

# **TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

## **MINUTES OF BOARD MEETING**

**FEBRUARY 14, 2012**

President Clark McKinney called the meeting to order at 10:03 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; Jimmy Gossett, Administrative Assistant; and Lisa Mosby, Licensing Technician.

### **INTRODUCTION OF NEW BOARD MEMBERS:**

President Clark McKinney introduced and welcomed three (3) new board members: Jane Gray Sowell from Columbia representing the Middle grand division, and Robert O. Starkey, III, from Knoxville and Anita Taylor from Chattanooga, both representing the Eastern grand division.

The Governor is the appointing authority for every board member. Ms. Sowell and Mr. Starkey were nominated by the Tennessee Funeral Directors Association, and Ms. Taylor was nominated by the Tennessee State Funeral Directors & Morticians Association.

### **ADOPTION OF AGENDA:**

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

Seconded by Wayne Hinkle

Adopted by voice vote

### **APPROVAL OF MINUTES:**

A motion was made by W. T. Patterson to approve the minutes of the December 13, 2011 Board Meeting.

Seconded by Jane Gray Sowell

Adopted by voice vote

**iPAD DEMONSTRATION:**

Kimberly Whaley, representing Assistant Commissioner Bill Giannini's Office, informed the board members of the State's plan to implement the use of iPads. Ms. Whaley gave a brief demonstration and then talked with each board member individually on the iPad and its expected use during future meetings.

**ADOPTION OF ROBERT'S RULES OF ORDER:**

A motion was made by Jane Gray Sowell to adopt Robert's Rules of Order to govern the Board in all cases to which they are applicable and in which they are not inconsistent with statutes and any special rules of order the Board may adopt.

Seconded by W. T. Patterson

Adopted by voice vote

**CONFLICT OF INTEREST STATEMENT:**

Executive Director Gribble explained that a Conflict of Interest Statement be signed annually, and those are presented to the board members at the first meeting of the year. Every board member signed a new statement acknowledging that its purpose is to assure that the interests and activities of all members serving on a departmental board do not conflict or give the appearance of conflicting with the provision of unbiased service to the public.

**LEGAL REPORT:**

**BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL**

**1. Case No.: L11-FUN-RBS-2011026111**

**Complaint:**

- On August 31, 2011, a field representative with the Board of Funeral Directors and Embalmers conducted a routine inspection of the Respondent establishment.
- Upon reviewing the Respondent's file pertaining to a customer, it was determined that the Respondent included a cremation authorization form; however, the document failed to disclose the name, telephone number, and address of the in-state or out-of-state crematory.
- The field representative pointed out this same violation to the Respondent in the previous year's examination.
- The field representative found in the Statement of Funeral Goods and Services Selected for two customers that the Respondent charged one

hundred and seventy-five dollars (\$175.00) for the purchase of “equipment”; however, the Respondent failed to provide an itemized description for the purchase.

**Response:**

- The Respondent provided a different copy of the cremation authorization form that appears to be in compliance, but it was dated later than the one initially found in the file.
- The Respondent states that the Funeral Rule is in place to protect the consumer from an attempt to deliberately deceive the consumer on the part of the funeral establishment, and the Respondent states that the field representative’s choice of words does more harm than good.
- The Respondent was cited because the Statement of Funeral Goods and Services Selected showed a charge for one hundred and seventy-five dollars (\$175.00) for “Other Services, Facilities, and Equipment.” The Respondent states that the field representative should have used the word “set-up” instead of “equipment”; however, there is no mention of “set-up” in the brief description of that section, while the word “equipment” was put on the SFGSS by the Respondent. Furthermore, as noted above, there is no itemized description of the purchase.

**NOTE:**

- The Respondent keeps the files at the manager’s private home, and the manager chose a selection of four (4) files to bring with them to the examination. This prevented the field representative from making a broad random selection of the files to review.

**History:**

- Two (2) closed complaints with T.C.A. 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 and add a stipulation to the Consent Order that the establishment will make all files available for review at the funeral establishment on subsequent inspections.

Seconded by Tony Hysmith

Adopted by voice vote

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**2. Case No.: L11-FUN-RBS-2011026151**

**Complaint:**

- On August 19, 2011, a field representative conducted a routine examination of the Respondent establishment.
- During the examination, the field representative reviewed the file of a customer, and found that the cremation authorization did not meet statutory requirements.
- The cremation authorization form in the decedent's file gave the name, address and phone number of the wrong establishment.
- The establishment noted in the file did not operate a crematory, nor is the establishment licensed to operate a crematory. However, the funeral director states that they thought it was the correct establishment because it had "cremation services" in its name.
- The Respondent's manager stated he would send his funeral director to the home of the authorizing agent with a new cremation authorization form that shows the correct information.
- Respondent provided a copy of the license and latest inspection report of the crematories typically used by this establishment; however, they did not have the license or inspection report for the crematory actually used in this instance. The Respondent was able to contact the crematory and obtain that information during the examination.

