

Louisiana State Board of Embalmers And Funeral Directors

Minutes of the Meeting

For

November 9, 2021

Board Members present:

Rodney McFarland , President

Willie P. Davis, Jr. , Vice President

Terry Luneau , Secretary

Shelton Dixon, Treasurer and Consumer Representative

Maurice Southall

Juan M. Joseph

Stephen Boudreaux

Gregory McKneely

Louis Charbonnet

The meeting was called to order by the Board's President, Mr. McFarland at 9:00 AM, at the Board's office, located at 3500 N. Causeway Blvd. Ste. 1232 Metairie, Louisiana. Also, present was Kim W. Michel, Executive Director, Heidi Penouilh, Administrative Coordinator, IV, Jude Daigle, Inspector, Christopher Lento, General Counsel and Chanel R. Debose, Prosecuting Attorney.

Meeting of the Board via Zoom - NO PUBLIC ATTENDANCE ALLOWED AT THIS TIME DUE TO THE PANDEMIC

PRESENTATIONS:

Louis Charbonnet, III, received a "Welcome" introduction as a newly appointed board member.

PUBLIC COMMENTS:

There were no public comments made at today's meeting.

COMPLIANCE, HEARING and/or ADMISSION AND CONSENT

An Admission and Consent; In the Matter of Professional Funeral Service, Malcolm Gibson, New Orleans, was presented to the Board Members for their review and determination.

Motion was made by Mr. Southall and seconded by Mr. Davis and unanimously passed that the admission and consent be discussed in Executive Session.

Update with regard to a letter received by Ms. Michel from the East Baton Rouge Coroner's office which stated that Arthur Johnson of Rollins Funeral Home, Woodville, MS made a removal in LA without notifying or reporting the death to the EBPCO. The board directed Ms. Michel to file a complaint letter to the Mississippi State Board of Funeral Service with regard to the issue outlined within the EPBCO letter. Ms. Michel presented the board with a letter received from the MSBFS to Rollins Funeral Home, Woodville, MS and the MSBFS is awaiting a response from Rollins Funeral Home, Woodville, MS.

Ms. Michel presented the board members with a letter to Cease and Desist, addressed to David Whiddon, owner of 1st

Call Transport. The letter outlines an issue that Mr. Whiddon has a refrigeration unit located in a warehouse where he is storing deceased human remains for funeral homes and for the Ascension Parish Coroner's office. The letter also outlined an issue with out of state funeral homes making removals in Louisiana as well as Mr. Whiddon representing himself as a funeral director as reported to the board by the East Baton Rouge Parish Coroner's office along with numerous other objections regarding the storing of deceased human remains.

Ms. Michel spoke to Mr. Whiddon regarding the letter and the regulations regarding his practices and not having a license. Ms. Michel also spoke to the Ascension Parish Coroner's office, staff and Coroner, who advised that their office does not own or lease the building in which the deceased human remains are being stored by Mr. Whiddon and that they were misled regarding him having a license to practice. The Ascension Parish Coroner's office advised that they have discontinued allowing 1st Call Transport to hold and store deceased human remains on their behalf at the warehouse.

A discussion ensued with the board members regarding the State Board Examination (SBE) for the funeral directing only license and the unsuccessful numbers and ratings involving that examination. The discussion continued with the LA Regulations and Rules Examination and the possibility of implementing the LRR examination in place of the SBE.

Motion was made by Mr. Dixon and seconded by Mr. Davis and unanimously passed that the board allow a funeral director only candidate to be eligible to take the LRR.

After further discussion and comments from attendees of the meeting, it was suggested that a funeral director only candidate should be able to decide which examination they would like to take.

Motion was made by Mr. Boudreaux, seconded by Mr. Southall and unanimously passed that a funeral director only candidate be allowed to choose which examination they would like to take, either the LRR or the SBE.

The Conference is offering an opportunity for one delegate grant to be awarded to each state board for a board member to join the annual meeting to be held in Houston, TX, February 12 -24, 2022.

Motion was made by Mr. Southall, seconded by Mr. McKNeely and unanimously passed that Mr. McFarland be nominated and accepted for the delegate grant to attend the annual meeting of the Conference in Houston, TX, February 12 -24, 2022.

The Laws and Rules Committee update; the committee is comprised of members; Mr. Luneau, President, Mr. Southall, Mr. Chabrbonnet and Mr. Davis. The next meeting of the LRC will be scheduled for November 30, 2021 at 3:00 PM. The meeting is an open meeting and will be posted to the website with a Zoom link for attendance.

The Executive Director's report was presented by Ms. Michel outlining the Certemy licensing portal and an update with regard to CE Broker.

Mr. Daigle presented his inspector's report as; 95,300 MILES IS THE TOTAL MILEAGE ON THE 2017 FORD FUSION AS OF TODAY ON MEETING DAY; Since the beginning of 2021 a total of 475 inspections have been done so far this year; 20 Inspections since the last meeting; This represents the total number of inspections since the beginning of 2021.

Motion was made by Mr. Luneau, seconded by Mr. Boudreaux and unanimously passed that the Executive Director's report and the Inspector's report be accepted as presented.

