

MINUTES
South Carolina Board of Funeral Service
Board Meeting

10:00 a.m., July 23, 2015
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Thursday, July 23, 2015

1. Meeting Called to Order

Wallace McKnight, Jr., President, of Andrews, called the regular meeting of the SC Board of Funeral Service to order at 10:07 a.m. Other Board members present for the meeting included: ; Marcus D. Brown, Secretary/Treasurer, of Anderson; Michelle Cooper, of Moncks Corner; D'Michelle P. DuPre, of Chapin; William B. Horton, Jr., of Kingstree; Eddie Nelson, of Blythewood; Mark R. O'Steen, of Spartanburg; John L. Petty, III, of Landrum; and, Jeffrey K. Temples, of Columbia.

Staff members participating in the meeting included: Donnell Jennings, Advice Counsel, Office of Advice Counsel; Tracey Perlman, Office of Disciplinary Counsel; Wendi Elrod, Program Assistant; Amy Holleman, Administrator; Sharon Cook, Investigator, Office of Investigations and Enforcement; Ernest Adams, Inspector, Office of Investigations and Enforcement; Sharon Wolfe, Chief Investigator, Office of Investigations and Enforcement; Kathy Meadows, Investigator, Office of Investigations and Enforcement and, Rodney Pigford, Investigator, Office of Investigations and Enforcement.

Members of the public attending the meeting included: Elizabeth Simmons, of the SC Morticians Association (SCMA); Matalie Mickens, of SC Department of Consumer Affairs (SCDCA); Lou Ann Pyatt, of the SC Morticians Association (SCMA); Flavours McMillian; Anita McMillian; Marcus Yocum, of Charleston Cremation Center & Crematory; Gary T. Frost, Esq., of All & Frost, LLC; Jim Keith, of Keith Funeral Cremation Services; Ruby Littlejohn; Michael A. Glenn, of Michael A. Glenn Funeral Home; Tanoka Acker, of Webb-Settles Funeral Home; Jacqueline McGill, of Jackson-McGill Funeral Home; Poiette M. Bromell, of Jackson-McGill Funeral Home; Henry McGill, Jr., of Jackson-McGill Funeral Home; F. Deloris Gist, of Michael A. Glenn Funeral Home; Kim Formby, of Cooner Funeral Home; Billy Williams, of Cooner Funeral Home; Theo W. Mitchell, Esq., of Law Office of Theo Mitchell, LLC; Albert Frank; Brooke Williams, of the SC Morticians Association (SCMA); Ivori Henryhand, of Henryhand Funeral Home; Reverand W. C. Henryhand, of Herryhand Funeral Home; Alpha M. Henryhand, of Henryhand Funeral Home; and, Ben Pooser, of Charleston Cremation Center.

A. Public Notice

Mr. McKnight announced that public notice of this meeting was properly posted at the SC Board of Funeral Service office, Synergy Business Park, Kingstree 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

Thomas E. Baker, II, of Kershaw, was granted excused absence.

MOTION

Mr. Horton made a motion that the Board excuse Mr. Baker's absence. Mr. Temples seconded the motion, which carried unanimously.

4. Reports

A. Inspection Report – Ernest Adams

Mr. Adams informed the Board that he and Mr. Poole conducted 136 inspections from May 13, 2015 to July 9, 2015.

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

Ms. Wolfe stated that the Board of Funeral Service has two new inspectors, Rodney Pigford and Kathy Meadows. She stated both have been with the agency for a number of years and Ms. Meadows had worked with the Board of Funeral Service many years ago.

July 8, 2015 IRC report

Ms. Wolfe presented the Investigative Review Committee (IRC) report from the July 8, 2015 IRC meeting. The IRC recommended that the Board issue formal complaints for case numbers 2012-9, 2014-24, 2014-41, 2015-18, 2015-19, and 2015-54; dismiss case number 2014-42 and, a letter of caution for case number 2014-38.

MOTION

Mr. Horton made a motion that the Board approve the IRC recommendations. Mr. Nelson seconded the motion, which carried unanimously.

C. Office of Investigations and Enforcement (OIE) Report

Ms. Wolfe stated that the Office of Investigations and Enforcement (OIE) currently has 31 active investigations, fifteen do not open cases, three opened cases, three pending board action, and 17 closed cases from January 1, 2015 through July 15, 2015. The oldest active case is 300 days.

MOTION

Mr. Petty made a motion that the Board accept the OIE report as information. Ms. Cooper seconded the motion, which carried unanimously.

