

DRAFT
MINUTES
April 1, 2010 - 10:00 A.M. to 5:00 P.M.
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
Hawthorn Suites Lake Buena Vista
8303 Palm Parkway
Orlando, FL 32836

1. Call to Order and Roll Call

Mr. Jody Brandenburg, The Chair, called the meeting to order at 10:00 am.

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

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is April 1, 2010; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery, and Consumer Services. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. The meeting is occurring in person at the Hawthorne Suites Lake Buena Vista in Orlando, FL. 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.

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

PRESENT:

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

ABSENT:

Tracy Huggins

ALSO PRESENT:

Doug Shropshire, Executive Director
Anthony Miller, Assistant Director
Allison Dudley, Board Counsel
Thomas "Tad" David, Department Counsel
James Gellepis, Department Staff
LaTonya Bryant-Parker, Department Staff
Jasmin Richardson, Department Staff

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

2. Action on the Minutes

A. March 4, 2010 – Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on March 4, 2010.

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

3. Old Business

A. Application(s) for Direct Disposal Establishment

(1) Recommended for Approval with conditions

(a) Socofi Capital and Mortuary Investments Inc d/b/a Quality Care Cremation Services (Plantation)

The application for a Direct Disposal Establishment was submitted on October 15, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on October 30, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Direct Disposer in Charge will be Rebecca Jean-Baptiste Ceva (F042114).

A search of Division records shows that one of the Applicant's officers, Albert McWhite, was disciplined in 1995, by the former ch. 470 Board. The violation involved was aiding an unlicensed person by signing as funeral director an at-need funeral contract arranged by the unlicensed person. McWhite was fined \$750 and costs of \$356.80. The Final Order is included herein.

The application was deferred at the December 2009 board meeting. There were questions concerning the name of the establishment. The Applicant has since changed the name to remove "and Shipping" from the fictitious name and has also moved locations. The establishment has passed its inspection. The Division is recommending approval with conditions.

The Chair questioned whether Mr. McWhite understood that if the license is granted, the establishment would not be allowed to offer shipping from this location.

Mr. Albert McWhite answered yes.

MOTION: Ms. Nancy Hubbell moved to approve the application subject to probation for 12 months after issuance of the license applied for, due to the involvement of Mr. McWhite as an officer. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

4. Disciplinary Proceeding(s)

A. Proposed Stipulation to Resolve Appeal of Disciplinary Action (Probable Cause Panel A)

(1) Emerald Coast Funeral Home (Ft Walton Beach)

This matter was previously before the Board and the Board issued a Final Order pursuant to the recommendations of the Administrative Law Judge, reprimanding Emerald Coast Funeral Home in connection with failure to file an application regarding change in ownership and representing the license of another as Emerald Coast Funeral Home's license. Emerald Coast Funeral Home, after entry of the Final Order, filed a timely notice of appeal to the First District Court of Appeal and the appeal action is pending at this time. The parties have come together though to discuss and present to the Board a recommended settlement that would result in dismissal of that appeal. The Final Order of the Board found Emerald Coast Funeral Home to have violated 2 statutes; that they did not timely file an application for approval of change of ownership and that they represented the license of another as their own. From discussions with Emerald Coast Funeral Home, the second violation, to them, suggests that they intended to deceive by representing the license of another as their own and that that was not the case; they never had that intention and was just mistaken of the legal requirements. The Division agrees with them that there was not an intention to misrepresent anyone else's license. They were using the previous license that they held and were continuing to operate under it. The Division has agreed with them to suggest to the Board a proposed settlement in which the violation of representing the license of another be stricken and the violation concerning failure to file an application for approval of change of ownership be sustained; that the reprimand be amended to address only that one violation. In exchange, Emerald Coast will dismiss their appeal. The Division recommends this proposed settlement. It appears our principle has been vindicated and yet their concern is appropriately addressed.

Mr. Tad David stated he was the litigating attorney on the underlying disciplinary action in this matter and has been intimately involved in the negotiations and discussions leading up to this proposed amended final order. Mr. David agrees this is an extremely reasonable and just end to this matter.

Ms. Thomas-Dewitt stated she has concerns on dropping the other issue concerning the tongue situation.

Ms. Allison Dudley stated that part was already dismissed by the Judge. After reviewing all the evidence, the Judge dismissed Count I of the Administrative Complaint.

Ms. Thomas-Dewitt suggested there may be errors in Count I.

Ms. Dudley questioned whether the errors are in the Administrative Complaint or in the Judge's findings.

Ms. Thomas-Dewitt stated the errors are in the Administrative Complaint.

Ms. Dudley stated that the Board can not really address those right now. If the Board does not feel that the Judge's findings were based on competent, substantial evidence you could overturn them but at this point it may be too late because the Board has already gone through the first meeting and has adopted that portion of the Judge's recommended order. So at this point it would be too late to come back and state that there is competent, substantial evidence. Back when this was done a couple of months ago and there was an indication that the Judge was mistaken and you could point it out in the transcript, then the Board could have overturned that.

MOTION: Ms. Hubbell moved to approve the Stipulation. Mr. Lew Hall seconded the motion, which passed with one dissenting vote.

B. Settlement Stipulation for Consent Order and Proposed Consent Order (Probable Cause Panel A)
(1) Loyless Funeral Homes d/b/a Florida Mortuary Funeral & Cremations, Case No: 105659-09-FC

Mr. David stated that the above referenced matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with the Respondent, Loyless Funeral Homes.

The Department conducted an investigation of Loyless Funeral Homes (License No. F040835) 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 filed an administrative complaint against Loyless Funeral Homes. The administrative complaint alleged that a decedent died on January 21, 2009, and her body was picked up on January 23, 2009, by a representative from Loyless Funeral Homes. On January 29, the body of the decedent was cremated by Loyless Funeral Homes before her death was ever reported to the Polk County Medical Examiner's office. The administrative complaint alleged that, by not reporting her death to the Medical Examiner's office, Loyless Funeral Homes prevented the medical examiner from performing his statutory obligation, pursuant to Chapter 406, Florida Statutes, and thereby violated the Florida Funeral, Cemetery and Consumers Services Act.

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.

Ms. Thomas-Dewitt questioned the fine range.

Mr. David stated that the penalty agreed to in these Stipulations are within and actually the middle to upper end of the penalty guidelines range.

MOTION: Ms. Ginny Taylor moved to approve the Settlement Stipulation and adopt the Consent Order. Mr. Jones seconded the motion, which passed with one dissenting vote.

(2) Mees, Ronald G Jr, Case No: 105657-09-FC

Mr. David stated that the above referenced matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with the Respondent, Ronald G. Mees, Jr., as the funeral director in charge at Loyless Funeral Homes.

The Department conducted an investigation of Ronald G. Mees, Jr. 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 filed an administrative complaint against Ronald G. Mees, Jr. The administrative complaint alleged that a decedent died on January 21, 2009, and her body was picked up on January 23, 2009, by a representative from Loyless Funeral Homes. On January 29, the body of the decedent was cremated by Loyless Funeral Homes before her death was ever reported to the Polk County Medical Examiner's office. The administrative complaint alleged that, by not reporting her death to the Medical Examiner's office, Loyless Funeral Homes prevented the medical examiner from performing his statutory obligation, pursuant to Chapter 406, Florida Statutes, and thereby violated the Florida Funeral, Cemetery and Consumers Services Act.

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.

MOTION: Ms. Taylor moved to approve the Settlement Stipulation and adopt the Consent Order. Ms. Hubbell seconded the motion, which passed unanimously.

(3) *Stanley Gunter-Butler, Case No: 104232-09-FC*

Mr. David stated that the above referenced matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with the Respondent, Stanley Gunter-Butler

Stanley Gunter-Butler (License No. F045059) is the funeral director in charge for the funeral establishment, Tony Tanner Funeral Services, Inc. As the funeral director in charge of a funeral establishment, Stanley Gunter-Butler is responsible for making sure the funeral establishment and all persons employed in the establishment comply with all applicable laws and rules of the Board.

The administrative complaint in this matter alleged that the funeral establishment license for Tony Tanner Funeral Services, Inc. (License No.: F048141) expired on November 30, 2008 and was not renewed until December 17, 2008. The administrative complaint alleged, also, that Tony Tanner Funeral Services, Inc. did not disclose a service fee for obtaining death certificates, did not maintain a clean and sanitary preparatory room, and operated a funeral establishment without a valid funeral establishment license during the period of December 1, 2008 through December 16, 2008.

Stanley Gunter-Butler, as funeral director in charge for Tony Tanner Funeral Services, Inc., did not ensure that the funeral establishment license for Tony Tanner Funeral Services, Inc. was timely renewed, did not ensure that the proper disclosure of service fees charged for death certificates was provided on all at-need contracts, and did not ensure that the preparation room was kept in a clean and sanitary condition.

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. David added that the discipline contained in the Stipulation is within the penalty guidelines range for the alleged violation.

MOTION: Mr. Helm moved to approve the Settlement Stipulation and adopt the Consent Order. Ms. Taylor seconded the motion, which passed unanimously.

(4) *Tony Tanner Funeral Services Inc., Case No: 104221-09-FC*

Mr. David stated that the above referenced matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with the Respondent, Tony Tanner Funeral Services, Inc.

