

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

FEBRUARY 9, 2016

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

Board members present: David Neal, President; Robert Helms, Vice President; Dennis Bridges, Mark Cochran, Robert Davis, Jeff Duffer and Charles Rahm.

Staff present: Robert Gribble, Executive Director; Ellery Richardson, Assistant General Counsel; DePrey Flournoy, Administrative Secretary; and Lisa Mosby, Administrative Manager.

WELCOME NEW BOARD MEMBERS:

President David Neal introduced and welcomed four new board members: Dennis Bridges of Knoxville, Tennessee, a funeral director and embalmer representing the Eastern Grand Division, Robert Davis of Louisville, Tennessee, a funeral director representing the Eastern Grand Division, Jeff Duffer of Brentwood, Tennessee, a funeral director and embalmer representing the Middle Grand Division and Charles Rahm of Jackson, Tennessee, a funeral director and embalmer representing the Western Grand Division.

ADOPTION OF AGENDA:

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

Seconded by Mark Cochran

Adopted by voice vote

ADOPTION OF ROBERT'S RULES OF ORDER:

A motion was made by Mark Cochran to adopt Robert's Rules of Order to govern the Board in all cases to which they are applicable and in which they are not inconsistent with statutes and any special rules of order the Board may adopt.

Seconded by Charles Rahm

Adopted by voice vote

CONFLICT OF INTEREST STATEMENTS:

President David Neal explained that a Conflict of Interest Statement must be signed annually and new statements are presented to the board members at the first meeting of the year. Every board member signed a new statement acknowledging that its purpose is to assure that the interests and activities of all members serving on a departmental board do not conflict or give the appearance of conflicting with the provision of unbiased service to the public.

APPROVAL OF MINUTES:

A motion was made by Robert Helms to approve the Minutes of the November 10, 2015 Board Meeting.

Seconded by Mark Cochran

Adopted by voice vote

A motion was made by Mark Cochran to approve the Minutes of the December 8, 2015 Board Meeting.

Seconded by Robert Helms

Adopted by voice vote

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

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- 1. Case No.: L15-FUN-RBS-20150212081**
 - 2. Case No.: L15-FUN-RBS-20150212082**

The Deceased was at Complainant funeral home; the ex-wife and children wanted cremation. Respondent states that he was contacted by the Deceased's siblings who were opposed to cremation, and they wanted to transfer the body to Respondent to straighten everything out. Respondent then contacted Complainant's funeral director, who stated that they were not releasing the body.

When Respondent met with the siblings, the family told him that the other establishment had already scheduled the cremation and service for the next morning and asked him to help. The siblings gave Respondent the deceased's will that specifically indicated that the deceased's sisters be involved and stated that he did not want to be cremated. Respondent then attempted to contact the

Complainant's funeral director again, but they were not cooperative. Respondent called the Board office, which gave Respondent the applicable statute for who holds the Rights of Disposition and the statute that states it is prohibited to hold a body against the wishes of the one lawfully entitled to the body. The family suggested that he call the police to obtain the body, so he did. After the police arrived the body was not released, but the family agreed to cooperate and to not cremate. Respondent states that he encouraged the family to stay with Complainant and work with the rest of the family.

An investigation revealed that although Respondent was acting at the behest of the deceased's sisters, the children were the ones with the right of disposition. The sisters had a holographic will that was never probated by a judge, but it does not appear from legal's review to be valid. Of course, Respondent would not have known that the will was not valid at the time. Complainant filed the complaint because it felt that calling the police on another funeral home is not the professional way to handle a family disagreement.

Recommendation:

- Funeral Establishment: Close
- Funeral Director: Close

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

Seconded by Mark Cochran

Adopted by voice vote

3. Case No.: L15-FUN-RBS-20150218561

4. Case No.: L15-FUN-RBS-20150218562

Complainant is sister to the deceased. The deceased's children wanted to cremate, but the siblings did not. The siblings presented a holographic will during the arrangement conference that stated the deceased did not want cremation; the validity of this will is debatable. The siblings left after an argument. Four of the five children signed the cremation authorization form at the arrangement conference. Even though the authorization was signed, the funeral home did not plan any cremation and told the children that they were holding off. The funeral home states that they then called Complainant and her siblings and explained that they were holding the cremation and she could go before a judge with the will if she wished. At that point, the Complainant asked if they could do a burial if the siblings paid for it; the children eventually agreed. The siblings were able to come up with \$4000 for the funeral and cemetery charges; Respondent gave them a \$2000 discount.

