the current license for each funeral director and/or embalmer available for inspection in the office of the funeral establishment in which the funeral director and/or embalmer works; and (5) Respondent violated TENN. CODE. ANN. § 62-5-107, by not having the current crematory license on file for the crematory and a copy of the crematory's latest inspection report of the crematory facility used by Snow Funeral Home available for inspection.

The Board found that the Respondent shall be subject to: (1) an inspection of the establishment by a Board representative on or after May 30, 2015 and at that time, the Respondent, Snow Funeral Home shall be required to meet the minimum requirements of a licensed funeral establishment/facility in Tennessee and if the Respondent is not compliance with the minimum requirements of a licensed funeral establishment/facility in Tennessee, the Respondent's funeral establishment license shall be immediately suspended until compliance is met; (2) assessment of a civil penalty of \$500 for failing to have a fixed place of business, assessment of a civil penalty of \$250 for not having all records subject to inspection by the Federal Trade Commission made available for inspection;

assessment of a civil penalty of \$250 for not submitting any records that are to be kept by the licensee in the normal course of business; assessment of a civil penalty of \$250 for not having the current license for each funeral director and/or embalmer available for inspection in the office of the funeral establishment in which the funeral director and/or embalmer works; and an assessment of a civil penalty of \$250 for not having the current crematory license on file for the crematory and a copy of the crematory's latest inspection report of the crematory facility used by Snow Funeral Home available for inspection. The total civil penalty assessed by the Board was \$1,500 plus assessment of all investigatory and hearing costs in this matter, not to exceed \$1,500, incurred pursuant to TENN. CODE ANN. § 56-1-311(a) and TENN. COMP. R. & REG. 0780-5-11-.01.

Note:

Board member David Neal departed the meeting during the formal hearing and did not participate in the findings of fact, conclusions of law, policy statement, or assessment of penalties, investigatory or hearing costs.

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-2014032351**
 2. **Case No.: L14-FUN-RBS-2014032352**
 3. **Case No.: L14-FUN-RBS-2014032361**
 4. **Case No.: L14-FUN-RBS-2014032362**

Complaint:

- August 21, 2014 inspection revealed that Respondent's funeral director and embalmer licensed expired on April 30, 2014 and were not renewed until June 16, 2014. During this time Respondent performed nineteen embalmings with Respondent #1 and five with Respondent #3 for a total of twenty-four cases.

Response:

- Respondent stated that he did not receive his renewal notice until May 22, 2014, 22 days after his licenses expired, because the renewal notices were originally sent to the address on file for the licensee, the licensee has a new mailing address but did not notify the Board timely. Respondent mailed all the required material, and the Board received it on June 16, 2014. Respondent called the Board Office about the lapse. It appears that Respondent misunderstood the grace period to mean that he could

continue embalming. Respondent takes responsibility for not updating his address, but states that he thought it was acceptable to continue embalming while the renewal was being processed.

Recommendation:

- For Embalmer: Consent Order with \$600 civil penalty and authorization for a hearing.
- For the two funeral establishments: Consent Order with \$250 civil penalty each and authorization for a hearing.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

5. Case No.: L14-FUN-RBS-2014032621

6. Case No.: L14-FUN-RBS-2014032622

Complaint:

- Respondent funeral director and embalmer licenses expired on June 30, 2014 and were not renewed until August 14, 2014. During this time, Respondent funeral director was the manager of Respondent funeral establishment and conducted funeral and embalming services for at least seven cases.

Response:

- Respondent apologizes for the lapse and states that he was going through a divorce at the time, had left his previous residence, and did not remember that the expiration date was approaching.

Recommendation:

- Funeral Director: Consent Order with \$350 civil penalty and authorization for a hearing.
- Establishment: Consent Order with \$350 civil penalty and authorization for a hearing.

