

BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
TELECONFERENCE MEETING
SEPTEMBER 2, 2009
9:00 AM TO 11:00 AM

1. Call to Order and Roll Call

Mr. Greg Brudnicki, Chair, called the meeting to order at 9:01 am.

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

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. Notice of this meeting has been duly published in the FAW. An agenda for this meeting have been made available to interested persons. 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, Florida and in fact we have some members of the Public here with us. My Assistant, Ms LaTonya Bryant-Parker, will take minutes of this meeting.

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. All persons participating by phone, other than the Chair and Board members, while speaking are asked to place their phones on mute at all times while listening. We ask this to enhance the audio quality of the Teleconference. If any Member is disconnected they can call back to the same number called initially. 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, other Board members and the Public cannot hear you.

At this time I will take the roll and Board members will please respond clearly with "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

ALSO PRESENT:

Tammy Teston, Deputy CFO
Doug Shropshire, Executive Director
Allison Dudley, Board Counsel
Mary K Surlles, Department Attorney (via telephone)
Jim Gellepis, Department Staff
LaTonya Bryant-Parker, Department Staff

ABSENT:

Mr. Shropshire added that Ms. Catherine Zippay emailed yesterday advising of a hearing scheduled for this morning and should call her if there were a quorum problem, but there is a quorum without her presence for the business before the Board.

2. Disciplinary Proceedings

A. Perl, Inc. d/b/a LaPerle Memorials (F037703), Case No. 101688-09-FC

Perl, Inc., D/B/A LaPerle Memorials, at all times relevant, was a licensed monument establishment doing business in Inverness, Florida. The record evidence substantiates that Perl, Inc. failed to deliver a contracted for monument and failed to return the \$1000 deposit after receiving written cancellation of the contract.

In mitigation, the original owner of LaPerle Memorials, David LaPerle, has passed away and his son now operates the licensed business. The licensee and the complainant have reached a private settlement whereby LaPerle has paid the complainant \$2500.00 in compensation. In return, the complainant, Mr. Morell, sent a letter to the department requesting that no further action be taken against the Respondent.

This is a violation of Sections 497.152(13) and 497.553(5), 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 approval of the Settlement Stipulation for Consent Order assessing Respondent a \$500 fine and undergo a six month period of probation.

Mr. Powell Helm stated that David did pass away during this time period. This is also the time period where all the contracts were coming back and forth from the State and there was a lot of confusion with that. Mr. Helm added that he does not disagree with fine but does disagree with the 6-month probation as Travis is trying to run this business and it seems a little unfair to burden him with this even though he did agree to it.

Ms. Allison Dudley stated any time the Settlement Agreement is changed, even if the Board votes to lower it, a counteroffer would have to be submitted to see if the Respondent accepts it as the Settlement Agreement is what they signed for. Ms. Dudley questioned whether there was a representative for Perl, Inc. on the line.

There was a negative response.

Ms. Dudley added since there is not a representative on the line to verbally accept then the Board would have to do a formal counteroffer.

Mr. Helm stated Travis is probably not on the line as he is trying to get his father's estate in order.

The Chair questioned how prohibited the probation is; is there a lot of documentation and paperwork to keep up or is it just a probationary period.

Mr. Shropshire stated it is a simple probationary period.

Mr. Helm questioned the outcome if Travis does anything wrong during that six month time period.

Mr. Shropshire stated that any disciplinary action would consider the fact that he was on probation. The probation does not have any reporting requirements.

Mr. Helm questioned whether it would continue to be on Travis' record.

Mr. Shropshire responded yes.

Mr. Helm stated it involved his father and not him, but the probation would be on him.

Mr. Shropshire stated the probation is on Perl, Inc., the business entity.

Mr. Justin Baxley stated that he understands Mr. Helm's perspective, but it was agreed to.

MOTION: Mr. Baxley moved to approve the Settlement Stipulation for Consent Order assessing Respondent a \$500 fine and undergo a six month period of probation. Ms. Gail Thomas-Dewitt seconded the motion, which passed with one dissenting vote.

