

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MARCH 12, 2019

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

Board members present: Jeff Duffer, President; Clark McKinney, Vice President; Robert Davis, Dennis Bridges and Robert Shackelford, III.

Board Member(s) absent: Charles Rahm

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

ADOPTION OF AGENDA:

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

Seconded by Robert Davis

Adopted by voice vote

APPROVAL OF MINUTES:

President Jeff Duffer announced that the February 12, 2019 Minutes will be presented for review/approval at the next board meeting.

FORMAL HEARING:

Docket No. 12.21-155427A –

Case Nos. FUN-RBS-2017059021, FUN-RBS-2017059341, FUN-RBS-2017059471, FUN-RBS-2017068431, FUN-RBS-2017068451, FUN-RBS-2017068471, FUN-RBS-2017069881, FUN-RBS-2017069901, and FUN-RBS-2017069921

Respondents: Signature Funeral Home by Premier and Roland Lee Gosey

Attorneys Cherrelle Hooper and Ashley Geno appeared for the Department of Commerce & Insurance.

Respondents Signature Home by Premier and Roland Lee Gosey did not appear for the formal hearing.

A formal hearing was held and the Board voted to revoke the funeral establishment license (#1346) of Signature Funeral Home by Premier up until the effective date of the change of ownership of the funeral establishment and the name change to Williams Funeral Home, which occurred on October 31, 2018. Additionally, the Board voted to revoke the funeral director (#16258) and embalmer (#16230) licenses of Roland Lee Gosey. Furthermore, the Board assessed civil penalties to the establishment and to the individual in the amount of \$7,000.00 each plus costs.

LEGAL REPORT:
ASHLEY GENO, 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.: 2018087501 – Establishment

Summary: This is a consumer complaint in which the consumer alleges:

1. The deceased's body was not handled properly;
2. She was not allowed to view the deceased's body.

In response to these allegations, the Respondent indicated:

1. The deceased (who passed on February 28, 2018) had elephant foot disease and her body was not in a state where she could be viewed at either time the consumer requested to view the remains.
2. In early March 2018, a legal battle began between the consumer and her sister regarding the deceased's estate. This stopped all progress with the funeral arrangements. The deceased's body was placed in storage until the probate court ordered the funeral and burial commence and be completed.
3. The deceased's body was in storage from March 7, 2018 through March 23, 2018. When the body was removed from storage, it was placed in a containment pouch due to deterioration from being held in storage. When the consumer requested to view the remains after they were removed from storage, the Respondent advised the body could not be viewed.

Recommendation:

- Close

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

Seconded by Dennis Bridges

Adopted by roll call vote

2. Case No.: 2019000381 – Establishment

Summary: This is a consumer complaint alleging life insurance policies were redeemed by the Respondent to pay for the deceased's services without the consumer's permission. In response, the Respondent indicated:

1. It is unaware of any life insurance policy naming the consumer as a beneficiary, primary or otherwise;
2. There was no life insurance policy from which it received proceeds to fund the funeral of the deceased (while there were two life insurance policies naming the deceased as beneficiary, the Respondent has not received any payment from either policy); and,
3. There is still an outstanding balance for the services rendered on behalf of the deceased.

Notably, a complaint involving the same parties was filed in 2016, which was closed by this Board with no action.

Recommendation:

- Close

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

Seconded by Dennis Bridges

Adopted by voice vote

3. Case No.: 2019004301 – Establishment

This is a consumer complaint in which the consumer alleges she was discriminated against by the Respondent because it charged her \$20.00/hour to sit with the deceased's body at the establishment until the body's final disposition in observance of the Jewish practice of shmira.

In response to the complaint, the Respondent alleged:

1. It spoke with the deceased's grandson/executor of the estate about the consumer's request and they decided on an hourly price for the consumer to sit with the body at the establishment until the cremation. Initially, the price was to be \$200.00 per hour because the price on the GPL for "Use of Equipment and Staff for viewing/visitation" was \$400.00 and normally lasts about two hours. However, because it would just be the consumer and it would be more than two hours, the Respondent offered the price of \$100.00/hr.
2. The grandson/executor called the consumer and told her the agreed price. The consumer purportedly stated that she should not be charged for the service because it is religious.
3. After this conversation, the Respondent met with the consumer to go over options. Specifically, the Respondent indicates it told the consumer:
 - a. If she could make arrangements with the local synagogue, church, rabbi, or individual that would allow her to stay with the deceased's body, that it would take the body here and pick it up once the cremation permit was obtained and she would only pay the transportation cost.
 - b. If she wanted to have the local synagogue, or an ambulance take the body somewhere that she could stay with the body, then it would pick up the body from that location when it obtained the cremation permit.
4. The consumer was not agreeable to either additional option the Respondent suggested. The consumer indicated that the concept of having the body moved to a synagogue for temporary storage or private home would be considered a desecration and odious to Judaism.
5. The Respondent asked the consumer what she believed would be a fair price for sitting with the body and, eventually, they agreed to \$20.00 per hour until the cremation could be performed.

