

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

November 9, 2010

**Before the State of Tennessee Board of Funeral Directors and Embalmers
In the Matter of:
Alfred Thomas Tacker and Bartlett Funeral Home, Inc.
Docket Number 12.21-105387A
Presiding: Honorable Marion Wall**

The State was represented by Assistant General Counsel Adrian Chick. The respondents, Alfred Thomas Tacker and Bartlett Funeral Home, Inc., were represented by Thomas J. Long, Esq., and Cheryl P. Long, Esq.

Board members, prosecutor for the State, defense attorneys and witnesses were given their charge by Judge Marion Wall. After the case was presented and closing arguments were completed, Judge Wall instructed the Board of their responsibilities and the Board adopted the following:

Findings of Fact:

- A. A motion was made by Tony Hysmith and seconded by Paula Bridges that a written contract signed by both parties was not honored as written.

Roll Call Vote:	Paula Bridges	Yes
	Dennis Hamilton	No
	Wayne Hinkle	No
	Tony Hysmith	Yes
	Clark McKinney	No
	Eugene Williams	Yes

The motion failed.

- B. A motion was made by Clark McKinney and seconded by Wayne Hinkle that the Allegations of Facts include Numbers 1-6 and Number 8 found in the Notice of Hearing Charges be adopted as Findings of Fact. Allegation Number 7 also should be adopted after being changed to read "Respondent provided an Outer Burial Container after casket placed in grave and damaged by backfill due to complainant saying she changed her mind and did not want an Outer Burial Container."

Roll call vote:	Paula Bridges	No
	Dennis Hamilton	Yes
	Wayne Hinkle	Yes
	Tony Hysmith	No

Clark McKinney	Yes
Eugene Williams	Yes

Adopted by roll call vote.

- C. A motion was made by Tony Hysmith and seconded by Wayne Hinkle that the Findings of Fact show that the Statement of Funeral Goods and Services Selected does not correspond with the respondent's General Price List.

Roll Call Vote: All board members voted "Yes".

Conclusions of Law:

A motion was made by Clark McKinney to adopt the Conclusions of Law as they appeared in the Notice of Hearing Charges except for number 8. The word immoral is to be removed.

Seconded by Wayne Hinkle

Roll Call Vote: All board members voted "Yes".

Board Action:

A motion was made by Clark McKinney to assess both respondents, Alfred Thomas Tacker and Bartlett Funeral Home, Inc., a civil penalty in the amount of five hundred dollars (\$500.00) each and to assess the total cost of the hearing to the respondents.

Seconded by Wayne Hinkle

Roll Call Vote: All board members voted "Yes".

Policy Statement:

A motion was made by Clark McKinney to adopt the following as a Policy Statement, "It is the policy of the Tennessee Board of Funeral Directors & Embalmers to protect the public from negligence, incompetence and deceptive practices."

Seconded by Wayne Hinkle

Roll Call Vote: All board members voted "Yes".

The formal hearing was concluded at this point.

President Dennis Hamilton called the regular board meeting to order at 8:10 P.M. in the Second Floor Conference Room of the Andrew Johnson Tower, Nashville, Tennessee.

Board members present were Dennis Hamilton, President; Eugene Williams, Vice President; Paula Bridges, Wayne Hinkle, Clark McKinney and Tony Hysmith. Board member absent: Jill Horner.

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

ADOPTION OF AGENDA:

A motion was made by Tony Hysmith to approve the agenda as printed.

Seconded by Clark McKinney

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Wayne Hinkle to approve the minutes of the October 12, 2010 Board Meeting.

Seconded by Clark McKinney

Adopted by voice vote

APPROVAL OF INDIVIDUAL LICENSES:

**Casey Allan Stephens
Franklin, TN**

Funeral Director/Embalmer

Upon motion by Eugene Williams and seconded by Clark McKinney, based upon application record, this individual was approved for licensure:

Adopted by voice vote

**Jackson Nave Hunter
Watertown, TN**

Funeral Director

Upon motion by Clark McKinney and seconded by Eugene Williams, based upon application record, this individual was approved for licensure:

Adopted by voice vote

At 8:40 P.M., President Dennis Hamilton suggested that the Board recess until the next day.