Complainant states that Respondent ignored the will and was rude, disrespectful, and ignored the siblings' wishes during the whole process, and that Respondent never embalmed the deceased. An investigation revealed that the daughter declined embalming at the initial removal and the deceased was refrigerated. The investigation did not reveal evidence of a violation of the funeral laws and rules by these Respondents. It appears that the funeral home attempted to follow the Right of Disposition statute during a time of family conflict.

Recommendation:

- Close

A motion was made by Charles Rahm to accept Counsel's recommendation.

Seconded by Mark Cochran

Adopted by voice vote

5. Case No.: L15-FUN-RBS-20150219051

Respondent's establishment license expired on June 30, 2015 and was not renewed until July 21, 2015. Respondent handled 17 cases during this time. Respondent apologizes for the oversight and states that he did not receive the renewal notice.

Recommendation:

- Consent Order with \$850 civil penalty and authorization for hearing.

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

Seconded by Charles Rahm

Adopted by voice vote

6. Case No.: L15-FUN-RBS-20150220911

One of Respondent's employees had an apprentice registration that expired on April 30, 2015. On August 26, 2015, Respondent had its inspection, and the inspector noted that the employee was still listed as registered on its website. Additionally, the website lists six individuals who are not licensed. Respondent states that they thought they made the correction when the inspector was on site, but since their website is supported by an outside company, the change did not appear. When the inspector informed them that the website still wasn't corrected, they contacted the company and paid to have it changed. Legal has confirmed that the website is now corrected.

Recommendation:

- 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 Jeff Duffer

Adopted by voice vote

7. Case No.: L15-FUN-RBS-20150224931**8. Case No.: L15-FUN-RBS-20150224932**

Complainant is a Medical Examiner who states that she signed the death certificate after an autopsy on October 19, 2015. In late November they received the completed death certificate, but it is clear that it is not the same certificate she signed (due to typing vs. handwriting). Additionally, Respondent forged the Medical Examiner's signature on this second death certificate. Respondent admits to doing this and stated that it was because of a clerical error in filling out the death certificate. Because the family was pushing to get the certificate, Respondent states that they just created another death certificate and completed the Medical Examiner's section, including the cause of death and forgery of the Medical Examiner's signature.

Recommendation:

- Establishment: Consent Order with civil penalty of \$1,000 and authorization for a hearing.
- Manager: Close with a Letter of Warning.

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

Seconded by Charles Rahm

Adopted by voice vote

9. Case No.: L15-FUN-RBS-20150221861

Complainant is a funeral establishment that did embalming services for Respondent. Complainant states that on the last four cases, Respondent refused to pay. Complainant sent invoices, called multiple times, and finally had their lawyer send Respondent a demand letter, but to no avail. The total amount owed is \$1,775.

Respondent states that at the time the invoices were due he had some financial concerns based on another matter, so he withheld payment on some of his debts until that matter was concluded. He states that he will pay Respondent what is owed within 15-30 days. The invoices have still not been paid.

Recommendation:

- Consent order with civil penalty of \$500 and proof of payment to supplier within 30 days. If payment is not made to supplier within 30 days, civil penalty increases to \$750.

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

Seconded by Mark Cochran

Adopted by voice vote

10. Case No.: L15-FUN-RBS-20150226191

Respondent's establishment license expired on August 31, 2015 and was not renewed until October 12, 2015. Respondent handled 15 cases during this time.

Response:

- Respondent apologizes for the oversight and states that it was due to a miscommunication with his accountant.

Recommendation:

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

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

Seconded by Dennis Bridges

Adopted by voice vote

11. Case No.: L15-FUN-RBS-20150227321

Crematory inspection report not available, billboard with advertising violations, and funeral rule violations: inconsistencies for prices on two caskets and no reason for embalming listed on three funeral contracts. Respondent states that he has corrected the violations and stressed the importance of the embalming disclosure to his staff.