The administrative complaint in this matter alleged that the funeral establishment license (License No.: F048141) for Respondent expired on November 30, 2008 and was not renewed until December 17, 2008. The administrative complaint alleges, also, that Respondent did not disclose a service fee for obtaining death certificates, did not maintain a clean and sanitary preparatory room, and operated a funeral establishment without a valid funeral establishment license during the period of December 1, 2008 through December 16, 2008.

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.

MOTION: Ms. Thomas-Dewitt moved to approve the Settlement Stipulation and adopt the Consent Order. Ms. Taylor seconded the motion, which passed unanimously.

5. Informal Hearings, Section 120.57(2), Facts Not Disputed

A. Disciplinary Proceeding

(1) Motion for Determination of Waiver and for Order by Board (Probable Cause Panel A)

(a) Signal 7 Transport, Inc., Case No: 103066-09-FC

Mr. David stated that this matter went before Probable Cause Panel A. Mr. David requested that Ms. Hubbell recuse herself from the consideration of this matter.

Ms. Hubbell recused herself as she participated in the Probable Cause Panel.

The above referenced matter has been scheduled for an Informal Hearing to consider the attached Motion for Determination of Waiver and Order by Board.

On December 1, 2009, the Department of Financial Services ("Department") filed an Administrative Complaint alleging facts that Signal 7 Transport, Inc., ("Respondent") violated provisions of Chapter 497, Florida Statutes, and Chapter 69K, Florida Administrative Code. The Administrative Complaint specifically alleges that Respondent relocated its removal service facility at least three times without notifying the Department and submitted a check for its license renewal fee in the amount of \$555.00, which was returned to the Department for insufficient funds. Additionally, the Administrative Complaint alleges that Respondent operated a removal services facility without an active and valid license, and failed to have its location inspected by the Department before operating a removal service facility at the location.

Respondent is currently licensed, as a removal service facility by the Board.

The Administrative Complaint was sent by Certified U.S. Mail to Signal 7 Transport, Inc. at three different addresses, including the business address and preferred mailing address listed with the Division of Funeral, Cemetery and Consumer Services on the ALIS system. All of the certified mail was returned to the Division without being accepted by Respondent.

Subsequently, in accordance with Section 120.60(5), Florida Statutes, a copy of the Legal Notice of the Administrative Complaint was published for four (4) consecutive weeks in the Florida Today newspaper on December 29, 2009, January 5, 2010, January 12, 2010, and January 19, 2010. Said publication constitutes service upon Respondent, and proof of service by publication is attached hereto as "Exhibit B."

Respondent was notified in the published notice of the right to request a proceeding in accordance with Sections 120.569 and 120.57, Florida Statutes, and that failure to answer the Administrative Complaint, or request a proceeding within the time allotted would result in the waiver of its rights to choose a hearing in this matter, and result in the imposition of a penalty.

The Department did not receive a response in this matter, and the time for Respondent to submit a response has passed. Therefore, the Department requests that the Chairman of the Board entertain a motion finding that the Respondent was served with an Administrative Complaint containing a Notice of Rights, that no response has been received by the Department, and that Respondent has waived its rights to choose a proceeding involving disputed issues of material facts in this matter.

MOTION: Mr. Jones moved that the Respondent did not respond to the Administrative Complaint containing a Notice of Rights and therefore waived their right to elect a proceeding involving disputed issues of material facts in this matter. Ms. Taylor seconded the motion, which passed unanimously.

The Chair questioned whether there was anyone representing Signal 7 present. There was a negative response.

Col. Don Stiegman stated that given the fact that the Licensee did not respond, that constitutes a waiver.

Ms. Dudley concurred. That would be a waiver of their right to select a formal proceeding.

Col. Stiegman questioned whether the Licensee had to be present to acknowledge whether they agree.

Ms. Dudley answered no.

Mr. David stated that the prior motion simply found that the Licensee did not respond and therefore they do not have the option to select a formal hearing or informal hearing upon written submissions or an informal hearing before the Board. Now, they have waived that right and therefore the Department, as the Petitioner, gets to select and informal hearing before the Board, which will now begin.

The facts in this matter are outlined in the Administrative Complaint that was included in the Board's packet. A summary of the complaints are as follows:

In Counts I, III and IV, it is alleged that the Respondent moved 3 times, 3 different locations, and at no point during that time did they notify the Division of the new location/address. Each of those moves, without notification, was the subject of a Count;

Count II alleges that they did not timely renew their license in 2006.

Those are a brief summary of the factual allegations as outlined in the Administrative Complaint. The Department requests that the Board adopt the facts as stated in the Administrative Complaint as the Findings of Fact in this matter. As previously stated, the Respondent did not dispute any of the facts. Therefore the Department feels it is appropriate to adopt those facts as the Findings of Fact of the Board for the Final Order.

MOTION: Mr. Helm moved to adopt the Findings of Fact. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. David stated pursuant to the alleged facts, the Department has alleged that those facts are the basis of violating the following statutes in each of the Counts:

In Count I, the factual allegations support violation of ss. 497.152(1)(a), 497.152(4)(h), 497.385(1)(g)(2), F.S., Rules 69K-24.010(3) and 69K-24.022(3), F.A.C.;

In Count II, the factual allegations support violation of ss. 497.152(1)(a), 497.152(15)(a), 497.152(4)(h), 497.385(1)(j), 497.152(1)(b), F.S.;

In Count III, the factual allegations support violation of ss. 497.152(1)(a), 497.152(1)(b), 497.385(1)(g)(2), 497.385(1)(j), F.S., Rules 69K-24.010(3), 69K-24.022(3), F.A.C

In Count IV, the factual allegations support violation of ss. 497.152(1)(a), 497.152(1)(b), 497.385(1)(g)(2), 497.385(1)(j), F.S., Rules 69K-24.010(3), 69K-24.022(3), F.A.C.

The Department requests that the Board adopts these alleged violations as the Conclusions of Law in the violations found in their Final Order in this matter.

MOTION: Ms. Jean Anderson moved to adopt the Conclusions of Law. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. David stated that there are aggravators present that would allow the Board to take the discipline in this matter outside of the stated penalty guidelines. These aggravators are found in 69K-30.001, F.A.C.:

69K-30.001(2)(b), The length of time since the date of the violation – This works against the Licensee in 2 ways. First of all, it has been a long time since the violations started, since the first in the series of violations. Secondly, it is very recent since the most recent violation and it appears to be ongoing;

69K-30.001(2)(f), The deterrent effect of the penalty imposed – The Department recommends that this be aggravated outside of the penalty guidelines because to do otherwise would not present very much of a deterrent effect for this Licensee in the future if they obtained another license and for other licensees within the industry;

69K-30.001(2)(g), The effect of penalty upon the Licensee’s livelihood – The Department does not have any evidence of where the Licensee is operating or whether they are even operating. There does not appear to be a severe effect on the livelihood of this person, which would support a more severe or at least would not work against a more severe penalty outside of the disciplinary guidelines;

69K-30.001(2)(h), Any efforts for rehabilitation – The Department still has not received any response or communication from the Licensee. There appears to be no effort to contact the Department or the Division or to make any rehabilitation in this matter. Therefore that aggravator certainly works against the Licensee and would support taking this above the stated penalty in the guidelines;

69K-30.001(2)(j), Attempts by the Licensee to correct or stop violations or refusal by the Licensee to correct or stop violations – There appears to be no effort to correct or remedy the violations in this matter by the Licensee, no contact whatsoever. Therefore that aggravator certainly supports taking the discipline outside of the penalty guidelines in this matter;

69K-30.001(2)(l), Actual negligence of the Licensee pertaining to any violation – Obviously you do not move a business without the Licensee being aware that it has moved. All of the evidence shows that the Licensee and the license holder, the person responsible for, were directly involved in the violation which supports aggravating the penalty and supports taking it above the penalty recommended in the guidelines;

69K-30.001(2)(n), Any other mitigating or aggravating circumstances – The complete lack of response, the complete lack of involvement of the Licensee with this process and the complete lack of interest in this process by the Licensee shows that they have no involvement whatsoever with the Industry and with this process. Therefore the Department proposes that supports taking it outside of the penalty guidelines.

The Department requests that the Board adopts the previously stated aggravators as the aggravators in this matter.

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

Mr. David stated in light of the aggravators adopted by the Board, the Department recommends the penalty of revocation. Normally the penalty of revocation would not be available. However, since the aggravators were adopted and approved by the Board, the Department feels that revocation is appropriate and should be levied by the Board in this matter.

The Chair questioned whether there would be any fines and costs included.

Mr. Helm questioned the Division’s thoughts on fines and costs.

Mr. Shropshire stated that it would be allowable and appropriate to include costs so that if the Licensee ever applies again he would first have to cover the costs of this action. Mr. Shropshire estimated the costs in the range of \$2500.

Mr. David stated that \$2500 would be a conservative estimate, since the Department does not have an exact figure in an effort to give the Licensee every benefit of the doubt, which would be required under due process.

Mr. Shropshire questioned whether Mr. David is confident that the costs would be at least \$2500.

Mr. David stated he would be confident with \$2000.

Ms. Dudley stated the Board could impose another fine, \$2000 in costs and a \$1000 or \$500 fine.

The Chair stated the fine could be per Count, per the Board’s option.

Ms. Dudley agreed.

MOTION: Mr. Helm moved for revocation with \$2000 in costs and a fine of \$2000 (\$500 on each of the 4 Counts). Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. Funeral Director and Embalmer by Endorsement, Denial of Application
(1) Powell, Jack (NOI-2009-144)

The action concerning Jack Powell has been withdrawn from the Agenda at his request in order to allow him to obtain counsel.

