

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
October 7, 2010 - 10:00 A.M. to 5:00 P.M.
Hawthorn Suites Lake Buena Vista
8303 Palm Parkway
Orlando, FL 32836

THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order and Roll Call

Mr. Jody Brandenburg, The Chair, called the meeting to order at 10:00 am and requested that Mr. Doug Shropshire make the usual prefatory comments for the record.

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is October 7, 2010; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery, and Consumer Services convened in Orlando, 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-Parker, will be taking minutes of the meeting and recording it in addition to that.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. Participants are respectfully requested to keep in mind the necessary protocol that only one person may speak at a time.

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

PRESENT:

Joseph "Jody" Brandenburg, Chairman
Gail Thomas-DeWitt, Vice-Chairman
Jean Anderson
Lewis "Lew" Hall
Powell Helm
Tracy Huggins
Ken Jones
Col. Don Stiegman
Virginia "Ginny" Taylor

ALSO PRESENT:

Doug Shropshire, Executive Director
Allison Dudley, Board Counsel
Anthony Miller, Assistant Director
Linje Rivers, Department Counsel
Mary K Surles, Department Counsel
LaTonya Bryant-Parker, Department Staff
Jasmin Richardson, Department Staff
Tina Williams, Department Staff

ABSENT

Nancy Hubbell

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

The Chair requested that those in attendance briefly introduce themselves.

2. Action on the Minutes

A. September 2, 2010 – Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on September 2, 2010.

MOTION: Mr. Ken Jones moved to adopt the minutes of the meeting. Mr. Powell Helm seconded the motion, which passed unanimously.

3. Old Business

A. Application for Embalmer Apprentice

(1) Recommended for Approval with Conditions

(a) Moore, Jamarie P

An application for an Embalmer Apprentice license was submitted on June 14, 2010. The application was complete when.

At the time the application was submitted, a letter from Kayla Alexander (F043924) was submitted listing several concerns regarding this Applicant. Ms. Alexander believed that per Florida Statute 497.152(4)(d) it was her responsibility to report any violations she may see in reference to the Applicant.

Mr. Moore was given an opportunity to respond and has submitted character letters. Mr. Postell has also responded in kind to the concerns that Ms. Alexander has.

The Division feels that some of the concerns are valid are recommending approval of the license with twelve full calendar months probation.

This application was presented to the Board on August 5, 2010, however the Board requested to table the application until the October 7, 2010 Board meeting to give Jamarie Moore and/or Henry Postell (supervisor) an opportunity to respond in person to allegations.

The Division recommends approval subject to the terms & conditions of the attached stipulation for licensure.

The Chair requested that the Applicant state his name for the record.

The Applicant answered, "Jamarie Purcell Moore."

Mr. Shropshire requested that Mr. Moore raise his right hand. "Do you solemnly swear that you will testify in truth in this matter, the whole truth and nothing but the truth so help you God?"

Mr. Moore answered, "I do."

The Chair questioned whether Mr. Moore would like to advise the Board of his working relationship at the funeral home and his expectations.

Mr. Moore stated that he started working at Postell's Mortuary at the age of 12. Rev Postell became his Pastor and offered Mr. Moore the opportunity to come on staff as a male attendant at the funeral, at which time Mr. Moore became intrigued with the funeral industry and decided to attend Mortuary School. Mr. Moore is currently enrolled in Mortuary School in Jacksonville, FL pursuing to become a licensed funeral director and embalmer.

The Chair questioned whether Mr. Moore ever held himself out to be a funeral director or embalmer.

Mr. Moore answered no.

The Chair questioned whether Mr. Moore has done things that would lead people to believe he was a funeral director or embalmer.

Mr. Moore answered no.

The Chair questioned whether Mr. Postell was present.

Mr. Moore answered no.

Mr. Jones questioned whether Mr. Moore forwarded the funeral home phone to his cell phone as alleged in the complaint.

Mr. Moore stated that he did not. Mr. Moore added that what he and Ms. Alexander have is very personal. Ms. Alexander has called Law Enforcement on Mr. Moore twice since he has been employed at the funeral home, unrelated to the business; it is all personal issues. Ms. Alexander tries to do whatever to block Mr. Moore from becoming successful in this profession.

Ms. Gail Thomas-Dewitt expressed concern over the fact that Mr. Moore's supervisor has failed a second time to appear.

Ms. Ginny Taylor questioned Mr. Postell's absence.

Mr. Moore stated that he had just spoken with Mr. Postell's wife who advised that Mr. Postell is on his way and should have been present by now.

The Chair questioned whether Ms. Alexander had anything to add to the testimony given last time.

Mr. Shropshire requested that Ms. Alexander raise her right hand. "Do you solemnly swear that you will testify in truth in this matter, the whole truth and nothing but the truth so help you God?"

Ms. Kayla K Alexander answered, "I do."

The Chair stated that he would prefer to defer this matter until Mr. Postell arrives.

Col. Don Stiegman questioned why the item is being deferred.

The Chair stated he would like for Mr. Postell to be present to hear Ms. Alexander's remarks.

The Chair thanked Mr. Postell for taking the time to attend the meeting.

Mr. Shropshire requested that Mr. Postell raise his right hand. "Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Henry Postell answered, "I do."

The Chair stated at one of the last meetings, there were some questions by the Board members, who wanted to speak directly with Mr. Postell. Therefore, the Board requested that Mr. Postell appear today. The Chair questioned whether Mr. Postell understood what the proceedings were for.

Mr. Postell stated that he did.

Mr. Helm questioned whether Mr. Postell has knowledge of Mr. Moore forwarding the funeral home's telephone to his cell phone.

Mr. Postell stated that Mr. Moore forwarded the phone to his house not his cell phone. Mr. Moore's cell phone was connected to the funeral home line.

The Chair questioned whether Mr. Moore has ever held himself out to be a funeral director or an embalmer.

Mr. Postell stated that he had no knowledge of Mr. Moore doing so.

Mr. Jones questioned Mr. Postell's take on the situation regarding Mr. Moore and Ms. Alexander.

Mr. Postell stated that this matter should not even be a Board matter. Mr. Moore is a young man that has been with the establishment, he is Mr. Postell's godson and he has taken him under his wings. Mr. Moore has graduated from high school and is currently a student at Jacksonville College. Mr. Moore and Mr. Postell have had some run-ins because of his grades in high school, but Mr. Moore has proven himself to be a young man that is capable of being an apprentice upon completion of Mortuary School. Mr. Moore does a good job at the funeral home and in the community. Mr. Postell is Mr. Moore's pastor and mentor. Mr. Postell feels that Mr. Moore is capable of being a fine young man in the funeral profession.

The Chair questioned whether Ms. Alexander is employed by Mr. Postell.

Mr. Postell stated that Ms. Alexander is no longer an employee of Postell's Mortuary.

Ms. Anderson questioned Mr. Moore's purpose in forwarding the funeral home's phone to his home phone. Ms. Anderson questioned whether Mr. Moore was on-call that weekend.

Mr. Postell stated that Mr. Moore was not on-call. Mr. Moore put his phone into the funeral home's phone and therefore when the phones were forwarded to the answering service, the calls went into his phone.

Mr. Jones questioned whether Mr. Moore took any calls.

Mr. Postell answered that he did not. Mr. Postell added that when the phone rang, the call went into Mr. Moore's phone so Mr. Postell called Mr. Moore's mother to find out why the calls were going into Mr. Moore's phone during the Christmas holiday. Mr. Moore's mother did not know that Mr. Moore's phone was hooked up to the funeral home line. Mr. Postell had the answering service to override that call because the phone was at the answering service and should not have been into his phone.

The Chair stated that is not a violation.

Ms. Thomas-Dewitt questioned who would be Mr. Moore's supervisor should the Board approve him as an apprentice.

Mr. Postell stated that he would be Mr. Moore's supervisor.

Ms. Thomas-Dewitt stated that an apprentice basically learns how to embalm. Ms. Thomas-Dewitt questioned who would teach Mr. Moore since Mr. Postell is not an active embalmer at the establishment.

Mr. Postell stated that was not necessarily true. Mr. Postell added that he does participate in embalming at the establishment. There are other embalmers there as well, but Mr. Postell will be Mr. Moore's supervisor as he is the Funeral Director in Charge. Right now Mr. Moore is in school so his major role is to complete his educational requirements at Jacksonville Community College.

Ms. Thomas-Dewitt stated that the Board is not a court of opinion but is trying to determine whether Mr. Moore is worthy of being an apprentice. Ms. Thomas-Dewitt stated her only concern is that a moment ago Mr. Moore stated that he did not do something and now Mr. Postell is stating that he did. Trustworthiness is something to be considered.

Mr. Postell feels that Mr. Moore would do an excellent job as he would be under his supervision. Mr. Postell stated that he would ensure that Mr. Moore is doing what is right.

Ms. Dudley stated that there is a lot of he said she said types of complaints. Should the Board deny the application, Ms. Dudley would potentially have to go to DOAH and actually prove that Ms. Alexander's allegations are valid and that is going to be a tough road when there are 2 witnesses with conflicting stories. Ms. Dudley requested that the Board keep this in mind. There is a probationary term on this recommendation from the Division.

The Chair questioned whether Ms. Alexander has anything new to offer to the Board.

Ms. Alexander stated that Mr. Moore did forward the phone and perjured himself today. Ms. Alexander stated that whatever decisions the Board makes, she is in total agreement with. All of this came about because Ms. Alexander questioned how Mr. Postell would supervise Mr. Moore when he does not embalm. Mr. Postell stated that he appointed Mr. Henry Stallworth, who would be the direct supervisor. Ms. Alexander stated that everything she has said is the truth. Mr. Moore lacks integrity as he perjured himself before the Board today.

Col. Don Stiegman stated that Mr. Moore really did not lie about the phone situation. Mr. Moore was asked whether he forwarded the phones and he answered that he did not. Mr. Moore's phone was into the establishment, which was forward by the answering service. Mr. Moore answered what he felt was truthful. Furthermore, Col. Stiegman does not feel this is an issue.

MOTION: Ms. Tracy Huggins moved to approve the application subject to the terms & conditions of the stipulation for licensure which calls for a 12 month probation. Col. Stiegman seconded the motion, which passed unanimously.

B. *Preneed License Renewal*
(1) *Recommended for Approval with Conditions*
(a) *Cemetery Professionals, LLC (Atlantic Beach)*

This license renewal application for a preneed main was considered by the Board at the August 5, 2010 Board meeting. Materials were provided to the Board by the Division, recommending denial of the renewal application. The Division's cover memo to the Board as it appeared in the materials provided to the Board is included in this packet. During the August Board meeting, the Board voted to deny the renewal application, based on the reasons stated in the cover memo. The Order Denying Renewal of License was issued on August 6, 2010.

