

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MAY 8, 2012

President Clark McKinney called the meeting to order 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, Jane Gray Sowell, Robert Starkey and Anita Taylor. Board member W. T. Patterson was absent from the meeting.

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

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 Tony Hysmith to approve the minutes of the April 10, 2012 Board Meeting.

Seconded by Jane Gray Sowell

Adopted by voice vote

FORMAL HEARING:

Before the State of Tennessee Board of Funeral Directors and Embalmers

In the Matter of:

**Howard Funeral Home – Establishment
and Beverly Howard Godfrey – Funeral Director**

**Docket Number 12.21-114692A
Presiding: Honorable Marion Wall**

The State was represented by Assistant General Counsel Adrian Chick. The Respondents were not present and were not represented by counsel. The board, upon finding that the Respondents had been properly served with the Notice of Hearing and Charges, voted unanimously to declare Respondents in default and proceed with the hearing.

After hearing testimony of witnesses, considering exhibits introduced by the state, considering the record as a whole, and openly deliberating, the board adopted findings of fact and conclusions of law.

The board then imposed discipline, revocation of the establishment license of Howard Funeral Home and revocation of the funeral director license of Beverly Howard Godfrey, and the board assessed costs against the Respondents.

The board stated the policy statement for the discipline which had been imposed on the Respondents.

The formal hearing was concluded at this point.

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.: L11-FUN-RBS-2011031321

Complaint:

- On November 3, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- Rule 0660-11-.06
 - o On first SFGSS, Respondent charged customer \$1,693.00 for “Basic Services of Funeral Director & Staff” and \$892.00 for “Direct Cremation,” which is a duplicate charge since “Basic Services of Funeral Director & Staff” is already included in the cost for “Direct Cremation”.
 - o The Respondent also made duplicate charges for “other preparations,” “Disinfecting,” and “Removal,” which are all included in “Direct Cremation”.
 - o Second SFGSS, Respondent charged customer \$1,895.00 for “Titan” vault, but the OBCPL in effect at that time lists a price of \$1,695.00 for the same item. This is an overcharge of \$200.00.

- Third SFGSS, Respondent charged customer \$2,852.00 for the “Compassion Package,” but no other packages matched this price.
- Furthermore, the Respondent failed to give any description of the casket included in the packages offered by the Respondent.
- The GPL provided by the Respondent dated September 14, 2011, had a price range of \$995.00 to \$3,895.00 for the Outer Burial Containers; however, the Respondent’s OBCPL ranged up to \$18,995.00.
- TCA 62-5-314
 - The Respondent provided a business card with the name of an employee with no designation as to whether or not this individual is a licensed funeral director.

Response:

- The Respondent states that the business card in question has been replaced, the GPL price range for the Outer Burial Containers has been changed, the families have been reimbursed for the duplicate charges they incurred, and the “Compassionate Package” has been removed from the Respondent’s arrangement room.

History:

- Five (5) closed complaints, one (1) related; two (2) open complaints, one (1) related.

Recommendation:

- Consent Order with \$2,000.00 civil penalty and authorization for hearing.

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

Seconded by Robert Starkey

Adopted by voice vote

2. Case No.: L11-FUN-RBS-2011031331

Complaint:

- On November 4, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- TCA 62-5-107(3)(c)
 - Following the inspection of a funeral file, it was determined that the Respondent failed to obtain the signature of a licensed funeral director on a Cremation Authorization Form.

- Rule 0660-11-.06
 - o Following the inspection of three (3) SFGSS, it was determined that the Respondent failed to itemize caskets purchased by customers.

Response:

- Respondent admits that they failed to obtain the signature of a licensed funeral director on the Cremation Authorization form, but they did have a licensed funeral director sign the SFGSS.
- As for the lack of itemization of the casket on the SFGSS, the Respondent believes they did not violate the Funeral Rule in this matter.
 - o Respondent states that their CPL does not reflect every casket sold by their vendor, but they provide an option to choose a casket from a kiosk in the event a customer cannot choose a casket from their list of thirty (30) assorted caskets.
 - o Respondent states that the three (3) instances in which the caskets selected were not itemized, the customers selected caskets from the kiosk, and those caskets were not included in the Respondent's CPL.
 - o Respondent states that the families in these cases were not prohibited from evaluating their selections or making any desired changes to their selection, which is the basis for the Funeral Rule.
 - o Respondent goes on to say that they have made changes to the wording so that the SFGSS will provide the casket name, model number, color, exterior construction, and price, not just "20 Ga. Casket".

History:

- One (1) closed complaint with a different TCA violation.

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 Anita Taylor

Adopted by voice vote

3. Case No.: L11-FUN-RBS-2011031351

Complaint:

- On November 23, 2011, a field representative conducted a routine inspection of the Respondent establishment.

