

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

NOVEMBER 8, 2011

President Eugene Williams called the meeting to order at 10:28 A.M. in the Second Floor Conference Room of the Andrew Johnson Tower, Nashville, Tennessee. Due to a fire drill at Andrew Johnson Tower, the starting time was delayed twenty eight minutes.

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

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

ADOPTION OF AGENDA:

A motion was made by Clark McKinney to approve the agenda as printed.

Seconded by Paula Bridges

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Tony Hysmith to approve the minutes of the October 11, 2011 Board Meeting.

Seconded by W. T. Patterson

Adopted by voice vote

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

1. Case No.: L11-FUN-RBS-2011019241

Complaint:

- The Respondent placed an advertisement in a local newspaper advertising cremations for \$1,995.00.

- The Respondent stated, "Simple cremations starting at \$1,995.00 includes minimum service of funeral director and staff, transfer of remains to the funeral establishment, crematory fee, refrigeration and a service vehicle," but failed to include an itemized listing of each and every item, procedure or service along with the price of each item.
- The Respondent also stated that all services were handled on site; however, the Respondent has no refrigeration unit and does not have a crematory on site.

Response:

- Respondent states that they believed the law requires that each item included in the cremation price be listed in the advertisement, which was done at the bottom of the advertisement.
- Respondent states that as soon as there was some question regarding the legality of the advertisement, they immediately pulled the advertisement.
- Also, Respondent states that they did not attempt to mislead the public by stating that all services were handled on site, but they wanted to communicate through the advertisement that their services are handled by the same group of employees and that the customer's loved one will remain in the organization's care throughout the disposition process.

History:

- One (1) closed complaint, not related.

Recommendation:

- Consent Order with \$500.00 civil penalty and authorization for hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

2. Case No.: L11-FUN-RBS-2011019271

3. Case No.: L11-FUN-RBS-2011019272

Complaint:

- The Complainant states that she spoke to the Respondent shortly before burying her grandmother, and informed the Respondent that the Respondent was in possession of all of the decedent's life insurance policies.
- Complainant states that she informed the Respondent that he better check the policies and make sure there is enough to cover the services purchased as the decedent could not pay her premiums three years ago, and the Respondent was receiving reduced "paid up" policies.
- Complainant states that the Respondent assured her that he had everything he needed, and the Complainant informed the Respondent that

- she could not afford to add anything more, but he talked the Complainant into paying all she had in the bank for a few things that weren't covered by the policies which cost \$320.00.
- Complainant states that she signed all of the paperwork and made sure she received a "paid in full" receipt.
 - Complainant states that the Respondent is now harassing her by calling her cell phone, her mother's phone, and her house phone, asking for just under \$2,000.00.

Response:

- Respondent states that the pre-arranged funeral contract was not secured by any payment or assigned insurance policies.
- Respondent states that in 2007 (five years after the contract) the funeral home received two (2) insurance policies, and the funeral home was named the beneficiary of both policies as surety for the pre-arrangement.
- The face amounts were:
 - o Liberty National Life Insurance Company - \$4,609.00
 - o American General Life & Accident Insurance Company - \$2,000.00
- Following the funeral, the Respondent filed a claim against both policies; however, Liberty National only paid \$3,585.90, and American General Life only paid \$1,362.00, leaving a funeral balance of \$1,661.10.
- Respondent states that he called and then sent the Complainant a copy of the policies and informed her that there was not enough money to cover the services, and the Complainant informed the Respondent that her grandmother may have taken out loans against these policies (which was later proven to be the case based upon a review of the "explanation of benefits" provided by the insurance carriers).
- Respondent states that this is the only time he spoke with Complainant, but she called the funeral establishment to inform them that any outstanding balance would be paid by her father, and he states that he made several attempts to contact her at numbers she provided to him to inform her that she signed the contract and she was responsible for any outstanding balance.

History:

- Two (2) closed complaints, not related.

Recommendation:

- #2 – (Establishment) – Letter of Warning. By statute, the funeral establishment may not be the beneficiary of a policy. Therefore, the establishment is guilty of violating a preneed statute.
- #3 (Funeral Director) – Dismiss.