D. Office of Disciplinary (ODC) Counsel

Ms. Perlman presented the Board with the report from the Office of Disciplinary Counsel (ODC). She included in the report that ODC opened 16 cases, four cases are pending action, five cases pending hearings, six pending final orders, seven cases were closed, and one case appealed.

MOTION

Mr. Horton made a motion that the Board accept the ODC report as information. Mr. Nelson seconded the motion, which carried unanimously.

5. Approval of Minutes for the May 20, 2015 board meeting

MOTION

Mr. Brown made a motion that the Board approve the minutes from the May 20, 2015, board meeting as written. Ms. Cooper seconded the motion, which carried unanimously.

6. President's Remarks – Wallace McKnight

Mr. McKnight welcomed everyone and stated he has no further remarks.

7. Administrator's Remarks – Amy Holleman

A. Financial report

Ms. Holleman presented the financial report to the Board for review and asked they let her know if they have questions.

MOTION

Mr. Brown made a motion that the Board accept the financial report as information. Mr. O'Steen seconded the motion, which carried unanimously.

Ms. Holleman informed the Board that Mr. Evans, Vice President, has resigned from the Board of Funeral Service to serve on the school Board.

She stated that Mr. Homer Elwood has resigned from the Investigative Review Committee (IRC), to serve as Secretary of the South Carolina Funeral Director Association (SCFDA).

Ms. Holleman stated that currently the next board meeting will be on August 12, 2015, but we don't currently have anything on the agenda. She asked if nothing is received for the August 12, 2015, meeting does the Board want to push the meeting to September 4, 2015, which is the only date available in September or to cancel the August 12, 2015, meeting.

MOTION

Mr. Temples made a motion that the Board keep the August 12, 2015, board meeting on the schedule just in case something comes in for the agenda. If nothing is received for the August 12, 2015, board meeting then we may cancel the meeting the week before and resume with the regular scheduled meeting on October 22, 2015. Mr. Nelson seconded the motion, which carried unanimously.

8. Motion for Reconsideration – Tracey Perlman

1. Case No. OIE – 2014-8 – Whitesell Funeral Home, FE 684

Ms. Perlman stated that staff has received a Motion for Continuance to the next meeting in this matter, which has been granted.

9. Disciplinary Hearing – Tracey Perlman

1. Case No. OIE – 2014-43 – Michael A. Glenn, FD 2175

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

Mr. Gary Frost, of All & Frost, LLC, Union, SC represented Mr. Glenn.

Ms. Perlman presented her case for the record.

Witnesses for the case are: Anita McMillian and Michael A. Glenn.

On or about June 16, 2014, Complainant contacted Respondent to make arrangements for her recently deceased father. Complainant contacted the Respondent to pick up the decedent and handle the arrangements. Complainant hoped to have the funeral and burial take place on June 21, 2014.

On or about June 18, 2014, Respondent and Complainant met at the funeral home to discuss specifics regarding the arrangements. Complainant asked for a breakdown of costs for the funeral service, but Respondent did not provide it. Respondent also failed to obtain a written contract with the Complainant regarding the decedent.

Respondent finally advised Complainant that the cost of arrangements for the decedent was \$8,426.70. Complainant told Respondent not to go forward with the service since she could not afford it. Respondent took the body back to the funeral home even though the grave had been already opened.

Complainant repeatedly attempted to contact Respondent regarding the decedent, yet Respondent failed to return Complainant's phone calls and provided updates regarding the decedent. One month after the unauthorized funeral service was conducted that decedent had yet to be interred. The death certificate for the decedent also had not been filed.

Ms. Perlman stated that Respondent violated Section 40-19-110(1)(9), 40-19-290(A), 40-19-290(D), 40-1-110(1)(f), 40-1-110(1)(g), 40-1-110(1)(l), and 61-19(18)(a).

Break

Mr. McKnight stated that the Board will take a 10 minute break.

Executive Session

MOTION

Mr. Nelson made a motion that the Board enter into executive session for legal advice. Mr. Brown seconded the motion, which carried unanimously.

Return to Public Session

MOTION

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

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

MOTION

Ms. Cooper made a motion that the Board permanently revoke Mr. Glenn's funeral director license, a public reprimand, pay a penalty of Three Thousand Five Hundred Dollars (\$3,500) and One Hundred Eight Dollars (\$180) for the investigation to the Board. Mr. Temples seconded the motion, which carried unanimously.

2. Case No. OIE – 2014-30 – Jackson & McGill Funeral Home, FE 244
3. Case No. OIE – 2014-73 – Jackson & McGill Funeral Home, FE 244
4. Case No. OIE – 2014-69 – Henry McGill, Jr., FD 1333

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

Mr. McGill represented himself & his daughter, Poiette M. Bromell, in this matter.