A motion was made by Tony Hysmith to recess the meeting until 8:30 A.M. on Wednesday November 10, 2010.

Seconded by Wayne Hinkle

Adopted by voice vote

November 10, 2010

President Dennis Hamilton called the meeting back to order at 8:30 A.M. Wednesday November 10, 2010 in the Third Floor Conference Room of the Andrew Johnson Tower.

The same board members and staff were present as on the preceding day.

Assistant General Counsel Adrian Chick presented the Board with an Agreed Order regarding High Point Funeral Chapel, Mid-South Mortuary Service, and Herbert Shane McElveen, Funeral Director.

Thomas B. Russell, Esq., of Gullett Sanford Robinson & Martin PLLC in Nashville, Tennessee, appeared before the Board representing High Point Funeral Chapel, Mid-South Mortuary Service, and Hebert Shane McElveen.

Dennis Hamilton recused himself from the discussions and proceedings of this Agreed Order and turned the Chair over to Vice President Eugene Williams.

After review and discussion, Clark McKinney made a motion to accept the Agreed Order against High Point Funeral Chapel, Mid-South Mortuary Service and Herbert Shane McElveen, Funeral Director.

Seconded by Tony Hysmith

Adopted by voice vote

Assistant General Counsel Chick then presented the Board with an Agreed Order regarding Margie Beasley White, Funeral Director.

After review and discussion, Clark McKinney made a motion to accept the Agreed Order against Margie Beasley White, Funeral Director.

Seconded by Wayne Hinkle

Adopted by voice vote

Vice President Williams turned the Chair back over to President Hamilton.

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

1. Case No.: L10-FUN-RBS-2010008611
2. Case No.: L10-FUN-RBS-2010026061

The complainant states that they were charged \$2,197.00 for a service with the market value of \$1,500.00. Also, complainant states they did not receive an itemized list of charges. Complainant states that they did not receive the cremains of the deceased until November of 2009, even though the decedent passed away in April. Complainant states that they paid for an urn and got a plastic jewelry box. Finally, complainant believes the cremains of the deceased were switched with someone else's cremains because the name on the box was different than their loved one. During an examination, the field representative found the latest inspection report and license for the crematory used was not available; one of the files lacked a cremation authorization form; the signage on funeral vans reads differently than the name given on the license; cremains were co-mingled in the "arrangement room"; the remains of one body failed to have an identification device attached prior to being cremated; and there were discrepancies with the Statement of Funeral Goods and Services Selected.

Response: The funeral director initially stated that these findings were unsubstantiated. The director has since admitted that they gave the wrong remains to the wrong families.

Complaint History: Several previous complaints.

Recommendation: Consent Order with \$2000 civil penalty and suspend funeral director's license for six (6) months. Authorization for a hearing.

Eugene Williams recused himself from the discussions and proceedings of these complaints.

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

Seconded by Tony Hysmith

Adopted by voice vote

3. Case No.: L10-FUN-RBS-2010021201

During a routine inspection, a field representative found:

- The latest crematory inspection report and license were not available.

- The establishment did not have any identification devices available.
- The ventilation fan in the preparation room was not working.
- Some records were not available for inspection.
- The establishment's registration had expired and was not renewed.
- On a Statement of Funeral Goods and Services Selected, the prices were not itemized.
- Eleven (11) caskets on the Casket Price List were not in the establishment's catalogue.
- Prices on the Casket Price List and General Price List were inconsistent.

Response: No response received.

Complaint History: One (1) case is closed and related.

Recommendation: Establishment has closed. Close the file.

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

Seconded by Wayne Hinkle

Adopted by voice vote

4. Case No.: L10-FUN-RBS-2010021011

Complainant states that their company has been attempting to collect on caskets delivered to the establishment. The establishment owes \$27,713.09 which is past due. Additionally, the establishment issued a bad check to the company in the amount of \$6,158.88. The complainant has sent mail to the establishment letting them know of the past due balance, and phone calls have gone unreturned.

Response: No response has been received at this time.

Complaint History: One (1) is closed and related; One (1) remains open and unrelated.