**Response:**

- Respondent obtained the signature of the authorizing agent.
- The Respondent provided a copy of the proper cremation authorization form along with a copy of the crematory license and latest inspection report.

**History:**

- Three (3) closed complaints with two (2) being 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 Wayne Hinkle

Adopted by voice vote

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**3. Case No.: L11-FUN-RBS-2011026431**

**4. Case No.: L11-FUN-RBS-2011026432**

**Complaint:**

- The Complainant's husband passed away on August 1, 2011.

- Respondent #3 performed the decedent's cremation, and his ashes were supposed to be placed in a black heavy plastic container to be mailed to Orlando, Florida.
- The ashes were supposed to arrive in four (4) to five (5) days, but Respondent #4 stated that someone forgot to mail them. It took approximately two (2) weeks for the ashes to arrive.
- When the church in Florida opened the box, they found ashes in a plastic bag without the proper container.
- The church called the decedent's mother to come retrieve the ashes as the church could not place the ashes in a vault without a container; so the decedent's mother was forced to purchase an urn.
- Complainant then called Respondent #4 and told him about the ashes at the church, and Respondent #4 stated that someone must have tampered with the container.
- Also, Complainant states that her husband had an insurance policy and the Complainant keeps receiving phone calls from the insurance company stating that they need a certified death certificate.
- Complainant called Respondent #3 and found that they had yet to send the insurance claim, which had been in the Respondent's possession for a month.
- Complainant states that Respondent #4 informed her that they had not heard anything from the insurance company regarding paperwork.
- Complainant called the insurance company again who informed her of the particular forms that were needed from the Respondents.
- Complainant continued attempts to contact the Respondents and her calls were not returned so she filed this complaint.
- Shortly after filing the complaint, Respondent #4 came to her residence to fill out the paperwork.
- Complainant called insurance company and was informed that the company received death certificate but not the form necessary from the Respondents.

**Response:**

- Respondent states that the statements regarding the delay in mailing the cremains were correct and that the cremains were not mailed until August 17, 2011, arriving in Orlando on August 22, 2011.
- Respondent states the cremains were mailed in a plastic bag within a temporary container of cardboard, not the container the Complainant believed they would be mailed in.
- Respondent states they use both cardboard and plastic containers, and the Respondent states the only way the church would have known the cremains were in a plastic bag would be if they opened the container.
- Respondent states they always seal cremains in a plastic bag inside temporary containers, and the idea that the Respondent mailed the cremains in a plastic bag alone would not be correct.

- As for the insurance policy, the Respondent states that they offered to file the paperwork for no charge and took an assignment on the amount owed the funeral home through Express Funeral Funding.
- Respondent states that the insurance company mails claim forms and they could not be obtained via fax or online.
- Furthermore, Respondent states that they received the necessary forms and called the Complainant on September 12, 2011 offering to drive to her house to fill out the paperwork.
- The documentation was sent to Express Funeral Funding on the 13<sup>th</sup> and Respondent contacted the company following the Complainant's call on the 21<sup>st</sup>, to which the insurance company stated all documents had been sent to the insurance company to finalize the claim.
- Respondent admits that the timing of events was not good and the Respondent will no longer mail cremains in cardboard temporary containers, all will be mailed in poly temporary containers.

**History:**

- Respondent #3 – One (1) closed complaint, not related.
- Respondent #4 – None.

**Recommendation:**

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

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**5. Case No.: L11-FUN-RBS-2011026721**

**Complaint:**

- This complaint was filed by the Respondent's employer.
- The employer was recently contacted by two customers regarding two funerals and one monument sold on a preneed basis to them by the Respondent on March 23, 2011, for the total of \$12,990.00.
- The customers had paid this amount in cash and were provided a signed receipt (with the employer's name on it) from the Respondent.
- The customers presented their receipt and insurance enrollment form in addition to the Statement of Funeral Goods and Services Selected on August 30, 2011, but the employer had no record of this sale.

- The Respondent, who had not taken an active part in the employer's business since June 2011, was immediately contacted, and he offered various excuses as to his failure to promptly remit receipt of funds.
- The Respondent promptly delivered a cashier's check in the amount of \$12,990.00 to the employer with a memo noting payment for a prearranged funeral plan.
- No reason was given to the employer for this failure to submit the money received by the Respondent, and the employer reports that a page appears to be missing from the back of their cash receipt book.
- No cash receipt appears in the book during the chronological time frame in which this preneed product was sold.
- When staff received the cashier's check, they modified the date of the insurance enrollment form and statement of funeral goods and services as it believed this to be appropriate to correspond to the actual receipt of funds by it and in turn these were promptly forwarded to Forethought.

