

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

DECEMBER 12, 2023

President Anthony Harris called the meeting to order at 10:00 a.m. The meeting was conducted in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

Board members physically present: Anthony Harris, President; Tonya Scales Haynes, Vice President; Fred Berry, Christopher Lea, and Wendell Naylor.

Board member(s) absent: Scottie Poarch and Pamela Stephens

Staff physically present: Robert Gribble, Executive Director; Troy Bryant, Associate General Counsel; and Lisa Bohannon, Regulatory Board Administrative Manager.

ADOPTION OF AGENDA:

A motion was made by Fred Berry to approve the agenda as published.

Seconded by Christopher Lea

Adopted by Voice Vote

APPROVAL OF MINUTES:

A motion was made by Fred Berry to approve the Minutes of the November 14, 2023, Board Meeting.

Seconded by Christopher Lea

Adopted by Voice Vote

LEGAL REPORT:
TROY BRYANT, 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.: 2023048881 – Funeral Establishment

This complaint was administratively opened on October 2, 2023, following an inspection conducted by the Department on September 27, 2023. This inspection occurred due to ownership and name changes of Respondent establishment and follows an inspection conducted on April 12, 2023. During the course of the April 12, 2023, inspection, it was discovered that an individual who had signed most, if not all, of the Permits for Cremation of Human Remains on behalf of Respondent establishment was not a licensed funeral director.

Since the last inspection ranging from April 13, 2023, to September 27, 2023, the inspector noted that approximately 86 cremations had been performed at this location with the same unlicensed individual signing most, if not all, of the Permits for Cremation of Human Remains.

Respondent replied acknowledging that the findings were accurate, offering their only defense that he (the owner) and none of the funeral directors knew that the person overseeing and signing the cremation papers had to be a licensed funeral director. Respondent added that although the individual who signed the documents was not a licensed funeral director, he was a certified crematory operator. Respondent also offered that a licensed funeral director was on the premises of the establishment at all times.

Based on the above, the Board previously issued a \$750.00 civil penalty for violations of the unauthorized individual signing the necessary documentation, and an expiration of the funeral director's license for a period from February 28, 2023 – April 3, 2023. The suggested civil penalty represents an increased civil penalty for the one violation of having an unlicensed individual sign for pertinent documentation as there was no violation found for expired license during this inspection.

Recommendation:

- \$500.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

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

Seconded by Christopher Lea

Adopted by Voice Vote

2. Case No.: 2023052851 – Apprentice Funeral Director

Complainant, who is the owner of a funeral establishment, alleged that a former employee of their funeral establishment placed an unauthorized ad with a local newspaper promoting the new name of the funeral establishment before the change of ownership and name applications were submitted nor approved by the Board. Complainant stated they did not give this employee permission to place the ad, and attached an email from the publisher of the local newspaper stating that the ad was published in error and not authorized by the proper person.

Respondent replied stating that Complainant had put him in charge of promotion regarding the new ownership of the funeral establishment. Respondent stated throughout the promotion, they were careful to not promote the new establishment name until it had been approved by the state. Respondent stated at no time was he advised that he could not place ads without Complainant's approval. Respondent stated that the ad referenced in the complaint was one of many ads prepared to be run in the future after the name change. Respondent stated this ad was placed without knowing the confirmed date of printing/publication. Respondent stated there was no intent on their part to run an ad with an unapproved name and no intent to violate applicable rules.

Recommendation:

- Letter or Warning

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

Seconded by Christopher Lea

Adopted by Voice Vote

3. Case No.: 2023053441 – Funeral Establishment

Complainant alleged that on October 10, 2023, they were informed by another individual that an associate of Respondent establishment speculated that the reason an autopsy for the decedent was offered was because "the hospital suspected foul play." Complainant stated they called the associate and "strongly coached him on the inappropriateness of this comment" and communicated that it was unprofessional. Complainant further claimed that they told the associate

that they were completely unaware of the reason why the hospital offered an autopsy and stated the associate should have encouraged the family to contact the hospital if they had questions regarding the autopsy.

Respondent replied stating that Complainant had misconstrued their conversation with the decedent's family. Respondent confirmed that Complainant was not part of their conversation with the family, and that their information is not first hand. Respondent explained that the wife of the decedent mentioned that a doctor from a hospital had called her multiple times wanting an autopsy done. Respondent stated they explained to the wife that "most autopsies are done when foul play is suspected . . . which is not the case in this situation." Respondent continued stating that the decedent had numerous health issues and the autopsy was likely the doctor wanting to understand the specific cause of death. Respondent stated they met with the family several times and that any time the autopsy subject was mentioned, they told the family that the autopsy had nothing to do with foul play.

Based on the above, Complainant admits the basis of their complaint is based upon a hearsay understanding of what Respondent allegedly told the family. Respondent explains that they specifically mentioned that the autopsy was not due to foul play and confirms that Complainant was not present for the conversation to be able to accurately know what was stated.

