

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

JUNE 11, 2024

President Pam Stephens called the meeting to order at 10:01 a.m. The meeting was conducted in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

Board members physically present: Pam Stephens, President; Christopher Lea, Vice President; Don Haynes, Randy Nash, Scottie Poarch, and Tim Wheeler.

Board member(s) absent: Wendell Naylor

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 Christopher Lea to approve the agenda as published.

Seconded by Randy Nash

Adopted by Voice Vote

APPROVAL OF MINUTES:

A motion was made by Tim Wheeler to approve the Minutes of the April 9, 2024, 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.: 2024027231 – Funeral Establishment

This case was administratively opened following a routine inspection conducted on May 6, 2024. During the course of this routine inspection, the inspector observed the following:

The funeral director license of the person serving as manager of Respondent funeral establishment expired as of February 29, 2024, and was not renewed until March 12, 2024. During this time of expiration, the person acted in the capacity of funeral director for four (4) cases and as manager of the establishment.

The manager replied on behalf of Respondent establishment stating that their expired license was simply human error. The manager stated that to their recollection, their license expired at the end of March, not February. The manager stated that he was notified by the inspector on March 7, 2024, that the funeral director license had expired, and that they were lacking continuing education credits. The manager stated they immediately completed the four hours, but due to issues with the online system and out of town travel, they renewed their license on March 12, 2024.

Based on the above, Respondent establishment had an unlicensed individual acting in the capacity of manager from March 1, 2024 – March 11, 2024, and serviced four (4) decedents during this time.

Recommendation:

- \$250.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

A motion was made by Christopher Lea for a Letter of Instruction.

Seconded by Scottie Poarch

Adopted by Voice Vote

2. Case No.: 2024027241 – Funeral Director

This case was administratively opened following a routine inspection conducted on May 6, 2024. During the course of this routine inspection, the inspector observed the following:

Respondent's funeral director license expired as of February 29, 2024, and was not renewed until March 12, 2024. During this time of expiration, Respondent acted in the capacity of funeral director for four (4) cases and manager of a funeral establishment.

Note: This Respondent is the manager from the previous complaint.

Based on the above, Respondent operated in the capacity for a funeral establishment manager and a funeral director for four (4) cases with an expired license from March 1, 2024, - March 11, 2024.

Recommendation:

- \$250.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

A motion was made by Don Haynes to accept Counsel's recommendation.

Seconded by Tim Wheeler

Adopted by Voice Vote

3. Case No.: 2024006131 – Expired Apprentice Funeral Director

Complainant, a friend of the decedent, filed a complaint alleging unprofessional conduct. Complainant stated that upon their arrival, the funeral staff was pushing a casket out the front door. Complainant thought this inappropriate as they should have used a side or back door. Next, Complainant alleged that the establishment was not accommodating to their sister who had limited walking ability. Specifically, Complainant stated that their sister was not allowed to sit in the parlor while the sister waited on Complainant to park. Finally, Complainant claims that while the decedent's son was speaking, funeral establishment staff closed the casket with no announcement.

Respondent replied stating that at the time of the service, they did not know who the Complainant was, and that they and their sister were denied entrance into the parlor at that time because the previous service had just ended. Respondent stated it is their policy to, prior to allowing entrance for a service, to set up for the service and to disinfect the area. Respondent stated that the Complainant became frustrated, acted aggressively, and called Respondent names.

Respondent contends that Complainant was asked to calm down and to conduct themselves in a respectful manner or they would not be permitted to attend the service. Respondent stated that they could not attest to what happened at the service because she does not work the services. However, Respondent stated that if the funeral director closed the casket, it was because they were instructed to do so by the family. Respondent stated they have received no complaints from the family of the decedent, and after contacting them, stated that the family was not familiar with the Complainant.

Based on the above, most, if not all of Complainant's allegations involve the funeral establishment, not the Respondent specifically. In fact, Complainant's complaint does not mention Respondent by name until the very final sentence, in which they state that Respondent is who they spoke to when they called following the service. Again, the allegations of unprofessional conduct, do not directly involve the Respondent. Therefore, Complainant has not provided evidence to show that Respondent violated applicable statutes or rules.

Recommendation:

- Closure

A motion was made by Randy Nash to accept Counsel's recommendation.

Seconded by Christopher Lea

Adopted by Voice Vote

4. Case No.: 2024012501 – Funeral Establishment

Complainant, mother of the deceased, alleged that the ambulance did not pick up the decedent for more than four hours and that Respondent failed to notify the medical examiner of the decedent's death. Finally, Complainant alleged they had to pay Respondent \$400.00 for the ambulance.

Respondent replied stating that upon receiving the call from the first responders, they immediately let them know that they were in the midst of assisting another family and that it would take them an hour to an hour and a half to arrive at the residence. Respondent stated they arrived approximately an hour and fifteen minutes later. Respondent stated that they did not have an ambulance transport the decedent, and that they performed removal services themselves with assistance from the paramedic. Respondent stated that the Complainant was not charged \$400.00 but \$395.00 as that is the cost for their removal service.

