

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

AUGUST 14, 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, W. T. Patterson, Jane Gray Sowell, and Robert Starkey. Anita Taylor arrived at 10:02 A.M., just immediately after the Roll Call.

Staff members present were Robert Gribble, Executive Director; Benton McDonough, Assistant General Counsel; Adrian Chick, 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 Robert Starkey to approve the Minutes of the July 10, 2012 Board Meeting.

Seconded by Jane Gray Sowell

Adopted by voice vote

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

1. Case No.: L12-FUN-RBS-2012004821
2. Case No.: L12-FUN-RBS-2012004822
3. Case No.: L12-FUN-RBS-2012004823

Complaint:

- Complainant states that her sister's funeral was held at the Respondent funeral establishment.

- She states that she had great respect for the individuals who worked there until Friday, February 3, 2012.
- On this day, Complainant states that Respondent 1&3 told her he had something he couldn't share with her over the phone, and she later had a conversation with the Respondent regarding a sexual dream he had about her.
- Complainant states that the Respondent told her he could provide her a discount for her sister's headstone, and he wished she would remove her shirt or her pants so he knows she won't tell anyone.
- Complainant states that she left the conversation feeling disrespected, and she reported it to the Respondent's supervisor the following Monday.
- Later that night, Complainant states that the Respondent's wife texted the Complainant's other sister apologizing for what her husband had done, and her father called the funeral home to speak with the supervisor, but he wasn't in at the time.
- Five (5) minutes later, Complainant states that the Respondent's wife called the Complainant's brother and told them to quit calling.
- Complainant called to speak to the manager again, and he said it was best for them to purchase the headstone somewhere else and told her to quit calling, said she was yelling and hung up.
- Complainant called back and reached the Respondent who asked her what she wanted from him and he said, "Fine, I apologize. Now, leave it at that."
- The Complainant states that she was sexually harassed and she feels like the Respondent tried to use her sister's headstone to get sex from her.

Response:

- Respondent #1 & #3
 - The Complainant is the former sister-in-law of the Respondent's wife.
 - Respondent states that his wife's ex-husband and his family have continually harassed, threatened, stolen from, and lied to the Respondent and his family.
 - Respondent states that they receive no financial assistance or child support from his wife's ex-husband whatsoever.
 - The Respondent and his wife have worked to keep her ex-husband from going to jail for failing to pay child support; however, the Court instructed the ex-husband during the previous proceedings that he would be taken into custody if this issue came up again.
 - Respondent believes this complaint was filed as revenge for the ex-husband possibly going to jail.

- Respondent states that he did not sexually harass the Complainant, and he has no physical attraction to her, whatsoever.
- Respondent states that this family has continued to treat him poorly, despite his involvement in the funeral services for the Complainant's sister – his involvement which came at the request of the Complainant's family.
- Respondent states that he did in fact meet with the Complainant on the day in question, but it was in a public location to discuss the cost of the headstone.
- Following this conversation, the Complainant informed the Respondent that she could not stand his current wife.
- On the following Monday, February 6, 2012, Respondent answered a call from the Complainant regarding their conversation, and Respondent apologized for anything he did to offend the Complainant, and even offered to apologize to her husband and other family members in person.
- Respondent #2
 - Has known employee Respondent #1 / #3 since 1988, and he is a trusted employee and friend.
 - Respondent spoke to his employee who flatly denied the allegations from the Complainant.
 - The establishment conducted the services for the Complainant's sister, and the family personally requested the employee Respondent conduct the services, despite the fact that the Complainant's brother is the ex-husband to the Respondent's wife.
 - The Respondent and his wife have custody of the ex-husband's three (3) sons, and they provide this care without support from the ex-husband.
 - Members of the Complainant's family have threatened to kill the Respondent in the past, and they have given him many problems.
 - The Complainant spoke to Respondent #2 on February 6th, and he apologized and explained that they would get to the bottom of the situation.
 - Complainant called back the next day, very combative and screaming as her kids screamed in the background.
 - Respondent stated that he would speak to her, but only if she calmed down and quit screaming, then the Respondent hung up on her.
 - The Complainant called back and spoke to the employee / Respondent.

- The employee stated that he confronted the allegations at that time, and the Complainant would not give him a reason for the accusations, and he apologized for whatever upset her.

History:

- Respondent #1 – No prior complaints.
- Respondent #2 – Three (3) closed complaints, not related.
- Respondent #3 – No prior complaints.

Recommendation:

- Respondent #1 – Dismiss.
- Respondent #2 – Dismiss.
- Respondent #3 – Dismiss.

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

Seconded by Anita Taylor

Adopted by voice vote

4. Case No.: L12-FUN-RBS-2012007161

Complaint:

- On March 15, 2012, the Complainant provided the Board with one (1) advertisement published by the Respondent.
- The advertisement appeared in the Sunday, March 11, 2012, edition of the local newspaper.
- The advertisement lists a Simple Cremation Service (direct cremation with container) for only \$750.00.
- The Respondent's GPL does not list this "package" as advertised, nor are the charges itemized in the explanation of the package.