Recommendation: Consent Order with \$1000 civil penalty for not paying bills, \$1000 civil penalty for writing a bad check, and \$250 for not responding. Authorization for a hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

5. Case No.: L10-FUN-RBS-2010026021

The complainant took their mother to the respondent's funeral home. Complainant signed a contract for services; however, complainant decided to take the deceased to another establishment to render services. When complainant asked that the deceased be released to the second establishment, the respondent's funeral director refused to timely release the body without compensation first.

Response: Respondent vehemently denies any wrongdoing. Respondent states that their policy is to: 1) Ask that a written release be presented and signed by a relative of the nearest degree, 2) Notify requestor of charges accrued, if any; and 3) Schedule a time for the removal. Respondent believes its funeral director properly followed this policy.

Complaint History: Seven (7) closed complaints with one (1) being related. Two (2) open complaints and none are related.

Recommendation: A consent order has been offered for \$1000. Authorization for a hearing.

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

Seconded by Eugene Williams

Adopted by voice vote

6. Case No.: L10-FUN-RBS-2010021491

Establishment changed from a sole proprietorship to a corporation on August 26, 2004, and has not submitted an application for a change of ownership.

Response: No response received, even though respondent asked for, and was granted an extra thirty (30) days.

Complaint History: Seven (7) closed complaints with none related. Two (2) remain open with none related.

Recommendation: Consent Order with \$500 civil penalty and authorization for a hearing.

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

Seconded by Eugene Williams

Adopted by voice vote

7. Case No.: L10-FUN-RBS-2010021211

During a routine inspection, the field representative found leaks and water damage in the preparation room and arrangement office. Additionally, there were errors on the Statement of Funeral Goods and Services Selected, Casket Price List, and General Price List:

On the Statements of Funeral Goods and Services Selected, two (2) did not have reason for embalming; on seven (7) contracts, the description of merchandise sold was missing and charges must be only for items selected by consumer; on the Casket Price List, nine (9) caskets used by the establishment were not in the catalogue; and on the General Price List, prices stated were incorrect.

Response: Respondent claims that the leaks were caused by the flood which occurred the month prior to the inspection. Additionally, they claim the issues related to the SFGSS, CPL, and GPL were written up in 2009.

Complaint History: Two (2) complaints are closed with similar violations. Two (2) are open with FTC violations.

Recommendation: Consent Order with \$750 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

8. Case No.: L10-FUN-RBS-2010021741

The complainant is concerned that the respondent is disseminating a misleading video to the public with people that the public may consider to be licensed funeral directors who are actually non-licensed.

Response: Respondent states that this video portrays people in a number of roles and none are specific to the role of a funeral director or funeral home staff member. The generic nature and absence of individual names and titles was intended to prevent the public from being misled as to any one person's specific responsibilities at the funeral home.

Complaint History: Two (2) complaints closed with no relation, one (1) is open and related.

Recommendation: Close.

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

Seconded by Eugene Williams

Adopted by voice vote

9. Case No.: L10-FUN-RBS-2010021631

During a routine inspection, the field representative found that the funeral director's license was not available for inspection, and the representative found errors in the General Price List, the Casket Price List, and Statement of Funeral Goods and Services Selected:

- Consumer's right of selection required disclosure was incomplete.
- Contracts must state reason for embalming.
- Alternative container price for direct cremation was incorrect.
- Direct cremation with cardboard box was incorrect.
- Immediate burial with alternative container price incorrect.
- Immediate burial with cloth-covered casket price incorrect.
- Four (4) caskets in casket selection room available for sale were not listed on the Casket Price List.

Response: Respondent sent a letter with a revised General Price List, a revised Casket Price List, and noted that the current funeral director's license was available for inspection.

Complaint History: Six (6) closed complaints, three (3) have related violations, three (3) are not related.

Recommendation: Consent Order with \$1000 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

10. Case No.: L10-FUN-RBS-2010021531

During a routine inspection, the field representative found errors relating to the General Price List:

- Immediate burial on General Price List with 20 gauge casket incorrect when compared to same item on Casket Price List.
- Immediate burial price range on General Price List is incorrect.

- Upper-end price for caskets offered for sale incorrect when compared to prices of caskets on Casket Price List.

Also, field representative found that in an advertisement, the funeral home failed to include itemized price listing for the sale of merchandise or services at a specific price:

- The establishment displayed three (3) types of signage advertising a funeral package from \$1,895. Signs were displayed on front and sides of establishment.

