

West Virginia Board of Funeral Service Examiners
February 10, 2015

The meeting was called to order at 1:15 p.m. by Chad Hutson, as the President was unable to attend. Members present: Chad Hutson, Keith Kimble, and Ira Handley. John Fahey and Sarah Lobban attended via telephone conference call. John Stump and Chad Harding were absent due to injury and illness. Non members present, Mark Weiler, Assistant Attorney General, Regina Foster, Executive Director, Amanda Legg, Administrative Assistant and Constance Sloan, Office Manager.

The Board then took up the matter of a letter from StoneMor, addressed to Chad Harding, relating to emails between them concerning a lease for property. In one of the emails Mr. Harding referenced having the Board find out why the property could not be leased by him. Mr. Harding advised the Board office that he made the remark out of frustration as he had been negotiating with the company for several months and was angry when, without explanation, he was told they would not lease to him and that he sincerely regrets his remark and will give StoneMor a written apology.

Board staff stated they had researched their files and have no licensees which are owned by StoneMor and that as long as the property in question meets the requirements of the City and has the necessary licenses and permits, there is no reason to believe that whoever leases the building would not be able to be licensed by the Board. A further review of the Secretary of State's web site does not reveal any StoneMor facilities licensed in West Virginia.

Mr. Weiler noted that in a communication from StoneMor, the lease was a private business matter and as such is not regulated by the Board and that his review of the applicable laws, rules and regulations does not indicate a violation of the Board's laws and regulations and therefore is not an appropriate matter for a complaint process.

Mr. Weiler then left the meeting.

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

COMPLAINT 2014-03

James E. Patton, the respondent, was charged and indicted by the Raleigh County Grand Jury in July, 2014, on 45 separate counts of sexual assault, use of minors in the filming of sexually explicit conduct, sexual abuse by a person in a position of trust and other related charges. The Board notify Mr. Patton that it would commence proceedings to revoke his license but offered him the option of voluntarily surrendering permanent his license by means of a

Consent Decree and Order. Mr. Patton agreed and on February 2, 2015 submitted to the Board is signed Consent Decree and Order in which he agrees to the permanent revocation of his license. The Complaint Committee recommended that the Board accept the same.

COMPLAINT NO. 2014-04

The complainant, Kathy Jean Achtziger, and her family were estranged. The deceased (her mother), had prearranged her funeral with Waybright Funeral Home). At the time of her mother's death, the other sister and brother went to the funeral home to finalize the funeral arrangements and told the funeral director that they had no problem with the complainant attending visitation or the funeral but they did not want her companion to attend. The funeral director told them he could not tell the man he could not attend, if they did not want him in the funeral home it would be up to them to tell him. The funeral home was willing to give Kathy a private viewing but she did not attend the private viewing.

At the visitation the complainant, who had already been told by her family not to bring her companion, showed up with him and was told by members of the family that they were not welcome.

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

COMPLAINT 2014-05

The complaint in this complaint is also Kathy Jean Achtziger who complains that Waybright Funeral Home failed to obtain a Veteran's marker for her husband. Waybright Funeral Home did attempt to get the marker, and filed the necessary papers, however Mr. Achtziger did not serve enough time to qualify for the marker according to the records from the Army. There is nothing that the Funeral Home can do in this matter.

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

COMPLAINT 2014-06

This complaint is by the Board Office against a funeral director who has been accused by the Attorney General's Office of embezzlement of preneed funeral funds. The funeral director has left the state and at this time we have no address for him although it is alleged he is in Myrtle Beach, South Carolina.

The funeral home has been sold and the Attorney General has filed suit against the funeral director. According to the AG's office, the persons whose funds were embezzled have not been paid out of the guarantee fund but if there is a death the fund will then pay.

Recommend that we hold this until we find some address for the funeral director and attempt to get a voluntary consent to surrender his license or, in the alternative, hold a hearing for revocation of his license.

