

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

FEBRUARY 10, 2009

President David Murphy called the meeting to order at 10:00 A.M. in the 2nd Floor Conference Room, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee.

Board members present were David Murphy, President, Paula Bridges, Wayne Hinkle, Jill Horner, and Eugene Williams. Absent were Steve Murphy and Dennis Hamilton, Vice President.

Staff members present were Robert Gribble, Executive Director, Adrian Chick, Assistant General Counsel, and Jimmy Gossett, Administrative Assistant.

President David Murphy introduced and welcomed new board member Wayne Hinkle as the consumer representative.

ADOPTION OF AGENDA:

A motion was made by Eugene Williams to approve the agenda as printed.

Seconded by Jill Horner

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Eugene Williams to approve the minutes of the January 13, 2009 Board Meeting.

Seconded by Paula Bridges

Adopted by voice vote

CONFLICT OF INTEREST STATEMENTS:

Each board member present signed a new "Conflict of Interest Statement for Board Members" which is required annually.

LEGAL REPORT:

ADRIAN CHICK, STAFF ATTORNEY

1. Case No.: L08-FUN-RBS-2008023941

The Respondent in this complaint is a removal service which is not licensed by the Board. An advertisement appeared in the Nomis 2009 Funeral Home and Cemetery Directory offering "Removals – Complete Preparation, Delivery to Your Funeral Home at Moderate Rates). The Respondent also had an advertisement in the Red Book for an "embalming service".

Response: The Respondent submitted a letter from Nomis dated November 3, 2008 which indicates that the Respondent called on May 19, 2008 and stated that it no longer performed embalming or any aspect of the embalming process, yet the information was not updated accordingly. The Respondent submitted a letter from the Red Book dated November 3, 2008 indicating that the Red Book had listed the advertisement incorrectly.

Complaint History: None.

Recommendation: Consent Order assessing civil penalty of \$250 per violation (total \$500) and authorization for hearing.

A motion was made by Jill Horner to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

2. Case No.: L08-FUN-RBS-2008018641

An inspection on August 4, 2008 revealed the following violations:

- TCA 62-5-304 – Statement of Funeral Goods and Services Selected does not reflect actual name of the registered funeral establishment;
- TCA 62-5-107 – Current inspection report for crematory used was not available at time of inspection; and
- FTC Rules – Reason for embalming not provided where required.

Response: The Respondent has made some changes to the computer generated statements so that the full name of the establishment is printed, and a current inspection report of the crematory has been obtained.

Complaint History: None.

Recommendation: Letter of Warning.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

3. Case No.: L08-FUN-RBS-2008026081

This complaint alleges that the Respondent establishment, through an employee, contacted a person knowing that the person's aunt was facing imminent death and asked whether his establishment could "have the body". The establishment had previously handled arrangements for another family member. The complaint also alleges that the establishment, in handling the prior arrangements, placed the body in a bag and buried it, and that the body may not have been embalmed.

Response: The Respondent states that its employee contacted the family member only after being requested to do so by the person's cousin. The Respondent states that it was only attempting to assist the family. As for the prior arrangements, the Respondent states that the body could not be embalmed due to decomposition and that the complainant is simply upset because the complainant was unable to be present for the funeral.

Complaint History: 200418907 (unlicensed conduct), 200504271 (FTC violations), and 200604575 (assisting in obtaining license by false pretenses), all closed by consent orders.

Recommendation: Consent Order assessing civil penalty of \$1000 for solicitation of a dead human body.

A motion was made by Jill Horner to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

4. Case No.: L08-FUN-RBS-2008026371

Shortly after death of decedent at a medical facility, the decedent's sister requested that Respondent establishment remove the body. The body was removed and transported to another location where it was embalmed later that same day. The complaint was filed by the decedent's daughter who claims that she is the next of kin and that she never gave permission for the body to be embalmed. The complainant states that a life insurance policy was held by the decedent's sister, but that the decedent's sister withheld information about the policy. Instead, the sister gave the establishment information regarding an additional policy where the daughter was the beneficiary, and the daughter had to assign her policy to pay funeral expenses. She feels that the sister should have used her policy since she is the one who requested embalming. The complainant insisted that the body be picked up by another establishment, and she complains that she had to pay embalming and storage fees for the body to be released.

