

Minutes of Meeting
Board of Funeral, Cemetery and Consumer Services
February 4, 2009 - 10:00 A.M. to 5:00 P.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg #230
Tallahassee, FL 32301

I. Call to Order and Roll Call

Mr. Greg Brudnicki, The Chair, called the meeting to order at 10:00 am.

Mr. Doug Shropshire, Executive Director, requested to make the usual prefatory comments for the record and then take the role.

As a preliminary matter, let me state for the record that my name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. This is a meeting of the Board of Funeral, Cemetery, and Consumer Services. Today is February 4, 2009. The meeting is occurring in the Alexander Building in Tallahassee, FL. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. My Assistant, Ms LaTonya Bryant, is recording these proceedings.

At this time I will take the role and Board members will please respond with "aye" or "present" when I call their name:

PRESENT:

Greg Brudnicki, Chairman
Jody Brandenburg, Vice-Chairman
Justin Baxley
Powell Helm
Tracy Huggins
Gail Thomas-DeWitt
Catherine Zippay

ALSO PRESENT:

Doug Shropshire, Executive Director
Anthony Miller, Assistant Director
Allison Dudley, Board Counsel
Mary K Surles, Department Counsel
Thomas "Tad" David, Department Counsel
James Gellepis, Department Staff
LaTonya Bryant, Department Staff
Karen Duehring, Department Staff

ABSENT:

Nancy Hubbell
Ken Jones

Mr. Chair, we have a quorum for the business before the Board.

II. Action on the Minutes

A. January 7, 2009

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on January 7th.

MOTION: Mr. Justin Baxley moved to adopt the minutes of the meeting with the recommended revision. Mr. Powell Helm seconded the motion, which passed unanimously.

III. Old Business

A. Application(s) for Funeral Establishment

1. Recommended for Approval with Conditions

a. Presidential Circle Funeral Home, Inc. (Hollywood) (formerly Valerie Panciera Funeral Home Inc)

The initial application for a Funeral Establishment was submitted on November 7, 2008. Valerie Panciera-Reith and Kevin Reith applied with the Division to open a funeral establishment at 4200 Hollywood Blvd, Hollywood, Florida, the former address for Panciera Memorial Home, Inc., owned by Mark Panciera. The application was complete when submitted. The applicant initially applied as Valerie Panciera Funeral Home, Inc. and has since changed the name to Presidential Circle Funeral Home, Inc. The Funeral Director in Charge of the establishment will be Kevin Reith (F028016). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on November 10, 2008.

The application was placed on the December Board agenda and recommended for approval by the Division. Prior to that Board meeting, the Department received a written complaint from Mark Panciera, essentially alleging that the applicant conducted a business as an unlicensed funeral establishment and also alleging that the applicant mislead the public by representing itself as Panciera Memorial Home. During the December 3, 2008 Board meeting the Board decided to defer the application to the next meeting while the Department completed its investigation into the complaint. In the course of that investigation, it came to the attention of Division management that a prior employment relationship existed between the assigned examiner and both the applicant and the complainant. Although the Division did not suspect or find any impropriety by the examiner, the Division decided to reassign the investigation to another examiner to avoid any appearance of impropriety. Respective counsel for both the applicant and the complainant were advised that due to the reassignment, the matter would be presented at the February Board meeting instead.

The Division completed its investigation on January 16, 2009. Although the report found violations of Chapter 497, it is the determination of the Division that the violations do not constitute the type of violations that would warrant a denial of a license under Chapter 497, Florida Statutes.

Based on the violations cited in the investigative report, the Division entered into a Settlement Stipulation for Consent Order with Respondent in which the Respondent agrees to waive probable cause and pay an administrative fine of \$1000.00. Respondent also signed a separate waiver of findings of probable cause and waiver of confidentiality. Due to that waiver, the Division is authorized to present the investigative report to the Board. A copy of the investigative report is attached for the Board's reference.

Should the Board reject the settlement stipulation, the Division will forward the case to the probable cause panel. Board counsel has advised the Division that should the Board decide to defer the application, pending completion of the probable cause proceeding, that the time to deny or reject the application would be tolled pursuant to Section 497.141(5), Florida Statutes. Counsel for Respondent has asserted that Section 497.141(5), Florida Statute would not apply to toll the time in this instance. By the Department's calculation, the deemer date for this application is March 9, 2009. In any event, the Division will make every effort to expedite the convening of a probable cause panel to hear the matter. However, in light of the anticipated contested issue regarding tolling, a decision to defer the application may run up against the deemer date.

