

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
December 6, 2012 - 10:00 A.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg #230
Tallahassee, FL 32301

1. Call to Order, Preliminary Remarks and Roll Call

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

Mr. Doug Shropshire made the following prefatory comments for the record:

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is December 6, 2012; 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 Florida Administrative Weekly. An agenda for this meeting has been made available to interested persons. The meeting is occurring in person at the Alexander Building in Tallahassee, FL. My Assistant, Ms LaTonya Bryant, is recording the meeting and will be preparing minutes of the meeting.

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

Mr. Shropshire took the roll and the following members were present:

Joseph "Jody" Brandenburg, Chairman
Gail Thomas-DeWitt, Vice-Chairman
Jean Anderson
Andrew Clark
Powell Helm
Nancy Hubbell
Ken Jones
Richard "Dick" Mueller
Col. Don Stiegman

ABSENT:

Lewis "Lew" Hall

Mr. Shropshire advised the Chair that there was a quorum present and the Board may proceed to address the matters on the agenda.

Also noted as present:

Donna McNulty, Board Legal Advisor
Anthony Miller, Assistant Director
LaTonya Bryant, Department Staff
Ellen Simon, Department Counsel
Tad David, Department Counsel
Mary K Surles, Department Counsel
Linje Rivers, Department Counsel
Jim Bossart, Department Counsel
Jasmin Richardson, Department Staff
Karen Duehring, Department Staff

2. Overview of Legal Process Regarding Disciplinary Actions (By DFS Legal Staff) (Oral)

Mr. Shropshire stated that the presentation concerning an overview of the disciplinary process will be presented by members of the Legal Team headed up by Ellen Simon, assisted by Tad David, MaryK Surles and Linje Rivers. The Division works very closely with this legal team and they provide us excellent support. We are very pleased that they had the time to come here and make this presentation today.

Ms. Ellen Simon, Chief Counsel of Prosecution and Enforcement for the Division of Legal Services, thanked Mr. Shropshire for the introduction. Ms. Simon stated that she has met many of the members before and has attended Board meetings but traditionally only those held in Tallahassee. This training today will be a refresher course for many of you because you all basically know the legal process, but there are some nuisances you may not be familiar with and if you are it is always great to have a refresher course. The Legal Team gave the following slide presentation to the Board:



- Complaints are generally received from:
 - Consumers
 - Others within the Funeral & Cemetery Industry
 - The Division of Funeral & Cemetery
 - Regarding violation of Final Orders

Receiving Complaint at the Division of Funeral and Cemetery

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- Investigation by the Division
 - Notice of Non-Compliance
 - Citation
 - Referral to Legal Services for prosecution

Results of Complaint

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- The Division of Legal Services receives the file from the Division of Funeral & Cemetery.
- The first responsibility of the attorney reviewing the file is to determine whether there is substantially sufficient evidence to proceed forward.
- The attorney determines whether there is legally sufficient evidence such that the Department will overcome the burden of proof at hearing.

Receipt by the Division of Legal Services

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- If there is no legal sufficiency:
 - The case is closed; or
 - There is a request for additional investigation
- If the case is found to be legally sufficient:
 - Legal prepares settlement terms which the Division of Funeral & Cemetery reviews
 - Contact is made with the licensee
 - The licensee is asked if they would like to waive a finding of probable cause
 - Offer licensee Settlement agreement
 - Preparation of Administrative Complaint for the Probable Cause Panel

Receipt by the Division of Legal Services (Con't)

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- Possible Outcomes at the Probable Cause Panel
 - No Probable Cause Found-The case is closed or further investigation is conducted
 - Probable Cause Found
 - File the Administrative Complaint
 - Serve the Administrative Complaint
 - By Mail
 - By Personal Service
 - By Publication

Probable Cause Panel

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- PCP members may not consider any specific information that is not provided by the Division to the Probable Cause Panel members.
- PCP members may use their knowledge, skills, and experience in the industry to evaluate the evidence in deliberation of whether probable cause exists.
- A determination of whether probable cause exists shall be made after careful review of the materials submitted to PCP members and the discussions held at the PCP meeting.
 - Any additional information known by the PCP members should not be considered when making a determination regarding probable cause.
 - Knowledge obtained by rumor or gossip within the death care industry should not be considered.

Limitations of the Probable Cause Panel

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- Ex parte communication is a direct or indirect communication on the substance of a pending case without the knowledge, presence, or consent of all parties involved in the matter.
- Ex parte communication is improper and prohibited in all proceedings.
- A probable cause panel member may not rely on ex parte communications in determining probable cause.
- A Board member may not rely on ex parte communications when considering discipline.

Ex Parte Communications

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- Violations of the Sunshine Law include
 - Private telephone conversations between board members to discuss matters which may come before the Board for action
 - Discussion in person between board members to discuss matters which may come before the Board for action
 - Two or more members should not discuss a matter which may come before the Board

Sunshine Law

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- Notice of Rights on Administrative Complaint
 - 21 Day Period
 - Request for Hearing
 - Formal-Held at the Division of Administrative Hearings (DOAH)
 - Informal-Held by the Board
 - Default-Occurs if there is no response by the licensee within 21 days of service of the Administrative Complaint

Administrative Complaint

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- FOUR OPTIONS:
 - OPTION ONE:
 - Settlement Agreement
 - The Division of Legal Services seeks input from the Division of Funeral & Cemetery before settling a case.
 - Once a settlement agreement is proposed to the Board, the Board may take the following actions:
 - Accept the Settlement Agreement as proposed
 - Reject the Settlement Agreement
 - Offer a Counter-Offer
 - If the Board does not accept a settlement agreement, the options are a formal or an informal hearing.

Disposition of the Administrative Complaint

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- **OPTION TWO:**

- **Formal Hearing**

- Opportunity to conduct discovery
 - Opportunity to call witnesses
 - Opportunity to present evidence that supports or disproves the facts
 - ALJ is responsible for making both findings of fact and conclusions of law

- **A formal hearing will result in a Recommended Order issued by an ALJ**

- A Recommended Order is presented to the Board for consideration of the findings of facts, conclusions of law and the recommended penalty of the ALJ.
 - The Department prepares the Final Order after the Board renders its decision.

Disposition of the Administrative Complaint (Con't)

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- **OPTION THREE**

- **Informal Hearing-only applicable to matters not involving disputed issues of material fact.**

- **Initiated by:**

- Request by licensee
 - Default by licensee-Failing to answer the Administrative Complaint within 21 days of service

Disposition of the Administrative Complaint (Con't)

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- **OPTION FOUR**

- Take the Administrative Complaint back to the Probable Cause Panel for reconsideration.
 - This would occur if exculpatory evidence is uncovered during the discovery process.
 - This would also occur if the discovery process uncovered information which would make it impossible to satisfy the high burden at the Division of Administrative Hearings.

Disposition of the Administrative Complaint (Con't)

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- The Division of Legal Services seeks input from the Division of Funeral & Cemetery regarding disciplinary sanctions before settling a case
- Discipline imposed by the Board should be consistent
 - Discipline may not be arbitrary and capricious
- Board members may and should consider prior discipline when imposing sanctions
- An individual board member's knowledge of the activities of a licensee based upon material outside the board package should not be considered

DISCIPLINE

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Ms. Simon questioned whether the Board members had any questions for the Legal staff.

Col. Don Stiegman questioned the definition of “exculpatory.”

Ms. Simon stated that exculpatory means evidence that would tend to prove the innocence of the Respondent or Licensee.

Ms. Gail Thomas-Dewitt stated when a funeral home owner is at fault, the facility is charged. Ms. Thomas-Dewitt questioned whether it is also possible to charge the FDIC because they have neglected their duties as well.

Ms. Simon responded that often what happens when we get cases brought forward to Legal or to the Division of Funeral and Cemetery, the allegations are against the funeral establishment coupled with the FDIC. We usually get cases in tandem because the FDIC is typically responsible for the activities of the funeral establishment, so yes that would happen.

Ms. Nancy Hubbell stated that one of the things discussed regarding Probable Cause was considering additional evidence or what you may have knowledge of. The ALJ in his findings stated that the Probable Cause Panel had copies of Board minutes for its April 8th and May 6th meetings but the minutes of the April 8th meeting were incomplete. If anyone had read these minutes they would have seen that they had ended after the announcement of a ten (10) minute break and other things were not included in the packet that was presented to Probable Cause Panel. Since the minutes are public record, is that something that the Probable Cause Panel could have used those omitted statements in making their decision.

Mr. Tad David stated that what would have been appropriate probably there theoretically would be if the Panel member stated that in looking at the minutes and they seem to just end and do not seem to be complete. If we put that on the record then the Probable Cause Panel could have voted to request that the item be brought back when a full set of minutes is available. The Probable Cause Panel’s findings have to be based on what is in front of the Probable Cause Panel. Those would be easy to submit because they are public records but just because something is of public record does not mean that it can be cited as evidence. It has to be in the package and it has to be specifically cited. So that would have been something possible to do in that situation.

Ms. Simon stated so even if it is public record and available to the general public it cannot be considered by the Panel. It is only based on the four corners of the documents in front of them as well as previously. You can apply your own knowledge, your own skill base but you cannot apply facts that you know but that are not in front of you.

Mr. David stated this is just his opinion as the ALJ did not say this, but if you were in attendance at the Board meeting and brought up what happened that may have been more risky than stating that the minutes look incomplete.

Mr. Andrew Clark stated that the Division did a great job with Board orientation but stated this would be helpful in the future for new Board members to have this explained in this manner.

Ms. Simon concurred and stated she foresees this happening again in the future as the Legal staff has a great relationship with the Division, who allowed them to bring this training forward. It would be a great idea to do it on a more routine basis.

3. Action on the Minutes

A. October 4, 2012

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on October 4, 2012.

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

B. November 1, 2012

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on November 1, 2012.

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

The Chair disclosed his affiliation with SCI Funeral Services of Florida Inc and stated it would not affect his ability to make fair and impartial decisions on items coming before the Board at this meeting or any other meeting.

4. Old Business

A. *Disciplinary Proceedings: Proposed Settlement Stipulations*

(1) *Edgley, John S: Case No. 119604-11-FC, Division #1-694824407 (F042261) (Probable Cause Panel A)*

(2) *Edgley Crematory Inc. d/b/a Edgley Cremation Services: Case No. 119606-11-FC, Division #1-694824407 (F052579) (Probable Cause Panel A)*

Ms. Hubbell recused herself as she participated on Probable Cause Panel A.