Recommendation:

- Closure

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

Seconded by Christopher Lea

Adopted by Voice Vote

4. Case No.: 2023045331 – Funeral Director

Complainant, daughter of the decedent, stated that the services for their mother were changed. Complainant alleged that when they called Respondent, they informed her that graveside services were at 12:30 and "hung up and called the family member that was in charge of making the arrangements." Complainant alleged that they were intentionally given an incorrect time because Respondent recognized their voice over the phone. Complainant further stated that during the services there were lawnmowers, blowers, and weed eaters "from the time [they]

arrived to the time [they left].” Complainant also alleged that when arriving at the church they overheard Respondent make a comment to the effect of “Oh, she just had to show up.” Further, Complainant alleged that Respondent was rude and that when Respondent sent the list of the decedent’s wishes, they did not match what the decedent had wanted. Finally, Complainant stated that members of the family that came to the church for the decedent’s services had firearms holstered throughout the service.

Respondent stated that on September 3, 2023, they received a call from a local hospital informing them of the death of the decedent. Respondent stated the next of kin, a daughter separate from Complainant had instructed them to release to the decedent to their funeral establishment and that Respondent had called the next of kin daughter and talked briefly about the types of services to arrange for the decedent. During this meeting, the next of kin daughter presented a “Final Wishes” paper that the decedent out filled out and provided to the next of kin daughter prior to her death. Respondent stated that the next of kin daughter told her it was very important that they wanted to honor the decedent’s final wishes, and that Respondent may be contacted by other family members expressing their wishes. Respondent stated the next of kin daughter asked that she refer any outside calls from other relatives to her. Respondent stated the day after this appointment, Complainant called their office and identified herself as a daughter of the decedent. Respondent stated that the Complainant was angry and stated that no arrangements should have been made without the entire family present. Respondent stated she explained that the funeral director does not decide who is present for the arrangement conference, but stated that Complainant’s mother’s wishes were what guided the arrangements meeting. Respondent said the only actual decisions made by the next of kin daughter were the date and time for the family visitation and that some music be played during the visitation time (the Final Wishes document indicated that there be no organists or soloists during the visitation, but Respondent included streamed music at the request of the next of kin daughter). Respondent further stated that the next of kin daughter had an appointment the following Wednesday at the cemetery, and thus service times were not determined until after that meeting occurred so they could determine the cemetery’s availability. Respondent stated they have no information to determine whether the next of kin daughter communicated service times among the family that ended up being inaccurate, but only knew that the cemetery personnel requested the 12:30 graveside time. At Complainant’s request, Respondent sent a copy of the Last Wishes document to Complainant, and Respondent contends that over the phone, Complainant told her she “better be sure [you] have security at that funeral” causing Respondent additional concern.

Respondent stated that the next of kin daughter provided her with insurance policy information (in which she was the primary beneficiary), the policy had been pre-purchased by the decedent in March of 2019. Respondent further provides that the next of kin daughter was acknowledged as the next of kin because she had been listed as the informant on the certified death certificate and since she was the named beneficiary on the insurance information. Further, the next of kin daughter was also listed as the next of kin on the hospital discharge papers. Respondent denies that Complainant was given an incorrect time, or that an alternate time was given due to Complainant's identity. Respondent stated they do not screen a caller's identification when inquiring about service time, and that Complainant was told the 12:30 time because that's the time everyone else was told. Next, Respondent stated that there were not lawn mowers, blowers, and weed eaters present at the service, but instead that it was a tree trimming service, Respondent stated that they were trimming limbs for "many consecutive days during the entire week" of the decedent's service. Next, Respondent stated they only met the next of kin daughter and her son in person and no other members of the decedent's family, so they would not have known to make any comment about Complainant as they alleged and further confirmed that no one had introduced her to Complainant that day. Respondent stated she personally did not observe firearms at the service but stated that her staff and pastor did notice one individual openly carrying a firearm. Respondent stated he was the grandson of the decedent and son of the next of kin daughter. Respondent mentioned that this individual spoke at the service and asked that the family "please stop the quarreling and try to improve their relationships with each other." Respondent stated she did not change the times for the visitation or graveside service and that that decision was made by the next of kin daughter and that neither or nor her staff were in any way rude as Complainant had alleged.

Complainant also supplied an 11-minute phone recording between her and Respondent. Highlights of this call include:

- Complainant acknowledging that the next of kin sister was left in charge.
- Continued allegations of not following the decedent's wishes, though Complainant acknowledges that Respondent followed the document of Final Wishes that Respondent had been provided.
- Complainant acknowledged that there were family issues and tension that extended beyond just the arrangement process.
- Complainant acknowledges that she asked Respondent for her mother's wishes, acknowledges that Respondent did as she asked and provided the document, but appeared to take issue with the fact that Respondent

contacted the next of kin sister and her son as they had requested she do if she was contacted by other family members.

