

Minutes of Meeting
BOARD OF FUNERAL, CEMETERY & CONSUMER SERVICES
Teleconference Meeting
June 3, 2009 - 9:00 A.M. to 11:00 A.M.

1. Call to Order and Roll Call

Mr. Greg Brudnicki, Chair, called the meeting to order at 9:04 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 public meeting of the Board of Funeral, Cemetery, and Consumer Services occurring by Teleconference. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. We in Tallahassee are assembled in a conference room in the Alexander Building. Members of the Board are participating by Teleconference. Members of the Public have been invited to listen in via speakerphone with us here in the Alexander Building in Tallahassee and in fact we have some members of the Public here with us. 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. Participants are requested to keep in mind the necessary protocol that only one person may speak at a time. Persons participating by teleconference are reminded that if you try to speak while someone else is speaking on the phone, most phone systems will prevent the Board members and the Public from hearing you.

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

PRESENT (via phone):

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

ALSO PRESENT:

Doug Shropshire, Executive Director
Allison Dudley, Board Counsel

Mary K Surles, Department Attorney
Jim Gellepis, Department Staff
Karen Duehring, Department Staff
LaTonya Bryant, Department Staff

Mr. Shropshire advised The Chair of a quorum for the business before the Board.

2. Old Business

A. Application(s) for Funeral Establishment

(1) Recommended for Approval

(a) Pax-Villa USA Inc (Homestead)

This application for a Funeral Establishment was submitted on January 14, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on February 11, 2009. The fingerprint cards for all principals were submitted and revealed no criminal history. The establishment passed its inspection on March 9, 2009.

The application was submitted to the Board at the April 2009 meeting, with a Division recommendation for approval. After some discussion, it was asked whether a representative of the Applicant was present, and there was no response. The Board tabled the matter, in order to have to have a representative of the Applicant attend a subsequent Board meeting and respond to Board questions concerning the matter.

The Funeral Director in Charge of the establishment will be Sandra St. Amand (F043179).

The current applicant is a corporation by the name of "Pax-Villa USA, Inc." In the current application, in Section 2 of the "Business Entity-List of Principals", one Fred Saint Amand, Sr. is listed as one of the principals.

On December 27, 1997, Fred Saint Armand, Sr., in Dept of Banking & Finance case number 4536-F-3/96, signed on behalf of a different entity, Pax-Villa Florida, Inc. (hereinafter Pax-Villa Florida) a Stipulation and Consent Agreement to Issuance of a Final Order. In March 1998 the Board approved the Stipulation and a Final Order was issued adopting same. The proceedings in case number 4536-F-3/96 are hereinafter referred to as the "1997-98 case."

The 1997-98 case was based upon Pax-Villa Florida's sale of nine preneed funeral contracts without holding a certificate of authority, its failure to deposit proceeds of the sale of preneed contracts into an approved trust account within 30 days of the end of the calendar month in which the payments were received, its failure to use Board approved preneed contract forms, and its failure to use an alternate preneed contract which complied with Chapter 497.

The Final Order in the 1997-98 case required the following of Pax-Villa Florida: (1) pay a \$5000 fine; (2) cease and desist from the sale or offering to sell any prearranged or preneed funeral contracts; (3) allow each person with whom it had a contract for preneed funeral services or merchandise still in force to choose either to rescind the existing contract and receive a refund of all monies, including interest, or with the purchaser's approval, choose to allow the assignment of such contracts to a licensed certificate of authority holder; and (4) make full accounting of all contracts for preneed funeral services which they had entered into and to certify that the accounting was complete and correct. Division records indicate that said requirements have been satisfied.

In addition, the Stipulation in the 1997-98 case provided as follows:

Respondent [Pax-Villa Florida, Inc.] agrees never to seek licensure from, or hold an ownership interest in any enterprise which is licensed by the Department or the Board for any activity regulated under Chapter 497, Florida Statutes.

In 2005, Pax-Villa USA, Inc. [a different legal entity from the Respondent in the 1997-98 case] applied to the Board for a preneed main license. Fred Saint Armand, Sr. was listed as a principal in the 2005 application. The Board initially denied the application, and reference was made to the 1997-98 case in which there was an agreement never to seek licensure under ch. 497.