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

Seconded by Robert Helms

Adopted by voice vote

7. Case No.: L14-FUN-RBS-2014031501

Complaint:

- Inspection revealed three instances where the permanent identification devices on the deceased individuals only had names and was missing the rest of the required information. There was also an inconsistency between the General Price List and the Casket Price List.

Response:

- Respondent states that their process was to just have the names until right before the viewing, when the family would supply some of the additional information. The inspection occurred before the viewing; all the identification tags were correct by the time of viewing. Respondent has agreed to change its procedure in light of this complaint. Respondent states that it has corrected the price list inconsistency, but the inconsistency actually benefitted the consumer and was to the detriment of the funeral home by \$295.

Recommendation:

- Close with a Letter of Warning.
-

A motion was made by Mark Cochran to accept Counsel's recommendation.

Seconded by Anita Taylor

Adopted by voice vote

8. Case No.: L14-FUN-RBS-2014031631

Complaint:

- Embalmer license was not available for inspection, and there were thirteen inconsistencies or disclosure violations in the price lists.

Response:

- Respondent has submitted corrected price lists.

Recommendation:

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

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

Seconded by W. T. Patterson

Adopted by voice vote

9. Case No.: L14-FUN-RBS-2014031661

Complaint:

- Respondent's establishment license expired on June 30, 2014 and was not reinstated until July 7, 2014. During this time Respondent handled arrangements for four cases.

Response:

- Respondent apologizes; he states that the Board Office was closed when he came on June 30, 2014 and he was unable to return until July 7, 2014.

Note:

June 30, 2014 was a Monday and the state offices were open their normal hours of 8:00 a.m. until 4:30 p.m.

Recommendation:

- Consent Order with \$400 civil penalty and authorization for a hearing.

A motion was made by Mark Cochran to accept Counsel's recommendation.

Seconded by Robert Helms

Adopted by voice vote

10. Case No.: L14-FUN-RBS-2014032111

Complaint:

- Respondent sent out a mailing for a "Special Veterans Funeral Package" that includes a \$2,065 "Veterans Honor Discount/Savings Allowance." Customers are bringing the mailing into Complainant's funeral home and asking whether they do this too, wanting to prearrange funeral contracts. Complainant wants to know if this is allowed and is asking for an interpretation, since it was his understanding that preneed discounts are not allowed.

Response:

- Respondent states that this package is offered preneed and at-need, although it is generally purchased at-need.

Recommendation:

- Close with a Letter of Instruction to the Respondent and send a copy of it to the Complainant.

A motion was made by Mark Cochran to accept Counsel's recommendation.

Seconded by Robert Helms

Adopted by voice vote

-
11. **Case No.: L14-FUN-RBS-2014032311**
 12. **Case No.: L14-FUN-RBS-2014032312**
 13. **Case No.: L14-FUN-RBS-2014032313**

Complaint:

- Respondent of Case No. 12 (the crematory) self-reported that they had mis-matched two sets of cremated human remains. The crematory stated that the shipping box containing cremains belonging to Establishment #1 ended up labeled as the cremains for Establishment #3 and vice versa and were shipped out to the funeral homes and the families as such. The mix-up was discovered eleven months later when one of the families went to bury the cremains and noticed that while the mailer had the name of their family member, the permanent identification device contained within the urn had the name of another person.

Response:

- Respondents contacted the other family, but the cremains had already been scattered on their farm and they had not realized the mix-up. Respondents mailed the correct cremains to them, and the family that discovered the mix-up traveled to this farm to see the scattering ground. The Respondents state that as far as they can tell, the families are satisfied.

Recommendation:

- For Establishments #1 & #3: Close with a Letter of Warning for the establishment to verify the correctness of all data before passing the cremated human remains along to the customer.
- For Crematory: Consent order with \$750 civil penalty and authorization for a hearing.