1. Rule 0660-11-.06
 - In one SFGSS, the Respondent charged \$500.00 for “Use of Facilities & Staff for Memorial Service,” but the GPL presented during the inspection listed a price of \$450.00 for the same service, causing an overcharge of \$50.00.
 - Furthermore, the Respondent listed a charge of \$995.00 for “Immediate Burial” and additional documents show a cremation took place, with a \$100.00 charge for “Cardboard Container” listed under “Outer Burial Container,” but should have been listed as an Alternative Container.
2. Rule 0660-11-.06
 - Another SFGSS failed to correctly itemize the goods and services selected as required.
 - The customer was charged \$2,170.00 for an “Immediate Burial” when the other documents reflect otherwise.
 - Furthermore, the customer’s only description of the casket selected on the SFGSS described the casket as “Oak” with a price of \$3,695.00; however, the price charged does not match either of the two oak caskets on the CPL.
3. Rule 0660-11-.06
 - The CPL presented at inspection failed to list an “Alternative Container” as required by law.
4. Rule 0660-11-.06
 - The Respondent lists the same price of \$995.00 for “Direct Cremation with container provided by purchaser” as is listed for “Direct Cremation with cardboard (alternative) container.”
 - A review of the Respondent’s files shows the Respondent has been charging \$100.00 for the cardboard container and \$995.00 for “Direct Cremation” which indicates a \$100.00 overcharge according to the GPL.

Response:

1. Respondent states that there was an overcharge of \$50.00 on the SFGSS, but the charges for cremation and cardboard container do conform to the GPL in effect at the time.
 - The \$995.00 fee for Direct Cremation was typed on the wrong line, and a page from an earlier GPL was inadvertently included with the GPL at the time of the inspection.
 - The family was given a \$300.00 discount, and there is absolutely no deceptive, misleading or unfair practice.
2. In the second SFGSS, the fee for the casket was correctly itemized, based upon the CPL in effect at the time of the funeral.
 - The CPL provided during the inspection with an effective date of November 1, 2011, does not include the casket in question because the Respondent no longer offers that particular casket,

- and the Monticello was the only oak casket on that particular price list.
- o While it is true that the services provided to this individual were not itemized, that does not mean they were misled or treated unfairly.
3. As for the CPL without an "Alternative Container," the last page of the CPL containing the "Alternative Container" was inadvertently left off and has been included with our response.
 4. The Respondent provided the GPL and believes it indicates the proper itemization for cremation with and without alternative container.

History:

- Four (4) closed complaints with different TCA and Rules 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 Jane Gray Sowell

Adopted by voice vote

4. Case No.: L11-FUN-RBS-2011031371

Complaint:

- On November 28, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- The establishment license expired on October 31, 2011, and the Respondent conducted nine (9) funerals while the license was invalid.

Response:

- Respondent states that they received the license renewal at the funeral establishment and forwarded the renewal to their accountants.
- Respondent states that once the accountant took possession of the renewal, the paperwork and check were not mailed in a timely fashion.
- Corrective action has been taken, and the renewal notice, check, and late fee were mailed to the Board Office.

History:

- Five (5) closed complaints with none related.

Recommendation:

- Consent Order with \$900.00 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

5. Case No.: L11-FUN-RBS-2011031411

Complaint:

- A second complaint with the same set of facts was presented last month.
- Complainant's father passed away and the EMTs notified the Respondent establishment where the decedent and his wife had a burial policy.
- The decedent had not even been deceased for fifteen minutes when a member of the Respondent's staff called regarding who would be paying for the funeral.
- The employee was rude, disrespectful, and called six times before the family got to the funeral establishment.
- Respondent only sent one man to remove the decedent's body, and he needed the help of the EMTs.
- The family got to the funeral establishment and met with the employee who had previously called them on numerous occasions.
- The Complainant states that they told the employee that their cousin would pay for the entire funeral.
- The employee then asked for the name and phone number of the cousin and stated that they wanted the services paid in full.
- Complainant and her sister then decided to transport the decedent's body to a different funeral establishment, and the employee then demanded that the Complainant pay \$190.00 for transportation of the decedent from their residence to the funeral home.

Response:

- Respondent wants to apologize for any misunderstanding that might have occurred.
- It would never be their intent to cause a misunderstanding or cause any hurt feelings.

History:

- One (1) open related complaint; one (1) closed unrelated complaint.

Recommendation:

- Close. A complaint almost identical to this one was presented last month.

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

Seconded by Wayne Hinkle

Adopted by voice vote

6. Case No.: L11-FUN-RBS-2011031671

Complaint:

- The Complainant states that it has been brought to their attention that the Respondent has “price comparisons” posted throughout their building.
- The Complainant states that his business published a new GPL on July 25, 2011, and that the Respondent has continued to compare their prices to the Complainant’s old GPL.
- Complainant has included a photo showing the old GPL from the Complainant posted at the Respondent establishment (old GPL dated March 5, 2010).
- The Respondent claims to be the “most affordable” funeral home in town, but two other funeral establishments actually charge less.

