

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

APRIL 10, 2018

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

Board members present: Charles Rahm, President; Jeff Duffer, Vice President; Dennis Bridges, Mark Cochran, Robert Davis, Clark McKinney, and Robert Shackelford, III.

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

ADOPTION OF AGENDA:

A motion was made by Clark McKinney to approve the Agenda as printed.

Seconded by Jeff Duffer

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Clark McKinney, to approve the Minutes of the March 13, 2018 Board Meeting.

Seconded by Mark Cochran

Adopted by voice vote

LEGAL REPORT:

ASHLEY GENO, 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.: 2018003611 – Establishment**
 - 2. Case No.: 2018003651 – Funeral Director**
 - 3. Case No.: 2018003671 – Embalmer**
 - 4. Case No.: 2018003631 – Unlicensed/Acting as Funeral Director**

Upon routine examination on December 28, 2017, it was discovered that:

1. A new owner purchased the Respondent establishment on June 8, 2017. However, at the time of the inspection, neither the Respondent establishment nor the new owner had submitted a change of ownership notification to the Board of Funeral Directors and Embalmers.
 - a. To date, no change of ownership notification has been received by the Board of Funeral Directors and Embalmers.
2. The funeral director's license was not available for inspection at the establishment.
 - a. The listed funeral director listed as the establishment manager of records responded to the Complaint, advising he was incorrectly listed as the manager. He further advised that he had not at any time written, signed, or submitted a written document stating he was the funeral director, embalmer, or manager for the Respondent establishment after the establishment was purchased by the new owner.
 - b. On February 14, 2018, the Department received a response from the new funeral director and manager advising he has been serving as the manager and funeral director for the Respondent establishment since January 2, 2018. He advised his license is currently available for inspection.
3. The current embalmer's license was not available for inspection at the establishment.
 - a. The new funeral director and manager for the establishment advised that the license of an embalmer is currently available for inspection.
4. The current license and inspection report of the crematory utilized by the Respondent establishment was not available at the time of inspection.

- a. The new funeral director and manager for the establishment advised the crematory's license is currently available for inspection.
5. The funeral file for funeral services performed on behalf of one of the decedents was not available during the time of the inspection.
 - a. The new funeral director and manager advised that all records are in a file cabinet in the manager's office and available for inspection.
6. Despite not being licensed as a funeral director, the new owner engaged in funeral directing for three decedents. Specifically, he signed the Statement of Funeral Goods and Services Selected contract for one of the three decedents and also made funeral arrangements for another one of the three decedents while the investigator was conducting the inspection. There was no licensed funeral director present at that time.
 - a. After the new owner purchased the business, the family of one of the three decedents came to make funeral arrangements. The family presented the new owner with a pre-paid funeral contract. The new owner investigated but could not determine where the money was placed for this contract. The new owner gave a solid oak casket to the family at no charge, purchased a concrete box out of his own money, and provided all services for that decedent at no charge.
7. The signage on the front door of the establishment listed the new owner's name with the caption "owner", but did not designate that he was neither a Tennessee licensed funeral director nor Tennessee licensed embalmer. The same was true for the new owner's business cards.
 - a. The new funeral director and manager advised his name is being used, shown, or displayed by the funeral establishment.
8. There were several errors and/or omissions in the General Price List ("GPL").
 - a. The majority of errors and/or omissions in the General Price List were corrected by the new funeral director and manager. A copy of the new General Price List, Casket Price List, Outer Burial

Container Price List, and Statement of Funeral Goods and Services Selected Contract were provided.

9. There was no reason for embalming listed on the Statement of Funeral Goods and Services Selected contract for one of the three decedents.

Recommendation:

1. Establishment (FUN-2018003611): Authorization for a formal hearing. Authorization of a civil penalty in a total amount of \$3,250.00, to be reduced to \$2,500.00 if Respondent provides proof that an application for a change of ownership with all necessary supporting documents has been submitted to the Board of Funeral Directors and Embalmers within thirty (30) days, for:
 - a. Failing to submit a change of ownership notification to the Board of Funeral Directors and Embalmers;
 - b. Failing to have funeral director's license available for inspection at the time of the examination;
 - c. Failing to have the embalmer's license available for inspection at the time of the examination;
 - d. Failing to have the crematory's license and inspection report available for inspection at the time of the examination;
 - e. Failing to have the funeral file for funeral services performed on behalf of one of the decedents available for inspection at the time of the examination;
 - f. Aiding and abetting an unlicensed individual to engage in funeral directing;
 - g. Displaying the new owner's name on the front door without indicating he was neither a licensed funeral director nor licensed embalmer and displaying the new owner's name on business cards without indicating he was neither a licensed funeral director nor licensed embalmer;
 - h. Errors and/or omissions in the GPL;