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

Seconded by Wayne Hinkle

Adopted by voice vote

4. Case No.: L11-FUN-RBS-2011013261

Complaint:

- On March 7, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- After reviewing the Respondent's files pertaining to "R. G" and "G. R.", the field representative found that the Cremation Authorization Forms failed to disclose the address and telephone number of the crematory utilized by the Respondent.
- Next, upon reviewing a random selection of customer files, the field representative found that the Statements of Funeral Goods and Services Selected (SFGSS) failed to identify the specific package sold to these purchasers.
- On the "Complete Service with Cremation" package, the Respondent lists \$4,200.00 for Professional Services of Funeral Director & Staff; however, the Respondent fails to clearly identify the 16 required items on the General Price List that are included.
 - o On the offering sheet for "Memorial Service," "Direct Cremation," and "Family Identification," the same line item is \$2,775.00 and the item "Basic Services of Funeral Director & Staff" does not appear in this listing.
- On the General Price List, the casket range of prices listed for Outer Burial Container range do not agree with the prices shown on the OBCPL.
- On "Cremation Package Offerings," the Respondent includes the item "Cremation at our crematory or crematory fee."
 - o This establishment does not have a crematory nor are they licensed to operate a crematory.
- In the Cremation Package Offering – "Family Identification" lists "Family Identification during business hours."

Response:

- Respondent states that while they only made a copy of the signatures on the Cremation Authorization Form, but not the address; they did provide a copy of the addresses to the consumers.
- Respondent states that they did not include the name of the package, but just the price, on the SFGSS. Respondent has changed their method of filling out the SFGSS.
- Respondent admits leaving out the 16 required FTC items. Batesville Casket Company produced documents with a lump sum pricing of the charges. Respondent has since contacted Batesville in order to bring the SFGSS within compliance.
- Respondent states that the high end of the casket price range on the GPL was higher than any casket offered on the CPL. Respondent states that

- this occurred because they had a bronze casket that was on the list in 2010; however, that casket was sold, and the Respondent failed to make the proper corrections to the GPL.
- As for the OBCPL, the Respondent added a Poly-Vault to the OBCPL at the request of families and failed to make the change regarding the range on the GPL.
 - As for the claim that the Respondent operates a crematory, the Respondent states that they provided customers with a generic price list and they were unaware of this language and were not purposefully misleading.
 - Respondent states that they did not charge for "Family Identification" in this particular package. This package has since been removed.

History:

- Two (2) closed complaints with TCA and FTC violations.

Recommendation:

- Consent Order with \$750.00 civil penalty and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

5. Case No.: L11-FUN-RBS-2011020121**Complaint:**

- On or about July 18, 2011, the Board received a complaint from a casket company.
- The Complainant stated that the Respondent is in arrears with a balance going back to November 2010.
- The Complainant states that in June, the Respondent verbally agreed to pay the balance in four (4) monthly installments; however, no payments have been received at this time.
- The Respondent no longer returns messages left by the Complainant.

Response:

- No response received.

Note: We received confirmation from the Complainant that this outstanding balance has been paid.

History:

- Two (2) closed complaints and one (1) open complaint, none related.

Recommendation:

- Consent Order with \$250.00 civil penalty and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

6. Case No.: L11-FUN-RBS-2011020791

Complaint:

- On June 3, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Upon reviewing the files of two (2) deceased individuals, it was discovered that the Respondent charged one thousand three hundred and fifty-five dollars (\$1,355.00) for Basic Services of Funeral Director and Staff; however, the General Price List states the same service for one thousand three hundred and five dollars (\$1,305.00) – a difference of fifty dollars (\$50.00).

Response:

- The Respondent apologizes for this mistake and states that the \$1,355.00 was actually from a previous charge for Basic Services of Funeral Director and Staff, but should have been \$1,305.00.

Note: We received documentation that the \$50.00 was refunded.

History:

- No history of prior complaints.

Recommendation:

- Letter of Warning.