COMPLAINT 2014-07

The complainant, Sharon Darby, alleges George Lewis, a funeral director who is not affiliated with any funeral home but who operates a transport service, picked up a body from a nursing home and transported it to a funeral home with her two small children in the back of the van with the body. The children were unable to say which funeral home they went to and the Board staff contacted every funeral home in the norther panhandle and no one has any knowledge of him doing a removal for them at that time.

Mr. Lewis states that at the time of the alleged incident he was incapacitated with a broken right leg and unable to drive. Ms. Darby is Mr. Lewis's wife's sister and there is evidently some problems between the two. There is nothing to corroborate the complaint and the Committee recommends the complaint be dismissed as there is no violation of the Funeral Service Examiners Act.

COMPLAINT 2014-08

The complainant, John C. Brown, II, alleges violations of the preneed act and the Funeral Service Examiners Act by Anthony Paletti of Stockert-Paletti Funeral Home. The complaint was forwarded to the Attorney General's Office for resolution of the pertinent parts of the complaint relating to preneed.

Mr. Paletti was asked to respond to the Board regarding his failure to provide a GPL, Casket or Vault price list or to give to Mr. Brown a Statement of Goods and Services at the time the arrangements were made or by the date of the funeral.

Mr. Paletti was notified of the Complaint on September 8, 2014 and shortly thereafter called the Board and stated that the complaint was going to be withdrawn. He called a couple more times asking if the complaint was withdrawn and was told no and that he needed to file a response. On October 27, 2014 we received a letter from his attorney stating that it was his client's understanding that all matters had been resolved and that the complaint was to be withdrawn. A copy of that letter was sent to the complainant who responded that he had no intention of dropping the complaint and stated that Mr. Paletti had called him 5 times requesting the complaint be dropped and that he still had not received an itemized statement for the funeral charges.

Mr. Paletti and his attorney appeared before the Committee and Mr. Paletti states that he did give Mr. Brown a GPL and a Statement of Goods and Services on the very first time he met with him. However, when asked by Mr. Kimble as to whether he had a signed copy of the Statement, Mr. Paletti admitted that he did not. There is also an email from Mr. Brown dated August 20, 2014 in which he states that he made a verbal request on August 15, 2014 (the date the arrangements were made) for an itemized statement; made a second request for the statement on August 17, 2014, and was at that time making the third request for an itemized statement.

On the matter of the GPL, there is no evidence that Mr. Paletti did or did not give the GPL to Mr. Brown. On the matter of the Statement of Goods and Services, Mr. Paletti does not have a signed copy and the August 17, 2014 email from Mr. Brown does indicate that he has not received an itemized

statement.

The Committee recommends that the complaint be dismissed but that Mr. Paletti be sent a letter from the Executive Director which instructs him that every person must receive a General Price List at the time they inquire about funeral services and a Statement of Goods and Services at the time of the arrangements conference, pursuant to the Federal Trade Commission Funeral Rule and that if cash advance items are not known at that time, to enter a good faith estimate. A copy of the pertinent portions of the FTC Rule should also be sent to him.

COMPLAINT 2014-09

The complainant, Shirley Phares, is the mother of the daughter of the deceased as well as the ex-wife of the deceased. She basically complains that the cremation cost charged by Eackles-Spencer & Norton Funeral Home is twice that charged by other funeral homes.

At the time of the death of Mr. Phares there were no funds available from the Indigent Burial Fund and the funeral director advised the daughter, Lori Pauley, who was making the arrangements, that the cremation costs had to be paid in advance. Mrs. Phares paid the charges using her credit card. When they returned home, Mrs. Phares found out that another family member had used a different funeral home and that the cost was purportedly half that charged by ES&N. The price list submitted with the response from the funeral home indicates that the charges are in line with the prices on their GPL.

The Board has no authority to set prices or control prices charged by funeral homes. The Committee therefore recommends that the complaint be dismissed as there is no violation of the Funeral Service Act and that the complainant be advised that we do not regulate what funeral homes may charge.