2. Listed/Former Funeral Director/Manager (FUN-2018003651 and FUN-2018003671): Close with Letter of Warning.
3. New Owner (FUN-2018003631): Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$1,000.00 for unlicensed funeral directing.

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

Seconded by Dennis Bridges

Adopted by voice vote

5. Case No.: 2017074231 – Establishment

Complainant alleged: 1) unauthorized removal of her father-in-law's remains from a nursing home and 2) that Respondent refused to allow a transfer of the remains to another facility, wanting to be compensated for the services it performed. On the first allegation, Respondent indicated the nursing home authorized it to remove the decedent's remains because it was unable to get in touch with any members of the family after the decedent passed. Respondent further stated the nursing home called Respondent because Respondent's name and phone number were in the paperwork for the decedent when he was admitted into the nursing home. These statements were corroborated by the nursing home.

On the second allegation, the Respondent stated while it did initially request the family pay for services rendered (removal charge and embalming) as it believed these services were authorized (by nursing home), neither the family nor Complainant were billed for such services. Respondent also indicated it did not refuse to allow the transfer of the remains to another facility. On the same day Respondent received the remains (and decedent passed), Respondent transferred the decedent's remains to the requested establishment. The receiving establishment corroborated this. The funeral director/manager for the receiving establishment stated there were no problems with the transfer.

Recommendation:

- Closure.

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

Seconded by Robert Davis

Adopted by voice vote

6. Case No.: 2018003861 – Establishment

Upon examination, it was discovered Respondent operated and conducted services for five (5) decedents while its license was expired (December 1, 2017 through December 12, 2017). In response, Respondent purported that on or about the middle of November 2017, the location manager spoke with someone during a call to the Board who allegedly told him the license renewal had a thirty (30) day grace period. Respondent further purported one (1) of the five (5) services performed was a memorial service held on December 2, 2017 for a cremation which took place on November 30, 2017.

Recommendation:

- Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$250.00.

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

Seconded by Robert Shackelford

Adopted by voice vote

7. Case No.: 2018007551 – Establishment

On February 2, 2018, Complainant submitted a complaint against Respondent alleging he had yet to receive his father's cremains/ashes despite receiving the Death Certificate on February 1, 2018 and contacting the Respondent on four (4) occasions in January 2018 regarding the remains. By letter dated February 20, 2018, Respondent responded to Complainant/Consumer's allegations as follows:

1. On December 12, 2017, decedent's family inquired about making arrangements for the decedent. The family's initial plans were to have a funeral on December 18, 2017. However, on December 18, 2017, the family requested the funeral be moved to December 21, 2017. On December 20, 2017, the family advised they wanted a visitation and cremation instead of a funeral.
2. The family had a first viewing. Before the cremation, however, the Respondent was advised decedent's sister would be coming in for a viewing and that a family friend would come in to take pictures. The sister came in for a viewing the week following the first viewing, but the family friend never came.

3. The cremation request was sent on January 2, 2018 and was returned to Respondent on January 17, 2018. In between this time, Respondent indicates it had to keep pushing the appointment at the crematory because the doctor had not submitted the form for Respondent to send to the Medical Examiner's Office to get permission to cremate.
4. Respondent received permission from the Medical Examiner's Office on January 19, 2018. After this, Respondent made an appointment with the crematory. The Respondent and crematory agreed that due to the icy weather conditions and unsafe condition of the streets, the matter would be taken care of the following week.
5. On February 3, 2018, Respondent called Complainant to inform him decedent's ashes were ready for pick up.

Recommendation:

- Close.

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

Seconded by Mark Cochran

Adopted by voice vote

8. Case No.: 2018009071 – Establishment

Complainant, the decedent's sister, alleges she gave Respondent specific instructions of the decedent's wishes that his remains not be viewed by anyone. Despite these instructions, however, Respondent allowed the decedent's brother to view his remains. Complainant further alleges that when she spoke with the funeral director about allowing the brother to view the remains, the funeral director told her to pray about it.