Based on the above, the bulk of the complaint appears to be family related issues. Respondent appears to have had sufficient reliance information to establish the next of kin daughter as the next of kin and appeared to abide by the requests and wishes of the next of kin sister. While Complainant may have taken issue with the Final Wishes document and the decisions made by the next of kin daughter, it appears that Respondent followed the document and next of kin as they were instructed to do.

Recommendation:

- Closure

A motion was made by Christopher Lea to accept Counsel's recommendation.

Seconded by Wendell Naylor

Adopted by Voice Vote

5. Case No.: 2023050881 – Funeral Establishment

Complainant, a former employee of Respondent establishment, alleged racial discrimination and harassment in the workplace.

Respondent establishment replied denying the allegations as Complainant had stated them.

Legal attempted to send this case for investigation. However, after the investigator contacted Complainant, Complainant disclosed that he had retained legal counsel since filing the complaint. After Legal discussed the complaint with Complainant's counsel, Complainant's counsel requested that her client not speak with the investigator at that time, and that she would know more about how to proceed in two weeks. Two weeks later, Legal contacted Complainant's counsel to determine how to move forward. In short, Complainant's counsel felt that due to ongoing litigation, it would be pertinent to halt the progress of this complaint so that the matters could be addressed in a separate jurisdiction. In an email dated November 17, 2023, Complainant's counsel stated that they and the counsel of Respondent would request that this complaint be closed without prejudice so that a future complaint could be re-filed in the future if necessary.

Based on the above, Legal would recommend closure of this complaint and allow for Complainant to refile a separate complaint at a later date when or if the timing becomes ripe.

Recommendation:

- Closure

A motion was made by Christopher Lea to accept Counsel's recommendation.

Seconded by Tonya Scales Haynes

Adopted by Voice Vote

6. Case No.: 2023028421 – Funeral Establishment

Complainant alleged that Respondent establishment had mishandled the body of a decedent. Specifically, Complainant alleged that the funeral director in charge failed to properly catalogue decedent's clothing and belongings, the funeral director destroyed the decedent's clothing without authorization, and that the embalmer at the establishment had broken the decedent's ankles in order to fit him inside the casket.

Respondent vehemently denied the allegations stating that they treat all families in an ethical and respectful manner.

On June 17, 2023, the Complainant supplied a rebuttal stating, "I am gathering multiple affidavits in this matter and will forward to you. I respectfully request you refrain from issuing a final decision before I get this evidence to you." As of this date, Complainant has not supplied any additional information.

This complaint was sent for investigation. First, the investigator spoke to the general manager and licensed funeral director for the Respondent establishment. The general manager stated his familiarity with this matter was all second hand as it had occurred prior to his time with Respondent establishment which began in 2021. The investigator inquired as to whether Respondent establishment had a protocol as to a decedent's personal effects. The general manager stated they have a chain of custody and provided the investigator with a copy of that form.

Next, the investigator met with the funeral director referenced in the complaint. The funeral director stated that they were the manager of the Respondent Establishment at the time that the complaint was filed by the Complainant. The

manager/funeral director stated that on July 20, 2020, Respondent establishment received a death call from a hospital, and that their staff made the removal of the decedent. The funeral director/manager also provided the name of the embalmer who had embalmed the decedent, but provided that they no longer worked at the Respondent establishment. The manager/funeral director recalled the timeline of making funeral arrangements with the family on July 21, 2020, visitation occurring on July 24, 2020, and funeral services on July 25, 2020. The manager/funeral director stated that they were the one involved with making the funeral arrangements, conducting the visitation, and the funeral and internment services. When asked about the protocol for personal effects, the manager/funeral director stated that Respondent establishment staff would place any jewelry or personal effects in a plastic bag and the bag was placed above the embalmer's desk with the name of the deceased and date of death. They continued that any clothing was placed in a paper bag with the name of the deceased and date of death on the bag. The manager/funeral director stated that it appeared from the medical release form the clothing may have been removed by medical staff and provided that the release form stated that the socks and shoes were given to the mother of the decedent. The manager/funeral director stated that to the best of their recollection no additional personal effects were given to the funeral home at the time of the removal.

Next, the investigator met with another funeral director at Respondent establishment. This funeral director stated they began employment at Respondent establishment in 2013. The funeral director recalled the embalmer who had embalmed the decedent and stated that embalmer had performed approximately 90% of all embalmings at the Respondent location. The funeral director stated to the best of their recollection, they did not assist the embalmer with the dressing or casketing of the decedent and recalled that they were not involved with assisting the family in question with funeral services. The funeral director stated they never spoke to the family and absolutely denied ever speaking to the family regarding the allegedly broken ankles of the decedent. The funeral director explained that in the event a person was too tall to fit in a casket, the ankles would never be broken but instead the knees could be gently bent with a pillow placed under the knees.

