



Oklahoma Funeral Board  
3700 N. Classen Blvd, Suite 175  
Oklahoma City, Oklahoma 73118  
405.522.1790

## MEMORANDUM & BOARD PACKET

April 2, 2021

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**TO: MEMBERS**

Tom Coble  
J. Cooper  
Joe Highberger  
Brent Matherly  
Jim Roberts  
Chad Vice

**BOARD STAFF**

Amanda Everett, AAG  
Thomas Grossnicklaus, AAG  
Thomas Schneider, AAG  
Karol Shepherd  
Tyler Stiles

**FR:** Chris Ferguson

**RE:** April 8, 2021 Regular Board Meeting

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Attached please find the April 8, 2021 Oklahoma Funeral Board agenda, previous meeting drafted minutes, and other supporting documents regarding the meeting. If you have any questions or if you cannot attend next week's meeting please contact me.

Chris Ferguson  
Executive Director  
Oklahoma Funeral Board

**OKLAHOMA FUNERAL BOARD**  
3700 North Classen Blvd, Suite 175  
Oklahoma City, Oklahoma 73118

NOTICE OF REGULAR MEETING

MEETING PLACE: Videoconference at

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23<sup>rd</sup> Street Conference Room 1<sup>st</sup> Floor Oklahoma City, OK 73105.

All Funeral Board Members, Funeral Board Staff, and visitors who wish to attend the Funeral Board's monthly Board meetings are encouraged to wear a facial covering or mask over the mouth and nose at all times.

DATE & TIME: April 8, 2021 10:00AM

A copy of this notice of meeting and agenda has been posted in a prominent location at the office of the Oklahoma Funeral Board, 3700 North Classen Blvd Suite 175, Oklahoma City, Oklahoma, on April 2, 2021 at 4:00PM. A copy of this agenda is available on the Funeral Board website at [www.ok.gov/funeral](http://www.ok.gov/funeral)

A virtual videoconference special Board meeting of the Oklahoma Funeral Board will be held on April 8, 2021 at 10:00 a.m. in accordance with the Administrative Procedures Act, and the Open Meeting Act as amended by SB1031. Appearing remotely via videoconference for the meeting will be Board members; Tom Coble, Appearing in person for the meeting will be Board members, J. Cooper, Joe Highberger, Brent Matherly, Jim Roberts, Chad Vice and Board staff of AAG Amanda Everett, Chris Ferguson, AAG Thomas Schneider, Karol Shepherd, and Tyler Stiles.

If attending via videoconference or via telephone Continuing Education credit will not be provided for this meeting. If you plan to attend a Board meeting for Continuing Education credit and would like a rough estimate of the length of time Board staff estimates the meeting might last, please email your request to [info@funeral.ok.gov](mailto:info@funeral.ok.gov).

\*\*\* This symbol denotes the application and/or applicant is not in compliance with 235:1-1-2 (c) (14 day Rule)

ORDER OF BUSINESS: The Board may discuss, vote to approve, vote to disapprove, vote to table, change the sequence of any agenda item, or decide not to discuss any item on the agenda.

**1. Roll Call**

**2. Reading of the Oklahoma Funeral Board mission statement**

The mission of the Oklahoma Funeral Board is to act in the public interest and for the protection of the public within the powers vested in the Board by the State of Oklahoma for the regulation and education of the funeral service profession.

**3. Approval of the February 18, 2021 Special Board meeting minutes**

**4. Review complaints with possible vote for probable cause or other action**

21-31- Overcharging

21-36- Next of Kin Issues

21-38- Death Certificate Issues

**5. Matters for consideration: Consent Order**

At the conclusion of the parties' presentation and any questions or public discussion by the Board, the Board may in each complaint case:

- i. consider and vote on motion(s) to conduct executive session(s) pursuant to 25 O.S.2011, Section 307(B)(8) to engage in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act;
- ii. if an executive session is held, designate a person to keep written minutes of the executive session;
- iii. consider and vote on motion(s) to exit executive session and return to open meeting; and
- iv. consider and vote on motion(s) regarding possible action to be taken regarding matter discussed in executive session.

- 5A. Complaint 20-25 Forever Memories Funeral Service, Inc.; Establishment, Sallisaw; Forever Memories Funeral Service, Inc. Owner; David Hampton, FDIC, Sallisaw. Member Vice needs to be recused
- 5B. Complaint 21-14 Forever Memories Funeral Service, Inc.; Establishment, Sallisaw; Forever Memories Funeral Service, Inc. Owner; David Hampton, FDIC, Sallisaw. Member Vice needs to be recused
- 5C. Complaint 21-23 Alternatives Cremation & Funeral Service, Establishment, Cordell; Alternatives Cremation & Funeral Service, Owner; Richard Varner, FDIC, Cordell. Member Matherly needs to be recused
- 5D. Complaint 21-33 Alternatives Cremation & Funeral Service, Establishment, Cordell; Alternatives Cremation & Funeral Service, Owner; Richard Varner, FDIC, Cordell. Member Matherly needs to be recused
- 5E. Complaint 21-39 Alternatives Cremation & Funeral Service, Establishment, Cordell; Alternatives Cremation & Funeral Service, Owner; Richard Varner, FDIC, Cordell. Member Matherly needs to be recused

6. Vote to affirm or disaffirm the issuance of the following licenses, registrations, certificates, dissolution or other action

A. Apprenticeship (Original)

1. Sarah Miller, OKC, Bill Eisenhower FS, OKC
2. Andrea Landrum, Denison, TX, Brown's FS, Durant
3. Katlynn Chism, OKC, OMS, OKC (EM only)
4. Samantha Jasper, OKC, Fallon, OKC and Hibbs, Choctaw
5. Taigen White, Sulphur, Dearman FH, Tishomingo
6. Chantal Hernandez, Hinton, Matthews FH, Edmond

B. Apprenticeship (2nd extension)

1. Wanda Douglas, Ardmore, Alexander Gray FH, Wilson

C. Apprenticeship (FD only) (Original)

1. Amy Tolle, Purcell, Wilson-Little FH, Purcell

D. Apprenticeship (FD only) (2nd extension)

1. Alan Hedden, Tulsa, Cremation Society of Oklahoma, Tulsa (Grad of Dallas)

E. Funeral Director and/or Embalmer (Reciprocal)

1. Chester Beavers, Texas ( FD only)
2. Joseph Campbell, Missouri

F. Funeral Director and/or Embalmer (Original)

1. Nicole Winters, Okmulgee (FD only)
2. Brent Patterson, Tuttle (FD only)
3. Staci Hartwell-Helm, Ardmore

4. Christopher Gann, Broken Bow (FD Only)

#### G. Establishments

1. Tishomingo FH, request to change FDIC from Chad John to Tasha Kemp
  2. The Funeral Home, LLC, Watonga, New Establishment, The Funeral Home, LLC, Owner; Kenneth Anglin Jr. FDIC.
  3. Rice FS, Catoosa request to close establishment
  4. Rice FS & CremationCare+, Catoosa, New Establishment, Kennedy FH a Separate Series of the Odell Group LLC a OK Series LLC, Owner; Rondall Gammon, FDIC.
  5. Cremation +, Tulsa request to close establishment
  6. CremationCare+, Tulsa, New Establishment, Kennedy FH a Separate Series of the Odell Group LLC a OK Series LLC, Owner; Rondall Gammon, FDIC.
  7. Tribute Memorial Care Southwest, Tuttle, New Establishment, Tribute Memorial Care Southwest LLC, Owner; John Davenport, FDIC
  8. Brown's Family Funeral Home, McLoud, request to change FDIC from Venita Elmore to Timothy Alonzo
  9. Brown's Family Funeral Home, Chandler, request to close establishment
  10. McKay-Davis & Tate FH & C, OKC request to change FDIC from Johnnie Swanson Jr. to Venita Elmore
7. **New Business.** Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda. 25 O.S. Section 311.9.

## 8. Legal Update

- A. Possible vote to enter into executive session pursuant to 25 O.S. Section 307(B)(4) for confidential communication between the Funeral Board and its attorney concerning pending litigation in Garfield County District Court, Case Number CJ-2020-284, *Amy Stittsworth Funeral Svc. & Cremation Directors, Inc., et al. v. State of Okla., ex rel. Oklahoma Funeral Board, et al.*, when with the advice of its attorney, the Funeral Board determines that disclosure would seriously impair the ability of the Funeral Board to process or conduct or defend its claim in the pending litigation
- B. Vote to exit executive session.
- C. Possible vote on matters discussed in executive session.
- D. Possible vote to enter into executive session pursuant to 25 O.S. Section 307(B)(4) for confidential communication between the Funeral Board and its attorney concerning pending litigation in Oklahoma County District Court, Case Number CV-2020-2297, *Neptune Management Corp. v. State of Okla., ex rel. Oklahoma Funeral Board, et al.*, when with the advice of its attorney, the Funeral Board determines that disclosure would seriously impair the ability of the Funeral Board to process or conduct or defend its claim in the pending litigation.
- E. Vote to exit executive session.
- F. Possible vote on matters discussed in executive session.

## 9. Administrative Assistant Report

- A. Thentia Computer Software Project Update

## 10. Deputy Director's Report

- A. 2021 Legislative Update; HB1638; HB1742; HB2009; HB2072; and SB354

## 11. Executive Director's Report

- A. Agency Financial update

B. COVID-19-related funeral expenses

12. Adjournment

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Chris Ferguson  
Executive Director

The next regular meeting of the Oklahoma Funeral Board will be held: **May 13, 2021. Office of Chief Medical Examiner –OKC 921 N.E. 23<sup>rd</sup> Street Conference Room – 1<sup>st</sup> Floor Oklahoma City, OK 73105.**





## MINUTES OF A REGULAR MEETING

OKLAHOMA FUNERAL BOARD  
3700 N. Classen, Suite 175  
Oklahoma City, Oklahoma 73118

March 11, 2021

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### BOARD MEMBERS

J. Cooper  
Joe Highberger  
Brent Matherly  
Jim Roberts  
Chad Vice

### STAFF

Chris Ferguson  
Thomas Grossnicklaus, AAG  
Karol Shepherd  
Tyler Stiles

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MEETING PLACE: MEETING PLACE: Videoconference at

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only Board Members, Staff, and Respondents use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23<sup>rd</sup> Street Conference Room 1<sup>st</sup> Floor Oklahoma City, OK 73105. Face masks are required to be worn if attending in person.

This Board meeting notice and agenda was posted on our web site ([www.ok.gov/funeral](http://www.ok.gov/funeral)) on March 5, 2021 at 11:30am

Continuing Education credit was not provided for this meeting if attended via videoconference or telephone.