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

Seconded by Paula Bridges

Adopted by voice vote

7. Case No.: L11-FUN-RBS-2011020801

Complaint:

- On June 8, 2011, a field representative conducted a routine inspection of the Respondent's establishment.

- During the inspection, it was discovered that the Respondent charged one (1) purchaser two thousand one hundred and eighty-five dollars (\$2,185.00) for Basic Services of Funeral Director and Staff. This is the same price listed on the GPL.
- The Respondent charged this same person two thousand and eighty-five dollars (\$2,085.00) for a Direct Cremation; however, the Direct Cremation is required to already include the Basic Services of Funeral Director and Staff.
- Based upon a review of the other charges on the SFGSS, the \$2,185.00 is the correct charge because there was no Direct Cremation.
 - o Additional services were provided such as embalming, visitation / viewing, and a funeral ceremony followed by a cremation.
 - o Direct Cremation should have been deleted from this SFGSS, and there should have just been a charge of \$2,185.00 for Basic Services of Funeral Director and Staff in addition to \$310.00 for Transfer of Remains to Funeral Home, \$75.00 for crematory fees, and \$25.00 for a cremation permit fee.
- Also during the inspection, it was discovered that one (1) file that contained a Cremation Authorization Form lacked the statutory required signature of a funeral director.

Response:

- SFGSS Calculation:
 - o Respondent states that another funeral director was providing services in place of the normal manager.
 - o The family of the decedent could not decide whether they wanted to cremate the decedent or not.
 - o Initially the family wanted a traditional funeral and burial; but halfway through the contract, they decided to honor the decedent's wishes and cremate following the services.
 - o The manager realized that Direct Cremation was actually less than Basic Services of Funeral Director and Staff, and the manager believed the numbers were not correct, so the manager left the charges on the SFGSS believing he was correct to do so, and the family was happy with the services provided and never complained.
- Cremation Authorization
 - o The usual manager of the establishment states that he failed to sign as Funeral Director on the Cremation Authorization Form.
 - o The manager states that he never signs as a witness on the authorizations that he did not personally witness.
 - o The decedent's mother handled the final arrangements; although, he still had two (2) children that were the legal next of kin that had little to no contact with him.
 - o The forms were faxed to the children to sign and they returned the original copy to the Respondent.

- Respondent stated that he is waiting to reimburse the family until the Board deems such action necessary.

History:

- Three (3) closed complaints, one (1) with related violations.

Recommendation:

- Consent Order with \$750.00 civil penalty and authorization for hearing; accompanied by recommendation that Respondent reimburse the family \$2,085.00.

A motion was made by W. T. Patterson to accept Counsel's recommendation.

Seconded by Paula Bridges

Adopted by voice vote

8. Case No.: L09-FUN-RBS-2009006111**Complaint:**

- Based upon a complaint from a customer, the staff reviewed the funeral home's records and found that nine thousand six hundred and four dollars (\$9,604.00) was not deposited into a trust or insurance for three (3) separate cases.
- *Customer 1 - \$6,654.00*
- *Customer 2 - \$450.00*
- *Customer 3 - \$2,500.00*

Response:

- The Respondent stated that in the case of Customer 1, they promised this customer that they would take care of their funeral. When the time for services came, the total cost was \$6,654.00.
- The Respondent states that the funeral home was sold and that the new director was informed of this agreement. Respondent then gave the owner \$3,000.00, and informed the owner that they could take the remainder of the \$6,654.00 from the money the new owner still owed the Respondent.
- The new owner took out \$3,979.00, which was \$325.00 more than they were supposed to.
- As to Customer 2, the Respondent stated that this customer wanted them to spread their ashes and the Respondent offered to recommend them to a different funeral home.

- The Respondent states that Customer 2 did not want anyone else involved, especially the new owner of the funeral home.
- Respondent states that Customer 2 is still alive and currently lives out of state.
- As to Customer 3, the Respondent does not remember this customer and does not remember signing a contract with them.
- Respondent states that the fact that the contract was unsigned and undated would lead them to believe this was merely an estimate.