COMPLAINT 2014-11

The complainant, Elizabeth James, alleges, that she should have received the excess funds from a preneed funeral account and that there are discrepancies in the signatures of the Will and a Power of Attorney made by her grandmother, now deceased, appointing her mother with certain rights under those documents. She feels that she, being the eldest of the surviving grandchildren should have had the right of final disposition.

First, the proceeds of the preneed funds are not within the jurisdiction of this office. The amount in dispute is \$315.72. The person designated to receive those funds was the son of Ms. James and he was deceased at the time the preneed became at-need. Normally, the funds would have been paid to his estate ,however, the funds were given to the person who handled the funeral arrangements to offset other expenses. This was approved by the Attorney General's office and, therefore, not within our jurisdiction to act on.

The questions relating to the signature on a Power of Attorney are also not within our jurisdiction to decide and should be directed to the County Commission or taken to Circuit Court.

There are no matters which this Board can address and the Committee recommends that the complaint be dismissed as there are no violations of the Funeral Service Examiners Act.

COMPLAINT 2014-12A

This complaint is made by Terry Warne, the husband of a deceased and alleges that shortly after his wife's demise Jason Cook, an employee of Davis Funeral Home, began corresponding with his daughter on FaceBook and in the process of numerous communications told her that a family had offered to pay for the funeral (if it was held at his funeral home) and then touts the fact that he has the largest building in the area and can offer personalization to caskets, etc., which is one of the main reasons the family wanted to donate the service. The family decided to use a competitor funeral home. Although he does not know this girl, he states that he will be at the viewing and is having a blanket made in memory of her mom. The responses from the girl are short and respectful.

The blanket was delivered to the funeral home and upset the family members who asked that it be removed. In a post on FaceBook, Jason Cook actually states that he hates it that the other funeral director, Randy Amos, dislikes him so bad personally that he makes a scene out of a nice gesture. Mr. Warne's daughter replied "it wasn't Randy or Paul...we appreciate the thought and gesture."

When the letter and complaint were forwarded to the funeral home's LIC for response, he did not respond, rather the response came from Jason Cook, Operations Manager, the person who made the FB posts. We contacted the LIC and asked him to respond and received an irate phone call from Jason Cook who stated that he was an owner of the funeral home and the boss of the LIC and that the LIC had no knowledge of the facts. We advised him that the LIC was, by statute, the person in charge of the day to day operations of the funeral home and that he was the only person who could respond. We did receive a response from the LIC which is basically the same as filed by Mr. Cook.

Between that time and now (February 10, 2015), the Board office received copies of an incident wherein Jason Cook was arrested on assault charges and copies of internet criminal background checks of Jason Cook which revealed he has a history of criminal activity in Georgia

consisting of embezzlement charges for which he had served time as well as other charges. Ms. Sloan then talked with David Bolyard who advised her that Jason Cook had been fired, which precipitated the melee at the funeral home.

Mr. Bolyard also advised that he knew nothing of Jason Cook's criminal past and that when he made him Operations Manager that title was supposed to mean that he would coordinate funerals between the funeral homes but that Jason took it to a whole new level. He states he was unaware that Jason had attempted to answer the complaint with the Board rather than giving it to the LIC to whom it was addressed. Mr. Bolyard was told that the LIC, according to statute, is the person in charge of the day to day operations of the funeral home and that they should be instructed that their duties cannot be relegated and absolve them of responsibility.

The Complaint Committee recommend that the Funeral Home and Mr. Bolyard be offered a consent agreement with reprimand and that the LIC be advised that he is in charge of the day to day operations of the funeral home and that it is his license which is in jeopardy.

