

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

MARCH 10, 2015

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; Mark Cochran, Robert P. Helms, David Neal, W. T. Patterson and Jane Gray Sowell.

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

ADOPTION OF AGENDA:

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

Seconded by David Neal

Adopted by voice vote

APPROVAL OF MINUTES:

A motion was made by Robert Helms to approve the Minutes of the February 10, 2015 Board Meeting.

Seconded by Jane Gray Sowell

Adopted by voice vote

Budget Close / Financial Position and Administrative Initiatives / Updates:

Bill Giannini, Deputy Commissioner for Regulatory Boards and Consumer Affairs, and Brian McCormack, Assistant Commissioner for Regulatory Boards, presented the Revenue and Expenditures Statement for FY13-14 and apprised the Board of new administrative initiatives. Bill Huddleston, an Accounting Manager with the Assistant Commissioner's Office, was also in attendance.

Director Robert Gribble discussed further data details during his presentation of the Financial Recap for fiscal year July 1, 2013 through June 30, 2014 and answered questions concerning the Board's current financial position.

**Board of Funeral Directors and Embalmers
Financial Recap
Fiscal Year July 1, 2013 – June 30, 2014**

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 21, 2014 for use in the compilation of this report.

Beginning Balance – July 1, 2013	\$ 714,380.00
Net Revenue (Earnings) for July 1, 2013 – June 30, 2014	\$ 932,587.00
Total Funds Available	<u>\$1,646,967.00</u>
Expenditures July 1, 2013 – June 30, 2014	\$ 407,917.00
Cost Backs (Cost Allocations charged to the Board from Administration and Legal)	\$ 151,424.00
Total Expenditures, Including Cost Backs	<u>\$ 559,341.00</u>
Reserve Balance	\$1,087,626.00
Less CORE Expense	\$ 21,300.00
Reserve Balance (after CORE Expense) – July 1, 2014	\$1,066.326.00

LEGAL REPORT:
ELLERY RICHARDSON, 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.: L14-FUN-RBS-2014027121
 2. Case No.: L14-FUN-RBS-2014027122
 3. Case No.: L14-FUN-RBS-2014028031
 4. Case No.: L14-FUN-RBS-2014028032

Complaint:

- Funeral establishment files complaint against Respondent, former owner and manager. Respondent wrote a pre-need contract in 2008 and accepted money towards payment of the contract but did not put the funds in the preneed trust. In October 2014, the contract beneficiary dies, and complainant funeral establishment could not find a full contract. Upon contacting Respondent, Respondent provided the full contract showing that Respondent accepted money towards this funeral, and Respondent paid \$5,400.00 towards the funeral, which is the amount he received from the contract purchaser. There was also a life insurance plan that gave Complainant \$494.45 towards the funeral. At need, the funeral cost was \$8,278.95. Purchaser was still \$2,384.50 short.

Response:

- Respondent states that he did not fill out the preneed and send the money off because he was waiting on full payment. He found while reviewing the file that the purchaser did pay in full, but Respondent misread the file and didn't think it was ever paid in full. He did save the funds in a savings account, and that is the money that he sent Complainant when the contract beneficiary died. Respondent also states that he explained this to Complainant when he sold the business.

Recommendation:

- Revocation of funeral director and embalmer licenses and authorization for a hearing.

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

Seconded by W. T. Patterson

Adopted by voice vote

5. Case No.: L14-FUN-RBS-2014029871

6. Case No.: L14-FUN-RBS-2014029872

Complaint:

- Respondent #1 is the managing funeral director of Respondent #2, an establishment. On Thursday, November 20, 2014, a reporter contacted the Department with a photograph of Respondent #1 loading a deceased individual into the bed of a covered pickup truck for removal from a hospital. There has been a statement that the truck is "fitted" for removals in case the removal van is in need of repair.

Response:

- Respondent admits that his pickup truck was used to transport the remains and states that it was an error of judgment. The establishment has two vehicles normally used for transport, but they were both out of

service. He states that he was not the person making the removal, but that person was acting under his authority. He apologizes to the family for any disrespect they felt, which was unintended.

