

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

NOVEMBER 14, 2017

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

Board members present: Robert Helms, President; Dennis Bridges, Mark Cochran, Jeff Duffer, Robert Davis and Clark McKinney.

Board member(s) absent: Charles Rahm, Vice President.

Staff present: Robert Gribble, Executive Director; Cherrelle Hooper, Assistant General Counsel; and Lisa Mosby, Administrative Manager.

ADOPTION OF AGENDA:

A motion was made by Clark McKinney to approve the Agenda as printed.

Seconded by Jeff Duffer

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Jeff Duffer to approve the Minutes of the October 10, 2017 Board Meeting.

Seconded by Clark McKinney

Adopted by voice vote

PETITION FOR STAY OF FINAL ORDER –
DOCKET NO. 12.21-142962A
CASE NOS. FUN-201603761(1)(2) AND FUN-201602254(1)(2):

Respondents Alfred Tacker and Bartlett Funeral Home, Inc., filed a Petition to Stay the Final Order which was entered on October 17, 2017, by the Board of Funeral Directors and Embalmers against the Respondents. Attorney Samuel P. Helmbrecht of Watkins McNeilly, PLLC, attended the hearing on the Respondents' behalf. Respondents provided a ten minute argument to the Board

on the reasons the discipline should be stayed pending an appeal. Sara Page, Assistant General Counsel for the Department, rebutted.

The Board voted unanimously to deny the Respondents' Petition to Stay.

Adopted by voice vote

LEGAL REPORT:
COREY WRIGHT, ASSISTANT GENERAL COUNSEL

Abbreviations:

GPL – General Price List

CPL – Casket Price List

OBCPL – Outer Burial Container Price List

SFGSS – Statement of Funeral Goods and Services Selected

1. Case No.: 2017038641

Complainant alleges that \$1,800.00 was paid for a funeral that occurred on May 25, 2017, and Complainant understood that this price would cover burial fees. Complainant alleges on June 12, 2017, Respondent telephoned the family of the deceased and demanded more money before the body could be buried to pay for the burial and Complainant was not aware that the deceased had not been buried.

Respondent avers that the daughter of the deceased was advised that the cost of the funeral would be \$2,800.00, and the family was informed that this cost would not cover burial fees and an additional \$1,200.00 would be needed for burial services. The daughter indicated that she had only \$500.00 to pay for the funeral, and she was advised by Respondent that this would not be enough to cover the cost.

Respondent indicates that it was then contacted by a niece of the decedent who inquired as to the status of the funeral arrangements and finding that funding was an issue, raised \$2,200.00 from fellow family members. Respondent agreed to finalize the funeral arrangements at that cost, yet, Respondent alleges that it informed the family that additional costs would be needed for the burial and the family understood.

After the services were completed, Respondent avers that it attempted to reach the daughter of the deceased to collect the additional money owed for the burial services. After attempts to contact the daughter were unsuccessful, Respondent contacted the granddaughter of the deceased (Complainant). Respondent contends that Complainant was well aware that there had not yet been a burial service, as she did not attend one, and was aware that additional costs were needed to complete this service.

Respondent contends that they buried the deceased prior to receiving the complaint and without the assistance of family. Burial of the decedent occurred on June 23, 2017.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$750.00 civil penalty for unprofessional conduct.

A motion was made by Mark Cochran to authorize formal hearing and settlement by consent order with \$250.00 civil penalty and authorization for formal hearing.

Motion failed for lack of a second.

A motion was made by Clark McKinney to authorize formal hearing and settlement by consent order with \$500.00 civil penalty for aiding and abetting an unlicensed person to practice within the funeral profession.

Seconded by Jeff Duffer

Adopted by voice vote

2. Case No.: 2017038661

After the above Complaint was filed, it was discovered that the apprentice funeral director registration of the employee that the Complainant allegedly worked with while making funeral arrangements expired in 2000. In response, Respondent stated that a licensed funeral director at the establishment handled all of the matters pertaining to funeral arrangements. Respondent avers that all business performed by Respondent was done in consultation with the licensed funeral director. A further statement by the Complainant reveals that Respondent was the sole employee that worked with them during the majority of planning.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$500.00 civil penalty plus investigation costs.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

3. Case No.: 2017043031

Complainant was approved for an apprentice funeral director registration under the sponsorship of Respondent. Respondent was subsequently terminated from the establishment in which he worked. Complainant attempted to retrieve the necessary paperwork from Respondent for reassignment of her apprenticeship. Respondent allegedly failed to certify and return the Certification of Completion of Apprenticeship Form to Complainant that was sent to him on May 25, 2017. Complaint was filed on July 3, 2017.

