

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

JUNE 9, 2009

President David Murphy called the meeting to order at 10:00 A.M. in the Second Floor Conference Room of the Andrew Johnson Tower, Nashville, Tennessee.

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

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

ADOPTION OF AGENDA:

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

Seconded by Wayne Hinkle

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Dennis Hamilton to approve the minutes of the April 14, 2009 Board Meeting.

Seconded by Eugene Williams

Adopted by voice vote

LEGAL REPORT:

ADRIAN CHICK, ASSISTANT GENERAL COUNSEL

1. Case No.: L08-FUN-RBS-2008024451

An inspection on October 7, 2008 revealed that this establishment charged a fee of \$150 for use of the embalming room in addition to its regular fee of \$575 for embalming in seven (7) different contracts. A sale of the establishment is pending.

Response: The Respondent is working to ensure the violations are not repeated and assures the Board that there was no intent to mislead or deceive.

Complaint History: None.

Recommendation: Consent order assessing civil penalty of \$300 per violation, for a total of \$2,100 and authorization for hearing.

Note: Due to a pending sale of this establishment, the consent order has already been submitted to the Respondent, and the Respondent has signed the consent order, paid the civil penalty and returned it to the Board for acceptance.

President David Murphy recused himself from this case and asked Vice President Dennis Hamilton to preside over the proceedings.

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

Seconded by Jill Horner

Adopted by voice vote

2. Case No.: L08-FUN-RBS-2008024451

The complainant is a consumer who alleges that he paid \$1,750 in cash for ½ of the cost of a preneed contract for his mother in 2005. The other half was paid by complainant's brother with a credit card. In April 2008, following the death of complainant's mother, the preneed file was opened by the funeral home and found to contain no information other than some information regarding the brother's credit card. The complainant alleges that he gave the cash and completed contract to the Respondent funeral director.

Response: The Respondent funeral director points out that the complaint was not filed until September 2008, which was after settlement of a lawsuit that the Respondent had filed against his former employer. The Respondent states that pursuant to the settlement, the Respondent was awarded damages and a non-compete agreement that his former employer was attempting to enforce against him was set aside. The Respondent, at the time the complaint was filed, was in the process of opening his own establishment in the same market area as his former employer.

Complaint History: None.

Recommendation: DISMISS, because there is no evidence of the cash being paid, or if it was paid, that the Respondent had anything to do with its absence. The establishment provided a funeral for the complainant's mother according to complainant's statements.

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

Seconded by Paula Bridges

Adopted by voice vote

3. Case No.: L09-FUN-RBS-2009005431

An inspection on December 29, 2008 revealed that statements of funeral goods and services failed to provide description for merchandise selected and reason for embalming where required. Also, the license of a funeral director working at the establishment was not available for inspection.

Response: The Respondent has provided a copy of the funeral director license and states that contracts lacking sufficient information have been amended as necessary.

Complaint History: None directly related.

Recommendation: Consent order assessing civil penalty of \$350 and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

4. Case No.: L09-FUN-RBS-2009005421

This complaint is based upon an advertisement in the yellow pages for " Cremation Society" under the heading of "Cremation Services". The listed business is not licensed as an establishment as required by Tenn. Code Ann. § 62-5-303(b) which reads, in pertinent part, as follows:

It is unlawful for any person to engage in or offer to engage in, either funeral directing, embalming or operation of a funeral establishment unless such person or business has been duly licensed under the provisions of this chapter as hereinafter provided.

Response: The Respondent disputes the Board's jurisdiction and authority over the cremation society and states that it does not advertise to sell, nor does it sell funeral merchandise, funeral services, nor does it have a crematory, and the word "crematory" does not appear in association with the cremation society.

Complaint History: None related.

Recommendation: Because advertising under the heading "cremation services" constitutes an offer to engage in funeral directing and an offer to engage in operation of an establishment, legal recommends the following actions:

1. An additional complaint should be opened against the funeral director license of the individual responsible for placing the advertisement for violation of Tenn. Code Ann. § 62-5-303(b);
2. A consent order should be offered against the cremation society assessing a civil penalty of \$500; and
3. A consent order should be offered against the funeral director who placed the advertisement assessing a civil penalty of \$500; and
4. The Board should authorize the filing of formal charges against both Respondents in the event the consent orders are not accepted.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Eugene Williams

Member(s) noted as voting contrary of the voice vote conclusion: Dennis Hamilton

Adopted by voice vote

5. Case No.: L09-FUN-RBS-2009005361

This complaint is based upon an advertisement in the yellow pages for " Cremation Society" under the heading of "Cremation Services". The listed business is not licensed as an establishment as required by Tenn. Code Ann. § 62-5-303(b) which reads, in pertinent part, as follows:

It is unlawful for any person to engage in or offer to engage in, either funeral directing, embalming or operation of a funeral establishment unless such person or business has been duly licensed under the provisions of this chapter as hereinafter provided.

