

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

JUNE 20, 2018

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

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

Board Member(s) absent: Jeff Duffer, Vice President

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

ADOPTION OF AGENDA:

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

Seconded by Robert Davis

Adopted by voice vote

APPROVAL OF MINUTES:

President Charles Rahm announced that the May 8, 2018 Minutes will be presented for review/approval at the next board meeting.

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

1. Case No.: 2018012151 – Establishment

The Complainant alleges the Respondent lacked professionalism, attention to details, and staff on the day of the deceased's memorial service.

Specifically, the Complainant alleges:

1. The chapel was not set up or physically ready for a 1:00 p.m. visitation;
2. The Respondent was low staffed on the day of the service;
3. The service did not start on time;
4. The start of the service was rushed and disorganized;
5. The staff was not at the entrances to hand out programs as people came in; and
6. Over half of the guests did not receive a program.

In response to these allegations, the Respondent indicated:

1. Neither the Respondent's notes nor the funeral bill reflected an agreement to a 1:00 p.m. visitation in the chapel;
2. The memorial service began at 2:00 p.m. as scheduled;
3. By 12:45 p.m., the family had 30-40 people standing in the visitation room waiting for the memorial service to begin at 2:00 p.m. The staff attempted to accommodate the crowd and continually added more chairs as best they could;
4. Door greeters were temporarily pulled to accommodate the family by setting up more chairs;
5. Failure to provide programs to all family members may have been due to a short supply of programs printed (which the family created and printed themselves); and
6. The programs were handed out as the family entered.

In response to these indications, the Complainant insists a 1:00 p.m. visitation was discussed at the initial meeting with the Respondent and that the only items missing from the contract at that time were keepsakes. Because of this, her sister came in to sign the contract to include keepsakes at a later date. The Respondent, however, claims it was not until this second meeting that the family indicated it would also like a one hour visitation prior to the service.

An investigation into this matter was conducted. As part of the investigation, the Complainant's sister provided the contract from the initial meeting and the contract she signed. Neither contract reflected a 1:00 p.m. visitation. Under "facilities fees", the original contract (not signed) reflected only "use of facilities and staff for memorial service". The second contract, signed by the Complainant's sister, reflected "use of facilities and staff for memorial service"

and “use of overflow for memorial service.” Ultimately, the Respondent did provide a visitation but did not charge the family for it.

According to the Respondent’s manager, when the Complainant’s sister came to sign the contract she advised the establishment had received numerous calls about the services and suggested the number of attendees may be larger than anticipated. At that time, the Complainant’s sister agreed and requested the use of the larger main chapel for the memorial service to accommodate everyone. However, because the Respondent had not charged the family the basic service fee, the owner explained the best he could do would be to block out the smaller chapel and allow the use of an overflow room prior to the memorial service. The manager advised she adjusted the funeral contract and the family agreed to pay for the use of the overflow room.

The Complainant’s sister disputes this, claiming she believed the chapel and visitation room had been reserved in the initial conference.

Recommendation:

- Closure.

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

Seconded by Mark Cochran

Adopted by voice vote

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- 2. Case No.: 2018015381 – Establishment**
 - 3. Case No.: 2018015401 – Funeral Director**
 - 4. Case No.: 2018015451 – Expired Apprentice Funeral Director**

In the complaint, the Complainant alleged unlicensed activity and the ejection/ban of family members from both visitation and funeral services for the deceased. The family members were relatives of the deceased and former employees of the establishment. The family learned of the ban when one of the former employees was asked to leave the visitation after having been at the visitation for approximately one hour and was further advised to tell the other former employee that she could not come to the visitation or funeral.

Respondent denied the unlicensed activity and indicated that the former employees were aware they were not allowed on the funeral home property.

An investigation was conducted, which does not support a finding of unlicensed activity. The circumstances related to the removal of a former employee from the visitation and the ban of both of them dating back to 2013. The Respondent Funeral Director / Owner failed to provide any reason for the alleged ban despite ample opportunity to do so. However, both former employees appear to allege that in 2013, they were suspended for 30 days for insubordination (at least one with pay) after which they refused to return and instead went to work for a competitor's establishment. The investigation did not reveal a substantive basis for the alleged ban of these two former employees nor was there sufficient evidence to support that such a ban was ever in place. Both former employees deny ever being told they were banned from the property. One had been an employee of Respondent's establishment for five years and the other for thirty three years.