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

Seconded by W. T. Patterson

Board member(s) recorded as voting contrary to the conclusion: Jane Gray Sowell

Adopted by voice vote

14. Case No.: L14-FUN-RBS-2014032331**Complaint:**

- Previous inspection cited Respondent's failure to have a "date of release" recorded in their logs. This subsequent inspection indicates that this failure has not been corrected. Two cremation authorization forms did not

have a funeral director's signature. Additionally, Respondent is using a cremation authorization form that has not been approved by the Board.

No Response

Recommendation:

- Consent Order with \$1,250 civil penalty and authorization for a hearing.

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

Seconded by Robert Helms

Adopted by voice vote

15. Case No.: L14-FUN-RBS-2014032381

Complaint:

- Inspection revealed an inconsistency in the price lists, equaling a \$225 excess charged on 12 funeral contracts.

Response:

- Respondent apologizes for failing to update one of the price lists and shows proof that the funeral establishment has issued overpayment checks to each of these customers to correct the problem.

Recommendation:

- Close with a Letter of Warning.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

16. Case No.: L14-FUN-RBS-2014032631

Complaint:

- Inspection revealed that one body lacked a permanent identification device; the license and inspection report of the crematory Respondent uses was not available for inspection; there are four caskets not on the casket price list and another four caskets with prices that are different on the caskets in the showroom than those prices on the price list; and outer burial container price list did not contain proper disclosure language.

Response:

- Respondent states that he immediately corrected the problems.

Recommendation:

- Consent Order with \$750 civil penalty and authorization for a hearing.

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

Seconded by Anita Taylor

Adopted by voice vote

17. Case No.: L14-FUN-RBS-2014032661

Complaint:

- Inspection revealed that Respondent has not been keeping final disposition records required by Tenn. Code Ann. § 62-5-509. A Letter of Warning was issued at the 2012 inspection, and it was a violation at the 2013 inspection. Respondent began keeping these records after the 2013 inspection, but abruptly stopped in March 2014. One cremation authorization form lacked a funeral director's signature.

Response:

- Respondent's new manager states that he will work to make sure the record keeping is enforced and all the records are filled out correctly.

Recommendation:

- Consent order with \$500 civil penalty and authorization for a hearing.

A motion was made by Mark Cochran to accept Counsel's recommendation.

Seconded by Robert Helms

Adopted by voice vote

18. Case No.: L14-FUN-RBS-2014030091

Complaint:

- Complainant made arrangements with Respondent for his father, but there was a problem with the insurance policy, and Complainant found another funeral establishment to work with. Complainant alleges that Respondent's funeral director said she would not release the body until Complainant paid \$945 to the funeral establishment. Complainant received many phone calls demanding payment and stating Respondent would not release the body until payment was received.

Response:

- Respondent states that the family was visibly upset when they realized that the insurance policy had lapsed. The family gave authorization to embalm and cremate but asked that Respondent wait a day. Complainant called later and asked what the process would be to change funeral homes, and Respondent told the caller that the family would still owe \$945 for removal and embalming fees. Complainant then called back saying that Respondent's fees were too high and another funeral home told him so and that he shouldn't pay them. Another funeral home then contacted the Respondent, signed the release, and picked up the human remains. Respondent states that they did say in their messages that they were owed \$945 but denied saying they wouldn't release the human remains without the money, and they apologize for any misunderstanding.

Investigation:

- An investigation revealed that Respondent's prices were higher than what they had quoted to the family a few days prior, and with the lapse of the insurance policy, the family left the arrangement conference trying to find another funeral home with better prices. Respondent left messages on both the Complainant and her sister's phones stating that they need to pay \$945 before the transfer to another funeral home; Complainant was left four or five messages and his sister one. The other funeral home stated that an employee of Respondent told them that they could not make the removal unless they brought the money. Complainant contacted the Board Office upset that the funeral home would not release the body, and the Board Office staff told Complainant that the funeral home could not hold the body for payment. Board Office staff then called Respondent's owner and informed them that they could not hold the body. When the other funeral home came for the removal, they stated that one staff member was very hostile and they had to wait 45 minutes. The rest of the staff was cordial and fine.

