

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

Tuesday, October 19, 2021

1 Commerce Way  
Diamond Mine Room– 2<sup>nd</sup> Floor  
Little Rock, AR  
9:06 AM– 3:26 PM

Chair Bill Booker, Professional Member called the meeting to order. Member(s) present: Commissioner Appointed Designee Dan Honey, Professional Member, Rausch Hodges, Professional Member, Josephine Perry, Senior Citizens Member, and Bruce Smithson, Professional Member.

Members absent: Billy Curl, Professional Member and Stephanie Neipling, Consumer Member.

Staff present: Robert Akers, Director, Funeral Services Division, Amy Goode, Executive Secretary, Lorin Hillery, Auditor, Amanda Gibson, Arkansas Insurance Department, Associate Counsel, Sarah Dunbar, Insurance Investigator, and Gray Turner, Associate Counsel to serve as hearing officer.

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

Chairman Booker stated there was a need to deviate from the proposed agenda, since we did not have a court reporter to start the hearings. The board agreed to move to other items on the agenda.

3. **Administrative**
  - a) **Approval of the September 21, 2021, meeting minutes**

Motion made by Hodges to approve the September 21, 2021, meeting minutes as presented by staff, seconded by Smithson, all in favor. Motion carried.

- b) **Approval of the September 29, 2021, public hearing meeting minutes.**

Motion made by Hodges to approve the September 29, 2021, public hearing meeting minutes as presented by staff, seconded by Smithson, all in favor. Motion carried.

4. **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 complaint to present to the Board.

**Case No. #21-18** – Complaint alleged that the funeral home and employees conspired to steal insurance money. The services were paid for in cash and none of the employees knew anything about and insurance policies. This matter was investigated and there were no violations found, recommend the complaint be closed.

Motion made by Honey to accept staff’s recommendation to close, seconded by Smithson, all in favor. Motion carried.

## 5. **Old Business**

### a) **Update from Yell County Burial Association**

Burial association members were offered a paid-up life insurance policy of 110% or a 95% reimbursement in cash of the face amount of the certificate. Executive Secretary updated the Board, that there appeared to be approximately 20 members that has not responded. Most of the members have opted out for the 95% cash payout. The remaining members that do not respond by October 31, 2021, will be issued a paid-up policy of up to 95% with an option to cash surrender at any time. Chair believed this was a very fair option that the insurance company is offering.

Motion made by Hodges, to approve and accept Fidelity Standard plan to finish the dissolving the association, seconded by Honey, all in favor. Motion carried.

## 6. **Financial Update September 2021**

Executive Secretary explained that there were no major changes in the finances.

## 7. **Hearings**

### a) **In the matter of Zachary Cockrill, Applicant for Apprentice Embalmer, Respondent. Case No. 21-21.**

Gray Turner, Associate Counsel | Arkansas Insurance Department, served as Hearing Officer. Amanda Gibson, Board Counsel, represented the Board. Zachary Cockrill, Applicant, represented himself. Tiffanie Harrison, Court Reporter.

Hearing Officer, Gray Turner called the hearing on the record at 9:20 A.M. and explained the purpose of the hearing. Mr. Gray 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.

Mr. Cockrill was sworn in by the court reporter.

Mr. Gray inquired if Mr. Cockrill had received the notice of hearing and he indicated on the record, that it had been received and that he was not represented by counsel.

Mr. Cockrill had a character reference letter entered as a Respondent Exhibit 1.

Ms. Gibson stated she had Board's Exhibit Packet 1-9 prepared to enter into the record and explained the details of the packet. Mr. Cockrill also agreed to waive the 20-day notice of hearing and that he did accept receipt via email.

There was no objection to enter the exhibit packet.

Mr. Cockrill is seeking a waiver of his felony conviction to be allowed to register as an apprentice embalmer. Mr. Cockrill stated he is trying to work to seal his record and currently waiting on the judge to sign and approve.

Mr. Cockrill explained that he was arrested and charged with possession of a controlled substance. He accepted a negotiated plea of guilty, with 36 months' probation completing 50 hours of community service and a drug treatment class. He successfully completed the terms of his probation and received early termination of his probation. He further explained that he believes the arrest helped turn his life around.

Mr. Honey questioned Mr. Cockrill, if the drugs he had were for his personal use or distribution. Mr. Cockrill indicated it was for his personal use and that he had been in active addiction for about 2 years prior. Mr. Honey also inquired if he had stayed clean since and Mr. Cockrill indicated that he had.

