

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
December 4, 2014 - 10:00 A.M.
Department of Financial Services
Tallahassee FL

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 4, 2014; 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 Register. An agenda for this meeting has been made available to interested persons. The meeting is occurring in 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
Keenan Knopke, Vice Chair
Jean Anderson
Lewis "Lew" Hall
Powell Helm
Ken Jones
Richard "Dick" Mueller

ABSENT:

Andrew Clark
James "Jim" Davis
Vanessa Oliver

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:

Larry Harris, Board Legal Advisor
Ellen Simon, Assistant Director
LaTonya Bryant, Department Staff
Linje Rivers, Department Counsel
Melissa Dembicer, Department Counsel
Jasmin Richardson, Department Staff
LaShonda Morris, Department Field Staff
Christine Moore, Department Staff

The Chair confirmed that the Board members had received their packets in a timely manner.

2. Action on the Minutes

A. November 6, 2014

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on November 6, 2014.

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

3. Old Business

A. Monument Establishment Retail Sales Agreement

(1) Recommended for Approval with Conditions

(a) Bronze Memorials Monuments & Markers, LLC (F080153) (Port St Lucie)

Mr. Shropshire stated that the Applicant herein was approved for a monument establishment retailer license at the July 2014 Board meeting. This form approval matter initially came before the Board at that same July 2014 Board meeting, and approval of the form was denied.

This form matter came back before the Board at the October 2014 Board meeting, based on changes to the form Applicant had made, and the Board restated the denial. However, the Board tabled the matter with a request to the Division to look into possible unlicensed activity by Applicant herein. That investigation has been done and the report is attached. To summarize, Applicant sold 7 contracts before being licensed and one contract after being licensed but on an unapproved sales form. Thus, in total there were 8 violations found. See related monument establishment sales agent license application herein, for the Division's proposed resolution of these 8 violations.

There is a related monument establishment sales agent application being presented at the December 2014 Board meeting.

The Division recommends approval of the agreement subject to the condition that two full sized print-ready copies of each contract are received by the Department within 60 days of this Board meeting.

Mr. Keenan Knopke stated that he finds conflict about the number of sales the Respondent claims to have made versus what the examination shows. Mr. Savage, President of Bronze Memorial Monuments & Markers, stated that he had sold more than one (1) bronze marker over the last year, mostly sales are outside of Florida. In his other testimony, Mr. Savage stated that he sold over eight (8) markers. I just wonder if we are getting the true story of what this guy has done for the last thirty (30) years.

Mr. Larry Harris stated if the Board wanted to take action to deny this form it would have to make the link between that conduct and the form. Seems to me what you are saying really is more related to the penalty case in the next item.

MOTION: Mr. Knopke moved to approve the agreement subject to the condition that two full sized print-ready copies of each contract are received by the Department within 60 days of this Board meeting. Mr. Dick Mueller seconded the motion, which passed unanimously.

B. Application for Monument Establishment Sales Agent License

(1) Recommended for Approval with Conditions

(a) Savage, James W. (Port St Lucie)

Mr. Shropshire stated that this matter comes before the Board on the application of James Savage for a monument establishment sales agent license.

See related application for monument establishment sales form approval being presented at this same Board meeting. The Board tabled the form approval application with a request to the Division to look into possible unlicensed activity by Applicant herein. That investigation has been done and the report is attached. To summarize, Applicant sold 7 contracts before being licensed and one contract after being licensed but on an unapproved sales form. Thus, in total there were 8 violations found.

Applicant has consented to payment of a \$500 fine for the 8 violations, to be paid within 30 days of filing of an Order of the Board approving this sales agent application and the related form approval application.

The Division recommends approval subject to the condition(s) as follows: Payment by Applicant of a \$500 fine for the 8 violations, to be paid within 30 days of filing of an Order of the Board approving this sales agent application and the related form approval application.

Mr. Powell Helm questioned why the fine is so light.

Mr. Shropshire stated that the Department is trying to get Mr. Savage licensed and right, as he is finally before the Board. The eight (8) violations were for flat plaques. As I recall his testimony, he said that he is a bronze product manufacturer and he did not realize these flat plaques were subject to the licensure requirement. My basic philosophy is to try and get the people into the system, licensed. Mr. Savage is here, he has applied so \$500 in overall context appears to be an appropriate fine. The Board could make a counter proposal.

Mr. Helm stated that his problem is Mr. Savage initially stated that he had not done so at the meeting in Tampa.

Mr. Knopke stated that Mr. Savage did indicate he had sold one (1) but it turns out it was eight (8). Mr. Knopke questioned whether anyone has gone to Mr. Savage's office and actually taken a look.

Mr. Shropshire stated that Kurt Schuller has.

The Chair questioned whether Mr. Savage would like to address the Board. The Chair requested Mr. Shropshire swear Mr. Savage in.

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

Mr. James Savage, President of Bronze Memorial Monuments & Markers, responded, "I do."

The Chair stated that Mr. Savage does not have to make any statements, but could indicate that he is available to answer questions.

Mr. Savage stated that he would like to take the opportunity to apologize to the Board for any inconveniences he may have caused here. All my actions were inadvertent and accidental and I am prepared to pay any fine that the Board deems necessary and prudent. I am here at the mercy of the Board.

Mr. Dick Mueller questioned how Mr. Savage finally came to apply after being in business for some time.

Mr. Savage stated that he is in the bronze business and has been selling bronze plaques for thirty-five (35) – thirty-seven (37) years now and I morphed into the bronze marker business, basically by accident, as I had always sold markers only. I wanted to sell granite but my perception of granite grave markers is uprights and to be in the monument business, granite upright monuments, I understood I needed a license so I applied for a license because I have always been a legitimate business in every business I have ever been into. I would not conceivably go into a business without being properly license. So the minute I determined that I needed a license to be a monument dealer I applied and this arose that by the way, if you are going to be in the monument business it includes bronze also. That is when I ran into this issue and I am trying to correct it as quickly as possible to the Board's satisfaction because I am a legitimate company and have always operated as a legitimate business with all my proper licenses in every aspect and I want to do so now.

Mr. Mueller questioned whether this is a new name for the company and how long the company has been named Bronze Memorial Monuments & Markers, LLC.

Mr. Savage responded just this year because he just started selling monuments and needed a proper company, proper license and his documentation in order as a corporation. I want to make sure that I am doing this properly to be in business a long period of time in the State of Florida.

Mr. Jones questioned whether Mr. Savage applied immediately once he found out he needed a license.

Mr. Savage stated that he applied instantly, no delaying whatsoever, the minute he found out that he had to have a license.

Mr. Helm questioned whether Mr. Savage stated at the Tampa meeting that he had not sold any markers previously.

Mr. Savage stated that he indicated he had sold monuments, grave markers previously during that year but he did not know the exact amount because they had been in a file. I knew there was not very many but I just did not know the exact amount at the time. So when I said just a couple that was my impression that I had only sold 2, 4, 8, 10. I had no idea because I did not count them before I came before the Board or I would have brought them to be exact numbers.

Mr. Helm questioned whether Mr. Savage has counted them now.

Mr. Savage responded that he has. I stated that he has double checked each file and has sent the information to the Tampa office and to the Ft Lauderdale office.

Mr. Helm questioned the number.

Mr. Savage responded that he believes there were eight (8).

Mr. Hall questioned whether Mr. Savage understands now that it is not just uprights but also flat markers.

Mr. Savage responded that he understands that it is everything that deals with the cemetery business and whatever license he is required now or in the future, he will comply with and make sure that he is up to date with everything.

The Chair stated that at the previous meeting he questioned whether Mr. Savage had read Chapter 497, F.S. and Mr. Savage indicated that he had read parts of it. The Chair encouraged Mr. Savage to read and study the part dealing with his business.

MOTION: Mr. Jones moved to approve the application subject to the condition(s) as follows: Payment by Applicant of an \$800 fine for the 8 violations, to be paid within 30 days of filing of an Order of the Board approving this sales agent application and the related form approval application. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Savage apologized to the Board for any inconveniences that he may have caused in this issue as that was never his intent and he thanked the Board for the courtesy extended to him. Mr. Savage added that he hopes the next time he comes before the Board it would be under more pleasant circumstances.

Mr. Harris stated that in addition to Chapter 497, F.S. there are also rules pertaining to Mr. Savage's business in Title 69K, F.A.C. that Mr. Savage should read and follow.

C. Pershing-Vista

Mr. Shropshire stated that this is an application for renewal of two (2) preneed licenses held by Pershing Industries, Inc. and Vista Funeral Home, Inc. These are presented here in one (1) coversheet because the two (2) licenses are under common, ultimate control. These licenses have been before the Board previously and the Division recommends approval for the reasons set forth in the coversheet that the licenses be renewed without waiving any grounds for subsequent action against the Licensees based on violations of Chapter 497, F.S. asserted in the examination of these Licensees for the period ending December 31, 2012, if and as such asserted violations may be established in separate pending proceedings.

Mr. Helm questioned why they Licensees are not trusting 100%.

Mr. Shropshire stated that the Licensees are not subject to 100% trusting.

Mr. Helm questioned whether this is preneed.

Mr. Shropshire responded that it is preneed, 100% of cash advances and services and the greater of 30% retail or 110% of wholesale for merchandise.

Mr. Hall stated that the financials that were provided are not relevant. It is a waste of the Board's time to even read it. I do not have any faith in those. They should have audited externally and provided, in lieu of the fact that this company admittedly came before the Board and took \$4.5 million out of preneed.

Mr. John Rudolph, representing Vista and Pershing, objected to any statements about that as it is a violation of his client's due process rights. It is my position that what has been provided to the Board is the only thing that can be talked about and anything extraneous about that or saying we admitted to anything, we did not and it is inappropriate.

Mr. Harris stated that he knows the Board members feel strongly about these matters but Mr. Rudolph is correct here. The only things before the Board are preneed license renewals. There is a lot of other stuff going on but none of that has been formally filed, formally proven before the Board. So even though you "know" there is other stuff going on, you do not have that information in front of you in a way that you could use today. The Board is in a position where you have preneed licenses before you, there is stuff going that the Board is aware about, but legally because allegations have not gone through probable cause, gone through the disciplinary process, we do not "know" that there is anything out there so the Board can not consider that. I know that it is going to be difficult for you all but you have to sort of separate these two (2) hats and you do have to give them due process as they have the right to go through any investigatory and disciplinary proceeding the way any other Licensee would, which is if there was an investigation it would be investigated, there would be a recommendation to Legal, it would go to Probable Cause and this is all confidential until probable cause. So we do not know that any of this stuff might be going on for the purpose of this application. Therefore, the Board has to consider what was provided in the packet. This is what I have to advise to protect the Board as we do not want to have any possible allegation that there is some type of violation of rights of the Licensees because I can tell you that I have been practicing law for twenty (20) years and courts love it when they do not have to make a hard decision on what the right thing is. They can say well this person's rights were violated so we are going to reverse. They protect people's rights zealously and they like to not have to get to the merits of something if they can on due process say we are going to reverse it and send it back. My advice to you all is to consider just the materials in front of you, the applications for preneed license renewal, the way you would any other application for a license. You look at whether they have the amounts in the trust fund, whether they have any proven discipline on their license, etc.