President Highberger called the meeting to order at 10:00AM. Board Members, Highberger, Matherly, Roberts and Vice were present. Member Coble was absent. Member Cooper arrived after the meeting started. A quorum was at all times present

Reading of the Oklahoma Funeral Board mission statement. The mission of the Oklahoma Funeral Board is to act in the public interest and for the protection of the public within the powers vested in the Board by the State of Oklahoma for the regulation and education of the funeral service profession.

Motion by Roberts second by Matherly to approve the February 18, 2021 Special Board meeting minutes. The motion passed unanimously.

Motion by Vice, second by Highberger to dismiss complaint 21-29 regarding not paying vendor issues with a letter of concern. The motion passed unanimously.

Mr. Cooper entered the meeting room.

Motion by Vice, second by Highberger to find probable cause on complaint 21-39 regarding death certificate issues. The motion passed unanimously.

Regarding possible vote to enter into executive session pursuant to 25 O.S. Section 307(B)(4) for confidential communication between the Funeral Board and its attorney concerning pending litigation in Oklahoma County District Court, Case Number CV-2020-2297, *Neptune Management Corp. v. State of Okla., ex rel. Oklahoma Funeral Board, et al.*, when with the advice of its attorney, the Funeral Board determines that disclosure would seriously impair the ability of the Funeral Board to process or conduct or defend its claim in the pending litigation; Vote to exit executive session; and possible vote on matters discussed in executive session. Motion by Vice, second by Cooper to enter into executive session. The motion passed unanimously.

Motion by Cooper second by Highberger to exit executive session. The motion passed unanimously. While in executive session no votes were taken and only this case was discussed.

No action was taken as a result of the executive session.

Motion by Roberts second by Highberger to approve the following: Apprenticeship (Original) Troy D. Wells, Sand Springs, Dillon FS, Sand Springs; Leah Calaway, Ada, Estes-Phillips FH, Ada; Peri Moore, Norman, Tribute Memorial Care, Norman; Lewis Robinson III, Guthrie, Pollard FH, Guthrie and Michael Turner, Blair, Kincannon FH, Altus. The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following:  
Apprenticeship (2nd extension) Tammy Marshall, Cordell, Ray and Martha's  
FH, Cordell (enrolled at Dallas) The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following:  
Apprenticeship (2nd extension) Nathan Rice, Pryor, Rice FS, Claremore  
(enrolled at UCO) The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following:  
Apprenticeship (3rd extension) Daniel Collier, Claremore, Rice FS, Claremore  
(enrolled at North Texas) The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following:  
Apprenticeship (FD only) (Original) Kari Harrell, Sallisaw, Forever Memories FS,  
Sallisaw. The motion passed unanimously.

Motion by Roberts second by Highberger to table the following: Alan Hedden,  
Tulsa, Butler-Stumpff & Dyer FH, Tulsa (Grad of Dallas). The motion passed  
unanimously.

Motion by Roberts second by Highberger to approve the following:  
Apprenticeship (FD only) (1<sup>st</sup> extension) Kimberly Clark, Tishomingo,  
DeArman-Clark FH, Tishomingo (enrolled at Dallas). The motion passed  
unanimously.

Motion by Roberts second by Highberger to table the following: Funeral  
Director and/or Embalmer (Reciprocal) Chester Beavers, Texas ( FD only) and  
Joseph Campbell, Missouri. The motion passed unanimously.

Motion by Roberts second by Cooper to approve the following: Funeral  
Director and/or Embalmer (Original) Robert L. Stevens, Wheatland (FD only),  
Patricia Gonzalez-Carter, Macomb, and Lea Mikala, Shawnee. The motion  
passed unanimously.

Motion by Roberts second by Highberger to table the following: Staci  
Hartwell-Helm, Ardmore. The motion passed unanimously.

Motion by Vice second by Matherly to approve the following: Establishment;  
Neptune Society, Edmond, New Establishment, Neptune Management Corp.,  
Owner; Angela Bynum, FDIC. Members Cooper, Matherly, and Vice voted yes;  
Members Highberger and Roberts voted no. The motion passed.

Motion by Vice second by Matherly to approve the following: Establishment;  
Bixby FS, Bixby, request to change name from Bixby FS to Bixby-South Tulsa

Funeral Service and Crematory. Members Cooper, Matherly, Roberts, and Vice voted yes; Member Highberger voted no. The motion passed.

No new business was discussed.

No action was taken regarding possible vote to enter into executive session pursuant to 25 O.S. Section 307(B)(4) for confidential communication between the Funeral Board and its attorney concerning pending litigation in Garfield County District Court, Case Number CJ-2020-284, *Amy Stittsworth Funeral Svc. & Cremation Directors, Inc., et al. v. State of Okla., ex rel. Oklahoma Funeral Board, et al.*, when with the advice of its attorney, the Funeral Board determines that disclosure would seriously impair the ability of the Funeral Board to process or conduct or defend its claim in the pending litigation

Motion by Highberger second by Matherly to approve the proposed permanent Oklahoma Funeral Board Rules. The motion passed unanimously.

Administrative Assistant Report-Thentia Computer Software Project Update  
Mrs. Shepherd updated the Board that she is currently in the process of development and implementation of a regulatory database with Thentia and that she is in the questionnaire and analysis process. In addition, she is researching payment processor companies to choose which will be the best fit for the Board.

Deputy Director's Report-2021 Legislative Update; HB1638; HB1742; HB2009; HB2072; HB2528; SB301, SB354, and SB970 Mr. Stiles updated the Board that board staff are currently tracking the following Bills: Here is a brief summary of legislation that we are tracking at this time that could impact the funeral industry.

- |        |   |
|--------|---|
| HB1638 | Rep. Lepak- Related to Death Certificates. Felony to knowingly provide false data or misrepresent any person's relationship to the decedent. This Bill passed the House 91-0 and has been sent to the Senate. |
| HB1742 | Rep. Dills- Funeral Board Bill-Related to Alkaline Hydrolysis. This Bill has been passed the House 93-1 and is on its way to the Senate.  |
| HB2009 | Rep. Townley- Related to advance practice registered nurses signing DC's. This Bill passed the House 93-0 and was sent to the Senate.   |

- HB2072 Rep. McCall- Related to a temporary funeral director and embalm license. Passed with Emergency
- HB2528 Rep. Kannady- Funeral Service Licensing Act shell bill. This Bill is dormant due to rules.
- SB301 Sen. Bergstrom- Related to recommendations to the legislature for the need for out of state permits from the Medical Examiner's Office. This Bill is dormant due to rules.
- SB354 permit Sen. Bergstrom- Related to the elimination of the out of state from the Medical Examiner's Office for boarding counties to other states. This Bill was amended to include all counties and not the outlying counties in Oklahoma. This Bill was received in the House.
- SB970 Sen. Floyd- Related to Open Records Act- redacting personal identifiers on licensing applications. This Bill requires redaction of email addresses, physical address, phone numbers and other identifiers on license applications that are requested from an Open Records Request. This Bill was received in the House.

Executive Director's Report-Agency Financial update- Mr. Ferguson reported gross receipts for February 2021 to be \$8,267.75 with \$336.27 going to the State of Oklahoma general fund. The expenses for the same timeframe totaled \$30,624.53 and net income after expenses totaled -\$22,693.05

Motion by Vice second by Roberts to adjourn the meeting at 11:27AM. The motion passed unanimously.

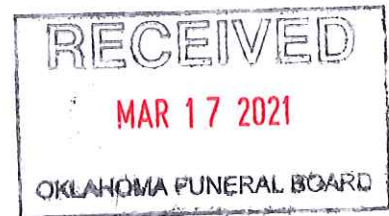
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Joe Highberger  
Funeral Board President

**BEFORE THE OKLAHOMA FUNERAL BOARD**

**IN THE MATTER OF THE COMPLAINT** )  
**AGAINST:** )  
 )  
**FOREVER MEMORIES FUNERAL** )  
**SERVICES, INC** )  
**Establishment Lic. # 1845ES,** )  
**Location: 463411 HWY 101,** )  
**Sallisaw, OK 74955,** )  
**Owner: Forever Memories Funeral Services Inc)**  
**Michael C Harrell, Service Agent,** )  
**463411 HWY 101** )  
**Sallisaw, OK 74955,** )  
**A Licensed Funeral Establishment, and** )  
 )  
**DAVID HAMPTON,** )  
**Licenses: 2048FD, 2198EM,** )  
**Address: 317 E. Lucy,** )  
**Sallisaw, OK 74955,** )  
**A Licensed Funeral Director, a Licensed** )  
**Embalmer, and the Funeral Director in Charge** )  
**FOREVER MEMORIES FUNERAL** )  
**SERVICES, INC** )  
 )  
 )  
**Respondents.** )

**Complaint No. 20-25**



**COMPLAINT AND NOTICE OF HEARING**

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board ("Board"), by and through Assistant Attorney General Thomas L. Grossnicklaus, and alleges that the Respondents, a funeral service establishment, one individual duly licensed by the Board, have violated provisions of the State Funeral Licensing Act, 59 O.S. 2011, 395.1 et seq, ("the Act"), and Rules of the Board, OAC 235:10-1-1 et seq, ("the Rules"), in the manner set forth below:

**A. FACTUAL ALLEGATIONS**

1. Respondent FOREVER MEMORIES FUNERAL SERVICES, INC. (“FUNERAL HOME”) with establishment license number 1845ES is located at 463411 HWY 101 Sallisaw, OK 74955, and was at all times relevant owned by FOREVER MEMORIES FUNERAL SERVICES, INC, whose service agent is Michael Harrell, 463411 HWY 101, Sallisaw, Oklahoma 74955, and as such FOREVER MEMORIES FUNERAL SERVICES, INC, is liable for any administrative penalty and costs imposed.

2. Respondent DAVID HAMPTON (“HAMPTON”) is a licensed Funeral Director and embalmer with license numbers 2048FD and 2198EM and was the Funeral Director in Charge (“FDIC”) of the Funeral Home at all times relevant in this Complaint, and as the FDIC was responsible for the establishment’s legal and ethical operation pursuant to 59 O.S. Section 396.2(12) and is thus responsible for the wrongful conduct identified herein.

3. The Board exercises jurisdiction over Respondents pursuant to 59 O.S. 396.2a(9) and (11).

4. During the course of an investigation conducted by the Oklahoma Funeral Board’s Investigator, Tyler Stiles, it was determined that the Respondents’ Statements of Goods and Services and the facts surrounding a Statements of Goods and Services for the deceased Charlotte Taylor, which reflects that on September 28, 2018, Respondent made arrangements with the Charlotte Taylor family. The family was charged \$1,307 for Direct Cremation.

5. Board staff obtained a copy of Respondents’ General Price List effective February 15, 2017, which reflects the price for Direct Cremation is \$1,295.