Recommendation:

- Funeral Director: Close with Letter of Warning.
- Establishment: Close with Letter of Warning.

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

Seconded by Anita Taylor

Adopted by voice vote

7. Case No.: L14-FUN-RBS-2014028541

Complaint:

- Respondent has not had a fixed place of business since a fire on December 24, 2013. Respondent conducted 59 funerals in 2014. Respondent did not have available for inspection the following: establishment license; any funeral director license; any embalmer license; any price list including General Price List, Casket Price List, Outer Burial Container Price List, and a Statement of Funeral Goods and Services Selected; crematory license; and crematory inspection report.

Response:

- Respondent states that it has been working diligently to erect a building. He states that he had a temporary trailer, but it was vandalized and had to be taken down.

Recommendation:

- Suspension of the license and denial of renewal of that license until the statutory requirements of Tenn. Code Ann. § 62-5-311, Rules 0660-6-.02, 0660-11-.04, and 0660-11-.07 are met and authorization for a hearing.

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

Seconded by David Neal

Adopted by voice vote

8. Case No.: L14-FUN-RBS-2014029351

9. Case No.: L14-FUN-RBS-2014029352

Complaint:

- Complainant's brother was killed in a motorcycle accident in Tennessee. Complainant states that the deceased was religiously devout, and Respondent separated his cremains into multiple vessels against the family's wishes and against their religion because they view the body as a temple that should not be disturbed.

Response:

- Respondent states that she asked the next of kin more than once whether she wanted cremation because Respondent was aware of the family's religion. The next of kin wanted cremation and brought in multiple urns and keepsakes for the cremated remains. After the memorial service, the next of kin told Respondent that the rest of the family was upset with the separation of the cremains. Respondent then returned all the cremains to one urn.

Recommendation:

- Close

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

Seconded by Anita Taylor

Adopted by voice vote

10. Case No.: L14-FUN-RBS-2014031101

Complaint:

- Respondent's manager allowed his funeral director's license to lapse for 11 days. Respondent did not conduct any services during this time.

Response:

- Respondent states that it mailed the renewal before the lapse, but processing took a few days. Respondent also changed ownership about a month later.

Recommendation:

- Close with a Letter of Warning

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

Seconded by David Neal

Adopted by voice vote

11. Case No.: L14-FUN-RBS-2014031121

Complaint:

- Respondent's establishment license expired on June 30, 2014 and was not reinstated until August 13, 2014. During this time Respondent handled arrangements for one case.

Response:

- Respondent states that she forgot to fill out the back of the renewal form and did not realize the license lapsed. Respondent apologizes for the oversight.

Recommendation:

- Consent Order with civil penalty of \$150 and authorization for a hearing.

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

Seconded by Anita Taylor

Adopted by voice vote

12. Case No.: L14-FUN-RBS-2014031221

13. Case No.: L14-FUN-RBS-2014031222

Complaint:

- Respondent funeral director's license expired on February 28, 2014 and was not reinstated until April 28, 2014. Respondent funeral director serves as the manager of Respondent establishment. Respondent establishment handled 23 cases during this time.

Response:

- No response received.

Recommendation:

- Funeral Director: Consent order with civil penalty of \$750, which is to be paid with certified funds, and authorization for a hearing.
- Establishment: Consent Order with civil penalty of \$1,400, which is to be paid with certified funds, and authorization for a hearing.

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

Seconded by Anita Taylor

Adopted by voice vote

14. Case No.: L14-FUN-RBS-2014031481

15. Case No.: L14-FUN-RBS-2014031482

16. Case No.: L14-FUN-RBS-2014031483

Complaint:

- Respondent funeral director and embalmer licenses expired on June 30, 2014 and were not renewed at the time of inspection. During this time Respondent acted as a funeral director for two cases, an embalmer for one case, and is also the manager of Respondent establishment.

Response:

- Respondent states that he did not receive renewal notices and apologizes for the oversight.

Recommendation:

- Funeral Director and Embalmer: Consent Order with civil penalty of \$250 and authorization for a hearing.
- Establishment: Consent Order with civil penalty of \$250 and authorization for a hearing.