During the August Board meeting, Ms. Kuzniar represented to the Board that it was her understanding that Funeral Services, Inc. (FSI) had hand-delivered a revised financial statement to the Division prior to the meeting. However, Ms. Kuzniar now acknowledges that the revised financial statement was not hand delivered by FSI as she had previously stated in error, but it was mailed to the Division. Ms. Kuzniar represents that the misstatement was unintentional, and was not intended to mislead the Board. The revised financial statement was received by the Division on July 28, 2010, eight (8) days prior to the August Board meeting, but this was not realized by the Division until after the August meeting had concluded. Subsequent to the Board meeting, the Division completed its review of the revised financial statement and related information and has determined that the Applicant meets the requirements for the license.

The licensee reports total outstanding preneed contracts in the amount of \$4,762,329 (Summary page of renewal submission, R-3). It should be noted, however, that based upon further clarification from FSI, this figure represents the Total Gross Sales Amount which includes burial rights and individual at-need + total net preneed sales. The total net preneed sales, excluding these amounts for burial and at-need sales is therefore a lesser amount, as reported on the balance sheet under Preneed Trust liabilities in the amount of \$1,490,134. The revised financial statement is prepared in accordance with Generally Accepted Accounting Principals (GAAP), pursuant to Rule 69K-5.0016, F.A.C. The revised financial statement submitted by the Applicant to the Division on 7-28-10 reports a total net worth of \$ 108,302. The required net worth is \$100,000. Therefore, the Applicant meets the required net worth for the preneed renewal license.

After the Division completed its review of the revised financial statement, through discussions with the Applicant, the Division and the Applicant entered into a joint stipulation, requesting that the Board reconsider the Order Denying Renewal of License, based on the extenuating circumstances presented above.

The Division recommends approval subject to the following conditions:

- (1) That the Board grant the Joint Stipulation to Petition Board for Reconsideration of Order Denying Renewal of License;
- (2) That the Board rescinds the Order Denying Renewal of License
- (3) That the Board grant Cemetery Professionals, LLC's application for preneed main license renewal, based on the fact that the Applicant meets the required net worth, as required by Rule 69K-5.0016, FAC.

Mr. Shropshire requested that Ms. Kuzniar raise her right hand. "Do you solemnly swear that you will testify in truth in this matter, the whole truth and nothing but the truth so help you God?"

Ms. Amanda Kuzniar answered yes.

Mr. Helm requested adding probation or something to motivate the Licensee to ensure the filing is on time next year.

Ms. Allison Dudley stated there is already a fine imposed for late submission.

Mr. Shropshire concurred.

Ms. Kuzniar stated it was \$200 and she paid it.

Col. Stiegman stated he did not agree with Mr. Helm. Ms. Kuzniar was late, but she paid her fine.

The Chair questioned how the Applicant accomplished this remarkable turnaround in net worth in two months period of time.

Ms. Kuzniar stated that the CPA redid the paperwork in accordance with Statute.

The Chair questioned whether the Applicant had to contribute from outside sources to obtain the net worth.

Ms. Kuzniar answered no.

Mr. Shropshire stated the initial financial statements indicated that the outstanding preneed contracts were \$4.7 million, where as in fact that number included burial and at-need sales. Once those were removed, the amount of outstanding preneed fell to \$1.4 million, for which the net worth was met.

The Chair questioned whether there was clarification on the statement that the financials were delivered by FSI.

Ms. Kuzniar stated that the financials were delivered to the Division by the CPA via certified mail.

Col. Stiegman questioned whether the Division is satisfied with the new financials since Ms. Hubbell was not present.

Mr. Shropshire stated that the evidence before us indicates that the Applicant meets the net worth.

MOTION: Mr. Jones moved to approve the application subject to the conditions proposed by the Division. Ms. Taylor seconded the motion, which passed unanimously.

4. Disciplinary Proceedings

A. Settlement Stipulation for Consent Order and Proposed Consent Order (1) *Clymer Cremations & Funeral Home, Inc.: Case No. 111258-10-FC*

Mr. Linje Rivers stated that the Department conducted an annual inspection of the Respondent (License No. F040142). As a result of this inspection, the Department of Financial Services alleges that the Respondent violated the Florida Statutes by not including the required disclosure statement on at-need contracts, not including the customer's signature on at-need contracts, and taking possession of dead bodies without having obtained written permission from the customer. The Respondent has been apprised of his rights and has entered into this settlement agreement voluntarily.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Shropshire questioned the proposed penalty.

Mr. Rivers stated that the proposed penalty is \$1000.

MOTION: Col. Stiegman moved to accept the Consent Order. Mr. Lew Hall seconded the motion, which passed unanimously.

(2) Clymer, Kenneth: Case No. 111259-10-FC

Mr. Rivers stated that the Department conducted an annual inspection of the Respondent (License No. F046666). As a result of this inspection, the Department of Financial Services alleges that the Respondent violated the Florida Statutes by not including the required disclosure statement on at-need contracts, not including the customer's signature on at-need contracts, and taking possession of dead bodies without obtaining written permission from the customer. The Respondent has been apprised of his rights and has entered into this settlement agreement voluntarily.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Col. Stiegman questioned whether there is also a \$1000 penalty associated with this case.

Mr. Rivers answered yes.

MOTION: Mr. Helm moved to accept the Consent Order. Ms. Taylor seconded the motion, which passed unanimously.

(3) Ganey, Michael: Case No. 109805-10-FC

Mr. Rivers stated that the Department conducted an investigation of Michael Ganey (License No. F045535) in response to a complaint filed with the Division of Funeral, Cemetery and Consumer Services. As a result of this investigation, the Department of Financial Services alleges that in 2005 Mr. Ganey, under a Consent Order of the North Carolina Board of Funeral Services, Case No. M03-023, surrendered his North Carolina funeral service license and preneed sales agent license for cause. In the Consent Order the North Carolina Board of Funeral Services concluded that Mr. Ganey violated multiple provisions of the North Carolina statutes related to the execution of preneed sales. Pursuant to Section 497.152, Florida Statutes, it is a violation to have your license subject to discipline under the authority of another jurisdiction for conduct that would constitute a violation of Chapter 497 if committed in the state of Florida. Mr. Ganey has been apprised of his rights and has voluntarily entered into this settlement agreement.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

The fine amount was \$1500.

Col. Stiegman requested further explanation.

Mr. Shropshire stated that Mr. Ganey was disciplined by the North Carolina Board which is a disciplinary violation under Florida Statutes. Therefore the Department is trying to make that of record in Florida by this disciplinary action with a fine of \$1500.

Col. Stiegman questioned whether Mr. Ganey is still licensed in Florida.

Mr. Shropshire answered yes.

Mr. Helm questioned whether Mr. Ganey was licensed in Florida prior to these allegations.

Mr. Shropshire answered yes.

Mr. Rivers concurred that Mr. Ganey had a Florida license when he was disciplined in North Carolina.

Col. Stiegman stated that the Florida license was not obtained fraudulently.

Mr. Rivers concurred.

Mr. Jones questioned whether the Licensee had a responsibility to report that to the Board.

Mr. Shropshire stated he did not believe there was at the time.

MOTION: Mr. Jones moved to accept the Consent Order. Mr. Hall seconded the motion, which passed unanimously.

(4) Prevatt Funeral Home (CEP Investments, Inc. d/b/a): Case No. 106814-09-FC (Probable Cause Panel B)

Ms. Mary K Surles stated that the Department received an anonymous complaint and conducted an investigation. The Department reviewed the Cases Embalmed and Bodies Handled Reports submitted to the Department and compared them with a Palm State Cooler Log and found that CEP Investments, Inc D/B/A Prevatt Funeral Home (hereinafter "Prevatt Funeral Home") failed to have 45 bodies embalmed or refrigerated within twenty-four (24) hours of the funeral establishment receiving the body, between September 2008 – February 2009. This is a violation of s. 497.386(2), F.S.

A Settlement Stipulation has been executed by the Department and Mr. Prevatt on behalf of CEP Investments Inc. d/b/a Prevatt Funeral Home and Cremation Services with the following terms: A \$2500 fine and \$250 in costs

Mr. Helm questioned the number of bodies in question.

Ms. Surles stated there were approximately 45 within that time period.

Mr. John Rudolph stated that the Respondent has disputed that number.

Col. Stiegman questioned the amount of the fine.

Ms. Surles stated that the fine was \$2500 and \$250 in costs.

Mr. Shropshire added that there is a related case to follow on Mr. Prevatt individually.

Col. Stiegman stated there is indication that the fine could be \$5000 for each count, a written reprimand, probation.

Ms. Surles stated according to the disciplinary guidelines, this would be the maximum that the Department would be able to obtain if it is shown to be aggravating circumstances.

Mr. Helm questioned whether these allegations occurred during the time period of Mr. Prevatt's open heart surgery.

Mr. Rudolph stated it was after that period during the time Mr. Prevatt was recovering.

Ms. Surles stated some occurred before, some afterwards.

Mr. Helm questioned whether Mr. Prevatt was back in charge during the time period when some of the allegations occurred.

Ms. Surles answered yes.

Mr. Rudolph stated that Mr. Prevatt was the Funeral Director in Charge during this period of time.

Ms. Taylor requested elaboration on why this continued to happen or what Mr. Prevatt's reasoning was other than the fact that he was recuperating.

Mr. Rudolph stated there was another man running the funeral home for Mr. Prevatt. The refrigeration unit was at a crematory in Clearwater, which is a 45 minute ride to get there. Many times when he called the crematory, their refrigeration was full and this man, instead of calling back every hour, would wait until the next day. So a lot of these were within 48

hours. There are some that we have found were embalmed within 24 hours, but that was not reflected. They were all looked at as a cremation log. The way this case was proven was by taking the Bodies Handled Reports, comparing them to the cremation log and counting up the days. The Respondent entered into this Stipulation after arguing vehemently back and forth. This is a very good Stipulation, under all the facts and circumstances of this case, for Mr. Prevatt.

Ms. Surles added that under the disciplinary guidelines, s. 497.386(2), F.S., it states penalty for a first offense can be any from a fine of \$500 up to \$1000 plus costs, 6 months – 1 year probation with usual conditions.

Mr. Rudolph stated this was Mr. Prevatt's first offense.

Mr. Hall questioned whether there was some concern on maybe an Eye Bank or Tissue Bank picking up some of the bodies and having possession of those.

Mr. Rudolph stated that there was. There are a number of circumstances and a number of issues also arise when there is a body, through religious purposes, that the family has to sit with and hold after the body has been picked up. We did not find any of those but that was something that needs to be addressed before the Board as we have no control over refrigerating or embalming that body.

Ms. Surles stated that it had been 3 and 4 days for some of the bodies. Clearly, the Department looked at the time that the funeral home was in receipt or possession of that body and considered the ME or anything such as that. There were sufficient days in between to calculate over 24 hours.