Response:

- These allegations are moot and unfounded.
- The Complainant is not a funeral director.
- We advertise price comparisons in the newspaper, and the latest price comparison was completed by secret shoppers.
- The Complainant’s employer also uses price comparisons as well, and we are the lowest priced firm in town.

History:

- Five (5) closed complaints with two (2) being related. Two (2) open complaints not related.

Recommendation:

- Close.

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

Seconded by Wayne Hinkle

Adopted by voice vote

7. Case No.: L11-FUN-RBS-2011031921

Complaint:

- Following the death of her husband, the Complainant met with the Respondent to discuss final arrangements.

- Complainant states that she made arrangements for a funeral car to pick her up at her residence, and allow for a private wake that would allow her son to attend the services, even though he's currently incarcerated.
- Complainant states that after receiving these explicit directions, including a select few family members to attend the private wake, the Respondent disregarded these directions and notified the decedent's six sisters, niece, cousin, and family friend.
- Complainant states that this action put her in a very awkward position with her husband's family.
- Furthermore, the Respondent sent the funeral car to the Complainant's daughter's house, not the Complainant's house.
- After viewing the body at the private wake, the Complainant states that she asked for a closed funeral because her husband's body was in bad condition following the embalming.
- Complainant believes the Respondent acted unprofessionally as he disregarded her instructions, even though she was the person who signed the contract and paid nearly \$9,000.00.

Response:

- Respondent states that the decedent's sisters stopped by the decedent's home to take him to church when they found him deceased.
- Respondent states it is their understanding that the Complainant and the decedent had not resided in the same residence in almost two years.
- Respondent was transporting the decedent's body to the private wake when he received a call from the decedent's sisters who asked if they could view their brother's body following the private wake. Respondent explained that he would have to call them back, and then realized that the decedent's body was leaking fluid and would have to be returned to the funeral home immediately to address the problem.
- Respondent reached the site for the private wake and explained to the prison officials that the body would have to be returned to the funeral home due to the leakage, but that the decedent's sisters wished to view the body along with the decedent's son.
- The Complainant arrived at the private wake and the Respondent explained the situation and the fact that the decedent's sisters asked to view the body as well, which caused the Complainant to become enraged.
- Respondent spoke with the Complainant's daughter and apologized for the situation involving the decedent's sisters.
- Respondent asked the Complainant's daughter to speak to the Complainant regarding finalizing transportation to the funeral the next day, and the daughter gave the Respondent the daughter's phone number and address.
- The decedent's daughter asked that the casket remain open during the funeral service the next day, but the Complainant went on her own to the church the next day to have the casket closed.

- The casket remained closed during most of the funeral service; however, the decedent's mother did not get to view the decedent's body, so the Complainant allowed for the casket to be opened in the middle of the service.
- Although the Complainant signed the SFGSS, her daughter and son paid the funeral bill, and no money exchanged hands between the Complainant and Respondent.
- The Respondent sent a copy of the check signed by the daughter for \$8,120.00.

History:

- Two (2) closed complaints, unrelated.

Recommendation:

- Close. This appears to be a dispute regarding the execution of a contract that should be addressed in civil court.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

8. Case No.: L11-FUN-RBS-2011032211**Complaint:**

- Complainant's wife passed away, and he tendered a National Burial Insurance Policy to cover the cost of the funeral, but the policy was declined by the Respondent.
- Complainant states that he is aware of other issues concerning similar policies, and the courts have ruled that the policy should be honored for the portions of the services specified in the policy.
- It would not cover those services not specified in the policy, i.e. dove release, concrete vault, etc.
- Complainant states that the Respondent took possession of the policy, which paid out \$385.20 toward the funeral services.
- Complainant believes this is not a just settlement.

Response:

- Respondent states that the Complainant's issue is not with the funeral establishment; rather, he has an issue with the insurance company.
- Respondent states that they met with the Complainant on the day of the funeral arrangements, and the Complainant never stated anything about possessing a burial policy.

- The Complainant did not mention a burial policy until he came to settle his account.
- Respondent states that they informed the Complainant that they could allow him a \$600.00 credit on the bill, but the insurance company would pay only \$385.00.

History:

- One (1) closed complaint, not related; two (2) open complaints, one (1) with related violations.

Recommendation:

- Close.

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

Seconded by Tony Hysmith

Adopted by voice vote

Note: President Clark McKinney turned the chair over to Vice President Tony Hysmith and then exited the room.