MOTION: Mr. Jones moved to approve the applications for the reasons set forth in the coversheet that the licenses be renewed without waiving any grounds for subsequent action against the Licensees based on violations of Chapter 497, F.S. asserted in the examination of these Licensees for the period ending December 31, 2012, if and as such asserted violations may be established in separate pending proceedings. Mr. Knopke seconded the motion, which passed with three (3) dissenting votes.

4. Disciplinary Proceedings:

A. Settlement Stipulation(s)

(1) Waiver of Probable Cause

(a) Ruskin Memorial Park Association, Inc: Case No.: 161244-14-FC; Division #ATN-22802 (F039551)

Ms. Melissa Dembicer stated that on or about June 24, 2014, a regularly scheduled cemetery examination of the Respondent was conducted. The findings uncovered irregularity in the Respondent's statutorily required deposits to the Care and Maintenance Trust Fund that were not made within thirty (30) days following the close of the calendar month in which the payment was received as required. The last deposit to the Care and Maintenance Trust Fund was on October 19, 2009. The deficit in the Care and Maintenance Trust Fund is \$14,494.00 based on bank statements, summary spreadsheets and sales reports provided by the Respondent. The Respondent believes it is in its best interest to enter into this Stipulation for Consent Order and waives the right to a hearing in this matter.

No Administrative Complaint was filed. The Respondent was offered the Settlement Stipulation for Consent Order, which was accepted and is being presented before you today. The terms of the Settlement Stipulation requires the Respondent to pay the sum of \$14,494.00 to the Care and Maintenance Trust account within thirty (30) days after the execution of the Consent Order. The Respondent shall pay an administrative fine of \$1000 to the Board within sixty (60) days after filing of the Consent Order. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the Settlement and issue the Consent Order to conclude this matter.

Ms. Dembicer added that as of November 6, 2014, the money has been paid to the trust account.

The Chair questioned whether the deficit has been made whole.

Ms. Dembicer responded that it has.

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

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

(b) Restlawn Cemetery, Inc.: Case No.: 160014-14-FC; Division #ATN-22266 (F039704)

Ms. Dembicer stated that on or about June 2 or 3, 2014, a regularly scheduled cemetery examination was conducted. The findings uncovered irregularities in the Respondent's deposits to the Care and Maintenance Trust Fund that were not made within thirty (30) days following the close of the calendar month in which the payment was received as required. Additionally, the Respondent sold preneed contracts without first obtaining a preneed license and the Respondent did not supply adequate work papers for inspection, pursuant to statutory requirements. The Respondent believes it is in its best interest to enter into this Stipulation for Consent Order and waives the right to a hearing in this matter.

No Administrative Complaint was filed. The Respondent was offered the Settlement Stipulation for Consent Order, which was accepted and is being presented before you today. The terms of the Settlement Stipulation requires the Respondent to pay an administrative fine of \$500 and be on probation for the period of eighteen (18) months following the execution of the Consent Order. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the Settlement and issue the Consent Order to conclude this matter.

Ms. Dembicer added that she thought the fine may have been paid.

Mr. Rudolph, representing the Respondent, stated that the Respondent tried to pay the fine but it was returned.

The Chair questioned whether there is an application for a preneed license.

Mr. Rudolph responded that there is no such application.

Mr. Shropshire stated that he does not believe an application has been submitted.

Ms. Lashonda Morris concurred.

Mr. Rudolph stated that it would have to be a branch application because they are owned by the same person.

The Chair questioned whether Wilson-Eichelberger Mortuary has a preneed license.

Mr. Rudolph responded that they do. Mr. Rudolph added that Ms. Eunice Wilson is present and she is 97 years old.

Mr. Mueller questioned whether the Respondent has a prior disciplinary history.

Mr. Rudolph stated that there was a time when Bernard Mitchell went in and stole money and Ms. Wilson put all the money back into trust out of her personal funds.

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

(c) Wilson-Eichelberger Mortuary, Inc.: Case No.: 160017-14-FC; Division #ATN-22266 (F041817, F019320)

Ms. Dembicer stated that on or about June 3, 2014, a regularly scheduled preneed examination was conducted. The findings uncovered deficiencies in fourteen (14) preneed contracts, which failed to sufficiently describe the merchandise sold. The Respondent believes it is in its best interest to enter into this Stipulation for Consent Order and waives the right to a hearing in this matter.

No Administrative Complaint was filed. The Respondent was offered the Settlement Stipulation for Consent Order, which was accepted and is being presented before you today. The terms of the Settlement Stipulation requires the Respondent to pay an administrative fine of \$500 and be on probation for the period of eighteen (18) months following the execution of the Consent Order with specific conditions that the Respondent will not engage in any activity that is in violation of Chapter 497, F. S and Title 69K, F.A.C. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the Settlement and issue the Consent Order to conclude this matter.

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

Mr. Rudolph stated that he has a check addressed to the Executive Director of the Board of Funeral and Cemetery Services, which was returned so a new check will be issued to the Department of Financial Services.

(2) Probable Cause Panel A

Mr. Knopke recused himself from the following case(s) as he served on Probable Cause Panel A.

(a) Buy and Sell Cemetery Plots, LLC: Case No. 154941-14-FC; Division #ATN-22135 (F058800)

Ms. Dembicer stated that Buy and Sell brokered burial plots while the license was expired. There were twenty-one (21) contracts signed during this time period. On or about December 27, 2012, the Florida Department of Revenue – Pinellas County filed a Notice of Tax Lien against the Respondent in the amount of \$1147.92 for failure to pay unemployment tax. On or about March 21, 2013, the Florida Department of Revenue – Pinellas County filed a Notice of Tax Lien against the Respondent in the amount of \$376.87 for failure to pay unemployment tax. The Respondent believes it is in its best interest to enter into this Stipulation for Consent Order and waives the right to a hearing in this matter.

The Administrative Complaint was filed on August 18, 2014. The Respondent was served on August 22, 2014. The Respondent filed an Election of Proceeding requesting a hearing on September 8, 2014. Prior to filing the Notice of Hearing with DOAH the Respondent was offered a Settlement Stipulation for Consent Order, which was accepted and is being presented before you today. The terms of the Settlement Stipulation requires the Respondent to pay an administrative fine of \$750 to the Board to be paid within twelve (12) months. The Respondent shall also pay the Florida Department of Revenue – Pinellas County in full and complete satisfaction of Tax Lien I in the amount of \$1147.92 and Tax Lien II in the amount of \$376.87 and provide proof of the payments to Board within one (1) year from the date of the Consent Order and be placed on probation for that year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the Settlement and issue the Consent Order to conclude this matter.

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

Mr. Helm questioned whether the Respondent has a current license.

Ms. Dembicer responded that the license is current. They were having financial troubles so they requested a payment plan.

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

(b) Chestnut Funeral Home, Inc.: Case No.: 154927-14-FC; Division #ATN-22341 (F040669)

Ms. Dembicer stated that on or about January 10, 1994, a consumer entered into a preneed contract with Dorsey's Funeral Home for \$4001.50. Thereafter, Dorsey's Funeral Home went out of business. On or about December 15, 2006, the consumer brought her preneed arrangement to the Respondent to see if it would honor the preneed arrangement. The Respondent agreed to honor the preneed arrangement and added additional services totaling \$1942.85. On or about November 25, 2013, the consumer died. On or about February 12, 2014, the Respondent filed a preneed claim with the Department. The Respondent did not have a valid preneed license during this time period. The Respondent believes it is in its best interest to enter into this Stipulation for Consent Order and waives the right to a hearing in this matter.

The Administrative Complaint was filed on August 18, 2014 and served on the Respondent August 21, 2014. The Respondent was offered a Settlement Stipulation for Consent Order which was accepted and is being presented before you today. The terms of the Settlement Stipulation require the Respondent to pay an administrative fine of \$500 within thirty (30) days of the entry of the Consent Order to be issued in the case and withdraw its Consumer Protection Trust Fund claim for \$4001.50. 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. Mueller questioned whether the Respondent is currently licensed.

Ms. Dembicer stated that they do not have a license. This was done as a favor to his next door neighbor. They have never had preneed before this and they never intend to after. This was just a mistake.

Mr. Hall questioned whether the Respondent would have been alright servicing the contract had they not added the additional services.

Mr. Shropshire concurred.

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

(c) Larry M Saunders: Case No.: 154919-14-FC; Division #ATN-22341 (F043582)

Ms. Dembicer stated that on or about January 10, 1994, a consumer entered into a preneed contract with Dorsey's Funeral Home for \$4001.50. Thereafter, Dorsey's Funeral Home went out of business. On or about December 15, 2006, the consumer brought her preneed arrangement to the Respondent to see if his employer, Chestnut Funeral Home, would honor the preneed arrangement. The Respondent's employer agreed to honor the preneed arrangement and the Respondent signed a contract with the consumer for additional services totaling \$1942.85. On or about November 25, 2013, the consumer died. On or about February 12, 2014, the Respondent filed a preneed claim with the Department on behalf of the Respondent's employer. The Respondent did not have a valid preneed license during this time period. The Respondent believes it is in its best interest to enter into this Stipulation for Consent Order and waives the right to a hearing in this matter.

The Administrative Complaint was filed on August 18, 2014 and served on the Respondent August 21, 2014. The Respondent was offered a Settlement Stipulation for Consent Order which was accepted and is being presented before you today. The terms of the Settlement Stipulation require the Respondent to pay an administrative fine of \$500 within thirty (30) days of the entry of the Consent Order to be issued in the case and withdraw its Consumer Protection Trust Fund claim for \$4001.50. 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 whether Larry Saunders is the FDIC or the owner.

Ms. Dembicer responded that Mr. Saunders was the FDIC at Chestnut Funeral Home.

Mr. Helm questioned whether Mr. Saunders was FDIC of Dorsey's Funeral Home as well.

Ms. Dembicer responded that he was not. Dorsey's went out of business and the consumer was next door neighbors to Mr. Saunders and asked that they honor the contract.

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

(3) Probable Cause Panel B

(a) Rose Hill Cemetery: Case No. 141381-13-FC; Division #ATN- (F039451)

Mr. Linje Rivers stated that the Division alleges that the Licensee failed to use due care when performing the installation of cement during a gravesite funeral ceremony. The Licensee and the Division have agreed to issue a letter of reprimand to the Licensee in order to resolve this matter. At this time it would be appropriate for the Board to entertain a motion accepting the Settlement Stipulation.

Ms. Anderson recused herself from the case as she served on Probable Cause Panel B.

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

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

(1) Probable Cause Panel B

Ms. Anderson recused herself from the following case(s) as she served on Probable Cause Panel B.

(a) Cremation Services of Mid-Florida: Case No. 139614-13-FC; Division #ATN-20063 (F041385)

Mr. Rivers stated that the Respondent is currently licensed as a direct disposer establishment in the State of Florida. Based on an investigation conducted by the Division, it was determined that the Licensee advertised as a funeral home and also advertised the sale of preneed contracts. This is a violation of the terms of a previous Consent Order, as alleged in the Administrative Complaint filed on January 14, 2014. On or about July 7, 2011, a Consent Order was filed by the Division requiring the Respondent to pay \$2750 and be placed on two (2) years probation for similar violations. On January 1, 2013, a Final Order was issued requiring the Respondent to pay \$3000, a ten (10) day suspension was implemented and one (1) year probation for Cremation Services of Mid-Florida for allegedly selling or attempting to sell preneed merchandise and services without a proper license. Based on the allegations a One Count Administrative Complaint was filed against the Respondent. The Respondent, through counsel, has elected to attend a Section 120.57(2), FS, hearing not involving material facts in dispute. At this time it would be appropriate to entertain a motion determining that the Respondent has requested a 120.57(2), FS, hearing not involving material facts in dispute.