Recommendation:

- Consent order with \$500 civil penalty, an additional \$600 investigation costs and authorization for a hearing, and send a Letter of Instruction/Warning to the funeral director responsible.

A motion was made by Robert Helms 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 MARCH 10, 2015 – APRIL 13, 2015****Establishments****Type of License(s)**

Alternative Cremation & Funeral Service Franklin, TN	New Establishment
M. D. Dotson & Sons Funeral Home & Cremation Service, LLC Athens, TN	Ownership and Name
M. D. Dotson & Sons Funeral Home & Cremation Service, LLC Cleveland, TN	Ownership and Name
Portland Funeral Chapel, LLC Portland, TN	Ownership and Name
Speck Funeral Home Livingston, TN	Ownership and Name

Individuals**Type of License(s)**

Amber Gael Coss Ripley, TN	Funeral Director/Embalmer
April Yvonne McCollum Sweetwater, TN	Funeral Director/Embalmer
Jeremy Nathaniel Weaver Morristown, TN	Funeral Director/Embalmer
Joseph Scott Galyon Knoxville, TN	Funeral Director/Embalmer Reciprocity – Georgia
Eric Daniel Cullop Mountain City, TN	Funeral Director
Lolieta Louise Shaw Nashville, TN	Funeral Director

Joey Don Howard
Memphis, TN

Funeral Director
Reciprocity – Texas

Dana Pleshette Taylor
Memphis, TN

Embalmer

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY
ACCEPTED/APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO
BOARD AUTHORITY FOR THE PERIOD OF
MARCH 1, 2015 – MARCH 31, 2015**

Respondent: Bledsoe Funeral Home, Inc., Jackson, TN
Violation: Engaged in the operation of a funeral establishment while the establishment license was expired
Action: \$250 Civil Penalty

Respondent: Forest Hill Funeral Home & Memorial Park – Midtown, Memphis, TN
Violation: Signage for the establishment referred to the funeral establishment by a name other than the exact name approved by the Board
Action: \$250 Civil Penalty

Respondent: Forest Hill Funeral Home & Memorial Park – South, Memphis, TN
Violation: Signage for the establishment referred to the funeral establishment by a name other than the exact name approved by the Board
Action: \$250 Civil Penalty

Respondent: N. H. Owens & Son Funeral Home, Memphis, TN
Violation: Manager of the funeral establishment engaged in the practice of funeral directing while funeral director license was expired and funeral establishment failed to respond within the time specified after receiving notice of an open complaint
Action: \$400 Civil Penalty

Respondent: Patton Funeral Home, Cleveland, TN
Violation: Failed to have funeral establishment license available for inspection and offered multiple caskets that were either priced higher in the casket selection room than shown on the price list or were not listed on the price list
Action: \$250 Civil Penalty

Respondent: Rucker Memorial Chapel, Inc., Murfreesboro, TN
Violation: Failed to refund money for services that were cancelled
Action: \$400 Civil Penalty

Respondent: Revonda J. Rucker, Murfreesboro, TN
Violation: Failed to refund money for services that were cancelled
Action: \$400 Civil Penalty

OPEN COMPLAINT REPORT:

As of April 14, 2015 there were 53 open complaints.

A motion was made by W. T. Patterson to accept the Executive Director's Report.

Seconded by Anita Taylor

Adopted by voice vote

LEGISLATIVE UPDATE:

The following report was presented to the Board by Robert Gribble, Executive Director:

SB0194 / *HB0163

Funeral Directors and Embalmers – As introduced, clarifies that the two members of the board of funeral directors and embalmers with a minimum of five consecutive years' experience in this state immediately preceding their appointment shall be licensed as funeral directors, embalmers, or both; and provides that if the board is inspecting a crematory facility in conjunction with an application for initial licensure, change of ownership, or change of location, the authorized representative conducting the inspection for the board shall also be a certified crematory operator. – Amends TCA Title 62, Chapter 5, Part 2.