**Response:**

- Respondent states that on March 23, 2011, a customer and her two daughters approached him to purchase a monument and make final arrangements for both the customer and her husband.
- The customers paid him approximately twelve thousand nine hundred and ninety dollars (\$12,990.00) in cash for the combined services.
- The Respondent then secured the money in a briefcase, but he was later unable to locate the money, and he failed to recall placing the funds in a briefcase.
- The Respondent identified various health issues, an oversight on his part and failure to deliver the cash received when he cleaned out his company vehicle in June 2011.
- Respondent states that he was using prescription drugs, which greatly affected his memory.
- On or about August 30, 2011, Respondent states that the daughter of the customers notified his employer to view the drawing of the monument.
- Respondent's employer contacted him, and the Respondent discovered the money and accompanying paperwork following a thorough search of his files in his company vehicle.
- Respondent states he made Forethought whole via a cashier's check and states that he understands that his failure to notify his employer and Forethought of the lost money was irresponsible.
- Respondent states that he is not aware of what happened to his employer's missing cash receipts, as he did not remove any of the pages from the book.

**History:**

- No prior complaints.

**Recommendation:**

- Consent Order with two (2) year suspension of funeral director's license, and authorization for hearing.

Jane Gray Sowell recused herself from the proceedings of this complaint.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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## **6. Case No.: L11-FUN-RBS-2011031881**

### **Complaint:**

- The Complainant's initial complaint was received by the Board on December 9, 2011.
- The owner of the Respondent's business passed away on November 29, 2011.
- The Complainant stated that the Respondent was conducting unlicensed activity and provided obituaries showing the establishment conducting funeral services after the November 29, 2011 death of the establishment's owner.
- The Complainant provided a copy of a funeral program showing the Respondent holding herself out to be a "Funeral Director Apprentice"; however, the Respondent's apprentice registration was invalid at that time.

### **Response:**

- The Respondent states that the final services for the establishment owner were overseen by the Respondent and a licensed funeral director.
- Respondent stated that as far as her name being placed on a program with the title, "Funeral Director Apprentice," that she sent an old sample program to the printer so they could use the proper format for the program, but she failed to proof read the programs before 500 of them were printed.
- Respondent stated they had three (3) funeral services to conduct following the establishment owner's death, and she performed administrative duties and prepared paperwork while being supervised by a licensed funeral director. (Documentation provided by the Respondent reflects the fact that a licensed funeral director provided the services).
- Respondent believes the Complainant is upset because he was fired by the establishment owner recently, and there is no credibility to the complaint.
- Respondent admits that her apprentice registration has expired and she takes full responsibility for the oversight of her expired apprenticeship title being printed on the funeral program.



**History:**

- One (1) closed complaint, 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

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**7. Case No.: L11-FUN-RBS-2011025911**

**Complaint:**

- Unbeknownst to the Complainant, her father passed away in a rehabilitation center on August 18, 2011.
- The Complainant was asked to go to the funeral home to grant permission for her father's body to be cremated.
- The Complainant then asked to see her father's remains after signing the authorization form, but she was told that the body was being prepared for cremation.
- Three (3) days later, on August 21, 2011, the Complainant went to meet with the Respondent and informed the Respondent of her wishes to see her father's body.
- The Complainant states that the Respondent told her that he could bring the body out, but then he told her that the body was never actually at the funeral establishment, and it was taken directly from the rehabilitation center to the crematory.
- The Respondent then told the Complainant that he could get her some of her father's ashes following the cremation, but then he told her that she would have to share the remains with other family members.
- The Complainant believes the Respondent willfully and knowingly misled her after she had already been deprived of being with her dad during his last days.

**Response:**

- Respondent was contacted by the rehabilitation facility and given contact information for the decedent's next of kin – that being contact information for the Complainant's aunt.
- The aunt said the decedent's wishes were to be cremated without any viewing.
- The aunt informed the Respondent of the decedent's two (2) children as the next of kin, but these are not the decedent's biological children. However, they do bear his last name.

- Based upon the Respondent's attorney's reading of the law, they believed the aunt had the right to grant permission to cremate the body, and that's what the parties did.

**Response from Complainant's Attorney:**

- Respondent and his wife contacted the Complainant, her brother and her mother on numerous occasions on Friday, August 19, 2011 the day after decedent passed away, regarding documents that needed to be signed.
- Complainant returned phone call and asked for more time to process the death.
- Complainant, her brother and mother went to sign the documents, and the decedent's sister was present at that meeting as well.
- The Complainant and her brother asked for a portion of the ashes, and the decedent's sister agreed to this request.
- The Respondent agreed as well and said he could provide them with the necessary container, to which the aunt said she would hold him to that statement.
- The Complainant asked to see the decedent's body, but Respondent told her no, as the body had already been prepared for cremation.
- The Complainant tried to contact the Respondent on Saturday the 20<sup>th</sup> to discuss what transpired on Friday, but she was unable to meet with him until Monday the 22<sup>nd</sup>.
- The Respondent then informed the Complainant that he could take her back to see the decedent and the Complainant was alarmed by this. The Complainant told the Respondent she was very disappointed with his actions and would tell the board about it, and then the Respondent stated that the body wasn't actually back there as it was sent directly to the crematorium from the rehabilitation center.