Mr. Linje Rivers requested that Items 1 and 2 be considered together as they are the same facts and we are requesting the same disciplinary penalty. The circumstances of this case are that the Respondent is currently licensed as a funeral director and embalmer and the establishment is licensed as a direct disposal. An investigation was completed at Edgley Cremations where the Division alleges that the Licensee, John Edgley, purchased numerous domain names representing funeral industry competitors within the same locale and area. The Licensee activated the website domain names in order to divert potential consumers to the Licensee's website (www.edgleycremationservices.com). Originally we entered into a global settlement attempting to settle the four (4) related cases. However, we broke them up into four (4) different Settlement Agreements. In the first Settlement Agreement with John Edgley we ask that you find that the Licensee, through his representative Mr. Rudolph, has agreed to pay a fine of \$2500 and serve two (2) years probation. They have also agreed to the same terms for Edgley Crematory Inc license as well. The terms of the Settlement Stipulations are reasonable under the facts and circumstances of these cases, the Department requests that the Board approve these Settlements and issue the Consent Orders to conclude these matters. After speaking with the Division, we came up with these Settlement Agreements and feel that it is fair and just under the current rules as well as what is alleged in the Administrative Complaint.

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

Mr. John Rudolph responded that he represents Mr. Edgley.

Ms. Wendy Wiener stated that she along with Mr. Chris Harris represent the complainants in the matter who were the victims of the improper taking of the domain names. Mr. Harris' firm was told by Mr. Miller that we would have an opportunity to speak to the Board this morning.

Mr. Rudolph stated that both parties spoke the first time this came before the Board and expressed their opinions. Right now this is a matter of discipline. They were speaking on factual issues. The matter of discipline is something for the Board to determine.

Mr. Chris Harris stated that they were also present to state on the record that their clients object to the Settlement Stipulation.

Ms. Donna McNulty stated that the last time this item was presented as proposed global settlement agreement.

Mr. Harris concurred.

Ms. McNulty questioned whether Ms. Wiener and Mr. Harris both represent the complainant in this matter.

Ms. Wiener responded that they represent different complainants. I represent two (2) different Licensees whose domain names were taken.

Mr. Harris stated that he represents Taylor & Modeen Funeral Home who had up to seven (7) taken.

Mr. Rivers stated that was the subject of the complaint. Ms. Wiener's clients were not the subject of complaint that was filed with the Division.

Mr. Rudolph stated that taking a domain name, buying a domain name is not a violation. The supposed violation is using that domain name and directing it to my client's information.

Ms. McNulty stated it is up to the Chair to decide the appropriate procedure but I would recommend that the complainant and/or their attorney representative may be allowed a brief opportunity to address the matter. However, I also recommend that the Respondent's counsel be allowed to respond because it is a matter of discipline.

The Chair advised that Mr. Harris may address the Board globally on all the cases within three (3) minutes.

Mr. Harris stated that he was not going to rehash the facts as this is not what he is here to do. My client just strongly objects to this proposed settlement as a whole, all four (4) parts because the fines total only \$7000. Previously Ms. Thomas-Dewitt proposed a \$12,000 Settlement, so already we are \$5000 less than the Settlement. The previous Settlement also incorporated requirement for Mr. Edgley to complete an Ethics class which is not included in any of these Settlements. Also the probation period stated in this Settlement seems to provide that Mr. Edgley will not engage in this type of activity again. It almost seems to justify two (2) years later that it possibly could be okay. These are serious offenses to the public. It seems there is no deterrent for Mr. Edgley. Another issue that is really difficult to understand is there are no terms in the Settlement provided for if Mr. Edgley should violate which could be an issue further along the road if there is a violation. We would at least see what is provided for if he should violate his probationary period.

Ms. McNulty stated that if in the future there is a future violation that is something that would be a separate disciplinary matter.

Ms. Wiener stated she is representing All County Cremation Society and North Star Memorial Group.

The Chair questioned whether Ms. Wiener's clients were a part of the complaint.

Ms. Wiener stated that she believes North Star Memorial Group was part of the global Settlement taken up by the Board previously. If the Board intends to take further disciplinary action based on the taking of my client's domain names and other violations alleged by my clients against Mr. Edgley then I will reserve my comments but I was under the impression based on a conversation that your partner had with Mr. Miller that there was going to be no further discipline regarding these matters considered for Mr. Edgley.

Mr. Rudolph stated that the previous Settlement that was proposed, the counteroffer that was proposed by the Board did not include probation. The probation that this Board has been issuing for the last two (2) years has been specific to the violation that were charged and that is what this is for. I can go buy any domain name and hold it. A lot of people did that when domain names came out and sold them to people. Taking or buying a domain name by and of itself is not a violation. That is a civil matter. If you have a trademark in your trade name and somebody is holding something with your trademark on it then that is a proper claim for a civil action. In this case, the \$2500 each for both cases plus two (2) years of probation is more egregious than a blanket fine and having to take an Ethics course, which you almost have to do to get your continuing education requirements.

MOTION: Mr. Helm moved to approve the Settlement Stipulation as recommended by the Department. Col. Stiegman seconded the motion, which passed with two (2) dissenting votes.

Col. Stiegman questioned whether there would be any other action taken by the Board since some people came up and objected to the recommendation.

The Chair stated that the Board's decision was 7:2. Any other action would result from a complaint being filed.

(3) Edgley, John S: Case No. 117342-11-FC, Division #1-680620547 (F042261) (Probable Cause Panel B)

(4) Palm Beach Removals, Inc: Case No. 117345-11-FC, Division #1-680620547 (F052580) (Probable Cause Panel B)

The circumstances of this case are the Respondent is currently licensed as a funeral director and embalmer and the establishment is licensed as a centralized embalming facility. An investigation was completed at Palm Beach Removals where John Edgley was the acting FDIC. The Division alleges that the Licensee is conducting business and advertising to conduct business outside the scope of their licensure and that the Licensee advertised funeral arrangement services to at-need consumers. A centralized embalming facility is restricted from contracting directly with consumers for at-need arrangements. The Licensee and the Department introduce these Settlement Agreements and the Licensee agrees to pay a fine of \$1000 for the establishment as well as the individual Licensee. The terms of the Settlement Stipulations are reasonable under the facts and circumstances of these cases, the Department requests that the Board approve these Settlements and issue the Consent Orders to conclude these matters.

MOTION: Mr. Mueller moved to approve the Settlement Stipulation as recommended by the Department. Mr. Jones seconded the motion, which passed with one (1) dissenting vote.

B. Request to Modify Payments under Previous Consent Order
(1) Gunter-Butler, Stanley: Case No. 117958-11-FC (F045059) (Probable Cause Panel A)

Ms. Hubbell recused herself as she participated on Probable Cause Panel A.

Mr. Shropshire stated that under the Consent Order in Case No. 117958-11-FC, filed July 19, 2012, the Licensee was required to pay a \$2500 administrative fine and \$250 in costs within thirty days (30) of the Consent Order. The total fine and costs were due August 20, 2012. Since entry of the Consent Order, the Licensee has made the following partial payments, totaling \$900: \$500 (8/3/12); \$150 (9/21/12); and \$250 (11/8/12). The Licensee has a remaining balance of \$1850. Copies of the Consent Order and proof of payments received are attached.

On October 3, 2012, the counsel for the Licensee filed a Motion for Extension of Time to Pay Fine and Costs. In that Motion, the Licensee is requesting that the Board amend the previous Consent Order entered in Case No. 117958-11-FC and allow Stanley Gunter-Butler to pay \$200 in monthly installments until the total fine and costs are paid. As a basis for the Motion, counsel represents that he Licensee has only been able to obtain part time work for the last 6 months and that part time employment is continuing.

Mr. Shropshire stated that the Petition is being submitted by the Licensee's attorney, Mr. Rudolph, who is here to address the Board.

Due to the fact that the Licensee has made monthly payments since the entry of the Consent Order, the Division recommends that the Board grant the Motion and allow the Licensee to make monthly installment payments as requested. If the Board grants the Motion, the Division would recommend that the Board approve the Motion to modify the payment of fine and costs under the Consent Order, No. 117958-11-FC, and issue an Amended Consent Order that incorporates the following payment schedule:

- (1) Nine installment payments of \$200, one (1) due on each of the following dates: December 31, 2012; January 31, 2013; February 28, 2013; March 29, 2013; April 30, 2013; May 31, 2013; June 28, 2013; July 31, 2013; and August 30, 2013.
- (2) One final payment of \$50 to be paid by September 30, 2013.

Failure of Respondent to pay any of the payments required under this Amended Consent Order within thirty (30) days of the due date as specified above shall result in suspension of Respondent's license until payment is made.

Mr. Rudolph responded that as stated in his Motion and when his client originally signed the Settlement Stipulation, he was employed but at we went before the Board I was asked to address the Board and request the Licensee be given time to make the payments because he had lost his position. That has continued on today plus he has had to pay out of pocket for the Law and Rules Exam. Mr. Gunter-Butler does not have the money to do it. Once he gets a full time job he of course would escalate the payments and get them over with because he understands that failing to make the payments would result in an open and shut Administrative Complaint and he would lose his license. I wanted to make sure we get this changed because even though I spoke with the Division about it, the Division is bound by what the original Stipulation says. So I wanted to come here and plead to the Board to give this man time to make his payments so he does not lose his license because he does not have the ability to pay.

Mr. Clark questioned whether the Licensee has taken the Law and Rules exam.

Mr. Rudolph stated that Mr. Gunter-Butler took the exam one time but only got a 68 or 69 so he had to sign up for it again.

MOTION: Ms. Thomas-Dewitt moved to approve the Settlement Stipulation as recommended by the Department. Mr. Clark seconded the motion, which passed unanimously.

5. Disciplinary Proceedings:

A. Material Facts Not Disputed (Section 120.57(2) Hearings)

(1) Cremation Services of Mid-Florida, Inc: Case No. 126781-12-FC, Division #ATN-18403 (F041385) (Probable Cause Panel A)

Ms. Hubbell recused herself as she participated on Probable Cause Panel A.

Ms. Mary K Surles stated that on September 6, 2012, the Department filed an Administrative Complaint alleging the licensed funeral director, Kevin Blackmon, on behalf of Cremation Services of Mid-Florida, entered into a contract and sold preneed services and merchandise when Cremation Services of Mid-Florida did not have a license as required by Chapter 497, F.S. On September 10, 2012 the Respondent received the Administrative Complaint by certified mail and Notice of Rights was attached to the Administrative Complaint which provided the Respondent 21 days to submit its response to the Department. The Department did not receive the Respondent's response to the Administrative Complaint and on November 6, 2012 the Department filed a Motion for Determination of Waiver and for Final Order which is before you here today. The Department believes that it is appropriate at this time for the Chair to entertain a motion that the Respondent has waived its right to elect a proceeding in the administrative action.

Mr. Mueller questioned whether this is the case where someone other than the Respondent signed the receipt for the certified mail.

Ms. Surles stated that Kevin Blackmon signed the certificate of service in this matter on behalf of the establishment. Therefore, since that is the record of address and is deemed to be valid service then he can receive that.

The Chair recognized Mr. Locke and advised he would have an opportunity to address the Board after the motion is voted on. The Chair questioned whether there is anyone present other than Mr. Locke representing the Respondent.

Mr. Rudolph stated that Mr. Locke is the Respondent.

