

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

DECEMBER 10, 2013

President Tony Hysmith called the meeting to order at 10:02 a.m. in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

Board members present: Tony Hysmith, President; Wayne Hinkle, David Neal, Jane Gray Sowell, Robert Starkey and Anita Taylor.

Note: Wayne Hinkle arrived at 10:06 a.m. as the Board just finished approving the Minutes from the previous meeting.

Board member(s) absent: W. T. Patterson, Vice President.

Staff present: Robert Gribble, Executive Director; Adrian Chick, Assistant General Counsel; Benton McDonough, Assistant General Counsel; Genesis Johnson, Administrative Secretary; and Lisa Mosby, Administrative Assistant.

ADOPTION OF AGENDA:

A motion was made by Jane Gray Sowell to approve the Agenda as printed.

Seconded by Anita Taylor

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by David Neal to approve the Minutes of the November 12, 2013 Board Meeting.

Seconded by Robert Starkey

Adopted by voice vote

PRESENTATION OF CONSENT ORDER:

Portland Funeral Chapel – Establishment License No. 1033 and Scott E. Hamm, Jr. – Funeral Director License No. 4615 and Embalmer License No. 4616

Benton McDonough, Assistant General Counsel, and Adrian Chick, Assistant General Counsel, presented a Consent Order for the Board's consideration

regarding complaint numbers 2011002691, 2012000691, and 2012000692 pertaining to Portland Funeral Chapel and Scott E. Hamm, Jr.

A motion was made by Jane Gray Sowell to accept the Consent Order as presented.

Seconded by David Neal

Adopted by voice vote

EMERGENCY RULES FOR REMOVAL SERVICE REGISTRATON:

Public Chapter No. 437 of Public Acts 2013 regarding Removal Services.

Benton McDonough, Assistant General Counsel, presented a review of the emergency rules taking place pursuant to Tennessee Code Annotated, Section 4-5-208. The purpose of this review is to present and adopt emergency rules regarding Public Chapter No. 437 of the Public Acts of 2013.

A motion was made by Jane Gray Sowell that due to the general assembly enacting legislation pertaining to Removal Service Registration under Public Chapter No. 437 of the Public Acts of 2013, with an effective date of January 1, 2014, the Board makes a determination of its reason for holding such review of emergency rules is necessary because “the agency is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of Rulemaking procedures described elsewhere in this chapter for promulgation of permanent rules” pursuant to Tenn. Code Ann. 4-5-208(a)(5) in order to implement this program as required by the Public Chapter.

Seconded by David Neal

Adopted by voice vote

Benton McDonough, Assistant General Counsel presented the recommend new Rules 0660-03-.11 and 0660-12-.01 for the Removal Service Registration.

A motion was made by Robert Starkey that the recommended Removal Services Rules read by Assistant General Counsel Benton McDonough be adopted by the Board.

Seconded by Wayne Hinkle

President Tony Hysmith announced there would be a roll call vote, and the board members that were present voted as follows:

Roll Call Vote			
Board Members	Yes	No	Abstain
Wayne Hinkle	X		
Tony Hysmith	X		
David Neal	X		
Jane Gray Sowell	X		
Robert Starkey	X		
Anita Taylor	X		

Motion passed.

A motion was made by Jane Gray Sowell that Rules will have no impact on local governments.

Seconded by Wayne Hinkle

Adopted by voice vote

A motion was made by David Neal to move forward with full Rulemaking hearing so that the agency may proceed with the process.

Seconded by Wayne Hinkle

Adopted by voice vote

PROPOSED RULES DISCUSSION – MILITARY APPLICANTS:

Benton McDonough, Assistant General Counsel, presented a review of Public Chapter No. 122 of the Public Acts of 2013 regarding Military Applicants.

The Board commented that they believe the Board Office already handles all applications as expeditious as possible.

No action was taken on this item by the Board.

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

Complaint:

- Complainant contacted the Respondent regarding a full refund of \$9,386.86 from a funeral bill on October 13, 2011.
- Complainant states that it was not an irrevocable contract, the owner has died and the Complainant will not be using their services.
- Complainant states that they were told they would receive a credit in return rather than a full refund.

Response:

- The board received a letter on November 27, 2013, from the son of the deceased establishment owner stating that the establishment has now closed.

Recommendation:

- Close. The establishment is no longer in operation.

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

Seconded by Wayne Hinkle

Adopted by voice vote

2. Case No.: L13-FUN-RBS-2013019571

Complaint:

- Complainant stated that the Respondent continues to run an advertisement in the local newspaper with the Complainant's name listed as "Director of Community Affairs, Licensed Funeral Director and Embalmer."
- Complainant has not been employed there since October 2012.
- Complainant has spoken with the funeral home's COO regarding this issue, but the matter has yet to be resolved.