Response: The Respondent denies that the advertisement offers services or merchandise of any sort and points out that any services are actually performed by a certain licensed establishment.

Complaint History: None related.

Recommendation: Because advertising under the heading "cremation services" constitutes an offer to engage in funeral directing and an offer to engage in operation of an establishment, legal recommends the following actions:

1. An additional complaint should be opened against the funeral director license of the manager of the establishment providing services for violation of TCA 62-5-303(b) and 62-5-317(b)(6) and (17), because such establishment is clearly operating in concert with the cremation society in question;

2. A consent order should be offered against the cremation society assessing a civil penalty of \$500;
3. A consent order should be offered against the managing funeral director referred to above assessing a civil penalty of \$500; and
4. The Board should authorize the filing of formal charges against both Respondents in the event the consent orders are not accepted.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Eugene Williams

Member(s) noted as voting contrary of the voice vote conclusion: Dennis Hamilton

Adopted by voice vote

6. Case No.: L09-FUN-RBS-2009005331

An inspection on December 16, 2008 revealed that two funeral director licenses were not available at the time of inspection and one embalmer license was not available for inspection.

Response: Respondent states that it was unable to assist the inspector at the time, but that the licenses are hanging on the wall in the office.

Complaint History: None.

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

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

Seconded by Paula Bridges

Adopted by voice vote

7. Case No.: L09-FUN-RBS-2009005291

An inspection on December 2, 2008 revealed that a customer was charged for both direct cremation (\$1,195) and basic services (\$1,225). The inspection also revealed several discrepancies on price lists. Updated price lists have been submitted.

Response: The Respondent states that the overcharge was unintentional, and that the customer originally wanted direct cremation but later requested a funeral service, which was provided. The customer has been issued a refund.

Complaint History: None directly related.

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

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

8. Case No.: L09-FUN-RBS-2009007211

This complaint was filed by a consumer whose mother died on January 20, 2009. A SFGSS was completed on January 21, 2009 totaling \$5304.33. It appeared that a policy was available to pay \$5,000, so the respondent was required to pay \$304.33 cash. After the burial, the insurance company informed respondent that it would only pay \$2620. The respondent later collected the \$2380 difference from the complainant. The complainant now states that the insurance company has now decided that the policy was in full force and effect, and that the funeral establishment is failing to reimburse him/her.

Response: The Respondent states that it has not yet received the balance from the insurance company and will forward it once received.

Complaint History: None directly related.

Recommendation: Dismiss. No violation by respondent.

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

Seconded by Eugene Williams

Adopted by voice vote

9. Case No.: L09-FUN-RBS-2009005351

An inspection on December 17, 2008 revealed the following violations:

- TCA 62-5-313(d) - Required information on two identification devices was not present;
- TCA 62-5-107 - Current license and copy of latest inspection report of the crematory used was not available at time of inspection;
- FTC Rules - Price for a casket on CPL vs. GPL is inconsistent;
- FTC Rules - Range of casket prices on CPL vs. GPL is inconsistent;

- FTC Rules - Required alternative containers listing is not present on the CPL; and
- FTC Rules - Several caskets offered are not listed on CPL.

Response: No response received.

Complaint History: Another complaint is still open from inspection last year, similar violations.

Recommendation: Consent order assessing civil penalty of \$2000 and authorization for hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

10. Case No.: L09-FUN-RBS-2009005221

An inspection on November 6, 2008 revealed the following violations:

- TCA 62-5-107 - Copy of license and latest inspection report for the crematory used was not available at time of inspection;
- FTC Rules - Effective date not listed on GPL;
- FTC Rules - Range of outer burial containers incorrect on GPL;
- FTC Rules - High end range under direct cremation incorrect on GPL;
- FTC Rules - High end range under immediate burial on GPL is incorrect;
- FTC Rules - Alternative container prices are not present on the CPL; and
- FTC Rules - Description of merchandise and services not present where required on the SFGSS inspected.

Response: The Respondent has provided a copy of the funeral director license and states that contracts lacking sufficient information have been amended as necessary.

Complaint History: None related.

