

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

JANUARY 14, 2014

President Robert Starkey called the meeting to order at 10:00 a.m. in Conference Room 1-B, Davy Crockett Tower, Nashville, Tennessee.

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

Note: Vice President Anita Taylor entered the meeting at 10:03 a.m. as the Board was discussing the adoption of Roberts Rules of Order.

Board member(s) absent: W. T. Patterson.

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

WELCOME NEW BOARD MEMBER:

President Robert Starkey introduced and welcomed new board member Robert P. Helms of Lexington, Tennessee, a funeral director and embalmer representing the Western Grand Division.

Mr. Helms was nominated by the Tennessee Funeral Directors Association and appointed to the Board by the Governor.

ADOPTION OF AGENDA:

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

Seconded by Jane Gray Sowell

Adopted by voice vote

APPROVAL OF MINUTES:

President Starkey announced that the December 10, 2013 Minutes and those of the January 3, 2014 Teleconference will be presented for review / approval at next month's board meeting.

ADOPTION OF ROBERT'S RULES OF ORDER:

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

Seconded by David Neal

Adopted by voice vote

CONFLICT OF INTEREST STATEMENT:

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

LEGAL REPORT:

BENTON McDONOUGH, ASSISTANT GENERAL COUNSEL

Abbreviations:

GPL – General Price List

CPL – Casket Price List

OBCPL – Outer Burial Container Price List

SFGSS – Statement of Funeral Goods and Services Selected

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- 1. Case No.: L13-FUN-RBS-2013023331**
 - 2. Case No.: L13-FUN-RBS-2013023332**

Complaint:

- The funeral establishment's license was first issued on March 14, 2001, and the Respondent was one of two members of the limited liability company, the registered agent for the LLC, and served as the managing funeral director from May 12, 2003 until the establishment was sold on December 17, 2012.
- Tenn. Code Ann. 62-5-317(a)(4), 62-5-317(b)(13), and 62-5-317(b)(17)
- Tenn. Code Ann. § 62-5-412 requires an audit report prepared and signed by an independent CPA in order to transfer a pre-need seller registration to a new owner.
 - o The Respondent engaged the services of a Certified Public Accountant to determine the establishment's compliance with certain provisions of the law which could have a direct and material effect on the determination of the schedule or pre-need funeral contract amounts.

- The CPA found violations of Tenn. Code Ann. § 62-5-407 which requires any pre-need seller to deposit funds collected on the sale of such contract shall deposit the funds in a trust account or paid to an insurance provider within 15 days.
- Numerous signed contracts were discovered that were not listed on any insurance company confirmations, nor were any trust fund accounts found to exist.
- The CPA found violations of Tenn. Code Ann. § 62-5-409(c) which prohibits discounts on pre-need funeral contracts.

Response:

- Pre-need Funeral Contracts
 - As for the audit, the Respondent states that the new ownership mistakenly provided the pre-need and at-need contracts instead of just the pre-need files to the CPA for the audit.
 - The money was not trusted, nor the contracts listed with the insurance companies, because the families made partial payments to the pre-need funeral contracts and never returned to complete the contract.
- Discounts
 - Respondent states that they were told by a Burial Services' Auditor that they could not provide discounts to customers; however, Respondent believed it was okay to call it "competitive pricing" on the contracts instead.
 - Respondent started using a new accountant and they used documents that had a box for "discounts" on the contracts, which the Respondent marked.
 - When their personal auditor reviewed the documents, Respondent states that she had them mark through the term "discount" and replace it with "competitive pricing".
 - The only time the Respondent used "competitive pricing" was if a customer brought in a flyer or documented pricing from another funeral establishment.

Recommendation:

- Respondent #1 – Consent Order with one thousand dollar (\$1,000.00) civil penalty and suspend Funeral Director's License for one (1) year and require a total of ten (10) additional hours of Continuing Education, four (4) of which must be in ethics and authorization for hearing.
- Respondent #2 – Suspend Embalmer's License for one (1) year and required a total of ten (10) additional hours of Continuing Education, four (4) of which must be in ethics and authorization for hearing.