MOTION: Mr. Jones moved to find that the Respondent has requested a 120.57(2), FS, hearing not involving material facts in dispute. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Rivers stated that 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.

MOTION: Mr. Helm moved to adopt the Findings of Fact. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Rudolph, representing the Respondent, appeared before the Board alongside Mr. Larry Locke.

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

Mr. Larry W Locke answered, "I do Sir."

Mr. Rudolph questioned Mr. Locke's position with Cremation Services of Mid-Florida.

Mr. Locke stated that he is the owner and Direct Disposer in Charge.

Mr. Rudolph stated that Mr. Locke admitted all the facts in the Administrative Complaint but requested that Mr. Locke tell the Board what he did after he got the first disciplinary Order in this case.

Mr. Locke stated that he immediately called his rep from the phonebook, Super Media, Mr. Tom Settles, and explained to him that we could no longer advertise and could not have those line ads, which is a free listing in the phonebook. Mr. Settles assured me that they would not be in the next phonebook when we met to finalize the ad for that phonebook. I ran the same ad for approximately eight (8) years. Normally, I do not even see a rep. They call me on the phone because they know that I am not going to change my ad. When he called me I told him we had some problems so he came by. I explained to him why those ads could not be in the phonebook and he assured me it would be taken care of, but undoubtedly they were not. I called him after that and he apologized. When my approval came for the ads, the only thing they send me is the display ad no line ad was in there. When the line ads came out, Mr. Settles told me that those are free listings and that they are put in the book at the publisher's discretion. Again, I explained to him that I could not have those headings by law. Mr. Settles promised to have it corrected in the next book. When he called me about the book I reminded him of this and he advised it had been corrected. When the book came out it was not corrected. Again, I contacted him and he apologized but advised there was nothing he could do about it. I told him something has to be done and he again advised it would be corrected in the next book. When it was time for the third book (2014-2015), I requested a different sales rep. They did send one to me. I explained to him my situation and what was going on. The rep told me that he would come see me and we would get it worked out. When the new rep came to see me, he brought copies of all my ads out of all the phonebooks. By the way, we have seven (7) phonebooks in our county. Each little town has its own phonebook so it says that I have had fourteen (14) listings in the phonebook. I do those all at one time as one (1) ad and they put them in all of the books so I am not going out trying to put fourteen (14) different ads in. When the new sales rep showed up, he brought copies of all the phonebook pages my ads ran in. We went over them and I showed him the ads that had to come out and explained to him why. There was no problem when the new book came out. The ads were out and everything was fine. I asked why this has not happened before and he could not explain to me why. The way the phonebook operates is they turn all of this in but the free listings are something that they do not normally have control over. They do the display ads. The free listings are written up as free listings but they were not written up as to any type of placement. Since this, which all started three (3) years ago, the book has been straightened out and there have been no problems since and there will not be any this year. I have been assured and we have just renewed advertising again. They assured me that there would be no listings under these headings. There was something in the report about notifying the phonebook in writing of any discrepancies or changes to be made. I have been in business thirty something years dealing with the phonebook and I have never written the phone company to get any changes made. I have always dealt with a representative and they have always taken care of my problems. For whatever reason, this one rep failed to do it or from what he told me that it was something he had no control over, but it seems that all the reps before were able to take care of my problems and the one since then has also taken care of them so I do not know what the situation was. We have been in business fifteen (15) years and have never had a problem with an inspection or anything. When we had a preneed license, our preneed license inspections were okay. We have never had a faulty inspection. This is something that I tried to the best of my knowledge to correct. I was not aware of having to writing the phonebook company to get something like this corrected as I have always dealt with sales reps. I figured if the sales rep could not take care of then writing a corporation like that would not do anything. I had no forms or anything to do that and I was never told that I had to send a form in. We did the best we could. I have never held myself out to be a funeral director. We answer the phone "Cremation Services:" When someone asks for our services, we ask if they are looking for a direct simple cremation first, because we do not provide any kind of services, viewings or visitations. We do this to ensure that this is what the people want. We do not even do ID viewings, as some of the direct disposers do. We tell them if there is going to be an ID viewing that they would have to go to a funeral home to do that. That is pretty much how this came about.

The Chair questioned whether Mr. Locke has any documentation concerning his conversations with Mr. Settles.

Mr. Locke stated that he cannot get a hold of Mr. Settles. They will not allow me to talk to him.

The Chair questioned whether Mr. Locke has any documentation regarding his conversations with Mr. Settles.

Mr. Locke stated that he never documented the conversations.

The Chair directed the Board's attention to page 184, paragraph 5 of the Board packet which reads: *"Examiner Helms then contacted Ms. Stecz-Hunter by telephone and explained that she needed documentation indicating who was responsible for the CSOME listing appearing under the "Funeral Preplanning & Information Services." Ms. Stecz-Hunter stated that she was not aware such documentation existed. She stated that in the package purchased by CSOME, two additional listings under the headings of the customer's choosing are included at no charge."* The Chair stated that this is Ms. Stecz-Hunter's statement who indicated that there is never an instance when this choice does not solely belong to the customer. That is from the Supermedia Litigation Paralegal.

Mr. Knopke stated that he has done yellow page ads for years and whether you are paying for them or they are free, you always pick where your free ones are going to go. I have never gotten a free one that I did not tell them where it went. Mr. Knopke stated that he respectfully disagrees with what Mr. Locke testified to, from personal experience.

Mr. Locke stated that his reps have never asked him about those. They just told me I had free line ads and I told them they were not to go under there.

Mr. Knopke stated that from what Mr. Locke is saying, he could have been advertised under restaurants and that does not make sense.

Mr. Locke stated that to them there is no difference in funeral and cremation services. You have to explain to them why all of this takes place. They believe that a funeral home is a funeral home and they do not know the distinction between them so we have to educate them on why we cannot do this, why the ads cannot go here, why the ads cannot go there. To most of the people out there, everywhere that deals with death is a funeral home.

Mr. Rudolph stated that Mr. Locke also had a preneed license for a while so he had an ad running under preneed until it was expired.

Mr. Harris stated that, in his mind, the Board is getting sort of far-field of where we are procedurally. As he understands the posture of this case, there are no disputed issues of fact. This is a One-Count Administrative Complaint. The sole charge is violation of s. 497.152(1)(a), F.S., which provides that it is a violation to fail to comply with any provision of Chapter 497, F.S., or any lawful Order of the Board or Department, or of the statutory predecessors to the Board or Department. They have conceded that they have failed to comply with the lawful Order of the Board so what we are talking about here is mitigation. The next step would be to adopt the Conclusions of Law. Presumably the Department is going to ask the Board to find that the facts alleged constitute a violation of the practice act for which discipline can be imposed. Then the Board will be asked to impose some discipline.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Knopke moved to adopt the Conclusions of Law. Mr. Helm seconded the motion, which passed unanimously.

Mr. Harris stated that now the next step procedurally would be discipline. Now it would be the argument regarding the mitigating factors. I suppose the prosecutor could argue whatever he thinks is mitigation or aggravating or that he thinks the Board could just impose. If I looked it up properly, I think the guideline amount for a violation of s. 497.152(1)(a), F.S., for an intentional violation for the first offense would be a reprimand, fine of \$1000-\$2500 plus costs, six (6) months – one (1) probation with usual conditions to suspension until compliant; second violation would be a reprimand, fine of \$2500-\$5000, revocation or denial of a license, costs, two (2) years probation with the usual conditions to suspension. That is sort of poorly worded but it looks like a fine of \$2500-\$5000 plus costs, two (2) years probation, suspension until compliant or revocation or some combination thereof. I think that is the disciplinary guideline. The Board has heard argument about mitigating factors. That would mean a downward departure from those guidelines. The prosecutor may choose to argue aggravating factors

which would be an upward departure, but I do not know how you go upward from revocation. Procedurally, that is where we are, which is now the Board considering any mitigating factors, the aggravating factors and what discipline to impose.

Mr. Rudolph stated that the Department has not shown where any consumer was refused. In this case, even if you have Cremation Services of Mid Florida under funeral homes, no one is going to look at that and think it is a funeral home and try to contact them. Mr. Rudolph questioned whether Mr. Locke ever had anyone call his cremation services asking for funeral services.

Mr. Locke stated that has never happened.

Mr. Helm questioned whether the Board can accept Mr. Locke's testimony and go from that.

Mr. Harris stated that Mr. Locke is not contesting any facts so the facts the Board have are that the ads were run without the proper license. The Board can consider what he said as mitigating (why it happened, it was a mistake, it is not his fault). Those mitigating circumstances could cause the Board to either depart from the guidelines or theoretically the Board could decide that based on these uncontested facts discipline should not be imposed, that it truly was not his fault and the Board could choose to dismiss it based on Mr. Locke's testimony.

Mr. Helm questioned whether it is okay to use what Mr. Locke said.

Mr. Harris stated that it is absolutely alright.

Mr. Jones stated that Mr. Locke advised he had knowledge that the ad was being advertised incorrectly. Mr. Jones questioned whether Mr. Locke contacted the Department at any point to say that he could not get it corrected or go through his legal counsel to try and get the matter resolved.

Mr. Locke answered that he did not.

Mr. Harris stated that Mr. Hall being in the same geographical area and using the same yellow pages could use that in forming his judgment but he could not argue any facts for him.

Mr. Hall stated that the worst time of his year is when Supermedia calls. Supermedia is very specific in what is being presented in the documentation. You have to sign the ad as well as the category and send it back in, whether it's a paid or free ad. My other concern is the website says contact Cremation Services to find out if funeral services are available.

Mr. Locke stated that he does not have a website.

Mr. Hall stated he Googled Cremation Services of Mid Florida, it read "This is not a funeral home. Please contact Cremation Services of Mid Florida to find out if funeral director services are available." That is confusing.

Mr. Locke stated that he does not have a website and they do not do anything on the internet.

Mr. Harris stated that is not in the record before the Board so it cannot be considered. The Board has to base its decision on the materials presented to the Board and the testimony given today by the Respondent. Mr. Hall is certainly allowed to use his personal experience to inform his judgment but it would not be evidence that the other Board members could necessarily base their decision on.

The Chair requested that Mr. Harris read the disciplinary guidelines again.

Mr. Harris stated that Rule 69K-30.001(1) states that:

When the Board finds an applicant or licensee whom it regulates under Chapter 497, F.S., has violated any provisions of Chapter 497, F.S., it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines

Mr. Harris stated it this brings you to s. 497.152(1)(a) if intentional: (first offense) –*Reprimand, fine of \$1000-2500 + costs, 6 mos 1 yr probation with usual conditions to suspension until compliant*; (second offense) – *Reprimand, fine of \$2500-5000, revocation or denial + costs 2 yr probation with usual conditions, to suspension until compliant*. The Board would have to determine whether this is the first violation or the second. The Board specifically has a rule that discusses aggravating and mitigating factors and that is in subsection (2) of this rule. If the Board wants to depart from those recommended penalties, to go downward you can find mitigating factors or if you want to go upwards you can find aggravating factors. Mr. Harris questioned whether there is an agreement amongst counsel on whether this is a first or second violation.

