

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

JANUARY 8, 2019

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

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

Board Member(s) absent: Charles Rahm

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

Adopted by voice vote

ADOPTION OF ROBERT'S RULES OF ORDER:

A motion was made by Clark McKinney that rules contained in the most recent version of *Robert's Rules of Order Newly Revised (RONR)* shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with statutes and any special rules of order the Board may adopt.

Seconded by Dennis Bridges

Adopted by voice vote

CONFLICT OF INTEREST STATEMENTS:

President Jeff Duffer explained that a Conflict of Interest of Interest Statement must be signed annually and new statements are presented to the board members at the first meeting of the year. Every board member signed a new

statement acknowledging that its purpose is to assure that the interests and activities of all members serving on a departmental board do not conflict or give the appearance of conflicting with the provision of unbiased service to the public.

APPROVAL OF MINUTES:

A motion was made by Clark McKinney, to approve the Minutes of the December 11, 2018 Board Meeting.

Seconded by Dennis Bridges

Adopted by voice vote

CASE UPDATES:

Pamela Spicer, Assistant General Counsel, provided an update to the Board regarding the Watson-North Funeral Home, Cremation Center & Memorial Park, Whispering Winds Crematory, and Thomas Henry North, Jr., cases that have been continued due to witness and party unavailability and will be reset by agreement.

Sara Page, Assistant General Counsel, provided an update to the Board regarding a Memorandum and Order from Davidson Chancery Court on the Bartlett Funeral Home, Inc. and Alfred Tacker cases. The Chancery Court affirmed the Board's Final Order fully, and no further action is needed to be by the Board.

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.: 2018083471 – Establishment

On November 27, 2018, a board field representative performed an inspection of the Respondent establishment. At that time, the representative discovered the Respondent establishment's license was expired from September 1, 2018

through September 3, 2018. During that time period, the Respondent establishment handled the disposition of the remains for two (2) decedents.

In response, Respondent indicated funding was approved and made available to its administrator to renew the license in mid-August. However, the administrator suffered a family loss on August 27, 2018 and went on bereavement leave, returning to the office on September 4, 2018. It was not discovered until after the fact that the license had not been renewed in August.

Recommendation:

- Letter of Warning

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

Seconded by Clark McKinney

Adopted by roll call vote

2. Case No.: 2018079881 – Establishment

3. Case No.: 2018081771 – Establishment

Two (2) rival establishments filed complaints against the Respondent establishment alleging the Respondent's advertisement violated Tenn. Code Ann. § 62-5-106, which provides:

Any advertisement by a funeral director or embalmer for the sale of merchandise or services that indicates a specific price shall include an itemized listing of each and every item, procedure or service and shall show the price of the item. Failure to include the itemized price listing in any advertisement constitutes misrepresentation or fraud in the conduct of the business of the funeral establishment or false and misleading advertising as used in § 62-5-317.

The advertisement in question provided two charts. The first chart compared the price of certain services and merchandise available at the Respondent establishment to the prices of those items at three (3) rival establishments. Specifically, the chart provided the following categories:

1. Basic Services of the Funeral Director & Staff
2. Embalming
3. Use of Facilities for Visitation
4. Use of Facilities for Funeral Service
5. Use of Staff and Equipment for Graveside Service
6. Transfer to the Funeral Home

7. Transfer to the Cemetery
8. Service Vehicle
9. 18 Gauge Casket
10. Outer Burial Container (12 Ga. Vault or Monticello Vault)
11. Sales Tax

Below the first chart it was noted that the “Price are accurate and current as of 09/24/2018 and are taken from the providers’ general price lists. Prices are subject to change without notice.”

The second chart compared the price of direct cremation available at the Respondent establishment to the price of this service at the three (3) rival establishments. Above this chart, it was noted that “Charges Include Direct Cremation and Alternative Cremation Container”. Below the chart, it was noted that “Charges do not include cash advance items such as newspaper notice, death certificates, opening and closing fees, cremation permits, or sales tax... Prices are accurate and current as of 09/24/2018 and are taken from the providers’ general price lists. Prices are subject to change without notice.”

In response to the complaints, the Respondent indicated: 1) the charts appeared to correspond with the rival establishments’ general price lists and 2) the advertisement will not be used again.

Recommendation:

- Close

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

Seconded by Dennis Bridges

Adopted by voice vote

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- 4. Case No.: 2018081221 – Establishment**
 - 5. Case No.: 2018081241 – Funeral Director**

On November 6, 2018, a board field representative performed an inspection of the Respondent establishment. At that time, the representative discovered the Respondent funeral director’s license was expired from August 31, 2018 through September 24, 2018. During that time, the Respondent funeral director signed two (2) death certificates and one (1) authorization for cremation and disposition form.