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

Seconded by Robert P. Helms

Adopted by voice vote

3. Case No.: L13-FUN-RBS-2013022271

Complaint:

- On October 4, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- Tenn. Code Ann. § 62-5-107(c)(2)
 - o The current license and latest inspection report of the crematory utilized by this establishment was not available for inspection.
- Rule 0660-11-.02
 - o The ventilation fan in the embalming room was not working and must be repaired.
- Tenn. Code Ann. 62-5-306
 - o The current funeral director's license for one (1) individual was not available for inspection.
- Tenn. Code Ann. § 62-5-308
 - o The current embalmer's license for one (1) individual was not available for inspection.
- Tenn. Code Ann. § 62-5-107(c)(3)(C)
 - o Four (4) files lacked a cremation authorization form signed and dated by a licensed funeral director.
- Tenn. Code Ann. § 62-5-508(c)
 - o The establishment's cremation authorization form must be changed to read 180 days instead of 60 days for unclaimed cremated remains.
- Rule 0660-11-.06
 - o On the GPL – under direct cremation with wood casket or cremation container, the price range of \$3,480.00 being offered to the consumer is inconsistent with the CPL. There is no listing for a wood casket or cremation container on the CPL for that price.

Response:

- An expired license for the crematory was hanging on the wall during the inspection, and Respondent immediately called the crematory to obtain a copy of the current license and latest inspection report, in the presence of the field representative.
- Respondent believes the fan in the preparation room was working properly and that he just had the switch in the wrong position when the field representative tested it.
 - o The Respondent contacted a service company who found it in good working condition.
- The funeral director / embalmer in question, whose licenses were expired, has not worked for the Respondent in two (2) years, and their licenses should have been removed from the wall.

- The wording on the cremation authorization form has been changed to read 180 days.
- The GPL has been corrected to reflect a correct price range for cremation with wood casket.

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

4. Case No.: L13-FUN-RBS-2013022301

Complaint:

- On October 9, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- Tenn. Code Ann. § 62-5-107(c)(1)(2)
 - o Respondent failed to provide a copy of the current license and latest inspection report for the crematory utilized by this establishment.

Response:

- Respondent apologizes for not providing a copy of the current license and latest inspection report of the crematory.
- They state that they e-mailed the crematory in January requesting one, but never received a return confirmation.

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 David Neal

Adopted by voice vote

5. Case No.: L13-FUN-RBS-2013023821

Complaint:

- On November 15, 2013, a field representative conducted a routine inspection of the Respondent establishment.
 - o Tenn. Code Ann. § 62-5-317(b)(2); Rule 0660-11-.06; and Rule 0660-01-.03;

- Establishment advertising in local newspaper as “Funeral Home and Cremation Services” – by a name other than that which is listed on the application with the Board.
- Rule 0660-11-.02 – Preparation Room
 - The preparation room is in need of a general overall cleaning.
- Rule 0660-11-.06 – Funeral Rule
 - Reason for embalming must be completed on SFGSS.
 - Merchandise and Services must be completed on all SFGSS; the description should be such that the consumer can easily compare the prices on the contract with the appropriate price list for accuracy.
 - One file had pricing errors – A charge of \$3,895.00 was charged for an unidentified casket – the outer burial container selected was a Poly-Vault listed on the OBCPL at a price of \$1,195.00, but on the SFGSS the family was charged \$1,395.00 – overcharged by \$200.00.
 - GPL – alternative container listed on the GPL must be changed from fiberboard to cardboard to agree with the disclosure on the GPL and CPL.

Response:

- Respondent’s manager suffered serious car accident on June 8, 2012, leading to neck and knee injuries.
- Same person suffered a stroke on February 2, 2013, leading to another licensed funeral director taking over the day-to-day activities at the funeral home.
- September 30, 2013, the manager was airlifted to a local hospital with congestive heart failure.
- Violations
- Different Name –
 - As for the name change, Respondent did not intend to give the appearance of a name change in the newspaper – this matter was addressed and changed immediately.
- Preparation Room
 - There were no soiled or contaminated surfaces, instruments, tables, fixtures or equipment, clothing, linens or waste present at the time of inspection.
 - There was a deceased body on the table that had just been embalmed but nothing visibly contaminated.
- Reason for Embalming
 - The reason for embalming was not listed due to a simple oversight on the part of the funeral director.
- Casket Description

- The casket description was not given due to oversight on the part of the funeral director who did not go back and fill in the description when the final casket was decided upon.
- The casket ordered was an oversized unit that had to be ordered on short notice and was not large enough when delivered so it had to be returned.
- Pricing Error
 - No pricing error existed for the outer burial container purchased; it simply was not listed as an oversized poly-vault which was a funeral director error.
- GPL
 - The GPL was corrected immediately to read “Cardboard” instead of “Fiberboard” under alternative container.