Mr. Rudolph stated that the first violation was when they sold the preneed contract. S. 497.152(1)(a) is a general statute. It is not a specific statute talking about advertising. So what we have a general statute, but we have two (2) different facts. One was writing a preneed contract, which is the first one that they did. I remember it was because somebody tried to do it and they tried to service it. Really there has only been two (2) that have been advertising and this is the second one.

Mr. Harris stated that the charge is for violation of a Final Order that related to the advertising so it is not an advertising violation, it is a violation of a Final Order finding him in violation of an advertising violation.

Mr. Helm stated that if Mr. Locke has documentation from Supermedia stating that they made a mistake it would make a big difference on how he feels about what needs to be done as far as the penalty goes.

Mr. Rivers stated that the Department would contend that there are aggravating factors present in this case. Giving the pervasiveness of the violations, disciplinary history of the Licensee and the current probationary status of the Licensee, the Department would argue the following factors:

(2)(b) The length of time since date of violation (Mr. Rivers stated that considering that the violation occurred during the time that the Licensee was under probation for a similar violation.);

(2)(f) The deterrent effect of the penalty imposed (Mr. Rivers stated that clearly the Licensee made no effort to contact Supermedia to have the ads taken down.);

(2)(h) Any efforts for rehabilitation (Mr. Rivers stated that obviously the Licensee has made no attempt to rehabilitate in terms of not doing this again.);

(2)(i) The actual knowledge of the licensee pertaining to the violation (Mr. Rivers stated that if you see from the depositions, he knew that from the contract that he signed if he needed to amend the contract or take something it was required that he submit the request in writing and send it in to Supermedia Pages in order for them to take down the advertisements.);

(2)(j) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations (Mr. Rivers stated that the Licensee made no attempts to send in this letter to Supermedia to stop them from running these ads.)

Mr. Rivers stated that based on those factors the Department would argue that those aggravating factors would tend to need for deviation from the current penalty and would recommend an administrative fine of \$2500 and revocation of the license.

Mr. Rudolph objected to the aggravating circumstances where Mr. Rivers stated that the Licensee did not try to do anything to fix this because he did try and call the people and that he did not correct it because the second time, he did get it corrected and the next one it will not be on there.

Mr. Harris stated that Mr. Rudolph also stated for mitigation that there was no harm to the public.

Mr. Rudolph stated that there was no harm to the public.

Mr. Harris questioned whether there were any other mitigating factors.

Mr. Rudolph stated that is it other than the ones they testified to.

Mr. Jones stated that in the future Mr. Locke should contact counsel and the Department to let them work with him.

MOTION: Mr. Jones moved for a penalty an administrative fine of \$5000, 30 day suspension and one (1) year of probation to follow. The motion failed due to lack of a second.

Mr. Knopke questioned if Mr. Locke does not do funeral why when answering the phone he questions whether the caller is inquiring about a funeral, especially since Mr. Locke stated that he has never had anyone call him about a funeral.

Mr. Locke stated that they answer the phone that way because now a lot of people want cremations with viewings and they do not do any kind of viewings. We just qualify the call to start with so that there are no misunderstandings when they come in to make arrangements. I just do not like to have a family come in and put them under undue stress over something like that when it could be handled upfront and that is just the way that we have started doing it because there are a lot of people who want a direct cremation but they also want someone to view the body.

Mr. Knopke stated that is a little bit of his concern. Mr. Locke testified that he has never had anyone call and ask for a funeral.

Mr. Locke stated that he has not, not to his knowledge.

Mr. Knopke stated that part of a funeral is a viewing.

Mr. Locke stated a cremation with a viewing. To the general public, funeral and cremation is all one thing. They cannot distinguish between the two (2) so we try to do everything we can upfront to let them know that we are not a funeral home.

2nd MOTION: MOTION: Mr. Knopke moved for a penalty an administrative fine of \$5000, 60 day suspension and two (2) years of probation, considering the aggravating factors enumerated by the Department as well as the mitigating factors stated by the defense. Mr. Jones seconded the motion, which passed unanimously.

(b) Locke, Larry: Case No. 139606-14-FC; Division #ATN-20063 (F043249)

Mr. Rivers stated that the Respondent is currently licensed as a direct disposer in the State of Florida. Based on an investigation conducted by the Division, it was determined that the Licensee allowed Cremation Services of Mid Florida to advertise as a funeral home and also advertised the sale of preneed contracts. This is a violation of the terms of a previous Consent Order, as alleged in the Administrative Complaint filed on January 14, 2014. On or about July 7, 2011, a Consent Order was filed by the Division requiring the Respondent to pay \$2750 and be placed on two (2) years probation for similar violations. On January 1, 2013, a Final Order was issued requiring the Respondent to pay \$3000, a ten (10) day suspension was implemented and one (1) year probation for Cremation Services of Mid-Florida for allegedly selling or attempting to sell preneed merchandise and services without a proper license. Based on the allegations a One Count Administrative Complaint was filed against the Respondent. The Respondent, through counsel, has elected to attend a Section 120.57(2), FS, hearing not involving material facts in dispute. At this time it would be appropriate to entertain a motion determining that the Respondent has requested a 120.57(2), FS, hearing not involving material facts in dispute.

MOTION: Mr. Mueller moved to find that the Respondent has requested a 120.57(2), FS, hearing not involving material facts in dispute. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Rivers stated that 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.

MOTION: Mr. Jones moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Title 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Knopke moved to adopt the Conclusions of Law. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that at this time it is appropriate for the Respondent to address the Board.

Mr. Rudolph stated that they have already made the arguments on the first one which are equally applicable to this one.

Mr. Harris questioned whether Mr. Rudolph wants to incorporate in total the testimony from the first case for the record.

Mr. Rudolph concurred.

Mr. Rivers stated that the Department would ask the same.

Mr. Shropshire stated that the Division's understanding of the suspension that was just imposed pending the Board's contrary direction and our advice to the Licensee is that he cannot take any new business for sixty (60) days but he is authorized to fulfill any cases he has on hand.

The Chair stated that he hears nothing contrary from the Board.

Mr. Rudolph concurred.

Mr. Rivers stated that based on those factors the Department would argue that those aggravating factors would tend to need for deviation from the current penalty and would recommend an administrative fine of \$2500 and revocation of the license.

Mr. Rudolph requested leniency from the Board.

Mr. Mueller questioned what Mr. Locke's options would be if his personal license is suspended.

Mr. Rudolph stated that it would be for two (2) months and the company cannot operate for two (2) months.

Mr. Shropshire stated that his advice to Mr. Locke would be the same that he is to honor any cases he has on hand. A condition of the suspension would be that he is allowed to fulfill cases that he has on hand.

Mr. Rudolph stated the suspension would start upon entry of the Final Order.

Mr. Shropshire concurred.

The Chair questioned how long the Final Order usually takes.

Mr. Harris stated that it roughly takes a week to ten (10) days.

MOTION: Mr. Knopke moved for a penalty an administrative fine of \$5000, 60 day suspension and two (2) years of probation. Mr. Jones seconded the motion, which passed with one (1) dissenting vote.

Mr. Hall stated that in their area too, counsel may want to check, there is a media called Yellow Book. They will not call you, so what Mr. Locke was saying is true. With Supermedia we have to sign off and do everything we need. Yellow Book does not call or charge, they just put the ad in. My fear is if this comes back and he does not have any control over that.

Mr. Locke stated that part of this case was an ad in that book.

(2) Probable Cause Panel A

Mr. Knopke recused himself from the following cases as he served on Probable Cause Panel A.

(a) All Bronze Inc: Case No.: 146379-14-FC; Division #ATN-20916 (F064331)

Mr. Rivers stated that All Bronze Inc (All Bronze), at all times relevant, was not registered in this state as a monument establishment. All Bronze's monument establishment license expired in September 2011 and is presently inactive. It is alleged that All Bronze entered into a contract on February 10, 2013, with Dorothy Dorich to construct a monument for her deceased mother. All Bronze was paid \$1900 for the monument. All Bronze failed to timely deliver the monument. The monument

was not delivered until September 11, 2013 and then only after a criminal complaint had been filed with the Miami-Dade Police Department. As a result of this, All Bronze is in violation of ss. 497.152(1)(a), (b), (5)(b), (13) and 497.553(5), FS.

The Department filed an Administrative Complaint on April 17, 2014. A copy of the Administrative Complaint, including an Election of Proceedings form, was sent to the Respondent by certified mail. However, an answer or other response to the Administrative Complaint was not obtained from the Licensee. Personal service of the Administrative Complaint was then attempted by Nassim Tavit of Nolan Process Servers. Mr. Tavit was unable to obtain service upon the Respondent. The affidavit of non-service executed is attached to the Motion for Determination of Waiver. Service was then obtained by publication of notice in the Miami Daily Business Review, a newspaper located in Miami-Dade County, Florida on September 3, 10, 17 and 24, 2014. The notice stated that the Respondent must file his answer on or before October 15, 2014. The Department has not received any response as of this date.

MOTION: Mr. Hall moved to find that the Respondent was properly served through publication after attempts to personally serve by certified mail. Mr. Helm seconded the motion, which passed unanimously.

MOTION: Mr. Mueller moved to find that the Respondent failed to respond and has waived its rights to request a proceeding in this matter. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that 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.

MOTION: Mr. Mueller moved to adopt the Findings of Fact. Mr. Helm seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Title 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the Conclusions of Law. Mr. Hall seconded the motion, which passed unanimously.

MOTION: Mr. Mueller moved to move the investigative file and all materials into evidence for purposes of determining penalty. Mr. Knopke seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent or a representative was present. There was a negative response.

Mr. Rivers stated that based on the penalty guidelines and the violations as found by the Board, under 69K-11.001(2)(d), F.A.C., in a violation of s. 497.152(1)(a), F.S., the suggested penalty would be revocation. The Department recommends that revocation be implemented in this case.

MOTION: Mr. Jones moved for a penalty of revocation. Mr. Mueller seconded the motion, which passed unanimously.

(b) Idalmis Soca: Case No.: 146377-14-FC; Division #ATN-20916 (F064334)

Mr. Rivers stated that the investigation alleges that Idalmis Soca, both individually and as owner of All Bronze, Inc., a Florida licensed monument establishment liable for the following violations. Idalmis Soca, at all times relevant, was not registered in this state as a monument establishment sales agent. Idalmis Soca's monument establishment sales agent license expired in September 2011 and is presently inactive. All Bronze's monument establishment license also expired in September 2011 and is presently inactive. It is alleged that Idalmis Soca and All Bronze, Inc. entered into a contract on February 10, 2013, with Dorothy Dorich to construct a monument for her deceased mother. Idalmis Soca and All Bronze was paid \$1900 for the monument. The monument was not timely delivered. The monument was not delivered until September 11, 2013 and then only after a criminal complaint had been filed with the Miami-Dade Police Department. These allegations constitute a violation of ss. 497.152(1)(a), (b), (5)(b), (13) and 497.553(5), FS.