Recommendation: Consent order assessing civil penalty of \$750 and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

11. Case No.: L09-FUN-RBS-2009005111

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

TCA 62-5-107 - Latest inspection report of crematory used was not available at the time of inspection;

TCA 62-5-308(d) - Embalmer license was not present as required;

FTC Rules - high end range for caskets on GPL inconsistent with CPL;

FTC Rules - High end range for outer burial containers on GPL inconsistent with OBCPL;

FTC Rules - High end range for immediate burial on GPL inconsistent with CPL; and

FTC Rules - Description of merchandise and services on SFGSS missing where required.

Response: Respondent has submitted a copy of the crematory report, embalmer license, corrected SFGSS, and updated price lists.

Complaint History: None directly related.

Recommendation: Consent order assessing civil penalty of \$550 and authorization for hearing.

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

Seconded by Jill Horner

Adopted by voice vote

12. Case No.: L09-FUN-RBS-2009005081

An inspection on November 3, 2008 revealed a casketed body that lacked required information on the permanent identification device as required by TCA 62-5-313 and price range on GPL was inconsistent with prices on OBCPL.

Response: Respondent states that the information was not known at the time of casketing and that respondent had not yet had a chance to add the required information and the price list has been updated.

Complaint History: None directly related.

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

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

Seconded by Paula Bridges

Adopted by voice vote

13. Case No.: L08-FUN-RBS-2008012221

This complaint was opened in response to learning that the Respondent funeral director was charged with a felony criminal offense. A conviction was entered against Respondent on May 1, 2009 pursuant to a plea agreement for conspiracy to obstruct justice in violation of 18 U.S.C. §§ 1512(c)(2) which reads, in pertinent part, as follows:

(c) Whoever corruptly—

(2) Otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

Shall be fined under this title or imprisoned not more than 20 years, or both.

Response: Respondent provided an initial response shortly after the complaint and stated "I would state to the Board that at no time have I compromised my integrity as a licensed funeral director or embalmer and stand ready to defend my reputation in this regard." The Respondent provided a supplemental response after the plea was entered.

Complaint History: None.

Recommendation: Consent Order assessing a civil penalty of \$750 and authorization for hearing, shall abide by all terms and conditions of probation imposed upon respondent by the Court for the duration of the probation, and shall present to the Board, upon applying for license renewal, a verified statement from the probation officer or supervising court affirming the respondent's compliance with all terms and conditions of probation.

Eugene Williams recused himself from this case.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

14. Case No.: L07-FUN-RBS-2007087961

During an inspection on November 6, 2007, various FTC violations were found.

Recommendation: This Respondent has since been closed and legal requests that the matter be closed.

Complaint History: None directly related.

Recommendation: Close.

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

Seconded by Paula Bridges

Adopted by voice vote

15. Case No.: L08-FUN-RBS-2008024421

An inspection on October 28, 2008 revealed the following violations:

- TCA 62-5-107 - Two cremation authorization forms lacked signature by funeral director;
- FTC Rules - Charges for immediate burial are totaled incorrectly;
- FTC Rules - Low end range on OBCPL inconsistent with GPL;
- FTC Rules - Under casket include in "economical" package does not appear on CPL; and
- FTC Rules - Vault listed under "traditional" package is not properly referenced on the OBCPL.

Response: A copy of the correctly executed cremation authorization will be retained in the file in the future, and updated price lists were submitted.

Complaint History: None.

Recommendation: Consent order assessing civil penalty of \$350 and authorization for hearing.

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

Seconded by Eugene Williams

Adopted by voice vote

16. Case No.: L09-FUN-RBS-2009005961

An inspection was conducted on January 8, 2009. In general, the price lists do not provide the required information in a clear and conspicuous manner, which would make price comparisons by consumers very difficult, contrary to the spirit of the Funeral Rule. Specifically, the inspection revealed the following violations:

- FTC Rules - Price for basic services of funeral director and staff is provided on page 6 of a tri-fold brochure, sixteen (16) lines down from the top. The manner in which this fee is listed is in violation of 16 C.F.R.

§§ 453.2(b)(4)(iii)(C) and 453.7 which requires disclosures to be "in a clear and conspicuous manner."