Allegation 8 added, Mr. Cockrill did waive his 20-day notice of hearing.

Motion made by Smithson to find factual allegations 1-8 proven, seconded by Hodges, all in favor. Motion carried.

Motion made by Hodge to find charge 1 proven, seconded by Honey, all in favor. Motion carried.

Motion made by Honey to waive the requirement to pass a background check and that Cockrill be allowed to register as an embalmer apprentice, seconded by Smithson, all in favor. Motion carried.

The hearing closed at 9:46 AM.

**b) In the matter of Woodland Memorial Park, Permit Number 11802. Case No. PCC21-019.**

Gray Turner, Attorney Specialist | Arkansas Insurance Department, served as Hearing Officer. Amanda Gibson, Board Counsel, represented the Board. No one was present representing the cemetery. Tiffanie Harrison, Court Reporter.

Hearing Officer, Gray Turner called the hearing on the record at 9:47 A.M. and explained the purpose of the hearing. Mr. Gray 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 1-9 prepared to enter into the record and explained the details of the packet. Respondent has received notice and does not appear to be here today.

Robert Akers and Amy Goode were sworn in on the record.

The cemetery company and trustee have not complied with filing their 2020 annual report and fees, when they were due March 16, 2021. They have been requested several times and which resulted in the hearing today. The late fees based on the statute is \$10,650.

Motion made by Hodges to find allegations 1-6 true, seconded by Honey, all in favor. Motion carried.

Motion made by Honey to adopt the charges 1-2, to amend charges 3-4 by adding timely, to amend charges 5-8 by striking timely, seconded by Hodges, all in favor. Motion carried.

Motion made by Honey to impose a fine of \$10,650 to be paid to the trust fund by November 15, 2021, and all reports and fees related to them be filed and paid by November 15, 2021, seconded by Hodges, all in favor. Motion carried.

**c) Consent Agreement – In the matter of Lyles Funeral Home, a Type A Establishment, and Roy Lyles, a Licensed Funeral Director, Respondents. Case. No. 17-32.**

This was a matter that the Respondent had appealed in 2017 and it was upheld by courts. Due to the non-compliance of the original order, resulted in the matter being set for a hearing several times this past year. He requested continuances due to his health, several times. He did finally comply with board's original order; the probation period has passed, and he did receive the required continuing education. Due to his health and not being able to come to Little Rock, he agreed to sign the consent agreement.

Motion made by Honey to approve the consent agreement in Case No.17-32 per counsel's recommendation, seconded by Hodges, all in favor. Motion carried.

Proposed Rule 1 and 2 will be going before the legislature on Wednesday, November 17, 2021, at 9 AM. Mr. Curl will be attending with Ms. Gibson.

8. **Next Meeting Date(s)**

- a) **Tuesday, November 16, 2021 (9:00 a.m.) Board Meeting and Hearings**
- b) **Tuesday, December 7, 2021 (9:00 a.m.) Board Meeting and Hearings**

9. **Future Meeting Date(s) 2022:**

- a) **Tuesday, January 18, 2022 (9:00 a.m.) Board Meeting and Hearings**
- b) **Tuesday, January 18, 2022 (1:00 p.m.) Rules Sub-Committee to follow regular meeting.**

Recess until 12:30.

Reconvened at 1:05 PM

10. **New Business**

- a) **Approval Change of Ownership | Williams Funeral Home, Board ID No. 20262 | Camden, AR.**

Sylvester Smith, Jr. was present representing Williams Funeral Home and was represented by Sylvester Smith, III.

Mr. Smith stated that there has been a change of ownership filed. The board wasn't notified of the change of ownership as required by the law, which requires 30 days advance notice. The reason this matter is coming before the board is due to the length of time it took to file it.

The board approved the change as presented.

11. **Hearings (continued 1 PM)**

- a) **In the matter of Marks Funeral Home, a Type A Establishment, and Joe Todd, a Licensed Funeral Director, Respondents. Case No. 21-03.**

Gray Turner, Associate Counsel | Arkansas Insurance Department, served as Hearing Officer.

Amanda Gibson, Board Counsel, represented the Board.

Marks Funeral Home and Joe Todd, Respondents is represented by Counsel, Sylvester Smith, III. Randy Reed and Robert Akers, Witness for the Board.