Next, the investigator met with the embalmer who had embalmed the decedent for Respondent establishment. The embalmer confirmed that he had never met the family as his duties were limited to embalming, dressing and casketing decedents. The embalmer provided that if there were any personal effects, those items were bagged and kept in the preparation room area for a reasonable

amount of time and that any personal items of value or items that needed to be returned to the family were given to the funeral director making the arrangements with the family. The embalmer vehemently denied ever breaking a decedent's ankles so they would fit in the casket.

Next, the investigator attempted to meet with the mother of the decedent. After nearly a month of organizing attempted meetings, and no shows from the mother after a scheduled time and place had been decided, the investigator was able to meet with the mother of the decedent. The mother stated that upon arriving at the hospital realizing her son had passed away, her son was still wearing the clothing he had worn when he was brought to the hospital. The mother stated that the clothes appeared to have been cut to allow medical staff to attend to him, but that the clothes were still on his body. The mother stated that there was no blood on the clothing, and that a nurse at the hospital gave her the socks and shoes that belonged to her son. The mother stated that she later inquired as to the remainder of her son's clothes and his silver cross, and she was informed by the nurses that they had been sent to Respondent establishment along with the body. The mother confirmed that the manager/funeral director was present and had assisted the family with arrangements and was also present for the visitation and funeral services. The mother stated that when the family conducted a private viewing, the embalmer escorted the family to view the decedent in the casket. The mother stated she requested that the embalmer open the foot end of the casket because she wanted to see the entirety of the decedent. The mother claims that the embalmer was "reluctant" but agreed, and that she was surprised to see that her son's feet were contorted in an unnatural position. The mother alleged that the embalmer stated, "sometimes we have to do that to fit them in the casket." The mother stated a few days later she met with a hairstylist to fix the decedent's hair and that after she had had the opportunity to do so, the hairstylist gave the decedent's silver cross to her. The mother stated she inquired several times of the manager/funeral director and another employee about retrieving the decedent's clothes. The mother stated that both employees stated they would return the son's clothing to her, but that the mother never received them. The mother stated one month after the service, she called Respondent establishment again inquiring about the decedent's personal effects and was never given a direct answer. The mother again contacted the nurses who purportedly stated that the decedent's personal effects were placed in a bag with his cross and it was sent to the Respondent establishment. The mother then contacted the manager/funeral director who she claimed stated that the hospital had thrown the decedent's clothes away. However, the mother contended that when they told the manager/funeral director the nurses had informed her the

clothes were sent to the Respondent establishment, the mother purported that the manager/funeral director then changed their story and said that the decedent's clothes were biohazard and that the Respondent establishment had thrown them away. The mother also contended that the manager/funeral director was rude and unprofessional on several occasions and purported to have a recording as proof. However, after several months of requesting those recordings, they were not received until November 28, 2023. After listening to the recordings, it does not appear that the manager/funeral director was ever recorded being rude to the mother.

Next, the investigator met with the chief nursing officer, market president, and compliance manager at the hospital where the decedent had died . However, the employees stated that due to HIPPA regulations, they could not provide any details of a patient, including their personal effects. However, one of the employees stated that it was hospital policy that all personal effects of a decedent be given to the family or sent with the decedent to the funeral establishment making the removal.

Next, the investigator met with one of the nurses who had treated the decedent. Again, due to HIPPA regulations, the nurse refused to discuss the matter with the investigator and refused to provide a statement.

Next, the investigator met with the hairdresser who stated she had been acquainted with the mother and decedent for numerous years and had styled the decedent's hair on numerous occasions. The hairstylist stated while styling the decedent's hair (after death), she recalled seeing some of the decedent's personal effects on an adjacent table. The stylist stated after she completed styling and met with the mother of the decedent again, the mother asked if the silver cross necklace was in the room with the decedent. The stylist stated she asked the embalmer if she could take the cross to the mother but could not recall the outcome and did not want to be misquoted.

Finally, the investigator contacted the Complainant and requested that he provide any information, documents, or affidavits he had referenced in the rebuttal. The Complainant stated that due to pending litigation, he would not be willing to provide any information or provide a statement at this time.

Based on the above, while it appears that the manager/funeral director does not recall whether the personal effects of the decedent were received by the Respondent establishment, several affiants recall seeing the decedent's personal

effects at the establishment. The evidence appears to show that the decedent's silver cross was returned to the mother of the decedent. However, the evidence suggests that the clothes that were torn were not returned to the mother. From Legal's perspective, while it is potentially understandable to dispose of ripped or torn clothes, it is ultimately up to the determination of the next of kin as to how to dispose of, if at all, the decedent's personal effects. No evidence was present other than the recollection of the mother that the decedent's ankles had been broken as alleged. Further, there was no proof that Respondent's staff, specifically the manager/funeral director, had been rude to the decedent's mother as alleged.

