

West Virginia Board of Funeral Service Examiners
BOARD MEETING
October 8, 2013

The meeting was called to order at 1:00 p.m. by President Chad Harding. Members present: Chad Hutson, Keith Kimble, Ira Handley, John Fahey, John Stump, Chad Harding and Sarah Lobban. Non members present, Regina Foster, Executive Director and Constance Sloan, Administrative Assistant. At the conclusion of the Executive Session Rob Kimes and Anthony Paletti joined the meeting.

Chad Hutson moved to go into Executive Session pursuant to WV Code 6-9-4(4), seconded by Sarah Lobban. The motion carried unanimously.

On motion of Ira Handley, seconded by Sarah Lobban., the Board voted to return to public session

The Board then moved to the recommendations of the Complaint Committee as follows:

COMPLAINT 2013-04

The Complainant requested a reconsideration of the dismissal of his complaint against Lobban Funeral Home alleging she did not give him a price list until the date he retrieved the ashes from the funeral home.

The deceased died December 17, 2012 and her body was picked up by Charleston Mortuary and taken to the crematory in Princeton as this was a direct cremation which had been arranged for by the complainant by telephone. There was some delay in getting the death certificate from CMS and with the holiday schedule there was a delay in getting the cremation done.

The funeral home states that in the initial conversation with the complaint which was over the phone, that she gave him an estimate of the costs and told him that the final bill could be different depending on obituary charges, the cost of an urn if one was purchased, sales tax, etc.

The actual cremation took place January 12, 2013 and the ashes were picked up at the crematory on January 25, 2013. The death certificates were received on February 9, 2013 and on February 10, 2013 the complainant was contacted by phone and asked if the funeral home could deliver the death certificates and finalize the bill. Complainant stated that was not convenient to him and that he had decided not to purchase an urn and for her to mail the death certificates, which she did. The complainant did not come to the funeral home until February 17, 2013 at which time the bill was finalized and he was provided with the GPL. The complainant returned the following day and paid the bill in full.

The FTC Rule, which is incorporated in the Funeral Service Examiners Act, provides that the triggering event for giving out a GPL is a face-to-face meeting. With regard to the Statement for Funeral Services, the FTC Rule provides that "if arrangements are made over the telephone, you should give the consumer the Statement at the earliest possible date. If the consumer makes all funeral arrangements by telephone, you make a reasonable attempt to give a completed

Statement to the consumer before a final disposition of the remains occurs. If the Consumer does not visit the funeral home in person before the final disposition, you should still give or send a completed statement to the consumer as soon as possible.

The Board has confirmed with Seaver Mortuary that they did give an invoice to either the transport service or the person picking up the cremains for Lobban and that due to the backlog of work and the holiday schedule they are unable to state when the invoice was sent to Lobban.

A review of the circumstances of this complaint again does not indicate that Lobban Funeral Home violated this FTC Rule which would, in turn, be a violation of the Funeral Service Act. The Committee, therefore, recommended this complaint be dismissed but that the Director write Lobban and ask that she try to get her billings done a little faster in the future.

COMPLAINT 2013-08

The complainant's deceased brother was first taken to Tyree Funeral Home, however, the family wanted him transferred to High Lawn Funeral Home. The brothers of the deceased were told that the decedent's daughter (Janette Hall) would have to arrange for the transfer to their funeral home.

On March 23, 2013, the complainant and his family went to the funeral home to make the funeral arrangements. At that time they met with the Kaye Ballard, owner of the funeral home who is not a licensed funeral director and who very frequently meets with family to make at-need funeral arrangements. The complaint was told that the funeral bill would need to be paid in full before the body would be removed to their funeral home. At that time they were given a "price quote" of \$5590.61 for the funeral services. On March 24, 2013 the family returned to the funeral home and paid in full the bill. The body was removed from Tyree's on March 25, 2013.

At no time prior to the funeral, and specifically not at the time the second Statement of Goods and Services was prepared, were the complainants given receipts for their payments or presented with the finalized bill. When the complainant asked for a copy of the contract he found that the deceased's daughter was the named purchaser, that the Statement was dated March 26, 2013, the day of the funeral, and that they had been charged a second embalming fee in the amount of \$895.

Complainant asked the funeral home to give him a contract with his name so that he could file the claim against the estate but the funeral home refused. After several unsuccessful attempts to obtain the contract and a refund of the second embalming charge, the complainant filed his complaint with this office. (It should be noted that this office talked with the owner and was assured that the contract would be rewritten and a refund made, however, that did not happen.)

The funeral home responded to the complainant and in their response states that "Kaye Ballard, owner of Highlawn, met with Bobby Gene Ward and his family on March 25, 2013, at which time the contract was executed." The response further states that he (Mr. Ward) "met with the funeral director, Mr. James Patton, who came in the office while they were meeting with Ms.

