

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

JULY 14, 2009

President David Murphy called the meeting to order at 8:40 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 June 9, 2009 Board Meeting.

Seconded by Paula Bridges

Adopted by voice vote

RULEMAKING HEARING:

President David Murphy spoke to the audience and informed them that anyone wishing to comment on the Rules must register to do so. He further stated that the Board is here to listen to the public comments and suggestions and not to engage in a dialogue or debate. Assistant General Counsel Adrian Chick read the proposed Rules. After they were read, President Murphy again reiterated his previous comments. The following individuals addressed the Board:

Charles L. Crawford of Nashville, TN, specifically Rule 0660-11-.03;
Alfred Tacker of Memphis, TN, specifically Rule 0660-05-.01(1)(f)(1);

Robert W. Batson, representing the Tennessee Funeral Directors Association, Inc., Nashville, TN, specifically Rules 0660-06-.02(1); 0660-11-.02(2)(5) and 0660-11-.05(1)(a);

Tony W. Hysmith, representing Shackelford Funeral Directors, Henderson, TN, specifically Rule 0660-01-.03(2);

Carol Austin, specifically Rule 0660-06-.02(1); and

Malcolm Butler, representing the Tennessee State Funeral Directors and Morticians Association, Nashville, TN, specifically Rule 0660-11-.06(2).

Assistant General Counsel Chick recommended that the Board take the suggestions and comments and consider those with the Rules, bringing the Rules back for consideration again at the August 11, 2009 meeting.

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

Seconded by Eugene Williams

Adopted by voice vote

PRESIDENT'S REQUEST:

President David Murphy asked Executive Director Robert Gribble to speak with the Assistant Commissioner for Regulatory Boards about the possibility of allowing the Field Representatives to attend the board meetings. President Murphy thinks that the "first hand" knowledge and experience that the Field Representatives have would be very valuable in the understanding of laws and rules and the information they could provide concerning inspections that resulted in the issuing of a Citation.

President Murphy called for a recess.

A motion was made by Clark McKinney for a ten (10) minute recess.

Seconded by Eugene Williams

Adopted by voice vote

FORMAL HEARING:

The meeting reconvened for a formal hearing, Docket No. 12.21-103185A. During the recess, Assistant General Counsel Chick and Respondent Vivian Gail Brown of Kingston, Tennessee, reached an agreement to settle the case with an Agreed Order and a \$250 civil penalty provided that the Board would accept this proposal.

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

Seconded by Dennis Hamilton

Adopted by voice vote

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

**REPORT OF LICENSES ISSUED JUNE 9, 2009 – JULY 13, 2009
BY EXECUTIVE DIRECTOR AS PER BOARD AUTHORITY**

LICENSEE REPORT:

Establishments

None

Individuals

Laruen Ashley Blevins Columbia, TN	Funeral Director
Gregory James Griffin Memphis, TN	Funeral Director
Steven Neal Williams Newbern, TN	Funeral Director
Deborah J. Yant Prospect, TN	Funeral Director
Mary Ann Peete Somerville, TN	Funeral Director Reapplication
Bradley Scott Austin Springfield, TN	Funeral Director & Embalmer
Seth Lee Presley Nashville, TN	Funeral Director & Embalmer
Adam Miller Starkey Knoxville, TN	Funeral Director & Embalmer
Trinity Autumn Stone Memphis, TN	Funeral Director & Embalmer

Michael Myers Tilghman
Hernando, MS

Funeral Director & Embalmer
Reciprocity

CLOSED ESTABLISHMENT REPORT:

Closed Establishments:

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

- Robinson Funeral Services, Inc., 1000 Martin Luther King Drive, Kingsport, TN.