Recommendation:

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

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

Seconded by Charles Rahm

Adopted by voice vote

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- 12. Case No.: L15-FUN-RBS-20150225891**
 - 13. Case No.: L15-FUN-RBS-20150225892**
 - 14. Case No.: L15-FUN-RBS-20150225893**

Complainant states that Respondent apprentice performed a graveside committal service on December 6, 2015 without a licensed supervisor or sponsor present. Additionally, he is advertising in a magazine as a Funeral Director, Mortician, and Pre-Need Counselor.

Respondent funeral home states that they believed he was allowed to perform a committal service as long as a funeral director "was in the area or nearby." Respondent apologizes for the advertisement and states that it should have used the name of a licensed funeral director.

Recommendation:

- Apprentice: Close with a Letter of Warning
- Establishment: Consent Order with \$1,000 and authorization for a hearing

A motion was made by Jeff Duffer to accept Counsel's recommendation.

Seconded by Charles Rahm

Adopted by voice vote

RE-PRESENTS

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- 15. Case No.: L15-FUN-RBS-2015014961**
 - 16. Case No.: L15-FUN-RBS-2015014211**

Original Consent Order was for overcharging the family, next of kin did not sign the cremation authorization form before the cremation, and Respondent then had the next-of-kin sign and then backdate that cremation authorization form. Upon additional information submitted, it was determined that Respondent did not overcharge the family as much as initially thought, but it still resulted in an overcharge to the family. Respondent also showed proof they refunded the family

the excess charges. Civil penalty was for \$2,000. Based on new information, Legal recommends reducing the civil penalty to \$1,500.

New Recommendation:

- Consent Order with reduced civil penalty of \$1,500 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

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

BUDGET REPORT:

Board of Funeral Directors and Embalmers
Financial Recap
Fiscal Year July 1, 2014 – June 30, 2015

Financial data was provided to the Board's Executive Director by the Assistant Commissioner's Office for Regulatory Boards of the Tennessee Department of Commerce and Insurance on October 6, 2015 for use in the compilation of this report.

Beginning Balance – July 1, 2014	\$1,066,326.00
Net Revenue (Earnings) for July 1, 2014 – June 30, 2015	\$ 484,416.00
Total Funds Available	<u>\$1,550,742.00</u>
Expenditures July 1, 2014 – June 30, 2015	\$ 387,109.00
Cost Backs (Cost Allocations charged to the Board from Administration and Investigation; Administration includes Legal)	\$ 180,468.00
Total Expenditures, Including Cost Backs	<u>\$ 567,577.00</u>
Reserve Balance – July 1, 2015	\$ 983,166.00

Footnote: The dollar amounts used in compiling these figures have been rounded to the nearest dollar and may vary one dollar mathematically.

LEGISLATIVE UPDATE:

Bill(s) Directly Affecting the Board of Funeral Directors and Embalmers:

SB2534 / *HB2569

Professions and Occupations - As introduced, revises various provisions regarding cemetery owners and companies, architects, insurers, shops licensed by the board of cosmetology and barber examiners, funeral directors, real estate firms, real estate brokers, affiliate brokers, time-share salespersons, and acquisition agents. - Amends TCA Section 46-2-101; Section 56-1-213 and Title 62.

<http://www.capitol.tn.gov/Bills/109/Bill/HB2569.pdf>

Other Bill(s) of Interest to Funeral Directors and Establishments:

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/Amend/SA0502.pdf>

SB1972 / *HB1894

Estates - As introduced, increases the maximum amount of a life insurance policy from \$7,500 to \$15,000 in order that a photocopy of a certificate of death, along with certain statements, may constitute proof of death; authorizes certain financial institutions and associations to pay out all accounts of certain deceased, and checks payable to certain deceased, to certain creditors, relatives, and representatives as long as the sums do not exceed \$15,000 in the aggregate. - Amends TCA Title 45 and Title 56.

<http://www.capitol.tn.gov/Bills/109/Bill/HB1894.pdf>

***SB2045 / HB2263**

Trusts - As introduced, authorizes a trustee to establish a single trust fund for all pre-need funeral contracts issued by multiple pre-need sellers, instead of having to establish a trust fund for each pre-need seller. - Amends TCA Title 62, Chapter 5, Part 4.