Response:

- Respondent points out that the advertisement states that the package was based upon the GPL effective July 25, 2011; however, the Complainant used the GPL from April 2011.
- Next, Respondent states that Direct Cremation is one of four minimal services required to be listed on the GPL and is not considered a package under the Funeral Rule, nor does it have to be presented as a package on the GPL.
- Furthermore, the Funeral Rule requires a range of prices for a direct cremation and one price for a direct cremation with the family providing

- the container and one price for a direct cremation with alternative container.
- Respondent states that the Funeral Rule requires items included in the minimal service to be listed, but the cost of each item does not have to be itemized.
 - For the State to call a "Direct Cremation" a "Package" and require itemization goes against the general application of the rule.
 - Also, to say Direct Cremation is a minimal service for GPL and contract purposes, and then call it a package for advertising purposes is arbitrary and confusing.

History:

- Six (6) closed complaints and one (1) open complaint, none related.

Recommendation:

- Letter of Warning.

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

Seconded by W. T. Patterson

Adopted by voice vote

5. Case No.: L12-FUN-RBS-2012007171**Complaint:**

- On March 15, 2012, the Complainant provided the Board with one (1) advertisement published by the Respondent.
- The advertisement appeared in the Sunday, March 11, 2012, edition of the local newspaper.
- The advertisement lists "Cremations Starting at \$892.00."
- The Respondent's price list on their website does not list this "package" as advertised, nor are the charges itemized on the explanation of the package.

Response:

- Respondent states that the Complainant is correct that the "Cremations Starting at \$892.00" is not on their price list as a package.
- Respondent states they first ran this advertisement on April 18, 2010, and failed to include what was included in the price.
- On Wednesday April 21, 2010, the same Complainants filed a complaint, and the Respondent immediately corrected the error and have since run this advertisement on average of three (3) times per week for the past twenty-three (23) months.

- In regards to packages, Respondent states that they do not offer packages at their firm any longer, but they did leave three (3) packages on their website from the past.
- Respondent states that their webmaster failed to click “do not show” in order to remove the packages.
- Finally, Respondent states that they have never placed their GPL on their website, but they did list their \$892.00 Direct Cremation offer and what it represents and includes.

History:

- Five (5) closed complaints, three (3) open complaints – two (2) 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

6. Case No.: L12-FUN-RBS-2012007661

Complaint:

- On March 19, 2012, a field representative conducted an inspection of the Respondent establishment.
- The Respondent applied for an establishment license and was not properly approved for licensure when the inspection took place.
- The field representative found a sign in place at the location announcing the grand opening.
- A sign on the door of the establishment published the name of the business as seen on the application for licensure.
- The establishment hours of operation were published on the door.
- The establishment published a 1-800 number used to contact the establishment.

Response:

- Respondent believes they inadvertently violated state rules by having a temporary canvas banner tied on the building announcing the grand opening and the future hours of business.
- Respondent states that the field representative stated that these violations made it appear that this was a licensed entity open for business prior to the official licensing approval.

- Respondent concedes that the inadvertent premature advertising, posting of a temporary sign announcing grand opening and posting name and prospective hours of operation amounts to a violation of the Board Rules prohibiting advertising prior to license approval.
- Respondent admits to these violations despite lack of a fully staffed office, the office was still being assembled and equipped, not open for business, and no sales manager, administrative staff, or sales representative had been hired.
- While Respondent admits violations, they disagree with the actions termed as willful or fraudulent attempt to misrepresent the status of the business to the public.
- There was no harm brought to the citizens of Tennessee.
- The signage was immediately covered on the door and taken off the building within twenty-four (24) hours.
- Respondent operates in fourteen (14) states with similar rules.
- Despite warnings from the Respondent's legal counsel, the company failed to adequately communicate to the crew in Tennessee regarding advertising and signage prior to official approval.

History:

- No prior complaints.

Recommendation:

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

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

Seconded by Jane Gray Sowell

Adopted by voice vote

7. Case No.: L12-FUN-RBS-2012009131

8. Case No.: L12-FUN-RBS-2012009132

9. Case No.: L12-FUN-RBS-2012009133

Complaint:

- This complaint was filed by a consumer on April 12, 2012.
- The Complainant's husband was under hospice care and the family had already pre-planned funeral services with the Respondent's competitor, but the hospice social worker suggested the Complainant and her family go see the Respondents.
- The social worker provided a name of her friend and the Respondent's phone number.
- The Complainant states that they already made the decision to go with the competitor and decided not to call the Respondent; however, the social

worker's friend called the Complainant to ask that they consider using the Respondents' services.

- The Complainant was contacted numerous times by the Respondents and the Respondents informed the Complainant that the Respondents could beat any price and that the competitor would hit the Complainant with numerous hidden fees.
- The Complainant believes it is improper for a hospice facility to push and try to alter a family's decision regarding the final arrangements of their terminally ill loved one.

