

*Arkansas State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services
Board Meeting Minutes*

Tuesday, November 17, 2020

1 Commerce Way
Diamond Mine Room– 2nd Floor
Little Rock, AR
9:00 A.M. – 11:38 A.M.

Chairman Bill Booker called the meeting to order. Member(s) present: Billy Curl, Professional Member, Rausch Hodges, Professional Member, Commissioner, Alan McClain, Professional Member, Stephanie Neipling, Consumer Member, Josephine Perry, Senior Citizens Member, James Bruce Smithson, Professional Member, and Steve Whitwell, Professional Member and Vice-Chair.

Staff present: Robert Akers, Director, Funeral Services Division, Eddie Davis, Security Director, Darriel Ezell, Inspector, Amy Goode, Executive Secretary, and Amanda Gibson, Arkansas Insurance Department, Associate Counsel.

1. **Call to Order** – Introduction of Board members and staff.
2. **Approval of the Agenda**

Chairman Booker inquired, if there was any desire to change or deviate from the proposed agenda. Hearing none, the Board preceded with the agenda as prepared by staff.

3. **Administrative**
 - a. **Approval of the October 20, 2020, meeting minutes.**

Motion made by McClain to approve the October 20, 2020 meeting minutes as submitted by Staff, seconded by curl, all in favor. Motion carried.

4. **New Business**
 - a. **Embalmers & Funeral Directors – Establishments Seeking Approval**
[A.C.A. §17-29-304 Funeral Establishment – Requirements, §17-29-305 Examinations – Licenses]
 - i. **M J Transport – Board ID No. 25330.** Requests a **Type D** establishment license and is located at 2092 Jimmy Creek Rd, Fox, Arkansas. Inspector Ezell inspected the Type D Transport establishment owned by Mary Rychtarik on **Monday, November 9, 2020**. Other drivers for the service will be John Rychtarik. Mary and John

Rychtarik have acceptable driving records and have received their blood borne pathogen training. All required documentation submitted is pending Board approval.

Mary and John Rychtarik were present representing M J Transport.

Chairman Booker recused from this item, due to applicants having connections to Roller Funeral Homes. Vice Chair, Steve Whitwell took over as Chair.

Motion made by Curl to approve the Type D establishment license for M J Transport, seconded by Smithson, all in favor. Motion carried.

- ii. **Hope Gardens Funeral Home LLC – Board ID No. 25332.** Requests a **Type A** establishment license and is located at 2803 Hwy 67 South, Pocahontas, Arkansas. Inspector Ezell inspected the Type A Full-Service establishment is owned by Casey and Cindi Grant, Brody and Becca Foster and Gage Glisson on **Tuesday, November 10, 2020**. The manager of record will be Casey Grant, Board ID No. 24750 and embalming will be done under the direction of Jerrod Lowe, Board ID No. 24161. The establishment will use Serenity Ridge Crematory, Board ID No. 24550, in Piggott, Arkansas for their cremations. All required documentation submitted is pending Board approval.

Casey and Cindi Grant, Becca and Brody Foster, and Gage Glisson were present representing the funeral home.

This facility has previously been operating as Fears Family Funeral Home due to the complications with the previous owner, it is closing. Mr. Grant has been with the funeral home for about four (4) years and been the general manager the last few months.

Motion made by Neipling to approve the Type A funeral establishment license for Hope Gardens Funeral Home, seconded by Curl, all in favor. Motion carried.

5. Hearings

- a. **In the matter of Sean Daniels, an Applicant for Apprentice Funeral Director – Case No. 20-26.**

Jim Brader, General Counsel, Arkansas Insurance Department, served as Hearing Officer;
Amanda Gibson, Board Counsel, represented the Board;
Tiffanie Harrison, Court Reporter;
Sean Daniels, Respondent;
Court Reporter swore in witnesses.

Hearing Officer, Jim Brader called the hearing on the record at 9:16 A.M. and explained the purpose of the hearing. Mr. Brader noted Respondent Daniels was present and had received notice of hearing. Mr. Brader explained the hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply

and all parties will be given latitude in presenting testimony and evidence, to promote a fair hearing. This hearing is subject to the Arkansas Freedom of Information Act and therefore all parts of the hearing, including deliberations are open to the public. The Board will base its decision solely on evidence presented today.