9. Case No.: L11-FUN-RBS-2011032831

Complaint:

- On December 20, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- A review of one SFGSS shows a charge of \$3,000.00 for Direct Cremation, \$50.00 for fiberboard container for cremation, and \$285.00 in cash advances; however, the GPL from November 17, 2010, shows a price of \$2,170.00 for Direct Cremations and \$2,670.00 for Direct Cremation with fiberboard container for cremation, which reflects an overcharge of \$380.00 by the Respondent.
- On another SFGSS, the Respondent failed to provide an accurate itemization of the services selected.
- On two (2) other SFGSS, the Respondent charged \$3,550.00 for "Basic Services of Funeral Director & Staff" and \$2,850.00 for the same service on a third SFGSS, but the GPL effective during that time lists the same service at \$1,800.00.
- If the \$3,550.00 or \$2,850.00 were charges for package offerings, the Respondent failed to comply with requirements for listing package offerings on the SFGSS.
- Finally, the Respondent failed to properly provide the required disclosure language for "Right of Selection" and "Embalming" on their GPL.

Response:

- Respondent states that they inadvertently provided a copy of an old GPL effective February 1, 2008, which listed direct cremation from \$2,500.00 to \$3,000.00.
 - o Respondent states this was a mistake on their part, and they did not charge the family for a memorial service at the funeral home, the two hours of visitation, or the video presentation, which was not taken into consideration by the field representative.
- Respondent states that during their inspection in November 2010, they were instructed to write "Inc." next to all of the items on the SFGSS that were included in the package price.
 - o Respondent believes they complied with this, but states that they received citations for violations on this action during their 2011 inspection.
- The Respondent states that their current GPL, effective November 17, 2010, has not changed since their previous inspection in 2010, and their disclosures passed inspection during that time.
 - o Respondent believes they have the identical wording required by the Funeral Rule, and they believe there was no violation.

History:

- Three (3) closed complaints, not related.

Recommendation:

- Letter of Instruction.

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

Seconded by Wayne Hinkle

Adopted by voice vote

Note: President Clark McKinney re-entered the room and took charge of the meeting again.

10. Case No.: L12-FUN-RBS-2012000381**Complaint:**

- The Complainant's family member had a burial policy with the Respondent establishment.
- The Respondent is refusing to honor the Citizens Mutual Burial Policy because the family used another funeral establishment.
- Complainant included a copy of letters sent to every member of the Burial Association stating that they will refuse to pay a claim if an association member uses another funeral establishment that the Respondent deems "impracticable or not" for the payment of any death claim.

- In a letter dated December 31, 2009, the Respondent states that payments are due, and any assessments not paid will make the burial policy null and void.
 - o Furthermore, the same letter states that this policy will not be honored unless it is impracticable to use the Respondent's funeral establishment, which they point out is stated in clause 4 of the contract.
 - o In the contract in question, the Respondent states that the Respondent reserves the right to be the judge in determining what is considered impracticable.

Response:

- Respondent states that the decedent or their family decided to use a funeral establishment two miles away from the Respondent establishment.
- The intention of the Burial Association was to assist family members choosing to use the funeral home listed on the contract, and if members chose to use a different funeral establishment for practical reasons, the contract made provisions for partial assistance.
- In this case, the proximity of the funeral establishment used did not generate any such impractical circumstance.
- Furthermore, the Complainant admits receiving the letter reminding members to pay their dues, and the Respondent would only be required to render payment of the burial association policy if circumstances made it impractical to use the Respondent's establishment.

History:

- None.

Recommendation:

- 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 Jane Gray Sowell

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	
Jane Gray Sowell	X	
Robert Starkey		X
Anita Taylor	X	

Motion adopted, four (4) Yes and two (2) No.

11. Case No.: L12-FUN-RBS-2012000471**Complaint:**

- Complainant states that their aunt passed away in 2010 and the funeral establishment they used contacted the Respondent to verify that the decedent would receive a burial credit.
- The Respondent verified that the decedent would receive a burial credit; however, they later contacted the Complainant to inform them that the credit had been rescinded.
- The Complainant states that they contacted the Respondent and the Respondent informed them that they were no longer paying old burial policies.
- A message sent to the Complainant from the Respondent states that the burial policies paid through 2006 and 2007 will now be deemed paid in full and credit will be given.

Respondent:

- Respondent states that they ran an advertisement in the local newspaper on October 18, 2007, stating that they would no longer accept payments for burial policies, and credit would be given for all policies.
- Respondent states they have been giving credit on the Burial Association to all that were current at the time of the notice.
- Respondent states that they have not paid another funeral home on a Burial Association policy since January 2010.
- Respondent states that they believe they have honored the contracts as intended, and they believe the Burial Association policy was intended to be used at the funeral home from which it originated.

History:

- Three (3) closed related complaints.

Recommendation:

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

A motion was made by Tony Hysmith to table and request that the Assistant General Counsel obtain a copy of the original policy.

Seconded by Wayne Hinkle

Adopted by voice vote

Note: President Clark McKinney turned the chair over to Vice President Tony Hysmith and then exited the room.