Respondent admits the funeral director told Complainant to pray about it after she expressed concerns over her brother viewing the decedent's remains. Respondent indicates it saw no harm in allowing the brother to view the remains and that the brother told the Respondent that the Complainant had given him permission to view the remains.

Tenn. Code Ann. § 62-5-703 dictates the order in which right to control disposition of remains vests. Based upon the information gathered during our

investigation of the complaint, it does not appear the Complainant had any greater right to control the disposition of the decedent's remains than the brother.

Recommendation:

- Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$250.00 for unprofessional conduct (for the manner in which the funeral director treated Complainant).

A motion was made by Mark Cochran to Close the complaint.

Seconded by Dennis Bridges

Adopted by voice vote

9. Case No.: 2018011311 – Establishment

10. Case No.: 2018011331 – Funeral Director

The Complainant made numerous complaints against the Respondent establishment and Respondent funeral director. Our investigation, however, revealed these complaints were not credible and, as such, it is our recommendation to close this complaint.

Listed below are the Complainant's specific allegations and the Respondents' responses to the same:

1. Complainant claims she was the daughter of decedent. Despite this, the Respondent funeral director catered to the wishes of her cousin/decedent's nephew and his mother/decedent's sister. Complainant purports Respondent funeral director deferred to and consulted with them on procedures instead of her.
 - a. Respondents assert Complainant agreed to allow the above individuals to arrange the ceremony prior to her arrival and that Complainant approved, validated, sanctioned, and confirmed those arrangements.
2. Complainant alleges Respondent charged an Acceptance and Funding Fee of \$443.00.
 - a. Respondent indicates Complainant elected to use a life insurance policy to pay for the services. The Respondent assigns all life

insurance policies to a third party processing and funding company. That company verifies coverage with the insurance company and then advances the amount of the arrangements to the Respondent. The fee was for this service.

3. Complainant purports she told Respondents she believed decedent's burial arrangements were taken of before his death, but Respondents denied arrangements or details of service and denied payment for the services having been made.
 - a. Respondents explained while the decedent met with the funeral director before he passed away, the decedent did not make any payments or arrangements at that time; rather, he advised that his nephew (Complainant's cousin) would handle his final arrangements.
4. Limousine service was late to transport the family to funeral services and the list of persons to ride in the limousine did not include two people originally designated to ride in the limousine.
 - a. Respondents indicate they arrived at the residence in a timely manner and that the limousine driver simply called the list of names provided to him by the family, and the Complainant did not object.
5. Respondent funeral director drove the lead car in an erratic manner.
 - a. Respondent funeral director indicates that when driving the escort van, one must pace the lights so as to avoid breaking the procession, which requires one to speed ahead to catch the traffic light or to block an intersection.
6. Complainant claims she requested a DNA sample on several occasions, but Respondents advised 1) she was the second person to make a request and 2) that they would need to speak with an attorney before allowing her to collect a sample.
 - a. Respondents indicate that at the time Complainant requested a sample, she was informed that since there was a question with regards to decedent being her father, they could not give a specific time or date when someone could retrieve a sample because they would need to discuss the matter with counsel and the family. After

- speaking with counsel, Respondents informed the Complainant a DNA sample could be taken. Complainant admitted her lab technician was able to collect a DNA sample before the decedent was buried.
- b. Respondents indicate they had no knowledge then or now of anyone other than Complainant requesting a DNA sample.
7. Complainant alleges Respondent funeral director made the comment that “men don’t always tell the truth to everyone about who their children are.”
 - a. Respondent funeral director denies making this statement.
 8. Complainant claims the cosmetic preparation of the body was not satisfactory – decedent’s finger nails were uncut and extremely discolored. Family members witnessed Respondent trimming decedent’s finger nails in their presence.
 - a. Respondent funeral director indicates he has known the family for more than 36 years and prepared the decedent in a manner that the decedent normally appeared – with long nails.
 - b. Respondents also indicate when the decedent was casketed, his hands were in a position that they did not show. A family member raised the overlay throw, noticed the length of decedent’s nails, and asked for the nails to be trimmed. Respondent funeral director indicates he normally would have waited to trim the nails after the viewing; but to appease the family, he obliged the request at that time.
 9. Complainant purports there was no discussion about or approval of a public viewing.
 - a. Respondents indicate the viewing, and other arrangements, were discussed with the Complainant. Respondents indicate an opportunity was extended Complainant to make any changes, but she declined to make any changes and assured him that she was pleased with the arrangements the family selected.
 10. Flyers were created and distributed at a local restaurant with the announcement of decedent’s viewing and services.

