

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

DECEMBER 11, 2012 and DECEMBER 17, 2012

President Clark McKinney called the meeting to order on December 11, 2012 at 9:00 A.M. in the Second Floor Conference Room of the Andrew Johnson Tower, Nashville, Tennessee.

Board members present were Clark McKinney, President; Tony Hysmith, Vice President; Wayne Hinkle, W. T. Patterson, Jane Gray Sowell, Robert Starkey and Anita Taylor.

Staff members present were Robert Gribble, Executive Director; Benton McDonough, Assistant General Counsel; Adrian Chick, Assistant General Counsel; Lisa Mosby, Administrative Assistant, and Josh Kilgore, Administrative Secretary.

ADOPTION OF AGENDA:

A motion was made by Wayne Hinkle to approve the Agenda as printed.

Seconded by Jane Gray Sowell

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Jane Gray Sowell to approve the Minutes of the November 13, 2012 Board Meeting.

Seconded by Robert Starkey

Adopted by voice vote

FORMAL HEARING:

Docket No. 12.21-118289A

- Respondent: Carl R. Points, Columbia, Tennessee, Funeral Director License No. 5122

The formal hearing was conducted before the Honorable Mattielyn B. Williams, Administrative Law Judge. The State was represented by Assistant General Counsel Adrian Chick, and the Respondent was represented by Attorney William C. Barnes.

Jane Gray Sowell recused herself from participation in this matter.

Due to a medical issue of the Respondent's Attorney, the hearing proceedings concluded at 1:38 P.M. for the day, and the hearing was recessed by Judge Williams until December 17, 2012, at 10:00 A.M.

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

Abbreviations:

GPL – General Price List

CPL – Casket Price List

OBCPL – Outer Burial Container Price List

SFGSS – Statement of Funeral Goods and Services Selected

1. Case No.: L12-FUN-RBS-2012020411

2. Case No.: L12-FUN-RBS-2012020412

Complaint:

- On August 8, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Expiration of License – 62-5-316 and 62-5-313
 - o The funeral director's license of the manager of record expired on June 30, 2012.
 - o From July 1, 2012 through July 15, 2012, this individual was listed as the "manager of record" at a time when the establishment provided final arrangements for one (1) decedent.

Response:

- Respondent #2 responded for both complaints.
- Respondent states that he has been a funeral director for twenty-five (25) years, and he cannot recall a time when he allowed his license to lapse.
- Respondent states that he never received his renewal information, as he moved to another residence since last renewing his license.
- Respondent states that he spoke to personnel at the Board and paid his renewal fee plus the \$200.00 late fee penalty, and asks that the Board take this late fee penalty into consideration when considering the complaint.

History:

- No prior complaints.

Recommendation:

- Respondent #1 – Letter of Warning.

- Respondent #2 – Consent Order with \$250.00 civil penalty and authorization for hearing.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

3. Case No.: L12-FUN-RBS-2012020431

4. Case No.: L12-FUN-RBS-2012020432

Complaint:

- On August 23, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Renewal of Licenses – 62-5-313 and 62-5-316
 - o The licenses of the funeral establishment and manager of record expired on June 30, 2012, and were not renewed until July 30, 2012.
 - o During this time, the establishment conducted final arrangements for two (2) individuals, and the funeral director whose license was also expired was listed as the “manager of record” during this time.
- Funeral Rule Violation - 0660-11-.06
 - o The SFGSS of one (1) individual failed to list any itemization for the casket sold at a cost of \$2,010.00 and for the outer burial container sold at a cost of \$1,010.00.
 - o Also, the lowest priced casket on the CPL was listed at \$1,200.00, but the GPL lists caskets beginning at \$1,010.00.

Response:

- Respondent #4 provided the response for both parties.
- Respondent received her renewal information in May 2012 regarding the licenses for the funeral director and establishment.
- Respondent started having severe pain and sought medical assistance, causing her funeral director responsibilities to suffer.
- Respondent was diagnosed with arthritis and forgot during this time that her licensing renewals were due.

History:

- Respondent #3 – Three (3) closed complaints.
- Complaint #200901308
 - o Allegation: FD did not give copy of authorization to agent; SFGSS not in file; copy of license and inspection of crematory not available; GPL / CPL discrepancies.
 - o Findings: \$250.00 Consent Order on October 13, 2009.
 - o Closed: December 11, 2009.