According to the expired Apprentice Funeral Director, on the night of the visitation the Respondent Funeral Director / Owner was monitoring the visitation on security cameras at the funeral establishment from her residence. He stated she called him to advise that she had seen the family member in attendance from the video. After this call, he requested to speak to the family member in a private room where he asked her to leave. He claims she became irate and combative and told him that she would not leave unless the police removed her. He called the police, but the family member left before they arrived. Two police officers did arrive at the establishment during the visitation. It appears the expired Apprentice Funeral Director was acting solely upon the orders of the Respondent Funeral Director / Owner.

The deceased's son stated that had he known some of his family members would not be welcome at the visitation or service, he would have selected a different funeral home. At the time of the former employee being asked to leave the premises, evidence supports that the individual had been there at least an hour and was sitting with a small child and visiting with other family members at the time. At that time, she was told to advise the other former employee that she was not welcome on the property for the visitation / funeral. Neither former employee attended the funeral of the deceased the next day due to the conduct of the Respondent Funeral Director / Owner and their desire not to cause a scene at the services.

Recommendation:

- Establishment: Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$2,000.00.

- Funeral Director: Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$2,000.00.
- Expired Apprentice Funeral Director: Close.

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

Seconded by Robert Shackelford, III

Adopted by voice vote

5. Case No.: 2018021681 – Establishment

6. Case No.: 2018021821 – Unlicensed Embalmer

On April 3, 2018, an employee of the Establishment submitted a complaint alleging the Unlicensed Embalmer embalmed over 200 bodies from 2017 to March 2018, despite not being licensed to do so. The employee also alleged the existence of a log book with embalmer signatures. He claimed the log provided the name of the Establishment's manager, but the signatures did not belong to her. In support of his complaint, the employee identified five witnesses (all former or current employees).

An investigation was conducted and the following was found:

1. Witness No. 1 denied knowledge of the allegations.
2. Witness No. 2 denied knowledge of the allegations.
3. Witness No. 3 initially indicated he was aware of a complaint being filed, but he had no direct knowledge of the allegations. He then indicated he was under the impression that the Unlicensed Embalmer stopped working for the Establishment two weeks prior, but that she did embalm bodies prior to her leaving and that the Establishment's owner and managing funeral director signed off on the embalmer signature book for her. However, Witness No. 3 ultimately signed an affidavit denying knowledge of the allegations.
4. Witness No. 4 denied knowledge of the allegations.
5. Witness No. 5 denied knowledge of the allegations.
6. The employee / Complainant denied making the complaint and stated that he had only seen the Unlicensed Embalmer perform as an Attendant, Makeup Artist, and Hair Stylist. He attested to this in a signed affidavit.
7. The Establishment's managing funeral director advised that the Unlicensed Embalmer assisted in the embalming room receiving cases, preparing the table, instruments and table for the embalmer, maintaining

- sterile conditions, transferring cases received to the crematory for refrigeration / cremation, dressing and casketing remains, applying cosmetics and styling hair.
8. The Unlicensed Embalmer initially denied the allegations, but then stated that upon her initial employment with the Establishment, she did assist and embalm a few trauma cases during her first 30 days of employment.
 9. The Establishment's owner initially indicated that during the 30 day waiting period on the Unlicensed Embalmer's application for a reciprocal license (as she is licensed in another state), she did perform embalming procedures, but after it was learned she could not get licensed in Tennessee, she did not perform anymore. In his sworn statement, however, he denied the allegations of the complaint.
 10. The Establishment's owner provided a copy of the referenced embalming book. He indicated it was kept for the purpose of logging bodies transported to the Establishment. He also indicated there was no book kept for logging in who conducted an embalming; he indicated that record is kept on death certificates only. The log book entries were categorized into the following sections: "deceased name", "date of death", "place of death", "date / time received at [funeral home]", "removal by", "personal effects", and "embalmer initials / date".

Recommendation:

- Establishment: Letter of Warning.
- Unlicensed Embalmer: Letter of Warning.

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

Seconded by Clark McKinney

Adopted by voice vote

7. Case No.: 2018024141 – Establishment

Complainant alleges that on September 27, 2017, Respondent contacted it for services needed of one (1) hearse and four (4) limousines. Complainant alleges the Respondent agreed it would pay \$1,600.00 upon completion of services. Complainant alleges that despite it completing services in October 2017, Respondent has yet to pay Complainant for those services. Respondent failed to submit a response to these allegations.

