

Arkansas State Board of Embalmers and Funeral Directors
Board Meeting

MINUTES

Thursday, January 8, 2015, 9:00 a.m.

101 East Capitol Avenue
Arkansas River Room, 3rd Floor
Little Rock, AR

Chairman James Terry Woodard called the meeting to order. Members present were: Vice Chairman Bobby Thurman, Bobby Burns, Patricia Roberts, Ben Brazzel and welcome to our new consumer member John Wilkerson. Board members absent: Jerry Adams. Staff that were present: Amy Goode, Executive Secretary, Leslie Stokes, Inspector, and Mark Ohrenberger, Board Counsel.

1. **Introduction of the Board**

2. **Oral Examinations**

- a. Miranda Mathewson oral administered.

3. **Reinstatement**

- a. **Jack Still** – Motion made by Brazzel to reinstate after payment of the \$920 delinquent fees, seconded by Roberts, all in favor. Motion carried.

4. **Administrative**

- a. **Approval of November 13, 2014 Board Minutes.** Motion made by Burns to approve the November 13, 2014 minutes as delivered electronically with no necessary changes or corrections, seconded by Brazel, all in favor. Motion carried.
- b. **Approval of November 25, 2014 Public Hearing and meeting Phillips Crematory Permit Application.** Motion made by Brazzel to approve the public hearing and transcript minutes of the Phillips Crematory permit application as delivered electronically with no necessary changes or corrections, seconded by Burns, all in favor with Woodard and Roberts sustaining from voting. Motion carried.
- c. **Approval of the November – December 2014 DF&A financial reports and trial balance.** Motion made by Roberts to approve the November – December 2014 DF&A reports as delivered and printed, seconded by Brazzel, all in favor. Motion carried.

5. **Board Discussion**

- a. **Steve Ballard – Roller Funeral Homes – Topic “Ebola”** – Mr. Ballard recently attended an Ebola seminar and since that time has received permission from his executive team to develop an “Ebola plan of action”. One of the main items mentioned that caught his attention was that only personnel trained and wearing protective gear should come in contact with these cases. There are many organizations to get involved, but before doing anything he wanted to get the Board’s approval to work on a plan for the funeral industry. Motion made by Burns to allow Mr. Ballard to help the industry as a whole with the guidance for safe handling of human remains of Ebola patients in U. S. hospitals and mortuaries, seconded by Brazzel, all in favor. Motion carried.

- b. **111th Annual Meeting – Dallas, TX – February 25-26, 2015** – Motion made by Burns to approve President Woodard and Executive Secretary Amy Goode to attend the convention in Dallas and approved the room rate of \$159 per night and to allow travel beginning Tuesday, February 24 through Friday, February 27, 2015, seconded by Roberts, all in favor. Motion carried.
- c. **Out of State License Oral Exam** – Executive Secretary explained that it has always been the Board's practice to administer the oral exam to those licensees that were reciprocating. Executive Secretary discussed the laws and rules surrounding this with legal counsel and found that even though the Board has every right to administer the oral exam, it's not a requirement by law. Since the Board is removing this requirement from the law for all licensees, then it was the Executive Secretary's recommendation to cease this practice. Motion made by Thurman to discontinue the oral exam for out of state licensees, seconded by Brazzel, all in favor. Motion carried.

6. **Hearings**

- a. **In the matter of : Brazzel-Cornish Funeral Home and Ben L. Brazzel, a licensed establishment and a licensed funeral director and embalmer - Case#14-7**

Assistant Attorney General Rebecca Caine served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Ben L. Brazzel, was represented by Counsel Jim Pilkinton.

Amy Goode – Executive Secretary witness for the Board.

Opal Price– complainant witness for the Board.

Court Reporter – Faith Grigsby – Grigsby Court Reporting.

Ms. Caine swore in the witnesses for the record.

Hearing Officer Rebecca Caine called the hearing on the record and explained the purpose of the hearing. Ms. Caine explained that the Board would base its decision solely on evidence presented today and that this hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and will give latitude in presenting testimony and evidence. This hearing is subject to the Freedom of Information Act and is open to the public.