Case No. OIE – 2014-30

On March 20, 2013, an Inspector from the South Carolina Department of Labor, Licensing, and Regulation (LLR) conducted a routine inspection at Respondent's-Establishment. During this visit, the Inspector noted that the General Price List (GPL) presented to the public was incomplete and there was damage to the floor. Respondent-Establishment failed this inspection.

On June 19, 2013, LLR Inspector Adams conducted a re-inspection at Respondent-Establishment. During this visit, the Inspector noted that the GPL presented to the public was still incomplete and there was damage to the floor still needing repair. Respondent-Establishment failed this inspection.

On September 12, 2013, LLR Inspector Adams conducted a re-inspection at Respondent-Establishment. During this visit, the Inspector noted that floor was now repaired. However, LLR Inspector Adams found that the eye wash station/shower head was dirty and noticed there was mold in the prep room as well as water leaks that needed to be repaired. Respondent-Establishment failed this inspection.

On February 19, 2014, LLR Inspector Adams conducted a re-inspection at Respondent-Establishment. During this visit, the Inspector noted the mold was still present in the prep room and noted a hole in the wall. Respondent-Establishment failed this inspection.

On July 23, 2014, LLR Investigator Yolanda Rogers conducted a re-inspection at Respondent-Establishment. During this visit, the Investigator noted the mold was still present in the prep room and noted a hole in the wall. Respondent-Establishment failed this inspection.

Case No. OIE – 2014-73

Respondent-Director is the owner of the Funeral Establishment where the failed inspections of Respondent-Director knowingly, willingly, and intentionally allowing the continued violations of the state or federal law or regulation is concerning funeral establishments as evident through all the failed inspections that took place in 2013-2014.

Ms. Perlman stated that on both cases Respondent violated Section 40-1-110(1)(f), 40-1-110(1)(c), 40-19-110(14), 57-10(B)(2), and 57-15(2).

Case No. OIE – 2014-69

Respondent serves as the owner/licensed funeral director for Jackson & McGill Funeral Home in Marion, South Carolina.

On or about September 11, 2008, Complainant's mother contacted Respondent to make arrangements for her recently deceased brother, specifically funeral services and a cemetery plot. On the same day, Complainant's mother purchased the cemetery plot beside her brother to be used when she died.

On or about February 28, 2014, the Complainant's mother passed. Complainant contacted Respondent to retrieve the maker to lay the decedent in the cemetery plot beside decedent's brother. Respondent inquired where the body of the decedent was located, and Complainant advised him that it was at another funeral home. Upon learning that another funeral home had the body, Respondent would not allow decedent to be buried until Complainant paid an additional \$300.00 for the up-keep of the cemetery.

On or about March 4, 2014, the Complainant paid the additional \$300.00 to bury decedent beside decedent's brother, but did not agree with the additional fee.

On or about June 19, 2014, Complainant filed a complaint against Respondent with the South Carolina Department of Labor, Licensing, and Regulation (LLR). LLR assigned Investigator Yoland Rogers to investigate the allegations in the complaint.

On or about July 23, 2014, Investigator Rogers interviewed the Respondent regarding the Complaint. During her visit, Investigator Rogers requested a copy of the General Price List (GPL) to determine if the up-keep price was listed. Respondent did not have a GPL to disperse at the time since they were in the process of updating the old GPL, but provided an office copy of the old GPL and a rough draft of the new GPL. The cemetery up-keep price is not listed in either GPL.

Respondent admitted to Investigator Rogers that he sold the plot to decedent and charged \$300.00 for the up-keep of the cemetery. Respondent further admitted that he did not charge decedent's brother the up-keep fee because decedent's brother used the Respondent's funeral services, not that of the competitor. Respondent offered to refund the \$300.00 if the family agreed to remove the body from his cemetery stating, "if the family wanted the enemy to come into his cemetery and dig into his soil, he was going to charge them".

Ms. Perlman stated that Respondent violated Section 40-19-110(1), 40-1-110(1)(f), 40-1-110(1)(1), 40-19-290(A), and 40-19-290(D).

Executive Session

MOTION

Mr. Nelson made a motion that the Board enter into executive session for legal advice. Mr. Temples seconded the motion, which carried unanimously.

Return to Public Session

MOTION

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

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

MOTION

Ms. Cooper made a motion that the Respondent's license be Publicly Reprimanded and a one (1) probation for Mr. McGill. Respondent to pay a Two Hundred Sixty Dollars and Seventy Five Cents (\$260.75) to the Board for investigation costs since the Respondent has complied with the investigation. If the funeral home fails any inspections they must appear before the Board for further sanctions. Mr. Horton seconded the motion, which carried unanimously.

