

**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES**

**April 3, 2014 - 10:00 A.M.**

**Aloft Jacksonville Tapestry Park  
4812 Deer Lake Drive West  
Jacksonville, FL**

**1. Call to Order, Preliminary Remarks and Roll Call**

Mr. Jody Brandenburg, The Chair, called the meeting to order at 10:00 am. The Chair recognized a long time member of the Funeral Board, the Chairman of the Funeral Board for many years, his friend, mentor and colleague, Ronald Giddens; Robbins Giddens-Sheppard of the FCCFA, currently serving as President; and long time member of this Board, and we are glad to see her back with us, Gail Thomas-Dewitt. The Chair stated that the Board is always proud to have the future of our industry visit the Board as he recognized the students from Florida State College Jacksonville along with Robert Dean, the director of the Mortuary Science Funeral Service Program. The Chair requested that all of the students stand.

Mr. Doug Shropshire requested that Dianna Patterson, field examiner, stand to be recognized.

Mr. 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 April 3, 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 Jacksonville FL at the Aloft Tapestry Park. 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  
Andrew Clark  
Lewis "Lew" Hall  
Powell Helm  
Ken Jones  
Richard "Dick" Mueller

**ABSENT:**

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:**

Clark Jennings, Board Legal Advisor  
Anthony Miller, Assistant Director  
LaTonya Bryant, Department Staff  
Linje Rivers, Department Counsel  
Mary K Surles, Department Counsel  
Jasmin Richardson, Department Staff  
Dianna Patterson, Department Staff

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

**2. Action on the Minutes**

**A. March 6, 2014**

**MOTION:** Mr. Dick Mueller moved to adopt the minutes of the meeting. Mr. Powell Helm seconded the motion, which passed unanimously.

**3. Disciplinary Proceedings**

**A. Settlement Stipulation(s)**

**(1) Probable Cause Panel A**

Ms. Mary K Surles stated the Panel members involved in the following Probable Cause Panel A cases were Mr. Keenan Knopke, Mr. Justin Baxley and Ms. Nancy Hubbell.

Mr. Keenan Knopke recused himself for Items (a) – (c) as he served on Probable Cause Panel A.

**(a) Holmes, Deliria (F044909): Case No. 133746-13-FC Division #ATN-19177**

Ms. Mary K Surles stated that the Department's Administrative Complaint filed on June 20, 2013 alleges that the Respondent allowed the body of Mr. Robert Suter to be maintained over a 24 hour period without being embalmed or refrigerated and allowed unidentified human remains, viscera, to be placed in the same alternative cremation container of Mr. Suter's body, in violation of ss. 497.386(2), 497.386(4), 497.152(1)(a) and 497.152(b), F.S. The Settlement Stipulation for Consent Order before the Board today requires Ms. Deliria Holmes as the Respondent in this matter pay an administrative fine in the amount of \$5000 and \$250 in costs, in accordance with the installment plan identified in the Settlement Stipulation for Consent Order. The Respondent's funeral director and embalmer license will be suspended for six (6) months to be followed by one (1) year probation; during which time Ms. Deliria Holmes will not be able to practice any funeral directing or embalming while her funeral director and embalmer license is suspended. Neither the suspension period nor the probationary period will have the possibility of early termination.

Mr. John Rudolph, representing the Respondent, stated that Ms. Holmes would be permitted to serve as a funeral director during the probation but not a Funeral Director in Charge.

Ms. Surles concurred.

The Chair requested clarification.

Ms. Surles stated that during the suspension time, the Respondent would not be able to practice any funeral directing or embalming. The six (6) month suspension is followed by a one (1) probationary period. During that time, the Respondent would be able to be a funeral director but not a funeral director in charge. It is now appropriate for the Board to entertain a motion to accept the Settlement Stipulation for Consent Order as discipline in this matter.

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

Mr. Lew Hall stated that the Board has had an issue in the past with this same firm concerning disposal of human viscera. Mr. Hall questioned why the Board is being lead to believe that in six (6) months this problem would be corrected.

Mr. Rudolph stated that after looking at that first case and looking at the law that was in place, Mr. Holmes should not have been charged criminally but that is another issue. To answer Mr. Hall's question, the viscera was mistakenly there and was retrieved the same day, so it was not a way to try and cremate viscera that belonged to another body.

Ms. Surles stated that Ms. Holmes license is being discussed so it may be appropriate to address this during the discussion of the establishment license.

Mr. Hall questioned whether Ms. Holmes is the FDIC.

Ms. Surles concurred.

***(b) Holmes Funeral Directors (F041651): Case No. 133745-13-FC Division #ATN-19177***

Ms. Mary K Surles stated that on June 20, 2013 the Department filed an Administrative Complaint alleging that the Respondent, Holmes Funeral Directors, maintained the body of Mr. Robert Suter over a 24 hour period without being embalmed or refrigerated and allowed unidentified human remains, viscera, to be placed in the same alternative cremation container of Mr. Suter's body, in violation of ss. 497.386(2), 497.386(4), 497.152(1)(a) and 497.152(1)(b), F.S. The Settlement Stipulation for Consent Order before the Board today requires Holmes Funeral Directors as the Respondent in this matter pay an administrative fine in the amount of \$5000 and \$250 in costs, in accordance with the installment plan identified in the Settlement Stipulation for Consent Order. The Respondent's funeral establishment license will be placed on probation for a period of two (2) years and be required to file with the Department accurate and complete bodies handled reports, obtain accurate authorizations for embalming and ensure that viscera is not placed with a separate body to which the viscera does not belong and Respondent's probation is without the possibility of early termination. It is now appropriate for the Board to entertain a motion to accept the Settlement Stipulation for Consent Order as discipline in this matter.

Mr. Hall posed the same question for counsel regarding the establishment. Mr. Hall questioned what assurance the Board has if this establishment continues to let this happen in the future.

Mr. Rudolph stated that it was a mistake that has been corrected by the establishment. This was the viscera of a young boy who had been killed in an accident. The bag was placed outside of his little casket and the person who carried Mr. Suter's body to the crematory mistakenly thought that was his viscera. When the establishment was notified by Oakridge they immediately sent someone over who picked up the viscera and took it back. I do not see this as an intent to try to cremate viscera that belongs to someone else.

Mr. Hall stated that given the past history one would have to assume that was the intent and the fact that the body was un-embalmed as long as it was prior to being taken to the crematory and all of the other issues one would have to allude to that.

Mr. Rudolph stated that the body was embalmed within 24 hours.

Mr. Hall stated that was disputed in the facts as well.

Mr. Andrew Clark questioned whether the establishment has standard practices on the treatment of viscera.

Mr. Rudolph stated that the viscera were outside of the body bag and that was the way it was delivered by the funeral home. When they retrieved the viscera it was placed into the casket of the little boy and he was buried.

Mr. Clark questioned whether the standard practice is to keep the viscera away from the decedent.

Mr. Rudolph answered yes.

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

Mr. Rudolph stated that this was Ms. Surles' last case in front of the Board. Mr. Rudolph added that he would miss practicing against Ms. Surles as she has been moved to another Division within the Department. The Board is losing a wonderful person.

***(c) Noble, Ronald (F046246): Case No. 134081-13-FC; Division #ATN-17635***

This item was withdrawn from the Agenda.

***(2) Probable Cause Panel B***

Mr. Jean Anderson recused herself for Items (a) – (f) as she served on Probable Cause Panel B.

Mr. Linje Rivers stated that all of the cases are related so the facts will be the same. Mr. Rivers requested that the Board consider each case separately during the settlement proposal phase.

*(a) Baldwin Brothers Memorial Care Services, Inc (F041940): Case No. 141482; Division #ATN-20662*

Mr. Rivers stated that the Division conducted an investigation into the practices and procedures at Baldwin Brothers Memorial Care Services, Inc. During this investigation it was determined that Ruth Yeats failed to obtain the proper medical examiner authorization for a deceased body for cremation at Tri-City Crematories. Before a body is released for cremation proper authorization from the Medical Examiner must be obtained. All Licensees in these cases failed to ensure that the proper authorization was obtained. The Licensee in this case has agreed to pay an administrative fine of \$1500. The terms of the settlement are reasonable under the facts and circumstances and the Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Clark Jennings stated that since all the cases are related and all of the facts are the same for (2)(a) – (f) then a general discussion could be had regarding all of these cases but a separate motion and vote on each of the cases would be required. Mr. Jennings questioned whether Ms. Wiener had a problem with that format.

Ms. Wendy Wiener, representing the Respondents, stated that she did not have a problem with that format.

Mr. Jennings questioned whether Ms. Wiener's clients are present.

Ms. Wiener responded that Ms. Ruth Ann Yeats and Mr. Skip Knopke are present. Mr. S Knopke is President of Baldwin Brothers Memorial Care Services.

Mr. Jennings questioned whether Ms. Wiener anticipates that her clients would be speaking today.

Ms. Wiener stated that it is possible because there may be questions that are addressed to them so they should probably be sworn in.

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

Mr. Raymond Chester "Skip" Knopke, Jr answered, "I do."

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

Ms. Ruth Ann Yeats answered, "I do."