Ms. Thomas-Dewitt questioned whether this occurred over a year's period.

Ms. Surles stated it was roughly 6 months, September 2008 – February 2009.

Mr. Jones questioned whether this case went before the Probable Cause Panel.

Ms. Surles answered yes and stated that probable cause was found on this action.

Ms. Thomas-Dewitt stated that over a 6 month period, the Respondent should have put some type of corrective action in place. The explanation is not justifiable.

Mr. Rudolph stated after notice was given to Mr. Prevatt, he changed to a local refrigeration unit and had gone to another local crematory but they were having problems releasing the bodies in time. So he decided to go with another. The closest one he could find was in Clearwater. Under those circumstances, had Mr. Prevatt been present at the funeral home, he would have ensured it was there within 24 hours. For some reason, that man did not do that and he was no longer in charge of those things after that period of time.

The Chair stated questioned whether there are adequate procedures in place to ensure this will not be a problem going forward or whether Mr. Prevatt ever considered a refrigeration unit for himself. Then he would not be dependent upon all the outside excuses for not having refrigeration within 24 hours.

Mr. Rudolph stated that Mr. Prevatt has procedures in place and is making sure they all get there within 24 hours. Regarding the capability of the facility having refrigeration, Mr. Prevatt indicated it is not big enough right now so he would have to add onto it, but in these economic times he can not do it.

The Chair stated he would like the Division to conduct a review of Mr. Prevatt's procedures in 6 weeks so that the Board is assured that this does not continue to be a violation.

Ms. Surles questioned whether the Board would like to make that condition of probation part of the Settlement Agreement.

Mr. Rudolph stated that the Applicant agrees to add that to the Stipulation.

MOTION: Mr. Jones moved to accept the Consent Order with The Chair's recommendation. Ms. Taylor seconded the motion, which passed with one dissenting vote.

(5) *Prevatt, Clarence E – FDIC: Case No. 106816-09-FC (Probable Cause Panel B)*

Ms. Surles stated that this case is similar to the case previously presented. The Administrative Complaint served on July 5, 2010 alleges that Clarence Prevatt was the Funeral Director in Charge for CEP Investments, Inc D/B/A Prevatt Funeral Home and Cremation Services and responsible for ensuring that the funeral establishment and its employees follow the laws of the State and the Rules of the Board. Between September 2008 and February 2009, Mr. Prevatt permitted approximately 45 bodies to be held over 24 hours after the funeral home took possession without embalming the body or placing the body in refrigeration. This is a violation of 497.386(2), F.S.

A Settlement Stipulation has been executed by the Department and Mr. Prevatt with the following term(s): An administrative fine of \$1500

The Chair requested that the Division provide the Board with the results of the inspection.

Ms. Thomas-Dewitt stated she would to see a year's probation added to the terms of the agreement.

Mr. Rudolph stated he would have to speak with Mr. Prevatt. Under this case, Mr. Prevatt was the FDIC and there is no evidence that Mr. Prevatt actually committed any of this or failed to deliver the bodies within 24 hours since he was recovering. That is why we are arguing that there should not be probation.

Ms. Thomas-Dewitt stated that the FDIC is ultimately responsible for all actions in that establishment.

In an effort to clarify the Board's options, Ms. Dudley stated since this is a Settlement Stipulation, the Board could make a counteroffer for what you would like to see plus the probation. Mr. Rudolph would then have to take that offer back to Mr. Prevatt to see whether he agrees. If they cannot reach an agreement, then they are back to the stage of looking at going to DOAH or back to the Board on an informal. The Board cannot change what is before us today; either accept it, reject it or make a counteroffer.

MOTION: Ms. Thomas-Dewitt moved to deny the Consent Order.

Mr. Rudolph requested that the item be held in abeyance so that he could call Mr. Prevatt to see whether he would agree to probation.

The Chair agreed to hold the item in abeyance until Mr. Rudolph contacts Mr. Prevatt.

Mr. Rudolph stated that he spoke with Mr. Prevatt who indicated he would agree to 1 year probation, specific to the term that he would not fail to embalm or refrigerate a body within 24 hours after receipt of the body.

MOTION: Ms. Taylor moved to accept the Consent Order with the condition agreed upon. Mr. Helm seconded the motion, which passed unanimously.

Ms. Dudley questioned whether Ms. Surles was in agreement with the decision.

Ms. Surles answered yes.

B. *Order Closing File for Issuance of Final Order/ Applicant's Notice of Withdrawal of License Application Without Prejudice*

(1) *JGR Funeral Services: DOAH Case No. 09-5543*

JGR Funeral Services, Inc. (hereinafter, "Petitioner") applied for renewal of its Preneed Main License, F038692. The application was placed on the agenda of the June 24, 2010 Board meeting. The Board voted to deny the license during that meeting. On August 25, 2010, the Board issued a Notice of Intent to Deny Licensure. Petitioner requested a formal hearing and the matter was referred to the Division of Administrative Hearings. On July 14, 2010, prior to the scheduled final hearing, Petitioner filed a Notice of Voluntary Dismissal and Withdrawal of Petition. On July 21, 2010, the Administrative Law Judge issued the Order Closing File, relinquishing jurisdiction to the Board of Funeral, Cemetery and Consumer Services.

On July 14, 2010, the Petitioner also filed with the Board, its Notice of Withdrawal of License Application without Prejudice.

This Board packet includes the record before the Division of Administrative Hearings in the above-referenced case, Petitioner's Notice of Withdrawal of License Application without Prejudice, and the Division's notice that this matter will be considered by the Board at the October 7, 2010.

Further, the Division contends that should the Board deny Petitioner's request to withdraw license application without prejudice, such denial would not prohibit Petitioner from applying for the license in the future.

Ms. Dudley stated that she was the attorney representing the Board at the Division of Administrative Hearings. At which time some problems were encountered with some of the allegations in the Notice of Intent to Deny. The Applicant was never able to meet the net worth requirement, so that was not an issue, but there were other allegations in the Notice of Intent to Deny, mainly all the trustworthiness. This is all related back to a disciplinary action where Julio Gonzalez Roel and Adolfo Gonzalez Roel were revoked by this Board. At the time that the Board reviewed this application, there were changes in JGR. The Roel brothers no longer appear to be involved as there is no evidence of this. One of the brothers' wives, Lucille Gonzalez Roel, is President of JGR at this point and was back when the Board looked at this. Also, the Funeral Director in charge is Douglas Hernandez. There appears to be no evidence of lack of trustworthiness for either Ms. Gonzalez or Mr. Hernandez. With Ms. Gonzales, it appears the Board was looking at the fact that she was married to Julio. As a matter of law, the Board cannot impute Julio's actions to his spouse; therefore, the Board cannot say that Ms. Gonzalez is untrustworthy just because her husband is. There has never been a complaint against the Funeral Director in Charge and there is no evidence of lack of trustworthiness against him as well.

Ms. Dudley stated that the Division made a recommendation for entry of a Final Order:

- a. Denying JGR Funeral Services, Inc.'s request to withdraw its license application without prejudice, filed July 14, 2010.
- b. Affirming denial of JGR Funeral Services Inc.'s application for renewal of its preneed main license, based on the grounds stated in the Notice of Intent to Deny Licensure.

Ms. Dudley requested that the Board only issue a Final Order on the failure to meet the net worth requirement. There is concern that if the other allegations in the Notice of Intent to Deny were included in a Final Order, they are guaranteed to appeal that and then the Board would have to offend those allegations potentially in the Appellate Court. Ms. Dudley expressed concern that the Board could end up paying fees. The Board would be on much stronger ground with the one issue of the net worth requirement. The Applicant filed a petition to withdraw their application. The Application has taken the position that once they say the application is withdrawn before a DOAH judge hears anything and before the order becomes final that they can do that at any time. Some case law was cited. The Board's situation is a little bit different than what they cited, but it does not appear that the issue of withdrawal has fully been flushed out in the Appellate Court. The first thing would have to be whether the Board is willing to allow the Applicant to withdraw their application and no Final Order be entered. The second issue is if the Board does not allow the Applicant to withdraw the application, you would need to specify what the Final Order would entail. Ms. Dudley recommends that the Final Order just include the net worth requirement, as the Board would have far less litigation and continued litigation if that Final Order is entered in that manner.

Mr. Jones questioned whether Board Counsel and the Division agree that the application can be withdrawn at any time.

Mr. Shropshire stated that is the very critical legal issue that is before the Board. The Division agrees with Ms. Dudley's analysis that the matter is not entirely clear in the case law. The Division concurs with Ms. Dudley's recommendation and are amending the recommendation presented in the written material.

The Division recommends that the Board deny JGR's request to withdraw its application and to affirm the denial of its application for renewal based on the grounds of failure to meet net worth.

Col. Stiegman questioned what defines the fact finding process.

Ms. Dudley stated that she was unable to find any definitions of that. In the past this issue has come up and it has taken the position that the fact finding process is when the Board first looks at it and issues the Intent to Deny. Ms. Dudley added that she was unsure whether this is the strongest position because typically the fact finding portion would be the DOAH hearing and this came to an end before the Division of Administration Hearing Judge looked at this. There is another case, a Board of Medicine case, where they refused to allow withdrawal. The Court did not think that they acted without colorable authority, but they are not really going to fully address the affect of the withdrawal. Ms. Dudley stated that she could not find a case that directly addresses this issue.

Col. Stiegman stated that he did not disagree he would just hate to see the Department back off just because someone is threatening to take them to court.

Ms. Huggins stated that the Board has denied other firms that have requested to withdraw their application when it was up for denial. Ms. Huggins questioned whether this case is different only because it has gone to DOAH, as the Board has never had this issue before.

Mr. Shropshire stated that the Division is being consistent in this position as the Division's recommendation is to deny the petition to withdraw.

Col. Stiegman questioned whether this is something that the Division is going to do now as this is not what was stated in the beginning.

Mr. Shropshire stated that it is. The Division changed that the denial of the application for renewal would be based only on failure to meet the net worth and would include the grounds of Julio and Adolfo's criminal conviction.

The Chair questioned whether there was a representative of JGR Funeral Services, Inc that would like to come forward to make any statements or answer any questions.

Mr. Michael Bray, attorney for JGR, stated that Ms. Dudley explained their position thoroughly

MOTION: Mr. Jones moved to deny based on failure to meet net worth requirement. Mr. Helm seconded the motion, which passed with 1 dissenting vote.

5. Application(s) to Acquire Control of an Existing Cemetery Company

A. Application for Embalmer Apprentice

(1) Recommended for Approval with Conditions

(a) SCI Funeral Services of Florida Inc to acquire control of Oaklawn Cemetery Association (Jacksonville)

S. 497.264, Florida Statutes, provides that "(2) Any person or entity that seeks to purchase or otherwise acquire control of any cemetery licensed under this chapter shall first apply to the licensing authority and obtain approval of such purchase or change in control."