Complaint History:

- No Complaints

Recommendation:

- Consent Order for suspension of funeral director license for three (3) months, and three thousand dollar (\$3,000.00) civil penalty and authorization for hearing.

Board Decision:

- Consent Order with six (6) month suspension and first application for licensing renewal must come before the Board. Additionally, the Board assessed a \$3,000.00 civil penalty and granted authorization for a hearing.

New Recommendation:

- We are recommending this case be closed and the Respondent flagged for any future attempt to obtain a funeral director's license. The Respondent has failed to accept the Board's initial offer and her license has subsequently expired. In the event she attempts to obtain a funeral director's license in the future, she will be required to come before the Board.

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

Seconded by W. T. Patterson

Adopted by voice vote

9. Case No.: L11-FUN-RBS-2011020811

Complaint:

- On June 21, 2011, a field representative conducted a routine inspection of the Respondent establishment which is a crematory.
- Respondent cremated the remains of one (1) individual without having a valid Cremation Authorization form as the form signed by the decedent's daughter fails to provide the name, address, and telephone number of the crematory.

- After reviewing another file, it was discovered that the Respondent failed to keep a copy of the written receipt for delivery of human remains to the crematory in another decedent's file.
- A third file failed to provide a valid cremation authorization form as the funeral director failed to sign as funeral director in charge.

Response:

- The Respondent crematory states that they called the funeral home regarding the missing information on the cremation authorization form.
- Respondent states that the other establishment (funeral home) admitted that this was an oversight on their part.
- Respondent states that they discovered there were two (2) copies of a receipt for delivery of human remains in the funeral establishment's files; however, one of those copies was supposed to be retained by the crematory, but both copies were accidentally sent to the funeral establishment.
- Respondent states that the funeral establishment's funeral director failed to sign the cremation authorization form and the crematory overlooked this violation.
- Respondent states that they have addressed these violations with their staff and have corrected the issues cited.

History:

- Two (2) closed complaints with different TCA violations.

Recommendation:

- Consent Order with a \$500.00 civil penalty and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

10. Case No.: L11-FUN-RBS-2011020821

Complaint:

- On June 29, 2011, a field representative conducted a routine inspection of the Respondent establishment funeral home.
- This Respondent's establishment license expired on April 30, 2011, and was not renewed until June 6, 2011.
- During this time, the Respondent conducted five (5) funeral services.

Response:

- Respondent states that it was the administrator's job to renew the license prior to the expiration date.

- Respondent states that the administrator stated on April 18, 2011, that the license renewal had been processed and mailed; however, it was brought to the Respondent's attention on June 2, 2011, that this information was false.

History:

- One (1) closed complaint with different TCA violations.

Recommendation:

- Consent Order with \$1,000 civil penalty and authorization for hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

11. Case No.: L11-FUN-RBS-2011021181**Complaint:**

- On May 23, 2011, a field representative conducted a routine inspection of the Respondent funeral establishment.
- The Respondent's preparation room door was unsecured as no lock or any other type of device was attached to the preparation room door to prohibit entry by unauthorized individuals.
- The Respondent had several FTC violations:
 - o The high end range for immediate burial on the GPL did not match the CPL.
 - o The minimum casket price with immediate burial was inconsistent on the GPL and the CPL.
 - o The casket selected from the funeral home for the immediate burial package was inconsistent on the CPL and GPL.
 - o The high end ranges under direct cremation was inconsistent on the GPL and CPL.
 - o The required disclosure was missing under alternative containers for direct cremation on the GPL.
 - o Prices lists were inconsistent for direct cremation with embalming, visitation and memorial service on the same day.
 - o Alternative containers must be added to the CPL.
 - o On the SFGSS for five (5) individuals, the Respondent failed to provide the goods and services selected that correspond with the GPL. Also, the prices were not listed for the goods and services selected. The items were not itemized.

Response:

- A new key lock has been installed on the preparation room door.

- The Respondent corrected the inconsistencies on the price lists.
- Respondent states that they always attach a copy of the GPL to the consumer's SFGSS for their information.
- Also, a copy of the GPL goes in that customer's file.