6. Thus, regarding the Charlotte Taylor death, the Respondents misrepresented to the consumer the price of Direct Cremation and the family was charged a larger amount than reflected on the Respondents General Price List. The family has been overcharged by the Respondents in the amount of \$12.00.

7. The manner in which Statements of Funeral Goods and Services were completed by Respondents demonstrates gross malpractice and gross incompetence by each of the Respondents.

8. The Funeral Home establishment is responsible for the activities and violations identified herein.

9. The investigative complaint was filed with the Board on December 26, 2019, and by certified letter dated December 26, 2019, notice was provided to the Respondents. On January 10, 2020, the Respondent FUNERAL HOME and DAVID HAMPTON submitted their response which is summarized as follows:

- Respondent's GPL charge for Direct Cremation is \$1,295 plus any additional expenses incurred. The Respondents were required to pay a different funeral home \$600 for their services of removal and embalming.
- The total of the services reflected on the Charlotte Taylor Statement of Goods and Services would have been \$2,288. The Respondents and Charlotte Taylor's family agreed to \$2,000. In hindsight, the full amount should have been reflected and then a discount been provided instead of as agreed with the family.

10. The prosecution contends there is clear and convincing evidence that the violations alleged above occurred.

11. This matter was presented to the Board on January 14, 2021, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondents.



## **B. CONCLUSIONS**

1. The Funeral Services Licensing Act, 59 O.S. §396.12c(3), (5), (8) and (14) provide that a license issued by the Board may be suspended or revoked for any of the following:

(3) Gross malpractice or gross incompetency, which shall be determined by the Board;

(5) Violation of any of the provisions of the Funeral Services Licensing Act . . . ;

(8) Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act...;

(14) Failing to comply with the Funeral Rules of the Federal Trade Commission, 15 U.S.C., Section 57a(a);

### **Federal Trade Commission Violations**

3. **Statements of Funeral Goods and Services.** The Federal Trade Commission ("FTC") has rules regarding the contents of Statements of Funeral Goods and Services and the price disclosures which must be made. 16 C.F.R. Section 453.2(b)(5)(i)(A) promulgated by the Federal Trade Commission under 15 U.S.C.A. Section 57a(a), provides:

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

. . .

(5) Statement of funeral goods and services selected.

(i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person

and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

4. The FTC Guidelines titled “Complying with the Funeral Rule” at page 15 addresses the information that is required to be placed in the Statement of Goods and Services when a funeral package is purchased, as follows:

**Cost Information**

You should list all of the individual goods and services that the consumer will purchase, together with the price for each item. You cannot simply lump together goods and services that are listed separately on the GPL.

Example: Your Statement would violate the Rule if it listed only three broad categories for “Services,” “Facilities,” and “Automotive Equipment.”

**You may still offer funeral packages, as long as they are offered in addition to, not in place of, itemized prices.** If the consumer selects a package (after you offer itemized prices), your Statement should describe the package, listing individually each of the goods and services included in the package, and state the package price.

5. **General Price List.** The Federal Trade Commission (“FTC”) has rules regarding the contents of the General Price List which must be provided to persons who inquire about funeral goods and services. 16 C.F.R. Section 453.2(b)(4)(i)(A) promulgated by the Federal Trade Commission under 15 U.S.C.A. Section 57a(a), provides:

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

- (1) The prices of funeral goods or funeral services;
- (2) The overall type of funeral service or disposition; or
- (3) Specific funeral goods or funeral services offered by the funeral provider.

6. The FTC Guidelines titled “Complying with the Funeral Rule” at pages 7-8 requires that the General Price List (GPL) contain itemized and accurate pricing information, as follows:

#### **Required Itemized Prices on the GPL**

The Rule requires you to itemize the prices for certain goods and services so consumers may choose only those elements of a funeral that they want. You must list the following 16 specified items of goods and services on the GPL, together with the price for each item:

1. Forwarding of remains to another funeral home
2. Receiving remains from another funeral home
3. Direct cremation
4. Immediate burial
5. Basic services of funeral director and staff, and overhead
6. Transfer of remains to funeral home
7. Embalming
8. Other preparation of the body
9. Use of facilities and staff for viewing
10. Use of facilities and staff for funeral ceremony
11. Use of facilities and staff for memorial service
12. Use of equipment and staff for graveside service
13. Hearse
14. Limousine
15. Either individual casket prices or the range of casket prices that appear on the Casket Price List
16. Either individual outer burial container prices or the range of outer burial container prices that appear on the Outer Burial Container Price List

You can list these items in any order you want. You only have to list the items that you actually offer. If you do not offer one or more of the 16 items,

you need not list those items on the General Price List. In addition to these 16 items, you also may list other items that you offer, such as acknowledgement cards and cremation urns. You also may provide prices for package funerals on your GPL. However, you must offer any package funerals *in addition to and not in place of* the required itemized prices.

**The itemized prices on your General Price List, as well as your Casket Price List and Outer Burial Container Price List, should be accurate and up-to-date. These prices should reflect the prices that you actually charge your customers.**

Of course, you can offer a discount when there are special circumstances, such as arrangements for a friend or relative or a family that otherwise could not afford your services. The Rule does not prevent you from doing this. However, you should not inflate the prices on any of your price lists in order to offer all or most of your customers a discount. In that case, the “discounted” prices would be the *accurate* prices and should be reflected on the price lists.

7. The Respondents violated the above FTC statutes, rules and regulations, by charging a larger amount for Direct Cremation than reflected on the Respondent’s GPL.

### **Material Misrepresentation To The Public**

8. Respondents FOREVER MEMORIES FUNERAL SERVICES, INC and DAVID HAMPTON violated OAC 235:10-7-2(1) by creating a Statement of Funeral Goods and Services pricing that did not match the charges in the Respondent’s General Price List. OAC 235:10-7-2(1) provides that a license shall be suspended or revoked for:

(1) **Material misrepresentation.** Material misrepresentation to the public of facts, requirements of Oklahoma Statutes, State Board Rules, or any rule or regulation pertaining directly to the custody, care, or disposal of dead human remains.

### **Overcharging the Consumer**

9. Respondents FOREVER MEMORIES FUNERAL SERVICES, INC and

DAVID HAMPTON violated OAC 235:10-7-2(13) by overcharging consumers in the approximate amount of \$12.00. OAC 235:10-7-2(13) provides that a license shall be suspended or revoked for:

(13) **Charging.** For service or merchandise not contracted for or failing to provide the services or merchandise contracted for or making substitution for services or merchandise contracted for without the authorization of the customer.

10. As the Funeral Director in Charge at the times in question, DAVID HAMPTON, is responsible for the legal and ethical operations of FOREVER MEMORIES FUNERAL SERVICES, INC, and is accountable to the Board under 59 O.S. §396.2(12).

59 O.S. 396.12(C). Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge.

59 O.S. 396.2(12). The “‘Funeral director in charge’ means an individual licensed as both a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board”.

11. The conduct of Respondents FOREVER MEMORIES FUNERAL SERVICES, INC and DAVID HAMPTON as alleged in this Complaint constitutes gross malpractice and incompetence in the preparation of Statements of Goods and Services and subjects the Respondents to disciplinary action pursuant to 59 O.S. 396.12c(3). Regarding the allegations of gross malpractice and gross incompetency, in 54 C.J.S., p. 1111, malpractice is defined as follows:

“‘Malpractice,’ sometimes called ‘malapraxis,’ is a term of broad significance. It is defined as any professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional or fiduciary duties; illegal or immoral conduct; improper or immoral conduct; misbehavior; wrongdoing; evil, bad, objectionable, or wrong practice; evil

practices, acts, or doings; illegal or unethical practice; practice contrary to established rules; practice contrary to rules."

The Oklahoma Supreme Court cited with approval the above definition of malpractice in the context of a professional license being denied for gross malpractice. *See Bd. of Examiners of Veterinary Medicine v. Mohr*, 1971 OK 64, ¶¶18 & 19, 485 P.2d 235,239.

12. For the violation alleged above of Board rules and the provisions of the Funeral Services Licensing Act, Respondents FOREVER MEMORIES FUNERAL SERVICES, INC and DAVID HAMPTON are subject to disciplinary action by the Board pursuant to 59 O.S. 396.2a(9), 396.12d and 396.12e, and 59 O.S. 396.12c(3), (5), (8) and (14).

**D. POTENTIAL PENALTIES WHICH FUNERAL BOARD MAY IMPOSE**

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. *See* 59 O.S. 396.12c, 396.12d and 396.12e.

2. 59 O.S. 396.12d provides the types of discipline which may be imposed:

Any person who violates any of the provisions of the Funeral Services Licensing Act or rule or regulation promulgated or order issued pursuant thereto, after notice and hearing pursuant to Article II of the Administrative Procedures Act, shall be subject to any of the following penalties and liabilities authorized by the Funeral Services Licensing Act:

1. License or certificate of apprenticeship revocation, denial, suspension or nonrenewal;
2. Administrative fines;
3. Injunctive proceedings; and
4. Other disciplinary action.

3. Potential administrative penalties identified in 59 O.S. 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral

Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board," created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

#### **NOTICE OF HEARING**

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e an evidentiary hearing will be commenced on **THURSDAY, APRIL 8, 2021, at 10:00 a.m. virtually via VIDEOCONFERENCE** using the following link:

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

**Funeral Board Members, Funeral Board Staff, and visitors who wish to attend the Funeral Board's monthly Board meetings are encouraged to wear a facial covering or mask over the mouth and nose at all times and adhere to social distancing.**

If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf. **However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma.** *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing



and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



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Thomas L. Grossnicklaus, OBA # 34317  
Assistant Attorney General  
Office of the Oklahoma Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
PHONE: (405) 522-5264  
FAX: (405) 522-4536  
Thomas.Grossnicklaus@oag.ok.gov  
Attorney for Oklahoma Funeral Board

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of March, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either in person or by certified mailed, postage prepaid, as follows:

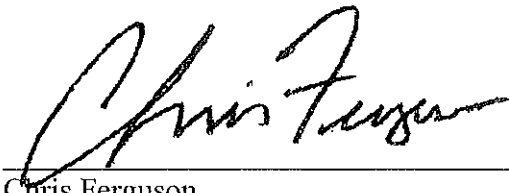
**BY CERTIFIED MAIL:**

Forever Memories Funeral Services, Inc.  
463505 HWY 101  
Sallisaw, Oklahoma 74955

Forever Memories Funeral Services, Inc. (owner)  
Michael Harrell, Service Agent  
463505 HWY 101  
Sallisaw, Oklahoma 74955,

Forever Memories Funeral Services, Inc.  
P.O. Box 688  
Sallisaw, Oklahoma 74955

David Hampton  
317 E. Lucy  
Sallisaw, Oklahoma 74955

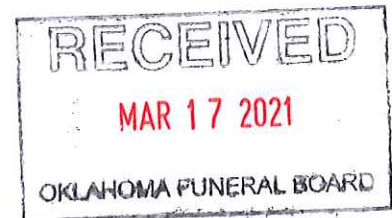
A handwritten signature in black ink, reading "Chris Ferguson", written over a horizontal line.