Mr. Helm stated that the fine is very, very lenient for what has happened. The Board was told at the December meeting that some things did not occur, which in turn did happen. There appears to be no basis for denying the license but the fine is very lenient.

Mr. John Rudolph stated that in December when this came before the Board, there was an application for a funeral establishment license. Allegations were raised. In the past, this Board, where there is a valid funeral establishment application, has not used allegations of misconduct to deny a funeral establishment application. At that time, the applicant should have received its funeral establishment application. The allegations would then be presented and then to a hearing and through a fact finding process. The findings, from what was presented, the applicant feels very confident that under all the circumstances the applicant's statements would be correct. This is an attempt through negotiations with the Department after getting the report back to reach a settlement stipulation of this whole matter and stop this whole investigation. There may be other allegations that have come up, but again, these are allegations. Mr. Rudolph urged the Board to grant the funeral establishment license.

Mr. Helm stated that Mr. Rudolph made an incorrect statement that the Board denied the license.

Mr. Rudolph stated that the Board never denied the license, the matter was just continued. The license should have been issued in December with directions to the Department to proceed forward on an investigation. Otherwise, the Board is setting a precedent that every time a funeral establishment license comes before the Board, any competitor can come up with allegations and stop them from getting a funeral license, which has happened now and they have not had their license in 2 months. That is the travesty in this.

Ms. Wendy Wiener, representing the complainant Mark Panciera, stated that we are no longer dealing with allegations. We are dealing with six findings of misleading the funeral buying public concluded by the Division's investigator, Tina Williams, after substantial investigation. It does not appear the Board can approve the license application under the statutory standard set forth at 497.380(4) (copies presented to the Board). The statute states that the Board can not approve an application unless it has made a conclusion and a finding that there is a demonstrated history where there is no untrustworthiness or lack of integrity. With six specific findings of misleading the funeral buying public and what the investigator actually concludes is deceitful behavior, it does not appear that this Board can validly find that this applicant meets the statutory criteria and is statutorily mandated to disapprove the application. There is a statement in the Division's comments that needs to be addressed as well regarding the fact that this is within the context of a family dispute. Violations of Chapter 497 are violations of Chapter 497 no matter who brings them to the attention of the Division. For this matter to be considered in any way in the context of a family dispute seems absolutely incorrect. The Division investigator made 4 specific findings. Some of them have been disputed on the backend by counselor for Mrs. Panciera Rieth and her applicant. However, Mrs. Panciera Rieth and the other people involved with the applicant had an

opportunity to talk with Tina Williams, who found there were 4 specific instances of misleading the funeral buying public and in 2 of those she found multiple violations. It is simply not possible under the statutory standard for this application to go forward. The Board simply can not make a finding in the face of this investigator's conclusion. In addition, the discipline is against Mrs. Panciera Reith's preneed license. At this point, it does not appear she has a preneed license as she is not affiliated with a certificate of authority holder. The applicant is the entity that should be disciplined here if anyone is to be disciplined and perhaps Mrs. Panciera Reith herself if in fact she is licensed. So what we have is an applicant with at least 6 instances of misleading and deceitful behavior to the funeral buying public and we are going to license that entity with no discipline associated with its license when it in fact fails to meet the statutory standards. The penalty guidelines call for a minimum fine of \$1000 per separate offense when you violate Chapter 497. The Division's investigator supports at least 6 individual offenses, maybe more. Because of the gravity of the violations of the chapter, disapproval is the only mechanism that you have to comply with Chapter 497, but if you choose to go forward with some discipline, a \$1000 fine with no reprimand, no probation, no suspension, no other penalty against Mrs. Reith personally is certainly not the appropriate discipline.

Ms. Allison Dudley stated that the guidelines of the Board's rules call for a fine up to \$1000 per count and/or a reprimand.

Ms. Gail Thomas-Dewitt stated that due to lack of respect for the law, the penalty is not stiff enough. There should also be some type of probation or guidance for this firm. Every funeral director should know the law whether they are practicing or not. The Board needs to be sure that they are going to follow the guidelines of the law. Ms. Thomas-Dewitt recommended that the applicant be placed on probation for 1 year.