History:

- Five (5) closed complaints, two (2) not related, three (3) with non-related TCA violations.

Recommendation:

- Consent Order with \$500.00 civil penalty and authorization for hearing.

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

Seconded by Paula Bridges

Adopted by voice vote

12. Case No.: L11-FUN-RBS-2011021201

Complaint:

- On June 7, 2011, a field representative conducted a routine inspection of the Respondent funeral establishment.
- During this inspection, it was discovered that the current license of the crematory used by this establishment was not available for inspection.
- It was discovered that one deceased human remains had been embalmed, dressed and casketed in the chapel ready for visitation to begin but no permanent identification tag was attached to the body. (Note: No family members were present when the inspection took place).
- The preparation room was not properly cleaned:
 - o Cosmetics and other items were open and left out in various parts of the room.
 - o The mortuary cot that appeared to have used for transportation of a deceased human remains to the establishment contained soiled bedding.
 - o There was clutter generally throughout the room.
 - o Uncovered trash container.
 - o Preparation room in need of overall cleaning.
- On one (1) SFGSS, the reason for embalming was not completed.

Response:

- Respondent states that they have taken steps so that the funeral director will keep all required current licenses.
- Respondent has a funeral director and an embalmer that will double check to be sure that a permanent identification device is placed on the decedent.

- The Respondent states they were busy in the preparation room prior to the field representative making the inspection, and the regular embalmer was on vacation that week.
- More than one funeral director worked with the decedent's family and overlooked the reason for embalming on the SFGSS. All directors have been instructed to make sure it is properly done in the future.

History:

- No prior complaints.

Recommendation:

- Consent Order with \$500.00 civil penalty and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

13. Case No.: L11-FUN-RBS-2011021211**Complaint:**

- On June 8, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Respondent was unable to provide the current license of the crematory and the latest inspection report used by this establishment.
- GPL –
 - o Under direct cremation, the low to high end range is inconsistent with the prices of:
 - Direct cremation with container provided by the purchaser.
 - Direct cremation with alternative container.
 - Direct cremation with casket provided by funeral home.
- GPL –
 - o Under immediate burial, the high-end range is inconsistent with the CPL.
- CPL
 - o The alternative container on the CPL is inconsistent with the GPL.
- Respondent uses a catalogue in lieu of a casket selection room, and the following caskets are on the CPL, but not in the catalogue:
 - o Anthem Silver Stainless Steel; Tapestry Rose Stainless Steel; Pearl Essence 16 Ga.; Golden Granite 18 Ga.; Meriot 18 Ga.; Sunglow 20 Ga.; Marcellus Provincial Mahogany; Pembroke Cherry; Provincial Maple; Mansfield Poplar; Cameo Hardwood; Landon Hardwood; Woodhaven Pecan; Cortland Oak; Trenton Hardwood; Dalton Select Hardwood; Rockwood Hardwood; Mission Hardwood; Taylor – Wood Composite; Stratus – Wood Composite.

- OBCPL
 - o Respondent did not have a catalogue or a selection room from which the consumer could select merchandise.

Response:

- Respondent states that on June 10, 2011, they corrected the following:
 - o The GPL
 - o Provided laminates of caskets with price list
 - o Provided laminates of vaults with price lists.

History:

- One (1) closed complaint with TCA and FTC violations.

Recommendation:

- Consent Order with \$500.00 civil penalty and authorization for hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

14. Case No.: L11-FUN-RBS-2011021241

Complaint:

- On June 8, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Respondent was unable to provide the current license and the latest inspection report of the crematory used by this establishment.
- One (1) file that was inspected failed to contain a cremation authorization form.
- Upon reviewing the business cards used by employees of the Respondent, it was discovered that none of the cards contained any language separating licensed employees from non-licensed employees. The business cards for the funeral directors and embalmers did not specify that they were licensed funeral directors and/or embalmers nor did the business cards of the unlicensed individuals indicate such, so this gave the impression that all employees were licensed when that was not the case.
- GPL
 - o Under direct cremation with alternative container, the price on the GPL is inconsistent with the CPL.
 - o Under direct cremation, the serenity wood casket being offered to the consumer must be added to the CPL.
 - o Under direct cremation, the high-end range is inconsistent with the CPL.
 - o Under immediate burial, the high-end range must be added.