Chris Ferguson  
Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD**

**IN THE MATTER OF THE COMPLAINT** )  
**AGAINST:** )  
 )  
**FOREVER MEMORIES FUNERAL** )  
**SERVICES, INC** )  
**Establishment Lic. # 1845ES,** )  
**Location: 463411 HWY 101,** )  
**Sallisaw, OK 74955,** )  
**Owner: Forever Memories Funeral Services Inc)**  
**Michael C Harrell, Service Agent,** )  
**463411 HWY 101** )  
**Sallisaw, OK 74955,** )  
**A Licensed Funeral Establishment, and** )  
 )  
**DAVID HAMPTON,** )  
**Licenses: 2048FD, 2198EM,** )  
**Address: 317 E. Lucy,** )  
**Sallisaw, OK 74955,** )  
**A Licensed Funeral Director, a Licensed** )  
**Embalmer, and the Funeral Director in Charge** )  
**FOREVER MEMORIES FUNERAL** )  
**SERVICES, INC** )  
 )  
 )  
**Respondents.** )

**Complaint No. 21-14**



**COMPLAINT AND NOTICE OF HEARING**

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board ("Board"), by and through Assistant Attorney General Thomas L. Grossnicklaus, and alleges that the Respondents, a funeral service establishment and one individual duly licensed by the Board, have violated provisions of the State Funeral Licensing Act, 59 O.S. 2011, 395.1 et seq, ("the Act"), and Rules of the Board, OAC 235:10-1-1 et seq, ("the Rules"), in the manner set forth below:

**A. FACTUAL ALLEGATIONS**

1. Respondent FOREVER MEMORIES FUNERAL SERVICES, INC. (“FUNERAL HOME”) with establishment license number 1845ES is located at 463411 HWY 101 Sallisaw, OK 74955, and was at all times relevant owned by FOREVER MEMORIES FUNERAL SERVICES, INC, whose service agent is Michael Harrell, 463411 HWY 101, Sallisaw, Oklahoma 74955, and as such FOREVER MEMORIES FUNERAL SERVICES, INC, is liable for any administrative penalty and costs imposed.

2. Respondent DAVID HAMPTON (“HAMPTON”) is a licensed Funeral Director and embalmer with license numbers 2048FD and 2198EM and was the Funeral Director in Charge (“FDIC”) of the Funeral Home at all times relevant in this Complaint, and as the FDIC was responsible for the establishment’s legal and ethical operation pursuant to 59 O.S. Section 396.2(12) and is thus responsible for the wrongful conduct identified herein.

3. The Board exercises jurisdiction over Respondents pursuant to 59 O.S. 396.2a(9) and (11).

4. During the course of an investigation conducted by the Oklahoma Funeral Board’s Investigator, Tyler Stiles, it was determined that the Respondents’ Statements of Goods and Services and the facts surrounding those Statements of Goods and Services for the period of time from June, 2018 through June, 2019, reflected numerous violations of Oklahoma Funeral Board statutes and rules. The results of that investigation, and many of the violations revealed during that investigation, are summarized as follows:

During the period of time from June 4, 2018, through June 25, 2019, the Respondents have violated: Federal Trade Commission and Oklahoma Funeral Board statutes, rules and regulations related to price lists and statements of goods and services, as follows:

i. On at least 25 occasions, did not clearly identify to the consumer which outer container they purchased. For instance, the Statement of Funeral Goods and Services reflected a category listed "Concrete Vault" with a sub-category listing "Concrete Grave Liner." A concrete vault being reflected in conjunction with a "Concrete Grave Liner" on the Statement of Goods and Services is misleading to the consumer by leading them to believe that they purchased a vault, when in fact may have purchased a concrete grave liner which offers less protection than a vault.

ii. On at least 32 occasions, charged consumers more on the Statement of Funeral Goods and Services for certain specific services than the price identified on the General Price List, Casket Price List, and/or Outer Burial Container Price List for those same specific services. The consumers were overcharged by \$5,904.97 total. The overcharges were to: Freddy Scoggins, Jr. an overcharge of \$20; Bonnie Truett an overcharge of \$40; William Long an overcharge of \$305; David Teague an overcharge of \$450; Thelma Keihi an overcharge of \$3; William Musgrove, Sr. an overcharge of \$15; Jacob Harp an overcharge of \$25; Harold Diffie an overcharge of \$15; Suphronia Amaro an overcharge of \$15; James Winbush an overcharge of \$115; Phyllis Douglas an overcharge of \$15; Calvin Teague an overcharge of \$170; Arkie England an overcharge of \$195; Katherine Poindexter an overcharge of \$110; Roy Rogers an overcharge of \$15; William Kightlinger an overcharge of \$295; Bobby Freeman an overcharge of \$15; Roger Christy an overcharge of \$270; Delcia Robison an overcharge of \$15; Roselind McCoy an overcharge of \$405; Ralph Brown an overcharge of \$200; Reba Farmer an overcharge of \$610; Charles House an overcharge of \$20; Adrienne Sisco an overcharge of \$130; James Dority an overcharge of \$117; Jerry Clark an overcharge of \$675; Douglas Owen an overcharge of \$1,229.97; Bertha Byrd an overcharge of \$15; Andres Little an overcharge of \$15; Audrey Hernandez an overcharge of \$370; and Steven Hand an overcharge of \$15.

iii. On at least 74 occasions, charged consumers a different price on the Statement of Funeral Goods and Services for certain specific services or merchandise than the price identified on the General Price List, Casket Price List, or Outer Burial Container Price List for those same specific services or merchandise, thus making price lists meaningless.

5. The manner in which Statements of Funeral Goods and Services were completed by Respondents demonstrates gross malpractice and gross incompetence by

each of the Respondents.

6. The Funeral Home establishment is responsible for the activities and violations identified herein.

7. The investigative complaint was filed with the Board on September 18, 2020, and by certified letter dated September 18, 2020, notice was provided to the Respondents. On November 5, 2020, Respondent DAVID HAMPTON submitted his response which is summarized as follows:

- Contracts were written in response to each family's wishes and needs and there is a variation in listed prices.
- Contract amounts that do not match the GPL are clerical errors that should have been caught.
- The final cost amount is the final determining factor for most of our families.
- Each family receives an explanation of merchandise selected and there are never any moments where the merchandise that is selected is in question.
- Each family is in receipt of a substantial financial discount of the final funeral price. This is given by our firm in respect to the financial burden a funeral could represent to each family, especially due to the fact of our low economic atmosphere in Sequoyah County.
- Respondents agree they cannot defend the errors with which the Statements of Goods and Services were completed, but contend that consumers did not receive an undue burden of costs as a result of the clerical mistakes.

8. On November 5, 2020, the Respondent FUNERAL HOME submitted a response contending that:

- Each family making arrangements are shown a scale model of the Outer Burial containers, which is clearly identified. On the Statement of Funeral Goods and Services, the sub-category of "Concrete Grave Liner" is not misleading, it purely is a description that the vault company uses.

- There are several clerical errors, but the vast majority were either made by looking at a price list and simply typing the wrong number, or by typing in an amount for a service that was simply the total of one or more services.
- On the occasions where a family was charged a different price than reflected in the price lists, these were done trying to help the family with price to make the total price more affordable.
- Respondents agree they cannot defend the errors contained in the Statements of Goods and Services, but contend that consumers did not receive an undue burden of costs as a result of the clerical mistakes.

9. The prosecution contends there is clear and convincing evidence that the violations alleged above occurred.

10. This matter was presented to the Board on January 14, 2021, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondents.

## **B. CONCLUSIONS**

1. The Funeral Services Licensing Act, 59 O.S. §396.12c(3), (5), (8) and (14) provide that a license issued by the Board may be suspended or revoked for any of the following:

- (3) Gross malpractice or gross incompetency, which shall be determined by the Board;
- (5) Violation of any of the provisions of the Funeral Services Licensing Act . . . ;
- (8) Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act...;
- (14) Failing to comply with the Funeral Rules of the Federal Trade Commission, 15 U.S.C., Section 57a(a);

### **Federal Trade Commission Violations**

3. **Statements of Funeral Goods and Services.** The Federal Trade

Commission (“FTC”) has rules regarding the contents of Statements of Funeral Goods and Services and the price disclosures which must be made. 16 C.F.R. Section 453.2(b)(5)(i)(A) promulgated by the Federal Trade Commission under 15 U.S.C.A. Section 57a(a), provides:

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

...

(5) Statement of funeral goods and services selected.

(i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

4. The FTC Guidelines titled “Complying with the Funeral Rule” at page 15 addresses the information that is required to be placed in the Statement of Goods and Services when a funeral package is purchased, as follows:

#### **Cost Information**

You should list all of the individual goods and services that the consumer will purchase, together with the price for each item. You cannot simply lump together goods and services that are listed separately on the GPL.

Example: Your Statement would violate the Rule if it listed only three broad categories for “Services,” “Facilities,” and “Automotive Equipment.”



**You may still offer funeral packages, as long as they are offered in addition to, not in place of, itemized prices.** If the consumer selects a package (after you offer itemized prices), your Statement should describe the package, listing individually each of the goods and services included in the package, and state the package price.

5.     **General Price List.** The Federal Trade Commission (“FTC”) has rules regarding the contents of the General Price List which must be provided to persons who inquire about funeral goods and services. 16 C.F.R. Section 453.2(b)(4)(i)(A) promulgated by the Federal Trade Commission under 15 U.S.C.A. Section 57a(a), provides:

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

- (1) The prices of funeral goods or funeral services;
- (2) The overall type of funeral service or disposition; or
- (3) Specific funeral goods or funeral services offered by the funeral provider.

6.     The FTC Guidelines titled “Complying with the Funeral Rule” at pages 7-8 requires that the General Price List (GPL) contain itemized and accurate pricing information, as follows:

**Required Itemized Prices on the GPL**

The Rule requires you to itemize the prices for certain goods and services

so consumers may choose only those elements of a funeral that they want. You must list the following 16 specified items of goods and services on the GPL, together with the price for each item:

1. Forwarding of remains to another funeral home
2. Receiving remains from another funeral home
3. Direct cremation
4. Immediate burial
5. Basic services of funeral director and staff, and overhead
6. Transfer of remains to funeral home
7. Embalming
8. Other preparation of the body
9. Use of facilities and staff for viewing
10. Use of facilities and staff for funeral ceremony
11. Use of facilities and staff for memorial service
12. Use of equipment and staff for graveside service
13. Hearse
14. Limousine
15. Either individual casket prices or the range of casket prices that appear on the Casket Price List
16. Either individual outer burial container prices or the range of outer burial container prices that appear on the Outer Burial Container Price List

You can list these items in any order you want. You only have to list the items that you actually offer. If you do not offer one or more of the 16 items, you need not list those items on the General Price List. In addition to these 16 items, you also may list other items that you offer, such as acknowledgement cards and cremation urns. You also may provide prices for package funerals on your GPL. However, you must offer any package funerals *in addition to and not in place of* the required itemized prices.

