

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

NOVEMBER 13, 2018

President Charles Rahm called the meeting to order at 9:00 a.m. in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

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

Staff present: Robert Gribble, Executive Director; Cherrelle Hooper, Assistant General Counsel; Ashley Geno, Assistant General Counsel; Pamela Spicer, 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:

A motion was made by Clark McKinney, to approve the Minutes of the October 9, 2018 Board Meeting.

Seconded by Jeff Duffer

Adopted by voice vote

RULEMAKING UPDATE:

Cherrelle Hooper, Assistant General Counsel, provided an update regarding the rules adopted by the Board at the October 9, 2018, rulemaking hearing. Ms. Hooper stated that the rules have been submitted to the Office of the Attorney General for final review/signature.

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

Note: Board member Robert Shackelford recused himself from participation in entire the Legal Report.

1. Case No.: 2018061791 – Establishment

In August 2018, a board field representative performed a routine inspection of the Respondent establishment. During the inspection, the representative discovered the following:

1. The manager's licenses were not available for review at the time of the inspection.
2. Another individual's funeral director and embalmer licenses were also not available for review at the time of the inspection.
3. The crematory license was not available for review at the time of the inspection.
4. The preparation room was disorderly/cluttered and in need of a cleaning.
5. There were issues with the Respondent's CPL. Specifically a casket listed with immediate burial on the GPL needed to be added to the CPL.
6. One SFGSS contract had pricing that was inconsistent with the GPL.

In response, Respondent's attorney indicated:

1. The licenses at issue are kept at the location but may have been misfiled at the time of the inspection. This has been corrected and additional copies have been filed at the location.
2. While the preparation room required cleaning and order on the day of the inspection, it could not have been done "as soon as practicable" by the Respondent prior to the inspection because the room had been recently used for body preparation and a new embalming machine had been delivered and installed. As such, the shipping box and associated paperwork were still present in the room. In addition, clothing associated with the preparation of the body had been delivered for laundry.
3. The CPL has been corrected.
4. The SFGSS contract at issue was an error on the part of a funeral director who no longer works at the Respondent establishment. The error has since been corrected and the account adjusted to reflect the correct price.

Recommendation:

- Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$1,000.00.

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

Seconded by Jeff Duffer

Adopted by roll call vote

2. Case No.: 2018064651 – Establishment

In August 2018, a board field representative performed a routine inspection of the Respondent establishment. During the inspection, the representative discovered the following:

1. The casket listed with immediate burial needed to be corrected on the GPL.
2. Alternative containers needed to be added to the CPL.
3. An effective date and caption needed to be added to the top of the CPL.
4. Respondent's website prominently displays a photograph of the owner but does not indicate that he is not a licensed funeral director or embalmer.
5. Respondent's website fails to provide the names and titles of each employee in such a way that is easily understood and their status as to licensure.
6. Respondent's website implied one of its employees was an "assistant Funeral Director".

In response, Respondent indicated:

1. The GPL and CPL have been corrected accordingly.
2. The photograph of the owner has been removed from the website and any other mention of him has been deleted, except he has been listed once as the owner and non-licensed.
3. The website has been corrected to reflect staff as non-licensed and there is no mention of a funeral assistant.

Recommendation:

- Authorization for a formal hearing. Authorization of a civil penalty in an amount of \$500.00.

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

Seconded by Dennis Bridges

Adopted by voice vote

3. Case No.: 2018064671 – Establishment

In August 2018, a board field representative performed a routine inspection of the Respondent establishment. During the inspection, the representative discovered the following:

1. Four (4) SFGSS contracts were not available for review at the time of the inspection.
2. A co-owner's business card did not reflect that he is neither a licensed funeral director nor embalmer.
3. An employee's business card did not reflect that she is neither a licensed funeral director nor embalmer.

In response, Respondent indicated:

1. The four (4) SFGSS contacts are being corrected.
2. The business cards at issue have been corrected and now provide "non-licensed funeral director/non-licensed embalmer".

Recommendation:

- Letter of Warning

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

Seconded by Jeff Duffer

Adopted by voice vote

4. Case No.: 2018067191 – Establishment

Complainant filed a complaint because she has yet to receive her deceased son's death certificate. Her son passed away in July of 2018. However, in her complaint she indicated the ER physician has refused to sign the death certificate. She believes the Respondent should be doing more to get the certificate signed.