- FTC Rules - Price range for caskets is provided on page 2 line five (5) of the GPL. The manner in which this range is listed is in violation of 16 C.F.R. §§ 453.2(b)(4)(iii)(A) and 453.7 which requires disclosures to be "in a clear and conspicuous manner."
- FTC Rules - Caption on CPL is "Adult Casket Price List" instead of "Casket Price List" as required by 16 C.F.R. § 453.2(b)(2)(ii).
- FTC Rules - Low end range for caskets on the GPL is based upon a casket on the CPL that is listed under the heading "cremation caskets". The cheapest casket listed under "Adult Caskets" is higher than the amount listed as the lowest price on the GPL.
- FTC Rules - "Transfer of Remains to funeral home" is not listed on GPL as required by 16 C.F.R. § 453.2(b)(4)(ii)(E);
- FTC Rules - The OBCPL does not list the "Titan" which is offered to consumers as required by 16 C.F.R. § 453.2(b)(3)(i)

Response: The Respondent states that it has reverted back to use of prior price lists, and that the mileage statement has been relocated so that it is next to the charge for transfer of remains. The OBCPL has been updated to include all containers offered.

Complaint History: Some prior complaints.

Recommendation: Consent order assessing civil penalty of \$250 per violation (total of \$1,500) and authorization for hearing.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

17. Case No.: L09-FUN-RBS-2009005381

An inspection on December 17, 2008 revealed the following violations:

- TCA 62-5-107 - The current license and latest inspection report of the crematory used was not available for inspection; and
- TCA 62-5-306 - A required copy of a funeral director license was not available.

Response: The Respondent states that the person in question has never been employed at this location.

Complaint History: None.

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

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

Seconded by Eugene Williams

Adopted by voice vote

18. Case No.: L06-FUN-RBS-2006016521

The Board issued a consent order assessing civil penalty of \$250 for an FTC violation on August 8, 2006. The establishment has since been closed.

Recommendation: Close.

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

Seconded by Paula Bridges

Adopted by voice vote

19. Case No.: L07-FUN-RBS-2007049841

The Board issued a consent order assessing civil penalty of \$250 for failure to pay a reinspection fee on June 15, 2007. The establishment has since been closed.

Recommendation: Close.

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

Seconded by Eugene Williams

Adopted by voice vote

20. Case No.: L07-FUN-RBS-2007049861

Same as previous case, but against the individual funeral director license. License is expired.

Recommendation: Close.

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

Seconded by Wayne Hinkle

Adopted by voice vote

21. Case No.: L09-FUN-RBS-2009003891

The complainant states despite advertisements it published in the paper regarding its new crematory, the Respondent has continued to advertise as the only crematory in the area.

Response: The Respondent indicates that it took immediate steps to edit its advertisements.

Complaint History: None related.

Recommendation: Dismiss. The proof is insufficient to establish a knowing or intentional advertising violation.

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

Seconded by Jill Horner

Adopted by voice vote

22. Case No.: L09-FUN-RBS-2009003491

The Respondent establishment charged a consumer for removal of remains from a local hospital as well as a \$200 charge for use of hearse in the removal. According to the complainant, the establishment would not release the body to a second funeral establishment until all fees were paid.

Response: Respondent states that it will reimburse the \$200 hearse fee.

Complaint History: Several other complaints for unprofessional conduct and FTC violations.

Recommendation: Consent order assessing civil penalty of \$1000 and authorization for hearing.

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

Seconded by Jill Horner

Adopted by voice vote

23. Case No.: L09-FUN-RBS-2009008511

According to sworn affidavits of a police officer, the Respondent, on May 6, 2009, armed with a gun entered a convenience store and robbed the clerk at gunpoint. On May 8, 2009, the Respondent entered a second business establishment and attempted to rob the clerk at gunpoint. On May 13, 2009, the charges were bound over to the grand jury. The Respondent holds both a funeral director and embalmer license issued by this Board.

Response: A response has been requested but not received.

Complaint History: None.

Recommendation: Consent order for voluntary revocation of Respondent's licenses and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

**24. Docket Number 12.21-102080A
(Complaint Numbers 200706700 and 200706701)**

Agreed Order submitted for voluntary suspension of funeral director license and embalmer license, payment of \$2000 civil penalty, \$1300 investigations cost, and hearing costs.

Recommendation: Approval of Agreed Order as final resolution in this matter.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Dennis Hamilton

Adopted by voice vote

25. Case No.: L09-FUN-RBS-2009005971

An inspection was conducted on January 12, 2009. In general, the price lists do not provide the required information in a clear and conspicuous manner, which would make price comparisons by consumers very difficult, contrary to the spirit of the Funeral Rule. Specifically, the inspection revealed the following violations:

