

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

NOVEMBER 12, 2019

President Jeff Duffer called the meeting to order at 10:12 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, Charles Rahm, and Robert Shackelford, III (via phone).

Staff present: Robert Gribble, Executive Director; Elizabeth A. Bendell, Associate General Counsel; and Lisa Bohannon, Regulatory Board Administrative Manager.

ADOPTION OF AGENDA:

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

Seconded by Dennis Bridges

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Clark McKinney to approve the Minutes of the October 8, 2019 Board Meeting.

Seconded by Charles Rahm

Adopted by voice vote

LEGAL REPORT:

ELIZABETH A. BENDELL, ASSOCIATE 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.: 2019051651 – Funeral Establishment

This is an anonymous complaint concerning a disinterment that took place on June 5, 2019. Complainant alleges that the deceased had to be re-casketed due to casket and vault damage. Complainant alleges that the new casket has been previously used and the Respondent's general manager chose to remove the previously used interior materials and place the deceased inside the casket with no interior casketing materials.

Respondent responded to the complaint and stated they were ready to self-report prior to receipt of the complaint. Respondent indicated the following:

1. On June 5, 2019 funeral directors were called to assist with a disinterment which was presenting challenges. The grave had been opened and the vault compromised.
2. The weather was poor, as was the condition of the outer burial container.
3. The vault lid was removed and it was observed that the wooden casket was in poor and unstable condition.
4. A call was made to find a casket to place the deceased inside. In the meantime, the deceased was placed in a secure pouch.
5. Given the urgency of the situation, a used training casket was used to replace the wooden casket; Respondent indicated that the interior materials were replaced.
6. The family was not present but in being transparent, the family was informed on June 5, 2019.
7. The family executed all paperwork regarding another disinterment and reinternment on June 11, 2019.
8. On June 12, 2019 a subsequent disinterment took place.

Recommendation:

- Authorization for a formal hearing. Authorize settlement by consent order with \$1500.00 civil penalty.

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

Seconded by Robert Shackelford

Adopted by roll call vote

2. Case No.: 2019062251 – Funeral Establishment

This is a consumer complaint alleging professional misconduct by the Respondent funeral establishment. The consumer alleges that on the day of her deceased husband's funeral she was never called to view the body prior to the services. The consumer alleges that the Respondent did not follow instructions regarding shaving of the deceased's face or placing his hands in a certain way. Consumer alleges that the casket was damaged. Consumer also alleges that she paid for a car and on the day of the funeral service she was told a car was not included.

In response, the Respondent provided the following timeline:

1. On April 27, 2019, the Respondent establishment was contacted by a Georgia funeral establishment regarding picking up the deceased and transporting to Nashville, TN.
2. On May 2, 2019, funeral arrangement prices were given to the consumer over the phone, and an in person meeting was scheduled for May 4, 2019.
3. On May 4, 2019, the deceased was embalmed in Georgia before being transported to the Respondent establishment in Nashville, TN.
4. On May 4, 2019, after arriving late the consumer was informed of all particulars regarding the service and costs. Specifically, the consumer was informed that a limousine was not included in the quoted price but that a car could be provided. The Respondent states the consumer declined this offer. The Respondent states that the consumer provided a cashier's check for half of the amount of the services.
5. On May 5, 2019, the funeral services were held after the consumer arrived thirty (30) minutes late. Respondent alleges that the consumer stated she would pay the remaining balance for the funeral on Monday, May 6, 2019 when she returned for the burial scheduled for 11a.m.
6. On May 6, 2019, the Respondent was informed by the cemetery that the grave had not been paid for and therefore the burial did not occur. The Respondent reached out to the consumer. When Respondent inquired about the remaining funeral balance, the consumer texted the Respondent that her mother-in-law was supposed to pay the balance owed on the bill. The deceased's mother was contacted and paid the remaining balance to the Respondent.
7. On May 7, 2019, the consumer contacted the Medical Examiner's office regarding an autopsy.

8. On May 8, 2019, prior to pick up from the medical examiner's office, Respondent's funeral director drove across town to have a consent form signed by consumer.
9. On May 9, 2019, Respondent picked up the deceased from the medical examiner's office. Respondent contacted the consumer to inform her of the additional expenses incurred, but she would not accept any calls from the Respondent.
10. On May 10, 2019, the burial occurred after the grave was paid for.

Respondent states that the consumer's wishes for her husband to be shaved would have been discussed with the Georgia funeral home prior to embalming. Respondent additionally states that they did not see any damages on the casket, and they were not informed by the consumer of any damage at the burial.