Recommendation:

- Letter of Warning related to alleged disposal of the decedent's clothes.

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

Seconded by Christopher Lea

Adopted by Voice Vote

7. Case No.: 2023036291 – Funeral Establishment

Complainant, an employee of the medical examiner's office, alleged that Respondent had cremated without the proper authorization in place. Specifically, Complainant stated that on July 18, 2023, Respondent submitted a request for cremation approval for a decedent along with a certified death certificate signed by an attending hospital physician. Complainant stated that the cause of death listed was not sufficient for initial approval and that medical records were requested on July 19, 2023. Complainant stated that Respondent was sent written notification via email that the approval for cremation was pending until the records could be obtained and reviewed. Complainant stated they received the records on July 21, 2023, and after review determined that a physical examination of the decedent was needed. However, upon reaching out to Respondent, Complainant was advised that the decedent had already been cremated. Complainant alleged that this had been carried out without medical examiner approval and without a permit from the local health department.

Respondent replied stating that the decedent died on June 22, 2023, and that the hospital released to Respondent establishment. At the request of the family, the Respondent establishment began working towards cremation and a cremation permission form was sent to the medical examiner's office for approval on July 18, 2023. On July 19, 2023, the mother of the decedent signed all appropriate documents for cremation. Respondent stated the same day, Respondent establishment talked to the medical examiner's office where verbal authorization

was given over the phone for cremation. Respondent contends that it is not uncommon for funeral homes to receive verbal confirmation from the medical examiner's offices for cremation. Ultimately, the decedent was cremated on July 20, 2023. The following day on July 21, 2023, Respondent received a call from the medical examiner's office indicating that the decedent needed to be brought into the medical examiner's office for an examination. However, Respondent Establishment indicated that they had already received verbal permission to cremate from the medical examiner's office. After this call, Respondent stated they checked their email and saw an email from the medical examiner's office indicating a chart review was needed on the decedent. The Complainant contacted the office manager at Respondent establishment to verify whether the decedent had been cremated, and after this was confirmed, Respondent purported that Complainant stated, "it was no problem" and that she would just need to do a chart review. However, Complainant called a second time and indicated that her boss had requested her to file charges against Respondent stating that since the decedent was only 20 years old, there was no way the cause of death listed on the death certificate was correct. Respondent stated that although Complainant indicated that the Respondent had been cremated without authorization of the local health department, according to an email dated December 23, 2020, coming from the state department of health, local registrar signatures were no longer required for cremation permits.

This case was sent for investigation. First, the investigator spoke to Complainant who confirmed that they had received a request for cremation from Respondent on July 19, 2023, and that the request was reviewed by the death investigator. After observing and opining that the cause of death listed was insufficient, they determined that the decedent's medical records would need to be reviewed prior to issuing cremation approval. Complainant stated the medical records were received, and on July 21, 2023, it was determined that the decedent would need to be examined. Complainant contended that at no time was verbal permission to cremate granted by a staff member of the medical examiner's office. Complainant explained that the protocol for granting permission by the medical examiner's office was that after granting permission, a medical examiner form was completed and sent to the local health department. Complainant continued that after the medical examiner form was sent to the local health department, a death investigator would contact the funeral establishment and notify the funeral home that the medical examiner form had been sent to the health department. From there, the funeral home would go to the health department and obtain the permission form. Complainant stated that there was no authorization form submitted by the medical examiner's office to the local health department for the decedent.

The investigator interviewed the office manager for Respondent establishment. Respondent stated that on or about June 28, 2023, the decedent's mother and grandmother came to Respondent establishment to make arrangements for the deceased. Originally, the family hoped to have a funeral service, but due to

finances, several weeks later requested that the decedent be cremated. On July 18, 2023, Respondent sent the decedent's mother a text message stating that the death certificate had been completed and was available to be picked up. When the mother came in to pick up the decedent's ashes, she signed the necessary paperwork for the cremation authorization forms. These forms were signed by the decedent's mother on July 19, 2023. The previous day, July 18, 2023, Respondent had made the request to the medical examiner's office for permission to cremate the decedent. Respondent stated she spoke to an employee at the medical examiner's office (Respondent was able to recall the first and last name of the purported individual she had spoken with) over the phone and that this employee had given verbal permission to cremate the decedent. Respondent stated they did not get a permit from the local health department per instructions received in an email from the state health department sent on December 23, 2020. Respondent confirmed that on or about July 24, 2023, they were contacted by the medical examiner's office requesting to examine the body. Respondent stated they informed the employee that the decedent had already been cremated via verbal permission from the previously named employee. Respondent stated that when Complainant called them the next day stating no permission had been granted, Respondent checked their emails and found an email in their spam inbox indicating the medical examiner's office wanted to do a review of the remains of the decedent. Respondent contends that at the time, Complainant informed her that everything was fine as they would conduct a chart review. However, Respondent stated that Complainant called back later and informed her that Complainant's supervisor had requested that Respondent be reported. Respondent stated that this was an isolated incident that only occurred due to a breakdown in communication between Respondent establishment and the medical examiner's office.