<http://www.capitol.tn.gov/Bills/109/Bill/SB2045.pdf>

SB2488 / *HB2268

Cemeteries - As introduced, creates a nine-member task force to make recommendations for statutory changes concerning funding for community exempt cemeteries; task force will make a report and cease to exist by January 1, 2017. - Amends TCA Title 46.

<http://www.capitol.tn.gov/Bills/109/Bill/HB2268.pdf>

***SB1480 / HB2436**

Cemeteries - As introduced, extends to all local governments the authorization that county governments currently have to use local funds at their discretion to rehabilitate or maintain dilapidated or abandoned cemeteries that do not maintain a sufficient improvement care trust fund or are not maintained adequately. - Amends TCA Title 46, Chapter 2, Part 1.

<http://www.capitol.tn.gov/Bills/109/Bill/SB1480.pdf>

SB2562 / *HB1558

Veterans Services, Dept. of - As introduced, prohibits any person working for or representing the department from participating in certain solicitations from the public for veterans' cemeteries; grants the commissioner rule-making authority for such cemeteries; adds other provisions regarding such cemeteries. - Amends TCA Title 46, Chapter 6.

<http://www.capitol.tn.gov/Bills/109/Bill/HB1558.pdf>

SB1090 / *HB0828

Veterans - As introduced, specifies that no fee shall be charged for the interment of an eligible veteran in a state veterans' cemetery and limits the fee to \$300 for the interment of an eligible veteran's spouse. - Amends TCA Title 46, Chapter 6.

<http://www.capitol.tn.gov/Bills/109/Bill/HB0828.pdf>

***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/SB0320.pdf>

SB0870 / *HB0446

Cemeteries - As introduced, makes various changes with regard 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>

Website for Legislative Bill Searches:

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

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
DECEMBER 8, 2015 – FEBRUARY 8, 2016**

Establishment(s)

Lawrence-Sorensen Funeral Home
Jackson, TN

Madison Funeral Home
Madison, TN

Gilbert Funeral Home
Portland, TN

Individual(s)

Matthew Tyler Mott
Oak Ridge, TN

Erwin Holmes Shea, III
Goodlettsville, TN

Shaquille Jamal Wiggins
Byhalia, MS

Billy David Dotson, Jr.
Kingsport, TN

Corey Michael Hall
Cookeville, TN

Ashely Ann Luer
Naples, FL

Sarah Noel Mullins
Chattanooga, TN

James Maxwell Shockney
Elkmont, AL

Joseph Anthony Martin
Bowling Green, KY

Type of Action(s)

Ownership and Name Changes

Ownership Change

Name Change

Type of License(s)

Funeral Director/Embalmer

Funeral Director/Embalmer

Embalmer

Funeral Director/Embalmer
Reciprocity – Texas

Funeral Director/Embalmer
Reciprocity – Georgia

Funeral Director/Embalmer
Reciprocity – Minnesota & Florida

Funeral Director/Embalmer
Reciprocity – Georgia

Funeral Director/Embalmer
Reciprocity – Alabama

Funeral Director
Reciprocity – Kentucky

CLOSED ESTABLISHMENT REPORT:

Two (2) establishments have reported closing since the last board meeting:

- Cosmopolitan Funeral Services, 1101 Hornbrook Street, Dyersburg, TN;
and
- Strawther & White Funeral Home, 425 Walnut Grove Road, Hartsville, TN.

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY
ACCEPTED/APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO
BOARD AUTHORITY FOR THE PERIOD OF
DECEMBER 1, 2015 – JANUARY 31, 2016**

Respondent: Affordable Funerals & Cremation Services, Jackson, TN
Violation: Failed to maintain a copy of the crematory's latest inspection that the establishment uses and failed to comply with multiple aspects of the Funeral Rule

Action: \$250 Civil Penalty

Respondent: Blake Alan Carroll, Hohenwald, TN
Violation: Immoral or unprofessional conduct and obtained licenses by fraud or misrepresentation (The International Conference of Funeral Service Examining Boards, Inc., determined that the licensee provided confidential information to Arapahoe Community College, the licensee admitted this fact, and The Conference invalidated licensee's national board examination scores based on the alleged distribution of testing materials)

