

**Minutes**  
**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES**  
**June 24, 2009 - 10:00 A.M. to 5:00 P.M.**  
**Department of Financial Services**  
**2020 Capital Circle SE, Alexander Bldg #230**  
**Tallahassee, FL 32301**

**THIS MEETING IS OPEN TO THE PUBLIC**

**1. Call to Order and Roll Call**

Mr. Greg Brudnicki, The Chair, called the meeting to order at 10:02 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 June 24, 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.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brudnicki, runs the meeting. Persons desiring to speak should initially ask the Chair for permission.

At this time I will take the roll 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  
Ken Jones  
Gail Thomas-DeWitt  
Catherine Zippay

**ALSO PRESENT:**

Doug Shropshire, Executive Director  
Anthony Miller, Assistant Director  
Allison Dudley, Board Counsel  
Jim Bossart, Department Counsel  
Tad David, Department Counsel  
Mary K Surles, Department Counsel  
James Gellepis, Department Staff

Karen Duehring, Department Staff  
Jim Deason, Department Staff  
LaTonya Bryant, Department Staff  
Lashonda Morris, Department Staff  
Christine Lynn, Department Staff

**ABSENT:**

Nancy Hubbell

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

**2. Action on the Minutes**

*A. April 8, 2009*

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on April 8th.

**MOTION:** Mr. Justin Baxley moved to adopt the minutes of the meeting. Ms. Gail Thomas-Dewitt seconded the motion, which passed unanimously.

*B. May 6, 2009 – Teleconference*

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on May 6<sup>th</sup>.

**MOTION:** Mr. Baxley moved to adopt the minutes of the meeting. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

*C. June 3, 2009 – Teleconference*

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on June 3<sup>rd</sup>.

**MOTION:** Mr. Baxley moved to adopt the minutes of the meeting. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

**3. Informal Hearing(s)**

Ms. Allison Dudley stated that informal hearings involve situations where a Respondent is not disputing the material facts of a case as alleged in the Administrative Complaint, but is asking the Board to consider mitigating evidence. The appropriate motion for informal hearings would be that the Board move to find that there are no disputed issues of material facts and to adopt the Findings of Fact as alleged in the Administrative Complaint and all the cases held into evidence. The Board would also allow the Respondent the opportunity to present mitigating evidence and/or legal argument. The Board must also move to adopt the Conclusions of Law as contained in the Administrative Complaint and finally impose a penalty upon the Respondent if it is not a licensure issue. Penalties should be within the disciplinary guidelines. If the Board chooses a penalty that is other than those contained in the disciplinary guidelines, you must find an aggravator or a mitigator to go other than the guidelines. The Prosecutor will make any argument and a recommendation regarding the penalty for these various cases.

Mr. Jody Brandenburg disclosed his affiliation with SCI Funeral Services of Florida and recused himself from the next two issues.

*A. Gonzalez-Roel, Adolfo (F046741) Case No: 97880-08-FC*

Mr. Tad David stated that this matter was presented to the Probable Cause Panel on October 27, 2008. On November 19, 2008 an Administrative Complaint was filed against the Respondent in this matter. On or about December 23, 2008 the Respondent filed a response to the Administrative Complaint citing a factual dispute but not citing which facts.

Subsequent to the Department dismissing that petition on the basis of failure to follow procedural grounds for citing specific facts disputed, the Respondent filed an election of proceedings requesting an informal hearing citing that there were no material facts in dispute. Since there are no material facts in dispute, the following factual allegations of the Administrative Complaint should be adopted by the Board:

On or about August 23, 2007, the Office of the State Attorney of the 13<sup>th</sup> Judicial Circuit in Hillsborough County, FL filed a criminal information against Adolfo Gonzalez-Roel in Case No. 07-17394 alleging one count of grand theft as a second-degree felony, under s. 812.014(2)(b)(1), F.S. and specifically alleging as follows in the information:

Adolfo Gonzalez-Roel, the Respondent and licensee in this matter, from on or about August 25, 2002 until on or about December 31, 2004, in Hillsborough County, FL, unlawfully obtained or used or endeavored to obtain or use US currency, the property of SCI Funeral Services of Florida, in the amount of \$20,000 or more but less than \$100,000. In doing so, the Respondent, Adolfo Gonzalez-Roel, intended to permanently or temporarily deprive SCI Funeral Services of Florida of the property or benefit therefrom or to appropriate the property to his own use or the use of a person not entitled thereto.

The theft identified in above criminal information occurred in the course of the licensee's employment in a funeral establishment.

On or about August 25, 2008, the Respondent in this matter, Adolfo Gonzalez-Roel, entered a plea of guilty to the lesser included charge of grand theft, a third-degree felony. As a result, the licensee, Adolfo Gonzalez-Roel, was placed on probation for a period of five years in order to pay restitution in the amount of \$24,734.

Mr. David requested that the Board accept and adopt the facts as alleged in the Administrative Complaint as recited here and that the documents provided to the Board in reference to this matter are moved into evidence.

**MOTION:** Mr. Baxley moved to accept the material facts of the complaint and submit the documents into evidence. Mr. Ken Jones seconded the motion, which passed unanimously.

Mr. David stated that the Department, in the Administrative Complaint, states that the foregoing facts as alleged and now as adopted by the Board, are violations of the following Statutes: s. 497.152(1)(a), F.S. and s. 497.152(2), F.S. Mr. David requested that the Board adopt these violations as the Conclusions of Law in this informal hearing.

**MOTION:** Ms. Thomas-Dewitt moved to accept the violations as the Conclusions of Law. Ms. Tracy Huggins seconded the motion, which passed unanimously.

Mr. David stated per the penalty guidelines, the penalty range for the violation of the two prior cited and adopted laws for the first offense, which this is Mr. Adolfo Gonzalez-Roel's first offense, the initial penalty range for s. 497.152(1)(a), F.S. is a reprimand and a fine of up to \$2500 plus the cost of investigation and prosecution, plus one year probation with usual conditions as contained in the statute which could include, among other things, continuing education and such. The violation of s. 497.152(2), F.S. requires by the penalty guidelines, a reprimand

and a fine of up to \$2500, plus the cost and one year probation with usual conditions including, among other things, continuing education. In addition to the aggravating facts in this matter that would allow the Board to impose a penalty other than that contained in the disciplinary guidelines are the facts that the cited offense took place over a period of time, from some time in 2002 through the end of 2004. This was not an isolated incident. It was in fact a chain of transactions upon which the count was based. Also, the other thing that would aggravate the circumstances is the amount of money that was involved. The restitution ordered in this matter was \$24,734. That is, in the Department's opinion, a pretty hefty sum. The Department feels that is an aggravating factor, just the gravity of the offense. There is no evidence that the restitution has been fully repaid. Certainly if it has not been repaid, that would be an aggravating factor. Among other aggravating factors are the effects of the penalty imposed. This is a pretty serious situation, and in order to ensure this type thing does not happen again, the Department feels the penalty should be aggravated. With all the aggravating factors referenced, the Department recommends revocation of Mr. Adolfo Gonzalez-Roel's license.

At this time, Mr. David yielded the floor to Mr. Gonzalez-Roel's attorney, but would like to reserve a minute or two after his presentation to make any rebuttal if necessary.

Mr. Powell Helm questioned whether \$2500 is the maximum fine as the Department states it is \$5000.

Mr. David stated that may include costs because the Department can include costs. The maximum for a second or subsequent offense is \$5000, but for the first offense, just within the penalty guidelines, not considering any aggravating circumstances, the \$2500 is the maximum fine, not including the cost added in.

Mr. Shropshire stated it appears Mr. Helm is referring to Page 3 of the Administrative Complaint, the last paragraph.

Mr. David stated that is a jurisdiction amount that the Department cannot impose a fine higher than that.

Mr. Helm questioned whether \$2500 or \$5000 is correct.

Mr. David stated that the \$5000 is a general limitation on the Department's ability to fine a licensee. The guidelines are rules established and promulgated in order to make the Statutes more detailed and to address situations that may not be specifically addressed in the Statutes. That means, even by Rules, the penalty guidelines could not set a fine higher than \$5000.

Mr. Shropshire questioned whether it would be true to say on this case, the maximum fine is \$2500 unless there are aggravating circumstances.

Mr. David answered yes. In this case, the maximum fine is \$2500 not considering aggravating circumstances and not considering costs of investigation and prosecution. The \$5000 limitation is the most that the Rules could have been promulgated to impose.

Mr. David Ferrentino, representing Adolfo and Julio Gonzalez-Roel, stated that both matters are here before the Board and are appreciative of the Board's time. Mr. Ferrentino stated he had some preliminary statements to make as far as the backgrounds of the individuals that are here before you and are specifically relating to the matters here. Mr. Ferrentino requested permission to address both matters if it meets with the Board's approval.

The Chair indicated that would be fine.

Mr. Ferrentino stated that Julio and Adolfo grew up in the funeral business and have been licensed in the funeral business for over 25 years. Today, their name, Gonzalez-Roel, Roel was bought out by Stewart Enterprises, which Ms. Huggins is affiliated with; Gonzalez, part of their name, was bought out by SCI, which Mr. Brandenburg is affiliated with. They are extremely popular, successful and an asset to the Tampa community as far as being independent funeral operators. The reason why the background is so important here, specific to these complaints, is they relate not to consumers but to the brothers' affiliation with SCI. SCI specifically built a home around the brothers in Tampa. If anyone knows anything about Tampa, we are talking about N Dale Mabry Hwy, the most populated street in Tampa. They put a lot of money into the home, a complex structure. We are not talking about simply employee/employer relationship. The brothers were there for ten years. Accolades; I literally have here memos from Mr. Brandenburg himself congratulating the brothers on the good job they were doing. I have a book of unsolicited consumer accolades, if any Board member would like to look at these.

The Chair stated that the Board was provided with a big packet.

Mr. Ferrentino stated that those were just a sampling. These are letters written to us by folks that are going through a terrible time in their life. We have redacted their names as best as possible to keep anything out of the public record. That is why the book is here if anyone would like to look at it.

The underlying criminal complaints in this matter did not stem from consumers. It stemmed from a dispute between SCI and the brothers about the way the home was being run. To put it in perspective, they were there for 10 years. The criminal complaints that were brought to the State Attorney's Office by SCI pertained to 2 years, at the tail end of the brothers' relationship with SCI, which ended unfavorable to everyone. There was going to be a buy-out, but it did not happen and now all of a sudden there were allegations of mispropriety at the home. That is what this stems from. This is a civil dispute which was brought through the criminal justice system and it has been resolved at this point. SCI made the allegations to the State Attorney's Office. At that time, in the last few years where they were running the home, there was between \$1.5 million and \$2 million a year in revenue going through the home. The complaints were resolved for a total of \$65,000 between the two brothers; approximately \$40,000 for one and \$20,000 to the other. The restitution half of it was paid immediately upon entering the plea. The rest of it is on schedule and is being paid current and will be paid off in a couple of months. So, we go back to "what is this really about, why are we here?"

I can stand up here all day and tell you what was going on between SCI and the brothers, five or six years ago, which is what we are talking about at this point. Mr. David can come up here and make the same things. At the end of the day, they are assertions of counsel. You do not have any evidence in front of you that is why we settled the criminal matter because of the time, money and expense of going through it. It is why we have come here before the Board to try and settle this matter. Anyone who has ever been involved in civil litigation, you will know that 99% of cases settle without going to trial. I don't think that means 99% of the plaintiffs are correct. I think it shows what it takes to go through a trial. A lot of factors go into settling it. Well, what do we do know? We do know that not one consumer has complained about these brothers in 25 years.

We had a long drive from Tampa this morning and it was a good experience for a lawyer because you really get to know who you are representing. I didn't know this until this morning; 10,000 funerals is what they would estimate in good faith. Not one consumer complaint. So we are here today. We have resolved the criminal matter. We have paid restitution and now we are down to trying to resolve this matter before the Board. We come here in good faith to acknowledge the situation and just ask for fair treatment.

What I have here are the penalty guidelines. This is a first offense, the first time either of them has been before you. Even to this day, there has not been a consumer complaint against these brothers. The penalty range, for the items cited in the Administrative Complaint, is reprimand and a fine of \$1000 - \$2500 plus cost. The other statute

that is referenced is a reprimand, a fine of \$1000 - \$2500 plus cost, 6 months – 1 year probation with usual conditions to suspension until compliant. Mr. David mentioned the assertion that there should be aggravating circumstances taking us out of the norm. I submit to you if there are any unusual circumstances here they are mitigating circumstances. Twenty-five years and there no consumer complaints, even to this day. Isn't that the charge of the Board, consumers – the public? Even to this today what we have, the genesis, the whole reason why we are here is the dispute between the brothers and SCI, not consumers. In fact, as we submitted, we have character references from people in Tampa, some of who are even in Tallahassee you may recognize their names, talking about what an asset to the community the brothers are. So we believe any penalty above and beyond the minimum set forth in the statute would actually do an injustice to the consumers in the public of Tampa who look to these brothers to provide the services they have been provided at 3 different establishes: 1<sup>st</sup> at their father's establishment growing up, then at Gonzalez Funeral Home owned by SCI and now on their own. We ask the Board to please consider these mitigating factors to if anything provide the minimum penalty provided in the guidelines. Definitely do not go outside the guidelines, but if anything, give us the minimum.

Ms. Allison Dudley stated that Mr. Ferrentino had mentioned that he had some documents from Mr. Brandenburg. Ms. Dudley requested that Mr. Ferrentino clarify that he was not referring to the Board member, Jody Brandenburg.

Mr. Ferrentino stated that he has material from Mr. Brandenburg's son as well as Mr. Brandenburg himself, accolades.

Ms. Dudley stated there is one in the packet from Mr. Joel Brandenburg.

Mr. Ferrentino stated that he understands is Mr. Brandenburg's son. This is in February of 2003, shortly before the blowup between SCI and the brothers, where the buyout did not go through; Mr. Brandenburg's son, who at that time was working for SCI praising the job that they were doing. I then have a document in here from Mr. Brandenburg himself addressed to Steve Mack, another SCI representative, "*This is a great survey results visiting here today. Julio Gonzalez runs a very efficient ship.*" It is signed Jody Brandenburg, SCI.

Mr. David questioned whether that document was submitted to the Board as part of the record.

Mr. Ferrentino answered no but stated he would be happy to introduce it into evidence, but we would move that all of our other materials previously submitted be moved into evidence. Again, we are here today not to have a full blown final hearing.

Mr. David stated that the restitution has not been fully paid. Whether it is on schedule or not, I cannot say, but I do know even from Mr. Ferrentino's assertion that it has not been paid in full.

The Chair questioned the pleasure of the Board. There are a couple different issues. First of all, there are two 497 violations, penalty amounts and the dispute of whether or not it is aggravating.

Mr. Baxley questioned whether Mr. Ferrentino stated that Mr. Adolfo Gonzalez entered a plea of guilty in a civil case, not a criminal case.

Mr. Ferrentino stated it was a criminal case. The genesis of it is a civil matter was moved into a criminal arena.

Mr. David stressed that whether or not it initiated in a civil matter, it was a guilty plea in a criminal matter that is the genesis of this hearing.

The Chair requested clarification on the statutes; 497.152(2) and 497.153(5). In the matter of 497.152(2), there is a \$1000 - \$2500 penalty.

Ms. Dudley stated that it should be 497.152(1)(a).

Mr. David stated there are only two statutes, 497.152(2) and 497.152(1)a.

**MOTION:** Mr. Jones moved to accept the Department's recommendation of a \$2500 fine for violation of 497.152(1)(a). Ms. Catherine Zippay seconded the motion, which passed unanimously.

Mr. David stated that was the penalty guidelines before the aggravation. The Department's recommendation was revocation of the license.

**MOTION:** Mr. Helm moved to accept the Department's recommendation of a \$2500 fine for violation of 497.152(2). Ms. Zippay seconded the motion, which passed unanimously.

The Chair stated in regards to the revocation or suspension issue whether there a motion regarding the licenses of both, since counsel addressed both. The Chair questioned whether there are any issues in the brothers' situation that are any different.

Mr. David stated that the amount of restitution is.

The Chair questioned whether the motions were for one brother or both.

Mr. David stated that procedurally we can possibly abbreviate the second one as they need to be handled separately. Mr. David stated this was a one-count Administrative Complaint so the vote should be on one penalty considering the two violations cited, the aggravating and any mitigating circumstances and granting each of those the weight appropriate. The Board procedurally should vote on one penalty as it is a one-count Administrative Complaint. The Board would have to take all of its consideration and all the evidence together, including the documentation and the factual evidence and vote on one penalty.

The Chair questioned whether there could be a separate vote on the aggravation amount of the penalty.

Mr. David stated the aggravating circumstances aggravate the big penalty. So, the Board would not be voting on two penalties.

Ms. Dudley stated that it may not be absolutely required, but procedurally it would probably be better to discuss an entire penalty at once. If the Board wanted to do it the other way it could but it would be cleaner this way.

**MOTION:** Mr. Jones moved to reconsider the motion on the first penalty. Ms. Zippay seconded the motion, which passed unanimously.

**MOTION:** Mr. Baxley moved to reconsider the motion on the second penalty. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. Baxley questioned whether the Board is handling 497.152(1)(a) separately from 497.152(2).

Ms. Dudley stated that the Board should probably combine the two statutes as they are only included in one count. If they are separated out that would make two counts.

Mr. Ferrentino stated that the two violations cited in the complaint are 497.152(2) and 497.152(1)(a). As far as the penalty guidelines go, at the end it talks about upon consideration of the following factors the Board may impose actions different than the guidelines. As a point of order, should there be some determination first whether there are mitigating or aggravating factors to go outside the guidelines.

Mr. Shropshire stated that the person proposing the penalty if its above the guidelines would state why they believe there are aggravating circumstances justifying a higher than standard penalty.

Mr. David agreed and added they would need to cite whether the aggravating or mitigating circumstances affect their moved penalty.

Mr. Ferrentino stated that they have presented reasons to mitigating circumstances and questioned whether the Board will go through the mitigation factors that he has set forth or the aggravating factors set forth by Mr. David and make determination on those factors. As I go through these factors, I do not see any of these aggravating factors as being applicable here. There has been no statement as to a factor that is listed in the code that would amount to an aggravating factor.

The Chair stated that the amount of money mentioned.