Response:

- Respondent states that this complaint is the result of a small church advertisement which was not removed from print once the Complainant left employment with the Respondent.
- Respondent notified the newspaper in April 2013 about removing the advertisement, but the Complainant called the Respondent again in August 2013 to state that the advertisement was still running.
- On August 5, 2013 the Respondent sent a new advertisement to replace the old one; however, the newspaper continued running the old advertisement.
- Respondent determined that the church advertisements were overseen by an outside third party who was slow to respond; however, they have since

contacted the third party, and as of October 22, 2013 the misleading advertisement is no longer running in the paper.

Recommendation:

- Close.

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

Seconded by Robert Starkey

Adopted by voice vote

3. Case No.: L13-FUN-RBS-2013019591

Complaint:

- The Respondent's billboard is advertising "affordable funeral packages" for \$2,995.00.
- Respondent failed to provide an itemized listing of what services and/or merchandise is included in the package.

Response:

- Respondent provided a photograph of the sign, which includes an itemized listing of the merchandise and services included in the price of the package.
- Respondent states that their attorney and the sign company reviewed the sign and found it to be in compliance with state law, including the minimum size font required for disclaimers.

Note:

- While it was evident that the Respondent provided an itemized listing of the merchandise and services included in the price of the package, the print is so small that it would be difficult, if not impossible, for any consumer to fully realize the merchandise and services included in the package.

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 David Neal

Adopted by voice vote

4. Case No.: L13-FUN-RBS-2013019641

Complaint:

- The Complainant believes the Respondent is advertising discounts for at need funeral services.
- Complainant provided an advertisement that provides the "Total at need discount of \$1,500.00."

Response:

- Respondent states that they are aware of the law prohibiting pre-need funeral discounts; however, they are not a pre-need seller and are not aware of any law or prohibition against offering at need funeral discounts.

Recommendation:

- Dismiss.

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

Seconded by Wayne Hinkle

Member noted as voting contrary to the voice vote conclusion: Jane Gray Sowell

Adopted by voice vote

5. Case No.: L13-FUN-RBS-2013020151

Complaint:

- Rule 0660-11-.06 – Funeral Rule
 - o On or about September 13, 2013, a field representative conducted a routine inspection of the Respondent establishment.
 - o The corporation owning the Respondent owns location A and location B (Respondent); however, location A has had an expired license for several years.
 - o Despite having an expired establishment license and not currently operating, location A has an active listing in the Yellow Pages.
 - o When a consumer tries to contact location A based upon the listing in the phone book, the phone is forwarded to the Respondent establishment (location B).
- 62-5-107 – Utilization of licensed crematory facilities by funeral directors
 - o The current inspection report for the crematory utilized by this establishment was not available for inspection.

Response:

- Respondent states that this incorrect phone listing is not defined as an unfair or deceptive act or practice.
- The Yellow Pages listing was not intended to be misleading.

- Location A was closed, but the Respondent forwarded the phone line to location B so that anyone with a pre-need funeral contract with location A can find their paperwork and determine their funeral options.
- Respondent's attorney contacted the phone company to change the Yellow Pages listing prior to the next edition being distributed.
- As for the lacking inspection report, Respondent felt it was appropriate to keep a copy of the latest inspection report at their corporate headquarters.
- Therefore, there was no crematory inspection report available at the Respondent location because those documents were kept at their corporate headquarters.

Recommendation:

- Letter of Warning.

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

Seconded by Robert Starkey

Adopted by voice vote

6. Case No.: L13-FUN-RBS-2013021881

Complaint:

- The Complainant's daughter passed away following an auto accident, and had services conducted in Mississippi and later at the Respondent's funeral establishment.
- The decedent was to have the first service in Mississippi and then be transported to the Respondent's funeral establishment for services and cremation.
- Upon seeing his daughter's body once it was brought back to Tennessee, the Complainant states that he was not satisfied with the daughter's condition, as her make-up was terrible and the flowers had wilted.
- Furthermore, the Complainant states that he was provided changing prices for the services, but finally agreed to the final price of \$900.00.
- The decedent passed away on August 24, 2013, the first service was in Mississippi on August 29, 2013, the funeral service in Tennessee was scheduled for September 1, 2013, and the Respondent failed to file for a cremation permit until September 6, 2013.
- The funeral director told the family that he would obtain the permit no later than September 4, 2013.
- The Complainant called the Respondent on many occasions – once the Respondent informed him that he was having difficulty obtaining the permit, and this happens a lot with this particular Medical Examiner, but

several times the Respondent failed to answer the phone or return phone calls.

- The Complainant contacted the Medical Examiner's Office and determined that the Respondent never filed the paperwork for a cremation permit until September 6, 2013.
- The Complainant believes the Respondent lied to him at a time when the Complainant and his wife were most vulnerable.