Response:

- Respondent #7 / #8
 - o Respondent is saddened that a family would be upset by his assistance in funeral planning.
 - o In early 2012, the Respondent was contacted by the hospice company with the name of the family member and requested that he contact the family.
 - o The employee indicated that the family had no funeral plan and they were collecting information to make their decision – Respondent states that the exact phrase was: “They are simply shopping around looking for the best price.”
 - o Respondent states that the family gave permission for him to contact them.
 - o Respondent contacted the Complainant that morning and believed they had a very productive conversation about the wishes of the family for a “simple cremation.”
 - o Respondent states that he informed the Complainant that some funeral establishments are not very forthcoming regarding all of the charges assessed that relate to containers, urns, receptacles, permit fees, etc.
 - o The Respondent ended the conversation with a scheduled appointment for later that afternoon, but the Complainant failed to keep that appointment, and the Respondent contacted her and she informed him that she made arrangements with their competitor.
 - o The Complainant's daughter knew the owner of the competitor and the Complainant stated that the family just felt more comfortable there.
 - o The Respondent states that he informed the Complainant that they made a good choice, and he would be available should she have further questions or concerns, ending the conversation in a positive tone.

- The Complainant's husband passed away, and services were conducted on April 11, 2012, with the complaint being filed on April 12, 2012, and Respondent believes the Complainant would have contacted him or the Board sooner had she been upset by the tone or acts of the Respondents.
- Respondent states that he worked as a co-owner with his competitor for ten (10) years, and he states that many of the relationships he has forged over the years with caregivers around the state occurred while he was employed by the competitor.
- Respondent believes he did nothing improper.
- Respondent #9
 - Respondent states that their employee did receive permission to contact the Complainant and set up an appointment following the Complainant's appointment with the competitor.
 - Complainant did not show up for the Respondent's appointment and apologized to the Respondent when the Respondent called regarding the missed appointment for not giving the Respondent an opportunity to serve the Complainant, but the Complainant stated that they felt very comfortable at the competitor's establishment.
 - Respondent believes three (3) points are very important:
 - The Complainant made the appointment because no funeral arrangements had been made,
 - The employee called the following day as a courtesy since the Complainant did not keep her scheduled appointment and was told the Complainant had finalized their arrangements with the competitor, and
 - If two (2) calls should be considered "multiple calls" then they are guilty of that act.
 - The Respondent would like to address a few items that are critical in this complaint:
 - The employee resigned his position with the competitor in August 2011, and came to work for the Respondent one (1) month later.
 - The employee cultivated relationships with the hospice caregivers while employed by the competitor.
 - An employee of the competitor appears to have assisted in filling out the complaint form and notarized the document as well.

History:

- Respondent #7 – No prior complaints.

- Respondent #8 – No prior complaints.
- Respondent #9 – Five (5) closed complaints, none related; four (4) open complaints, none related.

Recommendation:

- Respondent #7 – Dismiss.
- Respondent #8 – Dismiss.
- Respondent #9 – Dismiss.

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

Seconded by Wayne Hinkle

Seconded withdrawn by Wayne Hinkle

Motion died for lack of Second

A motion by Tony Hysmith:

- Respondent #7 and #8 – Consent Order with a total of \$250 civil penalty and authorization for hearing.
- Respondent #9 – Letter of Warning

Seconded by Jane Gray Sowell

Adopted by voice vote

10. Case No.: L12-FUN-RBS-2012010511

Complaint:

- The decedent in this case was removed from a local hospital by a removal service.
- Complainant states that the facilities were unclean, the Respondent was unprofessional.
- A bloody sheet was haphazardly thrown over the body and decedent's feet were hanging off the table.
- Dried blood was in both ears, and appeared in the ears on the day of the funeral.
- The parking attendant ran the Complainant's car into the back of another car, and the Complainant states that she and her family have suffered mentally and physically from this experience.
- The decedent's husband was given an unsigned copy of the bill, and the family did not receive the casket they chose; also, the family asked for a steel vault and received a concrete vault instead.
- Charged for flower van and had no flowers to take to the graveside.

Response:

- No response received.

History:

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

Recommendation:

- Consent order with \$1,000.00 civil penalty plus additional \$250.00 for no response (total civil penalty of \$1,250.00) and authorization for hearing.

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

Seconded by Anita Taylor

Adopted by voice vote

11. Case No.: L12-FUN-RBS-2012011351

Complaint:

- Complainant, a competing funeral establishment, states that the Respondent, an "interment company", has been offering cremation services via their website.
- Complainant states that the website is misleading and deceptive leading consumers to believe that they have a funeral establishment in various states and cities, when in fact they do not have a licensed facility and are not a licensed establishment in Tennessee.
- The business model is the same throughout the entire United States.
- The website shows the Respondent's name with Funeral Services Provider listed below that, leading the public to believe the Respondent has an establishment.
- The Respondent even has a Cremation Authorization document with the name of the Respondent at the top.
- The website also advertises cremations for \$695 - \$1395.
- The website lacks an address and only provides a phone number.

Response:

- No response received.

History:

- No prior complaints.

Recommendation:

- Consent order with \$1,000.00 civil penalty plus additional \$250.00 for no response (total civil penalty of \$1,250.00) and authorization for hearing.

A motion was made by Tony Hysmith to accept Counsel's recommendation with the addition of a Cease and Desist Letter to the Respondent.

Seconded by Wayne Hinkle

Adopted by voice vote

12. Case No.: L12-FUN-RBS-2012012541

Complaint:

- On March 26, 2012, a routine inspection was conducted at the Respondent establishment.
- It was determined that the preparation room floor is in need of replacement.
- The Respondent failed to retain the following cremation authorization forms:
 - o Shirley Jones
 - o Antino Spears
 - o Maurice Side

Response:

- No response received.

