

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

DECEMBER 12, 2017

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

Board members present: Robert Helms, President; Charles Rahm, Vice President; Dennis Bridges, Jeff Duffer, and Clark McKinney.

Board member(s) absent: Mark Cochran and Robert Davis

Staff present: Robert Gribble, Executive Director; Cherrelle Hooper, Assistant General Counsel; and Lisa Mosby, Administrative Manager.

ADOPTION OF AGENDA:

A motion was made by Charles Rahm to approve the Agenda as printed.

Seconded by Clark McKinney

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Jeff Duffer to approve the Minutes of the November 14, 2017 Board Meeting.

Seconded by Charles Rahm

Adopted by voice vote

LEGAL REPORT:
ANTHONY GLANDORF, CHIEF 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.: 2017042181 – Establishment**
 - 2. Case No.: 2017045081 – Establishment**
 - 3. Case No.: 2017045101 – Establishment**
 - 4. Case No.: 2017045121 – Establishment**
 - 5. Case No.: 2017047091 – Establishment**

All complaints involve the conditions of the establishment during the funeral of a deceased loved one. The complaints allege that the establishment was not properly cleaned, including the presence of insects and rodents in the establishment. Complaints also allege that the air conditioner was not working and the establishment was very warm and uncomfortable. Further, the complaints allege that the bathroom was unkempt as the trash was running over and the sink, toilet and walls were visibly dirty. Complainants provided pictures of the disheveled restroom.

Complaints also allege unsatisfactory service by the establishment. Allegations include: tardiness and the funeral director napping in the back office during the service, which he was found doing by a family member. It is also alleged that traffic services were not provided as agreed upon and a family member had to direct traffic as a result.

In response, Respondent contends that the funeral home was clean during the service and at all meetings with the family members. Although the Respondent admits that its air conditioning was not working, they were attempting to fix the issue.

An investigation was conducted and obtained sworn statements from the complainants which substantiated the claims regarding the lack of cleanliness of the restroom along with the lack of air conditioning. It was also found from these statements and from the response of the respondents that a member of the funeral establishment staff had met with the family to conduct arrangements without first obtaining a funeral director license. This individual has already been subject of a previous legal report regarding this issue and has been sent a consent order for such activity.

Additional information for consideration but not relevant to a determination of a violation is that Respondent stated it has filed a civil suit against various complainants since the complaint was filed to collect funds owed for the funeral

services which had yet to be paid. The lawsuit was filed after this complaint was submitted to the Board.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order a total civil penalty in the amount of \$1,000 plus investigatory costs regarding an unclean restroom, not in good working order (\$250), lack of sufficient air conditioning – which is a lack of a public area in good state of repair (\$250) both of which are violations of 0660-11-.04(1)-(2). Further, a civil penalty of \$500 for allowing the unlicensed individual to arrange funeral details is aiding and abetting an unlicensed funeral director in violation of 62-5-317(b)(6).

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Charles Rahm

Adopted by voice vote

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- 6. Case No.: 2017059021 – Establishment**
 - 7. Case No.: 2017059341 – Establishment**
 - 8. Case No.: 2017059471 – Establishment**

There are three (3) complainants regarding the same incident. The complainant alleges that she visited respondent for a quote on the cost of her mother's funeral. A representative of the respondent met with complainant along with her brother and informed her that she would receive a quote on Monday, August 28, 2017, and had Complainant and her brother sign paperwork that they believed was for the purpose of obtaining a quote. On Monday, August 28, 2017, Respondent informed complainant that it had picked up her mother's body and had embalmed her. Complaint states that she was surprised at this information, as she was only expecting a quote. Complainant decided to not use respondent's services. According to complainant, respondent refused to release the body of the deceased until the funeral establishment was paid \$1,075.00. The next day, the complainants chosen funeral home attempted to pick up the body and was refused. Complainant contacted respondent again and was told that \$2,175.00 must now be paid for release of the body which now included a \$500.00 consultation fee and \$600.00 for 'pre-arranging.'