- TCA 62-5-107 - Copy of current license of crematory used was not available for inspection.
- FTC Rules - Price for basic services of funeral director and staff is provided on page 6 of a tri-fold brochure, sixteen (16) lines down from the top. The manner in which this fee is listed is in violation of 16 C.F.R. §§ 453.2(b)(4)(iii)(C) and 453.7 which requires disclosures to be "in a clear and conspicuous manner."
- FTC Rules - Price range for caskets is provided on page 2 line five (5) of the GPL. The manner in which this range is listed is in violation of 16 C.F.R. §§ 453.2(b)(4)(iii)(A) and 453.7 which requires disclosures to be "in a clear and conspicuous manner."
- FTC Rules - Caption on CPL is "Adult Casket Price List" instead of "Casket Price List" as required by 16 C.F.R. § 453.2(b)(2)(ii).
- FTC Rules - Low end range for caskets on the GPL is based upon a casket on the CPL that is listed under the heading "cremation caskets". The cheapest casket listed under "Adult Caskets" is higher than the amount listed as the lowest price on the GPL.
- FTC Rules - "Transfer of Remains to funeral home" is not listed on GPL as required by 16 C.F.R. § 453.2(b)(4)(ii)(E).

Response: Respondent does not address absence of copy of crematory license at time of inspection but has submitted copies that "are" available. The Respondent states that it has reverted back to use of prior price lists, and that the mileage statement has been relocated so that it is next to the charge for transfer or remains. The OBCPL has been updated to include all containers offered.

Complaint History: Some prior complaints.

Recommendation: Consent order assessing civil penalty of \$750 and authorization for hearing.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

This complaint was filed by a consumer who alleged the Respondent funeral director made disparaging comments regarding a funeral establishment that was handling arrangements for her family. The complainant later sent a letter seeking to withdraw the complaint.

Response: Respondent denies making any inappropriate comments and states that the decision to change providers was totally that of the complainant. Legal placed calls and left messages on May 15, 2009 for the witness and complainant to call but no return calls have been received.

Complaint History: None.

Recommendation: Dismiss.

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

Seconded by Eugene Williams

Adopted by voice vote

27. Case No.: L09-FUN-RBS-2009005241

An inspection on November 17, 2008 revealed the following violations:

- TCA 62-5-107 - Latest inspection report for the crematory used was not available for inspection; and
- FTC Rules - Reason for embalming not listed where required on several Statements.

Response: Respondent apologizes for not having the inspection form available and states it will ensure statements have reason for embalming in the future.

Complaint History: One prior FTC violation.

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

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

Seconded by Dennis Hamilton

Adopted by voice vote

28. Case No.: L09-FUN-RBS-2009005151

An inspection on November 6, 2008 revealed the following violations:

- FTC Rules – SFGSS does not list individual items comprising a funeral package; and
- FTC Rules - GPL does not specify description of alternative container for direct cremation.

Response: Respondent has submitted updated price lists.

Complaint History: One but not directly related.

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

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

Seconded by Paula Bridges

Adopted by voice vote

29. Case No.: L09-FUN-RBS-2009004711

This complaint was filed by a consumer who alleges she was "ripped off" by the Respondent funeral establishment. After removing the body, the establishment refused to ship the body via airline out of state until the funeral bill was paid. The complainant feels that her mother's remains were "held hostage". The complainant had the out of state establishment come and retrieve the body from the Respondent's custody.

Response: Respondent verifies the events, but states the body was released to the second establishment without regard to payment.

Complaint History: None directly related.

Recommendation: Dismiss.

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

Seconded by Clark McKinney

Adopted by voice vote

30. Case No.: L08-FUN-RBS-2008024371

An inspection on October 6, 2008 revealed the following violations:

- TCA 62-5-107 - Copy of latest inspection report for crematory used not available at inspection;

- FTC Rules - Reason for embalming not present where required on several contracts;
- FTC Rules - Description of merchandise and services not provided on several contracts; and
- FTC Rules - Two caskets in selection room not listed on CPL.

Response: Respondent has taken steps to ensure FTC violations are not repeated, updated price lists and has posted a copy of latest inspection report.

Complaint History: No similar violations during the past several years.

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

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

Seconded by Jill Horner

Adopted by voice vote

31. Case No.: L09-FUN-RBS-2009002751

This complaint was opened by staff due to a discrepancy between the registered name of the establishment and the name on a sign. The establishment has taken necessary steps and expended a significant sum of money for a new sign which has been installed.

Response: The sign has been replaced.

Complaint History: None related.

Recommendation: Close without further action.

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

Seconded by Paula Bridges

Adopted by voice vote

32. Case No.: L09-FUN-RBS-2009003371

The Respondent is an out of state resident who is licensed by this Board as a funeral director. This complaint was opened in response to criminal charges filed against him in his state of residence. In March, 2009, the Respondent pled guilty to cultivating marijuana, possession of controlled substance, possession of marijuana, possession of drug paraphernalia, and official misconduct. All five

convictions are misdemeanors. Pursuant to the plea agreement, Respondent was sentenced to two (2) years of probation with the following conditions:

1. Respondent shall remain free of any illegal drugs;
2. Respondent shall be subject to random drug screens; and
3. Respondent shall commit no other violations of law during the two (2) year probation period.