Ms. Surles responded that Mr. Locke is the owner of the Respondent.

Mr. Mueller questioned why Mr. Locke is not being permitted an opportunity to address the Board prior to a vote on the motion.

The Chair stated this motion is in regards to the Waiver of Rights.

MOTION: Mr. Jones moved to find that the Respondent waived its rights to request a proceeding in this matter. Mr. Clark seconded the motion, which passed unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint as the Board's Findings of Fact.

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

The Department contends that based on the Board's Findings of Fact that the Respondent has violated ss. 497.452(1)(a), 497.458(1)(a), 497.152(1)(a) and (b), F.S. as charged in the Administrative Complaint. It is appropriate at this time for the Chair to entertain a motion adopting the violations set forth in the Administrative Complaint as the Board's Conclusions of Law.

Ms. McNulty stated that prior to this vote, it is appropriate to allow the Respondent to come forward and make statements regarding whether these Findings of Fact constitute a violation of law and any mitigation.

Ms. Surles questioned whether this is the case since it has been deemed that the Respondent waived its right to elect a proceeding.

Ms. McNulty stated that the Respondent waived its right to elect a proceeding and the Board has already ruled on the Findings of Fact the Respondent cannot address that. It is appropriate to address how the Findings of Fact set forth in that Administrative Complaint do or do not constitute a violation of the law that is alleged in the Administrative Complaint and any mitigation in terms of penalty.

The Chair requested that Mr. Locke come forward and be sworn in.

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

Mr. Larry Locke responded, "I do Sir." Mr. Locke stated that he is the owner of Cremation Services of Mid-Florida, Inc. We have been in business thirteen (13) years and have never had any issues with any inspections. We had a preneed license and never had an issue with an audit, but because of some medical problems the license lapsed. I was not at the facility fulltime. We took care of that with an administrative fine and such. This issue here is because of a lady that was very adamant about us taking care of her cremation. She kept calling wanting to pay for it before she died because she did not want to go to a funeral home. Mr. Blackmon explained to her, on several occasions that he could not do that and we could not accept pre-payment. Mr. Blackmon did finally agree to go to her home because her eyesight was failing and she was told she had less than three (3) weeks to live. She did not want her family to take her to a local funeral home so she kept calling. Mr. Blackmon agreed to come out and do the paperwork while still telling her we could not accept payment. When he got out there to do the paperwork, her husband made out a check and pleaded with Mr. Blackmon to take the check so she would know it was paid for. Mr. Blackmon did take the check and brought it back to the office. It was put in the file and was never cashed or endorsed. I became aware of it when I received this complaint. The children went to the local funeral home for a viewing or some type of service and advised that the cremation was already paid for. The funeral home has been the subject of problems we have had in the past. Mr. Locke stated that he does not understand the law and is not an attorney or an educated person. All these attorneys here do not even understand everything. I see some of the Board members do not even understand the laws as they are now because everything is so technical. Mr. Locke added that he has a high school education, has run a successful business for thirteen (13) years and is doing an excellent job for the community charging \$695 for cremations. I have people in my office everyday that cannot afford to pay that. We are the only independent crematory in that county. The other two (2) cremation services are owned by funeral homes. People just cannot afford their prices so that is why we are doing so well. We are under the microscope every day. Also I have five (5) employees that have been with me through all this and they are going to lose their jobs if this continues on the road that it is headed. There are going to be five (5) people without a job and I do not know where they are going to go or what they are going to do in this market. Not only will this affect them but also the hundreds of families that we deal with, 800+ every year, that cannot afford to go to a funeral home. This should not have happened but it did not hurt anyone, the money was not used for anything and the check was not cashed as Mr. Blackmon told the consumer. Mr. Blackmon thought that as long as we did not endorse that check that it was not actually a payment. This whole deal is getting to the point where one of the State's Attorneys made a mention that the amount of litigation will determine settlements so basically what I get out of that is that all of the corporations with all of these attorneys on staff are the ones getting the benefits of these laws because if they litigate it they are not going to get pushed. I do not have an attorney and have never hired one in my life as I have never had a reason to. Therefore, I do not understand all of this. I understand what I should have done but did not do. I thought that once this went through, I would be waiting to find out what the fine was going to be like the last time but I did not consider the fact that they would try to shut down my facility over someone trying to fulfill a dying woman's last wishes. I just do not believe that in this case the punishment fits the facts of the case. We presented all of the facts, copies of everything to the Board and I was very sure that once the facts were reviewed it would never have gone this far. I was willing to pay a fine, extend the probation or whatever. I have cancelled everyone there at my office. We have not tried to get another preneed license because the expense of preneed keeps going up. We do not charge that much for our cremations; we cannot because people cannot afford it. I have not raised my prices in over nine (9) years as I am doing something for the community so I do not think that putting me out of business is going to benefit anyone. It is not going to protect the consumers. All it is going to do is through these people out there to where they

are not going to have anywhere to go to get something done and they are going to be at the mercy of these corporate funeral homes. Mr. Locke added that he has nothing against corporations. Everyone here is affiliated with them or knows about them and knows how they operate. It is just money. A lot of people have lost sight of what it is like down in the trenches. The jobless rate is way up there so people cannot afford all of this and it is very sad, very heart wrenching when someone comes in and cannot afford to bury their mother or grandmother. When I tell them how much cremation is they cry because they do not even have that much. That is why we exist there. That is why we do not have attorneys. I try and cut every dollar I can in order to keep my prices where they are for these people. I do not do it for myself. I am not making anything. I am trying to just pay my employees so that they can make a living and do something for the community. I feel very strongly that the consequences here do not fit the "crime" that I committed by accepting payment for an old lady so that she could be assured that she would not have to go to a funeral home and put on display once she died.

Ms. Jean Anderson questioned why Mr. Locke failed to respond to the Notice.

Mr. Locke stated that all of the evidence was sent in and letters were written to the Board stating why this happened.

Ms. Anderson questioned whether the information was submitted within 21 days.

Mr. Locke responded that he did not know the time period and does not understand all of the legal papers. Mr. Locke assumed that once the Board reviewed everything that was submitted that it would not come to this as he was willing to pay a fine.

Ms. McNulty stated that any Respondent has a legal right not to respond if they so choose. That goes to the election of which type of hearing he may or may not want.

Mr. Locke stated that he did not respond based on the fact that he did not dispute the facts as they were presented because Mr. Blackmon did in fact accept the check and that could be construed as accepting a prepayment.

Ms. McNulty stated that in terms of setting a penalty, just because the Respondent chose not to respond, the Board cannot hold that against the Respondent.

Ms. Surles stated that the Department contends that based on the Board's Findings of Fact and admissions stated here today that the Respondent has violated ss. 497.452(1)(a), 497.458(1)(a), 497.152(1)(a) and (b), F.S. as charged in the Administrative Complaint. It is appropriate at this time for the Chair to entertain a motion adopting the violations set forth in the Administrative Complaint as the Board's Conclusions of Law.

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

Ms. Surles stated that the Department's recommendation along with the Division's approval recommends the following penalty: a \$3000 Administrative fine and a one (1) month suspension of the direct disposal establishment license. This recommendation is also based on the Respondent's prior discipline.

Mr. Jones questioned the Respondent's prior discipline.

Ms. Surles responded that on July 7, 2011, a Consent Order was entered into based on a Settlement Stipulation that was entered into between the Department and the Respondent for selling preneed without having a preneed license.

Mr. Helm questioned whether the Respondent's prior discipline occurred during the time when Mr. Locke was sick.

Mr. Locke responded yes and stated he was having heart problems which led to open heart surgery and his license did not get renewed. We did not realize it and continued selling preneed. We do not have a preneed program and do not go out actively.

Col. Stiegman questioned the amount of the check Mr. Blackmon received from the consumer.

Mr. Locke stated that the amount was \$1102.

Mr. Helm questioned what happened to the \$1102.

Mr. Locke stated that he currently has the check. The funeral home that the family went to asked them to put a stop-payment on it and advised that they were going to file a complaint with the Board. I do not know whether they ever put a stop-payment on it or not, but the check is still in the file.

Mr. Clark questioned whether Mr. Darwin, the legal next of kin, was the person who went to the funeral home.

Mr. Locke stated that the children went to the funeral home. Mr. Darwin was in agreement with what his wife wanted.

Mr. Mueller questioned whether Mr. Locke performed the cremation.

Mr. Locke responded that he did not perform the cremation. Once the family went to the funeral home, they made some type deal with them to take it over and we never heard from the family since.

Ms. Thomas-Dewitt questioned whether Mr. Locke now realizes the severity that regardless of how someone pleads, if you do not have a preneed license you are not allowed to accept funds for preneed.

Mr. Locke responded, "Absolutely." Mr. Locke stated that he has counseled everyone there on this matter, including the Law. We still have people approach us every day, but we tell them very sternly that we cannot accept pre-payments. We suggest to those consumers that they open up a savings account and put the money there so that once the death occurs they will have the money saved.

Ms. Thomas-Dewitt questioned whether Mr. Locke had that understanding between the first offense and the second.

Mr. Locke stated undoubtedly Mr. Blackmon did not understand that him taking a check and not cashing it, but holding it was considered preneed. So he took the check, placed it in her file where it stayed until this came up. Mr. Blackmon does understand now that he cannot even accept a check, even if you do not cash it.

Mr. Shropshire questioned whether the only case being addressed at this time is the Cremation Services case and that the Board will subsequently address the Larry Locke matter.

Ms. Surles responded yes.

Mr. Shropshire stated this would be an action and a penalty assessed against Cremation Services and then we are going to separately consider the Larry Locke case.

Ms. Surles concurred.

MOTION: Ms. Thomas-Dewitt moved to accept the Division's recommended penalty. The motion failed due to lack of a second.

Mr. Helm stated he was confused. The materials indicated that Respondent had not responded within 21 days and Mr. Locke stated that he did respond.

Ms. Surles stated that the Respondent responded to the investigation initially. After the Administrative Complaint is filed, which is after it gets to Legal Services, we then try to either settle the case or an Administrative Complaint is filed and issued. The Respondent is then allowed, under the law, 21 days to respond to that Administrative Complaint. The Cremation Services of Mid Florida did not submit a response within the 21 days.

Mr. Helm questioned whether the 21 days began once the FDIC signed for the certified document.

Ms. Surles concurred. Mr. Locke is the DDIC. Mr. Blackmon did sign for it. It was mailed to the address which is the record of address that the Division has on file for this Licensee. Once we prove services their 21 days start ticking from the date of service of that Administrative Complaint, which is why we send things via certified mail. No response was received after that.

Col. Stiegman questioned whether it was stated that there could be nothing attached to that.

Ms. McNulty responded that the Board could not hold it against the Respondent for not responding.

Mr. Mueller questioned whether it would be appropriate to discuss the companion case prior to deciding on this case.

The Chair stated he would prefer to work on this case.