Respondent avers that complainant and her family initially signed the authorization for removal and embalming form on Saturday, August 26, 2017, and received a quoted price for the funeral costs on Monday, August 28, 2017 at which time complainant informed respondent that other family members of the deceased would be paying for the services. On Friday, September 1, 2017, another funeral home contacted respondent inquiring into the cost for transfer to their funeral home. The other funeral home stated it would only pay for the embalming and removal services despite respondent's submission of itemized cost for transfer. On Tuesday, September 5, 2017, respondent alleges that a representative of the other funeral home, the family, the Memphis Police Department, and the media showed up at respondent's facility and demanded release of decedent's body. Respondent states that after the police were satisfied no laws had been broken, upon demonstration of the signed authorization forms, the family paid the itemized costs in an amount of \$2,175.00, signed the appropriate release, and the deceased was released to the other funeral home. The investigation noted that there was not an executed agreement for goods/services for this matter. Two other family members filed additional complaints alleging the same facts as discussed above.

It was found from the investigation that the individual who operates the establishment, made arrangements with the family, refused release of the body and had solely met with the family is not a licensed funeral director and had previously held an apprentice funeral director registration which expired August 31, 2000. It was also found that the manager of the funeral establishment lives 220 miles from the location of this funeral establishment and is also the manager of a second funeral establishment in another state. (These complaints are seen below in Cases 9-11.)

Note: A similar situation occurred involving another decedent shortly following the incident described above. (See complaints below in Cases 12-15.)

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order for the revocation of the funeral establishment license in connection with the facts surrounding cases 9-15 below for violations of 62-5-317(b)(6) of aiding and abetting an unlicensed funeral director, violation of 62-5-313(c) for failing to be managed and supervised by a licensed funeral director in that the manager was not at the location during these events, violations of 62-5-317(a)(4-5), and (7) for immoral or unprofessional conduct, permitting an unlicensed person to engage in the profession of funeral directing, and

refusing to surrender the custody of a dead human body upon expressed order of person legally entitled to such. Further violations include violations of 62-5-317(b)(1),(11), and (17) for misrepresentation as to the service to be provided, unreasonably refusing to promptly surrender a dead human body, and failure to comply with the provisions of chapter 5, title 62. Rule violations include 0660-11-.05(1) and -.06 for failing to treat the public in a respectful manner regarding the failure to surrender the body, and engaging in an unfair or deceptive act or practices defined in the Funeral Rule and engaging in any act that is misleading or deceptive.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Charles Rahm

Adopted by voice vote

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- 9. Case No.: 2017059041 – Expired Apprentice Funeral Director**
 - 10. Case No.: 2017059381 – Expired Apprentice Funeral Director**
 - 11. Case No.: 2017068501 – Expired Apprentice Funeral Director**

After the above Complaints (6-8) were filed, it was discovered that respondent's apprentice funeral director registration expired August 31, 2000, and was not reinstated or renewed. Respondent did not address the issue of his expired apprentice funeral director registration in his response.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with civil penalty in the amount of \$2,000 plus investigatory costs as this involves unlicensed activity with two decedents.

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

Seconded by Clark McKinney

Adopted by voice vote

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- 12. Case No.: 2017068431 – Establishment**
 - 13. Case No.: 2017068451 – Funeral Director (Establishment Manager)**
 - 14. Case No.: 2017068471 – Embalmer (Same Individual as FD/Est. Mgr.)**
 - 15. Case No.: 2017068501 – Expired Apprentice Funeral Director**

Complainant is a competitor and alleges a failure of respondent to release a body upon lawful demand. The funeral establishment Respondent in this matter is the same as above Complaints 6-8 and the individual involved acting on behalf of the establishment is the same unlicensed person from Complaints 9-11. The complainant alleged that near the same time as the actions in complaints seen in 6-8 above, the media aired the controversy. Due to this, the current customers of the respondent decided not to use the services of the respondent and contacted the complainant and asked that its establishment provide the services and executed a Statement of Funeral Goods and Services Selected with that establishment. The respondent establishment employed the same unlicensed individual in complaints 6-8 and subject complaints 9-11. This individual refused to release the body to the family until it received \$1,200.00. Further, an affidavit was obtained from a family member who stated she also spoke with the funeral home manager and licensed funeral director who refused to release the body until the amount was paid. The family hired an attorney to assist in the release of the body. Ultimately, representatives of the family stated they negotiated with the respondent and made a settlement payment of \$900.00 for the release of the body. The SFG&SS obtained from an investigation into the Respondent was not signed by either party. Further, the individual representing the respondent who assisted the family for the arrangements and refused to surrender the body was the same unlicensed individual as seen in complaints 6-8 above and subject of unlicensed complaints in 9-11 above.