Response:

- The Complainant's recollections are inaccurate.
- Respondent told the family that given it was close to the Labor Day holiday, they should be able to obtain a cremation permit no later than Wednesday, September 4, 2013.
- Complainant informed the Respondent that they would hold a graveside service on September 7, 2013 or September 8, 2013 and this was the only deadline given to the Respondent.
- The Respondent states that he never told the Complainant that they were having a tough time getting a permit from the Medical Examiner's Office, nor did Respondent say this is a regular occurrence with this Medical Examiner, as this was the first time they ever had done business with this particular county.
- Respondent states that they provided the cremains in a timely fashion for the graveside services.

Recommendation:

Dismiss.

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

Seconded by Anita Taylor

Adopted by voice vote

7. Case No.: L13-FUN-RBS-2013021891

Complaint:

- The Complainant's brother passed away in August of 2013.
- The decedent was an employee of the Respondent funeral establishment and the decedent's funeral bill was allegedly covered by the funeral establishment due to the decedent's employment; however, the Complainant later received a bill in the amount of \$9,177.54.
- During the period of visitation and services, the Complainant informed the Respondent that they wanted a new casket as the current one was

- actually the display model and it had a crack in the center of it, but the Respondent asked why the Complainant had such a problem with it if they were not paying for the services.
- Complainant also states that the Respondent worked with the decedent to have his life insurance policy changed to name the funeral establishment as the beneficiary of 50% of the policy.
 - Complainant states that they were led to believe the insurance policy was not in force, as the decedent had not worked since being diagnosed with Stage 4 Cancer in 2012.
 - Complainant was upset that a car was sent to the home of the decedent's girlfriend (who also worked at the funeral establishment) instead of the decedent's next of kin. Furthermore, Complainant believes the flowers should have been given to the next of kin instead of the decedent's girlfriend.
 - The Complainants did not say much about these issues at the time because they were under the impression that the Respondent was covering the funeral costs.

Response:

- No response was provided by the Respondent.

Recommendation:

- Consent Order with \$1,250.00 civil penalty (includes no response) and authorization for hearing.

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

Seconded by David Neal

Adopted by voice vote

8. Case No.: L13-FUN-RBS-2013022261**Complaint:**

- On October 1, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- This establishment is a crematory, but it is operated under the same establishment license as its funeral home.
- Tenn. Code Ann. § 62-5-509(b)(6) – Written receipt for human remains
 - o Eight (8) crematory files failed to contain a signature of the person who received the decedent on behalf of the crematory facility.
 - o One (1) decedent's file fails to contain the date of release, time of release, and signature of the person who released the cremated remains.
 - o Another file failed to contain a "Release of Cremated Remains".

- Tenn. Code Ann. § 62-5-504 – Prerequisites to cremation
 - o One (1) cremation authorization form failed to contain the signature of a licensed funeral director.

Response:

- Missing signature of person receiving decedent for cremation
 - o The person who delivered the decedent to the crematory was the same person receiving the decedent on behalf of the funeral establishment.
 - o Respondent believed it was unnecessary to sign the receipt twice.
 - o This matter has been corrected for future notice.
- Missing information on release of cremated remains
 - o This information was written in a release log in the office, but not noted on the receipt before it was placed in the file.
 - o A new oversight plan was put in place to review all files before they are permanently filed.
- Missing signature of licensed funeral director
 - o This authorization was delivered by the outside funeral home, by the licensed funeral director of that firm.
 - o The crematory operator assumed the signature was affixed and simply failed to review.
 - o This human error has been addressed with the reminder that all documents must be carefully reviewed.

Recommendation:

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

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

Seconded by Anita Taylor

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
NOVEMBER 12, 2013 – DECEMBER 9, 2013**

Individuals

Type of License(s)

Jeffrey Darryl Davenport Baxter, TN	Funeral Director/Embalmer
Bradford Lee Farmer Memphis, TN	Funeral Director/Embalmer
Tately Cay Jennings Columbia, TN	Funeral Director/Embalmer
Leah-faye Brooke Stedam Wartburg, TN	Funeral Director/Embalmer
Bradley Eugene Fielden New Market, TN	Funeral Director
Stephen Walter Howard Bristol, VA	Funeral Director Reciprocity

CLOSED ESTABLISHMENT REPORT:

These two (2) establishments have reported closing since the last board meeting:

- 1) Wise Choice Cremations, 2735 Highway 64, Suite 104, Hickory Withe, TN;
and
- 2) Holmes Funeral Home, 1408 Jo Johnston Avenue, Nashville, TN.