Recommendation:

- Closure

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

Seconded by Dennis Bridges

Board member(s) recorded as voting contrary to the conclusion: Charles Rahm

Adopted by voice vote

3. Case No.: 20190064651 – Funeral Establishment

In July 2019, a board field representative performed a routine inspection of the Respondent establishment. During the inspection, the representative discovered the following:

1. A co-owner of Respondent establishment was listed on funeral programs and certificates of attendance letters, and they did not reflect that he is neither a licensed funeral director nor embalmer.
2. An employee of Respondent establishment was listed on funeral programs, and they did not reflect that she is neither a licensed funeral director nor embalmer.

Respondent responded to the complaint and states that the violations were not authorized by the manager of the Respondent establishment. Respondent's manager states that there has been a breakdown in the business relationship

resulting in litigation against one another. Respondent's manager states that the documents were not printed by the professional printer but printed by the unlicensed individuals.

Recommendation:

- Authorization for a formal hearing. Authorize settlement by consent order with \$500.00 civil penalty.

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

Seconded by Robert Davis

Adopted by voice vote

4. Case No.: 20190068801 – Funeral Director

This is a consumer complaint alleging that Respondent did not inform consumer that if an insurance policy did not have the funds to cover the funeral costs, the consumer would owe the difference. Consumer states that a bill was sent to her mother for \$2,000.00 and Respondent scared her into paying it.

Respondent responded to the complaint and states that consumer and their family were informed that one of the insurance policies had been surrendered to the insurance company for cash value and that the family would have to pay the balance owed. Respondent further states that Respondent's mother was not scared into paying her bill and that she was given the option to make payments with zero (0) interest. The Respondent also provided a copy of the funeral contract and insurance assignment checks.

Consumer responded to the Respondent's response and stated that the problem has been resolved.

Recommendation:

- Closure

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

Seconded by Clark McKinney

Adopted by voice vote

5. Case No.: 2019057731 – Funeral Establishment

An anonymous complaint was received in June 2019 and was opened against the Respondent based on a copy of the Respondent's advertisement in a newspaper which states, in part, the following; "Complete Funeral Service \$2,895 includes metal casket in two colors. Best Quality, Best Price Guaranteed". This complaint was sent for investigation. In October 2019, a board field representative performed an investigation of the Respondent establishment. During the investigation, the representative discovered the following:

1. An advertisement was run indicating a specific price for the sale of merchandise and services without including an itemized price list.
 - a. Respondent's indicated during the investigation that upon his return as establishment manager in October 2019. He contacted both news organizations and requested the advertisements be stopped.
2. The name listed on the website, advertisements, business cards, and various documents is different than the name of the establishment registered with the Board of Funeral Directors and Embalmers.
 - a. Respondent acknowledged the violation and stated he was in the process of correcting the establishment's name on the website, advertisements, and business cards.
3. The owner of Respondent establishment business cards did not reflect that he is neither a licensed funeral director nor embalmer.
 - a. Respondent indicated they would immediately destroy the cards and have new cards printed.

Recommendation:

- Authorization for a formal hearing. Authorize settlement by consent order with \$1,000.00 civil penalty.

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

Seconded by Charles Rahm

Adopted by voice vote

6. Case No.: 2019068771 – Funeral Establishment

In August 2019, a board field representative performed a routine inspection of the Respondent establishment. During the inspection, the representative discovered that in June 2018 the Respondent establishment's manager passed away and as of the date of inspection an application for a manager change had not been submitted to the board office.

The Respondent responded to the complaint and indicated that the failure to comply was an administrative oversight due to the passing of the manager, their parent. The Respondent apologized for the oversight and stated that a manager application was submitted and all fees were paid. Upon review, the Respondent filed an application for an establishment manager change with the Board in August 2019.

Recommendation:

- Letter of Warning

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

Seconded by Robert Davis

Adopted by voice vote

7. Case No.: 2019071571 – Funeral Establishment**8. Case No.: 2019071151 – Funeral Director**

This is a consumer complaint alleging professional misconduct. Specifically, the Complainant alleges that the guaranteed fee prices on her deceased mother's pre-planned funeral policy were increased making the total funeral costs \$2,000.00 higher than the policy had originally arranged for. Consumer further alleges that while she was trying to resolve the discrepancy, and had not agreed on the additional fees, the Respondent funeral director sent the insurance documents without the consumer's signature.