COMPLAINT 2014-12B

Donetta Clutter is complaint against the same funeral home as in 2014-12A (Davis Funeral Home) where Jason Cook, Operations Manager, advised the wife of the deceased that he and his partner (David Bolyard) would like to offer her a funeral at no charge. The complainant further states that while her husband was in the hospital in Pittsburgh that she started getting messages from Jason and that neither she nor her husband knew him personally and finally asked a friend to contact him and ask him to stop sending messages. The messages regarding the free funeral were posted to Facebook. Jason Cook also sent flowers to the funeral home which were removed at the request of Mrs. Clutter.

Again, Jason Cook responded to the complaint rather than the LIC. He stated that they offer free funerals to In-Line of Duty deaths and children under the age of 12. He also attached a letter from the mother of the deceased who is the Administratrix of the deceased's estate and is an employee of his funeral home who states that her family did not learn until after the death and burial of any offer to pay for his funeral and that the only reason this complaint was filed was because of a disagreement over the disbursement of insurance and other moneys and that she was only married to the deceased for 9 months before his death. The Administratrix of the Estate has no standing as the wife was the legally authorized representative to make final disposition and if she didn't want flowers from Jason Cook or Davis Funeral Home that was her decision to make.

Recommend that this complaint be consolidated for disposition as set out in 2014-12A.

Chad Hutson stepped down as the Chairperson and Keith Kimble assumed that position.

Ira Handley moved, seconded by Chad Hutson, that the Board accept the recommendation of the Complaint Committee to accept the Consent Decree and Order in Complaint 2014-03, signed by James E. Patton, wherein his license is permanently revoked. The motion carried unanimously.

Ira Handley then moved that the Board accept the remainder of the recommendations of the Complaint Committee and that the Committee be authorized to enter into a Consent Agreement on Complaints 2014-12A and 12B. The motion was seconded by Chad Hutson and carried unanimously.

Chad Hutson then resumed the position of Chairperson and asked if the Minutes of the Meeting of October 7, 2014 had been read and if there were any amendments. There being no amendments to be made, Keith Kimble moved that the Minutes be accepted. The motion was seconded by Sarah Lobban and carried unanimously.

Ira Handley moved that the P-Card invoices be approved, seconded by Keith Kimble. The motion carried unanimously.

Keith Kimble moved that the Financial Report be approved, seconded by Sarah Lobban. The motion carried unanimously. Ms. Sloan advised the Board that they were slowly getting reports from the OASIS system but that it is still not to the point where she can get reports that indicate to her the actual amount budgeted and what is spend from each category. She stated that she had received an email that there was a new report which may give that information. She also advised the Board that it now takes twice as long to pay bills under the OASIS system.

The Board then took up the matter of reimbursement of meal and other expenses of the inspectors. Ira Handley recused himself from the discussion and vote. On motion of Keith Kimble, seconded by Sarah Lobban, the Board voted unanimously to adopt the meal and mileage allowances for state employees and to retain the \$15 meal allowance for Kanawha County as the inspector does not get a mileage allowance for Kanawha County and that \$15 is a reasonable amount to reimburse the inspector for meals while making those inspections. Meal allowances will be paid for one-day trips when the inspectors are using rental cars as they will receive no mileage allowance.

The Board reviewed and approved the expenditure for membership dues in the West Virginia Association of Licensing Boards in the amount of \$245.

The Board then discussed the location of the June meeting and it was decided to meet in Charleston on June 8, 2015 at 1:00 pm. The Complaint Committee will meet the same day at 10:00 am.

Licenses were signed for the following individuals and establishments:

Funeral Directors:

Andrew C. Johnson
Bradley J. Mayle
Brittany E. Miller
Jordan M. Mullins (Duplicate)

Apprentices:

Lynn R. Grainger
Randelle Renecker

Courtesy Cards:

Frank D. Dawson

Sheria R. Robinson

Gary L. Rollins

Carl E. Rush

Richard L. Slack

Funeral Homes:

Affordable Cremations of

WV

(Branch Funeral Home of Bartlett-Chapman)

Crematories:

Chapman's Mortuary, Inc.

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

Chad A. Hutson

Acting Chairperson

Executive Director

Regina J. Foster,