Mr. K Knopke, Board Vice Chair, stated that while Mr. S Knopke is his brother that is not my issue. My issue in this case is the level of penalty being imposed based upon a self-reported incident that occurred. I am not disputing that they did not have the cremation authorization from the Medical Examiner but the fact that we have a firm that is trying to do the right thing; they made a mistake they contacted their attorney who immediately went to the Division office and reported. They did not dispute that they made the mistake or impede the investigation or anything like that yet the firm, Ms. Yeats and Mr. Jimmy Baldwin are being fined \$5000 for being a "good guy." The crematory on the other hand is doing the exact same thing. The total on this thing is \$9500 plus counsel. If that is what this Board wants to do for a firm that is doing the right thing in that they are self-reporting and the fact that the consumer was never involved or harmed that is fine but I want the industry to understand that the bar for being a "good guy" has now been raised and set to a pretty expensive standard. If that is where we want to be then that is fine but when we have discipline cases like the previous case, I would think that our penalties going forward would be much higher much more strict and much more punishable. That is where my issue is with this case. Not that they did something wrong because that is factual. Not that my brother should get away with something because that is

not fair and it is not right and he should not but the penalty for this is way out of line, in my opinion, for a firm that has self-reported and everyone involved has cooperated.

Ms. Wiener stated that they did self-report on the matter understanding the gravity of the situation and we are certainly happy to address the issues.

Mr. Hall agreed with Mr. K Knopke. Mr. Hall stated that the previous case, which he thought was grievous and should have resulted in revocation, but when you compare the two (2) and the fines are almost identical there is no comparison. This was a human error. We are human and we will make mistakes. There was no deception involved. Mr. Hall questioned whether it is possible that Licensees not be allowed to print a permit until that ME number has been approved for a cremation in the future.

Mr. Jones, speaking for the Department of Health and Vital Statistics, stated that he would be glad to look at it. Mr. Jones added that he was not sure that would be the way to handle it but if they determine what the concern is and how the industry wants the permit to work, then he would have staff would look into it. Mr. Jones questioned whether this was reported by the Medical Examiner.

Ms. Wiener responded that she did not know whether it was ever reported by the Medical Examiner. As soon as the Licensee determined that it had made an error they contacted me and I contacted the Division. Then there were subsequent meetings with the Division with full cooperation as Mr. K Knopke has stated. One of the concerns I think that we are hearing is the global amount of these fines. This was a single incident with discipline spread out over a number of Licensees but it does add up to be a very significant fine in the case where we did come forward immediately. I do not know whether the Medical Examiner ever caught up with it but that was not the impetus for the self-report was any interactions with the Medical Examiner.

Mr. Helm questioned whether J.P.'s, the daughter of L.E.R., arrangements were for cremation.

Ms. Wiener concurred. It was not as though this was not what the family wanted. It was a technical error.

Mr. Shropshire stated that he can confirm that Ms. Wiener did call him directly to self-report this and that she and her client were very cooperative. Mr. Shropshire suggested that the Board have among their options are they could motion to approve or motion to reject and make a counter-stipulation of some lesser fine amount.

The Chair questioned whether there are any other options besides those two (2).

Ms. Wiener stated that the Board could direct that the case be dismissed in its entirety.

Mr. Helm questioned whether Ms. Wiener represents all six (6) Respondents and is able to speak for them.

Ms. Wiener stated that she can speak for all six (6).

Mr. Jennings stated that the Board could accept the stipulation, reject the stipulation and dismiss the case, or reject the stipulation and modify the disposition up or down. Mr. Jennings noted that whatever modification the Board did propose would require an agreement by the parties which included the Department. The Department would have to agree with the modified terms if the Board wishes to reduce the penalty or disposition. The Board has a variety of options.

Mr. Helm questioned the variation in the fine amounts.

Mr. Rivers stated that the Department felt that the individuals had more responsibility to check the paperwork to ensure that everything was filled out correctly so that when it came time to cremate the body all the papers were in order. Somewhere along that way someone did not fulfill their task and responsibility.

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

**MOTION:** Mr. Helm moved for a fine in the amount of \$500. Mr. Jones seconded the motion, which passed unanimously.

Mr. Jennings stated that it would probably be appropriate to ask if Ms. Wiener, on behalf of her client, if her client would agree to that offer.

Ms. Wiener stated that the term is agreed to.

**(b) Baldwin, James (F043616): Case No. 141490-13-FC; Division #ATN-20662**

Mr. Rivers stated that this is the Funeral Director in Charge of Baldwin Brothers Memorial Care Services. The Department has proposed an administrative fine of \$1000. The terms of the settlement are reasonable under the facts and circumstances and the Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

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

**MOTION:** Mr. Mueller moved for a fine in the amount of \$500. Mr. Hall seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent agrees to the offer.

Ms. Wiener stated that the term is agreed to.

**(c) Meyers, Barry E. (F056714): Case No. 141496-13-FC; Division #ATN-20662**

Mr. Rivers stated that Mr. Barry Meyers was the direct disposer that performed the cremation at Tri-City Diversified Services. The Department has proposed an administrative fine of \$2000. The terms of the settlement are reasonable under the facts and circumstances and the Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Mueller questioned whether these businesses are related and if they also self-reported.

Ms. Wiener responded that the self-report was on behalf of both of the businesses. There is some common ownership at an upper level.

Mr. Helm questioned the amount of the fine.

Mr. Rivers stated that Mr. Meyers actually performed the cremation of the body so he was required to ensure that all the paperwork was in order prior to initiating the cremation process.

**MOTION:** Mr. K Knopke moved to reject the Settlement Stipulation as recommended by the Department. Mr. Mueller seconded the motion, which passed unanimously.

**MOTION:** Mr. Helm moved for a fine in the amount of \$1000. Mr. Hall seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent agrees to the offer.

Ms. Wiener stated that the term is agreed to.

**(d) Tri-City Diversified Services, Inc. (F040567): Case No. 141495-13-FC; Division #ATN-20662**

Mr. Rivers stated that Tri-City Diversified Services is the cinerator facility that performed the cremation of the deceased body. The Department has proposed an administrative fine of \$1500. The terms of the settlement are reasonable under the facts and circumstances and the Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

The Chair questioned whether Mr. Meyers was an employee of Tri-City Diversified Services.

Mr. Rivers concurred.

**MOTION:** Mr. K Knopke moved to reject the Settlement Stipulation as recommended by the Department. Mr. Mueller seconded the motion, which passed unanimously.

**MOTION:** Mr. K Knopke moved for a fine in the amount of \$750. Mr. Mueller seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent agrees to the offer.

Ms. Wiener stated that the term is agreed to.

*(e) Woodward, David (F028187): Case No. 141498-13-FC; Division #ATN-20662*

Mr. Rivers stated that Mr. David Woodward is the Direct Disposer in Charge at Tri-City Diversified Services. The Department has proposed an administrative fine of \$1000. The terms of the settlement are reasonable under the facts and circumstances and the Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

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

**MOTION:** Mr. Helm moved for a fine in the amount of \$500. Mr. Mueller seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent agrees to the offer.

Ms. Wiener stated that the term is agreed to.

*(f) Yeats, Ruth (F047012): Case No. 141487-13-FC; Division #ATN-20662*

Mr. Rivers stated that Ms. Ruth Yeats is the funeral director at Baldwin Brothers Memorial Care Services. Ms. Yeats received the cremation authorization from the Medical Examiner but misread it as it was not filled out properly so they did not give authorization. Ms. Yeats forwarded the paperwork on under the assumption that the cremation had been authorized when it was not. The Department has proposed an administrative fine of \$2500. The terms of the settlement are reasonable under the facts and circumstances and the Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

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

**MOTION:** Mr. Mueller moved for a fine in the amount of \$500. The motion failed due to the lack of a second.

Mr. Helm questioned the amount of the fine.

Mr. Rivers stated that this all started with Ms. Yeats. Had Ms. Yeats not misread or misinterpreted the actual email, this would not have started. This is the catalyst that started the entire process. While the Department applauds Ms. Yeats for self-reporting the fact remains that even a simple mistake could have turned into a very large mistake. A slap on the wrist of \$500 does not have the deterrent effect that needs to be implemented to ensure that accidents like this do not happen in the future.

Mr. Clark stated that the last three (3) or four (4) cases have proven that the Board really values that self-reporting aspect. Mr. Clark questioned whether the Department took that into consideration when they came up with suggested fine.



Mr. Rivers stated that the Department did consider that but in this case the Division and the Department had to consider whether or not it was just a simple mistake or gross negligence. In this case there was no indication that the emails received could have been misread or misinterpreted as the email indicated that the cremation was not authorized and there was more paperwork that needed to be filed in order for the cremation authorization to be approved. That was considered in the deliberations and the actual proposal to opposing counsel. Please note that Ms. Yeats did accept the \$2500 fine.

Mr. Jones stated that Mr. Rivers indicated that the Medical Examiner asked for additional information and they denied the cremation.

Mr. Rivers stated that the emails indicate that the cremation authorization was not approved at that time.

Ms. Wiener stated that it was approved within hours after the situation had actually occurred.

Mr. Jones questioned whether the cremation occurred prior to receipt of the approval.

Ms. Wiener suggested that Ms. Yeats address this issue since the question has come up about the circumstances.

Ms. Yeats stated that the cremation did occur prior to receipt of the approval.