**History:**

- Two (2) closed complaints, not related.

**Recommendation:**

- Close – This case was originally presented at the December board meeting; however, the case was tabled as the board requested more information regarding the relationship between the Complainant and the decedent.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

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**8. Case No.: L11-FUN-RBS-2011026491**

**Complaint:**

- On September 6, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- A review of the Statement of Funeral Goods and Services Selected for one customer shows a charge of \$2,895.00 for the Casket "In God's Care." However, the Casket Price List shows a price of \$2,795.00 for the same item, creating an overcharge of \$100.00.
- Next, upon reviewing the Statement of Funeral Goods and Services Selected for another customer, it was determined that she received a charge for \$1,535.00 which included Direct Cremation, Embalming, Viewing / Visitation, Funeral Ceremony, Additional mileage to transfer of Remains to Funeral Home, Rental Casket, Video, and Cash Advances; however, it was clear that this was not a Direct Cremation.
- The Respondent failed to itemize the purchases indicated on the Statement of Funeral Goods and Services Selected.
- The field representative discussed the fact that the Respondent did not have packages in writing to offer customers, and the "crematory fee" should have been included in the cash advance section along with "Basic Services of Funeral Director and Staff", and "Transfer of Remains to Funeral Home."
- Respondent stated that they did not have any packages in writing, but the "Traditional Funeral Followed by Cremation" that is noted on the General Price List is \$2,975.00, which is a total of the items indicated on the General Price List.
- Respondent stated he did not know how to charge a crematory fee since he was not being charged anything for use of the crematory due to the fact that the crematory is on the same premises as the funeral establishment.

**Response:**

- Overcharge of Casket
  - o The casket was specified on the pre-arrangement contract was a Batesville model and would have been priced at \$2,895.00, and it was the decision of the family to select the casket we had in stock which was shown on the CPL at \$2,795.00.
  - o In writing the contract, it was an error to charge the family the \$2,895.00 instead of the price for the casket in stock.
  - o Respondent refunded \$109.25 to the family.
- Direct Cremation
  - o This individual's death occurred on July 2, 2011, and the daughter came to the funeral home to notify Respondent of the death.
  - o The body was transferred to the Medical Examiner's Office in Nashville, and the daughter stated that the decedent wished to be cremated but was not sure what the remainder of the family wished to do.
  - o The decedent's husband was in a nursing home suffering dementia, and the executor opted out of serving in that capacity.

The daughter who hired the funeral home was later found to be completely excluded from any family inheritance.

- o The family asked that the body be embalmed and they asked for a traditional funeral package, so the Respondent started with a Direct Cremation and continued to add the price of services requested by the family to the Direct Cremation, which the Respondent now admits was incorrect.
- o Respondent states that even if they had properly itemized the services on the Statement of Funeral Goods and Services Selected, the price would have been the same.
- o Respondent has created three (3) cremation packages which include: (1) Direct Cremation with Minimum Container, (2) Cremation with Memorial Service, and (3) Traditional Funeral followed by Cremation.

**History:**

- No prior complaints.

**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

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**9. Case No.: L11-FUN-RBS-2011026561****Complaint:**

- The Complainants state that the Respondent allowed an individual, who was not a surviving family member, to change the funeral from a 12:30 P.M. commencement to 12 Noon without the permission or notification of the surviving family members.
- The Complainant states that they arrived at 12:15 and found the funeral service was already taking place. They were not escorted in to the chapel and had to sit on the back row, behind other guests.
- Complainant states that this individual who was not authorized to change the funeral only provided four (4) obituaries to family members.
- Complainant states that this individual is friends with the Respondent's family member.
- Complainant states that they called the Respondent to complain, and they were treated poorly.

**Response:**

- Respondent states that the services began at approximately 12:30 that afternoon.
- Respondent states the decedent's cousin signed the SFGSS and was listed as the informant on the certificate of death.
- The services were not changed to noon, as there was a service that started at 11:00 in the same chapel that did not end until 12:00, and the decedent was not placed in the chapel until 12:15.
- The family was escorted in around 12:25.
- The Complainant was not slated to receive the death certificates, but the cousin who signed the SFGSS was the one who received the death certificates.
- Respondent states that neither he, nor his wife, showed any disrespect or unconcern to any of the family members.

**History:**

- Nine (9) closed complaints, none related.

**Recommendation:**

- Dismiss

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

Seconded by Anita Taylor

Adopted by voice vote

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**10. Case No.: L11-FUN-RBS-2011032111**

**Complaint:**

- On December 13, 2011, the Board received the Respondent's Quarterly Report of Apprenticeship Training for July 2011 – September 2011.
- The report must be received no later than sixty (60) days following the last day of the quarter for which credit is sought.
- This report was due on November 30, 2011, making the report 13 days late.

**Response:**

- No response was received.

**History:**

- No prior complaints.