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

Seconded by Robert Helms

Adopted by voice vote

17. Case No.: L14-FUN-RBS-2014031311

Complaint:

- Routine examination revealed that Respondent did not have the inspection report for the crematory it uses available for inspection (Tenn. Code Ann. § 62-5-107), one cremation authorization had the funeral director's name printed but not his signature, and Respondent did not have its OBCPL available for inspection.

Response:

- Respondent states that he was able to find all the documentation after the inspection.

Recommendation:

- Consent Order with civil penalty of \$1000 and authorization for a hearing.

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

Seconded by David Neal

Adopted by voice vote

ADMINISTRATIVE MATTERS:
ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

LICENSEE REPORT:

**REPORT OF LICENSES ADMINISTRATIVELY APPROVED BY EXECUTIVE
DIRECTOR PURSUANT TO BOARD AUTHORITY FOR THE PERIOD OF
FEBRUARY 10, 2015 – MARCH 9, 2015**

<u>Establishments</u>	<u>Type of License(s)</u>
East Tennessee Funeral Home and Cremation Services Blountville, TN	New Establishment
Gibson County Crematory Milan, TN	New Establishment
Justin Ford Funeral Home Memphis, TN	New Establishment
Tribute Funeral and Cremation Services Johnson City, TN	New Establishment
Heritage Funeral Homes and Cremation Services Chattanooga, TN	Ownership Change
Alder-Mayes Funeral Home Morristown, TN	Name Change
Cremation Society of Tennessee, LLC Columbia, TN	Location Change
<u>Individuals</u>	<u>Type of License(s)</u>
Gib Edward Harris Madisonville, TN	Funeral Director/Embalmer
Trudy Ann Riggs Hendersonville, TN	Funeral Director/Embalmer
Lori Lynn Willett Johnson City, TN	Funeral Director/Embalmer
Dustin Thomas Hubbard Oakland, TN	Funeral Director/Embalmer Reciprocity – Mississippi

Steven Daryl Hanvy, Jr. Columbia, TN	Funeral Director/Embalmer Reapplication
Danny R. Phillips Graysville, GA	Funeral Director/Embalmer Reapplication
Casey Austin Jackson Winchester, TN	Funeral Director
Ben McClary Crox, III Cleveland, TN	Embalmer
Gayla Lorraine Guerard Whitwell, TN	Embalmer

CLOSED ESTABLISHMENT REPORT:

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

- Resthaven Funeral Home & Cremation Services, 2930 Highway 41A South, Clarksville, TN; and
- Tri-Cities Funeral Home, LLC, 2630 Highway 75, Blountville, TN.

DISCIPLINARY ACTION REPORT:

**REPORT OF CONSENT ORDERS ADMINISTRATIVELY
ACCEPTED/APPROVED BY THE EXECUTIVE DIRECTOR PURSUANT TO
BOARD AUTHORITY FOR THE PERIOD OF
FEBRUARY 1, 2015 – FEBRUARY 28, 2015**

Respondent:	Gardner Memorial Chapel, Inc., Nashville, TN
Violation:	Engaged in the operation of a funeral establishment while establishment license was expired and failed to respond within the time specified after receiving notice of an open complaint
Action:	\$350 Civil Penalty
Respondent:	Bradley Noel Smith, Chattanooga, TN
Violation:	Failed to honor a financial obligation to a person in a timely manner with which the funeral establishment requested the performance of professional services
Action:	\$250 Civil Penalty

OPEN COMPLAINT REPORT:

As of March 10, 2015, there were 50 open complaints.

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

Seconded by W. T. Patterson

Adopted by voice vote

LEGISLATIVE UPDATE:

SB0194 / HB0163*

Funeral Directors and Embalmers – As introduced, clarifies that the two members of the board of funeral directors and embalmers with a minimum of five consecutive years' experience in this state immediately preceding their appointment shall be licensed as funeral directors, embalmers, or both; and provides that if the board is inspecting a crematory facility in conjunction with an application for initial licensure, change of ownership, or change of location, the authorized representative conducting the inspection for the board shall also be a certified crematory operator. – Amends TCA Title 62, Chapter 5, Part 2.