Ms. Wiener stated that Mr. Hall had asked a question also which Mr. Rivers answered. Ms. Wiener requested to address that question because Mr. Clark and Mr. Hall had a question that was not actually fully addressed by Mr. Rivers.

Mr. Clark stated that he questioned whether the Mr. Rivers considered the self-reporting aspect in his recommendation regarding the fine.

Mr. Rivers stated that the Department did.

Ms. Wiener stated that there was some additional information provided without an answer that does not give the full story of why Ms. Yeats thought that the email she received was the authorization and I can have Ms. Yeats address that if it pleases the Board because it does go to the distinction between gross negligence and what we would consider to be a simple human error.

Ms. Yeats stated that when receiving death certificates from the EDRS system it is possible to receive up to four (4) or more emails from the system in this case. First, we did send it to the doctor and we received an email back from EDRS indicating that the doctor had signed the death certificate allowing us to move forward in placing the cause of death into the death certificate. Then the next step in a normal case would be an email from the EDRS system stating that the Medical Examiner has given approval as well as an email from EDRS stating that the State has certified the death certificate. In this case, we received an email from the EDRS system stating that the death certificate was late and you continue to receive these emails when a death certificate is late and they all start out exactly the same. So in this case we had received numerous EDRS email notifications on this person and we knew that we had received verbal notification from the Medical Examiner that the case had been closed and they would be issuing the approval any minute. So when I saw that come through with the name indicating that the death certificate was late, I assumed it was the next step which was the approval.

Ms. Wiener questioned whether that was based on Ms. Yeats telephone communication with the Medical Examiner's office.

Ms. Yeats concurred. Ms. Yeats stated it was a human error, a mistake.

**2<sup>nd</sup> MOTION:** Mr. Jones moved for a fine in the amount of \$1000. Mr. Mueller seconded the motion, which passed unanimously.

The Chair questioned whether the Respondent agrees to the offer.

Ms. Wiener stated that the term is agreed to.

#### **4. Application(s) for Preneed Sales Agent**



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

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

**B. Recommended for Approval without Conditions (Criminal History)**

**(1) Seufert, Benjamin F (Appointing Entity: SCI Funeral Services of Florida, Inc.)**

On February 12, 2014, the Department received an application from Mr. Seufert. Mr. Seufert answered “Yes” to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was confirmed, Mr. Seufert did have one criminal infraction that required disclosing.

Mr. Seufert pled nolo contendere to a criminal traffic infraction in June 8, 2011, and his sentence included probation, community service, DUI school, installation of ignition interlock device, court cost and fines, which occurred in Pinellas County, Florida.. Upon request he disclosed all required information.

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

The Chair disclosed his affiliation with SCI Funeral Services of Florida, Inc. and stated that it would not affect his ability to remain fair and impartial on any of the items presented on today’s agenda.

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

**5. Application(s) for Continuing Education Course Approval**

**A. Recommended for Approval without Conditions – Addendum B**

- (1) *Academy Of Graduate Embalmers of GA #13609*
- (2) *Didasko Communications, LLC #15808*
- (3) *Florida Cemetery, Cremation & Funeral Association #75*
- (4) *Independent Funeral Directors of Florida Inc #135*
- (5) *International Order of the Golden Rule #2201*
- (6) *M.K. Jones & Associates, Inc #9605*
- (7) *National Funeral Directors and Morticians Association, Inc #15608*
- (8) *National Funeral Directors Association #136*

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

**MOTION:** Mr. Mueller moved to approve the application(s). Mr. Hall seconded the motion, which passed unanimously.

**6. Application(s) for Florida Law and Rules Examination**

**A. Informational Item (License Issued without Conditions) – Addendum C**

- (1) *Funeral Director – by Internship and Exam*
  - (a) *Hall, Jaynee E*
- (2) *Funeral Director and Embalmer – by Endorsement*
  - (a) *Roberson, Frances A*
- (3) *Funeral Director and Embalmer – by Internship and Exam*
  - (a) *King, Susan D*
  - (b) *Maignan, Nadine I*
  - (c) *Mehu, Laura*
  - (d) *Spurlock, Tammy*

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

**B. Recommended for Approval without Conditions (Criminal History)**  
**(1) Funeral Director and Embalmer by Internship and Exam**  
**(a) Chambery, Paul L**

The Applicant submitted an application for a Concurrent Intern license on January 31, 2014. The application was complete when submitted. The Applicant has a criminal history.

In 1998, Mr. Chambery was a Corrections Officer and was accused of sexual battery by a female inmate. He was subsequently found guilty of sexual battery in Flagler County Circuit Court. He was originally sentenced to 8 years incarceration; however, that sentence was subsequently set aside, and he was re-sentenced to 1 year of community control, followed by 2 years probation. Applicant advises that the reduced sentence was due to a finding of ineffective counsel in the original trial. Applicant makes several other comments concerning the original criminal proceedings against him (see his written statements, infra).

The Applicant was previously granted an Embalmer Apprentice license at the August 4, 2011 Board meeting. He appeared at that Board meeting as was questioned by the Board. The apprentice license application was approved, subject to probation for 24 months. The Board packet and a copy of the minutes are included.

The Applicant has provided a letter dated March 25, 2014, from the funeral establishment where he is currently employed (Pinello Funeral Home), "strongly" recommending that this intern license application be approved. He also includes a letter of recommendation from Clymer Funeral Home.

The Division is recommending approval subject the terms & conditions of the agreed upon stipulation for license (24 month probation).

The Chair questioned whether the Applicant wishes to address the Board.

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

Mr. Paul L Chambery answered, "I do."

The Chair questioned whether Mr. Chambery would like to address the Board or just answer questions.

Mr. Chambery stated that he would answer any questions the Board may have. Mr. Chambery added that he previously appeared before the Board for his embalmer apprenticeship which he completed under Joseph Pinello, who is present for support. I continued to work hard, went back to school, completed at Florida State College under Professor Dean and passed both sections of the exam. I worked real hard to put this injustice that was done to me behind me and my wife has supported me, as well as Mr. Pinello and Professor Dean. I have come a long way and have gotten my life back together. I currently work for Mr. Clymer and I also work with Mr. Pinello. Mr. Joe Pinello is present today.

The Chair stated that Mr. Pinello submitted a letter to the Board on Mr. Chambery's behalf.

Mr. Chambery stated that Professor Dean is also present.

**MOTION:** Mr. Helm moved to approve the application subject to the terms and conditions of the stipulation for licensure which calls for 24 months probation. Ms. Anderson seconded the motion, which passed unanimously.

**C. Recommended for Approval with Conditions (Criminal History)**  
**(1) Funeral Director and Embalmer by Internship and Exam**  
**(a) Richard Jr., Samuel E**

The Applicant submitted an application for a Funeral Director and Embalmer license on September 11, 2013. The application was incomplete at the time of submission. All deficient items were returned on February 28, 2014. The Applicant submitted a fingerprint card, which processing came back with criminal history disclosed on a previous application.

In or about June 2005, in St. Lucie County Circuit Court, case number 05-002668, Mr. Richard pled guilty to possession of marijuana, and possession of narcotics paraphernalia.

In or about January 2006, in St. Lucie County Circuit Court, case number 03-16489, Mr. Richard pled guilty to carrying a concealed weapon, and possession of cocaine. Also in January 2006, in St. Lucie County Circuit Court, case number 06-C-011339, Mr. Richard pled guilty to possession of cocaine, and trafficking in cocaine, and conspiracy to traffic in cocaine.

In October 2009 Mr. Richard submitted an Embalmer Apprentice application. The embalmer apprentice application came before the Board at its April 2010 Board meeting (copy of April 2010 Board meeting materials included herein). The FCCS Division recommended denial of the application. Mr. Richard attended the Board meeting, and was questioned by the Board (see attached minutes). His application included a letter of recommendation from a licensed funeral director and a letter of recommendation from his counselor at the residential treatment program he attended. On October 29, 2009, the Board approved the application.

In July 2009 Mr. Richard applied for a concurrent intern license. That application came before the Board at the October 2012 Board meeting. Mr. Richard appeared at the October 2012 Board meeting and was questioned by the Board. The Board, weighing all the pertinent factors, determined to the effect that he had been rehabilitated, and the Board approved his concurrent intern license application, subject to one year probation.

Mr. Richard has now applied to take the Law and Rules exam, upon passing, which he will be licensed as a funeral director & embalmer. The funeral establishment where he performed his internship, knowing of his criminal record, recommends approval of the current license application.

Based on the Board's prior approval of his concurrent intern license, the Division recommends approval of the present application subject to terms of the agreed upon 2 year probation stipulation.

Mr. Knopke questioned the Division's recommendation for two (2) years probation since the Applicant was previously approved for one (1) year probation.

Mr. Shropshire stated that the Applicant was approved for one (1) year probation because the concurrent internship, by definition, can only be for one (1) year.

Mr. Rudolph, representing the Applicant, stated that the issue he has is that Mr. Richard cannot own his funeral establishment and he cannot be an FDIC for the two (2) years. I understand the probation to ensure that the Applicant does not go back and start selling drugs again but I cannot understand why the Board would not allow him to own his own facility or be an FDIC.