Complainant also alleges that the establishment was rude and unprofessional, and that she suspected that the body was embalmed by an unlicensed person.

Response: The Respondent submitted written authorization signed by the sister for embalming of the body. The Respondent also submitted a written statement by the contract embalmer verifying that he embalmed the body. The statement from the second establishment shows that the charges for embalming and storage were listed as a cash advance by the second establishment, indicating that release of the body was not conditioned on payment. The Respondent denies being unprofessional.

Complaint History: None.

Recommendation: Dismiss. The facts of this case are insufficient to sustain violations as claimed by the complainant. Contractual obligations between the daughter and aunt should be determined in a civil court.

A motion was made by Jill Horner to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

5. Case No.: L09-FUN-RBS-2009002451

6. Case No.: L09-FUN-RBS-2009002461

During an inspection on February 6, 2009, the field representative noticed a foul odor in the embalming room. The establishment has no refrigeration unit and the field representative quickly traced the odor to a cardboard box containing a dead human body whose date of death was July 25, 2008. The body had been autopsied and released to the Respondent on July 26, 2008, and apparently embalmed shortly thereafter. Although the decedent's weight upon arriving at the medical examiner's office was less than 140 lbs, the body appeared to be distended and was pushing against the sides of the cardboard box. Although the body was dressed in a long sleeve shirt and pants, signs of decay were very clearly indicated on the face, particularly around the eyes, nose and mouth, and the hands were swollen. The certificate of death, filed July 31, 2008, lists the method of disposition as "cremation" and the place of disposition as "Music City Crematory". Due to concern for the health of other individuals that might be in the embalming room performing other procedures, and families that are brought into the embalming room to identify remains, TOSHA was notified immediately. TOSHA inspectors visited the establishment on February 6, 2009 and took samples to test for formaldehyde levels. Although the tests results will not be received for a week, TOSHA believes the levels were within an acceptable range. TOSHA indicates however that it does not have the capability to test for many other airborne pathogens that might pose a health risk to those in the vicinity.

Response: The Respondent states that the family originally planned to have the remains cremated; but later, the family decided they wanted a second post mortem examination conducted on the remains, and that is why the body is still present.

Complaint History: Numerous complaints.

Recommendation: The above facts constitute unprofessional conduct and knowingly making a false statement on a certificate of death.

Legal Counsel presented available options to the Board, but deferred a specific recommendation of action to the Board.

After much discussion, the Board found that public health, safety and welfare imperatively required emergency action. A motion was made by Jill Horner to issue an "Order of Summary Suspension" based upon the Board's finding of concern for the health, safety and welfare of both the public and the establishment's employees, due to a dead human body being held approximately seven (7) months after death in unrefrigerated conditions and is now in a decomposing condition.

Seconded by Wayne Hinkle

President David Murphy directed for a roll call vote:

<u>BOARD MEMBER</u>	<u>VOTE</u>
Paula Bridges	Yes
Wayne Hinkle	Yes
Jill Horner	Yes
David Murphy	Yes
Eugene Williams	Yes

Adopted by voice vote

7. Case No.: L08-FUN-RBS-2008024431

An inspection on October 15, 2008 revealed the following violations:

- TCA 62-5-313 – A dressed and casketed body lacked a permanent identification device with all required information;
- TCA 62-5-107 – The establishment does not have a copy of the latest inspection report or a copy of the license for the crematory used;
- FTC Rules – Required disclosure language missing from Outer Burial Container Price List; and
- FTC Rules – Reason for embalming not provided where required.

Response: The Respondent states that the dates of birth and death were missing on the identification tag because the Respondent had not yet received this information from Alive Hospice, although they had already requested it. The establishment had recently had trouble with the former crematory used, and had to remove several bodies in the crematory's custody, and then transfer them to another facility which they are now using on a routine basis. This is the reason the current licenses were not available at inspection. With regard to the reason for embalming, the field inspector referred to a preneed contract instead of the corresponding statement which does list the reason for embalming.