The minutes of October meeting was presented to the board for review and approval.

Motion was made by Mr. Southall, seconded by Mr. Boudreaux and unanimously passed that the minutes be approved as presented.

The financial report and budget for FY 20/21 was presented for review and consideration.

Motion was made by Mr. Luneau, seconded by Mr. Boudreaux and unanimously passed that the financial report be accepted as presented.

The Complaint Review Committee's report was presented to the Board by Ms. Debose, Prosecuting Attorney.

Ms. Debose reiterated that the complaints are presented anonymously in numerical format to the Board with the Complaint Review Committee's decision based upon the information presented at the time of review. The numbered complaints presented in an open meeting remains anonymous while a complaint is pending further investigation and/or until such time as the complaint file has been closed.

Four complaints were recommended for an informal hearing, all in keeping with the recommendation of the Complaint Review Committee.

There were no complaints in which there did not appear to be a violation of the laws, rules and regulations under which licensees operate, all as per the recommendations of the Complaint Review Committee

Motion was made by Mr. Southall, seconded by Mr. Davis and unanimously passed that the complaint report be accepted as presented per the recommendations of the Complaint Review Committee.

Motion was made by Mr. Dixon, seconded by Mr. Luneau and unanimously passed that the board move into Executive Session at 10:30 PM for the following;

- Discussion with regard to board staff and any issues or concerns
- Discussion with regard to the Admission and Consent In the Matter of Professional Funeral Services, New Orleans

Motion was made by Mr. Southall, seconded by Mr. Luneau and unanimously passed that the board move out of Executive Session at 12:50 PM for discussion of the following:

Ms. Michel advised the members that there was a problem with funeral homes that were displaced during hurricanes last year in 2020 and that the board should consider promulgating emergency rules for natural disasters and that although there are allowances within the Governor's Proclamations during such emergencies, the board should receive notification from funeral establishments and crematories in order to be recognized for special considerations due to the damages incurred from such natural disasters.

Ms. Michel addressed the board with regard to her retirement and that the first opportunity for her to apply for retirement will be April 12, 2023.

While discussing her retirement, Ms. Michel noted quite a few issues that needed to be addressed due to the fact that there are only 2 office personnel. Ms. Michel also advised the board that she is the sole curator of the finances and bank accounts and that an additional signature and overseer of the accounts should be made. Ms. Michel also noted the responsibilities involved with the title of Executive Director and that her successor and anyone to follow in the future, should have an agreement in place for the position to address the exiting process. Ms. Michel expressed that the board had previously moved for her to hire a part time person and that the time is now critical for the move

due to the possible transition of her position as Executive Director.

Ms. Michel did explain that since she has taken the position as Executive Director, many changes have taken place with regard to the State of LA, State Departments, other Agencies and the processes involved with reporting requirements, changes to how the promulgation of rules are handled, contracts, training, auditing and accountability that is mandatory per the State of LA.

Motion was made by Mr. Boudreaux, seconded by Mr. Dixon and unanimously passed that Ms. Penouilh's signature be added to all financial accounts; that reporting of finance details be reviewed by Mr. Luneau; that Mr. Charbonnet review Ms. Michel's job description, tasks, and reporting for the state.

With regard to the Admission and Consent submitted by Professional Funeral Services, Malcolm Gibson, and Herbert Johnson, New Orleans;

Motion was made by Mr. Dixon, seconded by Mr. Luneau and passed by the following; Mr. Boudreaux, Mr. Davis, Mr. Dixon, Mr. Joseph, Mr. Luneau, Mr. MckNeely and Mr. Southall voted yes that Malcolm Gibson and Herbert Johnson, both be fined \$2500.00 each to include the fees for the attorney.

For the record, Mr. Charbonnet recused himself from any discussion of the proceedings.

FINDINGS OF FACT and DECISIONS of the BOARD

This matter came before the Louisiana State Board of Embalmers and Funeral Directors on November 9, 2021 for a ruling on an Admission and Consent submitted by the parties.

Present:

CHANEL R. DEBOSE, Prosecuting Attorney, for and on behalf of the Louisiana State Board of Embalmers and Funeral Directors.

CHRISTOPHER LENTO, General Counsel, for and on behalf of the Louisiana State Board of Embalmers and Funeral Directors.

After considering the law, the evidence, the entire record of these proceedings, and the Admission and Consent submitted by the parties for a ruling on the Admission and Consent, MALCOLM GIBSON and the entity operating as PROFESSIONAL FUNERAL SERVICES, INC., who waived their appearances to appear before the Board to be a part of the proceedings held on November 9, 2021. The Louisiana Board of Embalmers and Funeral Directors rules as follows:

FINDINGS OF FACT

That MALCOLM GIBSON is the licensed funeral director and embalmer (#E2431); designated manager, designated agent; and the owner of the establishment operating as Professional Funeral Services, Inc. (#2642), New Orleans, Louisiana, and, therefore, subject to the jurisdiction of this Board. HERBERT JOHNSON is a licensed funeral director (#U1464), and a co-owner of the establishment operating as Professional Funeral Services, Inc. (#2642), and, therefore, subject to the jurisdiction of this Board: that evidence contained within the record of these proceedings, and the Admission and Consent signed by the parties, reflect that Malcolm Gibson, Herbert Johnson, and the entity operating as Professional Funeral Services, Inc. are guilty of violating the provisions of: LA R.S. 37:846 (A) (5) (Unprofessional, Unethical, or Dishonest Conduct) (Failing to List the Wife of the Decedent on the Death Certificate).