- Complaint #200800566
 - o Allegation: FTC rule violation.
 - o Findings: Presented July 8, 2008 – Letter of Warning
 - o Closed: July 15, 2008.
- Complaint #201100270
 - o Allegation: Embalmer's License not available for inspection; CPL errors.
 - o Findings: Presented May 11, 2011 – \$250.00 Consent Order
 - o Closed: July 6, 2011.

Recommendation:

- Respondent #3 – Consent Order with \$250.00 civil penalty and authorization for hearing.
- Respondent #4 – Consent Order with \$200.00 civil penalty and authorization for hearing.

A motion was made by Robert Starkey to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

5. Case No.: L12-FUN-RBS-2012020931

Complaint:

- On July 17, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Rule 0660-11-.06
 - o Three (3) Statements of Funeral Goods and Services Selected showed a duplicate charge for "Basic Services of Funeral Director and Staff".
 - On the first two, the customers were charged \$1,490.00 for "Basic Services of Funeral Director and Staff" while also being charged \$750.00 for a Direct Cremation (which already included the charge for basic services).
 - The third customer was charged \$1,490.00 for "Basic Services of Funeral Director and Staff" and \$750.00 under "Cash Advances" for "Crematory Services". The field representative could not obtain pricing for the crematory, but staff admitted that it does not cost \$750.00 which means that either the Respondent made duplicate charges for "Basic Services" or failed to properly provide the proper disclosure regarding marking up the price of cremation services.
- Rule 0660-1-.03
 - o The Respondent's sign referred to the funeral establishment by a name other than the exact name listed on the establishment

application approved by the Board. It should be noted, however, that the Respondent's previous establishment had suffered fire damage the month or two previous to the inspection.

Response:

- Respondent states that the families of the first two decedents originally chose a Direct Cremation, but then changed their minds and later added additional merchandise to their SFGSS.
- As for the third individual, the same thing happened; however, the funeral director inadvertently placed the Direct Cremation price on the Cash Advance line, but the family later decided to upgrade services and merchandise after initially choosing a Direct Cremation.
- The funeral director, in all three cases, filled in the contract they had previously started, and the staff now understands that the Direct Cremation is a minimum charge that includes Basic Services of Funeral Director and Staff that cannot be charged twice.
- As for the sign, Respondent states that the previous location was destroyed by fire, and in haste they opened a temporary location with a sign containing that verbiage.
- Respondent took out the "at" that was in the sign and inserted the new address instead; however, they admit that this is still in violation of the law, but believe it matches the "spirit" of the statute.

History:

- Eight (8) closed complaints; two (2) open complaints.
 - o 2012017141
 - Allegation: Consumer afraid that father's cremation not handled properly.
 - Presented: October 9, 2012 – Dismiss.
 - Status: Closed – October 26, 2012.
 - o 2012019101
 - Allegation: Unlicensed individuals practicing funeral directing and embalming.
 - Presented: November 13, 2012 – Close.
 - Status: Closed – November 15, 2012.
 - o 2007069811
 - Allegation: Aiding and abetting unlicensed person to practice funeral directing.
 - Presented: October 9, 2007 – \$1,000.00 Consent Order.
 - Status: Closed – January 25, 2008.
 - o 2007077631
 - Allegation: Large bone fragments in cremains.
 - Presented: October 9, 2007 – Dismiss.
 - Status: Closed – October 12, 2007.
 - o 2009003891

- Allegation: Competitor alleging misrepresentation in advertisement.
- Presented: June 9, 2009 – Dismissed.
- Status: Closed – June 22, 2009.
- 2009017951
 - Allegation: Possibility of unprofessional conduct.
 - Presented: April 13, 2010 – Dismiss.
 - Status: Closed – April 21, 2010
- 2010018871
 - Allegation: Errors on OBCPL and SFGSS.
 - Presented: October 12, 2010 – \$250.00 Consent Order
 - Status: Closed – November 1, 2010.
- 2011000581
 - Allegation: Listing unlicensed person on website as funeral director.
 - Presented: April 12, 2011 – \$500.00 Consent Order.
 - Status: Closed – June 10, 2011.
- 2012000861
 - Allegation: Former employee requested Respondent remove his name and picture from website.
 - Presented: May 8, 2012 – Close.
 - Status: Closed – May 11, 2012.
- 2012007161
 - Allegation: Complainant alleges illegal advertising by Respondent.
 - Presented: August 14, 2012 – Letter of Warning.
 - Status: Closed – September 9, 2012.