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. Continuing Education Course Approval(s)
A. Recommended for Approval – Addendum B
(1) Aurora Casket Company #129
(2) Florida Morticians Association #133
(3) FuneralCE #43
(4) FuneralReview.com, LLC #122
(5) International Cemetery and Funeral Association #74
(6) Jewish Funeral Directors of America, Inc. #66
(7) National Funeral Directors Association #136
(8) Pinellas County Funeral Home Association #58
(9) SCI Management-Dignity University #99

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

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

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

A. Recommended for Approval - See Addendum C

- (1) *Funeral Director and Embalmer – By Endorsement*
 - (a) *Hild, Kirk C*
 - (b) *Killillay, Dorothy J*
 - (c) *White, Tara L*
- (2) *Funeral Director – By Endorsement*
 - (a) *Gutterman, Lawrence*
- (3) *Direct Disposer*
 - (a) *Blackmon, Kevin*
 - (b) *Calderin, Marcus*
 - (c) *Clarkson, Carol L*
 - (d) *Gould, William T*
 - (e) *Kilgore, Jacob M*

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

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

6. Application(s) for Internship

A. Recommended for Approval – See Addendum D

- (1) *Funeral Director and Embalmer*
 - (a) *Buxton, Philip M*
 - (b) *Johnson, Howard F*
 - (c) *McDonald, Kaitlynn M*
 - (d) *Minotti, Michelle*
 - (e) *Phillips, Jonathan M*
 - (f) *Sanchez, Heather L*
 - (g) *Schiro, Carly*
- (2) *Funeral Director*
 - (a) *Fischman, Robert J*

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

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

7. Application(s) for Embalmer Apprenticeship

A. Recommended for Approval – See Addendum E

- (1) *Earnhardt Sr., Joseph C*
- (2) *Feacher, Roderic C*
- (3) *Gray, Russell D*

- (4) *Hall, Charles M*
- (5) *Hookway, Kimberly C*

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

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

- 8. **Application(s) for Training Agency Designation**
 - A. *Recommended for Approval – See Addendum F*
 - (1) *Funeral Directing and Embalming*
 - (a) *Banfield Funeral Home (F044891)*
 - (b) *Brackney Funeral Service (F041287)*
 - (c) *Jones-Gallagher Funeral Home LLC d/b/a Jones Funeral Home (F047902)*
 - (2) *Funeral Directing*
 - (a) *Rubin Memorial Chapel (F040771)*

These are clean application(s). The Division recommends approval.

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

- 9. **Application(s) for Monument Establishment Sales Agent**
 - A. *Informational Item – See Addendum G*

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

- 10. **Application(s) for Centralized Embalming Facility-Recommended for Approval**
 - A. *William J. Rafferty d/b/a Fort Myers Mortuary Service (Fort Myers)*

The application for a Centralized Embalming Facility was submitted on May 26, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on July 2, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be William Rafferty (F042737). The facility passed its inspection on July 15, 2009.

William Rafferty previously resided in Pennsylvania. In February 2008 Pennsylvania regulatory authorities, pursuant to a consent agreement with William Rafferty, fined William Rafferty a total of \$1,000 for failing to timely renew the license of a Pennsylvania funeral establishment he was associated with. The funeral establishment operated on an expired license from February 1, 2002 to December 18, 2003. Mr. Rafferty states that he was a 20% minority owner in the firm that operated the funeral establishment, and that he was operating under the assumption that the firm's administrator would take care of renewing the license. On balance, the FCCS Division does not believe that the Pennsylvania disciplinary action indicates a character flaw or dishonesty sufficient to warrant denial of this application. The Division recommends approval.

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

11. Application(s) for a Cinerator Facility-Recommended for Approval

A. Broadus-Raines Family Funeral Home Inc d/b/a Clay Crematory (Middleburg)

The application for a Cinerator Facility was submitted on March 9, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on March 30, 2009; however the facility was not ready for inspection. The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed inspection on August 6, 2009. The Division recommends approval.

Mr. Brandenburg stated that page 4 of the application, question #4 (Have all required DEP permits been obtained), was answered NO. Traditionally, the Board has not licensed any cinerator facility unless they have the proper permits from DEP.

The Chair questioned whether the Division could check to see if the permits have been obtained.

Mr. Shropshire stated that DEP will not issue the permit until the Department issues the license and the facility begins operating. DEP will issue a letter, but not the permit. The Board could set this item aside while the Division verifies whether the temporary letter has been issued.

Mr. David Broadus stated that the temporary permit was submitted to Jim Deason about a week or so ago.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to verification of Department receipt of temporary permit from DEP. Mr. Jones seconded the motion, which passed unanimously.

B. DeGusipe Funeral Home & Crematory LLC d/b/a DeGusipe Funeral & Crematory (Maitland)

This application for a Cinerator Facility was submitted on December 10, 2008. The applicant's retort was installed on May 21, 2009 and the facility passed inspection by the Division on June 1, 2009. The cinerator application was placed on the June 3, 2009 Board agenda, but was pulled off that agenda when it was noted that a certificate of occupancy had not been issued by the local building department for the building the cinerator was located in. The certificate of occupancy was issued on Aug. 21, 2009.

