

MINUTES
South Carolina Board of Funeral Service
Board Meeting

9:00 a.m. Monday, April 29, 2016
Synergy Business Park
110 Centerview Drive, Kingtree Building Room 108
Columbia, South Carolina

Friday, April 29, 2016

1. Meeting Called to Order

The regular meeting of the SC Board of Funeral Services was called to order at 9:02 a.m. by William B. Horton, Jr., President, of Kingtree. Other Board members present for the meeting included: Eddie Nelson, Vice President, of Blythewood; Jeffrey K. Temples, Secretary, of Columbia; Michelle Cooper, of Moncks Corner; Wallace McKnight, Jr., of Andrews; John L. Petty, III, of Landrum; Stephen R. Gantt, of Greenwood; Charvis K. Gray, of Piedmont; S. Lee McMillan, Jr., of Myrtle Beach; and Mark R. O'Steen, of Spartanburg.

Staff members participating in the meeting included: Donnell Jennings, Advice Counsel, Office of Advice Counsel; Tracey Perlman, Office of Disciplinary Counsel; Holly Beeson, Office of Communication and Government Affairs, Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement; Kathy Meadows, Investigator, Office of Investigations and Enforcement; Amy Holleman, Administrator; Monaca Harrelson, Administrative Assistant; Norma McAllister, Program Assistant; and Buddy Poole, Inspector, Office of Investigations and Enforcement;.

Members of the public attending the meeting included: Tommy Harris, Harris-Nadeau Mortuary; Steven Nadeau, Harris-Nadeau Mortuary; Wes Hiott, Mountain View Funerals and Crematory; Don Turner, Mountain View Funerals and Crematory; Richard Benton, Foundation Partners Group; James Dobbins, Simplicity: Lowcountry Cremation and Burial Services; Daniel Jeffrey; Alan King, King Funeral Home of Blair, SC; Travis Dayhuff, Nelson-Mullins; Steve Whitesell, Fort Mills Funeral Home; Regina J. Jenkins; Bobby Fuller; Zachary T. Elwood, Gray's Funeral Home; Kelly Rainsford, of South Carolina Department of Consumer Affairs (SCDCA).

A. Public Notice

Mr. Horton announced that public notice of this meeting was properly posted at the SC Board of Funeral Service office, Synergy Business Park, Kingtree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

B. Pledge of Allegiance

All present recited the Pledge of Allegiance.

2. Introduction of Board Members and Persons Attending the Meeting

The Board members, staff, and all other persons attending the meeting introduced themselves.

3. Approval of Excused Absences

D'Michelle P. DuPre, of Chapin, was not present.

Mr. Horton informed the Board Mr. Gantt was delayed in traffic. Mr. Temples and Ms. Cooper will be arriving promptly.

MOTION

Mr. O'Steen made a motion to approve the absence of Dr. DuPre.
Mr. McMillian seconded the motion, which carried unanimously.

Let the record reflect Mr. Gantt arrived at 9:13 a.m., Ms. Cooper arrived at 9:13 a.m. and Mr. Temples arrived at 9:27 a.m.

4. Approval of Minutes for the March 7, 2016 board meeting

Mr. Horton called for a motion to approve the minutes from the March 7, 2016 meeting with correction as follows:

The Administrator has the authority to grant one (1) thirty (30) day extension to a funeral home searching for a new manager if the funeral home has not been able to find a new manager within the thirty (30) day period allowed in statute and regulations and is able to show proof that they have been actively searching for a new manager. If the funeral home does not submit an application for a change of manager at the end of the sixty (60) day period, the Administrator has the authority to immediately issue a Cease and Desist Order.

MOTION

Mr. Gray made a motion to amend the minutes with the above verbiage.
Mr. Nelson seconded the motion, which carried unanimously.

Secondly, Mr. Horton addressed a correction for page 3, number 9, to let the record reflect, per the transcript, "Mr. Nelson made a motion to issue a Cease and Desist Order to Goins Funeral Home if it is not in compliance with all licensing requirements by March 10, 2016. Mr. Jeff Temples seconded, and the motion passed unanimously."