Ms. Tracy Huggins stated that she has a problem when someone is not following the law prior to being licensed. Ms. Huggins questioned whether Mr. Rudolph is implying the applicant has not conducted any funeral business whether preneed or at-need between October and today.

Mr. Rudolph agreed. The findings by the examiner did not include conducting funerals. They were not conducting funerals at their facility.

Ms. Huggins stated that they were and there was a visitation held.

Mr. Rudolph stated that was not the applicant but another licensee. Three of the findings have been denied because the applicant is able to prove in a hearing what was done. The 6 violations Ms. Weiner mentioned relate to one ad that was put in the Dioceses and there are 4 things to that. It was at the request of the Dioceses for them to put something in there because families were wondering what happened.

Mr. Rudolph requested that the funeral establishment license be granted as the Department has recommended approval. Should the Board reject the settlement stipulation, the applicant will do whatever to contest the findings.

Ms. Wiener stated that by approving the license, the Board would be rejecting its statutory standard by finding this licensee trustworthy and with integrity in business. The Division investigator found 6 different instances, not one ad but multiple ads, signage on a building and advertisements making misrepresentations about the status of the licensee and improper use of the Consumer Protection Trust

Fund as a solicitation tool. Approving this license would find that this is trustworthiness and integrity in the business and profession regulated by this Board.

MOTION: Ms. Catherine Zippay moved to approve the application for funeral establishment and reject the settlement stipulation. The motion failed due to lack of a second.

Mr. Baxley requested clarification on "it is our privilege to serve you with unbroken continuity" as stated in the Diocese ad.

Mr. Rudolph stated that was an idea that they had filed a funeral establishment application. They had received an inspection and received notice that the application was recommended for approval, so they figured it would be granted in the December meeting.

Mr. Kevin Reith stated that the state inspector advised that the language was okay.

Ms. Wiener stated that Dianna Patterson denies approval of advertisements specifically.

Mr. Mark Panciera stated that the applicants indicated that they would reopen. However, they were never opened or licensed. It was not an Archdioceses recommended ad it was a finding of fact in the civil litigation.

Mrs. Valerie Panciera Reith stated they were asked by the Pastor of that Church through the Archdioceses to put that notice as a friendly notice to calm the fears of people who thought that their preneed money had been taken.

Mr. Panciera stated that the findings of fact contradict that statement.

Mr. Shropshire asked for a point of order from the legal advisor to the extent which we should have this kind of back and forth.

Ms. Dudley stated that there has been a waiver so if the Board has questions of the parties that are here that would be acceptable, but where we are getting into a back and forth, that is inappropriate.

Ms. Huggins questioned how the Board should vote according to its statute.

Ms. Dudley stated that the Board has discretion. The decision must be made from the materials presented to the Board and determine whether that demonstrates that history and whether it is to the level that requires a denial. If the Board denies the license, the applicant has the option to seek administrative remedies through the Division of Administrative Hearing and would have to prove that they are entitled to that license. The other option would be to approve the license and deny the settlement agreement or make a counter offer on the settlement if the fine is not high enough. The Board could also deny the application and reject the settlement.

Mr. Baxley questioned what role the examiner played in the Department's recommendation.

Mr. Shropshire stated that he spoke with the examiner but does not ask them for their recommendation.

Mr. Brandenburg questioned regarding the handout by Ms. Wiener, what specifically in her opinion should be the grounds for denial.

Ms. Wiener stated that denial should be based on 497.380(4).

Mr. Helm stated that it appears the Board was misled and that is untrustworthiness.

Mr. Rudolph questioned how the Board was misled.

Mr. Helm stated at the meeting in December the applicant stated none of this went on.

Mr. Rudolph stated that the applicant stated they would contest the allegations and provide evidence to contest the allegations.

2nd MOTION: Ms. Huggins moved to deny the application and settlement based on 497 and the findings of the investigator. Mr. Helm seconded the motion, which passed with 2 dissenting votes.