Mr. Clark questioned the previous motion.

Ms. Surles stated the recommended penalty was a \$3000 fine and one (1) month suspension of the direct disposal establishment license.

Mr. Helm questioned whether this means the establishment could not perform cremations for a month.

The Chair stated not only can they not cremate, they could not service any customers, at-need or preneed.

2nd MOTION: Mr. Jones moved for a \$3000 fine and one (1) year of probation. Mr. Helm seconded the motion, which failed as a result of a tie.

Ms. Surles stated this is an informal hearing so the Board gets to determine the discipline in this matter.

Mr. Shropshire stated he would imagine that one of the Board members who voted against the last motion had in mind some reason why they did not support it, so you may want to put that on the table for discussion or propose a penalty that you think is appropriate.

3rd MOTION: The Chair moved for a penalty of a \$3000 fine, 10 day suspension and one (1) year of probation. Mr. Clark seconded the motion, which passed with two (2) dissenting votes.

(2) Locke, Larry: Case No. 126779-12-FC, Division #ATN-18403 (F043249) (Probable Cause Panel A)

Ms. Hubbell recused herself as she participated on Probable Cause Panel A.

Ms. Surles stated that similar to the same facts as previously presented in the prior case of Cremation Services, this case involves Larry Locke. On September 6, 2012, the Department filed an Administrative Complaint alleging that Larry Locke as the responsible Direct Disposer in Charge of Cremation Services of Mid-Florida, failed to ensure that the facility, its operations and all employees complied with all of the applicable state and federal laws when Kevin Blackmon, on behalf of Cremation Services of Mid Florida, sold preneed services and merchandise when Cremation Services of Mid-Florida did not have a preneed license as required by Chapter 497, F.S. On September 25, 2012 the Respondent was personally served with the Administrative Complaint and Notice of Rights attached to the Administrative Complaint provided the Respondent 21 days to submit its response to the Department. The Department did not receive the Respondent's response to the Administrative Complaint and on November 6, 2012 the Department filed a Motion for Determination of Waiver and for Final Order which is before you here today. The Department believes that it is appropriate at this time for the Chair to entertain a motion that the Respondent has waived its right to elect a proceeding in the administrative action.

MOTION: Mr. Mueller moved to find that the Respondent waived its rights to request a proceeding in this matter. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Now that the Board has determined that the Respondent has waived its right to request a proceeding, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint filed by the Department as the Board's Findings of Facts in this matter.

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

Ms. Surles stated that now it would be appropriate to hear from the Respondent.

The Chair requested that Mr. Locke come forward and be sworn in again.

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

Mr. Larry Locke answered, "I do."

The Chair questioned whether Mr. Locke would like to address the Board or whether he is present to answer questions.

Mr. Locke stated that he was present to answer questions. Mr. Locke added that if his licenses are suspended then the business would be shut down as he is the DDIC.

Ms. Surles stated that the Department contends that based on the Board's Findings of Fact, the Respondent has violated ss. 497.452(1)(a), 497.458(1)(a), 497.152(1)(b) and 497.152(1)(a), F.S. as charged in the Administrative Complaint. It is appropriate at this time for the Chair entertain a motion adopting the violations set forth in the Administrative Complaint as the Board's Conclusions of Law in this matter.

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

Ms. Surles stated that the Department's recommendation as approved by the Division is a \$2500 Administrative Fine, six (6) month suspension of the direct disposer license, which is based on the Respondent's prior disciplinary actions. Mr. Locke had prior discipline against his license on July 7, 2011 and that Consent Order was issued for selling preneed without a license.

Mr. Helm questioned whether Mr. Locke was on two (2) years probation.

Ms. Surles responded affirmatively.

Mr. Helm questioned whether Cremation Services of Mid Florida was on probation.

Ms. Surles stated that both the establishment license and the individual license were on probation when this matter occurred.

The Chair stated that in the materials presented, there is reference to a funeral director and embalmer license as well as reference to a direct disposer license. The Chair requested clarification.

Ms. Surles stated that Mr. Locke is licensed as a direct disposer, not a funeral director and embalmer.

MOTION: Col. Stiegman moved to assess no penalty because Mr. Locke only has a High School education and is helping the public. The motion failed due to lack of a second.

Ms. Thomas-Dewitt stated that she is totally against not assessing a penalty, as the Board is here to protect the consumer. The Respondent willfully violated the law and there should be some type penalty assessed.

2nd MOTION: Mr. Jones moved for a penalty of a \$3000 fine, 10 day suspension and two (2) years of probation. During the suspension, the establishment would remain open for the limited purpose of assuring that preneed contracts are honored by other entities. Ms. Thomas-Dewitt seconded the motion, which passed with one (1) dissenting vote.

Mr. Mueller questioned whether the suspensions would run concurrently.

Ms. Surles stated they are two (2) separate licenses.

Mr. Jones stated that his recommendation would be that the run concurrent. The facility would be closed for the same 10 days that Mr. Locke's license would be suspended.

Mr. Shropshire stated that the establishment needs to remain open for the limited purpose of receiving his former preneed clients who may come to him. The Respondent cannot honor the contracts but he has to make arrangements for someone else to honor them.

Ms. Surles questioned whether Mr. Shropshire is recommending a suspension with restrictions.

Mr. Shropshire stated he just wanted to let the Board know that is the position the Division would take and if the Board does not approve, the Division needs to be advised at this time because the Division would hold Mr. Locke liable to be his premises and have his phone manned to receive calls from his former preneed clients.

Mr. Locke stated that would be hard and added he would rather pay a larger fine.

Mr. Shropshire questioned whether Mr. Locke is stating that he would not comply with the Division's position. Mr. Shropshire stated that Mr. Locke needs to man his phones and be sitting in his office for those ten (10) days. Mr. Locke cannot take any new business or perform any cremations but if a preneed client comes in Mr. Locke would have to make arrangements with another licensed facility to get that contract honored during those ten (10) days.

Ms. Surles stated that the Department needs to clarify that in the Order.

Mr. Mueller stated that may affect the concurrency of the suspensions. It may be easier to comply if the establishment license is suspended at one time during which he is licensed to act as the DDIC and after those ten (10) days the establishment license would be reinstated and the DDIC license would be suspended for the following ten (10) days.

The Chair stated even if it is concurrent and a family comes in during that time, some arrangement must be made with another licensed facility to handle that family's needs.

Mr. Jones questioned whether Mr. Locke could comply with the Division's position.

Mr. Locke stated he would make arrangements to comply.

Ms. Surles stated that the Respondent has other direct disposers that could "man" the phones.

Mr. Clark questioned whether there are other direct disposers at the facility because he thought Mr. Locke had stated he was the only Licensee.

Mr. Locke stated that his is the only DDIC.

Ms. Anderson questioned whether the two (2) year probation is concurrent.

Mr. Shropshire stated it would begin at the same time.

Ms. McNulty stated that would only occur if the two (2) Orders are filed at the same time.

Mr. Shropshire stated that would be the Division's intention.

B. Settlement Stipulations

(1) Culley's Meadowwood Funeral Home: Division #ATN-18664 (F040240) (Waiver of Probable Cause)

Ms. Karen Duehring stated that SCI self-reported the violation involving a non-licensed administrative manager acting as a licensed funeral director. Culley's had already taken action and terminated the employee at the time it was reported to the Division. The individual was a licensed funeral director in another state and had been counseled and instructed that he could not perform those duties at Culley's.

Culley's Meadowwood Funeral Home has agreed to pay a \$200.00 fine. The terms of the Settlement Stipulation are reasonable and the facts and circumstances of this case. Circumstances of the violation were self-reported and self-corrected. The individual was terminated and has returned to his former state of residence. There was no consumer complaint and the Department would have had no knowledge of the incident except by the self-reporting of the Licensee. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Mueller stated that given this is a self-reported issue, issuing anything that would be on record as discipline will serve to discourage others in the future to report such acts. Mr. Mueller questioned whether the Department could issue a letter of instruction.

Ms. Lisa Coney, on behalf of Culley's, stated that she did look at the rules associated with this. It is an old Chapter 470 carryover so it does not have the structure of the disciplinary guidelines that some of the Chapter 497 stuff does. Ms. Coney requested that the Board issue a Notice of Noncompliance as an appropriate course of action as this is the kind of behavior we want out of our Licensees rather than sending a message that when they bring things to the Division's attention they are going to be disciplined rather than appreciated.

Ms. Duehring stated that in this case there was unlicensed activity but they also verified with the consumer that they were satisfied with their services and there was no consumer harm.

MOTION: Mr. Mueller moved to reject the Settlement Stipulation as recommended by the Department and issue a Notice of Noncompliance with no fine. Mr. Helm seconded the motion, which passed with three (3) dissenting votes.

(2) SCI Funeral Services of Florida Inc/Forest Lawn d/b/a Forest Lawn Memory Gardens #907: Division #ATN-17648 (F039473) (Waiver of Probable Cause)

Ms. Duehring stated that the Department conducted an investigation at Forest Lawn Memory Gardens ("Forest Lawn") and found that Faye Mobley, General Manager for Forest Lawn contacted the daughter of deceased Elizabeth M. Swilley, on October 6, 2011. Mrs. Mobley advised the daughter, Julia Thigpin, that her mother's vault lid had been cracked and damaged during routine lawn maintenance. The Department's investigation, which included disinterment and re-interment of Mrs. Swilley, proved that the vault lid had been cracked prior to the original burial, and the general manager had knowledge of this. After the disinterment, a new vault and lid were installed and the casket of Mrs. Swilley re-interred. Mrs. Mobley continued denying knowledge of the crack until an "anonymous letter" was sent to the company, even in her affidavit.

Mitigating factors include:

- 1) The consumer is satisfied, and the family signed paperwork that will individually and on behalf of the estate, will hold SCI, its affiliates, owners, and all of their respective officers, directors, shareholders, employees, representatives, successors, assigns and agents harmless and discharge absolutely unconditionally and forever from all claims, demands, liabilities, obligations, actions, causes of actions, damages, losses, costs, and expenses of any nature relating to, arising out of, or in any way connected with the funeral and cemetery services and merchandise provided by forest lawn for Elizabeth Swilley.
- 2) The consumer has been reimbursed 100% for all expenses related to the burial in question, for a total of \$7,938.00.
- 3) SCI donated \$1,000 to the deceased's church in her memory.
- 4) Faye Mobley, General Manager for Forest Lawn was terminated.

Forest Meadows has agreed to pay a \$500.00 fine and \$200.00 administrative costs. 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. Helm stated Ms. Duehring mentioned that the lid was broken but the materials indicated it was cracked. Mr. Helm requested clarification as there is a big difference in the two.

Ms. Duehring stated it was a long crack.

MOTION: Mr. Mueller moved to approve the Settlement Stipulation as recommended by the Department. Mr. Jones seconded the motion, which passed unanimously.

