

Arkansas State Board of Embalmers and Funeral Directors  
Board Meeting

MINUTES

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

President James Terry Woodard called the meeting to order. Members present were: Vice President Bobby Thurman, Jerry Adams, Patricia Roberts, Bobby Burns and newest Board Member Ben Brazzel. Board members absent were: Mary Ann Allen. Staff that were present: Amy Goode, Executive Secretary, Boyd Heath, Inspector, Katina Hodge, Board Counsel, and Thomas Robinson, law clerk.

1. **Introduction of the Board**

2. **Oral Examinations**

- a. **Bryan Moore**
- b. **Cynthia Medlock**
- c. **Andres Gonzalez, Jr.**
- d. **Kimberly Ann Buck**

All oral examinations were administered.

3. **License Reinstatements**

- a. Gregory Patterson – Mr. Patterson allowed his funeral director and embalmer licenses to lapse in 2008. He worked for Baptist Health Medical Center and was responsible for all the death calls in the middle of the night. Also embalmed at Ruebel and has been in and around the business since he was 16 years old. Baptist Health in 2008 decided to dismantle that department, in which you had to hold at least a funeral directors license to have that job. They gave him the opportunity to go nursing school and he's been doing nursing for the last few years. He would like the opportunity to be reinstated, because he misses the business. Motion by Brazzel to allow reinstatement of Mr. Patterson's funeral director and embalmer licenses after the payment of the accrued fees of \$920.00, seconded by Roberts. All in favor, motion carried.

4. **Hearings**

a. **In the matter of Dial & Dudley Funeral Home**

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

Assistant Attorney General Kat Hodge represented the Board.

Law Clerk Thomas Robinson

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

Gina Renaye Dial and James Dial appeared on their own behalf.

Court Reporter Sharon Hill entered documents into the record

Hearing officer Johnson explained that the hearing would follow the Administrative Procedures Act and allowed Attorney Hodge to enter Board's exhibit compilation 1 of 10 pages and there were no objections from the Dial's.

Attorney Hodge had a brief opening that we here today on the matter of Dial & Dudley's failure to renew their license in a timely manner that was due on December 31, 2012 and they did not pay those license renewal fees until January 23, 2013. The Board office received notice from the Health Department that death certificates had been filed during the time prior to renewal. Hodge also explained that the complaint was not answered in the fifteen day requirement. Operating an establishment without proper licensure and not answering a complaint are violation of the Board's law.

Mrs. Dial opened with that due to health issues they had failed to renew their license. She had been in the hospital with pneumonia and the Mr. Dial had been involved in a serious car accident in October 2004. He has multiple surgeries to repair and trying save his fingers. After several attempts to save them that had to amputate them during the time licenses were due.

Mrs. Dial first wanted to say she was sorry, that life had got in the way. She also stated that all license renewals were ready and on her desk, but she was in the hospital during that time. The death certificates that were filed were filed by Darrell Drennan whom does hold a current license. Executive Secretary explained that she had emailed correspondence between April 1 and April 3, 2013. The three services were cremations. Mr. Dial stated that they were a mom and pop operation. The family's they service are their top priority.

Executive Secretary wanted to clarify that during a phone conversation that took place after the May 21, 2013 meeting, that I informed Mrs. Dial that the matter had been set hearing; so there was no reason to answer the complaint. The time to answer the complaint had already expired prior to the meeting on May 21<sup>st</sup> that had originally been scheduled for May 28, 2013.

Motion made by Thurman that the factual allegations A1-A7 be found true, seconded by Burns. All in favor, motion carried.

Motion made by Roberts that the charges C1-C2 be found true, seconded by Brazzel. All in favor, motion carried.

Motion made by Burns to issue a letter of reprimand, seconded by Adams. All in favor, motion carried.

#### **FINDINGS OF FACT**

A.1. Respondent Dial & Dudley Funeral Home is currently licensed as a Funeral Establishment Type A in the State of Arkansas. Respondent's license was first issued on April 25, 2008.