Mr. Shropshire stated that it is for the protection of the public. The two (2) years is certainly warranted to see that Mr. Richard continues to behave. The Division as an actual matter would like to recommend denial but we give great way to the Board as the Board has considered this before. So the Division does not persist in denial where the Board has made its judgment in the matter but we believe that Mr. Richard probably should not be licensed and if he is licensed at least a two (2) year probation should be imposed because the Applicant is a danger to the public in our view until he very clearly demonstrates that he is not.

Mr. Rudolph stated that Mr. Richard has been on probation for three (3) years now.

Mr. Samuel Richard concurred and stated that it was two (2) years probation for the embalmer and one (1) year for the internship.

The Chair requested that Mr. Richard be sworn in.

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

Mr. Samuel Edward Richard Jr. answered, "I do. The probationary period for the embalmer apprenticeship was for 24-months and after that the funeral director and embalmer internship was for one (1) year."

Mr. Helm questioned whether Mr. Richard has intentions to own his own funeral home in the near future.

Mr. Richard stated that he does.

Mr. Rudolph added that Mr. Richard would like to but cannot with the stipulation. I know that Mr. Richard signed the stipulation and there is nothing we can do to change that but I wanted to raise a question about it, especially with someone who has turned his life around, who has these people that are standing behind him, who served two (2) years of probation followed by a third year of probation and successfully passed everything. I think the laws for licensing a funeral director and embalmer should be strict enough as they are to protect the people if they pass and if they get their license. I understand when you have a criminal background you have to something and I am not saying you should not do anything, but I was just wondering why Mr. Richard could not own a funeral home and be an FDIC.

The Chair questioned where Mr. Richard is currently working.

Mr. Richard responded that he currently works at Charles E Lewis Funeral Home in Winter Haven.

The Chair questioned how long Mr. Richard has been working there.

Mr. Richard stated that he has been there for the duration of his embalmer apprenticeship license as well as the probationary period for the funeral director and embalmer internship, three (3) years.

Mr. Helm question whether the probation prevents Mr. Richard from owning his own funeral home and serving as an FDIC.

Mr. Shropshire stated that that is correct pursuant to the terms of the stipulation for licensure signed by Mr. Richard.

**MOTION:** Mr. Helm moved to approve the application subject to the terms and conditions of the stipulation for licensure which calls for 24 months probation. Mr. Jones seconded the motion, which passed unanimously.

**7. Application(s) for Internship**

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

**(1) Funeral Director**

**(a) Snow, Thomas L (F078045)**

**(b) Warden, Belinda J (F078077)**

**(2) Funeral Director and Embalmer**

**(a) Fernandez, Jennifer P (F078118)**

**(b) Molina, Vanessa D (F078121)**

**(c) Peele III, Kenneth (F078096)**

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**

**(a) Jay, Ahmadd**

An application for a Concurrent Intern license was submitted on February 12, 2014. The application was incomplete at the time of submission. All deficient information was returned on March 10, 2014.

Applicant has a criminal history. In 2004 Mr. Jay pled no contest to a third degree felony of resisting arrest with violence in 2004. He advises that the incident occurred during Spring break in Daytona Beach. The police stopped the car he was riding in; he got out, was searched by the police, and the situation escalated, ending with the police tasing him. The Mr. Jay served 30 days in jail and was placed on one year probation.

The Division is recommending approval subject to the condition that the Applicant be placed on one year probation according to the enclosed Stipulation for Licensure.

The Chair questioned whether there was anyone present representing the Applicant. There was no response.

**MOTION:** Mr. Mueller moved to approve the application subject to the terms and conditions of the stipulation for licensure which calls for 24 months probation. Mr. Knopke seconded the motion, which passed unanimously.

*C. Recommended for Denial (Criminal History)*

*(1) Funeral Director and Embalmer*

*(a) Castillo, Gloria Y*

An application for a Concurrent Intern license was submitted on January 27, 2014. The application was complete at the time of submission. The Applicant submitted a fingerprint card, which processing came back with criminal history. Ms. Gloria Castillo pled no contest to Trafficking Cocaine and Conspiracy to Traffic Cocaine in 1989 and was released from prison in 1992. She was placed on probation for ten years. Ms. Castillo's probation was terminated in 2002.

The Division is recommending denial.

\*The Board was presented with documents prepared by the Applicant.

The Chair questioned whether Ms. Castillo would like to address the Board.

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

Ms. Gloria Castillo answered, "I do. I stand before the Board this morning and what you see is change and I am a product of change. The first document in my presentation shows where I presented ten (10) years of probation. Yes I was young, yes I made mistakes. I was a 23 year old young lady that made bad choices and I paid for those choices, but with the ten (10) years probation, at the end of the probation, Hillsboro County never had anywhere that they were aware of who completed ten (10) years probation. So in order to get me back to the original court, I was violated so that is why you see the charges today. Beyond that, I have been married for 23 years, I have two (2) children and I have been very active in the community. I am not a stranger to the funeral industry. My daughter was a funeral home owner and I was the office manager. Through that time I met with families to assist the funeral director in setting up their arrangements, greeting them, as well as filling out death certificates and attending services. I am well known in the community through church leadership organizations and I currently am a state officer for Progressive M&E Baptist State Convention of Florida. I also have recommendations from Mr. Gregory B Massey, Eastside Funeral Home, where my internship will take place. Mr. Massey is the one that inspired me and insisted that I attend school and with that I took two (2) years out of my life and attended Gupton Jones College of Funeral Services in Atlanta in 2011 and I graduated August 2013. I have passed the National Board Exam, both Arts and Sciences so I ask today that you give me a chance and allow me to begin my internship and do not hold what took place in 1989 against me."

The Chair questioned the approximate number of families Ms. Castillo has waited on and made funeral arrangements for in her funeral career.

Ms. Castillo stated that she has not made any funeral arrangements as she was the office manager for her daughter's funeral home, Integrity Funeral Services. The funeral home was opened in October 2009 and unfortunately there was a fire in February 2011. During that time, the funeral home serviced 39 families. I have not made arrangements with any families. I

was there to greet them, assist Mr. Massey or the funeral director that was meeting with the family and provide them with water or tissues and direct them to the conference room and ease their grief during that time.

Mr. Knopke questioned whether Ms. Castillo spent seven (7) years in jail followed by ten (10) years probation.

Ms. Castillo stated that she was sentenced to seventeen (17) years, (10) years probation and seven (7) years with the Florida Department of Corrections.

Mr. Knopke questioned whether that was terminated in 1992.

Ms. Castillo stated that the seven (7) years was three (3) years mandatory and that was terminated. After the sentencing, then the probation began. The probation was ended April 2002. The original charge was January 4, 1989.

Mr. Knopke questioned whether Ms. Castillo has had any issue since the probation terminated in 2002.

Ms. Castillo stated that she has not had any issues.

**MOTION:** Mr. Knopke moved to approve the application subject to the terms and conditions of the stipulation for licensure which calls for twelve (12) month probation and the Applicant must reappear before the Board at the end of the probation. Mr. Mueller seconded the motion, which one (1) dissenting vote.

Mr. Knopke requested that Ms. Castillo not disappoint the Board.

Ms. Castillo stated that she would not and would see the Board in one (1) year.

8. **Application(s) for Embalmer Apprenticeship**
  - A. **Informational Item (Licenses issued without Conditions) – Addendum E**
    - (1) *Harbison, Leanne E (F078066)*
    - (2) *Hortman, Matthew W (F078219)*
    - (3) *Kirkum, Mark E (F078044)*
    - (4) *Spangler, Shane (F078041)*
    - (5) *Warden, Belinda J (F078077)*

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

9. **Application(s) for Training Facility**
  - A. **Informational Item (Licenses Issued without Conditions) – Addendum F**
    - (1) *Eric A Brown & Son Funeral Home Inc (F053089) (Jasper) (67-EM; 47-FD)*

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. **Notification(s) of Change of Location**
  - A. **Informational Item – Addendum G**
    - (1) *Integrity Removal Services LLC d/b/a Integrity Cremations (F074103) (Jacksonville)*

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

11. **Consumer Protection Trust Fund Claims**
  - A. **Recommended for Approval without Conditions – Addendum H**

The Division recommends approval of the claim(s) for the amounts indicated on the Addendum.

**MOTION:** Mr. Mueller moved to approve the claim(s). Mr. Knopke seconded the motion, which passed unanimously.

**12. Application(s) for Change of Ownership (Legacy Funeral Holdings of Florida LLC)**

**A. Recommended for Approval with Conditions**

**(1) Funeral Establishments**

- (a) Legacy Funeral Holdings of Florida LLC d/b/a Carey Hand Colonial Funeral Home (Orlando)**
- (b) Legacy Funeral Holdings of Florida LLC d/b/a Carey-Hand Cox-Parker Funeral Home (Winter Park)**
- (c) Legacy Funeral Holdings of Florida LLC d/b/a Collison Carey Hand Funeral Home (Winter Garden)**

Legacy Funeral Holdings of Florida LLC submitted a Change of Ownership Application for the following funeral establishment locations.

As stated in the letter from Wendy Wiener, dated March 4, 2014, Legacy Funeral Holdings of Florida LLC will assume all existing preneed liabilities of the locations listed. 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.
- 8) That there be receipt by the Division, within 45 days of this Board meeting, proof of Fictitious Name Registration by Applicant with the Florida Department of State.
- 9) That the Petitions relating to continuation of training agency status be approved, so that the training agency status of said locations is continued under the new owners.