**Recommendation:**

- Deny apprenticeship credit for July 2011 – September 2011.

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

Seconded by Wayne Hinkle

Adopted by voice vote

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**11. Case No.: L11-FUN-RBS-2011032191**

**12. Case No.: L11-FUN-RBS-2011032192**

**Complaint:**

- Complainant states that on November 29, 2011, her father passed away at a local hospital.
- On November 28, 2011, Complainant states that Respondent #11 visited her family while her father was staying in the intensive care unit of the hospital, and the Respondent gave his condolences while also handing out his business card to several family members.
- The very same day, Complainant states that Respondent #11 contacted her mother at home.
- On November 29, 2011, Complainant states that before her family made final arrangements with the former employer of Respondent #11, that Respondent #11 called her mother's house again; however, the Complainant was there to answer the phone instead.
- Respondent #11 repeated his condolences and stated that he was no longer affiliated with his former employer and informed the Complainant of his new employer, Respondent #12.
- Complainant informed Respondent #11 that her family has a pre-need account with the Respondent's former employer, and they intended to use their services.
- Complainant included a copy of the business card provided by Respondent #11.

**Response:**

- Respondent #11
  - o He is a minister and active member of the community.
  - o States he is a good friend of the Complainant's family and went to pray with the family when he learned of the father's illness.
  - o States that he gave his condolences to the decedent's son, told the son he would be praying for them, and gave him his business card.
  - o States that he informed the son of his new employer and stated that he could give him a call at his new place of business if there was anything further he could do.
  - o States that he never asked them to use the services of Respondent #12.
- Respondent #12
  - o This complaint originates with the former employer of Respondent #11 who is upset that he left their employment to work with Respondent #12.

- Respondent #11 was at the hospital visiting a friend who later died, but Respondent #11 went by to see the decedent in this case while acting in the role of minister.
- Respondent #11 prayed with the decedent and his son, and then he left his business card and told the family to contact him if he could be of service.
- Respondent #11 contacted the decedent's wife after hearing of his death and spoke to the decedent's daughter, telling her that he was not comfortable going to visitation at his former employer's place of business, but gave her a list of other funeral establishments in which he would feel comfortable.
- Respondent #11 gave the family his business card because it had his cell phone number on the card; however, we have since instructed the Respondent to obtain new cards with his cell phone number if he will be using those cards for ministerial purposes.
- Respondent #12 states that the wife of the decedent was totally embarrassed by the actions of her daughter (the Complainant) in filing this complaint.

**History:**

- One (1) open complaint, not related.

**Recommendation:**

- #11 – Funeral Director - Consent Order with \$1000.00 civil penalty and authorization for hearing.
- #12 – Funeral Establishment - Consent Order with \$500.00 civil penalty and authorization for hearing.

Jane Gray Sowell recused herself from the proceedings of these complaints.

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

Seconded by W. T. Patterson

Adopted by voice vote

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**13. Case No.: L11-FUN-RBS-2011026591**

**14. Case No.: L11-FUN-RBS-2011026592**

**15. Case No.: L11-FUN-RBS-2011026593**

**16. Case No.: L11-FUN-RBS-2011026594**

**Complaint:**

- On September 12, 2011, a field representative noticed a billboard that stated: "UP TO \$1,000.00 OFF INTERMENT FEES." The billboard went on to say, "When you use the services of Respondent #13, 14, 15, 16."

- The Respondent's names on the billboard are not the exact name listed on the establishment application approved by the Board.
- The billboard then provided the reader with two (2) cemeteries to contact for this discount.
  - The field representative noticed this billboard while conducting a routine examination of a funeral establishment located near the sign. The establishment being examined was a new competitor of the Respondents mentioned on the billboard.

**Response:**

- Respondent's legal counsel responded, stating that the sign was not placed by the Respondent funeral establishments, but by the two (2) cemeteries mentioned on the billboard.
- Respondent states that he respectfully disagrees with any reference to the advertisement being deceptive or misleading to the public.

**History:**

- One (1) closed complaint, not related; one (1) open complaint, non-related T.C.A. violations.

**Recommendation:**

- #13 – Consent Order with \$250.00 civil penalty and authorization for hearing.
- #14 – Consent Order with \$250.00 civil penalty and authorization for hearing.
- #15 – Consent Order with \$250.00 civil penalty and authorization for hearing.
- #16 – 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

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**17. Case No.: L11-FUN-RBS-2011026601****Complaint:**

- Complainant met with Respondent on September 15, 2011, to discuss the final arrangements for the decedent.
- Complainant believed Respondent's services were unprofessional.
- The Complainant asked that changes be made to the body after viewing the decedent on September 23, 2011; however, the staff was not accommodating to these requests.



