

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

FEBRUARY 9, 2021

President Robert Shackelford, III, called the meeting to order at 10:02 a.m. The meeting was conducted via WebEx.

Board members present: Robert Shackelford, III, President; Charles Rahm, Vice President; Fred Berry, Anthony Harris, Tonya Scales Haynes, Clark McKinney and Scottie Poarch.

Staff present: Robert Gribble, Executive Director; Elizabeth A. Bendell, Associate General Counsel; and Lisa Bohannon, Regulatory Board Administrative Manager.

STATEMENT OF NECESSITY (TENN. CODE ANN. § 8-44-108):

Elizabeth A. Bendell, Associate General Counsel for Regulatory Boards, read the Statement of Necessity for the record.

ADOPTION OF AGENDA:

A motion was made by Anthony Harris to approve the Agenda as printed.

Seconded by Clark McKinney

Roll Call Vote			
Board Members	Yes	No	Absent
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm	X		
Robert Shackelford, III	X		

Adopted by Roll Call Vote

APPROVAL OF MINUTES:

A motion was made by Fred Berry to approve the Minutes of the December 8, 2020 Board Meeting.

Roll Call Vote			
Board Members	Yes	No	Absent
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm	X		
Robert Shackelford, III	X		

Adopted by Roll Call Vote

President Robert Shackelford, III, stated that the January 12, 2021 Minutes will be presented for review/approval at the next board meeting.

LEGAL REPORT:

ELIZABETH A. BENDELL, ASSOCIATE 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

Note: Vice President Charles Rahm recused himself from the entire legal report.

1. Case No.: 2020073191 – Funeral Director

This is a consumer complaint alleging unprofessional conduct by the Respondent. Specifically, the consumer states that in August 2020 the consumer was referred to the Respondent after the passing of their grandmother. The consumer states that they arrived at the location to make arrangements, but the location was a mess, and it did not appear that there was a place to do services. The consumer states that they inquired about other locations; and in response, the Respondent informed that consumer that costs could be cut in half in exchange for sexual favors.

The Respondent responded to the complaint and denies all of the allegations made by the consumer. The Respondent states that they never met with the consumer to make arrangements, and that no one associated the Respondent's establishment met with the consumer. The Respondent states that the allegations are false claims that never occurred.

This complaint was sent for investigation. In January 2021 a Board Field investigator attempted multiple times to get in contact with the Complainant; however, the complainant did not provide a telephone number, a valid email address, or a valid residential address. After reviewing documents and obtaining a statement from the Respondent, no violations were found.

Recommendation:

- Closure

A motion was made by Fred Berry to accept Counsel's recommendation.

Seconded by Clark McKinney

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

-
2. **Case No.: 2020078181 – Funeral Director**
 3. **Case No.: 2020079131 – Embalmer**

Note: President Robert Shackelford and board members Clark McKinney, Fred Berry, and Tonya Scales Haynes disclosed they were inappropriately contacted by the Respondent's employer or a representative of the Respondent's employer regarding these complaints. However, each of these board members stated on the record that they could hear the

complaint and make an unbiased decision regarding its determination and disposition.

This is an ex-employer complaint alleging unprofessional conduct and theft by the Respondent. Specifically, the Complainant states that in July 2020 they discovered that pre-need funeral funds were not deposited within the fifteen (15) days required by law. The Complainant states that they confronted the Respondent, and the Respondent admitted that they did not deposit the funds. The Complainant states that the Respondent paid back the missing funds, and that in August 2020 the Respondent was terminated. The Complainant states that they conducted an investigation, and in September 2020 they discovered that one entire funeral file was missing. The Complainant states that there was no record for any funds received by the family. Complainant states that they contacted the next of kin who stated they paid cash up front and then made a check payable to the Respondent.

Respondent provided a lengthy response indicating the following:

1. The money from the first pre-need funeral contract was stolen while in the Respondent's care, and the Respondent did not inform their ex-employer out of fear and shame.
2. Respondent states that the consumer did not pay \$400.00 cash up front and that all other payments were brought to the funeral home.

This complaint was sent for investigation. In January 2021, a Board Field Investigator interviewed and obtained documents from the various parties involved. The Board Field Investigator discovered violations including that the Respondent failed to Deposit \$6,100 of pre-need funeral funds within the fifteen (15) days required by law, plus \$2,500 in another instance of pre-need funeral funds; however, that \$2,500 was later paid to the funeral home on the funeral account. Additionally, a consumer check for \$1,300 was written to the Respondent and deposited into Respondent's personal account. The Respondent engaged in fraudulent and deceptive practices

Recommendation:

- Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of six calendar months, beginning on the first day of the month following execution of the Consent Order, a civil penalty of \$1,000.00, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order.

Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.

A motion was made by Anthony Harris for Authorization for a formal hearing. Authorization for suspension of funeral director and embalmer licenses for a period of twelve calendar months, beginning on the first day of the month following execution of the Consent Order, a civil penalty of \$1,000.00, ten hours of continuing education courses approved by the Board, and successfully pass the Tennessee Laws, Rules, and Regulations Examination via Consent Order. Additionally, the Consent Order shall include that the Respondent cannot work, perform services, or be associated in any manner with a funeral establishment during the suspension period.

Seconded by Fred Berry

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

4. Case No.: 2020082731 – Funeral Establishment

5. Case No.: 2020082741 – Funeral Director

In September 2020 a Board field representative performed an inspection of the Respondent establishment. During the inspection, the Representative discovered that the funeral director’s license for the Respondent funeral director expired on June 30, 2020 and was not reinstated until July 30, 2020, during which the Respondent funeral director conducted services and acted as the establishment manager.

The Respondent responded to the complaint and apologized for the oversight. The Respondent indicated they rectified the situation as soon as they found out about their license expiration.

Funeral Establishment Recommendation:

- Letter of Warning

Funeral Director Recommendation:

- Letter of Warning

A motion was made by Fred Berry to accept Counsel’s recommendation.

Seconded by Clark McKinney

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

6. Case No.: 2020082691 – Funeral Director

This is a consumer complaint alleging unprofessional conduct by the Respondent. The Complainant states that in October 2, 2020 their mother passed away and due to an estranged relationship, they found out via social media. The Complainant indicated that they were contacted by the Respondent and informed that she would not be able to attend her mother’s funeral due to the family’s request that the consumer be barred. The Complainant states that they attended the viewing, and that the Respondent allowed the Complainant a private viewing. The Complainant states they were then told that their stepfather “paid more” to keep her out. The Complainant states they were disappointed they were not allowed to attend the funeral.

The Respondent responded to the complaint and indicated that they feel like they have been pulled into a personal legal battle between family members. The Respondent states that they were following the wishes of the legal next of kin and denies the allegation that the funeral establishment accepted additional money to exclude the Complainant.

Recommendation:

- Closure

A motion was made by Anthony Harris to accept Counsel’s recommendation.

Seconded by Clark McKinney

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

7. Case No.: 2020084231 – Funeral Director

This is a consumer complaint alleging unprofessional conduct by the Respondent. The consumer states that on March 7, 2020 their child passed away. The consumer states that the Respondent lacked compassion and was disrespectful during their time of grieving. The consumer states the viewing of her daughter was traumatizing as there was a horrific odor and the deceased was not in good condition. The consumer states that they did not receive their daughter’s ashes until March 25, 2020 at which point she explained the pain she endured from viewing her daughter. The consumer states that the Respondent lacked compassion regarding the incident.

The Respondent responded to the complaint and indicated that the only communication the Respondent had with the consumer was the initial phone call to set up an arrangement conference. The Respondent stated that the deceased

remained in refrigeration after arriving to at the establishment on March 7, 2020. The Respondent states that because the consumer chose basic cremation, the deceased remained in refrigeration because no other preparation was requested. The Respondent states that staff did set basic features on the deceased as they were able to, but that the deceased was presented to the consumer as she came to the establishment. In regard to the ashes timeline, the Respondent states that the death certificate was signed by the doctor on 3/13/2020, the cremation permit was sent to the health department on 3/16/2020, and it was scheduled for the consumer to witness the cremation on 3/19/2020, but the consumer was unreachable. The Respondent states that they called on Monday, 3/23/2020 to inform the consumer that the remains were ready to be picked up.

Recommendation:

- Closure

A motion was made by Fred Berry to accept Counsel’s recommendation.

Seconded by Anthony Harris

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

8. Case No.: 2020085041 – Funeral Establishment

This is a consumer complaint alleging unprofessional conduct and issues with the conditions of the Respondent establishment. Specifically, the consumer alleges the following:

1. There were bugs throughout the establishment.
2. The toilet was not functioning.
3. The obituary information was delayed. Additionally, there were errors in the obituary when placed on the establishment’s website.

4. There was plywood placed where a sidewalk had previously been dug up.
5. The exterior grass was shin high.

The consumer states that they contacted the Respondent about the issues, but that the Respondent was unresponsive. The consumer provided photographs.

The Respondent responded to the complaint and apologized for the consumer’s experience. The Respondent states that they are dealing with many of the prior owners’ deficiencies, and that they are working to address them. The Respondent further states that they have been hit hard by COVID-19 which has affected their business and staff. The Respondent stated they will work hard to correct the matters addressed in the complaint.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty of \$250.00 via consent order.