Mr. Ohrenberger explained the state had an exhibit packet with three exhibits labeled 1-3 and asked they be entered into the record and Mr. Pilkinton agreed to these exhibits by stipulation. Mr. Pilkinton had one additional exhibit labeled respondent exhibit R-1 and the state stipulated to that as well.

There are two charges based on the same set of allegations. Factual matters that you will be asked to consider are these. In April 2014 that Ms. Opal Price complainant worked with some extent with Brazzel and Brazzel-Cornish Funeral Home. Preparation and arrangements were made for Ms. Price's mother in law. Allegations are that during the time body was being prepared, Ms. Price was allowed to come place jewelry on Ms. Delaughter specifically an opal and diamond ring. Ms. Price put the ring on the decedant's finger in Mr. Brazzel's presence and that sometime after that discovered the ring was missing. This was before viewing by guests, she was allowed to search. It was not found at that time and she filed a police report claiming it was stolen. Sometime after the funeral Ms. Price was contacted that the ring had been found and turned in by a staff member from the funeral home. Even after it was found complainant alleges that the ring was missing a diamond.

First charge is C.1 comes under 17-29-311 (3) (11) unlawful charges. The Board under 17-3-19-311 (a) (2) may take action against a licensee that has made misrepresentation or fraud as holder of license, whether it's letter of reprimand, probation, suspension, revocation, or monetary fines. You will have to determine if the facts are met and if these facts meet the provision of our statute. The second provision where we brought a charge is 17-29-311 (a) (10)

provides that any unlawful act for a holder of a license to commit any violation of any state or local laws. In charge C.2 we have cited 5-36-115 (a) (1) which is a general theft statute. The Board could find if any of the charges are true then they can find a violation of this statute to have occurred. One last point Mr. Ohrenberger stated is that Mr. Brazzel is a member of this Board and the obligation of this Board to put aside personal relationships and decide on the facts presented today.

Mr. Jim Pilkinton opened that Mr. Brazzel's position and the funeral home's position is they do not know how the ring disappeared or how a diamond disappeared. They know the ring was found and returned by one of their employees. The ring was turned over to the Prescott Police Department who returned the ring. The arrangements were made by Ms. Price's estranged husband the son of the deceased and a former Nevada County Sheriff. If he had thought there had been a theft he certainly would have been here today.

Ms. Price stated she took care of her mother-in-law and that she gave more information to the funeral home than her estranged husband at the time about the family. The jewelry was given to Mr. Brazzel and explained that this was her jewelry she was to get back. Ms. Price was allowed to place the jewelry on the decedent while in the dressing room and that she had placed the opal ring on her pinkie and it was snug. The day of visitation she noticed the ring was missing and everyone at the funeral home helped look for the ring. Ms. Price alleged she was allowed to search all over the casket. She didn't believe the ring could have fallen off. Ms. Price further stated she wore the ring all the time and it had twelve diamonds, but when she received it back a jeweler told her actually three diamonds were missing. All other jewelry was returned except the opal ring until a later date as stated.

The Board questioned if Ms. Price had the ring inspected on a regular basis or had it been inspected prior to the ring being placed on decedent. Ms. Price stated that she gets her jewelry checked every couple of years. Ms. Roberts questioned what was the value of the diamond. Ms. Price stated it would be \$195 to repair it.

Mr. Woodard questioned if she examined the ring prior to placing the ring on the decedent. Ms. Price answered, "No". Then Woodard inquired if the diamonds could have been missing when she placed the ring on her finger; Ms. Price stated she didn't think so, because the ring snags easily and she would have realized it. Mr. Wilkerson asked if the jeweler thought the diamonds had been pried out. Ms. Price stated no, that the jeweler could not tell if they had.

Mr. Pilkinton inquired if she had ever asked Mr. Brazzel to replace the diamonds and she stated she had no other contact with Mr. Brazzel.