<http://www.capitol.tn.gov/Bills/109/Bill/HB0163.pdf>

SB0320* / HB0289

Autopsies – As introduced, rewrites Post-Mortem Examinations Act effective January 1, 2017; requires counties to appoint a medicolegal death investigator; terminates Tennessee medical examiner advisory council. – Amends TCA Title 4, Chapter 29, Part 2; Title 38, Chapter 7 and Title 68, Chapter 1, Part 11.

<http://www.capitol.tn.gov/Bills/109/Bill/SB0230.pdf>

SB0621 / HB0199

Insurance Companies, Agents, Brokers, Policies – As introduced, defines funeral merchandise for prearrangement insurance policies. – Amends TCA Title 46 and Title 62, Chapter 5.

<http://www.capitol.tn.gov/Bills/109/Bill/HB0199.pdf>

SB0870 / HB0446*

Cemeteries – As introduced, makes various changes with regards to the treatment of urn vaults, vaults, outer burial containers, and other merchandise offered by a cemetery company in pre-need contracts and in the disbursement of trust assets; clarifies the law applicable to pre-need contracts offered by cemetery companies. – Amends TCA Title 46, Chapter 1.

<http://www.capitol.tn.gov/Bills/109/Bill/HB0446.pdf>

SB1235* / HB1307

Cemeteries – As introduced, makes various revisions to regulations governing cemetery companies or other entities engaged in the business of selling, leasing, or renting lots, grave spaces, crypts, niches, and burial rights for the interment of deceased persons; requires the commissioner of commerce and insurance to issue audit reports after auditing a cemetery company. – Amends TCA Title 46, Chapter 1 and Title 62.

<http://www.capitol.tn.gov/Bills/109/Bill/SB1235.pdf>

Website for Legislative Bill Searches:

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

A motion was made by Mark Cochran to accept the Legislative Update Report.

Seconded by Robert Helms

Adopted by voice vote

Continuing Education Exemption Request from Licensee:

Donald R. Fiolkoski
Knoxville, Tennessee
Funeral Director License No. 5389
Embalmer License No. 5390

After the Board reviewed and discussed a request from Donald R. Fiolkoski of Knoxville, Tennessee, a funeral director and embalmer, and the medical information provided by his physician, G. Anthony Wilson, M.D., board member Robert Helms made a motion to grant Mr. Fiolkoski an exemption from the continuing education requirements until such time as Mr. Fiolkoski becomes employed again by a funeral establishment or resumes the practice of funeral directing and/or embalming. Should either of these events occur, the exemption terminates immediately. Additionally, it is Mr. Fiolkoski's responsibility for reporting to the Board should he become employed by a funeral establishment again or resume the practice of funeral directing and/or embalming.

Seconded by Mark Cochran

Adopted by voice vote

INDIVIDUAL APPLICATION:

**Joseph Scott Galyon
Knoxville, TN**

**Funeral Director/Embalmer
Reciprocity**

Upon motion by Jane Gray Sowell and seconded by David Neal, based upon application record, this individual was approved for licensure.

Adopted by voice vote

**Lolietta Louise Shaw
Nashville, TN**

Funeral Director

Upon motion by Robert Helms and seconded by W. T. Patterson, based upon application record, this individual was approved for licensure.

Adopted by voice vote

ESTABLISHMENT APPLICATION:

**ALTERNATIVE CREMATION & FUNERAL SERVICE
206B COOL SPRINGS BOULEVARD, SUITE 201
FRANKLIN, TN 37067-7292**

New Establishment

Ownership: Limited Liability Company

**Owner(s): Brick Church Funeral Home & Cremation Services, LLC, 2422
Brick Church Pike, Nashville, TN 37207-4406**

Upon motion by Anita Taylor and seconded by W. T. Patterson, based upon application record, the establishment was approved for licensure.

Adopted by voice vote

Board member(s) recorded as voting contrary to the conclusion: Jane Gray Sowell

ADJOURN:

A motion was made by Anita Taylor to adjourn.

Seconded by W. T. Patterson

Adopted by voice vote

The meeting was adjourned by President Robert Starkey at 11:20 a.m.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director