Mr. Knopke stated that Legacy Funeral Holdings of Florida LLC is a relatively new company with one (1) proponent, Michael Soper. For some of us at this table, we have never heard of Michael Soper. Mr. Knopke requested that Ms. Wiener provide the Board members with a brief background of her client, good, bad or indifferent. Mr. Knopke added that he did a Google search of Mr. Soper and found some wonderful, very positive things but you never know about the internet.

Ms. Wiener, representing the Applicant, stated that she would be happy to speak briefly about Legacy Funeral Holdings of Florida, LLC (Legacy) a newly formed entity that was formed to be the Licensee in the State of Florida. Legacy is part of the Legacy Group, a family of companies owned by Michael Soper. The group was formed in 1998 by Michael Soper and at that time he had some partners but he no longer has them. The group acquired its first funeral operation in 2001. It is based in Houston TX and is considered to be one of the largest, independently owned deathcare operations in the United States. They have most recently acquired 24 additional properties from the SCI/Alderwoods divestiture back when that occurred. They operate 68 deathcare operations in five (5) states and have no history of discipline in any of the states in which they operate. They have an excellent relationship and reputation with the regulators in each of the states in which they operate. They were recently successful in being a winning bidder for the Orlando divestiture relating from the SCI acquisition of Stewart and those are the applications that are before the Board today.



**MOTION:** Mr. Knopke moved to approve the application(s) subject to the condition(s) recommended by the Division. Mr. Clark seconded the motion, which passed unanimously.

- (2) *Acquire Control of an Existing Cemetery and Preneed Main License*
  - (a) *Legacy Funeral Holdings of Florida, LLC d/b/a Highland Memory Gardens (Apopka) (CEM)*
  - (b) *Legacy Funeral Holdings of Florida, LLC d/b/a Orlando Memorial Gardens (Apopka) (CEM)*
  - (c) *Legacy Funeral Holding of Florida LLC (Houston, TX) (PNL)*

Legacy Funeral Holdings of Florida, LLC (Legacy), herein submits 2 applications for Change of Control of an Existing Cemetery Company for the above named cemetery properties, an application for a preneed license, and 5 applications for preneed branch locations (please refer to Addendum I ), to operate under the Preneed Main License for Legacy, if approved. The cemetery companies and preneed branch locations being acquired are licensed as named at the above specified locations. The applications were received by the Division on March 4, 2014 and deficiencies were noted on the applications. All items were resolved as of March 19, 2014. A completed background check of all officers revealed no criminal history.

The change of control will be accomplished via an asset purchase agreement (please see attached letter from attorney dated March 4, 2014), wherein Legacy will acquire all of the assets and liabilities for the above named cemetery and preneed locations from SCI Funeral Services of Florida, Inc. If these applications for change of control are approved, Legacy will operate the following 2 cemetery locations as above specified: Orlando Memorial Gardens (F039483) and Highland Memory Gardens (F077496). Additionally, Legacy is also acquiring a combination of these 2 cemetery and 3 funeral preneed branch locations that will operate under Legacy's Preneed Main License, if approved. The applications for change of ownership of the funeral establishment locations are also being presented at this Board teleconference meeting (please refer to Addendum I).

Legacy has represented through its attorney that "Legacy will assume all existing preneed liabilities of the locations being acquired." The care and maintenance trustee reports for CY 2012 are attached. The cemetery reports appear to be in line with the reported gross sales for CY 2012 for the listed properties being acquired.

The Applicant's financial statement as of March 4, 2014 reflects the following:

Required Net Worth	= \$	50,000
Reported Net Worth	= \$	50,000

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

- 1) Applicant Legacy will assume all existing preneed liabilities of the locations being acquired.
- 2) That closing occurs within 60 days of the date of this Board meeting, and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
- 3) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
- 4) Receipt by the Division within 75 days of this Board meeting, of a copy of the Asset Purchase Agreement, executed by all parties, and any and all amendments thereto, also fully executed.
- 5) That the Board approves the Applications for Change of Ownership for the related funeral establishment locations subject to the stated conditions also being presented at this Board meeting.

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

- (3) *Preneed Branch Office License – Addendum I*

The Division recommends approval of the application(s).

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

Ms. Wiener questioned whether the Board would be comfortable if you could extend up to two (2) 90-day extensions upon request regarding all Legacy applications in Item 12.

**MOTION:** Mr. Knopke moved to approve the agreement subject to the condition(s) recommended by the Division. Mr. Mueller seconded the motion, which passed unanimously.

**13. Application(s) for Change of Ownership (Stonemor FL Subsidiary LLC and StoneMor FL Subsidiary, LLC)**

**A. Recommended for Approval *with* Conditions**

**(1) Acquire Control of an Existing Cemetery**

- (a) StoneMor Florida, LLC d/b/a Arlington Park Cemetery (Jacksonville)**
- (b) StoneMor Florida, LLC d/b/a Forest Hills Memorial Park (Palm City)**
- (c) StoneMor Florida, LLC d/b/a Good Shepherd Memorial Gardens (Ocala)**

StoneMor Florida, LLC (StoneMor), herein submits 3 applications for Change of Control of an Existing Cemetery Company for the above named cemetery properties, and 8 applications for preneed branch locations (please refer to Addendum I), to operate under the Preneed Main License for StoneMor Florida Subsidiary, LLC (F038725). The cemetery companies and preneed branch locations being acquired are licensed as named at the named specified locations.

The applications were received by the Division on March 4, 2014 and no deficiencies were noted on the applications. A completed background check of all officers revealed no criminal history. The change of control will be accomplished via an asset purchase agreement (please see attached letter from attorney dated March 4, 2014), wherein StoneMor will acquire all of the assets and liabilities for the above named cemetery and preneed locations from SCI Funeral Services of Florida, Inc. If these applications for change of control are approved, StoneMor will operate the following 3 cemetery locations as above specified: Arlington Park Cemetery (F077497), Forest Hills Memorial Park & Crematory – Palm City Chapel (F077502), and Good Shepherd Memorial Gardens (F077490). In addition, StoneMor is acquiring a combination of the 3 named cemetery locations as well as 5 funeral preneed branch locations that will operate under StoneMor's Preneed Main License #F038725, if approved. The applications for change of ownership of the funeral establishment locations are also being presented at this Board meeting (please refer to Addendum I).

StoneMor has represented through its attorney that "StoneMor will assume all existing preneed liabilities of the locations being acquired." The care and maintenance trustee reports for CY 2012 are attached. The cemetery reports appear to be in line with the reported gross sales for CY 2012 for the listed properties being acquired.

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

- 1) StoneMor will assume all existing preneed liabilities of the locations being acquired.
- 2) That closing occurs within 60 days of the date of this Board meeting, and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
- 3) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
- 4) Receipt by the Division within 75 days of this Board meeting, of a copy of the Asset Purchase Agreement, executed by all parties, and any and all amendments thereto, also fully executed.
- 5) That the Board approves the Applications for Change of Ownership for the related funeral establishment locations subject to the stated conditions also being presented at this Board meeting.

**MOTION:** Mr. Jones moved to approve the application(s) subject to the condition(s) recommended by the Division. Mr. Knopke seconded the motion, which passed unanimously.

**(2) Cinerator Facility, Funeral Establishments and Training Establishments – Request to Waive Rule**

- (a) Stonemor Florida Subsidiary LLC d/b/a Roberts Crematory (Ocala) (CIN)**
- (b) Stonemor Florida Subsidiary LLC d/b/a Arlington Park Funeral Home (Jacksonville) (FUN)**
- (c) Stonemor Florida Subsidiary LLC dba Forest Hill Funeral Home–Palm City Chapel (Palm City) (FUN)**

- (d) Stonemor Florida Subsidiary LLC d/b/a Roberts Funeral Homes (Ocala) (FUN)*
- (e) Stonemor Florida Subsidiary LLC d/b/a Roberts Funeral Homes – Bruce Chapel East (Ocala) (FUN)*
- (f) Stonemor Florida Subsidiary LLC d/b/a Roberts Funeral Homes – Bruce Chapel West (Ocala) (FUN)*
- (g) Stonemor Florida Subsidiary LLC d/b/a Arlington Park Funeral Home (Jacksonville) (Training Est.)*
- (h) Stonemor Florida Subsidiary LLC d/b/a Forest Hill Funeral Home – Palm City Chapel (Palm City) (Training Est.)*
- (i) Stonemor Florida Subsidiary LLC d/b/a Roberts Funeral Homes (Ocala) (Training Est.)*

Stonemor Florida Subsidiary LLC submitted a Change of Ownership Application for the following funeral establishment locations and one Cinerator facility location. Three of the locations to be acquired are training agencies with interns in training. Applicant has also submitted herein requests (Petitions) that the training agency status of those two locations be continued and has been duly published in the Florida Administrative Register as of March 17, 2014.

As stated in the letter from Wendy Wiener, dated March 4, 2014, Stonemor Florida Subsidiary LLC will assume all existing preneed liabilities of the locations listed. All fingerprint information was returned without criminal history. The Division is recommending approval with conditions.

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.
- 8) That there be receipt by the Division, within 45 days of this Board meeting, proof of Fictitious Name Registration by Applicant with the Florida Department of State.
- 9) That the Petitions relating to continuation of training agency status be approved, so that the training agency status of said locations is continued under the new owners.

