

West Virginia Board of Funeral Service Examiners
June 8, 2015
AMENDED February 9, 2016

The meeting was called to order at 1:00 p.m. by Chad Harding, President. Members present: Chad Harding, Keith Kimble, Chad Hutson and Sarah Lobban. (Chad Hutson and Sarah Lobban were present by conference call.) John Fahey had to leave because of a family emergency; Ira Handley was absent due to an excessive number of funerals and John Stump was absent due to his injury; however, he asked that the Board be advised that he believes this is his last doctor's appointment and hopes to be here for the next meeting. Non members present, Regina Foster, Executive Director, Amanda Legg, Administrative Assistant and Constance Sloan, Office Manager.

On motion of Keith Kimble to go into Executive Session, pursuant to WV Code §6-9A-4(b)(A), seconded by Sarah Lobban, by unanimous vote the Board went into Executive Session. The Board then returned to Public Session and took up the following matters:

COMPLAINTS 2012-12A and 2014 12-B

The Respondents, David Bolyard, owner of Davis Funeral Home, and Jeffrey W. Heitger, Jr., Licensee in Charge, have agreed to enter into a Consent Decree and Order in order to resolve the issues in these two complaints.

The Respondents agree to be Reprimanded for their actions in these two complaints and Respondent, David Bolyard, shall instruct the employees of Davis Funeral Home that the Licensee in Charge is the person designated by statute to be in charge of the day to day operations of the funeral home. Further, Respondent, Jeffrey W. Heitger, Jr., is reminded that as Licensee in Charge, any violations of the Funeral Service Examiners Act by any of his employees under his supervision will result in disciplinary action against his license.

Should the Respondents fail to comply with the Consent Decree and Order the Board may take other disciplinary action as deemed necessary.

The effective date of the Consent Decree and Order shall be June 8, 2015.

COMPLAINT 2015-01

This complaint deals mainly with the grave marker purchased from Preston Funeral Enterprises. The funeral home provided a time line of the events relating to this complaint.

The complainant's husband died in January 2014. Complainant ordered a VA marker in August 2014. Complainant states she should have been allowed to order the marker from another company, however, this is a VA marker and those are provided by the VA.

The marker was received in October 2014. The marker was to be set in November, however, the vase assembly kit was not included and the cemetery had none on hand. Those kits had to be special ordered before the marker could be assembled and set.

On December 4, 2014, complainant went to the funeral home to inquire about the marker but the funeral director she spoke to was unaware that the marker had been received and that they were waiting on the vase assembly kit. On December 10, the complainant went to the funeral home and this time spoke to the funeral director who knew about the situation and offered take her to the cemetery to show her that the marker was partially assembled and could not be set without the assembly kit.

The assembly kit arrived December 16, 2014 but the setting ring was not included. The vase ring arrived December 19, 2014 and the marker was set that date.

On December 15, 2014 a refund check was issued to the complainant in the amount of \$501.58. The check was cashed and cleared the bank of December 29, 2014.

The Complaint Committee recommend that the complaint be dismissed as there is no violation of the Funeral Service Examiners Act.

COMPLAINT 2015-02

The complaint alleges that they purchased a cremation for their son from Lohr Barb Funeral Home and were charged for an 18 gauge casket and that they did not pick out the casket, the funeral home did. According to complainant, he contacted Pat Boyle at the crematory where the cremation was performed to see if he had been cremated in the metal casket and was advised that his son was not cremated in the casket. Complainant believes that the casket was then reused by others. Complainant also contacted other funeral homes in the area comparing prices and getting advice on what should have occurred with his son's funeral. This complaint is another example of what happens when competitor funeral homes give advice when they have no idea of the actual situation.

The complainant did purchase a cremation, but with viewing. However, because of their son's size an oversized casket was required. The funeral director states that he explained this to the family and showed them a picture of a casket which could be used and that they agreed to use that casket.

The situation is further complicated by the fact that the mausoleum where the deceased was to be buried could not accommodate the oversized casket and the family decided to have him cremated and hold a memorial service at a later date at another cemetery.

The funeral director states that the deceased, with the knowledge of the crematory, was placed in an airline tray and that the pillow, blanket, etc. from the casket were also placed in the shipping tray.

The Complaint Committee recommend that the complaint be dismissed as there is no violation of the Funeral Service Act.

COMPLAINT 2014-14

The complainants are filing this complaint over 5 years after the date of service. They have several complaints, i.e., that embalming was not authorized; that the funeral director didn't contact the medical examiner and report a death involving fractures; that the funeral director destroyed evidence for an autopsy; that the funeral director buried the deceased when the death certificate was incorrect, and possibly other such acts.

The funeral director states that embalming was done because of the condition of the body when it was received. Further, a viewing was planned and would have required embalming. The wife of the deceased signed the Statement of Goods and Services acknowledging that embalming had been authorized.

As to the death certificate, it is not the funeral director's responsibility to question the cause of death on the death certificate unless the same is incomplete. The complainants contacted the doctor, the police department, and the medical examiners office and an amended death certificate was filed in July, three months after the original death certificate, indicating that a fall at the hospital had occurred. The medical examiner found no reason to proceed past the amended death certificate.

It is not the funeral director's responsibility to ask for an autopsy. That should have been done by the family prior to the body being removed from the hospital and, in fact, the complainant refused an autopsy at the hospital.