The Department filed an Administrative Complaint on April 17, 2014. A copy of the Administrative Complaint, including an Election of Proceedings form, was sent to the Respondent by certified mail. However, an answer or other response to the Administrative Complaint was not obtained from the Licensee. Personal service of the Administrative Complaint was then attempted by Nassim Tavit of Nolan Process Servers. Mr. Tavit was unable to obtain service upon the Respondent. The affidavit of non-service executed is attached to the Motion for Determination of Waiver. Service was then obtained by publication of notice in the Miami Daily Business Review, a newspaper located in Miami-Dade County, Florida on September 3, 10, 17 and 24, 2014. The notice stated that the Respondent must file his answer on or before October 15, 2014. The Department has not received any response as of this date.

MOTION: Mr. Mueller moved to find that the Respondent was properly served through publication after attempts to personally serve by certified mail. Mr. Hall seconded the motion, which passed unanimously.

MOTION: Mr. Mueller moved to find that the Respondent failed to respond and has waived its rights to request a proceeding in this matter. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that 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.

MOTION: Mr. Jones moved to adopt the Findings of Fact. Ms. Anderson seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Title 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Mueller moved to adopt the Conclusions of Law. Mr. Helm seconded the motion, which passed unanimously.

MOTION: Mr. Mueller moved to move the investigative file and all materials into evidence for purposes of determining penalty. Ms. Anderson seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent or a representative was present. There was a negative response.

Mr. Rivers stated that based on the penalty guidelines and the violations as found by the Board, under 69K-11.001(2)(d), F.A.C., in a violation of s. 497.152(1)(a), F.S., the suggested penalty would be revocation. The Department recommends that revocation be implemented in this case.

Mr. Helm questioned whether there is any penalty that could be applied that would hold more weight than just revocation.

Mr. Harris questioned whether Mr. Helm is referring to restitution or some type of fine.

Mr. Helm stated that he was thinking adding a stipulation that the Respondent cannot apply for licensure again or the Respondent would have to appear before the Board prior to applying for licensure.

Mr. Harris stated that he does not think the Board could do that as part of this discipline but clearly revocation of a license, if she reapplies for one, the Division is going to put that before the Board. I do not think the Board could require an appearance prior to an application. The Board could make its intent to the Division known that you would want to look at this thing carefully if there was ever an application by this person or any of the principals.

Mr. Helm stated that his thought process was not to waste the Division's time.

Mr. Shropshire stated that there is a provision in s. 497.153(5)(a)(8), F.S. that reads. *“The Board may by order on a case-by-case basis specify that a revocation is permanent and that no future application for licensure under this chapter by the revoked person or entity shall be accepted, processed, or approved.”*

MOTION: Mr. Helm moved for a penalty of permanent revocation and no future application for licensure shall be accepted, processed or approved pursuant to s. 497.153(5)(a)(8), F.S. Mr. Hall seconded the motion, which passed unanimously.

(c) Rogers Funeral Home: Case No. 150303-14-FC; Division #ATN-21144 (F065242)

Mr. Rivers stated that the Licensee failed to perform the cremation services specified in the at-need contract, failed to mail the cremated remains to the family as specified in the contract and engaged in the practice of unlicensed funeral directing.

The Administrative Complaint was served by way of publication in the Sun Sentinel in Broward, Palm Beach and Miami-Dade counties on September 24^h, October 1, 8 and 15, 2014, in accordance with ss. 120.60(5) and 497.153(4)(a), F.S. Respondent failed to file an Election of Proceeding form in this case and that contained material facts to dispute the allegations in the Administrative Complaint. The Department has not received any response as of this date. The Department has submitted a Motion for Determination of Waiver to the Board for review.

MOTION: Mr. Mueller moved to find that the Respondent was properly served through publication after attempts to personally serve by certified mail. Mr. Hall seconded the motion, which passed unanimously.

MOTION: Mr. Mueller moved to find that the Respondent failed to respond and has waived its rights to request a proceeding in this matter. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that 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.

MOTION: Mr. Hall moved to adopt the Findings of Fact. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board’s Findings of Fact support a finding of the violations of Chapter 497, F.S. and Title 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Knopke moved to adopt the Conclusions of Law. Ms. Anderson seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent or a representative was present. There was a negative response.

MOTION: Mr. Jones moved to move the investigative file and all materials into evidence for purposes of determining penalty. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Rivers stated that he was not able to ascertain whether there was a disciplinary history regarding this particular Licensee. So considering that, they would still be under the first penalty range for the allegations as listed in the Administrative Complaint. The Department recommends an administrative fine of \$3000 and revocation of licensure.

Mr. Harris questioned whether Mr. Rivers was going to add the aggravating factors to support that penalty.

Mr. Rivers concurred and cited the following factors:

- (2)(d) The length of time the Licensee has practiced – The Licensee has been practicing for a length of time now. It should not be a practice for them to not respond to Administrative Complaints provided by the Department, as well as to consumer complaints.

- (2)(i) The actual knowledge of the Licensee pertaining to the violation – The Respondent did not timely provide the monuments to the family and for failure to respond to the consumer in a timely fashion.
- (2)(j) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations

Mr. Rivers stated that based on that the Department would argue that those aggravating factors would necessitate a deviation from the penalty guidelines.

MOTION: Mr. Jones moved for a penalty an administrative fine of \$3000 and revocation based on the aggravating factors. Mr. Hall seconded the motion, which passed unanimously.

(d) Rogers, Delvis D: Case No. 150301-14-FC; Division #ATN-21144 (F059372)

Mr. Rivers stated that the Division alleges that the Licensee failed to perform the cremation services specified in the at-need contract, failed to mail the cremated remain s to the family as specified in the contract and engaged in the practice of unlicensed funeral directing. A Two-Count Administrative Complaint was filed on July 11, 2014. The Licensee returned an Election of Proceeding for to the Division indicating a desire to submit a written statement and documentary evidence to the Board in lieu of a hearing. At this time it would be appropriate to entertain a motion determining that the Licensee was properly served.

MOTION: Mr. Hall moved to find that the Respondent was properly served with the Administrative Complaint. Mr. Mueller seconded the motion, which passed unanimously.

MOTION: Mr. Mueller moved to find that the Respondent did elect a 120.57(2) proceeding and a desire to submit a written statement and documentary evidence. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that 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.

MOTION: Mr. Helm moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board’s Findings of Fact support a finding of the violations of Chapter 497, F.S. and Title 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the Conclusions of Law. Ms. Anderson seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent or a representative was present. There was a negative response.

MOTION: Mr. Mueller moved to move the investigative file and all materials into evidence for purposes of determining penalty. Mr. Hall seconded the motion, which passed unanimously.

Mr. Harris stated that the Board was provided a statement from Mr. Rogers in the Board material.

Mr. Rivers stated that the Department recommends an administrative fine of \$3500 and one (1) year of probation.

MOTION: Mr. Mueller moved for a penalty an administrative fine of \$3500 and one (1) year of probation. Ms. Anderson seconded the motion, which passed with one (1) dissenting vote.

C. Relinquish Jurisdiction to DOAH

(1) Probable Cause Panel A

(a) Ron Noble, DFS Case No. 134081-13-FC; Division #ATN-17635 (F046246)

Mr. Shropshire stated that this case came before the Board at its October 2, 2014 Board meeting, as a disciplinary matter.

Following the October 2, 2014 Board meeting, the attached Order (filed October 23, 2014) was issued, setting the Ron Noble matter for de novo hearing at the December 4, 2014 Board meeting.

However, on November 19, 2014 the Division received two pleadings (copy attached), from Mr. Noble's new attorney, Ms. Maureen Daughton, advising to the effect that (1) Ms. Daughton would henceforth represent Mr. Noble, in place of his prior counsel, Wendy Wiener; and (2) Mr. Noble disputed the material facts and requested a formal hearing before DOAH as per s. 120.569 and 120.57(1), Florida Statutes.

After consulting the Board's Legal Counsel, Mr. Lawrence Harris, it was determined that legally the matter must be referred to the Division of Administrative Hearings (DOAH) for formal hearing, and that under the applicable law the Board has no option but to relinquish jurisdiction to DOAH. Accordingly, the Ron Noble matter does not appear on this agenda. It will come back before the Board at some subsequent Board meeting after the DOAH proceeding has run its course.

The Division recommends that the Board vote to relinquish jurisdiction to DOAH.

Mr. Helm questioned whether this case would come back to the Board.

Mr. Harris responded that the case would go over to DOAH for a formal evidentiary hearing. The Department will have to prove its case. The DOAH Hearing Office will enter a Recommended Order, which will come back to the Board for entry of a Final Order. The Board will be bound by the Findings of Fact and strongly constrained by the Recommendations of Law of the Hearing Officer for entry of the Final Order but it will be back to the Board for consideration.

MOTION: Mr. Knopke moved to relinquish jurisdiction to DOAH. Mr. Hall seconded the motion, which passed unanimously.

5. Application(s) for Preneed Sales Agent

A. Informational Item (Licenses Issued without Conditions) – Addendum A

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

B. Recommended for Approval with Conditions (Criminal History)

(1) Franco, Hector Claudio (Appointing Entity: Phoenix Cremation Society Inc d/b/a Tri-County Cremation and Funeral Home)

Mr. Shropshire stated that the Applicant submitted an application for preneed sales agent license on September 26, 2014, and there were no deficiencies noted on the application. A completed background check revealed a criminal history, to wit:

On or about August 2012, Mr. Franco pled No Contest to the charge of a misdemeanor, DUI with Property Damage/Personal Injury, in Florida. Mr. Franco's Driver's License was suspended for 6 months; additionally, he was placed on probation for 12 months, ordered to complete a Substance Abuse Treatment program, the Victim Awareness Program, DUI Counter Attack School, serve 50 hours of community service, and fined \$1,809. All of the above conditions have been met and satisfied by the Applicant (please see attached statement from Applicant dated November 3, 2014 and court documentation).

The Division is recommending approval subject to the terms & conditions of the stipulation for licensure that requires twelve (12) months probation.

MOTION: Mr. Helm moved to approval of the application subject to the terms & conditions of the stipulation for licensure that requires twelve (12) months probation. Mr. Mueller seconded the motion, which passed unanimously.

6. Application(s) for Continuing Education Course Approval

A. Recommended for Approval without Conditions – Addendum B

- (1) *MK Jones & Associates, Inc #9605*
- (2) *National Funeral Directors Association #136*
- (3) *Thanos Institute #80*

Mr. Shropshire stated that 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. Hall moved to approve the application(s). Ms. Anderson seconded the motion, which passed unanimously.

7. **Application(s) for Florida Law and Rules Examination**
 - A. **Informational Item (Licenses Issued without Conditions) – Addendum C**
 - (1) **Funeral Director - by Internship**
 - (a) *Raph-Bowie, Rebecca J*
 - (b) *Troxel, Erin K*
 - (2) **Funeral Director and Embalmer - by Endorsement**
 - (a) *Couldry, Kenneth I*
 - (b) *Lisenbey, William S*

Mr. Shropshire stated that 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 with Conditions (Criminal History)**
 - (1) **Funeral Director and Embalmer – by Endorsement**
 - (a) *Pinson, Timothy H*

Mr. Shropshire stated that the Applicant submitted an application for a Funeral Director and Embalmer by Endorsement on August 1, 2014. The application was incomplete when submitted. All deficient items were returned on September 15, 2014. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

In 1995 Applicant pled guilty in Georgia State Court, to felony burglary, arson, and entering an auto with intent to commit a theft. He has submitted a statement He was sentenced to 20 years in prison. The crimes were committed in 1994. Applicant was born in 1974, and was approximately 20 years old at the time of the crimes. In 2003 the Georgia Parole Board granted Applicant parole and he was released from prison and is unsupervised parole until sometime in 2015.