Ballard, when he spoke to them, gave them his sympathy . . .”

The response also questions the refund of \$220 stating that their cost for embalming was less than Tyree charged. The Board obtained a copy of the statement from Tyree for the services rendered. Their charges were \$300 for removal and \$625 for embalming, totaling \$925. Respondent told the complainant that the embalming fee was \$925 and that they were cheaper and thus saved him money.

On June 10, 2013, the Board advised the attorney for respondent the discrepancy in his client’s figures and that the refund would be proper. The Board also advised the attorney that the contract should be in the name of the complainant.

Complainant has notified this office that he has received a refund and, finally, a new contract in his name.

The Complaint Committee notes that the license in charge at the time of this complaint has now been criminally charged with a felony and is no longer at the funeral home. A new LIC has been hired and he has been advised that he must insist that the owner refrain from funeral director activities.

The Complaint Committee recommends that the current Licensee in Charge of High Lawn Funeral Home be advised that the Kaye Ballard may not make funeral arrangements or perform other duties of a licensed funeral director and that any such conduct in the future will result in penalties not only against the Licensee in Charge but also the license of the funeral home. The funeral home is to be instructed to comply with the FTC Rule relating to giving the Statement of Goods and Services in a timely manner.

COMPLAINT 2013-09

The complainant alleges that he was treated unprofessionally by David Deal of Deal Funeral Home with regard to his wife’s funeral services and specifically, that the funeral director is attempting to hold him responsible for a funeral bill of an in-law.

The funeral director responded and his response does indicate that he has a problem with this family as well as complainant’s in-laws. His recitation of services rendered in the past to a member of his in-laws family is unprofessional, at best.

Complainant called the funeral director at 1:30 am to say he wanted to change the arrangements. He is miffed that the funeral director was upset at being awakened at that hour and hung up on him. However, it is unacceptable to make changes to a funeral at that hour of the morning.

The Complaint Committee believes that both the complainant and the funeral director are at fault. However, the funeral director should be better prepared to act in a professional manner. His personal attacks on th complainant and his extended family are uncalled for, unethical and unprofessional. The complainant states in his response, he has made payments to the funeral

home contrary to what the funeral home represents in its answer.

The Complaint Committee finds that David Deal did act in an unprofessional manner and recommends that the Board by letter admonish the funeral director that his personal attack on the complainant and extended family is unprofessional and that he should probably refrain from handling future services for these families.

COMPLAINT 2013-10

The complaint is the sister of the deceased. She complains Richard M. Roach Funeral Home did not embalm her sister and that no one at the viewing was aware they were viewing an unembalmed body.

The funeral director says that although the body was unembalmed, at the request of the family, that adequate measures were taken to ensure sanitation and safety. Some cosmetic work was done and the body was prepared for viewing. An unembalmed body disclosure was placed in the register.

The husband of the deceased sent a letter to the Board stating that his wife's body had been preserved and she was dressed and prepared for viewing.

The Complaint Committee finds that there was no violation of the Funeral Service Examiners Act and recommends that the complaint be dismissed as the funeral director acted to ensure the safety and welfare of all concerned.

COMPLAINT 2013-11

The complainant alleges that Junora Walton of Walton's Chapel of Faith acted unprofessionally towards her and her family and did not properly embalm her deceased father. The father of complainant died July 30, 2013 at 4:00 am at his place of residence. Junora Walton was contacted and a transport service picked up the body.

Junora Walton was supposed to call the family on Wednesday, July 31st to arrange to meet the family. When she did not call that morning, the complainant's mother called to ask about the death certificate at which time she was advised she was "putting the cart before the horse" and that the death certificate had been sent to the doctor for signature. When the complainant's mother asked about coming in to make the arrangements, she was told that most of that could be done by telephone.

When the complainant's mother told the funeral director that she was thinking of a funeral August 17, due to family coming from out of town and other reasons, the funeral director said that was entirely too long and that if they were looking at that date they would have to cremate him. Because the funeral director had a funeral the following day (Thursday) the arrangements conference was set for Friday, August 2, 2013 at 10am.

The complainant offers a very detailed statement regarding the events which took place.

What is apparent is that at no time did Junora Walton offer a GPL or give a GPL to the family (as they had to ask prices) nor did she show them a casket price list before showing them caskets.

Complainant became uncomfortable with the meeting and decided to transfer her father to another funeral home. At that time she asked what the charges were for the transportation and embalming and was told by Ms. Walton that the total was \$960. As the complainant was driving to the bank to get the money she received a telephone call from Ms. Walton wanting payment in cash, which was done.

