

Arkansas State Board of Embalmers and Funeral Directors
Board Meeting

MINUTES

Tuesday, March 12, 2013, 9:00 am
101 East Capitol, Little Rock, AR
Conference Room C

1. President James Terry Woodard called the meeting to order. Members present were: Vice President Bobby Thurman, Eddie Hawkins, Mary Ann Allen, Jerry Adams, and Bobby Burns. Members absent were: Patricia Roberts. Staff that were present: Amy Goode, Executive Secretary, Boyd Heath, Inspector, and Mark Ohrenberger, Board Counsel.

2. **Hearings**

a. **In the Matter of: Daniel Ahrens, Applicant for Embalmer and Funeral Director Apprenticeships**

Assistant Attorney General Peggy Johnson served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Amy S. Goode, Executive Secretary appeared as the Board's witness.

Daniel Ahrens appeared on his own behalf.

Court Reporter Sharon Hill entered documents into the record

Hearing officer Johnson explained the hearing would follow the Administrative Procedures Act and allowed Attorney Ohrenberger to enter Board's compilation exhibit 1 and compilation exhibit 2 from Mr. Ahrens since there were no objections from either party.

Attorney Ohrenberger opened with a brief statement. We are here to today for the application to start an apprenticeship in the science of embalming and business of funeral directing. As you will see from compilation exhibit 1 the first 3 pages are the Notice of Hearing outlining the reason for the hearing today. Mr. Ahrens has a prior drug related felony conviction from 2008. For that reason, Mr. Ahrens did have to appear before the Board today. Mr. Ahrens did self-disclose his conviction on his applications for his apprenticeship. He has completed a 3 ½ month boot camp program through the Arkansas Department of Corrections.

The letter on file explains the experience that Mr. Ahrens had during his time in boot camp. This is the final step for him to be allowed his license as a funeral director and embalmer. He was arrested for distribution of marijuana and cocaine in July 2007 and was convicted in January 2008. He is still on parole with Community Correction until January 2018. He can petition to have it expunged from record after 5 years if he stays out of trouble, since it was his first offense and he was eligible for Boot Camp. He completed drug rehabilitation prior to his conviction.

Motion made by Thurman to find factual allegations 1-5 be found true, seconded by Burns, all in favor. Motion carried.

Charges C. 1

Motion made by Thurman to approve Mr. Ahrens application for apprenticeship in the business of Funeral Directing and science of embalming, seconded by Adams, all in favor. Motion carried.

b. In the Matter of: Nicholas Robertson, Applicant for Funeral Director Apprenticeship

Assistant Attorney General Peggy Johnson served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Amy S. Goode, Executive Secretary appeared as the Board's witness.

Nicholas Robertson appeared on his own behalf with Jan Jackson Maris as a character reference.

Court Reporter Sharon Hill entered documents into the record

Hearing officer Johnson explained the hearing would follow the Administrative Procedures Act and allowed Board's compilation exhibits 1 that consists of 10 pages will be entered into the record since there were no objections from Mr. Robertson.

Attorney Ohrenberger opened with a brief statement. The matter we are here on today is the funeral director apprenticeship application of Mr. Robertson. Mr. Robertson presented his application to the Board and self-disclosed that he had a prior felony conviction from December 2000. That conviction has since been expunged, in which there is supporting documentation in the exhibit. Since Mr. Robertson was previously convicted of a felony conviction it is by rule that Mr. Robertson must appear before the Board.

Robertson explained that he has had no other issues, since that time not even a speeding ticket. Has completed his probation and is currently not on parole or supervision. He has been sober since 2004 and has not even seen meth since that time. He is currently the shift supervisor at Centocio. He will be serving his apprenticeship if accepted at Thompson-Wilson Funeral and Jackson Funeral Home. Mr. Robertson requested of the Board to allow for him to serve his funeral director and embalmer apprenticeship.

Ohrenberger stated that to add to the factual allegations in paragraph 1 to include science of embalming and to charges C.1.

Motion made by Burns to find factual allegations 1-5 with the addition to paragraph 1 to include the science of embalming, seconded by Thurman, all in favor. Motion carried.

Charges C.1 was amended to include the science of embalming.

Motion made by Thurman to approve Robertson's application to serve an apprenticeship in the business of funeral directing and science of embalming, seconded by Hawkins, all in favor. Motion carried.