Recommendation:

- Funeral Establishment - Authorize formal hearing. Authorize settlement by consent order with the revocation of the funeral establishment license in conjunction with number 6-8 above.
- Funeral Director/Establishment Manager – Authorize formal hearing. Authorization for the revocation of the funeral director/manager’s license and embalmer’s license for failing to supervise, manage the location, aiding and abetting an unlicensed person in the practice of a funeral director, unprofessional conduct, misrepresentation, deceptive acts, and violations of Chapter 5, Title 62.
- Unlicensed individual/expired apprentice funeral director registration – Authorize formal hearing. Include this complaint to the previous complaints above presented in 9-11 without additional civil penalty as this matter includes a same transaction or occurrence as seen in 9-11 above.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Charles Rahm

Adopted by voice vote

16. Case No.: 2017061731 – Establishment

Complainant alleges that she arrived at the cemetery for her spouse's burial service and the burial site was not prepared correctly, as the hole was dug too shallow. Allegedly, respondent informed complainant and her family to leave and return an hour later and the problem would be corrected and they could watch their loved one being buried. When complainant returned, she alleges that the respondent had already buried her husband, filled the grave, and left the cemetery.

Respondent contends that complainant did not purchase a grave site set up and it was agreed that the final committal would be done at the funeral home; however, the family could attend the burial if they wished. Realizing the grave was too shallow, respondent discussed the matter with cemetery personnel who suggested dismissing the family while the situation was remedied, which included making the hole larger, placing the casket in the grave, and covering it. Respondent alleges that he explained the situation to the family and told them that they could come back in an hour to see where their loved one was buried.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with civil penalty in the amount of \$500 for unprofessional conduct.

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

Seconded by Jeff Duffer

Adopted by voice vote

17. Case No.: 2017061401 – Establishment

SUMMARY: Upon inspection it was found that:

(1) Respondent charged \$495.00 more than the price listed on the General Price List regarding the price for a package offering for one decedent. Respondent contends that this was in error and the price respondent actually charged the family was less than what was on the General Price List.

(2) Respondent did not provide a completed Statement of Funeral Goods and Services Selected at the conclusion of arrangements demonstrating the itemized charges during the funeral arrangements of one decedent. The Statement of Funeral Goods and Services Selected in the decedent's file was completely blank except for cash advance charges for obituaries and copies of death certificates. Respondent contends that the family only owed for cash advance items and they were not charged for a service charge.

(3) Description of items included in package offerings on the Statement of Funeral Goods and Services Selected did not match prices listed on the General Price List. Further, the listing on the Statement of Funeral Goods and Services omits the words "basic" and "and staff" from the listings of packaged prices as required by the 1994 revision of the Funeral Rules.

(4) One casket on display in the casket selection room does not appear on the Casket Price List. Further, one casket in the display room is advertised for sale as \$100.00 more than listed on the casket price list. Also, the casket price listed describes one casket as velvet lined, but in the display room it is on display with a crepe interior. Respondent avers that this was a typo, and has been corrected.

(5) Prices listed for caskets on the General Price List do not agree with caskets listed on the Casket Price List. Further, the GPL advertises \$250.00 for a low-end range casket, but this price does not represent a casket, but instead an alternative container.

(6) Name and address of establishment is not listed on the General Price List, Casket Price List, or the Statement of Funeral Goods and Services Selected documents. Respondent contends that this has been corrected.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with civil penalty in the amount of \$750.

A motion was made by Clark McKinney to accept the Board's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

18. Case No.: 2017055421 – Establishment

An anonymous complaint attached advertisements where employees of respondent are listed in advertisements with the acronym “NLFD” after their name. Anonymous complainant avers that this is not a legitimate state license and this is misleading to consumers.