Recommendation:

- Consent Order with \$750.00 civil penalty and authorization for hearing with instructions to refund the \$200.00 that was overcharged the family.

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

Seconded by Anita Taylor

Adopted by voice vote

6. Case No.: L13-FUN-RBS-2013024291**Complaint:**

- On November 22, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- Rule 0660-11-.06 – Funeral Rule
 - GPL – Disclosures required by the FTC on the GPL must be exact and word-for-word.
 - The Consumer’s Right of Selection disclosure was not exact and word-for-word.
 - The Basic Services disclosure was not exact and word-for-word.
 - The Direct Cremation disclosure was not exact and word-for-word.
 - Immediate Burial upper end price range was incorrect when compared to the price of caskets offered for sale on the CPL.
 - Immediate Burial “with container” upper end price range and lower end price range was incorrect when compared to the price of caskets offered for sale on CPL.

- The Direct Cremation upper end price range was incorrect when compared to the price of caskets on the CPL.
- The Direct Cremation “with cremation casket selected from our funeral home” lower end price range and upper end price range were incorrect when compared with the price of caskets offered for sale on the CPL.
- CPL –
 - Two (2) caskets on the CPL contained an incorrect price when compared to the price of the same two (2) caskets offered for sale in the casket selection room.
 - The Woodridge Pecan casket offered for sale at a price of \$5,588.00 in the selection room was not listed on the CPL.
 - The following three (3) alternative containers offered for sale under “Direct Cremation” options on the GPL were not listed on the CPL as required by the FTC Funeral Rule – Minimum Cardboard Alternative Container; Standard Brown Alternative Container; and Stratus Alternative Container.
- Rule 0660-11-.05
 - Respondent failed to respond within the time specified upon receiving notice that a complaint was initiated against their establishment license.

Response:

- No response received.

Recommendation:

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

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

Seconded by David Neal

Adopted by voice vote

7. Case No.: L13-FUN-RBS-2013024951**Complaint:**

- Complainant’s daughter was killed in a car accident on October 9, 2011.
- The family asked that in lieu of flowers, donations be made toward the \$8,400.00 funeral bill.

- The local District Attorney filed a request for the Criminal Victim Rights Claim as the Complainant's daughter was killed by a drunk driver.
- The money from that fund would be used to pay for the funeral expenses.
- The Complainant states that the Respondent has filed suit against her seeking the remainder of the funeral bill.
- Complainant believes the Respondent is asking for more money than they are due and that they have not taken into account the money from the funeral fund.
- Complainant would like to know details about the funeral fund money.

Response:

- A contract was entered into by the establishment, the mother, the father, and the biological father to cover funeral expenses.
- On March 18, 2012, a letter was mailed to the mother showing a balance due of \$8,063.23, and that no payments had been received since October 2011.
- Respondent gave them until April 15, 2012, to provide payment (no response).
- The mother came in on July 6, 2012 and made a payment of \$100.00.
- The mother was contacted again on August 27, 2012, for her to pay the remaining amount (no response).
- On September 4, 2012, Respondent received a letter from the mother involving five (5) post-dated checks, stating that she was in the process of obtaining a loan and that she had filed suit against the insurance company of the other driver.
- August 28, 2012, the father came in and paid his part of \$2,687.74.
- The biological father paid \$500.00 in four separate payments, totaling \$2,000.00, but two (2) of those checks were returned as "insufficient funds" – which Respondent received a judgment on December 7, 2012.
- As of January 4, 2013, no payments were made with a balance remaining of \$3,775.49.
 - o Original Contract - \$8,968.23
 - o Community Payments – (\$905.00)
 - o Payment by Mother – (\$600.00)
 - o Insufficient Funds - \$1,000.00
 - o Payment by Father – (\$2,687.74)
 - o Interest is 5.25% as of December 7, 2012 plus court costs.
- As of January 2014, a warrant has been issued for the mother and biological father for non-payment and to appear in Scott County General Sessions Court, with a court date of January 17, 2014.