Recommendation:

- Consent Order with \$750.00 civil penalty and authorization for hearing. Additionally, recommend that the establishment refund \$1490.00 to each of the three (3) customers.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

Member(s) noted as voting to the contrary of the voice vote conclusion: Robert Starkey

6. Case No.: L12-FUN-RBS-2012020971

Complaint:

- On July 23, 2012, field representative conducted a routine inspection.

- Rule 0660-11-.06
 - o One (1) file shows three (3) duplicate charges.
 - Person charged \$1,495.00 for Basic Services of Funeral Director and Staff and \$965.00 for Direct Cremation (along with other services which indicate a Direct Cremation did not take place).
 - The GPL – states that a Direct Cremation includes transfer of remains to funeral home; however, the customer was charged \$190.00 for transfer of remains.
 - The Norwood Oak Rental Casket is listed at \$995.00 and the SFGSS lists a \$150.00 charge for Alternative Container; however, the CPL lists the Norwood Oak for \$995.00 and states that this charge includes a cremation insert, which serves as an alternative container.

Response:

- Respondent admits that these final arrangements gave them trouble as it included a rental casket, open casket viewing, and cremation.
- The family did not live in town, and seemed to be in a rush during the arrangement meeting.
- Respondent accidentally charged the family twice for the cremation charge and transfer of the decedent, which was already included in the basic services of funeral director and staff and for the alternative container, which was already included in the rental casket.
- Respondent met with the field representative, understands where the error occurred, and has provided a reimbursement in the amount of \$1,129.63 to the family.

History:

- One (1) closed complaint.
 - o 2009015431
 - Allegation: Violation of FTC due to price discrepancies.
 - Presented: December 8, 2009 – \$250.00 Consent Order
 - Status: Closed – March 30, 2010.

Recommendation:

- Letter of Warning.

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

Seconded by Anita Taylor

Adopted by voice vote

Member(s) noted as voting to the contrary of the voice vote conclusion: Tony Hysmith

7. Case No.: L12-FUN-RBS-2012021121**Complaint:**

- The Commissioner for the Tennessee Department of Veterans Affairs filed this complaint.
- On September 25, 2012, a veteran was buried in a State Veterans Cemetery.
- When the director of the cemetery attended the funeral, he noticed the casket was leaking and emitting a distinct and offensive smell, and witnessed bodily fluid coming from the casket.
- The fluid was substantial, and a trail of bodily fluid was present from the casket and in the form of a small puddle.

Response:

- Respondent sincerely apologizes for this event.
- The decedent had been a severe dialysis patient for some time and had an abundance of shunt points or holes throughout his body.
- His feet were swollen and leaking during the embalming process, causing the staff to place plastic stockings on the body.
- There was a porthole in the left upper shoulder, which leaked very little during the embalming process.
- The funeral services were on Friday, September 21, 2012, and the burial was scheduled for Tuesday, September 25, 2012.
- The hole in the left shoulder was wrapped in cotton and sealed with surgical tape very firmly.
- The trip to the cemetery was fifty-two (52) miles long, and the pressure from the wrapping of the surgical tape was so immense that it caused the skin to burst and fluid to escape from his left arm.
- Respondent states that in the future they will do a better job of inspecting the bodies and properly wrapping the bodies.

History:

- Two (2) closed complaints; three (3) open complaints.
 - o 2012020691
 - Allegations: Individual embalming without license.
 - Presented: Not yet presented.
 - Status: Open.
 - o 2011020121
 - Allegations: Respondent failed to pay supplier.
 - Presented: November 8, 2011 – \$250.00 Consent Order.
 - Status: Open.
 - o 2011008361
 - Allegations: Establishment license and manager's funeral director's license expired.
 - Presented: August 9, 2011 – \$750.00 Consent Order.

- Status: Open.
- 2008019351
 - Allegations: Cremation authorization not signed by funeral director and pricing violations.
 - Presented: October 14, 2008 – \$1500.00 Consent Order
 - Status: Closed – June 26, 2009.
- 2007075161
 - Allegations: FTC Rule violations.
 - Presented: October 9, 2007 – \$250.00 Consent Order.
 - Status: Closed – January 24, 2008.