IV. Disciplinary Proceeding(s)

A. James A. McKee Funeral Home: Case No. 93021-07-FC

Case originates from a December 20, 2007 probable cause determination by the Board and the subsequent filing of an Administrative Complaint, alleging that Respondent funeral establishment violated Section 497.459(6)(d), Florida Statutes by failing to timely refund \$845 to a Florida consumer upon cancellation of her pre-need funeral contract. Subsequent to the filing of the administrative complaint, two additional complaints were received alleging Respondent's failure to timely remit \$2730.00 to Bergen Funeral Services, an entitled vendor, in violation of Section 497.152(1)(b), Florida Statutes and failing to document \$1128 in additional charges in connection with the funeral of a Florida consumer, in violation of Section 497.152(11)(g), Florida Statutes. Also, a December 19, 2006 inspection and a follow up inspection found the premises were not being kept in a clean and sanitary manner, in violation of Rule 69K-21.003(1)(c) and (e) and 69K-21.005, Florida Administrative Code. During the pendency of this action, Respondent allowed his license to lapse into delinquent status after November 30, 2008. Evidence supports the conclusion that Respondent violated the enumerated statutes and administrative rules. The Respondent has elected to waive a determination of probable cause by the Board and enters into this settlement stipulation.

Department Recommendation: Approve the Settlement Stipulation for Consent Order assessing Respondent a \$ 5000 fine, apply for renewal of its license, and undergo a six month period of probation.

MOTION: Mr. Helm moved to approve the order. Mr. Brandenburg seconded the motion, which passed unanimously.

V. Informal Hearing(s)

A. Orlando Cuevas d/b/a Metropolitan Memorial Monuments (Lake Alfred) Case No. 100207-08-FC

Mr. Tad David stated that Mr. Cuevas is not currently licensed, but is an applicant.

Mr. Helm questioned whether the Department had received the requested documentation.

Ms. Dudley stated that Mr. Cuevas was given a deadline to submit paperwork. Although Mr. Cuevas missed the deadline, he did submit the documentation. Ms. Dudley recommended that the Board review the documentation presented despite the missed deadline. Mr. David would probably object to this.

Mr. David objected as he did not receive a copy of the letter until this morning. The Department did not receive the information until yesterday. This was not just a little late, it was entirely prejudicially tardy.

MOTION: Mr. Brandenburg moved to deny the application based on the violations noted in the Notice of Intent to Deny Licensure. Ms. Zippay seconded the motion, which passed unanimously.

VI. Application(s) for Preneed Sales Agent
A. Informational Item - See Addendum A

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

Mr. Brandenburg disclosed his affiliation with SCI Funeral Services of Florida, Inc.

Ms. Huggins disclosed her affiliation with The Simplicity Plan.

The Chair disclosed his affiliation with CFS Funeral Services, Inc.

B. Recommended for Approval (Criminal History)
1. McGuire, Maureen (Appointing Entity: Neptune Management Corp)

On the application received by the Department on September 29, 2008, the applicant answered "Yes" to Applicant Background Questions.

The criminal history includes two (2) offenses relating to two domestic incidents in 2007, which occurred in Florida. Ms. McGuire attached the criminal history form to her application. Ms. McGuire was asked to provide a detailed written explanation of the incident, submitted as requested.

The Department assessment is that if issued a preneed sales agent license, Ms. McGuire would not pose an unreasonable risk to members of the public who might deal with her in preneed transactions. See Florida Statutes, section 497.466(5)(c).

The Division recommends approval of the application(s).

MOTION: Mr. Helm moved to approve the application. Ms. Huggins seconded the motion, which passed unanimously.

VII. Application(s) for Preneed License Branch
A. Recommended for Approval - See Addendum B

The Division recommends approval of the application(s).

MOTION: Mr. Baxley moved to approve the application(s). Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

VIII. Application(s) for Florida Laws and Rules Examination
A. Recommended for Approval - Addendum C
1. Funeral Director and Embalmer - by Internship
a. Bivens, Burney

- b. *Gould, Jay W*
- c. *Green, Taimiko M*
- d. *Wynn, Javardia R*
- 2. *Funeral Director and Embalmer- by Endorsement*
 - a. *Robinson, Kristyn M*
- 3. *Direct Disposer*
 - a. *Giunta, Nicolette B*

The Division recommends approval of the application(s).

MOTION: Ms. Thomas-Dewitt moved to approve the application(s). Ms. Zippay seconded the motion, which passed unanimously.

- IX. Application(s) for Internship**
 - A. *Recommended for Approval – See Addendum D*
 - 1. *Funeral Director and Embalmer*
 - a. *Cooks, Leyshir C*
 - b. *Gross, Kamisha D*
 - c. *Williams, Antonia M*

The Division recommends approval of the application(s).

MOTION: Mr. Brandenburg moved to approve the application(s). Mr. Helm seconded the motion, which passed unanimously.