Thirdly, let the record reflect the following correction to the March 7, 2016 minutes, page 1, number 4. "Mr. Gantt seconded the motion, which carried unanimously."

MOTION

Mr. McMillian made a motion to amend the minutes with the correction.
Mr. McKnight seconded the motion, which carried unanimously.

5. President's Remarks – Billy Horton

Mr. Horton welcomed everyone to the Board Meeting.

Mr. Horton requested the Board take a moment to remember Mr. John Eggers, a former member of the Board from August 1998 to August 2001, who passed away April 15, 2016. . Mr. Horton recommended the Board send a letter of condolence to his wife, Betty, and Staff.

MOTION

Mr. McMillian made the motion to send a letter of condolence.
Mr. Nelson seconded the motion, which carried unanimously.

6. Administrator's Remarks – Amy Holleman

Ms. Holleman introduced Norma McAllister, the new staff member.

Ms. Holleman stated the renewal notices were mailed to the recipients on April 15, 2016. She also noted that the Agency is working on online applications for individuals and that she hoped those would be available soon.

Ms. Holleman noted that Mr. Nelson brought to her attention that the language used on apprentice certificates and student permits conflicted with the language in statute. The apprentices will now receive "certificates," and students will receive "permits," as is stated in statute.

Mr. Horton welcomed Norma McAllister to the Board.

Mr. Horton advised the minutes shall reflect Mr. Gantt and Mr. Cooper have arrived.

Ms. Holleman presented the Financial Report: Cash balance at the end of March 2016 was -\$762,887.06.

MOTION

Mr. Nelson made a motion to receive the Financial Report as information.

Mr. McKnight seconded the motion, which carried unanimously.

7. Legislative Update – Holly Beeson, Office of Communication and Government Affairs

Senate Bill 160 – Sponsored by Senator Katrina Shealy, S.160 addresses third party funeral service providers. These providers are not licensed funeral homes in South Carolina but contract with South Carolina funeral establishments, funeral directors, and embalmers for services. The bill passed out of the Senate, but it has not yet passed the House. There are several concerns, including jurisdiction and pre-need transfers.

Senate Bill 4470 – S.4470 addresses the five (5) day deadline to file a death certificate, which went into effect in 2015. The Bill relates "to electronic filing and transmission of death certificates so as to change the time within which to file death certificates..." On or about February 2016, the debate on the bill was adjourned.

House Bill 4845 – The first reading of H.4845 was on April 28, 2016 in the Senate.

SECTION 1. Chapter 19, Title 40 of the 1976 Code is amended by adding:

"Section 40-19-105. When a funeral home, funeral director, or embalmer ('transferor provider') provides services for a dead human body and the body subsequently is transferred to another funeral home, funeral director, or embalmer ('transferee provider') for additional services, the transferor provider has a cause of action against the transferee provider if the transferee fails to compensate the transferor for the services provided by the transferor. The transferor may recover its usual fee plus reasonable attorney fees and costs. An action brought pursuant to this section may be brought and tried in magistrate's court regardless of the amount of money involved, and the monetary jurisdictional limits of magistrate's court do not apply."

Ms. Beeson stated she received one legislative call regarding the current fee changes/adjustments.

Mr. Horton thanked Ms. Beeson for the information.

8. Reports

A. Inspection Report – Buddy Poole

Mr. Poole informed the Board that he and Mr. Adams conducted 104 inspections from February 9, 2016 to April 14, 2016.

MOTION

Mr. Nelson made a motion to receive the Inspection Report as information.

Mr. McKnight seconded the motion, which carried unanimously

B. Investigative Review Committee (IRC) Report – Presented by Sharon Wolfe

1. The IRC recommended to dismiss case numbers 2015-68, 2015-74, 2015-84, 2015-86, and 2016-5, and they recommended formal complaints for 2015-16, 2015-17, 2015-66, 2015-67, 2015-69, 2015-73, and 2015-79.

MOTION

Mr. McMillan made a motion to approve the IRC recommendations.

Mr. Gray seconded the motion, which carried unanimously

C. Office of Investigation and Enforcement (OIE) Report – Presented by Sharon Wolfe

1. 33 cases completed
2. 21 cases closed

MOTION

Mr. Temples made a motion to receive the OIE report as information.