The application was received by the Division on August 24, 2010 and deficiencies were noted on the application. All deficiencies were resolved as of September 1, 2010. This application is for a change of control only. The Applicant, SCI Funeral Services of Florida, Inc, is purchasing 100% of the stock of the corporation from the current owners, Mark D. Taylor and Janice E. Taylor. The licensee is Oaklawn Cemetery Association at 4801 San Jose Blvd, Jacksonville, FL, and will remain the same. The Applicant principals will be: Noble L. Longino, Curtis G. Briggs, Keith L. Gruendl, Pamela J. Gehl, Manuel Guara, Jr., Janet S. Key, and Susan L. Garrett. A completed background check of all officers revealed no criminal history.

The Applicant's financial statement as of July 31, 2010 reflects the following:

| | | |
|--------------------|------|-----------|
| Required Net Worth | = \$ | 50,000 |
| Reported Net Worth | = \$ | 4,809,903 |

Approve subject to conditions as follows:

1. That closing occurs within 60 days of the date of this Board meeting, and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
2. Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
3. Receipt by the Division within 75 days of this Board meeting, of a copy of the Stock Purchase Agreement, executed by all parties, and any and all amendments thereto, also fully executed.

The Chair disclosed his affiliation with SCI Funeral Services of Florida Inc and stated it would not affect his ability to remain fair and impartial.

Ms. Taylor disclosed her affiliation with Oaklawn Cemetery and Funeral Home and stated it would not affect her ability to remain fair and impartial. Ms. Taylor added that she would recuse herself from the vote. Ms. Taylor stated with regret that pending the approval and closing, she would submit her resignation to the Board when that time comes.

MOTION: Mr. Jones moved to approve the application subject to the conditions proposed by the Division. Col. Stiegman seconded the motion, which passed unanimously.

Mr. Helm requested an explanation of Ms. Taylor's proposed resignation.

Mr. Shropshire stated that ch. 497 provides that there cannot be more than one Board member working for the same corporate entity. Assuming there is a closing, Ms. Taylor would become an employee of SCI and The Chair is affiliated with SCI so one of the 2 of them would have to drop off the Board and Ms. Taylor has indicated that she would tender her resignation.

6. Request to Withdraw from Corpus of Cemetery Care & Maintenance Trust Fund

A. Recommended for Denial

(1) American Funeral Partners of Florida Inc. d/b/a Charlotte Memorial Funeral Home and Memorial Gardens (Punta Gorda)

On August 16, 2010, the Division received a request from American Funeral Partners of Florida, Inc. d/b/a Charlotte Memorial Funeral Home and Memorial Gardens to withdraw from corpus of the cemetery care and maintenance trust pursuant to 497.266(3), F.S.

As noted in the licensee's request, American Funeral Partners is making this request to pay for repairs to a mausoleum on the property. As a result of an inspection by the Division, it was discovered that four (4) panels of the mausoleum are damaged and require replacement. The licensee received an estimate for the total cost of these repairs in the amount of \$4,740.

The Division is recommending denial of this request based upon 497.267, F.S.: *The net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery.*

The Chair questioned whether there was anyone present representing American Funeral Partners of Florida Inc. There was a negative response.

MOTION: Ms. Thomas-Dewitt moved to deny the application based upon 497.267, F.S. Mr. Hall seconded the motion, which passed unanimously.

7. Application(s) for Preneed Sales Agent

A. Informational Item (Licenses Issued without Conditions) – 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 without Conditions (Criminal History)
(1) Robinson, John J (Appointing Entity: Security Trust Plans, Inc.)

On August 8, 2010, the Department received an application from Mr. Robinson. Mr. Robinson answered "No" to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was determined Mr. Robinson had one criminal traffic infraction that required disclosing. Mr. Robinson was asked to provide an explanation for the inaccuracy on his application.

Mr. Robinson's explanation "*I answered truthfully, no, I did not answer yes, because I had never been convicted of anything in my life, in a court of law. I paid a \$288 fine and the charges were dropped*".

The criminal history includes (1) offense relating to one incident of Nonmoving Traffic Violation – Driver License Suspended in 2009, which occurred in Broward County, Florida. Upon request Mr. Robinson disclosed all required information.

Notwithstanding the Applicant's understanding, the record documents that he was subjected to a criminal law proceeding, and he "pled no contest" to the misdemeanor charge of driving on a suspended license. Adjudication was withheld by the court, however, pursuant to F.S. 497.142 (10) (b), with holding of adjudication does not affect the requirement that the "plea of no contest" be reported on the license application and considered by the Board.

The Department assessment is that if issued a preneed sales agent license, Mr. Robinson would not pose an unreasonable risk to the members of the public who might deal with him in preneed transactions.

The Chair questioned whether there was anyone present representing Mr. Robinson.

Mr. Shropshire requested that Ms. Coney raise her right hand. "Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Lisa Coney answered yes. (The Board had no questions for Ms. Coney.)

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

C. Recommended for Approval with Conditions (Criminal History)
(1) Babb, Terry D (Appointing Entity: Daytona Memorial Park, Inc.)

On the application received by the Department on September 2, 2010, the Applicant answered "Yes" to the Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was confirmed Mr. Babb had one criminal infraction that required disclosing.

Mr. Babb's criminal history includes one misdemeanor count of improper exhibit of a firearm or dangerous weapon in Florida. In November 2, 2009, Applicant threatened his neighbor with a hammer. He was arrested and in June 2010 he pled no contest in state court, Volusia County.

In addition to Mr. Babb's detail explanation, he also provided a statement indicating that he's been dealing with an alcohol issue, and at the time of the incident, he had been drinking. The criminal court placed Mr. Babb on 12 month probation. That probation is still underway.

The Division recommends approval subject to the terms and conditions of the attached Stipulation for Licensure, calling for 12 month license probation, with the further condition that Applicant may not make sales calls at residences without a supervisor being present during the probation.

Mr. Helm questioned whether Mr. Babb understands the conditions.

Mr. Terry Babb stated that he understands the conditions and is completely okay with that.

Mr. Shropshire requested that Mr. Babb raise his right hand. "Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Terry David Babb answered, "I do."

Mr. Hall requested that Mr. Babb explain the 2 instances regarding the firearm and the hammer.

Mr. Babb stated that there was nothing regarding a firearm. It was a hammer. Mr. Babb stated that a neighbor of his, a convicted felon currently in prison, attacked him. There was a hammer lying on the window seal, so Mr. Babb picked it up to warn him off, but did not threaten the neighbor with it. The neighbor's girlfriend entered the scene around the time this was occurring and called the police. This happened November 2nd of last year.

The Chair requested that Mr. Babb verbalize his understanding of the stipulation.

Mr. Babb stated that the stipulations would be that he would not be able to enter a family's home without a licensed supervisor for preneed. Mr. Ty Lohman did state to Mr. Babb and his supervisors that if Mr. Babb enters a home without a licensed supervisor, Mr. Babb would be terminated immediately.

MOTION: Col. Stiegman moved to approve the application subject to 12 month license probation, with the further condition that Applicant may not make sales calls at residences without a supervisor being present during the probation. Mr. Hall Anderson seconded the motion, which passed unanimously.

(2) *Fagan, Cheryl A (Appointing Entity: Daytona Memorial Park, Inc.)*

On the application received by the Department on August 24, 2010, the Applicant answered "Yes" to the Applicant Background Questions. During the review of his fingerprint results provided by FDLE it confirmed that Ms. Fagan did have one criminal infraction that required disclosing.

The criminal history includes one (1) offense relating to one incident of misdemeanor DUI in 2009, which occurred in Key West, Florida. Ms. Fagan disclosed all required information.

The Department assessment is that if issued a preneed sales agent license, Ms. Fagan would not pose an unreasonable risk to members of the public who might deal with her in preneed transactions.

Approve subject to the terms & conditions of the attached stipulation for licensure as follows:

- (1) That the licensee be on 12 full months of probation.

MOTION: Ms. Taylor moved to approve the application subject to 12 full months of probation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

8. Application(s) for Preneed Main License

A. *Recommended for Approval with Conditions*

- (1) *Allen Funeral Directors LLC (Key Largo)***

The Department received the application on July 14, 2010 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on July 16, 2010 and all deficiencies were resolved as of July 22, 2010.

This application for change on ownership of a preneed main license is related to a change in ownership of a funeral establishment, from H.W. Beyer Funeral Home, Inc. to Allen Funeral Directors, LLC. On August 5, 2010 the Board approved the funeral establishment's change in ownership, subject to conditions. See enclosed letter of understandings, dated 9-22-10, for further information on the transactions involved.

A completed background check of all officers revealed no criminal history. Applicant will sell preneed through Funeral Services Inc (FSI) and will use the pre-approved First Florida Trust Agreement (BB&T) and pre-arranged funeral agreement.

The Applicant's financial statements as of June 30, 2010 reflect the following:

| | | |
|----------------------------|------|--------|
| Acquired Preneed Contracts | = \$ | 45,192 |
| Required Net Worth | = \$ | 10,000 |
| Reported Net Worth | = \$ | 10,000 |

The Division recommends approval with the following conditions:

- (1) That the funeral establishment license be issued after passing of the required on-site inspection by Division.
- (2) That the closing occur within 60 days of the date of this Board meeting.
- (3) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.
- (4) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.

Mr. Helm questioned the name of the current license holder.

Mr. Shropshire stated that the current license holder is H.W. Beyer Funeral Home, Inc. Allen Funeral Directors, LLC would be the new controlling owning party.

Ms. Wendy Weiner, representing the Applicant, noted that the Allen's have actually moved to Key Largo where the location is.

MOTION: Mr. Jones moved to approve the application with the conditions proposed by the Division. Ms. Huggins seconded the motion, which passed unanimously.

9. Application(s) for Preneed Branch License
A. Recommended for Approval with Conditions – Addendum B

The Division recommends approval of the application contingent upon Board approval of the Application for Funeral Establishment.

MOTION: Mr. Helm moved to approve the application contingent upon Board approval of the Application for Funeral Establishment. Ms. Huggins seconded the motion, which passed unanimously.

10. Continuing Education Course Approval(s)
A. Recommended for Approval without Conditions – Addendum C
(1) Department of Health, Bureau of Vital Statistics #11408
(2) International Cemetery & Funeral Association #74
(3) International Order of the Golden Rule #2201
(4) M.K. Jones & Associates, Inc #9605
(5) National Funeral Directors Association #136
(6) Pinellas County Funeral Home Association #58
(7) Thanos Institute #80

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

Mr. Jones disclosed his affiliation with the Department of Health and stated that it would not affect his decision to remain fair and impartial.