6. 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 with Conditions (Criminal History)
(1) Baldwin, Evans Palmer (Appointing Entity: Baldwin Brothers Memorial Care Services Inc.)

On the application received by the Department on September 30, 2009, the Applicant answered “Yes” to the Applicant Background Questions.

On Sept. 25, 2002 Applicant, then age 17, while driving a car at approximately 9 PM in Winter Park, struck a woman on a bicycle that he asserts he never saw, and caused her death. Applicant did not stop at the scene. Applicant asserts he pulled over at gas station a little way further on, and saw people apparently helping the victim, and heard emergency vehicles going to the scene, and decided to drive home. At home that same night he told his girlfriend that he had struck a bicyclist and he could hear her screaming. The next day, when his step-mother noticed the damage to the car Applicant had been driving, Applicant told her he had fallen out of a tree onto the car and damaged it. It was not until Oct. 5, 2002 that Applicant told his parents the truth. His father went to see an attorney to obtain advice and representation for Applicant. On Oct. 14, 2002 the attorney for Applicant delivered a letter to the highway patrol, revealing Applicant’s involvement, which the police were not previously aware of.

On or about January 4, 2004 Applicant pled guilty to the felony charge of leaving the scene of an accident with death, in Florida Circuit Court, Orange County. His sentence included 5 years supervised probation, 150 hours of community service including 10 hours of speaking to groups in victim awareness programs using a photo of the victim, his drivers license was restricted to business driving for one year, he had to pay the victim’s funeral costs, and court costs were imposed.

This matter appeared on the Feb. 2010 Board meeting agenda but was subsequently pulled off that agenda at the Applicant’s request, and was not considered by the Board at that meeting. The Division’s recommendation in the Feb. Board package was for denial. However, subsequently the Applicant has provided multiple character and other references that were not included in the initial application package. The references are from the following:

- Habitat for Humanity – Hal George, President/Construction Supervisor
- Curlew Hills Memory Gardens – Keenan Knopke, President/CEO
- Law Offices of Leventhal & Slaughter, L.L.P. – Robert A. Leventhal
- University of Central Florida – Dr. Taylor Ellis, Associate Dean
- University of Central Florida – Patricia A. MacKown, Assistant Vice President
- First Congregational Church of Winter Park – James Armstrong, Senior Minister (email)

The additional references that have been supplied tip the Division onto the side of recommending approval subject to the terms and conditions of the Stipulation for Licensure signed by the Applicant, which calls for a 24 month probation.

Mr. Helm questioned whether the Applicant was charged with anything other than leaving the scene of an accident.

Ms. Wendy Wiener stated that he was not.

Mr. Helm stated there was mention of a red light.

Ms. Wiener stated there was a mention in the report from FDLE regarding a red light although that allegation came about as the result of 2 witnesses who were too intoxicated the night of the incident for reports to be given to Law Enforcement. Ultimately that was not a charge in the case.

MOTION: Mr. Helm moved to approve the application with conditions as set forth in the Stipulation for Licensure signed by Applicant, which calls for a 24 month probation. Mr. Hall seconded the motion, which passed unanimously.

(2) Bastien, Jean (Appointing Entity: SCI Funeral Services of Florida Inc)

On February 18, 2010, the Department received an application from Mr. Bastien. Mr. Bastien answered “No” to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was determined Mr. Bastien had one criminal infraction that required disclosing. Mr. Bastien was asked to provide an explanation for the inaccuracy on his application.

Mr. Bastien’s explanation *“In the past interviews that I’ve had, the protocol usually dictates that any traffic violation short of a DUI or DWI was not of any importance. I my case when I was applying with SCI, the laws of familiarity had already settled in to my routine response to the question, since I have no Felony, no misdemeanor, no DUI nor DWI. For that I am whole heartedly apologizing for having created such fuss over something this small that, had it been disclosed prior would have not required this current arbitration.”*

The criminal history includes one (1) offense relating to one incident of Nonmoving Traffic Violation – No Valid Drivers License in 2007, which occurred in Village of Pinecrest, Florida. Upon request Mr. Bastien disclosed all required information.

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

The Division recommends approval with the condition of 12-month probation.

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

MOTION: Ms. Taylor moved to approve the application with the condition that the licensee be placed on 12 months probation. Mr. Jones seconded the motion, which passed unanimously.

(3) Kennedy, Michael (Appointing Entity: Neptune Management Corp)

On March 9, 2010, the Department received an application from Mr. Kennedy. Mr. Kennedy answered “Yes” to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was determined Mr. Kennedy had one criminal infraction that required disclosing.

The criminal history includes one (1) offense relating to one incident of felony conspiring to distribute of cocaine in 1990, which occurred in Middle District of Florida. Mr. Kennedy disclosed all required information. Mr. Kennedy at the time of this infraction owned and operated a resort in the Bahamas. He took money for the use of his private airstrip. Mr. Kennedy, who is 70 yrs old, acknowledges that his participation in this activity was wrong and cooperated fully with the Federal Government throughout his trial. Mr. Kennedy has been very candid and cooperative with the Division’s staff.

He applied to the Office of Executive Clemency for restoration of his Civil Rights and his application was approved. Mr. Kennedy has worked very hard to become good citizen.

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

MOTION: Ms. Hubbell moved to approve the application with the condition that the licensee be placed on 24 months probation. Col. Stiegman seconded the motion, which passed unanimously.

(4) Stansberry, Anthony (Appointing Entity: CFS Funeral Services Inc)

On February 23, 2010, the Department received an application from Mr. Stansberry. Mr. Stansberry answered "No" to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was determined Mr. Stansberry had one criminal infraction that required disclosing. Mr. Stansberry was asked to provide an explanation for the inaccuracy on his application.

Mr. Stansberry's explanation *"I felt that I had no criminal history. The reason for my discharge in the military was from misconduct based on the Military Code of Conduct. The offense from which I was punished is NOT an offense in the Civilian society. I was not trying to misrepresent my background or hide anything but the offense that I committed is NOT considered a misdemeanor, felony or any other crime outside of the military. I apologize for not answering the question in the correct manor but my situation is a little different and the question did not fully represent my background without further explanation"*.

In 1998 Applicant, then 23 years old, pled guilty at court-martial to wrongful use of marijuana on 8 occasions, wrongful use of the controlled drug "Ecstasy", and drinking vinegar in an attempt to alter urine test results. He was sentenced to 3 months confinement, reduction in rank, and bad conduct discharge.

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

The Division recommends approval subject to the condition of 12-month probation.

The Chair questioned whether Mr. Stansberry was present. There was a negative response from the audience.

Col. Stiegman questioned whether there is any evidence of drug use since the BCD.

Mr. Shropshire stated that the Division has no evidence in forms of arrests or criminal action.

Mr. Hall questioned Mr. Stansberry's statement, *"...is NOT an offense in the Civilian society."*

Ms. Dudley stated that if a urine test is conducted and it is determined that Ecstasy was ingested there would be no charge for ingesting it. The person would need to be charged with possession of Ecstasy. In the Military if it's determined that the drug has been ingested, the person could be charged by court martial. In Florida, ingesting a drug is not a criminal offense, but if you are caught possessing it would be a problem.

Mr. Hall questioned the wrongful use of marijuana.

Ms. Dudley stated that implies that he was drug tested and it was determined that he was using marijuana. There does not appear evidence that he possessed it. Possession of marijuana is a crime, using it is not.

Col. Stiegman questioned whether the Applicant was notified that his item would come before the Board today.

Mr. Shropshire stated that Mr. Stansberry was aware as the Division communicated with him on multiple occasions concerning this.

Col. Stiegman questioned whether Mr. Stansberry gave any indication that he thought he should appear to present his side of the story.

Mr. Helm stated that the Applicant knew he was recommended for Approval with Conditions.

MOTION: Ms. Hubbell moved to approve the application with the condition that the licensee be placed on 12 months probation. Ms. Anderson seconded the motion, which passed with 2 dissenting votes.

C. Recommended for Deferral

(1) *MacQuarrie, Barbara (Appointing Entity: International Cremation Society Inc)*

On November 6, 2009, the Department received an application from Ms. MacQuarrie. Ms. MacQuarrie answered "No" to Applicant Background Questions. During the review of her fingerprint results provided by FDLE it was discovered that Ms. MacQuarrie did have a criminal infraction that required disclosing. The criminal history includes one (1) offense relating to an incident of DUI in 2007, which occurred in Florida.

Upon request, Ms. MacQuarrie subsequently disclosed all required information. Ms. MacQuarrie was asked to provide an explanation for the inaccuracy on her application, and she explained: *"I was not aware of my first offense a DUI is to be considered a criminal history. That is the reason I wrote that on my application. I realized that I misrepresented myself on my application but I am very sorry for this horrible endeavor that has caused me so much humiliation to my family, my job, my church and I have to live with this horrible situation that was caused over losing a husband 2-1/2 years ago."*

This Applicant is the subject of a pending investigation under Division file # SR1-642250361. Section 497.141(5), Florida Statutes, provides as follows:

(5) The Board may refuse to rule on an initial application for licensure by any Applicant who is under investigation or prosecution in any jurisdiction for an action which there is reasonable cause to believe would constitute a violation of this chapter if committed in this state, until such time as such investigation or prosecution is completed and the results of the investigation or prosecution are reviewed by the Board.