History:

- Two (2) closed complaints, none related.

Recommendation:

- Consent Order with \$500.00 civil penalty plus additional \$250.00 for no response (total civil penalty of \$750.00) and authorization for hearing.

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

Seconded by Tony Hysmith

Adopted by voice vote

13. Case No.: L12-FUN-RBS-2012012561

14. Case No.: L12-FUN-RBS-2012012562

Complaint:

- On February 13, 2012, a routine inspection was conducted at the Respondent establishment.
- The funeral director's license expired on November 30, 2011, and was not reinstated until December 16, 2011.
- From December 1 through December 15, 2011, the funeral director was involved in five (5) cases as evidenced by her signature as the funeral director on the death certificates.

- These decedents included:
 - o Aaron Todd
 - o Mildred Smartt
 - o Geraldine Porter
 - o Richard Hall
 - o Lois Travis

Response:

- Respondent #14 states that she renewed her license on the Board's website on November 30, 2011.
- The Respondent states that she entered all of the relevant information, including the credit card information for payment.
- Respondent states that after two weeks, when she did not receive her renewal certificate, she checked her credit card to see that no funds had ever been removed from her account.
- The Respondent immediately called the Board office and found that she never completed her renewal.
- The Respondent completed the renewal process again and paid the \$200.00 late fee and later received her renewal card.

History:

- Respondent #13: One (1) closed complaint, not related.
- Respondent #14: No prior complaints.

Recommendation:

- Respondent #13 – Consent Order with \$500.00 civil penalty and authorization for hearing.
- Respondent #14 – 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 Wayne Hinkle

Adopted by voice vote

15. Case No.: L12-FUN-RBS-2012012571

Complaint:

- On March 20, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Changes – Rule 0660-01-.03

- The Respondent has a manager of record; however, another employee has been signing documents as the “Managing Funeral Director.”
- The Board has not received any notification that the manager of record has changed.
- Use of Names of Unregistered Individuals – Tenn. Code Ann. § 62-5-314
 - One individual uses business cards that only use the title of “owner”, but the card does not indicate that the individual is not licensed.
- FTC – Rule 0660-11-.06
 - GPL – The low to high end range is inconsistent with the OBCPL.
 - GPL – Immediate burial price is inconsistent on GPL and CPL.
 - CPL – Under direct cremation the three (3) alternative containers being offered to the consumer must be added to the GPL.
 - GPL – Direct cremation with alternative container, the price is inconsistent with the price on the CPL.
 - CPL – Two (2) caskets (18 Ga. Golden Granite & Burnished Silver) in the Casket Selection Room being offered to the consumer, the price on the unit is inconsistent with the CPL.

Response:

- No response received.

History:

- Six (6) closed complaints, two (2) related.

Recommendation:

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

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

Seconded by Tony Hysmith

Adopted by voice vote

16. Case No.: L12-FUN-RBS-2012012581**Complaint:**

- On March 14, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Changes – Rule 0660-01-.03
 - The establishment hired a new manager on February 29, 2012, but the Respondent never notified the Board of this change.
- FTC – Rule 0660-11-.06

- SFGSS – Three (3) SFGSS did not have the reason for embalming filled out.
- CPL – Four (4) caskets (20 Gauge Roman, 18 Gauge Antique Blue, Courtland Oak, and 18 Gauge Amethyst) could not be identified on the CPL but were shown in the Casket Selection Room.

Respondent:

- Changes
 - Respondent states that they were acquired by another firm and thought the main office provided the notice of change in manager to the Board.
- FTC
 - Respondent has addressed the need to provide “Reason for Embalming” on all SFGSS in the future.
 - Respondent states they were acquired by another firm and had a change in the manner in how they displayed and marked the caskets in the Casket Selection Room.
 - Respondent mismarked four (4) units and made the appropriate changes while the field representative was still present.

History:

- Two (2) closed complaints, one (1) with similar violations.

Recommendation:

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

Seconded by W. T. Patterson

Adopted by voice vote

17. Case No.: L12-FUN-RBS-2012012611**Complaint:**

- On April 10, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- FTC – Rule 0660-11-.06
 - GPL – GPL did not have a telephone number as required by the Funeral Rule.
 - GPL – The Casket Price Range on the GPL was incorrect when compared to the price of caskets on the CPL.
 - CPL – The CPL had no effective date as required by the Funeral Rule.
- Requirements for Operation – Tenn. Code Ann. § 62-5-313
 - The preparation room floor is in need of replacement.
- Utilization of Crematory – Tenn. Code Ann. § 62-5-107

- The Respondent failed to provide a copy of the crematory license and latest inspection report for the crematory utilized by this establishment.
- The Respondent conducted cremation arrangements for three (3) deceased individuals without retaining a copy of the Cremation Authorization Form:
 - Mark Anderson
 - Shelley Sorrell
 - Robert Weay

Response:

- FTC
 - There was a typographical error on the GPL and that has since been corrected.
 - The Casket Price Range on the GPL was incorrect when compared to the price of caskets on the CPL, so the Respondent has corrected the CPL and submitted documentation with the response.
- Requirements for Operation
 - The preparation room floor was repaired and photographs were submitted with the response.
- Utilization of Crematory
 - Respondent retained a copy of the crematory license and latest inspection report.