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

Seconded by Tonya Haynes

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

9. Case No.: 2020087821 – Funeral Establishment

This is a consumer complaint alleging unprofessional conduct by the Respondent. Specifically, the consumer states that in November 2020 the consumer arrived at the Respondent establishment to bury their mother. The consumer states that it was discussed placing the dirt to the left of the grave, but

that when they arrived the dirt was on the right and they could not have a true graveside service. The consumer states that they informed the Respondent that they were unhappy and would not be paying for the opening of the grave at which point the Respondent threatened the consumer. The consumer states that the grave was closed, but his parent’s headstone was cracked and dirt remained piled up. The consumer states that they fear the Respondent will go back and dig up their mother.

The Respondent responded to the complaint and indicated the following:

1. The Respondent was only hired for the opening and closing of the grave.
2. The dirt pile was placed to the north due to a large cedar tree in close proximity to the grave.
3. The consumer called the Respondent and berated them for the dirt placement. The Respondent states that they explained why the dirt was placed where it was, but that the consumer continued to curse the Respondent out.
4. The Respondent states that the damage to the headstone was not caused by them, and they are unsure how the damage got there.
5. The Respondent states that the allegation that they would dig up the consumer’s mother is absurd.

Recommendation:

- Closure

A motion was made by Fred Berry to accept Counsel’s recommendation.

Seconded by Anthony Harris

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

10. Case No.: 2020090641 – Funeral Establishment

This is a consumer complaint alleging unprofessional conduct by the Respondent establishment. The consumer states that erroneous information was provided to the Respondent, and that information was used to take away the consumer's decision-making powers regarding the deceased. The consumer states that they were not consulted regarding the handling of the deceased or the deceased's obituary. Additionally, the consumer states that the death certificate listed the incorrect cause of death and marital status, and the consumer was not provided a copy of the death certificate.

The Respondent responded to the complaint and indicated the following:

1. The Respondent received a copy of the Durable Power of Attorney listing the daughter as well as a copy of the insurance beneficiary form that listed the daughter.
2. The Respondent states that the death certificate copy in their file does list the wife, and that they were married but separated.
3. The Respondent indicated they met with the consumer, but that the consumer indicated they were not paying for the services.
4. The funeral services were arranged for and paid by the daughter of the deceased, so the Respondent executed those arrangements.
5. The Respondent indicated that the cause of death on the death certificate can be amended by the physician, but that the Respondent does not have control over what cause of death is listed.

The Respondent provided documentation.

The Consumer provided a rebuttal disputing the Respondent's response.

Recommendation:

- Closure

A motion was made by Anthony Harris to accept Counsel's recommendation.

Seconded by Fred Berry

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

11. Case No.: 2020090661 – Funeral Establishment

This is a consumer complaint alleging unprofessional conduct by the Respondent establishment. The consumer states that their father passed away and the Respondent failed to research the deceased’s family members and failed to recognize the consumer’s mother as the surviving spouse. Furthermore, the consumer states that the deceased was cremated; however, the consumer states that the deceased’s wish was not to be cremated. The consumer states that the Respondent never reached out to the consumer regarding the deceased’s obituary which failed to mention his job working with Veteran Affairs.

The Respondent responded to the complaint and indicated the following:

1. The Respondent received a copy of the Durable Power of Attorney listing the daughter as well as a copy of the insurance beneficiary form that listed the daughter.
2. The Respondent states that the death certificate copy in their file does list the wife, and that they were married but separated.
3. The Respondent indicated they met with the consumer, but that the consumer indicated they were not paying for the services.
4. The funeral services were arranged for and paid by the daughter of the deceased so the Respondent executed those arrangements.
5. The Respondent indicated that the obituary was provided by the daughter who paid for the funeral services.

The Respondent provided documentation.

The Consumer provided a rebuttal disputing the Respondent’s response.

Recommendation:

- Closure

A motion was made by Fred Berry to accept Counsel’s recommendation.

Seconded by Clark McKinney

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

12. Case No.: 2020091611 – Funeral Establishment

This is a consumer complaint alleging unprofessional conduct by the Respondent establishment. The consumer states that in June 2020 they contacted the Respondent establishment to arrange for the cremation of a family friend, placement of a marker for that family friend, and the moving of the consumer’s sister’s remains from one cemetery to another. During this time the consumer’s other sister passed, and they made arrangements for her sister to be cremated and a marker to be placed. The consumer states that several weeks passed; and when they went to pick up the cremated remains, they inquired about the markers. However, they were informed that because insurance was paying for them, it was taking longer for the markers. The consumer states that in September 2020 they again inquired about the marker placement for the two decedents and the moving of her sister’s remains, but they were advised it would be done in a couple weeks. The consumer states that they contacted the insurance who indicated that both policies were paid out in August 2020. The consumer states that the Respondent is unresponsive, and they do not have closure on whether the markers have been placed.