- Under immediate burial with casket, the Thacker 20 gauge metal casket being offered to the consumer must be added to the CPL.
- CPL
 - The high-end range on the CPL does not agree with the high-end range on the GPL.
- OBCPL
 - The low-end range on the OBCPL does not agree with the low-end range on the GPL.
- SFGSS
 - Description of merchandise selected was not included on two (2) contracts reviewed.
 - The reason for embalming was not completed on six (6) contracts.

Response:

- Respondent states that all of the errors on the GPL, CPL, and OBCPL have been addressed and corrected.

History:

- Seven (7) closed complaints, four (4) with related violations.

Recommendation:

- Consent Order with \$750.00 civil penalty and authorization for hearing.

A motion was made by W. T. Patterson to accept Counsel’s recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

15. Case No.: L11-FUN-RBS-2011021251

Complaint:

- On June 13, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- During this inspection, it was discovered that the Respondent failed to retain a cremation authorization form in the file that was signed by the authorizing agent(s) and signed by the funeral director.
- OBCPL
 - Three (3) outer burial containers in the selection / arrangement room being offered to the consumer did not agree with the OBCPL:

	<u>OBCPL</u>	<u>Selection Room</u>
▪ Bronze Lined	\$5,095.00	\$4,995.00
▪ Copper Lined	\$4,095.00	\$3,075.00
▪ Marbelon Lined	\$2,450.00	\$2,350.00

Response:

- The Respondent's attorney addressed the violations:
 - o The Respondent enclosed the signed cremation authorization form with their response.
 - o At the time of the inspection, the prices shown in the selection room for the outer burial containers were incorrect. The prices in the selection room have been corrected.

History:

- Two (2) closed complaints with related violations.

Recommendation:

- Consent Order with \$500.00 civil penalty and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

16. Case No.: L11-FUN-RBS-2011021281

Complaint:

- On June 21, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- During the inspection, nine (9) files were found to contain insufficient information on the cremation authorization forms.
 - o The forms were not signed and dated, and all of the required contact information for the crematory used was not present on the form.
- Additionally, the Respondent does not have the same name on the price lists and its establishment application form that was approved by the Board.

Response:

- Respondent stated that upon the field representative leaving, following the inspection, the Respondent corrected the violations and obtained all of the necessary forms from the crematorium.
- The GPL has been changed so that the Respondent's name matches that on the establishment application form.

History:

- No prior complaints.

Recommendation:

- Consent Order with \$500.00 civil penalty and authorization for hearing.

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

Seconded by Clark McKinney

Adopted by voice vote

17. Case No.: L11-FUN-RBS-2011021321

18. Case No.: L11-FUN-RBS-2011021322

Complaint:

- On July 14, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- The field representative found that an individual who had completed his apprenticeship as a funeral director and embalmer, and is currently registered with the state as a "student" was practicing funeral directing.
- The field representative reviewed a random assortment of SFGSS and found that in twenty-six (26) of those files, the student signed as a "funeral director," even though he is only registered with the State of Tennessee as a "student."
- Additionally, this same individual signed one (1) cremation authorization form as a "funeral director."
- Furthermore, the field representative found that the Respondent was in the process of opening an animal cremation retort in the back corner of the establishment's parking lot; however, the animal retort was not operational at the time of the inspection.
- Additionally, the field representative found that Respondent has printed brochures advertising their pet services. Also, a web site has been created advertising the services available for animal owners.
- All advertisements seek to link the established funeral establishment to the new animal pet service.
- Upon reviewing the brochures, the Respondent refers to the new pet services as their "Pet Services Division."