This is the Applicant's initial application for the license applied for. Although the investigation is not yet complete, the Division believes that there is reasonable cause to believe that a violation of Ch. 497 by Applicant has occurred. However, s. 497.172(3) (c), Florida Statutes, provides as follows:

(c) Except as otherwise provided in his subsection, information held by the Department pursuant to an investigation of a violation of this chapter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made pursuant to s. 497.153.

Accordingly, the Division is prevented from advising the Board as to the subject and nature of the investigation or findings to date, unless Applicant waived confidentiality. However, in this case the Division believes that it would impair the Division's investigation to expose investigative information to the Applicant. Therefore, the Division has not offered the Applicant an opportunity to waive confidentiality.

The Division recommends to the Board:

- A. That the Board refuse to rule on this application due to the pending investigation, as authorized by s. 497.141(5), F.S.; and
- B. That the Board directs that the Division update the Board concerning the status of the application and investigation at the next in-person meeting of the Board.

Mr. Helm questioned whether there is a deemer date.

Ms. Dudley stated there is a deemer date, but this provision that allows the Board to defer if there is an open investigation would toll the deemer date.

Col. Stiegman questioned what this does to the deemer date.

Ms. Dudley stated it would allow the Board to hold off on ruling on the application with no consequences essentially.

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

7. **Application(s) for Preneed Main License**

- A. *Recommended for Approval without Conditions*
 - (1) *Nakia Ingraham Funeral Home, Inc. (Hollywood)*

The Department received the application on September 22, 2009 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on October 2, 2009 and the Applicant resolved all deficiencies as of March 15, 2010. A completed background check of all officers revealed no criminal history. Applicant will sell preneed through Funeral Services Inc (FSI) under the pre-approved First Florida Trust Agreement (BB&T) and pre-arranged funeral agreement.

It should be noted that Ms. Nakia Ingraham, owner and principal of Nakia Ingraham Funeral Home, Inc., was the FDIC over Grace Funeral Home when the establishment was inspected and several infractions were found (please see attached August 24, 2006 Board minutes). As a result, Ms. Ingraham was placed on probation for six months, ordered to retake the Florida Law & Rules Exam, to take three hours of Laws & Rules continuing education and to pay a \$1000 fine. All of these stipulations were met and this matter previously came before the Board in 2006 during consideration of the application for the funeral establishment license for Nakia Ingraham Funeral Home, Inc.

The application was approved by the Board on August 24, 2006, and Applicant is currently licensed as a funeral establishment. Therefore, recommendation is for approval of the application without conditions.

The Applicant's financial statements as of December 31, 2009 reflect the following:

Acquired Preneed Contracts = \$	0
Required Net Worth = \$	10,000
Reported Net Worth = \$	24,144

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

The Chair stated on the Profit and Loss Statement, page 29, there is no salary or payroll expense.

Mr. Shropshire requested that Mr. Jim Gellepis respond.

Mr. Bill Williams stated that he could not answer the question but could contact the firm for the answer if it pleases the Board.

Mr. Jim Gellepis stated this is as of December 31, 2009, January thru December.

Ms. Hubbell stated that she was surprised to see that the Retained Earnings and the Equity, they had less distributions. Ms. Hubbell questioned whether the distributions were in lieu of salary. This would not be a wise business decision to handle it that way.

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

(2) Stuart Group, Inc. d/b/a Affordable Cremation-A Dignified Alternative (Fort Myers)

The Department received the application on December 8, 2009 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on January 7, 2010 and the Applicant resolved all deficiencies as of February 24, 2010. A completed background check of all officers revealed no criminal history. Applicant will sell insurance-funded preneed only through Funeral Services Inc (FSI) and will use the Funeral Director's Life Insurance Co (FDLIC) Pre-arranged Funeral Agreement. The Applicant is currently licensed as a direct disposal establishment and has held this license since August 2004.

The Applicant's financial statements as of December 31, 2009 reflect the following:

Acquired Preneed Contracts = \$	0
Required Net Worth = \$	10,000
Reported Net Worth = \$	35,041

Randall T. Stuart, principal, answered "yes" on the Historical Sketch, Page 3, Question 4: "Have you, or any company of which you are or were then an officer or member, ever been declared bankrupt?"

Documentation establishes that Randall T. Stuart (a principal of Applicant herein) was discharged from Ch. 7 bankruptcy on July 6, 1982, by the Federal District Court, Western District of Kentucky. It was a personal bankruptcy action and discharge. Applicant provided a notarized statement disclosing the bankruptcy as supporting documentation.

In view of the bankruptcy, the FCCS Division requested additional materials from Applicant:

- 1) Court documentation evidencing that the bankruptcy was discharged.
- 2) A personal financial statement for Officer Randall T. Stuart.
- 3) Letters of reference for Mr. Stuart from a financial institution, and from a trade supplier.

Applicant has provided all requested information and material. The letters of reference are favorable.

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

B. Recommended for Approval with Conditions

(1) Savino Funeral Home, Inc. d/b/a Savino Funeral Home & Cremation Services (Margate)

The Department received the application on February 5, 2010 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on February 10, 2010 and the Applicant resolved all deficiencies as of March 12, 2010. A completed background check of all officers revealed no criminal history. Applicant will sell both trust and insurance-funded preneed through Funeral Services, Inc. (FSI). Applicant will utilize the Funeral Director's Life Insurance Co (FDLIC) Pre-arranged Funeral Agreement and the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (BB&T) and Pre-arranged Funeral Agreement, respectively. The Applicant has obtained a funeral establishment license, approved by the Board on March 4, 2010. It should also be noted that the Applicant is applying for a preneed branch office license for Gendron Funeral & Cremation Services, Inc. and, if approved by the Board, agrees to adhere to certain restrictions (please see the enclosed written guidelines regarding the sale of preneed contracts at the Gendron branch location).

The Applicant's financial statements as of December 31, 2009 reflect the following:

Acquired Preneed Contracts = \$	0
Required Net Worth = \$	10,000
Reported Net Worth = \$	54,053

William J. Savino, officer, answered "yes" to Question 4 on the Historical Sketch, Page 3: "Have you, or any company of which you are or were then an officer or member, ever been declared bankrupt?"

Documentation establishes that William J. Savino (a principal of Applicant herein) was discharged from Ch. 7 bankruptcy on February 27, 2008, by the Federal District Court, Southern District of Florida. It was a personal bankruptcy action and discharge. Applicant provided a notarized statement disclosing the bankruptcy as supporting documentation.

In view of the bankruptcy, the FCCS Division requested additional materials from Applicant:

- 1) Court documentation evidencing that the bankruptcy was discharged.
- 2) A personal financial statement for officer, William J. Savino.
- 3) Letters of reference for Mr. Savino from a financial institution, and from a trade supplier.
- 4) Please see also Mr. Savino's letter of explanation dated March 16, 2010 at 7:55 pm provided to "Kellie" of attorney Wendy Wiener's Law Firm, at our request. In his letter, he indicates that no death-care industry related business debts were discharged in the personal bankruptcy.

Applicant has provided all requested information and material. The letters of reference are favorable. Therefore, recommendation is for approval of the application with the following conditions:

- (1) That the Applicant will trust 100% for any preneed contracts that will be written under trust.
- (2) That Applicant agrees to adhere to the enclosed written procedures for all preneed contracts that will be written at Gendron Funeral & Cremation Services, Inc., a branch location of Savino Funeral Home, Inc.

Mr. Hall questioned whether there was anyone present representing the Applicant.

Ms. Wiener answered yes.

Mr. Hall questioned whether the 100% trusting condition is indefinite or for a limited amount of time.

Mr. Shropshire stated that the Division's position would be that trusting 100% would continue until the Applicant approaches the Division and asks that the condition be removed, at which time the Division would present the request to the Board with a recommendation from the Division.

Ms. Wiener stated as she explained the conditions to the Applicant, it was explained that often people start out with 100% trusting and then they re-approach the Division a year or 2 years later, after they have established a track record of appropriate actions with the preneed license issued.

Mr. Hall questioned whether the Applicant is applying to be a branch preneed location for Gendron.

Ms. Wiener stated that Mr. Savino owns 2 locations in the State; one that he just recently opened which was licensed a couple of meetings ago and subsequently applied for his preneed main license for that location. Mr. Savino has another location across the State, which is Gendron Funeral Home, but is also owned by him. That location, pursuant to our Statute, because of the common ownership can be a branch location, but there are some conditions about how that will operate and Mr. Savino has agreed to those.

Mr. Hall questioned the reason for them not being able to provide preneed at the location to begin with.

Ms. Wiener stated that Mr. Gendron had a disciplinary matter that occurred in Maine some years. It was presented to the Board. There was a period of time that Ms. Wiener was representing Mr. Gendron then he transferred to one of Ms. Wiener's current law partners. Ultimately, the location that Mr. Gendron is at is owned by Mr. Savino but Mr. Gendron had an issue with some preneed discipline up in Maine many years ago. That issue was actually heard by the 470 Board and Mr. Gendron was disciplined for it and was approved and he continues to be licensed in good standing. The Division had some concern about Mr. Gendron having control over preneed money, so the Division asked for additional assurances and a procedure that would occur by Mr. Savino to oversee the preneed business and those have been agreed.

Mr. Hall questioned the distance between the locations.

Ms. Wiener stated that are located across the State from one another.

The Chair stated one is in Ft Myers and the other in Broward.

MOTION: Col. Stiegman moved to approve the application subject to conditions specified by the Division. Ms. Thomas-Dewitt seconded the motion, which passed with 1 dissenting.