History:

- Six (6) closed complaints – one (1) similar.

Recommendation:

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

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

Seconded by Anita Taylor

Adopted by voice vote

18. Case No.: L12-FUN-RBS-2012012631**Complaint:**

- On February 29, 2012, a routine inspection was performed at the Respondent establishment.
- Utilization of Crematory – Tenn. Code Ann. § 62-5-107
 - Respondent failed to provide copy of the latest inspection report and license of the crematory utilized by this establishment.
- FTC – Rule 0660-11-.06

- GPL – Immediate Burial with casket selected from Respondent funeral home range was incorrect when compared to prices of caskets on CPL.
- GPL – Direct Cremation with casket selected from funeral home range was incorrect when compared to prices of caskets on the CPL.
- GPL – Traditional Funeral Service package price was incorrect.
- SFGSS – Must provide a description of merchandise (casket and outer burial container) selected with the price of each item. Several SFGSS did not provide a description of the merchandise selected as required by the Funeral Rule.
- OBCPL – Price of the Wilbert Monticello Burial Vault was listed on the OBCPL at \$1,695.00, but the price of the sample offered for sale in the selection / arrangement office reflected a price of \$1,875.00.

Response:

- No response received.

History:

- One (1) closed complaint, one (1) open complaint – one (1) related.

Recommendation:

- Consent Order with \$500.00 civil penalty plus \$250.00 for no response (total civil penalty of \$750.00) 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

19. Case No.: L12-FUN-RBS-2012012651

20. Case No.: L12-FUN-RBS-2012012652

21. Case No.: L12-FUN-RBS-2012012653

Complaint:

- The Complainant states that she went to view her aunt's body prior to the burial, as no one had informed them of the final arrangements.
- The decedent's power of attorney questioned the Complainant about the obituary that her aunt had written, due to some of the people being mentioned in the obituary were already deceased.
- The funeral director then informed the Complainant that the decedent had left her some money, but he never said how much.

- One (1) policy for the Complainant and two (2) policies for another aunt who was already deceased were left by the decedent.
- The funeral director informed the Complainant that one (1) of the policies was actually in the name of the funeral establishment, and the Complainant needed to sign the documents so the establishment could receive the money.
- All of this took place on March 19, 2012, and when the Complainant had not heard any further from the Respondents, she went back to the funeral establishment on April 13, 2012 and asked for a copy of the paperwork she signed.
- The funeral director stated he would call and asked for her home phone number again.
- Complainant states that she waited ten (10) business days and received a statement that she had signed money over to the mortuary.
- She then called the insurance company to request a copy of the form and noted that her signature had been forged on one of the documents.
- Later in the week, she called several times to speak to the funeral director and he did not return her phone calls.
- She then asked again for a copy of the form she signed to get the money and the funeral director said he would provide that for her.
- The Complainant states that the document she received from the insurance company was a letter she never saw previously and did not sign the document.

Response:

- Respondent #20 & #21
 - o The decedent informed him of the insurance policies that she had taken out to pay for her final arrangements upon her passing.
 - o At the time of her passing, the Respondent met with her family and discussed the final arrangements for the decedent and any financial obligations that the family was responsible for as well.
 - o The family agreed to everything that was discussed and he had the Complainant sign an assignment for the policy that listed her as the beneficiary.
 - o Respondent explained to her that this would allow the proceeds to help pay towards the funeral bill and the Complainant agreed and signed the document.
 - o The original document that she signed was damaged in processing as a cup of coffee was spilled on the document.
 - o Thinking that they were already in agreement, the Respondent duplicated the document for processing.

- In no way did he attempt to defraud anyone of any proceeds of any kind.
- Respondent states that they had an agreement and the Complainant is having a change of heart.
- Decedent's Power of Attorney
 - The individual with POA status over the decedent states that he had acted in that capacity for approximately ten (10) years.
 - These funeral arrangements had been in place for years and agreed to by the decedent and the Respondents.
 - This individual states that he was present at the establishment and witnessed the Complainant signing the documents in order for the decedent to be buried.

Note: The Complainant stated that she spoke further with the Respondent and the matter has been resolved.

History:

- Respondent #19: Thirteen (13) closed complaints, none related.
- Respondent #20: No prior complaints.
- Respondent #21: No prior complaints.

Recommendation:

- Respondent #19 – Dismiss.
- Respondent #20 – Dismiss.
- Respondent #21 – Dismiss.

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

Seconded by W. T. Patterson

Adopted by voice vote

22. Case No.: L12-FUN-RBS-2012013211

Complaint:

- On April 18, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- Use of Names of Unregistered Persons – Tenn. Code Ann. § 62-5-314
 - The Respondent lists one (1) employee in the "staff section" as "Operations Manager", but fails to note that he is unlicensed.
 - The field representative reviewed three (3) business cards and one (1) card listed this employee as "Operations Manager / CFO".
- Utilization of Crematory – Tenn. Code Ann. § 62-5-107

- The crematory inspection report was dated March 15, 2011, but the manager called the crematory and received the latest copy of the crematory inspection report dated January 25, 2012.
- FTC – Rule 0660-11-.06
 - CPL – The CPL & OBCPL dated January 4, 2012, presented at inspection both lack basic descriptive information for the units listed as required for these two documents.