**The itemized prices on your General Price List, as well as your Casket Price List and Outer Burial Container Price List, should be accurate and up-to-date. These prices should reflect the prices that you actually charge your customers.**

Of course, you can offer a discount when there are special circumstances, such as arrangements for a friend or relative or a family that otherwise could not afford your services. The Rule does not prevent you from doing this. However, you should not inflate the prices on any of your price lists in order to offer all or most of your customers a discount. In that case, the “discounted” prices would be the *accurate* prices and should be reflected on the price lists.

7. The Respondents violated the above FTC statutes, rules and regulations, plus violated OAC 235:10-7-2(3)(price lists) and OAC 235:10-7-2(4)(A)(statements of goods and services) by:

- i. On at least 25 occasions, did not clearly identify to the consumer which outer container they purchased. For instance, the Statement of Goods and Services reflected a category listed "Concrete Vault" with a sub-category listing "Concrete Grave Liner." A concrete vault being reflected in conjunction with a "Concrete Grave Liner" on the Statement of Goods and Services is misleading to the consumer by leading them to believe that they purchased a vault, when in fact may have purchased a concrete grave liner which offers less protection than a vault.
- ii. On at least 32 occasions, charged consumers more on the Statement of Goods and Services for certain specific services than the price identified on the General Price List for those same specific services. The consumers were overcharged by \$5,904.97 total.
- iii. On at least 74 occasions, charged consumers a different price on the Statement of Goods and Services for certain specific services or merchandise than the price identified on the General Price List, Casket Price List, or Outer Burial Container Price List for those same specific services or merchandise, thus making the price lists meaningless.

**Material Misrepresentation To The Public**

8. On at least seventy-four (74) occasions, Respondent FOREVER MEMORIES FUNERAL SERVICES, INC and DAVID HAMPTON violated OAC 235:10-7-2(1) by creating a Statement of Funeral Goods and Services pricing that did not match the charges in the Respondent's General Price List, Casket Price List, and/or Outer Burial Container Price List. OAC 235:10-7-2(1) provides that a license shall be suspended or revoked for:

- (1) **Material misrepresentation.** Material misrepresentation to the

public of facts, requirements of Oklahoma Statutes, State Board Rules, or any rule or regulation pertaining directly to the custody, care, or disposal of dead human remains.

**Overcharging the Consumer**

9. On at least thirty-two (32) occasions, Respondents FOREVER MEMORIES FUNERAL SERVICES, INC and DAVID HAMPTON violated OAC 235:10-7-2(13) by overcharging consumers on Statement of Funeral Goods and Services than the reflected price in the Respondents' General Price List, Casket Price List, and/or Outer Burial Container Price List in the approximate amount of \$5,904.97. OAC 235:10-7-2(13) provides that a license shall be suspended or revoked for:

(13) **Charging.** For service or merchandise not contracted for or failing to provide the services or merchandise contracted for or making substitution for services or merchandise contracted for without the authorization of the customer.

10. As the Funeral Director in Charge at the times in question, DAVID HAMPTON, is responsible for the legal and ethical operations of FOREVER MEMORIES FUNERAL SERVICES, INC, and is accountable to the Board under 59 O.S. §396.2(12).

59 O.S. 396.12(C). Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge.

59 O.S. 396.2(12). The “Funeral director in charge” means an individual licensed as both a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board”.

11. The conduct of Respondents FOREVER MEMORIES FUNERAL SERVICES, INC and DAVID HAMPTON as alleged in this Complaint constitutes gross

malpractice and incompetence in the preparation of Statements of Goods and Services and subjects the Respondents to disciplinary action pursuant to 59 O.S. 396.12c(3). Regarding the allegations of gross malpractice and gross incompetency, in 54 C.J.S., p. 1111, malpractice is defined as follows:

"'Malpractice,' sometimes called 'malapraxis,' is a term of broad significance. It is defined as any professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional or fiduciary duties; illegal or immoral conduct; improper or immoral conduct; misbehavior; wrongdoing; evil, bad, objectionable, or wrong practice; evil practices, acts, or doings; illegal or unethical practice; practice contrary to established rules; practice contrary to rules."

The Oklahoma Supreme Court cited with approval the above definition of malpractice in the context of a professional license being denied for gross malpractice. *See Bd. of Examiners of Veterinary Medicine v. Mohr*, 1971 OK 64, ¶¶18 & 19, 485 P.2d 235,239.

12. For the violation alleged above of Board rules and the provisions of the Funeral Services Licensing Act, Respondents FOREVER MEMORIES FUNERAL SERVICES, INC and DAVID HAMPTON are subject to disciplinary action by the Board pursuant to 59 O.S. 396.2a(9), 396.12d and 396.12e, and 59 O.S. 396.12c(3), (5), (8) and (14).

#### **D. POTENTIAL PENALTIES WHICH FUNERAL BOARD MAY IMPOSE**

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. *See* 59 O.S. 396.12c, 396.12d and 396.12e.

2. 59 O.S. 396.12d provides the types of discipline which may be imposed:

Any person who violates any of the provisions of the Funeral Services Licensing Act or rule or regulation promulgated or order issued pursuant thereto, after notice and hearing pursuant to Article II of the Administrative Procedures Act, shall be subject to any of the following penalties and liabilities authorized by the Funeral Services Licensing Act:

1. License or certificate of apprenticeship revocation, denial, suspension or nonrenewal;
2. Administrative fines;
3. Injunctive proceedings; and
4. Other disciplinary action.

3. Potential administrative penalties identified in 59 O.S. 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board," created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

### **NOTICE OF HEARING**

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e an evidentiary hearing will be commenced on **THURSDAY, APRIL 8, 2021, at 10:00 a.m. virtually via VIDEOCONFERENCE** using the following link:

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

**Funeral Board Members, Funeral Board Staff, and visitors who wish to attend the Funeral Board's monthly Board meetings are encouraged to wear a facial covering or mask over the mouth and nose at all times and adhere to social distancing.**

If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf. **However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is**

represented by an attorney licensed in the State of Oklahoma. *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



---

Thomas L. Grossnicklaus, OBA # 34317  
Assistant Attorney General



Office of the Oklahoma Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
PHONE: (405) 522-5264  
FAX: (405) 522-4536  
Thomas.Grossnicklaus@oag.ok.gov  
Attorney for Oklahoma Funeral Board

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of March, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either in person or by certified mailed, postage prepaid, as follows:

**BY CERTIFIED MAIL:**

Forever Memories Funeral Services, Inc.  
463505 HWY 101  
Sallisaw, Oklahoma 74955

Forever Memories Funeral Services, Inc. (owner)  
Michael Harrell, Service Agent  
463505 HWY 101  
Sallisaw, Oklahoma 74955,

Forever Memories Funeral Services, Inc.  
P.O. Box 688  
Sallisaw, Oklahoma 74955

David Hampton  
317 E. Lucy  
Sallisaw, Oklahoma 74955

A handwritten signature in black ink, appearing to read "Chris Ferguson", written over a horizontal line.

Chris Ferguson  
Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD**

**IN THE MATTER OF THE COMPLAINT** )  
**AGAINST:** )

**ALTERNATIVES CREMATION &** )  
**FUNERAL SERVICE** )

**Establishment Lic. # 1947ES** )

**A Licensed Embalming Establishment,** )

**Owned by: Varner Professional Services, LLC** )

**Location: 1206 N. Market Street** )

**Cordell, OK 73632** )

**Complaint No. 21-23**

**Mailing address: 1206 N. Market Street** )

**Cordell, OK 73632,** )

**RICHARD VARNER,** )

**A Licensed Funeral Director and Embalmer,** )

**License Numbers 3070FD and 3450EM,** )

**Address: 1206 N. Market Street** )

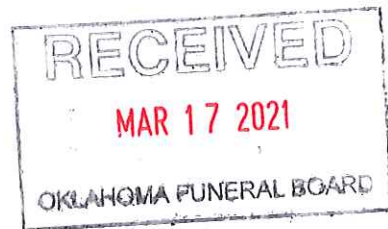
**Cordell, OK 73632** )

**and Funeral Director in Charge at** )

**ALTERNATIVES CREMATION &** )

**FUNERAL SERVICE** )

**Respondents.** )



**COMPLAINT AND NOTICE OF HEARING**

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board ("Board"), by and through its attorney of record, Thomas L. Grossnicklaus, Assistant Attorney General, and alleges that the Respondents, operating under licenses issued by the Board, have violated provisions of the State Funeral Services Licensing Act, 59 O.S. Section 395.1, *et seq.* (the "Act"), and of the Board, OAC 235:10-1-1, *et seq.*, (the "Rules"), in the manner set forth below:

### **A. Factual Allegations**

1. Respondent ALTERNATIVES CREMATION & FUNERAL SERVICE, (“funeral home”), with establishment license number 1947ES, located at 1206 N. Market Street, Cordell, OK 73632, was at all times relevant owned by VARNER PROFESSIONAL SERVICES, LLC, and as such, VARNER PROFESSIONAL SERVICES, LLC, is liable and responsible for any penalty imposed in these proceedings.

2. Respondent RICHARD VARNER (“Varner”) is a licensed Funeral Director and Embalmer with license numbers 3070FD and 3450EM, and was the Funeral Director in Charge (“FDIC”) of ALTERNATIVES CREMATION & FUNERAL SERVICE at the time of the conduct giving rise to this complaint, and as the Funeral Director in Charge was responsible for the establishments’ legal and ethical operation pursuant to 59 O.S.2011, Section 396.2(12).

3. The Board exercises jurisdiction over Respondents pursuant to 59 O.S. § 396.2a(9) and (11).

4. Respondent establishment failed to timely pay fees owed to the State Office of the Chief Medical Examiner (OCME) for cases spanning the time period of June 15, 2020 to July 15, 2020. The OCME provided the permits to ALTERNATIVES CREMATION & FUNERAL SERVICE and made attempts to collect the amount owed, but the balance owed of \$11,475 remains unpaid for more than 90 days after Respondents were invoiced. All of the funeral service merchandise purchased by Respondents arose out of statements for goods and services in favor of the vendor signed by the authorized persons, or were in connection with goods and services provided for specific buyers.