Ms. Gibson stated she had Board's Exhibit Packet 1-7 prepared to enter into the record. There were no objections to the exhibits. Respondent's Exhibit 1 was also allowed into the record.

Mr. Daniels was convicted of fraudulent use of a credit card in 2007 and filing a false report of crime wrongdoing in 2010, the sentencing ran concurrently. He completed requirements of his parole in 2010.

Respondent Daniels waived twenty (20) days' notice of hearing and service by certified mail. Accepted notice via email.

Motion made by Whitwell to grant waiver of the felony conviction, seconded by Neipling, all in favor. Motion carried.

Record closed at 9:35 AM.

b. In the matter of Crystal Daniels, an Applicant for Apprentice Funeral Director – Case No. 20-27.

Jim Brader, General Counsel, Arkansas Insurance Department, served as Hearing Officer; Amanda Gibson, Board Counsel, represented the Board; Tiffanie Harrison, Court Reporter; Crystal Daniels, Respondent; Court Reporter swore in witnesses.

Hearing Officer, Jim Brader called the hearing on the record at 9:40 A.M. and explained the purpose of the hearing. Mr. Brader noted Respondent Daniels was present and had received notice of hearing. Mr. Brader explained the hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and all parties will be given latitude in presenting testimony and evidence, to promote a fair hearing. This hearing is subject to the Arkansas Freedom of Information Act and therefore all parts of the hearing, including deliberations are open to the public. The Board will base its decision solely on evidence presented today.

Ms. Gibson stated she had Board's Exhibit Packet 1-7 prepared to enter into the record. There were no objections to the exhibits.

Mrs. Daniels stated she was involved in an accident where she left the scene due to the high crime area. Accident involved a pedestrian. Mrs. Daniels has learned to always travel with a cell phone, preferably not alone, and be aware of your surroundings.

Respondent Daniels waived twenty (20) days' notice of hearing and service by certified mail. Accepted notice via email.

Motion made by Curl to grant waiver of the felony conviction, seconded by Smithson, all in favor. Motion carried.

Record closed at 9:52 AM.

c. In the matter of Jonathan Ballard, an Applicant for Apprentice Funeral Director and Embalmer – Case No. 20-31.

Jim Brader, General Counsel, Arkansas Insurance Department, served as Hearing Officer; Amanda Gibson, Board Counsel, represented the Board; Tiffanie Harrison, Court Reporter; Jonathan Bradley Ballard, Respondent; Court Reporter swore in witnesses.

Hearing Officer, Jim Brader called the hearing on the record at 9:54 A.M. and explained the purpose of the hearing. Mr. Brader noted Respondent Ballard was present and had received notice of hearing. Mr. Brader explained the hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and all parties will be given latitude in presenting testimony and evidence, to promote a fair hearing. This hearing is subject to the Arkansas Freedom of Information Act and therefore all parts of the hearing, including deliberations are open to the public. The Board will base its decision solely on evidence presented today.

Ms. Gibson stated she had Board's Exhibit Packet 1-8 prepared to enter into the record. There were no objections to the exhibits.

Mr. Ballard stated he started college and got involved with the wrong crowd and eventually went to prison for seven (7) years for writing hot checks, theft, and fraudulent use of a credit card.

Respondent Ballard waived twenty (20) days' notice of hearing and service by certified mail. Accepted notice via email.

Motion made by Whitwell to grant waiver of the felony conviction, seconded by Neipling, all in favor. Motion carried.

Record closed 10:13 AM.

d. In the matter of Metro Mortuary Transport, Board 25176, a Type D Establishment – Case No. 20-29

Jim Brader, General Counsel, Arkansas Insurance Department, served as Hearing Officer; Amanda Gibson, Board Counsel, represented the Board; Tiffanie Harrison, Court Reporter;

Metro Mortuary Transport and Christian Blackmon, Respondent;
Court Reporter swore in witnesses.

Hearing Officer, Jim Brader called the hearing on the record at 10:15 A.M. and explained the purpose of the hearing. Mr. Brader noted Respondents were not present for the hearing. Mr. Brader explained the hearing would be conducted pursuant to the Arkansas Administrative Procedures Act. The strict rules of introducing evidence do not apply and all parties will be given latitude in presenting testimony and evidence, to promote a fair hearing. This hearing is subject to the Arkansas Freedom of Information Act and therefore all parts of the hearing, including deliberations are open to the public. The Board will base its decision solely on evidence presented today.