3. Administrative

Motion made by Burns, that the Board moves to approve the February 2013 minutes with correction to Mr. Woodard's name, seconded by Thurman, all in favor. Motion carried.

Motion made by Hawkins, to approve the February 2013 DF&A Trial Balances as printed, second by Allen, all in favor. Motion carried.

4. Complaints

- a. Karanya Dudley V. Lyles Funeral Home, Roy Lyles, FD and Manager-** The Board staff has made repeated attempts by phone to reach Ms. Dudley and also wrote a letter requesting she

contact the Board to update her phone number to no avail. Executive Secretary even went through previous correspondence Ms. Dudley had provided to attempt to contact the complainant. Therefore, after repeated attempts the Board made the following motion. Motion made by Allen to dismiss, seconded by Adams, all in favor. Motion carried.

- b. **Saffle V. AR Funeral Care** – Executive Secretary updated the Board they had tabled this from the previous meeting awaiting further complaints. We have not received any further complaints as of today's date. The local Hospice in the area where Board member Bobby Thurman is from had referred a family to AR Funeral Care. The family did have a problem with the funeral home losing the body or cremains. The substance of the complaint from Saffle is difficult to investigate. Ohrenberger stated if there is any specific investigation that the Board would like the staff to do they could request that or they could wait until further information is received from other families. Motion made by Hawkins to table until next meeting, seconded by Allen, all in favor. Motion carried.
- c. **Sarantos and Tweedle V. Pharr Funeral Home, Wendy Pharr, Owner – Case #13-03** – The Board discussed the complaint and did not find any violations by Pharr Funeral Home. The funeral home did what was instructed by the next of kin and released the body when they received authorization. Motion made by Hawkins to dismiss complaint for no rule violations, seconded by Allen, all in favor. Motion carried.
- d. **Hearington V. Hardwicke Funeral Home, Kathleen Nicholas-Owner/Manager-Case#13-04** – After the Board's discussion there was nothing in the complaint that resulted in a rule violation. Motion made by Burns to dismiss for no violations, seconded by Allen, all in favor. Motion carried.
- e. **Fells V. Gunn Funeral Home – Derrick Gunn-Manager/Funeral Director** – The Board after having reviewed the above captioned complaint determined there was some clarification that needed to be made. The documents the family provided and the statement of funeral goods and service did have some price list discrepancies. Motion made by Hawkins to set the matter for hearing for clarification, seconded by Burns, all in favor. Motion carried.

5. **Ferrell Beard – Lifetime license request**

Executive Secretary explained to the Board that in their packets there was some email correspondence between Mr. Beard and the Executive Secretary. Mr. Beard had let his license lapse for a period of fifteen (15) years due to illness. Motion made by Burns that Mr. Beard be informed that he lacks 15 years of meeting the requirements to be eligible to receive a Lifetime License, seconded by Adams, all in favor. Motion carried.

6. **Board Discussion**

Woodard inquired of the Board Attorney about a recent Board Member Training that several members attended at the convention this year. At that training it was discussed that during deliberations that the audience be asked to leave, so there is no retaliation against any board member. Ohrenberger explained that due to the Arkansas Open Public Meetings law and the Freedom of Information Act that was not an option in Arkansas. Prior to the meeting being called to order several other states will mention they do not allow camera, video, or recorders in the meeting. Ohrenberger explained that also was allowed under the same laws. There is a published Attorney General opinion on that exact question. Anyone can attend the meeting and record the meeting if they desire.

It was brought up by the Board that there are times when they were affected by influences around them on particular cases. Board member Burns inquired of the attorney how they should handle situations that arise when they have prior knowledge of a case. He mentioned it perhaps best to remove himself or herself from the discussions. Ohrenberger stated that yes it would be the best practice to recuse and have it reflected for the record prior to the hearing. HB1786 addresses some of the Board member concerns. It brings into focus the conflict of interest matter and if it passes it will clarify some of these items. What the Board staff will do if this passes is put together a form, because it does require written statement of what the substance of the conflict is.

Executive Secretary did pass out the exam results received from the Conference from January-February 2013. Explained she would need the copies back to shred since it did contain social security numbers.

Chairman and vice chairman did discuss with the attorney that in case when an individual appears before the Board like today to request approval for apprenticeship program; that if they are on probation to have the apprenticeship in a probation period to run concurrently.