<http://www.capitol.tn.gov/Bills/109/Bill/HB0163.pdf>

Last Actions:

04/06/2015 – HB0163 – Transmitted to Governor for his action

03/30/2015 – SB0194 – Companion House Bill substituted

***SB0320 / HB0289**

Autopsies – As introduced, rewrites Post-Mortem Examinations Act effective January 1, 2017; requires counties to appoint a medicolegal death investigator;

terminates Tennessee medical examiner advisory council. – Amends TCA Title 4, Chapter 29, Part 2; Title 38, Chapter 7 and Title 68, Chapter 1, Part 11.

<http://www.capitol.tn.gov/Bills/109/Bill/SB0230.pdf>

Last Actions:

02/11/2015 – SB0320 – Passed on Second Consideration, refer to Senate Health and Welfare Committee

02/11/2015 – HB0289 – Assigned to s/c Health Subcommittee

SB0621 / *HB0199

Insurance Companies, Agents, Brokers, Policies – As introduced, defines funeral merchandise for prearrangement insurance policies. – Amends TCA Title 46 and Title 62, Chapter 5.

<http://www.capitol.tn.gov/Bills/109/Bill/HB0199.pdf>

Last Actions:

03/17/2015 – HB0199 – Taken off notice for call in s/c Business and Utilities Subcommittee of Business and Utilities Committee

02/12/2015 – SB0631 – Passed on second Consideration, refer to Senate Commerce and Labor Committee

SB0870 / *HB0446

Cemeteries – As introduced, makes various changes with regards to the treatment of urn vaults, vaults, outer burial containers, and other merchandise offered by a cemetery company in pre-need contracts and in the disbursement of trust assets; clarifies the law applicable to pre-need contracts offered by cemetery companies. – Amends TCA Title 46, Chapter 1.

<http://www.capitol.tn.gov/Bills/109/Bill/HB0446.pdf>

Last Actions:

02/18/2015 – HB0446 – Assigned to s/c Business and Utilities Subcommittee

02/18/2015 – SB0780 – Passed on Second Consideration, refer to Senate Commerce and Labor Committee

***SB1235 / HB1307**

Cemeteries – As introduced, makes various revisions to regulations governing cemetery companies or other entities engaged in the business of selling, leasing, or renting lots, grave spaces, crypts, niches, and burial rights for the interment of deceased persons; requires the commissioner of commerce and insurance to

issue audit reports after auditing a cemetery company. – Amends TCA Title 46, Chapter 1 and Title 62.

<http://www.capitol.tn.gov/Bills/109/Bill/SB1235.pdf>

Last Actions:

04/13/2015 – SB1235 – Placed on Senate Regular Calendar for 04/15/2015

04/09/2015 – HB1307 – H. Placed on Regular Calendar for 04/13/2015

Website for Legislative Bill Searches:

<http://wapp.capitol.tn.gov/apps/billsearch/BillSearchAdvanced.aspx>

A motion was made by W. T. Patterson to accept the Legislative Update.

Seconded by Anita Taylor

Adopted by voice vote

ESTABLISHMENT APPLICATION:

**LAKEWAY CREMATION CENTER
1028 WEST MAIN STREET
MORRISTOWN, TN 37814-4517**

New Establishment

Ownership: Corporation

**Owner(s): Paxus Services (Tennessee), Inc., 444 West Main Street,
Morristown, TN 37814-4616**

Upon motion by W. T. Patterson and seconded by Mark Cochran, based upon application record, the establishment was approved for licensure.

Adopted by voice vote

Board member(s) recorded as voting contrary to the conclusion: Jane Gray Sowell

ADJOURN:

A motion was made by Robert Helms to adjourn.

Seconded by Mark Cochran

Adopted by voice vote

The meeting was adjourned by President Robert Starkey at 6:19 p.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director