Ms. Gibson stated she had Board's Exhibit Packet 1-5 prepared to enter into the record. There were no objections to the exhibits.

Respondent was not present for the hearing. The Board was informed that Respondent was given ample time to comply with the staff's request before setting for a hearing. The transport firm allowed their insurance to lapse and did not provide proof of coverage. Additionally, they did not notify the Board they had closed as they had indicated verbally.

Motion made by Curl to adopt the factual allegations 1-9 as true and correct, that charges 1-2 are true, and to revoke the Type D Transport license of Metro Mortuary Transport, seconded by Smithson, all in favor. Motion carried.

Record closed at 10:33 AM.

Commissioner McClain stated that he wanted to discuss briefly some of the proposed legislation that is currently part of the Insurance Departments package. The process here is to pull together an omnibus bill, that contains a lot of clean up language in the insurance code and couple of stand-alone insurance bills that the department will be proposing and getting sponsors for during the upcoming session of the general assembly. Also, we have three (3) funeral home and cemetery related bills and we can include these in our package, or we can hand these off and let you all find someone to work with or a combination of the two. Mr. Brader added, that if we might need a fact witnesses to testify, we hope that the board members would be willing to step forward and come testify.

The Board was content with the department finding sponsors and they gave input concerning their relationships with sponsors.

The board discussed the one (1) proposed bills, that covered the following items:

- Defining or clarify classroom instructions for funeral directors licensing, that virtual instruction would be allowed.
- Clarifying publication for crematory construction to allow digital publication.
- Expanding the confidentially already in the insurance code to funeral related audit papers, working papers, licensee papers, etc. when something is under exam or

investigation, that those types of paperwork be exempt. It would just bring parity to the business of this board as well. Afford funeral home licensees the same confidentiality protection that is now afforded to life insurance companies and agents. Mr. Akers stated that when the boards came over in July 2018 it was noticed that they didn't have any comparable protection on their audits and other financial information. We have had some instances over the last couple of year, whereas a non-affiliated individual has attempt to get information from trustee banks. We wanted to get parity between the prepaid law, as far as protection against subpoena and disclosure and mirror that for funeral services.

- Cemetery law changes are broad. Curl addressed the section concerning Principal of the Permanent Maintenance Fund, inquired if it addressed discussions. Ms. Gibson stated this is clean up language, because it conflicted with another statute.
- Mr. Curl stated that perpetual care cemeteries have met some significant challenges over the last 15 or more years. There are some cemeteries that have a million or more in trust, but maybe can get a quarter of point of interest on a CD or funds to maintain the cemeteries. Senator Wallace asked Mr. Curl what perpetual care cemeteries do to keep them looking so nice and Curl informed him that they pull money out of their own pocket to make it happen and take care of what that consumer bought. We have discussed about being able to take a portion of the principal out of the perpetual care trust fund with approval by this board on an application that would be approved to make capital improvements. Roads are falling through that were built in the 60's, 70's, 80's, as we have in Fort Smith and my own properties. Consumers expect those properties to look good and they should. Cemeteries that can ask to withdraw up to 20% of their principal through the board and the board would see that work is being conducted. The board would allocate that financial institution to pay the vendors and the funds stay out of the hands of the owners. No conflict. This would be for improving roads, building, and equipment. The board by rule can determine how those funds could be applied, but we need the mechanism in place in the statute. Ms. Gibson stated that concept was deemed too controversial for the Department of Commerce package and which why Representative Crawford is addressing that with her work being constituent driven with the cemeteries in Fort Smith. Mr. Curl further stated Senator Wallace wanted to be involved.

6. Old Business

a. Embalmers and Funeral Directors Rule Discussion Continued.

Mr. Curl stated we were going to present this at our last meeting, but we did clean up out of state businesses advertising in our state on a strictly web-based type business. There is language in this latest draft. Problems that can arise in a completely web-based business is that families will think they are dealing with a company in Arkansas and when in fact they are not in the state at all. The out of state business will have a funeral home here make the removal and carry out the services, if they are willing to enter into the agreement with them for their quoted price.