In 2011 Applicant enrolled in Gupton Jones College of Funeral Service, and graduated in 2012. In 2012 Applicant took and passed the National Conference Arts and Science exams. In 2013 the Georgia Board of professions licensed Applicant as a funeral director & embalmer.

Applicant provides three letters of recommendation from current members of the deathcare profession.

There appears to be insufficient evidence to support the assertion that Applicant has not substantially rehabilitated himself.

The Division is recommending approval subject to the conditions that:

- 1) Applicant appearing at the December 4, 2014 Board meeting and satisfactorily answering any questions by the Board;
- 2) subject to the terms and conditions of the attached stipulation for licensure, placing him on probation for 24 months after licensure, and in which he agrees he will not serve as funeral director in charge of any establishment for five (5) years after obtaining the funeral director & embalmer applied for herein.

Mr. Hall stated that a twenty (20) year sentence seems long for a theft and requested that the Applicant elaborate.

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

Mr. Timothy Hank Pinson responded, "I do." It was petty theft as a child. I made stupid decisions when I was seventeen (17) – eighteen (18) years old. I am forty (40) now and recognize that. It was a stiff sentence and I still pay for that today. It will haunt me for the rest of my life but those decisions I made at a young age, now as a man standing before you today I can assure you those mistakes will not be made again.

The Chair questioned the arson.

Mr. Pinson stated that the arson is what made the case.

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

The Chair requested that Mr. Pinson appear before the Board at a future meeting to advise how things are going.

Mr. Pinson accepted the request.

Ms. Wendy Wiener, representing the Applicant, stated that she is always at the Board meetings so if there are questions that arise she could certainly provide the Board with information at any meeting.

The Chair stated that the Board feels it has an investment in Mr. Pinson and is expecting positive reports.

Mr. Pinson thanked the Board.

(2) Funeral Director and Embalmer – by Internship
(a) Phillips, Candice

Mr. Shropshire stated that an application for a Funeral Director and Embalmer license was submitted on October 17, 2014. The application was complete when submitted. The Applicant's fingerprint submission was returned with criminal history

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

The Applicant previously submitted an application to become a Direct Disposer and it was presented to the Board at the October 7, 2010 Board meeting. The Board approved the application subject to 24 months probation, however the Applicant was not issued a Direct Disposer license and the probation portion was not fulfilled because Ms. Phillips chose instead to complete the Associate in Funeral Service degree in order to pursue a full Funeral Director and Embalmer License. Her application for a Concurrent Intern License was approved at the December 5, 2013 Board meeting with one year probation.

The Division is recommending approval subject to the terms & conditions of the stipulation for licensure that requires twelve (12) months probation.

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

MOTION: Mr. Helm moved to approve the application subject to the terms & conditions of the stipulation for licensure that requires twelve (12) months probation. Mr. Knopke seconded the motion, which passed unanimously.

8. Application(s) for Internship

A. Informational Item (Licenses Issued without Conditions) – Addendum D

(1) Funeral Director

(a) Heldman, Brooke A (F081211)

- (2) *Funeral Director and Embalmer*
 - (a) *Brown, Mario J (F081208)*
 - (b) *Hawk, Demarien J (F081293)*
 - (c) *Jacobs-Armstrong, Kandice (F081206)*
 - (d) *Smith, Eboni L (F081207)*

Mr. Shropshire stated that 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.

Mr. Mueller stated that he did not understand how one person was assigned to two (2) separate funeral homes.

The Chair stated that he would have to look at the specific case but sometimes for embalming and the other for funeral directing as they may not qualify for one or the other.

Ms. Jasmin Richardson concurred.

- B. *Recommended for Approval without Conditions (Criminal History)***
 - (1) *Funeral Director and Embalmer***
 - (a) *Borders, Shaquita L*

Mr. Shropshire stated that the Applicant submitted an application for a Concurrent Internship on August 15, 2014. The application was incomplete when submitted. All deficient items were returned on September 19, 2014. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- In 1996 (approximately 18 years ago) Ms. Borders pled no contest to 2nd degree felony Aggravated Battery, in Florida Circuit Court, Orange County. She was born in 1977, and was thus approximately 19 years of age at the time of the court action. She was sentenced to 30 months of probation. Applicant advises that the incident was a high school fight.

The Division is recommending approval without conditions.

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

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

- 9. *Application(s) for Embalmer Apprenticeship***
 - A. *Informational Item (Licenses Issued without Conditions) – Addendum E***
 - (1) *Downing, Tarvaes J (F081209)*
 - (2) *Hawkins, Amber L (F081181)*
 - (3) *Lay, Brittani L (F081319)*
 - (4) *Maus, Alana (F081210)*
 - (5) *Schmitt, Saben M (F081304)*

Mr. Shropshire stated that 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.

- 10. *Application(s) for Registration as a Training Agency***
 - A. *Informational Item (Licenses Issued without Conditions) – Addendum F***
 - (1) *Becker Funeral Home (F040083) (Clermont)*

Mr. Shropshire stated that 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. Notification(s) of Change in Location

A. Informational Item (Licenses Issued without Conditions) – Addendum G

(1) Johnson Funeral Homes A Limited Liability Company (F079558) (Okeechobee)

Mr. Shropshire stated that this item is informational only and does not require Board action.

12. Application(s) for Funeral Establishment

A. Recommended for Approval with Conditions

(1) M A Hall Funeral Services LLC (Miami)

Mr. Shropshire stated that an application for a Funeral Establishment was received on October 8, 2014. The application was incomplete when submitted. All deficient items were returned on November 5, 2014. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Jeanette Kelley (F046564).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Jones moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Knopke seconded the motion, which passed unanimously.

(2) Naugle Schnauss Funeral Home and Cremation Services LLC (Jacksonville)

Mr. Shropshire stated that an application for a Funeral Establishment was received on September 25, 2014. The application was incomplete when submitted. All deficient items were returned on November 7, 2014. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Paul Naugle Jr (F043909).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Knopke moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Mueller seconded the motion, which passed unanimously.

(3) Socofi Capital & Mortuary Investments Inc d/b/a McWhites' Funeral Home (West Palm Beach)

Mr. Shropshire stated that an application for a Funeral Establishment was received on November 7, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Adrienne Leger (F045309).

The principal, Albert McWhite (F046972), does not have criminal history; however he does have adverse licensing history. In 1995, he was given an administrative fine of \$750 and cost of \$356.80. He was also placed on probation for 18 months. The violation was an incident in which Mr. McWhite signed a funeral service agreement that had been arranged by an unlicensed person.

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

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

13. Application(s) for Monument Establishment Sales Agent

A. Informational Item (Licenses Issued without Conditions) – Addendum H

Mr. Shropshire stated that 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.

14. Application(s) for Preneed Main License

A. Recommended for Approval without Conditions

(1) Ed Kalis Memorial Services, LLC d/b/a Edwards Cremation & Funeral Services (Wilton Manors)

Mr. Shropshire stated that the Department received the application on October 15, 2014 and a deficiency letter was sent to the Applicant as of October 21, 2014. Applicant responded to all deficiencies and the application was completed as of November 3, 2014. A completed background check of all officers revealed no criminal history. Applicant obtained its current qualifying funeral establishment license (#F03990) as of February 28, 2005 and, if approved, will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement.

The Applicant's financial statements as of December 31, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	29,949

The establishment is recommended for approval.

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

(2) Integrity Removal Services, LLC d/b/a Integrity Cremations (Jacksonville)

Mr. Shropshire stated that this matter comes before the Board on an application for preneed main Licensee. The Applicant currently holds two other licenses:

Integrity Removal Service LLC, 4720 Salisbury Rd, Jacksonville FL 32256
d/b/a Integrity Cremations
License type: Direct Disposal Establishment
License no: F074103

Integrity Removal Service LLC, 54023 Evergreen Trail, Callahan FL 32011
License Type: Removal Facility
License No: F056041

The Department received the application on September 19, 2014 and a deficiency letter was sent to the Applicant as of September 23, 2014. Applicant responded to all deficiencies and the application was completed as of October 31, 2014.

A completed background check of all officers revealed no criminal history. Applicant's qualifying license will be the direct disposal establishment, F074103. Applicant will sell insurance –funded preneed through Great Western Insurance Company and utilize Great Western's approved pre-arranged funeral agreement.

The Applicant's financial statements as of September 30, 2014 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	16,191

The establishment is recommended for approval.

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

15. **Application(s) for Removal Facility**
A. **Recommended for Approval with Conditions**
(1) **Alternative Transportation Service Inc (Beverly Hills)**

Mr. Shropshire stated that a change of ownership application was received on October 28, 2014. The application was deficient when received. All deficient items were returned on November 14, 2014. The fingerprint cards for all principals were returned without criminal history.

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

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the Applicant in the application and related materials provided to the Board or FCCS Division by the Applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment(s) under the application(s) herein passes an onsite inspection by a member of Division Staff.

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

(2) **Mortuary Transport Service LLC (New Port Richey)**

Mr. Shropshire stated that an application for a Removal Service was received on October 20, 2014. The application was complete when submitted.

Mr. Joseph Venezia, the sole identified principal of the Applicant, has a criminal history. In 1993-94, in New York state court, he pled guilty to the felony of criminal possession of a narcotic drug. He was sentenced to prison. He served 7.5 years and was then paroled.

This criminal history has been disclosed three times previously by Mr. Venezia to this Board: (1) In August 2006 in connection with an application for removal service license by Mortuary Transport Division LLC (F039965); (2) in October 2010 in connection with the application for license for a previous license, Mortuary Transport Service LLC (F062038); and (3) in February 2012 in connection with the application for the current Licensee, Mortuary Transport Service LLC (F068501).

497.385 Removal services; refrigeration facilities; centralized embalming facilities.—

(1) REMOVAL SERVICES AND REFRIGERATION SERVICES.—

(g)

2. A change in location shall be promptly reported to the licensing authority pursuant to procedures established by rule. Operations by the Licensee at a new location may not commence until an inspection by the licensing authority of the facilities, pursuant to rules of the licensing authority, has been conducted and passed at the new location.

Rule 69K-24.010: Application for Licensure of Removal Services, Refrigeration Facilities, and Centralized Embalming Facilities.

(3) Any change in ownership or location of a removal service, refrigeration facility, or centralized embalming facility requires relicensure. Such application for relicensure must be made within ten (10) days of the change in ownership or location.

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Knopke moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Mueller seconded the motion, which passed unanimously.

(3) Removal Services Miami LLC (Sunny Isle Beach)

Mr. Shropshire stated that an application for a Removal Service was received on August 18, 2014. The application was incomplete when submitted. All deficient items were received on October 24, 2014. The fingerprint cards for all principals were returned without criminal history.