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

11. Application(s) for Florida Laws and Rules Examination
A. Recommended for Approval without Conditions – Addendum D
(1) Direct Disposer

- (a) *Peck, Penelope L*
- (2) *Funeral Director – by Internship*
 - (a) *Ross Sr., Gerald*
- (3) *Funeral Director and Embalmer - by Endorsement*
 - (a) *Jacobs, Joseph R*
 - (b) *Rhoades, Denise*
- (4) *Funeral Director and Embalmer – by Internship*
 - (a) *Buxton, Phillip M*
 - (b) *Gainous, Alonia P*
 - (c) *Johnson, Eric J*
 - (d) *Johnson, Howard F*
 - (e) *Kipe, Troy M*
 - (f) *Rice Jr, Floyd O*
 - (g) *Sanchez, Heather L*

The Division recommends approval of the application(s).

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

B. Recommended for Approval without Conditions

- (1) *Direct Disposer*
 - (a) *Glisson, James E (Criminal History)*

The Applicant submitted an application to become a Direct Disposer on July 16, 2010. The application was incomplete when submitted. All deficient items were returned on September 15, 2010. The Applicant submitted a fingerprint card and was returned with criminal history,

Mr. James Glisson pled No Contest to Driving Under the Influence in January 2009. Mr. Glisson was placed on twelve months probation, six months suspended license, and fined a total of \$1630.29. Mr. Glisson’s probation was terminated early due to complying with all conditions in a timely and responsible manner.

Mr. Glisson is the owner of Central Florida Removal Service (F041140) which has been licensed since January 22, 1987 with no adverse licensing history. The Division is recommending approval without conditions.

The Chair questioned whether there was anyone present representing Mr. Glisson. There was a negative response.

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

C. Recommended for Approval with Conditions

- (1) *Direct Disposer*
 - (a) *Phillips, Candice J*

The Applicant submitted an application to become a Direct Disposer on July 7, 2010. The application was incomplete when submitted. All deficient items were returned on July 28, 2010. The Applicant submitted a fingerprint card and was returned with criminal history,

Applicant was found guilty of possession of cocaine in September 2002, in state court in Hillsborough County. Applicant indicates that she was stopped by police while driving with another woman in her car; that the other woman gave a fake name and was arrested; that the cocaine belonged to the other woman and when the other woman got out of the car, the other woman left the cocaine in the car and that when police searched the car they found the cocaine, and they attributed the cocaine to Applicant, since it was her car. Applicant was sentenced to Probation and to pay costs of \$592. Applicant has successfully completed the court-ordered probation. Applicant has not been convicted or charged with a crime since 2002. The Division is recommending approval with conditions.

Approve subject to the terms and conditions of the attached stipulation for licensure (24 month probation)

Mr. Shropshire requested that Ms. Phillips raise her right hand. "Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Candice J Phillips answered, "Yes sir." Ms. Phillips stated that she has not been in trouble since then and has been working in a funeral home off and on since 2000, going to school at Miami Dade; actually driving back and forth from Lakeland to Miami in an effort to get everything turned back around.

The Chair questioned where Mr. Phillips is currently employed.

Ms. Phillips stated that she is employed with Central Florida Casket Store and Funeral Chapel in Lakeland, where she has been employed off and on since 2000.

MOTION: Col. Stiegman moved to approve the application subject to the terms and conditions of the Stipulation for Licensure which calls for a 24 month probation. Ms. Anderson seconded the motion, which passed unanimously.

(2) Funeral Director and Embalmer- by Endorsement
(a) Kelly, Michael H (Adverse Licensing History)

The Applicant submitted an application to become a Funeral Director and Embalmer by Endorsement on July 28, 2010. The application was incomplete when submitted. All deficient items were returned on September 7, 2010. The Applicant submitted a fingerprint card and was returned with no criminal history,

The Applicant did submit adverse licensing history from the state of Virginia (final order enclosed). From on or about February 7, 2001 through April 15, 2001, the Applicant practiced as a funeral service provider without a license. The Applicant was reprimanded and ordered to pay a fine of \$250.

The Division is recommending approval subject to the terms and conditions of the attached stipulation for licensure (12 month probation)

Mr. Shropshire requested that Mr. Kelly raise his right hand. "Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Michael H Kelly answered, "I do." Mr. Kelly stated that the incident took place during a transitional time when he was moving from one state to another. Mr. Kelly was licensed in Georgia, had moved to the Commonwealth of Virginia and had applied for reciprocity in that State and taken the Law Exam. Mr. Kelly admits to having acted as a funeral director prior to receiving final approval from the licensing Board in that State and has taken responsibility for his actions pursuant to the recommendation of a fine and reprimand. Since then, Mr. Kelly has not faced any additional issues in either of the States he is currently licensed in.

The Chair questioned whether Mr. Kelly is currently employed in Florida.

Mr. Kelly stated that he is employed by North Brevard Funeral Home.

The Chair questioned Mr. Kelly's duties at the funeral home.

Mr. Kelly stated that he is doing community outreach, assisting on services and also working with the cemetery. Mr. Kelly added that he is back and forth between Florida and Arkansas as he is trying to move his family here. Mr. Kelly stated that he has been very cautious not to serve in any capacity as a funeral director or embalmer.

MOTION: Mr. Jones moved to approve the application subject to 12 full months of probation upon licensure. Ms. Huggins seconded the motion, which passed unanimously.

12. Application(s) for Internship

- A. Recommended for Approval without Conditions – Addendum E**
- (1) **Funeral Director and Embalmer**
 - (a) Barber, Cheryl J
 - (b) Gonzalez, Samantha A
 - (c) Logan, Ana A
 - (d) Telfort, Fabienne

The Division recommends approval of the application(s).

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

13. Application(s) for Embalmer Apprentice

- A. Recommended for Approval without Conditions – Addendum F**
- (1) Lane, Evaughan
 - (2) Patterson, Angela S

The Division recommends approval of the application(s).

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

- B. Recommended for Approval with Conditions**
- (1) Pixley, Miranda F

This application was withdrawn by the Applicant.

- C. Recommended for Denial**
- (1) Altman-Kingwell, Heather

The Applicant submitted an application to become an Embalmer Apprentice on August 2, 2010. The application was complete when submitted. The Applicant submitted a fingerprint card and was returned with criminal history,

In 1998 Applicant pled guilty to felony grand theft, in Florida Circuit Court. Applicant explains that she was stealing to support her drug habit.

In 2000 Applicant pled guilty to felony possession of heroin, and resisting arrest with violence, in Florida Circuit Court.

No person may be licensed as an embalmer unless they are of good character, Section 497.368(1)(c), 497.369(1)(b)2., Florida Statutes.

The Division recommends denial based on the criminal record as reflecting lack of good character.

Mr. Shropshire requested that Ms. Altman-Kingwell raise her right hand. "Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Heather Altman-Kingwell answered, "It is." Ms. Altman-Kingwell presented the Board with a letter from her employer:
"I am writing on behalf of Heather Kingwell to petition the Board to approve her application as embalmer apprentice. Mrs. Kingwell has been working part-time at our firm as an attendant and has shown that in the future she can become an excellent funeral director. If approved, we would possibly be the firm to allow her to serve her internship. If I can be of any service to the Board on her behalf, please feel free to call me at any time. Julian Almeida"

The Chair questioned Mr. Almeida's statement, "...we would possibly be the firm to allow her to serve her internship."

Ms. Altman-Kingwell stated that the firm currently has an intern and Ms. Altman-Kingwell is actually due to graduate in December.

Col. Stiegman questions whether this means Ms. Altman-Kingwell may go someplace else to complete internship.

The Chair answered, "Yes."

Ms. Anderson questioned whether Ms. Altman-Kingwell has sought help.

Ms. Altman-Kingwell stated that she has and have been sober for 8 years. Ms. Altman-Kingwell helps other people like herself on a daily basis, as this is needed to maintain her life. Ms. Altman-Kingwell admits that her past record is not pretty on paper. However, 10 years later, Ms. Altman-Kingwell feels her life has been restored and she has worked really hard; has maintained straight As in the funeral service program and received a scholarship from The Conference to take the Board Exam. Ms. Altman-Kingwell stated that she is married with a son and tries to stay sober a day at a time, but she is not the same person that she was.

Mr. Jones questioned whether Ms. Altman-Kingwell will continue to attend her meetings.

Ms. Altman-Kingwell answered, "Absolutely."

The Chair questioned whether Ms. Altman-Kingwell considered what the licensing requirements were prior to getting into Mortuary College or had any apprehensions about whether she would be disqualified for licensure based on her background.

Ms. Altman-Kingwell stated that she did not at first. Ms. Altman-Kingwell took Funeral Law her very 1st semester and began to get nervous as State Statutes were covered, January 2009. At this point, Ms. Altman-Kingwell started speaking with Dr. Powell about what he thought about this. Dr. Powell encouraged Ms. Altman-Kingwell to continue as this is something that she really wants. Ms. Altman-Kingwell added that she is willing to fight for it. Ms. Altman-Kingwell realizes what she did in the past was wrong and has fully accepted all the consequences of her actions, as she served time and paid restitution. The State saw fit to grant Ms. Altman-Kingwell her rights back in 2008.

The Chair questioned whether Ms. Altman-Kingwell understands that even if the Board approves the application for embalmer apprentice, there is a possibility that these same issues may arise and the application for full licensure or internship could be approved or denied at that time.

Ms. Altman-Kingwell stated that she understands.

Mr. Hall questioned what drove Ms. Altman-Kingwell to this industry.

Ms. Altman-Kingwell stated that it is compassion to give the deceased the dignity that they deserve. Ms. Altman-Kingwell added that she has had a lot of people pass away in her life from this disease and she has seen what it does to families and feels compassion, she understands and enjoys it. Ms. Altman-Kingwell stated when she started going to school and taking the class she fell in love. It was wonderful. Ms. Altman-Kingwell's first love is psychology and she plans to obtain a Masters in Psychology once she finishes at Miami-Dade. Ms. Altman-Kingwell added that she just wants to help and be of service.

The Chair questioned Ms. Altman-Kingwell's relationship with Julian Almeida.

Ms. Altman-Kingwell stated that Mr. Almeida is the Funeral Director in Charge of Palm Coast Funeral Home and she has been haunting Mr. Almeida down for 2 years to give her a job and he did. Ms. Altman-Kingwell stated that she opens the doors, cleans bathrooms, arrange flowers, turns on music or whatever is needed.

The Chair questioned whether Mr. Almeida is aware of Ms. Altman-Kingwell's background and everything that she is going through.

Ms. Altman-Kingwell stated that Mr. Almeida is aware.

Ms. Thomas-Dewitt questioned how well Ms. Altman-Kingwell handles stress and conflict.

Ms. Altman-Kingwell stated that she handles stress and conflict pretty well now.