*C. Recommended for Deferral
(1) Landmark Funeral Home, Inc. (Hollywood)*

At the request of the Applicant, the item has been removed from the Agenda.

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

Mr. Helm questioned whether the Board should note that the application for Buxton is pending approval of the funeral establishment license.

Mr. Shropshire stated that the application for approval of Buxton Funeral Home and Crematory as a branch location would be subject to approval of the related pending application for funeral establishment license that is on the agenda today.

MOTION: Ms. Taylor moved to approve the applications noting that the approval of Buxton Funeral Home and Crematory as a branch location would be subject to approval of the related pending application for funeral establishment license. Ms. Hubbell seconded the motion, which passed unanimously.

9. **Continuing Education Course Approval(s)**
- A. *Recommended for Approval without Conditions – Addendum C*
- (1) *Academy of Graduate Embalmers of Georgia #69*
 - (2) *Epsilon Nu Delta Mortuary Fraternity #5801*
 - (3) *Florida Funeral Directors Association #75*
 - (4) *Florida Morticians Association, Inc #133*
 - (5) *FuneralReview.com #122*
 - (6) *Independent Funeral Directors of Florida #135*
 - (7) *In-Sight Books #10008*
 - (8) *International Order of the Golden Rule #2201*
 - (9) *National Funeral Directors Association #136*
 - (10) *National Funeral Directors & Morticians Association #120*
 - (11) *SCI Management – Dignity University #99*

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

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

10. **Application(s) for Florida Laws and Rules Examination**
- A. *Recommended for Approval without Conditions – Addendum D*
- (1) *Funeral Director and Embalmer - by Internship*
 - (a) *Burg Jr, Gary L*
 - (b) *Dorsey, Joshua*
 - (c) *Fleming, Brittney A*
 - (d) *Johnson, William A*
 - (e) *Spates, Charles A*
 - (2) *Funeral Director and Embalmer-by Endorsement*
 - (a) *LaBella, Peter J*
 - (b) *Mandel, Lloyd J*

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.

11. **Application(s) for Internship**
- A. *Recommended for Approval without Conditions – Addendum E*
- (1) *Funeral Director and Embalmer*
 - (a) *Clemons, Audrey Y*
 - (b) *Williams, Tysnie L*

The Division recommends approval of the application(s).

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

12. **Application(s) for Embalmer Apprentice**
- A. *Recommended for Approval without Conditions – Addendum F*
- (1) *Johnson, Darrell D*
 - (2) *Wilson, Ralph E*

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 Denial
(1) Richard, Jr., Samuel E

The Applicant submitted an application to become an Embalmer Apprentice. The application was submitted on July 16, 2009. The application was complete and a deficiency letter was not sent to the Applicant. Mr. Richard pled guilty and was convicted of crimes ranging from having narcotics paraphernalia, possession of marijuana, carrying a concealed weapon to more serious offenses such as conspiracy to traffic cocaine and trafficking cocaine. The division is recommending denial of this application based on the criminal history of the Applicant and also the demonstrated history of lack of trustworthiness or integrity.

The Division recommends denial of the application pursuant to ss. 497.373(1)(c), 497.374(1)(d), 497.376, 497.368(1)(c), and 497.369(1)(d), F.S., No Applicant may be approved unless the Board finds the Applicant to be of good character with no demonstrated history of lack of trustworthiness or integrity.

The Chair requested that Mr. Shropshire swear Mr. Richard in.

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

Mr. Samuel Richard answered, "I do."

The Chair questioned whether Mr. Richard would like to address the Board.

Mr. Richard stated he understands that his application is up for denial as a result of mistakes made when he was younger and in college. Although he made some wrong decisions, he is requesting that the Board give him a second chance, not just to be successful but to leave behind a legacy for his family.

Mr. Helm questioned whether the fines have been paid.

Mr. Richard answered no. Mr. Richard stated that his fines are in excess of \$30,000 and he is saving to pay the fines but as of now they have not been paid.

Ms. Hubbell questioned what Mr. Richard has done to rehabilitate himself.

Mr. Richard stated while incarcerated, he attended a drug rehabilitation program where he received counseling for drugs, anger management and things of that sort.

Ms. Hubbell questioned whether Mr. Richard successfully completed the program.

Mr. Richard answered yes.

Ms. Hubbell questioned whether Mr. Richard remained off drugs or whether he continues to participate in those type activities.

Mr. Richard stated that he does not and no longer hang around the guys that he used do nor does he partake in the activities that he used. Mr. Richard stated that he understands there are no shortcuts to success so he is trying to change his life. Mr. Richard stated that he is currently employed at the funeral home and at Publix.

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

Mr. Richard stated that his duties vary. Mr. Richard added that he helps out with visitations, work services and drive cars.

The Chair questioned whether Mr. Richard does any embalming.

Mr. Richard answered no.

Ms. Hubbell questioned whether all of the charges were basically drug related.

Mr. Richard answered yes.

The Chair stated there was also a concealed weapons charge.

Mr. Jones questioned whether Mr. Richard is currently attending any drug counseling.

Mr. Richard stated that he currently attends Narcotics Anonymous every Monday night.

The Chair questioned the location of the meeting.

Mr. Richard stated that the meeting is held in Kissimmee.

The Chair questioned whether Mr. Richard drives all the way to Kissimmee.

Mr. Richard answered yes.

Mr. Jones questioned whether Mr. Richard plans to continue attending the meeting.

Mr. Richard stated that he does.

Ms. Thomas-Dewitt questioned whether Mr. Richard is aware that he would have to appear before the Board each time for approval in order to complete an internship and to take the Board Exam.

Mr. Richard stated that he understands he would have to reappear before the Board.

Mr. Zach White stated he was Mr. Richard's attorney on his criminal cases and developed a relationship with him over the course of time. Mr. Richard started to confide in Mr. White in the mistakes that he had made which led him to State prison. Mr. Richard has spoken with Mr. White on a weekly basis, requesting guidance, so they meet and talk occasionally. On the morning of the trial, Mr. White explained to Mr. Richard that he thought he had a very good chance of prevailing on his case. Mr. Richard stated he would not go forward, as he had gotten involved in this so he wanted to take his punishment. Mr. Richard has a seven year old son. Mr. Richard explained that he needed to get out and make a life for himself and his son. Mr. White stated that was commended as most of his clients do not do that. Mr. Richard is also a college graduate as a result of the prison sentence being delayed until he completed his B.A. at the University of South Florida in Tampa. Mr. Richard has always been respectful, well-dressed and well-mannered. Over and over again, Mr. Richard has always stated, "I don't know how I got myself into this mess, but I want to get it behind me and make a quality life for myself and my child." Six months prior to Mr. Richard being released from prison, he resumed calling Mr. White requesting assistance. Mr. White has a funeral home that is willing to allow Mr. Richard to complete his apprenticeship with them. As a backup plan, Mr. White has spoken with another funeral director in Tampa, Stone Memorial. Mr. Stone indicated if this does not work out he would certainly speak with Mr. Richard and afford him the opportunity to work up under him. Mr. White added he sees the disappointment in Mr. Richard's eyes for the mistakes that he has made. Mr. White requested that the Board grant Mr. Richard another opportunity to make good on his life. Mr. White referenced a letter of reference that he submitted on Mr. Richard's behalf. Mr. Richard speaks from the heart, has been honest to the Board and has accepted responsibility for the things he has done in the past.

The Chair questioned Mr. Richard's last criminal charge.

Mr. Richard stated his last criminal charge was January 23, 2006, trafficking cocaine.

The Chair questioned whether there had been any criminal charges since then.

Mr. Richard answered no.

The Chair questioned whether Mr. Richard has a valid driver's license.

Mr. Richard stated that he does.

Mr. Hall questioned whether there was recent action taken against the funeral home Mr. Richard is looking to serve his apprenticeship under.

Ms. Thomas-Dewitt answered yes.

Mr. Jones questioned whether Mr. Richard received his B.A.

Mr. Richard answered yes and stated he was taking classes at Florida State College, formerly Florida Community College, up in Jacksonville. Mr. Richard stopped taking the classes in order to begin the apprenticeship program so that when he completes school and comes back before the Board, he would have already presented his case.

Mr. Hall questioned whether it is possible to exclude a firm under which an apprenticeship can be served when the firm is under investigation.

Mr. Shropshire stated that he did not believe that would comport with due process. There is no specific statutory provision addressing that, but the Board could ask the Applicant whether he would voluntarily agree to a term and condition that he seek employment somewhere else and if he agreeable to it, then it would become part of the Order of the Board.

Ms. Thomas-Dewitt stated it would be in the Applicant's best interest to search for another location for the betterment of his own good.

Col. Stiegman questioned whether that would penalize the Applicant. Col. Stiegman questioned whether the Applicant go to the backup plan pretty easily.

Mr. White stated he would go back and speak with Mr. Stone today.

Ms. Thomas-Dewitt questioned the area in which Mr. Richard lives.

Mr. Richard stated he lives in Haines City, but he is willing to do whatever it takes.

Ms. Thomas-Dewitt stated she would be willing to assist the Applicant in locating another facility.

Mr. Shropshire requested that the Applicant stated the specific funeral home he had originally planned to do his apprenticeship at.

Mr. Richard stated that it is Holmes Funeral Home.

The Chair stated that the Applicant is currently working at Holmes Funeral Home.

Col. Stiegman questioned whether it is fair to penalize Mr. Richard for the actions against the organization.