By virtue of WV Code 61-12-8, the medical examiner is to be notified when any person dies from violence, or by apparent suicide, or suddenly when in apparent good health, or when unattended by a physician, or when an inmate of a public institution, or from some disease which might constitute a threat to public health, or in any suspicious, unusual or unnatural manner. None of these reasons are applicable in this case and even if the funeral director had been told that the person had suffered broken bones at the hospital, that fact alone would not warrant a call to the medical examiner.

This complaint was originally scheduled for February, however, after the complainants received a copy of the response from the funeral home they wanted to submit rebuttal. Those documents are marked Jan 22, 2015.

The wife of the deceased advised Board staff that she had given verbal approval to the funeral home to embalm at the time of death, however she states she was so distraught she didn't know what she was doing. She also signed the Statement of Goods and Services at the time of the arrangements conference acknowledging that she authorized embalming.

The embalming report is not very well done as there were recent surgeries which should have been apparent but are not marked. The time the body was received and when the embalming took place are also not noted. That being said, the family did refuse autopsy at the time of death and in one document they stated that they waited until the next morning to tell the funeral home they wanted an autopsy.

Whether this should have been an ME case is debatable. Should the funeral director have called the ME about surgical scars, would that have been enough to trigger an investigation? The Committee thinks not.

The complainants have conspiracy theories involving the doctor and the funeral home, and possibly others. They believe that the deceased was poisoned at the hospital and that when he died there was a rush to get him embalmed so that no one would know what happened. They also question a picture that appeared in a newspaper where the treating physician and the funeral director were at a social function at the same time. It is inconceivable that funeral directors and doctors would not know each other, and perhaps would belong to the same social organizations, however, there is simply nothing to suggest that any criminal wrong doing took place here.

The Complaint Committee recommends that the Complaint be dismissed as there is no violation of the Funeral Service Act. However, the Committee does recommend that the Board direct a letter to the funeral home advising them that embalming room reports are vital and must be complete records of the deceased at the time the body is received at the funeral home. Any and all bruising, surgical scars or wounds must be noted. These reports are important in the event that any legal proceedings are instituted against the funeral home or others as they become subject to subpoena.

At this time, Mr. Harding turned the Chair over to Mr. Kimble, who is unable to vote on these matters.

On Motion of Chad Harding, seconded by Chad Hutson, the Board voted unanimously to accept the Committee's recommendation in Complaints 2014-01 and 2014-02 and Complaint 2014-14 and to accept the Consent Decree and Order entered in Complaint 2012-A and 2012-B.

At this time the Chair was returned to Mr. Harding.

The Board then moved to the issue of pay raises of office staff and inspectors. On motion of Chad Hutson, seconded by Sarah Lobban, the Board voted unanimously to increase the salaries of Regina Foster, Amanda Legg, Michael Howard and Ira Handley by five percent (5%) and Constance Sloan is increased to \$20,000 per year pursuant to the Legislative increase

allowed retired employees working part time. Raises are effective July 1, 2015.

The Board considered the Minutes of February 10, 2015, and on motion of Chad Hutson, seconded by Keith Kimble, voted unanimously to accept the same.

The P-Card invoices were reviewed and on motion of Chad Hutson, seconded by Sarah Lobban, the Board voted unanimously to accept and approve the same.

Financial reports from January through May 19, 2015 were reviewed and on motion of Chad Hutson, seconded by Keith Kimble, were accepted and approved unanimously.

The application of Yuganda Rash for a reciprocal license was discussed. On motion of Keith Kimble, seconded by Chad Hutson, the Board approved her application subject to Ms. Rash working under the supervision of a licensed funeral director and submitting monthly reports of her funeral directing/embalming activities for a period of one year. The Board makes this stipulation inasmuch as Ms. Rash has not practiced in over ten years.

The Board was appraised of the change in legal fees to be charged by the Attorney General effective July 1, 2015. For a number of years the Board has paid \$50 per hour for legal services, pursuant to an agreement with the former Attorney General. The current Attorney General will no longer honor that agreement. Instead, legal fees will range from \$120 to \$140 per hour depending on each attorney's rate. It was understood at a meeting between Board staff and Mr. Leslie that the Attorney General's Office would not bill our office for activities not requested by the Board and that any inquiries as to funeral services, complaints, etc. would be forwarded to this office to handle in the normal, routine manner.

On motion of Keith Kimble, seconded by Chad Hutson, the Board voted unanimously to continue Chad Harding as President.

On motion of Chad Hutson, seconded by Keith Kimble, the Board voted unanimously to continue John Stump as Chairman.

The President then appointed Chad Hutson and John Stump to the Complaint Committee for a 2-year term, effective July 1, 2015.

The next meeting date will be Tuesday, October 6, 2015 at 1:00 pm. The Complaint Committee will meet that same date at 10:00 am.

Licenses were then signed for the following:

Funeral Service Licensees:

Tracy V. Boorum
Michelle L. Walls Durst
James A. Harris
Jeffrey T. Jude
James M. Kidwell

Apprentice Licenses:

John Brady
Nicholas T. Cutright
Kevin M. Gessler
Z. Luke Massey
Tyler J. Matney

Anthony W. Lowry
Emily R. Rosinski
Katie J. Woodside

Stacey Vallarta

Funeral Homes:

Adams-Reed Funeral Home (new ownership)
Dodd-Reed Funeral Home (new ownership)
Foglesong-Casto Funeral Home (new ownership)
White Funeral Home (new ownership)
Affordable Funeral and Cremation Center

There being no further business to be discussed, the meeting adjourned.

Ira Handley, President
(Succeeding Chad Harding)

Regina J. Foster, Executive Director