- Also, as the Respondent attempted to move the body from the funeral establishment to the church across the street, the employee hit a bump causing the lid of the casket to come open.
- Prior to the body being transported from the funeral establishment to the cemetery, Complainant states that they were asked to sign a document on the hood of the hearse, but they were not given a copy of the document.
- Respondent and staff failed to return phone calls or show sympathy toward the family.
- Complainant states that they received a receipt for the services selected, but the name of the Respondent's establishment was absent on the document.

**Response:**

- Respondent provided a letter from the Complainant stating that the two parties have reached a mutual agreement and that they wish for the complaint to be dismissed.

**History:**

- Five (5) closed complaints, not related.

**Recommendation:**

- Dismiss.

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

Seconded by W. T. Patterson

Adopted by voice vote

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**18. Case No.: L11-FUN-RBS-2011026601**

**Complaint:**

- On September 21, 2011, a field representative conducted a routine examination of the Respondent establishment.
- During the examination, it was determined that the price of one (1) casket in the casket selection room (Hartfield Solid \$2,695.00) was inconsistent with the same casket listed on the Casket Price List (\$3,195.00).

**Response:**

- No response received.

**History:**

- One (1) closed complaint with T.C.A. violations.

**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 Anita Taylor

Adopted by voice vote

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**19. Case No.: L11-FUN-RBS-2011026641**

**20. Case No.: L11-FUN-RBS-2011026642**

**Complaint:**

- On September 22, 2011, a field representative conducted a routine examination of the Respondent funeral establishment.
- Upon reviewing the Respondent's records, it was discovered that Respondent #19, an apprentice funeral director, signed off on cremation authorization forms as a licensed funeral director.
- Next, upon reviewing the file of one customer, it was determined that the Respondent failed to retain a copy of the Cremation Authorization Form.
- The Cremation Authorization Forms for three customers were not signed by a licensed funeral director.
- GPL, under direct cremation, (with container provided by customer) was not included in the cremation section.
- GPL, under direct cremation (with alternative container) was not included in the cremation section.
- GPL, under immediate burial with cloth covered casket, the casket needs to be added to the CPL.
- CPL – alternative containers being offered to the consumer must be added under direct cremations to the GPL.
- SFGSS – upon reviewing the SFGSS for four customers, the items selected by these individuals must be listed individually on the SFGSS contract so they can easily be identified on the respective price lists by the consumer.
- Two (2) caskets in the casket selection room (Golden Platinum SS and 16 Ga. Winter Gray) were not consistent with the prices listed on the CPL.
- Preparation Room – The lock on the door did not secure the area as required (no key was available to use the lock as needed), and the room in general was in an unkempt condition with uncovered garbage and soiled linen.

**Response:**

- Respondent #19
  - o Respondent states that a licensed funeral director was teaching her how to fill out a Cremation Authorization Form.
  - o The funeral director pointed to the line where the licensed funeral director is to sign, the Respondent then signed her name on the

- line and the funeral director signed his name beside the apprentice's signature.
- Respondent states that both individuals agreed that if anyone questioned the document, they would hopefully see that the apprentice was being trained.
  - In hindsight, the Respondent states that they should have just discarded the document and allowed the licensed funeral director to sign the document.
- Respondent #20
- Apprentice signing as Licensed Funeral Director
    - Respondent believed it was time for the apprentice funeral director to learn how to fill out a Cremation Authorization Form.
    - Respondent states that it was a mistake on his part to allow the apprentice to sign as a licensed funeral director and the form has since been corrected.
  - File Missing a Cremation Authorization Form
    - This item has been corrected, and a copy of the document is now in the appropriate file.
  - Failure to Sign Three (3) Cremation Authorization Forms
    - All of these documents have been signed, and a copy of the documents has been retained in each file.
  - Pricing
    - Respondent states that the section pertaining to the Respondent charging for cremation by weight will be moved from Miscellaneous Merchandise to the Cremation Price List.
    - Regarding the two (2) caskets on the CPL and in the Casket Selection Room, the Respondent states that a price change with Batesville Caskets took place and the manager was out of the office on a family emergency; therefore, they were unable to change the corresponding prices where necessary. The Respondent has since changed the prices to reflect the Batesville prices.
  - SFGSS
    - Respondent states that these files have been corrected.
  - Preparation Room
    - This room has been cleaned and sanitized as well as arranged orderly and free of clutter.
    - The issue with the key has been corrected as each employee has a key giving them access to the room, and an extra key is on the wall in the general area of each door entering the room to provide entry as needed.
    - A garbage can with a lid has been placed in the room.

**History:**

- #19 – No prior complaints.

- #20 – No prior complaints.

**Recommendation:**

- #19 – Apprentice Funeral Director - Letter of Warning.
- #20 – Funeral Establishment - Consent Order with \$500.00 civil penalty and authorization for hearing.

Respondent #19 – A motion was made by Wayne Hinkle to accept Counsel's recommendation.

Seconded by W. T. Patterson

Adopted by voice vote

Respondent #20 – A motion was made by Wayne Hinkle to increase the Civil Penalty to an amount of \$750.00 and an authorization for a hearing.