Mr. Hall stated if the Board is offering to give Mr. Richard a second chance to better himself and help his son, with the problems of the location Mr. Richard could be stepping back into the same problems. Mr. Hall questioned whether it is possible to defer until Mr. Richard finds better employment.

Col. Stiegman disagreed with deferring the application. Col. Stiegman suggested that the Applicant go with Ms. Thomas-Dewitt suggestion of a more suitable location or the backup plan.

Ms. Hubbell questioned whether Mr. Richard's son lives with him.

Mr. Richard stated that his son does live with him.

Ms. Hubbell stated for Mr. Richard to transfer to Tampa would interfere with his son's schooling.

Mr. Richard stated it would be he is willing to do whatever it takes.

Mr. Jones stated that the discussion of employment location is possibly outside of this. The motion should be taken to approve what is on the table and then any discussion beyond that take place.

Mr. Keenan Knopke requested that the Board vote on the motion and not put any other conditions on this gentleman as to where he works. Mr. Richard has obviously heard the Board's concerns and clearly has to appear before the Board down the road. This is another opportunity for him to show the Board his true intentions to do the right thing.

MOTION: Ms. Hubbell moved to approve the application subject to 24-month probation. Col. Stiegman seconded the motion, which passed with 3 dissenting votes.

Mr. Richard questioned whether it is possible to receive a list of other training facilities in his area so that he could look into finding employment elsewhere.

The Chair requested that Mr. Richard contact the Division office for that information.

13. Registration(s) as a Training Agency

A. Recommended for Approval without Conditions – Addendum G

(1) Funeral Directing and Embalming

(a) Sellers Funeral Home Inc (F041524)

(2) Embalming

(a) Gendron Funeral Home & Cremation Services (F057222)

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.

14. Consumer Protection Trust Fund Claims

A. Recommended for Approval without Conditions – Addendum H

The Division recommends approval of the claim(s).

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

15. Application(s) for Change in Location of Establishment

A. Informational Item - Addendum I

(1) Northeast Florida Cremations LLC d/b/a A Direct Cremation (F052855)

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

16. Application(s) for Monument Establishment Sales Agent, Licenses Issued without Conditions

A. Informational Item - Addendum J

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. *Angelic Monument Co., Inc. (Sunrise)*

The application was received on February 26, 2010 and deficiencies were noted. A deficiency letter was sent on March 4, 2010 and the Applicant resolved all deficiencies by March 15, 2010. The Department completed a background check of all officers which revealed no criminal history. The Division recommends approval of the application.

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

18. Application(s) for Direct Disposal Establishment

A. *Recommended for Approval without Conditions*

(1) *Jacob M. Kilgore d/b/a Kilgore Family Cremations (Pinellas Park)*

An application for a Direct Disposal Establishment was received on February 8, 2010. The application was incomplete and a deficiency letter was sent. All deficient items were returned on February 22, 2010. The fingerprint cards for all principals were returned with no criminal history. The Direct Disposer in Charge will be Jacob Kilgore (F057778). The Direct Disposal Establishment passed its inspection on February 25, 2010. The Division is recommending approval without conditions.

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

19. Application(s) for Funeral Establishment

A. *Recommended for Approval without Conditions*

(1) *Global Asset Negotiators Inc d/b/a Global Alternative Cremations and Funeral Choices (Fort Lauderdale)*

An application for a Funeral Establishment was received on February 16, 2010. The application was incomplete and deficiency letter was sent to the Applicant. All deficient items were returned on March 1, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Ronne McCollum-Berry (F032056). The establishment passed its inspection on March 12, 2010. The Division is recommending approval without conditions.

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) *Alex 2002 LLC d/b/a Carnegie & Dallas Funeral Services (Clearwater)*

An application for a Funeral Establishment was received on December 4, 2009. The application was incomplete and deficiency letter was sent to the Applicant. All deficient items were returned on March 4, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Tony Anderson (F046410). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

Mr. Helm stated there was no refrigeration agreement included.

The Chair questioned whether they indicated they would be outside of their facility for refrigeration.

Mr. Helm stated that application indicates they would make arrangements for refrigeration.

The Chair questioned whether there was anyone present representing Carnegie & Dallas. There was a negative response.

Mr. Helm stated that Gee & Sorenson Funeral Home is listed for embalming but there is no one listed for refrigeration.

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

(2) *Brandon Funeral and Cremation Services LLC (Brandon)*

An application for a Funeral Establishment was received on March 1, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Roger Troost (F026964). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

Ms. Taylor stated this application is also missing the refrigeration information. It appears the Applicant thinks 2a and 2b are part and partial to the same question, as Central Florida Crematory is listed.

Mr. Shropshire questioned whether the agreement from Central Florida Crematory would cover the refrigeration: "Central Florida Crematory of Polk County (F041196) has agreed to do cremations for Brandon Funeral and Cremation Services on a pay as you go status. The cremation fee includes a basic alternative container, up to 7 days refrigeration, the cremation and a temporary urn."

Mr. Helm stated that agreement is just for cremations.

The Chair questioned whether the agreement increases Ms. Taylor's comfort level.

Ms. Taylor stated that it did.

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. Thomas-Dewitt seconded the motion, which passed unanimously.

(3) *Eric S George Funeral Home Dania Inc (Dania)*

An application for a Funeral Establishment was received on February 8, 2010. The application was incomplete and deficiency letter was sent to the Applicant. All deficient items were returned on March 8, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Deborah Cartwright-Clough (F043653). 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 with the condition that the establishment passes an on-site inspection by a member of the Division staff. Mr. Helm seconded the motion, which passed unanimously.

(4) *Integrity Funeral Services Inc (Tampa)*

An application for a Funeral Establishment was received on March 9, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Gregory Massey (F045301). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

Mr. Helm questioned whether the name of the funeral home is staying the same.

Mr. Shropshire answered yes.

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. Anderson seconded the motion, which passed unanimously.

20. Application(s) for Removal Service

A. Recommended for Approval with Conditions
(1) Lee Transport Service LLC (Caryville)

An application for a Removal Service was received on March 11, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. 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. Mr. Jones seconded the motion, which passed unanimously.

(2) Metro Mortuary Removal Inc (Miami Gardens)

An application for a Removal Service was received on January 19, 2010. The application was incomplete and a deficiency letter was sent. All deficient items were returned on February 16, 2010. The fingerprint cards for all principals were returned with criminal history. The principal Domingo Bueno was convicted of Possession with Intent to distribute Marijuana July 1, 1993. Mr. Bueno was sentenced to 51 months incarceration. Since Mr. Bueno's release in 1997, there have been no other infractions. The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff and that the Licensee be on probation for 12 months after issuance of the license

Mr. Shropshire requested that Mr. Bueno raise his right hand. "Will the testimony you are about to give in this matter be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Helm questioned whether Mr. Bueno agrees to the terms recommended by the Division.

Mr. Domingo Bueno answered, "Oh yes, of course."

MOTION: Col. Stiegman moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff and that the Licensee be on probation for 12 months after issuance of the license. Mr. Helm seconded the motion, which passed unanimously.

21. Contract(s) or Other Related Form(s)
A. Monument Establishment Retail Sales Agreement
(1) Recommended for Approval without Conditions
(a) Angelic Monument Co., Inc. (Tamarac)

The Division recommends approval of the agreement.

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

22. Special Item – Recommended for Approval with Conditions
A. Buxton Funeral Home Bankruptcy & Related Matters
(1) Assumption of Buxton Preneed Contracts by Family Heritage

Thus matter comes before the Board upon the request of the Division for entry of an Order by the Board assigning the unfulfilled preneed contracts of insolvent Buxton Funeral Home, to Family Heritage Funeral Home.

The attached proposed Order of the Board and the attachments thereto, explain the background and specify the requested action.

Family Heritage has consented to entry of the proposed Order.

The Division recommends that the Board approve the proposed Order for execution and filing by the Board's Executive Director.

Mr. Shropshire requested that Mr. Mitchell raise his right hand. "Will the testimony you are about to give in this matter be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Paul Mitchell answered, "I do." Mr. Mitchell stated he is here to answer any questions the Board may have and added that his partner could not be present but is available by phone if needed.

MOTION: Ms. Taylor moved to approve the proposed Order for execution and filing by the Board's Executive Director. Mr. Jones seconded the motion, which passed unanimously.

(2) Application for Funeral Establishment License at Buxton Location
(a) Okeechobee Funeral Home LLC d/b/a Buxton Funeral Home & Crematory (Okeechobee)

An application for a Funeral Establishment was received on March 11, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Thomas Conway (F042510). The Division is recommending approval with conditions.

Approve subject to the condition(s) as follows:

- (1) That the establishment passes an on-site inspection by a member of the Division staff.
- (2) Submit proof of sale and closing documents

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 and submission of proof of sale and closing documents. Mr. Jones seconded the motion, which passed unanimously.

23. Request to Borrow Against Care and Maintenance Trust Fund
A. Recommended for Denial
(1) All Saints Cemetery Association (Jensen Beach)

On January 14, 2010, Mr. Douglas Ell a member of All Saints Cemetery Association Board sent a faxed request to borrow from their care and maintenance trust fund.

When the Cemetery Association gave up the previously held cemetery license in January 1997 the Board stated that they could no longer sell preneed contracts and any existing contracts be fulfilled prior to withdrawal. The Board also stipulated that the company continue to maintain its care and maintenance trust fund intact.