- X Application(s) for Embalmer Apprentice**
 - A. *Recommended for Approval – See Addendum E*
 - 1. *Woods, Matthew J*

The Division recommends approval of the application(s).

MOTION: Mr. Baxley moved to approve the application(s). Ms. Zippay seconded the motion, which passed unanimously.

- XI. Application(s) for Continuing Education Course Approval**
 - A. *Recommended for Approval – See Addendum F*
 - 1. *Batesville Management Services #86*
 - 2. *Epsilon Nu Delta Mortuary Fraternity #5801*
 - 3. *Florida Funeral Directors Association, Inc. #75*
 - 4. *Funeral Review.Com, LLC #122*
 - 5. *Jewish Funeral Directors of America, Inc. #66*
 - 6. *National Funeral Directors Association #136*
 - 7. *SCI Management - Dignity University #99*
 - 8. *Southeast Tissue Alliance #108*
 - 9. *The Dodge Institute for Advanced Mortuary Stu #81*

The Continuing Education Committee and the Division recommends approval of the application(s).

MOTION: Ms. Thomas-Dewitt moved to approve the application(s). Ms. Huggins seconded the motion, which passed unanimously.

XII. Application(s) for Registered Training Facility

A. Recommended for Approval – See Addendum G

1. Funeral Directing and Embalming

a. Heritage Gardens Funeral Home & Cemetery-F041695 (Niceville)

2. Funeral Directing

a. National Cremation Society and Memorial Center-F041128 (Sarasota)

The Division recommends approval of the application(s).

MOTION: Ms. Zippay moved to approve the application(s). Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

XIII. Consumer Protection Trust Fund Claims

A. Recommended for Approval - See Addendum H

The Division recommends approval of the claim(s).

MOTION: Mr. Helm moved to approve the claim(s). Ms. Huggins seconded the motion, which passed unanimously.

XIV. Application(s) for Monument Establishment Sales Agent

A. Informational Item – See Addendum I

These are clean application(s) where there have been no disciplinary or criminal history noted. This addendum is an informational report. No Board action is needed. The Division has issued these licenses as the Statute requires.

XV. Monument Retail Sales Agreement(s)

A. Cumbaa Monuments, Inc. (Blountstown)

Staff recommends approval of the agreement.

MOTION: Mr. Helm moved to approve the agreement. Ms. Huggins seconded the motion, which passed unanimously.

B. Sam Carroll Memorials, Inc. d/b/a Emerald Coast Memorials (Crestview)

Staff recommends approval of the agreement.

MOTION: Ms. Thomas-Dewitt moved to approve the agreement. Mr. Baxley seconded the motion, which passed unanimously.

XVI. Application(s) for Funeral Establishment

A. Recommended for Approval

1. Bomet Inc d/b/a Trustguard Cremation Services (Orlando)

The application for a Funeral Establishment was submitted on December 15, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on January 13, 2009. The Funeral Director in Charge of the establishment will be Edward Trifone (F053241). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on January 21, 2009.

MOTION: Ms. Zippay moved to approve the application. Mr. Baxley seconded the motion, which passed unanimously.

2. *Brisson Funeral Home Inc (Sanford)*

The application for a Funeral Establishment was submitted on December 12, 2008. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on December 30, 2008. The Funeral Director in Charge will be David Ellis (F044995). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on January 9, 2009. The application is recommended for approval pending subject to the following condition: Proof of sale to the new owner.

MOTION: Mr. Brandenburg moved to approve the application contingent upon proof of sale to the new owner. Mr. Baxley seconded the motion, which passed unanimously.

3. *Genesis Funeral Home and \$495 Cremation Center Inc (Hollywood)*

The application for a Funeral Establishment was submitted on December 15, 2008. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on January 7, 2009. The Funeral Director in Charge will be Paul Ray (F042763). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on January 16, 2009.

MOTION: Mr. Brandenburg moved to approve the application with the condition that the Department checks the applicant's price list at end of 6 months to ensure the cremation price is still \$495. Mr. Helm seconded the motion, which passed unanimously.

DISCUSSION: Mr. Shropshire stated the Division would notify the applicant that if they in fact at any time charge more than \$495 they are in jeopardy of a disciplinary violation for deceitful conduct. Staff will go out and check in approximately 6 months to see if they are in fact charging \$495. Mr. Baxley stated that if the applicant decided to change their name, they would not have to reapply.