Recommendation:

- Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$500.00 plus \$250.00 for failure to respond.

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

Seconded by Dennis Bridges

Adopted by voice vote

8. Case No.: 2018027581 – Establishment

The Complainant's father passed away on April 26, 2018, after which the hospital called the wrong funeral home (due to the family not knowing about a change of ownership). The Complainant alleges that when he told the Respondent his father was in the wrong place, the Respondent asked for \$875.00 for embalming and removal (\$650.00 for embalming and \$225.00 for removal). The Complainant then claims the Respondent lied about the fee because it did not embalm his father. The Complainant indicates the \$225.00 removal fee was paid.

In response to these allegations, the Respondent indicates it spoke with the deceased's wife (next of kin) after the deceased passed, at which time she gave verbal permission for the Respondent to embalm the body. However, the embalming was ultimately not performed as the Complainant (not next of kin) demanded the deceased be removed immediately to another establishment. The Respondent indicates that while it did ask for \$875.00 for embalming and removal, that was because it believed it was going to be embalming the remains. Once notification was given for immediate removal, however, no fee for embalming was charged; only the \$225.00 removal fee, which was paid by the receiving funeral establishment.

Recommendation:

- Closure.

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

Seconded by Robert Davis

Adopted by voice vote

9. Case No.: 2018011951 – Establishment

A routine inspection was performed on December 14, 2017. During that examination, it was discovered that copies of two (2) funeral director's licenses were not available for inspection. In response to this finding, Respondent's owner indicates that he had obtained the required copies and filed them in the crematory office after July 11, 2017. He further indicates that had he been present for the examination, he could have verified the licenses were in the office. He, however, admitted that it was an oversight on his part that the funeral director present during the examination was not aware that the other licenses had been put on file.

Recommendation:

- Letter of Warning.

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

Seconded by Dennis Bridges

Adopted by voice vote

10. Case No.: 2017068621 – Establishment

Complainants allege that they entered into preneed funeral agreements in November 2009 with the former owner of the funeral establishment. The two paid a total of \$9,150.00 via money order for two separate contracts and received documentation that an irrevocable trust account would be established pursuant to the contracts. The former owner of the establishment signed both contracts and endorsed the money order.

Complainants have since received a phone call from the new owner of the establishment. He advised that the money they gave the former owner of the establishment was never placed in trust and the funerals were not pre-paid.

Recommendation:

- Closure. A complaint has been opened against the former owner.

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

Seconded by Clark McKinney

Adopted by voice vote

RE-PRESENTS

- 11. Case No.: 2018017411 – Establishment**
- 12. Case No.: 2018017471 – Funeral Director #1**
- 13. Case No.: 2018017491 – Funeral Director #2, who is not the managing funeral director**

These matters were previously presented to the Board at its May 8, 2018 meeting. The Board decided to table the matters until its next meeting.

Complainant alleges Respondents refuse to pay for the merchandise and services his establishment rendered before the deceased's family switched establishments. Specifically, Complainant claims the deceased's family incurred \$3,095.00 before the change, which includes embalming (\$800.00), additional preparation of an autopsied remains (\$400.00), transfer of remains (\$400.00), and "Basic Services" (\$1,495.00). In support of his claim, Complainant supplied a contract signed by the deceased's father (not next of kin). The contract depicted a balance due of \$2,350.00 (a \$745.00 discount was given).

In response, Respondent Funeral Director #1 indicates Respondent Establishment offered to pay Complainant \$1,600.00, but Complainant refused payment. The \$1,600.00 represents payment for charges for embalming, additional preparation of an autopsied remains, and transfer of remains. Respondents dispute "Basic Services" were provided. Respondent Funeral Director #1 requested Complainant provide Respondents with a copy of the contract and the Complainant's General Price List, but Complainant refused to provide the price list unless Respondent Funeral Director #1 requested a copy in person.

An investigation was conducted, which revealed a genuine, good faith dispute as to what is owed. There was also a question as to whether the individual who contracted with Complainant had the authority to do so on behalf of the deceased.

Respondent Funeral Director #2 (who is not the managing funeral director) was not personally involved with the deceased's family and indicated he had no first-hand knowledge of the events surrounding the complaint. Respondent Funeral

Director #1 corroborated this, indicating Respondent Funeral Director #2 was never directly involved with the deceased's family.