Mr. David stated that the list also includes as in other mitigating and aggravating circumstances. On top of that, the amount of money would fall under the actual damaged caused by the violation. The Board can go through and see. The Department did not specifically cite to subsection, but simply listed what it felt were aggravating circumstances that would fall under one or more of the factors in (2) of the penalty guidelines. Mr. Shropshire is correct in the Board member making the motion simply needs to cite which facts they feel are aggravating or mitigating facts that fall under this subsection and then stated the penalty they think those circumstances support.

Mr. Ferrentino stated as you go through these, the first one is danger to the public. There has been no danger to the public. Length of time since the date of violation; we are talking about a long period of time not a short period of time; number of complaints filed against the licensee; as we talked about there are none. Length of time licensee has practiced; that is substantial as opposed to somebody who was just licensed. I just want to make sure we are all on the same page of addressing within the bounds of the guidelines as to where this is going.

The Chair questioned where the guidelines are.

Mr. Ferrentino provided the Board with a copy of the guidelines and indicated it is the second to last page of that document.

Mr. David stated this information is contained in Rule 69K-30.001, F.A.C.

Mr. Ferrentino stated there is no suspension or revocation within the guidelines. To all of a sudden be putting up a motion for revocation, we are already outside the guidelines and there has been no consideration of the mitigating factors. Mr. Ferrentino added he has not heard any aggravating factors. No danger to the public has been alleged. These matters are solely between the brothers and SCI. The length of time since date of violation, we are talking about between five and seven years ago that this occurred. The number of complaints filed against the licensee, zero; two of them, 25 years; 50 years of practice, not one consumer complaint. Actual damage, physical or otherwise caused by the violation, the deterrent effect of the penalty imposed. The effects of the penalty upon the licensee's livelihood, these brothers run an independent funeral home, and if the Board revokes their licenses they are done. Their business is done.



Ms. Thomas-Dewitt stated that the first item listed under aggravating or mitigating circumstances is the severity of the offense. That would apply.

Mr. Ferrentino stated that Ms. Thomas-Dewitt may be looking at a different code provision.

Ms. Dudley stated there are two sets of guidelines in the Rule.

Mr. David stated that Mr. Ferrentino had rested his case and is now trying to represent things and is mischaracterizing the way the Department presented things. The aggravating factors were presented with the facts that supported the aggravation of the penalty. If it is the Board's pleasure, Mr. David stated that he could go through the list and tell exactly where it fits. With subparagraph (n) that states other mitigating circumstances, the Board can decide whether it is an aggravating or mitigating circumstance. If it is cited on the record as an aggravating circumstance that takes it outside of the guidelines, then that is perfectly appropriate and perfectly within the Board's power and authority.

**MOTION:** Mr. Baxley moved for revocation of the license and collection of cost in consideration of the aggravating factors of actual damage of the violation and the actual knowledge of the licensee pertaining to the violation as evidenced in the guilty. Ms. Thomas-Dewitt seconded the motion, which passed with 1 dissenting vote.

Mr. Shropshire questioned whether Mr. David could provide a statement of the cost.

Mr. David stated he did not have one with him.

Mr. Shropshire questioned whether \$1500 would be an appropriate estimate.

Mr. David stated it would be a very conservative estimate, but would be a reasonable one.

Mr. Shropshire questioned whether the motion could be amended to specify \$1500 as cost.

Ms. Dudley stated that there was a Part J of the aggravators, attempts by licensee to correct or stop violation or refusal to correct or stop violations. It looks like this is going on for a period of about 2 years. Ms. Dudley questioned whether Mr. Baxley would consider that as another aggravator for the motion.

**AMENDED MOTION:** Mr. Baxley moved for revocation of the license and collection of \$1500 in cost in consideration of the aggravating factors of actual damage of the violation, the actual knowledge of the licensee pertaining to the violation as evidenced in the guilty and the licensee's refusal to correct or stop violations for a period of about 2 years. Ms. Thomas-Dewitt seconded the motion, which passed with 1 dissenting vote.

***B. Gonzalez-Roel, Julio Gustavo (F043850) Case No: 97881-08-FC***

Mr. David stated that this matter is related to the previous matter and shares most of the previous factual allegations. It was presented to Probable Cause Panel properly on October 26, 2008. The Department filed an Administrative Complaint on November 17, 2008. The Respondent filed a response on December 10, 2008. The response was dismissed by the Department because it was not responsive pursuant to Rule 28-106.2015 of the Administrative Code which requires certain information be included. Subsequent to that Order of Dismissal, the Respondent Julio Gonzalez-Roel filed and Election of Proceedings form requesting an informal proceeding not involving disputed issues or materials of fact which led to this proceeding. Therefore, the following facts have

been established or are undisputed in the matter of Julio Gustavo Gonzalez-Roel, license no. F043850, in DFS Case No. 97881-08-FC:

On or about August 23, 2007, the Office of the State Attorney of the 13<sup>th</sup> Judicial Circuit in Hillsborough County, FL filed a criminal information against Julio Gustavo Gonzalez-Roel in Case No. 07-17394 alleging one count of grand theft as a second-degree felony, under s. 812.014(2)(b)(1), F.S. and specifically alleging as follows in the information:

Julio Gustavo Gonzalez-Roel, the Respondent and licensee in this matter, from on or about August 25, 2002 until on or about December 31, 2004, in Hillsborough County, FL, unlawfully obtained or used or endeavored to obtain or use US currency, the property of SCI Funeral Services of Florida, in the amount of \$20,000 or more but less than \$100,000. In doing so, the Respondent, Julio Gustavo Gonzalez-Roel, intended to permanently or temporarily deprive SCI Funeral Services of Florida of the property or benefit therefrom or to appropriate the property to his own use or the use of a person not entitled thereto.

The theft identified in above criminal information occurred in the course of the Julio Gustavo Gonzalez-Roel's employment in a funeral establishment and involved monies paid to the funeral home in which he was employed to provide funeral services.

On or about August 21, 2008, Julio Gustavo Gonzalez-Roel, entered a plea of guilty to the lesser included charge of grand theft, a third-degree felony. As a result, Julio Gustavo Gonzalez-Roel, was placed on probation for a period of five years in order to pay restitution in the amount of \$41,264.

Mr. David requested that the Board adopt the facts as presented and the documents provided to the Board into evidence.

**MOTION:** Ms. Zippay moved to accept the material facts of the complaint and submit the documents into evidence. Mr. Jones seconded the motion, which passed unanimously.

Mr. David stated that the Department has alleged that these factual allegations that were undisputed and have now been accepted by the Board support violations of s. 497.152(1)(a), F.S. and s. 497.152(2), F.S. Mr. David requested that the Board adopt these violations as the Conclusions of Law.

**MOTION:** Mr. Jones moved to accept the violations as the Conclusions of Law. Ms. Zippay seconded the motion, which passed unanimously.

Mr. David stated pursuant to Rule 69K-30.001, F.A.C. the penalty guidelines suggest a base penalty, for these two violations, of a reprimand, a maximum fine of \$2500 plus cost and 1 year probation with the usual conditions including possibly continuing education. In addition, the cited Rule allows for aggravating circumstances that will allow the Board to suggest a penalty greater than the penalty guidelines. These are listed in (2) of the rule cited. The Department would cite the fact that there has been less than a year since the violation actually occurred, which the violation was the plea of guilty in August 2008. Further the Department would submit that the violation was a series of transactions that occurred over a period of more than two years. It showed a consistent multiple transactions and showed that there was consideration and time to consider the actions during which time the Respondent did not correct any of the actions and did not avoid any of the actions that led to the violation. The actual damage caused by the violation is at least the cited \$41, 264.48 in restitution ordered. Certainly this type of violation requires a pretty serious deterrent effect which we feel the penalty guidelines will not provide. Therefore, the need for that deterrent effect is an aggravating circumstance. The licensees were the people intimately involved. This was not some subordinate that caused these violations. They themselves engaged in activity that led to this violation. So they had to have had actual knowledge of the violation and of the acts relating to the violation. Further, with the facts submitted and the documents submitted to the Board, the Board may consider any other mitigating or aggravating circumstances that are suggested in the documentation and information.

Mr. Ferrentino stated he does not know where Mr. David gets any of this. The statements he just told you about who did what, where is that in the record? All that is in the record here is that individuals pled to criminal charge and paid restitution on schedule and are set to pay it off. What's before you about these gentlemen, 25 years both of them and you just take away their licenses, their livelihood, their family's livelihood just like that because they made a decision to plead to a criminal charge that all the evidence before you pertains to them and SCI, no consumer. Not one consumer complaint and you are revoking their licenses.

Mr. Helm stated that it involves more than consumers. It involves the industry itself, which the Board is a part of that protection to for that industry. Mr. Helm questioned how Mr. Ferrentino could feel that it is not a part of what the Board should decide.

Ms. Lucia Gonzalez-Roel, Julio's wife and part owner of JGR Funeral Home in Tampa stated they worked for SCI for ten years. Ms. Gonzalez-Roel added that Mr. Brandenburg knows her, Julio and Adolfo well.

Ms. Gonzalez-Roel stated that she appeared before the Board in 2006 for her establishment license, which Mr. Brandenburg tried wholeheartedly to prevent her from getting for one reason and one reason only. Speaking of the Industry, we need to understand that our Industry was built by family funeral homes not corporate America. Without us in our town, our people are going to be subjected to only having the corporation handle anything for them. We have put everything we have into our business and to revoke the licenses without considering the ten years we spent with SCI building the largest funeral home in Hillsborough County for SCI; the two brothers, no other funeral directors, working 24 hours a day with the intention that SCI was going to sell us the funeral home, which they decided to change their minds at the end, is unfair and prejudice against us. We cannot go back to our town, our banker and our investor, as we are not the only owners of the funeral home, and tell them we no longer have a license and we are going to shut down; and to our families. I do not think anyone has looked through all the accolades we have from the families in Tampa to see that we are an asset to our Community.

The Chair stated that the Board has looked at the accolades and has taken this into consideration. The Board has spent an hour today and has read all of this. Based on what was presented, it appears to be some integrity issues. The Chair stated that Ms. Gonzalez-Roel should not accuse the Board of not doing their job as they are.

Ms. Gonzalez-Roel stated that she is not accusing the Board of not doing their job but is accusing the Board of behaving unethically and trying to keep them from trying to practice in Tampa because their funeral home is in direct competition with a corporation.

The Chair stated the Board is not looking into the corporation as this is the case and this is what the Board is going by.

Mr. Ferrentino stated in response to Mr. Helm's question regarding the Industry, the guidelines are specifically set up for a violation such as you have here. This is the penalty range, first offense and then there is a penalty range, subsequent offenses. All we are asking for is to be within the penalty range. We understand we are here to do what we need to do to put this behind us. That has been our approach from day one, but we are talking about the penalty guidelines. I believe there are numerous factors which show that we should be at the bottom of the penalty range. I definitely do not see anything that says this is above and beyond. We were in the penalty guidelines.

Mr. Helm stated he was not referring to the penalty guidelines. He was addressing Mr. Ferrentino's claim that there were no consumer complaints. There is more to this Board than just the consumers; the Industry applies also. Mr. Helm questioned whether Mr. Ferrentino does not believe there has been damage to the Industry.

Mr. Ferrentino stated that he honestly believes that there is a dispute between SCI and the brothers.

Mr. Helm stated he did not understand how Mr. Ferrentino could say that as they pled guilty.

Mr. Ferrentino stated he deals with litigation every day of the week and he sees how cases are resolved. Mr. Ferrentino added that he knows how much time, money and effort goes into trying to dispute something. Decisions are made for a whole host of reasons. These charges were brought while the brothers were sitting out a non-compete. There are only so many things you can do when you are in that position and then eventually later on trying to start business from scratch to move on. Again, within the penalty range is all we are asking to be treated. This is what the penalty range is set up for. And how I get to where I do not see aggravating circumstances such as the Industry has been hurt to an aggravated extent is we are not consumers. Even through all of what was alleged by SCI, there was not consumer that complained in 25 years, 10,000 funerals. I do not know what the Industry statistics are but I cannot believe it gets any better than that. All we are asking for is that the Board takes those considerations, those factors into consideration and keeps us within the range. If Mr. Julio Gonzalez-Roel's license is revoked, this is a family-run funeral home; you are shutting down a family-run business in Tampa. You are shutting down the people who work for the business. It is the most extreme, punitive measure. Mr. Ferrentino asked that the Board please give consideration for Mr. Gonzalez-Roel to stay within the penalty range and at least allow this family-run business, which I am happy to share these (accolades) that are this thick of consumers without request who have written in applauding them for their efforts and how important they are to the community and some of the character reference that were submitted as well. Mr. Ferrentino requested that the Board put probation, a reporting or some additional CLEs. Revocation is the most extreme and is not warranted here.

Mr. David stated that the documents were moved into evidence and the documents were the full FDLE report behind this guilty plea. In the subsequent offenses penalty guideline, revocation is one of the choices, so in actuality all we are doing is using aggravating circumstances to make a single leap. The effect is punitive but it is intended to be punitive. That is what we are trying to do is punish a violation. This is just a single leap from the penalty guidelines considering aggravating circumstances to a single step up in the penalty guidelines to revocation. That is what the Department is suggesting.

**MOTION:** Mr. Baxley moved for revocation of the license as well as \$1500 in costs in consideration of the aggravating factors of the actual damage caused by the violation, the actual knowledge of the licensee pertaining to the violation and the refusal by the licensee to correct or stop those violations. Ms. Huggins seconded the motion, which passed with 2 dissenting vote.

*C. Marvin Zanders Funeral Home Case No: 102726-09-FC*

Mr. David stated that he was in communication with opposing counsel last night and he had an accidental fall and was admitted to the hospital last night and is unable to be here. Mr. David requested that the Board to continue this to a later Board meeting as this is an appeal of a denial and there is really no real danger of harm or anything.

**MOTION:** Ms. Thomas-Dewitt moved to defer the item. Ms. Zippay seconded the motion, which passed unanimously.

*D. Moody, Christopher Troy (F037286) Case No: 97383-08-FC*

Mr. David stated that a Probable Cause Panel found Probable Cause on October 27, 2008. An Administrative Complaint was filed against Mr. Moody on November 4, 2008. After several attempts to personally serve Mr.

Moody and all of the requisite, diligent search requirements, Mr. Moody was served by publication. The notice of the Administrative Complaint was published on April 2, 2009, April 9, 2009, April 16, 2009 and April 23, 2009 in the Broward Daily Business Review. The Respondent has not responded, has not filed any document in response or an Election of Proceeding Form. The Respondent was advised by the Notice that a failure to respond would waive any right to elect a proceeding. No response has been received. Therefore the Department submits that Mr. Moody has waived his right to elect a proceeding. By failing to respond, Mr. Moody has and was notified that it would count as a prima facie case. The Department would present the Administrative Complaint as a prima facie case of the facts submitted therein.

Ms. Dudley stated that the Board should determine whether the Administrative Complaint was properly served and whether the Respondent did in fact waive his rights to a formal hearing.

Mr. Brandenburg moved that the Administrative Complaint was properly served and whether the Respondent did in fact waive his rights to a formal hearing. Ms. Thomas-Dewitt seconded the motion which passed unanimously.

Mr. David stated at all relevant times of the allegations in the Administrative Complaint Christopher Troy Moody was employed by Funeral Depot, Inc. Mr. Moody was actually the vice president of Funeral Depot. On or about March 5, 2008, the Division was notified by the President of Funeral Depot that he suspected Mr. Moody of inappropriately utilizing funds in Funeral Depot's preneed transfer account. On March 11<sup>th</sup> and 12<sup>th</sup>, Division Examiner Dianna Patterson conducted an examination of Funeral Depot's records and discovered at least the thirteen cited violations that are the subject of the thirteen counts in the Administrative Complaint. The factual allegations supporting these thirteen counts, which are general factual allegations, are as follows:

At all times relevant to the allegations of this Administrative Complaint, the Funeral Depot transfer account was established by Funeral Depot exclusively as a past through account through which money paid to Funeral Depot by consumers for preneed contracts was transferred to FSI for servicing.

No other transactions were authorized from this transfer account.

Mr. Moody was an authorized signatory on the transfer account, but he was authorized only for the purpose of signing checks necessary to transfer consumers' money from the transfer account to FSI.

Between August 2007 and January 2008, Mr. Moody made at least 13 unauthorized withdrawals from the transfer account.

These unauthorized withdrawals totaled \$43,965.27.

The Chair stated that the Board has read all this information and questioned whether the money has been replaced in the trust. The Chair questioned the responsibility of Funeral Depot and whether they are still in business.

Mr. Shropshire responded no.

The Chair stated this is now the Board's responsibility. The Chair questioned the alternative since Mr. Moody's whereabouts are unknown and there is no one to fine.

Mr. David stated the violations to be cited require revocation anyways. There is nothing other than revocation for these violations.

**MOTION:** Mr. Brandenburg moved to adopt the Findings of Facts and Conclusions of Law as contained in the Administrative Complaint. Ms. Zippay seconded the motion which passed unanimously.

Mr. David requested that the documents submitted to the Board be included into evidence.

**MOTION:** Mr. Brandenburg moved that the documents submitted to the Board be included into evidence. Mr. Jones seconded the motion, which passed unanimously.

**MOTION:** Mr. Brandenburg moved for revocation of the preneed sales agent license and a fine of \$1500 in costs. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

*E. Morning Glory Funeral Chapel (F041658) Case No. 96583-08-FC*

Ms. Mary K Surles stated this is an informal hearing in which the Department of Financial Services, Division of Funeral, Cemetery and Consumer Services issued an Administrative Complaint against Morning Glory Funeral Chapel located in Tampa, Florida, license no. F041658, on February 13, 2009.

Ms. Dudley stated that the Board should determine whether the Respondent was properly served and waived his rights to a formal hearing.

**MOTION:** Mr. Brandenburg moved that the Respondent was properly served and waived his rights to a formal hearing. Ms. Thomas-Dewitt seconded the motion which passed unanimously.

At this time it would be appropriate to have the Findings of Fact alleged in the Administrative Complaint.

**MOTION:** Ms. Thomas-Dewitt moved to adopt the Findings of Facts as contained in the Administrative Complaint. Ms. Zippay seconded the motion which passed unanimously.

The Board has jurisdiction over Respondent in a subject matter pursuant to Chapter 497, F.S. and the Rules promulgated thereto. The Board has authority to impose disciplinary penalties which include determining whether any licensee should have its license revoked or suspended. Finding that the Respondent failed to respond to the Administrative Complaint and has not disputed these allegations and having adopted the Findings of Facts which include the violations stated in the Administrative Complaint, the Board must conclude that the Respondent has committed the act and the violations as alleged in the Administrative Complaint. At this time it would be appropriate to have the Board adopt the Conclusions of Law as stated.