Mr. Brandenburg questioned whether there was anyone present representing the applicant.

There was a negative response from the audience.

XVII. *Contract(s) or Other Related Form(s)*

A. *Daytona Memorial Park, Inc. (Daytona Beach)*

1. *Merchandise Addendum*

MOTION: Ms. Huggins moved to approve the addendum subject to Department receipt within 60 days of two print-ready copies. Mr. Jones seconded the motion, which passed unanimously.

B. Fred Hunter Memorial Services, Inc. (Hollywood)

1. Purchase Agreement and Financial Accommodation Addendum

MOTION: Mr. Brandenburg moved to approve the agreement and addendum subject to Department receipt within 60 days of two print-ready copies. Ms. Zippay seconded the motion, which passed unanimously.

C. National Guardian Life (NGL) Insurance Group (Madison, WI)

1. Prefunded Funeral Agreement PN-SGS-SER-FL 01/09

MOTION: Ms. Huggins moved to approve the agreement subject to Department receipt within 60 days of two print-ready copies. Mr. Brandenburg seconded the motion, which passed unanimously.

D. The Simplicity Plan (Altamonte Springs)

1. Agreement to Purchase Cemetery Interment Rights, Merchandise and Services FL-ORL-10/08-CEM

2. Agreement to Purchase Funeral Goods and Services FL-ORL-10/08-FUN

The licensee has prepared new preneed agreements to provide standardization and to accommodate software being implemented throughout the company. They will be used for preneed sales at all the licensee's funeral home and cemetery locations in the state.

An arbitration contract and retail installment contract are incorporated in the agreement. On November 24, 2008, the Department issued a notice of deficiencies which requested a number of revisions, including provisions related to the limitation of liability and the Arbitration Contract. The Department indicated the provisions may be restrictive to rights under general civil and common law and may abrogate rights to damages or other relief in any court. In particular, the Department had concern with the clause that gave the purchaser the right to reject arbitration, but stated that the class action and punitive damage waivers would remain valid and effective even upon rejection.

On December 9, 2008 the Department received a letter from the licensee's legal representative Mr. David W. Thompson, of Bennet Koren-McGlinche Stafford, that provided United States and Florida case law related to arbitration agreements and limits to the availability of class actions and liability of a contracting party. Upon the Department's review and research into the legal issues, the Department stipulated that the Arbitration Contract may remain in place on the condition that the clause holding the class action and punitive damage waivers valid and effective upon rejection of arbitration would be removed. The licensee agreed and removed the language.

The Department recommends approval of the agreements upon Department receipt within sixty (60) days of two print-ready copies of each agreement.

Compliance with other State and Federal regulations is the responsibility of the licensee.

MOTION: Mr. Baxley moved to approve the agreements subject to Department receipt within 60 days of two print-ready copies of each agreement. Mr. Helm seconded the motion, which passed unanimously.

XVIII. Chairman's Report (Oral)

The Chair stated that he did not have a report.

XIX. Executive Director's Report

A. Legislative matters (verbal report)

Mr. Shropshire advised he met with a Representative this morning concerning a proposed bill that the Representative is sponsoring. The Rep is considering possibly including the provision regarding allowing transfer of funds from the Consumer Protection Trust Fund to the Regulatory Trust Fund in excess of \$5 million. That provision has been published on the Division's website. Although no decision has been made, at least preliminarily he is not inclined to include the provision for a fee on at need contracts in his bill.

The Chair questioned whether the Division would get an indirect effect to help cover expenses.

Mr. Shropshire stated that would be the benefit if the Legislature allows it. We are in the position of being the applicant.

The Chair expressed concern over the funds being transferred to someone else's trust fund.

Mr. Shropshire stated that the funds would be transferred to the Board's Regulatory Trust Fund to fund the Board's and the Division's operations. Mr. Shropshire stated that he would distribute the revised language that would be forwarded to the Representative.

B. Report from Richard Baldwin, Examiner for Menorah Gardens, November '08 (attachment)

The Board members received a copy of the report from Richard Baldwin for the month(s) of November '08. Mr. Baldwin continues to assist consumers.

DISCUSSION: Mr. Helm questioned why the Department does not try and collect cost from the Respondents.

Mr. Shropshire stated that in some extent, it is a wash because the fine money and any separate amount collected for the investigation cost go in the same Regulatory Trust Fund. Sometimes it is just cleaner to negotiate a fine that includes enough to cover our costs and penalize them appropriately.