Respondent contends that he believed his part in Complainant's apprenticeship was taken care of when he left the establishment and notified the Department that he no longer had any association with the establishment he left nor Complainant's apprenticeship. He avers that he has since signed the Certification of Completion of Apprenticeship and mailed to Board. The Board has not received this certification form.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$250.00 civil penalty to be reduced to Letter of Warning if the Board Office receives the certification form properly completed from the Respondent within 30 days.

A motion was made by Mark Cochran to accept Counsel's recommendation.

Seconded by Dennis Bridges

Adopted by voice vote

4. Case No.: 2017043301

Complaint alleges that the cremated remains of Complainant's deceased father were distributed to a non-family member friend of the deceased without the permission of Complainant.

Respondent explained that it initially made contact with the friend because hospital records listed him as the next of kin and brother of the deceased. Respondent began making arrangements with the friend and discovered that the proposed obituary listed a surviving child, the Complainant. Realizing that there was a biological child, Respondent indicated to the friend that Complainant would be in control of the deceased's final disposition. After discovering that Complainant was incarcerated, Respondent made contact with the Tennessee Board of Funeral Directors and Embalmers and inquired as to whether an incarcerated person has control over the disposition. According to Respondent, the contact point of the board indicated to Respondent that if it were able to obtain Complainant's signature for cremation authorization, it could proceed to make arrangements with another representative. Respondent avers that he did obtain the Complainant's signature for cremation authorization and Complainant gave his verbal confirmation to pursue making arrangements with the friend.

After the service, the cremated remains were released to the friend and the friend executed a document accepting responsibility for the remains. A few days later, Respondent was contacted by Complainant's mother and the deceased's ex-wife. She inquired into why the cremated remains were not released to her for safe keeping until Complainant was released from incarceration. Respondent informed her that Complainant had signed the authorization for cremation, gave his verbal permission to pursue making arrangements with the friend, and did not indicate to Respondent that he wanted the cremated remains held for him and that she personally as the ex-spouse had no legal right to the cremated remains. After confirmation from Complainant, Respondent contacted the friend and asked that the remains be returned to Respondent so they could be released to the mother of Complainant, and he obliged. Half of the remains had already been scattered by the friend.

After receiving the response, Complainant sent a letter indicating that he never gave verbal permission for Respondent to allow the friend to make arrangements for his father and that he was not contacted by the funeral director until later regarding the release of the cremated remains to his mother. However, this appears to not be true. In the initial complaint, Complainant indicates that the funeral director did contact him initially to get the cremation authorization, but in his response claims that he was not contacted until the funeral director was seeking permission to release the cremated remains to his mother.

Recommendation:

- Closure

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

5. Case No.: 2017048261

6. Case No.: 2017048281

Complainant alleged that Respondent, owner of the Establishment, had told Complainant that he had embalmed her father and previously had showed Complainant the embalming room where he allegedly said he performed embalmings. Complainant later discovered that Respondent is not a licensed embalmer and a different embalmer is listed on her father's death certificate.

Respondent contends that Complainant is upset with him over an unrelated matter and has made up these accusations. He stated that he never does any of the embalming and all embalming is done by the establishment's hired embalmer. The reason he took Complainant to the embalming room is because she requested to see her deceased father, but he alleges that he never told Complainant that he did the embalming. Respondent attached a letter from the embalmer stating that he (the licensed embalmer) did in fact perform the embalming. Insufficient evidence exists in the file to support a claim of unlicensed embalming activity.

Recommendation:

- Closure

A motion was made by Jeff Duffer to accept the Board's recommendation.

Seconded by Robert Davis

Adopted by voice vote

7. Case No.: 2017049151

Pursuant to an inspection, it was found that Respondent charged a consumer more for a casket than the price listed on the Casket Price List. Further, Respondent failed to maintain a copy of the current license of the crematory utilized by the establishment. The crematory license that was maintained by respondent expired on April 30, 2017.

Respondent contends that the price the family was charged for the casket was the correct price, but the price had not been updated on the Casket Price List in error. As the family had not yet paid the bill for the funeral services, Respondent explained the mistake and reduced the amount owed by \$548.75 (the difference between the price on the Casket Price List and the price charged) and provided evidence of the reduction. Further, Respondent contends that the current crematory license had been misplaced at the time of the inspection and provided evidence of a current license.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$250.00 civil penalty.