Recommendation:

- Consent Order with \$1,000.00 civil penalty and authorization for hearing.

A motion was made by Anita Taylor to accept Counsel's recommendation.

Seconded by Robert Starkey

Adopted by voice vote

8. Case No.: L12-FUN-RBS-2012021621

Complaint:

- On November 1, 2010, the Respondent filed a letter of closure of their funeral establishment.
- In March 2012, the Respondent filed a Monthly Report of Funeral Directors with the local County Health Department.
- A field representative went to the establishment and found the wife of the owner.
- She stated that the funeral establishment was still closed, but that her husband was working at improving the building so he could operate it in the future.
- The field representative asked about the website and Facebook pages still in operation, she stated that she was not aware of those pages.
- She further stated that they filed the Monthly Report with the local Health Department because they believed they were obligated to do so.

Response:

- Respondent states that he has operated his establishment properly and met all of the requirements during the time of actual operation of the business prior to the closure in 2010.
- As for the website, Respondent states that this was a demo site and he had not given permission to put the website or Facebook page to use.
- Respondent states that his business is not currently operating, but he intends to re-open it in the future.

- Furthermore, the county health department continued to contact the Respondent, so they believed they should provide the Monthly Report, regardless of their closure of the business.

History:

- One (1) closed complaint.
 - o 2010021531
 - Allegations: GPL errors; improper advertising; no electrical service to building.
 - Presented: March 13, 2012 – Close.
 - Status: Closed – March 15, 2012.

Recommendation:

- Letter of Warning.

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

Seconded by W. T. Patterson

Adopted by voice vote

9. Case No.: L12-FUN-RBS-2012022371**Complaint:**

- Complainant alleges that the Respondent offered a pre-need discount when they offered "Special Pricing for At-need and Pre-need Traditional Funeral Services".
- The Respondent appears to be offering the same price for at-need and pre-need; however, in reviewing the advertisement, it was discovered that the Respondent failed to provide an itemized charge for each item.

Response:

- Respondent states that the price advertised for a Traditional Funeral Service (\$3,250.00) includes Basic Professional Services of Funeral Director and Staff, Embalming, Dressing, Casketing, Cosmetology, Funeral Service, Visitation, Removal from place of death, Hearse to Cemetery, Flower Van, Cemetery Equipment, online obituary and dove release, and a 20 gauge Batesville non-protective Star Silver or Star Coppertone for (\$745.00) which equals an at-need or pre-need total of (\$3,995.00) which is listed in the GPL.

History:

- Three (3) closed complaints, one (1) dismissed complaint.
 - o 2002063361
 - Allegations: Customer not happy with the fact that the Respondent did not refund the contract.

- Presented: N/A
- Status: Dismissed – May 14, 2002.
- 2010003331
 - Allegations: Illegal Advertising
 - Presented: July 15, 2010.
 - Status: Closed – July 15, 2010.
- 2009023031
 - Allegations: Funeral home advertising illegal ownership.
 - Presented: January 12, 2010.
 - Status: Closed – January 14, 2010.
- 2012000471
 - Allegations: Respondent refusing to pay “old burial policy”.
 - Presented: July 10, 2012 – Letter of Warning.
 - Status: Closed – July 12, 2012.

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 Wayne Hinkle

Adopted by voice vote

10. Case No.: L12-FUN-RBS-2012023081**Complaint:**

- The Complainant’s brother passed away in Detroit, Michigan, in August 2012.
- The body was embalmed at a funeral establishment in Detroit and then transported to the Respondent’s funeral establishment.
- The family viewed the body in Detroit prior to the transport, and they were very pleased with the condition of the body then.
- However, when the family and friends conducted a viewing following the funeral services in Tennessee, the Complainant was horrified by the condition of the body.
- Complainant states that the decedent’s arm seemed very flimsy, and he appeared much darker during the second viewing on August 25, 2012 as compared to the initial viewing in Detroit on Wednesday, August 22, 2012.
- The flowers on the casket were wilted, and the body had an odor as the family walked up to the casket which was not present at the previous viewing.
- The Respondent informed the Complainant that the Detroit funeral establishment failed to properly embalm and preserve the body.