Ms. Thomas-Dewitt stated that the flip side of being a gentle lamb is that in the funeral industry you are faced with multiple personalities and very trying times. Ms. Thomas-Dewitt expressed concern over whether Ms. Altman-Kingwell would be able to endure the stress.

Ms. Altman-Kingwell stated that one thing she has received from being sober is coping skills. Ms. Altman-Kingwell stated that she worked in property management for 5 years and dealt with a lot of conflicting personalities.

Col. Stiegman stated that the Board is here today to discuss the application for an embalmer apprentice not future licensure as The Chair has already mentioned.

Ms. Thomas-Dewitt stated that she was just trying to determine what really sparks Ms. Altman-Kingwell's craving for drugs, because when a person cannot handle stress, they tend to resort to different mechanisms to cope.

Ms. Altman-Kingwell stated by maintaining her sobriety, doing what she needs to do, going to meetings, working with others and doing service work that helps her. Those are her coping skills. Ms. Altman-Kingwell added that she has support that she reaches out to and people that she works with. Without that Ms. Altman-Kingwell stated she would have nothing and would be here today.

Mr. Jones stated it appears Ms. Altman-Kingwell has turned her life around in the last 10 years and has done an admirable job.

Mr. Shropshire stated that the Division does have a Stipulation for Licensure form which has been used on occasion and calls for the Applicant to agree to take random drug tests. Mr. Shropshire suggested that the Board hold the item in abeyance until the Division determines whether the Applicant would be willing to sign that type of stipulation.

Ms. Altman-Kingwell stated that she would absolutely sign the stipulation.

The Chair questioned whether Mr. Shropshire's recommendation could be a part of the motion.

Mr. Shropshire stated that it could, but Ms. Altman-Kingwell has not seen the entire stipulation with all of its terms and conditions.

Ms. Dudley stated that the Board could probably vote today that if the Applicant could reach an agreement with Mr. Shropshire and get the stipulation signed that she would not have to reappear.

MOTION: Mr. Jones moved to approve the application subject to probation equal to the length of her apprenticeship and the Division's receipt of an executed stipulation for licensure. Ms. Taylor seconded the motion, which passed unanimously.

14. Registration(s) as a Training Agency

A. Recommended for Approval without Conditions – Addendum G

(1) Funeral Directing Only

(a) All County Funeral Home & Crematory (F041243)

(b) Anderson-McQueen Co d/b/a ALife Tribute FuneralCare (F040259)

(c) Anderson-McQueen Co d/b/a ALife Tribute FuneralCare (F041491)

(2) Funeral Directing and Embalming

(a) Anderson-McQueen Co (F040255)

(b) Shuler & Shuler LLC d/b/a Shuler's Memorial Chapel (F047891)

The Division recommends approval of the application(s).

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

15. Consumer Protection Trust Fund Claims

A. Recommended for Approval without Conditions – Addendum H

The Division recommends approval of the claim(s).

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

16. Application(s) for Monument Establishment Sales Agent

A. Informational Item (Licenses Issued without Conditions) - Addendum I

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

17. Application(s) for Monument Establishment Retailer License

A. Recommended for Approval without Conditions

(1) Mr. Bronze Co. LLC (Miami)

The application was received on August 12, 2010 and deficiencies were noted. A deficiency letter was sent on August 17, 2010 and the Applicant resolved all deficiencies by September 22, 2010. The Department completed a background check of all officers which revealed no criminal history.

For informational purposes only, it should also be noted that upon request by the Division, the Applicant did provide a response to Section 9(b); questions 1-5 of the application (please refer to the attached email for Applicant's responses).

The Division recommends approval of the application without conditions.

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

18. Application(s) for Centralized Embalming Facility

A. Recommended for approval with Conditions

(1) Elijah Bell's Funeral Services LLC (Pompano Beach)

An application for a Centralized Embalming Facility was received on May 14, 2010. The application was incomplete when submitted. All deficient items were returned on September 20, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Ricky Butts (F045113). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to the establishment passing an on-site inspection by a member of the Division staff. Ms. Taylor seconded the motion, which passed unanimously.

19. Application(s) for Cinerator Facility

A. Recommended for approval with Conditions

(1) Florida Cremations Services LLC (Opa Locka)

An application for a Cinerator Facility was received on June 2, 2010. The application was incomplete when submitted. All deficient items were returned on September 20, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Terrance O'Dea (F042664). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Taylor moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff. Ms. Huggins seconded the motion, which passed unanimously.

20. Application(s) for Funeral Establishment

A. Recommended for Approval without Conditions

(1) Abundant Favor Mortuary Inc (Bradenton)

An application for a Funeral Establishment was received on August 8, 2010. The application was incomplete when submitted. All deficient items were returned on September 13, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Kieron Speights (F043150). The establishment passed its inspection on August 13, 2010. The Division is recommending approval without conditions.

Mr. Helm stated that he received a call indicating that the building was not 1250 sq ft and questioned whether this would be one of the items checked out during an inspection.

Mr. Shropshire stated that would be one of the items checked during the inspection. Mr. Shropshire requested that Ms. Williams, Division Inspector, verify this.

Ms. Tina Williams stated that would be one of the items that are routinely checked and it is a part of the inspection form. New Applicants are requested to provide verification of the square footage.

The Chair indicated that there were representatives of Abundant Favor present.

Mr. Shropshire requested that Ms. Austin raise her right hand. "Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Jannine S Austin stated that the building is 2400 sq ft.

MOTION: Ms. Taylor moved to approve the application. Col. Stiegman seconded the motion, which passed unanimously.

B. Recommended for Approval with Conditions

(1) Lawrence J Bakey d/b/a Fort Myers Mortuary Services (Fort Myers)

An application for a Funeral Establishment was received on September 13, 2010. The Applicant listed above currently operates a Centralized Embalming Facility at the above mentioned location address. If the application is approved, the Centralized Embalming Facility license will be relinquished in lieu of the Funeral Establishment License. The application was complete when submitted. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be John Gallaher (F042170). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Jones moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff. Mr. Hall seconded the motion, which passed unanimously.

(2) Oaklawn Cemetery Association d/b/a Oaklawn Cemetery and Funeral Home (Jacksonville)

An application for a Funeral Establishment was received on August 24, 2010. The application was incomplete when submitted. All deficient items were returned on September 13, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Robert Moore (F043054). The Division is recommending approval with the following conditions:

- (1) That the establishment passes an on-site inspection by a member of the Division staff.
- (2) That the closing occur within 60 days of the date of this Board meeting.
- (3) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.

- (4) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.

Ms. Taylor stated that she is an employer not an owner and recused herself from voting.

MOTION: Mr. Helm moved to approve the application with the conditions proposed by the Division. Mr. Jones seconded the motion, which passed unanimously.

(3) *Unity Memorial Funeral Home East Inc (Apopka)*

An application for a Funeral Establishment was received on August 23, 2010. The application was incomplete when submitted. All deficient items were returned on September 11, 2010. The fingerprint cards for all principals were returned and one was returned with criminal history. The Funeral Director in Charge will be Daryl Schofield (F046547).

One of the application's officers, Marvin Prince, has a criminal history. In February, 2010 he pled no contest to the 2nd degree misdemeanor charge of refusing to sign a traffic citation. He refused to sign, as the Division understands the matter, because he felt he was not being treated fairly by the police who stopped him. He was sentenced to one day in jail with one day credited for time served, and fine and costs totaling \$286 were imposed, which have been paid.

The Division does not believe that Applicant would pose an unreasonable risk to the public if licensed. The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Taylor moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff. Col. Stiegman seconded the motion, which passed unanimously.

21. Application(s) for Removal Service

- A. ***Recommended for Approval without Conditions***
 - (1) ***Mortuary Transport Service LLC (Largo)***

An application for a Removal Service was received on July 21, 2010. The application was incomplete when submitted. All deficient items were returned on August 25, 2010. The fingerprint cards for all principals were returned and one was returned with criminal history. The establishment passed the inspection on September 15, 2010.

One of the principals, Joseph Venezia, has a criminal history. Mr. Venezia disclosed his criminal history when he submitted and was approved for removal service license, Mortuary Transport Division LLC (F039965) in August 2006. The minutes from the August 24, 2006 Board meeting are included in this packet.

The Division does not believe that Applicant would pose an unreasonable risk to the public if licensed. The Division is recommending approval without conditions.

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

- B. ***Recommended for Approval with Conditions***
 - (1) ***William A. Johnson d/b/a Dignified Mortuary Services (Casselberry)***

William A Johnson d/b/a Dignified Mortuary Services (F056368) submits this request for approval of a change in location of the removal service, as required by s. 497.385(1)(g)2, Florida Statutes.

The application for a Removal Service was submitted on July 8, 2010. The application was incomplete when submitted. All deficient items were returned on August 19, 2010. The fingerprint cards for all principals were submitted and returned without criminal history.

On June 3, 2010 Division field staff went out to conduct a routine annual inspection of the removal service, but found the location empty. The inspector contacted the licensee by phone and determined that licensee had moved the location. Licensee was apparently unaware of the requirement for Board approval of a change in location. On August 27, 2010 the licensee was served with a disciplinary citation for a \$300 fine in regard to having moved the location without Board approval and without an inspection of the new location; the licensee has 60 days to pay the Citation. The licensee did subsequently pass an inspection at the new location.

The Division is recommending approval with conditions that the establishment pays the fine associated with the enclosed citation.

The Chair questioned whether there was anyone present representing the Applicant. There was a negative response.

MOTION: Mr. Jones moved to approve the application with the condition that the establishment pays the fine associated with the enclosed citation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

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

A. Recommended for Approval with Conditions

(1) Monument Establishment Retail Sales Agreement

(a) Mr. Bronze Co. LLC (Miami)

Staff recommends approval of the agreement without conditions as the Board has approved the Applicant's application for a monument establishment retailer license.

Mr. Helm questioned whether the size and the font of the contract 10 as it should be. Mr. Helm requested that the Division indicate the font size if the contracts are reduced down.

Mr. Shropshire stated that the Division usually includes, as a condition of approval, that the Department receives two full-sized print-ready copies of the contract.

Mr. Helm requested clarification of 2 numbers included on the contract: at the top No. 1000 then Monument Retail Sales Agreement #1 on the first line.

Mr. Shropshire stated that the 2 numbers would ultimately correspond.

MOTION: Mr. Helm moved to approve the agreement with the condition that the Board approves the Applicant's application for a monument establishment retailer license. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(2) Preneed Insurance-Funded Contract

(a) Supreme Council of the Royal Arcanum (Boston, MA)

The Applicant submitted an Insurance-Funded Preneed Funeral Agreement and Assignment (PNF AA 10-FL) with Addendum (PN10-FL) to be sold solely through preneed licensed funeral homes. The Supreme Council of the Royal Arcanum received approval for its insurance products from the Florida Office of Insurance Regulation on March 31, 2010.