Tiffanie Harrison, Court Reporter.

Hearing Officer, Gray Turner called the hearing on the record at 1:20 PM and explained the purpose of the hearing. Mr. Gray 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.

Mr. Todd was not present at the beginning of the hearing, but Mr. Smith stipulated that Mr. Todd had received the notice of hearing.

Ms. Gibson introduced Board's Exhibit Packet 1-7 and it was entered with no objection. Respondent had 4 exhibits. R1-Report of Examination from AID July 2019, R2-Blank funeral plan contract approved by AID, R3-Signed, and executed prepaid contract Vanilla Smith, and R4 - Prepaid plan for Anna Burris. Ms. Gibson stated for the record she objected to R1 and R2, because these relate to the prepaid funeral permit that this board does not have jurisdiction over. The hearing officer allowed for the exhibits to be entered.

Ms. Gibson opened with that the Board will see evidence and hear testimony that funds were prepaid to Marks Funeral Home; however, at the time of need there were four (4) families that decided to use R. L. Reed Funeral Home. Those decedents are Lee Shepherd, Thurman Jackson, Anna Burris, and Vanilla Smith. There is no allegation in the hearing notice about Ms. Smith, but the board will prove that funds were prepaid to Marks, but later the services were provided by Reed. The Board will also prove that amount owed from Marks Funeral Home to R. L. Reed Funeral Home is \$16,126.00.

Mr. Smith stated this was a matter of first impression and that there is an open question of law, because it's never come before the supreme court, and it's not well defined by statute. Their position is simple, Marks Funeral Home entered contracts to provide prepaid funeral services to these four people. They subsequently died and then after their death, someone up and decided they didn't want to use Marks and wanted to use Reed. Here is the problem with that, this all starts and ends with the contract. They are going to demonstrate today that each of these contracts said that they were irrevocable and could not be modified or changed without the approval of the seller. Under Arkansas law, when a contract is irrevocable, the purchaser should not have a right to a refund of any funds paid to the seller but shall have the right to change providers to a substitute provider. It says the purchaser, none of these folks changed their provider while, they were still living. Their family or other people changed the provider and that effort conflicts with the plain language of the contract. That is their defense. They are prepared to stipulate to the facts, the staff has prepared, to save time.

Witnesses were sworn in for the record.

Randy Reed was called, and he stated he was a licensed funeral director and embalmer for R. L. Reed Funeral Home. He is the owner of the establishment. Mr. Reed stated they did provide the services for Lee Shepherd and that the family paid for the services minus the prepaid portion. The prepaid portion was \$2,000.00. They did not pay that amount, because the family was under the assumption, they could file an assignment with Marks along with the death certificate, for him to pay the balance. It was cash funded. After they filed the claim, they never heard anything from Marks. The daughter of the deceased reached out to him, and he wouldn't pay it to the family either. Mr. Todd told the family the conversation was over.

Thurman Jackson was another they provided services for and the only amount they hadn't been paid was the prepaid amount. The amount owed was 4,525.00. Reed did request the funds from Marks and heard nothing. He also hand-delivered requests for reimbursement for both and there was no response by Todd.

Anna Burris was another they provided services for and the only amount they hadn't received was the prepaid amount. The prepaid amount was \$5,375.00. Reed did request the reimbursement from Marks and had not received it. Reed also contacted the son of the decedent, so that he was aware of the situation. The son personally went to retrieve the funds and he was told they would be paid in 15 days. The son went and talked to an attorney, that attorney had Todd served on March 18<sup>th</sup> requesting payment. Wallace Baker is the son of the decedent and he advised Mr. Reed of these actions.

Vanilla Smith was yet another decedent serviced by R. L. Reed Funeral Home and the only amount they hadn't been paid was the prepaid amount of \$4,226.00. They sent reimbursement request to Todd and Marks Funeral Home and received no response.

Mr. Reed confirmed that he had never received any payment or correspondence from Todd.

Smith inquired the cost of the services for Lee Shepherd, \$5,689, Thurman Jackson, \$7,689, Anna Burris, \$5,375, Vanilla Smith, \$6,626.00 dollars.

Mr. Smith pointed out that all these decedents had all went to Marks Funeral Home to make their prearrangements and not to R. L. Reed.