12. Case No.: L12-FUN-RBS-2012000691

13. Case No.: L12-FUN-RBS-2012000692

Complaint:

- On December 1, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- The field representative found that the funeral director and embalmer licenses of the owner / manager expired on October 31, 2011, and had not been reinstated by the December 1, 2011, inspection.
- Since this individual is the owner / manager, the establishment operated without a manager from October 31, 2011 – December 1, 2011.
- This individual also completed four (4) contracts during this time.
- The current funeral director and embalmer licenses for this individual were not available for inspection.
- Another employee has been writing pre-need contracts without being registered as a Preneed Sales Agent with Burial Services, causing him to violate preneed statutes.
- The preparation room had several issues:
 - o Ventilation fan not working properly.
 - o Soiled clothing visible on the floor.
 - o Instruments lying all over the counter, clean and dirty instruments mixed together.
 - o Bags of garbage on the floor that needed to be disposed of.
 - o Uncovered products.
 - o Much clutter, the room in need of an overall cleaning.
- Crematory
 - o Two (2) files selected for review did not have Cremation Authorization forms signed and dated.
- Names of Unregistered Individuals
 - o Respondent's website notes that the manager's spouse is a "third generation funeral director"; however, spouse is not a licensed funeral director.
 - o Business cards for the manager's spouse were issued by the establishment with no notation of a specific title.
- GPL
 - o The required disclosure language on the CPL ranges must be corrected.

- The required disclosure language on the OBCPL ranges must be corrected.
- The use of facilities and staff for memorial services must be added.
- Limousine must have its price listed.
- Immediate Burial with cloth covered casket on CPL is inconsistent with the GPL.
- The cloth covered casket has two (2) different prices. Under direct cremation - \$995.00 and under Immediate Burial - \$495.00 – and these prices must be corrected in order to agree with the CPL.
- The high end range for Outer Burial Containers is inconsistent with the OBCPL.
- Other preparation of the body, dressing, casketing, and cosmetics must have prices added.
- Staff, facilities and/or equipment for Saturday viewing must have price added.

- CPL
 - Alternative containers must be added.

- OBCPL
 - Required disclosure language must be added.

Response:

- No response received.

History:

- Four (4) closed complaints, none related; one (1) open complaint, not related.

Recommendation:

- #12 – Consent Order with \$1,750.00 (plus \$250.00 for no response) for total civil penalty of \$2,000.00 and authorization for formal hearing.
- #13 – Consent Order with \$250.00 (plus \$250.00 for no response) for total civil penalty of \$500.00 and authorization for hearing.

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

Seconded by Robert Starkey

Adopted by voice vote

Note: President Clark McKinney re-entered the room and took charge of the meeting again.

14. Case No.: L12-FUN-RBS-2012000721**Complaint:**

- On December 7, 2011, a field representative conducted a routine inspection of the Respondent establishment.
- The Respondent failed to provide a copy of the latest inspection report for the crematory utilized by this establishment.
- Two (2) of the files reviewed did not contain a Cremation Authorization form.
- The license of one (1) funeral director was not available for inspection.
- The license of one (1) embalmer was not available for inspection.
- The name of the Respondent's president is listed on the establishment website and gives the impression that he is a licensed funeral director when that is not the case.
- Another individual is listed as an "apprentice funeral director and embalmer"; however, that person's apprenticeship expired in May 2010.
- This same individual provided business cards with the title "Funeral Director and Embalmer" with a notation as "student".
- The Respondent's GPL and CPL are inconsistent regarding the price of immediate burial.
- The Respondent is providing documents to the public identifying the Respondent by a name other than the exact name listed on the establishment application approved by the Board.

Response:

- Respondent states that all of these items have been addressed and corrected.

History:

- One (1) open complaint, similar violations.

Recommendation:

- Consent Order with \$1,500.00 civil penalty and authorization for hearing.

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

Seconded by Jane Gray Sowell

Adopted by voice vote

15. Case No.: L12-FUN-RBS-2012000861**Complaint:**

- A former employee of the Respondent filed this complaint against the Respondent.
- Complainant states that they ceased working for Respondent on April 1, 2008.
- Complainant states that Respondent has maintained his picture and name on their website, which the Complainant believes is a lie to the public.
- Furthermore, Complainant states that Respondent has used his photograph in their advertisements.
- Complainant states that he called the establishment on January 6, 2012, and no one ever called him back.

Response:

- Respondent states that the Complainant retired in April 2008, following the Complainant's work as a part-time, non-licensed funeral assistant and greeter.
- Respondent states that the Complainant never mentioned he wanted his name and photograph removed from the funeral home website, and it was the Respondent's understanding that Complainant would still make himself available to assist if the Respondent was ever in a bind.
- Respondent states that the Complainant recently casually mentioned to an employee that he wanted his name off the website, but he never made a direct request to the owner of the establishment.
- Furthermore, Respondent states that a message was left with the front desk asking that someone call the Complainant's wife, but they never said what the message was about.
- Respondent believes the Complainant is being influenced by a former disgruntled employee.