Mr. Gantt seconded the motion, which carried unanimously

Ms. Perlman stated let the record reflect Mr. Temples has arrived.

D. Office of Disciplinary Counsel (ODC) Report – Presented by Tracey Perlman

1. 22 open cases
2. 10 pending action
3. 12 pending hearings

MOTION

Mr. Nelson made a motion to receive the ODC report as information.

Mr. McMillan seconded the motion, which carried unanimously

9. Approval of Consent Agreement (CA) – Case No. OIE – 2015-52

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. Sandra W. Brown

Mr. McMillan recused himself.

The Respondent stipulates and admits that:

- a. Respondent was the Funeral Director at McKiever Funeral Home Inc. (License No.: FE. I 07 PAR) located at 1408 Racepath Avenue in Conway, South Carolina.
- b. On May 17, 2015, Respondent was contacted to handle the cremation of James Jarrett (hereinafter "decedent"). Decedent's spouse specifically stated that she did not want any kind of funeral or memorial service. Although the spouse signed an authorization for cremation, Respondent failed to obtain a contract with the decedent's spouse.
- c. The cremation cost was \$1785.00 and the decedent's family paid \$750.00 leaving the balance for the spouse to pay. Respondent performed the cremation without a signed contract from the spouse or the family. Decedent's spouse requested the cremains, but the Respondent held the cremains until payment was obtained. The cremains remained in the Respondent's possession until the Funeral Board Administrator called to inform the Respondent that the cremains should be released.

Ms. Brown admits to the violations of S.C. Ann. Codes. 40-19-110(9); 40-110(1)(f); and S.C. Code Reg. 57-13 (A)(5).

It has been agreed upon Ms. Brown shall be publicly reprimanded and placed on a probationary status for a period of one (1) year from the effective date of the Agreement.

Ms. Brown shall pay a civil penalty of One Thousand Dollars (\$1,000.00) to the Board within sixty (60) days of the effective date of the Agreement. Ms. Brown shall pay an additional One Hundred and forty Dollars (\$140.00) for the cost of the investigations, for a total fine of One Thousand One Hundred and Forty Dollars (\$1,140.00) to be paid. The fine will not be deemed paid until the full amount is received by the Board. Failure to pay the fine as ordered shall result in the immediate administrative suspension of Ms. Brown's license until the civil penalty is paid in full.

MOTION

Mr. Nelson made a motion to accept the Consent Agreement and its terms.
Ms. Cooper seconded, and the motion was passed unanimously.

10. Approval of Memorandum of Agreement (MOA) – Case Nos. OIE – 2015-38, 2015-39

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. Fort Mill Funeral Home and Steven A. Whitesell

Ms. Perlman presented the MOA to the Board with following stipulations:

1. Respondent-Home's current license has an effective date of June 30, 2014. On its most recent renewal application, Respondent-Home listed Billy Ray Haire, a licensed Funeral Director/Embalmer (License Number.: FDE. 2329 DUAL), as its manager of record.
2. Mr. Haire's license lapsed on June 30, 2014, and Haire did not submit a renewal application within thirty (30) days of June 30, 2014 or submit a late renewal application during the six (6) month penalty period following June 30, 2014.
3. While Haire was on the payroll and was engaged in management of Respondent-Home, Haire was not working full-time at Respondent-Home.
4. Before an LLR Investigator conducted a visit to Respondent-Home on September 10, 2015 pursuant to an initial complaint, Respondents were not aware that Haire had not renewed his license, and consequently Respondents did not submit a change of facility manager application within 30 days.
5. In response to LLR's investigation of this matter, Respondents have taken the appropriate steps to correct this issue including submitting the appropriate documentation to the Board designating a licensed funeral director, Jeff McWatters, as the manager of Respondent-Home. Mr. McWatters manages Respondent-Home on a full-time basis.