A motion was made by Clark McKinney to accept the Board's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

8. Case No.: 2017058041

9. Case No.: 2017058061

Respondent falsely answered a question on his apprenticeship application regarding whether he had ever been convicted of a felony or misdemeanor involving moral turpitude. Respondent indicated that he had not, but evidence shows that Respondent plead guilty to charges of indecent acts and sodomy involving minor victims. Respondent is a registered sex offender in the State of Tennessee.

In response, Respondent contends that he did not mean to provide false information on his application and merely checked the wrong box.

Recommendation:

- Revocation of apprenticeship registrations and that no credit is to be given for the period of time that the person has been registered as an apprentice funeral director and an apprentice embalmer.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Dennis Bridges

Adopted by voice vote

10. Case No.: 2017044201

In a related complaint against an establishment, the Complainant alleged that Respondent conducted a meeting with the deceased's family members and made funeral arrangements. Respondent is not a licensed funeral director.

In response, Respondent admits that she started the meeting and adds that she did so because the family never requested to speak to the licensed funeral director.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$500.00 civil penalty.

A motion was made by Clark McKinney to accept the Board's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

11. Case No.: 2017054531

Pursuant to an establishment inspection on August 8, 2017, it was found that:

- (1) The required Funeral Rule heading "Other Preparation of the Body" was not available on the General Price List.
- (2) Direct Cremation with "fiberboard container selected from our funeral home" price was incorrect when compared to price of fiberboard container listed on Casket Price List.

- (3) Immediate Burial upper price range was incorrect when compared to price of caskets on Casket Price List.
- (4) The required Funeral Rule disclosure was not listed on the Outer Burial Contained Price List.
- (5) The name of the establishment listed on the Casket Price List is incorrect when compared to the name of the establishment listed on the establishment application approved by the Board.

In response, Respondent contends that it mistakenly used the wrong price list and attached corrected price lists.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$250.00 civil penalty.

A motion was made by Jeff Duffer to accept Counsel's recommendation.

Seconded by Mark Cochran

Adopted by voice vote

12. Case No.: 2017061431

This is a complaint from an inspector that found Respondent's crematory license maintained at the establishment expired on April 30, 2017. As of the date of the inspection, August 14, 2017, the Inspector found that Respondent had arranged for and cremated seven decedents during the period from May 1, 2017 to August 14, 2017. A current license was faxed to Respondent, however, before the inspection concluded on August 14th. The faxed crematory license showed a current license with the expiration date of April 30, 2019. The license of the crematory was continuously active; however, the establishment failed to obtain and maintain a copy of the crematory's current license.

Recommendation:

- Letter of Warning

A motion was made by Mark Cochran to accept Counsel's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

13. Case No.: 2017061671

This is a complaint from an inspector that alleges Respondent's website and social media outlets include advertisements for complete funeral packages and packages for cremation that do not include an itemized price list. Further, the complaint alleges that Respondent's website advertises that it has a "state of the art" crematory that is coming soon. The inspector alleges that this is misleading. Further, the inspector found several issues with the General Price List including no offering listed for a direct cremation without container provided by purchaser; an offering requiring consumers to purchase urn with cremation services; no range on the General Price List for an immediate burial; and there is no offering for an immediate burial with casket provided by purchaser as required by the Funeral Rule. Finally, the inspector alleges that Respondent did not have a copy of the results of the latest regularly scheduled inspection of the crematory used by the funeral establishment.

In response, Respondent states that it had no intentions to mislead, deceive, or use unfair acts or practices as it uses a third party company who controls the dissemination of advertisements on its social media outlets. Respondent explains that the images on social media were taken from a post card where one side includes the advertisement for the complete funeral packages and the other side of the postcard includes an itemized list. However, the third party did not include these images together for its social media advertising. Respondent states that it will only post complete packages and itemized prices on same side of postcards from now on and states that some of the social media posts did include itemized items.

Further, Respondent states that the advertisement regarding the state of the art crematory was not to be misleading as it included the phrase "coming soon" which should have lead consumers to the realization that the crematory was not yet in existence.

Additionally, Respondent states that immediately after inspection it contacted the crematory it uses and received an updated inspection report.

Finally, as for the price list, Respondent avers that it was currently revising its General Price List and it was not completely revised on the date of inspection and the price list had never been given to a consumer. Respondent states that

the General Price List has now been updated to reflect the discrepancy in pricing and submitted a copy of the corrected General Price List.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$250.00 civil penalty for violations of multiple aspects regarding the Funeral Rule and failure to have a copy of the results of the latest regularly scheduled inspection of the crematory used by the funeral establishment.