Recommendation:

- Dismissed – Civil court appears to be the appropriate venue for this matter.

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

Seconded by Robert P. Helms

Adopted by voice vote

8. Case No.: L12-FUN-RBS-2012019321**9. Case No.: L12-FUN-RBS-2012019322****Complaint:**

- This case was originally opened in Burial Services; however, the case was closed against the pre-need sales agent and re-opened against his funeral director's / embalmer's licenses.
- On February 27, 2012, an auditor with Burial Services conducted a routine audit of the Respondent establishment.
- 2010 Establishment Report – Rule 0780-5-10-.07
 - o There is no record that the 2010 Establishment Preneed Funeral Funds Report on Irrevocable and Revocable Contracts was received in Burial Services.
- 2009 Establishment Report not Completed Correctly – Rule 0780-5-10-.07
 - o It was determined that the statistics reported in Section 5 of the 2009 Establishment Preneed Funeral Funds Report was incorrect.
 - o The number of insurance preneed contracts written during 2009 was reported as six (6); however, there are only five (5) documented preneed contracts on the Investor's Heritage Insurance listing.
 - o Furthermore, there were eleven (11) serviced preneed contracts reported on line (d), but records showed only five (5) were serviced.
 - o This is a repeat finding.
- Required Documentation – Tenn. Code Ann. § 62-5-411(a)
 - o During the review of the funeral home files, there is evidence of continued insufficient documentation in the preneed contract files, it was noted that of the four (4) files that did not contain the enrollment / contract application form, which shows the beneficiary information, contract amount, and application date, the following was shown:
 - George Orr – Deceased. No evidence of enrollment form was presented during exam.
 - Laura Orr – Active file and no evidence that enrollment form/contract is in file.
- Exam Fees – Tenn. Code Ann. § 62-5-411(b)

- A funeral home preneed examination was performed on August 9, 2010.
- As of the date of audit report, Burial Services has yet to receive \$300.00 exam fee.

Response:

- No response received.

NOTE:

- Respondent allowed both his funeral director and embalmer licenses to expire on June 30, 2012.

Recommendation:

- Close – Respondent's licenses expired and he is unlikely to apply for a new license.

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

Seconded by Anita Taylor

Adopted by voice vote

10. Case No.: L12-FUN-RBS-2012001061

11. Case No.: L12-FUN-RBS-2012001062

12. 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" from 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 returned by the bank.

Response:

- No response received.

Original Recommendation:

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

New Recommendation:

- This establishment is no longer owned by same entity. Therefore, we recommend that this complaint be closed.

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

Seconded by Wayne Hinkle

Adopted by voice vote

13. Case No.: L12-FUN-RBS-201201051

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 her 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 but received a concrete vault instead.
- Charged for flower van and had no flowers to take to the graveside.

Response:

- No response received.

Original Recommendation:

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

New Recommendation:

- This is the same Respondent in the previous complaint. Again, due to the establishment no longer owned by same entity as it was when the complaint was filed, we believe the proper course of action would be to close this complaint.

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

Seconded by Anita Taylor

Adopted by voice vote

14. Case No.: L12-FUN-RBS-2012003051

Complaint:

- On January 22, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- The Respondent's funeral establishment license expired on November 30, 2011, and was not renewed at the time this inspection took place in January.
- During this time, the establishment conducted five (5) funeral services.
- Also, it was determined that the ventilation fan in the preparation room was inoperable at the time of inspection.

Response:

- Respondent states that all of the issues in the complaint have been addressed.

Original Recommendation:

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

New Recommendation:

- Due to this Respondent establishment no longer in operation, we believe the proper course of action is to close this complaint.

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

Seconded by David Neal

Adopted by voice vote

15. Case No.: L13-FUN-RBS-2013004201

Complaint:

- The Complainant's mother died on January 30, 2013, in Louisville, Kentucky and he contacted the Respondent funeral establishment to handle services in Tennessee.
- Complainant spoke with the Respondent regarding removing the decedent back to Tennessee and burial at a local Veteran's Cemetery.
- The Respondent provided a charge of \$100.00 for removal plus \$1.75 per mile.
- Complainant stated that he would be in town the next week to make final arrangements.