Respondent avers that the acronym “NLFD” stands for “non-licensed funeral director” and is present on advertisements to inform the public that certain employees are not licensed funeral directors. Nevertheless, respondent avers that all “NLFD” labels will be removed from future advertisements and attached an advertisement with the title removed.

The anonymous complaint further alleges that a licensed funeral director of respondent listed as the manager of respondent is also the manager of two other establishments. Respondent contends that it has since hired a new manager who only manages its establishment.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with civil penalty in the amount of \$250 and require the funeral establishment to properly report and pay appropriate change of establishment manager fee to the State Board Office.

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

Seconded by Dennis Bridges

Adopted by voice vote

19. Case No.: 2017058161 – Establishment

Complainant alleges the funeral home failed to provide him with a copy of the General Price List and did not give him a copy of the Statement of Funeral Goods and Services Selected at the conclusion of arrangements. Complainant further alleges that upon requesting a copy of the contract, the prices changed drastically. The contract shows several items crossed out and the overall price

lowered. Complainant further alleges that he was wrongfully charged for an alternative container. Complainant states that a special urn that the deceased had made was used. Complainant stated that he wanted to place the family member's urn in the same crypt as another deceased relative and was told he would be charged the exact same price as another crypt and was not offered a second right of internment/entombment. Complainant alleges that after filing the complaint he received a call from a representative of the funeral home accusing him of being a thief, etc. Both the statements from the complainant and the funeral home confirm that the complainant did cash out the insurance policy but has not paid the bill for the services provided. Complainant states that he was instructed to file the claim but does not explain failing to pay any of the monies owed.

Respondent alleges that the contract was initially not complete and they were waiting on additional pieces of information to complete the contract because the customer had to withdraw the insurance funds before the arrangements could be finalized. Respondent alleges that the current contract was changed when the complainant changed his mind regarding certain things. Respondent alleges that complainant knew he would be charged for an alternative container and that they do not place multiple bodies or ashes in the same space.

The contract shows that originally the complainant was charged for basic services of a funeral director, use of facilities and staff for funeral, viewing/visitation, and transfer of remains. All of these charges were subsequently changed and he was only charged for use of facilities and staff for memorial resulting in an approximate \$1,900.00 reduction in the bill. The contract is signed by complainant. The contract itself does not show a merchandise charge for an alternative container. The respondent states verbally that the discussion about the alternative container deals with the total price for the direct cremation and complainant does not understand that there had to be a container in which to do the cremation itself as opposed to placing the decedent directly in the furnace. The only merchandise charge is for acknowledgement cards. The use of a contract that clearly delineates the charges along with the complainant's signature shows an agreement to the contract terms. The complainant's statement that the prices were all changed due to a clerical error when he asked for a copy is countered by his signature on the agreement and funeral home's contention that the complainant changed his mind after requesting the insurance funds. Complainant has provided no further evidence to show that he was not given a copy of the GPL or that the agreement was not used. However, it appears a copy was not given. Upon review of the GPL, it is determined that the

complainant was charged the exact prices on the GPL at all times. The complainant's subsequent complaints about being contacted by the funeral home regarding his outstanding bill and the alleged rudeness is countered by his failure to pay any of his outstanding bill despite there being insurance funds for such.

Recommendation:

Authorize Letter of Warning regarding failure to provide a copy of General Price List.

A motion was made by Clark McKinney to accept the Board's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

20. Case No.: 2017067311 – Establishment

21. Case No.: 2017067351 – Funeral Director

22. Case No.: 2017067371 – Embalmer (Same Individual as FD)

Complainant alleges that his minor nephew (17 years old) was approached the night his father passed away by an employee of the funeral home and provided with a business card and instructed to contact the funeral home in order to make arrangements. The complainant was so upset by this that he went to the funeral establishment the following day to inquire about the solicitation; his visit has been confirmed by the funeral home. The funeral home totally denies this incident occurred and highlights the fact that the business card was not ever brought to the funeral establishment as requested for inspection. The complainant states that instead of returning to the funeral home after they denied all wrongdoing, he decided to file a complaint with the State Board instead. Because complainant had to look at a list involving pictures in order to identify the person he believed was responsible for handing out the card, it does raise concerns about proper identification of the individual who physically handed out the card. Nevertheless, there is compelling evidence that a solicitation on behalf of this funeral home did in fact occur at the hospital that evening and that the card was that of a licensed funeral director.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order for civil penalty against funeral home in the amount of \$1,000. Authorize Letters of