Respondent stated that notifying the medical examiner is outside of their capacity, and that the medical examiner had been notified by the first responders prior to releasing the decedent into their care. Respondent stated that they had the deceased in their care for three days before the family requested a neighboring funeral home to care for them instead.

Legal spoke to both Respondent and Complainant by phone. Complainant again gave broad general allegations of unprofessionalism, but either did not provide enough evidence or recount of the unprofessional behavior or took exception to things that were not necessarily violations (for example, the \$395.00 removal charge). When speaking to Respondent, they explained the situation with great detail and recounted that they had sent out a funeral director directly to Complainant's home due to their lack of transportation to make arrangements and had stored the decedent in their cooler for approximately five days at no charge. Respondent stated that they were made aware of the transfer to another establishment on the fifth day, and the transfer occurred without any issue. Additionally, Respondent stated that from the time the Complainant called emergency services to the time the decedent was removed, it may have been close to four hours, but Respondent added that the decedent had not even passed away when Complainant had called emergency services.

Based on the above, Complainant has not provided sufficient evidence to show that a violation of applicable laws or rules occurred.

Recommendation:

- Closure

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

Seconded by Tim Wheeler

Adopted by Voice Vote

5. Case No.: 2024011541 – Funeral Director

Complainant, wife of the decedent, stated that their husband passed away on January 25, 2024, and was autopsied two days later on the 27th. Complainant argues that Tennessee law requires the death certificate to be signed within 48 hours, and that the death certificate was not signed until January 30, 2024 (five days after death, four days after autopsy). Complainant stated that due to this delay, her son used up additional leave time and plans to bury the decedent in

another state were placed on hold. Complainant stated that, “as much as this funeral home was professional and compassionate this delay in signing off the death certificate is unacceptable.” Complainant stated that they filed a complaint against the medical examiner and medical facility but stated that the investigator reported to her that the funeral home was the one who was responsible for the delay. Complainant does not clarify or elaborate who this “investigator” is or what party they are affiliated with, or what information led them to conclude that the delay was caused by Respondent.

Respondent provided the following timeline regarding the funeral establishment’s involvement:

1. Friday January 26, 2024, 2:58 p.m. Received official notice that the decedent was ready for release from the medical examiner.
2. Monday January 29, 2024, decedent was picked up from the medical examiner.
3. Monday January 29, 2024, the funeral home filed the death certificate with Vital Records and it was assigned to a physician.
4. The doctor certified the death certificate on January 30, 2024.
5. The funeral establishment registered the death certificate on February 1, 2024.

Respondent stated that they were compliant with the filing requirement as the decedent did not enter their care until January 29, 2024. Likewise, Respondent points to the fact that the physician certified the certificate within 48 hours of assignment as the statute required, and also points out that an exception exists when the medical examiner has an inquiry (most commonly in the form of autopsy).

Complainant filed a rebuttal largely reiterating their complaint, stating that they are under the belief that the death certificate was only signed because they contacted the funeral establishment and “became extremely verbally angry.”

The law that Complainant references in their complaint is T.C.A. § 68-3-502. Respondent relied upon an older version of this law that puts the burden upon the physician in charge to complete the medical certification within forty-eight hours. The current version of this law states, in pertinent part:

(a)(1) A death certificate for each death that occurs in this state shall be filed with the office of vital records or as otherwise directed by the state registrar within five (5) days after death and prior to final disposition, or as prescribed by regulations

of the department. It shall be registered if it has been completed and filed in accordance with this section.

Based on the timelines provided, even by Complainant's more stringent account (January 26th-January 30th) this five-day requirement has been met. While Tennessee does have laws and rules which prohibits funeral directors or establishments from unreasonably delaying the filing of a death certificate, based upon the timeline provided by the Respondent which Complainant did not rebut, and the lack of specific evidence to support Complainant's assertion that Respondent was the one responsible for the delay, there is no evidence to show that Respondent unreasonably delayed in filing the death certificate, particularly when Respondent did not come into possession of the decedent until January 29th.

In short, the statute Complainant relies upon does not appear to have been violated based upon the information provided. Complainant has provided no further evidence to suggest that Respondent contributed to an "unreasonable delay" in filing the death certificate.

Recommendation:

- Closure

A motion was made by Don Haynes to accept Counsel's recommendation.

Seconded by Christopher Lea

Adopted by Voice Vote

6. Case No.: 2024013491 – Funeral Establishment

Complainant stated that on March 2, 2024, she witnessed the owner of Respondent establishment fighting and brandishing a weapon in front of children and adults. Complainant also stated that the deceased was a veteran, and the funeral director was disrespectful by handling the flag.