XX. Office of Attorney General's Report (Oral)

A. Issue Concerning "Coming Soon" Language in Advertising (verbal report)

Ms. Dudley handed out a summary of the relevant statutes with regard to the issue regarding coming soon language in advertising. Ms. Dudley stated that she only found one statute within Chapter 497 that specifically addresses perspective advertising and that is with regard to preneed contracts, 497.454(1)a. That would limit an applicant from advertising prior to obtaining a valid preneed license. Ms. Dudley stated that she was unable to find any similar provision other than that one. Section 497.452, F.S., applies to all licensees and states that nobody should advertise in a fraudulent, deceptive or misleading form. If the Board has a concern, it would have to be on a case by case basis to determine what is fraudulent or misleading. There is no statutory definition of misleading in 497. Criminal Statute 819.40(5) requires some intent on the party to mislead the public. In the future, the Board would have to look at the intent of the person advertising. In the situation that was at hand, the coming soon language, if they reasonably believed that they were going to get a license within a short period then that would be okay, but if they

found it may take 6 months or they may not get their license at all, that could probably arguably be misleading or deceptive.

Ms. Huggins stated that 497.380(3) states that no person may conduct, maintain, manage or operate a funeral establishment unless a funeral establishment operating license has been issued under this Chapter for that funeral establishment.

Ms. Dudley stated that those provisions are throughout 497 with respect to each licensee, those are in regard to practicing prior to obtaining a license.

Ms. Huggins states this needs to be addressed as it appears to be coming up more often and the Board seems to have issues with it even on an individual basis.

Ms. Dudley stated that she would check to see whether there is statutory authority to enact a rule that would limit people's ability to advertise before they have actually opened for business. If there is no statutory authority it may require a legislative change.

Ms. Wiener questioned whether there is a conclusion on how to act appropriately.

Ms. Dudley stated it does not appear to be any prohibition against advertising "Coming Soon".

Ms. Thomas-Dewitt stated that the Board has fined applicants for this and now we are saying it is okay for you to do it. That is contradictory.

Mr. Bill Williams stated that our statute does not prohibit this. You can not practice without a license, but there is nothing in the statute that prohibits this industry or any other industry from saying "Coming Soon."

Mr. Keenan Knopke stated that there is nothing that prohibits saying "Coming Soon." The reality is when you start practicing without a license is when you cross over the red line.

Ms. Wiener stated that the problem for the Board statutorily is that there is no definition in our law as to what can be done at a funeral establishment. Technically the law does not address this issue. It would be good to have a change by rule or if there is statutory authority.

Ms. Zippay stated if the Board looked back at the cases that were cited for using "Coming Soon", it would be very fact determined that they did more than used the term. It does not appear that the Board did anything in the past that was in conflict to what is being discussed today.

Mr. Williams stated that there was one case where "Coming Soon" was used on the website and the applicant was fined \$1000.

Ms Lyons Coney added that the applicant's ad did not include preneed, because that he was told he could not use it in the ad.

Mr. Helm stated there was more to it. The Chair made a phone call to the applicant.

Ms. Olvey agreed that the Chair called and the call was answered "Joe Blow Funeral Home", so that is a little more.

Ms. Olvey stated that part of the licensing process is having the facility inspected and approved, so to say "Coming Soon" prior to this may be considered misleading because it has not been approved. So there may be some validity to looking at everything on a case by case basis and not trying to make a cookie cutter rule.

Ms. Thomas-Dewitt stated that it could also result in unlicensed activity.

Ms. Michele Hood stated that perhaps if there was some wording that stated that the person had applied for their funeral establishment license and there is a reasonable expectation that the Department is going to act upon that license application within the next 90 days.

Mr. Williams stated that it sounds good but there is no statutory authority for that.

Ms. Lyons Coney stated that her concern is that there is a disconnect in what the applicants are being told in the field and the actions of the Board.

Mr. Shropshire stated that on that point, he would send out direction today to all staff in the field and in the office advising not to tell people it is okay, it is a gray area and we recommend against it.

XXI. Administrative Report

The Administrative Report was submitted to the Board on the Agenda.

XXII. Disciplinary Report

The Disciplinary Report was submitted to the Board on the Agenda.

XXIII. Adjournment

At 11:21 a.m., the meeting was adjourned.