New Business

Application Hearings

10. New Funeral Home or Ownership change

1. Charleston Cremation Center LLC – Marcus Allan Yocum
2. Charleston Cremation Center LLC Crematory – Marcus Allan Yocum

Ms. Holleman stated that Charleston Cremation Center, LLC is the proposed owner with Mr. Yocum as manager.

Mr. Brown asked if Mr. Yocum has read and understands the SC laws and regulations as stated on the application that has been submitted.

Mr. Yocum stated he has read and understands the SC laws and regulations.

MOTION

Mr. Nelson made a motion that the Board approve the application with Mr. Yocum as manager, pending passing inspection. Mr. Horton seconded the motion, which carried unanimously.

3. Cooner Funeral Home – Billy Albert Williams, III

Ms. Cooper and Mr. Temples both know Mr. Williams and will recuse themselves if need be. But they both stated they can remain impartial in this matter.

Mr. Williams stated that it will not be necessary for them to recuse themselves.

Ms. Holleman stated Mr. Alfred Ken Formby left the funeral home to his daughters, Kay F. Brinkley and Kimberly R. Formby when he passed away on July 25, 2001 but they failed to submit a change of ownership application to the Board. They did submit a change of manager application on September 11, 2001, naming Ms. Formby's husband, Mr. Raymond G. Derienzo, Sr., as manager.

Ms. Holleman stated Ms. Formby contacted board staff inquiring on what to do regarding manager change since her husband had passed away. This is when staff noticed that they had never submitted a change of ownership application in 2001.

Ms. Formby has purchased her sister's shares and is now sole owner of the funeral home. She is requesting an ownership change with Mr. Williams as manager.

Mr. Brown asked Mr. Williams if he has read and understands the SC Laws.

Mr. Williams stated he has read them and understands.

MOTION

Mr. Horton made a motion that the Board approve the application with Mr. Williams as manager, honoring the funeral home inspection on June 11, 2015. Ms. Cooper seconded the motion, which carried unanimously.

4. Keith Funeral Cremation Services LLC – James P. Keith

Ms. Holleman stated that this is a new funeral home and Mr. Keith is the proposed owner and manager.

Mr. Keith has been licensed in South Carolina since August 15, 2014, and Mr. Keith currently still has an active license in Pennsylvania which was issued in 1995.

Mr. Horton asked Mr. Keith if he has read and understands the SC Laws. Mr. Keith stated he has.

MOTION

Mr. Horton made a motion that the Board approve the application with Mr. Keith as manager, once he has been licensed for one (1) year and pending passing inspection. Mr. Temples seconded the motion, which carried unanimously.

5. Lee Funeral Home – Parent – Allen E. Lee

6. Lee Funeral Home – Crematory – Allen E. Lee

Mr. Horton stated he will recuse himself if need be since he knows Mr. Lee. Mr. Lee stated that will not be necessary.

Mr. Lee stated that he is selling his funeral home and crematory to SCI (South Carolina Funeral Services, Inc.) but he will remain manager of both facilities.

Mr. Temples asked if the funeral home sales preneed. Mr. Lee stated that yes they do.

MOTION

Mr. Temples made a motion that the Board approve the application with Mr. Lee as manager, pending passing inspection and a favorable audit letter from Consumer Affairs. Mr. Nelson seconded the motion, which carried unanimously.

11. Consideration for ownership/manager change

1. Webb-Settles Funeral Home – Tanoka Acker

Mr. Theo W. Mitchell, of Law Office of Theo Mitchell, LLC, Greenville, SC, represented Ms. Acker.

Ms. Holleman stated that Ms. Acker is applying for ownership/manager change. Ms. Acker completed her apprenticeship under Mr. Marcus Brown and has only been licensed since June 8, 2015, which means she does not meet the requirements for manager since she must have a license for a year prior to being manager.

Mr. Mitchell stated that Ms. Acker is the sole owner of Webb-Settles Funeral Home so she meets the requirement to be manager per statute Section 40-19-270(E) When more than one person proposes to engage in the operation of a funeral establishment or crematory as a partnership or a **corporation, one of the partners or corporation officers must be a licensed funeral director** or the corporation or partnership must employ a full-time manager.

Executive Session

MOTION

Mr. Nelson made a motion that the Board enter into executive session for legal advice. Mr. Temples seconded the motion, which carried unanimously.

Return to Public Session

MOTION

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

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

MOTION

Ms. Cooper made a motion that the Board deny Ms. Acker's request since the Board doesn't have the authority to waive the one (1) year licensure requirement. Mr. Temples seconded the motion, which carried unanimously.