**MOTION:** Mr. Helm moved to adopt the Conclusions of Law as contained in the Administrative Complaint. Ms. Huggins seconded the motion which passed unanimously.

Ms. Surles stated therefore based on the Findings of Fact and Conclusions of Law adopted by this Board, the Department has provided the Board with a handout that lays out the appropriate penalty guidelines as well as the circumstances that the Department believe are aggravating in this matter, pursuant to Rule 69K-30.001(2), FAC and therefore would justify he permanent revocation of the license of Morning Glory Funeral Chapel. For the record, the Department believes the following to be aggravating circumstances in this matter:

Ms. Surles requested if the Board find permanent revocation that also the order state that no future application for licensure under this Chapter be accepted, processed or approved by the Board.

Ms. Thomas-Dewitt questioned whether there is an open investigation against Morning Glory St Petersburg with Lisa Speights.

Ms. Surles stated that it would not be appropriate to comment on that at this time as it is not the agenda item before us. All investigations, until they have been provided to Probable Cause and a determination made, are confidential.

**MOTION:** Ms. Thomas moved for revocation based on the aggravating circumstances and also to never allow them a license under Chapter 497. Mr. Brandenburg seconded the motion, which passed unanimously.

Mr. Helm stated it is obvious Mr. Jones is not concerned with being licensed. Mr. Helm questioned whether there should be a Cease and Desist Order issued to Mr. Jones.

Mr. Shropshire stated there was a Cease and Desist Order issued against the facility and it is not operating currently.

Ms. Surles stated a Cease and Desist Order was issued against an unlicensed person, Mr. Harold Jones, which this Board has no jurisdiction over. The Department does and did take action which resulted in a Final Order to Cease and Desist against Mr. Harold Jones. However, the funeral establishment that he owns and continues to operate under the license that you do have jurisdiction of, the Department recommends that you revoke this licensure so at least it is not an outstanding, open facility for Mr. Jones or anyone else to commit additional public harm in this Industry.

Mr. Helm stated he questioned issuing a Cease and Desist for the funeral home.

Mr. Shropshire stated the Department would have to wait and see if he continues operating it. If he does the Department would take that kind of action in conjunction with others.

The Chair questioned whether the establishment is closed.

Mr. Shropshire apologized as he had referenced to the Cease and Desist that Ms. Surles referred to which is a settled matter. The funeral home here is operating and will continue unless we revoke it. If the Board revokes the license today, the Department will serve the Final Order on him advising that the facility license is revoked. If the establishment does not stop operating it would be an unlicensed entity at that point and the Department will take action as such.

Ms. Huggins thanked Ms. Surles for providing the handout. The Board members agreed the information was very helpful.

***F. The Good Earth Crematory (F041305) Case No: 102710-09-FC***

Mr. David stated that the case was presented to a Probable Cause Panel on April 14, 2009 where Probable Cause was found to charge violations of Chapter 497. On April 23, 2009 the Department filed an Administrative Complaint against the Good Earth Crematory. On or about April 27, 2009 the Department properly served the Respondent with the Administrative Complaint. On May 26, 2009, the Respondent filed an Election of Proceeding form requesting an informal proceeding, not involving disputed issues and material facts to be conducted here. Therefore the following factual allegations are not in dispute:

At all times relevant to the allegations in the Administrative Complaint, the Good Earth Crematory was licensed as a direct disposal establishment.

At all times relevant to the allegations in the Administrative Complaint, William Tompkins was licensed as a direct disposer, license no. F045074 and was the Direct Disposer in charge of the Good Earth Crematory at this time.

Further factual allegations that are not in dispute are on or about June 19, 2007, Mr. Tompkins on behalf of the Good Earth Crematory took possession of a body from the Manatee County Medical Examiners Office.

Mr. Tompkins did not obtain written or oral permission to take possession of the body in that matter. The Good Earth Crematory did not ensure that the decedent was identified by tag or other means of identification

that was affixed to her ankle or wrist at the time the remains were removed from the Manatee County Medical Examiner's Office.

The afternoon they removed the body from the Manatee County Medical Examiner's Office they cremated this body without having obtained written authorization for cremation from a legally authorized person. Mr. Tompkins picked up the wrong body.

Mr. David moved that the facts submitted are adopted by the Board as the factual allegations in this matter.

**MOTION:** Mr. Baxley moved to adopt the Findings of Facts. Ms. Zippay seconded the motion, which passed unanimously.

**MOTION:** Ms. Thomas-Dewitt moved that the documents submitted to the Board be included into evidence. Mr. Jones seconded the motion, which passed unanimously.

Ms. Huggins recused herself as she was on the Probable Cause Panel.

Mr. David stated the Department alleges that the previously adopted facts establish violations under the following cited statutes; s. 497.152(1)(a), 497.152(1)(b), 497.152(8)(c), 497.171(1)(d) and 497.607(1), F.S. The penalty guidelines applicable to this licensee, found in 69K-11.001, FAC, from the various violations calls for generally a maximum of \$2500 fine plus costs and one year probation with the usual conditions which could include additional continuing education as an example.

The Department feels there are aggravating circumstances in this matter, mainly the irreparable damage of the cremation of the incorrect body. The Department recommends the maximum guideline cited in the penalty which is \$2500 fine plus \$1000 cost of prosecution and investigation.

Ms. Dudley clarified that aggravators are not really necessary since the Department is requesting something that is within the guidelines.

Mr. Shropshire questioned whether the recommended penalty would be assessed against each Good Earth and Mr. Tompkins separately.

Mr. David stated that this only applies to Good Earth as the recommendation for Mr. Tompkins is different.

Mr. William Meeks representing Mr. Tompkins and The Good Earth Crematory stated that the business has been in operation in Bradenton, Florida going on 11 years. This is the first time they have had a violation. The facts stated are correct in the record. Mr. Tompkins and The Good Earth have not tried to say they were not true.

Essentially what happened here as stated is the wrong body was picked up from the Medical Examiner's Office. This is a mistake that was made by Mr. Tompkins as he picked the body up. This is also a mistake that was made by the Medical Examiner's office. If you look at Exhibit 7 in the materials presented, Brown and Sons Funeral Home who is probably the longest tenured funeral home in Bradenton also made the same mistake. They picked up the wrong body as well and did not discover it until they got back to their facility and called the Medical Examiner. Essentially, there was a laxity at the Medical Examiner's Office in identifying bodies when they were picked up. There was a civil lawsuit filed against the Medical Examiner and also The Good Earth Crematory that has been settled. The Good Earth Crematory along with Mr. Tompkins has made restitution. The procedures at the Medical Examiner's Office have been changed and corrected so that this does not happen again. Certainly no



one feels any worse about this than Mr. Tompkins, but there is nothing he can do to correct it other than to make sure it does not happen again.

The other somewhat mitigating circumstance that occurred that day was that the body he thought he was cremating, the family had given all the proper authority to cremate that body and had asked him to expedite that due to family timing and what the family was going through. So, Mr. Tompkins put that body ahead of schedule and expedited the cremation which also contributed to what happened here. Essentially that was the mistake; the original misidentification of the body or not identifying the body with a body tag at the Medical Examiner's office and then that carried over to the cremation. The allegations that Mr. Tompkins and The Good Earth failed to obtain authorization from an authorized person kind of follows that initial mistake. It really was not a separate offense. Mr. Tompkins had the authorization for the body he thought he had but obviously he did not get authorization for the other body or it would not have happened. It is our position that this is an unfortunate mistake that was shared by others. Mr. Tompkins certainly understands his responsibility in this and requests the Board's consideration of these factors in making a decision.

Mr. Baxley questioned in addition to having authorization of the legally authorized person he thought he had received whether it was also pass the mandatory 48 hour wait in terms of the time of death.

Mr. Tompkins stated that the 48 hours had elapsed prior to the cremation.

The Chair questioned whether there was a toe tag on the body.

Mr. Tompkins stated that standard procedure at that time over at Manatee County Medical Examiner's Office, they service Manatee County, Sarasota County and Desoto County. On the bag itself, there were two labels identifying the person I was picking up. Going inside the bag was not a standard operation at that time.

The Chair questioned whether the bag Mr. Tompkins picked up had Chris on it, but there was a woman in it.

Mr. Tompkins answered yes.

Mr. Helm stated that the act was severe. Mr. Tompkins' license should not be revoked but he should be put on probation.

Mr. David stated that the Department's recommendation was a \$2500 fine plus \$1000 costs for the investigation and prosecution.

**MOTION:** Mr. Helm moved for a \$2500 fine plus \$1000 costs for the investigation and prosecution and 2 years probation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Ms. Dudley stated that the Board has gone outside of the guidelines. Therefore an aggravator is needed for the additional year of probation as the guidelines only call for 1 year of probation.

**AMENDED MOTION:** Mr. Helm moved for a \$2500 fine plus \$1000 costs for the investigation and prosecution and 2 years probation using the irreparable damage of the cremation of the incorrect body as the aggravating circumstance in this matter. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

*G. Tompkins, Williams R (F045074) Case No: 103357-09-FC*

Mr. David stated that Probable Cause was found by a Probable Cause Panel on April 14, 2009. On April 21, 2009 the Department filed an Administrative Complaint against the Respondent, Mr. William R Tompkins. The Administrative Complaint was served on April 23, 2009. On May 26, 2009 the Respondent filed an Election of Proceeding form requesting an informal proceeding not involving disputed issues of material facts which is the genesis of this hearing today. Therefore the following factual allegations are not in dispute:

William R Tompkins was and is licensed as a direct disposer, license #F045074 pursuant to Chapter 497, F.S.

At all times relevant to the allegations in the Administrative Complaint, William Tompkins was licensed as a direct disposer, license no. F045074 and was the Direct Disposer in charge of the Good Earth Crematory at this time.

Further factual allegations that are not in dispute are on or about June 19, 2007, Mr. Tompkins on behalf of the Good Earth Crematory took possession of a body of a female decedent from the Manatee County Medical Examiners Office.

Mr. Tompkins did not obtain written or oral permission to take possession of the body in that matter. The Good Earth Crematory did not ensure that the female decedent was identified by tag or other means of identification that was affixed to her ankle or wrist at the time the remains were removed from the Manatee County Medical Examiner's Office.

That afternoon, Mr. Tompkins cremated the female decedent's body and he did not obtain written authorization for the cremation from a legally authorized person.

Mr. David moved that the Board adopt the facts as alleged in the Administrative Complaint and move that the documents submitted to the Board be submitted into evidence.

**MOTION:** Mr. Baxley moved that the Board adopt the facts as alleged in the Administrative Complaint and move that the documents submitted to the Board be submitted into evidence. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

The Department alleges that the previously adopted factual allegations support violation of the following statutes: s. 497.152(1)(a), 497.152(1)(b), 497.152(8)(c), 497.171(1)(d) and 497.607(1), F.S. The penalty guidelines in this matter call for a reprimand and a fine of up to \$2500 plus cost and 1 year probation including possible continuing education on each of the above referenced offenses that are listed in the penalty guidelines. However, because of the irreparable actual physical damage that was done in this instance, the Department submits that is absolutely an aggravating factor that would take the penalty outside of the penalty guidelines. The penalty needs to be enhanced for the deterrent effect of the penalty imposed, plus the fact that the violation demonstrates that there could possibly be a danger to the public caused if bodies are not handled and identified correctly or the various issues that may be present with the body. Therefore, the Department is recommending a penalty outside of the guidelines of a \$5000, 1 month suspension, 1 year probation including 3 extra hours of continuing education on the Laws and Rules.

The Chair questioned the restitution.

Mr. Meeks stated the Respondent paid \$10,000 to the family and is cooperating with the civil attorneys and pursuing his insurance. That was handled at the mediation which all parties agreed to those sums.

Mr. Tompkins will see to it that this does not happen again personally. There is less danger from him doing something in violation in the future than a facility doing something in the future. Therefore the penalty should essentially be the same for both of them.

Mr. David requested that the list of statutes that are alleged to have been violated be accepted by the Board as Conclusions of Law.

**MOTION:** Mr. Brandenburg moved that the list of statutes that are alleged to have been violated be accepted by the Board as Conclusions of Law. Ms. Thomas-Dewitt seconded the motion which passed unanimously.

Mr. Baxley questioned whether there are any other licensed direct disposers working at this facility.

Mr. Meeks stated that Mr. Tompkins wife is licensed.

Mr. Baxley questioned whether Mr. Tompkins has a written procedure for identification of human remains.

Mr. Tompkins stated that he does.

Mr. Baxley questioned whether it includes a visual inspection of the remains.

Mr. Tompkins stated that it does.

Mr. Baxley questioned whether Mr. Tompkins had the procedure prior to this happening.

Mr. Tompkins answered no, because it was just him doing all the removals. It has just been him and his wife for 10 years doing everything. Now, he has some staff and everything is written down.

**MOTION:** Mr. Baxley moved for a \$2500 fine and 1 year probation including 3 extra hours of continuing education on the Laws and Rules. Mr. Jones seconded the motion, which passed unanimously.

\*\*\***BREAK**\*\*\*

#### **4. Disciplinary Proceeding(s)**

##### **A. Barrett-Fryar Funeral Home (F041568) Case No: 97366-08-FC**

Mr. Jim Bossart stated this case originates from an October 27, 2008 Probable Cause determination by the Board and the subsequent filing of an Administrative Complaint, alleging that Respondent funeral establishment was operating as an unlicensed funeral home, without filing a new application, in violation of Section 497.380(3), Florida Statutes. Furthermore, there was no funeral director-in-charge at this establishment, in violation of Section 497.380(7), Florida Statutes, and an inspection revealed that the preparation room was not maintained in a clean and sanitary manner. Instruments were dirty and unsanitary, in violation of Section 497.30(10), Florida Statutes and Rule 69K-21.003(5), Florida Statutes.

Service of process was attempted by certified mail to the Respondent's address of record. The certified mail was returned by the Post Office as undeliverable. Service was then attempted by a private process server. The process server was unsuccessful and returned the Administrative Complaint to the department, stating that the funeral home premises were vacant and that a forwarding address was not available. The Administrative Complaint was then served upon Respondent by publication, in accordance with Section 120.60(5), Florida Statutes, in the Miami Daily Business Review. The Respondent failed to answer the Administrative Complaint and request a proceeding in accordance with Florida Statutes.

**MOTION:** Mr. Baxley moved that the Respondent was properly served and waived his rights to a formal hearing. Mr. Jones seconded the motion which passed unanimously.

**MOTION:** Mr. Brandenburg moved to adopt the Findings of Facts and Conclusions of Law as contained in the Administrative Complaint. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

**MOTION:** Ms. Thomas-Dewitt moved to accept all case material facts of the complaint and submit the documents into evidence. Mr. Jones seconded the motion, which passed unanimously.

Evidence supports the conclusion that Respondent violated the enumerated statutes and administrative rules. The Department recommends that this Order be approved by the Board and that Respondent Barret-Fryar's licenses be suspended for six (6) months, and that Respondent be required to apply to the Board and demonstrate code compliance before any license reinstatement.

Apparently, the business was abandoned but the penalty guidelines only allow for a variety of penalties. A six month suspension seems to be the maximum penalty.

Mr. Helm questioned how the license would be suspended if there is no license to begin with.

Mr. Bossart stated the Respondent has a license now and is in effect.

The Chair questioned whether it is an establishment license or an individual license.

Mr. Bossart stated that the funeral home is licensed.

The Chair questioned whether the Respondent has a funeral director's license.

Mr. Bossart stated he did not know. This case only deals with the funeral home itself. If there is an FDIC, no complaints have been filed the FDIC of Barrett-Fryar.

Mr. Helm questioned whether the materials presented stated that he did not renew his license.

Mr. Bossart stated apparently he sold the funeral home, but did not apply for a new license. They operated under the previous license.

Mr. Shropshire stated he is not licensed and does not have an FDIC.

Ms. Thomas-Dewitt questioned the length of time they operated without a licensed funeral director.

Mr. Bossart stated that information is not available as it is not part of the investigation.

The Chair requested clarification of the Department's recommendation of 6 month suspension and having the Respondent reapply before the Board.

Mr. Shropshire stated that in effect, it is an indefinite suspension. He has to come back to the Board if he ever wants to be reinstated.

Mr. Bossart agreed. Now that he has abandoned the business, he cannot reopen under this license so in effect it is an affirmative suspension.

The Chair questioned whether a Cease and Desist has been ordered.

Mr. Bossart responded no.

Mr. Jones questioned whether the Order is still valid after six months as the Department is putting a six month time line on it.

Mr. Bossart stated that it is valid if he does not apply for reinstatement. He does have to make a positive act to come before the Board.

Mr. Jones questioned the Board's authority if the Respondent does not reapply but yet resumes business as the Board's Order is only for six months.

Mr. Bossart stated he would be operating without a license.

The Chair stated that it is a six month suspension and then he has to reapply after six months to even attempt to open the business.

Ms. Dudley stated the guidelines call for suspension until compliant. Ms. Dudley questioned whether the Department is taking the position that his reapplication is compliant.

Mr. Bossart stated he did not understand the question.

Ms. Dudley stated the guidelines call for reprimand, fine of \$1000 - \$2500, costs, 6 months – 1 year probation with usual conditions and/or suspension until compliant.

Mr. Bossart stated that the problem is the guidelines do not allow for licensees who abandon their business.

Ms. Dudley requested that the recommendation be amended to state the Respondent has to reappear before the Board before the suspension is lifted.

**MOTION:** Mr. Helm moved to accept the Order and that Respondent Barret-Fryar's license be suspended for six (6) months, and that Respondent be required to reapply to the Board in person before the suspension is lifted. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

***B. Hodges Family Funeral Home (F041399) Case No: 98907-09-FC***

Mr. Bossart stated that Hodges Family Funeral Home, at all times relevant, was a licensed funeral establishment doing business in Dade City, Florida. The record evidence substantiates that Hodges Family Funeral Home disinterred a human body without first obtaining the written authorization of the family, next of kin or of a legally authorized person. The funeral establishment was ordered to disinter and reinter the human remains by the municipality of Dade City in order to rectify a burial vault that was not in compliance with the municipal code; however, several weeks did lapse between the municipal order and the disinterment, and Respondent failed to obtain any written authorization during this time.