A.2. Respondent's Funeral Establishment license for licensure year 2012 expired on December 31, 2012, and Respondent failed to renew its license until January 23, 2013. As a result, Respondent did not possess a valid Funeral Establishment license from January 1, 2013 to January 22, 2013.

A.3. During the period of time from January 1, 2013 to January 22, 2013, Respondent provided funeral services in connection with the following three decedents:

- a. Deceased R.N., who died on January 9, 2013;
- b. Deceased D.H., who died on January 1, 2013; and
- c. Deceased M.H., who died on January 2, 2013.

A.4. On or about March 13, 2013, the Board sent a formal complaint, via certified mail, to Respondent in connection with the allegations described in paragraphs A.1 through A.3 above. Respondent, through its representative Joyce Dudley, received and signed for the certified mailing of the Board complaint on March 14, 2013.

A.5. The Board received no response to its complaint whatsoever from Respondent until April 3, 2013 – more than fifteen days after Respondent received the complaint – when Reynae Dial, on behalf of Respondent, responded to a follow-up email about the complaint from the Board's Executive Secretary.

A.6. In her April 3, 2013 email on behalf of Respondent, Ms. Dial indicated that she was not sure how to respond to the Board complaint and asked the Board's Executive Secretary for assistance. The Board's Executive Secretary responded to that email on the same day, recommending to Ms. Dial that she should answer the complaint to the best of her ability.

A.7. As of June 11, 2013, the Board had not received a response to the complaint from Respondent.

## CONCLUSIONS OF LAW

C.1. The facts set forth in paragraphs A.2 through A.3 establish that Respondent Dial & Dudley Funeral Home is guilty of operating or maintaining a funeral establishment in the State of Arkansas without a license. Respondent therefore violated Ark. Code Ann. § 17-29-311(e) and is guilty of three separate violations of this statute, one for each funeral service conducted during the time period when Respondent did not possess an active, valid license.

C.2. The facts set forth in paragraphs A.4 through A.7 establish that Respondent Dial & Dudley Funeral Home is guilty of failing to answer a complaint within the fifteen-day time period. Respondent therefore violated Ark. Code Ann. § 17-29-311(a)(18).

### **ORDER**

Based upon the testimony and evidence admitted during the hearing, including testimony concerning medical hardship suffered by the Respondent/Managers, the Board determined that Respondent should be issued a letter of reprimand for the violations found in this order.

#### ***b. In the matter of Arkansas Funeral Care***

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

Assistant Attorney General Kat Hodge represented the Board.

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

LeRoy Wood appeared on his own behalf.

John Harris and Terry Pipkin appeared on behalf of Buie Funeral Home

Court Reporter Sharon Hill entered documents into the record

Hearing officer Johnson explained that the hearing would follow the Administrative Procedures Act and allowed Attorney Hodge to enter Board's exhibit compilation 1 of 11 pages there was no objection from Mr. Wood.

Hodge had a brief opening informing the Board that we were here on the matter of Arkansas Funeral Care and Buie Funeral Home concerning a violation of Rule XIV. Buie Funeral Home maintains they provided the initial services for the family, but that the family decided to use Arkansas Funeral Care. Buie Funeral Home relied on Board's Rule XIV to seek reimbursement for the transportation and embalming before being received by Arkansas Funeral Care.

Le Roy Wood had two documents for Attorney Hodge to review. It was a statement from Glenda Beard that took the call from the family to make the removal. Hodge had no objection and it was entered into the record as Respondent Exhibit 1. The other document was a letter from the family and Ms. Johnson stated Ms. Hodge would have to review. Hodge allowed the letter to be entered into the record as Respondent Exhibit 2.

Motion made by Thurman to find factual allegations A1-A7 true, seconded by Roberts. Adams abstained, all remaining members were in favor, motion carried.