In response to the complaint, the Respondent indicated the following:

1. The policy in question was transferred to the Respondent establishment in 2009.

2. Before the death of the consumer's mother, the consumer was informed that she would owe no balance despite the contract being short of covering the costs.
3. After the passing of the consumer's mother the consumer made changes and finalized the arrangements. With the changes made, the amount that was originally going to be discounted to cover the costs became a surplus of funds that the consumer would receive upon filing the insurance claim.
4. The Respondent explained in detail the charges on the funeral statement. The Respondent also explained how guaranteed contracts work. The consumer then signed the statement voluntarily.
5. The consumer was informed by the Respondent that in order to receive the surplus of funds the consumer would have to sign the claim form. The consumer refused to sign the claim form.
6. The Respondent filed the claim to receive their funds for the services rendered.
7. The Respondent informed the consumer when the claims were paid and that in order for the consumer to get her surplus of funds she would have to contact the insurance company.

In support of their response, the Respondent provided email correspondence between the Respondent and Consumer.

Recommendation:

- Establishment – Closure
- Funeral Director – Closure

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

Seconded by Clark McKinney

Adopted by voice vote

9. Case No.: 2019075181 – Funeral Establishment

This is a consumer complaint alleging that the Respondent establishment failed to provide a marker that was paid for in March of 2018 when the consumer's father passed. Consumer alleges that they were informed in December 2018 that they could request a refund with the stone company, which they did, but no refund was provided. Consumer alleges that they had another funeral home

inquire about the headstone delay and that the Respondent stated that changes were requested which caused a delay. The consumer denies that changes to the headstone were ever requested. As of the date of the complaint, consumer indicated that neither a refund nor the headstone had been provided.

Respondent responded to the complaint and indicates that the marker has been placed and that the next of kin, the deceased's wife, was notified. The Respondent indicated that a change was made to the marker and the deceased's wife was informed of the turnaround time. Respondent indicated that the contract was signed by the deceased's wife and not the Complainant and the Respondent establishment has had to consult an attorney due to the complainant's badmouthing of the Respondent establishment. Respondent provided copies of the marker purchase agreement as well as text messages indicating a request for a change.

Recommendation:

- Closure

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

Seconded by Charles Rahm

Adopted by voice vote

10. Case No.: 2019076581 – Funeral Director

This is a competitor complaint alleging that the Respondent funeral director refused to pay full amount for services rendered and transfer fees. The complainant alleges that after providing removal services and discussing funeral arrangements with a family the Respondent informed the Complainant that the family elected to transfer the deceased to the Respondent's funeral establishment. Complainant states that Respondent was informed of the \$1,310.00 transfer fees and provided a breakdown of those costs but that Respondent stated they would only be paying \$835.00.

Respondent responded to the complaint and states that the Complainant will be paid in full once the insurance policies were verified. Respondent has since provided a copy of a receipt from the Complainant for a check that was received in the full amount of \$1,310.00.

Recommendation:

- Closure

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

Seconded by Robert Davis

Adopted by voice vote

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11. **Case No.: 2019057561 – Funeral Establishment**
 12. **Case No.: 2019065721 – Funeral Establishment**
 13. **Case No.: 2019055101 – Funeral Establishment**
 14. **Case No.: 2019077621 – Funeral Establishment**
 15. **Case No.: 2019078051 – Expired Apprentice Funeral Director**

Between June and September 2019 four (4) complaints were filed against the Respondent establishment, and one (1) complaint was filed against the expired apprentice funeral director alleging unlicensed activity as well as unprofessional conduct. Specifically, the complaints included the following allegations:

FUN-2019055101 Funeral Establishment: This is a competitor complaint which alleges, in part, Respondent establishment's employee is making funeral arrangements without a license and has arranged over 50 plus services. The Complainant also alleges that Respondent's unlicensed employee has cremated over 300 people since last year.

- This Complainant was contacted and stated that although their name was listed on complaint they did not submit the complaint and believe it was submitted by an ex-employee of the Respondent.

FUN- 2019057561 Funeral Establishment: This is a complaint that was submitted by an ex-employee of the Respondent establishment. The complaint alleges the expired apprentice funeral director has been making funeral arrangements without a funeral director's license. The complaint also alleges that the Respondent establishment's employees have been cremating bodies. The complaint further alleges that the Respondent establishment cremated the wrong body and gave families the wrong cremated remains.

- It is notable that the ex-employee is currently involved in litigation with the Respondent.

FUN-2019065721 Funeral Establishment: This is a complaint that was submitted by an ex-employee of the Respondent establishment. The complaint

alleges that the Respondent establishment pays their employees in cash to avoid taxation.