- a. Respondents indicate the information referenced as a flyer was simply a copy of the information that was published in the newspaper. It was provided at the request of the owner of a restaurant that the decedent visited daily.
11. Respondents allowed Complainant's cousin to interrupt the service to announce an omission from the program.
- a. Respondents indicate they did not tell Complainant's cousin to make an announcement. Respondents aver that they cannot control Complainant's cousin's actions.
12. Complainant told Respondents after the funeral service that she did not want Respondents to perform the burial. She purports the Respondent funeral director told her this was fine, but that she would need to sign paperwork and pay for the funeral services in the event the insurance claim was denied as well as potential additional charges for storing/holding the body. Because she was unable to provide Respondent with a personal check, she left decedent's remains with Respondents for the burial the next day.
- a. Respondents indicate they did not request a personal check from Complainant during their meeting. The Respondents indicate they had already been paid by FAC (the third party processing and funding company) and that the only services left to render were to transport the remains and the family to the cemetery for the burial.
 - b. In response to the storage fee allegation, Respondents indicate there would be no need for a storage fee.
13. The other funeral home Complainant called the Respondent funeral director and told him they would pick up the remains, but Respondent purportedly rejected this, telling them that Complainant needed to complete paperwork first.
- a. Respondents indicate while they did receive a call from another funeral home inquiring about the remains, it was explained to that funeral home that the issue had been resolved.

14. The limousine service was thirty minutes late on the day of the burial. Complainant purports the Respondent funeral director drove the hearse in an erratic manner.
 - a. Respondents indicate they arrived at the family residence and then cemetery in a safe and timely manner. Respondents indicate the funeral director did not drive the hearse; he drove the escort vehicle.

15. Respondent funeral director was the notary on a Quitclaim deed transferring decedent's property to his sister executed two days prior to his death.
 - a. Respondent funeral director indicates that on July 20, 2016 he was asked to notarize a document for the decedent at the healthcare facility. He also indicates that he later attended the probate hearing involving the deed, at which the judge ruled in favor of the sister and upheld the transfer without reservation or scrutiny.

16. The healthcare facility notified Complainant that "those people" had been there "trying to get [decedent] to sign something." Complainant purports the healthcare facility also advised staff intervention social workers had asked them to leave.
 - a. Respondent funeral director indicates that while he was present at the facility, no one requested him or anyone else to leave the premises.

17. Complainant was purportedly told by a bank staff member that Respondent funeral director called and inquired about the details of the power of attorney presented relative to decedent's bank account.
 - a. Respondent funeral director indicates he did not call the bank to inquire about the decedent or his business affairs, but on one occasion before the funeral, while at the bank, he was questioned by a teller who asked if he was handling the services for the decedent. He indicates the extent of the conversation was telling the teller the date, time, and location of the service.

18. Complainant did not receive a copy of the death certificate dated August 10, 2016 until August 19, 2016. The additional copies she requested from

the Health Department on August 16, 2016 arrived on the same day as the one sent by Respondent.

- a. Respondent funeral director indicates he sent one copy of the Death Certificate to Complainant through FedEx overnight delivery. He also indicates his assistant forgot to mail the additional copies via regular mail, but upon discovering this, he immediately mailed the additional copies to Complainant.

Recommendation:

- Close.

A motion was made by Dennis Bridges to accept the Counsel's recommendation.

Seconded by Mark Cochran

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

SB1517*/HB1611 Funeral Directors and Embalmers – Sunset Laws - As enacted, extends the board of funeral directors and embalmers for six years to June 30, 2024. - Amends TCA Title 4, Chapter 29 and Title 62, Chapter 5, Part 2.

Public Chapter 500

SB2046/HB1979* Funeral Directors and Embalmers – As introduced, extends registration period for apprentice funeral directors, apprentice embalmers, and mortuary school students, from two to three years, or until the registrant has completed the apprenticeship requirements, whichever occurs first. - Amends TCA Section 62-5-312.