Mr. Brazzel stated that Mr. Delaughter or "Doc" was the next of kin. Doc stated that she (Ms. Price) was close to his mother and allowed Ms. Price to set in on the arrangements. Mr. Brazzel questioned his staff who placed the decedent in the casket about the ring the decedent was in the chapel, not in the parlor or state room. They were searching the dressing room and prep room. The color of the floor in the room is yellow. Mr. Brazzel told the family he would like to thoroughly look in the casket one more time after the funeral. The family told him no that everything that was in the casket stated except the jewelry.

Motion made by Thurman to find factual allegations 1-10 true, seconded by Roberts, all in favor. Motion carried.

FINDINGS OF FACT

1. Respondent Ben Brazzel holds a funeral director's license issued by the Board.
2. Respondent Brazzel serves as the licensed funeral director under whose general management and supervision Brazzel-Cornish Funeral Home, a licensed Funeral Establishment Type A, operates.
3. In April of 2014, the Respondents made arrangements with the family and provided funeral services for the decedent, Lois Delaughter.
4. Complainant Opal Price was the decedent's daughter-in-law.

5. While the decedent's body was at the Respondent Funeral Home, being prepared for viewing by Respondent Brazzel, Complainant Price was allowed to place, and did place, an opal and diamond ring on the finger of the decedent.

6. Complainant Price left, and when she returned later, the ring was missing.

7. Complainant Price searched the area around the body and the room where the body had been, but she was unable to locate the ring.

8. Complainant Price later complained to the local police that the ring was missing.

9. The police later contacted Complainant Price and notified her that someone from the Respondent Funeral Home had turned the ring in, reporting that it had been found in the Respondent Funeral Home.

10. When Complainant Price received the ring back from the police, a diamond was missing from the ring.

11. Complainant Price's complaint suggests that the Respondents stole the ring and the diamond in it. The Board found this to be unfounded.

Motion made by Burns to find factual allegation 11 to be unfounded, to add the verbiage the Board found this to be unfounded, seconded by Roberts, all in favor. Motion carried.

Motion made by Thurman to find charges C.1 & C.2 false, seconded by Burns, amending C. 1 to amended statute to 17-29-311 (a) (2)

CONCLUSIONS OF LAW

C.1 Charge C.1 in the hearing notice for this matter is found to be false.

C.2 Charge C.2 in the hearing notice for this matter is found to be false.

ORDER

Because no charges proffered against the Respondents in this matter were found to be substantiated, the complaint against the Respondents is dismissed.

b. *In the matter of : Herman Eaton*

Assistant Attorney General Rebecca Caine served as Hearing Officer and swore in witnesses.

Assistant Attorney General Mark Ohrenberger represented the Board.

Herman Eaton represented himself.

Eugenia Jordan with Jackson-Highley Funeral Home was a witness for Mr. Eaton.

Amy Goode – Executive Secretary witness for the Board.

Court Reporter – Faith Grigsby – Grigsby Court Reporting.

Ms. Caine swore in the witnesses for the record.

Hearing Officer Rebecca Caine called the hearing on the record and explained the purpose of the hearing. Ms. Caine explained that the Board would base its decision solely on evidence presented today and that this hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and will give latitude in presenting testimony and evidence. This hearing is subject to the Freedom of Information Act and is open to the public.

Mr. Ohrenberger stated that we had one exhibit packet containing state's exhibits 1-4. There was no objection from Mr. Eaton. Ms. Jordan stated that she asks the Board to allow Mr.; Eaton to be allowed to be reinstated as a funeral director. During his suspension he has helped around the funeral home in a capacity that he was allowed. Mr. Eaton had other character witnesses that was sworn in by the name Reggie Rose.

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

FINDINGS OF FACT

F1. Respondent appeared before the Board on May 21, 2013 for consideration of the 2013 renewal of his license as a funeral director in the State of Arkansas. The matter came before the Board on the Board's own complaint against the Respondent. His license was first issued on October 20, 1999.

F2. Although Respondent timely submitted his 2013 funeral director license renewal to the Board, his license was administratively withheld pending the results of the hearing on May 21, 2013.

