

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

JUNE 8, 2021

President Robert Shackelford, III, called the meeting to order at 10:00 a.m. The meeting was conducted in Conference Room 1-A, Davy Crockett Tower, Nashville, Tennessee.

Board members present: Robert Shackelford, III, President; Charles Rahm, Vice President; Fred Berry, Anthony Harris, Tonya Scales Haynes, Clark McKinney and Scottie Poarch.

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 Anthony Harris to approve the Agenda as printed.

Seconded by Fred Berry

Adopted by Voice Vote

APPROVAL OF MINUTES:

A motion was made by Fred Berry to approve the Minutes of the May 11, 2021 board meeting as corrected.

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

Note: President Robert Shackelford recused himself from participation in the entire Legal Report. Vice President Charles Rahm presided over the meeting during the Legal Report.

1. Case No.: 2021015601 – Funeral Establishment

This is an administrative complaint submitted against the Respondent alleging that the Respondent funeral home is aiding and abetting an individual who is acting in the capacity of a funeral director and embalmer despite the individual surrendering their license in March 2020

This complaint was sent for investigation. During March and April 2021, a Board Field Investigator interviewed and obtained documents from the Respondent and associated unlicensed individual. An investigation discovered that in November 2020 the Respondent establishment was contacted by the unlicensed individual regarding assistance with funeral services. The investigation discovered that from November 2020 to December 2020 the Respondent establishment worked with the unlicensed individual on five cases where the Respondent was contacted regarding burial or cremation. The Respondent manager indicated that they became aware of the lack of licensure on December 10, 2020, and the Respondent severed their working relationship with the unlicensed individual. The Respondent indicates they are still owed approximately \$5,500.00 by that unlicensed individual.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty in the amount of \$2,500 via consent order.

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

Seconded by Fred Berry

Adopted by Voice Vote

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- 2. Case No.: 2021015561 – Previously licensed as a Funeral Director**
 - 3. Case No.: 2021020121 – Previously licensed as a Funeral Director**
 - 4. Case No.: 2021015581 – Previously licensed as an Embalmer**
 - 5. Case No.: 2021026541 – Previously licensed as a Funeral Director**

These complaints submitted against the Respondent allege that the Respondent is acting in the capacity of a funeral director and embalmer despite the Respondent surrendering both their licenses in March 2020.

Specifically, the complaints allege that the Respondent continues to engage in funeral directing by meeting with families to arrange for services, cremation, and international transportation. Additionally, a consumer complaint alleges that they contacted the Respondent directly about services and merchandise for their grandmother. The consumer states that they paid for a marker to the Respondent directly, but were informed by the cemetery that the Respondent never paid the cemetery for the installation of the marker.

These complaints were sent for investigation. During March and April 2021, a Board Field Investigator interviewed and obtained documents from the Respondent and all associated establishments. Numerous violations were discovered including the following:

1. The Respondent has been acting in the capacity of a funeral director and embalmer despite surrendering their licenses.
2. The Respondent had contracted with at least one family to provide cremation services and international transportation.
3. The Respondent was unable to provide funeral files or information regarding bodies. The Respondent was reluctant to provide any information.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty in the amount of \$10,000 via consent order.

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

Seconded by Fred Berry

Adopted by Voice Vote

6. Case No.: 2021020691 – Funeral Director

This is a consumer complaint alleging unprofessional conduct. Specifically, the consumer states that the Respondent would not amend the marital status on their deceased husband's death certificate. The consumer states that they were not able obtain the death certificate because the marital status read "Unknown". The consumer states that they informed the Respondent that they would provide

a copy of the marriage certificate, but that the Respondent became unresponsive. The consumer provided a copy of the marriage certificate.

The Respondent responded to the complaint and indicated that the sisters of the deceased made arrangements with the Respondent. The Respondent states that the sisters to the deceased, who paid for the arrangements, indicated that the marriage status should not be amended. The Respondent states that communication with the consumer ceased because legal threats were made by the consumer. The Respondent indicated that they do diligence according to the family expectations and with accordance to law.

Recommendation:

- Letter of Warning

A motion was made by Anthony Harris to accept Counsel's recommendation.

Seconded by Scottie Poarch

Adopted by Voice Vote

7. Case No.: 2021023071 – Funeral Establishment

On March 10, 2021 a Board Field Representative performed an inspection of the Respondent establishment. During the inspection, the representative discovered that a General Price List indicating that a price match guarantee discount would be given on pre-need and at-need funeral arrangements.