Respondent stated that upon the decedent's passing, they started receiving calls from the decedent's extended family in another state demanding certain information pertaining to the decedent's disposition. Respondent stated they had not made arrangements with the decedent's next of kin at this time, so they were unable to release any information. Respondent stated that the extended family was disgruntled with the limited information. Respondent stated to their

knowledge, they believed the service went well with no flaws until they received the complaint. Respondent stated they did give a flag to the decedent's mother in honor of the decedent, per the decedent's wife's request as somewhat of a peace offering to help with the animosity between the decedent's extended and immediate family. Respondent stated that the service ended after completion, and since there was no procession to the cemetery, they left in the hearse with the decedent's remains. As they were about to pull away, Respondent stated they noticed what appeared to be an altercation blocking the exit. Respondent stated they had to stop the hearse to keep from hitting people in the altercation. The funeral director exited the vehicle and asked if they could please exit, and Respondent contended that a gentleman pushed three people out of the way so that the hearse could pass through.

In addition to this, the Respondent asked the wife of the decedent, who was the next of kin and signed the statement of funeral goods and services to provide a statement of the events as she experienced them. The wife of the decedent was very complimentary of Respondent, stating that the decedent's body was prepared as requested and stating that she requested a flag be presented to the decedent's mother "to keep down family confrontation." The wife agreed that there was an altercation outside of the building following the service but stated that neither the funeral director nor Respondent staff was involved in the altercation.

Recommendation:

- Closure

A motion was made by Randy Nash to accept Counsel's recommendation.

Seconded by Christopher Lea

Adopted by Voice Vote

7. Case No.: 2024027691 – Funeral Establishment

This complaint was received several weeks after the preceding complaint making similar allegations. Complainant alleged that the funeral director at Respondent establishment violated professional conduct standards claiming that the funeral director entered into a room of the church while the family ate dinner, holding an object that appeared to be a small handgun and stated he was looking for an unknown person. Complainant alleged that the funeral director shouted

expletives at the family and said that he was looking for a particular individual. Complainant then stated that he was escorted out of the church.

Respondent stated that these allegations were untrue, and that the funeral director identified at no point engaged in any of the activities alleged. Respondent acknowledged that a similar complaint was filed several weeks ago and explained that this complaint came from another member of the extended family (both Complainants are from the same out of state town). Respondent also attached their response to the other complaint to provide context, again attached the decedent's wife's statement, and stated he had recently spoken to her and that she was available to be contacted if there were any questions.

Legal attempted to call the church where these events were alleged to have occurred and has not heard back. Legal also spoke to the wife of the decedent on June 4, 2024, and she again reiterated that the service went well, that the funeral director made an attempt to calm the animosity between the family by presenting the decedent's mother with the flag, and that she had no complaints regarding the service. The wife further stated that she was not aware of the funeral director's involvement in any altercation.

Based on the above, while the allegations in this and the preceding complaint are certainly very serious, the two events described by the Complainants do not match. Given that the recollection of events by Complainants appear to be two entirely separate circumstances, the known tension between the extended family of the decedent and the wife of the decedent that Respondent establishment has inadvertently ended up involved in, and that the wife of the decedent had written a statement refuting the Complainants' recollection of events, the Complainant in this case has not provided evidence to show a violation of applicable laws and rules.

Recommendation:

- Closure

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

Seconded by Tim Wheeler

Adopted by Voice Vote

8. Case No.: 2024016271 – Funeral Establishment

Complainant, a Tennessee funeral director, provided information to the Department stating that Respondent establishment had conducted services for a decedent in December of 2023. Complainant stated that the family originally selected their establishment to provide services, and that their establishment had made the removal and completed the embalming before the family decided to transfer to Respondent establishment. The Complainant stated that when the death certificate was filed, it listed a different individual as the embalmer rather than the individual who had performed the embalming at their location.

Respondent replied agreeing to the timeline as described by Complainant and agreed that the decedent had already been embalmed upon their receipt. Respondent stated when the death certificate was filed, the secretary erroneously listed their usual embalmer as the one who had done the embalming not realizing it had been performed by a different individual. Respondent explained that at the time of the decedent's death, they had an establishment manager who had resigned without notice, and thus he did not file the death certificate while employed there. Respondent stated that there was no intent to violate any rules or statutes, and that it was a mistake. Respondent stated that they are providing an affidavit to Vital Records at the Department of Health to correct these mistakes.

Note: This Respondent is one that the Board heard a complaint on at the previous board meeting (specifically, several cases of unlicensed activity due to the resignation of a funeral director). As such, the matter of a non-licensed individual has already been addressed via a Consent Order. Therefore, the Board should focus only on the alleged violation of providing incorrect information on a death certificate.