Public areas not kept in good repair:

- The establishment had no electricity in the building. Owner stated that service would be restored pending payment of electric bill.

Response: Respondent apologizes for the errors and states that these were mere oversights of a novice. Errors have been corrected on the price list, they are no longer offering the package that appeared on the signs, and the establishment has electricity.

Complaint History: None

Recommendation: Consent Order with \$1500 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation and verification that the signs had been removed.

Seconded by Wayne Hinkle

Adopted by voice vote

11. Case No.: L10-FUN-RBS-2010021511

During a routine inspection, the field representative found:

- The manager served as a funeral director without a valid license, and the director oversaw thirteen (13) services during this time.
- The establishment listed one casket on the General Price List and not on the Casket Price List.
- The Casket Price List did not include the name of the business as required by rule.
- The Casket Price List must include effective date as required by rule.

Response: No response was received from the respondent.

Complaint History: One (1) closed not related; one (1) open not related.

Recommendation: Consent Order with \$1500 civil penalty plus an additional \$250 for no response and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation and verify the current funeral director license of the individual serving as the establishment manager.

Seconded by Paula Bridges

Adopted by voice vote

12. Case No.: L10-FUN-RBS-2010022341

During routine inspection, a field representative found:

- General Price List lacked correct address and phone number.
- General Price List lacked itemized pricing for equipment and staff for graveside service.
- Limousine was listed as N/C in violation of the Funeral Rule;
- Casket price incorrect on General Price List as compared to Casket Price List.
- Outer burial container price range incorrect compared to Outer Burial Container Price List.
- Immediate Burial price range incorrect.
- Immediate Burial with minimum casket price incorrect compared to Casket Price List.
- Direct Cremation price wrong on General Price List.
- Direct Cremation with alternative container wrong compared to Casket Price List.
- The Casket Price List failed to include caption "Casket Price List" as required by the Funeral Rule.
- Casket Price List did not include name of business and effective date.
- No embalmer's license available for inspection.
- Current license and inspection report for crematory used not available for inspection

Response: No response received.

Complaint History: Four (4) closed complaints with three (3) having FTC and/or TCA violations. Two (2) open complaints with one (1) being related.

Recommendation: Consent Order with \$750 civil penalty plus an additional \$250 for no response and authorization for a hearing.

A motion was made by Clark McKinney to increase the civil penalty to \$1000 plus an additional \$250 for no response and authorization for a hearing and the respondent submit proof of compliance.

Seconded by Wayne Hinkle

Adopted by voice vote

13. Case No.: L10-FUN-RBS-2010022591

Complainant claims he was not allowed to work forty (40) hours per week in order to fulfill his apprenticeship requirements and funeral home manager forged clients' names to documents.

Response: Respondent stated that the Complainant is lying and that he concocted this story because he no longer works for them. They also claim the complainant is unstable.

Complaint History: None

Recommendation: Close

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

Seconded by Eugene Williams

Adopted by voice vote

14. Case No.: L10-FUN-RBS-2010024001

The complainant saw an advertisement in the local newspaper advertising "complete service with a metal casket included for \$1,995.00" and believed the funeral home's advertising price was improper because it lacked an itemized list.

Response: The respondent believes more information must be provided before they can properly respond.

Complaint History: Six (6) closed complaints not related, one (1) open complaint not related.

Recommendation: Consent Order with \$500 civil penalty and authorization for a hearing.

A motion was made by Paula Bridges to dismiss. The motion died due to lack of a second.

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

Seconded by Tony Hysmith

Adopted by voice vote

15. Case No.: L10-FUN-RBS-2010025081

Complainant claims that improper information was given to the funeral home regarding the death certificate. The complainant states that they have provided the information requested by the funeral home to make the proper changes, but the funeral home keeps asking for different documents and keeps “changing the rules in the middle of the game.”

Response: Respondent states that they were told by the decedent’s mother that he was divorced and had a new fiancé. The funeral home filled in this information only to find out that the decedent was still married at the time of his death and had been for thirty (30) years. Upon learning of the decedent’s marital status, the funeral home contacted the health department to make these changes. The health department informed the funeral home that such changes could only be made upon the presentation of a court order stating that the decedent was married. The respondent then states that they attempted to contact the decedent’s wife to inform her of this new information / requirement.