Motion made by Thurman to find charge C1 true, seconded by Roberts. Adams abstained, all remaining members were in favor, motion carried.

Motion made by Thurman to issue a civil penalty in the amount of \$1,500 against AR Funeral Care to paid within 30 days; the Board will forgive the civil penalty if office receives proof of payment of \$1,440 to Buie Funeral Home. Adams abstained, all remaining members were in favor, motion carried.

### FINDINGS OF FACT

A.1. Respondent Arkansas Funeral Care, LLC is currently licensed as a Funeral Establishment Type A in the State of Arkansas. Respondent was so licensed at all times relevant to the matters addressed herein.

- A.2. On or about February 16, 2013, complainant Buie Funeral Home, a licensed funeral establishment, was engaged to remove the body of the deceased Jimmy Lunsford from the hospital where Mr. Lunsford expired and to transport the body to the Buie Funeral Home location in Sheridan, Arkansas.
- A.3. In addition to picking up and transporting the body, Buie Funeral Home also embalmed the body of the decedent.
- A.4. The family of the deceased ultimately decided to use Respondent, rather than Buie Funeral Home, as the servicing funeral home.
- A.5. On or about February 17, 2013, a representative of Respondent picked up the body of the decedent from Buie Funeral Home. Respondent did not make payment to complainant Buie Funeral Home for any of its costs at the time Respondent removed the body from Buie Funeral Home.
- A.6. On February 28, 2013, complainant Buie Funeral Home sent documentation of its charges to Respondent and requested Respondent to make payment within five business days.
- A.7. As of June 11, 2013, the Respondent has not made payment to complainant Buie Funeral Home for any portion of Buie's charges for the services provided in connection with the removal, transportation, and embalming of the decedent.

#### **CONCLUSIONS OF LAW**

C.1 The Findings of Fact as set out above constitutes a violation of Rule XIV of the Rules and Regulations of the Arkansas State Board of Embalmers and Funeral Directors. Respondent's violation of a Board Rule constitutes a violation of Ark. Code Ann. § 17-29-311(a)(10).

#### **ORDER**

In light of the violations found in this order, the Board imposes a civil penalty on the Respondent in the amount of \$1,500, which must be paid to the Board within thirty days of the date of this order. However, the Board will waive imposition of the civil penalty if Respondent pays to Buie Funeral Home restitution in the amount of \$1,440

#### ***c. In the matter of Bobby Acklin, Applicant for Funeral License Reinstatement***

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

*Assistant Attorney General Kat Hodge represented the Board.*

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

*Bobby Acklin appeared on his own behalf.*

*Court Reporter Sharon Hill entered documents into the record*

Hodge explained this was a rather large exhibit, lots of historical information. Essentially, Mr. Acklin's license was suspended in 2005 indefinitely; concerning two issues one on the manner of how the funeral home Acklin was manager handled the cremains of Benny Doss. The other issue was how N. B. Carter was dissolving and the Board had concerns that it was not being closed down properly.

Mr. Acklin thanked the Board for allowing him to be there; that he had tried to contact the family about the cremains, but the never came to get them. That's what he recalled. No money was owed. He brought the cremains to the hearing.

Motion made by Brazzel to allow the reinstatement of Mr. Acklin's funeral directors license, seconded by Roberts. Adams opposed, remaining board members were in favor. Motion carried.