F3. At the May 21, 2013 hearing, the Board found that the Respondent had violated Ark. Code Ann. § 17-29-311(a)(1), by being convicted of a felony. The Board ordered that Respondent's funeral director license shall be suspended until he is released from the supervised release imposed in connection with the judgment entered against him in the United States District Court for the Eastern District of Arkansas, Case No. 4:11-CR-213 JLH. The order further provided that at the conclusion of his supervised release, Respondent must appear before the Board to request reinstatement of his funeral director license.

F4. On December 6, 2014, Respondent was terminated from supervised release from the United States District Court, and he has requested a hearing to seek reinstatement of his funeral director license.

F5. Respondent on December 12, 2014 waived his right to a twenty (20) day notice of hearing..

Motion made by Burns to reinstate and lift the suspension of Mr. Eaton's funeral director license, seconded by Roberts, all in favor. Motion carried.

CONCLUSIONS OF LAW

C1. The Board has previously found that, Respondent is guilty of having been convicted of a felony in violation of Ark. Code Ann. § 17-29-311(a)(1), and it suspended his funeral director license as a result of that finding. The Board finds that the suspension of the Respondent's funeral director license should be lifted.

ORDER

The Board lifts the suspension on Respondent's funeral director license.

7. Complaints

- a. **Case#14-14- Parker, Gerrie V. Roller-Christeson Funeral Home, Aaron Gutting, Manager**- Motion made by Brazzel to dismiss complaint for no violations, seconded by Burns, all in favor. Motion carried.
- b. **Case#14-16 – Mays, Becky V. Arkansas Funeral Care, LLC. LeRoy Wood, Manager** – Motion made by Brazzel to dismiss complaint for no violations, seconded by Burns, all in favor. Motion carried.
- c. **Case#14-18 – Sheffield, Deborah, Ruffin & Jarrett Funeral Home V. Robinson Mortuary, Kenneth Robinson, Manager**- This on the surface appears to be a violation of Rule XIV (1). Motion made by Burns to set the matter for hearing, seconded by Brazzel, all in favor. Motion carried.
- d. **Case#14-19 – Johnson, James L. V. Reddick Funeral Home, Billy Reddick, Funeral Director and Na'Keena Brown, Manager** –The Board has already heard this matter twice concerning the matter whether or not he lied before the Board has already been decided in a previous order. There was a specific finding of fact about the forgery charge. Complainant has come forward with new information that he can prove the forgery with a handwriting expert. The respondent filed through their attorney that the Board has already made a determination about the forgery and the Board cannot charge them again on a matter already decided. Motion made by Burns to dismiss complaint for no violations, seconded by Brazzel, all in favor. Motion carried.

8. Inspector Updates – Leslie Stokes

The Inspector had the following to report since the last meeting:

- November 14th – inspected the new location of Arms of Peace owned by Venetta Peaster located at 2800 Percy Machin in North Little Rock
- November 18th – initial inspection of Veasley Funeral Home & Cremations, owned by Derrick & Henry Veasley, located at 1111 Harkrider in Conway.
- November 25th – annual inspections in West Memphis were conducted, during that visit it was discovered Roller had closed and opened a new state of the art location at the same physical location. They have filed the proper paperwork and an inspection was done on the 25th.

Inspector Stokes stated to the Board that from here on out, she would like to report back to the Board her findings of initial inspections and the Board as a whole approve the license be issued at their next scheduled meeting. Have the owner of the facility come and let the Board determine if they meet the requirements for a Type A or Type B Funeral establishment and at that time the license be issued. This would not apply to location changes, only new establishments. Crematories would have already received their permit from the Board, so unless a problem was found at inspection the Inspector could approve license to be issued. Motion made by Brazzel that all new funeral establishment licenses shall come before the Board for licensure approval after initial inspection has occurred, seconded by Burns, all in favor. Motion carried.