This is a violation of Sections 497.152(8)(e) and 497.384(3), Florida Statutes. Evidence supports the conclusion that Respondent violated the enumerated statutes and administrative rules. The Respondent has elected to enter into this settlement stipulation.

The Department recommends approve of the Settlement Stipulation for Consent Order assessing Respondent a \$1500 fine, \$250 costs and to undergo a six month period of probation.

Ms. Dudley stated the materials she received did not contain a signed consent agreement and questioned whether there was any supplemental material.

Ms. Wendy Wiener stated that the agreement has been signed by her and Mr. Hodges.

Mr. Bossart stated that he has received a signed copy of page 3.

**MOTION:** Mr. Brandenburg moved to approve the Settlement Stipulation for Consent Order assessing Respondent a \$1500 fine, \$250 costs and to undergo a six month period of probation. Ms. Zippay seconded the motion, which passed unanimously.

*C. Wilson, Walter (F043712) Case No: 97541-08-FC*

Mr. Shropshire stated in this case, the copy of the Administrative Complaint against Walter Wilson was distributed to the Board members this morning and should be considered part of the Board packet.

Mr. David stated that this Settlement Stipulation Consent Order stems from a matter that was presented to the Probable Cause Panel on March 11, 2009. Subsequent thereto an Administrative Complaint was filed on April 8, 2009. Mr. Wilson filed a response disputing one or more of the material facts and requested a formal hearing. Subsequent to the Election of Proceeding, discovery took place. After that discovery, the Department realized that there were probably mitigating circumstances and entered into settlement discussions with Mr. Wilson, which resulted in the Settlement Stipulation Consent Order presented to the Board today.

The Order calls for a probationary period of 1 year and a \$500 fine. Mr. Wilson also agreed to 3 additional hours of continuing education in ethics.

**MOTION:** Mr. Brandenburg moved to accept the order. Ms. Zippay seconded the motion, which passed unanimously.

Ms. Huggins recused herself as she served on the Probable Cause Panel.

**5. Request(s) for Waiver of Late Penalty**

- A. Forest Meadows Funeral Home & Cemeteries, Inc. d/b/a Forest Meadows Cemeteries-Central (Gainesville)*
- B. Forest Meadows Funeral Home & Cemeteries, Inc. d/b/a Forest Meadows Cemeteries-East (Gainesville)*
- C. Forest Meadows Funeral Home & Cemeteries, Inc. d/b/a Forest Meadows Cemeteries-West (Gainesville)*

On April 6, 2009 the Department received a request from Forest Meadows Funeral Home & Cemeteries Inc. for a waiver of any delinquent penalties.

The cemetery license renewal for the above named three (3) cemetery locations was due as of December 31, 2008 and was received by the Department on March 26, 2009, or 85 days late. The licensee was notified as of March 10, 2009 that the license renewals were not received timely and a \$600 delinquent penalty (\$200 per month) was due for each license renewal, for a total of \$1,800.

The Licensee's request cites difficulties with receipt of the license renewal notices as the reason for failure to timely renew and is requesting consideration for a waiver of the delinquent fees based upon their reputation of consistently filing their cemetery renewals for the previous years in a timely manner.

The Division recommends denial for waiver of the \$1,800 delinquent penalty.

Ms. Wiener stated that the Licensee understands the precedent established in previous years regarding this matter. We simply wanted to note a couple of mitigating factors for the record. Mr. Jon Thomas, owner of Forest Meadows has a long history in the industry; has been licensed since the mid 70s in various capacities and has no discipline on his record; has provided advice and assistance to the Division, its predecessor and entities for many years; has put procedural safeguards in place.

**MOTION:** Ms. Thomas-Dewitt moved to deny the request. Ms. Huggins seconded the motion, which passed with one dissenting vote.

*D. Jacobs Funeral Services, LLC (Boca Raton)*

This preneed licensee meets the net worth and other requirements for renewal of preneed main license, subject to the late fee issue set forth below.

The licensee's last fiscal year end date was December 31, 2008. In accordance with Chapter 497.453(5), Florida Statutes, financial statements for preneed license renewal are due within 3 months of the after the end of the licensee's fiscal period, or by April 1, 2009.

On April 16, 2009 the Department issued a deficiency notice to the licensee for non-receipt of the preneed license renewal packet. On April 30, 2009 the Department received the renewal packet including financial statements and the renewal statement. Each was received 29 days late which requires a \$200 late penalty for each statement. On May 5<sup>th</sup> the Department issued a deficiency notice for the late penalties. On May 18<sup>th</sup> the Department received a letter from Mr. Garrett Jacobs requesting waiver of the \$400 in late penalties.

The Department recommends that the Board deny the request for waiver of late penalties, and direct that the preneed license shall be deemed renewed effective upon the later of July 1, 2009 or receipt by the Division of the remaining \$400 late fee, and that if the said \$400 is not paid by July 1, 2009, the licensee shall make no preneed sales until the said \$400 is paid.

**MOTION:** Mr. Brandenburg moved to deny the request. Mr. Jones seconded the motion, which passed unanimously.

**6. Application(s) for Preneed Sales Agent**

*A. Informational Item - 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.

*B. Recommended for Approval (Criminal History)*

*(1) Allgaier, Angelyn (Appointing Entity: Daytona Memorial Park, Inc.)*

On May 21, 2009, the Department received an application from Ms. Allgaier. Ms. Allgaier answered "No" to Applicant Background Questions. Upon the review of the applicant fingerprint results the department discovered

the applicant had a criminal history. Ms. Allgaier was asked to provide an explanation for the inaccuracy on her application.

Ms. Allgaier's explanation *"I never thought that a DUI would be considered a "criminal" charge. It was not my intent to hide any information or forge any information on my application, and I do apologize for any inconvenience this mistake my have caused"*.

The criminal history includes one (1) offense relating to one incident of misdemeanor driving Under the Influence in 2005, which occurred in Atlanta, Georgia. Ms. Allgaier disclosed all required information.

The Division recommends Approval with the following condition(s): 12 months probation as per attached Stipulation for Licensure (any criminal arrests or proceedings within the probation will be grounds for immediate suspension of license).

**MOTION:** Mr. Brandenburg moved to approve the application with the conditions as set forth in the Stipulation for Licensure. Mr. Jones seconded the motion, which passed unanimously.

**(2) Galloway, Russell Lee (Appointing Entity: Neptune Management)**

On the application received by the Department on April 20, 2009, the applicant answered "Yes" to Applicant Background Questions. Upon review of the department's licensing system it was determined that Mr. Galloway was issued a temporary preneed sales agent license that expired before it was converted to a permanent licensure.

On January 6, 2009, Mr. Galloway submitted his preneed sales agent application for licensure. Mr. Galloway indicated that he had no criminal history. When in fact Mr. Galloway was adjudicated guilty and placed on probation March 24, 2008. Mr. Galloway was asked to provide an explanation for the inaccuracy on his application.

Mr. Galloway's explanation *"I did not know that the DUI Traffic Offense was considered as a criminal charge, I thought it was traffic related. My attorney told me this. He never told me that this would effect me for any state licenses that I have or want to obtain"*.

The criminal history includes one (1) offense relating to one incident of misdemeanor DUI in 2008, which occurred in Venice, Florida. Mr. Galloway 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, Mr. Galloway would not pose an unreasonable risk to members of the public who might deal with him in preneed transactions.

**Conditions:**

- a) Applicant shall be issued the license applied for, but the Applicant shall be on probation for a period of one (1) year providing there are no further DUI convictions.
- b) Provided, Applicant shall report to the FCCS Division at 6 months of his probation any criminal infractions.
- c) And, Applicant shall report to the FCCS Division at 12 months of his probation any criminal infractions.
- d) Also provided further, if at any time the FCCS Division is advised by the applicant, representing appointing entity or members of the public that the applicant is in violation of any of the terms of the



probation, the Division shall suspend the license and commence action to revoke the license granted hereunder.

**MOTION:** Ms. Thomas-Dewitt moved to approve the application with recommended conditions. Mr. Helm seconded the motion, which passed unanimously.

**(3) Rich II, Marvin J. (Appointing Entity: Neptune Management)**

On May 14, 2009, the Department received an application from Mr. Rich II. Mr. Rich II answered "Yes" to Applicant Background Questions.

The criminal record is summarized as follows: On or about 5-9-08 Respondent pled no contest to the misdemeanor crime, driving under the influence of alcohol, causing personal injury or property damage. In or about December 2008 Respondent was sentenced in Lee County Circuit Court, case no. 08-CF-017251, to include, but not limited to, the following: \$1,000 fine; 1 year probation; 100 hours of community service; install car ignition interlock device; complete 8 hour trauma course; possess no firearms; pay community service fee of \$600.

The Department assessment is that if issued a preneed sales agent license subject to the terms and conditions of the attached Stipulation for Licensure, Mr. Rich II would not pose an unreasonable risk to members of the public who might deal with him in preneed transactions.

The Division recommends Approval with conditions as set forth in the attached Stipulation for Licensure, which includes but is not limited to: 24 months probation and periodic checks for subsequent arrests and/or criminal proceedings.

**MOTION:** Mr. Helm moved to approve the application with the conditions as set forth in the Stipulation for Licensure. Ms. Zippay seconded the motion, which passed unanimously.

**C. Recommended for Denial (Criminal History)**

**(1) Bellamy, Michael D. (Appointing Entity: SCI Funeral Services of Florida, Inc.)**

On the application received by the Department on May 20, 2009, the applicant answered "Yes" to Applicant Background Questions.

The criminal history includes one (1) offense relating to one incident in 1993, Misappropriation by a Fiduciary which occurred in North Carolina. Upon the submission of Mr. Bellamy's application licensure he disclosed his criminal history and copy certified copies of his final disposition.

The Department assessment is that if issued a preneed sales agent license, Mr. Bellamy would pose an unreasonable risk to members of the public who might deal with him in preneed transactions

The Division recommends Denial under s. 497.466(5)(c)2, on the basis that the Applicant's criminal record poses an unreasonable risk to members of the public who might deal with the applicant in preneed transactions.

Ms. Corinne Olvey stated that SCI Funeral Services of Florida withdrew this appointment.

Mr. Shropshire stated that SCI withdrew the sponsorship but the application has not been withdrawn. The law requires there be a sponsor for the application to be approved. Now that the sponsor has withdrawn, that would be an additional reason for denial.

**MOTION:** Mr. Helm moved to deny the application on the basis that the Applicant's criminal record poses an unreasonable risk to members of the public who might deal with the applicant in preneed transactions and the lack of sponsorship. Mr. Jones seconded the motion, which passed unanimously.

*(2) Negrin, Kenia (Appointing Entity: SCI Funeral Services of Florida, Inc.)*

On the application received by the Department on April 28, 2009, the applicant answered "No" to the Applicant Background Questions. During the review of the fingerprint results provided by FDLE it was determined that Ms. Negrin was in the country illegally. According to the Department of Homeland Security representative, Ms. Tashman, the hit on immigrant's background check is not an indication of criminal activity. It is the department's (Homeland Security) administrative procedures for documenting the arrival of immigrants in to our country.

The background check includes one count of Alien Inadmissibility at the Airport in Miami January 1, 2009. Ms. Negrin has been allowed to remain in the country, pending the removal proceedings under section 240 of the Immigration and Nationality Act.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA") restricts the distribution of certain government privileges, including professional licenses. Specifically, PRWORA states that certain non-qualified aliens and nonimmigrant are not eligible for "State or local public benefits," which, by definition, include "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government." A copy of PRWORA is included for reference.

Ms. Negrin is not a qualified alien or a nonimmigrant; both terms are defined by 8 U.S.C. 1641. A "qualified alien" is one lawfully admitted for permanent residence, is granted asylum, is granted refugee status, is paroled for at least one year, whose deportation is being withheld, who is granted conditional entry, who is a Cuban or Haitian Entrant, or who has been the victim of domestic abuse. Ms. Negrin fits into none of these categories. She was never lawfully admitted into the United States, has not claimed she is eligible for asylum or refugee status since her arrival.

We have no evidence that her deportation is being withheld, or that she was granted conditional entry, or that she has been a victim of domestic abuse.

In speaking with INS representatives, an immigrant must have a work visa or "green card", and without one, cannot obtain a legal job in the U.S

The Department assessment is that Ms. Negrin's denial of licensure is not based on her lack of citizenship. Rather, it would be based on federal provisions restricting people who entered and are residing in the country illegally from obtaining professional license and other government benefits.

The initial appointing entity, SCI Funeral Services of Florida, Inc., has withdrawn its appointment of this agent. However, the agent has not withdrawn the application, so it is being presented to the Board.

The Division recommends Denial for the following reason: 8 USC s. 1621: Applicant is not eligible for a professional or commercial license due to applicant's status as an alien, pursuant to United States Code, Title 8, § 1621 and the lack of sponsorship which is a requirement in the law for approval of a preneed sales agent application.

Ms. Olvey stated that under the Immigration Law, this person was eligible to work in the United States. However, there is another requirement through Homeland Security or Immigration that they are not eligible to get a professional license which is the preneed license. They were not undocumented to work.

**MOTION:** Mr. Helm moved to deny the application on the basis that the Applicant is not eligible for a professional or commercial license due to applicant's status as an alien, pursuant to United States Code, Title 8, § 1621 and the lack of sponsorship. Ms. Huggins seconded the motion, which passed unanimously.

**(3) *Windover, William E. (Appointing Entity: Neptune Management)***

This application was withdrawn by the Applicant.

**(4) *Zipter, Christopher M (Appointing Entity: SCI Funeral Services of Florida Inc.)***

On the application received by the Department on January 6, 2009, the applicant answered "No" to the Applicant Background Questions. During the review of the fingerprint results provided by FDLE it was determined that there was an adverse Military record.

Mr. Zipter was not court martialled and has no criminal convictions. Thus, he was not required to disclose these offenses on his application. However, the department did investigate the adverse Military record.

The Military records indicate that Mr. Zipter, while assigned at Fort Wainwright was recommended and received two Non-Judicial Punishments, imposed under the Uniform Code of Military Justice (UCMJ). Non-Judicial punishment permits a commander to administratively discipline troops without a court-martial. The receipt of non-judicial punishment does not constitute a criminal conviction, but is placed on a military member's service record. Ms. Kluka with the Department of The Army, Administrative Law Attorney/Ethics Counselor provided the following:

- On April 5, 2008, Mr. Zipter failed to go to the Charge of Quarter duties. A Company Grade Article-15 was administered. For this offense Mr. Zipter received the following punishment: Reduced from Private First Class to Private -E2; Forfeiture of pay in the amount of \$352.00 for one month; 14 days restriction and 14 days extra duty.
- On February 21, 2008, Mr. Zipter stole a fellow soldier's Blackberry Pearl Cell Phone valued at \$178.00. A Field Grade Article -15 was administered. For this offense he received the following punishment: Reduced to Private-E1; Forfeiture of pay in the amount of \$250.00 per month which was suspended, to be automatically remitted if not vacated on or about December 28, 2008; 45 days extra duty; restricted to confines of the installation, suspended to be automatically remitted if not vacated on or before December 28, 2008; and an Oral reprimand.

It is the Division's belief that if issued a preneed sales agent license, Mr. Zipter would pose an unreasonable risk to members of the public who might deal with him in preneed transactions. See Florida Statutes, section 497.466(5) (c) (2). The Department's assessment is that Mr. Zipter has not had a significant amount of time to show that he is rehabilitated, due to the dates of these infractions. His adverse Military record demonstrates a history of lack of untrustworthiness and integrity in business or professional matters, so that pursuant to s. 497.380(4), Florida Statutes, the application should not be approved.

The initial appointing entity, SCI Funeral Services of Florida, Inc., has withdrawn its appointment of this agent. However, the agent has not withdrawn the application, so it is being presented to the Board.

The Division recommends Denial as the Applicant would be an unreasonable risk to the public if licensed. SCI has also withdrawn its sponsorship.

**MOTION:** Ms. Thomas-Dewitt moved to deny the application as the Applicant would be an unreasonable risk to the public and the lack of sponsorship. Ms. Zippay seconded the motion, which passed unanimously.

**7. Preneed License Renewals**

***A. Recommended for Approval – Addendum B\****

Mr. Baxley disclosed his affiliation with Hiers Funeral Home, Inc. and Highland Memorial Park Association and stated this would not impact his decision making ability to render a fair and impartial decision regarding this application(s).

Ms. Thomas-Dewitt disclosed her affiliation with Gail & Wynn’s Mortuary and stated this would not impact her decision making ability to render a fair and impartial decision regarding this application(s).

The Chair disclosed his affiliation with CFS Funeral Services Inc. and stated this would not impact his decision making ability to render a fair and impartial decision regarding this application(s).

Mr. Brandenburg disclosed his affiliation with SCI Funeral Services Inc. and stated this would not impact his decision making ability to render a fair and impartial decision regarding this application(s).

Ms. Huggins disclosed her affiliation with The Simplicity Plan and stated this would not impact her decision making ability to render a fair and impartial decision regarding this application(s).

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

***B. Recommended for Denial – Addendum C***

***(1) Alphonso West Mortuary Inc (Jacksonville)***

On March 4, 2009 the Department received the licensee’s renewal fee of \$405.00 and Annual Renewal Statement (R-3). A deficiency notice was sent on April 17, 2009 notifying the licensee that the financial statements were missing and the application would be recommended for denial if not received by June 1st. As of June 12<sup>th</sup>, the Department had not received the 2008 financial statements.

The Department recommends Board denial based on Failure to submit Preneed License Annual Financial Statements as required by s.497.453 (5) (b), Florida Statutes.

**MOTION:** Ms. Thomas-Dewitt moved to deny the application for failure to submit Preneed License Annual Financial Statements as required by s.497.453 (5) (b), Florida Statutes. Ms. Huggins seconded the motion, which passed unanimously.

***(2) Carthage Chapel Funeral Home Inc ( Jacksonville)***

On April 6, 2009 the Department received the licensee’s renewal fee of \$405.00, financial statements and Annual Renewal Statement (R-3). A deficiency notice was sent on April 14, 2009 notifying the licensee that the preneed license renewal financial statements did not meet the required minimum net worth of \$80,000, and a \$1,000 late

fee was payable. Denial would be recommended if a response was not received by June 1<sup>st</sup>. As of June 12, 2009, the licensee had not responded.

The Department recommends Board denial based on the following:

1. Owes \$1,000 in late fees for late submission of financial statements. Fiscal year end is March 31, 2008. Statements were received on April 6, 2009.
2. Does not meet minimum net worth requirements of Rule 69K-5.0016 (3):

Total Preneed Contracts:	\$	771,831
Required Net Worth:	\$	80,000
Reported Net Worth:	\$	75,443

The Chair questioned whether there was anyone present representing Carthage.