Mr. Ell states that the company needs to borrow against the care and maintenance trust to build a mausoleum in order to keep the cemetery going.

In his memo Mr. Ell specifically asks:

1. As exempt cemetery, what is the legal basis for the statement in the 1997 letter that the Care and Maintenance Trust Fund "must remain in tact"? See ss.497.462 and 497.266 F.S.
2. If we are subject to that requirement, does it prevent Borrowing to build a Mausoleum to keep our cemetery going?

Generally, the Board or Department does not have any say over the funds of an exempt cemetery. However, in this particular case, as evidenced by the 1996 Board minutes, the Board granted All Saints Cemetery Association Board a conditional exemption, requiring that the Care and Maintenance Trust Fund remain intact. Regarding the second question, based on its review, the Division asserts that the Association's request to use funds from the Care and Maintenance trust to build a mausoleum is not be a permissible use of the Care and Maintenance trust funds as defined in s. 497.005(9), F.S. Section 497.005(9), F.S., states, "Care and maintenance does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public."

The Chair questioned whether there was any present from All Saints Cemetery Assoc. There was a negative response.

MOTION: Mr. Helm moved to deny based on the requirement that the Care and Maintenance Trust fund remain intact and that the stated basis for the withdrawal request is not permissible under s. 497.005(9), F.S. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

24. Chairman's Report (Oral)

The Chair had no report but yielded the floor to Mr. Helm.

Mr. Helm stated at the previous Teleconference meeting there was discussion about one particular item that had come before the Board. It is very hard to have a discussion over the phone when it is something like that. Mr. Helm stated that he did not understand it because previously the Board had denied it twice and then it came back on the Teleconference with the option to approve the license. Mr. Helm stated he did not quite understand why that transpired and requested an explanation of that.

Mr. Shropshire stated that Mr. Helm was referring to the Timothy Kitchens' matter, which was before the Board on 3 occasions: the first time was the initial decision of the Board, which was then conveyed to Mr. Kitchens and pursuant to Statute he requested an Informal Hearing; the Informal Hearing was the second time it appeared before the Board, but in connection with the Informal Hearing there was an error in the minutes as to the basis of the original denial at the first meeting; so there had to be a third meeting to correct the minutes and for that reason the whole matter had to come back before the Board so that the entire context would be before the Board. At that point and time, the Executive Director felt that it was appropriate to simply offer the option of reversal because that has consistently been the Division's recommendation.

Mr. Helm stated that the Board denied the application again at the second meeting even though Col. Stiegman's motion was exactly as he stated once the Division went back and checked the minutes.

Mr. Shropshire concurred.

Mr. Helm stated that he does not understand why the Board was presented with that option again.

Mr. Shropshire stated that there was in fact an error in the minutes. Col. Stiegman was correct.

Mr. Helm agreed and stated had Col. Stiegman been wrong in what he stated in the second meeting, then there would be a need to come back with a third option.

Mr. Shropshire stated that at the second meeting the Division disagreed to what Col. Stiegman stated was his motion and the minutes had already been approved in any event. So after that second meeting the Division went back and checked the actual transcript and found that Col. Stiegman was correct in what he asserted at the second meeting and the Division was incorrect at that second meeting. Therefore the matter had to be brought back to the Board for a third time to acknowledge that the Division made a mistake, Col. Stiegman was correct and to get the record cleaned up.

Mr. Helm stated that he has not spoken to any of the Board members but feels they thought if the item was not approved it would continue to come back before the Board.

Mr. Shropshire stated that the Division did not any way conjure up or create a third appearance before the Board.

Mr. Helm stated that he is not accusing the Division of that, but the Board had already denied it twice, then it reappeared for the third time.

Mr. Shropshire stated that this is not the first time that this concern on this particular case has been voiced. Mr. Shropshire added that he takes the concerns being expressed very seriously. Every one of these cases has to be reviewed individually. In the future the Division will give a lot of weight, but cannot absolutely say that the same recommendation would not be made on the third occasion. Mr. Shropshire added that he recognizes that the Board appropriately and justifiable wants an end to all the matters at some point and time and that the Board felt the second appearance was the end of the matter.

Mr. Helm questioned whether Mr. Shropshire understands his concerns.

Mr. Shropshire stated that he does.

Col. Stiegman stated he would have to agree with Mr. Helm, as he had the same discussion with Mr. Shropshire last evening, but did not understand why the third option was even included if there was only going to be a correction to the minutes as the agenda stated. The action should have been to correct the minutes to reflect that Col. Stiegman's first motion was correct. There should not have been a third option to overturn 2 votes before. Col. Stiegman added that he understands Mr. Shropshire's position but he agrees with Mr. Helm.

Ms. Thomas-Dewitt questioned whether an error in the minutes could not be corrected without readdressing the issue.

Ms. Dudley stated there are 2 reasons this came back. The problem was at the Informal Hearing where Col. Stiegman wanted to talk about a bunch of issue which could not be discussed because the motion for denial was only one issue. The Division went back and discovered that the motion was actually for 2 reasons, but the discussion had been cut off to only allow discussion on 1 reason. The reason the whole thing came back to the Board was to correct the minutes first and secondly look at this again to get into all these issues that probably could have previously been addressed had there not been an error in the minutes. In the future, on a case by case basis, the Board could probably just correct the minutes, but this was a unique situation.

Col. Stiegman stated he does not feel it was unique at all it just appears someone was "lawyer talked" into a corner.

Mr. John Rudolph stated that the issue here is that there was a denial followed by an Informal Hearing, pursuant to a Notice of Intent to Deny, which stated 2 issues only. At the Informal Hearing, there was discussion about all of the issues. Mr. Rudolph stated that he could not bring up answers to all of the issues without waiving confidentiality because the Notice of Intent only referenced the 2, so the Board denied it. It was then determined that looking at the Notice of Intent to Deny and the minutes that indeed the Board did originally deny based on all of the issues. So that meant that the original Notice of Intent to Deny was invalid but the minutes had to be amended. Then when it came through, there were 3 recommendations made at the Teleconference. Mr. Rudolph stated he did request that the Division include the 3 recommendations but they were included and they were discussed on the Teleconference. The Board then had to amend the minutes. There were 3 options available. The first motion was to accept Option 3. The Board voted on it and it passed. Mr. Rudolph stated that he did nothing wrong in this.

Col. Stiegman questioned whether anyone said that Mr. Rudolph had done something wrong.

Mr. Rudolph stated that Col. Stiegman mentioned it was over-lawyered and he was the lawyer.

Mr. Hall stated that some of the frustration may have come as this really was the forth time as Mr. Kitchens was allowed to address the Board twice in one meeting. If there is an error in the minutes, the minutes should be fixed and the rest left alone.

25. Executive Director's Report

A. Issue RE Fee Due Regarding Beaches Memorial Gardens (see attachments)

(This matter was initially to be set for the Feb. 2010 Board meeting but was re-set to April so that counsel for the licensee could appear and address the Board.)

At its Dec. 2, 2009 regular meeting the Board of Funeral, Cemetery, and Consumer Services approved an application for change of control of "Beaches Memorial Gardens" (hereinafter "Beaches"). The approval of the change in control is not in issue here.

What is at issue here is what fee was properly due in connection with the application for change in control. The Division advised Beaches that the required fee was \$5,000, and Beaches paid that amount. However, Beaches asserts through their attorney, Mr. Alan Winter, that in fact the fee due was only \$500, and Beaches seeks refund of \$4,500. The matter is presented to the Board for its decision as to whether the fee due was \$500 or \$5,000.

Although the FCCS Division asked the Board for a ruling on this issue in the materials for the Dec. 2009 meeting, as it turns out, the minutes of the Dec. 2009 meeting are not clear as to whether the Board ruled on this fee issue. Hence the FCCS Division presents the fee issue here on a standalone basis.

Section 497.264(2)(m), relating to applications to acquire control of a licensed cemetery, provides as follows:

(m) The application shall be accompanied by a nonrefundable application fee of \$5,000; provided, the fee shall be \$500 if the application is in regard to a change in ownership that will not be accompanied by any change in ultimate control.

S. 497.005(18) provides as follows:

(18) "Control" means the possession, directly or indirectly, through the ownership of voting shares, by contract, arrangement, understanding, relationship, or otherwise, of the power to direct or cause the direction of the management and policies of a person or entity. However, a person or entity shall not be deemed to have control if the person or entity holds voting shares, in good faith and not for the purpose of circumventing this definition, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control.

Beaches presents its position and argument in the attached letter of Attorney Winter, dated December 18, 2009. In addition, Attorney Winter has been invited to attend and participate in the Feb. 2010 meeting and make such presentation to the Board as he finds advisable, on behalf of Beaches.

The Division understands the facts as follows:

Previous to a divorce decree dated August 24, 2008, the LLC had 2 members who were both managers: husband and wife, Stephen Kuzniar (SK) as LC President, and Amanda Kuzniar (AK) as LLC Vice-President. The August 24, 2008 divorce decree (copy attached) relating to Stephen and Amanda Kuzniar provides at page 8 as follows: *"The parties own two (2) corporations to wit: Cemetery Professionals, LLC, and the Kuzniar Group, LLC. The wife shall have sole and exclusive ownership, use and possession of all shares of stock and all interest in both corporations including all assets owned by the businesses."*

The Division believes that this was a change in control, in that prior to the divorce decree AK could not unilaterally act to direct the operations of the LLC, because she was only one of two members and managers of the LLC, and she and SK had to agree on any decisions. Whereas after the divorce decree AK does not need to consult SK and may unilaterally direct the operations of the LLC.