In response, Respondent indicated it worked on trying to get the physician to sign the certificate and made many phone calls to the physician's office. Respondent also indicated that the County Medical Examiner's Office agreed to sign the

certificate on September 20, 2018. Respondent indicated that certified copies of the death certificate were ordered on September 24, 2018 and were mailed out by the County Health Department on September 25, 2018. After communicating with the Health Department, however, Respondent realized the certified copies were mailed to the address of the deceased and not the Complainant. Respondent indicated this has since been corrected and it sent an amendment to the State to change Complainant's address on the death certificate to reflect her correct address instead of the deceased's address.

Respondent further indicated it did not advise Complainant of this because Complainant requested the Respondent not contact her again.

After Complainant received the response, she paid for and received another copy of the death certificate.

Recommendation:

- Close

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

Seconded by Robert Davis

Adopted by voice vote

5. Case No.: 2018069121 – Establishment

6. Case No.: 2018068481 – Funeral Director

Complainant claimed Respondents picked up her deceased husband from the hospital without permission and embalmed him without permission. In response, Respondents provided a Release of Body Form from the hospital signed by Complainant indicating she gave permission to the hospital to release the body to the Respondent establishment. Embalming was also checked off on the form.

Recommendation:

- Establishment – Close
- Funeral Director – Close

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

Seconded by Clark McKinney

Adopted by voice vote

7. Case No.: 2018069171 – Establishment

8. Case No.: 2018068501 – Funeral Director

Complainant made several allegations against Respondent funeral director, including:

1. His appearance and demeanor were not acceptable.
2. He did not provide the family with a price list.
3. He pointed out the cheapest casket and vault.
4. He put a plastic vault in the graveside when a concrete vault was paid for.
5. He did not offer to bring chairs or the register book to the Complainant's house.
6. He did not play all of the songs the family requested at the service.

In addition, Complainant also alleged the family was not asked about what they wanted in the obituary and, when the obituary was printed, the burial service was omitted.

In response, Respondents' attorney provided a letter signed by Respondents which indicated:

1. Complainant was shown a price list. Respondents also provided an FTC disclosure form signed by Complainant indicating he received price lists.
2. The family was shown the lowest priced casket and vault in an effort to keep the family's expenses low since the family had indicated the services would be a financial burden to them.
3. Ground staff mistakenly placed a poly-vault in the deceased's grave. Respondents indicated this mistake was corrected immediately.
4. The burial information was in the obituary. Respondent provided an email, screen shot from the newspaper's website, and screen shots from its own website describing the burial services.
5. Chairs and the register book were taken to Complainant's home.

As to Complainant's interpersonal interactions with Respondent funeral director, Respondents indicated Respondent funeral director treats all families the same and they have not received any other such complaints from any other families.

Respondents also indicated that because the family stated the services would be a financial burden to them, Respondent funeral director advised the family could pay 60% upfront and the rest after services were rendered. The family still owes Respondent establishment the remaining 40% of the total for services rendered.

Recommendation:

- Establishment – Close
- Funeral Director – Close

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

Seconded by Clark McKinney

Adopted by roll call vote

9. Case No.: 2018049971 – Funeral Director

Complainant alleged Respondent embezzled money from a funeral establishment and obtained several credit cards in the funeral home's name but used them for personal purchases. Respondent denied these allegations.

Complainant reported the matter to the police. It is our understanding this matter is being investigated.

Recommendation:

- Litigation monitoring.

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

Seconded by Jeff Duffer

Adopted by voice vote

10. Case No.: 2018042731 – Establishment

11. Case No.: 2018042751 – Funeral Director

12. Case No.: 2018042771 – Embalmer

Based on anonymous complaint of unlicensed activity an investigation was performed. The Complaint cited to testimonials found on the Respondent's website. However, the results of the investigation found the complaint to be unsubstantiated.

Recommendation:

- Closure

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

Seconded by Clark McKinney

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

FINANCIAL DATA FOR FY17-18

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 29, 2018 for use in the compilation of this report.