Seconded by Robert Starkey

Adopted by voice vote

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**21. Case No.: L09-FUN-RBS-2009024091**

**Complaint:** Based upon a routine examination, the following violations were found:

- Change –
  - o Licensed funeral director resigned from employment at respondent's establishment on September 4, 2009. As of November 10, 2009, no licensed funeral director was overseeing the establishment.
- Immoral or Unprofessional Conduct –
  - o On July 10, 2009, electricity was cut off to this establishment due to lack of payment.
  - o On July 9, 2009, no water, sewer, gas or garbage service due to nonpayment.
  - o Phone number no longer in service.
- FTC Violations –
  - o Owner could not provide GPL, CPL, or OBCPL.
- Crematory –
  - o Latest inspection and license for crematory used was not available.

**Response:**

- Change –
  - o Failed to report licensed director resigning because respondent was not aware they needed to do so.
- Immoral or Unprofessional Conduct –

- The economy has been slow, and respondent has only conducted one (1) service since January 1, 2009. Because of this, it has been difficult to pay all of the bills.
- FTC Violations –
  - Some of respondent's records were at their home and not available for inspection.
- Crematory –
  - License and contract unavailable at time of inspection, but available now.

Respondent states that they have been involved in talks with other funeral directors to handle contract work, and those directors will assist in managing Respondent's funeral home.

**History:**

- Two (2) are closed with related complaints; one (1) is still open with related complaints. This case was originally presented in December 2010. The Board authorized a \$1,000.00 civil penalty and authorized a hearing. This business has since closed.

**Recommendation:**

- Close – Due to the subsequent closure of this establishment.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

**Ruling from the Chancery Court for the State of Tennessee, Twentieth Judicial District, Davidson County, Part III (Bartlett Funeral Home, Inc., and Alfred Thomas Tacker, Petitioners vs. Tennessee Department of Commerce and Insurance, Respondent)**

Benton McDonough, Assistant General Counsel for the Board reported that the Chancery Court affirmed the Board's actions in an earlier hearing before an Administrative Law Judge. In a decision issued Friday, February 3, 2012 by Chancellor Ellen Hobbs Lyle, the Court ordered that the petition of Bartlett Funeral Home and Alfred Thomas Tacker is dismissed with prejudice, and the decision of the Respondent Board is affirmed. Court costs are assessed against the Petitioners (Bartlett and Tacker).

**Note:** President Clark McKinney called for a recess at 10:34 A.M. The meeting reconvened at 10:45 A.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  
DECEMBER 13, 2011 – FEBRUARY 13, 2012****Individuals**

James Dalton Dyer Lexington, TN	Funeral Director/Embalmer
Christopher Lee Jefferson Nashville, TN	Funeral Director/Embalmer
Kenneth Mason Kressenberg, Jr. Chattanooga, TN	Funeral Director/Embalmer
Courtney Nicole Partin Dunlap, TN	Funeral Director/Embalmer
Bradford Allen Birge Scottsville, KY	Funeral Director/Embalmer Reciprocity
Gary A. Mayes Decatur, TN	Funeral Director/Embalmer Reciprocity
Arthur Lee Jackson Nashville, TN	Funeral Director/Embalmer Reciprocity/Reapplication
Mitchell Christopher Kyker Harriman, TN	Funeral Director
Kristy Lynn Pope Cleveland, TN	Funeral Director
Dana Pleshette Taylor Memphis, TN	Funeral Director
Christopher Marc Rush Cleveland, TN	Funeral Director Reapplication

**CLOSED ESTABLISHMENT REPORT:**

One (1) establishment has reported closing recently:

- **Peoples Funeral Home, 330 Reeves Street, Lexington, TN**

**DISCIPLINARY ACTION REPORT:**

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED  
BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE  
PERIOD OF DECEMBER 13, 2011 – FEBRUARY 13, 2012**

Respondent: Anderson Funeral Home, Lewisburg, TN  
Violation: Overcharged consumer on multiple occasions by charging more than price list or duplicating charges, failed to provide a cremation authorization form that was signed and dated by a funeral director and multiple aspects of the establishment's price lists did not comply with the Funeral Rule  
Action: \$750 Civil Penalty

Respondent: Boyd Funeral Home, Ashland City, TN  
Violation: Failed to take reasonable steps to secure the preparation room from unauthorized entry and multiple aspects of the establishment's price lists and contracts did not comply with the Funeral Rule  
Action: \$500 Civil Penalty

Respondent: Chattanooga Funeral Home & Crematory – Valley View Chapel, Chattanooga, TN  
Violation: Cremation authorization form failed to contain the name, address and telephone number of the crematory and the funeral director's signature and the crematory's written receipt for delivery of human remains was not properly retained in the file  
Action: \$500 Civil Penalty

Respondent: Cookeville Funeral Home, Cookeville, TN  
Violation: Operated an establishment and conducted multiple funerals on an expired license, used a name on the outside sign and website other than the exact name approved by the Board and failed to respond to the Board's complaint within the time specified in the notice  
Action: \$1250 Civil Penalty