The Respondent has not responded to the complaint.

Legal attempted to reach out to the Respondent; however, to no success.

Legal spoke with the consumer who stated that the gravestones have been placed, and the deceased has been moved; however, their experience with the Respondent has lasting physical, emotional, and mental effects.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty of \$1,000.00 via consent order.

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

Seconded by Fred Berry

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

13. Case No.: 2020082901 – Funeral Establishment

This is a consumer complaint alleging that the consumer purchased a marker in 2017 and that as of the date of the complaint, the marker had not been placed. The consumer indicated numerous conversations with the Respondent regarding the placement of the marker, but that the marker had still not been placed.

The Respondent’s representative provided a response to the complaint and indicated this was an oversight by the Respondent but that they are working diligently to get the marker placed. The Respondent states that they spoke to the consumer to apologize and inform them that they were taking care of the marker.

Legal reached out to the Respondent regarding the placement of the marker. The Respondent did provide documentation that the marker had been ordered; however, it has not been placed at this time.

Recommendation:

- Authorization for a formal hearing. Authorization for a civil penalty of \$250.00 via consent order.

A motion was made by Fred Berry to accept Counsel's recommendation.

Seconded by Clark McKinney

Roll Call Vote			
Board Members	Yes	No	Recused
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm			X
Robert Shackelford, III	X		

Adopted by Roll Call Vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LEGISLATIVE UPDATE:

After receipt of information from the Assistant Commissioner's Office, the members of the board were notified on February 3, 2021, that after much consideration, the Governor's Office has decided not to run the universal licensing bill. However, the modernization and merger bills are still expected to be included in the administration package.

HB0334 Funeral Directors and Embalmers –
 Death - As introduced, imposes requirements on the operation of alkaline hydrolysis facilities and the use of alkaline hydrolysis in this state. - AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 5.

LICENSEE REPORT:

REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF JANUARY 9, 2021 – FEBRUARY 5, 2021

<u>Establishment(s)</u>	<u>Type of Action(s)/Change(s)</u>
Smith Family Funeral and Cremation Services, LLC Smyrna, TN	New Establishment
<u>Individual(s)</u>	<u>Type of License(s)</u>
Jason Dale McCord Bruceton, TN	Funeral Director and Embalmer
Jacob Binh Morris Cleveland, TN	Funeral Director and Embalmer
John Scott Braly Florence, AL	Funeral Director and Embalmer Reciprocity – Alabama
Ryan Glen Heath Jonesborough, TN	Funeral Director and Embalmer Reciprocity – Virginia
Melanie Burroughs Cole Germantown, TN	Funeral Director
Temam Mark Joslin Clarksville, TN	Funeral Director
Joshua Andrew McNabb Lenoir City, TN	Funeral Director
Caleb Lane Smith Leoma, TN	Funeral Director

2020 END OF YEAR REPORT ON TESTING RESULTS OF CANDIDATES:

Executive Director Robert Gribble and Administrative Manager Lisa Bohannon reported to the Board regarding results of the 2020 end of the year testing results of candidates from data provided to the Board by The International Conference of Funeral Service Examining Boards (ICFSEB).

DISCIPLINARY ACTION REPORT:

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

report on the December 2020 Regulatory Board’s Disciplinary Action Report:

Respondent: Northridge Woodhaven Funeral Home, Millington, TN
 Violation: Failure to treat a member of the public in respectful manner
 Action: \$500 Civil Penalty

OPEN COMPLAINT REPORT:

As of February 9, 2021, there were 35 open complaints.

A motion was made by Charles Rahm to accept the Executive Director’s Report.

Seconded by Fred Berry

Roll Call Vote			
Board Members	Yes	No	Absent
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm	X		
Robert Shackelford, III	X		

Adopted by Roll Call Vote

ADJOURN:

A motion was made Charles Rahm to adjourn.

Seconded by Clark McKinney

Roll Call Vote			
Board Members	Yes	No	Absent
Fred Berry	X		
Anthony Harris	X		
Tonya Scales Haynes	X		
Clark McKinney	X		
Scottie Poarch	X		
Charles Rahm	X		
Robert Shackelford, III	X		

Adopted by Roll Call Vote

The meeting was adjourned by President Robert Shackelford at 11:01 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CPM, CFSP
Executive Director