The Respondent responded to the complaint and indicated that a mistake was made by giving the Field Representative an old price list by a new employee in training. The Respondent states that the current General Price List does not contain any language indicating that pre-need discounts are available.

Recommendation:

- Letter of Warning

A motion was made by Fred Berry to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by Voice Vote

- 8. Case No.: 2021024991 – Funeral Director**
- 9. Case No.: 2021025011 – Embalmer**
- 10. Case No.: 2021012801 – Funeral Director**

Two of these are administrative complaints based on information provided to the Board Office indicating that the Respondent was indicted by a Grand Jury on charges that include two counts of theft of property and one count of burglary. Additionally, a complaint was submitted by the Respondent's ex-employer indicating the same. The Complainant indicates that the Respondent was an employee of the Complainant's establishment until he was discharged based on the theft and burglary. Documentation provided shows that the city police investigation discovered the amount taken from the Complainant's establishment was estimated to be approximately \$80,000.00. Additionally, the city police investigation discovered an estimated \$13,000.00 was taken from individuals and not turned over to the funeral home for payments made toward funerals.

Recommendation:

- Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of twelve calendar months, beginning on the first day of the month following execution of the Order, a civil penalty of \$1,000.00, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.

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

Seconded by Fred Berry

Adopted by Voice Vote

Note: Later in the board meeting after covering other cases on the Legal Report, Vice President Charles Rahm announced that he would like to be noted as voting "No" on Cases 8, 9, and 10.

11. Case No.: 2021026771 – Funeral Establishment

This is a consumer complaint alleging unprofessional conduct and a failure to deliver for services and merchandise paid for. The complainant alleges that in 2018 a family friend entered into a pre-paid funeral agreement with the Respondent and subsequently passed away in May 2020. The Complainant states that since they were only a friend they were informed of the passing in October 2020 and were informed that the cremated remains were being kept at a funeral establishment. The Complainant indicates that permission was given from the deceased's family to make arrangements, but that it took from December 11, 2020 to January 7, 2021 to finalize arrangements as the Respondent was unresponsive. The Complainant states that the services received were not what the deceased paid for. The Complainant states they were reimbursed for a vault but never received an itemized bill.

The Respondent responded to the complaint and indicated the following:

1. In 2018 the deceased entered into a pre-arrangement for a full service.
2. In October 2020 the Respondent was informed that the deceased had been cremated by another establishment at the request of a family member.
3. The Complainant requested that the Respondent pick up the remains so the family could have a graveside service and place his cremated remains in his cemetery plot.
4. The Respondent states they received approval from the deceased's next of kin, who indicated that they would not be coming to the service, but would approve the funeral bill according the requests of the Complainant.
5. The Respondent states that because the deceased was already cremated they could only charge for services incurred.
6. The Respondent states that the Statement of Funeral Goods and Services Selected was signed by the beneficiary, and the difference was sent from the insurance company directly to them.
7. The Respondent states that because the Complainant paid the cemetery directly, they were reimbursed for the vault.

The Respondent provided documentation.

The Complainant provided a rebuttal indicating that the deceased was estranged from their son, and he was not listed as a beneficiary. The Complainant further indicated they are not looking for money but just clarification as to where the funds went.

Recommendation:

- Letter of Warning

A motion was made by Fred Berry to accept Counsel's recommendation.

Seconded by Tonya Haynes

Adopted by Voice Vote

12. Case No.: 2021028771 – Funeral Establishment

This is a complaint submitted by the Vital Records Section with the Department of Health alleging families are experiencing a substantial delay in receiving a certified copy of their loved one's certificate of death because the Respondent is not entering data correctly nor in a timely manner. The complaint submitted in April 2021 indicates that the Respondent has death certificates started but not completed as far back as October 2020. The complaint further indicates that that Vital Records is receiving calls from families complaining about the delay. Records received show that the Respondent has twenty death certificates still with missing information.

The Respondent's representative responded to the complaint and indicated that the Respondent establishment has recently hired a new manager who is going through all pending death certificates for the Respondent to get them caught up. The Representative further indicated that the previous employee in charge of the funeral establishment is no longer employed by the Respondent.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty in the amount of \$2,000.00 via consent order.

A motion was made by Fred Berry for Authorization of a formal hearing. Authorization for a civil penalty in the amount of \$2,000.00 and proof of filing the completed death certificates.