- Complainant arrived February 6, 2013, and met the funeral director and delivered clothes for his mother.
- Respondent gave a price of \$6,195.00 for the services selected by the Complainant, but the Complainant decided to go with another funeral home for one-third of the price.
- Respondent provided charges of \$2,053.00 for services already rendered before the body could be transferred to the new establishment.
- Complainant acquired the funds, but the funeral director, other staff, and owners of the establishment said they are not responsible for making such arrangements.
- Complainant decided to contact police because he was unable to get a response from the Respondent and believed they were unlawfully holding his mother's body.
- Complainant informed Respondent of his contact with police and informed them that he was going to proceed with a memorial service for his mother if the Respondent failed to release the body (11 days after taking possession of the body).
- Complainant then met with the funeral director and a secretary who provided a bill that included \$1,295.00 for services provided by funeral director and staff and \$758.00 for transporting the body from Louisville.

Response:

- Respondent states that they removed the body and received permission to embalm the decedent's body.
- On February 7, 2013, funeral director met with the Complainant and presented him with the embalming authorization form and GPL.
- Complainant gave vital information and funeral service particulars and then looked through the casket catalog.
- He picked a casket of his choice and color and selected an outer burial container after he had finished.
- The office manager typed up the bill, which was signed by the Complainant and funeral director.
- Respondent explained that they do not accept out of state checks, credit cards, or term payments and the bill must be paid in full prior to funeral services.
- Complainant left and stated he would return with the funds, so the Respondent ordered the merchandise and a plot at the local veterans' cemetery.
- Several days passed without any communication from the Complainant, so the Respondent contacted him and learned that he chose a different funeral establishment.
- Respondent then cancelled the merchandise and the plot, but provided charges for the services rendered, which included housing the decedent's remains.
- The bill provided to the Complainant did not include charges for burial, but only charges for services rendered by the establishment.

Original Recommendation:

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

New Recommendation:

- This is the same Respondent as the previous complaint. Again, due to the Respondent establishment no longer in operation, we believe the proper course of action is to close this complaint.

A motion was made by David Neal to accept Counsel's recommendation.

Seconded by Robert P. Helms

Adopted by voice vote

16. Case No.: L11-FUN-RBS-2011020821

Complaint:

- On June 29, 2011, a field representative conducted a routine inspection of the Respondent establishment funeral home.
- This Respondent's establishment license expired on April 30, 2011, and was not renewed until June 6, 2011.
- During this time, the Respondent conducted five (5) funeral services.

Response:

- Respondent states that it was the administrator's job to renew the license prior to the expiration date.
- Respondent states that the administrator stated on April 18, 2011, that the license renewal had been processed and mailed; however, it was brought to the Respondent's attention on June 2, 2011, that this was false.

Original Recommendation:

- Consent Order with \$1,000 civil penalty and authorization for hearing.

New Recommendation:

- This establishment recently ceased operation. Therefore, we believe the best course of action is to close this complaint.

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

Seconded by Wayne Hinkle

Adopted by voice vote

17. Case No.: L13-FUN-RBS-2013000571

Complaint:

- On May 14, 2012, a field representative conducted a routine inspection of the Respondent establishment.
- The co-owner of the establishment had their name listed as “co-owner” on establishment material without indicating that they were unlicensed.
- The establishment name listed on the establishment application is different than that advertised on the vehicles, website, and memorial folders.
- General Price List
 - o Casket price range incorrect when compared to CPL.
 - o Outer Burial Container Price range incorrect compared to price of outer burial container price list.
 - o Immediate Burial with Gemini (20 Gauge) not listed on CPL.
 - o Direct Cremation must include range.
 - o Direct Cremation with corrugated cardboard container price incorrect compared to CPL.
- Statement of Funeral Goods and Services Selected
 - o One (1) customer chose memorial with cremation arrangements.
 - She was charged \$1,995.00 for “Basic Services of Funeral Director and Staff”, and \$250.00 for “Transfer of Remains to Funeral Home”, both of which were already included in package, creating overcharge of \$2,245.00.
 - o One (1) customer chose memorial with cremation arrangements.
 - He was charged \$1,995.00 for “Basic Services of Funeral Director and Staff”, which was already included in the package. Staff also charged for corrugated cardboard container and rental casket, rental casket includes charge of insert, creating overcharge of \$2,245.00, but Respondent waived \$823.12, leaving a net overcharge of \$1,421.88.
 - o One (1) customer chose funeral with cremation arrangements.
 - He was charged \$1,995.00 for “Basic Services of Funeral Director and Staff”, which was already included in the package. Respondent charged for corrugated cardboard container and additional charge for rental casket. Respondent charged family \$250.00 for “Transfer of Remains to Funeral Home”. All of this resulted in an overcharge of \$2,697.00 less a discount of \$2,200.00, leaving a net overcharge of \$497.00.
 - o One (1) SFGSS does not provide a reason for embalming when a fee was charged.