In support of its response, the Respondent provided a letter signed by the grandson/executor, in which he indicated he believed the Respondent quoted the consumer (his aunt) a fair price and that the Respondent went out of its way to accommodate the consumer.

The consumer disputes the response and indicated her nephew (the grandson/executor) was abusive and ignorant of the religious custom. She claims her nephew did not speak with her regarding prices and that when she brought up the topic with the Respondent, it told her \$200/hr. She did, however, admit that the Respondent did offer \$100/hour. In response to this, she indicated she said that people do this on a volunteer basis and are sometimes even paid to sit shmira.

Recommendation:

- Close

A motion was made by Dennis Bridges to accept Counsel's recommendation.

Seconded by Clark McKinney

Adopted by voice vote

4. Case No.: 2019007291 – Establishment

This is a competitor complaint alleging that the Respondent has two (2) GPLs – one (1) for consumers purchasing caskets from them and one (1) for consumers purchasing caskets from outside sources. The Respondent denied these allegations, stating that it only uses one (1) GPL, CPL, and OBC price list. The Respondent also indicated that it does not apply any additional fee or service charge for use of any outside vendors.

This matter was sent for an investigation. At that time, the Respondent explained it discounts its service charge if a consumer purchases funeral merchandise through it. No discount is given if the funeral merchandise is purchased elsewhere.

The Respondent's GPL provides the following:

Traditional Graveside Service Package

Includes Basic services of funeral director and staff, embalming, dressing and/or cosmetic preparation and/or casketing, transfer of remains, hearse, flower van or utility van and 1 hour private viewing, Graveside service. (All services are to be conducted at the grave) Package Savings of \$895

(Package Discount only applied when casket is purchased from [Respondent])

Recommendation:

- Close

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

Seconded by Robert Davis

Adopted by voice vote

5. Case No.: 2018091621 – Establishment**6. Case No.: 2018091571 – Apprentice Funeral Director**

A former employee of the Respondent establishment filed a complaint against the Respondents, alleging that during the time he was employed at the establishment (May to October/November 2018), the following occurred:

1. He was asked on several occasions to sign-off on insurance policy applications that he did not prepare or present to a family.
2. He was told to go to Welch, West Virginia, to deliver a body. When he arrived, there was no licensed West Virginia funeral director available. He claims he was expected to escort the casket into and out of the church, open and close the casket, direct the service, and conduct the burial at the cemetery.
3. He witnessed the Respondent Apprentice Funeral Director embalming bodies with no licensed embalmer in the building.
4. The Respondents would leave the door open when performing embalming activities.
5. Three (3) of his last four (4) paychecks bounced.

In response to the allegations, the Respondents indicated:

1. The Complainant is a disgruntled former employee.
2. Insurance: The Complainant was only asked to follow up with consumers to try to get paid-up paperwork in order to prevent termination and loss of funds on pre-need policies. This paperwork did not require the original agent who sold the policy (a former employee who moved) to sign anything.
3. West Virginia: A widow contacted the establishment, indicating she had no way to get her deceased husband to West Virginia to be buried in a family lot there. The Respondents agreed to help her with providing the removal, embalming, dressing, casket, and transport to West Virginia, but advised they could not help her in any way beyond the transportation once in West Virginia. The Respondents then contacted the Complainant to drive the hearse with the deceased's body to West Virginia. They claim the Complainant was specifically told that he was not to set foot in the church, lift anything, get involved in any way, or do anything that could be perceived as funeral directing. They also gave the Complainant a form for the family to sign before the casket was removed from the hearse. The Respondents claimed this form specifically stated the family was releasing Respondent #1 from its custodial duty and the family would be taking

- custody of the deceased. The Complainant was to drive back to Tennessee immediately.
4. Embalming: The Respondent Apprentice Funeral Director has helped with body prep (washing, removing medical tubes, makeup, etc.) and has assisted with embalming, but any work he has done has been under the direct supervision of a licensed embalmer.
 5. Prep Room Door: Respondents dispute this claim.
 6. Finances: The Complainant was paid in full for all monies owed to him when his employment was terminated.

This matter was sent for an investigation. The investigation revealed one (1) embalming record where a deceased's body was listed as embalmed by the Respondent Apprentice Funeral Director.

There was no evidence to support the Complainant's other allegations.

Recommendation:

- Establishment – Letter of Warning
- Apprenticeship Funeral Director – Letter of Warning

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

Seconded by Robert Shackelford

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

HB0048*/SB0856 Funeral Directors and Embalmers –
As introduced, authorizes lawful permanent residents of the United States to apply for an embalmer's license; changes the requirement that an applicant for an embalmer's license have obtained an associate of arts degree to an associate degree. - AN ACT to amend Tennessee Code Annotated, Section 62-5-307, relative to embalmer's license.