Response:

- Unlicensed Activity
 - o The Respondent admits that its employee met with grieving family members and finalized arrangements under the close supervision of a licensed funeral director.
 - o The Respondent admits that the employee signed as a "licensed funeral director" when they were actually an "apprentice funeral director."
 - o Respondent admits that this is a clear violation.
 - o The Respondent apprentice apologizes for these violations and states that he never intentionally violated the law, and that these violations were caused by his lack of experience, not disregard for the rules and regulations of this state.

- Pet Services
 - o Respondent's attorney states that there is an animal cremation retort located on adjacent property in an unmarked building that will never be marked; however, this establishment and the animal cremation services are owned by the same parent corporation.
 - o The funeral establishment leases property from the parent company, and the animal funeral services leases the adjacent property from the parent company upon which the unmarked building housing the animal cremation retort currently stands.
 - o The Respondent states that there are allegations that the establishment is in the process of opening a cremation retort in the back corner of the funeral establishment's parking lot, but this is patently false as the Respondent has nothing to do with the animal cremation retort and is in no way affiliated with the pet service.
 - o Respondent states allegations that the funeral establishment printed off brochures to advertise pet services is also false as the pet services company paid for and printed off its own brochures.
 - o Respondent's attorney also states:
 - Pet services is not owned by the funeral establishment;
 - Both establishments are stand-alone corporate entities;
 - Both entities have separate physical addresses (although they use the same P.O. Box);
 - They use separate phone numbers;
 - They use separate web sites;
 - They use separate checking accounts, payroll and tax ID numbers;
 - Anyone calling the pet services corporation looking for the funeral establishment is given the correct phone number to the funeral establishment, and they cannot be transferred as they are separate entities.

Additional Information:

- Respondent establishment was providing brochures in the funeral establishment advertising their pet services.
- The pet retort is located in the same building used by the establishment to store outer burial containers.
- Respondent establishment's Facebook page provides photos of the pet crematory being installed, and the Respondent uses the same address for the funeral home and the pet crematory on the Secretary of State's web site.

History:

- Respondent # 17 – one (1) closed complaint, not related; and, one (1) open complaint, not related.
- Respondent #18 – No prior complaints.

Recommendation:

- #17 (Establishment) – Letter of Instruction regarding the pet crematory, and a Consent Order with a \$1,500.00 civil penalty and authorization for a hearing as it relates to the student signing as a licensed funeral director.
- #18 (Student) – Consent Order with a \$750.00 civil penalty and authorization for hearing.

Tony Hysmith recused himself from the proceedings of these two complaints.

Case #17 – A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

Case #18 – A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

Member(s) noted as voting contrary of the voice vote conclusion on Case #18: Paula Bridges.

19. Case No.: L11-FUN-RBS-2011027481

20. Case No.: L11-FUN-RBS-2011027161

Complaint:

- The Complainant is the niece of the decedent who passed away, and final arrangements were made by the decedent's daughter.
- Complainant states that when she arrived at the Respondent's place of business for the services and viewing, the family was not allowed to enter the building.
- The Complainant is upset because her father, who has COPD and heart disease, was made to stand outside in direct sunlight for almost two hours in 80 degree weather without any place to sit.
- Complainant states that her two children had to beg just to use the restroom at the establishment.
- Two employees came out to speak to us, but were more concerned about getting paid than addressing the fact that they had 19 people standing outside in their parking lot.
- The Complainant states that they were informed that the decedent's daughter was going to pay for the remainder of the services once the

decedent's last disability check came in; however, the check did not get cashed in time for the services.

- The Respondents were not concerned with the fact that several family members came from great distances to pay their final respects.
- Complainant states in their complaint on October 13, 2011, that it had been 17 days since they were turned away from the funeral establishment, and they are still holding her uncle's body at the establishment.
- Complainant believes the Respondent is holding her uncle's body hostage until the services are paid for.

Response:

- Respondent states that they made final arrangements with the decedent's daughter and that neither complainant was involved in making final arrangements.
- The decedent's family showed up on a day for a service that had not been finalized.
- They were not denied access to the funeral home, and the decedent's daughter explained to the rest of the family that no money had been paid and asked for their assistance in meeting the financial obligation.
- As for the restrooms, our facilities are open to the public and always kept clean and above standards.
- By their choice, the decedent's family gathered in the parking lot to socialize and smoke.
- We negotiated the price trying to figure out a way to help the decedent's daughter bury her father.
- The decedent was buried on October 13, 2011, and his daughter stated that she had closure and was satisfied.