Mr. Booker questioned the Boards ability to address a prepaid contract issue, when he was just told he didn't have any jurisdiction over the matter, in a previous matter before the board. Ms. Gibson explained that the charge was that Mr. Todd was paid these prepaid amounts and he did not provide those services and it is fraudulent for him to retain those funds for services he did not provide, and the Board also has a law that states, if a licensee has their prepaid license revoked, that this board can act against their funeral directors or establishment license.

Mr. Booker further stated he deals with this subject weekly, if not daily, as his firms. He was present in the legislature when the law was changed in 1995. He stated, if you believe in legislative intent, that he sat in those meetings to hear what was said, the intent was crystal clear of who can change their mind for who services these contracts, whether they are walking around this earth or not. He firmly believes that all they money that was paid to Marks, should be paid to Reed for performing the services.

Mr. Smith stated he respected Mr. Booker's knowledge and expertise, but with all due respect he had a different interpretation of the law. He also does not believe that the Chair is biased or has a problem with the chair hearing this and respects his experiences of how this happens on daily basis.

Ms. Gibson, called Robert Akers, Director of the Funeral Services Division and Manager of Prepaid Funeral Benefits Division. Ms. Gibson questioned why it was wrong for Mr. Todd to retain those funds and requested a brief overview of how the contracts can be transferred to a substitute provider.

Mr. Akers stated there were two material issues right now, one of which that hasn't been verbalized in this meeting yet, which is the fact that the prepaid funeral benefits license issued to Marks Funeral Home was revoked October 8, 2020. There was a hearing held initially in April 2019 that resulted in some stipulations be met or be required to reappear. Another hearing was scheduled for October 8, 2020, Mr. Todd did not show up for that hearing. He did not comply with the April 2019 order, so there was the need to rehear in the matter in October, so his prepaid license was revoked. Mr. Akers stated he has been trying to obtain the records from Mr. Todd for almost a year. He is not licensed to sell or hold prepaid contracts. He shouldn't even be holding the contracts since the license is revoked. Two or more of these decedents died after he didn't even hold a license. Mr. Akers further stated there was major overall in 1995 at the legislature that refers to A. C. A. §23-40-122 Cancellations. It spells out the intentions of the law. *A. C. A. §23-40-122 (a) A purchaser may cancel or transfer a prepaid contract under this section, whether revocable or irrevocable, or whether cash-funded or funded by insurance or an annuity, at any time before performance of the contract by the seller, under the following conditions: (1) (B) After death, if the prepaid contract is revocable, the purchaser or his or her representative is entitled to receive one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price; or (C) If the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid by him or her or proceeds paid to the seller but shall have the right to change the provider of the contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;*

This after death statement clearly states, they must pay 100% of the purchase price of the prepaid contract to the substitute provider. It clearly says after death, so the purchaser would not have been able to say I want to use R. L. Reed. The law provides that after the death, the family has the right to use whatever funeral home at the time of need, they don't have to use the original contract selling funeral home. The Arkansas Final Rights of Disposition, explain who has that right after death. None of these four decedents could have gone to Mr. Reed prior to their death, because he has elected to not hold a prepaid license. He was not going to violate the law and hold contracts before he was licensed.

Going back to the contract, it's an offer and acceptance. Me as the consumer is going to part with \$7,000 of my hard-earned money for your promise at the time of my death, that you are going to provide these funeral services and merchandise for the costs I have paid. Then and only then after you have provided those services and merchandise does the money go to the funeral home. It's called trusted for a reason. I am trusting you with my money. The money does not belong to the funeral home, until the death of the contract beneficiary. If Mr. Todd, did not provide services for any of these individuals, then he did not execute his end of the prepaid contract. He has kept their money though, just because the family at the time of need chose to



use a different provider and that is their right as consumers. If he would have surrendered his contracts like he was asked to do, then this would not have even been an issue.

Joe Todd, Marks Funeral Home, Inc. stated he did not do the services for Lee Shepherd. He did collect funds from the nursing home, not the family. He stated that Lewis Funeral Home provided the services for Thurman Jackson. He stated he did not recall how much money he received. For Anna Burris he could not recall how much he collected, but that he did not perform the services. For Vanilla Smith he did not perform the services and could not recall how much he collected. Ms. Gibson, inquired of Mr. Todd, if he had received any request for reimbursement for any of these decedents from Mr. Reed. He indicated that he had and that he threw them in the trash. He has never spoken with Mr. Reed about these services.