(3) Coleman, Christopher: Case No. 122892-12-FC, Division #SR1-696531711 (F045343) (Probable Cause Panel B)

Mr. Jim Bossart stated that the Department recommends approval of the attached proposed Settlement Stipulation for Consent Order assessing Respondent a \$250 administrative fine and placing his license on probation for one year. This investigation alleges that Christopher Coleman is liable for the following violations: Christopher Coleman, at all times relevant, was the Funeral Director in Charge (FDIC) at Coleman's Mortuary, Inc. Pursuant to a consumer complaint, it is alleged that Christopher Coleman on behalf of the funeral home entered into a preneed funeral contract on March 20, 2008, with Mr. Robert Ramsey of Alexandria, Virginia for the funeral service of Mr. Ramsey's father, Rudolph Ramsey, without holding a valid preneed funeral contract license. Further investigation, however, revealed that Mr. Robert Ramsey and Christopher Coleman are cousins. Mr. Rudolph Ramsey is Coleman's uncle and is not deceased but very much alive. These two facts were confirmed by Mr. Robert Ramsey's mother. Robert Ramsey complained to the Department about the pre need funeral contract in an apparent attempt to force Christopher Coleman to pay a family debt unrelated to this proceeding. Christopher Coleman has returned the funds paid to him related to this matter.

These allegations constitute a violation of Sections 497.152(1) and 497.452(1)(a) and (2)(a), Florida Statutes. Evidence supports the conclusion that Respondent violated the above enumerated statutes. However, in light of the special circumstances detailed above, the Department recommends limited discipline. Respondent has elected to enter into this stipulation, in which Mr. Coleman agrees to pay a \$250 fine and be placed on probation for one (1) year. Mr. Coleman averred by his stipulation that he has entered into no other preneed funeral contracts and that he would not do so in the future without first attaining a license. The Department recommends that the Board approve the Settlement Stipulation.

Mr. Shropshire noted for the record that there are two (2) related cases here and the Board is addressing the first one alone unless the Board decides to address them together.

The Chair inquired whether the Board would like to address both cases simultaneously.

MOTION: Ms. Hubbell moved to approve the Settlement Stipulation as recommended by the Department. Ms. Anderson seconded the motion, which passed unanimously.

(4) Coleman's Mortuary: Case No. 122894-12-FC, Division #SR1-696531711 (F040636) (Probable Cause Panel B)

Mr. Bossart stated that the Department recommends approval of the attached proposed Settlement Stipulation for Consent Order placing Respondent's license on probation for one year. (Christopher Coleman, the owner of the funeral home and licensed FDIC has been, in addition, assessed a \$250 fine.) This investigation alleges that Coleman's Mortuary is liable for the following violations: Coleman's Mortuary, Inc. is a licensed funeral establishment doing business in Duval County, Florida. Christopher Coleman, at all times relevant, was the owner and Funeral Director in Charge (FDIC) at Coleman's Mortuary, Inc. Pursuant to a consumer complaint, it is alleged that Christopher Coleman on behalf of the funeral home entered into a preneed funeral contract on March 20, 2008, with Mr. Robert Ramsey of Alexandria, Virginia for the funeral service of Mr. Ramsey's father, Rudolph Ramsey, without holding a valid preneed funeral contract license. Further investigation, however, revealed that Mr. Robert Ramsey and Christopher Coleman are cousins. Mr. Rudolph Ramsey is Coleman's uncle and is not deceased but very much alive. These two facts were confirmed by Mr. Robert Ramsey's mother. Robert Ramsey complained to the Department about the pre need funeral contract in an apparent attempt to force Christopher Coleman to pay a family

debt unrelated to this proceeding. Christopher Coleman has returned the funds paid to him by his uncle, Rudolph Coleman for a pre need funeral contract.

These allegations constitute a violation of Sections 497.152(1); and 497.452(1)(a) and (2)(a), Florida Statutes. Evidence supports the conclusion that Respondent violated the above enumerated statutes. However, in light of the special circumstances detailed above, the Department recommends leniency. Respondent has elected to enter into this stipulation, whereby they are placed on probation for one (1) year, averred that there are no other preneed funeral contracts and that they would not attempt to solicit them in the future without first attaining a license. The Department recommends that the Board approve the Settlement Stipulation.

The Chair questioned whether any representing the Respondent was present.

Mr. Bossart stated that he did not believe there was anyone present.

Mr. Helm questioned whether there was a fine assessed.

Mr. Bossart stated that Mr. Coleman elected to pay the fine. In cases of this nature when there are two (2) Licensees together, they can elect to have one (1) Licensee pay the fine.

MOTION: Ms. Hubbell moved to approve the Settlement Stipulation as recommended by the Department. Col. Stiegman seconded the motion, which passed unanimously.

***(5) New Serenity Memorial Funeral Home & Cremation Services, Inc: Case No. 126168-12-FC, (F039970)
Division #ATN-17731 (Waiver of Probable Cause)***

Mr. Linje Rivers stated that New Serenity Memorial Funeral Home & Cremation Services (“New Serenity”) is licensed as a funeral establishment. The Division conducted an investigation at the Licensee’s establishment. During that investigation, it was determined that the Licensee was in violation of the Funeral, Cemetery and Consumer Services Act. The Division alleges that the Licensee failed to install a granite memorial ledger in a timely manner, failed to provide a contract for funeral goods and services purchased and allowed an unlicensed individual to make funeral arrangements.

New Serenity has agreed to pay a fine of \$1500 and be placed on three (3) years probation. 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. Helm questioned how “the Licensee failed to install a granite memorial ledger in a timely manner.” Mr. Helm questioned whether the contract indicated when the merchandise would be installed.

Mr. John Rudolph, representing New Serenity, stated that they could not find the contract as it was destroyed. Some water got into the funeral home.

Mr. Helm questioned whether there was a time indicated on the contract when it was to be installed or whether the Respondent has any type contract like that. In our Industry, the contracts have to have an installment date.

Mr. Rudolph stated this is just a Southern Monument contract. They entered into a contract with Southern Monument to provide the monument.

Mr. Helm questioned who entered into the contract with Southern Monument.

Mr. Rudolph responded, “New Serenity.” This is not a monument establishment. If it was a monument establishment, they would have to have a contract for the at-need sale of the monument. This is a funeral home and they made arrangements to buy the marker. They have a contract for the at-need services, which is signed by the funeral director and then they made arrangements to get the marker through another monument company.

Mr. Helm questioned whether the funeral home made the arrangements.

Mr. Rudolph responded, "Yes."

MOTION: Mr. Jones moved to approve the Settlement Stipulation as recommended by the Department. Mr. Clark seconded the motion, which passed unanimously.

(6) Snow, Felix: Case No. 123303-12-FC, Division #SR1-659339001 (F043713) (Probable Cause Panel B)

Mr. Bossart stated that the Department recommends approval of the proposed Settlement Stipulation for Consent Order imposing upon Respondent a one (1) year probation. This investigation alleges that Felix Snow is liable for the following violations: Felix Snow, at all times relevant, was the owner and Funeral Director in Charge (FDIC) at Snow's Funeral Ministry. Pursuant to an investigation, it is alleged that Snow's Funeral Ministry abandoned its licensed location at 5791 SE 23rd Lane in Ocala, Florida, and did conduct funerals and otherwise transact business as a funeral establishment under the name of Snow's Funeral Ministry upon the premises of Cunningham's Funeral Home, a separately licensed and operating funeral establishment located at 434 NW Martin Luther King Drive in Ocala, Florida. Snow's Funeral Ministry failed to notify the Department at least ten days before the move and furthermore, conducted funeral operations without Department inspection. Cunningham's Funeral Home is closed down and its license has been revoked in a separate, unrelated proceeding. The business no longer exists.

These allegations constitute a violation of Sections 497.152(1), 497.452(1) (a), 497.380(3) (9) and 497.380 (12), Florida Statutes, as well as Rule 69K-21.002(4) (a), Florida Administrative Code. Evidence supports the conclusion that Respondent violated the above enumerated statutes. The Respondent has elected to enter into this stipulation, which would place his license on probation for a period of one (1) year. Snow's Funeral Home will pay the assessed \$2000 fine, which has been assessed against the funeral home license. The Department recommends that this Stipulation be approved.

Mr. Shropshire requested that Mr. Bossart clarify whether he is requesting that the Board decide the individual case against Felix Snow.

Mr. Bossart stated that he is requesting that the Settlement Stipulation for Consent Order against Felix Snow placing his license on probation for the period of one (1) year be approved.

Mr. Shropshire added the Board would separately consider the case against Snow's Funeral Ministry.

Mr. Rudolph stated that Mr. Snow has asked him to represent him on this matter.

MOTION: Mr. Jones moved to approve the Settlement Stipulation as recommended by the Department. Ms. Hubbell seconded the motion, which passed unanimously.

(7) Snow's Funeral Ministry and Cremation Service: Case No. 123305-12-FC, Division #SR1-659339001 (F040043) (Probable Cause Panel B)

Mr. Bossart stated that the Department recommends approval of the proposed Settlement Stipulation for Consent Order placing Respondent on probation for a period of one year. Respondent's FDIC and owner, Felix Snow, has also been assessed a \$2000 fine. This investigation alleges that Snow's Funeral Ministry and Cremation Service is liable for the following violations: Snow's Funeral Ministry and Cremation Service, at all times relevant, was a licensed funeral establishment doing business in Ocala, Florida. Felix Snow is the owner and Funeral Director in Charge (FDIC) at Snow's Funeral Ministry. Pursuant to an investigation, it is alleged that Snow's Funeral Ministry abandoned its licensed location at 5791 SE 23rd Lane in Ocala, Florida, and did conduct funerals and otherwise transact business as a funeral establishment under the name of Snow's Funeral Ministry upon the premises of Cunningham's Funeral Home, a separately licensed and operating funeral establishment located at 434 NW Martin Luther King Drive in Ocala, Florida. Snow's Funeral Ministry failed to notify the Department at least ten days before the move and furthermore, conducted funeral operations without Department inspection.

These allegations constitute a violation of Sections 497.152(1), 497.452(1)(a), 497.380(3)(9) and 497.380 (12), Florida Statutes, as well as Rule 69K-21.002(4)(a), Florida Administrative Code. Evidence supports the conclusion that Respondent violated the above enumerated statutes. The Respondent has elected to enter into this stipulation which provides for payment of a \$2000 fine and placement of the funeral establishment's license on probation for a period of one (1) year. The Department recommends that this Stipulation be approved.

MOTION: Col. Stiegman moved to approve the Settlement Stipulation as recommended by the Department. Ms. Anderson seconded the motion, which passed unanimously.

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.

7. Application(s) for Continuing Education Course Approval
A. Recommended for Approval without Conditions – Addendum B
(1) *Apex Continuing Education #4201*
(2) *Elite CME, Inc #113*
(3) *Florida Cemetery, Cremation & Funeral Association #75*
(4) *Hospice Foundation of America #14410*
(5) *M.K. Jones & Associates, Inc #9605*
(6) *National Funeral Directors Association #136*

The majority of the Continuing Education Committee and the Division recommends approval of the course(s) for the number of hours indicated on the Addendum.