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. 2009005361

Violation: Advertising as a "cremation service" but not licensed as an establishment by the Board

Action: \$500 Civil Penalty

Complaint No. 2009005311

Violation: Current license of a funeral director was not available for inspection and failure to affix a permanent identification device on casketed human remains

Action: \$500 Civil Penalty

Complaint No. 2008019351

Violation: Charges on Statement of Funeral Goods and Services Selected inconsistent with prices on General Price List (GPL), price ranges on the General Price List inconsistent with prices on the Casket Price List (CPL) and Outer Burial Container Price List, numerous caskets in the selection room priced inconsistent with the CPL, prices on GPL for immediate burial and direct cremation incorrect, CPL does not include an alternative container, CPL does not have an effective date and cremation authorization form not signed by a funeral director

Action: \$1,500 Civil Penalty

Complaint No. 2009005151

Violation: Statement of Funeral Goods and Services Selected does not contain individual items comprising a funeral package and the General Price List does not specify description of casket for a direct cremation

Action: \$250 Civil Penalty

Complaint No. 2009005081

Violation: Price range on the General Price List inconsistent with prices on the Outer Burial Container Price List and failure to affix a permanent identification device on casketed human remains

Action: \$250 Civil Penalty

Complaint No. 2009005241

Violation: Failure to list reason for embalming on numerous Statements of Funeral Goods and Services Selected and failure to maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses

Action: \$250 Civil Penalty

Complaint No. 2009008451

Violation: General Price List does not contain all required disclosures, price charged for outer burial container higher than the price listed on the Outer Burial Container Price List and packages listed on wall of selection room without itemization

Action: \$250 Civil Penalty

Complaint No. 2009010011

Violation: The price range for immediate burial on the General Price List (GPL) inconsistent with casket prices listed on the Casket Price List (CPL), the price range for direct cremation on the GPL inconsistent with prices on CPL, prices on the Outer Burial Container Price List inconsistent with the selection notebook used by establishment, reason for embalming not listed on Statement of Funeral Goods and Services Selected and failure to maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses

Action: \$250 Civil Penalty

Complaint No. 2008012221

Violation: Conviction of a felony – Case Number 1:08-CR-51-008 in the United States District Court, Eastern District of Tennessee, on May 14, 2009

Action: \$750 Civil Penalty, 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

Complaint No. 2009003371

Violation: Unprofessional or immoral conduct – convicted of offenses in Case No. 08-CR-00144 in the Commonwealth of Kentucky, Calloway Circuit Court, on January 16, 2009

Action: \$500 Civil Penalty, 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

Complaint No. 2008022571

Violation: Caskets do not have a label in a conspicuous location on the outside with concise wording describing the material of which the receptacle is formed or manufactured and failure to maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses

Action: \$250 Civil Penalty

Complaint No. 2009005331

Violation: The current licenses of two funeral directors not available for inspection

Action: \$250 Civil Penalty

Complaint No. 2009005291

Violation: Charging for both basic services and direct cremation on the same service, resulting in an overcharge

Action: \$250 Civil Penalty

Complaint No. 2009005381

Violation: Failure to maintain a copy of the current license and latest inspection report of the crematory that the funeral home uses

Action: \$250 Civil Penalty

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

Seconded by Paula Bridges

Adopted by voice vote

OPEN COMPLAINT REPORT:

As of July 10, 2009, there were 86 open complaints.

APPROVAL OF ESTABLISHMENT LICENSES:

**ALEXANDER FUNERAL HOME
584 NASHVILLE PIKE
GALLATIN, TN**

Changes of Name and Ownership

Ownership: Corporation

Owner: Family Heritage Funeral Home, Inc., Gallatin, TN

Upon motion by Paula Bridges and seconded by Dennis Hamilton, based upon application record, the establishment was approved for licensure:

Adopted by voice vote

**FORD FUNERAL HOME
230 STONEWALL STREET
JACKSON, TN**

Change of Ownership

Ownership: Partnership

Owners: Gwendolyn Ford Taylor and Suzzane Ford Bond both of Jackson, TN

Upon motion by Eugene Williams and seconded by Wayne Hinkle, based upon application record, the establishment was approved for licensure:

Adopted by voice vote

**WILLIAMS FUNERAL HOME OF GLEASON
429 SOUTH CEDAR STREET
GLEASON, TN**

Changes of Name and Ownership

Ownership: Partnership

Owners: Christopher J. Williams and Patricia A. Williams both of Greenfield, TN

Upon motion by Dennis Hamilton and seconded by Paula Bridges, based upon application record, the establishment was approved for licensure:

Adopted by voice vote

President David Murphy did not vote concerning the application of Williams Funeral Home of Gleason.