There was a negative response.

**MOTION:** Ms. Zippay moved to deny the application based on the fact that the licensee owes \$1,000 in late fees for late submission of financial statements and does not meet the minimum net worth requirements. Mr. Jones seconded the motion, which passed unanimously.

**(3) Cemetery Professionals LLC ( Jacksonville)**

The December 31, 2008 Renewal Statement identifies all outstanding contracts as trust funded, with trust principal \$384,276 and trust interest \$22,288.

The initial set of financial statements received by the Department on March 31, 2009, were prepared on the modified cash basis of accounting, which is not an acceptable basis for the financial statements. The Department issued a deficiency notice on April 23, 2009 regarding lack of GAAP/accrual financial statements, and in re the licensee's failure to indicate any disciplinary action pursuant to Chapter 497 during calendar year 2008.

On June 11, 2009 the Department received a revised set of financial statements prepared on the accrual basis in accordance with GAAP, which indicated a total equity of (\$72,695) (negative net worth).

The licensee has two Administrative Complaints currently filed against it. The licensee has disputed that allegations in the two Administrative Complaints, and the matter is in litigation. On June 12<sup>th</sup> the Department received the attached letter from Mr. John Rudolph of Ard, Shirley & Rudolph, P.A., representing the licensee, and addressing the matters raised in the two Administrative Complaints.

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$	4,820,043
Required Net Worth:	\$	100,000
Reported Net Worth:	\$	(72,695)
Reported Net Worth last renewal:		\$215,102

The Department recommends denial on the basis that Licensee does not meet minimum net worth requirements. S. 497.453(2)(b).

Mr. John Rudolph stated that the licensee had problems getting the financial statements in the correct form and order. On Friday of last week new financial statements were delivered to Mr. Gellepis, which shows the minimum standards have been met. Mr. Rudolph requested permission to provide the information to the Board. Staff was asked to review the information ahead of time, but obviously they could not.

Mr. Rudolph requested that the Department conditionally approve the preneed renewal subject to the approval of this financial statement by the Department.

The Chair stated there appears to be a difference in Member's equity. The Chair questioned what was done to change it.

Mr. Rudolph stated he would have to speak with the accountant, but thought it was a note that was due to the member. The cemetery liability, which is stated at \$1,013,506.22, which is the total purchase price of all of the cemetery merchandise contracts, is overstated. However, at this time, I have been assured that this is the financial statement.

The Chair stated they meet the requirement if it is overstated but questioned how the Board would know that it is not understated.

Mr. Rudolph stated he knows it is not understated as that is the total purchase price of all the cemetery contracts, all outstanding contracts, the total purchase price. This is not a NYSE property, which has to state all its liabilities on its cemetery contracts.

The Chair questioned the current net worth.

Mr. Rudolph answered "\$101,000."

The Chair questioned whether the Department had a chance to look at the financials.

Mr. Shropshire responded no.

The Chair questioned whether the item could be held in abeyance until the Department has time to review it.

Mr. Rudolph stated according to memo that was sent out yesterday, the Board would have to either approve or deny application. The Board could approve the renewal with conditions. The approval would be on the condition that the Department reviews the financial and if they find that it is acceptable and meets net worth requirements, it would be approved. If they look at and find it does not meet the minimum standards, they would deny it.

Ms. Huggins questioned whether the item could be deferred.

Ms. Zippay responded no.

Mr. Rudolph questioned whether Ms. Huggins received the memo yesterday that was emailed. Mr. Rudolph stated that he agrees with the Department's legal analysis.

Mr. Shropshire stated, as the memo indicated, if the Board denies the application and the licensee promptly files with the Division a request for an informal hearing, the Board's rule states that the licensee can continue to operate their preneed business until that hearing occurs. Mr. Shropshire added that he anticipates and the memo

says that the case would be brought back at the next in person meeting, August 5<sup>th</sup>. If in the interim the Department was able to satisfy that the requirements are met, the Division would probably recommend that the Board reverse the denial.

Mr. Rudolph stated that he agrees. However, for an informal hearing to be selected, the licensee would have to admit all facts. In this case, he would be admitting the fact that his client did not meet the minimum net worth when the Board was just provided a financial statement prepared by a CPA who has said this meets GAAP. If the Board denies the application, the Applicant would have to file a formal administration disputing that they do not meet the minimum net worth.

Mr. Brandenburg questioned whether the applicant has a cover letter from a CPA.

Mr. Rudolph stated it was provided to the Department.

Mr. Shropshire questioned whether the statements are compiled or audited.

Mr. Rudolph stated that he did not believe the statements are audited.

Mr. Shropshire stated that the presence of the CPA does little to provide comfort as they are just using the information given to them by the licensee. Mr. Shropshire questioned the net worth of the new statements.

Mr. Rudolph answered "\$101,000."

Mr. Shropshire stated there is \$199,000 in goodwill.

Mr. Rudolph stated it was on before and it needed to be on. It was not on the previous statements provided and there were numerous questions about that.

Mr. Shropshire stated the Division does as well. The reality of an asset of \$199,000 in goodwill is something that the Division would have to look into very closely to satisfy that there actually is net worth.

The Chair questioned the Division's recommendation.

Mr. Shropshire responded "denial."

**MOTION:** Mr. Brandenburg moved to deny the application on the basis that Licensee does not meet minimum net worth requirements. S. 497.453(2)(b). Ms. Huggins seconded the motion, which failed with 5 dissenting votes.

Mr. Shropshire stated that there probably is the ability to approve the application conditionally. The Division is moving to more stringently enforce the requirements of Chapter 497 and should try to give the Industry time to adjust.

Mr. Brandenburg stated his recommendation was based upon what was presented today and the Division's recommendation to deny.

Mr. Rudolph stated that the Division's recommendation to deny was based upon the previously submitted financials which show a negative net worth. The financials just provided to the Board were corrected by the CPA and submitted on Friday. The full intent in coming here today was to ask for a deferral to the next meeting. Right now, the applicant is requesting a conditional approval upon the Department's review of the financials that

do show a net worth that meets the standards. If they are approved by the Department, then the license would be issued. If they are not, that would be communicated and it would be denied.

The Chair stated that the statement that shows the \$72k net worth was submitted on June 11<sup>th</sup> and the reversal was received just now.

Ms. Dudley stated the Board could do a conditional approval and delegate to the Department to review this and approve or ultimately deny.

Mr. Shropshire stated that is not the way he would understand it. The conditional approval would mean if the Division could not satisfy itself, the item would be brought back to the Board at the August meeting.

Mr. Rudolph stated if the item is brought back in the August meeting and the Division decides the financials do not meet the minimum net worth that would mean that the applicant would not have a preneed license on July 1.

Mr. Shropshire stated that he does not think the Division would be alleging that was a violation.

The Chair questioned whether the Division would advise the applicant if the financials are satisfactory.

Mr. Shropshire stated the Division would do so between now and August 5<sup>th</sup>.

**MOTION:** Mr. Baxley moved to approve the application contingent upon a satisfactory review of the financials by the Division. Mr. Jones seconded the motion, which passed with 2 dissenting votes.

***(4) Elijah Bell's Funeral Services LLC (Pompano Beach)***

On May 2, 2009 the Department sent the licensee a renewal application and notified Mr. Bell that his application would be recommended for denial if not received by June 1st. After June 1<sup>st</sup>, Department attempts to contact Mr. Bell have proved unsuccessful. As of June 15<sup>th</sup>, the Department had not received the preneed license renewal application.

The Department recommends denial based on the Failure to submit Preneed License annual renewal application as required by s.497.453 (5), Florida Statutes.

**MOTION:** Ms. Zippay moved to deny the application for failure to submit Preneed License Annual Renewal Application as required by s.497.453 (5), Florida Statutes. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

***(5) Florida Funeral Home & Crematory Inc (Miami)***

On April 2, 2009 the Department received the licensee's renewal fee of \$505.00 and the Annual Renewal Statement (R-3). A deficiency notice was sent on April 20, 2009 notifying the licensee that the financial statements were incomplete and the application would be recommended for denial if the balance sheet and income statement were not received by June 1st. On June 11, 2009 the Department received a response from servicing agent Funeral Services, Inc., which included a letter from Ms. Laurie Gargis, owner, stating that the accountant was unable to complete the statements in time due to other demands on her time. She states that the matter would hopefully be resolved by the end of the ensuing week, or June 19, 2009.



The Department notes that a \$500.00 delinquent penalty is outstanding and would be payable if the Board choose to approve the renewal with conditions.

The Department recommends denial based on Failure to submit Preneed License Annual Financial Statements as required pursuant to s.497.453 (5) (b), Florida Statutes.

Mr. Bill Williams questioned whether the informal hearing could be requested today or per the Memo on the form submitted with the Memo.

Mr. Shropshire stated it would be advisable to request it in writing.

Mr. Williams requested whether it could be requested now on the record.

Mr. Shropshire stated it could, but it would have to be done after the Board denies the application.

**MOTION:** Mr. Helm moved to deny the application based on Failure to submit Preneed License Annual Financial Statements as required pursuant to s.497.453 (5) (b), Florida Statutes. Ms. Zippay seconded the motion, which passed unanimously.

Mr. Williams requested an informal hearing.

*(6) Hawkins Funeral Home PA ( Sarasota)*

On March 30, 2009 the Department received the licensee's renewal fee of \$405.00 and Annual Renewal Statement (R-3). A deficiency notice was sent on April 28, 2009 notifying the licensee that the preneed license renewal financial statements did not meet the required minimum net worth of \$40,000 and, if a response was not received by June 1st the application would be recommended for denial .As of June 12, 2009, the licensee had not responded.

The Department recommends denial based on the following:

Does not meet minimum net worth requirements of Rule 69K-5.0016 (3):

Total Preneed Contracts:	\$ 297,698
Required Net Worth:	\$ 40,000
Reported Net Worth:	\$ 18,619

Mr. Helm recused himself as the Applicant is one of his customers.

**MOTION:** Ms. Thomas-Dewitt moved to deny the application for failure to meet minimum net worth requirements of Rule 69K-5.0016 (3). Mr. Jones seconded the motion, which passed unanimously.

Mr. Williams requested an informal hearing.

*(7) Heritage Funeral Services, Inc. d/b/a Whitehurst-Powell Funeral Home (Crestview)*

The December 31, 2008 Renewal Statement identifies \$1,671,338 trust funded contracts and \$1,024,069 insurance funded. Trust principal is \$980,876 and trust interest is \$98,872.

The initial balance sheet submitted reflected a net worth of \$35,926. In response to a notice of deficiency, the licensee submitted a revised financial statement reflecting the \$62,761 net worth. Funeral Services Inc., the servicing agent for the licensee, informed the Department that the negative impact of treasury stock on the balance sheet is the reason for the licensee's deficient net worth. As of June 16<sup>th</sup>, the Department had not received a written justification for Board approval conditional upon the treasury stock issue.

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$	2,695,407	
Required Net Worth:	\$	100,000	
Reported Net Worth:	\$	62,761	Reported Net Worth last renewal: \$123,787

The Department recommends denial.

**MOTION:** Ms. Thomas-Dewitt moved to deny the application for failure to meet minimum net worth requirements of Rule 69K-5.0016 (3). Ms. Zippay seconded the motion, which passed unanimously.

Mr. Williams stated the Applicant has not met his net worth for two basic reasons. The net worth has changed over prior year from a restatement of his preneed contracts on his balance sheet to the appropriate manner under GAAP. That is why a major change has occurred in his net worth. Secondary to that is the treasury stock issued visited before on numerous occasions. The bottom line is this individual has invested back into his company \$60,000 and has reacquired stock that was outstanding. It has now been booked as treasury stock. This reduced his asset called "Cash" by \$60,000 and reduced his equity by another \$60,000. The treasury stock issue has been visited on numerous occasions. There are several licensees in the same boat. Traditionally, the Board has approved them because of that and there has always been discussion on it. The Applicant requests approval based on consideration of the treasury stock issue.

**MOTION:** Mr. Jones moved to reconsider the denial of the application. Mr. Brandenburg seconded the motion, which passed unanimously.

**MOTION:** Mr. Brandenburg moved to approve the application with consideration of the treasury stock. Ms. Huggins seconded the motion, which passed unanimously.

**(8) JGR Funeral Services Inc (Tampa)**

The December 31, 2008 Renewal Statement identifies all outstanding contracts as trust funded. Trust principal is \$87,550 and trust interest is \$3,686.

In a letter dated March 30, 2009 Ms. Lucia Gonzalez-Roel, President, stated that based on a letter from their CPA, the licensee's net worth had declined due to a restructuring of debt by which equity became reclassified as debt. The Department notes that approximately \$460,000 in "Other Assets" is classified as loans due from Mr. Julio Gonzalez Roel, as well as \$436,111 in intangible assets.

Ms. Roel further states that within the next 90 days, an infusion of \$250,000 of working capital is expected from the shareholders. In accordance with Rule 69K-5.0016(5) (g), F.A.C., Ms. Roel is willing to submit to additional oversight through the submission of quarterly financial statements and agreeing to 100 percent voluntary trusting. She also indicates that an appraisal of the funeral home property can be submitted.

Julio Gonzalez-Roel is the current FDIC and previous President of JGR Funeral Services, Inc. On November 17, 2008, the Department issued an Administrative Complaint against Mr. Julio Gonzalez-Roel, alleging that on or about August 21, 2008, he pled guilty to a charge of grand theft (third degree felony), related to the licensee's practice or occupation under Chapter 497. Consequently, the licensee was placed on 5 years probation and ordered to pay restitution in the amount of \$41,264.48. An informal hearing regarding this Administrative Complaint is scheduled during the June 24, 2009 Board meeting.

Adolfo Gonzalez-Roel is a licensed funeral director and embalmer at JGR Funeral Services, Inc. On November 19, 2008, the Department filed an Administrative Complaint against Mr. Adolfo Gonzalez-Roel, alleging that on or about August 21, 2008, he pled guilty to a charge of grand theft (third degree felony), related to the licensee's practice or occupation under Chapter 497. Consequently, the licensee was placed on 5 years probation and ordered to pay restitution in the amount of \$24,734. An informal hearing regarding this Administrative Complaint is scheduled during the June 24, 2009 Board meeting.

There is also a separate open investigation of both JGR Funeral Services, Inc. and Mr. Julio Gonzalez-Roel that was referred to the Department's Division of Legal Services in May 2009. The investigation matter is confidential until completed and presented to the Probable Cause panel of the Board. No adverse inference may be drawn at this time, concerning this investigation.

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Does not meet the Financial Requirements set forth in Rule 69K-5.0016 F.A.C.			
Total Preneed Contracts:	\$	269,163	
Required Net Worth:	\$	40,000	
Reported Net Worth:	\$	(455,587)	Reported Net Worth last renewal: \$161,103

The Department recommends denial for the following reasons, any one of which the Division suggests is by itself a sufficient basis for denial:

- (1. Licensee does not meet minimum net worth requirements. S. 497.453(2)(b).
- (2. Licensee or its principals have a demonstrated history of conducting their business affairs to the detriment of the public. S. 497.453(2)(e).
- (3. Licensee and its principals are not of good character and have a demonstrated history of lack of trustworthiness or integrity in business or professional matters. S. 497.453(2)(f).

Mr. Shropshire added that the operation of the licensee involves Julio and Adolfo Gonzalez-Roel who earlier appeared before the Board and their licenses were revoked.

Mr. Brandenburg disclosed his affiliation with SCI Funeral Services of Florida and recused himself.

The Chair questioned what happens to the preneed contracts if the licensee loses its license.

Mr. Shropshire stated presumably they would try and sell their business including the preneed contracts.

Ms. Michele Hood stated the Rule states they would have to continue collecting and trusting 100% of the monies collected on the preneed contracts existing. They would not be able to sell any future preneed contracts and they would be obligated to fulfill those contracts. They could choose to sell the business but the Rule specifies that inactive PNLs must trust 100% going forward.

The Chair questioned whether there would have to be a funeral director in place.

Ms. Hood stated they would need a funeral director in place at the establishment.

**MOTION:** Mr. Baxley moved to deny the application for the reasons specified by the Department. Ms. Huggins seconded the motion, which passed unanimously.

**(9) Legacy Funeral Home & Cremation Services LLC (Kissimmee)**

On April 16, 2009 the Department sent a deficiency notice notifying the licensee that the renewal application due April 1<sup>st</sup> was not received and would be recommended for denial if not received by June 1st. On June 2<sup>nd</sup> the Department received a renewal fee of \$305.00 and the financial statements and Annual Renewal Statement (R-3). On June 3<sup>rd</sup> the Department issued a deficiency notice stating the financial statements did not meet the minimum \$10,000 net worth requirement. In addition, a \$1,000 late penalty is due for the late submission of the financial and renewal statements, each of which was 62 days late. As of June 15, 2009 the Department had not received a response.

The Department recommends denial based on the following:

1. Does not meet minimum net worth requirements of Rule 69K-5.0016 (3):  
Total Preneed Contracts: \$ 0  
Required Net Worth: \$ 10,000  
Reported Net Worth: \$ (99,742)
2. Owes \$1,000 in late fees for late submission of financial statements and renewal statement.

**MOTION:** Mr. Helm moved to deny the application for failure to meet minimum net worth requirements of Rule 69K-5.0016(3) and the applicant owes \$1,000 in late fees for late submission of financial statements and renewal statement. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

**(10) Mohn, Lewis W & Martha P (Seminole)**

On March 25, 2009 the Department received the licensee's renewal fee of \$400.00, financial statements and Annual Renewal Statement (R-3). A deficiency notice was sent on April 21, 2009 notifying the licensee that the preneed license renewal financial statements did not meet the required minimum net worth of \$80,000. Denial would be recommended if a response was not received by June 1<sup>st</sup>. As of June 12, 2009, the licensee had not responded.

The Department recommends denial based on the following:

- Does not meet minimum net worth requirements of Rule 69K-5.0016 (3):
- |                          |             |
|--------------------------|-------------|
| Total Preneed Contracts: | \$ 667,902  |
| Required Net Worth:      | \$ 80,000   |
| Reported Net Worth:      | \$ (35,307) |

Mr. Jim Perkins requested that the Board defer the item to the next meeting as he has submitted additional financial information to Mr. Gellepis.

Mr. Jim Gellepis stated he received the information today.