MOTION: Mr. Mueller moved to approve the application(s). Mr. Jones seconded the motion, which passed with one (1) dissenting vote.

8. Application(s) for Florida Law and Rules Examination
A. Informational Item – Approved without Conditions – Addendum C
(1) *Funeral Director and Embalmer – by Endorsement*
(a) *Baugh, Randall J*
(b) *Pellin, Patrick M*
(2) *Funeral Director and Embalmer – by Internship and Exam*
(a) *Craynock, Cody J*
(b) *Dabney, Tiffany N*
(c) *Giard, Magon A*
(d) *Stengel, Tharon*
(e) *Trzyna, Jacqueline C*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

9. Application(s) for Internship
A. Informational Item (Licenses Issued without Conditions) – Addendum D
(1) *Funeral Director and Embalmer*
(a) *Hugoboom, Aimee N*
(b) *Stinson, Katie M*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

B. Recommended for Approval without Conditions – Criminal History
(1) Funeral Director and Embalmer
(a) Glisson, James E

The Applicant submitted an application to become a Concurrent Intern on October 11, 2012. The application was complete when submitted. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

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

Mr. Glisson is the owner of Central Florida Removal Service (F041140) which has been licensed since January 22, 1997 with no adverse licensing history. Mr. Glisson also applied was approved to sit for the Florida Law and Rules examination on October 7, 2010 and was also approved for an Embalmer Apprentice License on February 9, 2012 without conditions. The Division is recommending approval without conditions.

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

C. Recommended for Approval with Conditions – Criminal History
(1) Funeral Director and Embalmer
(a) Martin Jr, Robert D

The Applicant submitted an application to become a Concurrent Intern on October 1, 2012. The application was incomplete when submitted. All deficiency items were returned on October 22, 2012. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- (1) Mr. Martin pled guilty to Larceny in 1996. Mr. Martin explains that while he was working security someone gave him a laptop in a bag without his knowledge and he was arrested for theft after taking the person's belongings to his car. He was sentenced to two years probation.

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

The Chair questioned whether there was anyone present representing the Applicant.

Mr. Martin indicated that he was present and available for questions.

MOTION: Mr. Clark moved to approve the application subject to the terms & conditions of the stipulation for licensure. Col. Stiegman seconded the motion, which passed unanimously.

10. Application(s) for Embalmer Apprenticeship
A. Informational Item – (Licenses Issued without Conditions) – Addendum E
(1) Burton, Kenneth L

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

11. Registration(s) as a Training Agency
A. Informational Item (Licenses Issued without Conditions) – Addendum F
(1) Funeral Directing
(a) Funeral Solutions (F041405) (Cocoa)
(2) Funeral Directing and Embalming
(a) Carriage Florida Holdings Inc d/b/a Stanfill Funeral Homes (F064191) (Miami)

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

12. Notification(s) of Change of Location

A. Informational Item (No Board Action Required) – Addendum G

- (1) *B&T Enterprises of Tampa Bay LLC d/b/a Community Cremation (F060511) (Lutz)*
- (2) *Eternal Cremation Services LLC (F061573) (Tarpon Springs)*
- (3) *Fourtowns Cremation Inc (F040697) (Orange City)*

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

13. Consumer Protection Trust Fund Claims

A. Recommended for Approval without Conditions – Addendum H

The Division recommends approval of the claim(s).

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

14. Application(s) for Direct Disposal Establishment

A. Recommended for Approval with Conditions

- (1) *Alavon Direct Cremation Service (Orange City)*

An application for a Direct Disposal Establishment was received on October 8, 2012. The application was complete when submitted. The Funeral Director in Charge will be David Molineaux (F029145). The fingerprint cards for all principals were returned with no criminal history; however the establishment does have an adverse licensing history.

Alavon Direct Cremation Service currently holds direct disposal establishment license F041583, located at 661 Beville Rd Suite 110, South Daytona. A citation was issued to the establishment in December 2009 for the amount of \$300 (copy of citation attached). Currently the direct disposer in charge at the direct disposal establishment is Paula Pezzimenti (F061894). The establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

B. Recommended for Approval without Conditions

- (1) *Florida State Cremations Inc (New Port Richey)*

An application for a Direct Disposal Establishment was received on October 4, 2012. The application was incomplete when submitted. All deficient items were returned on October 24, 2012. The Funeral Director in Charge will be Michelle Ohmart (F052114). The fingerprint cards for all principals were returned with no criminal history. The establishment passed its inspection on November 2, 2012. The establishment is recommended for approval without conditions.

MOTION: Mr. Mueller moved to approve the application. Mr. Clark seconded the motion, which passed unanimously.

*****BREAK*****

15. Application(s) for Funeral Establishment

A. Recommended for Approval with Conditions

- (1) *Charlotte Funeral Services LLC d/b/a Charlotte Memorial Funeral Home and Cemetery (Punta Gorda)*

The Funeral Establishment application was received by the Division on October 15, 2012. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be A Richard Tuss (F020835). This entity is not the qualifying entity for any preneed license. The Division is recommending approval subject to the condition(s) as follows:

- 1) That the closing occur within 60 days of the date of this Board meeting.

- 2) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.
- 3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.
- 4) That the establishment passes an on-site inspection by a member of Division staff.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to the conditions recommended by the Division. Col. Stiegman seconded the motion, which passed unanimously.

(2) Faith Chapel Funeral Services LLC (Cantonment)

The Funeral Establishment application was received by the Division on November 19, 2012. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be Michael Atwood (F049946). This entity is the qualifying entity for a preneed Licensee. The preneed Licensee name and license number are: Faith Chapel Funeral Home Inc (F019273). The Applicant, via letter enclosed by Wendy Wiener, has referenced its plan to apply for a preneed license to be reviewed at an upcoming Board meeting. The Applicant will also fulfill all existing preneed contracts and will not engage in selling any preneed contracts until such time the Board approves the Applicant for licensure. The Division is recommending approval subject to the condition(s) as follows:

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

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

(3) Faith Chapel Funeral Services LLC (Pensacola)

The Funeral Establishment application was received by the Division on November 19, 2012. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be Dock Boyd (F048107). This entity is the qualifying entity for a preneed Licensee. The preneed Licensee name and license number are: Faith Chapel Funeral Home Inc (F019273). The Applicant, via letter enclosed by Wendy Wiener, has referenced its plan to apply for a preneed license to be reviewed at an upcoming Board meeting. The Applicant will also fulfill all existing preneed contracts and will not engage in selling any preneed contracts until such time the Board approves the Applicant for licensure. The Division is recommending approval subject to the condition(s) as follows:

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

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

(4) Frank Donald Terry Jr d/b/a Veterans Funeral Home and Cremation (Sarasota)

The Funeral Establishment application was received by the Division on September 24, 2012. The application was incomplete when submitted. All deficient items were returned on October 15, 2012. The fingerprint cards for all principals were returned with no criminal history; however Mr. Terry does disclose an adverse licensing history. The FDIC for the establishment will be Frank Terry Jr (F023120). This entity is the qualifying entity for a preneed license. The preneed name and license number are Robert Jay Harris Jr d/b/a Veterans Funeral Service and Cremation, F060085. The Applicant will not apply for a preneed

license but will fulfill the contracts that are currently on file. In 2009, Mr. Terry was fined \$250 by the Division of Insurance for failure to comply with continuing education requirements.

The Division is recommending approval subject to the condition(s) as follows:

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

MOTION: Col. Stiegman moved to approve the application subject to the conditions recommended by the Division. Ms. Anderson seconded the motion, which passed unanimously.

(5) Fred Hunter Memorial Services Inc (Lighthouse Point)

An application for a Funeral Establishment was received on September 24, 2012. The application was incomplete when submitted. All deficient items were returned on November 18, 2012. The Funeral Director in Charge will be William O'Brien (F068146). The fingerprint cards for all principals were returned with no criminal history.

The establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

(6) Legacy Options LLC (Naples)

An application for a Funeral Establishment was received on October 12, 2012. The application was complete when submitted. The Funeral Director in Charge will be Michael Whyte (F039268). The fingerprint cards for all principals were returned with no criminal history.

The establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

16. Application(s) for Cinerator Facility
A. Recommended for Approval with Conditions
(1) Legacy Options LLC (Naples)

An application for a Cinerator Facility was received on October 12, 2012. The application was complete when submitted. The Funeral Director in Charge will be Clarence Witzenburg (F060304). The fingerprint cards for all principals were returned with no criminal history.

The establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

(2) C.E.J. South Inc d/b/a Family-Funeral & Cremation (Pensacola)

An application for a Cinerator Facility was received on October 22, 2012. The application was complete when submitted. The Funeral Director in Charge will be Jeffrey Watts (F047717). The fingerprint cards for all principals were returned with no criminal history.

The establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

17. Application(s) for Preneed Main License
A. Recommended for Approval without Conditions
(1) Serenity Funeral Home & Cremation LLC (Oakland Park)

Serenity Funeral Home & Cremation LLC through its principals, Keila K. Crucet and Ibelia Ajo, applies herein for a preneed main license. The Department received the application on October 17, 2012 and no deficiencies were noted on the application. A completed background check of all officers revealed criminal history for principal, Keila Crucet. Ms. Crucet was found guilty of driving with a suspended license in March 2010. She was placed on six (6) months probation and paid a fine of \$583, both of which have been completed with no other charges or noted problems.

Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement. An application for the qualifying funeral establishment license was approved by the Board on April 5, 2012 and the license was issued as of September 19, 2012. The Applicant's financial statements as of October 15, 2012 reflect the following:

Acquired Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	63,065

The Division is recommending approval without conditions.

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

18. Application(s) for Preneed Branch License
A. Recommended for Approval without Conditions – Addendum I

The Division recommends approval of the application(s).

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

19. Application(s) for Refrigeration Facility
A. Recommended for Approval without Conditions
(1) Removal Transport Services of Broward Inc (Pompano Beach)

An application for a Refrigeration Facility was received on October 3, 2012. The application was incomplete when submitted. All deficient items were returned on October 16, 2012. The fingerprint cards for all principals were returned with criminal history for one of its principals, Keith Rider.

In 1995 Mr. Rider pled no contest to Burglary of an Unoccupied Structure and Grand Theft. He was sentenced to four years probation and ordered to pay restitution. Mr. Rider did disclose this information when he applied for Executive Removal Service Inc in 2008 and was granted a Removal License (F050172), which was approved for a change of location in 2010 (F062575). Executive Removal Service Inc was also granted a Refrigeration Facility License (F054404) in 2009. See enclosed interview of Mr. Rider, by the FCCS Division, on February 17, 2009. The facility passed its inspection on October 30, 2012. The establishment is recommended for approval without conditions.