Respondent: Dickson Funeral Home – Fairview Chapel, Fairview, TN  
Violation: Failed to obtain and maintain a copy of the latest inspection report and license of the crematory that the funeral home uses and multiple aspects of the establishment's price lists did not comply with the Funeral Rule  
Action: \$500 Civil Penalty

Respondent: Daniel Richard Early, Athens, TN  
Violation: Practiced funeral directing on multiple occasions while license was invalid including signing contracts and a cremation authorization form

Violation: \$500 Civil Penalty

Respondent: Rocky Blaise Ford, Savannah, TN  
Violation: Signed numerous funeral contracts and a cremation authorization form as a funeral director while only registered as a student

Action: \$750 Civil Penalty

Respondent: Gentry-Griffey Funeral Chapel & Cremation Services, Knoxville, TN

Violation: Failed to obtain and maintain a copy of the latest inspection report and licenses of two crematories that the funeral home use and failed to retain cremation authorization forms

Action: \$500 Civil Penalty

Respondent: Harrison's Funeral Home, Inc. – Orange Mound Chapel, Memphis, TN

Violation: Unreasonably refused to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to custody of the dead human body

Action: \$1000 Civil Penalty

Respondent: Barry Dean Hickman, Jr., Athens, TN  
Violation: Failed to file quarterly report of apprenticeship training within sixty (60) days of the last day of the quarter for which credit is sought

Action: Shall not receive credit for the time period affected and shall serve the remaining amount of time necessary to complete training as required by law

Respondent: Laycock-Hobbs Funeral Home, Inc., Athens, TN  
Violation: Aiding and abetting an unlicensed person to practice within the funeral profession by allowing a funeral director to practice on multiple occasions while license was invalid including permitting the funeral director to sign contracts and a cremation authorization form

Action: \$750 Civil Penalty

Respondent: Nashville Funeral and Cremation Service, Nashville, TN  
Violation: Website quoted prices for packages but failed to include an itemized listing of each and every item, procedure or service



and the price for each of them, used an establishment name other than the exact name approved by the Board, used the name of an unlicensed person on a business card that either gives or tends to give the impression that the person is licensed, failed to take reasonable steps to ensure that the preparation room is secured to prevent unauthorized entry and failed to comply with aspects of the Funeral Rule

Action: \$750 Civil Penalty

Respondent: N. J. Ford & Sons Funeral Home, Memphis, TN  
Violation: Unreasonably refused to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to the custody of the dead human body

Action: \$500 Civil Penalty

Respondent: Queen Ann Funeral Home, Pulaski, TN  
Violation: Failed to retain a cremation authorization form, failed to obtain and maintain a copy of the current license of the crematory that the funeral homes uses, multiple aspects of the establishment's price lists did not comply with the Funeral Rule and failed to respond to the Board's complaint within the time specified in the notice

Action: \$500 Civil Penalty

Respondent: Speck Funeral Home, Inc., Livingston, TN  
Violation: Failed to retain a copy of the current license of the crematory that the funeral home uses, failed to affix a permanent identification device to a deceased human remains, failed to maintain the preparation room in an orderly fashion and failed to list the reason for embalming on a contract

Action: \$500 Civil Penalty

Respondent: The Rose of Sharon Funeral Service, Pulaski, TN  
Violation: Failed to retain a cremation authorization form, failed to provide any description of a casket on a contract, advertisement brochure failed to include an itemized listing of each and every item, procedure or service and the price for each of them, website used an establishment name other than approved by the Board and failed to include disclosure for cash advance as required by the Funeral Rule

Action: \$750 Civil Penalty

**OPEN COMPLAINT REPORT:**

As of February 10, 2012 there were 119 open complaints.

A motion was made by Wayne Hinkle and seconded by W. T. Patterson to accept the Executive Director's Report.

Adopted by voice vote

**INDIVIDUAL APPLICATIONS:**

**Rocky Blaise Ford  
Savannah, TN**

**Funeral Director/Embalmer**

Tony Hysmith recused himself from the proceedings regarding this candidate.

Upon motion by Wayne Hinkle and seconded by Robert Starkey, based upon application record, this individual was approved for licensure.

Adopted by voice vote

**Melvin Melton, Jr.  
Grayson, GA**

**Funeral Director/Embalmer**

Anita Taylor first recused herself from the proceedings regarding this candidate and then after a better understanding of when it's necessary for a board member to recuse oneself, Ms. Taylor withdrew her recusal.

Upon motion by Wayne Hinkle and seconded by Anita Taylor, based upon application record, this individual was approved for licensure.

Adopted by voice vote

**ADJOURN:**

A motion was made by W. T. Patterson to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

There being no further business, the meeting was adjourned at 11:57 A.M.

Respectfully submitted,

*Robert B. Gribble*

Robert B. Gribble, CFSP  
Executive Director