Seconded by Anthony Harris

Adopted by Voice Vote

13. Case No.: 2021028801 – Funeral Establishment

This is a complaint submitted by the Vital Records Section of the Department of Health alleging families are experiencing a substantial delay in receiving a certified copy of their loved one's certificate of death because the Respondent is not entering data correctly and/or in a timely manner. The complaint submitted in April 2021 indicates that the Respondent has death certificates started but not completed as far back as October 2020. The complaint further indicates that the Vital Records is receiving calls from families complaining about the delay. Records received show that the Respondent has three death certificates still with missing information.

The Respondent has not responded to the complaint at this time.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty in the amount of \$550.00 via consent order. (\$250 for failure to respond to an open complaint).

A motion was made by Clark McKinney for Authorization of a formal hearing. Authorization for a civil penalty in the amount of \$850.00 and proof of filing the completed death certificates.

Seconded by Anthony Harris

Adopted by Voice Vote

14. Case No.: 2021027551 – Funeral Director

This is a competitor complaint alleging unprofessional conduct by the Respondent. The Complainant indicates that the Respondent had previously entered into an asset purchase and sale agreement with the Complainant which included among other things a non-compete agreement. The Complainant alleges that the Respondent is interfering with the Complainant's business operations, leasing of real property, and engaging in unprofessional conduct.

The Respondent has not responded to the complaint.

It appears that this matter would be more appropriate for a civil suit.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty in the amount of \$250.00 via consent order (failure to respond to an open complaint).

A motion was made by Clark McKinney for Authorization of a formal hearing. Authorization for a civil penalty in the amount of \$500.00 via consent order (failure to respond to an open complaint).

Seconded by Fred Berry

Adopted by Voice Vote

RE-PRESENTS

15. Case No.: 2018049971 – Funeral Director

This case was previously re-presented to the Board at its December 8, 2020 meeting as follows:

Summary: This case was previously presented to the Board at its November 13, 2018 meeting as follows: 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.

Board Decision: Approved.

UPDATE:

A final judgment was entered in the case. The Respondent was found guilty of a class E felony charge of theft greater than \$1,000.00 but less than \$2,500.00. The Respondent received a one-year sentence that was suspended to one year of probation supervised by Community Corrections.

Recommendation:

- *Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of six calendar months, beginning on the first day of the month following execution of Order, a civil penalty of \$1,000.00, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.*

Board Decision:

- *Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of twelve calendar months, beginning on the first day of the month following execution of Order, a civil penalty of \$1,000.00, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.*

UPDATE:

This case was originally scheduled for a June 8, 2021 hearing; however, the Respondent's counsel filed a motion to continue in the matter. The hearing is now set for the September 14, 2021 Board meeting.

New Recommendation:

- Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of twelve calendar months, beginning on January 1, 2022, a civil penalty of \$1,000.00 due immediately, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.

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

Seconded by Fred Berry

Adopted by Voice Vote

Board Member(s) noted as voting contrary to the conclusion: Charles Rahm

16. Case No.: 2020092901 – Embalmer

This case was previously presented to the Board at its December 8, 2020 meeting as follows:

Summary: This complaint was opened based on a 2018 complaint which was previously presented to the Board at its November 13, 2018 meeting as follows: 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.

A final judgment was entered in the case. The Respondent was found guilty of a class E felony charge of theft greater than \$1,000.00 but less than \$2,500.00. The Respondent received a one-year sentence that was suspended to one year of probation supervised by Community Corrections.

Recommendation:

- *Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of six calendar months, beginning on the first day of the month following execution of Order, a civil penalty of \$1,000.00, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.*

Board Decision:

- *Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of twelve calendar months, beginning on the first day of the month following execution of Order, a civil penalty of \$1,000.00, ten hours of continuing education courses approved*

by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.

UPDATE:

This case was originally scheduled for a June 8, 2021 hearing however the Respondent's counsel filed a motion to continue in the matter. The hearing is now set for the September 14, 2021 Board meeting.

New Recommendation:

- Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of Twelve calendar months, beginning on January 1, 2022, a civil penalty of \$1,000.00 due immediately, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.

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

Seconded by Fred Berry

Adopted by Voice Vote

Board Member(s) noted as voting contrary to the conclusion: Charles Rahm

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

HB0780/SB0771 -

Professions and Occupations - As introduced, makes various changes affecting certain professional boards and professions, including court reporters, motor vehicle dealers, barbers, certain apprentices, scrap metal dealers, locksmiths,

and other professions. - Amends TCA Title 4; Title 20; Title 47; Title 55; Title 56; Title 62 and Title 68.