Mr. Shropshire stated the Division continues to recommend denial, but if the Applicant promptly files a request for an informal hearing, you can continue your preneed business while the Division reviews the materials and will schedule an informal hearing before the Board at the August 5<sup>th</sup> meeting.

**MOTION:** Ms. Huggins moved to deny the application for failure to meet minimum net worth requirements of Rule 69K-5.0016 (3). Mr. Brandenburg seconded the motion, which passed unanimously.

Mr. Perkins requested an informal hearing.

**(11) Packer Funeral Homes Inc (Sarasota)**

On March 24, 2009 the Department received a renewal fee of \$400.00. On April 21st the Department sent a deficiency notice notifying the licensee that the financial statements and the R-3 Renewal Statement due April 1<sup>st</sup> were not received and the application would be recommended for denial if not received by June 1st. As of June 12<sup>th</sup>, the Department had not received the statements.

The Department recommends denial based on the following:

1. Failure to submit Preneed License Annual Financial Statements as required by s.497.453 (5)(b), Florida Statutes.
2. Failure to submit annual renewal statement - form DFS-PNL-R3, Preneed License Renewal Statement as required by s.497.453 (5) (d), Florida Statutes.

Mr. Helm recused himself.

**MOTION:** Ms. Thomas-Dewitt moved to deny the application for failure to submit Preneed License Annual Financial Statements as required by s.497.453 (5)(b) and failure to submit annual renewal statement - form DFS-PNL-R3, Preneed License Renewal Statement as required by s.497.453 (5) (d), Florida Statutes. Ms. Zippay seconded the motion, which passed unanimously.

Mr. Kevin Hazlip stated that he spoke with Mr. Packer and he plans to request an informal hearing.

**(12) Rubin Memorial Chapel LLC (Boynton Beach)**

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$	7,135,791
Required Net Worth:	\$	100,000
Reported Net Worth:	\$	(123,877)
Reported Net Worth last renewal:		\$227,725

The December 31, 2008 Renewal Statement identifies \$6,898,808 of outstanding contracts as trust funded. Trust principal is \$3,747,820 and trust interest is \$383,494.

In response to a notice of deficiency, Mr. Mark N. Shaffer, CPA, submitted a letter stating the deficient net worth is due to unrealized investment losses that are reported on the Income Statement as (\$228,303). Included was a personal guarantee from Mr. Joseph Rubin, Owner, who guarantees if necessary, to be personally responsible for any preneed contracts the funeral home would be unable to fulfill during the time the licensee's net worth is below the required \$100,000.

The Department recommends denial due to failure to meet net worth requirement.

Ms. Hood stated Mr. Rubin would like to apologize for not being able to attend in person. Mr. Rubin had requested that his CPA be present on his behalf, but he is on vacation in New Jersey until July 6<sup>th</sup>. Mr. Rubin would like to address some of the issues with regard to his financial statements and provide updated financials

showing a better net worth. Mr. Rubin has also indicated that he would be willing to guarantee personally any of the funeral contracts that he has on preneed. He also expressed some concern because he was not aware that he was able to make additional concessions as far as additional oversight for the approval of his license as others on the agenda for consideration have been even though they did not meet the preneed net worth. Mr. Rubin understands that the Board will likely deny his application at this meeting, but he would like to reserve his right to file for an informal hearing.

**MOTION:** Ms. Thomas-Dewitt moved to deny the application due to failure to meet net worth requirement. Mr. Helm seconded the motion, which passed unanimously.

*(13) StoneMor Florida Subsidiary LLC (Lake Placid)*

On April 16, 2009 the Department sent a deficiency notice notifying the licensee that the renewal application due April 1<sup>st</sup> was not received and would be recommended for denial if not received by June 1<sup>st</sup>. On May 20<sup>th</sup> the Department received a renewal fee of \$405.00 and the Annual Renewal Statement (R-3). The financial statements were not included in the submission. As of June 12<sup>th</sup>, the Department had not received the 2008 financial statements.

The Department recommends denial based on Failure to submit Preneed License Annual Financial Statements as required by s.497.453 (5) (b), Florida Statutes.

Ms. Pamela Thomas with Holland and Knight apologized as they were retained at 3:00 yesterday afternoon when the licensee received the first Notice that this matter was going to be heard at today's Board meeting. That does not comport with the minimum requirements of Chapter 120 for license review. Be that as it may, the licensee admits that they have failed to include the required financial statements with the licensure application, but the Florida subsidiary is a wholly-owned subsidiary which is publicly traded on NASDAQ. The consolidated annual financial statements for 2008 show a net worth of \$119,389,000. The licensee could also provide alternative evidence of financial stability.

Ms. Thomas stated she was a little confused about the procedure here because the memo states that in order to continue to sell preneed post July 1, you must request an informal hearing.

Mr. Shropshire stated that the Memo stated the licensee could request a formal or informal hearing.

The Chair questioned whether this is just one of the locations they have in Florida.

Ms. Thomas stated this is the one Florida location.

The Chair questioned whether the financial statements were submitted to the Department.

Ms. Thomas answered "no."

The Chair questioned whether Ms. Thomas would like to request an informal hearing.

Ms. Thomas stated she would prefer a conditional approval, subject to completing the application, given the fact that the licensee was not provided the requisite 21 days notice for denial.

Mr. Shropshire stated all of the Applicants were sent a letter in April advising of deficiencies and specifically advising them that the matter would be presented to the Board on June 24, 2009 and that if the matter was not corrected by June 1, 2009, their license would be recommended for denial.

Ms. Thomas stated that the licensee sort of admits that they received the letter, but she has not seen it. With respect to the notice, the minimum requirements of Chapter 120 require a licensing entity to provide 21 days notice of intent to deny. Twenty-days from the letter that was mailed on the 17<sup>th</sup> and then emailed yesterday, which was the 23<sup>rd</sup> is well after June 30<sup>th</sup>. The Memo states since the application is deficiency, in order to continue to sell preneed post July 1<sup>st</sup> that you must respond within what amounts to less than four business days. When you speak to Jim on the phone, he says "don't do anything until they actually act to deny because you have to have the Board's actual action on the recommendation in order to request your right to a hearing be it an informal or formal hearing, which does not comport with the basic requirements of the Florida Administrative Procedures Act, which cannot be trumped by any individual rule.

Ms. Dudley stated there appears to be a difference of opinion on what the APA requires. There is going to be a Notice of Intent to Deny and the 21 days would be the opportunity for the licensee to select the type of proceeding desired. Upon receiving the Intent to Deny, if the licensee chooses not to elect any proceeding, that would be the denial after 21 days.

Ms. Thomas stated that the memo that was sent out yesterday electronic, indicates it is the licensee's Notice of Election of Rights. Ms. Thomas questioned whether following today, at some point, the Division will issue a formal Notice of Intent to Deny, which would then trigger the 21 day statutory timeframe.

Mr. Shropshire stated if Ms. Thomas would like it done that way but it would be as advantageous for the licensee.

Ms. Thomas stated there are procedural objections to how the denial is being noticed to the applicant.

Mr. Shropshire stated that the Memo that was issued was actually seeking to help the licensees sell beyond July 1<sup>st</sup>. Strictly speaking, the Division did not have to offer that and could have left it to the licensees' own devices to figure out what they might have been able to do. Mr. Shropshire stated he is now thinking the Division should issue a formal issue of denial, since Ms. Thomas apparently wants one and it would be relatively easy issue to do.

Ms. Thomas stated that this is a broader issue. It is not confined to her representation or her particular client. It is a much broader issue of the Board's procedure.

Mr. Shropshire stated that Ms. Thomas is only representing their client. The Division will issue a Notice of Denial to the client.

Ms. Thomas questioned the Board's normal procedure and when does the 21 days trigger.

Mr. Shropshire stated it would run from the date the Notice of Intent to Deny is received.

**MOTION:** Mr. Jones moved to deny the application due to failure to submit Preneed License Annual Financial Statements as required by s.497.453 (5) (b), Florida Statutes. Mr. Brandenburg seconded the motion, which passed unanimously.

*C. Recommended for Approval with Conditions – Addendum D  
(1) Boynton Memorial Chapel, LTD (Boynton Beach)*

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$ 2,211,431	
Required Net Worth:	\$ 100,000	
Reported Net Worth:	\$ (1,126,690)	Reported Net Worth last renewal: \$(1,336,931)

The December 31, 2008 Renewal Statement identifies trust principal as \$1,819,756 and accumulated interest as \$245,180. The Licensee submitted a letter with the renewal statements acknowledging the deficient financials and requesting consideration based upon the value of the real estate and property. Notes and Loans Payable reflect \$2,496,769 for Real Estate Mortgages.

An independent appraiser's letter regarding the value of the real estate as of November 19, 2006 estimates the market value of the property as \$3,540,000. The value of the real estate owned on the balance sheet is \$1,941,095, less \$742,759 accumulated depreciation, for a total of \$1,198,336.

The licensee was approved by the Board under the same circumstances for the July 1, 2008 renewal with the additional stipulation that the principal owner(s) submit a personal guarantee for the obligations of preneed trust liabilities for 2008 -09.

The Department recommends approval of the preneed licensee's renewal application with the conditions as stipulated by the Board for the previous renewal.

**MOTION:** Ms. Huggins moved to approve the preneed licensee's renewal application with the conditions as stipulated by the Board for the previous renewal. Ms. Zippay seconded the motion, which passed unanimously.

**(2) CEP Investment, Inc. (Hudson)**

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$ 1,951,394	
Required Net Worth:	\$ 100,000	
Reported Net Worth:	\$ (70,594)	Reported Net Worth last renewal: \$16,197

The renewal statements indicate \$1,458,657 of the outstanding preneed sales are insurance-funded and \$492,243 trust funded. Principle balance in the preneed trust fund is \$465,737 and trust interest is \$(38,267).

The licensee submitted the Pasco County Property Tax Collector January 1, 2008 assessment on the market value of land and building at \$516,030. The Board approved the renewal for June 2008 upon the condition that all trust-funded contracts written during the license period shall continue to be trusted at 100%. The Licensee was allowed to continue to sell insurance-funded preneed contracts. The licensee is requesting approval under the same conditions.

1. Licensee shall submit quarterly financial statements to the Division;
2. All trust-funded preneed contracts written by licensee during the period July 1, 2009 to June 30, 2010 shall be trusted at 100%;
3. Receipt within 30 days of a personal guarantee of the license's preneed obligations, executed by Clarence E. Prevatt Jr., in a form acceptable by the Division;



4. Licensee shall within 45 days submit to the Division (attn: Jim Gellepis) a real estate appraisal done on or after January 1, 2009, by a person licensed to appraise real estate by the Florida Real Estate Commission, of the funeral home property located at 7709 SR 52, Bayonet Point, Hudson FL ((hereinafter the "property").
5. Receipt by the Division within 60 days of a written document executed by the owners of the property, in a form acceptable by the Division, in which document the owners or their legal representative --
  - (a. Identify by creditor name and amount of debt, all debts secured by a mortgage or other security interest in the property;
  - (b. Confirm that there is at least \$170,000 in equity in the property;
  - (c. Pledge all equity in the property to the fulfillment of obligations under preneed contracts at any time entered into by the licensee,
  - (d. Pledge that the said property will not be used as security or collateral for any debt other than the debt currently in place against the property as of June 9, 2009;
  - (e. Agreeing that both above pledges are irrevocable unless and until released by the Board.

**MOTION:** Mr. Brandenburg moved to approve the preneed licensee's renewal application with the conditions as set forth in the materials provided to the Board for this meeting. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. Clarence Prevatt stated to it is pretty expensive to get appraisals on commercial property. The licensee is trusting 100%, has \$1,951,394 in insurance policies and \$492,243 in monies in trust with IFDF at 100%. The trust value at that amount right now is \$465,737 plus \$38,267 interest, which comes to about \$504,000. The insurance is good and the trust is at 100% and the money approved in the trust is over the amount to satisfy the contracts. This year, \$50,000 was written off at one time and it brought that \$70,000 down low. Mr. Prevatt requested approval in lieu of having to comply with all the additional conditions added this year. A current appraisal was provided in 2008 which showed \$516,030. There is sufficient money to satisfy any needs.

The Chair questioned which conditions Mr. Prevatt would not like to meet. The Board is not requesting that the licensee come up with \$120,000. The Board is asking that the licensee ensures equity in the property and provides an updated appraisal, which would certainly be much less.

Mr. Prevatt stated that he shows \$516,000 on what he pays in taxes on that building in real estate. There is some excess money there. Mr. Prevatt stated that he does not want to go through a commercial company to spend thousands of dollars for a commercial appraisal when he has enough money to satisfy the needs of the community.

The Chair questioned the last time Mr. Prevatt had an appraisal.

Mr. Prevatt stated he has never had an appraisal, other than when he purchased it 14 years ago.

The Chair questioned whether the Board required the licensee to provide an appraisal last year.

Mr. Prevatt stated he has not had to do that as of yet.

The Chair stated there is now a BPO, a person who can value a piece of property. The Chair questioned whether the Board would be satisfied with that or whether a full appraisal is required.

Mr. Prevatt stated that typically appraisals are done on estimated real estate sold in the area in the current six month time span. That is basically what is used to determine the value of some comparable products in the area.

Mr. Shropshire stated he is not familiar with that type of appraisal so at this point would have to rely on the Board's judgment as to whether that would be an adequate safeguard.

Mr. Prevatt stated that listening to the conversations earlier, goodwill was entered into one of the contracts but GAAP has no goodwill in those contracts for the financials and the Board granted a license using \$190,000 worth of goodwill. Mr. Prevatt questioned whether licensee will be allowed to use that at this point in time.

Mr. Shropshire stated whether the previous is allowed to use the \$193,000 in goodwill remains to be seen.

The Chair stated there is such a thing as goodwill.

Mr. Prevatt stated that his financials did not and never have had any goodwill numbers.

Ms. Huggins questioned whether there is an outstanding mortgage on the property.

Mr. Prevatt answered yes. It is in the financials that were already submitted.

The Chair questioned the length of time the licensee has owned the business.

Mr. Prevatt answered that he has owned it for 14 years.

The Chair questioned whether the bank ever requires an appraisal.

Mr. Prevatt stated that they do the drive-by appraisals.

The Chair questioned whether the bank required an appraisal of the property when the licensee originally got the loan.

Mr. Prevatt stated he could not remember as it was 14 years ago. Mr. Prevatt stated that he has about \$90,000 in the funeral home's savings account just because of the financials and what has been going on with the banks and so forth. This amount is not listed on the financials that reflect the (\$70,000) just to cover operating expenses. Mr. Prevatt added that he can prove to the Board that he has an additional \$90,000 sitting in the bank, above and beyond the (\$70,000).

Mr. Brandenburg stated this is not part of the assets listed.

Mr. Prevatt agreed.

*(3) Family Owned Service Company, Inc. (Brooksville)*

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$ 7,669,419	
Required Net Worth:	\$ 100,000	
Reported Net Worth:	\$ (59,915)	Reported Net Worth last renewal: \$79,438

The December 31, 2008 Renewal Statement identifies \$5,144,672 of the outstanding contracts as insurance funded and \$2,524,747 as trust funded. Trust principal is \$1,584,388 and trust interest is \$9,228. The Licensee's current (liquidity) ratio (current assets/current liabilities) is 1.84.

In response to a Department notice of deficiency, the licensee notes improvement to a positive operating profit compared to last year's negative figure. In addition, the licensee states that no trust-funded contracts will be written in 2009 and the owner, Barry K. Brewer personally guarantees fulfillment of all contracts. The licensee was approved by the Board in 2008 on the basis of property appraisals for other licensee-owned funeral homes used as additional evidence in assessment of the licensee's net worth.

Approval with conditions as follows:

1. Licensee shall submit quarterly financial statements to the Division;
2. All trust-funded preneed contracts written by licensee during the period July 1, 2009 to June 30, 2010 shall be trusted at 100%;
3. Receipt within 30 days of a personal guarantee of the licensee's preneed obligations, executed by Barry K. Brewer, in a form acceptable by the Division;
4. Receipt by the Division within 45 days of a written document executed by the owners of the properties identified below, in a form acceptable to the Division, in which document the owners or their legal representative --
  - (a. Confirm that they currently own the funeral homes at 3328 S. Dale Mabry, Tampa; 1018 West Street, Clermont; and 132 east magnolia St. Groveland.
  - (b. Affirm that to the best of their knowledge and belief the real estate appraisals of said properties, by Gardner Consulting Services, Inc., dated May 16, 19, and 20, 2008 (respectively), and provided to the Division in 2008, are still fairly representative of the value of said properties.
  - (c. Identify by creditor name and amount of debt, all debts secured by a mortgage on or other security interest in any of the properties.
  - (d. Confirm that they hold at least \$160,000 in aggregate equity in the properties.
  - (e. Pledge all equity in the properties to the fulfillment of obligations under preneed contracts at any time entered into by the licensee.
  - (f. Pledge that the said property will not be used as security or collateral for any debt other than the debt secured by the property as of April 22, 2009.
  - (g. Agreeing that both above pledges are irrevocable unless and until released by the Board.

**MOTION:** Mr. Jones moved to approve the preneed licensee's renewal application subject to the conditions stated in the materials provided to the Board. Ms. Zippay seconded the motion, which passed unanimously.

Mr. Barry Brewer stated that he submitted all the requirements to Mr. Gellepis this morning. Mr. Brewer questioned what would release the excess equity in the property.

Mr. Shropshire stated that the licensee would have to come back before the Board and show them that you by other means now meet the net worth directly and ask them to release the excess equity.

Mr. Brewer questioned whether this would be a monthly thing because the Board is requesting quarterly statements or is that something he would come back next year to request.

Mr. Shropshire stated as soon as the licensee is financially better with an independent net worth that satisfy the requirements, the licensee could come back at that time.

Mr. Brewer stated that he meets the net worth today with the financials provided to Mr. Gellepis.

Mr. Shropshire stated the Division would have to review the financials. Mr. Gellepis will review them. Mr. Brewer should contact Mr. Gellepis and request to be placed on the Agenda to obtain a release of the excess equity.