Mr. Knopke questioned whether the training agencies would receive credit at the new locations.

The Chair stated that the Division has filed the necessary petitions for that provision.

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

*(3) Preneed Branch Office License – Addendum I*

The Division recommends approval of the application(s).

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

*(4) Trust Transfer Request*

*(a) StoneMor Florida, LLC and StoneMor Florida Subsidiary, LLC (F038725)*

StoneMor seeks approval of certain proposed trust asset transfers, all as more specifically set forth in its attorney, Wendy Wiener's letter dated March 4, 2014.

Background

StoneMor is acquiring all of the assets and liabilities for the cemetery and preneed for the locations as indicated in Mrs. Wiener's letter, also presented at this Board meeting. (Please refer to Exhibit A) The funeral establishments and cemeteries are currently selling preneed and operating as branches under SCI Funeral Services of Florida, Inc. preneed main license (F019227) and StoneMor is assuming liability for the outstanding preneed liability. As a result of this acquisition, StoneMor is requesting to transfer all the preneed and cemetery care and maintenance trust accounts as listed on the attached Exhibit A, as below outlined.

Item 1) Proposed Preneed Trust Transfers (Attachment 1)

StoneMor seeks approval of transfer of trust assets as listed on the attached Exhibit 'A' of certain existing preneed trusts to Forethought Federal Savings Bank (currently known as ClearPoint Federal Bank & Trust) , as successor trustee (that is, the trusts that is **Attachment 1**, and included in **Exhibit A** hereto) wherein ClearPoint Federal Bank & Trust is or will be trustee, and will operate under the Forethought Federal Savings Bank Florida Preneed Master Trust for StoneMor Florida Subsidiary, LLC, StoneMor Florida, LLC (and Related Licensees), as more specifically set out in the letter from Mrs. Wiener, dated March 4, 2014.

Item 2) Proposed Cemetery Care and Maintenance Trust Transfers (Attachment 2)

StoneMor seeks approval of transfer of trust assets as listed on the attached Exhibit 'A' of certain existing cemetery care and maintenance trusts to Forethought Federal Savings Bank (currently known as ClearPoint Federal Bank & Trust), as successor trustee, (that is, the trusts that is **Attachment 2**, and included in **Exhibit A** hereto) wherein ClearPoint Federal Bank & Trust is or will be trustee, and will operate under the Forethought Federal Savings Bank Florida Perpetual Care Master Trust for StoneMor Florida Subsidiary, LLC, StoneMor Florida, LLC (and Related Licensees), as more specifically set out in the letter from Mrs. Wiener, dated March 4, 2014.

The Division is recommending approval subject to the condition(s) as set forth below:

- A) Approval of the proposed preneed trust transfers to operate under the approved Forethought Federal Savings Bank Florida Preneed Master Trust for StoneMor Florida Subsidiary, LLC, StoneMor Florida, LLC (and Related Licensees), as identified in Item 1 above.
- B) Approval of the proposed care and maintenance trust transfers to operate under the approved Forethought Federal Savings Bank Florida Perpetual Care Master Trust for StoneMor Florida Subsidiary, LLC, StoneMor Florida, LLC (and Related Licensees), as identified in Item 2 above.

Conditions recommended by FCCS Division:

- 1) That the representations of StoneMor, through its Attorney Wendy Wiener, as set forth in Mrs. Wiener's letter dated March 4, 2014 be deemed material to the Board's decisions herein.
- 2) That within 90 days of this Board meeting ClearPoint Federal Bank & Trust (ClearPoint) provide the FCCS Division (ATTN: LaShonda Morris), the effective date of the transfer and certifications, stated as following:
  - a) That ClearPoint provides a letter signed and dated by one of its officers, certifying that it meets one or more of the applicable criteria in s. 497.266(1), and s. 497.458(1)(b), to act as trustee of the trusts to be transferred to ClearPoint pursuant to Mrs. Wiener's letter dated March 4, 2014.
  - b) A letter from ClearPoint, signed and dated by one of its officers, stating:
    - That ClearPoint provides a certificate stating the dollar amount of trust assets being transferred as identified in "**Exhibit A**" under Attachments 1 and 2, respectively, as referenced in Mrs. Wiener's attached letter dated March 4, 2014.
    - That ClearPoint provides acknowledgement of receipt of the amount of trust assets being transferred as specified under the former trust, as identified in "**Exhibit A**" under Attachments 1 and 2, respectively, as referenced in Mrs. Wiener's attached letter dated March 4, 2014.
- 3) That the Board's executive director, for good cause shown, may extend the compliance time for the above specified conditions, an additional 90 days.

Ms. Wiener noticed that an extension on the period of time could be granted up to 90 days. Ms. Wiener requested that with regard to this set of applications all under Item 13 and actually the prior acquisitions for Legacy Funeral Holdings that that 90 day time period not necessarily be firmly established at this time. We are subject to Federal Trade Commission requirements for closing dates on these transactions. We actually anticipated these transactions to have started closing already but they have not so to some degree we are subject to the court's approval and so if we could eliminate that 90 day time period for an additional extension or maybe make it 180 days just in case. We have no control over the court system and how quickly these things move through the process.

The Chair questioned whether Ms. Wiener's request would apply to Legacy Funeral Holdings.

Ms. Wiener concurred and added it would apply to the StoneMor acquisition as well because it is the same thing. These are SCI/Stewart divestitures pursuant to FTC requirement and approval of the court system.

The Chair stated that the Board would have to revisit Legacy.

Ms. Wiener apologized for not catching that before.

Mr. Jones questioned how Ms. Wiener would keep the Division posted as to the status so that it is not an open extended time, if the Board approved her request.

Ms. Wiener stated that the Board will see in the Director's Report a request for Northstar, so we would do the same thing. We would make a formal request. We calendar on our internal system in my office when our time period is about to run and 15-20-30 days out we start communicating with the Division Director. This time the Division Director asked us to do that in a more formal way in the form of a letter, which you see, so we would do that in this case as well.

Mr. Jones questioned whether that is agreeable to the Department.

Mr. Shropshire answered, "Yes sir."

Mr. Knopke stated that he is not inclined to agree with Ms. Wiener. Mr. Knopke stated that he would rather Ms. Wiener send a letter if need be as she is approaching the 90 days. Reason being is that we have already established that as a procedure.

Ms. Wiener stated that she is not asking to be excused from sending the letter. If you read this carefully it could require that they come back and reapply if they did not meet that deadline and that is what I would be trying to avoid. We would certainly agree to request an extension if we needed to go beyond the original 60 days, another extension if we needed to go beyond the original 90. I just do not want to box us in to having to do another set of applications and fees if in fact we are hamstrung by nothing more than the federal court system.

Mr. Knopke stated that he has no problem with that approach.

Mr. Helm questioned whether the Division is clear on all of this.

Mr. Shropshire stated that the 90 days should just be understood to be changed to 180 days.

Ms. Wiener concurred and stated that she would be happy to calendar at that 90 day point. If we are not getting close, we can at least apprise the Department of what is happening.

Mr. Jones stated that he wanted to keep it at the 90 days to hold it as tight as possible and Ms. Wiener would report to the Division beyond the 90 days and the Division would determine how it was handled from there. I just did not want to give an open 180 days.

Ms. Wiener questioned whether the Board would be comfortable if you could extend up to two (2) 90-day extensions upon request.

Mr. Knopke and Mr. Jones agreed to this.

Mr. Shropshire stated that the Division is fine with it as well.

The Chair stated this is being considered for all of the StoneMor applications.

**MOTION:** Mr. Knopke moved to approve the agreement subject to the condition(s) recommended by the Division. Mr. Jones seconded the motion, which passed unanimously.

**14. Application(s) for Cinerator Facility**  
**A. Recommended for Approval with Conditions**  
**(1) Harper-Morris Chapel PA (Pensacola)**

An application for a Cinerator Facility was received on February 27, 2014. The application was incomplete when submitted. All deficient items were returned on March 17, 2014. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge for the facility will be Tanner Morris (F045396).

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 on-site inspection by a member of Division Staff. Mr. Knopke seconded the motion, which passed unanimously.

**(2) Baldwin Brothers Memorial Care Services Inc d/b/a Baldwin Brothers Cremation Society (Apopka)**

An application for a Cinerator Facility was received on February 12, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned with criminal history for one of the principals, Evans P. Baldwin. The Funeral Director in Charge for the establishment will be Richard Baldwin (F043216).

**Criminal History:**

Evans P Baldwin criminal history has been presented to the Board in 2010 when he was granted a preneed agent license, at the June 27, 2013 Board meeting when he applied for and was granted a Funeral Director Intern license and again at the July 11, 2013, October 3, 2013, November 7, 2013 and March 6, 2014 Board meetings when he applied to be a principal of an establishment. The preneed sales agent license was approved with conditions. He was ordered to be placed on two years' probation which was completed in May 2012. The Funeral Director Intern license was approved without conditions. The Funeral Establishment application was approved without conditions.