Complaint History: Four (4) closed complaints, none related.

Recommendation: Dismiss.

A motion was made by Tony Hysmith to accept Counsel’s recommendation.

Seconded by Paula Bridges

Adopted by voice vote

16. Case No.: L10-FUN-RBS-2010026531

An employee of the Medical Examiner’s Office complained that the respondent admitted to the Medical Examiner’s Office that they were intentionally delaying filing the death certificate of the decedent because they did not agree with the Medical Examiner’s determination regarding matter of death.

Response: The respondent states that she only held on to the death certificate because the family was so upset with law enforcement officers determining that the decedent had died due to a suicide. The parents met with the officers and the respondent states that officers were going to change the cause of death from suicide to homicide. The respondent states that they are well aware of the rules that govern those in the funeral business, and they would have never held on to the death certificate this long without good reason. Furthermore, the respondent

states that they are not a medical doctor; therefore, what reason would they have to disagree with the findings of the Medical Examiner's Office.

Complaint History: None

Recommendation: Consent Order with \$1000 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to issue a Consent Order with a \$500 civil penalty and authorization for a hearing.

Seconded by Clark McKinney

Adopted by voice vote

17. Case No.: L10-FUN-RBS-2010027071

18. Case No.: L10-FUN-RBS-2010027081

The complainant claims that the respondent acted unprofessionally during her time there. There was a foul odor in the building and the respondent constantly answered the phone during their conversation. Additionally, the respondent overcharged for their services. When the complainant changed funeral homes, the respondent sent a bill for \$1,850.00:

- \$300.00 for Transferring the remains
- \$850.00 Funeral Director & Staff
- \$650.00 for Embalming
- \$250.00 for Other Preparation (Restoration Fee)

This totaled \$2,050.00, but the complainant received a \$200.00 credit, making it \$1,850.00.

During the investigation into the complaint, it was discovered that respondent was operating on an invalid license.

Response: The respondent stated that there did not appear to be any issues when they spoke with the complainant initially. Respondent stated that the preparation room is not even connected to the building where the meeting took place; however, respondent stated that the owner's wife may have been preparing lunch in another part of the funeral home. Respondent states that the complainant previously used the services of a second funeral home where they had the decedent transferred. Owner of the subsequent funeral home called the respondent and stated that they were overcharging this family for services.

Complaint History: None

Recommendation: Consent Orders with a \$1000 civil penalty against each respondent and authorization for a hearing on each case.

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

Seconded by Eugene Williams

Adopted by voice vote

19. Case No.: L10-FUN-RBS-2010021461

On February 6, 2008, a citation was presented to the respondent, informing them that their sign did not meet the standards appropriate for advertising. During a follow-up visit on June 12, 2008, the field representative found that the sign had been altered but still not completely in compliance. While the respondent modified the sign to remove "cremations", they failed to remove "funerals" from the sign. This respondent is not licensed as a funeral establishment.

Response: The Respondent sent photos to verify that "cremations and funerals" has now been removed from the sign.

Complaint History: None

Recommendation: Consent Order with \$750 civil penalty and authorization for a hearing.

A motion was made by Wayne Hinkle to issue a Letter of Warning.

Seconded by Paula Bridges

Adopted by voice vote

20. Case No.: L09-FUN-RBS-2009012641

During a routine inspection, the field representative found:

- Merchandise chosen was missing from the Statement of Goods and Services Selected on twelve (12) contracts.
- The price was inconsistent on the General Price List as relates to direct cremations with funeral ceremony as compared to the basic services of funeral director and staff.
- On the Casket Price List, under immediate burials, the high-end range on the Casket Price List is inconsistent with the General Price List.
- On the Casket Price List, under immediate burial with unfinished wood box, the price listed on the Casket Price List is inconsistent with the General Price List.

- On the Casket Price List, under immediate burials with fiberboard box, price listed on the Casket Price List inconsistent with General Price List.
- The price of one (1) casket in the selection room is inconsistent with the Casket Price List.

Response: No response received.