Mr. Steven A. Whitesell and legal counsel, Travis Dayhuff of Nelson-Mullis, were present. Mr. Dayhuff acknowledged the violation and apologized on behalf of his client. Mr. Dayhuff stated the violation was not intentional. Mr. Whitesell apologized stating a manager application has been submitted to the Board for review. The Respondents admitted to violation of Regulation 57-10.

MOTION

Ms. Cooper made a motion to go into Executive Session to receive legal advice.
Mr. McKnight seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. Temples made a motion that the Board return to public session.
Mr. Gantt seconded the motion, which carried unanimously.

Mr. Horton stated, for the record, that no votes were taken during executive session.

MOTION

Mr. Cooper made a motion to accept the conditions of the MOA and issue a Letter of Caution.
Mr. Gantt seconded the motion, which carried unanimously.

11. Disciplinary Hearings – Case Nos. OIE – 2015-29, 2015-30

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary

Neither the Respondents nor representatives of the Respondents were present. Ms. Perlman presented evidence that the Respondents had been duly served which was accepted by the Board. The Chairman recognized for the record that the Respondents were properly notice and that evidence entered by the State would be accepted.

The formal complaint alleged that:

1. On or about March 21, 2015, decedent's family (hereinafter "Complainant") authorized Respondents to pick up the body of Mr. Parnell Fuller (hereinafter "decedent") from the Greenville Memorial Hospital. Mr. Fuller had been a resident of the Whitten Center in Laurens, SC.
2. As of Monday March 23, 2015, Respondents had failed to meet with Complainants and had failed to provide the decedent's family an opportunity to make final arrangements for decedent.
3. After not hearing from the Respondents, Complainant decided to utilize another funeral home for the arrangements. On March 23, 2015, Complainant requested that decedent be transferred to another funeral home. After receiving that request, Respondents informed Complainant that the decedent's body had been embalmed and that Complainant must pay \$500 before the body would be released for transfer. Although Complainant did not sign a contract or agreement for goods and services, Complainant paid the \$500 embalming fee to facilitate the transfer of decedent's body.
4. Complainant filed a complaint with South Carolina Department of Labor, Licensing, and Regulation (hereinafter "LLR") regarding her experience with Respondents. LLR assigned Investigator Kathy Meadows to investigate the allegations in the complaint. Investigator Meadows received a statement acknowledging the situation as described by the Complainant. Respondent-Manager states that the owner of the Respondent-Establishment, Mr. Larry Brown (now deceased), was the one who answered the call from the hospital and failed to provide a statement of goods and services for the Complainant.

The State presented the following witnesses: Bobby Fuller, Regina Jenkins, Zachary T. Elwood of Gray's Funeral Home, Buddy Poole, Inspector for the Board of Funeral Service, and Kathy Meadows, Investigator.

MOTION

Mr. O'Steen made a motion to go into Executive Session to receive legal advice.
Ms. Cooper seconded the motion, which passed unanimously.

Return to Public Session

MOTION

Mr. McMillan made a motion that the Board return to public session.
Mr. Nelson seconded the motion, which carried unanimously.

Mr. Horton stated, for the record, that no votes were taken during executive session.

Ms. Cooper stated the State has met its burden of proof in that Respondents violated Sections 40-1-110(1)(c), 40-19-110(14), and Regulation 57-13(A)(5). The Board feels the appropriate sanctions are to publicly reprimand the Respondents, issue a civil fine of five-hundred (\$500.00) dollars for each violation, and permanently revoke both Respondents' licenses.

MOTION

Mr. McMillan made a motion to accept the findings and sanctions.
Mr. O'Steen seconded the motion, which carried unanimously.

Old Business

Application Hearings

12. New Funeral Home or Ownership change

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. Harris-Nadeau Mortuary – Tommy W. Harris

Mr. Tommy Wayne Harris of the Harris-Nadeau Mortuary requested an extension on the proposed opening date of Harris-Nadeau Mortuary due to construction delays. Present on behalf of the facility were Stephen James Nadeau and Tommy Wayne Harris.

MOTION

Mr. Nelson made a motion that Mr. Harris of the Harris-Nadeau Mortuary be granted an extension of 90 days.
Mr. Temples seconded the motion, which carried unanimously.