Response:

- No response received.

History:

- Six (6) closed complaints, two (2) related.

Recommendation:

- Consent Order with \$750.00 civil penalty plus \$250.00 for no response (total civil penalty of \$1,000.00) 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

23. Case No.: L12-FUN-RBS-2012013231**Complaint:**

- On March 13, 2012, a routine inspection was conducted of the Respondent establishment.
- Cremation Authorization – Tenn. Code Ann. § 62-5-107
 - The Cremation Authorization form of James H. Price failed to bear the signature of an authorizing agent.
- FTC – Rule 0660-11-.06
 - SFGSS for James H. Price failed to contain any itemization for the \$2,985.00 listed for "Total Funeral Home Charges" in the "Summary" section of the statement.
 - The SFGSS for John Harry Johnson lists a charge of \$995.00 for concrete box, but the price for a concrete grave liner on the OBCPL was \$850.00, creating an overcharge of \$145.00
 - The SFGSS for Lance Barnett lists a charge of \$895.00 for a C-Box Liner – Concrete, but the charge for a concrete grave liner on the OBCPL was \$850.00, creating an overcharge of \$45.00.
 - GPL – Presented at the inspection had an effective date of November 16, 2011.
 - The GPL shows a range of prices for Outer Burial Containers as \$895.00 - \$6,995.00.

- Neither of the two prices agrees with the actual OBCPL presented as being the current OBCPL with an effective date of November 16, 2011.

Response:

- Cremation Authorization:
 - This has been corrected.
- FTC
 - This has been corrected and a revised statement was given to the purchaser when the purchaser came to pay the statement.
 - The concrete grave liner overcharge has been corrected on the balance due statement and credit was given to this account.
 - Overcharge of \$45.00 and a check has been issued in this amount to the decedent's spouse.
 - GPL has been corrected.

History:

- Two (2) closed complaints and one (1) open complaint, one (1) somewhat related.

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

24. Case No.: L12-FUN-RBS-2012013241**Complaint:**

- On March 21, 2012, a routine inspection was conducted of the Respondent establishment.
- FTC – Rule 0660-11-.06
 - The price range listed on the GPL for Outer Burial Containers was incorrect when compared to the prices of Outer Burial Containers on the OBCPL.
 - Alternative Containers listed on the GPL for sale must meet the definition of Alternative Containers as provided by the Funeral Rule. The Trayview on the CPL does not meet the qualifications defined as an Alternative Container.
 - The following six (6) caskets were offered for sale in the Casket Selection Room but not on the CPL:
 - Pearson Cherry - \$4,495.00
 - Tapestry Rose - \$3,495.00
 - Ivory Mist - \$2,495.00

- Star Copper - \$995.00
- Athenian - \$2,495.00
- Courtland Oak - \$3,495.00
- One (1) Outer Burial Container sample offered for sale in the Selection Room had an incorrect price when compared to the OBCPL.
- The Regency Burial Vault sample in the Selection Room was priced at \$2,495.00, but the same vault was not listed on the OBCPL.
- The SFGSS of several customers included a \$95.00 charge for “Bathing and Handling of the Deceased (when embalming is not performed)” but the SFGSS indicated a charge the customers for embalming and bathing / handling of the body.

Response:

- GPL – The inconsistencies have been corrected.
- Alternative Containers – The Respondent believes the field representative’s reading of the Funeral Rule regarding Alternative Containers is a very narrow reading as the Trayview option specifically states it is “cardboard constructed” with a “crepe paper mattress and pillow.”
- CPL – The discrepancies have been corrected.
- OBCPL – These issues have been corrected.
- Respondent states that federal law does not prohibit a charge for “Bathing and Handling of the Deceased” but they no longer offer this service now.

History:

- No prior complaints.

Recommendation:

- Consent Order with \$1,000.00 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

25. Case No.: L12-FUN-RBS-2012013551
Complaint:

- The Complainant in this case states that the Respondent references the name of three (3) non-licensed individuals in an advertisement without noting that they are non-licensed.
- The Respondent also indicates that the establishment is under “local family ownership”, but they are owned by a large corporation.

Response:

- The Respondent provided a lengthy response to this complaint; however, it is apparent to counsel that there is no violation in this case.
- The advertisement was placed in a local publication on May 31, 2012, and the piece was written by the former, now retired, owner of the Respondent establishment.
- While the Complainant is correct that the Respondent alluded to three (3) unlicensed individuals in the piece in question, it is apparent that the writer of the article was providing the name of the new manager and the three (3) non-licensed individuals in question were the parents and spouse of the new manager.
- There was no evidence that the Respondent was attempting to mislead the public.

History:

- Three (3) closed complaints – none related.

Recommendation:

- Dismiss.