Complaint History: Numerous

Recommendation: Consent Order with \$1000 civil penalty plus an additional \$250 for no response and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

21. Case No.: L10-FUN-RBS-2010003781

Complainant states that they signed to have father's remains cremated. Upon reviewing the release form, Complainant noticed a section checked for jewelry. Complainant asked funeral director about having jewelry (amethyst ring and gold crucifix) returned to them. Complainant was told they would receive the jewelry along with the cremated remains. When Complainant went to retrieve the cremains, they were told there was no jewelry with the body. Complainant states they spoke with Medical Examiner's Office and the individual who transported the body to the funeral home. Both parties informed the Complainant that jewelry was present.

Response: Respondent states that no jewelry was received with the body and no document accompanied the body informing the funeral home of any jewelry being present.

Complaint History: Five (5) closed complaints not related. One (1) open complaint not related.

Recommendation: Request for Investigation.

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

Seconded by Paula Bridges

Adopted by voice vote

22. Case No.: L10-FUN-RBS-2010004651

Complainant states that the respondent has opened a business in a store front and offers services as a full service funeral home. Complainant believes they do not have the proper facilities to provide these services.

Response: Respondent states that they are a full service funeral home. Their advertisement states that they can provide a church service, chapel service, or graveside funeral service anywhere in Tennessee. Respondent states that while they do not have such facilities in their building, they merely advertise that they can provide the services anywhere in the state that the family so wishes.

Complaint History: One (1) complaint closed somewhat related.

Recommendation: Dismiss

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

Seconded by Paula Bridges

Adopted by voice vote

23. Case No.: L10-FUN-RBS-2010027201

Individual falsely answered Question No. 1 on the Application for Apprenticeship Registration regarding, "Have you ever been convicted of, or entered a plea of guilty or nolo contendere or no to either a felony or a misdemeanor involving moral turpitude?"

Response: The respondent stated that he believed the question was in regards to crimes involving sexual or depravity crimes. The respondent pled guilty and received a four (4) year sentence. The respondent states that he is now forty-three (43) years of age and was eighteen (18) when the crimes occurred; however, he has not been in any trouble since then.

Complaint History: None

Recommendation: Voluntary revocation of apprenticeship and authorization for a hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

24. Case No.: L10-FUN-RBS-2010027831

It was discovered that the respondent was working without a valid license. The funeral director license expired on July 1, 2010, and was not renewed until July 22, 2010. Respondent is the manager of record and was the funeral director in charge for at least one (1) service on July 8, 2010, during the time of expiration.

Response: Respondent believed that when they sent the checks for license renewal on June 28, 2010, that they would be received by the July 1, 2010 deadline. Respondent received notice by fax on July 19, 2010, and follow up letters were received on July 20, 2010 that the license renewal was processed on July 6, 2010. The family of a decedent made arrangements with the respondent on July 8, 2010. The establishment was not aware that license renewal fees had not been received by this time. When the respondent learned of the status, they sent the late fee next day on July 20, 2010.

Complaint History: None

Recommendation: Consent Order with \$250 civil penalty and authorization for a hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

25. Case No.: L10-FUN-RBS-2010027801

During a routine inspection, a field representative found:

- The licenses of two (2) funeral directors had expired.
- One of the two directors had signed off on a Statement of Funeral Goods and Services Selected during the time his license was expired.
- Based upon one of these expirations, the funeral establishment was operating without a properly licensed manager.
- The establishment knowingly allowed an individual without a valid license to engage in the funeral home business.

Response: Respondent believed that when they sent the checks for license renewal on June 28, 2010, that they would be received by the July 1, 2010 deadline. Respondent received notice by fax on July 19, 2010, and follow up letters were received on July 20, 2010, that the license renewal was processed on July 6, 2010. The family of a decedent made arrangements with the respondent on July 8, 2010. The establishment was not aware that license renewal fees had not been received by this time. When the respondent learned of the status, they sent their late fee next day on July 20, 2010.

Complaint History: Two (2) closed with one (1) having TCA violations. One (1) remains open with TCA violations.

Recommendation: Consent Order with \$250 civil penalty and authorization for a hearing.