In response, the manager of the Respondent establishment indicated that she was the one who made the arrangements for all three (3) of the involved

deceased persons, but her new assistant placed the wrong funeral director's name on the two (2) death certificates at issue. She also indicated that this issue has been addressed with the assistant and remedied. She additionally indicated that she was not aware of the Respondent funeral director's lapsed license.

The Respondent funeral director also submitted a response, indicating that she applied for the renewal of her license online on July 30, 2018 and thought that the process was successfully completed at that time. However, she was later informed her license had not been successfully renewed due to a \$5.00 deficiency in the renewal payment. When she learned of this, she sent in the additional payment.

Recommendation:

- Establishment – Letter of Warning
- Funeral Director – Letter of Warning

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

Seconded by Clark McKinney

Adopted by voice vote

6. Case No.: 2018079951 – Establishment

7. Case No.: 2018080011 – Funeral Director

Complainant (not next of kin) filed a complaint against the Respondent establishment and the Respondent funeral director alleging professional misconduct. Specifically, the Complainant alleged:

1. The Respondent funeral director did not follow the deceased's wishes;
2. The Respondent funeral director removed the deceased's ashes from two (2) boxes and poured the ashes into one (1) bag in front of the deceased's widow; and,
3. The Respondent funeral director defiled the deceased's body by cutting his beard before the cremation.

In response to these allegations, the Respondent funeral director indicated he was threatened and given competing instructions by various individuals. Specifically:

1. He was told a non-family member had power of attorney for cremation. However, the step-granddaughter of the deceased told him that the power of attorney for cremation was invalid.

2. The step-granddaughter of the deceased (a paralegal at a law office in another state) threatened to sue him if he honored the power of attorney. She purported there was a second will that was drawn up a couple of days before the deceased passed.
3. The step-granddaughter requested the Respondent funeral director provide her with some of the ashes, some hair, and a fingerprint from the deceased. She told the Respondent funeral director that the deceased's wife (her step-grandmother) had given her the ok.
4. After the cremation, the Respondent funeral director placed the remains (including bags with locks of the deceased's hair) in two (2) containers. Not long after this, however, the caretaker of the deceased's wife told him none of what the step-granddaughter said was true.
5. After this conversation with the caretaker, the Respondent funeral director traveled to the home of the deceased's wife to look at the deceased's will and other legal documents. He read the papers and saw where all four (4) of the deceased's children were excluded in the will. There was also an indication that the individual with power of attorney was to direct the disposition of the deceased's remains.
6. The Respondent funeral director stated that after reading the documents, he went to his car and provided the caretaker with the two (2) containers of ashes along with the plastic bag of hair. He indicated he did not pour the ashes into one (1) container. Rather, the caretaker's husband did so several days after he left. Specifically, the caretaker's husband placed the ashes in an urn and a keepsake (which the deceased's wife wears around her neck).

In support of his response, the Respondent funeral director provided the deceased's will, executed power of attorney, and a letter signed by: 1) the deceased's wife, 2) the caretaker of the deceased's wife and her husband, and 3) a witness to the power of attorney document. The letter indicated that statements made by the Complainant in her complaint were false. This letter also indicated that the signers were very satisfied with the Respondent funeral director's care and concern.

In an addendum to the response, the Respondent funeral director additionally indicated neither the step-granddaughter nor the Complainant attended the deceased's funeral.

Recommendation:

- Establishment – Close

- Funeral Director – Close

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

Seconded by Robert Shackelford

Adopted by voice vote

8. Case No.: 2018078121 – Funeral Director

Complaint filed against Respondent alleging unprofessional conduct. Specifically, a sibling of the deceased (not next of kin) filed a complaint with the Board alleging the Respondent allowed cremation of the body without first letting the family view the body and witness the start of the cremation. Complainant also alleged the Respondent vocalized traumatizing and insensitive statements to the family.

In response to these allegations, the Respondent provided the following timeline:

1. He had preliminary discussions with the deceased's wife (next of kin) before the deceased passed and immediately upon the deceased's death. At that time, the wife made clear to him that she wanted the basic cremation package. She also made clear to him that she did not want the rest of the deceased's family to be present or participate in making cremation arrangements.
2. The deceased died on Wednesday, October 24, 2018. The next morning, on Thursday, October 25, 2018, the deceased's wife signed all of the necessary paperwork for a direct cremation. The cremation was then scheduled for Friday, October 26, 2018, in accordance with the establishment's standard procedures. The body was not embalmed.
3. On Thursday, October 25, 2018, the Respondent and the deceased's wife did discuss the possibility of family members observing the beginning of the cremation process on Friday. (Notably, the wife claims she was specific concerning instructions regarding the viewing and that she did not want anything done until family members arrived.)
4. On Friday, October 26, 2018, the deceased's wife called the Respondent and stated that the family members would not be in town to view the cremation until Saturday, October 27, 2018. At the time of this conversation, however, the Respondent was working remotely and was not aware that the cremation process had already begun as scheduled.