5. Respondents' actions as alleged above constitute gross malpractice and gross incompetency.

6. On October 15, 2020, Amy Elliott, Chief Administrative Officer with the Office of the Chief Medical Examiner, filed a complaint with the Board against Respondents reflecting a balance of \$37,300 was owed to the OCME, \$11,475 of which was more than 90 days overdue. On October 20, 2020, Board staff by certified mail sent copies of the complaint and notice of complaint to the Respondents, which were received by Respondents no later than October 30, 2020.

7. On November 5, 2020, Board staff received an undated response from the Respondents concerning complaint 21-23. The Response contends: the Respondents made payment of the past due amount to the Medical Examiner and have checked balances to make sure they are current on their account.

8. This matter was presented to the Board for a probable cause determination on January 14, 2021, and the Board found probable cause to file a formal complaint.

### **B. CONCLUSIONS**

1. The Oklahoma Statutes 59 O.S. Section 396.12c(22) provides that the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license for "[f]ailure to properly discharge financial obligations as established by rule of the Board."

2. Oklahoma Administrative Code ("OAC") Section 235:10-7-2(9) provides for the suspension or revocation of a license under the following circumstances:

**Failure to discharge financial obligation.** Failure to pay any vendor or third party obligation, within 90 days, that arises out of a Statement of Goods and Services that has been signed by the authorized person . . . in favor of a

vendor or third party provider as designated on the Statement of Goods and Services or in connection with goods and services provided for a specific buyer.

3. Respondents' failure to pay fees owed to the OCME in a timely manner is a violation of 59 O.S. Section 396.12c(22) and OAC Section 235:10-7-2(9).

4. Title 59 O.S. Supp. 2014, Section 396.12c(8) provides that the Board may revoke or suspend any license for violation of any rules of the Board.

5. As the Funeral Director in Charge at the times in question, RICHARD VARNER is responsible for the legal and ethical operation of ALTERNATIVES CREMATION & FUNERAL SERVICE and is accountable to the Board under 59 O.S. Section 396.2(12).

59 O.S.2011, § 396.12(C). "Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge."

59 O.S.2011, § 396.2(12). The "'Funeral director in charge' means an individual licensed as a funeral director designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board."

6. Regarding the allegations of gross malpractice and gross incompetency as to the Respondents, in 54 C.J.S., p. 1111, malpractice is defined as follows:

"'Malpractice,' sometimes called 'malapaxis,' is a term of broad significance. It is defined as any professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional or fiduciary duties; illegal or immoral conduct; improper or immoral conduct; misbehavior; wrongdoing; evil, bad, objectionable, or wrong practice; evil practices, acts, or doings; illegal or unethical practice; practice contrary to established rules; practice contrary to rules."

The Oklahoma Supreme Court cited with approval the above definition of malpractice in the

context of a professional license being denied for gross malpractice. *See Bd. of Examiners of Veterinary Medicine v. Mohr*, 1971 OK 64, ¶¶18 & 19, 485 P.2d 235,239.

7. The conduct of the Respondents as alleged in this Complaint constitutes gross malpractice and incompetence and subjects the Respondents to disciplinary action pursuant to 59 O.S.Supp.2015, '396.12c(3), which provides:

After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license or registration for any one or combination of the following:

3. Gross malpractice or gross incompetency, which shall be determined by the Board;

8. For the violations alleged above of Board rules and the provisions of the Funeral Services Licensing Act, Respondents are subject to disciplinary action by the Board pursuant to 59 O.S.2011, " 396.2a(9), 396.12d and 396.12e, and 59 O.S. Supp.2015, " 396.12c(3)(gross malpractice or incompetence as to Respondent establishment only), (5)(violation of the FSLA), (8)(violation of Board rules), and (22)(failure to discharge financial obligation).

#### **C. POTENTIAL PENALTIES WHICH FUNERAL BOARD MAY IMPOSE**

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. *See* 59 O.S.2011, " 396.12c, 396.12d and 396.12e.

2. 59 O.S.2011, '396.12d provides the types of discipline which may be imposed:

Any person who violates any of the provisions of the Funeral Services Licensing Act or rule or regulation promulgated or order issued pursuant thereto, after notice and hearing pursuant to Article II of the Administrative Procedures Act, shall be

subject to any of the following penalties and liabilities authorized by the Funeral Services Licensing Act:

1. License or certificate of apprenticeship revocation, denial, suspension or nonrenewal;
2. Administrative fines;
3. Injunctive proceedings; and
4. Other disciplinary action.

3. Potential administrative penalties identified in 59 O.S.2011, ' 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.



## NOTICE OF HEARING

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e an evidentiary hearing will be commenced on **THURSDAY, APRIL 8, 2021, at 10:00 a.m. virtually via VIDEOCONFERENCE** using the following link:

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

**Funeral Board Members, Funeral Board Staff, and visitors who wish to attend the Funeral Board's monthly Board meetings are encouraged to wear a facial covering or mask over the mouth and nose at all times and adhere to social distancing.**

If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf. **However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma. See *Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented**

by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



---

Thomas L. Grossnicklaus, OBA # 34317  
Assistant Attorney General  
Office of the Oklahoma Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
PHONE: (405) 522-5264  
FAX: (405) 522-4536  
Thomas.Grossnicklaus@oag.ok.gov  
Attorney for Oklahoma Funeral Board

**CERTIFICATE OF SERVICE**

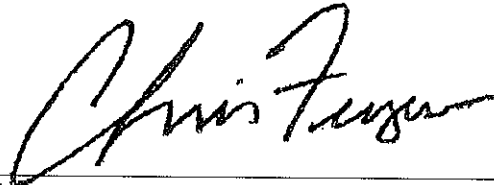
I hereby certify that on the 17<sup>th</sup> day of March, 2021, true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either in person or by certified mailed, postage prepaid, as follows:

**SERVED BY CERTIFIED MAIL:**

Varner Professional Services, LLC  
ATTN: Karrie Varner –Registered Agent  
1206 North Market  
Cordell, OK 73632

Alternatives Cremation & Funeral Service  
1206 North Market  
Cordell, OK 73632

Richard Varner  
1206 North Market  
Cordell, OK 73632

A handwritten signature in black ink, appearing to read "Chris Ferguson", written over a horizontal line.

Chris Ferguson, Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD**

**IN THE MATTER OF THE COMPLAINT  
AGAINST:**

**ALTERNATIVES CREMATION &  
FUNERAL SERVICE**

**Establishment Lic. # 1947ES**

**A Licensed Embalming Establishment,**

**Owned by: Varner Professional Services, LLC**

**Location: 1206 N. Market Street**

**Cordell, OK 73632**

**Complaint No. 21-33**

**Mailing address: 1206 N. Market Street**

**Cordell, OK 73632,**

**RICHARD VARNER,**

**A Licensed Funeral Director and Embalmer,**

**License Numbers 3070FD and 3450EM,**

**Address: 1206 N. Market Street**

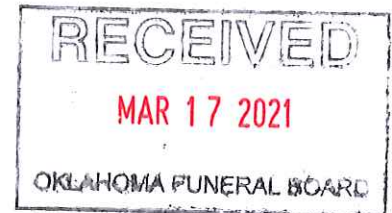
**Cordell, OK 73632**

**and Funeral Director in Charge at**

**ALTERNATIVES CREMATION &**

**FUNERAL SERVICE**

**Respondents.**



**COMPLAINT AND NOTICE OF HEARING**

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board (“Board”), by and through Assistant Attorney General Thomas L. Grossnicklaus, and alleges that the Respondents, a funeral service establishment, one individual duly licensed by the Board, have violated provisions of the State Funeral Licensing Act, 59 O.S. 2011, 395.1 et seq, (“the Act”), and Rules of the Board, OAC 235:10-1-1 et seq, (“the Rules”), in the manner set forth below:

**A. FACTUAL ALLEGATIONS**

1. Respondent ALTERNATIVES CREMATION & FUNERAL SERVICE, (“funeral home”), with establishment license number 1947ES, located at 1206 N. Market Street, Cordell, OK 73632, was at all times relevant owned by VARNER PROFESSIONAL SERVICES, LLC, and as such, VARNER PROFESSIONAL SERVICES, LLC, is liable and responsible for any penalty imposed in these proceedings.

2. Respondent RICHARD VARNER (“Varner”) is a licensed Funeral Director and Embalmer with license numbers 3070FD and 3450EM, and was the Funeral Director in Charge (“FDIC”) of ALTERNATIVES CREMATION & FUNERAL SERVICE at the time of the conduct giving rise to this complaint, and as the Funeral Director in Charge was responsible for the establishments’ legal and ethical operation pursuant to 59 O.S.2011, Section 396.2(12).

3. The Board exercises jurisdiction over Respondents pursuant to 59 O.S. 396.2a(9) and (11).

4. During the course of an investigation conducted by the Oklahoma Funeral Board’s Investigator, Tyler Stiles, it was determined that the Respondents’ Statements of Goods and Services and the facts surrounding those Statements of Goods and Services for the period of time from February 1, 2019 through November 1, 2019, reflected numerous violations of Oklahoma Funeral Board statutes and rules. The results of that investigation, and many of the violations revealed during that investigation, are summarized as follows:

During the period of time from February 1, 2019, through November 1, 2019, the Respondents have violated: Federal Trade Commission and Oklahoma Funeral Board statutes, rules and regulations related to price lists and statements of goods and services, as follows:

- i. On at least 84 occasions, charged consumers a different

price on the Statement of Funeral Goods and Services for certain specific services or merchandise than the price identified on the General Price List, Casket Price List, or Outer Burial Container Price List for those same specific services or merchandise, thus making price lists meaningless.

- ii. On at least 84 occasions, provided an additional package discount on the Statement of Funeral Goods and Services to consumers in the amount of \$235 for each family.

Further, for a considerable amount of time in the year 2020, Mr. Varner did not reside within 60 miles of his funeral home that he is Funeral Director-in-charge. On or about November 25, 2020, Mr. Varner, through his attorney, filed a Petition for Dissolution of Marriage, numbered FD-2020-3312, with the District Court of Oklahoma County. The Petition for Dissolution of Marriage reflects that Mr. Varner resided in Oklahoma County for more than 30 days prior to the filing of the Petition. On or about November 24, 2020, Mr. Varner signed the verification page of the Petition reflecting, under perjury of law, all the facts in the Petition for Dissolution of Marriage are true. The Oklahoma Funeral Board was never notified of a FDIC change at Alternatives Cremation and Funeral Service in Cordell, Oklahoma while FDIC Mr. Varner lived in Oklahoma County.

5. The manner in which Statements of Funeral Goods and Services were completed by Respondents demonstrates gross malpractice and gross incompetence by each of the Respondents.

6. The Funeral Home establishment is responsible for the activities and violations identified herein.

7. The investigative complaint was filed with the Board on January 11, 2021, and by certified letter dated same, notice was provided to the Respondents. On February 1, 2021, Respondent RICHARD VARNER submitted his response which is summarized as follows:

- No consumer was charged elevated prices, only discounted prices and the Respondent did not know this was deemed unethical or a violation in any way.