FUN-2019077621 Funeral Establishment

FUN- 2019078051 Expired Apprentice Funeral Director Registration

These are consumer complainants against the Respondent establishment and an expired apprentice funeral director that alleges, in part, that the expired apprentice funeral director is making arrangements with families without a license and has arranged over 50 plus services. Complainant also alleges that arrangements for their cousin's cremation were not completed in the given time frame.

In response to the allegations against the Respondent Funeral Establishment an affidavit was provided which indicated the following:

1. A licensed funeral director is on the premises every day and no unlicensed activity has occurred at the Respondent establishment.
2. It is impossible that cremated remains were given to the wrong family because there is a strict system in place regarding cremations.
3. While employees may have helped with a cremation due to the size of the deceased; they are not the ones conducting cremations.
4. The Respondent establishment has not cremated over 300 bodies in the last year.
5. The ex-employees who were listed as receiving cash for payment have never worked at the Respondent establishment.
6. The local police department has been called various times against the ex-employee due to harassing and threatening behavior. Police reports were provided.

In response to the allegations against the Respondent expired apprentice funeral director, the Respondent's attorney indicated the following:

1. During the time frame in question the Respondent's apprentice license was active and Respondent was working under the supervision of a licensed funeral director who was present when the arrangements were made.
2. The family of the deceased was not given an exact timeframe but that they were provided with a step-by-step cremation document to

inform them of the process, and that the cremation was conducted in a timely manner.

Based on the fact that four (4) complaints on the Respondent establishment were received, Legal reviewed an April 2019 inspection which indicated no violations were found. These cases were investigated in July 2019; during that investigation no violations were found. Legal contacted the individuals who would be listed as witnesses in this matter; the witnesses indicated that they could not provide specific instances of unlicensed activity or unprofessional conduct. Based on Legal’s communications with the witnesses, it appears unlikely they will be cooperative with any further investigation or litigation. An additional inspection was conducted in October 2019 and no violations were found.

Recommendation:

- Establishment – Closure
- Expired Apprentice Funeral Director Registration – 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

Board of Funeral Directors and Embalmers
Financial Recap
Fiscal Year July 1, 2018 – June 30, 2019

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 11, 2019 for use in the compilation of this report.

Beginning Balance – July 1, 2018	\$1,237,260.00
Net Revenue (Earnings) for July 1, 2018 – June 30, 2019	\$ 409,008.00
Total Funds Available	<u>\$1,646,268.00</u>

Expenditures July 1, 2018 – June 30, 2019 \$ 345,713.00

Cost Backs (Cost Allocations charged to the Board from Administration, Investigation, Legal, Customer Service Center, and Centralized Complaints) \$ 211,853.00

Total Expenditures, Including Cost Backs **\$ 557,566.00**

Reserve Balance – July 1, 2019 \$1,088,702.00

LEGISLATIVE UPDATE:

Our office has not received any 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 the upcoming legislative session. We extend an invitation to both associations and any other interested parties to meet with our staff and legal prior to the introduction of legislation affecting the Board of Funeral Directors and Embalmers.

LICENSEE REPORT:

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF OCTOBER 8, 2019 – NOVEMBER 8, 2019

Establishment(s)

Jefferson Stewart Cremations Inc.
Millington, TN

Type of Action(s)/Change(s)

New Establishment

Individual(s)

David Arnell Marshall
Spring City, TN

Type of License(s)

Funeral Director and Embalmer
Reapplication

CLOSED ESTABLISHMENT REPORT:

There is no closed establishment(s) to report for this board meeting.

DISCIPLINARY ACTION REPORT:

There is no disciplinary action(s) to report for this board meeting.

OPEN COMPLAINT REPORT:

As of November 12, 2019 there were 37 open complaints.

A motion was made by Charles Rahm to accept the Executive Director's Report.

Seconded by Dennis Bridges

Adopted by voice vote

ELECTION OF BOARD OFFICERS FOR 2020:

President:

Dennis Bridges made a motion to nominate and elect Clark McKinney as President of the Board for 2020.

Seconded by Charles Rahm

Adopted by voice vote

Vice President:

Dennis Bridges made a motion to nominate and elect Robert Shackelford as Vice President of the Board for 2020.

Seconded by Clark McKinney

Adopted by voice vote

APPOINTMENT OF CONTINUING EDUCATION LIAISON FOR 2020:

Dennis Bridges made a motion to appoint Charles Rahm as the Continuing Education Liaison for 2020.

Seconded by Clark McKinney

Adopted by voice vote

ADJOURN:

A motion was made by Charles Rahm to adjourn.

Seconded by Robert Davis

Adopted by voice vote

The meeting was adjourned by President Jeff Duffer at 10:56 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director