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY ACCEPTED/APPROVED
BY THE EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY
FOR THE PERIOD OF NOVEMBER 1, 2013 – NOVEMBER 30, 2013**

Respondent:	Erwin Memorial Funeral Home, Inc., Erwin, TN
Violation:	Funeral director served in the capacity of establishment manager and practiced funeral directing while license was expired
Action:	\$250 Civil Penalty
Respondent:	Hermitage Funeral Home & Memorial Gardens, Old Hickory, TN
Violation:	Funeral director failed to sign a cremation authorization form, failed to retain copies of cremation authorization forms in the files, and multiple aspects of the establishment's price lists

and statement of funeral goods and services sold did not comply with the Funeral Rule
Action: \$500 Civil Penalty

Respondent: Betty E. Ledford, Erwin, TN
Violation: Acted as the manager of record for an establishment and practiced funeral directing while license was expired
Action: \$250 Civil Penalty

Respondent: Neptune Society, Brentwood, TN
Violation: Unlicensed employees used titles on business cards that either gave or tended to give the impression that the persons were licensed to practice as a funeral director, failed to obtain and maintain a copy of the crematory's latest inspection report used by the funeral home, and multiple aspects of the establishment's price lists and statements of funeral goods and services selected did not comply with the Funeral Rule
Action: \$1,000 Civil Penalty

Respondent: Pettus-Turnbo Funeral Home, Lawrenceburg, TN
Violation: Multiple aspects of the establishment's price lists did not comply with the Funeral Rule
Action: \$250 Civil Penalty

Respondent: Robert Ledford Funeral Home and Chapel, Erwin, TN
Violation: False or misleading advertising (failed to include an itemized listing of each and every item, procedure or service and the price of each item in a newspaper advertisement)
Action: \$250 Civil Penalty

Respondent: Robert Ledford Funeral Home and Chapel, Erwin, TN
Violation: Funeral director served in the capacity of establishment manager and practiced funeral directing while license was expired
Action: \$250 Civil Penalty

Respondent: W.G. Hardy Funeral Home & Cremation Services, Louisville, KY
Violation: Unlicensed activity (a funeral director from another state conducted committal and interment services in Tennessee without a Tennessee funeral director present and in charge of the services)
Action: \$350 Civil Penalty

OPEN COMPLAINT REPORT:

As of December 9, 2013 there were 116 open complaints.

A motion was made by David Neal to accept the Executive Director's Report.

Seconded by Wayne Hinkle

Adopted by voice vote

ACCEPTANCE OF QUARTERLY REPORTS OF APPRENTICE TRAINING:

**Caleb Andrew Leach
Speedwell, TN**

Apprentice Funeral Director/Embalmer

Upon motion by Wayne Hinkle and seconded by Jane Gray Sowell, to accept the Quarterly Report of July – September 2012.

Adopted by voice vote

**Jill D. Corvin
Johnson City, TN**

Apprentice Funeral Director/Embalmer

Upon motion by Wayne Hinkle and seconded by Robert Starkey, to accept the Quarterly Report of July – September 2013.

Adopted by voice vote

RECESS:

President Tony Hysmith announced at 11:57 a.m. that the Board will take a ten (10) minute recess.

RECONVENE:

President Tony Hysmith called the meeting back to order at 12:09 p.m.

ELECTION OF BOARD OFFICERS FOR 2014:

President:

A motion was made by Jane Gray Sowell to nominate and elect Robert O. Starkey, III, as President of the Board for 2014.

Seconded by Anita Taylor

Adopted by voice vote

Vice President:

A motion was made by David Neal to nominate and elect Anita Taylor as Vice President of the Board for 2014.

Seconded by Wayne Hinkle

Adopted by voice vote

APPOINTMENT OF CONTINUING EDUCATION LIAISON FOR 2014:

President Tony Hysmith suggested the appointment of Jane Gray Sowell as the Continuing Education Liaison of the Board for 2014.

Adopted by voice vote

RECESS:

President Tony Hysmith announced at 12:15 p.m. that the Board will recess until 2:00 p.m.

RECONVENE AND RECESS:

President Tony Hysmith announced at 2:00 p.m. that the Board will continue the recess until 4:30 p.m.

RECONVENE:

President Tony Hysmith called the meeting to back order at 4:32 p.m. in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

Board members present: Tony Hysmith, President; Wayne Hinkle, David Neal and Robert Starkey.

Board member(s) absent: W. T. Patterson, Vice President; Jane Gray Sowell, and Anita Taylor.

EMERGENCY RULES FOR REMOVAL SERVICE REGISTRATION:

Michael Driver, Chief Counsel for the Regulatory Boards, presented information concerning the financial aspect of the proposed Removal Service rules.

A motion was made by Robert Starkey to hold up on implementation of the Emergency Rules pending the Board's receipt of further financial data.

Seconded by Wayne Hinkle

Adopted by voice vote

ADJOURN:

A motion was made by David Neal to adjourn.

Seconded by Robert Starkey

Adopted by voice vote

The meeting was adjourned by President Tony Hysmith at 4:36 p.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director