CONCLUSIONS

As to **Malcolm Gibson, Herbert Johnson, and the entity operating as Professional Funeral Services, Inc.**, the Board members found that Malcolm Gibson, Herbert Johnson, and the entity operating as Professional Funeral Services, Inc. violated the provisions of LA R.S. 37:846 (A) (5) (Unprofessional, Unethical, or Dishonest Conduct) (Failing to List the Wife of the Decedent on the Death Certificate) as evidenced by documentation appearing in the file and the Admission and Consent signed by Malcolm Gibson on behalf of himself and the entity operating as Professional Funeral Services, Inc., admitting to the following:

On or around March 22, 2021 through March 29, 2021, Malcolm Gibson, the entity operating as Professional Funeral Services, Inc., and Herbert Johnson violated LA. R.S. 37:846 (A) (5) by engaging in unprofessional, unethical, or dishonest conduct by failing to list Shirley Bienemy, the wife of the decedent, Shallon Bienemy, Sr., on the decedent's death certificate after knowing or having reason to know that she was the lawful wife of the decedent.

DECISION OF THE BOARD

Accordingly, for the reasons as stated and noted herein above;

IT IS ORDERED BY THE BOARD that Malcolm Gibson, Herbert Johnson, and the entity operating as Professional Funeral Services, Inc. are guilty of violating the provisions of LA R.S. 37:846 (A) (5) (Unprofessional, Unethical, or Dishonest Conduct) (Failing to List the Wife of the Decedent on the Death Certificate).

IT IS FURTHER ORDERED BY THE BOARD that pursuant to LA. R.S. 37:850, the penalty statute applicable to these violations, which states: Whoever violates the provisions of this Part shall be fined not less than five hundred dollars, nor more than two-thousand, five-hundred dollars, and costs of the court reporter and attorney for the board for each offense, or by imprisonment for not less than thirty days, nor more than one-hundred eighty days for each offense, or both such fine and imprisonment, Malcolm Gibson is fined the sum of Two-Thousand, Five Hundred (2,500.00) dollars for the above cited violation of LA R.S. 37:846 (A) (5) (Unprofessional, Unethical, or Dishonest Conduct) (Failing to List the Wife of the Decedent on the Death Certificate).

IT IS FURTHER ORDERED BY THE BOARD that pursuant to LA. R.S. 37:850, the penalty statute applicable to these violations, which states: Whoever violates the provisions of this Part shall be fined not less than five hundred dollars, nor more than two-thousand, five-hundred dollars, and costs of the court reporter and attorney for the board for each offense, or by imprisonment for not less than thirty days, nor more than one-hundred eighty days for each offense, or both such fine and imprisonment, Herbert Johnson is fined the sum of Two-Thousand, Five Hundred (2,500.00) dollars for the above cited violation of LA R.S. 37:846 (A) (5) (Unprofessional, Unethical, or Dishonest Conduct) (Failing to List the Wife of the Decedent on the Death Certificate).

IT IS FURTHER ORDERED BY THE BOARD that Professional Funeral Services, Inc. and its representative Malcolm Gibson are to pay the sum of Six-Thousand, Four-Hundred, Sixty-One Dollars, and Twenty-Five Cents (\$6,461.25) for the attorney's fees incurred by the Board for the handling of this matter from the date the matter was accepted by the Board through November 9, 2021, the date the Admission and Consent was accepted by the Board Members.

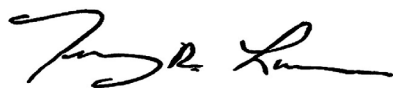
IT IS FURTHER ORDERED BY THE BOARD that the total assessed cost to Professional Funeral Services, Inc, Malcolm Gibson, and Herbert Johnson is Eleven-Thousand, Four-Hundred, Sixty-One Dollars, and Twenty-Five Cents (\$ 11, 461.25) in fines and fees owed to the Board for the above cited violations. The above assessed fines and attorney's fees are to be paid by Professional Funeral Services, Inc. and/or its representatives Malcolm Gibson and Herbert Johnson within thirty (30) days of receipt of this decision.

IT IS FURTHER ORDERED BY THE BOARD that should the costs not be received by the Board within thirty (30) days of the notification of costs due, then the license of the establishment operating as Professional Funeral Services, Inc., New Orleans, Louisiana shall be suspended until such time as all costs are paid.

NEW BUSINESS

The next schedule of meetings for the board will be on November 30, 2021 for a Laws & Rules Committee meeting, December 1, 2021 for a board meeting, and January 11, 2021 for a board meeting.

There being no further business, the meeting was concluded.



Terry Luneau, Secretary



Rodney McFarland, Sr., President