Recommendation:

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

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

Seconded by Tim Wheeler

Adopted by Voice Vote

9. Case No.: 2024027121 – Funeral Establishment

Complainant, wife of the deceased, stated that they met with a funeral director at Respondent establishment on March 16, 2024, with arrangements finalized March 18, 2024, with payment made in full. Complainant contends that a private visitation was scheduled for March 21, 2024. Complainant claims that those who were invited to this visitation stated that the decedent was not in a casket and was instead on a metal table with his head supported by a block of Styrofoam. Complainant further contended that the attendees claimed they were only allowed to visit for 10-15 minutes, when Complainant says it was discussed they would be able to visit for two hours. Complainant stated on April 5, 2024, Respondent was thirty minutes late with the decedent's remains to the graveside ceremony. Finally, Complainant alleged that she had ordered a poster board with the decedent's photographs, but never received it.

Respondent replied, stating that prior to receiving the decedent on March 16, 2024, they spoke to Complainant to determine what services would be provided. Respondent stated that Complainant advised she wanted a formal viewing with a graveside service to follow. On March 19, 2024, one day after the arrangement conference, Respondent advised that Complainant had issues gathering finances to handle the cost of services. In response to these financial issues, Complainant agreed to have an informal viewing with a limited number of family members. Respondent explained that in an informal viewing, the decedent is not placed in a casket because an informal viewing contemplates not having finances available to purchase a casket (that is, an informal viewing is an option when the family cannot afford a casket). Respondent advised the decedent is placed on a dressing table dressed and placed in an area for limited family to view. Respondent stated the family is given two hours during this informal visitation. Respondent stated that Complainant had come to view the decedent separately on March 21, 2024, stayed for approximately 25-30 minutes and left stating that other family members would come in later that day. Respondent stated that at that time, while viewing the decedent, Complainant never mentioned anything about dissatisfaction with the decedent, never mentioned anything about decedent not being casketed, and that later, no family members ever asked why the decedent was not casketed during the informal viewing. On April 5, 2024, the date of the graveside service, Respondent stated the cemetery was packed with vehicles for the graveside service of the decedent, which, as Respondent explains, caused the funeral home staff to have issues entering the cemetery for the service. Respondent stated that the policy of the cemetery is to not allow additional traffic into the cemetery until you are able to enter safely. Respondent stated this is why their staff was late, and that the employee of Respondent establishment had been 5-10 minutes late due to the cemetery traffic. Again,

Respondent stated that neither the family nor anyone in attendance contacted Respondent to let them know that anyone was late until receiving the complaint. Finally, Respondent stated that the poster board that was ordered by Complainant was not ordered in time, so a refund was issued to the family. Respondent stated that this refund was sent out on May 5, 2024, and that an additional refund of \$995 is also being refunded to the family for the cost of the rental casket.

The sister of the Complainant submitted additional information responding to Respondent's reply. The sister stated she was present for the arrangement conference, and while the Complainant did indicate during that meeting that she was low on finances, family members, including the sister, offered to help pay for the services. The sister stated that Complainant provided the funeral home manager a check on March 18th for the full amount requested. However, the sister stated that due to the overwhelming situation of losing a loved one and the context of the decedent's death, Complainant asked the sister to cancel the viewing, and to ask if it was possible to have a private viewing for the decedent's grandmother and mother. The sister stated she called the Respondent and informed them of the change, to which he explained he had already ordered the casket and had begun embalming the deceased. The sister stated she told the manager that they knew this was a last minute change and because of that they would not be seeking a refund. The sister stated the manager advised they could allow a private viewing on March 22nd. However, the sister stated that the manager did not inform them that the decedent would not be casketed for this private viewing, and due to the nature of their conversation that the casket had already been ordered, believed he already had a casket available. The sister closed her rebuttal by stating that their aunt contacted the funeral home fifteen (15) minutes after the remains were scheduled to arrive at the cemetery and that it was another twenty (20) minutes before a representative arrived, totaling to over thirty (30) minutes late.

Based on the above, there appears to be a discrepancy in communication and understanding on behalf of the manager of Respondent establishment and Complainant and her family. Based on the evidence presented, it appears they were prepared to do a traditional viewing which included a casket, and that payment was received. However, soon after, Complainant asked if they could transition to a private viewing. As Respondent recollects, they had discussed a private viewing during the arrangement conference, which Respondent stated is ordinarily done to save money on the casket rental. It is unclear whether during the conversation between Complainant's sister and Respondent's manager

whether it was communicated that the change from a public viewing to a private one (that is, a viewing with a rental casket and a viewing without) was for financial reasons or emotional reasons. While we know why the change was requested based on the sister's response, it is unclear whether Respondent knew why the change was being requested. As such, it appears that consistent with their prior explanation of what a private viewing entailed (no casketing), the manager of Respondent canceled the casket order and processed the refund for the casket to the family which appears to not be consistent with what the family was envisioning (a private viewing, but with casketing). Both parties agree that a representative of Respondent was late with the decedent's cremains but differ in the amounts (5-10 minutes from Respondent; 35 minutes from Complainant's sister).