#### **FINDINGS OF FACT**

1. Applicant has submitted a request to the Board to have his Funeral Director's license reinstated.
2. On December 5, 2005, Applicant, Bobby Acklin, appeared before the Board at a hearing concerning a complaint, stemming from services arranged on behalf of Benny Dean Doss.
3. At the December hearing, members of the Doss family testified (1) that the Doss family met with an individual who identified himself as Bob Acklin (the Applicant) at N.B. Carter Funeral Home to discuss service arrangements for Benny Dean Doss; (2) that as a part of the arrangements Mr. Doss was to be cremated; (3) that sometime after the May 2005 funeral, N.B. Carter Funeral Home ceased doing business; and (4) that the Doss family had not been able to reach Applicant and had not yet received Mr. Doss's cremains.
4. Based on the testimony presented at the December 2005 hearing, the Board found that: (1) Applicant was the managing funeral director for Mr. Doss's funeral arrangements; (2) Applicant had failed to provide copies of Mr. Doss's death certificates in a timely manner, and (3) that Applicant provided Mr. Doss's "cremains" to the Doss family at the December 2005 hearing.
5. Following the hearing, the Board concluded that Applicant had failed to fulfill the needs and desires of the arrangers as to both services and merchandise. Accordingly, the Board found that Applicant violated Board Rule XIV-Funeral Services Practices by failing to timely provide copies of death certificates and by failing to timely deliver to the family Mr. Doss's "cremains."
6. As a result of the above findings and conclusions, the Board suspended indefinitely, pending resolution of issues concerning the closure of N.B. Carter Funeral Home and the possible utilization of unlicensed persons to make funeral arrangements with families.
7. Pursuant to Ark. Code Ann. § 17-29-311, the Board "may issue letters of reprimand or caution, refuse to issue a license or to renew a license, suspend or revoke any license for the practice of embalming or funeral directing or may place the holder thereof on a term of probation after proper hearing upon the finding the holder of the license to be guilty of acts of commission or omission, including but not limited to the following:

\* \* \*

- (2) Misrepresentations made or fraud committed as a holder of a license;
- (7) Allowing personnel unlicensed pursuant to this subchapter to execute contracts for funeral services;
- (8) Aiding or abetting an unlicensed person to practice embalming or funeral directing;
- (9) Violation of any provision of this subchapter and § 17-29-201, et seq.;
- (10) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;

#### **CONCLUSION OF LAW**

C.1 The Board may refuse to reinstate Applicant's Funeral Director's license based upon a finding that Applicant violated any of the above provisions, violated any of the Board's Rules and Regulations, and/or upon a finding that Applicant has not resolved the issues identified in the Board's previous findings of fact.

#### **ORDER**

The Board has determined that applicant's license should be reinstated.

#### ***d. In the matter of Kayla Nugent, an applicant for an apprentice funeral director and embalmer license***

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

Assistant Attorney General Kat Hodge represented the Board.

Kayla Nugent appeared on her own behalf.

Court Reporter Sharon Hill entered documents into the record

Hearing officer Johnson explained that the hearing would follow the Administrative Procedures Act and allowed Attorney Hodge to enter Board's exhibit compilation 1 there was no objection from Ms. Nugent. Responds Exhibit compilation 1 consisting of 4 letters were entered with no objection from Hodge.

Attorney Hodge had a brief opening to explain for the record the reason of the hearing on Ms. Nugent. Ms. Nugent is an applicant for an apprentice funeral director and embalmer license and self-reported on her applications that she had a felony conviction. She has a criminal history and should that history affect her ability to obtain license.

Ms. Nugent has completed her probation and fines in 2013. Sentenced in 2009 and released in 2011 and is currently not on any probation. Her parole officer wrote a letter of recommendation on Ms. Nugent's behalf.

Motion made by Thurman to allow Ms. Nugent to serve her funeral director and embalmer apprentice, seconded by Brazzel. All in favor, motion carried.