Applicant was previously issued a funeral establishment license, and in that process the Board directed that the applicant delete the phrase "& Crematory" from the funeral establishment name, until applicant had a cinerator license. Applicant did in fact delete that phrase from the funeral establishment name; but will add it back if this cinerator application is approved. The Division recommends approval.

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

12. Application(s) for a Direct Disposal Establishment-Recommended for Approval
A. Cremation Society of America Inc (Hollywood)

The application for a Direct Disposal Establishment was submitted on July 6, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on July 27, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed inspection on August 14, 2009. The Division recommends approval.

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

13. Application(s) for Funeral Establishment
A. Countryside Funeral Home LLC (Anthony)

The application for a Funeral Establishment was submitted on February 13, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 11, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be James P. Byrne (F046579). The establishment passed the inspection on August 13, 2009. The Division is recommending approval for this establishment.

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

B. New Horizon Funeral Chapel & Cremation Inc (St. Cloud)

The application for a Funeral Establishment was submitted on July 6, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on July 29, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Michael Morales (F042205). The establishment passed the inspection on August 13, 2009. The Division recommends approval for the establishment.

Mr. Helm questioned the distance between St Cloud and Melbourne.

Mr. Michael Morales stated there is approximately a 46 mile difference.

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

C. Reginald R. McKinney d/b/a McKinney Family Funeral Home (Jacksonville)

The application for a Funeral Establishment was submitted on August 3, 2009. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The Funeral Director in Charge will be Reginald McKinney (F043411). The fingerprint cards for all principals were submitted and returned without criminal history. The application is

recommended for approval with the condition of passing the inspection. The establishment is scheduled for inspection on August 25, 2009.

MOTION: Mr. Brandenburg moved to approve the application pending a satisfactory inspection report. Mr. Helm seconded the motion, which passed unanimously.

14. Application(s) for a Removal Service

A. Family First Mortuary Services Inc (Brandon)

The application for a Removal Service was submitted on July 14, 2009. The application was complete when submitted and a deficiency letter was not sent to the applicant. The fingerprint cards for all principals were submitted and returned without criminal history. The removal service passed its inspection on August 5, 2009. The removal service is recommended for approval.

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

B. MBV Transport Inc (Sarasota)

The application for a Removal Service was submitted on June 12, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on July 21, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The removal service passed its inspection on August 13, 2009. The removal service is recommended for approval.

Mr. Helm questioned whether the President of the company is only fifteen years old.

Mr. Shropshire stated that the Division had not noted that and I do not know that the age is a legal requirement.

The Chair questioned whether the Applicant or a representative was present on the line. There was a negative response.

The Chair requested that the Division make a phone call to verify the birth date.

Mr. Shropshire stated that Mr. Gellepis would have Jasmin to make a phone call to verify this.

The item was held in abeyance until later in the meeting.

15. Contract(s) or Other Related Form(s)

A. Glenn M McCall d/b/a Seminole Monument Co. (Sanford)

(1) Monument Establishment Sales Agreement

Staff recommends approval of the agreement.

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

B. *SCI Funeral Services of Florida, Inc. (Winter Park, FL)*
(1) *Guaranteed Insurance Funded Prearranged Funeral Agreement*

Staff recommends approval subject to the following conditions: Department receipt within 60 days of two full-sized print-ready copies.

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

16. **Trust Agreement(s)**

A. *Comerica Bank & Trust, NA (Weston, FL)*
(1) *Master Care & Maintenance Trust Agreement*

Staff recommends approval of the agreement.

The Chair questioned whether this agreement would have to be approved again if someone decides to move to this bank.

Mr. Shropshire stated the agreement would not have to be approved again as long as they use this one literally without change.

Ms. Wendy Wiener stated that the cover sheet indicates a Preneed Trust Agreement, but it appears to be a Care and Maintenance Trust Agreement, if you read the recitals and the purpose of the trust.

Mr. Bill Williams stated that the agenda states it is a Care and Maintenance Trust Agreement.

The Chair stated that cemetery is spelled wrong at the top of page 1.

MOTION: Mr. Brandenburg moved to approve the agreement subject to the typo being corrected. Ms. Huggins seconded the motion, which passed unanimously.

17. **Trust Transfer(s)**

A. *Resthaven Gardens, Inc., Inc. (Pensacola)*
(1) *Old Chapter 608 Care & Maintenance Trust from Synovus Trust Company, N.A. to Funeral Services, Inc. (FSI) Master Care & Maintenance Trust Agreement (BB&T)*

Resthaven Gardens, Inc. requests transfer of care and maintenance funds held by Synovus Trust Company, N.A to the Funeral Services, Inc. (FSI) Master Care & Maintenance Trust Agreement (BB&T).