Response:

- Respondent believes the allegations of neglect are unfounded.
- The Respondent received the decedent's body from the Detroit funeral establishment via air shipment.
- The Complainant claims the decedent looked totally different and had an odor about him.
- Respondent states that any issue with the decedent's appearance should be filed with the Detroit funeral establishment that provided the embalming services.
- The family viewed the remains as they lay in repose on Friday, August 24, 2012, and never complained about the condition of the body.
- The family never complained until they were transported back to the church following the burial by the Respondent's staff.
- One employee expressed regret that the family was not pleased with the decedent's appearance, but stated that the Respondent did not preserve the remains and should not be responsible for the appearance.
- The employee also made the family aware that the decedent had been deceased for almost two (2) weeks prior to the funeral, and that could have an impact on the condition of the body.
- The family never complained about wilted flowers until after they returned to Detroit.

History:

- No prior complaints.

Recommendation:

- Dismiss.

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

Seconded by W. T. Patterson

Adopted by voice vote

11. Case No.: L12-FUN-RBS-2012023231

Complaint:

- On July 19, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- The establishment license for the Respondent expired on April 30, 2012, and was not renewed until May 21, 2012.
- During this time, the establishment conducted no funerals or funeral arrangements.
- As of August 1, 2012, the Respondent has only conducted four (4) funerals during the 2012 calendar year.

Response:

- Respondent apologizes and states that they wrote down the wrong date on their calendar regarding renewal of their establishment license.

History:

- One (1) closed complaint.
 - o 2011002041
 - Allegations: Complainant could not get flowers from daughter's funeral and funeral home would not return phone calls.
 - Presented: May 11, 2011 – Dismiss.
 - Status: Dismissed – June 3, 2011.

Recommendation:

- Letter of Warning.

A motion was made by Anita Taylor to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

12. Case No.: L12-FUN-RBS-2012023251

Complaint:

- On August 8, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- The Respondent's establishment license expired on June 30, 2012, and was not renewed until July 10, 2012.
- During this time, the Respondent conducted two (2) funeral services.

Response:

- Respondent states that they had a difficult time transitioning the business following the death of their relative.
- Respondent has delegated licensing renewal to the employee over accounts payable.
- Respondent's manager states that he was made aware of the pending renewal, and takes full responsibility for the late renewal.
- Respondent states they were overwhelmed with loss of family members and added family responsibilities, causing them to forget about the renewal.

History:

- Two (2) closed complaints.
 - o 2006016301

- Allegations: Complainant upset that Respondent does not have her burial arrangements that were entered into with a funeral home bought out by the Respondent.
- Presented: November 13, 2009 – Close.
- Status: Closed – December 4, 2009.
- 2009012891
 - Allegations: Price list discrepancies; copy of license and inspection report of crematory not available for inspection.
 - Presented: September 8, 2009 – \$350.00 Consent Order
 - Status: Closed – December 8, 2010.

Recommendation:

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

A motion was made by Robert Starkey to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

Note: Board member Patterson exited the meeting at 2:32 P.M.

13. Case No.: L12-FUN-RBS-2012023271**Complaint:**

- On August 10, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- The establishment license expired on June 30, 2012, and was not renewed until July 13, 2012.
- During this time, the establishment conducted five (5) funeral services.

Response:

- Respondent states that they have addressed the issue regarding an invalid license and have placed the event on their calendar for each year.

History:

- Two (2) prior complaints.
 - 2006041221
 - Allegations: FTC violations.
 - Presented: December 12, 2006 – \$750.00 Consent Order
 - Status: Closed – February 22, 2007.
 - 2007052841
 - Allegations: False advertising.
 - Presented: April 10, 2007 – Dismiss.
 - Status: Dismissed – April 12, 2007.

Recommendation:

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

A motion was made by Anita Taylor to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

14. Case No.: L12-FUN-RBS-2012023281**Complaint:**

- On August 29, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- The establishment license expired on June 30, 2012, and was not renewed until July 9, 2012.
- During this time, the Respondent conducted three (3) funeral services.

Response:

- Respondent manager was under the impression that the renewal application of the establishment's operating license had been forwarded to the Board with appropriate payment.
- As it turned out, this did not take place, and the Respondent has put methods in place to address this issue in the future.