Note:

- The Complainant's name is no longer on the Respondent's website.

History:

- Six (6) closed complaints, not related.

Recommendation:

- Close.

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

Seconded by Robert Starkey

Adopted by voice vote

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- 16. Case No.: L12-FUN-RBS-2012001061**
17. Case No.: L12-FUN-RBS-2012001062
18. Case No.: L12-FUN-RBS-2012001063

Complaint:

- The Complainant sold products to the Respondent in good faith, and the products have not been paid for yet.
- On September 28, 2011, the Complainant sent a letter to the Respondents with an invoice for the past due products.
- Additionally, Complainant provided a copy of a check that was provided by the Respondents and returned by the bank as "Not-Sufficient Funds" in October of 2011.
- Complainant points out in the letter that the Respondents were aware that the Complainant would seek remedies through the State Board should the invoice not be paid.
- Complainant states that letters and phone calls went unreturned and ignored by the Respondents, with the exception of the check which was later returned by the bank.

Response:

- #16 – No response received.
- #17 – No response received.
- #18 – No response received.

History:

- #16 – One (1) closed and one (1) open against the establishment, not related.
- #17 – No prior complaints.
- #18 – No prior complaints.

Recommendation:

- #16 – Consent Order with \$750.00 (plus \$250.00 for no response) for total civil penalty of \$1,000.00 and authorization for hearing.
- #17 – Consent Order with \$500.00 (plus \$250.00 for no response) for total civil penalty of \$750.00 and authorization for hearing.
- #18 – Consent Order with \$500.00 (plus \$250.00 for no response) for total civil penalty of \$750.00 and authorization for hearing.

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

Seconded by Wayne Hinkle

Adopted by voice vote

19. Case No.: L12-FUN-RBS-2012001881**Complaint:**

- The Complainant, a competing funeral establishment, states that he met with the decedent's spouse about providing funeral services.
- The decedent's body was first released by his spouse to the Respondent funeral establishment, and the Complainant claims that the Respondent failed to provide a GPL and failed to obtain authorization for embalming.
- The Complainant instructed the spouse to contact the Respondent about transferring the body to the Complainant, and the Respondent instructed the spouse that there would be a \$1,000.00 fee which included embalming, removal, and another service she could not remember.
- Complainant contacted the Respondent that night regarding removal and transfer, and the Respondent explained that he would not do that without first getting paid for the services already provided to the family.
- The Complainant explained that the spouse is willing to pay \$185.00 for the removal, but she disagrees with the other charges.
- The Respondent stated that he did not care if she disagreed with the charges, and he would not release the body until he received \$185.00 for removal and \$425.00 for embalming.
- After two days and several phone calls, the Complainant's staff went to remove the body from the Respondent, and the Respondent stated they would not release the body until a licensed funeral director was present.
- The Complainant then went to the Respondent establishment as the licensed funeral director and tried to obtain the embalmer's registration number, but the Respondent refused to provide that information.
- The body was removed for a \$185.00 removal fee, and the \$425.00 embalming fee was not paid prior to or during the removal.

Response:

- Respondent received a call from the tissue bank informing them that the decedent had passed away, and the Respondent establishment was the establishment of choice for the decedent's family.
- Respondent called the local hospital to obtain the name of the next of kin of the decedent and contacted the decedent's son to express their condolences and to coordinate the services.
- Later that evening, the decedent's ex-wife called to provide assistance in burying her ex-husband.

- The ex-wife had her son contact the tissue bank so the Respondent could provide removal services and embalm the body before making final arrangements.
- After arranging the removal and performing the embalming, a male member of the decedent's family called and stated that they wanted to move the decedent to the Complainant's funeral establishment.
- This phone call was followed by a phone call from the Complainant regarding transferring the body.
- Respondent explained that the decedent's ex-wife contacted the tissue bank about releasing the body to the Respondent and that the Respondent had provided services for which he would like to be paid.
- Respondent states that he informed the Complainant that he would transfer the body as soon as he received the \$185.00 removal fee and \$425.00 embalming fee.
- Respondent claims that he spoke to the Board Office regarding protocol of transfer and they explained that the Respondent could receive the \$185.00 fee from the other funeral home and \$425.00 fee from the family for embalming.
- Later that day, an employee of the Complainant came to remove the body, and the Respondent stated that he needed a licensed funeral director to be present.
- The Complainant paid the \$185.00 removal fee, and the family was later charged the \$425.00 embalming fee.

History:

- Ten (10) closed complaints, none related.

