

NEVADA FUNERAL AND CEMETERY SERVICES BOARD

MINUTES

The Nevada Funeral and Cemetery Services Board will conduct a meeting beginning Wednesday, May 24, 2017, at 8:30 a.m. The meeting will continue, if necessary, on Thursday, May 25, 2017 at 8:30 a.m. or until the Board concludes its business at the following location:

Hyatt Place Reno Tahoe Airport
Meeting Place 1
1790 E. Plumb Lane
Reno, Nevada 89502

- 1. Call to order, roll call, establish quorum.**
The meeting was called to order at 8:37 a.m.

Board Members Present

Dr. Randy Sharp, Chairman
Bart Burton
Brian Rebman
Christopher Naylor
Adam Garcia

Board Members Recused

Tammy Dermody, Secretary, Absent
Loretta Guazzini, Treasurer, Present

Board Staff Present

Jennifer Kandt, Executive Director
Marie Paakkari, Administrative Assistant

Board Counsel Present

Sarah Bradley,
Senior Deputy Attorney General

William McKean,
Chief Deputy Attorney General

Andrea Nichols,
Senior Deputy Attorney General

- 2. Public comment**

Note: No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

There was no public comment.

- 3. Discussion, recommendation, and possible action regarding disciplinary hearing on Complaint and Notice of Hearing In the Matter of La Paloma Funeral Services, 5301 Longley Lane, Reno, Funeral Establishment Permit No. EST88; La Paloma Funeral Services, 5301 Longley Lane, Reno, Crematory License No. CRE88; La Paloma Funeral Services, 437 Stoker Avenue, Reno, Funeral Establishment Permit No. EST107; Shaun Bowen, Funeral Director License No. FD201; Dustin Olson, Funeral Director License No. FD779 - Case Number FB17-01. This agenda item may include review and consideration of any motions and may include review and consideration of a settlement agreement or Consent Decree if one is presented (For possible action)**

(This matter being resumed from the continuation at the March 21, 2017, April 19, 2017 and May 8-9, 2017 meetings, agreed to by and between the Funeral Board, Andrea Nichols, Senior Deputy Attorney General and William McKean, Chief Deputy Attorney General of the Attorney

General's Office, counsel for Petitioners, and Dan Reaser and Katie Hoffman of Fennemore Craig, PC, counsel for Respondents.)

Dr. Randy Sharp administered oath to court reporter.

Dan Reaser and Katie Hoffman of Fennemore Craig, PC appearing on behalf of the Respondents. Respondents Shaun Bowen and Dustin Olson present with general counsel David Squires.

Andrea Nichols, Senior Deputy Attorney General and William McKean, Senior Deputy Attorney General with the Attorney General's office appearing on behalf of the Petitioner.

The Funeral Board heard and discussed witness testimony from Shaun Bowen regarding the matter at issue.

Admission of evidence was presented by both Petitioners and Respondents. Ms. Bradley stated that the State has Exhibits 1-31 which have been admitted and the Respondents have Exhibits A-QQ that have all been admitted and on the record.

Closing arguments were presented to the Funeral Board by both the State, by and through Andrea Nichols representing the Nevada Funeral Board and Mr. Reaser, representing Respondents.

The Funeral Board discussed and considered the facts, evidence, witness testimonies and closing arguments presented to the Funeral Board regarding Funeral Board Case No. FB17-01 formal Complaint filed on March 9, 2017 and concluded as follows:

FINDINGS OF FACT

The Funeral Board discussed facts Nos. 1-5 and 7 of the formal Complaint.

MOTION: Brian Rebman moved to accept Nos. 1-5 and 7 of the formal Complaint as facts. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 6 of the formal Complaint.

MOTION: Brian Rebman moved to accept No. 6 of the formal Complaint as fact that Board Staff did speak with someone who witnessed bodies being stored in an unrefrigerated warehouse. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 8(a) of the formal Complaint.

MOTION: Randy Sharp moved to accept No. 8(a) of the formal Complaint as fact that the warehouse known as Suite 195 was dirty and unorganized. Adam Garcia seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 8(b) of the formal Complaint.

MOTION: Adam Garcia moved to accept No. 8(b) of the formal Complaint as fact that there was extreme odor of decomposition within the warehouse. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 8(c) of the formal Complaint.

MOTION: Christopher Naylor moved to accept No. 8(c) of the formal Complaint as fact as follows: (i) there were three (3) shelving units outside of refrigeration holding a total of twelve (12) bodies and one (1) body being stored on one shelving unit severely decomposed and La Paloma Funeral Service staff indicated there had been several bodies recently decomposing due to lack of refrigeration; (ii) a standard folding table holding two (2) bodies with one of the bodies partially hanging off the side of the table; (iii) a standard folding table holding one (1) body and (iv) one (1) body was being stored directly on the floor of the warehouse in a cardboard cremation container with the lid partially off the box. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 8(d) of the formal Complaint.