Recommendation:

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

A motion was made by Randy Nash for a \$250.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

Seconded by Don Haynes

Adopted by Voice Vote

Board member(s) voting contrary to the board's determination: Pam Stephens and Christopher Lea.

A motion was made to reconsider by Tim Wheeler.

Seconded by Christopher Lea

Adopted by Voice Vote

A motion was made by Christopher Lea to table this complaint until the next Board meeting so that legal counsel could obtain additional documents.

Seconded by Tim Wheeler

Adopted by Voice Vote

10. Case No.: 2024027671 – Funeral Establishment

This case was administratively opened following a routine inspection conducted on April 29, 2024. During the course of this routine inspection, the inspector observed the following:

The preneed sales agent registration of an employee of Respondent establishment expired on January 23, 2023, and had not been renewed as of the date of the inspection on April 29, 2024. During this time, the employee had written seventy-seven (77) preneed contracts while having an expired registration.

Respondent replied stating that when the oversight was discovered, the preneed sales agent submitted the necessary paperwork and documentation to the Department the next day on April 30, 2024. Respondent stated that the employee did not intend to write contracts on an expired registration stating that he was under the impression that the insurance producer license was the only license that needed to be renewed. Respondent reiterated that the employee acts with integrity and that this oversight was not done intentionally or maliciously.

Recommendation:

- \$750.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

A motion was made by Randy Nash to accept Counsel's recommendation.

Seconded by Tim Wheeler

Adopted by Voice Vote

11. Case No.: 2024024721 – Funeral Establishment

This case was administratively opened following a routine inspection conducted on April 23, 2024. During the course of this routine inspection, the inspector observed the following:

- a. Upon entering the crematory, the inspector observed an employee of Respondent establishment placing a decedent into the cremation retort for cremation. The employee stated that she was not a licensed funeral director, and stated that there was not a licensed director in the crematory building, but that

there was one in the funeral home. The inspector checked the rest of the crematory building and found no other employees inside. The inspector stated that the funeral home and crematory are close in proximity, approximately one hundred and twenty feet apart. Upon reviewing fifty (50) cremation files, the inspector found that the employee, who is not a licensed funeral director, had signed forty-seven (47) Permits for Cremation of Human Remains as of the person in charge of the cremation. The employee indicated that from June 1, 2023, to April 23, 2024, Respondent establishment had performed approximately 434 cremations.

- b. The inspector noted that on the website of Respondent establishment, the employee was listed as crematory operator, but that no information was included stating that the employee was not a Tennessee licensed funeral director.

First, the Respondent argued through counsel that the inspection was not appropriate given that the inspector had, entered an employee only area, took photos of a decedent being placed in the retort without Respondent's knowledge, and that the inspector photographed a female employee without her knowledge.

Second, Respondent argues that the employee was under the "direct supervision" of a licensed funeral director. Respondent agreed that the inspector's estimation of 120 feet between the crematory and funeral establishment was approximately correct. Respondent also refuted that "directly supervised" required a funeral director to be in the same building, but that "their supervision is done through various means, including routine in-person supervision, an intercom system, phones, or through tracking the retort on computer software." Respondent stated that the employee "merely signed cremation permits because, despite being directly supervised, she personally performed the cremations."

Third, Respondent argued that the employee's title on Respondent's website being labeled as "Crematory Operator" but not indicating that the employee was not a licensed funeral director, would not lead the general public to believe that the employee was a funeral director. However, Respondent stated that the employee with the title "Crematory Operator" has currently been removed from their website.

Based on the above, Tennessee Code Annotated gives the Board authorization to conduct unannounced inspections. After examining the file, two photographs were taken of the unlicensed employee using the retort. In neither photograph is the decedent's identity recognizable. After speaking with the inspector, the inspector communicated the photographs were taken upon entering the crematory in the event that the employee was not a licensed funeral director, thus, taken in the event that the action witnessed was a violation as a potential violation was ongoing. These photographs were taken within the crematory in front of the retort. Rule 0660-09-.01(9) states, "Acceptance of a license issued by the Board gives a Board representative the right to inspect the crematory and the records of the crematory at any time."

The applicable rule is Tenn. Comp. R. & Reg. 0660-09-.01(7)(b) which states, "All cremations of human remains in this state shall be directly supervised by a licensed funeral director during the cremation process, including, but not limited to, the placement of remains in cremation chamber, repositioning of remains, removal of cremated remains from chamber, processing of cremated remains, and placement of cremated remains in an urn or other container." The operative phrase is "directly supervised." Historically, the Board and Department have interpreted "directly supervised" to be, preferably within sight, or, at a minimum, to be within the same building. Respondent does not refute that there was not a licensed funeral director in the crematory, however, Respondent offers various modes of communication arguing that these satisfy the "directly supervised" language in the rule.