Motion made by Smith to approve the proposed rules with an amendment to strike merchandise from page 9 B, seconded by Curl, all in favor. Motion carried.

Mr. Akers wanted to advise the board, regarding the laws and rules exam that apprentices are required to take to become fully licensed. When the Embalmers & Funeral Directors first came over the department in 2018, it was determined that the material upon which the current test was being administered were a little dated. However, there was not enough substantive changes to the A.C.A. or the rules between 2011 and 2018, so the book being distributed among the apprentice's date back to 2011-2012-time frame. When the test was last updated or changed, the Board was hit with a pretty hefty price by Pearson Vue to change the exam, around \$10,000 that required approval from DF&A for a sole source contract. There are a handful of questions, that have changed, that if the apprentice is studying the current laws could potentially mark the question wrong. Pearson Vue recently told us to change one or all questions and answers, it would cost \$4,200. The first order of business, when they come over was to address the rules. It wasn't finically practical to expense \$4000 or more to change a handful of questions, to then turn around and make changes again when the new rules have been approved and promogulated. So, we have been in a holding pattern regarding the apprentice laws and rules test. Most that take the test, it's not a borderline case, there have been a few funeral homes that have reached out to us when their apprentices have missed it by 1 or 2. Ms. Goode in those cases reviewed their tests and answers, and in those cases the borderline miss didn't have anything to do with the handful of questions in question. Mr. Akers, further stated that he and Ms. Goode, discussed that if we have an apprentice miss by 1 or 2 questions, then we will review and if their failing involved any of the potential questions and then bring that to the board for consideration.

Our goal is once the rules our promogulated, then we will get the test questions updated.

7. **Complaints**

a. To consider the complaint(s) on-file with the State Board

[[A.C.A. §23-61-1111 Duties of the State Insurance Department](#)]

Ms. Gibson stated she had one (1) funeral director and embalmer complaint and Ms. Vestal had four (4) complaints to present to the board.

Case No. 20-24. Recommend closing by board staff and counsel.

The funeral home gave the family a deadline for the obituary information, which the family failed to meet. The funeral home published an obituary prior to the service, then the family was upset that the obituary they provided (after the deadline) was not published. The funeral home then published the obituary the family wanted, at no cost to the family. Second, the funeral home did a false set-up at the cemetery because there had been a lot of rain. The family was upset that the set up was not at the grave site, but due all the rain it was not safe. Third, some mistakes were made on the death certificate. The funeral home corrected those mistakes and provided new certificates to the family at no charge, in a timely manner.

Motion made by Neipling, to close Case No. 20-24 as recommended by staff, seconded by Whitwell, all in favor. Motion carried

Ms. Vestal had four (4) cemetery complaints that staff was recommending to close.

PCC20-055 – Complaint was regarding the cemetery not being able to confirm and/or locate family members burial for a monument setting. Resolved when complainant and cemetery agreed upon a place in which to place the marker for remembrance sake.

PCC20-056 – Complaint regarding the cemetery not timely resetting the monuments due to the heavy rains. Resolved.

PCC20-057 – Complaint was regarding the cemetery not getting to reset the family headstone, order/placement of headstone and correction to engraved plaque. Resolved.

PCC20-060 – Complaint had two parts, first regarding care and maintenance, that part has been resolved. Second part was a contract dispute and that has been referred to the Attorney General's office.

Motion made by Whitwell to accept the staff's recommendation to close above referenced cases, seconded by Neipling, all in favor. Motion carried.

8. Next Meeting Date(s)

- a. No Rules Sub-Committee Meeting due to Martin Luther King Day, January 18th.**
- b. Tuesday, January 19, 2021 (9:00 a.m.) Board Meeting and Hearings**

9. Future Meeting Date(s):

- a. Monday, February 15, 2021 (1:00 p.m.) Rules Sub-Committee**
- b. Tuesday, February 16, 2021 (9:00 a.m.) Board Meeting and Hearings**

Staff recommended a special meeting via teleconference potentially to be held December 8, 2020 at 10:00 AM, since we had a cemetery matter and a new funeral home request, that was not quite ready for today's meeting. We did not want to make them wait until the January meeting, due to an already full schedule planned for that meeting.

10. Adjournment

Motion made by Smithson to adjourn at 11:38 AM, seconded by Neipling, all in favor. Motion carried.