SB0432*/HB0967 Funeral Directors and Embalmers –
As introduced, authorizes operators of crematory facilities who provide free services for the cremation of human remains to receive a refund of the permit fee

paid for such services. - AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 5; Title 63 and Title 68, Chapter 2, relative to operators of crematory facilities.

SB1041*/HB1431 Funeral Directors and Embalmers –

As introduced, expands the definition of cremation, for the purposes of regulating operators of crematory facilities, to include additional processes such as alkaline hydrolysis. - AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 5, relative to cremation.

HB0520*/SB1431 Professions and Occupations –

Professions and Occupations - As introduced, allows a HiSET(R) diploma to fulfill education requirements for licensure or registration of funeral directors, embalmers, and their apprentices. - AN ACT to amend Tennessee Code Annotated, Title 38; Title 62 and Title 67, relative to professions.

HB0304*/SB0384 Licenses –

As introduced, exempts members of the armed forces stationed within this state and their spouses from licensure requirements to practice professions and occupations regulated by the department of commerce and insurance and the department of health, subject to meeting certain requirements to practice. - AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 13; Title 62; Title 63 and Title 68, Chapter 1, Part 1, relative to professions.

SB0196*/HB0261 State Government –

As introduced, makes various changes to the Right to Earn a Living Act, including requiring entry regulations, public service restrictions, and statutes to be demonstrably necessary and carefully tailored to fulfill a legitimate public health or safety objective, and allowing persons to petition applicable licensing authorities and bring civil actions when such standard is not met. - AN ACT to amend Tennessee Code Annotated, Title 1; Title 4; Title 7; Title 38; Title 62; Title 63 and Title 67, relative to the ability to conduct business in this state.

SB0602*/HB0785 Trusts –

As introduced, authorizes a trustee to establish a single trust fund for all pre-need funeral contracts issued by multiple pre-need sellers, instead of having to establish a trust fund for each pre-need seller. - AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 5, Part 4, relative to trusts.

HB0650*/SB1173 Insurance Companies, Agents, Brokers, Policies –

As introduced, allows the owner of a prearrangement insurance policy, and not just the beneficiary, to irrevocably assign the policy or policy benefits to a funeral establishment if the insurance company issuing the policy does not offer a funeral trust, or only offers a funeral trust for an additional charge. - AN ACT to amend Tennessee Code Annotated, Title 56 and Title 62, Chapter 5, Part 4, relative to prepaid funeral benefits.

Website for Legislative Bill Searches:

<http://wapp.capitol.tn.gov/apps/billsearch/BillSearchAdvanced.aspx>

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
FEBRUARY 12, 2019 – MARCH 11, 2019**

<u>Establishment(s)</u>	<u>Type of Action(s)/Change(s)</u>
Life & Legacy Cremation Center, LLC Maryville, TN	New Establishment
Simple Cremation Solutions Somerville, TN	New Establishment
Claiborne-Overholt Funeral Home, LLC New Tazewell, TN	Ownership and Name
<u>Individual(s)</u>	<u>Type of License(s)</u>
James Robert Herring Sturdivant Nashville, TN	Funeral Director and Embalmer
William Lawton Hood Dickson, TN	Funeral Director and Embalmer
Roy Stanley Lovin, Jr. Rutledge, TN	Funeral Director and Embalmer
Grant Alexander Partlow Lebanon, TN	Funeral Director and Embalmer
Harry William Britt, III Cordova, TN	Funeral Director and Embalmer Reciprocity – Mississippi
Timothy Hank Pinson Chatsworth, GA	Funeral Director and Embalmer Reciprocity – Georgia
Derek Edward Reser Franklin, KY	Funeral Director Reciprocity – Wisconsin

DISCIPLINARY ACTION REPORT:

These are Consent Orders that have been administratively accepted / approved by the Executive Director pursuant to Board authority and as

reported on the January 2019 Regulatory Boards Disciplinary Action Report:

Respondent: Woodhaven Funeral Home & Memorial Gardens, Powell, TN
Violation: Engaged in deceptive acts or misleading practices
Action: \$500 Civil Penalty

OPEN COMPLAINT REPORT:

As of March 11, 2019 there were 45 open complaints.

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

Seconded by Robert Davis

Adopted by voice vote

NEW BUSINESS:

Cherelle Hooper, Assistant General Counsel, provided an update regarding the Rules that became effective March 12, 2019. The Legislative legal plans to make a draft in the Omnibus Bill for the House and that can potentially change the Rules; but as of now, they are in effect as written.

Robert Gribble, Executive Director, provided a report regarding his attendance at the annual meeting of The International Conference of Funeral Service Examining Boards, Inc., (The Conference).

Cherelle Hooper, Assistant General Counsel, presented "You Are My Sunshine, My Only Sunshine" regarding Open Records and Public Meetings for Regulatory Boards and Commissions.

ADJOURN:

A motion was made by Clark McKinney to adjourn.

Seconded by Dennis Bridges

Adopted by voice vote

The meeting was adjourned by President Jeff Duffer at 3:36 p.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director