The email referenced by Respondent from December 23, 2020, stating that the signature of the health department was no longer required states as follows:

"We have heard several concerns that the need for a local registrar's signature on cremation permits is unnecessary and is delaying cremations unnecessarily. We are in the process of removing the local registrar signature line from the cremation permit form. The form change, approval and redistribution is estimated to take 90 days. Starting today, 23 Dec. 2020, the interim solution going forward is that the Medical Examiner signature will be the only authorization needed on the current form."

Legal contacted the individual at the Department of Health who had sent the email in question. In short, as Legal understands it, Respondent correctly understood the original intent of the email from the Department of Health as it applies to a total of 89, primarily rural, county health departments that operate under the Tennessee Department of Health in Nashville. Excluded from jurisdiction of the State Health Department are Hamilton County, Knox County, Madison County, Metro Nashville, Shelby County and Sullivan County. As the

State Department of Health employee stated, the intent of the email was to cut the local registrar/county health department out of the equation because VRISM had essentially automated the local registrar's responsibility, which would help with the expedition of cremation permits. However, the employee stated that the Department of Health does not have jurisdiction over the metro counties, and that the metro county Respondent resides in had decided to continue with the local registrar's responsibility in contrast with the email. It is unclear if a follow up email from either the state or county departments of health was ever sent explaining this discrepancy.

Based on the above, while the Respondent made a mistake in cremating without the proper approval, the mistake seems to have been a reasonable one to make given the December 23, 2020, email they received. Although an argument could be made that it is incumbent upon the Respondent to understand their duty and responsibility when conducting cremations, an argument could also be made that upon receiving communication from the state about an update to the cremation approval process, one would follow the guideline provided by the state, particularly if they were unaware of the nuances of county/municipality immunity and jurisdictional lines. However, the Respondent clearly never received any type of written approval for cremation from the medical examiner prior to the cremation of the decedent.

Recommendation:

- \$500.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

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

Seconded by Tonya Scales Haynes

Adopted by Voice Vote

RE-PRESENT

8. Case No.: 202303151 – Funeral Director

This matter was previously presented to the Board at its August 29, 2023 meeting as follows:

Complainant alleged that Respondent funeral director failed to file the death certificate in a timely manner. Specifically, Complainant stated that the date of death for the decedent was April 25, 2022. Complainant stated that Respondent did communicate that there was a back log, but that they went to their county's

health department several times and stated that they did not have records. Complainant stated that the main purpose of the complaint was in order to receive the death certificate.

Respondent replied confirming the date of death as Complainant described. Respondent explained that the hospital the decedent died at refused to sign the death certificate because they were not the primary physician for the decedent. Respondent further stated that at a separate hospital, they were told by the hospital that “the floating physician wasn’t signed into the system” and that no other doctor would sign off on the certificate. Finally, Respondent said because no other physician would sign the certificate, they had no choice but to send it to the medical examiner’s office, and that as of the day of their response (July 10, 2023) they were still waiting.

Recommendation: \$1,000.00 civil penalty to be reduced to \$250.00 if Respondent supplies the death certificate to the family within 30 days of the receipt of this consent order. Included with the Consent Order will also be a letter of instruction that includes language as to how Respondent should make continued contacts with the medical examiner’s office and the vital records section of the Department of Health. Authorize via Consent Order and formal hearing if necessary.

Board Decision: Send for further investigation – specifically regarding information made available from medical examiner

Update: First, the investigator confirmed with the office manager of the county health department that the death certificate of the decedent had not been filed in VRISM. Second, the investigator spoke to the senior investigator at the forensic center of the medical examiner. The senior investigator provided that the death certificate for the decedent had been created on October 18, 2022, and had been assigned to an unlisted physician and had been assigned to the medical examiner’s office on July 10, 2023. The senior investigator provided that the decedent had died as an inpatient in a hospital and that the death certificate should have been signed by a physician at the hospital. During the interview, the senior investigator stated that he would request records from the hospital on the decedent and contact the Department’s investigator whenever they had the information. On November 10, 2023, the Department investigator contacted the senior investigator requesting an update on the information they indicated they would provide. The senior investigator stated that the medical examiner’s office had not received the requested information.