Mr. Todd's thought that irrevocable, to him meant that the purchaser and only the purchaser could change the provider. He would have provided the service to the family if the family would have come to him. Mr. Todd accused Mr. Reed of solicitation.

Mr. Todd stated that the reason he is here today, is because he testified before the Federal Trade Commission in 1976, in favor of regulating the funeral industry. Since 1976, Mr. Todd claimed that the Embalmer and Funeral Directors and Burial Association Board, have been trying to get him out of business. He is aware that there have been lots of changes and that he was not at the legislature in 1995.

Mr. Booker stated that if we get to the point today, we are going to go through these allegations, that are claimed to be done by your client. Mr. Smith agreed, he said they were there to determine these allegations. Mr. Booker further stated he wonders why his client would directly disobey an order from this Department. He wouldn't have the guts to disobey their orders, but maybe he has the wrong lawyer. Mr. Smith did reiterate that his advice to his client was to comply with any orders. Booker inquired if Mr. Akers, trying to obtain these records were truthful and Mr. Smith replied he would believe that Mr. Akers was telling the truth. his response on behalf of his client, is that this relationship is a new one. He has had no communication with Mr. Akers about this and that he is sure he could work with him and his staff to get it resolved.

Mr. Smith stated his interpretations of the law were that only the purchaser or their personal representative could change the contract after death, there is no mention the rights of disposition.

Ms. Gibson closed by stating that the Board must address and resolve three issues. First, you have got to determine if any action should be taken against Mr. Todd's funeral director license and/or the establishment license for violation of prepaid law. Second, you must determine if action should be taken for the funds he did receive, though he couldn't recall how much; he said he received funds for services he did not provide and that is not right for him to retain those funds for services, he did not provide. You heard Mr. Todd say that when he did receive those requests for payment, that he threw the requests for reimbursement in the trash. Third, you must determine if any action should be taken for his failure to respond to a complaint.

Mr. Smith stated they did not dispute allegations 1-5a or 5b, but allegations 6-12, they believe they have defense under the law. Marks had contracts with these families and had a right to rely

on those contracts, those contracts were irrevocable. Marks was ready to provide services to those families. He stated that under the law, the family members had a right to want to use someone else and take them where they wanted to take them, but as a matter of law and the statutory concept we have here, none of those family members were representatives as a matter of law. They believe that under the plain reading of A.C.A §23-40-122, Marks had every right to keep those funds. It's irrelevant that they did not have a prepaid permit as of October 2020, it's their position they had a permit when they entered the contracts. He further stated, that if the Board finds that these funds should be paid, that Mr. Todd and Marks Funeral Home should not be sanctioned, because he relied on advice of his previous counsel.

Off the record at 2:57 pm for deliberations.

Mr. Honey stated that as a non-professional member and a representative of the Commissioner, that he believes the intent and true meaning of the law, was that the family could change these contracts. The money is owed on behalf of these families. Mr. Smith makes a good hyper-technical argument and that he is welcome to appeal this up to the circuit court and supreme court, to see if he can make some new law, but he is inclined to agree with the allegations here and ready take appropriate action.

Mr. Booker stated in 1995 he was 100% on the other side, but the theory from the legislature was clear, that the family should have the final say in these matters.

The Board found allegations 1-12 true with the following amendments.

A2 – amended to add co-owner. A7 amended to 7a and added 7b R.L. Reed performed services for Vanilla Smith in March 2021, in the amount \$4,226.00. A9 was the total owed to R.L. Reed was amended to \$16,126.00

The Board found charges 1-4 proven.

Sanctions discussed were to require Respondent to reimburse \$16,126 to R.L. Reed and that the funeral director license of Joe Todd and establishment license of Marks Funeral Home be suspended until proof of payment is received. Licenses will be reactivated after proof is received. Respondents' licenses will be on probation for 3 years.

On the record 3:18 PM.

Motion made by Smithson to find factual allegations 1-12 true with amendments, seconded by Hodges, all in favor. Motion carried.

Motion made by Smithson to find charges 1-4 proven, seconded by Hodges, all in favor. Motion carried.

Motion made by Honey to require restitution in the amount of \$16,126 be paid to R. L. Reed and the funeral director license of Joe Todd and establishment license of Marks Funeral Home be

suspended until proof of payment is received. Then the licenses will be held in probation for a period of three (3) years after, seconded by Hodges, all in favor. Motion carried.

## 12. **Adjournment**

Board meeting concluded upon hearing and record closing at 3:26 PM.