**(4) Hudson Memorial Chapel Inc (Delray Beach)**

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$ 37,570	
Required Net Worth:	\$ 10,000	
Reported Net Worth:	\$ (109,438)	Reported Net Worth last renewal: N/A

The December 31, 2008 Renewal Statement identifies trust principal as \$17,262 and trust interest is (\$1,693). The licensee was initially licensed in July, 2008. In response to a notice of deficiency, Mr. Mark N. Shaffer, CPA, submitted a letter stating that the licensee was in the first year of operation, and expected profitability in the second year. In addition, Mr. Wilson Hudson III, principal owner, has a loan due from the funeral home of \$208,143 and has submitted a signed subordination statement that will subordinate \$100,000 of the loan, which subordination will remain in effect as required to fulfill the minimum net worth requirement.

The Department recommends approval of the preneed licensee's renewal application dependent upon the Board's acceptance of the owner's subordination agreement.

**MOTION:** Mr. Helm moved to approve the preneed licensee's renewal application with the conditions as stated in the materials provided to the Board. Ms. Zippay seconded the motion, which passed unanimously.

**(5) Jacobs Funeral Services, LLC (Boca Raton)**

This preneed licensee meets the net worth and other requirements for renewal of preneed main license, subject to the late fee issue set forth below.

The licensee's last fiscal year end date was December 31, 2008. In accordance with Chapter 497.453(5), Florida Statutes, financial statements for preneed license renewal are due within 3 months after the end of the licensee's fiscal period, or by April 1, 2009.

On April 16, 2009 the Department issued a deficiency notice to the licensee for non-receipt of the preneed license renewal packet. On April 30, 2009 the Department received the renewal packet including financial statements and the renewal statement. Each was received 29 days late which requires a \$200 late penalty for each statement. On May 5<sup>th</sup> the Department issued a deficiency notice for the late penalties. On May 18<sup>th</sup> the Department received a letter from Mr. Garrett Jacobs requesting waiver of the \$400 in late penalties.

The Department recommends that the Board deny the request for waiver of late penalties, and direct that the preneed license shall be deemed renewed effective upon the later of July 1, 2009 or receipt by the Division of the remaining \$400.00 late fee, and that if the said \$400 is not paid by July 1, 2009, the licensee shall make no preneed sales until the said \$400 is paid.

The Chair questioned whether the \$400 had been received.

Mr. Gellepis stated that it does not appear that the late fee was paid.

**MOTION:** Mr. Jones moved to approve the preneed licensee's renewal application with the conditions as stated in the materials provided to the Board. Ms. Zippay seconded the motion, which passed unanimously.

**(6) Lanier Funeral Home, Inc. (Lakeland)**

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$ 1,069,805	
Required Net Worth:	\$ 100,000	
Reported Net Worth:	\$ (9,228)	Reported Net Worth last renewal: \$123,787

The December 31, 2008 Renewal Statement identifies \$422,832 of the outstanding contracts as trust funded and \$646,973 as insurance funded. Trust principal is \$309,094 and trust interest \$47,751. The Licensee's current (liquidity) ratio (current assets/current liabilities) is .83.

In a letter submitted with the financial statements Mr. Charles R. Lanier, President, requests consideration based upon the fair market value of the real estate and property. The value of property and equipment on the balance sheet (less depreciation) is \$287,791. Mr. Lanier states the value as determined by the Polk County Property Appraisers office for 2008 is \$1,117,081. The Appraisers statement was not submitted.

Rule 69K-5.0016(5) (c), F.A.C. allows appraisal of the entity's property as a condition of receiving and retaining a preneed license. The July 1, 2008 renewal was approved by the Board based on the County Appraiser's stated value with the additional stipulation that Mr. Lanier submit a personal guarantee of the preneed trust obligations for 2008.

Approval with conditions as follows:

1. Licensee shall submit quarterly financial statements to the Division;
2. All trust-funded preneed contracts written by licensee during the period July 1, 2009 to June 30, 2010 shall be trusted at 100%;
3. Receipt within 30 days of a personal guarantee of the licensee's preneed obligations, executed by Charles R. Lanier, in a form acceptable by the Division;
4. Licensee shall within 45 days submit to the Division (attn: Jim Gellepis) a real estate appraisal done on or after January 1, 2009, by a person licensed to appraise real estate by the Florida Real Estate Commission, of the funeral home property located at 717 W. Griffin Road, Lakeland FL ((hereinafter the "property").
5. Receipt by the Division within 60 days of a written document executed by the owners of the property, in a form acceptable to the Division, in which document the owners or their legal representative --
  - (a. Identify by creditor name and amount of debt, all debts secured by a mortgage on or other security interest in the property;
  - (b. Confirm that there is at least \$109,000 in equity in the property;
  - (c. Pledge all equity in the property to the fulfillment of obligations under preneed contracts at any time entered into by the licensee,
  - (d. Pledge that the said property will not be used as security or collateral for any debt other than the debt secured by interest in the property as of April 16, 2009;
  - (e. Agreeing that both above pledges are irrevocable unless and until released by the Board.

**MOTION:** Ms. Thomas-Dewitt moved to approve the preneed licensee's renewal application with the conditions as stated in the materials provided to the Board. Mr. Jones seconded the motion, which passed unanimously.

**(7) Long-Granberry Funeral Services Inc (Marianna)**

Total Preneed Contracts: \$ 246,909  
Required Net Worth: \$ 40,000  
Reported Net Worth: \$ 37,619      Reported Net Worth last renewal: \$41,361

The December 31, 2008 Renewal Statement identifies all outstanding contracts as trust funded. Trust principal is \$144,626 and trust interest is (\$242).

In response to a notice of deficiency, Ms. Sara Applewhite, CPA, submitted a letter stating the stockholders contributed additional capital of \$5,000 to increase equity to \$42,619. Attached was a copy of the six month certificate of deposit on 6/2/09. Board approval is requested based upon the licensee's compliant net worth due to the additional contributed capital.

The Department recommends approval of the preneed licensee's renewal application on condition of the Board's acceptance of the stockholders additional capital contribution.

**MOTION:** Mr. Brandenburg moved to approve the preneed licensee's renewal application with the conditions as stated in the materials provided to the Board. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

**(8) Machriste, Inc. (Panama City)**

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts: \$ 3,933,530  
Required Net Worth: \$ 100,000  
Reported Net Worth: \$ 62,645      Reported Net Worth last renewal: \$85,139

The December 31, 2007 Renewal Statement identifies \$3,229,490 of the outstanding contracts as insurance funded and \$704,040 as trust funded. Trust principal is \$481,838 and trust interest is \$65,103. The Licensee's current (liquidity) ratio (current assets/current liabilities) is .59.

The Board approved renewal for the 2008 license period upon the condition that the Licensee submit quarterly financial statements, that all trust-funded contracts written during the period be trusted at 100%, as well as pledge of equity in property owned in Panama City to guarantee preneed commitments. An appraisal report as of January 8, 2002 was attached. In a letter submitted with the 2008 financial statements, the licensee requests the renewal be approved with the same stipulations as the 2008 renewal.

Rule 69K-5.0016(5) (c), F.A.C. allows appraisal of the entity's property as a condition of receiving and retaining a preneed license. The July 1, 2008 renewal was approved by the Board based on the County Appraiser's stated property value.

Approval with conditions as follows:

1. Licensee shall submit quarterly financial statements to the Division;

2. All trust-funded preneed contracts written by licensee during the period July 1, 2009 to June 30, 2010 shall be trusted at 100%;
3. Receipt within 30 days of a personal guarantee of the licensee's preneed obligations, executed by Steve Southerland II, in a form acceptable by the Division;
4. Licensee shall within 45 days submit to the Division a real estate appraisal done on or after January 1, 2009, by a person licensed to appraise real estate by the Florida Real Estate Commission, of the funeral home property located at 100 East 19<sup>th</sup> Street, Panama City ((hereinafter the "property").
5. Receipt by the Division within 60 days of a written document executed by the owner(s) of the property, in a form acceptable to the Division, in which document the owners or their legal representative --
  - (a. Identify by creditor name and amount of debt, all debts secured by a mortgage on or other security interest in the property;
  - (b. Confirm that there is at least \$40,000 in equity in the property;
  - (c. Pledge all equity in the property to the fulfillment of obligations under preneed contracts at any time entered into by the licensee;
  - (d. Pledge that the said property will not be used as security or collateral for any debt other than the debt secured by interest in the property as of June 9, 2009;
  - (e. Agreeing that both above pledges are irrevocable unless and until released by the Board.

**MOTION:** Mr. Brandenburg moved to approve the preneed licensee's renewal application with the conditions as stated in the materials provided to the Board. Ms. Zippay seconded the motion, which passed unanimously.

**(9) Oosco Funeral Homes Inc (Orlando)**

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

Total Preneed Contracts:	\$	1,665,958	
Required Net Worth:	\$	100,000	
Reported Net Worth:	\$	(371,358)	Reported Net Worth last renewal: \$261,749

The December 31, 2008 Renewal Statement identifies all outstanding contracts as trust funded. Trust principal is \$959,333 and trust interest is \$61,635. The licensee's current (liquidity) ratio (current assets/current liabilities) is 2.4.

In a letter dated May 29, 2009 Ms. Felecia G. Zeigler, attorney with the firm representing the licensee, states that the Florida Department of Transportation in an eminent domain action is taking 1,637 square feet from the property which has been appraised by FDOT to be valued at \$730,000. On November 24, 2008 a court ordered taking of the eminent domain action occurred based on the \$730,000 estimated value of the property.

On June 2, 2009, in response to a Department notice of deficiency, Mr. Richard M. Ornstein, CPA, states that the financial statements reflect the good faith deposit made on the \$730,000 sale, which was recorded as a liability as of December 31, 2008. He further states that when the sale is completed, the net sales amount will be regarded as a gain on sale, improving net worth by a minimum of \$700,000. On June 10<sup>th</sup> the Department contacted the law firm for an update and was informed that mediation on a final settlement is scheduled for July 21<sup>st</sup>, with a final closing expected in late September or early October.

Approval with conditions as follows:

The Department recommends that approval of the preneed licensee's renewal application be conditional upon notification to the Department of the final disposition of the eminent domain action and submission of updated financial statements reflecting the outcome of the action consistent with the licensee representation that when the sale is completed, the net sales amount will improve net worth by a minimum of \$700,000. The proceeds of the eminent domain action will be received and they will be sufficient to bring the entity up to the required net worth.

Ms. Huggins questioned when the final disposition is expected to take place.

Mr. Brandenburg stated that the materials indicated September or early October.

The Chair questioned whether the Department has received anything in writing from the DOT that the licensee will be receiving this.

Mr. Gellepis responded "no."

The Chair stated the Board needs confirmation from a third party indicating that this will happen.

**MOTION:** Mr. Jones moved to approve the preneed licensee's renewal application with the conditions as stated in the materials provided to the Board. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

***(10) Stephen R Baldauff Funeral Home, Inc. (Orange City)***

Applicant does not meet minimum net worth requirements of Rule 69K-5.0016 (3):

Total Preneed Contracts:	\$ 2,722,353
Required Net Worth:	\$ 100,000
Reported Net Worth:	\$ (323,694)

The Department received the licensee's renewal fee of \$505.00, financial statements and Annual Renewal Statement (R-3). A deficiency notice was sent on April 30, 2009 notifying the licensee that the preneed license renewal financial statements did not meet the required minimum net worth of \$100,000. Denial would be recommended if a response was not received by June 1<sup>st</sup>.

On June 11, 2009 the Department received a response from servicing agent Funeral Services, Inc., stating that Mr. Kevin Hazlip, CPA, would address the Board regarding the licensee's situation at the June 24<sup>th</sup> meeting. On June 15<sup>th</sup> the Department received a fax from Mr. Hazlip which explains the licensee's financial situation and requests approval on the conditions set by the Board in previous years.

Approval with conditions as follows:

1. Licensee shall submit quarterly financial statements to the Division;
2. All trust-funded preneed contracts written by licensee during the period July 1, 2009 to June 30, 2010 shall be trusted at 100%;
3. Receipt within 30 days of a personal guarantee of the licensee's preneed obligations, executed by Dennis Johnson, in a form acceptable by the Division;
4. Licensee shall within 30 days submit to the Division a real estate appraisal done on or after January 1, 2009, by a person licensed to appraise real estate by the Florida Real Estate Commission, of the funeral home property located at 1233 Saxon Blvd, Orange City, FL ((hereinafter the "property").
5. Receipt by the Division within 45 days of a written document (in a form satisfactory to the Division), executed by the owner(s) of the property, in which document the owner(s) or their legal representative --



- (a. Identify by creditor name and amount of debt, all debts secured by a mortgage on or other security interest in the property;
- (b. Confirm that there is at least \$424,000 in equity in the property;
- (c. Pledge all equity in the property to the fulfillment of obligations under preneed contracts at any time entered into by the licensee;
- (d. Pledge that the said property will not be used as security or collateral for any debt other than the debt secured by interest in the property as of June 9, 2009;
- (e. Agreeing that both above pledges are irrevocable unless and until released by the Board.

The Division believes the guarantee/pledge document(s) previously executed in this matter should be renewed using more specific provisions.

Mr. Hazlip questioned whether there is a deadline on the submission of the quarterly financials.

Mr. Shropshire stated that it is 45 days after the end of each quarter.

Mr. Hazlip questioned whether licensee would be allowed to sell insurance funded contracts.

Mr. Shropshire answered "yes."

Mr. Hazlip questioned whether there is a standardized form for the personal guarantee.

Mr. Shropshire stated that the Department does have a suggested format for a personal guarantee. If needed, Mr. Gellepis can provide the information.

Mr. Hazlip stated the licensee had an appraisal done in July 2008 and questioned whether this would be sufficient.

The Chair stated the appraisal would be sufficient.

**MOTION:** Mr. Brandenburg moved to approve the preneed licensee's renewal application with the conditions as stated in the materials provided to the Board with the exception that the July 2008 appraisal will be acceptable. Ms. Huggins seconded the motion, which passed unanimously.

***(11) Stinson Industries Inc (West Palm Beach)***

On April 16, 2009 the Department issued a notice of deficiency stating that the 2009-2010 preneed license renewal package had not been received. On May 28, 2009 the Department received the renewal package. On June 2<sup>nd</sup> the Department issued a second deficiency notice requiring payment of a \$1,000 late filing penalty - \$500.00 each for the financial and renewal statements which were each 57 days late. On June 11, 2009 the Department received notice from servicing agent Funeral Services, Inc., which included evidence of a partial payment of \$200.00 toward the late fees. The licensee's financial statements reflect the following:

Total Preneed Contracts:	\$	0
Required Net Worth:	\$	10,000
Reported Net Worth:	\$	505,756

Approval with conditions as follows: The preneed license shall be deemed renewed effective upon the later of July 1, 2009 or receipt by the Division of the remaining \$800.00 late fee, and that if the said \$800 is not paid by July 1, 2009, the licensee shall make no preneed sales until the said \$800 is paid.

**MOTION:** Ms. Zippay moved to approve the preneed licensee's renewal application with the conditions that the preneed license shall be deemed renewed effective upon the later of July 1, 2009 or receipt by the Division of the remaining \$800.00 late fee, and that if the said \$800 is not paid by July 1, 2009, the licensee shall make no preneed sales until the said \$800 is paid. Ms. Huggins seconded the motion, which passed unanimously.

***D. Expirations – Addendum E***

This item is informational only and does not require Board action.

Ms. Wiener stated she represents Panciera Memorial Home. When the licensee finalized the merger, a renewal was submitted for Boyd-Panciera. Panciera should have been on this list as well. The preneed application previous filed was withdrawn. Panciera needs to be on this list, not the approval list.

Mr. Shropshire stated Mr. Gellepis will make a note of this.

**8. Application(s) for Florida Laws and Rules Examination**

***A. Recommended for Approval - Addendum F***

***(1) Funeral Director and Embalmer by Internship***

- (a) Clark, O'Donald B***
- (b) Hancock, Melissa M***
- (c) Maldonado, Melissa E***
- (d) Rice, Dana P***
- (e) Roberts, Rachel M***
- (f) Walker, Tavaris L***
- (g) Williams, Todd L***

***(2) Funeral Director by Internship***

- (a) O'Mara, Annie M***

The Division recommends approval of the application(s).

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

***B. Recommended for Approval (Criminal History)***

***(1) Funeral Director and Embalmer by Internship***

- (a) King, Rickie V***

Mr. King submitted an application for Combination Funeral Director and Embalmer License by Internship and Examination on May 8, 2009. The application was complete when submitted. Mr. King has been approved by the Board for both an Embalmer Apprentice and Concurrent Internship licenses.

The Division is recommending approval for Mr. King's application, because the Board has previously reviewed his criminal history and approved him for apprentice and intern licensure.

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

- (b) Roman, Anastasia D***

Ms. Roman submitted an application for Combination Funeral Director and Embalmer License by Internship and Examination on April 6, 2009. The application was complete when submitted. Ms. Roman has been approved by the Board for a Concurrent Internship license at the June 25, 2008 Board meeting.

The Division is recommending approval of Ms. Roman's application because the Board was aware of the applicant's criminal record when the Board approved the applicant for internship.

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

*(c) Taylor, Arial R*

The application was submitted on February 26, 2009. The application was complete and a deficiency letter was not sent. Ms. Taylor has been licensed as a Concurrent Intern since June 30, 2008. Ms. Taylor's internship application was reviewed and approved by the Board at the June 25, 2008, with notice of her criminal history. The transcript of the June 25, 2008 Board meeting is enclosed.

Ms. Arial Taylor stated that she understands that the application requires 2 year probationary period. Ms. Taylor stated she has letters of character from funeral directors and has completed everything and completed internship for free. Ms. Taylor questioned whether a probationary period stipulation on her license would effect further future employment.

Ms. Thomas-Dewitt stated it should not be.

The Chair stated he did not think it would. It would be up to the employer.

**MOTION:** Mr. Brandenburg moved to approve the application subject to 2 years probation. Mr. Jones seconded the motion, which passed unanimously.

**9. Application(s) for Internship**

*A. Recommended for Approval – Addendum G*

*(1) Funeral Director and Embalmer*

*(a) Acosta, Eileen*

*(b) Harris, Jr., John D*

*(c) Lovett, Shanique L*

The Division recommends approval of the application(s).

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

*B. Recommended for Approval (Criminal History)*

*(1) Funeral Director and Embalmer*

*(a) Zamora, Bryan*

Mr. Zamora submitted the application for Concurrent Internship on March 27, 2009. The application was incomplete and a deficiency letter was sent to the applicant. All deficient items were complete on April 21, 2009. Mr. Zamora was convicted of Possession of Cannabis in 2004. He served 6 months of probation and all sanctions have been completed.

The Division is recommending approval for Mr. Zamora's application for licensure, subject to 12 months of probation..