Response: The Respondent states he has never "been in trouble" before, and still has a good reputation for being an honest, hardworking man, and acknowledges that he made some poor choices for which he is very sorry, and asks this Board to please grant him a second chance.

Complaint History: None.

Recommendation: Consent Order assessing a civil penalty of \$500 and authorization for hearing, shall abide by all terms and conditions of probation imposed upon respondent by the Court for the duration of the probation, and shall present to the Board, upon applying for license renewal, a verified statement from the probation officer or supervising court affirming the respondent's compliance with all terms and conditions of probation.

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

Seconded by Dennis Hamilton

Adopted by voice vote

33. Case No.: L09-FUN-RBS-2009001371

This complaint was filed by the estranged daughter of the decedent who lives out of state. The decedent made prearrangements several years prior to his death with the help of his sister. The complainant states that she will not be responsible for any debts incurred by his funeral, and complains that the body was embalmed without her permission, yet acknowledges that arrangements were delayed for several days so that the complainant and other family could come to the funeral. The complaint consists of multiple pages of single spaced, typewritten pages that refers mostly to family disputes and ill feelings among family members.

Response: The Respondent submitted a detailed response, including copy of the contract, and denies any wrongdoing.

Complaint History: None related.

Recommendation: Dismiss. The complaint does not establish any violation by the Respondent.

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

Seconded by Wayne Hinkle

Adopted by voice vote

34. Case No.: L09-FUN-RBS-2009005321

An inspection on December 9, 2008 revealed the following violations:

- TCA 62-5-306 - Copy of license for two funeral directors not available for inspection;
- TCA 62-5-308 - Copy of embalmer license not available at time of inspection; and
- FTC Rules - Low end range on OBCPL incorrect.

Response: Copies were faxed during inspection.

Complaint History: None directly related.

Recommendation: Letter of Warning.

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

35. Case No.: L09-FUN-RBS-2009004341

This complaint was filed by one establishment against another for a misleading advertisement. The Respondent has an ad running claiming that it will fully service certain burial policies. Complainant states that the Respondent does not fully service the policies.

Response: Respondent states that the ad was run by error, but that it will fully service the policies as long as the ad is in print.

Complaint History: None directly related.

Recommendation: Letter of Warning.

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

Seconded by Clark McKinney

Adopted by voice vote

36. Case No.: L09-FUN-RBS-2009002681

This complaint alleges that the establishment violated provisions regarding to the prearrangement of funerals, committed immoral or unprofessional conduct, and fraud by failing to forward insurance premiums to the insurance company.

Response: No response received.

Complaint History: Numerous, three still open.

Recommendation: Authorization for formal hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

37. Case No.: L09-FUN-RBS-2009005441

This complaint alleges FTC violations and overcharges to customers.

Response: None received.

Complaint History: Numerous, three still open.

Recommendation: Authorization for formal hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

38. Case No.: L09-FUN-RBS-2009003651

An inspection on February 17, 2009 revealed the following violations:

- TCA 62-5-107 - Cremation authorization forms lack required information;
- FTC Rules - Amount on GPL for forwarding of remains is higher than the total of the individual prices which are included in this service;
- FTC Rules - CPL does not have correct title and effective date;
- FTC Rules - CPL incorrectly labels a container with interior as an alternative container; and

- FTC Rules - GPL does not provide adequate description of merchandise (caskets).

Response: No response received.

Complaint History: None related.

Recommendation: Consent order assessing civil penalty of \$500 and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

39. Case No.: L09-FUN-RBS-2009002741

This complaint resulted from a routine inspection. The Respondent provided notice just days later that the establishment is closed.

Recommendation: Close without further action.

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

Seconded by Clark McKinney

Adopted by voice vote

40. Case No.: L09-FUN-RBS-2009005311

An inspection on December 3, 2008 revealed the following violations:

- TCA 62-5-306(d) - Current funeral director license not available for inspection; and
- TCA 62-5-313(d)(1) - A dressed and casketed body lacked a permanent identification device.

Response: The respondent has since posted the license as required, and has taken steps to prevent the issue of the missing id device, which it considers very serious.

Complaint History: None related.

Recommendation: Consent order assessing civil penalty of \$500 and authorization for hearing.