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

20. Application(s) for Removal Service

A. Recommended for Approval without Conditions

(1) Removal Transport Services of Broward Inc (Pompano Beach)

An application for a Removal Service was received on October 3, 2012. The application was incomplete when submitted. All deficient items were returned on October 16, 2012. The fingerprint cards for all principals were returned with criminal history for one of its principals, Keith Rider.

In 1995 Mr. Rider pled no contest to Burglary of an Unoccupied Structure and Grand Theft. He was sentenced to four years probation and ordered to pay restitution. Mr. Rider did disclose this information when he applied for Executive Removal Service Inc in 2008 and was granted a Removal License (F050172), which was approved for a change of location in 2010 (F062575). Executive Removal Service Inc was also granted a Refrigeration Facility License (F054404) in 2009. See enclosed sworn interview of Mr. Rider, by FCCS Division staff, on February 17, 2009. The removal service passed its inspection on October 30, 2012. The establishment is recommended for approval without conditions.

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

B. Recommended for approval with Conditions

(1) Tortuga Transport Services Inc (Fern Park)

An application for a Removal Service was received on August 21, 2012. The application was incomplete when submitted. All deficient items were returned on November 1, 2012. The fingerprint cards for all principals were returned with no criminal history.

The establishment is recommended for approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

21. Application(s) for Change of Ownership (StoneMor Florida Subsidiary LLC)

A. Recommended for Approval with Conditions

(1) Cinerator Facility

(a) StoneMor Florida Subsidiary LLC d/b/a Seawinds Crematory (Sebastian)

(b) StoneMor Florida Subsidiary LLC d/b/a Treasure Coast Seawinds Funeral Home & Crematory (Stuart)

(c) StoneMor Florida Subsidiary LLC d/b/a Young-Seawinds Funeral Home & Crematory (Fort Pierce)

(2) Funeral Establishment(s)

(a) StoneMor Florida Subsidiary LLC d/b/a Allen J Harden Funeral Home (Mount Dora)

(b) StoneMor Florida Subsidiary LLC d/b/a Buxton-Seawinds Funeral Home & Crematory (Okeechobee)

(c) StoneMor Florida Subsidiary LLC d/b/a Cox-Gifford Seawinds Funeral Home & Crematory (Vero Beach)

(d) StoneMor Florida Subsidiary LLC d/b/a Davis-Seawinds Funeral Home & Crematory (Melbourne)

(e) StoneMor Florida Subsidiary LLC d/b/a Palm Beach National Chapel (Lake Worth)

(f) StoneMor Florida Subsidiary LLC d/b/a Seawinds Funeral Home (Sebastian)

(g) StoneMor Florida Subsidiary LLC d/b/a Treasure Coast Seawinds Funeral Home & Crematory (Stuart)

(h) StoneMor Florida Subsidiary LLC d/b/a Young-Seawinds Funeral Home & Crematory (Fort Pierce)

(3) Training Agency

(a) Funeral Directing and Embalming

1. StoneMor Florida Subsidiary LLC d/b/a Seawinds Funeral Home (Sebastian)

2. *StoneMor Florida Subsidiary LLC d/b/a Cox-Gifford Seawinds Funeral Home & Crematory (Vero Beach)*

The enclosed packet of applications was received by the Division on October 31, 2012. The Applicant, Stonemor Florida Subsidiary LLC, is applying for change of ownership of eleven chapter 497 establishments (3 Cinerator and 8 Funeral Establishments)

The applications were accompanied by the attached letter from attorney Wendy Wiener, dated November 8, 2012, representing Stonemor, advising that Stonemor Florida Subsidiary LLC will assume all existing preneud liabilities related to the entities it is acquiring. The representations of said counsel are material to the Board's decision herein.

The applications were complete when submitted. The fingerprint cards for all principals were returned with no criminal history.

Training Facility Status: Two of the FEs being acquired are currently approved as intern training facilities, and Stonemor requests Board approval of those two FEs as training facilities under StoneMor ownership. In that regard, Stonemor is requesting credit for the number of cases done by those establishments prior to this acquisition, so that said two establishments may continue as training facilities without interruption. Stonemor advises that there will be no change in the FE professional staff, including the Supervising Licensee of the intern training program. The Board has approved this type of request in the past.

The Division recommends approval of the request for training facilities licensure under Stonemor and approval of all eleven (11) change of ownership applications, subject to conditions as follows:

- 1) That the closing occur within 60 days of the date of this Board meeting.
- 2) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.
- 3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.
- 4) That all fictitious names are registered with the Department of State and proof of registrations be submitted to the Division.
- 5) That each establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Helm moved to approve the applications subject to the conditions recommended by the Division. Col. Stiegman seconded the motion, which passed unanimously.

(4) *Application for Monument Establishment Retailer License*
(a) *StoneMor Florida LLC d/b/a Eagle Monument & Cemetery Services (Fort Pierce)*

The application was received by the Division in the enclosed packet of applications on November 1, 2012. The Applicant, StoneMor Florida Subsidiary LLC is also applying for a change of ownership of a monument establishment retailer license, Eagle Monument & Cemetery Services (License # F037614).

The application was accompanied by the attached letter from attorney, Wendy Weiner, dated October 31, 2012, representing StoneMor, advising that StoneMor Florida Subsidiary LLC is assuming all of the assets and existing liabilities related to the entities it is acquiring. The representations of said counsel are material to the Board's decision herein.

The application is complete and no deficiencies were noted on the application. The Department completed a background check of all officers which revealed no criminal history. Applicant will utilize the attached monument retail sales agreement that was previously approved by the Board on June 4, 2009.

The Division recommends approval of the application subject to the condition(s) as follows:

- 1) That the closing occur within 60 days of the date of this Board meeting.

- 2) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.
- 3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.
- 4) That all fictitious names are registered with the Department of State and proof of registrations be submitted to the Division

MOTION: Mr. Helm moved to approve the applications subject to the conditions recommended by the Division. Col. Stiegman seconded the motion, which passed unanimously.

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

A. Recommended for Approval without Conditions

(1) Monument Retail Sales Agreement

(a) Wilson-Wolfe Inc d/b/a Sweet Dreams Memorials (F050085) (Plant City)

Pursuant to Rule 69K-12.005, Wilson-Wolfe Inc d/b/a Sweet Dreams Memorials (F050085), has submitted for approval a monument retail sales agreement to be used solely for the sale of monuments through its licensed monument establishment retailer business.

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

B. Recommended for Approval with Conditions

(1) Pre-Construction Trust Agreement

(a) S.E. Cemeteries of Florida, LLC d/b/a Highland Memorial Gardens (F039558) (Apopka)

Pursuant to 497.272, a pre-construction trust must be established for the trusting of funds as required for the sale of interment rights, entombment rights, and/or inurnment rights on a pre-construction basis under preneed cemetery contracts.

In accordance with ss. 497.272, Florida Statutes, SE Cemeteries of Florida, LLC d/b/a Highland Memorial Gardens (F039558) submits a Master Pre-Construction Trust Agreement with SunTrust Bank, N.A. to be utilized for the construction of a mausoleum to be located at Highland Memorial Gardens at 3329 East Semoran Boulevard, Apopka, FL 32703. The mausoleum project is summarized as follows:

Project: Tranquility Mausoleum Building I
 422 Casket Crypts
 192 Niches
 Project Amount: \$701,287

The Division recommends approval with conditions as follows:

- 1) The Board's approval herein shall be limited to the "Tranquility Mausoleum-Building 1" project, described by Applicant's letter dated 11-26-2012 as having 422 crypts and 192 niches, with an estimated cost of \$701,287. See 497.272(2): "The preconstruction trust fund shall be separate from any other trust funds...."
- 2) No sales or reservations for space in Tranquility Mausoleum-Building 1" project may be made or accepted until the Applicant provides the FCCS Division the name and contact information of the licensed contractor, engineer, or architect, who has provided the \$701,287 cost estimate and will confirm same to the Division. See 497.271(3).
- 3) That the Department receives the approved trust agreement, fully executed by all parties, within 60 days from the date of this Board meeting.

MOTION: Mr. Mueller moved to approve the agreement with the conditions set forth by the Division. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

23. Executive Director's Report

A. "Funeral Professionals – What Do You Ask the Certifying Physician?" (Informational)

The attached item, entitled "Funeral Professionals -- What Do You Ask the Certifying Physician?" was distributed to Board members and all licensed funeral professionals in Florida, with our suggestion that they may find it useful in the operations of their funeral establishments. Feel free to copy and distribute the item freely.

The item is the result of the Board Chair's interaction with state Medical Examiners, and addresses an issue that is important to MEs, attending physicians, and funeral professionals. The item has been reviewed by the Bureau of Vital Statistics.

The Chair stated that along with Vital Statistics, the Medical Examiner Commission and I have made a commitment to try and get this out to all funeral professionals that we can. So, anyone that you can share it with in the Industry, we thank you for that.

B. Award of Attorney Fees and Costs to Landmark Funeral Home Inc. (Informational)

Mr. Shropshire questioned whether the Board had any questions or comments, but we are not calling for any as the record pretty well speaks for itself, but if there is any discussion using that as perhaps as a learning experience that the Board would have, Mr. David is present as he litigated that case and did the Settlement for us:

- (1) By Final Order dated June 14, 2012, an Administrative Law Judge (ALJ) awarded \$50,000 in attorney fees and costs to Landmark Funeral Home, Inc. (Landmark), in connection with a disciplinary action filed against Landmark Funeral Home Inc.
- (2) The Department of Financial Services appealed the matter to the 1st District Court of Appeal. Thereafter, a settlement was entered into between the Department and Landmark, under which the award was reduced to \$32,500 and said amount has been paid to Landmark from the regulatory trust funds derived from fees paid by Chapter 497 Licensees.
- (3) SUMMARY. Please refer to Attachment A hereto, the Final Order of ALJ Robert Meale, wherein the ALJ states his findings as to why the award of fees and costs was justified and required under the applicable statutes. Pursuant to applicable statutes, the ALJ's findings are controlling, whether the DFS or the Board agree with them or not, except to the extent reversed by a court of appeal. With the cautionary note, we provided the following brief summary.
 - a) The award of fees and costs relates to an Administrative Complaint, approved by the Boards Probable Cause Panel and filed against Landmark, in which there were two (2) Counts, very generally summarized as follows:
 - 1) Count I: advertising to provide preneed services before a preneed license was issued.
 - 2) Count II: obtaining a funeral establishment license by misrepresentation
 - b) Count II alleged to the effect that a principal of Landmark (Jonathon Shaw) misrepresented to the Board that two (2) individuals (Valerie Panciera and Irving Panciera) would not be involved in the operation of Landmark, whereas the Administrative Complaint alleged that they were in fact involved.
 - c) After service of the Administrative Complaint on Landmark, Landmark requested a formal hearing at DOAH and same occurred. The ALJ in the disciplinary action issued a Recommended Order in which he noted that Landmark had acknowledged the violation alleged in Count I of the Administrative Complaint and a fine of \$1000 was recommended. As to Count II, the ALJ found and recommended, after detailed findings of fact, that Landmark was not guilty under Count II.
 - d) The Board was thereafter presented with the Recommended Order and accepted same in its entirety.
 - e) Thereafter, Landmark filed its petition for fees and costs with the Division of Administrative Hearings (DOAH), asserting to the effect that Landmark was the prevailing party in the disciplinary action and that the disciplinary action was not substantially justified. Under the applicable Florida Statutes, petitions for fees and costs are filed directly with DOAH, not with the Board or DFS, and authority to decide such petitions is vested exclusively in the DOAH and the assigned ALJ, subject only to appeal to the courts.
 - f) The ALJ held a hearing on the petition for fees and costs and on June 14, 2012 issued his Final Order awarding Landmark \$50,000 in fees and costs, the maximum allowed under the controlling statute.
 - g) As noted above, the DFS appealed the matter to the 1st DCA; DFS thereafter entered into a settlement with Landmark, reducing the award to \$32,500, and the appeal was dismissed. See Attachment D, Settlement re fees and costs; Attachment E, Joint Motion to the Appeals Court to remand for implementation of settlement; and Attachment F, ALJ's Order vacating his Order re attorneys fee in view of settlement, and closing the ALJ's file in the fees and costs case.
- (4) The settlement of the fees and costs case was based upon review and evaluation by DFS attorneys as to the probabilities of a successful appeal. The FCCS Division was closely involved with DFS Legal's handling of the matter, and fully