Recommendation:

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

A motion was made by Jane Gray Sowell to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

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- 20. Case No.: L11-FUN-RBS-2011029961**
 - 21. Case No.: L11-FUN-RBS-2011029962**
 - 22. Case No.: L11-FUN-RBS-2011029963**
 - 23. Case No.: L11-FUN-RBS-2011029964**
 - 24. Case No.: L11-FUN-RBS-2011029965**

Complaint:

- In the 2012 edition of "Funeral Home and Cemetery Directory," a heading for Respondent #20 states: "(Respondent) Trade, Removals, and Shipping" and indicates that this business is operating in a specific region of Tennessee.
- Next, the advertisement further states "Embalming & Preparations to Multi Local Firms Daily."
- "2400 Calls Annually", "Restoration & Airbrush Specialists", "27 Years Licensed, Trusted Reputable Service", and "Experienced Professional Staff."
- The advertisement goes on to list Respondents #21-#24 as employees, with an indication that both are licensed in multiple states, a website address for the business, a telephone number, a fax number, and a toll free phone number.
- This same advertisement can be seen in the 2011 edition as well.
- The Respondents also operates a website with the following information:
 - o On the website, one section places an asterisk and states: "Respondent's business offers services to 'Licensed Funeral Establishments' only."
 - o Under "Services Offered" Section – "Embalming, Removals, Refrigeration, Graveside Services", "Providing Complete Funeral and Mortuary Trade Services 24/7", and "National and International Ship Outs."
 - o Under "Our Location" Section – "We have Staff / Service the following areas: Nashville / Chattanooga / All of Southeast Tennessee."
 - o Under "Contact Respondent" Section – This area contains photos, e-mail addresses and phone numbers for the Respondents.

Response:

- Respondents' attorney provided a response to the complaint.
- The Respondents are both funeral directors and embalmers duly licensed pursuant to the laws and regulations of the States of Tennessee and Georgia.
- Their company is an entity which provides certain non-funeral establishment services.
- Such services include embalming and preparation of bodies for licensed establishments as permitted by the laws of the State of Tennessee and the Rules promulgated by the Department of Commerce and Insurance.
- Respondents also contract to transport bodies to licensed funeral homes and to engage in embalming and related preparation services at the request of those licensed establishments.
- Respondents do not provide services at their own facility; rather, they provide services on the premises of the establishments that hire them for embalming / funeral directing services.
- One of those establishments, that list the Respondents as their employees, stated in a sworn affidavit that the Respondents only provide

services on location of licensed establishments and have no reason to have an establishment license themselves because they only provide services on the premises of establishments that hire them for funeral directing / embalming.

History:

- Respondent #20 – none
- Respondent #21 – none
- Respondent #22 – none
- Respondent #23 – none
- Respondent #24 – none

Recommendation:

- Respondent #20 – Close.
- Respondent #21 – Close.
- Respondent #22 – Close.
- Respondent #23 – Close.
- Respondent #24 – Close.

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

Seconded by Anita Taylor

Adopted by voice vote

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
APRIL 10, 2012 – MAY 8, 2012**

Establishments

Brummitt-McKenzie Funeral Home
McKenzie, TN

Name Change

Individuals

Jeremy Price Arnold
Henderson, TN

Funeral Director/Embalmer

Lindsey Marie Hillard

Funeral Director/Embalmer

Bruceton, TN

Nickless LaFayette Keith, Jr. Funeral Director/Embalmer
Cleveland, TN

Steven LeBron Logan Funeral Director/Embalmer
Hixson, TN

Justin Joseph Ford Embalmer
Bartlett, TN

Brad Chandler Geren Funeral Director
Cookeville, TN

John Henry Moore Funeral Director
Limestone, TN

Anthony Wayne South Funeral Director
Joelton, TN

Larry Thomas Dowden Funeral Director
Soddy Daisy, TN Reapplication

CLOSED ESTABLISHMENT REPORT:

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

- Brummitt Funeral Home, 321 Magnolia Avenue, McKenzie, TN

DISCIPLINARY ACTION REPORT:

REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF APRIL 10, 2012 – MAY 7, 2012

Respondent: Austin & Bell Funeral Home, Greenbrier, TN
Violation: Failed to state a reason for embalming on contracts and business cards and signage on establishment referred to the funeral establishment by a name other than the exact name approved by the Board
Action: \$250 Civil Penalty

Respondent: Austin & Bell Funeral Home, Springfield, TN
Violation: Cremation authorization form lacked the signature of a funeral director, failed to provide a clear title for each staff member listed on web site, and business cards referred to