History:

- Seven (7) closed complaints.
 - o 2004198491
 - Allegations: Consumer not happy after Respondent bought out burial policies from another establishment.
 - Presented: June 21, 2005.
 - Status: Closed – June 29, 2005.
 - o 2005041581
 - Allegations: FTC Rules violation.
 - Presented: January 10, 2006 - \$1,000.00 Consent Order.
 - Status: Closed – June 7, 2006.
 - o 2006023321
 - Allegations: Unlicensed activity.
 - Presented: August 8, 2006 – Dismissed.
 - Status: Dismissed – August 17, 2006.
 - o 2006031961
 - Allegations: Failure to correct warnings issued at previous inspection.
 - Presented: N/A
 - Status: Closed – August 18, 2006.
 - o 2007049761

- Allegations: FTC Rules violation.
- Presented: April 10, 2007 – \$500.00 Consent Order.
- Status: Closed – June 6, 2007.
- 2008019901
 - Allegations: Invalid license; FTC violation; errors on price lists.
 - Presented: March 10, 2009 – \$1,450.00 Consent Order.
 - Status: Closed – June 11, 2009.
- 2010021631
 - Allegations: GPL, CPL, SFGSS errors; funeral director's license not available for inspection.
 - Presented: December 1, 2010 – \$1,000.00 Consent Order.
 - Status: Closed – January 12, 2011.

Recommendation:

- Consent Order with \$300.00 civil penalty and authorization for hearing.

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

Seconded by Tony Hysmith

Adopted by voice vote

15. Case No.: L12-FUN-RBS-2012023431**Complaint:**

- Complainant provided copies of newspaper advertisements for "Cremations Starting at \$892.00".
- At the base of the advertisement, the Respondent provides a list of items and services included in the plan, but provides no itemized listing of the cost.
- The Complainant states that they received letters from the Board stating that they should cease similar advertisements.

Response:

- Respondent is not aware of any violation in their advertisement.
- Respondent states that this is not a package, and the details are explained, along with the price being included on the General Price List since April 9, 2010.

History:

- One (1) open complaint; nine (9) closed complaints.
 - 2012007171
 - Allegations: Illegal advertising.
 - Presented: August 14, 2012 – \$250.00 Consent Order.
 - Status: Open.

- 2012009131
 - Allegations: Solicitation of services at or near death.
 - Presented: August 14, 2012 – \$250.00 Consent Order
 - Status: Closed – October 29, 2012.
- 2011031671
 - Allegations: Unethical and misleading information.
 - Presented: May 8, 2012 – Close.
 - Status: Closed – May 11, 2012.
- 2011031321
 - Allegations: SFGSS, GPL, OBCPL discrepancies; business card fails to clearly state employee's responsibilities.
 - Presented: May 8, 2012 – \$2,000.00 Consent Order.
 - Status: June 13, 2012.
- 2011001781
 - Allegations: Use of names of unlicensed individuals.
 - Presented: May 10, 2011 – \$250.00 Consent Order.
 - Status: Closed – May 4, 2012.
- 2011000011
 - Allegations: Gives or tends to give impression employee is licensed.
 - Presented: April 12, 2011 – \$500.00 Consent Order.
 - Status: Closed – May 6, 2011.
- 2010037061
 - Allegations: Unlicensed personnel signed cremation authorization form.
 - Presented: April 12, 2011 – Letter of Warning.
 - Status: Closed – April 21, 2011.
- 2010028601
 - Allegations: Names of unregistered employees; Licensing violations; FTC violations.
 - Presented: February 8, 2011 – Letter of Warning.
 - Status: Closed – February 16, 2011.
- 2010016571
 - Allegations: False advertising.
 - Presented: August 10, 2010 – Letter of Caution.
 - Status: Closed – September 1, 2010.
- 2010013101
 - Allegations: False advertising and misrepresentation.
 - Presented: July 13, 2010 – Letter of Warning.
 - Status: Closed – August 19, 2010.

Recommendation:

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

A motion was made by Wayne Hinkle to increase the civil penalty to \$500.00 and authorization for hearing.

Seconded by Tony Hysmith

Adopted by voice vote

Note: Board member W. T. Patterson reentered meeting at 2:35 P.M.