- Respondent will update their GPL to reflect actual prices.
- Respondent maintained a permanent residence within 60 miles of the Establishment. Although his wife maintained a residence in Oklahoma City.
- Respondent's attorney inadvertently labeled the respondent's wife as the Petitioner instead of the respondent in a divorce petition.

8. The prosecution contends there is clear and convincing evidence that the violations alleged above occurred.

9. This matter was presented to the Board on March 11, 2021, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondents.

### **B. CONCLUSIONS**

1. The Funeral Services Licensing Act, 59 O.S. §396.12c(3), (5), (8) and (14) provide that a license issued by the Board may be suspended or revoked for any of the following:

(3) Gross malpractice or gross incompetency, which shall be determined by the Board;

(5) Violation of any of the provisions of the Funeral Services Licensing Act . . . ;

(8) Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act...;

(14) Failing to comply with the Funeral Rules of the Federal Trade Commission, 15 U.S.C., Section 57a(a);

### **Federal Trade Commission Violations**

3. **Statements of Funeral Goods and Services.** The Federal Trade Commission ("FTC") has rules regarding the contents of Statements of Funeral Goods and Services and the price disclosures which must be made. 16 C.F.R.

Section 453.2(b)(5)(i)(A) promulgated by the Federal Trade Commission under 15

U.S.C.A. Section 57a(a), provides:

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

...

(5) Statement of funeral goods and services selected.

(i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

4. The FTC Guidelines titled “Complying with the Funeral Rule” at page 15 addresses the information that is required to be placed in the Statement of Goods and Services when a funeral package is purchased, as follows:

#### **Cost Information**

You should list all of the individual goods and services that the consumer will purchase, together with the price for each item. You cannot simply lump together goods and services that are listed separately on the GPL.

Example: Your Statement would violate the Rule if it listed only three broad categories for “Services,” “Facilities,” and “Automotive Equipment.”

**You may still offer funeral packages, as long as they are offered in addition to, not in place of, itemized prices.** If the consumer selects a package (after you offer itemized prices), your Statement should describe



the package, listing individually each of the goods and services included in the package, and state the package price.

5.     **General Price List.** The Federal Trade Commission (“FTC”) has rules regarding the contents of the General Price List which must be provided to persons who inquire about funeral goods and services. 16 C.F.R. Section 453.2(b)(4)(i)(A) promulgated by the Federal Trade Commission under 15 U.S.C.A. Section 57a(a), provides:

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

...

(i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

- (1) The prices of funeral goods or funeral services;
- (2) The overall type of funeral service or disposition; or
- (3) Specific funeral goods or funeral services offered by the funeral provider.

6.     The FTC Guidelines titled “Complying with the Funeral Rule” at pages 7-8 requires that the General Price List (GPL) contain itemized and accurate pricing information, as follows:

#### **Required Itemized Prices on the GPL**

The Rule requires you to itemize the prices for certain goods and services so consumers may choose only those elements of a funeral that they want. You must list the following 16 specified items of goods and services on the GPL, together with the price for each item:

1. Forwarding of remains to another funeral home
2. Receiving remains from another funeral home
3. Direct cremation
4. Immediate burial
5. Basic services of funeral director and staff, and overhead
6. Transfer of remains to funeral home
7. Embalming
8. Other preparation of the body
9. Use of facilities and staff for viewing
10. Use of facilities and staff for funeral ceremony
11. Use of facilities and staff for memorial service
12. Use of equipment and staff for graveside service
13. Hearse
14. Limousine
15. Either individual casket prices or the range of casket prices that appear on the Casket Price List
16. Either individual outer burial container prices or the range of outer burial container prices that appear on the Outer Burial Container Price List

You can list these items in any order you want. You only have to list the items that you actually offer. If you do not offer one or more of the 16 items, you need not list those items on the General Price List. In addition to these 16 items, you also may list other items that you offer, such as acknowledgement cards and cremation urns. You also may provide prices for package funerals on your GPL. However, you must offer any package funerals *in addition to and not in place of* the required itemized prices.

**The itemized prices on your General Price List, as well as your Casket Price List and Outer Burial Container Price List, should be accurate and up-to-date. These prices should reflect the prices that you actually charge your customers.**

Of course, you can offer a discount when there are special circumstances, such as arrangements for a friend or relative or a family that otherwise could not afford your services. The Rule does not prevent you from doing this. However, you should not inflate the prices on any of your price lists in order to offer all or most of your customers a discount. In that case, the “discounted” prices would be the *accurate* prices and should be reflected on the price lists.

7. The Respondents violated the above FTC statutes, rules and regulations, plus violated OAC 235:10-7-2(3)(price lists) and OAC 235:10-7-2(4)(A)(statements of goods and services) by:

- i. On at least 84 occasions, charged consumers a different price on the Statement of Funeral Goods and Services for certain specific services or merchandise than the price identified on the General Price List, Casket Price List, or Outer Burial Container

Price List for those same specific services or merchandise, thus making price lists meaningless.

ii. On at least 84 occasions, provided an additional package discount on the Statement of Funeral Goods and Services to consumers in the amount of \$235 for each family.

8. OAC 235:10-3-2(9)(D) provides the requirements of the FDIC's residence:  
(D) The funeral director-in-charge shall reside and maintain a permanent residence within 60 miles of the funeral establishment, commercial embalming establishment, or crematory.
9. The Respondents violated the above rule by residing outside of 60 miles of his establishment as reflected in a certified copy of an Oklahoma County Court document. Respondent Richard Varner signed his approval of this Petition for Dissolution of Marriage as Petitioner in case FD-2020-3312.

#### **Material Misrepresentation To The Public**

10. On at least seventy-four (84) occasions, Respondent ALTERNATIVES CREMATION & FUNERAL SERVICE and RICHARD VARNER violated OAC 235:10-7-2(1) by creating a Statement of Funeral Goods and Services pricing that did not match the charges in the Respondent's General Price List. OAC 235:10-7-2(1) provides that a license shall be suspended or revoked for:

(1) **Material misrepresentation.** Material misrepresentation to the public of facts, requirements of Oklahoma Statutes, State Board Rules, or any rule or regulation pertaining directly to the custody, care, or disposal of dead human remains.

11. As the Funeral Director in Charge at the times in question, RICHARD VARNER, is responsible for the legal and ethical operations of ALTERNATIVES CREMATION & FUNERAL SERVICE, and is accountable to the Board under 59 O.S. §396.2(12).

59 O.S. 396.12(C). Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge.

59 O.S. 396.2(12). The “‘Funeral director in charge’ means an individual licensed as both a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board”.

12. The conduct of Respondents ALTERNATIVES CREMATION & FUNERAL SERVICE and RICHARD VARNER as alleged in this Complaint constitutes gross malpractice and incompetence in the preparation of Statements of Goods and Services and subjects the Respondents to disciplinary action pursuant to 59 O.S. 396.12c(3). Regarding the allegations of gross malpractice and gross incompetency, in 54 C.J.S., p. 1111, malpractice is defined as follows:

“‘Malpractice,’ sometimes called ‘malapraxis,’ is a term of broad significance. It is defined as any professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional or fiduciary duties; illegal or immoral conduct; improper or immoral conduct; misbehavior; wrongdoing; evil, bad, objectionable, or wrong practice; evil practices, acts, or doings; illegal or unethical practice; practice contrary to established rules; practice contrary to rules.”

The Oklahoma Supreme Court cited with approval the above definition of malpractice in the context of a professional license being denied for gross malpractice. *See Bd. of Examiners of Veterinary Medicine v. Mohr*, 1971 OK 64, ¶¶18 & 19, 485 P.2d 235,239.

13. For the violation alleged above of Board rules and the provisions of the Funeral Services Licensing Act, Respondents ALTERNATIVES CREMATION & FUNERAL SERVICE and RICHARD VARNER are subject to disciplinary action by the Board pursuant to 59 O.S. 396.2a(9), 396.12d and 396.12e, and 59 O.S. 396.12c(3), (5), (8) and (14).

**D. POTENTIAL PENALTIES WHICH FUNERAL BOARD MAY IMPOSE**

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. *See* 59 O.S. 396.12c, 396.12d and 396.12e.

2. 59 O.S. 396.12d provides the types of discipline which may be imposed:

Any person who violates any of the provisions of the Funeral Services Licensing Act or rule or regulation promulgated or order issued pursuant thereto, after notice and hearing pursuant to Article II of the Administrative Procedures Act, shall be subject to any of the following penalties and liabilities authorized by the Funeral Services Licensing Act:

1. License or certificate of apprenticeship revocation, denial, suspension or nonrenewal;
2. Administrative fines;
3. Injunctive proceedings; and
4. Other disciplinary action.

3. Potential administrative penalties identified in 59 O.S. 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed

the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board," created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

### **NOTICE OF HEARING**

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e an evidentiary hearing will be commenced on **THURSDAY, APRIL 8, 2021, at 10:00 a.m. virtually via VIDEOCONFERENCE** using the following link:

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

**Funeral Board Members, Funeral Board Staff, and visitors who wish to attend the Funeral Board's monthly Board meetings are encouraged to wear a facial covering or mask over the mouth and nose at all times and adhere to social distancing.**

If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the

right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf. **However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma.** *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each**

**Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'T. Grossnicklaus', written in a cursive style.

---

Thomas L. Grossnicklaus, OBA # 34317  
Assistant Attorney General  
Office of the Oklahoma Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
PHONE: (405) 522-5264  
FAX: (405) 522-4536  
Thomas.Grossnicklaus@oag.ok.gov  
Attorney for Oklahoma Funeral Board



**CERTIFICATE OF SERVICE**

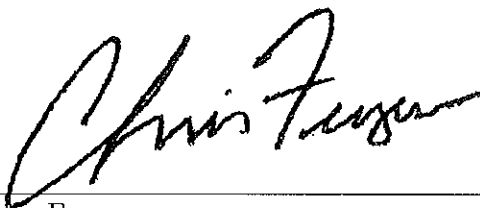
I hereby certify that on the 17<sup>th</sup> day of March, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either in person or by certified mailed, postage prepaid, as follows:

**BY CERTIFIED MAIL:**

Varner Professional Services, LLC  
ATTN: Karrie Varner –Registered Agent  
1206 North Market  
Cordell, OK 73632

Alternatives Cremation & Funeral Service  
1206 North Market  
Cordell, OK 73632

Richard Varner  
1206 North Market  
Cordell, OK 73632

A handwritten signature in black ink, appearing to read "Chris Ferguson", written over a horizontal line.