- the funeral establishment by a name other than the exact name approved by the Board
- Action: \$500 Civil Penalty
- Respondent: Austin & Bell Funeral Home, White House, TN
- Violation: Unlicensed individuals signed cremation authorization forms, failed to have funeral director and embalmer licenses available for inspection, business card failed to provide clear title for unlicensed staff member, failed to state a reason for embalming on contracts and business cards referred to the funeral establishment by a name other than the exact name approved by the Board
- Action: \$2500 Civil Penalty
- Respondent: Chattanooga Funeral Home & Crematory – East Brainerd Chapel, Chattanooga, TN
- Violation: Billboard advertisement referred to the funeral establishment by a name other than approved by the Board
- Action: \$250 Civil Penalty
- Respondent: Chattanooga Funeral Home & Crematory – East Chapel, East Ridge, TN
- Violation: Billboard advertisement referred to the funeral establishment by a name other than approved by the Board
- Action: \$250 Civil Penalty
- Respondent: Chattanooga Funeral Home & Crematory – North Chapel, Hixson, TN
- Violation: Billboard advertisement referred to the funeral establishment by a name other than approved by the Board
- Action: \$250 Civil Penalty
- Respondent: Chattanooga Funeral Home & Crematory – Valley View Chapel, Chattanooga, TN
- Violation: Billboard advertisement referred to the funeral establishment by a name other than approved by the Board
- Action: \$250 Civil Penalty
- Respondent: Dyer Funeral Home, Cookeville, TN
- Violation: Cremation authorization forms lacked the signature of funeral director, failed to retain a cremation authorization form, multiple aspects of the establishment's price lists did not comply with the Funeral Rule, contracts failed to provide an itemized description for items purchased, failed to take reasonable steps to prevent unauthorized entry into the

- preparation room, and preparation room was in an unkempt condition with uncovered garbage and soiled linen
- Action: \$750 Civil Penalty
- Respondent: Heritage Funeral Home & Cremation Services, LLC, Columbia, TN
- Violation: Funeral establishment gave or tended to give the impression that an individual associated with their establishment was licensed or entitled to practice either as a funeral director or embalmer when the individual was not actually licensed
- Action: \$250 Civil Penalty
- Respondent: High's, Inc., McMinnville, TN
- Violation: Discrepancies found on a cremation authorization form and failed to maintain a copy of the crematory's current license and latest inspection results that the funeral home used
- Action: \$250 Civil Penalty
- Respondent: Hux-Lipford Funeral Home, Mountain City, TN
- Violation: Immoral or unprofessional conduct (consumer purchased a steel outer burial container but instead received a wooden box)
- Action: \$1000 Civil Penalty
- Respondent: M. D. Dotson & Sons Funeral Home, Athens, TN
- Violation: Cremation authorization form failed to disclose the name, address and telephone number of the crematory used by the funeral home and contracts failed to provide an itemized description for items purchased
- Action: \$750 Civil Penalty
- Respondent: Weaver Funeral Home, Knoxville, TN
- Violation: Price of a casket in selection room was inconsistent with the same casket listed on the price list
- Action: \$500 Civil Penalty

OPEN COMPLAINT REPORT:

As of May 7, 2012 there were 131 open complaints.

A motion was made by Robert Starkey to accept the Executive Director's Report.

Seconded by Wayne Hinkle

Adopted by voice vote

INDIVIDUAL APPLICATION(S):

**Michael Bernard Sanders
Memphis, TN**

Funeral Director

Note: Board Member Robert Starkey exited and re-entered during the discussion of this application.

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

Adopted by voice vote

**Richard Neal Clark
Memphis, TN**

**Funeral Director
Reciprocity**

Assistant General Counsel Benton McDonough recused himself from participation in the proceeding of this application, and Assistant General Counsel Adrian Chick was present as the Board's counsel.

Upon motion by Jane Gray Sowell and seconded by Tony Hysmith, based upon application record, this individual was approved for licensure.

Adopted by voice vote

ESTABLISHMENT APPLICATION(S):

**DOGWOOD CREMATION, LLC
3511 WEST EMORY ROAD
POWELL, TN**

New Establishment

Ownership: Corporation

**Owners: Dogwood Cremations, LLC, a Tennessee Corporation, 7050
New Highway 68, Madisonville, Tennessee 37354-6982**

Wayne Hinkle recused himself from participation in the proceedings of this application.

Upon motion by Robert Starkey and seconded by Anita Taylor, based upon application record, this establishment was approved for licensure.

Adopted by voice vote

Voting contrary to the conclusion: Tony Hysmith

INDIVIDUAL(S) APPEARING BEFORE THE BOARD:

**Matthew Kenneth Mardis
Olive Branch, Mississippi**

**Former Apprentice Funeral Director,
Apprentice Embalmer and Student**

Mr. Mardis had requested to appear before the Board for the sole purpose of determining whether he has met the requirements set forth by the Board at its August 9, 2011, meeting in order for him to sit for the Tennessee Laws, Rules and Regulations Examination.

Motion by Wayne Hinkle to deny Mr. Mardis' request to sit for the examination because he has not yet met the requirements previously set forth by the Board at its August 9, 2011 meeting.

Seconded by Jane Gray Sowell

Adopted by voice vote

ADJOURN:

A motion was made by Wayne Hinkle to adjourn.

Seconded by Jane Gray Sowell

Adopted by voice vote

There being no further business, the meeting was adjourned at 2:59 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director