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

Seconded by Eugene Williams

Adopted by voice vote

41. Case No.: L09-FUN-RBS-2009005791

This complaint was filed by a consumer that alleges she paid the respondent funeral director \$2500 for a pre-need funeral for her mother, but then the respondent failed to perform at time of death and has not refunded the money.

Response: The Respondent states he received the check from the complainant, then handed it to the owner of the establishment.

Complaint History: None related.

Recommendation: Authorization for hearing (violation of preneed laws).

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

Seconded by Wayne Hinkle

Adopted by voice vote

42. Case No.: L09-FUN-RBS-2009006111

An examination by Burial Services revealed a preneed sell by an establishment managed by the respondent. Funds were not deposited as required by preneed statutes.

Response: The respondent provided no response, but respondent's mother did provide a response. The response provided no explanation for the missing funds.

Complaint History: None related.

Recommendation: Authorization for hearing (violation of preneed laws).

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

Seconded by Wayne Hinkle

Adopted by voice vote

43. Case No.: L09-FUN-RBS-2009010011

An inspection on January 26, 2009 revealed the following violations:

- TCA 62-5-107 - Current license and latest inspection report for the crematory used were not available for inspection;
- FTC Rules - On the GPL, under "immediate burial", the high end range is incorrect when compared to the CPL;
- FTC Rules - On the GPL, under direct cremation, high end range is inconsistent with prices on CPL;
- FTC Rules - Prices in the OBCPL are inconsistent with the selection notebook used; and
- FTC Rules - Reason for embalming was missing where required.

Response: The Respondent apologizes for any price list mistakes and has submitted corrections.

Complaint History: None related.

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

A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

44. Case No.: L08-FUN-RBS-2008022571

An inspection on September 9, 2008 revealed the following violations:

- TCA 62-5-104 - Caskets do not have label stating the material they are constructed of; and
- TCA 62-5-107 - Copy of latest inspection report and license of crematory used not available for inspection.

Response: Respondent has addressed issue with casket manufacturer and obtained required labels. The crematory inspection report and license had just expired, but a copy of the current information has been posted.

Complaint History: None related.

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

45. Case No.: L08-FUN-RBS-2008022561

An inspection on September 18, 2008 revealed that the establishment's license had expired July 31, 2008.

Response: The Respondent had conducted no funeral since expiration, but was still open for business. The establishment renewed its license shortly thereafter.

Complaint History: None related.

Recommendation: Consent order assessing civil penalty of \$350 and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

46. Case No.: L07-FUN-RBS-2007086981

This complaint was filed by a casket jobber due to an unpaid invoice. The invoice has since been paid.

Response: None required.

Complaint History: None related.

Recommendation: Close without further action.

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

Seconded by Dennis Hamilton

Adopted by voice vote

47. Case No.: L09-FUN-RBS-2009008451

An inspection on March 31, 2009 revealed the following violations:

- FTC Rules - Price charged for an OBC exceeds the price listed on the OBCPL;
- FTC Rules - GPL does not contain all required disclosures; and

- FTC Rules - Packages are listed on wall of selection room without itemization.

Response: Respondent states it has made corrections to the OBCPL and GPL and has now provided information on packages.

Complaint History: One related complaint from 2007 due to one casket in the selection room that was not listed correctly on CPL.

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

48. Case No.: L08-FUN-RBS-2008006941

This is a representation of this Complaint...

Complaint: During the course of a routine inspection, the establishment displayed a license certificate. The inspector immediately questioned the authenticity of the certificate because it stated "FUNERAL DIRECTOR & EMBALMER", and Tennessee has never had a dual licensing system. It was later confirmed that the certificate was invalid and had not been issued to the alleged licensee. Complaint No. 2008006921 was opened against the establishment, Complaint No. 2008006931 was opened against the owner of the establishment whose license was apparently used to make the falsified document, and Complaint No. 2008006941 was opened against the alleged licensee.

Response: The establishment responded that the alleged licensee had provided the certificate and that the establishment believed it to be valid. However, the alleged licensee has never performed any work as either a funeral director or embalmer for the establishment. The individual respondent whose license had been copied responded that he has no knowledge of the license status of the alleged licensee, and that the alleged licensee is an acquaintance of his son. He also states that a copy of the complaint was hand delivered to the alleged licensee. There was no response from the alleged licensee.

Complaint History: None related.

Previous Recommendation: Consent Order assessing civil penalty of \$500 against the establishment for violation of TCA 62-5-309 (Practice by unregistered persons prohibited) and authorization for hearing. Dismiss complaint against

individual whose license was copied. Authorization for hearing against alleged licensee.