Recommendation:

- Establishment: Closure.
- Funeral Director #1: Closure
- Funeral Director #2: Closure

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

Seconded by Mark Cochran

Adopted by voice vote

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- 14. Case No.: 2018001501 – Establishment**
 - 15. Case No.: 2018001541 – Funeral Director #1, who is the managing funeral director**
 - 16. Case No.: 2018001571 – Funeral Director #2**
 - 17. Case No.: 2018001601 – Embalmer**
 - 18. Case No.: 2018001641 – Expired Apprentice Funeral Director**
 - 19. Case No.: 2018001661 – Expired Apprentice Embalmer**

These complaints stem from a complaint received regarding unlicensed activity of the funeral director whose license is currently suspended. Complaints were opened against the establishment, current funeral director who is the establishment manager, the suspended director and embalmer, and the expired apprentice. The matter was sent out for investigation and the investigator has not been able to confirm any unlicensed activity by the suspended funeral director from any individuals who would have first-hand knowledge which would be required to go forward with a hearing in this matter. The Complainant has no first-hand knowledge of any unlicensed activity. The investigator spoke to several individuals in the area with whom the Complainant stated would have first-hand knowledge but those witnesses did not possess first-hand knowledge of unlicensed activity. Based on the fact that no first-hand knowledge has been ascertained by the Department, legal is recommending the closure of these complaints.

Recommendation:

- Closure.

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

Seconded by Robert Shackelford, III

Adopted by voice vote

20. Case No.: 2018011871 – Establishment #1

21. Case No.: 2018011941 – Funeral Director #1 – Who is the managing funeral director

22. Case No.: 2018011831 – Funeral Director #2

23. Case No.: 2018011861 – Embalmer

These complaints are pursuant to a Notice of Violation issued to the above Respondents due to the Respondents allowing and promoting the photograph of the suspended funeral director and embalmer to appear on the Facebook page owned by the funeral home. Additional investigation into the Facebook page shows the suspended funeral director presiding over a funeral and grave side procession in violation of the suspension order. Other violations included that the General Price List was incorrect when compared to the immediate burial price range, Casket Price List, and the basic services fee disclosure was incomplete as required by the Federal Trade Commission under the Funeral Rule. Also, a casket was offered for sale on the immediate burial list but not available on the Casket Price List.

Recommendation:

- Authorize formal hearing for revocation against Respondent No. 22 and 23. Discussion as to recommendation for funeral establishment and funeral director who is the establishment manager.

Board Decisions:

Cases No. 22 and 23:

A motion was made for Clark McKinney to authorize a formal hearing with revocation of funeral director and embalmer licenses involving cases No. 22 and 23, and the cases are not to be settled by Consent Order.

Seconded by Robert Shackelford, III

Adopted by voice vote

Case No. 20:

A motion was made by Robert Shackelford, III, to authorize a formal hearing with a civil penalty up to \$1,000.00 per occurrence for case No. 20, and the cases are not to be settled by Consent Order.

Seconded by Dennis Bridges

Adopted by voice vote

Case No. 21:

A motion was made by Robert Davis for authorization of a formal hearing and settlement by a Consent Order with \$500.00 civil penalty for case No. 21.

Seconded by Robert Shackelford, III

Adopted by voice vote

Board member(s) voting contrary to the conclusion of the Board regarding case No. 21: Dennis Bridges

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

A "Notify" regarding statute changes from the 2018 legislative session will be sent around July 1, 2018, to those interested parties who have registered with the Board of Funeral Directors and Embalmers as desiring to receive such communications. This notification will include all public chapters from 2018 that affects the licensees/registrants of the Board.

This is the process for an interested individual to Sign-Up for Notifications:

- 1) Visit <http://funeral.tn.gov>;
- 2) Hold cursor over "Contact Us";
- 3) Click on "Get Notified!";
- 4) Enter Name, Email Address, and Zip Code;
- 5) Check Board of Funeral Directors and Embalmers;
- 6) Check Burial Services; and
- 7) Scroll to the end of the page and click on "Sign-up".

Additionally, topics are available by programs, and you may click on a particular program to review archived notifications for that program.