Complaint History: Three closed (unrelated).

Recommendation: Consent Order assessing civil penalty of \$250 and authorization for hearing.

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

Seconded by Eugene Williams

Adopted by voice vote

8. Case No.: L08-FUN-RBS-2008022591

An inspection on September 24, 2008 revealed the following violations:

- FTC Rules – Price shown for alternative container on General Price List is inconsistent with price shown on casket price list for same item;
- FTC Rules – Price range for direct cremation is incorrect;
- FTC Rules – Required disclosures not present; and
- FTC Rules – Price range for immediate burials is incorrect.

Response: Updated price lists have been submitted.

Complaint History: None.

Recommendation: Letter of Warning.

A motion was made by Eugene Williams to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

**ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR**

LICENSEE REPORT:

**LICENSES ISSUED JANUARY 13, 2009 – FEBRUARY 9, 2009 BY
EXECUTIVE DIRECTOR AS PER BOARD AUTHORITY**

Individuals

Amanda Jane Phillips Nashville, TN	Funeral Director/Embalmer
Laura Marie Lyles Arlington, TN	Funeral Director/Embalmer
James Tommy Harris Cookeville, TN	Embalmer
Jonathan Daniel Keener Knoxville, TN	Funeral Director
J. Adam Brasfield Memphis, TN	Funeral Director
Amber Rippy Dicus Sparta, TN	Funeral Director
Jacob Donald Burke Oneida, TN	Funeral Director
Michael Bruce Williams Bristol, VA	Funeral Director Re-application

CLOSED ESTABLISHMENT REPORT:

One (1) establishment has reported closing since the last board meeting:

- **Tate Funeral Home, 876 Englewood Road, Madisonville, Tennessee**

DISCIPLINARY ACTION REPORT:

The Board has previously authorized this Consent Order and action. The Consent Order has been signed by the Respondent, and the Executive Director requests the Board's acceptance of it.

Complaint No. 2008020781

- Violation: Immoral or Unprofessional conduct (falsified the signature of a beneficiary on an insurance assignment form and acting as a Notary Public, falsely certified the signature)
- Action: No further consideration will be given to any application for licensure until the passage of one hundred twenty (120) days from the date this Consent Order is accepted by the Board.

A motion was made by Jill Horner to approve the Executive Director's request for the Board's acceptance of the above listed Consent Order.

Seconded by Paula Bridges

Adopted by voice vote

OPEN COMPLAINT REPORT:

As of February 6, 2009, there were 62 open complaints.

APPROVAL OF INDIVIDUAL LICENSE:

Upon motion, based upon application record, the following individual was approved for licensure:

Anthony Wayne Brown
Byrdstown, TN

Funeral Director/Embalmer

APPROVAL OF NAME CHANGE FOR ESTABLISHMENT LICENSE:

SMITH – REAGAN FUNERAL HOME
326 WATER STREET
RUTLEDGE, TN

Ownership: Corporation

Owner: Paxus Services (Tennessee), Inc., of Boerne, Texas

Dustin M. Gilliam, the manager and representative of the establishment appeared before the Board to request a change of the establishment name from "Smith Funeral Home" to "Smith – Reagan Funeral Home". Mr. Gilliam stated there was a wall inside the funeral home dedicated to the memory of Mr. Leon Reagan who worked for the funeral home for many years and suddenly passed away in 2001. The wall contains a photograph and memorial plaque dedicated to the memory of Mr. Leon Reagan. The field representative during an inspection on November 20, 2008, noted that a non-licensed individual, Floyd Reagan, currently is an employee of the funeral home. There was discussion regarding Tenn. Code Ann. § 62-5-314 which prohibits the name of any living person who has not been licensed to be shown or displayed upon any funeral establishment.

Upon motion by Wayne Hinkle and seconded by Eugene Williams, based upon application record, a name change was approved to change the establishment name to Smith – Reagan Funeral Home.

Adopted by voice vote

Member(s) noted as voting to the contrary of the voice vote conclusion: Jill Horner

ADJOURN:

A motion was made by Eugene Williams to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

There being no further business, the meeting was adjourned by President David Murphy at 11:18 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director