Current Recommendation: Legal recommends closing without further action.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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

**REPORT OF LICENSES ISSUED APRIL 14, 2009 – JUNE 8, 2009 BY
EXECUTIVE DIRECTOR AS PER BOARD AUTHORITY**

LICENSEE REPORT:

Establishments

Scales New Generation Funeral Home, Inc. Antioch, TN	New Establishment
Clinch Mountain Chapel & Crematory Bean Station, TN	New Establishment
Click Funeral Home and Cremations Tellico Village Chapel Loudon, TN	New Establishment
Richlawn Crematory Waverly, TN	New Establishment
Cremation Society of Northeast Tennessee Elizabethton, TN	Name Change

Individuals

Jonathon Scott Justice Clarksville, TN	Funeral Director
James William Rucker Knoxville, TN	Funeral Director
Randolph Ivory Seals, Jr. Southaven, MS	Embalmer

Raymond Louis Osborne
Pegram, TN

Funeral Director & Embalmer

Stephen E. DeBord, II
Mount Juliet, TN

Funeral Director & Embalmer

Gary Douglas Cooper
Nashville, TN

Funeral Director & Embalmer

CLOSED ESTABLISHMENT REPORT:

Closed Establishments:

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

- **Southern Funeral Home, Inc., 440 Vance Avenue, Memphis, Tennessee**

DISCIPLINARY ACTION REPORT:

The Board has previously authorized these consent orders and civil penalties. The Consent Orders have been signed and unless noted, the civil penalty has been paid by the respondent. The Executive Director requests the Board's acceptance of the following consent orders.

Complaint No. 2007071541

Violation: Price Lists and Statement of Funeral Goods and Services Selected show an establishment name different than the name registered with the Board, failure to retain the Cremation Authorization Form for a deceased, failure to maintain a copy of the license and latest inspection report of the crematory that the funeral home uses, price for embalming on General Price List is inconsistent with amount charged on statements, prices on General Price List for direct cremation, immediate burial, range for caskets and range for outer burial containers is inconsistent and Outer Burial Container Price List lacked required disclosure

Action: \$600 Civil Penalty

Complaint No. 2008019901

Violation: Operating an establishment and conducting multiple funerals on an invalid license due to non-renewal in a timely manner and a charge for an alternative container is higher than listed on the Casket Price List

Action: \$1400 Civil Penalty

Complaint No. 2008024451

Violation: Unfair or deceptive acts or practices by a charge for use of preparation room in addition to a charge for embalming on multiple Statements of Funeral Goods and Services Selected
Action: \$2100 Civil Penalty

Complaint No. 2008019461

Violation: Unfair or deceptive acts or practices by a charge for use of preparation room in addition to a charge for embalming on numerous Statements of Funeral Goods and Services Selected
Action: \$15,000 Civil Penalty

Complaint No. 2008027731

Violation: Immoral or unprofessional conduct – as manager of an establishment improperly depositing preneed funeral contract funds into an unrelated burial association account that only the licensee could access; and minutes after making the deposit, withdrawing a substantial portion, apparently for his own use
Action: Revocation of license as a funeral director and revocation of license as an embalmer

Complaint No. 2008020031

Violation: Operating an establishment and conducting multiple funerals on an invalid license due to non-renewal in a timely manner, cremation authorization lacked the name, address and telephone number of the crematory, a cremation authorization form was not signed by the funeral director and failure to maintain a copy of the latest inspection report of the crematory that the funeral home uses
Action: \$1450 Civil Penalty

Complaint No. 2008012431

Violation: An advertisement was placed in a local paper in which an unlicensed individual was listed as a funeral director
Action: \$500 Civil Penalty

A motion was made by Wayne Hinkle to approve the Executive Director's request for the Board's acceptance of the above listed Consent Orders.

Seconded by Clark McKinney

Adopted by voice vote

OPEN COMPLAINT REPORT:

As of June 5, 2009, there were 83 open complaints.

APPROVAL OF ESTABLISHMENT LICENSE:

Upon motion, based upon application record, the following establishment was approved for licensure by voice vote:

Member(s) noted as voting contrary of the voice vote conclusion: Paula Bridges

**COMMUNITY FUNERAL HOME
1488 TAYNER STREET
MEMPHIS, TN**

New Establishment

Ownership: Partnership

Owners: Donald O. Wallace and Charles Moore, both of Memphis, TN

ADJOURN:

A motion was made by Paula Bridges to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

There being no further business, the meeting was adjourned by President David Murphy at 1:13 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director