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

Seconded by Anita Taylor

Adopted by voice vote

26. Case No.: L12-FUN-RBS-2012013831

Complaint:

- The Complainant states that he and his wife went to the Respondent establishment to plan for their funerals.
- The Complainant states that he told the Respondent that everything should be included and he did not want to pay any extra money when the day came, and he states that the Respondent told him everything was covered and included.
- The Complainant's wife passed away on January 24, 2012, and he and the family went to the funeral home to make final arrangements.
- The Respondent explained that the insurance plan grew quite well and even had a surplus of \$200.00, but when the Complainant reviewed the paperwork, he found that the funeral was \$11,000.00 and explained to the Respondent that something was not right about that.
- The Complainant stated that he had paid extra on his wife's premiums because he wanted to purchase a rock for her grave with the extra money he would receive.

- Complainant states that he paid the plan off early and his wife's services came to a grand total of \$8,136.00, and Respondent noticed this and decided to reconfigure the paperwork.
- At around 1:00 p.m. that afternoon, the Complainant met again with the Respondent, who asked him to sign a blank document that would later be filled in.
- Expecting a price of \$8,136.00, the Complainant states that the price came back at \$8,775.67.
- Complainant informed the Respondent that this was not correct, and the Respondent explained that they brought the price down on the casket so the sales tax would not be as high, but the Complainant stated that he already paid the sales tax.
- When the insurance agent who works in the funeral establishment came in to his office, the Complainant informed the agent that the funeral establishment was overcharging him for his wife's funeral services, and the agent told him that could not be right, and the only items that they could charge the Complainant extra for would be opening & closing of the grave, hairdresser, preacher, and clothing, and the agent agreed to meet with the Complainant and funeral director.
- The three (3) discussed the charges just before the final services took place for the Complainant's wife.
- The Complainant states that he later found out that the funeral director did not lower his wife's casket into the grave, that the funeral director had to force the casket shut, that the funeral director failed to tell the preacher where the grave was located so the preacher had a difficult time finding the grave, and the funeral director didn't stand where the Complainant believes a funeral director should stand for a funeral service.

Response:

- The Complainant and his wife made funeral arrangements on a ten (10) year payment plan in December 2005.
- They purchased a traditional service with an 18 Ga. casket and a 12 Ga. Sozonian vault, which were all guaranteed; however, the items marked "non-guaranteed" included the hairdresser, opening / closing and sales tax.
- The flowers were non-guaranteed and they were not included in the initial contract.
- The Complainant was upset because he made extra payments towards his pre-need contract; however, no one at Forethought was aware that the Complainant made these extra payments for the monument, and everyone believed the Complainant was just trying to pay off his account early.

- Respondent tried to provide a proper response to events that occurred six (6) months ago, but there was a lot to recall considering the decedent's ten (10) siblings attended the planning for the final arrangements.
- The Respondent remembers thinking that the Complainant's pre-need account grew very well over the years, which was a surprise to all of the employees considering they had to write off dollars on most of the Forethought contracts due to growth shortfall.
- The Respondent informed the Complainant that their account grew very well and even had enough left over to provide for an addition \$200.00 to be returned to the Complainant.
- The Complainant then appeared to become agitated and said something was not right, as he had been making extra payments on the account.
- The Respondent then told the Complainant that they should have informed the Respondent and purchased a monument with the original contract because it was not included in the original contract so the extra money was going to pay off the contract.
- The Respondent then decided to call Forethought to satisfy the Complainant and asked them to refund any extra money that was paid in above the monthly premiums.
- The Forethought employee instructed the Respondent that this was not necessary, as the Complainant had yet to pay off the original contract, but the Respondent asked for the refund and received a check made out to the Complainant / beneficiary in the amount of \$2,160.66.
- The Respondent told the Complainant and his family what they were doing, and to avoid making the Complainant pay any money out of pocket, the Respondent only charged the Complainant today's prices for opening / closing and the hairdresser, while reducing the price of the casket from \$3,495.00 to \$2,450.00, to avoid the additional sales tax.
- The Complainant was still not satisfied, so the Respondent took the Complainant and his family to see the casket selected by the decedent.
- The family was pleased with the choice of casket and later thanked the Respondent and told them not to worry about the Complainant as he treats everyone that way.
- The funeral services then took place and the Complainant's family stopped by the next day to tell the Respondent that the Complainant was still unhappy as he believed he should receive the interest earned on the services.
- The Complainant believed he should receive the extra payments plus interest on the account, and the Respondent should only receive the \$8,136.00, the original cost of the funeral in 2005.

- Respondent attempted to explain that the interest helped cover the cost of inflation of the merchandise, and asked the insurance agent to come in to explain the situation to the Complainant.
- The agent initially believed the Complainant was telling him that the Respondent was charging for the difference in inflation of the guaranteed items, but then explained to the Complainant that he was receiving funeral services for less than the original agreed price of \$8,135.00, set back in 2005.
- Respondent does not recall the preacher, who was a relative of the Complainant, going to the wrong gravesite, and the Respondent states that the funeral director stood beside the grave where he always does.
- Respondent states that they have never been criticized regarding how they conduct funerals or graveside services.
- Respondent questions why the Complainant waited six (6) months to file this complaint, and believes it relates to the Complainant placing solar lights at his wife's grave and the Respondent removing the lights pursuant to the cemetery's rules, which explain that items left at the gravesite will be removed after seven (7) days.

History:

- No prior complaints.