New Business

Application Hearings

13. New Funeral Home or Ownership change

This proceeding was recorded by a court reporter in order to produce a verbatim transcript should one be necessary.

1. King Funeral Home of Blair, SC – Alan King

Mr. Alan King of King Funeral Home of Blair submitted an application for a new facility with him as the proposed manager. Mr. King had to obtain permission from the South Carolina Department of Health and Environmental Control (DHEC) to install an underground holding tank for embalming waste disposal. Mr. King confirmed the holding tank has been installed. Ms. Holleman informed the Board all information regarding the holding tank and new facility application has been received; however, staff is still waiting on Mr. King's criminal background report from North Carolina.

The Board questioned Mr. King about his barber shop located in Charlotte, North Carolina and asked if he understood that as manager of King Funeral Home of Blair, SC that he would have to be present at the funeral home for a minimum of thirty-five (35) hours per week. Mr. King told the Board that he understood, and he explained that he would be working in his funeral home not his barber shop, though he will continue to own the barber shop in Charlotte.

MOTION

Mr. Temples made a motion that the application for a new facility be approved pending receipt of a favorable North Carolina criminal background report and final inspection.

Mr. McMillan seconded, and the motion was passed unanimously.

2. Mountain View Funerals and Crematory – Don Alan Turner, Sr.

A new facility application was submitted for Mountain View Funerals and Crematory with Mr. Don Alan Turner, Sr. as the manager. Present on behalf of the facility were Mr. Don Allen Turner, Sr. and Mr. Gary Weston Hiott, Jr. Mr. Hiott explained the facility is under contract while in its final stage of completion/construction. Ms. Holleman informed the Board the application is complete. Mr. Temples questioned Mr. Don Alan Turner, Sr., has he read all the South Carolina rules and regulations of a manager. Mr. Turner affirmed by stating yes.

MOTION

Mr. O'Steen made a motion that the application for a new facility be approved pending the receipt of proof of ownership and final inspection

Mr. Nelson seconded the motion, which carried unanimously.

3. Simplicity: Lowcountry Cremation and Burial Services – James Lanton Dobbins

A new facility/change of ownership application was submitted for Simplicity: Lowcountry Cremation and Burial Services with Mr. James Lanton Dobbins as the manager. Present on behalf of the facility were Mr. Richard Benton and Mr. James Lanton Dobbins. Ms. Holleman informed the Board the application is complete. Mr. Temples questioned Mr. James Lanton Dobbins, has he read and understood the rules and regulations for being a manager. Mr. Dobbins affirmed by stating yes.

MOTION

Mr. Temples made a motion that the application for a new facility/change of ownership be approved pending receipt of favorable preneed letter from the SC Department of Consumer Affairs and final inspection.

Mr. McMillan seconded the motion, which carried unanimously.

4. Cremation Services of South Carolina – James Lanton Dobbins

A new facility/change of ownership application was submitted for Cremation Services of South Carolina with Mr. James Lanton Dobbins as the manager. Present on behalf of the facility were Mr. Richard Benton and Mr. James Lanton Dobbins. Ms. Holleman informed the Board the application is complete. Mr. Temples questioned Mr. James Lanton Dobbins, has he read and understood the rules and regulations for being a manager. Mr. Dobbins affirmed by stating yes.

MOTION

Mr. Temples made a motion that the application for a new facility/change of ownership be approved pending final inspection.

Mr. Gantt seconded the motion, which carried unanimously.

14. Reciprocal License

1. Daniel B. Jeffrey –Funeral Director/Embalmer

Mr. Jeffrey submitted a reciprocal license application. He received a Funeral Director and Embalmer's license in the state of Massachusetts on October 5, 2015. Prior to this, Mr. Jeffrey stated he was employed full-time with a funeral home in Massachusetts from September of 2011 until April of 2014. Mr. Jeffrey relocated to South Carolina prior to the obtaining his Massachusetts license and applied for a South Carolina apprenticeship in July 2015. However, Mr. Jeffrey, having completed his Massachusetts Funeral Director and Embalmer's apprenticeship in close timing to his relocation to South Carolina returned to Massachusetts for the licensing testing.