Action: Revocation of Funeral Director and Embalmer licenses and \$200 Hearing Costs

Respondent: Cremation Society of East Tennessee, Knoxville, TN
Violation: Engaged in the operation of a funeral establishment while the establishment license was expired

Action: \$400 Civil Penalty

Respondent: Golden Gate Funeral Home, Memphis, TN
Violation: Engaged in the operation of a funeral establishment while the establishment license was expired and failed to comply with multiple aspects of the Funeral Rule

Action: \$250 Civil Penalty

Respondent: Adriana Harrison, Harrison's Memorial Chapel, Inc., Memphis, TN

Violation: Unlicensed activity (engaged in funeral directing without a license – made arrangements to provide for funeral services and made financial arrangements for the rendering of funeral services), over-charged for multiple items, and refused to discuss discrepancy with the consumer

Action: \$1,000 Civil Penalty

Respondent: Legacy Funeral Home and Cremation Center, Inc., Soddy Daisy, TN
Violation: Engaged in the operation of a funeral establishment while the establishment license was expired
Action: \$700 Civil Penalty

Respondent: Snow Funeral Home, Memphis, TN
Violation: Engaged in unfair or deceptive acts (overcharged two separate families for use of facilities and staff)
Action: \$1,000 Civil Penalty

Respondent: Unity Mortuary, Knoxville, TN
Violation: Engaged in unfair or deceptive acts or practices as defined in the Funeral Rule (failed to present valid Casket and Outer Burial Container Price Lists, Casket Price List did not include multiple caskets for sale in the casket selection room, and the Outer Burial Container Price List and Statement of Funeral Goods and Services Selected failed to contain proper disclosure language)
Action: \$2,000 Civil Penalty

Respondent: Tracye L. White, Manager of Harrison's Memorial Chapel, Inc., Memphis, TN
Violation: Knowingly permitted unlicensed persons to engage in the profession or business of funeral directing under the licensee's supervision and aided or abetted unlicensed persons to practice within the funeral profession
Action: \$1,000 Civil Penalty

The following individuals have had their licenses suspended in accordance with Tenn. Code Ann. § 36-5-706 or Tenn. Code Ann. § 56-1-313:

Funeral Directors and Embalmers

JaVaughn Jermaine Tucker Memphis, TN
John Cedric Vincent Madisonville, TN

OPEN COMPLAINT REPORT:

As of February 9, 2016 there were 32 open complaints.

A motion was made by Robert Helms to accept the Executive Director's Report.

Seconded by Charles Rahm

Adopted by voice vote

BOARD FINANCIAL PRESENTATION:

Brian McCormack, Assistant Commissioner, Regulatory Boards Division, and Bill Huddleston, CPA, Accounting Manager, Regulatory Boards Division, presented the Revenue and Expenditures Statement for FY14-15.

Assistant Commissioner McCormack discussed data details during this presentation for fiscal year July 1, 2014 through June 30, 2015 and answered questions concerning the Board's current financial position.

ESTABLISHMENT APPLICATION:**ESSENTIALS FUNERAL AND CREMATION SERVICES**

ATTN: BRIAN KEITH GIVENS, MGR.

2114 CHAPMAN ROAD, SUITE 110

CHATTANOOGA, TN 37421-1619

New Establishment

Ownership: Corporation

**Owner(s): Precious Memories Enterprises, Inc., 958 Elaine Trail,
Chattanooga, TN 37421-4088**

Upon motion by Mark Cochran and seconded by Robert Helms, based upon application record, the establishment was approved for licensure.

President Neal announced there would be a roll call vote.

Roll Call Vote			
Board Members	Yes	No	Absent
Dennis Bridges	X		
Mark Cochran	X		
Robert Davis	X		
Jeff Duffer	X		
Robert Helms	X		
David Neal	X		
Charles Rahm		X	

Adopted by roll call vote

NEW BUSINESS:

North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S.Ct. 1101 (2015) – Assistant General Counsel Ellery Richardson gave a presentation to the Board regarding this particular case and the decision by the Supreme Court of the United States.

ADJOURN:

A motion was made by Robert Helms to adjourn.

Seconded by Mark Cochran

Adopted by voice vote

The meeting was adjourned by President David Neal at 11:28 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director