Charleston Mortuary Service removed the body from the Walton's Chapel of Faith and called Preston Funeral Home, the receiving funeral home, and stated that they would need to work on the body to have him viewable, including embalming because of the condition of the body. Ms. Walton states that "after the initial embalming process, it was clear that [the deceased] had not embalmed well due to the many complications of his condition when he arrived and that extensive work would have to be done to try to keep him." An embalming room report from CMS is submitted as part of the record indicating the work necessary. NOTE: Respondent funeral home did not have an embalming report and only started using them after this complaint was filed and the inspector asked for a copy of the deceased's report.

CMS was able to adequately embalm the body and do restoration work so that a private viewing could be had on Wednesday, August 7, 2013. In the respondent's response she states that "she was going to be charged extra anyway because of the amount of work that was involved."

The respondent funeral director has had two previous complaints resulting in reprimands and probation in each instance. She is currently on probation under Complaint 2012-08.

An inspection was made of the funeral home shortly after this complaint was received. See attached inspection report.

The Complaint Committee recommended that Junora Walton be required to hire a licensed funeral director to act as Licensee in Charge at her facility for a period of one year and that the Licensee be required to be present for all arrangements, at need or preneed, as well as during the embalming of bodies and to attend all funeral or memorial services. That the embalming fee of \$750 be returned to the complainant and that Junora Walton pay to the Board the sum of \$500 as administrative fees. The Committee also recommended that the Board allow the Committee to negotiate a consent decree with the Respondent pursuant to W. Va. Code § 6-4-2.8

COMPLAINT 2013-12

Complainant called this office and said she wanted to make a complaint about a funeral director at Ross Funeral Home in Fairmont. She alleged that he has allowed her and others to witness embalmings. She provided the names of Brad Summer and "Bob" and a person named Steven Coark.

A letter was sent to the director notifying him of the complaint and asking for his response. After receiving the letter, the director called the office and stated that this was untrue,

was the result of a domestic situation between he and his now ex-girlfriend and that he had no idea who Mr. Coark was, and that Brad Summer and Bob were employees in the funeral home who assist him after the embalming in dressing, etc. the body. The director was instructed to write a response and he did.

The response by the director states that the complainant has been harassing him and that neither she or anyone else has watched embalmings. He also alleges that the Marion County Sheriff's Department is working on this matter (I assume he means possible harassment charges).

The Complaint Committee recommends that the complaint be dismissed as there is nothing to substantiate the complaint and as this is the result of some domestic situation.

The Complaint Committee also recommended to the Board that a letter be sent to Pat Boyle advising him that he is to contact the Board Office with any complaints and concerns that he may have and that his actions in contacting Mr. Howard, the Board's inspector, questioning his inspection of a competitor facility were unethical and unprofessional especially when he had been expressly told that would be improper by the Executive Director. He is to be advised that any future such conduct will result in disciplinary action.

On motion of Chad Hutson, seconded by John Fahey, the recommendations of the Complaint Committee were unanimously accepted by the Board.

On motion of John Stump, seconded by John Fahey, the Minutes of the June 3, 2013 meeting were approved unanimously.

On motion of Chad Hutson, seconded by Sarah Lobban, the Financial Reports for May, June, July and August 2013 were unanimously approved.

On motion of John Fahey, seconded by Ira Handley, the P-Card reports for April, May, June, July and August 2013 were unanimously approved.

The Board considered the reinstatement of Carl Durgan conditioned on him obtaining his continuing education hours from the time his license lapsed to June 30, 2013; that he perform a one-year period of apprenticeship and pass the West Virginia Funeral Service Exam. On motion of Ira Handley, seconded by John Stump, the Board unanimously agreed to allow Carl Durgan to reinstate his license on the conditions herein set forth.

On motion of Chad Hutson, seconded by Sarah Lobban, the Board approved payment of the membership dues for the coming year to the International Conference.

Licenses were signed for the following individuals and facilities:

Funeral Directors:

Rachel S. Fischer-Bramble
Joseph Tanner
Cheryl Smith
Brian Gunnoe
Jessica Bowers

Apprentice:

Kasey L. Waybright
Bradley J. Mayle
Jill Luterek
Codi Cabrera
Michelle Walls
Leonard Romans, Jr.
Anthony Mitchem

Funeral Homes:
Grisell Funeral Service
Stockert-Gibson-Paletti

Courtesy Card Holders:
Theresa Boal
Ernest B. Hall III

Crematory Operators:
Rachel S. Fischer- Bramble

The next meeting of the Board will be at the Board's office in Charleston on Monday, February 3, 2013 at 1:00 pm with the Complaint Committee meeting at 10:00 am. that day.

There being no other business to be considered, on motion of John Fahey, seconded, by Chad Hutson, and unanimously adopted, the meeting was adjourned.

Chad R. Harding, President

Regina J. Foster, Executive Director