**MOTION:** Mr. Brandenburg moved to approve the application subject to 12 months probation. Mr. Jones seconded the motion, which passed unanimously.

**10. Application(s) for Embalmer Apprentice**

**A. Recommended for Approval – Addendum H**

(1) *Brown, Thomas B*

(2) *Lester, Michael A*

The Division recommends approval of the application(s).

Ms. Huggins disclosed her affiliation with Baldwin-Fairchild.

Ms. Dudley questioned whether this affiliation would affect her ability to remain fair and impartial.

Ms. Huggins answered “no.”

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

**B. Recommended for Denial (Criminal History)**

(1) *Anderson, Gaile M*

Ms. Anderson submitted an application for an Embalmer Apprenticeship on March 5, 2009. The application was incomplete and a deficiency letter was sent to the applicant. All deficient items were complete on May 11, 2009. Ms. Anderson was convicted of Conspiracy to commit Bank Fraud and was sentenced to three years probation. She violated probation during that time and was sentenced to six months incarceration. The Division is recommending denial of Ms. Anderson's application.

**MOTION:** Mr. Brandenburg moved to deny the application. Mr. Baxley seconded the motion, which passed unanimously.

(2) *Craig IV, Augustus H*

The application was withdrawn by the Applicant.

**11. Consumer Protection Trust Fund Claims**

**A. Recommended for Approval - Addendum I**

The Division recommends approval of the claim(s).

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

**12. Application(s) for Monument Establishment Retailer**

**A. Recommended for Denial**

(1) *Jose E. Torres d/b/a Metropolitan Memorial Monuments (Lake Alfred)*

This Applicant has no discipline or criminal history record. However, the Division recommends denial for reasons as stated on Pages 2 and 3 of the materials provided to the Board.

Mr. Jose Torres stated he purchased the business from his mom's ex-husband back in March for \$10,000. The previous owner advised that he would remain in the business and claim anything that came into the business. According to him, he was licensed by the Department of Financial Services and every other license that was required to run the business. Mr. Torres stated that in May he learned the gentleman was not licensed by the Department of Financial Services. Mr. Torres added he had paid the person \$5000 and his wife, Andrea had paid him another \$5000; \$10,000 lost if the license is not granted. Mr. Torres stated this is wrong, especially for a family member.

Mr. Torres requested that the Board change its recommendation of denial and give him an opportunity to run this business in the Lake Alfred area. This is something that would be called "guilty by association" since he knows the person that sold him the business. Mr. Torres stated he has not seen this individual in about four weeks, which is the time he was in Virginia for vacation visiting his sister, whose husband is in the Army. Upon returning, Ms. Lashonda Morris sent a copy of the Addendum. This is when Mr. Torres learned that he would be denied for the license of monument establishment retailer.

Mr. Brandenburg questioned whether the Applicant has a copy of the sales agreement that was made when the business was purchased.

Mr. Torres stated the one that came with the business is the one he received from the seller. It was submitted to the Department of Financial Services and everything was wrong.

Mr. Brandenburg stated he did not mean the merchandise sales agreement but the sale of the business.

Mr. Torres presented the Board with copies.

Ms. Huggins questioned when the business was purchased.

Mr. Torres answered that it was purchased back in March and that he has been making the monthly rent payments but has not been selling anything as he does not have the license. Mr. Torres added that he does not believe in selling something unless he is legally able to sell something.

Mr. Helm questioned the date that the Department investigator determined that Mr. Torres and Orlando had been out in the cemetery setting a monument.

Mr. Torres stated it was either April or May and he was basically being trained for the job as he never received payment for the job.

Ms. Huggins questioned whether Mr. Torres owned the business at that point.

Mr. Torres stated at that point, he did the contract and everything and was still making payments to him in order to complete the \$10,000.

Mr. Helm questioned whether Mr. Torres knew he was operating illegally at the time.

Mr. Torres stated according to him, he was licensed by all the licenses that were out there, including the business tags and the Department of Financial Services. According to him, he had all the licenses. Mr. Torres stated he did not know he was operating illegally.

Ms. Zippay questioned whether the personal agreement was drawn up by Mr. Torres.

Mr. Torres stated that it was drawn up by the person at the bottom with the notary stamp. Mr. Torres added that he and his wife looked it over and signed it.

Ms. Zippay questioned whether there were any attorneys present.

Mr. Torres answered "no, only a notary."

Mr. Jones questioned whether Mr. Torres submitted the application on the 27<sup>th</sup> of March.

Mr. Torres answered yes.

Ms. Huggins questioned whether preneed monument contracts were sold.

Mr. Torres answered yes.

Ms. Huggins questioned whether Mr. Torres will fulfill the contracts.

Mr. Torres stated if there is anything in the business that needs to be placed, he would go ahead and place them. According to Orlando, there is nothing that needs to be placed. Everything that he sold was already placed.

Mr. Brandenburg questioned whether there were any consumer complaints.

Mr. Torres stated he is not aware of any consumer complaints.

The Chair questioned whether Mr. Torres is making payments to Orlando.

Mr. Torres stated that he has already fulfilled his obligation to Orlando as he and his wife both gave him \$5000.

The Chair questioned whether this is considered a new application.

Mr. Shropshire answered yes.

Mr. Baxley questioned whether Mr. Torres has sold anything since applying for the license.

Mr. Torres answered no. Mr. Torres stated he was in the military for five years and believes in honesty. Mr. Torres added that he had planned to apply with the police department, but he put that aside. Mr. Torres completed the application for the Border Patrol, passed the test and passed every process. That is something he would like to do on the side. Mr. Torres states he believes in honesty and fair treatment to people.

**MOTION:** Ms. Huggins moved to approve the application with 2 years probation. Mr. Baxley seconded the motion, which passed unanimously.

**13. Application(s) for Funeral Establishment**

**A. Recommended for Approval**

**(1) Gloria J. Chandler d/b/a Chandler's Funeral Chapel (Bradenton)**

The application for a Funeral Establishment was submitted on April 30, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 28, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Henry Aikens (F043920). The establishment passed its inspection on June 10, 2009.

Mr. Helm questioned whether the Applicant has performed any funerals at this location.

Ms. Gloria Chandler responded no. Ms. Chandler added that they are in the process of decorating.

Mr. Helm questioned whether the parking lot is just being used to store the hearses.

Ms. Chandler answered yes. The vehicles are there to deter anyone from vandalizing what the Applicant is trying to accomplish.

Mr. Helm questioned what happened to the previous funeral home that was at the location.

Ms. Chandler stated that they relocated or did not pay whatever needed to be paid there.

The Chair questioned how long the funeral home has been closed.

Ms. Chandler answered that it has been almost a year.

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

**(2) Hadley Davis Funeral Home LLC (Miami Gardens)**

The application for a Funeral Establishment was submitted on May 7, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 29, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Lori Davis (F043177). The establishment is recommended for approval. The establishment did pass its inspection on June 11, 2009.

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

**14. Application(s) for Cinerator Facility**

**A. Maspons Funeral Home Inc d/b/a Solemn Cremations (Miami)**

The application for a Cinerator Facility was submitted on April 23, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 18, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Eric Maspons (F044029). The establishment passed its inspection in June 3, 2009.

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

***B. NorthStar Cemetery Services of Florida LLC d/b/a Memorial Crematory (Fort Myers)***

The application for a Cinerator Facility was submitted on October 3, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on April 20, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Michael Gendron (F042014). The establishment passed its inspection on May 11, 2009. The establishment was issued a citation for \$800 for failure to issue a refund. The citation has since been paid. The Division is recommending approval of this application.

In April 2009 the Board denied an application for funeral establishment licensure by applicant Gendron Funeral Home-Cremation Services. Michael Gendron (F042014) was shown as President of that applicant. Mr. Gendron's funeral director license was revoked several years ago by Vermont authorities. That denial is currently in litigation.

The Division recommends approval of the present application because the owner of the funeral establishment here will be NorthStar, and the Division believes that the presence of Northstar oversight is adequate to offset any danger that might be posed by use of an FDIC (Mr. Gendron) with a disciplinary record.

**MOTION:** Mr. Jones moved to approve the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

**15. Application(s) for Removal Service**

***A. Good Friends Removal Services LLC (N. Miami Beach)***

The application for a Removal Service was submitted on March 6, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on June 3, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on June 3, 2009.

**MOTION:** Ms. Thomas-Dewitt moved to approve the application. Mr. Jones seconded the motion, which passed unanimously.

***B. Integrity Removal Service LLC (Callahan)***

The application for a Removal Service was submitted on May 11, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 11, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Division is recommending approval. The inspection was passed on June 17, 2009.

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

**16. Request for Board Appearance**

***A. Beggs, Judson P***



Mr. Beggs was issued a Concurrent Intern License for the period of October 2, 2006 – October 26, 2007. Per the attached letter from Mr Beggs, he was unable to complete the internship due to personal reasons. Mr. Beggs is requesting an opportunity to reapply for a Concurrent Internship License. The Division requested some details as to why the first one was not completed but Mr. Beggs has not provided any details. The Division is recommending denial of Mr. Beggs request.

**MOTION:** Mr. Jones moved to deny the request. Mr. Baxley seconded the motion, which passed unanimously.

**B. Kipe, Troy M**

Mr. Kipe was issued a Concurrent Intern License for the period of November 3, 2004 – November 3, 2005. Per the attached letter from Mr Kipe, he discontinued working in the funeral industry during this period and has since returned. With this request to reapply for Concurrent Internship, he has submitted another application along with the appropriate fee. The Division is recommending approval for Mr. Kipe’s request.

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

**17. Request for Retroactive Continuing Education Credits**

**A. International Order of the Golden Rule**

The Provider is requesting that the Department/Board grant retroactive credits to Florida licenses in attendance of the Annual Conference for the International Order of the Golden Rule, which was held in April 2009, prior to submission or approval of the course.

Pursuant to Rule 69K-17.0042(5), Florida Administrative Code (copy attached), “No retroactive credit shall be granted if a provider improperly offers a course prior to approval, even if the course is subsequently approved.”

The Division is recommending denial of the request.

**MOTION:** Ms. Zippay moved to deny the request. Mr. Jones seconded the motion, which passed unanimously.

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

**A. Recommended for Approval with Conditions**

**(1) Catholic Holy Family Society (Belleville, IL)**

**(a) Preneed Funeral Agreement and Assignment (PNFAA09-FL)**

**(b) Addendum to Insurance Funded Preneed Funeral Agreement & Assignment (ADDENDUM PN09-FL)**

The Division recommends approval subject to Department receipt within 60 days of two print-ready copies.

**MOTION:** Mr. Baxley moved to approve the request subject to Department receipt within 60 days of two print-ready copies. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

**B. Recommended for Denial**

**(1) Jose E. Torres d/b/a Metropolitan Memorial Monuments (Lake Alfred)**

**(a) Monument Establishment Retail Sales Agreement**

The Division recommends approval of the monument establishment retail sales agreement in view of the Board’s approval of the monument establishment retailer application.

**MOTION:** Mr. Jones moved to approve the agreement. Mr. Baxley seconded the motion, which passed unanimously.

**19. Amendment(s) to Cemetery Bylaws**

A. Venice Memorial Gardens (Venice)

The Division recommends approval of the amended bylaws.

Mr. Don Ray stated that Item #60 would give the cemetery exclusive right to sell those vases and urns. It does not appear they are afforded that under the statutes or rules.

Mr. Jones stated that is existing language in the bylaws.

Mr. Ray concurred.

Mr. Shropshire requested that Mr. Ray restate the question.

Mr. Ray stated that s. 497.273(1)(d), states that "The licensing authority shall not approve any bylaw which unreasonably restricts...competition..." Mr. Ray added that there is nothing in 497 that exclusively gives the cemetery the sole right to be the only entity that the consumer can purchase urns and vases from.

Mr. Shropshire stated legally, the Board is looking at a set of bylaws that was previously approved. Now we are looking at proposed changes. The Division does not see any legal problems with the proposed changes.

Mr. Shropshire questioned whether Mr. Ray had previously brought this point up to the Division.

Mr. Ray stated that he had not as it came to his attention in the last 24 hours.

Mr. Shropshire stated it appears the objection is a separate issue that may be a valid point, but there was publication of these bylaws pursuant to statute. The whole idea was to elicit comments on the changes. Mr. Shropshire stated if Mr. Ray would like to file a complaint against the provision in the bylaws, it may be valid but is not before the Board today as the Department has not looked into it or investigated.

Mr. Ray stated there certainly is a way to address that for all cemeteries that currently have bylaws that perhaps are not in compliance with the statutes that have been amended over the last several years. The fact that there was a public hearing advertised and probably no one requested a public hearing certainly does not mean that the statutes still does not exist in terms of the point being made, which is the cemetery would have exclusivity.

The Chair stated they are probably not enforcing it.

Mr. Shropshire stated that the point he was making is if the issue was brought up, the Division might have had time to look into it factually.

Mr. Ray questioned whether this could be revisited in the future if a request is filed to the Division and the Board.

Mr. Shropshire stated that Mr. Ray could file a complaint on any issue.

Ms. Olvey stated that when the law changes any bylaw that does not comply with the law, the law supersedes it. There are a lot of bylaws that have been around since the 30s and the 40s with all kinds of restrictions that the law

now supersedes. It does not mean every time the law changes you have to come amend your bylaws. The law trumps whatever is not legal in the bylaws anymore.

**MOTION:** Mr. Jones moved to approve the bylaws. Ms. Zippay seconded the motion, which passed unanimously.

**20. Chairman's Report (Oral)**

None

**21. Executive Director's Report**

**A. *Boyd-Pancieria Family Funeral Care, Training Agency Status Emergency Petition to Waive Rule 69K-18.004 (see attachment)***

At its June 3, 2009 meeting the Board voted to waive the rule as requested in the emergency petition referenced above

At the time of the June 3 vote the Board had before it the application of Boyd-Pancieria Family Funeral Care, 6400 Hollywood Blvd, Ft. Lauderdale, for training agency status.

The Motion to grant the waiver was not entirely clear as to whether it included approval of the application for training agency status.

This is to advise the Board that, unless the Board directs the Division otherwise at the June 24 meeting, the Division will treat the Board's granting of the waiver as an approval of the application for training agency status at 6400 Hollywood Blvd.

There was no objection from the Board.

**B. *Division Performance Improves (Stats) (see attachment)***

The following stats, reflecting improved performance by the Division, are provided for your information.

All data compares the 5 months Jan-May 2008, to the 5 months Jan-May 2009:

650% increase in number of new cases presented to the Board's Probable Cause panels.

- 4 new cases presented, Jan-May 2008
- 30 cases presented, Jan-May 2009

1900% increase in number of Notices of Noncompliance (NONs) and disciplinary citations issued.

- January 1 – May 31, 2008
- 4 -- aggregate number of NONs (Notices of Noncompliance) and disciplinary Citations issued
- January 1 - May 31, 2009
- 81 -- aggregate number of NONs and Citations issued

In 2008, a TOTAL of 131 NONs and Citations were issued. Thus far in 2009, 107 have been issued. We think we will have reached the entire annual 2008 level by the end of June 2009 ...July at the latest!

**C. Request to add Lisa Lyons Coney as Member of Rules Committee on Handling and Storage of Human Remains (see attachment)**

Ms. Lisa Lyons Coney has been added to the Rules Committee on Handling and Storage of Human Remains at the request of Mr. Jody Brandenburg, Rules Committee Chair, and with the concurrence of Ms. Gail Thomas-Dewitt, Chair, Handling and Storage of Human Remains Committee.

**D. Director's presentation at IFDF Conference, June 11, 2009 (oral report)**

None

**E. Report from Richard Baldwin, Examiner for Menorah Gardens, Feb. 09 – Apr 09 (see attachment)**

The Board members received a copy of the report from Richard Baldwin for the month(s) of February '09 – April '09. Mr. Baldwin continues to assist consumers.

Mr. Helm commended the Division on a job well done with summarizing the materials presented to the Board. The Board agreed.

**22. Office of Attorney General's Report (Oral)**

None

**23. Administrative Report**

4/1/09 - 5/31/09

A.	New Cemetery Applications Received Since Last Meeting	0
	Recommended for Approval	0
	Pending	0
B.	Cemetery Acquisition Applications Received Since Last Meeting	0
	Recommended for Approval	1
	Pending	0
C.	Preneed License Applications Received Since Last Meeting	0
	Active Preneed Licenses	340
	Presented to the Board at this Meeting	0
	Pending	0
D.	Preneed License Branch Applications Received Since Last Meeting	0
	Active Preneed License Branches	336
	Recommended for Approval	0
	Pending	0
E.	Preneed Sales Agent Applications Received Since Last Meeting	37
	Active Sales Agents as of May 31, 2009	2014
	Recommended for Approval	35

	Temporary Licenses Issued; Pending Permanent	130
F.	Monument Establishment Applications Received Since Last Meeting	0
	Active Monument Establishments	103
	Pending	2
G.	Broker of Burial Rights Applications Received Since Last Meeting	0
	Active Brokers of Burial Rights	14
	Pending	0
H.	Exempt Cemetery Reports Received Since Last Meeting	0
	Active Exempt Cemeteries	61
	Pending	0
I.	Preneed Funeral Contract Consumer Protection Trust Fund Balance as of May 31, 2009	\$7,591,386.45
	# Claims Presented at This Board Meeting	18
	\$ Claims Presented at This Board Meeting	\$9,738.24
	Claims Paid as of May 31, 2009	\$72,683.94
J.	New Establishment Applications Received Since Last Meeting	14
	Pending	7
	Completed	7
K.	New Individual Applications Received Since Last Meeting	34
	Pending	19
	Completed	15
L.	Request for Training Facility Applications Received Since Last Meeting	1
	Pending	0
	Completed	1
M.	Request for CE Providers and Courses Received Since Last Meeting	77
	Pending	44
	Completed	33
N.	Initial Inspections Received Since Last Meeting	12
	Pending	2
	Completed	10
O.	Inspections Received Since Last Meeting	191
	Pending	0
	Completed	191
P.	Initial Licenses Issued Since Last Meeting	17

	Renewal Licenses Issued Since Last Meeting	5
	Duplicate Licenses Issued Since Last Meeting	12

**24. Disciplinary Report**

	Issued Since Last Meeting (April 8, 2009)	Issued Since January 1, 2009
Notice of Non-Compliance	35	36
Letters of Guidance	0	122
Citations	23	37

**25. Adjournment**

At 1:45 p.m., the meeting was adjourned.