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
NOVEMBER 13, 2012 – DECEMBER 10, 2012**

Establishments

Type of Change

Covenant Crematory
Chattanooga, TN

New Establishment

Shackelford Cremation Services, Inc.
Selmer, TN

New Establishment

Individuals

Type of License(s)

Elizabeth Anne Cotter
Athens, TN

Funeral Director/Embalmer

John William Haben, Jr.
Kingsport, TN

Funeral Director/Embalmer

Shannon Lee Hill
Pelham, TN

Funeral Director/Embalmer

Yvonne S. Blevins
Clarksville, TN

Funeral Director/Embalmer
Reciprocity

Britton Glenn Gilbert
Franklin, KY

Funeral Director/Embalmer
Reciprocity

Brandon Shane Willis
Knoxville, TN

Funeral Director/Embalmer
Reciprocity

Sherrod Andre Kimmins

Funeral Director

Nashville, TN

Lee Ann Myers
Tellico Plains, TN

Funeral Director

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED
BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE
PERIOD OF NOVEMBER 13, 2012 – DECEMBER 10, 2012**

Respondent: Anderson-Upper Cumberland Funeral Home, Gainesboro, TN

Violation: Failed to provide the reason for embalming on multiple contracts, failed to maintain a copy of the crematory's current license and latest regularly scheduled inspection results that the funeral home uses, and unlicensed individuals wore name tags lacking titles which gave or tended to give the impression that the persons were licensed or entitled to practice as a funeral director or embalmer

Action: \$250 Civil Penalty

Respondent: Boyd Funeral Home, Ashland City, TN

Violation: Failed to report a change of the establishment's manager, business card of an unlicensed owner gave or tended to give the impression that the person was licensed or entitled to practice as a funeral director or embalmer, failed to comply with multiple aspects of the Funeral Rule and failed to respond to the Board's complaint within the time specified in the notice

Action: \$1000 Civil Penalty

Respondent: Carter-Trent Funeral Home, Inc., Kingsport, TN

Violation: Failed to report a change of the establishment's manager, failed to provide the reason for embalming on multiple contracts and failed to list caskets that the establishment usually offered for sale on the Casket Price List

Action: \$500 Civil Penalty

Respondent: DeKalb Funeral Chapel, LLC, Smithville, TN

Violation: Knowingly permitted an unlicensed person to engage in the profession of funeral directing, aided and abetted an unlicensed person to practice within the funeral profession on multiple occasions, violation of a statute pertaining to the prearrangement or prefinancing of a funeral, engaged in unfair and deceptive acts or practices including overcharging

- customers for products and services, failed to properly clean and sanitize a mortuary cot and the preparation room and failed to maintain the preparation room in an orderly manner free from clutter
- Action: \$3500 Civil Penalty
- Respondent: E. H. Ford Mortuary Services, Memphis, TN
- Violation: Unreasonably refused to promptly surrender custody of a dead human body upon the express order of the person legally entitled to the custody of the dead human body
- Action: \$750 Civil Penalty
- Respondent: Joseph S. Ford, Sr., Memphis, TN
- Violation: Refused to promptly surrender custody of a dead human body upon the express order of the person legally entitled to the custody of the dead human body
- Action: \$250 Civil Penalty
- Respondent: Gallant-Riverview Funeral Home, Inc., Fayetteville, TN
- Violation: Allowed a funeral director to conduct multiple funeral services while their funeral director license was expired
- Action: \$500 Civil Penalty
- Respondent: Highland West Memorial Park, Funerals & Cremations, Knoxville, TN
- Violation: Failed to retain a cremation authorization form and a discrepancy existed regarding prices of outer burial containers on display and the prices on the price list
- Action: \$500 Civil Penalty
- Respondent: N. H. Owens & Son Funeral Home, Memphis, TN
- Violation: Failed to retain multiple cremation authorization forms, preparation room floor was found to be in very poor condition and needed to be replaced and failed to respond to the Board's complaint within the time specified in the notice
- Action: \$750 Civil Penalty
- Respondent: Resthaven Funeral Home & Cremation Services, Clarksville, TN
- Violation: Failed to maintain a copy of the crematory's current license and latest regularly scheduled inspection results that the funeral home uses, failed to comply with multiple aspects of the Funeral Rule and failed to respond to the Board's complaint within the time specified in the notice
- Action: \$750 Civil Penalty

Respondent: Vicky Sandlin, Smithville, TN
Violation: Met with the family of a deceased individual and planned funeral arrangements without being licensed to practice funeral directing
Action: \$1000 Civil Penalty

Respondent: Smith-Regan Funeral Home, Rutledge, TN
Violation: General Price List, Casket Price List, and Outer Burial Container Price List provided by the establishment were not the price lists in effect at the time of inspection and multiple caskets in the selection room were not listed on the price list
Action: \$250 Civil Penalty