Executive Secretary brought up the initial inspection for crematories. The practice has been that the inspector is there for the first body and the license issued at the same time. Our rules state that a license shall be issued prior to a cremation, so the practice has been it's done simultaneously. Can the Inspector not inspect prior to the first body to issue the license, since the manufacturer is there training them on their first body? All the training is coming from the manufacturer of the unit, because they want you to have a body present for training. What the Inspector is looking for are the requirements set out in the rules. It has nothing about the actual cremation process. The Board discussed that more requirements be required under the regulations for crematories. A retort operator license should be required. The Board decided that the current practice needs to remain in place until law and rule changes can take place.

Inspector has an appointment with Mrs. Strickland on the 20th of January.

9. **Attorney Updates – Mark Ohrenberger**

- a. Effie Collins has filed for judicial review under the APA, from the last time she appeared before the Board and was denied reinstatement of her license. The request for judicial review is still pending; there has been no briefing schedules.
- b. Javier Buck and Richardson Memorial Funeral Home has a case pending in Pulaski County for judicial review, and the briefing schedule has not been set in this matter. Not under any deadlines in either case.
- c. Leonard Fitzgerald has filed for judicial review. This has been served on the Executive Secretary since our last regular meeting. We have thirty days to file our answer along with the administrative record. Mr. Ohrenberger will be preparing the motion to dismiss. When a party receives an order issued under the APA they have thirty days to file a petition and must be served on the Board by rules of civil procedure within one hundred twenty (120) days to serve the petition after filing it. They did not serve timely and it should be dismissed.
- d. Elmer Davis is another case on the back burner. He was hired by Ms. Collins during the suspension and revocation of Ms. Collins he was found to have aided and abetted an unlicensed person. The Board revoked his license. In 2011 the Board denied his request for reinstatement and they sought judicial review and the Board responded to that, but since that time nothing else has been done. Ohrenberger spoke with Mr. Steele Davis's attorney about nine (9) months ago that we either needed to get a briefing schedule or get this dismissed. He said that he had a few Collins matters to finish up and he was going to move forward. Ms. Chavis is taking the case over and that she will likely file a motion to dismiss for failure to prosecute the case.

Mr. Ohrenberger stated that he was being removed as counsel on all cases. Ms. Julie Chavis will be the Board's counsel at least for the time being. He has enjoyed working with the Board, but we are being left in good hands

The Board had discussion raised concerning Effie Collins and that she is still advertising in the white and yellow pages. There have been allegations mentioned that a funeral home in Blytheville picked up a body and the family had a policy listing Ms. Collins as the owner and Collins Mortuary has the beneficiary; during the last hearing we had

on Ms. Collins she stated she had not bought any caskets, but a member researched and found that not to be the case. During her testimony she stated she had not bought caskets, so wondered if that would be a form of perjury.

There are allegations about a funeral home that made initial removal and embalmed, but then the family decided to use another funeral home. Funeral home B went to make the removal with the proper documentation and took the fee required by funeral home A. When the funeral home gets the body it had not actually been embalmed. The Board discussed that it would be best if the funeral home involved filed the complaint.

Another issue the Board has issues with are suitcase funeral directors, but it's going to require a family to file a complaint.

A member also brought up the suggestion he had received, that we should maybe consider for rule changes that if a funeral home has three (3) complaints filed against them within a twelve (12) month period that it would be deemed a rule violation. Fines associated with those violations to build after first violation. Legal counsel's advice is that you ought to rethink it, because you tie your own hands. If you set a schedule of penalties that could say for a serious offense that might should be punished more harshly, but since it's their first offense the penalty is so low and therefore you have tied your own hands. The Board wants to be fair and equitable in their evaluations of complaints, but setting out in rules that after so many complaints you be found in violation is not the way to approach it. The Board has already a process to punish more harshly for each time a repeat offender comes before them,

10. **Meeting dates:**

- a. March 12, 2015 – 9AM
- b. May 14, 2015 regular meeting 9am and annual meeting 1pm.
- c. July 9, 2015 – 9am
- d. September 10, 2015 – 9am
- e. November 12, 2015 – 9am

11. **Adjournment**

Motion made by Brazzel to adjourn the meeting, seconded by Burns, all in favor. Motion carried.