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

Seconded by Tony Hysmith

Adopted by voice vote

26. Case No.: L10-FUN-RBS-2010030091

Complainant states she was not given a Statement of Funeral Goods and Services Selected until after the burial. Complainant believes the funeral director lied and deceived her, post-dated documents, stole a family member's medication, and embezzled a majority of her son's death benefits policy.

Response: The respondent states that the complainant is not upset with the services provided but the amount of money she was charged. Respondent states that complainant saw advertisement in newspaper for funeral services with another establishment that were less expensive than the respondent provided, and complainant believes the respondent should not charge greater than that advertisement. Respondent states that they had numerous conversations with the complainant regarding the services being provided and their prices. Similarly, the respondent provided the complainant with a packet to explain the services available at the funeral home.

Complaint History: One (1) complaint is open but not related.

Recommendation: Consent Order with \$2000 civil penalty and authorization for a hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

27. Case No.: L10-FUN-RBS-2010030471

28. Case No.: L10-FUN-RBS-2010030461

During a routine inspection, the field representative found that a former apprentice was engaged in the direction of funerals while lacking a funeral director license. The former apprentice oversaw the services held at the church,

and then oversaw the burial shortly thereafter. During these services, the respondent wore a name tag identifying them as an employee / funeral director of the establishment. When the field representative confronted the individual, they admitted to not being properly licensed and stated, "You caught me." This individual admitted to the field representative that the owner of the establishment was aware that they were unlicensed; however, they took the risk due to the expense of hiring a licensed employee. No licensed funeral director was present at either the church or committal service.

Response: Respondent states that they were fully aware that each service was required to have a licensed funeral director. Respondent states that they accept full responsibility due to the fact that the owner was not present due to unexpected illness. It was too late to call any other licensed director. Respondent does not recall telling field representative that the establishment took a chance with an unlicensed funeral director due to the cost of hiring a licensed director.

Complaint History: One (1) preneed complaint, not related.

Recommendation: Consent Orders assessing a \$1000 civil penalty to each respondent and authorization for a hearing in each case.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

29. Case No.: L10-FUN-RBS-2010010191

Unprofessional Conduct – The respondent pled guilty to Aggravated Statutory Rape - a violation of T.C.A. § 39-13-506(c), a Class D felony.

Response: No response at this time.

Complaint History: None

Recommendation: Consent Order with voluntary revocation of licenses as a funeral director and embalmer and authorization for a hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

30. Case No.: L10-FUN-RBS-2010004351

Funeral home owner states that services for a customer cost \$9,146.13. The establishment received a total of \$11,484.61 from the decedent's insurance carriers. This made an excess payment to the funeral home an amount of \$2,338.00. Funeral home owner alleges that the respondent diverted \$2,338.00 to his mother by writing her name in as the beneficiary of this money. When the real beneficiary called inquiring as to the status of their refund, the funeral home owner realized what had occurred. The funeral home owner confronted the employee about the money, and he offered to give it back after the police were involved. All charges have been dropped against the respondent.

Response: Respondent states that he asked the funeral home owner for a \$2,500.00 loan to help his mother out, which he asserts would be paid back within the week. Respondent states that he was happy just to receive the \$2,338.00, and he was surprised when the police were called. Respondent states that grandson of funeral home owner does not like him and set him up.

Complaint History: One (1) closed complaint that is related.

Recommendation: Consent Order with \$1000 civil penalty, suspension of licenses as a funeral director and embalmer for one (1) year and authorization for a hearing.

Eugene Williams recused himself from the discussions and proceedings of this complaint.

A motion was made by Clark McKinney to accept Counsel's recommendation and stipulate that the licensee must appear before the Board in order for license to be reinstated after completion of the suspension period.

Seconded by Wayne Hinkle

Adopted by voice vote

31. Case No.: L10-FUN-RBS-2010030501

During a routine inspection, the field representative found that a funeral director was practicing without a valid license. The funeral director was in possession of an expired license in excess of sixty (60) days during which time she signed off on one (1) Statement of Funeral Goods and Services Selected.

Response: The respondent personally remitted the fee for renewal of her director license on June 30, 2010. However, the respondent did not meet her required continuing education hours. The respondent was under the impression that she could still practice as a licensed funeral director so long as she

completed this required education within sixty (60) days of June 30, 2010. On or about August 30, 2010, the respondent personally submitted proof of all outstanding continuing education hours by certificate and remitted the associated late penalty fee.