Recommendation:

- Dismiss.

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

Seconded by W. T. Patterson

Adopted by voice vote

REQUEST TO ADDRESS THE BOARD:
MICHAEL KEVIN KNOWLES

Michelle Owens, Esq., representing Michael Kevin Knowles, appeared before the Board concerning an application for an embalmer's license by reciprocity for Michael Kevin Knowles that first came before the Board on July 10, 2012. Ms. Owens requested reconsideration of the Board's actions in failing to grant an embalmer's license to Michael Kevin Knowles at the July 10, 2012, meeting. At the conclusion of Ms. Owens' presentation, President Clark McKinney invited members of the board to make a motion to reconsider, but none was made. Therefore, the Board's action on July 10, 2012 stands.

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
JULY 10, 2012 – AUGUST 13, 2012**

Establishments

Mabone Funeral Home Somerville, TN	Change of Ownership
East Tennessee Mortuary Service, Inc. Knoxville, TN	Change of Location
Gentry Griffey Funeral Chapel & Crematory Knoxville, TN	Change of Establishment Name

Individuals

Ebone TiQuara Lipsey Memphis, TN	Funeral Director/Embalmer
Seth Davis Leyhue Bells, TN	Funeral Director/Embalmer
Richard J. Davis Flintstone, GA	Funeral Director/Embalmer Reciprocity
Mark Anthony Shalz Kingsport, TN	Funeral Director Reciprocity

DISCIPLINARY ACTION REPORT:

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

Respondent:	Joseph S. Ford, Sr., Memphis, TN
Violation:	Practiced funeral directing during a time his funeral director license was invalid due to non-renewal by expiration date
Action:	\$500 Civil Penalty and \$200 Hearing Costs
Respondent:	Schubert Funeral Home, Inc., Sunbright, TN

Violation: Failed to make available for inspection the current license of a funeral director, failed to maintain a copy of the crematory's results of the latest regularly scheduled inspection which the funeral home uses and failed to comply with multiple aspects of the Funeral Rule

Action: \$250 Civil Penalty

Respondent: Wilkinson & Wiseman Funeral Home, Inc., Portland, TN

Violation: Failed to maintain a copy of the crematory's results of the latest regularly scheduled inspection which the funeral home uses, cremation authorization form lacked the signature of a funeral director and unlicensed individuals were listed on the establishment website that either gave or tended to give the impression they were licensed to practice either as a funeral director or embalmer

Action: \$250 Civil Penalty

OPEN COMPLAINT REPORT:

As of August 13, 2012 there were 121 open complaints.

A motion was made by W. T. Patterson and seconded by Jane Gray Sowell to accept the Executive Director's Report.

Adopted by voice vote

INDIVIDUAL APPLICATION:

**David William Trivette
Knoxville, TN**

Funeral Director/Embalmer

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

Adopted by voice vote

ESTABLISHMENT APPLICATION:

**CREMATION BY GRANDVIEW
2304 TUCKALEECHEE PIKE, SUITE 101
MARYVILLE, TN**

New Establishment

Ownership: Corporation

Owner(s): Cremation by Grandview, Inc., a Tennessee corporation, 2304 Tuckaleechee Pike, Suite 101, Maryville, TN 37803-5365

Upon motion by Robert Starkey and seconded by W. T. Patterson, based upon the application record, this establishment was approved for licensure.

Adopted by voice vote

**PEEBLES FAYETTE COUNTY FUNERAL HOMES AND CREMATION CENTER – PIPERTON OFFICE
3725 HIGHWAY 196 SOUTH, SUITE C
PIPERTON, TN**

New Establishment

Ownership: Corporation

**Owner(s): Fayette County Funeral Home, Inc., a Tennessee corporation,
18020 US Highway 64, Somerville, TN 38068-6167**

Upon motion by Robert Starkey and seconded by W. T. Patterson, based upon the application record, this establishment was approved for licensure.

Adopted by voice vote

Recorded as contrary to the conclusion: Tony Hysmith

RULE CHANGES:

BENTON MCDONOUGH, ASSISTANT GENERAL COUNSEL

Assistant General Counsel Benton McDonough presented proposed rule changes to the Board for their review.

Robert Starkey made a motion to approve the proposed rule changes.

Seconded by Tony Hysmith

Adopted by voice vote

Assistant General Counsel Benton McDonough then reviewed the “Regulatory Flexibility Act” with the Board, and the Board determined that the proposed rules are consistent with the guidelines of the Act, Tenn. Code Ann. § 4-5-401 et seq., and that, if enacted, these proposed rules have no negative impact on small businesses.

A motion was made by Jane Gray Sowell so stating.

Seconded by Tony Hysmith

Assistant General Counsel McDonough requested that President McKinney direct a roll call vote:

<u>BOARD MEMBERS</u>	<u>YES</u>	<u>NO</u>
Wayne Hinkle	X	
Tony Hysmith	X	
Clark McKinney	X	
W. T. Patterson	X	
Jane Gray Sowell	X	
Robert Starkey	X	
Anita Taylor	X	

Adopted by unanimous vote

ADJOURN:

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

Seconded by Anita Taylor

Adopted by voice vote

There being no further business, the meeting was adjourned at 12:23 P.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director