Instruction to funeral director and embalmer regarding solicitation of business in such a manner.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Dennis Bridges

Adopted by voice vote

23. Case No.: 2017050261 – Establishment

24. Case No.: 2017050281 – Funeral Director/Establishment Manager

Complaint alleges that Respondent agreed to refund money to a consumer after the deceased's life insurance policy was found to be in good standing; however, Respondent failed to refund the money. Respondent admits to owing the money to the consumer, but states it has not been paid back because he did not know whether to pay the consumer (who paid the amount via credit card) or the beneficiary of the life insurance policy. The only reason the consumer paid via credit card is because it was unclear whether the insurance policy was in good standing. The funeral establishment received full payment from the insurance company, so the monies to the consumer should have been immediately refunded. The establishment should have sought legal advice if there was a question as to who should receive a refund in order to quickly resolve this issue.

Recommendation:

- Funeral Establishment: Authorize formal hearing. Authorize settlement by consent order for civil penalty against funeral home in the amount of \$2,475, which is triple the amount owed to the complainant. If complainant is issued a full reimbursement of the \$825 by a cashier's check within thirty days and proper proof submitted to the State Board, the civil penalty shall be reduced to \$1,250.

- Funeral Director: Authorize formal hearing. Authorize settlement by consent order for a civil penalty in the amount of \$250.

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

Seconded by Dennis Bridges

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

We have not received official notification from the Tennessee State Funeral Directors & Morticians Association, the Tennessee Funeral Directors Association, or funeral related parties of any legislative proposals that they intend to pursue during the legislative session that reconvenes January 9, 2018.

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
NOVEMBER 14, 2017 – DECEMBER 11, 2017**

<u>Establishment(s)</u>	<u>Type of Action(s)</u>
Ponders Funeral Homes Brainerd Chapel Chattanooga, TN	New Establishment
Heritage Funeral Home and Cremation Memphis, TN	Name and Location

CLOSED ESTABLISHMENTS:

No funeral establishments have reported closing since the last board meeting.

DISCIPLINARY ACTION REPORT:

This is a Report of Consent Orders that have been administratively accepted / approved by the Executive Director pursuant to Board authority and as reported on the October 2017 Regulatory Boards Disciplinary Action Reports:

Respondent:	Bartlett Funeral Home, Inc., Bartlett, TN
Violation:	Deceptive practices; unprofessional conduct; misrepresentation or fraud in the conduct of business of funeral establishment; failure to timely respond to the complaint
Action:	Suspension of the funeral establishment license for six (6) months, \$8000 civil penalty, plus costs
Respondent:	Alfred Thomas Tacker, Memphis, TN

Violation: Deceptive practices; unprofessional conduct; misrepresentation or fraud in the conduct of business of funeral establishment; failure to timely respond to the complaint
Action: Revocation of funeral director license and \$8000 civil penalty

OPEN COMPLAINT REPORT:

As of December 12, 2017 there were 77 open complaints.

A motion was made by Clark McKinney to accept the Executive Director's Report.

Seconded by Jeff Duffer

Adopted by voice vote

ELECTION OF BOARD OFFICERS FOR 2018:

President:

Clark McKinney made a motion to nominate and elect Charles Rahm as President of the Board for 2018.

Seconded by Dennis Bridges

Adopted by voice vote

Vice President:

Charles Rahm made a motion to nominate and elect Jeff Duffer as Vice President of the Board for 2018.

Seconded by Clark McKinney

Adopted by voice vote

APPOINTMENT OF CONTINUING EDUCATION LIASON FOR 2018:

Charles Rahm made a motion to appoint Clark McKinney as the Continuing Education Liaison for 2018.

Seconded by Jeff Duffer

Adopted by voice vote

ADJOURN:

A motion was made by Jeff Duffer to adjourn.

Seconded by Charles Rahm

Adopted by voice vote

The meeting was adjourned by President Robert Helms at 10:42 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director