497.385 Removal services; refrigeration facilities; centralized embalming facilities.—

(1) REMOVAL SERVICES AND REFRIGERATION SERVICES.—

(g)

2. A change in location shall be promptly reported to the licensing authority pursuant to procedures established by rule. Operations by the Licensee at a new location may not commence until an inspection by the licensing authority of the facilities, pursuant to rules of the licensing authority, has been conducted and passed at the new location.

Rule 69K-24.010: Application for Licensure of Removal Services, Refrigeration Facilities, and Centralized Embalming Facilities.

(3) Any change in ownership or location of a removal service, refrigeration facility, or centralized embalming facility requires relicensure. Such application for relicensure must be made within ten (10) days of the change in ownership or location.

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Mueller moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Jones seconded the motion, which passed unanimously.

16. Related Items - Legacy Options, LLC (Change of Ownership) (Naples)

A. Recommended for Approval with Conditions

(1) Funeral Establishment and Cinerator Facility

Mr. Shropshire stated that this matter comes before the Board for approval of change of ownership of the following funeral establishment and cinerator facility:

Funeral Establishment:

- 1) Legacy Options LLC (F073095); FDIC – Michael Whyte (F039268)
4376 Corporate Square, Ste 1, Naples, FL 34104

Cinerator Facility:

- 1) Legacy Options LLC (F073558); FDIC – Clarence Witzenburg (F060304)
4376 Corporate Square, Ste 1, Naples, FL 34104

Whereas prior to the change of ownership the LLC that holds the licenses was owned by four persons (Richard Gosselin, Joseph Thomas Venture LLC, Clarence G. Witzenburg, Michael C. Whyte), after the proposed change of control the owners of the LLC will be Clarence G. Witzenburg, and Michael C. Whyte, each holding a 50% interest.

A related request for approval of transfer (change of control) of a preneed license and a request for approval of a transfer of preneed trust are also being presented at this Board meeting.

All fingerprint information was returned without criminal history. The Division is recommending approval subject to the condition(s) as follows:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the Applicant in the application and related materials provided to the Board or FCCS Division by the Applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment(s) under the application(s) herein passes an onsite inspection by a member of Division Staff.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.

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

(2) Application for Transfer of Preneed License (F073095)

Mr. Shropshire stated that this is an application for the transfer of a preneed license from Legacy Options, LLC (F073095), related to a change of control. Whereas prior to the change of control the LLC that holds the license was owned by four persons (Richard Gosselin, Joseph Thomas Venture LLC, Clarence G. Witzenburg, Michael C. Whyte), after the proposed change of control the owners of the LLC will be Clarence G. Witzenburg, and Michael C. Whyte, each holding a 50% interest.

S. 497.453(4), Florida Statutes, provides in pertinent part as follows: *"(4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE. -- (a) Each [preneed main] Licensee under this section shall provide notice as required by rule prior to any change in control of the Licensee. Any such change is subject to disapproval or to reasonable conditions imposed by the licensing authority, for the protection of the public to ensure compliance with this chapter, based upon criteria established by rule, which criteria shall promote the purposes of this part in protecting the consumer."*

The Department received the application on November 3, 2014 and no deficiencies were noted on the application.

The qualifying entity for the preneed Licensee is a funeral establishment under license number F073095, and an application for a change of ownership of the funeral establishment license is also being presented at this meeting.

A related request to transfer the preneed trust from SunTrust to Sabal Trust is also being presented at the 12-4-14 Board meeting.

All preneed contracts that were previously written under the preneed Licensee, Legacy Options, LLC (F073095), prior to the change of control, will be the responsibility of the Applicant herein.

The Applicant's financial statements as of December 31, 2013 reflect the following:

Outstanding Preneed Contracts	=	\$	26,675
Required Net Worth	=	\$	10,000
Reported Net Worth	=	\$	179,089

A completed background check of all officers revealed no criminal history. It should be noted that documentation establishes that Clarence G. Witzenburg (a principal of Applicant herein) was discharged from Ch. 13 bankruptcy on October 26, 2011, by

the Federal District Court, Middle District of Florida. It was a personal bankruptcy action and discharge (please see attached letter of explanation provided by Mr. Witzenburg dated 11-3-14). This information previously came before the Board on February 7, 2013 when the Applicant's initial application was presented and approved for licensure.

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

- 1) That the Application for Change of Ownership of the qualifying funeral establishment license is approved subject to the stated conditions.
- 2) All preneed contracts that were previously written under the preneed Licensee, Legacy Options, LLC (F073095), prior to the change of control, will be the responsibility of the Applicant herein.

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

(3) Request for Trust Transfer (F073095)

Mr. Shropshire stated that pursuant to ss. 497.458, F.S., Legacy Options, LLC (F073095) at the above listed location is requesting to transfer the above named preneed funeral trust fund, currently held at SunTrust to Sabal, administered by Funeral Services Inc (FSI). If this transfer is approved, Sabal will hold and manage these trust funds under the approved FSI 1993 Trust Agreement.

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

- 1) That Sabal provides a certification statement that as trustee it meets the requirements of Rule 69K-7.015(1) or (2).
- 2) That Sabal provides a certificate stating the dollar amount of trust assets being transferred.
- 3) That Sabal provides acknowledgement of receipt of the amount of trust assets being transferred as specified under the former trust.
- 4) That the effective date of the transfer and all above certifications be provided to the Division within 60 days of the date of this Board Meeting.

MOTION: Mr. Knopke moved to approve the request subject to the conditions recommended by the Division. Mr. Mueller seconded the motion, which passed unanimously.

17. Executive Director's Report

A. Extension(s) Granted – StoneMor Florida LLC/StoneMor Florida Subsidiary LLC (Informational)

GARDNER, BIST, WIENER, WADSWORTH, BOWDEN,
BUSH, DEE, LAVIA & WRIGHT, P.A.
ATTORNEYS AT LAW
1000 THORNTONWOOD DRIVE
TALLAHASSEE, FLORIDA 32308

MICHAEL P. BIST
GARRETT B. BOWDEN
BENJAMIN B. BUSH
DAVID S. DEE
DUSTIN W. LAVIA
CHARLES P. GARDNER
AMANDA L. WRIGHT
JOHN F. WADSWORTH, JR.
MURRAY M. WADSWORTH, JR.
BRUCE T. WIENER
WENDY RUSSELL WIENER
ROBERT S. WRIGHT
*BOARD-CERTIFIED REAL ESTATE ATTORNEY

TELEPHONE:
(850) 393-9600
FACSIMILE:
(850) 393-5415
OF COUNSEL:
MURRAY M. WADSWORTH

November 5, 2014

Doug Shropshire, Director
Division of Funeral, Cemetery and Consumer Services
Doug.Shropshire@myfloridacfo.com

Re: StoneMor Florida LLC/StoneMor Florida Subsidiary LLC
Transfer of Trust Assets

Dear Doug:

We represent StoneMor Florida LLC and StoneMor Florida Subsidiary LLC (StoneMor). On April 3, 2014, the Board approved StoneMor's requests to transfer trust assets. Conditions of the approval included that within ninety (90) days of the meeting, the successor trustee, ClearPoint Federal Bank & Trust (ClearPoint), would provide letters stating the effective date of the trust transfer, certifying the dollar amount of trust assets being transferred and acknowledging receipt of the amount of the trust assets being transferred. Subsequently, we requested, and were granted, extensions of time to complete the transfers. The last extension was until October 31, 2014.

We have been notified by our clients that the trust transfers have been completed, *in part*. Accompanying this letter is a spreadsheet provided by ClearPoint, certifying the dollar amounts of the trust assets transferred and acknowledging receipt of the amount of the trust assets being transferred.

There still remain three trusts to be transferred, and there is some uncertainty as to when those three remaining transfers will be completed. Therefore, we are requesting an additional extension of time to complete the remaining transfers, until December 31, 2014.

Please do not hesitate to contact me directly for further information.

Sincerely,

Wendy Russell Wiener

Approved.
DJS 11-6-14

Mr. Knopke questioned whether there is any idea when this will be complete.

Mr. Shropshire stated that they requested an extension of time until December 31, 2014.

B. Ebola Guidance (Informational)

MEMORANDUM
Department of Financial Services
Division of Funeral, Cemetery, and Consumer Services

TO: Board Members (Board of Funeral, Cemetery, and Consumer Services)
FROM: Douglas Shropshire, Division Director *DS*
DATE: 11-24-2014
RE: Ebola guidance

-
- (1) The FCCS Division has worked closely with the Florida Department of Health to develop more detailed guidelines for funeral industry members, regarding handling and disposition of remains infected by the Ebola Virus.
 - (2) We have received outstanding cooperation from our Dept of Health counterparts.
 - (3) As indicated in the attached 11-17-2014 email from Dr. Eggert of the Florida Department of Health, the guidelines are under review in Department of Health. As you might guess, they have a tremendous workload associated with the Ebola topic, and are moving as fast as possible.
 - (4) The FCCS Division's webpage has a prominent button entitled "Ebola Precautions" which will take you directly to the latest information we have.

Mr. Shropshire added that he has since received further word from the Department of Health that our proposed detailed guidance for Industry members is still under review by the Department of Health.

Ms. Lisa Coney, SCI Dignity Memorial, stated that she hopes that none of us are in a position to be dealing with Ebola cases but it's a stark reality that we may be soon. As you look at whatever information is coming, I know previously the Division shared the CDC recommendations funeral homes around the state are participating with medical examiner's offices on like tabletop discussions for training on how to handle Ebola. Every bit of training that I have seen from both the CDC and the local medical examiners has been that there would be no open of an emergency pouch so there would be no identification of remains that were within that pouch outside of the identification provided by the medical examiner. As we consider how this is going to impact it would also require a waiver of rules because that is very different than our current policies and procedures and none of us would want to put our people at risk. I know we do not have precedent for a lot of rulemaking in process right now but when those recommendations come back, I think it is imperative that the Division look at how our current requirements would have to be changed to accommodate handling those kinds of cases so that those of us that are serving those families are not in any way liable for the identification that we are told we cannot perform and those sort of tasks.

The Chair stated that the Division has been very sensitive to those issues in dealing with the Department of Health and their guidelines that we hope to be able to see soon. Mr. Shropshire has really been on top of that.

Ms. Coney stated that this is the first time she has seen do not open a bag and do not perform an identification at all so it is very concerning.

The Chair thanked Ms. Coney for her comments.

C. Citations Issued re: Quarterly Preneed Contract Remittances (Memo for Information and Discussion, if any)

Ms. Shropshire stated that this item is informational unless the Board wants to take a position in the matter. It relates to imposition of fines by citation on Licensees who do not properly remit to the Division for their quarterly preneed sales reports

for all of their contracts, pursuant to the Rules cited. For the first violation it is a \$200 fine and for each subsequent violation it is a \$400 fine. I have just responded to Mr. Williams who made the inquiry on behalf of one of his clients. The Division's position is that if the Board wants to change that rule and provide more leniency on a going forward basis that would be fine. Certainly that is the Board's prerogative. The Division would support that in fact but I believe that the Division is currently properly interpreting the rule..