The third violation appears to be corrected as the employee has, at this time, been removed from Respondent's website and in conversation with Respondent's counsel, plans are being made that when the employee is re-added to the website, they will be denoted with a symbol showing that they are not a licensed funeral director.

Recommendation:

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

Board President Pam Stephens recused herself from participating in this complaint and departed the conference room during its discussion and determination by the board.

A motion was made by Randy Nash to accept Counsel's recommendation.

Seconded by Tim Wheeler

Adopted by Voice Vote

12. Case No.: 2024016711 – Funeral Establishment

Complainant, a business owner adjacent to Respondent establishment, alleged issues with Respondent's crematory. Complainant explained that their business is currently undergoing renovations and thus they are not there every day, but that Complainant has smelled foul smells on "multiple occasions" that range from an "ashy smell to an electrical fire smell." Complainant stated that on February 27, 2024, the smell from the crematorium was extremely bad and that Complainant inquired with an employee from Respondent establishment. Complainant alleges that the employee explained that they were having an issue with a part for the retort and that a repair date was scheduled for the following week, but assured Complainant that the pollution control was functioning since the exhaust fan continued to blow. Complainant stated that again on March 14, 2024, their parking lot and building was filled with smoke from the crematorium.

The general manager of Respondent establishment replied acknowledging that there had been maintenance issues. Respondent provided a timeline and stated that as of the date of their response (March 28, 2024), a retort part was to be replaced the following day to alleviate the maintenance issues. Respondent's timeline is as follows:

February 2024- Issues with backdraft (smoke and odor), Respondent stated they checked with support and confirmed it was safe to operate under watch.

February 2024 – Outside smoke issues after pressing the "Load" button. Stated that smoke dissipates after 20-30 seconds, confirmed that pollution control was on. Reported suspected thermocouple failure to support, and support confirmed the thermocouple was not failing. Respondent stated the draft nozzle was checked and recalibrated.

March 5-6, 2024 – Unit was off for pre-maintenance cooling.

March 7, 2024 – Preventative maintenance inspection, repair of throat wall, pollution control confirmed to be on.

March 8, 2024 – Restarted system and operation was normal.

Respondent stated at some point afterwards intermittent smoke and odor issues occurred again and they checked with support. Support suspected it may be a damper issue on the draft nozzle pipe, pollution control was confirmed to be on.

March 25, 2024 – Draft nozzle was removed and sent to support for assessment with only a couple of smoke issues on this day. Respondent says unit is still working and safe to run.

March 26, 2024 – Draft nozzle was removed again and picture retaken and support confirmed that the draft nozzle needed to be replaced. Respondent says that one was shipped to be delivered March 28th and that the unit is still working and safe to operate.

March 27, 2024 – Unit is running smoothly with no backdraft, but still some odor inside the building.

This case was sent for investigation. Complainant largely reiterated what had been stated in the complaint. Complainant also provided videos to show the extent of the smoke coming from Respondent establishment, email correspondence sent to the city that Respondent establishment operates in, and photographs to show the proximity of Complainant's business to Respondent establishment (which the investigator approximated to be about forty feet).

Next, the investigator visited Respondent establishment and met the manager and their crematory operator. The investigator stated that when they entered the crematory, the crematory operator (an unlicensed assistant) was in the process of cremating a decedent (no one else was present in the crematory when the investigator entered). The investigator stated that during the investigation, they checked the Cremation Log and found no listing for the location, date, and manner of final disposition of the cremated remains, a violation of applicable statutes. Likewise, the Cremation Log listed the crematory operator by each disposition of the cremated remains. The crematory operator is not a licensed Tennessee funeral director. The investigator examined approximately sixty (60) cremation files and discovered that numerous receipts of human remains and delivery of cremated remains receipts were not completed as required by law. In addition, for every permit, the non-funeral director crematory operator was listed as the person in charge of the cremation. The investigator returned the following day. During this time, the crematory operator at one point repositioned a decedent being cremated in the retort without a licensed funeral director present.