Ms. Holleman stated the Massachusetts apprenticeship is a two year program. Ms. Holleman informed the Board the Massachusetts law has been included for review. The Board has not made a determination in regards to the Massachusetts law and its substantial equivalency for the purpose of reciprocity.

MOTION

Mr. Nelson made a motion to go into Executive Session to receive legal advice.
Ms. Cooper seconded the motion, which carried unanimously.

Return to Public Session

MOTION

Mr. McKnight made a motion that the Board return to public session.
Mr. Gantt seconded the motion, which carried unanimously.

Mr. Horton stated, for the record, that no votes were taken during executive session.

MOTION

Mr. Cooper made a motion that the reciprocity issue be continued to the May 16, 2016 hearing allotting time for the Advice Counsel to review the Massachusetts law.
Mr. O'Steen seconded, and the motion was passed unanimously.

15. Acceptance of Missing Quarterly Report

1. Mr. Chan Jones –Apprentice Funeral Director/Embalmer

Ms. Holleman stated Mr. Jones was unable to attend the meeting due to illness.

16. Status Report: Developing Resolution Guidelines for Inspections

Ms. Holleman informed the Board that Assistant Deputy Director, Christa Bell, Chief Investigator, Sharon Wolfe, Chief Inspector, Robbie Boland, Inspectors Ernest Adams and William (Buddy) Poole Tracey Perlman, and she have met to discuss establishing consent agreement perimeters for inspection issues. Statute and regulations do not give the Board's inspectors the authority to issue citations, so these issues must go through the IRC process.

Ms. Perlman expounded on the matter explaining a need to facilitate change without creating an undue burden on the Board. Ms. Perlman encouraged the Board to develop a method to streamline the process that would reduce the time frame of finding the violation and the Board's review.

Mr. Jennings stated a board member could participate in the process if the Board wished. Mr. Gray was recommended. Mr. Gray agreed. Mr. Horton agreed with the recommendation and the Board did not render any objections.

17. Discussion: Urn Sales

Ms. Holleman explained to the Board that staff has been receiving questions about urn sales from cemeterians and others interested in selling urns to the public. In the past, the Board required Retail Sales Outlets have six (6) caskets available, but that requirement has been removed. Section 40-19-

20(12) includes urns in the definition of “funeral merchandise.” Is a funeral establishment permit, including a Retail Sales Outlet permit, necessary for the sales of urns to the public for the intended purpose of storing cremated human remains?

Mr. Horton recommended the Board develop a committee to research the issue.

MOTION

Mr. Gray made a motion that a committee be formed to research the urn sales issue.

Mr. McMillan seconded the motion, which passed unanimously.

Mr. Gantt and Mr. McMillan volunteered to be the committee to research urn sales.

18. Discussion: Frequently Asked Question

Ms. Holleman explained and presented the concerns of Mr. Fulton to the Board. Mr. Temples suggested the Board take the information under advisement.

MOTION

Mr. McMillan made a motion to take the information under advisement.

Mr. Gray seconded the motion, which passed unanimously.

19. Discussion: Funeral Establishments and Memorial Services After Cremation

Ms. Holleman explained there have been occasions when an unlicensed staff member of a funeral establishment attended a memorial service and performed duties such as handing out programs and seating the attendees.

Mr. Temples stated final disposition is the crematory.

Mr. Horton concurred, citing state law requires a licensed Funeral Director be present at the final disposition.

Mr. Horton concluded that if the family has contracted with the funeral home and is charged a fee a licensed Funeral Director has to be present at the memorial. The Board concurred with the Chairman.

20. Public Comments (no votes taken)

No public comments at this time

21. Adjournment

MOTION

Mr. Temples made a motion to adjourn the meeting. Mr. O’Steen seconded the motion, which carried unanimously.

Mr. Horton, after ensuring there being no further business to discuss, adjourned the April 29, 2016, meeting for the SC Board of Funeral Service at 1:15p.m.

The next meeting of the SC Board of Funeral Service is scheduled for May 16, 2016 at 10:00 a.m. at Synergy Business Park, 110 Centerview Drive, Kingstree building, Room 108, Columbia, South Carolina.