Ms. Wiener, representing FSI, stated that they absolutely do not disagree. The rule says what it says. The rule results in unnecessarily harsh penalties and a disciplinary history for Licensees who otherwise would not ever have a disciplinary history because of the failure to remit \$14 instead of \$13 or whatever the case may be. We appreciate Mr. Shropshire's comments and we will be submitting some proposed language to work together with the Division on perhaps amending a rule so that it is reasonable like it is for unintentional failures to remit to the Preneed Trust Fund or the Care and Maintenance Trust Fund.

The Chair questioned whether Ms. Wiener could share with the Board a timeline on what she will be submitting and then Mr. Shropshire provide a timeline of when the Board could expect to be able to respond.

Mr. Shropshire stated that if he had the suggestions today from Ms. Wiener and they came to a mutually agreeable product it would have to be put on a Board agenda for approval and then it would take sixty (60) days to ninety (90) days to go through the rulemaking process.

Ms. Wiener stated that it is not an overnight scenario of course so she would anticipate providing a suggestion/recommendation to Mr. Shropshire well in advance of your next regularly scheduled meeting so that we can hopefully come to some agreement between ourselves that could be presented to the Board for approval and then it would go through the traditional s. 120.54, F.S. rulemaking process.

Mr. Helm questioned whether this item could be presented at a Board teleconference.

The Chair responded that it could.

Ms. Wiener stated that she would expect that it would be noncontroversial. This is the kind of thing where Licensees routinely sort of trip over this. Like I said, it could be the difference in remitting \$14 versus \$13 and so it ends up with a disciplinary history for the Licensee in that case.

The Chair stated that he knows that any rule can be proposed but if this was proposed and changed it would not be retroactive.

Ms. Wiener concurred.

Mr. Bill Williams, FSI, stated that their client literally miscounted their preneed contracts and \$21 did not get submitted and it was found and corrected immediately. The fine was such a harsh fine, a \$200 fine for a miscounted contract. There has never been any disciplinary action at all against this Licensee before but now he has a mark on his record because of this. If it was willful and warranted then no problem at all but it is not. It is a very simple mistake and it is very easily corrected and that is what we want to try and do is make it more in line with what we have with other trusts as it relates to timely remittances, etc.

Mr. Harris stated that if there was language on the January agenda, the Board would need three (3) motions. First would be to open the rule for development then that would result in the publication of a Notice in the Florida Administrative Register for fourteen (14) days. If at that January meeting you also have language in front of you, you could at the same time vote to propose that language then a second Notice would be submitted for the proposed rule. That has to be published and it gives a twenty-one (21) day period for people to either submit written comments or file a request for a hearing basically. If no one files a request for hearing or any written comments at the end of the twenty-one (21) days, we send a letter to JAPC as the seven (7) day Notice. If there is nothing then the rule gets filed for adoption and becomes effective twenty-one (21) days after it is filed for adoption. So the timeline would be no less than forty-five (45) days, no more than ninety (90) days without some of these other things happening. The third thing that would have to happen at the January meeting, if you propose rule language you have to decide whether you need a Statement of Estimated Regulatory Cost or not. So you would have to walk

through some statutory requirements about is there an adverse impact on any entity, including small business or government. If there is not, is there an economic impact of greater than \$200k within the first year of implementation. Then the third step would be determining if there is an impact of greater than a \$1 million in total over five (5) years. If the answer to all three (3) of those questions is no then you do not need a Statement of Estimated Regulatory Cost or Legislative ratification. If there is an adverse impact of more than \$200k in the first year you would have to prepare a SERC. In this case, given that you are essentially reducing a \$200 fine I think your discussion would be that it would reduce cost overall, therefore there would be no need for the preparation of this SERC and you could keep on moving with it. That is just an overview. The reason I offer that is if you want to have it on your January meeting those are basically the steps I would walk you through for the motions you would need for rule development.

The Chair stated that that same declaration is for any rule, not just this rule.

Mr. Harris concurred.

D. Same Sex Spouse as "Legally Authorized Person" (Informational)

MEMORANDUM
Department of Financial Services
Division of Funeral, Cemetery, and Consumer Services

TO: Board of Funeral, Cemetery, and Consumer Services
FROM: Douglas Shropshire, Division Director *DAS*
DATE: 11-24-2014
RE: Same sex spouse as "legally authorized person"

(1) The Division has been asked whether a same-sex spouse is a "spouse" for purposes of the definition of "legally authorized person" in section 497.005(39), Florida Statutes (2014).

(2) Section 497.005(39) FS (2014) defines "legally authorized person" as follows:

(39) "Legally authorized person" means, in the priority listed:

(a) The decedent, when written inter vivos authorizations and directions are provided by the decedent;

(b) The person designated by the decedent as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while serving military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard

(c) The surviving spouse, unless the spouse has been arrested for committing against the deceased an act of domestic violence as defined in s. 741.28 that resulted in or contributed to the death of the deceased;

(d) A son or daughter who is 18 years of age or older;

(e) A parent;

(f) A brother or sister who is 18 years of age or older;

(g) A grandchild who is 18 years of age or older;

(h) A grandparent; or

(i) Any person in the next degree of kinship.

In addition, the term may include, if no family member exists or is available, the guardian of the dead person at the time of death; the personal representative of the deceased; the attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commission, or administrator acting under part II of chapter 406 or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as the legally authorized person. Where there is a person in any priority class listed in this subsection, the funeral establishment shall rely upon the authorization of any one legally authorized person of that class if that person represents that she or he is not aware of any objection to the cremation of the deceased's human remains by others in the same class of the person making the representation or of any person in a higher priority class.

(3) Article I, Section 27 of the Florida Constitution reads as follows:

Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized

(4) Section 741.212 Florida Statutes (21014) provides as follows:

741.212 Marriages between persons of the same sex.—

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.

(3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

History.—s. 1, ch. 97-268.

(5) The constitutional provision cited above, and section 741.212, have been challenged in state and federal court by private parties, as being unconstitutional,. In recent months several state and federal trial courts have ruled the provisions to be unconstitutional. However, the FCCS Division has been advised that the litigation in those cases is not yet regarded as final, and that the Florida Attorney General is attempting to get a Florida Supreme Court ruling as soon as possible. Accordingly, we are advised that it is not feasible at this time to provide any definitive answer to the question raised herein.

(6) However, the FCCS Division would note that under s. 497.005(39), the highest authority and priority as to arrangements for the decedent's final disposition is "*The decedent, when written inter vivos authorizations and directions are provided by the decedent.*" If a person ("A") who represents themselves as the same sex spouse of the decedent, also presents documents executed by the decedent appointing "A" as the person authorized to make arrangements for the final disposition of the decedent's remains, then, all other things being equal, and entirely apart from the issue of same sex spouse, "A" would be regarded as the legally authorized person to direct the final disposition of the decedent's remains. However, if other parties appear, disputing the validity of the papers presented, the licensee should consult their private counsel.

The Chair questioned whether anything has been heard from the courts since this memo was written.

Ms. Michele Hood, Independent Funeral Directors of Florida, stated that she believes there was a ruling that basically said effective January 5th, unless there is an additional stay, that same sex marriage will be allowed in the State of Florida.

Mr. Harris stated that Judge Hinkle of the Northern District of Florida had issued an opinion but he had stayed it until January 1st to allow an appeal. That stay is running out. The US Appellate Court, 11th Circuit, determined not to extend the stay which means absent something else happening and I do not know what that would be. After January 1st Judge Hinkle's ruling would go into effect where he found that there was a problem with the ban on same sex marriages.

E. 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 4, 2014 Board Meeting
 Date of Report: November 24, 2014

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC dba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$38,860	33 mo pymts remaining	Status Pending	Licensee monthly restitution payments are current.
Affiliated Funeral Service	Feb-14	137272-13-FC	\$1,500	6/2/2014	No	On September 11, 2014, an Emergency Order of Suspension was entered due to failure to pay fines.
All Points Removal Service		130794-13	\$1,000	11/23/2014	No payment made	Working with Legal to take action on the non-payment.
Reddick Funeral Home		151718-14-FC	\$250	Fine due November 23	No payment made	Working with Legal to take action on the non-payment.
Jay Monument & Vault a/k/a Jay Monument & Vault Inc.		153256-14-FC	\$5000 and 13 years of renewal and fees	Fine due on November 23rd, No time set for fees	No payment made	Working with Legal to take action on the non-payment.
Melvin Jones		151723-14-FC	\$250		Paid In Full	
Roderick Stevens	Oct-14	145032-13-FC	\$1000/\$250 /\$250/\$250/ \$250	December 6, 2014/January 6, 2015/February 15, 2015/March 15, 2015/April 15, 2015	Note C	
Collisons Holding Company d/b/a Collison Family Funeral Home and Crematory - Howell Branch Chapel	Aug-14	143103-13-FC	\$1,500	9/17/2014	Yes	
Stone Funeral Home	Oct-14	144429-13-FC	\$1,500	See Note C		
Janorise Stone	Oct-14	14432-13-FC	\$1,500	See Note C		
Richard Alford	Aug-14	Mulitple cases	\$2,000	See Note D	No	The license was revoked in this matter and a \$2000 fine was assessed. It is not anticipated the fine will be paid and this matter will be removed from this report following December meeting.
Sumner Granite & Bronze, Inc.	Aug-14	Mulitple cases	\$2,000	See Note D	No	The license was revoked in this matter along with a \$2,000 fine. It is not anticipated the fine will be paid and this matter will be removed from this report following the meeting.
A. When payment in full 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; also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs. C. The Order re this case is still in process, so no Due date is not yet established. D. Due date has not passed, as of the date of this report. E. As of the date of this report, monthly payments were current.						

18. Chairman's Report (Oral)

The Chair commended the Board, Staff, Board Counsel and Mr. Shropshire. A lot of work and effort went into the finished product of what we see before us. The Board, the time and energy that you put into your agenda and packet is remarkable. Thank you for being so prepared. It is really great to know.

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

Mr. Shropshire stated with regret that Mr. Harris is not going to be continuing with us.

The Chair questioned whether the Board gets to vote on that.

Mr. Harris responded no and yes. I am subject to the direction of my supervisor, Edward Tellechea, who is the Bureau Chief for Administrative Law. About a month ago there was a realignment of Board Counsel's responsibilities and I am no longer the Board Counsel for this Board. Mr. Tom Barnhart, who is our Special Counsel and has been practicing Administrative Law for about twenty (20) years, has been assigned as your new counsel. The recourse you would have would be to vote on a resolution that would be transmitted to the Bureau Chief, but Mr. Tellechea as a general rule is not particularly interested in undoing his internal alignments. I have no control over that. You all could make a formal request to change that assignment. Mr. Barnhart is basically the third most senior person in the Administrative Law Bureau, he has been practicing for twenty something years and is very knowledgeable. He has personally helped me a lot. More importantly temperamentally I think he will get along well with you all. He is a very sharp guy but he also knows how to let you all do your business and only sort of interrupt when he feels like he needs to.

The Chair requested that Mr. Harris whisper in Mr. Barnhart's ear that the Board needs a lot of help and direction. The direction that you have given us has really been topnotch and we really appreciate you.

20. Administrative Report

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

21. Disciplinary Report

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

22. Upcoming Meeting(s)

- A. *January 8th (Teleconference)*
- B. *February 5th (Tallahassee)*
- C. *March 5th (Teleconference)*
- D. *April 2nd (Jacksonville)*

23. Adjournment

The meeting was adjourned at 2:31 p.m.