Beginning Balance – July 1, 2017	\$1,104,372.00	
Net Revenue (Earnings) for July 1, 2017 – June 30, 2018	\$ 792,260.00	
Total Funds Available		<u>\$1,896,632.00</u>
Expenditures July 1, 2017 – June 30, 2018	\$ 399,885.00	
Cost Backs (Cost Allocations charged to the Board from Administration, Investigation, Legal, and Customer Service Center)	\$ 259,487.00	
Total Expenditures, Including Cost Backs		<u>\$ 659,372.00</u>
Reserve Balance – July 1, 2018		\$1,237,260.00

LEGISLATIVE UPDATE:

We have not been notified by either the Tennessee State Funeral Directors & Morticians Association or the Tennessee Funeral Directors Association of any new legislation that they intend to pursue during the upcoming legislative session.

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF**

OCTOBER 9, 2018 – NOVEMBER 12, 2018

Establishment(s)

West Tennessee Crematory
Brownsville, TN

Type of Action(s)/Change(s)

New Establishment

Presley Funeral Home
Cookeville, TN

Ownership

Williams Funeral Home
Memphis, TN

Name and Ownership

Individual(s)

Brandon Maurice Berry
Memphis, TN

Type of License(s)

Funeral Director and Embalmer

Kelsey Anise Fahnestock
Johnson City, TN

Funeral Director and Embalmer

Kathleen Andrea Everly
Broomfield, CO

Funeral Director and Embalmer
Reciprocity – Oklahoma

Jason David Quesenberry
Nashville, TN

Funeral Director and Embalmer
Reciprocity – Kentucky

Joshua Allen Carter
Decatur, GA

Funeral Director and Embalmer
Reapplication

Amanda Renee Hicks
Memphis, TN

Funeral Director
Reciprocity – Arkansas

Laurie Rose Nelson
Elizabethton, TN

Funeral Director
Reciprocity – California

Scott Thomas Gullett
Keavy, KY

Embalmer
Reciprocity – Kentucky

CLOSED ESTABLISHMENT(S):

One (1) establishment has reported closing since the last board meeting:

- Click-Hawkins Chapel, 102 B Street, Lenoir City, TN.

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 September 2018 Regulatory Boards Disciplinary Action Report:

Respondent: Barry Miller, Lebanon, TN
Violation: Engaged in unfair, deceptive acts or practices defined in the Funeral Rule, failed to comply with an preventive requirements specified in the Funeral Rule
Action: \$250 Civil Penalty

Respondent: Jane Elizabeth Brawner, Gallatin, TN
Violation: Engaged in unfair, deceptive acts or practices defined in the Funeral Rule, engaged in an act, omission or practice that is misleading or deceptive
Action: \$250 Civil Penalty

Respondent: Dana Pleshette Taylor, Memphis, TN
Violation: Engaging in funeral directing and operating a funeral establishment with an expired license
Action: \$250 Civil Penalty

Respondent: Cosmopolitan Funeral Services, Jackson, TN
Violation: Failure to comply with the terms of an executed Consent Order
Action: Suspension of Funeral Establishment License

OPEN COMPLAINT REPORT:

As of November 9, 2018 there were 50 open complaints.

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

Seconded by Jeff Duffer

Adopted by voice vote

ESTABLISHMENT APPLICATION(S):

**Premier Funeral & Cremation Services, LLC
Attn: Delbrita Latrice Greene, Mgr.
805 Bradford Avenue, Suite 104**

Nashville, TN 37240-2105

New Establishment

Ownership: Limited Liability Company

Owner(s): Premier Funeral & Cremation Services, LLC, 500 8th Avenue South, Nashville, TN 37203-4119

Upon motion by Clark McKinney and seconded by Robert Davis, based upon application record, this establishment was approved for licensure.

NEW BUSINESS:

Consumer Board Member Steven Mark Cochran has been recently elected to the General Assembly. Mr. Cochran has resigned his position as a member of the Board of Funeral Directors and Embalmers. The appointment to replace Mr. Cochran will be made by the Governor. The individual to be appointed may reside in any grand division of the state but must be a person who is not engaged in the business of a funeral director or embalmer or otherwise commercially associated with any funeral establishment. The unexpired term ends December 31, 2020.

ADJOURN:

A motion was made by Clark McKinney to adjourn.

Seconded by Jeff Duffer

Adopted by voice vote

The meeting was adjourned by President Charles Rahm at 9:56 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director