03/15/18 – Senate passed; 02/26/18 – House passed; and 04/02/18 – sent to Governor.

SB2458*/HB2537 Professions and Occupations – Professions and Occupations - As introduced, establishes apprenticeship programs for professions regulated by entities administratively attached to the division of professional regulatory boards. - Amends TCA Title 62, Chapter 76, Part 2.

04/05/18 – Senate passed with Amendment 3 (016361) and 03/27/18 – Sent to House Calendar & Rules.

SB1876*/HB2305 Taxes, Sales –
 Taxes, Sales - As introduced, exempts sales of caskets from sales and use tax. - Amends TCA Title 67, Chapter 6, Part 3.

SB1948/HB1891* Preneed Funeral Trusts
 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.

SB2091/HB1889* Preneed Funeral Contracts
 Funeral Directors and Embalmers - As introduced, lessens the amount of time that a seller of a pre-need funeral contract has to retain records concerning the pre-need funeral contract and information relating to the sale from five years after the death of the beneficiary to three years. - Amends TCA Title 62, Chapter 5, Part 4.

SB1973*/HB2179 Preneed Funeral Contracts
 Insurance Companies, Agents, Brokers, Policies - As enacted, provides that a contract between a purchaser of a pre-need funeral contract and a travel protection service provider is not a contract of insurance. - Amends TCA Title 56 and Title 62, Chapter 5, Part 4.

Public Chapter 623

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 MARCH 13, 2018 – APRIL 9, 2018

| <u>Establishment(s)</u> | <u>Type of Action(s)/Change(s)</u> |
|--|---|
| Rogers Funeral Home Jasper, TN | Change of Ownership |
| Rogers Funeral Home South Pittsburg, TN | Change of Ownership |
| <u>Individual(s)</u> | <u>Type of License(s)</u> |
| Dana Marina Poisal Clarksville, TN | Funeral Director and Embalmer |
| Craig Dean Hanson | Funeral Director and Embalmer |

| | |
|---|--|
| Mount Juliet, TN | Reapplication |
| Kenneth A. Hodges Nashville, TN | Funeral Director and Embalmer Reapplication |
| John Cedric Vincent Madisonville, TN | Funeral Director |
| Michael Clinton Oliver Pelham, TN | Funeral Director Reapplication |
| Jackson Nave Hunter Watertown, TN | Embalmer |

CLOSED ESTABLISHMENTS:

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

DISCIPLINARY ACTION REPORT:

These are Consent Orders that have been administratively accepted / approved by the Executive Director pursuant to Board authority and as reported on the February 2018 Regulatory Boards Disciplinary Action Report:

Respondent: Joe Ford Funeral Home, LLC, Memphis, TN
Violation: Engaged in misleading or deceptive practices
Action: \$1,250 Civil Penalty

Respondent: Joseph S. Ford, Sr., Memphis, TN
Violation: Engaging in deceptive acts or practices
Action: \$250 Civil Penalty

OPEN COMPLAINT REPORT:

As of April 10, 2018 there were 73 open complaints.

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

Seconded by Jeff Duffer

Adopted by voice vote

RESTHAVEN MEMORIAL GARDENS (A FUNERAL ESTABLISHMENT) IN DANDRIDGE, TN:

Resthaven Memorial Gardens, represented by Bruce Clairborne (establishment owner), appeared before the Board requesting permission to perform additional services, pursuant to TCA § 62-5-101, et seq., as authorized in the Agreed Order of License Probation executed in connection with issuance of the establishment license in March 2017.

Note: Board Member Dennis Bridges recused himself from participation in this matter.

A motion was made by Robert Shackelford to grant permission for the establishment to perform all services lawfully permitted by holders of an establishment license contingent upon a successful examination of the firm's preneed funeral contracts and that the Agreed Order of License Probation shall otherwise remain in full force and effect, including but not limited to, the full probation period of two full calendar years from the date that the license was issued to the establishment.

Seconded by Jeff Duffer

Adopted by voice vote

ADJOURN:

A motion was made by Jeff Duffer to adjourn.

Seconded by Clark McKinney

Adopted by voice vote

The meeting was adjourned by President Charles Rahm at 11:07 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director