Response:

- No response received.

Original Recommendation:

- Consent Order with \$3,000.00 civil penalty and authorization for hearing.

Final Determination:

- Consent Order with \$3,000.00 plus \$250.00 for no response for a total civil penalty of \$3,250.00 and advise that they should make refunds to the customers.

New Recommendation:

- This is the same Respondent as the previous complaint. Due to the business ceasing operation, we believe the best course of action is to close this complaint.

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

Seconded by Robert P. Helms

Adopted by voice vote

18. Case No.: L13-FUN-RBS-2013009951

Complaint:

- On May 21, 2013, a field representative attempted to conduct a routine inspection of the Respondent establishment.
- The most recent inspection conducted on this establishment was May 14, 2012.
- Upon attempting to enter the establishment, the field representative found the front entrance of the establishment locked with a sign which read:
"Tennessee State Government Seizure
Property seized for non-payment of
Tennessee state taxes levy."
- The field representative found additional signs posted around the establishment, including one sign found posted on the establishment hearse parked under a carport.
- The field representative called a number listed on the signage and spoke to an employee with the Department of Revenue with knowledge of the situation.
- The employee informed the field representative that no human remains were found in the establishment at the time of the seizure.
- The field representative took additional pictures and completed their report.

Response:

- No response received.

Original Recommendation:

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

New Recommendation:

- This is the same Respondent as the two previous complaints. Therefore, we similarly believe the best course of action in this case is to close this complaint, due to the Respondent establishment has ceased operation.

A motion was made by David Neal to accept Counsel's recommendation.

Seconded by Wayne Hinkle

Adopted by voice vote

19. Case No.: L13-FUN-RBS-2013017961

Complaint:

- On August 2, 2013, a field representative conducted a routine inspection of the Respondent establishment.
- Licensing – Tenn. Code Ann. § 62-5-316
 - o The funeral establishment license expired on April 30, 2013, and was not renewed until June 28, 2013.
 - o From May 1, 2013 – June 27, 2013, the Respondent arranged and or conducted funeral or cremation arrangements for eight (8) deceased individuals.
- Rule 0660-11-.06
 - o Direct Cremation with Alternative Container must be included on the GPL as required by the FTC.

Response:

- No response was received.

Original Recommendation:

- Consent Order with one thousand dollar (\$1,000.00) civil penalty plus two hundred fifty dollars (\$250.00) for no response for a total civil penalty of one thousand two hundred fifty dollars (\$1,250.00) and authorization for hearing.

New Recommendation:

This is the same Respondent in this case as the three (3) previous complaints. We believe the proper course of action to be to close this complaint, due to the Respondent establishment has ceased operation.

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

Seconded by David Neal

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

LEGISLATIVE UPDATE
108TH GENERAL ASSEMBLY
BILLS INTRODUCED AFFECTING TCA TITLE 62

<u>HB1380</u> by Forgety	Funeral Directors and Embalmers - As introduced, codifies requirements for the inspection of funeral establishments presently enforced pursuant to board rules; authorizes unannounced inspections of establishments by a representative licensed as both a funeral director and an embalmer acting on behalf of the board.
<u>HB0250</u> by Lamberth	Funeral Directors and Embalmers - As introduced, prohibits certain licensees in the funeral services industry from affiliating or engaging in other arrangements with certain health care institutions and organizations.
<u>HB1125</u> by Floyd	Funeral Directors and Embalmers - As introduced, allows the disposal of a dead human body through the process of alkaline hydrolysis.
<u>SB1253</u> by Green	Veterans - As introduced, creates a process whereby the cremated remains of certain veterans and veterans' spouses may be interred by an entity selected by the county legislative body if certain conditions are met.