Note: [Public Chapter 549](#) with Effective Date(s): 05/26/2021, 10/01/2021

HB0334/SB0931 –

Death - As introduced, imposes requirements on the operation of alkaline hydrolysis facilities and the use of alkaline hydrolysis in this state. - AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 5.

Note: [Public Chapter 141](#) with Effective Date(s): 04/13/2021

HB1181/SB0828 –

Abortion - As introduced, requires disposition of aborted fetal remains to be by burial or cremation; requires the Department of Health to promulgate certain rules and forms; and makes certain other changes regarding the disposition of fetal remains. - Amends TCA Title 37, Chapter 10; Title 39; Title 62, Chapter 5 and Title 68.

Note: [Public Chapter 348](#) with Effective Date(s): 05/06/2021, 07/01/2021

HB0012/SB0951 –

Criminal Offenses - As introduced, enacts "April's Law" to clarify that a person who engages in sexual contact with a corpse commits the offense of abuse of a corpse, a Class E felony; requires law enforcement officers to ask victims of stalking, domestic abuse, or sexual assault whether the victim requests the defendant be required to wear GPS-tracker if released on bond. - Amends TCA Title 39, Chapter 17, Part 3; Title 40, Chapter 11 and Title 40, Chapter 39, Part 2.

Note: [Public Chapter 402](#) with Effective Date(s): 07/01/2021

HB0788/SB1429 –

Indigents - As introduced, requires this state and the county in which the person resided to pay up to \$2,000 for the burial or cremation of a person who dies from COVID-19 if the person's family is financially unable to pay for a proper burial or cremation of the person. - Amends TCA Title 5, Chapter 9; Title 9 and Title 46.

HB0738/SB1091 –

Contracts - As introduced, reduces from 100 percent to 80 percent the amount of funds received for funeral services and merchandise to be held in trust pursuant to a pre-need funeral contract funded by trust deposit; requires the contract to disclose to the purchaser in boldface type the percentage of funds the seller is required to trust along with the name of the trust officer, the trust institution, and their respective addresses and phone numbers. - Amends TCA Title 62, Chapter 5.

HB1466/SB1558 –

Professions and Occupations - As introduced, reduces from 75 to 60 days after the end of the pre-need seller's fiscal year, the time by which a pre-need seller

and trustee must file an annual report with the commissioner of commerce and insurance. - Amends TCA Title 38; Title 44; Title 55; Title 62 and Title 68.

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 MAY 1, 2021 – MAY 31, 2021

Individuals)

Type of License(s)

Travis Dwayne Howell
Nashville, TN

Funeral Director and Embalmer

Kerri Allyn Yokley
Knoxville, TN

Funeral Director and Embalmer

Beverly B. Austin
Mount Juliet, TN

Funeral Director

Jerry Madison Harrison
Memphis, TN

Funeral Director

Wendell Montez Howard
Maryville, TN

Funeral Director

Wendell Kim Whitworth
Pleasant View, TN

Funeral Director

Lane Dylan Massey
Southaven, MS

Funeral Director
Reciprocity – Mississippi

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 2021 Regulatory Boards Disciplinary Action Report

Respondent: Wann Funeral Home & Cremation Center, Inc.,
Chattanooga, TN
Violation: Failed to file an application for change of location with the
Board prior to moving to a new location
Action: \$1,000 Civil Penalty

OPEN COMPLAINT REPORT:

As of June 4, 2021, there were 38 open complaints.

A motion was made by Fred Berry to accept the Executive Director’s Report.

Seconded by Clark McKinney

Adopted by Voice Vote

BOARD MEETING DATES FOR 2022:

01.11.2022	02.08.2022	03.08.2022
04.12.2022	05.10.2022	06.14.2022
07.12.2022	08.09.2022	09.13.2022
10.11.2022	11.08.2022	12.13.2022

A motion was made by Anthony Harris to adopt the above dates as board meeting dates during the calendar year of 2022.

Seconded by Fred Berry

Adopted by Voice Vote

NEW BUSINESS:

A motion was made by Fred Berry to move the July 13, 2021 board meeting to Tuesday, August 3, 2021.

Second by Charles Rahm

Adopted by Voice Vote

ADJOURN:

A motion was made Charles Rahm to adjourn.

Seconded by Fred Berry

Adopted by Voice Vote

The meeting was adjourned by President Robert Shackelford at 10:39 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CPM, CFSP
Executive Director