The investigator interviewed the crematory operator, who stated he first became aware of the smoke problem with the crematory retort in about November 2023. The operator stated he contacted the manufacturer and conducted analytics on the retort and the manufacturer assured the operator the retort was safe to use. The operator stated there did seem to be a problem with the back wall of the retort and requested a preventative maintenance inspection on January 18, 2024. The operator stated he was told by the manufacturer that the request would take four-six weeks before the manufacturer could send a technician. The operator stated he met with Complainant on February 27, 2024, and informed Complainant that they were aware of the issue and that a technician was scheduled to make repairs on or about March 7, 2024. As scheduled, the technician arrived on March 7, 2024, and the repairs were made, and that the operator requested a calibration of the smokestack. The operator noticed additional smoke and odor on or about March 11, 2024, and again contacted the manufacturer. After some analysis it was determined that the draft nozzle needed to be checked, and a replacement was shipped, and that the operator personally replaced it on March 30, 2024. The operator stated that after replacing the nozzle, he had cremated approximately forty-seven (47) decedents with no issues. The investigator inquired about having a licensed funeral director present during the cremation process, and the operator stated that so long as a licensed funeral director was on the premises, he could perform all of his duties as a certified crematory operator. The inspector also pulled the file of the cremation performed on February 27, 2024, (the day Complainant complained of the smoke and odor) and stated it was inconclusive regarding the smoke and odor but did notice that the temperature gauge chart indicated a substantial drop in temperature before climbing back to operating temperature. The investigator pulled charts for the other dates that the Complainant had mentioned but could not make a determination of the condition of the retort based on the graphs in those files.

Next, the investigator met with the manager, a licensed funeral director of Respondent establishment. The manager explained that if there were any issues with the crematory equipment, the operator would bring the problem to him, and they would discuss a solution to resolve it in a timely manner. Regarding the smoke and odor, the manager stated that to his knowledge, all repairs had been completed and there were no issues with the equipment. When asked about the incomplete receipts for delivery of human remains, the manager stated he would address the incomplete receipts with the staff and make corrections moving forward. When asked about the operator performing cremation duties without the

direct supervision of a licensed funeral director, the manager stated that the operator was a certified crematory operator and was allowed to perform all duties at the crematory as long as there was a licensed funeral director on the premises.

On May 17, 2024, the investigator received four (4) videos from Complainant taken the same day evidencing additional smoke being emitted from Respondent establishment/crematory. On May 29, 2024, the investigator returned to the crematory facility and met with the manager again who stated he was aware of the incident. The manager also informed the investigator that the crematory operator was no longer employed by Respondent. The manager stated that while cremating the decedent on the day identified by Complainant, the temperature dropped, but again leveled off and the cremation was completed. The manager continued that on May 20, 2024, upon startup of the retort, there was an issue with the thermocouple, and the manufacturer was contacted to check it remotely. The manager stated that the manufacturer confirmed it was faulty and replaced the thermocouple with a new one. The manager explained the thermocouple in a crematory retort can fail at any given time and the crematory kept a couple of new thermocouples on hand. The manager stated after it was replaced, the crematory cremated approximately seventeen (17) cases without issue. The manager also provided that on May 23, 2024, the Tennessee Department of Environment and Conservation Air Quality Control made an unannounced visit, and while present, did not find any issues with the equipment.

In short, here are the potential violations for the Board to consider:

1. The operator, who is not a licensed funeral director, cremating decedents without the “direct supervision” of a licensed funeral director. The operator acknowledged a licensed funeral director was “on the premises” in an adjacent building but not in the crematory. Further, the crematory operator, who is not a licensed funeral director, signed sixty (60) Permits for Cremation of Human Remains.
2. Incomplete cremation log (did not include the location, date, and manner of disposition).
3. Incomplete receipt of human remains and delivery of cremated remains receipts.
4. Violation of professional conduct standards for failing to conduct “themselves in a way that does not offend the reasonable sensibilities of the public and reflects respect for dead human bodies.”

The Board should not consider violations related to potential pollution or operating condition of the crematory because that is within the jurisdiction of Tennessee Department of Environment & Conservation (TDEC). While the smoke and odor could lead to a finding of violation of potential violation #4, the finding of the crematories production issues is not linked to an enforcement statute within the Board's jurisdiction.

Recommendation:

- \$2,000.00 civil penalty. Authorize via Consent Order and formal hearing if necessary.

Board President Pam Stephens recused herself from participating in this complaint and remained outside the conference room during its discussion and determination by the board.

A motion was made by Tim Wheeler to accept Counsel's recommendation.

Seconded by Don Haynes

Adopted by Voice Vote

EXECUTIVE DIRECTOR'S REPORT:
ROBERT GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

HB1742/SB1599 – Funeral Directors and Embalmers

Extends the board of funeral directors and embalmers to June 30, 2030.

Public Chapter No. 490 – Effective Date(s): February 21, 2024

HB2097/SB2588 – Advisory Opinions

Requires state regulatory boards within the department of commerce and insurance and state health related boards within the department of health to issue advisory private letter rulings upon request to any affected person who is certified, licensed, or registered by such state entities or under such programs.

Public Chapter No. 944 – Effective Date(s): May 6, 2024 for the purpose of promulgating rules and July 1, 2024 for all other purposes

HB1811/SB2577 – Accrued Interest on Guaranteed Pre-need Funeral Contracts

Authorizes sellers of a guaranteed pre-need funeral contract funded by a prearrangement insurance policy or an irrevocable pre-need funeral trust to keep

the interest that accrues on the contract after payment is made for the merchandise and services set forth in the contracts provided the pre-need seller discloses in the guaranteed pre-need funeral contract the disposition of all interest earned on the contract.