For current information:

<http://wapp.capitol.tn.gov/apps/billsearch/billsearchadvanced.aspx?terms=keyword%20or%20bill&searchtype=all>

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
DECEMBER 10, 2013 – JANUARY 13, 2014**

Establishments

Harrison's Memorial Chapel, Inc.
Memphis, TN

Type of License(s)

New Establishment

Cooke-Campbell Mortuary, Inc.
Maynardville, TN

Ownership and Name

Individuals

Type of License(s)

Michelle Lynn Callahan
Johnson City, TN

Funeral Director/Embalmer
Reciprocity

Cherri Ann Dearing
Olive Branch, MS

Funeral Director
Reciprocity

Stephen Walter Howard
Bristol, VA

Embalmer
Reciprocity

CLOSED ESTABLISHMENT REPORT:

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

- 1) Henry Smith Funeral Home, 335 Franklin Street, Clarksville, TN; and
- 2) Jackson Funeral Services, 106 Administration Road, Suite C, Oak Ridge, TN.

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY
ACCEPTED/APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO
BOARD AUTHORITY FOR THE PERIOD OF DEC. 1, 2013 – DEC. 31, 2013**

Respondent: Scott E. Hamm, Jr., Portland, TN
Violation: Funeral director served in the capacity of establishment manager, practiced funeral directing while license was expired, failed to make available his current funeral director and embalmer licenses for inspection, and failed to respond regarding a complaint within the time specified in the notice
Action: Surrender of funeral director and embalmer licenses and the Board shall not consider any application from this Respondent for any license until the expiration of five years

Respondent: James Edwin Herndon, III, Memphis, TN
Violation: Immoral or unprofessional conduct (provided cremation services for two non-related individuals and released the cremated human remains of these two individuals to opposite family members for final disposition)
Action: \$2,000 Civil Penalty

Respondent: Hibbett & Hailey Funeral Home, Nashville, TN

Violation: Failed to obtain and maintain a copy of the crematory's current license and latest inspection report utilized by the funeral home, failed to retain a cremation authorization form, failed to report a change of the funeral director managing, supervising and responsible for the funeral establishment, 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: \$750 Civil Penalty

Respondent: Portland Funeral Chapel, Portland, TN

Violation: Failed to obtain and maintain a copy of the crematory's current license and latest inspection report utilized by the funeral home, cremation authorization forms were not signed and dated, a funeral director served in the capacity of establishment manager and practiced funeral directing while license was expired, failed to securely affix a permanent identification device to the deceased human remains, business cards and the establishment's website either gave or tended to give the impression that an unlicensed person was licensed or entitled to practice either as a funeral director or embalmer, ventilation fan in the preparation room was not working properly, waste and soiled clothing were not properly disposed of, the preparation room was disorderly and cluttered, multiple aspects of the establishment's price lists did not comply with the Funeral Rule, and failed to respond regarding a complaint within the time specified in the notice

Action: \$1,000 Civil Penalty

Respondent: Thompson's Mortuary, Ripley, TN

Violation: Immoral or unprofessional conduct (failed to honor a financial obligation to a supplier in a timely manner) and failed to respond regarding a complaint within the time specified in the notice

Action: \$500 Civil Penalty

The following individual(s) had their license(s) suspended in accordance with Tenn. Code Ann. § 36-5-706 or Tenn. Code Ann. § 56-1-313:

Board of Funeral Directors and Embalmers

James William Ford, Jr.

Nashville, TN

OPEN COMPLAINT REPORT:

As of January 13, 2014 there were 92 open complaints.

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

Seconded by Anita Taylor

Adopted by voice vote

INDIVIDUAL APPLICATION:

**Jasmine Penny Zervas
Alexandria, TN**

Funeral Director/Embalmer

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

Adopted by voice vote

ADJOURN:

A motion was made by David Neal to adjourn.

Seconded by Wayne Hinkle

Adopted by voice vote

The meeting was adjourned by President Robert Starkey at 11:05 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director