Third, the investigator spoke with Respondent. Respondent stated that the decedent was the brother to the owner of the funeral establishment that she worked for, and that that funeral home had handled the arrangements and interment services for the decedent. Respondent explained that the decedent died at a hospital on April 25, 2022, and that the death certificate was sent to the hospital to be signed and a cause of death to be completed by the doctor. However, Respondent explained that the doctor informed her and the funeral establishment that the death certificate would be sent to the V.A. Hospital where the decedent had previously been an inpatient. Respondent confirms that the death certificate was sent to the V.A. Hospital, but that the doctor there refused to sign the death certificate. Since neither doctor agreed to sign the death certificate, the death certificate was sent to the medical examiner's office to allow the medical examiner to sign it. However, Respondent stated that soon after, the medical examiner contacted Respondent and the establishment requiring that either a doctor from the V.A. hospital or the hospital the decedent died at would need to sign the death certificate. Respondent stated that the establishment had done everything they could to get the death certificate signed, but to date, no doctor or the medical examiner would agree to sign the death certificate. Respondent provided that in all her years in funeral service, she had never had any problem getting a death certificate signed.

Finally, the investigator spoke to the owner of the establishment who was also the brother of the decedent. The owner confirmed that his brother had died on April 24, 2022, at a hospital, and confirmed that prior to going to this hospital, his brother had been an inpatient at the V.A. Hospital. The owner stated prior to sending the death certificate for signature, a doctor from the hospital indicated that she would be willing to sign, but later, once the death certificate had been available for signature, the doctor refused to sign it. The owner further confirmed that he sent the death certificate to the V.A. hospital, but again, no doctor would agree to sign it. Following this denial, the owner stated he contacted Vital Records several times but did not receive assistance. The owner stated he had exhausted all efforts in trying to get a doctor to sign his brother's death certificate and was at a loss for what else to do. The owner provided that prior to this instance, they had never had an issue with getting a doctor to sign a death certificate.

Based on the above, it is unclear exactly how involved with this process Respondent themselves were. That is, although it is clear that Respondent as an

employee of the establishment was involved in this matter and has knowledge of how the issue involving the signature has progressed, it appears from the interview that the owner was the one primarily involved in trying to get their brother's death certificate signed. That is, it is unclear what, if any, violation Respondent is directly responsible for. Furthermore, both the Respondent and the owner went into great detail regarding the efforts they have gone through in trying to have the death certificate signed. With two separate physicians denying signature, multiple contacts to Vital Records, and sending the death certificate to the medical examiner's office and again receiving denial to sign the certificate, it is unclear what additional efforts Respondent may have taken. Further, the challenge and difficulty in having these three separate groups (hospital, V.A. hospital, and medical examiner's office) to coordinate to determine who should sign the death certificate was on display during the course of the investigation as the senior investigator, to legal's knowledge, never contacted our investigator with the requested information.

Recommendation:

- Closure

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

Seconded by Christopher Lea

Adopted by Voice Vote

9. Case No.: 2023037651 – Funeral Establishment

This matter was previously presented to the Board at its November 14, 2023 meeting as follows:

Complainant, funeral director appointed as establishment manager, alleged that the owner of Respondent establishment is making decisions without Complainant's knowledge. Specifically, Complainant referenced two cremation cases where Respondent was initially called and they later transferred and serviced the calls through a separate location in an adjacent state, but provided that they (Complainant) had not been notified or contacted regarding the two cases.

The Director of Operations, Marketing Director, and Business Manager for Respondent, not a licensed funeral director, replied stating there had been considerable tension between he and Complainant after a workplace dispute.

Respondent stated that Complainant informed him in the middle of July that Complainant and her husband would be leaving town for a week or so. Respondent stated he requested that Complainant call him whenever she returned. Respondent contends they never received this call, and that at the time of the response (August 14, 2023) they had not had any communication with Complainant since she indicated she would be going out of town; thus, Complainant was never involved in those cases because Complainant had not contacted Respondent. Further, Respondent provided that the two cremation calls were transferred to their location in Mississippi where their Mississippi funeral director at their Mississippi location handled all arrangements via e-mail and phone calls with the family. Respondent stated that Complainant could not have handled these two calls anyway because Complainant is not licensed in Mississippi.

The Mississippi funeral director is not licensed in Tennessee; the calls were initially received at their Tennessee location. Additionally, Respondent stated that one set of cremated remains were returned to the Tennessee location. There was no Tennessee funeral director involved in the process. Furthermore, there was no Tennessee licensed funeral director covering for the then establishment manager who was out of town and no Tennessee funeral director involved in either of the two cases where the death calls were initially received by the Tennessee establishment. The Complainant had notified the Department they resigned from the establishment effective June 13, 2023, and the Tennessee funeral establishment did not have any licensed funeral director employed from mid-June until July 13, 2023.

Recommendation: \$1,500.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

Board Decision: Would like more information regarding the complaint, specifically, did the decedent or family come into the building of the Tennessee establishment, who filed the death certificate, whether it was explained to the two families that were served during this time that there wasn't a licensed funeral director present to service the family, and whether it was explained they would need to outsource the case to their Mississippi establishment. To be re-presented at next possible board meeting.