Respondent: Snyder's Memorial Gardens, Inc., Gray, TN
Violation: Signage provided a name other than the exact name approved by the Board, failed to maintain the preparation and public visitation rooms in an orderly manner free from clutter and failed to comply with an aspect of the Funeral Rule
Action: \$250 Civil Penalty

Respondent: V. E. Parham and Son Funeral Home, Springfield, TN
Violation: Found to be using a tag provided by the hospital instead of affixing a permanent identification device to the deceased human body, failed to maintain a copy of the crematory's current license and latest regularly scheduled inspection results that the funeral home uses and failed to comply with multiple aspects of the Funeral Rule
Action: \$750 Civil Penalty

OPEN COMPLAINT REPORT:

As of December 10, 2012 there were 102 open complaints.

A motion was made by Wayne Hinkle to accept the Executive Director's Report.

Seconded by Robert Starkey

Adopted by voice vote

INDIVIDUAL APPLICATION:

**James Bryan Folsom
Blountville, TN**

**Funeral Director/Embalmer
Reciprocity**

Upon motion by W. T. Patterson and seconded by Tony Hysmith, based upon application record, this individual was approved for licensure subject to receipt of requested documents by the Board office.

Adopted by voice vote

ELECTION OF BOARD OFFICERS FOR 2013:

President:

Robert Starkey made a motion to nominate and elect Tony Hysmith as President of the Board for 2013.

Seconded by Wayne Hinkle

Wayne Hinkle made a motion that nominations cease and that Mr. Hysmith be elected by acclamation.

Seconded by Anita Taylor

Adopted by voice vote

Vice President:

Wayne Hinkle made a motion to nominate and elect W. T. Patterson as Vice President of the Board for 2013.

Seconded by Anita Taylor

Jane Gray Sowell made a motion that nominations cease and that Mr. Patterson be elected by acclamation.

Seconded by Anita Taylor

Adopted by voice vote

APPOINTMENT OF CONTINUING EDUCATION LIAISON FOR 2013:

Jane Gray Sowell made a motion to appoint Tony Hysmith as the Continuing Education Liaison for 2013.

Seconded by Wayne Hinkle

Adopted by voice vote

RECESS:

On December 11, 2012 at 2:47 P.M., a motion was made by Wayne Hinkle to recess this meeting until December 17, 2012, at 10:00 A.M.

Seconded by Anita Taylor

Adopted by voice vote

RECONVENE:

President Clark McKinney called the meeting to order on December 17, 2012 at 10:00 A.M. in the Second Floor Conference Room of the Andrew Johnson Tower, Nashville, Tennessee.

Board members present were Clark McKinney, President; Tony Hysmith, Vice President; Wayne Hinkle, W. T. Patterson, Jane Gray Sowell, Robert Starkey and Anita Taylor.

Staff members present were Robert Gribble, Executive Director; Benton McDonough, Assistant General Counsel; Adrian Chick, Assistant General Counsel; Lisa Mosby, Administrative Assistant, and Josh Kilgore, Administrative Secretary.

CONTINUATION OF FORMAL HEARING:

Docket No. 12.21-118289A

- Respondent: Carl R. Points, Columbia, Tennessee, Funeral Director License No. 5122

The formal hearing was continued before the Honorable Mattielyn B. Williams, Administrative Law Judge. The State was represented by Assistant General Counsel Adrian Chick, and the Respondent was represented by Attorney William C. Barnes.

Jane Gray Sowell recused herself from participation in this matter.

After hearing testimony, a motion was made by Tony Hysmith to:

- SUSPEND the Funeral Director license of Carl R. Points for a period of one (1) year;
- Respondent shall be assessed a civil penalty in the amount of \$3000.00;
- Respondent shall be assessed the total hearing costs; and
- Respondent's Funeral Director license shall be automatically reinstated immediately following this one year period provided that the Respondent has paid all costs and penalties assessed and that the Respondent has not been found to have committed additional violations.

Seconded by Anita Taylor

President Clark McKinney announced there would be roll call vote, and the board members voted as follows:

Board Members	Yes	No
Wayne Hinkle	X	
Tony Hysmith	X	
Clark McKinney	X	
W. T. Patterson	X	
Robert Starkey	X	
Anita Taylor	X	

Adopted

The formal hearing was concluded, and the meeting adjourned on December 17, 2012 at 2:44 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director