Complaint History: None

Recommendation: Consent Order and \$500 civil penalty and authorization for a hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

32. Case No.: L10-FUN-RBS-2010030481

During a routine inspection, a field representative found that the funeral establishment license had expired, and there was damage to the floor in the chapel.

Response: Respondent states that they were never sent a renewal notice and that they are receiving estimates to make repairs to the floor of the chapel.

Complaint History: One (1) complaint closed and not related.

Recommendation: Letter of Warning – owner of funeral home passed away subsequent to filing of the complaint.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Eugene Williams

Adopted by voice vote

33. Case No.: L10-FUN-RBS-2010028531

During a routine inspection, a field representative found that crematory was filling out the paperwork, but they were not sending the executed forms back to the health department as should be done.

Response: Respondent states that they have taken steps by enforcing new policies to remedy this issue.

Complaint History: One (1) closed complaint with T.C.A. violations.

Recommendation: Letter of Warning.

A motion was made by Tony Hysmith to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

ADMINISTRATIVE REPORTS:

ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
OCTOBER 12, 2010 – NOVEMBER 8, 2010**

Individuals

Nicklaus Stephen Canale Memphis, TN	Funeral Director
Willie Taylor Mayberry Lewisburg, TN	Funeral Director
Loyd Taylor Shelton, Jr. Rossville, TN	Funeral Director
Thomas Richard Stanifer Stanton, TN	Funeral Director
Telena Carol Vinson Huntingdon, TN	Funeral Director
Amanda Anglin Zellers Dover, TN	Funeral Director
Jason R. Tomlin, Sr. Spring Hill, TN	Funeral Director Reapplication
Brian Keith Myers McMinnville, TN	Funeral Director/Embalmer
Amanda Leeann Reeves Mount Juliet, TN	Funeral Director/Embalmer
Gina Marie Dolen	Funeral Director/Embalmer

Kingsport, TN

Reapplication

John Robert Thompson
Horn Lake, MS

Funeral Director/Embalmer
Reciprocity

CLOSED ESTABLISHMENT REPORT:

No establishments have reported closing since the last board meeting.

DISCIPLINARY ACTION REPORT:

The Board has previously authorized each Consent Order and Civil Penalty. The Consent/Agreed Orders have been signed and unless otherwise noted, the Civil Penalty has been paid by the Respondent. The Executive Director requests the Board's acceptance of the following Consent/Agreed Orders:

Complaint No. 2010017111

Violation: Unprofessional conduct – placement of the viscera in an unidentified box instead of placing it back into the body cavity following embalming demonstrates conduct that is below the standard of care normally employed by licensees in this state

Action: \$1000 Civil Penalty

Complaint No. 2010018791

Violation: Failure to notify the Board of change in ownership within ten days, failure to change name of establishment on price list and failure to respond to a complaint

Action: \$750 Civil Penalty

Complaint No. 2010018761

Violation: Failure to properly complete necessary information required on permanent identification device and errors on Casket Price List and Statement of Funeral Goods and Services Selected

Action: \$250 Civil Penalty

Complaint No. 2010017071

Violation: Unprofessional conduct – placement of the viscera in an unidentified box instead of placing it back into the body cavity following embalming demonstrates conduct that is below the standard of care normally employed by licensees in this state

Action: \$1000 Civil Penalty

Complaint No. 2010018881

Violation: Failure of funeral director to sign authorization for cremation form and lack of reason for embalming on multiple Statements of Funeral Goods and Services Selected
Action: \$250 Civil Penalty

Complaint No. 2010018771

Violation: Multiple aspects of the establishment's contract and price lists do not comply with the Funeral Rule
Action: \$500 Civil Penalty

Complaint No. 2010018871

Violation: Multiple aspects of the establishment's contract and price lists do not comply with the Funeral Rule
Action: \$250 Civil Penalty

OPEN COMPLAINT REPORT:

As of November 5, 2010, there were 164 open complaints.

ADJOURN:

A motion was made by Paula Bridges to adjourn.

Seconded by Eugene Williams

Adopted by voice vote

There being no further business, the meeting was adjourned by President Dennis Hamilton at 10:35 A.M. on November 10, 2010.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director