However, at the August 25, 2005 meeting, the Board approved a Consent Order, granting Pax Villa USA, Inc. the requested preneed main license, based on the following information as detailed in the Board Minutes:

During the preparation of the hearing Ms. Mendelson (DFS attorney) discovered that originally the Department tried to settle with St Armand and Pax Villa. As a condition of the settlement, their attorney submitted correspondence stating that Mr. St Armand would not be disciplined. They also stated that Pax Villa Florida would be disbanded. The Department accepted the conditions and removed Mr. St Armand from the settlement agreement. He is not a part of it and did not sign and agree for himself. At that time, the Department was well aware of it and agreed to it and understood, as the correspondence states that Mr. St Armand would be dissolving this corporation and starting another one. That stipulation can not be used as a reason to deny this new corporation of which Mr. St Armand is a principal. Therefore, the Department has entered into a consent order for the Board's approval. The order states that Pax Villa USA, Inc. will be awarded a COA and that both sides will pay their own attorney's fees

The application now before the Board is for a funeral establishment to be located at 255 NE 3rd Drive, Homestead, FL. The Division's records indicate the following entities, with "Pax-Villa" in their name, are currently licensed in Florida:

- 1) Funeral establishment license, held by Pax-Villa USA Funeral Home, Inc., located at 1941 West Oakland Park Blvd, Oakland Park (Ft. Lauderdale), Fla., License # F041720. This location also holds a training facility license.
- 2) Preneed main license held by Pax-Villa USA Funeral Home, Inc., 1941 W. Oakland Park Blvd, Ft. Lauderdale, License # F019476.
- 3) Funeral establishment license, held by Pax-Villa U.S.A., Inc., located at 54 NE 54th St., Miami FL. License # F041155,
- 4) Funeral establishment license, held by Pax Villa Orlando Funeral Services LLC, located at 1236 West Kaley Ave, Orlando FL. License # F041799.

Division records indicate that there currently are no entities licensed under the name Pax-Villa Florida, Inc. Division records indicate that the following is the only disciplinary action ever taken against any of the 4 licensees listed above: A Citation was issued on April 8, 2009 to the Pax Villa Orlando Funeral Services LLC licensee, for --

- Operating on an expired license during the 23 days from 12-1-08 to 12-23-08 (license renewed 12-23-08);

- Operating under a name other than as licensed. The sign in front of the Orlando location read “Pax Villa Funeral Home, Inc.,” whereas the licensed name is Pax Villa Orlando Funeral Services LLC, d/b/a Pax Villa Funeral Homes.”

There is currently one open investigation concerning the Pax Villa businesses. The investigation is based on submission by a licensee, who advised that they want to remain anonymous. Because the investigation is still ongoing, information concerning the investigation is confidential and cannot be disclosed. The current open investigation and the Citation referred to above, do not involve the location listed for the current application. Therefore, the Division recommends approval of the current application for licensure. If the Board approves the application at the current location, it will in now way prevent the Department from pursuing administrative action against the appropriate licensee regarding the open investigation, if merited.

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

3. Application(s) for Preneed Sales Agents
A. Informational Item - See Addendum A

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

4. Application(s) for Florida Laws and Rules Examination

A. Recommended for Approval - Addendum B

(1) Funeral Director and Embalmer - by Internship

- (a) Bivens, Aaron T**
- (b) Callava, Elizabeth**
- (c) Chandler, Jr., Willis S**
- (d) Daniels, Jordan**
- (e) Friedlander, Cary P**
- (f) Mims, Joseph E**
- (g) Sahlin, Nathan E**
- (h) Yennard, Brandi G**

(2) Funeral Director and Embalmer- by Endorsement

- (a) Gendron, Melanie R**
- (b) Leeds, Erika F**
- (c) Longino, Noble L**
- (d) Sternad, Daren A**
- (e) Varner, Eric S**

(3) Embalmer-by Endorsement

- (a) Harper, Donna M**

These are clean applications, no criminal or disciplinary record. The Division recommends approval.

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

5. **Application(s) for Internship**
A. *Recommended for Approval – Addendum C*
(1) *Funeral Director and Embalmer*
(a) *Marotta, Jr., Anthony J*

These are clean applications, no criminal or disciplinary record. The Division recommends approval.