UPDATE: Respondent provided the following information for the two families:

Family 1: Respondent stated the decedent was an elderly indigent lady in a nursing home. The decedent had no family as they were all estranged. Respondent stated that a nursing home called and asked if the establishment could help, and they offered a direct cremation for \$395.00. Respondent stated the decedent was picked up and transferred to the Mississippi location and a funeral director there got the information they needed by phone. An estranged niece eventually agreed to sign the cremation authorization form. The niece came to the Tennessee location to sign. Respondent stated the nursing staff was told that the decedent would be transferred to Mississippi for cremation and informed them that their Tennessee funeral director was on vacation and that the funeral director from Mississippi would be calling to set up everything. Respondent stated the only work done in Tennessee was the signing of the cremation permit. The death certificate was filed in Mississippi.

Family 2: The family chose to use the Mississippi location as they did not know there was a Tennessee location. The cremation authorization form was signed by the family and the decedent was picked up at a nursing home in Mississippi. After the family realized there was a Tennessee location, the cremains were picked up from the Mississippi location and payment was made at the Tennessee location. In short, the decedent died in Mississippi, was picked up and transported to the Mississippi location, and the cremains were picked up at the Mississippi location. Respondent stated that only the payment was collected at the Tennessee location. Respondent stated all information was gathered by the Mississippi location and that the death certificate was filed by the Mississippi location but had the Tennessee address on it.

Based on the above, although it appears that neither family that was serviced during this time was under the impression, or were misled to believe that their services would be conducted in Tennessee and Tennessee alone, the fact that the niece with the first family came to the Tennessee location to sign the cremation authorization, the fact that the nurses were able to call the establishment to request assistance in the first place, and the fact that payment was collected at the Tennessee location regarding the second family shows that at the very least, the Respondent establishment was open and conducting business despite lacking a licensed funeral director acting as manager nor any Tennessee licensed funeral director for that period of time.

Recommendation:

- Letter of Warning

A motion was made by Anthony Harris for a \$500.00 civil penalty with a letter of instruction. Authorize via Consent Order and formal hearing if necessary.

Seconded by Wendell Naylor

Adopted by Voice Vote

LEGISLATIVE UPDATE:

Our office has not been officially contacted by either the Tennessee State Funeral Directors & Morticians Association or the Tennessee Funeral Directors Association regarding their intent to pursue new legislation during the upcoming legislative session affecting the Board of Funeral Directors & Embalmers. However, the Tennessee Funeral Directors Association has verbally expressed they are considering items that would affect the Burial Services Section of the Department.

We extend an invitation to both associations and any other interested parties that would like to meet with our staff and legal counsel prior to the introduction of legislation.

LICENSEE REPORT:

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF NOVEMBER 9, 2023 – DECEMBER 8, 2023

Establishment(s)

Lee Heights Crematory
Lenoir City, TN

Type of Action(s)/Change(s)

Change of Name

Bates-Love Funeral and Cremation, LLC
Waynesboro, TN

Changes of Name & Location

Individuals)

Brittany Abigail Huffines
Lawrenceburg, TN

Type of License(s)

Funeral Director and Embalmer

Daniela Renee McLellan
Nashville, TN

Funeral Director and Embalmer

Jason Rudy Shockley
Jacksboro, TN

Funeral Director and Embalmer

Elisabeth Briana Mares
Ringgold, GA

Funeral Director and Embalmer
Reciprocity – Georgia

Nathanael Luke Cunningham
Ethridge, TN

Funeral Director

Shannon David Dossey
Buchanan, TN

Funeral Director

Earl Mack Shaw, III
Jackson, TN

Funeral Director

Audrey Rachel Staton
Decatur, TN

Funeral Director

CLOSED ESTABLISHMENT REPORT:

Two (2) establishments have reported closing since the last board meeting:

- Gardens of Memory Funeral Home-Cremation Services, 415 North Chancery Street, McMinnville, TN and
- Milldale Chapel, 8278 Highway 49 East, Springfield, 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 October 2023 Regulatory Boards Disciplinary Action Report

Respondent: Raintree Cremation Services LLC, Livingston, TN
Violation: Failed to pay a reinspection fee owed to the Board for the establishment
Action: \$250 Civil Penalty

Respondent: Trinity Crematory, Cleveland, TN
Violation: Operated a funeral establishment on an expired license and permitted an individual to sign permits for cremation of human remains who is not licensed to practice funeral directing
Action: \$750 Civil Penalty

OPEN COMPLAINT REPORT:

As of December 8, 2023, there were 42 open complaints.

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

Seconded by Tonya Scales Haynes

Adopted by Voice Vote

PUBLIC COMMENTS:

President Anthony Harris asked if anyone desired to make public comments related to Agenda items.

Nobody made public comments made at this time.

ADJOURN:

A motion was made by Anthony Harris to adjourn.

Seconded by Christopher Lea

Adopted by Voice Vote

The meeting was adjourned by President Anthony Harris at 11:12 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CPM, CFSP
Executive Director