The criminal recorder Evans Baldwin consists of one incident, as follows:

- On September 25, 2002 Applicant, then age 17, while driving a car at approximately 9 PM in Winter Park, struck a woman on a bicycle that he asserts he never saw, and caused her death. Applicant did not stop at the scene. Applicant asserts he pulled over at gas station a little way further on, and saw people apparently helping the victim, and heard emergency vehicles going to the scene, and decided to drive home. At home that same night he told his girlfriend that he had struck a bicyclist and he could hear her screaming. The next day, when his step-mother noticed the damage to the car Applicant had been driving, Applicant told her he had fallen out of a tree onto the car and damaged it. It was not until October 5, 2002 that Applicant told his parents the truth. His father went to see an attorney to obtain advice and representation for Applicant. On October 14, 2002 the attorney for Applicant delivered a letter to the highway patrol, revealing Applicant's involvement, which the police were not previously aware of.
- Thereafter, on or about January 4, 2004 Applicant pled guilty to the felony charge of leaving the scene of an accident with death, in Florida Circuit Court, Orange County. His sentence included 5 years supervised probation, 150 hours of community service including 10 hours of speaking to groups in victim awareness programs using a photo of the victim, his driver's license was restricted to business driving for one year, he had to pay the victim's funeral costs, and court costs were imposed. He has successfully completed the court-ordered probation.



The establishment is recommended for approval subject to the condition that the establishments pass 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 on-site inspection by a member of Division Staff. Mr. Hall seconded the motion, which passed unanimously.

**15. Application(s) for Funeral Establishment**

**A. Recommended for Approval with Conditions**

**(1) Baldwin Brothers Memorial Care Services Inc d/b/a Baldwin Brothers (Ocala)**

An application for a Funeral Establishment was received on March 4, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned with criminal history for one of the principals, Evans P. Baldwin. The Funeral Director in Charge for the establishment will be Richard Vyse (F044653).

**Criminal History:**

Evans P Baldwin criminal history has been presented to the Board in 2010 when he was granted a preneed agent license, at the June 27, 2013 Board meeting when he applied for and was granted a Funeral Director Intern license and again at the July 11, 2013, October 3, 2013, November 7, 2013 and March 6, 2014 Board meetings when he applied to be a principal of an Establishment. The preneed sales agent license was approved with conditions. He was ordered to be placed on two years' probation which was completed in May 2012. The Funeral Director Intern license was approved without conditions. The Funeral Establishment application was approved without conditions.

The criminal recorder Evans Baldwin consists of one incident, as follows:

- On September 25, 2002 Applicant, then age 17, while driving a car at approximately 9 PM in Winter Park, struck a woman on a bicycle that he asserts he never saw, and caused her death. Applicant did not stop at the scene. Applicant asserts he pulled over at gas station a little way further on, and saw people apparently helping the victim, and heard emergency vehicles going to the scene, and decided to drive home. At home that same night he told his girlfriend that he had struck a bicyclist and he could hear her screaming. The next day, when his step-mother noticed the damage to the car Applicant had been driving, Applicant told her he had fallen out of a tree onto the car and damaged it. It was not until October 5, 2002 that Applicant told his parents the truth. His father went to see an attorney to obtain advice and representation for Applicant. On Oct. 14, 2002 the attorney for Applicant delivered a letter to the highway patrol, revealing Applicant's involvement, which the police were not previously aware of.
- Thereafter, on or about January 4, 2004 Applicant pled guilty to the felony charge of leaving the scene of an accident with death, in Florida Circuit Court, Orange County. His sentence included 5 years supervised probation, 150 hours of community service including 10 hours of speaking to groups in victim awareness programs using a photo of the victim, his driver's license was restricted to business driving for one year, he had to pay the victim's funeral costs, and court costs were imposed. He has successfully completed the court-ordered probation.

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

Mr. Helm questioned the distance from Ocala to New Smyrna Beach.

Ms. Wiener stated that it is 89 miles.

Mr. Helm stated that he thought 75 miles was the maximum distance for embalming.

Ms. Wiener stated that our statute states it is within a 75 mile radius driving distance different than within a radius distance so we have looked at radius distance as opposed to. Our statute does not delineate. In most circumstances where you are determining miles, that is a generally accepted interpretation of distance and so because our statute does not define otherwise, that is what we were going with.



Mr. Shropshire stated that the Division has interpreted it as a straight line distance not as a road distance. The Division is satisfied that this meets the 75 miles requirement.

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

**(2) *Unity Funeral Home Inc (Sanford)***

An application for a Funeral Establishment was received on February 26, 2014. The application was incomplete when submitted. All deficient items were returned on March 12, 2014. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge for the establishment will be Karen Peoples (F059371).

The establishment is recommended for approval subject to the condition that the establishments pass 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 on-site inspection by a member of Division Staff. Mr. Jones seconded the motion, which passed unanimously.

**16. *Related Items - Affordable Headstones & More, Inc. (Jacksonville)***

**A. *Recommended for Approval without Conditions***

**(1) *Application for Monument Establishment Retailer***

This application is being filed for a new monument establishment retailer license. The application was received on February 21, 2014 and deficiencies were noted. A deficiency letter was sent on February 27, 2014 and the Applicant resolved all deficiencies as of March 11, 2014. If approved, Applicant will utilize the attached monument retail sales agreement which is also being presented for approval at this meeting.

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

**B. *Recommended for Approval with Conditions***

**(1) *Monument Retail Sales Agreement***

Affordable Headstones & More, Inc submits a monument retail sales agreement for approval. If the form is approved, it is to be used for the sale of monuments through its monument retailer establishment whose application is also being presented at this Board meeting.

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

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

**17. *Contract(s) or Other Related Form(s)***

**A. *Recommended for Approval with Conditions***

**(1) *Preneed Funeral Agreement(s)***

**(a) *ClearPoint Federal Bank & Trust (Batesville, IN)***

ClearPoint Federal Bank & Trust (ClearPoint), formerly known as Forethought Federal Savings Bank submits the attached preneed sales agreement forms for approval: Two (70/30) Funeral Planning Agreements (Forms T4072-04-FL, T4072-03B-FL, and T4047-04-FL), (Forms T3035-03, T3038-03-FL, and T3039-03-FL), and one (90/10) Funeral Planning Agreement (Form T4077-05-FL, T4077-05B-FL, and T4047-04-FL). If the forms are approved, they are to be used for the sale of trust-funded preneed contracts through various licensed preneed establishments and branches.

The Division recommends approval 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.

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

***(b) Forethought Life Insurance Company (Batesville, IN)***

Forethought Life Insurance Co (Forethought) submits the attached preneed sales agreement form for approval: Guaranteed Insurance Funded Prearranged Funeral Agreement (Form1033-FL7/09). If the form is approved, they are to be used for the sale of insurance-funded preneed contracts through various licensed preneed establishments and branches.

The Division recommends approval 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.

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

***(c) Foundation Partners of Florida, LLC (F060727) (Auburndale)***

Foundation Partners of Florida LLC (Foundation Partners) submits the attached preneed sales agreement forms for approval: Cemetery Interment Rights, Merchandise and Services Purchase Agreement and a Preneed Funeral Agreement. If the forms are approved, they are to be used for the sale of insurance-funded preneed contracts through Foundation Partner's licensed preneed establishment and branches.

The Division recommends approval 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. Clark disclosed his affiliation with Foundation Partners of Florida, LLC and stated it would not affect his ability to make a fair and partial decision.

**MOTION:** Mr. Jones moved to approve the agreement(s) subject to the condition that two full sized print-ready copies are received by the Department within 60 days of this Board meeting. Mr. Helm seconded the motion, which passed unanimously.

**18. Executive Director's Report**

***A. Extensions Granted (Northstar) (Informational)***

GARDNER, BIST, WIENER, WADSWORTH, BOWDEN,  
BUSH, DEE, LAVIA & WRIGHT, P.A.  
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1300 THOMASWOOD DRIVE  
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GARVIN B. BOWDEN  
BENJAMIN B. BUSH  
DAVID S. DEE  
ERIN W. DUNCAN  
CHARLES R. GARDNER  
AMANDA L. HALL  
JOHN T. LAVIA, III  
MURRAY M. WADSWORTH, JR.  
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OF COUNSEL:  
MURRAY M. WADSWORTH

\*BOARD CERTIFIED REAL ESTATE ATTORNEY

March 19, 2014

Doug Shropshire, Director  
Division of Funeral, Cemetery and Consumer Services  
[Doug.Shropshire@myfloridacfo.com](mailto:Doug.Shropshire@myfloridacfo.com)

**Re: NorthStar Funeral Services of Florida, LLC  
NorthStar Cemetery Services of Florida, LLC**

Dear Doug:

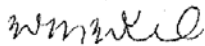
As you know, we represent NorthStar Funeral Services of Florida, LLC, and NorthStar Cemetery Services of Florida, LLC (NorthStar). On March 6, 2014, the Board approved the funeral establishment and cemetery license applications submitted by NorthStar, with the condition that the transactions close within 60 days (i.e., May 5, 2014).

Our client has notified us that it is unlikely that the closing will occur by May 5, 2014, as the FTC has not completed its final approval of the transaction.

Therefore, we are requesting an additional 60 days to complete the transactions, until July 3, 2014.

Please let us know if you require additional information.