After approval of establishment licenses, Assistant General Counsel Chick asked if the Board would grant a short recess to allow him time to get the legal report and he would present it if the Board desired. A ten (10) minute recess was granted.

**LEGAL REPORT:
ADRIAN CHICK, ASSISTANT GENERAL COUNSEL**

1. Case No.: L09-FUN-RBS-2009001281

This complaint was filed by a consumer and alleges that the funeral home lied about the time of death, refused to let her see her father's body the day after he died, refused to refund money for services not rendered and substituted inferior services (Respondent removed body with van instead of hearse).

Response: The Respondent filed a response denying the allegations as alleged in the complaint. According to Respondent, the son of the decedent had requested that he be notified before allowing anyone else to view the body, and that the funeral home staff was therefore reluctant to allow the complainant to view the body until the following day.

Complaint History: No related complaints.

Recommendation: Dismiss due to lack of evidence to support alleged violation. Following a June 5, 2009 telephone conversation with the Complainant, Legal agreed to postpone presentment of this complaint until the July meeting so that the complainant could provide Legal with supporting documentation. No such documentation has been received.

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

Seconded by Wayne Hinkle

Adopted by voice vote

2. Case No.: L09-FUN-RBS-2009008441

An inspection on March 27, 2009 revealed a dressed and casketed body without a permanent identification device.

Response: The body in question was transported to a third party location for embalming. The Respondent provided a garment bag to the embalmer which contained a completed identification device to be attached to the body. Apparently the embalmer did not attach the tag, but the Respondent understands that the responsibility lies with the Respondent.

Complaint History: One old complaint, unrelated. Two still open.

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 Wayne Hinkle

Adopted by voice vote

3. Case No.: L09-FUN-RBS-2009009821

4. Case No.: L09-FUN-RBS-2009009861

An inspection on January 13, 2009 revealed that the license of the establishment's manager was expired from July 1, 2008 to September 7, 2008. The establishment continued operation during this time period, conducting approximately forty-six (46) services.

Response: The Respondent states that the expiration of the license was an oversight, and the Respondent has implemented a system to alert him to upcoming expiration dates and apologizes to the Board for the oversight.

Complaint History: None directly related.

Recommendation: Consent Order assessing civil penalty of \$4,600 against the establishment for conducting 46 services without a licensed manager, Letter of Warning against the Respondent funeral director, and authorization for hearing.

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

Seconded by Eugene Williams

Adopted by voice vote

5. Case No.: L09-FUN-RBS-2009009881

An inspection was conducted on January 13, 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 two (2) line seven (7) 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 of remains. The OBCPL has been updated to include all containers offered.

Complaint History: Some prior complaints but none directly related.

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

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

Seconded by Paula Bridges

Adopted by voice vote

6. Case No.: L09-FUN-RBS-2009009931

An inspection was conducted on January 13, 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 62-5-306(d) - License of a funeral director not available at time of inspection.
- TCA 62-5-308(d) - License of an embalmer not available at time of inspection.

- FTC Rules - Price for basic services of funeral director and staff is provided on page six (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 two (2) line seven (7) 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 contest that the required funeral director and embalmer licenses were not present but only states that they are now available for review. 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: Similar violations were found in Complaint No. 200705631 (closed with consent order of \$300 on 08/16/2007).

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

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

Seconded by Paula Bridges

Adopted by voice vote

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 11:20 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director