The Division recommends approval with the condition that the Department receives two full-sized print-ready copies of the Insurance-Funded Agreement and Assignment (PNF AA 10-FL) with Addendum (PN10-FL) within 60 days.

MOTION: Ms. Thomas-Dewitt moved to approve the form with the condition that the Department receives two full-sized print-ready copies of the Insurance-Funded Agreement and Assignment (PNF AA 10-FL) with Addendum (PN10-FL) within 60 days. Mr. Jones seconded the motion, which passed unanimously.

23. Trust Agreement(s)

A. Recommended for Approval without Conditions

- (1) *Funeral Services, Inc. (FSI) (Tallahassee)*
 - (a) *FSI 1993 Trust Agreement*

Funeral Services, Inc. (FSI), a servicing agent, seeks approval of the attached proposed revision of its existing preneed trust entitled "FSI 1993 Trust Agreement." The proposed revision substantially re-writes the existing trust agreement. A copy of both the existing and proposed revised trust agreement is attached. FSI is represented in this matter by attorney Wendy Weiner.

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

- (b) *First Florida Trust Agreement*

Funeral Services, Inc. (FSI), a servicing agent, seeks approval of the attached revised Grantor trust, entitled "First Florida Trust Agreement," to replace the existing trust by the same name. A copy of both the existing and proposed trust agreements is attached. FSI is represented in this matter by Wendy Weiner, Esq.

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

- (2) *Sabal Trust Company (St Petersburg)*
 - (a) *Infinity Management Advisors, LLC (IMA) Florida Settlor Trust Agreement*
 - (b) *Infinity Management Advisors, LLC (IMA) Florida Alternative Trust Agreement*

Pursuant to ss. 497.458 and 497.464, Florida Statutes, Sabal Trust Company, submits an Infinity Management Advisors, LLC Florida Settlor and Florida Alternative Trust Agreement for use by various preneed entities in trusting required funds as derived from the sale of preneed contracts. It should also be noted that IMA is an agent of Sabal Trust Company, a limited charter bank having trust powers, authorized to do business in Florida, and these are brand new trust agreements that they are submitting for approval

Staff recommends approval of these trust agreements without conditions.

MOTION: Mr. Jones moved to approve the agreement(s). Ms. Anderson seconded the motion, which passed unanimously.

- (3) *Sabal Trust Company (St Petersburg)*
 - (a) *Infinity Management Advisors, LLC (IMA) Florida Care and Maintenance Trust Agreement*

The attached 5 page proposed trust agreement form is submitted for approval. Staff recommends approval of the trust agreement without conditions.

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

*****BREAK*****

- 24. **Trust Transfer Request(s)**
 - A. *Recommended for Approval with Conditions*
 - (1) *Fred Hunter's Memorial Services, Inc (Hollywood)*
 - (a) *Ch 639 (pre 9/30/93) Preneed Funeral Trust, Ch 497.417 (pre 2005) Cemetery Merchandise Trust and Cemetery Care & Maintenance Trust from SunTrust Bank to Regions Bank*

Fred Hunter's Memorial Services, Inc. has appointed Regions Bank as successor trustee and requests transfer of the above mentioned trust accounts currently held by SunTrust Bank to Regions Bank. The transfer includes the trust accounts for the Preneed Funeral, the Cemetery Merchandise and the Cemetery Care & Maintenance Trust funds for the preneed, cemeteries and cinerator facility that is currently owned by Fred Hunter's Memorial Services, Inc., respectively d/b/a: Fred Hunter's,

Hollywood Memorial Gardens, Hollywood Memorial Gardens North, and Fred Hunter Crematory. Regions Bank will continue to operate under the existing trust agreements.

The Division recommends approval with the condition that certification of the transfers is received by the Department within 60 days of this Board Meeting date.

MOTION: Mr. Helm moved to approve the request with the condition that certification of the transfers is received by the Department within 60 days of this Board meeting date. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

25. Amendment(s) to Cemetery Bylaws

A. Recommended for Approval with Conditions

(1) Remembrance Services of Florida, LLC d/b/a Gulf Pines Memorial Park (Englewood)

The attached proposed revised bylaws for Gulf Pines Memorial Park are submitted in order to update and to make them more location specific. The previous bylaws were from the time when SCI owned the cemetery and were generic to all SCI cemeteries.

Ch. 497.273(1)(d), Florida Statutes, provides the cemetery bylaws are subject to Board approval. Board Rule 69K-6.003 requires that changes to bylaws must be published in a local newspaper near the cemetery, so that affected persons may provide comment. Upon initial receipt of bylaw amendments from the licensee here, the Division caused same to be published in a newspaper, and no comment was received. However, the Division and the licensee had further discussions regarding the bylaws and as a result the licensee made further changes to the bylaws, and the bylaws need another publication as revised.

The Division recommends approval with the condition that the revised bylaws be published as required by Rule 69K-6.003, F.A.C. and that no adverse comments are received by the Division within the allotted period of 30 days as set forth in Rule 69K-6.003(3); if adverse comment is received, the matter is to be returned to the Board for further consideration.

Col. Stiegman questioned whether there are guidelines to follow when writing bylaws.

Mr. Shropshire answered, "No."

Col. Stiegman questioned the purpose of a complaint if there are no guidelines to begin with.

Mr. Shropshire stated that the purpose pursuant to Statute is to put the matter before the Board so that the Board can protect the interest of the public in any change of the bylaws. The bylaws might conceivably violate some term of the statutes. The Statutes and Rules are the guidelines for the bylaws.

Col. Stiegman questioned whether the bylaws could be that variable.

Mr. Shropshire answered, "Yes."

The Chair added that there cannot be any violations of ch. 497 or the Rules. The Division checks for that.

MOTION: Mr. Jones moved to approve the amendments with the condition that the revised bylaws be published as required by Rule 69K-6.003, F.A.C. and that no adverse comments be received by the Division within the allotted period of 30 days as set forth in Rule 69K-6.003(3); if adverse comment is received, the matter is to be returned to the Board for further consideration. Ms. Taylor seconded the motion, which passed unanimously.

26. Chairman's Report (Oral)

None

27. Executive Director's Report

A. Overview of Licensing Process

Mr. Shropshire stated that the Chair requested that the Division make a presentation at this meeting. Ms. Jasmin Richardson is and has been our primary person on applications under the old ch. 470 license categories. Ms. Richardson created and presented a Power Point slideshow presentation.

B. Proposal to Reduce Penalty for Certain Late-Filed Bodies Handled Reports

Pursuant to s. 497.382, funeral establishments and other specified licensees are required to file with the Division monthly reports of cases embalmed and bodies handled. The reports are due by the 20th of the following month.

Enforcement of s. 497.382 has been somewhat lax, due to lack of a computer system to track monthly reporting. The Division has been internally developing a computer system. The project has been delayed by other priorities, but the Division anticipates that within several months we will commence issuance of disciplinary citations for late filing and non-filing of the required reports.

Pursuant to Rule 69K-30.003(3)(a), the Citation penalty for violation of s. 497.382, is \$250 per violation. The penalty is the same regardless of how late you are.

The Division believes that an incremented penalty scale based on how late the report is, would be fairer and would incentive licensees to get their reports in as soon as possible even if late.

Accordingly, if without objection by the Board, the Division proposes to use the following penalty scale in citations for late filed monthly Bodies Handled Reports:

| | |
|-------|-------------------------|
| \$50 | Late by 7 days or less |
| \$100 | late by 8-14 days |
| \$200 | late by 15-21 days |
| \$250 | late by 22 or more days |

Col. Stiegman questioned how the Industry feels about this.

The Chair stated that it's a graduated scale so the penalty is not so severe for missing it by one day. There were a lot of head nods in the audience from the Industry.

Mr. Rudolph questioned whether this would require a Rule change.

Mr. Shropshire stated that technically perhaps it would but anyone objecting would be the one's receiving the lesser penalty. So the Division would have to concur, follow the Rule and increase it to \$250.

The Chair stated that the Division could move forward with the proposed change as there was no objection from the Board.

C. Request for Permission to Proceed with Rulemaking (Training Agencies)

The Rules Committee of the Board approved the attached Rule for presentation to the Board.

The Rules Committee approval occurred at a December 1, 2009 meeting, but through an oversight the matter was not brought before the full Board. The Division recently noticed this error and now brings the matter before the full Board.

The proposed change addresses the following issue: When a funeral establishment that is approved as an intern training agency changes ownership, does the funeral establishment have to accumulate another 40 embalmings and funeral services under the new owners, in order to qualify as a training agency again? Or can the funeral establishment take credit for the embalmings and funeral services under the prior owners?

The proposed change would allow the funeral establishment under the new owners to take credit for embalmings and funeral services under the prior owners, if the new owner certifies in writing that the professional staff involved in training under the prior owner will be continuing to do the agency's training as employees under the new owner.

This issue affects, among others, interns who are in place at the funeral establishment when the ownership changes.

The Division recommends approval of the proposed Rule. If without objection by the Board, the Division will proceed on behalf of the Board for Rule adoption.

69K-18.004 Intern Training Agencies

(1) Funeral establishments which are in good standing and approved as training agencies by the Board as of June 30, 1979, shall continue as approved intern training agencies under this Rule provision.

(2) Funeral establishments desiring to become licensed as an intern training agency pursuant to Sections 497.370 and 497.375, F.S., shall submit applications for such approval on form DPR/FD-015, effective 5/19/91, entitled "Application For Approval As Training Agency" which is incorporated herein by reference and is to be provided by the Department.

(3) In order to be approved as an embalmer intern training agency, a funeral establishment shall have performed at least 40 embalming cases per year for each intern it is applying to train in order to demonstrate its ability to provide such embalmer interns with the necessary intern training and experience. In order to be approved as a funeral director intern training agency, a funeral establishment shall have performed at least 40 funeral services per year for each intern it is applying to train in order to demonstrate its ability to provide such funeral director interns with the necessary intern training and experience.

(4) Funeral establishments which are approved as embalmer intern training agencies shall provide at least the following training for embalmer interns:

- (a) Handling and use of equipment, supplies and facilities of funeral establishments;
- (b) Preparing bodies for embalming, including bathing, shaving, and setting of features;
- (c) Embalming of bodies;
- (d) Care of embalming instruments;
- (e) Dressing and casketing of bodies;
- (f) Preparation of bodies for shipment; and
- (g) Study of applicable local and state Rules relating to embalming.

(5) Funeral establishments which are approved as funeral director intern training agencies shall provide at least the following training for funeral director interns:

- (a) Instruction and practical work experience in making funeral arrangements;
- (b) Study of requirements of funerals for various religious denominations;
- (c) Arranging and setting up of chapels, churches and other places for funeral services;
- (d) Arranging and supervising of cortege;
- (e) Arranging of liaisons with law enforcement officers, medical examiners and physicians;
- (f) Study of applicable local, state and federal laws relating to funeral directing;
- (g) Reserved;
- (h) Determining of signs of death and the manner by which death may be determined;
- (i) Instruction and practical experience in mortuary management and administration; and
- (j) Preparation and filing of death certificates, burial permits and other documents.