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

6. **Continuing Education Course Approval(s)**
A. *Recommended for Approval – Addendum D*
(1) *Aurora Casket Company #129*
(2) *Florida Funeral Directors Association #75*
(3) *Florida Morticians Association #133*
(4) *FuneralReview.com, LLC #122*
(5) *International Order of the Golden Rule #2201*
(6) *National Funeral Directors Association #136*

The Continuing Education Committee and the Division have reviewed these courses and recommends approval.

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

7. **Monument Establishment Retail Sales Agreement(s)**
A. *Southern Monument Co., Inc. (Jacksonville)*

Staff recommends approval of the agreement.

Mr. Jody Brandenburg stated that there is one typo on the right-hand side towards the bottom. "Material" is spelled incorrectly.

Mr. Brandenburg questioned whether this contract meets the Rule that requires the sales contract to indicate that the rules and regulations of the cemetery are met.

Ms. Allison Dudley requested a moment to review the Rule.

Mr. John Rudolph responded that the contract does not appear to meet the requirements of the Rule. There should be a provision in the contract that states the current bylaws, rules and regulations will be met.

The Chair stated that the item would be revisited later in the meeting.

8. **Application(s) for Funeral Establishment**
A. *Recommended for Approval*
(1) *A. L. Hall Funeral Directors Inc d/b/a Tillman Funeral Home (Tallahassee)*

The application for a Funeral establishment was submitted on April 29, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 19, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Vangie Scott (F044038). The establishment passed its inspection on May 20, 2009.

The Division recommends approval.

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

(2) Neptune Management Corp d/b/a Neptune Society (Jacksonville)

The application for a Funeral establishment was submitted on April 10, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on April 29, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Andres Arcelay (F044288). The establishment passed its inspection on May 12, 2009.

The Division recommends approval.

Mr. Powell Helm stated there was nothing checked regarding embalmings.

The Chair stated this was not required as the Applicant answered NO to question 3a.

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

(3) Robert L. Walker, Sr. d/b/a Walker Funeral Home (Alachua)

The application for a Funeral establishment 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 April 28, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Robert Walker (F044174). The establishment passed its inspection on May 12, 2009.

The Division recommends approval.

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

(4) The Faupel Group LLC d/b/a Morgan Funeral Home & Cremation Services (New Port Richey)

The application for a Funeral Establishment was submitted on March 16, 2009. The application was incomplete when submitted. All deficient items were received on April 20, 2009. The Funeral Director in Charge will be George Morgan (F045041). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 11, 2009.

The Division recommends approval.

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

9. Application(s) for Removal Facility

A. Recommended for Approval

(1) *Natasha B. Brooks d/b/a J&N Removal Services (Panama City)*

The application for a Removal Service was submitted on March 20, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 19, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The removal service passed its inspection on May 12, 2009.

The Division recommends approval.

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

10. Application(s) for a Cinerator Facility

A. Recommended for Approval

(1) *DeGusipe Funeral Home and Crematory LLC d/b/a DeGusipe Funeral Home and Crematory (Maitland)*

Pursuant to the request of Wendy Wiener, Applicant's counsel, the application has been withdrawn from the agenda and the Applicant has waived the deemer.

(2) *The Faupel Group LLC d/b/a West Florida Crematory (New Port Richey)*

The application for a Cinerator was submitted on March 16, 2009. The application was incomplete when submitted. All deficient items were received on April 20, 2009. The Funeral Director in Charge will be Samuel Morgan (F045376). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 11, 2009.

The Division recommends approval.

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

11. Trust Agreements

A. *Venice Memorial Gardens, Inc. (Venice)*

(1) *Preconstruction Trust Agreement and Draw Schedule*

In compliance with s. 497.272, F.S. Venice Memorial Gardens, Inc. proposes using the Funeral Services, Inc. (FSI) Master Preconstruction Trust Agreement for the "Peter" mausoleum project consisting of a 120 mausoleum crypt building.

The Division recommends approval.

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

12. Trust Transfers

A. Brisson Funeral Home, Inc. (Sanford)

(1) Chapter 497.417 Preneed Trust from SCI Master Florida Preneed Funeral Trust (SunTrust Bank) to Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BB&T)

Brisson Funeral Home requests transfer of preneed funds held by Regions Bank Chapter 497.417 Preneed trusts to the Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BBT).