LICENSEE REPORT:

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF MAY 9, 2018 – JUNE 19, 2018

Establishment(s)

Arnett & Steele Valley Chapel
Harrogate, TN

Type of Action(s)/Change(s)

Name and Ownership

Williams Funeral Home
Greenfield, TN

Ownership

Individual(s)

Joy Donna Lieb
Hendersonville, TN

Type of License(s)

Funeral Director and Embalmer

Stanley Mack Markham, II
Somerville, TN

Funeral Director and Embalmer

Samantha Joy Mays
Knoxville, TN

Funeral Director and Embalmer

Brandon Oshea Martin
Gadsden, AL

Funeral Director and Embalmer
Reciprocity – Alabama

Kimberly Anne Dobbs
Church Hill, TN

Funeral Director and Embalmer
Reapplication

Andrea Denitra Booker
Collierville, TN

Funeral Director

Albert Richard Davis
Chattanooga, TN

Funeral Director

Thomas Aylor Evans
Rockwood, TN

Funeral Director

CLOSED ESTABLISHMENTS:

There are no closed establishments to report.

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 April and May 2018 Regulatory Boards Disciplinary Action Reports:

Respondent: Baskerville Funeral Home, Inc., Humboldt, TN
Violation: Unprofessional conduct, engaging in a practice that is misleading or deceptive
Action: \$500 Civil Penalty

Respondent: Britton Glenn Gilbert, Portland, TN
Violation: Unprofessional conduct, knowingly making any false statement on the certificate of death
Action: \$1,000 Civil Penalty

Respondent: Chattanooga Funeral Home & Crematory-East Brainerd Chapel, Hixson, TN
Violation: Funeral establishment operated and conducted services on an expired license
Action: \$250 Civil Penalty

Respondent: Edgar T. Miller, Cordova, TN
Violation: Engaging in funeral directing without a valid license
Action: \$500 civil penalty plus \$912 investigation costs

Respondent: Gilbert Funeral Home, Portland, TN
Violation: Unprofessional conduct, knowingly making any false statement on the certificate of death
Action: \$1,000 Civil Penalty

Respondent: James Humphreys, Whiteville, TN
Violation: Engaging in funeral directing without a license
Action: \$1,000 Civil Penalty

Respondent: Lavonzale Saddler, Mount Juliet, TN
Violation: Engaging in funeral directing with an expired Apprentice Funeral Director Registration
Action: \$500 Civil Penalty

Respondent: Motley & Rivers Funeral Home, Whiteville, TN
Violation: Failure to report and submit an application for a change of ownership within the specified period of time, failure to have funeral director and embalmer licenses available for inspection, failure to have crematory's current license and results of the latest regularly scheduled inspection available

for inspection, failure to have records available for inspection, aiding and abetting an unlicensed person to practice in the funeral profession, signage on funeral home door and business cards give or tend to give the impression that an unlicensed person is licensed or entitled to practice either as a funeral director or embalmer, and engaging in a practice that is misleading or deceptive

Action: \$2,500 Civil Penalty

Respondent: Ralph Buckner Funeral Home & Crematory, Cleveland, TN
Violation: Unprofessional conduct for failure to honor financial obligations in a timely manner

Action: \$250 Civil Penalty

Respondent: Rucker Memorial Chapel, Inc., Murfreesboro, TN
Violation: Engaging in a practice that is misleading or deceptive
Action: \$750 Civil Penalty

OPEN COMPLAINT REPORT:

As of June 19, 2018 there were 66 open complaints.

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

Seconded by Mark Cochran

Adopted by voice vote

ADOPT BOARD MEETING DATES FOR 2019:

A motion was made by Clark McKinney to adopt the Board meeting dates for 2019 (the second Tuesday of each month).

Seconded by Robert Davis

Adopted by voice vote

NEW BUSINESS:

Cherelle Hooper, Assistant General Counsel, presented a rulemaking update. She advised the Board that the internal review of the rules was completed. Because there were only minor changes, it was not necessary to re-present the rules to the Board. She further advised that the rules were sent to the Office of

the Attorney General earlier in the month of June 2018 for a constitutionality preview. She indicated that the next step would be to send the rules to the Governor's Office. She stated that a rulemaking hearing would be scheduled if the rules were approved with no major changes. Based upon the amount of notice required, she indicated it would likely be scheduled approximately two months following approval by the Governor's Office.

Robert Gribble, Executive Director, provided information to the Board concerning possible legislative proposals from the Board. The Board, by consent, agreed that no proposals would be forthcoming for the upcoming legislative session.

ADJOURN:

A motion was made by Robert Davis to adjourn.

Seconded by Mark Cochran

Adopted by voice vote

The meeting was adjourned by President Charles Rahm at 11:29 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director