- a. **Broussard Funeral Home** - We received an email from the president of Stillwell Cemetery in Clarksville, AR. Broussard Funeral Home according to that email buried the person in the wrong place. The Board was confused how the funeral home could have went out and staked the grave and had the grave dug then later the cemetery come back and state they buried the person in the wrong place. Executive Secretary explained the issue has it had been explained by the president. That he had explained to the funeral home where to bury and they were aware. The Board did not believe this was a matter they needed to be involved in at the present time. The Board has no jurisdiction over cemeteries.
- b. **Arkansas Hospice** – Executive Secretary explained to the Board the call she had received from the compliance officer at Arkansas Hospice. He had been very upset and felt our statute did not apply to them. Ohrenberger stated that he was correct the statute did not apply to them specifically, but that what we were trying to communicate with them is that we are hearing that some funeral homes may be making soliciting agents out of your employees and help us enforce our statute. The compliance officer wanted more information about where the issues were coming from, he was extremely upset that he felt they were being accused of something illegal. During the course of the meeting, it was discovered by the staff that Arkansas Hospice is only one organization in the hospice industry. The Board asked the attorney to communicate with the Health department to help us communicate our concerns.
- c. **Board issued complaints** – Executive Secretary explained to the Board, we have had a funeral home that had renewed their establishment license delinquent and we were notified by the health department they had actually filed death certificates prior to the health department receiving the notice from our office to not accept death certificates from that funeral home. They had received an email to not accept death certificates from all delinquent funeral homes. This particular funeral home was the only funeral home that had actually filed death certificates prior to renewing their license. It was discussed if a letter of reprimand could be sent, but the attorney informed the Board they could not determine there had been a violation without a formal hearing that they have violated the rules absence of hearing. The Board can after issuing the complaint can issue a reprimand instead of hearing if the party will accept that in lieu of a hearing. Motion made by Burns, to issue a board complaint against Dial and Dudley Funeral Home for operating a funeral home without proper license, seconded by Adams, all in favor. Motion carried.
- d. **Attorney Updates**
Effie Collins Case - Mark Ohrenberger updated the Board that there were three (3) matters to report on a federal, state, and a claims commission case. The state case is that the Board had a hearing in May 2011, whereas Ms. Collins wanted her licenses reinstated and the Board denied that. She appealed in circuit court and he argued that back in November 2012. The judge in Mississippi County upheld the Boards order. Ms. Collins appealed that to Arkansas Court of Appeals which is the last stop. She was to have had the record filed with the Court of Appeals in February. It was before the last meeting he reported that her attorney had filed a motion asking for additional time to file record because the circuit clerk there had not had time to get the record in order. Ohrenberger had received a transcript of the hearing, so that should be ready to move forward in the next week or two. The process will be in about 45 days from now she will have to submit her brief to the Court of Appeals saying why both the Mississippi Circuit Court and this Board was wrong. Ohrenberger will have 30 days to respond and the Ms. Collins will have 15 days to reply then that should be the end of it. The Federal lawsuit against the Board is still pending. Colin Jorgenson filed a motion to dismiss the lawsuit, the court has not ruled to dismiss the case, at this time the Board is at the court's mercy.

The most recent case is the case with the Arkansas State Claims Commission. You can only proceed against the agency. She has filed a complaint with them against the Board and it also been assigned to Colin Jorgenson for handling the litigation. Colin filed a motion to dismiss this

past week. State Claims Commission is arm of the legislature it is set up to pay any just debts of the State. The rules of procedure and rules of evidence do not apply. That Commission does not have any authority to order the Board to do anything but to pay money. The appeal from there is before the Arkansas Legislature. You can only go to the Claims Commission if your case is barred from solvent immunity and until the Federal court rules for solvent immunity or not it will sit with the Claims Commission.

7. **Meeting Dates**

- a. Next meeting set for May 28, 2013 @ 9am and Annual meeting will be at 1:00pm.
- b. Board also discussed holding a strategic planning committee meeting to discuss changes that need to be made. The Board will have time to go through the rules and changes that need to be implemented. Executive Secretary stated she would research with other Boards how and when they hold their strategic planning meetings.
- c. President Woodard inquired from the attorney if prayer was allowed in the meeting. Ohrenberger stated it was unconstitutional to hold prayer at a public meeting.

8. **Adjournment**

- a. Motion by Thurman to adjourn, second by Allen, all in favor. Motion carried.