Staff recommends approval of the above referenced request subject to the following condition: certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Mr. Helm moved to approve the agreement subject to certification of the transfers being received by the Department within 60 days of the Board meeting date. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. *Ruckel Properties, Inc. d/b/a Heritage Gardens Funeral Home & Cemetery (Niceville)*
(1) *Chapter 497 Preneed Cemetery Trust from Synovus Trust Company, N.A. to Funeral Services, Inc. (FSI) 1993 Master Agreement (BB&T).*

Ruckel Properties, Inc., d/b/a Heritage Gardens Funeral Home & Cemetery, requests transfer of preneed funds held by Synovus Trust Company, N.A to the Funeral Services, Inc. (FSI) Master Trust Agreement (BB&T).

Staff recommends approval of the above referenced request subject to the following condition: certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Ms. Huggins moved to approve the agreement subject to certification of the transfers being received by the Department within 60 days of the Board meeting date. Mr. Brandenburg seconded the motion, which passed unanimously.

(2) *Chapter 497 Care & Maintenance Trust from Synovus Trust Company, N.A. to Funeral Services, Inc. (FSI) Master Care & Maintenance Trust Agreement (BB&T)*

Ruckel Properties, Inc., d/b/a Heritage Gardens Funeral Home & Cemetery, requests transfer of care and maintenance funds held by Synovus Trust Company, N.A to the Funeral Services, Inc. (FSI) Master Care & Maintenance Trust Agreement (BB&T).

Staff recommends approval of the above referenced request subject to the following condition: certification of the transfer being received by the Department within 60 days of the Board meeting date.

MOTION: Ms. Huggins moved to approve the agreement subject to certification of the transfers being received by the Department within 60 days of the Board meeting date. Mr. Brandenburg seconded the motion, which passed unanimously.

*****ITEM HELD IN ABEYANCE*****

B. *MBV Transport Inc (Sarasota)*

Mr. Gellepis stated that the fingerprint cards result indicate that the age is correct.

Mr. Shropshire stated that the age stated on the application is correct. Mr. Shropshire added that Jasmin states she spoke with the mother who confirms she named her son as President and his age is correct. He is sixteen. There is nothing in ch. 497 that would prevent that, so there appears to be no statutory grounds to take exception to the application because of that point.

Mr. Baxley questioned whether the mother indicated her son would be operationally involved in the business.

Mr. Shropshire stated it does appear that question was asked by Jasmin.

Mr. Jones questioned whether disciplinary action could be taken against a sixteen year old if needed.

Mr. Shropshire stated he would not be licensed, so he would not be the target of a disciplinary action. It would be the licensee, MBV Transport, Inc. He could not get a license as ch. 497 does require an applicant be 18 to get a license.

The Chair questioned whether the President could be part of this removal service at that age legally.

Mr. Shropshire stated he is not aware of any prohibition on this. In view of the Board's unease with this, Mr. Shropshire suggested tabling this to allow the Division to go back to the Applicant to obtain more facts and a better understanding of this young man's role will be in the firm.

Mr. Brandenburg questioned the deemer date.

Mr. Shropshire stated the deemer date is November 4, 2009.

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

18. Director's Report

A. Materials re: Sunset Review of Public Records Exemptions in Ch. 497

Mr. Shropshire included for the Board's information copies of the Legislative Sunset Review of Public Records Exemptions in Ch. 497, the inquiry received from the Senate staff and our response to the Senate staff. The Division recommended that the exemptions be continued except for an enlargement in the area concerning photographs of bodies and body parts.

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

A. Discussion regarding correction of language in Rule 69K-24.040 to make the language consistent with the Board's previous vote.

Ms. Dudley stated that on January 7, 2009, this Board voted to increase the inspection fee for Centralized Embalming Facilities from \$100 to \$225 and authorized rulemaking to accomplish this increase.

Unfortunately, during the rulemaking process, my office mistakenly submitted the rule for adoption with an incorrect fee of \$255. This mistake was not noticed until after the rule became effective. Since the rule is effective with a fee of \$255, we must go through the rulemaking process to lower the fee to the correct amount which is \$225.

At this point, the Board must address whether this change (lowering the fee), would have an impact on small business. Chapter 120 now requires Boards to approve a Statement of Estimated Regulatory Costs when a rule will have an effect on small business. This is not necessary when a Board determines that a change to a rule will have no effect on small business.

I do not believe this change would have an impact on small business, because the Division has not been collecting the higher amount for the inspection fee. This change is merely to make the adopted rule consistent with this Board's earlier action.

MOTION: Ms. Thomas-Dewitt moved to reduce the inspection fee from \$255 to \$225 which will have no impact on small business. Ms. Hubbell seconded the motion, which passed unanimously.

20. Adjournment

The meeting was adjourned at 9:30a.