12. Consideration to accept apprenticeship and SC Law exam about/over 5 years

1. Ivori Louise Henryhand – Funeral Director

Mr. Horton and Mr. McKnight stated they know the Herynyhand's and will recuse themselves if need be.

Ms. Cooper stated that she went to embalming school with Mr. Herynyhand, Ms. Henryhand's father/supervisor, and will recuse herself if necessary.

Ms. Henryhand state it will not be necessary for anyone to recuse themselves.

Ms. Holleman stated that Ms. Henryhand completed her apprenticeship in 2009. She has taken the exams since her apprenticeship expired. Ms. Henryhand passed the State Law exam on July 26, 2010, and passed the State Funeral Director exam on June 17, 2005. The Law exam has not been re-written or changed since March 19, 2010. Ms. Henryhand is applying for a Funeral Director license. Ms. Henryhand requests the Board accept her completed apprenticeship and the State Law exam score so she may be licensed as a South Carolina Funeral Director.

MOTION

Mr. Horton made a motion that the Board grant Ms. Henryhand's request. Ms. Cooper seconded the motion, which carried unanimously.

Mr. Horton left at 4:33 p.m. because he had a service to attend.

13. Funeral Director

1. Albert Joseph Frank – Funeral Director

Ms. Holleman stated that Mr. Frank is requesting consideration to accept his education.

Ms. Holleman stated that Mr. Frank has completed his apprenticeship and is now applying for a Funeral Director license. Mr. Frank went to Pensacola Christian College, which is not a regionally accredited college or university as it should be as outlined in Regulations 57-05 "successful completion of a one year course in an accredited mortuary college, **successful completion of a bachelor's degree from a regionally accredited college or university**".

Ms. Holleman informed the Board that Mr. Frank received his Bachelor's Degree in 2003 from Pensacola Christian College and the school has been accredited through Transnational Association of Christian Colleges and Schools (TRACS) since October 29, 2013.

Executive Session

MOTION

Mr. Nelson made a motion that the Board enter into executive session for legal advice. Mr. Temples seconded the motion, which carried unanimously.

Return to Public Session

MOTION

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

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

MOTION

Ms. Cooper made a motion that the Board accept Mr. Frank's education and allow him to sit for the required exams. Mr. Nelson seconded the motion, which carried unanimously.

14. Merchandise Sales Question

Ms. Holleman stated that staff has received a question inquiring if a funeral home company has a cemetery and the funeral home and cemetery share a building for both business. The funeral home would like to have cemetery staff be the staff that the funeral customers see when the customers come to pick up cremains. These cremains will be mostly from direct cremations, and they will generally be in the plain cardboard or plastic boxes, not urns or nicer boxes for cremains. The cemetery staff does not consist of licensed funeral directors. The cemetery staff will then try to sell the customer an urn or more expensive cremation box other than what the customer paid for with the cremation and would try to sell the customer various memorization options (like burial, columbarium niches, etc.). Again, the cemetery and funeral home share a building, so they will be in the same place. The cemetery is not a retail sales outlet.

Ms. Holleman state she doesn't think this is a good idea because it is potentially confusing for the customers, and the cemetery staff should not be selling funeral merchandise since the cemetery staff is neither made up of licensed funeral directors nor is the cemetery licensed as a retail sales outlet. The sale of funeral merchandise is covered under the practice of funeral service in Section 40-19-20(18)(d), but the Board of Funeral Service does allow unlicensed people to sell funeral merchandise at need through retail sales outlets. She stated she is also afraid that the customer, who does not know the cemetery staff can only discuss funeral arrangements and services with a licensed person, may end up asking for advice on funeral service and arrangements, and may be given this information or counseling on how to plan a funeral by an unlicensed person.

Ms. Cooper suggested that the licensee appear before the Board to propose the question or they may email the specific question explaining on the funeral side, cemetery side and cremation side.

Ms. Holleman asked if someone owns a facility to sale urns only do they need to be licensed as a Retail Sales Outlet.

Mr. Temples, Mr. Nelson, and Ms. Cooper all stated they someone does not need to be licensed as a Retail Sales Outlet to sell urns only.

15. Public Comments (no votes taken)

No public comments at this time.

16. Adjournment

MOTION

Mr. Temples made a motion the Board adjourn. Mr. O'Steen seconded the motion, which carried unanimously.

The July 23, 2015, meeting of the SC Board of Funeral Service adjourned at 5:01 p.m.

The next meeting of the SC Board of Funeral Service is scheduled for August 12, 2015.