MOTION: Brian Rebman moved to accept No. 8(d) of the formal Complaint as fact that dates written on the plastic coverings on the unrefrigerated bodies ranged from January 7, 2017 through January 21, 2017. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 8(e) of the formal Complaint.

MOTION: Brian Rebman moved to accept No. 8(e) of the formal Complaint as fact that based on photo evidence, in the main funeral establishment/cremation holding area in Suite E-180, a body in a cremation container had a large plastic bin resting on top of the lid of the cremation container which was upside down and only partially cover the body. Adam Garcia seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 8(f) of the formal Complaint.

MOTION: Brian Rebman moved not to accept No. 8(f) of the formal Complaint as fact that the body intake log indicated that at least one individual being stored in the unrefrigerated warehouse was not found on the intake log and that further review of documents indicated attempts to charge a family and Washoe County Social Services for refrigeration in the unrefrigerated warehouse since they were not proven. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 9 of the formal Complaint.

MOTION: Adam Garcia moved to accept No. 9 of the formal Complaint as fact that the foregoing facts constitute grounds for initiating disciplinary action pursuant to NRS 642.5175. Brian Rebman seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 10 of the formal Complaint.

MOTION: Adam Garcia moved to accept No. 10 of the formal Complaint as fact that pursuant to Nevada Revised Statute NRS 642.5175: The following acts are grounds for which the Board may take disciplinary action against a person who holds a funeral director's license, a permit to operate a funeral establishment or a license to conduct direct cremations or immediate burials, or may refuse to issue such a license or permit to an applicant therefor: (1) Conviction of a crime involving moral turpitude; (2)

Unprofessional conduct; (3) False or misleading advertising; (4) Conviction of a felony related to the practice of funeral directors or funeral arrangers; (5) Conviction of a misdemeanor that is related directly to the business of a funeral establishment, direct cremation facility, cemetery or crematory. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed fact No. 11 of the formal Complaint.

MOTION: Adam Garcia moved to accept No. 11 of the formal Complaint as fact that pursuant to Nevada Revised Statute NRS 642.5176: (1) If the Board determines that a person who holds a license, permit or certificate issued by the Board pursuant to this chapter or chapter 451 or 452 of NRS has committed any of the acts set forth in NRS 642.5175, the Board may: (a) Refuse to renew the license or permit; (b) Revoke the license or permit; (c) Suspend the license or permit for a definite period or until further order of the Board; (d) Impose a fine of not more than \$5,000 for each act that constitutes a ground for disciplinary action; (e) Place the person on probation for a definite period subject to any reasonable conditions imposed by the Board; (f) Administer a public reprimand; or (g) Impose any combination of disciplinary actions set forth in paragraphs (a) to (f), inclusive. (2) The Board shall not administer a private reprimand. (3) An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

CONCLUSIONS OF LAW

The Funeral Board discussed Count I of the formal Complaint.

MOTION: Brian Rebman moved to not accept Count I of the formal Complaint as proven that this conduct violates NRS 642.5174(1), which states that unprofessional conduct includes misrepresentation or fraud in the operation of a funeral establishment, direct cremation facility, cemetery or crematory, or the practice of a funeral director or funeral arranger. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed Count II of the formal Complaint.

MOTION: Adam Garcia moved to accept Count II of the formal Complaint as proven that this conduct violates NRS 642.5174(11), which states that unprofessional conduct includes violation of any provision of this chapter, any regulation adopted pursuant thereto or any order of the Board. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed Count III of the formal Complaint.

MOTION: Adam Garcia moved to accept Count III of the formal Complaint as proven that this conduct violates NRS 642.5174(12), which states that unprofessional conduct includes violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies, including, without limitation chapters 440, 451 and 452 of NRS. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed Count IV of the formal Complaint.

MOTION: *Brian Rebman moved to not accept Count IV of the formal Complaint as proven that this conduct violates NRS 642.5174(15), which states that unprofessional conduct includes taking undue advantage of the patrons of the funeral establishment or direct cremation facility, or being guilty of fraud or misrepresentation in the sale of merchandise to those patrons. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

The Funeral Board discussed Count V of the formal Complaint.

MOTION: *Bart Burton moved to accept Count V of the formal Complaint as proven that this conduct violates NRS 642.5174(18) which states that unprofessional conduct includes unethical practices contrary to the public interest as determined by the Board. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

The Funeral Board discussed Count VI of the formal Complaint.

MOTION: *Bart Burton moved to accept Count VI of the formal Complaint as proven that this conduct violates NRS 642.345(3), which states that a funeral director is responsible for the proper management of each funeral establishment of which the funeral director is the manager. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

The Funeral Board discussed Count VII of the formal Complaint.

MOTION: *Bart Burton moved to accept Count VII of the formal Complaint as proven that this conduct violates NRS 451.675(2), which states that if human remains are not embalmed, they may not be held longer than 24 hours unless the holding facility is refrigerated. Brian Rebman seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

The Funeral Board discussed Count VIII of the formal Complaint.