concluded with the decision to settle the matter. Both DFS Legal staff and FCCS Division believed that there were certain errors in the ALJ's findings. However, it was far from certain that we would prevail if the appeal was pursued, and on balance it was decided, in consultation with DFS Legal counsel, that the settlement was the best alternative and was thus pursued.

Mr. Dick Mueller stated in the ALJ's findings, he mentioned something about "an opportunity for humor" and questioned whether that rings a bell with Mr. David.

Mr. David stated it does but he is trying to place it exactly so that he can properly respond.

Mr. Mueller stated he would try and find it.

The Chair stated if Mr. Mueller goes through and finds it, it would be called back.

Mr. David stated that there were two (2) Orders from the same judge in this proceeding. The judge himself took the opportunity, in my opinion, to be a little in his opinion humorous. That reference may have been in his second Order referring to his first Order.

Mr. Mueller stated the statement could be found on pages seven (7) and eight (8):

"5. Petition prevailed as to Count II due to the Main Defense. Although consideration of the Backup Defense was thus unnecessary, the Recommended Order addressed the Backup Defense for three reasons: 1) if the Final Order materially altered the portion of the Recommended addressing the Main Defense, the alternative findings on the Backup Defense might avoid the necessity of a remand; 2) the alternative findings would not take long to make; and 3) the alternative findings presented an opportunity for humor."

Mr. David stated that was the ALJ's second and Final Order in the attorney's fees portion of it and he was referencing back to his Recommended Order that he had previously released in the matter. That is exactly what I thought it was in my previous explanation is accurate. The ALJ was pointing out that in his opinion his previous opinion had been humor whether or not anyone else reading it would think it was humorous.

C. Report: Payment of Disciplinary Fines and Costs (Informational)

Monthly Report of Fine and Costs Assessed and Paid
Division of Funeral, Cemetery and Consumer Services
December 6, 2012 Board Meeting
Report Updated as of November 27, 2012

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Alliance Monument & Marble Co.	Apr-12	122927-12-FC	\$2,750	6/22/2012	NO; See Note A	Emergency Order of Suspension issued 11/8/12; license currently suspended.
Stanley Gunter-Butler	Jun-12	117958-11-FC	\$2,750	8/20/2012	NO; See Note E	\$500 partial payment (received 8-1-12) \$150 partial payment (received 9-21-12) \$250 partial payment (received 11-8-12)
Kimberly White	Jun-12	120943-11-FC	\$5,250	8/20/2012	NO; See Note A	License currently suspended
Cemetery Professionals, LLC d/b/a Beaches Memorial Gardens and Cemetery Professionals, LLC d/b/a Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$5,250 \$5,000 \$38,859.57	9/6/2012 12/7/2012 35 mo payments	YES See Note D See Note F	Monthly restitution payments are current
George Morgan, III	Oct-12	120359-11-FC	\$1250 \$33,711.30	11/7/2012 36 mo payments	Yes See Note F	Monthly restitution payments are current

NOTES:

- A. When payment becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment.
- B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report.
- C. The Order re this case is still in process, so no Due date is yet established.
- D. Due date has not passed, as of the date of this report.
- E. Licensee's attorney filed a motion to modify payment schedule, which will be considered at the Dec. board meeting.
- F. As of the date of this report, monthly payments were current.

24. Chairman's Report (Oral)

The Chair stated that the next meeting would be a teleconference meeting.

Ms. LaTonya Bryant added that the Teleconference would be held on January 3, 2013 and the following Board meeting would be held in Tallahassee on February 7, 2013.

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

None

The Chair thanked Ms. McNulty for standing in.

Col. Stiegman requested a moment to discuss something that happened at the Board meeting on October 2nd in Deerfield. If you recall an application for approval of a change of ownership for a funeral establishment by Landmark was presented to the Board. During the discussion of the matter several Board members had questions related to the application and the motion to approve failed with four (4) dissenting votes. Subsequently the attorney for Landmark responded on the application. During his discourse, a person from the audience (Ms. Wendy Wiener) came forward to offer information on the subject. While waiting patiently to speak, the Board member, Ms. Anderson asked to hear from Ms. Wiener. The Chairman stated he had

been advised that Ms. Wiener did not represent anyone who has a case before the Board on this particular licensing issue and The Chair instructed Ms. Wiener to take her seat. Col. Stiegman stated he then questioned whether anyone in the audience had the right to speak up on any issue. The Chair stated that not unless they are representing someone before the Board. I asked that since it was an open meeting could someone in the back with a comment to make come forward and do so. Mr. Jennings stated "The Sunshine Law grants the public the right to be present and observe. It does not grant the public the right to participate." Col. Stiegman stated that he disagreed with that assessment at the time and I still do today so I did a little research on my own. In the Government in the Sunshine Manual, which was used this morning as a reference, Part One Item G(4)(b) Public Participation states that "The benefits of public input into the decision-making process....are still valid today. Accordingly, the Attorney General's Office strongly encourages public boards to consider a reasonable opportunity for the public to address the board prior to taking action." What this law is really trying to do is dissuade someone from coming up with a laundry list of complaints. They are not only talking about the issue that is before the Board at the time, but others that would cause a filibuster. In that instance, the law does apply and The Chair could cut them off but in the opinion of the Attorney General's Office, they strongly encourage public boards to consider a reasonable opportunity for the public to address the board prior to taking action. So, I have no axe to grind on the decision that the Board made that day. I think it was incorrect and may come back to bite us someday but that is not the point. I do believe however that Ms. Wiener should have had an opportunity to present her information, whatever it was, to the Board particularly since someone on the Board asked for it. Col. Stiegman added that he believes the Board owes Ms. Wiener an apology.

Ms. McNulty stated that she understands Col. Stiegman's concerns and that is actually something that is being proposed in the Legislature. However, I do concur with my colleague, Mr. Jennings, as he did give the appropriate legal advice in that situation. The Board wears many different hats. It wears a semi-legislative hat at times. Other times it wears a quasi judicial hat. In its role when the Board is acting on discipline for licensure matters, declaratory statements and other type of matters there is a due process and procedure that needs to be followed to protect those particular people's interest. The Board in that capacity is wearing a semi-judicial hat and has to follow the Constitution and due process. While Government in the Sunshine is like Constitution and Law, it allows people to see the deliberative process especially when it is a collegial body. So, absolutely everybody here can see how the Board is making its decisions but just because they are entitled to hear it does not mean they are entitled to participate in a particular case.

Col. Stiegman stated that is not what the Government in the Sunshine says.

Ms. McNulty stated there have been many discussions at the Attorney General's Office.

Col. Stiegman stated that Mr. David stood up and flashed it as the Law and it is right in there. I just read it to you. If you are going to give us some more legal gobbledegook, I am sorry, I do not want to hear it.

Ms. McNulty stated that the Attorney General's Office would support her position.

Col. Stiegman stated he would not agree to disagree but it is in there.

Mr. Rudolph stated if Col. Stiegman wanted anyone to be able to speak on anything, I could speak and we would not be out of here before 5:00.

Col. Stiegman stated that is not a problem as that is what the Law designates. If someone has a point to make on something that is before the Board they are certainly entitled to do so.

Mr. Rudolph stated unless the person is representing the party they should not come forward to say anything.

Col. Stiegman stated that the Law does not say that they have to be representing the party.

Ms. Wiener stated that the issue was not a disciplinary matter. That was an issue on application for a change in ownership. There was no discipline pending.

Ms. McNulty stated that it was a licensure matter.

Ms. Wiener stated that at the time the Board does not serve in a quasi judicial capacity.

Ms. McNulty disagreed because once a Notice of Intent to Approve or Deny is issued that person has rights attached to that. They can ask for hearings so the Board is acting in a quasi judicial capacity.

Ms. Wiener clarified that she did not ask Col. Stiegman to make that presentation. Col. Stiegman called to ask if I objected to him doing so, which I did not because I think that what we do need is clarification. This Board has operated, since its inception, as anybody who wants to speak on any issue speaks whenever they come up to the podium no matter whether they are representing a party or not. In the past several months that has been changing. After that meeting, I expressed to Chairman Brandenburg and Attorney General Representative Jennings that I would appreciate knowing where those lines are drawn now. Ms. Wiener questioned does no one, unless they are actually representing a party to a matter, either the Licensee that is proposed or the Respondent, the public does not get an opportunity to weigh in on any issues anymore.

Ms. McNulty questioned clarity on “any issues.” We need to be more specific of the type of action being taken.

Ms. Wiener responded, “License applications.”

Ms. McNulty stated that her position and the position of the Attorney General’s Office is no. With respect to rule making yes.

Mr. Rudolph stated when he started with this Board back when it originally began, we had a very good Attorney General, John Rimes. Mr. Rimes knew the Law backwards and forwards. The Chairman, Keenan Knopke, could always ask for public comment and frequently did but when it comes down to it, during licensure there was never anyone raising a complaint about the Licensee until the last five (5) years. Now we have these complaints. One Attorney General stated if you are raising a complaint and you have a valid license that is not grounds to deny a license in the fact that someone filed a complaint. Then we got another one who said we can bring in anything you want, which complicated it. The Landmark case is the perfect example.

26. Administrative Report

The Administrative Report was provided to the Board via the Agenda.

27. Disciplinary Report

The Disciplinary Report was provided to the Board via the Agenda.

28. Adjournment

The meeting was adjourned at 12:55 p.m.