Brisson Funeral Home was re-licensed in February 2009 due to a change of ownership from Northstar Funeral Services of Florida LLC.

Staff recommends approval of the above referenced request contingent upon certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Ms. Hubbell moved to approve the request contingent upon certification of the transfers being received by the Department within 60 days. Ms. Zippay seconded the motion, which passed unanimously.

(2) Chapter 639 Preneed Trust from Regions Bank Chapter 639 Preneed trusts to the Funeral Services, Inc. (FSI) Master Chapter 639 Trust Agreement (BB&T)

Brisson Funeral Home requests transfer of preneed funds held by Regions Bank Chapter 639 Preneed trusts to the Funeral Services, Inc. (FSI) Master Chapter 639 Trust Agreement (BBT).

Brisson Funeral Home was re-licensed in February 2009 due to a change of ownership from Northstar Funeral Services of Florida LLC.

Staff recommends approval of the above referenced request contingent upon certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Ms. Hubbell moved to approve the request contingent upon certification of the transfers being received by the Department within 60 days. Ms. Zippay seconded the motion, which passed unanimously.

13. Relocation of Records Request

A. Riverside Memorial Park (Tequesta)

SCI Funeral Services of Florida, Inc. d/b/a Riverside Memorial Park, requests Board approval to relocate cemetery records which are currently house in a trailer on the cemetery property to Aycock Funeral Home (an SCI licensee) in Jupiter, FL. The cemetery needs additional space to accommodate sales personnel. Pursuant to Rule 69K-6.005, records will be available for review at the licensed facility or an alternative site of the cemetery company if approved by the Board.

The Division recommends approval.

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

Ms. Dudley questioned whether Mr. Brandenburg's affiliation would impair his ability to remain fair and impartial in making a determination.

Mr. Brandenburg answered no.

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

14. Executive Director's Report

A. Rule 69K-18.004 Petition for Emergency Waiver, Filed by: Boyd-Pancieria Family Funeral Care, Inc. (Applicant) (see attachment)

The attached Petition for Emergency Waiver of Rule 69K-18.004 was filed by Boyd-Pancieria Family Funeral Care, Inc.

The petition was received by the Division office on May 18, 2009. Pursuant to applicable law, the Board is required to rule on the Petition within 30 days of receipt. Therefore, the Division has had to place the Petition on the June 3, 2009 agenda.

"Boyd's Funeral Home," at 6400 Hollywood Blvd., Hollywood, FL, was until approximately May 2009, licensed as a funeral establishment under license F041871.

The same Boyd's Funeral Home was also licensed as an Apprentice/Intern Training Agency, under license F041871.

Ownership of Boyd's Funeral Home changed, and an application for a new funeral establishment license for the 6400 Hollywood Blvd location was filed and approved by this Board at its meeting in April 2009. The new FE license number is F054856 and the new licensee "Boyd-Pancieria Family Funeral Care, Inc."

The Apprentice/Intern Training Agency license (F041871) now relates to a licensee that, legally speaking, no longer exists. Accordingly, the Division treats the prior training agency license, held by that prior licensee, as invalid. Therefore a new application for training agency license must be filed.

Rule 69K-18.004 requires that an applicant for a training agency license have performed 40 embalmings and funeral services.

As of when this memo is drafted, no application for training agency license has been filed, although the Petition indicates that Petitioner intends to file such an application.

The Petitioner indicates that the professional staff at the 6400 Hollywood location is the same now, under the new license, as it was under the prior license.

It is my understanding that in effect what Petitioner wants, is that the embalmings and funeral services previously done at the 6400 Hollywood Blvd location under the prior funeral establishment license, be credited to the new funeral establishment licensee at the same location and that the new licensee not be required to wait until the new licensee has accomplished 40 embalmings and 40 funeral services.

The Division published the petition on the Division website and emailed the petition to the Division's Industry email contact list on May 21, 2009. The only comment the Division had received in response, as of Noon May 26, 2009, was from Attorney John Rudolph.

The Division recommends that (a) the Board finds that this is not an emergency but (b) the Board approve the petition.