Chris Ferguson  
Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD**

**IN THE MATTER OF THE COMPLAINT  
AGAINST:**

**ALTERNATIVES CREMATION &  
FUNERAL SERVICE**

**Establishment Lic. # 1947ES**

**A Licensed Embalming Establishment,**

**Owned by: Varner Professional Services, LLC**

**Location: 1206 N. Market Street**

**Cordell, OK 73632**

**Complaint No. 21-39**

**Mailing address: 1206 N. Market Street**

**Cordell, OK 73632,**

**RICHARD VARNER,**

**A Licensed Funeral Director and Embalmer,**

**License Numbers 3070FD and 3450EM,**

**Address: 1206 N. Market Street**

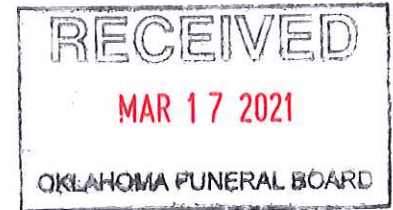
**Cordell, OK 73632**

**and Funeral Director in Charge at**

**ALTERNATIVES CREMATION &**

**FUNERAL SERVICE**

**Respondents.**



**COMPLAINT AND NOTICE OF HEARING**

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board (“Board”), by and through its attorney of record, Thomas L. Grossnicklaus, Assistant Attorney General, and alleges that the Respondents, operating under licenses issued by the Board, have violated provisions of the State Funeral Services Licensing Act, 59 O.S. Section 395.1, *et seq.* (the “Act”), and of the Board, OAC 235:10-1-1, *et seq.* (the “Rules”), in the manner set forth below:

### **A. Factual Allegations**

1. Respondent ALTERNATIVES CREMATION & FUNERAL SERVICE, (“funeral home”), with establishment license number 1947ES, located at 1206 N. Market Street, Cordell, OK 73632, was at all times relevant owned by VARNER PROFESSIONAL SERVICES, LLC, and as such, VARNER PROFESSIONAL SERVICES, LLC, is liable and responsible for any penalty imposed in these proceedings.

2. Respondent RICHARD VARNER (“Varner”) is a licensed Funeral Director and Embalmer with license numbers 3070FD and 3450EM, and was the Funeral Director in Charge (“FDIC”) of ALTERNATIVES CREMATION & FUNERAL SERVICE at the time of the conduct giving rise to this complaint, and as the Funeral Director in Charge was responsible for the establishments’ legal and ethical operation pursuant to 59 O.S.2011, Section 396.2(12).

3. The Board exercises jurisdiction over Respondents pursuant to 59 O.S. § 396.2a(9) and (11).

4. The deceased Richard Ray Wagner passed away on or about October 30, 2020, and his family made funeral arrangements with the Respondents. The deceased’s wife, Leslie Lightfoot-Wagner, requested and paid for two (2) death certificates which were needed for banking and insurance purposes. Mrs. Lightfoot-Wagner conveyed telephonically to Respondents numerous times the need for the death certificates. When she continued to be unable to obtain a death certificate approximately four (4) months after the death occurred, Mrs. Lightfoot-Wagner on February 12, 2021, filed a complaint with the Oklahoma Funeral Board.

5. Notice dated February 12, 2021, regarding the complaint was mailed to

Respondents by certified mail and was received by Respondents on February 17, 2021.

Respondents filed a response to the complaint on March 8, 2021. The response contends:

- There was a major power outage due to an ice storm and the funeral home was without power for 12 days.
- Once the Respondent realized they had failed to input the case in ROVER, they contacted the Medical Examiner and Health Department to expedite the death certificate.

6. Upon further investigation on February 26, 2021, Board staff determined from Health Department records the following:

- The Respondents did not start the death certificate record until January 21, 2021, which was eighty-three (83) days after the date of death.
- The Respondents signed the death certificate on February 5, 2021.

7. Respondents have personal knowledge of the timing requirements for the filing of death certificates.

8. Respondents actions as alleged above constitute gross malpractice and gross incompetency.

9. This matter was presented to the Board on March 11, 2021, for a probable cause determination and the Board found probable cause to file a formal complaint against the Respondents.

10. There exists clear and convincing evidence that the Respondents failed to timely file the death certificate for Richard Ray Wagner.

## **B. CONCLUSIONS**

1. The Funeral Services Licensing Act, 59 O.S., §396.12c(3), (5), (8), and (12) provide that a license issued by the Board may be suspended or revoked for any of the following:

(3) Gross malpractice or gross incompetency, which shall be determined by the Board;

(5) Violation of any of the provisions of the Funeral Services Licensing Act . . . ;

(8) Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act...;

(12) Violating applicable state laws relating to the failure to file a death certificate...;

2. Oklahoma Administrative Procedures Act (“OAC”) Section 235:10-7-2(12) makes it a violation to fail “to file a death certificate, cremation permit, disinterment permit or any other necessary permit as required by law in a timely manner.”

3. 63 O.S. §1-317 regarding the filing of death certificates, with emphasis added, provides:

**(a) A death certificate for each death which occurs in this state shall be filed with the State Department of Health, within three (3) days after such death.**

**(b) The funeral director shall personally sign the death certificate and shall be responsible for filing the death certificate.**

4. Respondents have personal knowledge of the death certificate filing requirements and failed to timely file the death certificate in question, and as such have violated the Funeral Services Licensing Act and the Rules and Regulations of the Oklahoma Funeral Board.

5. As the Funeral Director in Charge, RICHARD VARNER is responsible for the legal and ethical operations of the establishment and is accountable to the Board under 59 O.S. Section 396.2(12).

59 O.S. Section 396.12(C). "Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge."

59 O.S. Section 396.2(12). The "Funeral director in charge" means an individual licensed as both a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board."

6. In addition, under the facts and circumstances of this case and because of the Respondents' personal knowledge of the death certificate filing requirements, the conduct of Respondents as alleged in this Complaint constitutes gross malpractice and incompetence and subjects Respondents to disciplinary action pursuant to 59 O.S. § 396.12c(3). Regarding the allegations of gross malpractice and gross incompetency, in 54 C.J.S., p. 1111, malpractice is defined as follows:

"'Malpractice,' sometimes called 'malapaxis,' is a term of broad significance. It is defined as any professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional or fiduciary duties; illegal or immoral conduct; improper or immoral conduct; misbehavior; wrongdoing; evil, bad, objectionable, or wrong practice; evil practices, acts, or doings; illegal or unethical practice; practice contrary to established rules; practice contrary to rules."

The Oklahoma Supreme Court cited with approval the above definition of malpractice in the context of a professional license being denied for gross malpractice. *See Bd. of Examiners of Veterinary Medicine v. Mohr*, 1971 OK 64, ¶¶18 & 19, 485 P.2d 235,239.

7. For the violations alleged above of Board rules and the provisions of the Funeral Services Licensing Act, Respondents are subject to disciplinary action by the

Board pursuant to 59 O.S.2011, Sections 396.2a(9), 396.12d and 396.12e, and 59 O.S. Supp.2015, Sections 396.12c(3)(gross malpractice or incompetence), (5)(violation of the FSLA), (8)(violation of Board rules), and (12)(failing to timely file death certificate).

**C. POTENTIAL PENALTIES WHICH FUNERAL BOARD MAY IMPOSE**

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. *See* 59 O.S.2011, Sections 396.12c, 396.12d and 396.12e.

2. 59 O.S.2011, Section 396.12d provides the types of discipline which may be imposed:

Any person who violates any of the provisions of the Funeral Services Licensing Act or rule or regulation promulgated or order issued pursuant thereto, after notice and hearing pursuant to Article II of the Administrative Procedures Act, shall be subject to any of the following penalties and liabilities authorized by the Funeral Services Licensing Act:

1. License or certificate of apprenticeship revocation, denial, suspension or nonrenewal;
2. Administrative fines;
3. Injunctive proceedings; and
4. Other disciplinary action.

3. Potential administrative penalties identified in 59 O.S.2011, Section 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

### **NOTICE OF HEARING**

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e an evidentiary hearing will be commenced on **THURSDAY, APRIL 8, 2021, at 10:00 a.m. virtually via VIDEOCONFERENCE** using the following link:

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.



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If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf. **However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma.** *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged

against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



---

Thomas L. Grossnicklaus, OBA # 34317  
Assistant Attorney General  
Office of the Oklahoma Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
PHONE: (405) 522-5264  
FAX: (405) 522-4536  
Thomas.Grossnicklaus@oag.ok.gov  
Attorney for Oklahoma Funeral Board

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of March, 2021, true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either in person or by certified mailed, postage prepaid, as follows:

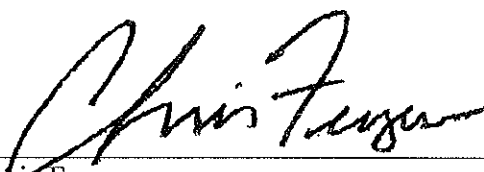
**SERVED BY CERTIFIED MAIL:**

Varner Professional Services, LLC  
ATTN: Karrie Varner –Registered Agent  
1206 North Market  
Cordell, OK 73632

Alternatives Cremation & Funeral Service  
1206 North Market  
Cordell, OK 73632

Richard Varner  
1206 North Market  
Cordell, OK 73632

Leslie Lightfoot-Wagner  
1521 SW 131<sup>st</sup> Street  
Oklahoma City, OK 73170

  
\_\_\_\_\_  
Chris Ferguson  
Executive Director



Oklahoma Funeral Board  
3700 N. Classen Blvd, Suite 175  
Oklahoma City, Oklahoma 73118  
405.522.1790

## MEMORANDUM

April 2, 2021

TO: MEMBERS  
Tom Coble  
J. Cooper  
Joe Highberger  
Brent Matherly  
Jim Roberts  
Chad Vice

BOARD STAFF  
Amanda Everett, AAG  
Thomas Grossnicklaus, AAG  
Thomas Schneider, AAG  
Chris Ferguson  
Karol Shepherd

From: Tyler Stiles

RE: April 8, 2021 Regular Board Meeting

Here is a brief summary of legislation that we are tracking at this time that could impact the funeral industry.

HB1638 Rep. Lepak- Related to Death Certificates. Felony to knowingly provide false data or misrepresent any person's relationship to the decedent.

HB1742 Rep. Dills- Funeral Board Bill-Related to Alkaline Hydrolysis

HB2009 Rep. Townley- Related to advance practice registered nurses signing DC's.

HB2072 Rep. McCall- Related to a temporary funeral director and embalm license.

SB354 Sen. Bergstrom- Related to the elimination of the out of state permit from the Medical Examiner's Office for boarding counties to other states.

If you have any questions, you may call my OFB cell number at: 405.550.3099

A handwritten signature in black ink, appearing to read "Tyler Stiles", is written over a horizontal line.

Tyler Stiles, MBA  
Deputy Director