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Jeff Duffer

Adopted by voice vote

14. Case No.: 2017061451

This is a consumer complaint that alleges Respondent posted an obituary stating that services would be held at Respondent's establishment, but omitted part of its name to cause confusion and lead consumers to believe that Respondent's establishment is associated with an establishment that used to operate at the same location. Respondent used the exact same name as used by the prior establishment at the same location, but adds the words "and Cremation Center" to the end of its name. Consumer alleges that this is misleading and intended to cause confusion to consumers by associating the new establishment with the one that previously did business at the same location.

Respondent contends that "and Cremation Center" was left off its name in the obituary by mistake and was not done to mislead consumers.

Recommendation:

- Letter of Warning

A motion was made by Clark McKinney to accept Counsel's recommendation.

Seconded by Robert Davis

Adopted by voice vote

15. Case No.: 2017061461

Upon establishment inspection, it was found that Respondent had a chart/visual describing different packages for purchase on its website and placed the same chart/visual as a poster in its arrangement conference room. Neither of these charts/visuals included an itemized price list.

In response, Respondent contends that a General Price List was also included on the website and a General Price List was also given to everyone who viewed the chart describing the packages. Respondent believed that this satisfied the itemized price list requirement.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$500.00 civil penalty.

A motion was made by Clark McKinney to authorize formal hearing and authorize settlement by consent order with \$750.00 civil penalty.

Seconded by Jeff Duffer

Adopted by voice vote

16. Case No.: 2017068571

Upon establishment inspection it was found that the Casket Price List failed to list eight (8) of the nineteen (19) caskets offered for sale. Additionally, it was discovered that the price on two (2) of the caskets displayed in the showroom was higher than the price listed on the Casket Price List for those caskets.

In response, Respondent contends that it recently expanded its casket showroom and in error forgot to add the newly displayed caskets to the Casket Price List. Additionally, with the expansion some prices were updated and in error, the edit of these prices on the Casket Price List was overlooked. Respondent submitted an updated Casket Price List showing all of the caskets on display in the showroom and emphasizes that the prices on the Casket Price List now match the casket price displays in the showroom.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$250.00 civil penalty.

A motion was made by Jeff Duffer to accept Board's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

17. Case No.: 201705549

Complainant performed an autopsy, signed a death certificate, and released the body with the certificate of death to Respondent. Weeks later, Respondent contacted Complainant and asked him to issue another death certificate as there had been a mistake in the original. The Complainant complied. A few days after mailing the new certificate to Respondent, Complainant received a copy of a filed death certificate in the mail from the Vital Records Section of the Tennessee Department of Health for the same decedent. Complainant avers that the filed death certificate appears to be forged and his signature is forged as well.

Respondent contends that he has no knowledge of the forged death certificate. Respondent avers that the forgery act had to be completed by a certain employee of the funeral home, as she was the only one with access to death certificate records. This employee has since resigned and all files that she was in charge of are being reviewed for authenticity.

Recommendation:

- Authorize formal hearing. Authorize settlement by consent order with \$500.00 civil penalty.

A motion was made by Mark Cochran to accept Counsel's recommendation.

Motion failed for lack of a second.

Motion was made by Clark McKinney to authorize settlement by consent order with \$1,000.00 civil penalty and authorization for formal hearing.

Motion failed for lack of a second.

Motion was made by Robert Davis to authorize settlement by consent order with \$2,000.00 civil penalty and authorization for formal hearing.

Motion failed for lack of a second.

Motion was made by Clark McKinney to authorize formal hearing and authorize settlement by consent order with \$1,000.00 civil penalty.

Roll Call Vote			
Board Members	Yes	No	Absent
Dennis Bridges	X		
Mark Cochran		X	
Robert Davis		X	
Jeff Duffer	X		
Robert Helms	X		
Clark McKinney	X		
Charles Rahm			X

Adopted – four (4) members voted “Yes” and two (2) members voted “No”

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

FINANCIAL DATA FOR FY 16-17:

Board of Funeral Directors and Embalmers
Financial Recap
Fiscal Year July 1, 2016 – June 30, 2017

Financial data was provided to the Board’s Executive Director by the Assistant Commissioner’s Office for Regulatory Boards of the Tennessee Department of Commerce and Insurance on October 9, 2017 for use in the compilation of this report.