MOTION: *Adam Garcia moved to accept Count VIII of the formal Complaint as proven that this conduct violates NRS 451.675(1), which states that if the operator of the crematory cannot cremate human remains immediately after receiving them, the operator shall place them in a holding facility within or adjacent to the crematory which preserves the dignity of the remains and protects the health and safety of employees of the operator. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

The Funeral Board discussed Count IX of the formal Complaint.

MOTION: *Brian Rebman moved to not accept the Count IX of the formal Complaint as proven that this conduct violates NRS 451.665, which states that the operator of a crematory, funeral establishment or direct cremation facility shall keep a record of the name of each person whose remains are received, the date and time of receipt, and a description of the container in which received. Dr. Randy Sharp seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

The Funeral Board discussed Count X of the formal Complaint.

MOTION: *Dr. Randy Sharp moved to accept Count X of the formal Complaint as proven that this conduct violates Sec. 13. of adopted LCB File No. R067-15, which states that the*

operator of the crematory, funeral establishment or direct cremation facility shall ensure that each dead body of a human being is embalmed or refrigerated at a temperature of not more than 48 degrees Fahrenheit within 24 hours after the operator receives the human remains. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed Count XI of the formal Complaint.

MOTION: Christopher Naylor moved to accept Count XI of the formal Complaint as proven that this conduct violates Sec. 33. of adopted LCB File No. R067-15, which states that each holder of a license, permit or certificate issue by the Board pursuant to chapter 451, 452, or 642 of NRS shall ensure that human remains are treated with dignity and respect at all times. Dr. Randy Sharp seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed Count XII of the formal Complaint.

MOTION: Christopher Naylor moved to accept Count XII of the formal Complaint as proven that this conduct violates Sec 33. Of adopted LCB File No. R067-15, which states that human remains must not be stored directly on the floor of any room used to store human remains. For the purposes of this subsection, "floor of any room" includes the floor of a room which is part of a refrigeration unit. Brian Rebman seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

The Funeral Board discussed Count XIII of the formal Complaint.

MOTION: Adam Garcia moved to accept Count XIII of the formal Complaint as proven that this conduct violates Sec. 33. Of adopted LCB File No. R067-15, which states that the premises of any location where human remains are stored must be maintained in a sanitary and professional manner. Brian Rebman seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

DELIBERATION

The Funeral Board found that Counts II, III, V, VI, VII, VIII, X, XI, XII and XIII were proven. The Funeral Board found that Counts I, IV and IX were not proven.

The Funeral Board ordered penalties as follows:

MOTION: Dr. Randy Sharp moved to have the State prepare and forward a final bill to Respondents within twenty (20) days of the close of this hearing to cover all attorney fees and costs. Respondents will also pay a fine of \$80,000. Both attorney fees and costs and the fine must be paid in full by October 2, 201. Licensees are to be jointly and severely liable. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

MOTION: Adam Garcia moved that the Board publicly reprimand Respondents. Dr. Randy Sharp seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

MOTION: Christopher Naylor moved to place Respondent, La Paloma Funeral Services, Establishment Permit No. EST88; Respondent, La Paloma Funeral Services, Establishment Permit No. EST107; and Respondent, La Paloma Funeral Services Crematory, Crematory License No. CRE88 on a five (5) year probation, with a minimum of

one inspection every six months for the first two years with the intent that if any violations surrounding the laws of funeral homes and crematories are found that those violations be brought directly to the board. Adam Garcia seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.

MOTION: *Dr. Randy Sharp moved to place Respondent, Dustin Olson, Funeral Director License No. FD779 on a five (5) year probation, that he provide an employee operation manual to the Board and proof that all employees have signed the operation manual at the next Board meeting. Mr. Olson shall provide the Board with quarterly updates of OSHA training for the employees and signed documentation for completion of training. If any violations surrounding the laws of funeral homes and crematories are found that those be brought directly to the Board. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

MOTION: *Dr. Randy Sharp moved to place Respondent, Shaun Bowen, Funeral Director License No. FD201 on a five (5) year probation, that he provide both a short term (6 months to a year) and long term action plan (three to five years) and that he also be responsible for providing proof the employees have signed the operation manual and proof of quarterly OSHA training for the employees. If any violations surrounding the laws of funeral homes and crematories are found that those be brought directly to the Board. Christopher Naylor seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

MOTION: *Dr. Randy Sharp moved to include language in the Order that the Board has a right to proceed with collection actions if the payments are not made and in addition, the Board has a right to bring any failure to comply with the Order back before the Board as grounds for disciplinary action. Bart Burton seconded the motion and the motion was carried unanimously with Tammy Dermody and Lorretta Guazzini recusing.*

Please refer to court reporter hearing transcript for specific details.

4. Public comment

<p>Note: No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)</p>
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There was no public comment.

5. Adjournment (For possible action)

The meeting was adjourned at 6:45 pm.