Public Chapter No. 707 – Effective Date(s): July 1, 2024

HB2173/SB2578 – Pre-need Registration Program

Revises provisions related to the special account in the general fund known as the “pre-need funeral account”; deletes the indigent burial fund.

Public Chapter No. 959 – Effective Date(s): May 9, 2024 for the purpose of promulgating rules and January 1, 2025 for all other purposes

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 APRIL 6, 2024 – JUNE 6, 2024

<u>Establishment(s)</u>	<u>Type of Action(s)/Change(s)</u>
Brent Taylor Funeral Directors Collierville, TN	Initial Establishment
Companion Funeral & Cremation Service Cleveland, TN	Initial Establishment
Tennessee Mortuary & Crematory Nashville, TN	Initial Establishment
Chase Funeral Home, LLC Huntingdon, TN	Name and Ownership
A & B Crematory Huntingdon, TN	Ownership
Alternative Cremation & Funeral Service Franklin, TN	Ownership
Cremation and Funeral Services of Tennessee Greenbrier, TN	Ownership
Davis-Campbell Funeral Home Nashville, TN	Ownership

Holle Lynn Ford Memphis, TN	Funeral Director
Edward Tyler Overholt New Tazewell, TN	Funeral Director
Raymond Charles Parker Cookeville, TN	Funeral Director Reciprocity – Oklahoma
Doran Kent Nance Jamestown, TN	Funeral Director Reapplication
Nathanael Luke Cunningham Ethridge, TN	Embalmer
Shannon David Dossey Buchanan, TN	Embalmer

CLOSED ESTABLISHMENT REPORT:

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

- Brummitt Funeral Home, 5842 Main Street East, Trezevant, TN and
- Schubert Funeral Home, Inc., 7905 Morgan County Highway, Sunbright, 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 March 2024 and April 2024 Regulatory Boards Disciplinary Action Reports

Respondent: Bond Memorial Chapel, Mt. Juliet, TN
Violation: Failed to treat members of the public in a reasonable manner (mistakenly tagged and identified two decedents which led to the inadvertent switch of the decedents)
Action: \$750 Civil Penalty

Respondent: Joe Ford Funeral Home, LLC, Memphis, TN
Violation: Failed to treat a member of the public in a respectful manner and failed to respond to a complaint within the time specified in the notice
Action: \$2,000 Civil Penalty

Respondent: Joe Ford Funeral Home, LLC, Memphis, TN

Violation: Failure to honor financial obligations with whom they conduct business in a timely manner and failed to respond to a complaint within the time specified in the notice

Action: \$5,000 Civil Penalty

Respondent: Joe Ford Funeral Home, LLC, Memphis, TN

Violation: Unprofessional conduct (unreasonably delayed the filing of a certificate of death) and failed to respond to a complaint within the time specified in the notice

Action: \$1,000 Civil Penalty

Respondent: Joseph S. Ford, Sr., Memphis, TN

Violation: Unprofessional conduct (unreasonable delayed the filing of a certificate of death) and failed to respond to a complaint within the time specified in the notice

Action: \$1,000 Civil Penalty

Respondent: R. S. Lewis & Sons Funeral Home, Memphis, TN

Violation: Being unresponsive to a member of the public for an unreasonable period of time without justification

Action: \$500 Civil Penalty

Respondent: Woodbine Funeral Home, Inc., Nashville, TN

Violation: Failed to treat a member of the public in a reasonable manner (untimely delayed obtaining a required permit for the cremation of a decedent and untimely delayed returning the cremated human remains to the authorized representative)

Action: \$750 Civil Penalty

OPEN COMPLAINT REPORT:

As of June 6, 2024, there were 42 open complaints.

A motion was made by Don Haynes to accept the Executive Director's Report.

Seconded by Christopher Lea

Adopted by Voice Vote

NEW BUSINESS:

Retrospective Rule Review – Request to Set Rulemaking Hearing:

Troy Bryant, Associate General Counsel, presented the Retrospective Rule Review and requested permission to set the rulemaking hearing.

A motion was made by Randy Nash to retain the current rule requirement for letters of recommendation to be from a funeral director and/or embalmer.

Seconded by Christopher Lea

Adopted by Voice Vote

A motion was made by Tim Wheeler to grant authority to Legal Counsel for the setting of a rulemaking hearing.

Seconded by Christopher Lea

Adopted by Voice Vote

PUBLIC COMMENTS:

President Pam Stephens asked if anyone desired to make public comments related to the agenda items.

Nobody made public comments at this time.

ADJOURN:

A motion was made by Christopher Lea to adjourn.

Seconded by Don Haynes

Adopted by Voice Vote

The meeting was adjourned by President Pam Stephens at 11:56 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CPM, CFSP
Executive Director