The Respondent denied making any disparaging remarks to anyone in the conversation with the family. He, however, did state that during the conversation, an unknown member of the family on the phone became upset and other unknown members of the family began to shout and threaten him. At that point, he terminated the conversation.

In addition to his statements, the Respondent also provided the Statement of Funeral Goods and Services Selected contract which was signed by the deceased's wife. None of the options for viewing or visitation were selected and the deceased's wife was not charged for any viewing and/or visitation.

An investigation was conducted into this matter. Recordings of the family's conversations with the Respondent were provided. The family members were emotional throughout the conversation, expressing both anger and sadness. The Respondent went through the timeline of events with the family members and apologized for any miscommunication. After this, the mother of the deceased blamed the Respondent for not allowing her to see her son one last time. In response, the Respondent told her she had ample time to see her son while he was sick. The Respondent then apologized for making that statement. Notably, during this time, the mother of the deceased repeatedly called the Respondent an "evil" and "wicked" person.

Recommendation:

- Close

A motion was made by Clark McKinney to issue a Letter of Warning and include the applicable Board Rule regarding treating members of the public in a respectable manner.

Seconded by Dennis Bridges

Adopted by voice vote

RE-PRESENT

9. Case No.: 201802441 – Establishment

This matter was previously presented to the Board at its June 20, 2018 meeting as follows:

SUMMARY: Complainant alleges that on September 27, 2017, Respondent contacted it for services needed on one (1) hearse and four (4) limousines. Complainant alleges it and Respondent agreed Respondent 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.

BOARD DECISION: APPROVED.

UPDATE: Despite our attempt to follow up with the Complainant regarding the status of payment, we have been unable to get into contact with him. Additionally, in September 2018, the ownership and the name of the establishment changed.

A motion was made by Clark McKinney 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 been received official notification from either the Tennessee State Funeral Directors & Morticians Association or the Tennessee Funeral Directors Association of any new legislation that they intend to pursue during this legislative session.

LICENSEE REPORT:

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF DECEMBER 11, 2018 – JANUARY 7, 2019

Establishment(s)

Bennett-May & Pierce Funeral Home

Type of Action(s)/Change(s)

Name

and Crematory
Pulaski, TN

Family Heritage Funeral Home
Gallatin, TN

Name

Individual(s)

Corsie Vanidver Akins
Blue Ridge, GA

Type of License(s)

Funeral Director and Embalmer

Laurie Rose Nelson
Elizabethton, TN

Embalmer
Reciprocity - California

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 November 2018 Regulatory Boards Disciplinary Action Report:

Respondent: Hayden Terry Green, Milan, TN
Violation: Failure to comply with T.C.A. § 36-5-706
Action: Suspension

Respondent: Chad Dealan Kirby, Smithville, TN
Violation: Engaging in funeral directing with an expired funeral director's license
Action: \$250 Civil Penalty

OPEN COMPLAINT REPORT:

As of January 7, 2019 there were 47 open complaints.

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

Seconded by Robert Davis

Adopted by voice vote

INDIVIDUAL APPLICATION(S):

**Terry Lee Alexander
Nashville, TN**

Funeral Director

Terry Lee Alexander’s application for a Funeral Director license was reviewed by the Board. Due to his criminal record, Mr. Alexander’s application was reviewed pursuant to the Fresh Start Act. The Board conducted a fresh start analysis and voted to deny the application (Roll Call Vote below). The Board adopted a justification statement for this denial and voted that Mr. Alexander may reapply for licensure one (1) year from the date of January 8, 2019 (Voice Vote referenced below).

Upon motion by Dennis Bridges and seconded by Robert Shackelford, based upon application record, this application was denied for licensure.

Roll Call Vote To Deny Application			
Board Members	Yes	No	Absent
Dennis Bridges	X		
Robert Davis	X		
Jeff Duffer	X		
Clark McKinney	X		
Charles Rahm			X
Robert Shackelford, III	X		

Denied by Roll Call vote

A motion was made by Clark McKinney that the applicant may reapply for licensure in one (1) year.

Seconded by Dennis Bridges

Adopted by voice vote

ADJOURN:

A motion was made by Clark McKinney to adjourn.

Seconded by Dennis Bridges

Adopted by voice vote

The meeting was adjourned by President Jeff Duffer at 12:56 p.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director