The Division recommends denial of this request as there was a change in control of the cemetery in issue and that the fee properly payable was \$5,000.

Mr. Alan Winter stated that he represents Ms. Kuzniar. Mr. Winter's letter of December 18, 2009 incorporated an argument citing the Kraft case from the US Supreme Court which was based on a Michigan decision. The argument in this case has to do with the way Florida handles husbands and wives, spouses. Mr. Winter stated that he does not pretend to be an expert in the area of divorce law and tries to avoid it in his practice. The issue of Tenants by the Entirety applies in this case. Tenant by the Entirety means, "The clothes you have on today, you believe you own those clothes and in fact you do but so does your spouse." It is a legal fiction, which assumes a 200% ownership, which cannot be. In truth, each spouse owns 100% of all of that spouse's property and the other spouse's property. Each may control it and do whatever they want. In this case, there was a divorce. Mr. Winter stated he finds it hard to believe that this is the only case that has come before the Board where owners of a facility under your control, where a divorce was involved. This is something that needs to be addressed because in this case there was a husband and wife who owned this company jointly and they got divorced. As part of the divorce, the husband walked away, to the betterment of the Industry. Ms. Kuzniar is now the 100% sole owner of this property. The day before that divorce decree by Judge McCauley in Duval County, she was still the 100% owner under the Tenants by the Entirety theory and she was and is a 100% owner after that divorce decree. Under Florida law, Ms. Kuzniar had ultimate control of this facility. Therefore, the licensee is requesting a refund of the \$4500. Ms. Kuzniar's conduct was not to withhold the \$4500. Her conduct was in good faith.

Ms. Taylor questioned Ms. Dudley's thoughts on Mr. Winter's presentation.

Ms. Dudley stated that Mr. Winter has an interesting point and questioned whether Mr. David has some counter-argument. Mr. Winter could be correct on the control issue.

Mr. David stated that he is not prepared to argue against Mr. Winter's position today, but at the same time he would not be willing to support Mr. Winter's position. Mr. David requested if the Board chooses to follow Mr. Winter's request that it is done based only upon what Mr. Winter is presenting here at the law and not in a fashion saying that's what the Board approves the law as applicable to the Funeral and Cemetery Industry is. Mr. David stated that this is an issue that needs more research as his understanding of Tenancy by the Entirety is not exactly the way Mr. Winter has presented. Mr. David stated that he is not suggesting that the Board refund or not refund the money, but requested that the Board base its decision on the representations today and only to the facts and circumstances presented today and not make it a precedent for future action without further legal research and support.

Mr. Shropshire suggested to the Board that interpretation of statutes in terms of dissolution of marriage vs. regulatory purposes is different. From a common sense perspective, there was a change in control. The day before the divorce decree, Ms. Kuzniar had to consult her husband as to a decision affecting the operation and running of that cemetery and the day after the divorce decree she did not have to consult him anymore. There was a change in control from a common sense perspective. The interpretation of control is different from a regulatory than from the perspective of dissolution of marriage, and taxation even.

Mr. Winter stated that the Kraft case is a Michigan case. Michigan and Florida have the same Tenants by the Entirety and the Supreme Court recognized that. This is similar, applicable, parallel law. The interesting thing in the Kraft case was people were trying to avoid the reach of Government and the United States said they cannot do that. In that case, a lien was being imposed; one spouse was trying to get out of the deal and the United States would not allow it under that case. In our case, Ms. Kuzniar is not trying to get out of anything and is trying to be controlled by this Board. In the Kraft case, one of the spouses was trying to avoid a sanction, a tax or lien. What happens with the ability of this Board, if the court does not recognize my argument in the future, if a spouse tries to avoid a sanction from the Board having committed a problem? Is the Board going to cite back to this case and say well we ruled against Ms. Kuzniar's argument in this case, so to be consistent we cannot rule against that spouse in that case? The interesting thing about the Kraft case is that they were coming after that spouse and were able to because of Tenants by the Entirety. In this case, even though we have a split situation here, it would be better for the Board to accept my argument and to issue the refund.

The Chair made the point that the Board is looking at ownership vs. the regulatory definition of control.

Mr. Winter stated that he understood this.

Mr. Helm stated in regards to the Michigan case, they were coming after the man. Mr. Helm questioned whether they could come after the man in this case being presented.

Mr. Winter stated if the ruling is there was a change in control, then he would agree with Mr. Helm that they would not be able to go after the man.

Mr. Helm stated there has already been a change of ownership. Mr. Helm questioned whether it is Ms. Kuzniar's name.

Mr. Winter answered yes.

Mr. Helm stated that they would not be able to go after the man right now.

Mr. Winter stated that would be his position and the Board's position. They are basically exonerating the spouse that walks away where they did not do that in Kraft.

Mr. Shropshire stated that the Division would close with the recommendation that the Board find there was a change in control of the cemetery in issue and the fee properly payable was \$5,000 and that the Board deny the request for a refund of \$4,500.

Col. Stiegman questioned what would happen if the Board denies the request and the licensee wants to go to the next step.

Mr. Shropshire stated that the Division would issue an Order which would be in effect a Notice of Intent stating the Board's action and he would have his Chapter 120 Rights and could elect a formal or informal hearing.

Mr. Helm stated that the Board should be very careful in making a decision as in the future there could be other decisions just like this. Mr. Helm stated he would like to see the December meeting minutes because he could not remember.

MOTION: Mr. Jones moved deny the request for a refund of \$4,500 as there was a change in control of the cemetery and the fee properly payable was \$5,000. Ms. Taylor seconded the motion, which passed with 1 dissenting vote.

B. Request to Address the Board – Bill Burger re: “Death Masks” (see attachments)

Mr. Shropshire questioned whether Mr. Burger was present. There was a negative response from the audience.

*****BREAK*****

C. Inquiry from Todd Winninger: Division Response

Mr. Shropshire stated that this is to advise the Board of the Division's recent response to an inquiry from Todd Winninger regarding Mr. Winninger's proposed business, "Florida Home Funerals." In its response, the Division notes that Chapter 497 does not provide any exemption from its requirements based on the fact or assertion that there is a "family directed funeral" or a "family-led funeral." The response also advises that services described on Mr. Winninger's business website are outlined within the definition of "funeral directing" under s. 497.372(1), F.S. The Division's complete response is attached.

Mr. Shropshire stated that he included a caveat in his letter that this is the Division's position and the Board might not necessarily agree. Mr. Shropshire added if the Board has any concerns or disagreement, he would appreciate contact at any time about the Board's feelings about the letter.

D. Report from Richard Baldwin, Examiner for Menorah Gardens, January '10 (see attachments)

Mr. Shropshire stated that this is an informational item. It is anticipated that the Special Examiner position is going to be terminating very quickly and Menorah Gardens will be released from that supervision probably in the next month or two.

The Chair recognized Justin Baxley, former Board member just off the Board.

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

27. 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	0
	Recommended for Approval	0
	Pending	0
C.	Preneed License Applications Received Since Last Meeting	0
	Active Preneed Licenses	332
	Presented to the Board at this Meeting	4

	Pending	0
D.	Preneed License Branch Applications Received Since Last Meeting	0
	Active Preneed License Branches	340
	Recommended for Approval	3
	Pending	0
E.	Preneed Sales Agent Applications Received Since Last Meeting	133
	Active Sales Agents as of March 16, 2010	3781
	Recommended for Approval	35
	Temporary Licenses Issued; Pending Permanent	138
F.	Monument Establishment Applications Received Since Last Meeting	1
	Active Monument Establishments	96
	Pending	1
G.	Broker of Burial Rights Applications Received Since Last Meeting	1
	Active Brokers of Burial Rights	12
	Pending	1
H.	Exempt Cemetery Reports Received Since Last Meeting	1
	Active Exempt Cemeteries	69
	Pending	0
I.	Preneed Funeral Contract Consumer Protection Trust Fund Balance as of January 20, 2010	\$7,799,157.09
	# Claims Presented at This Board Meeting	19
	\$ Claims Presented at This Board Meeting	\$ 5,330.33
	Claims Paid as of March 16, 2010 (for fiscal year 2009-2010)	\$36,165.01
J.	New Establishment Applications Received Since Last Meeting	15
	Pending	10
	Completed	5
K.	New Individual Applications Received Since Last Meeting	23
	Pending	13
	Completed	10
L.	Request for Training Facility Applications Received Since Last Meeting	4
	Pending	2
	Completed	2
M.	Request for CE Providers and Courses Received Since Last Meeting	24
	Pending	0
	Completed	24

N.	Initial Inspections Received Since Last Meeting	13
	Pending	1
	Completed	12
O.	Inspections Received Since Last Meeting	111
	Pending	0
	Completed	111
P.	Initial Licenses Issued Since Last Meeting	45
	Renewal Licenses Issued Since Last Meeting	349
	Duplicate Licenses Issued Since Last Meeting	7

28. Disciplinary Report

	Issued Since Last Meeting (February 4 2010)	Issued Since January 1, 2010
Notice of Non-Compliance	17	18
Citations	4	5

29. Adjournment

THE CHAIRMAN MAY MAKE SPECIFIC CHANGES IN THE AGENDA AFTER IT HAS BEEN MADE AVAILABLE FOR DISTRIBUTION, ONLY FOR "GOOD CAUSE" SHOWN.