#### **FINDINGS OF FACT**

1. Applicant has submitted an application to the Board to apprentice in the business of funeral directing pursuant to Rule V of the Rules of the Arkansas State Board of Embalmers and Funeral Directors.
2. In making application to the Board to apprentice in the science of embalming and in the business of funeral directing, Applicant self-disclosed her past criminal convictions.
3. In July 2009, Applicant was convicted of Furnishing Prohibited Articles. According to correspondence submitted with her application, Applicant placed chewing tobacco, a cellular phone charger, and candy bars outside of a county jail, which permitted inmates to access the articles.
4. Applicant was sentenced to forty-eight (48) months probation.
5. While on probation, Applicant was charged with Residential Burglary. According to the correspondence submitted with her application, Applicant was driving a vehicle in which the passenger broke into a home. As a result, Applicant was sentenced to two (2) years' incarceration in the Arkansas Department of Community Correction.
6. Applicant served nine months in the Arkansas Department of Community Correction, and served the remainder of her sentence on parole. She completed her incarceration in November 2011 and completed her sentence in January 2013, which included payment of fines and completion of probation.
7. Though Applicant has submitted two applications to have her criminal record sealed, those applications have been denied.
8. Applicant's request is supported by letters from Jill L. Johnson, Director of Community and Corporate Training, and Krystie Williams, Parole Officer.
9. Pursuant to Ark. Code Ann. § 17-29-311, the Board "may . . . refuse to issue a license . . . for the practice of embalming or funeral directing or may place the holder thereof on a term of probation after proper hearing upon the finding the holder of the license to be guilty of acts of commission or omission, including the following: (1) Conviction of a felony."

#### **CONCLUSION OF LAW**

C.1 The Board may refuse to approve Applicant's application to apprentice in the business of funeral directing based on her felony conviction.

#### **5. *Administrative***

- a. Motion made by Burns to accept as written the minutes of the May 2013 board meeting, seconded by Roberts. All in favor, motion carried.
- b. Motion made by Burns to accept and approve the May 2013 trial balance and DF&A documents as delivered, seconded by Adams. All in favor, motion carried.

#### **6. *Election of Officers***

Motion made by Roberts to keep President Woodard and Vice Chairman Thurman, in their currently held positions, seconded by Adams. Hodge chaired the motion all in favor, motion carried.

## 7. **Complaints**

### a. **Case #13-08 McKing V. Brown's Christianway Home for Funerals, Larry Brown**

Motion made by Brazzel to dismiss for no rule violations, seconded by Burns. All in favor, motion carried.

### b. **Case #13-09,13-11, 13-12, 13-13, 13-14, 13-15, 13-16, 13-17, and 13-18** – all involve two families, David Powell, Tyler Hyatt, Dr. Dicus, Shawna Bell, RN, Jeanie Barnett, RN in complaints against Bradford Funeral and Christine Lemons. Also three of the above referenced complaints are complaints filed by Christine Lemons, Bradford Funeral Home V. David Powell, Jr. and Tyler Hyatt. Motion made by Burns to set cases#13-09-13-18 as five separate hearings, seconded by Brazzel. All in favor, motion carried. **Update:** Attorney and Executive Secretary changed the notices of hearings to two separate hearings and concluded that all factual allegations be noticed pertaining to the respondent in each.

## 8. **Board Discussion**

### a. **Shown Request for Board's Opinion 20-17-102 AR Final Disposition Rights Act.** – Ms. Shown is requesting the Board's opinion on the Final Disposition Rights law. The Board discussed creating forms to make available for funeral homes to use to reflect a person's final disposition wishes that could appoint a person as their authorizing agent and witnessed by two individuals. That the funeral homes could use to protect the deceased wishes. The Board postponed further discussion until next meeting. Thurman would provide a copy of the form he uses that was provided by he thought Roller. It was noted the act was good law and in place to help protect the funeral homes.

## 9. **Attorney Updates**

### a. **Effie Collins Case Update** – Mark Ohrenberger will continue to handle the ongoing Collins cases. Court of Appeals granted Effie Collins received an extension until June 28, 2013 to file her brief, and Mark Ohrenberger will draft the Board's response and has until Monday, July 29, 2013 to file an answer.

## 10. **Meeting dates:**

### a. Next meeting scheduled for August 15, 2013 @ 9AM.

## 11. **Adjournment**

Motion made by Burns to adjourn since there was no further business to discuss, seconded by Brazzel. All in favor, motion carried.