Response from Daughter:

- The decedent's daughter stated that her father has been buried and the funeral home took excellent care of her father.
- She states that her uncle complained of being mistreated but that was simply not the case.
- In the contract with the establishment, the daughter states that she agreed that if she didn't pay for the services upfront, there would be no services until such money was paid.
- The daughter asked her uncle to help cover some of the charges, but he did not provide any monetary assistance.
- The family stood outside by their own choice, and was not refused access to the building or its facilities.
- The bathrooms were not filthy, and the entire building was clean and presentable.
- The daughter states that she was trying to negotiate an agreement with the Respondent regarding a price for the services; however, there was no extortion.

History:

- Two (2) closed complaints, not related; one (1) open complaint, related.

Recommendation:

- #19 – Dismiss.
- #20 – Dismiss.

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

Seconded by Clark McKinney

Adopted by voice vote

REPORTS – EUGENE WILLIAMS, PRESIDENT AND ROBERT GRIBBLE, EXECUTIVE DIRECTOR:

President Williams and Director Gribble gave reports on:

- 1) Vital Records Information System Management (VRISM) will be used for the electronic filing of death certificates. The Department of Health's project schedule for the implementation of this system for death reporting is April 2013; and
- 2) A newly revised Certificate of Death from the Department of Health will be used beginning January 1, 2012.

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

Board of Funeral Directors and Embalmers
Financial Recap
Fiscal Year July 1, 2010 – June 30, 2011

The following data was obtained on October 17, 2011, from the Assistant Commissioner's Office for Regulatory Boards of the Tennessee Department of Commerce and Insurance.

Beginning Balance – July 1, 2010	\$430,277.00
Net Revenue (Earnings) for July 1, 2010 – June 30, 2011	\$511,704.00
Total Funds Available	<u>\$ 941,981.00</u>
Expenditures July 1, 2010 – June 30, 2011	\$414,710.00

Cost Backs (Cost Allocations charged to the Board from Administration and Investigations) \$199,552.00

Total Expenditures, Including Cost Backs **\$ 614,261.00**

Beginning Balance – July 1, 2011 \$ 327,720.00

Note: The dollar amounts used in compiling these figures have been rounded to the nearest dollar and may vary one dollar mathematically.

LICENSEE REPORT:

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF OCTOBER 11, 2011 – NOVEMBER 7, 2011

Establishments

Madison Funeral Home Madison, TN	Name Change
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Individuals

Carolyn Diane Hunter Knoxville, TN	Funeral Director/Embalmer
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Patricia Waters Wilburn Seymour, TN	Funeral Director/Embalmer
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Christopher Robert Ross Murfreesboro, TN	Funeral Director/Embalmer Reciprocity
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James Anthony Hooten Huntsville, AL	Funeral Director/Embalmer Reciprocity – Reapplication
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Geren Charles Moegerle Brentwood, TN	Funeral Director Reciprocity
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CLOSED ESTABLISHMENT REPORT:

No establishments have reported closing since the last board meeting.

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED
BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE
PERIOD OF OCTOBER 11, 2011 – NOVEMBER 7, 2011**

Respondent: Jacob Donald Burke, Oneida, TN
Violation: Immoral or unprofessional conduct – admitted to embezzling funds from his employer and a check for the renewal payment of license fee was returned to the Board unpaid due to insufficient funds
Action: Revocation of license as a funeral director

Respondent: E. H. Ford Mortuary Services, Memphis, TN
Violation: Operated an establishment on numerous occasions during the period that the license of the funeral director in charge was expired
Action: \$4600 Civil Penalty and an additional \$200 for Administrative Costs

OPEN COMPLAINT REPORT:

As of November 4, 2011 there were 111 open complaints.

A motion was made by Clark McKinney to accept the Executive Director's Report.

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 at 11:55 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director