Beginning Balance – July 1, 2016	\$1,241,253.00	
Net Revenue (Earnings) for July 1, 2016 – June 30, 2017	\$ 441,888.00	
Total Funds Available		<u>\$1,683,141.00</u>
Expenditures July 1, 2016 – June 30, 2017	\$ 386,588.00	

Cost Backs (Cost Allocations charged to the Board from Administration, Investigation, Legal, and Customer Service Center)	\$ 192,181.00
Total Expenditures, Including Cost Backs	<u>\$ 578,769.00</u>
Reserve Balance – July 1, 2017	\$1,104,372.00

LEGISLATIVE UPDATE:

The Board Office has not been notified by either the Tennessee State Funeral Directors & Morticians Association, the Tennessee Funeral Directors Association, or any related parties of any legislative proposals that they intend to pursue during the next legislative session that begins January 2018.

LICENSEE REPORT:

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF OCTOBER 10, 2017 – NOVEMBER 13, 2017

<u>Establishment(s)</u>	<u>Type of Action(s)</u>
Henderson County Cremation Services of Tennessee LLC Lexington, TN	New Establishment
Alexander Family Heritage Funeral Home Gallatin, TN	Name Change
<u>Individual(s)</u>	<u>Type of License(s)</u>
Elizabeth Eleanor Brumfield Atoka, TN	Funeral Director and Embalmer
Joseph Winchester Stout Rutledge, TN	Funeral Director and Embalmer Reciprocity – Texas
Shawn Edward Scheffers Kingsport, TN	Funeral Director and Embalmer Reapplication
JaVaughn Jermaine Tucker Memphis, TN	Funeral Director Reapplication
Tameisha Michelle Parker Cordova, TN	Embalmer

CLOSED ESTABLISHMENTS:

No funeral establishments have reported closing since the last board meeting.

DISCIPLINARY ACTION REPORT:

This is a Report of Consent Orders that have been administratively accepted / approved by the Executive Director pursuant to Board authority and as reported on the September 2017 Regulatory Boards Disciplinary Action Reports:

- Respondent: Appalachian Funeral Home & Cremation Services, Inc.,
Johnson City, TN
- Violation: Funeral establishment failed to itemize the type of casket
being provided on the statements of four decedents; failed to
list the reason for the embalming for a decedent; and failed
to state that the crematory fee charged was higher than the
price paid by the funeral home for providing the service
- Action: \$500 Civil Penalty
- Respondent: Terrell Broady Funeral Home, Inc., Nashville, TN
- Violation: Failed to request a certificate of death in a timely manner
- Action: \$250 Civil Penalty
- Respondent: J. A. Lofties Funeral Home, Somerville, TN
- Violation: Funeral establishment failed to assist with its correction or
the filing of an amended certificate of death and failed to
submit a response to the complaint
- Action: \$500 Civil Penalty
- Respondent: Baxter Brothers Funeral Home, Columbia, TN
- Violation: Funeral establishment allowed a funeral director to practice
on an expired license
- Action: \$500 Civil Penalty
- Respondent: Marcus T. Baxter, Columbia, TN
- Violation: Executed a funeral contract with an expired funeral director
license
- Action: \$250 Civil Penalty
- Respondent: Tribute Funeral and Cremation Services, Johnson City, TN
- Violation: Unlicensed activity
- Action: \$1,000 Civil Penalty
- Respondent: Medina Funeral Home and Cremation Service, Medina, TN
- Violation: Failed to file a certificate of death in a timely manner

Action: \$250 Civil Penalty

OPEN COMPLAINT REPORT:

As of November 14, 2017 there were 73 open complaints.

A motion was made by Clark McKinney to accept the Executive Director's Report.

Seconded by Jeff Duffer

Adopted by voice vote

Note: The meeting recessed at 11:31 a.m. and reconvened at 11:41 a.m.

RULEMAKING:

The Board considered proposed rules and engaged in substantive discussions regarding such. The Board reviewed multiple changes to the proposed rules and agreed upon language for adoption. Robert Gribble, Executive Director, and Cherrelle Hooper, Assistant General Counsel, expressed their intent to complete the remaining documents associated with the rulemaking process in order for the Board to move forward with adoption of the rules.

ADJOURN:

A motion was made by Mark Cochran to adjourn.

Seconded by Jeff Duffer

Adopted by voice vote

The meeting was adjourned by President Robert Helms at 12:07 p.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director