(6) Training agencies which change location, without any change in ownership, shall continue to be approved training agencies without submitting any further application to the Department. Training agencies which experience a change in ownership and desire to continue as a training agency, shall apply for training agency status as a new training agency; provided, if the Applicant certifies in writing that the professional staff involved in training under the prior owner will be continuing to do the agency's training as employees under the new owner, and the Division and Board determine that the certification is accurate, the Board shall deem the requirements of subsection (3) above to be met.

Specific Authority 497.103, 497.370, 497.375 F.S. Law Implemented 497.370, 497.375 FS. History--New 11-11-79, Formerly 21J-18.04, Amended 5-24-89, 5-19-91, Formerly 21J-18.004, 61G8-18.004.

MOTION: Mr. Hall moved to approve the proposed Rule. Ms. Taylor seconded the motion, which passed unanimously.

MOTION: The Chair moved that the proposed Rule would not have any adverse effect on small businesses. Mr. Hall seconded the motion, which passed unanimously.

D. What Constitutes Written Permission to Take Possession of a Body

The Division of Funeral, Cemetery, and Consumer Services wishes to determine whether the Board has any objection to the Division instructing its staff as set forth below, concerning what constitutes adequate permission that a licensee must obtain.

Where a written contract (e.g., a "Statement of Services") between a legally authorized person and a licensed establishment, specifically itemizes removal of remains, embalming, cremation, interment, entombment, disinterment, disentombment, or disinurnment, as services being purchased, Division field staff shall treat such contract as written permission to take possession of the remains and perform the said itemized services, and satisfies the permission requirements of ch. 497.

At issue here are four instances in Ch. 497 where a licensee is required to obtain written permission from a legally authorized person.

Three of the instances are in section 497.152(8)(c), (d) and (e), which make the following conduct a disciplinary violation:

(c) Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person. If oral permission is granted, the licensee shall obtain written permission within a reasonable time as established by Rule.

(d) Embalming human remains without first having obtained written or oral permission from a legally authorized person; however, washing and other public health procedures, such as closing of the orifices by placing cotton soaked in a disinfectant in such orifices until authorization to embalm is received, shall not be precluded. If oral permission is granted, the licensee shall obtain written permission within a reasonable time as established by Board Rule.

(e) Failing to obtain written authorization from the family or next of kin of the deceased prior to entombment, interment, disinterment, disentombment, or disinurnment of the remains of any human being.

The fourth place is at s. 497.607(1), which provides as follows:

(1) At the time of the arrangement for a cremation performed by any person licensed pursuant to this chapter, the person contracting for cremation services shall be required to designate her or his intentions with respect to the disposition of the cremated remains of the deceased in a signed declaration of intent which shall be provided by and retained by the funeral or direct disposal establishment. A cremation may not be performed until a legally authorized person gives written authorization for such cremation. The cremation must be performed within 48 hours after a specified time which has been agreed to in writing by the person authorizing the cremation.

The question that has arisen is whether a stand-alone written permission form is required, or whether a statement of services, signed by a legally authorized person, can serve as the required permission.

There currently are no Rules under ch. 497 specifying any particular forms to be used in obtaining the required permission in any of the instances above. None of the statutes cited above give the Board or the Division any express authority to specify by Rule any particular form or format to be used in recording the required written permission.

In the absence of any clear authority in the statute to specify a particular form or format for the written permission, it does not appear that licensees are required to use a separate, stand-alone written permission form for any of these permissions.

Many (probably most) licensees use stand-alone permission forms to protect themselves from civil liability. That is probably highly advisable, but it does not appear required by law.

Therefore, unless the Board objects, the Division intends to give its field staff the following instructions indicated above.

MOTION: Ms. Huggins moved to support the language proposed by the Division. Ms. Taylor seconded the motion, which passed unanimously.

MOTION: The Chair moved that the proposed language would not have any adverse effect on small businesses. Mr. Hall seconded the motion, which passed unanimously.

E. Proposed Rule Amendments Related to Senate Bill 1152

The Board's Rules Committee reviewed the attached 38 pages of Rule and form proposals, at its meeting on September 23, 2010, and approved same for presentation to the full Board. The attached materials include amendment to some existing Rules, some new Rules, repeal of some existing Rules, and amendment to some forms.

The attached Rule and form changes are related to Senate Bill 1152 (copy attached), enacted by the legislature during its 2010 regular session, and which requires a significant amount of Rulemaking to accomplish the legislative changes.

The Division recommends that the Board approve the changes in the attached 38 pages of materials, and authorize the FCCS Division to move forward with Rulemaking to accomplish the attached Rule and form changes.

Mr. Rudolph quoted Rule 69K-21.008(3)(a) and (b)(1):

- (a) Within 20 days of a change of the person serving as a FDIC at a funeral establishment, the funeral establishment shall complete and file with the Division a form DFS-I1-1743 "Change of Funeral Director/Direct Disposer In Charge," which shall identify the new FDIC.
- (b) In the event that a funeral establishment's FDIC quits or is terminated as FDIC:
 - 1. The funeral establishment shall not accept or write any new business until it has designated a new FDIC by filing with the Division the required for DFS-N1-1743 "Change of Funeral Director/Direct Disposer In Charge."

Mr. Rudolph stated that the Rule suggests that the establishment would be effectively shut down on any new business if consumers come in and the required form has not been filed, which may take a day or two. When an establishment loses a Funeral Director in Charge, first you have to be notified that they quit before you have to appoint a new Funeral Director in Charge. Right now if a Funeral Director in Charge quits while he is on vacation and does not tell you and you continue to do business then they send in a report to the Division indicating that they quit on this date, any business conducted prior to learning of this could be subject to a violation because you took on new business. This provision needs clarification. It would better that once the funeral establishment determines or learns that the Funeral Director in Charge has quit, they shall immediately appoint a new Funeral Director in Charge and then shall file the application for a Funeral Director in Charge because that has been the practice for years and years.

Mr. Bill Williams questioned whether there used to be a 30 day window.

The Chair stated that Mr. Rudolph's point is that even during this 20 day window, the establishment cannot write any new business. The Chair stated that is his understanding as well and it does not seem fair and equitable.

Mr. Keenan Knopke stated that the impact of this would be more on small businesses than large business. Effectively, a large business would have multiple funeral directors and you could effectively name one. If you are a small business with only one funeral director, you would be out of business.

Ms. Dudley stated if the Board goes forward with this change that probably would have an effect. Ms. Dudley recommended that the Board pull the entire Rule, make changes to it and then bring it back to the Board.

MOTION: Mr. Hall moved to approve the changes in the attached 38 pages of materials excluding Rule 69K-21.008, and authorize the FCCS Division to move forward with Rulemaking to accomplish the attached Rule and form changes. Ms. Taylor seconded the motion, which passed with 2 dissenting votes.

The Chair commended the Rules Committee and those who attended the meetings for all their hard work and time dedicated to this. The Chair recognized Mark Revitz, Ken Jones and Bill Williams for all their time and effort.

MOTION: Mr. Jones moved that the proposed Rule would not have any adverse effect on small businesses. Ms. Huggins seconded the motion, which passed unanimously.

Mr. Shropshire stated that the Department would move forward with the process of publishing notice of proposed rulemaking. It is possible that JAPC will ultimately have some issue and it may have to be brought back to the Board. These do not go into effect today. Rulemaking usually takes 90 to 120 days even if JAPC has no objections.

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

None

29. Administrative Report

| | | |
|----|--|----------------|
| A. | New Cemetery Applications Received Since Last Meeting | 0 |
| | Recommended for Approval | 0 |
| | Pending | 0 |
| B. | Cemetery Acquisition Applications Received Since Last Meeting | 1 |
| | Recommended for Approval | 0 |
| | Pending | 1 |
| C. | Preneed License Applications Received Since Last Meeting | 1 |
| | Active Preneed Licenses | 334 |
| | Presented to the Board at this Meeting | 1 |
| | Pending | 1 |
| D. | Preneed License Branch Applications Received Since Last Meeting | 2 |
| | Active Preneed License Branches | 344 |
| | Recommended for Approval | 2 |
| | Pending | 0 |
| E. | Preneed Sales Agent Applications Received Since Last Meeting | 140 |
| | Active Sales Agents as of September 23, 2010 | 3863 |
| | Recommended for Approval | |
| | Temporary Licenses Issued; Pending Permanent | 172 |
| F. | Monument Establishment Applications Received Since Last Meeting | 4 |
| | Active Monument Establishments | 96 |
| | Pending | 1 |
| G. | Broker of Burial Rights Applications Received Since Last Meeting | 0 |
| | Active Brokers of Burial Rights | 13 |
| | Pending | 0 |
| H. | Exempt Cemetery Reports Received Since Last Meeting | 0 |
| | Active Exempt Cemeteries | 71 |
| | Pending | 0 |
| I. | Preneed Funeral Contract Consumer Protection Trust Fund Balance as of September 23, 2010 | \$7,911,123.50 |
| | # Claims Presented at This Board Meeting | 4 |
| | \$ Claims Presented at This Board Meeting | \$2,543.90 |
| | Claims Paid as of September 23, 2010 (for fiscal year 2010-2011) | \$7,560.69 |

| | | |
|----|--|-----|
| J. | New Establishment Applications Received Since Last Meeting | 12 |
| | Pending | 8 |
| | Completed | 4 |
| K. | New Individual Applications Received Since Last Meeting | 36 |
| | Pending | 19 |
| | Completed | 17 |
| L. | Request for Training Facility Applications Received Since Last Meeting | 2 |
| | Pending | 1 |
| | Completed | 1 |
| M. | Request for CE Providers and Courses Received Since Last Meeting | 33 |
| | Pending | 0 |
| | Completed | 33 |
| N. | Initial Inspections Received Since Last Meeting | 10 |
| | Pending | 0 |
| | Completed | 10 |
| O. | Inspections Received Since Last Meeting | 317 |
| | Pending | 0 |
| | Completed | 317 |
| P. | Initial Licenses Issued Since Last Meeting | 30 |
| | Renewal Licenses Issued Since Last Meeting | 7 |
| | Duplicate Licenses Issued Since Last Meeting | 8 |

30. Disciplinary Report

| | Issued Since Last Meeting (August 5, 2010) | Issued Since January 1, 2010 |
|--------------------------|---|---------------------------------|
| Notice of Non-Compliance | 4 | 36 |
| Citations | 8 | 25 |

31. Adjournment

The meeting was adjourned at 1:11 p.m.