Mr. John Rudolph expressed concern over the fact that two funeral homes are merging together. There has been nothing said that the way each of those funeral homes handles funerals is the same or the way that each of those funeral homes conducts embalmings is the same. Friends in the Industry state there may be a very big difference between the way one funeral home conducts a funeral and another one does and the way one funeral home conducts an embalming and the way another one does. If the Board grants this waiver, it will create a precedent that can be argued in other cases where funeral homes merge or where a company acquires a funeral home and that company has a number of funerals. The Board would then have to grant them a training facility license to continue in the training of their people.

Mr. Rudolph added that he is not representing anyone, but that is his position on the issue.

Ms. Wendy Wiener stated that the Rule for obtaining a training agency registration does not contemplate a particular manner in which funerals or embalmings are conducted. The potential difference in the way that the funerals and embalmings are conducted is immaterial to compliance with the Rule. What you have here is not something that would establish a negative precedent. In fact, the Rule and Statute regarding waivers and variances are specifically set up not to establish precedent. The Board is to look at each case on a case by case basis. In this particular case, you have two registered training agencies merging together and there is an affidavit on file that identifies that the location which will now be designated as the training agency for Boyd-Panciera will not have any differences in staff, training or mechanism. The Board would not be creating in any way a negative precedent. In fact there is absolutely no difference in what is happening at this facility from the moment before the merger until the moment after the merger. This is not a case where you have one company with a training agency registration that is being acquired by another without a training agency registration such that you might be letting someone come in "under the wire," if you will. In this particular case the facility has well more than the experience necessary to continue as a training agency for the two. In this case, the mechanism for conducting funerals and embalmings is something contemplated by the licensure Statute. The Statute contemplates a number and in this case, the Applicant certainly meets the number of required services.

Mr. Rudolph stated that the Rule is for a funeral establishment. My argument would be the requirement that there be so many embalmings and funerals conducted, by a funeral establishment, before it is allowed to have a training facility is to show consistency of practice. Ms. Wiener has stated that they use the same methods of doing funerals and embalmings at Boyd and Panciera.

The Chair questioned the Division's recommendation.

Mr. Shropshire stated that the Division recommends that (a) the Board finds that this is not an emergency but (b) the Board approve the waiver of the Rule in this particular case. The Division primarily relies on the affidavit, which has been provided by Mr. George David Lowery, which establishes that it is using exactly the same location as before the merger and the same staff will be training the interns.

Ms. Dudley requested that the Board state the reason for denying or approving the petition.

Mr. Baxley questioned the number of interns each agency currently has.

Ms. Wiener stated that each agency has one, so at this location there will be two. The requirement of the Rule is that the location has 40 per year, per intern. The material provided show 269 embalmings and 349 funerals at the location in the past calendar year so they will meet the requirements for 2 interns.

MOTION: Ms. Huggins moved to approve the petition and accept that this is not an emergency as it falls well within the Rule and also this protects the intern so that they do not fall into a problem with an unlicensed training facility. Ms. Hubbell seconded the motion, which passed with 1 dissenting vote.

B. Rule 69K-100.026 (Repeal) Charge for Installation and Maintenance of marker or Monument (see attachment)

The Division recommends approval of action to repeal Rule 69K-100.026, because there appears to be no statutory authority for the Rule.

The Rule authorizes cemetery companies to establish a fee for the installation and maintenance of a marker or monument.

MOTION: Mr. Brandenburg moved to approve the request to repeal the Rule. Mr. Jones seconded the motion, which passed unanimously.

*****ITEM PREVIOUSLY DISCUSSED*****

A. Southern Monument Co., Inc. (Jacksonville)

Ms. Dudley stated that the Rule states that the agreement shall disclose the latest date that the memorial or monument will be installed and that the memorial or marker meets all the cemetery's rules and regulations as of the date of the contract. Right now the agreement states "subject to the rules and regulations of the cemetery," which is not exact with regard to the language. Ms. Dudley recommended asking that the language be changed to read that they meet all the cemetery's rules and regulations in compliance with the Rule.

MOTION: Ms. Zippay moved to approve the agreement subject to amending the language to indicate that all the cemetery's rules and regulations are met in compliance with the Rule. Mr. Baxley seconded the motion, which passed unanimously.

15. Adjournment

The meeting was adjourned at 9:31 a.m.