Sincerely,



Wendy Russell Wiener

*Extension to July 3, 2014 approval.*  
*DAE 3-19-14*

Doug Shropshire, Director  
Funeral & Cemetery Division  
850-413-4096

***B. Irrevocable Preneed Contracts (For Discussion if Any)***

*The FCCS Division preliminarily contemplates distributing the following guidance to its field staff regarding Medicaid irrevocable preneed contracts. The draft piece below is submitted for comment, if any, by the Board.*

*- Doug Shropshire*

### Irrevocable Preneed Contracts – Medicaid

(1) The Florida Statutes require that all preneed contracts sold in Florida must be cancellable, with one exception: section 497.459(6)(a), Florida Statutes, provides that a consumer may make their preneed contract irrevocable (noncancelable) in order to try and qualify for Medicaid benefits. The applicable statute reads as follows:

(6) OTHER PROVISIONS.—

(a) All preneed contracts are cancelable and revocable as provided in this section, provided that a preneed contract does not restrict any contract purchaser who is a qualified applicant for, or a recipient of, supplemental security income, temporary cash assistance, or Medicaid from making her or his contract irrevocable.

(2) Assume that the customer, when purchasing the preneed contract, checked the box on the contract making the contract irrevocable.

#### The initial 30 day cancellation period.

(3) Note first that an "irrevocable" preneed contract does not become irrevocable until the 30 day statutory cancellation period under 497.459(1) has passed. The overall preneed contract, including the irrevocable clause, does not become final until said 30 days are passed.

#### Subsequent requests for cancellation and refund.

(4) Sometimes the customer, or the customer's family, will seek to cancel the irrevocable preneed contract and receive a refund after the 30 day cancellation period has run. When the preneed licensee refuses to cancel and make a refund, what is the FCCS Division's position?

(5) Two particular thoughts form the backdrop for the FCCS Division's position in analyzing and responding to such situations:

- The legislature, in giving the FCCS Division and the Board certain regulatory authority, did not give us authority to replace the civil courts in deciding the rights of the licensee and the customer under their apparently valid contracts. The civil courts are where contract disputes are generally intended to be resolved.

If we find that a contract involved fraud, or misrepresentation by a licensee, or otherwise violated Chapter 497, we can take regulatory action. And in some instances a licensee may take a position that is so far out of the mainstream as to in effect constitute fraud or a misrepresentation. But except for such situations, we have no authority to in effect deny a licensee the right to present their contractual defenses and arguments to a court and have the court make a decision under long standing rules of evidence and principles of contract law.

- We must be careful not to take positions that subvert the effectiveness of Medicaid laws. The available guidance concerning qualifying for Medicaid benefits does not seem to contemplate a preneed contract being "conditionally" irrevocable; that is, irrevocable if I apply for and receive Medicaid benefits, but otherwise cancellable. A contract is either irrevocable or not irrevocable -- there is no middle ground.

#### Scenario One

(6) The request to cancel an irrevocable preneed contract is often based on one, or a variation of one, of the following:

- 1) I was mistaken as to the need to reduce the amount of assets in my estate. My assets met the Medicaid requirement without having entered into a irrevocable preneed contract.
- 2) I changed my mind and never applied for Medicaid benefits, or I withdrew my application.
- 3) I was denied Medicaid benefits.
- 4) The customer has moved and it will not be practical or feasible to use the location where the preneed contract was purchased.

(7) A preneed licensee may voluntarily have put something in their preneed contract terms that require some specific relief to the customer in the above situations, and the Examiner should be alert for such provision in the preneed contract. But typically a preneed licensee who refuses to cancel and pay a refund in this scenario does not violate Chapter 497.

(8) As further background for Examiners, we note that a preneed licensee's refusal to cancel and refund under these circumstances is not out of the main stream. There are contract law principles which provide that a unilateral mistake by one of the parties in entering into a contract, and/or a change in one parties situation after the contract is entered into, does not generally void or affect the validity of the contract. There may be countervailing legal arguments on behalf of the customer, but the overall dispute is for a court to decide, not the FCCS Division or the Board. The FCCS Division has no authority to direct the preneed licensee to pay the refund in this type of situation. The customer's remedy, if they feel they have been wronged, is to seek relief in a private civil lawsuit.

#### Scenario Two

(9) In this scenario the cancellation and refund request justifications offered is the following or a variation of the following:

The customer died and the family, not knowing about the irrevocable preneed contract, paid another funeral establishment or cemetery to handle the final disposition.

(10) In this situation the FCCS Division will suggest and direct that the preneed licensee should offer to remit to the establishment or cemetery that handled the arrangements, or to the estate or the family, as the preneed licensee elects, the amount that would otherwise have been due if the contract were cancelled. If the preneed licensee makes such an offer, there is no disciplinary violation. If the other establishment or cemetery, or the family or the estate, does not find such offer adequate, their remedy is a private civil lawsuit against the preneed licensee.

(11) The FCCS Division do not have the authority to direct the preneed licensee to offer the remittance to a particular recipient from among the potential payees (the establishment or cemetery that provided the services, the family, or the estate). Some licensees are unwilling to offer the payment to the estate or family because of concerns about running afoul of the Medicaid irrevocability statutes, lack of a clearly authorized person to receive payment, inability to get a release; etc. As long as the preneed licensee offers a payment to one of the said potential payees, they have stayed clear of a disciplinary issue.

(12) If under this scenario the preneed licensee will not offer such a payment to any of the potential payees, the FCCS Division Examiner will generally write the matter up as a violation and submit same with a recommendation to present the matter to the probable cause panel. The violation to be cited is 497.152(13)(a):

(13) CONTRACT OBLIGATIONS.—

(a) Failing without reasonable justification to timely honor contracts entered into by the licensee or under the licensee's license for funeral or burial merchandise or services.

Our reasoning is that in this scenario the preneed licensee must somehow honor the preneed contract to the extent they can. The customer and/or the family has made it impossible for the preneed licensee to honor the preneed contract as originally contemplated. In this scenario the only way left for the preneed licensee to honor the preneed contract is to offer the payment referenced above.

(END)

Mr. Shropshire stated that the Division seeks comment by the Board concerning this proposed piece of instructions to its Field Staff.

Mr. Rudolph stated that it has always been his advice to clients that when you have to refund funds from an irrevocable preneed contract that you must put it into the estate of the deceased. The reason being is that if you send it to the heirs or to the family members and there is a claim and whatever agency it is that is making a claim for those funds finds out that the funds were distributed to someone other than a funeral director or to the estate of the deceased, the entity is going to be responsible for paying them back.

Mr. Shropshire stated that it would be more helpful if we could be more specific, perhaps by addressing "Scenario One", in which the Division has received a consumer complaint or a request from a consumer. The consumer has entered into a preneed contract and they checked the box to make it irrevocable, but they have had a change of heart or a change of conditions so they have requested a refund and the Licensee has declined. Now the consumer has filed a complaint with the Department. "Scenario One" concludes that the Department does not have any authority to direct the Licensee to refund the money.

Mr. Rudolph concurred.

Ms. Wiener concurred as well. Irrevocable means irrevocable particularly during the time that the contract beneficiary is alive.

Mr. Shropshire stated that in "Scenario Two" the situation is that the preneed customer beneficiary has died. The family, typically because they did not know about the preneed contract, went somewhere else other than the preneed seller and had the contract performed by someone else and now the family has found out about the preneed contract somehow and they want to be repaid. The Division's bottom line on this is that somehow or another that the contract at this point has to be honored because it would be an unfair win fall if the preneed seller keeps the funds and we offer several suggestions about what the seller could do. They could give the funds to the establishment that performed the contract or if the seller wants they can give it to family requesting. The Division does not dictate any of that. The Division just feels that they somehow have to pay out the funds to someone. Typically and best it would probably be the establishment that honored the contract. In that context I would invite your comments as to what is wrong with that part of the Department's analysis.

Mr. Rudolph stated that by the Division putting in there that they can give it to the family, someone would follow that advice and give it to the family and if Medicare or whoever it was found out funds intended for a funeral were given to a family member instead of to the estate where they would be making a claim potential, the person that sent the money to the family could be responsible for paying that money back to that Government.

Mr. Shropshire stated that the Department, in this draft guidance, does not say that we mandate that it is paid to the family, in fact we from experiences that a fair number of Licensees just do exactly that. They pay it to the family or whoever is coming to them. The Department does not mandate that but we do not have jurisdiction to say that the Licensee cannot pay the family. Maybe it would be advisable for them not to pay the family but the Division does not mandate that they do or do not.

Mr. Bill Williams stated that the Industry had a problem similar to this up in New York. The preneed contracts were being written by the funeral director for an extraordinary amount of money to hide assets from Medicare/Medicaid. Then when the individual died, they would come back and select something far less and the families would receive the money back into their own pockets while the funeral director took commission on it. There is a serious problem there and they were prosecuted for it and found guilty of it. You have to be very, very careful that you are not overstepping any Medicare/Medicaid laws here. Typically when that contract is not performed you have to notify Medicare/Medicaid of the situation. Theoretically you should give the money back to them and they should distribute it out.

Mr. Shropshire questioned whether it would resolve the concerns if the Department eliminates any reference to paying it to anyone other than the funeral establishment that actually performed the contract.

Ms. Wiener stated that would certainly address her concerns. Most of the times, in Florida, that contracts are made irrevocable it is for the purpose of a family member engaging in a "spend down" for purposes of receiving Institutional Care Program Medicaid. That is not necessarily Medicaid for poor people, but Medicaid for people with assets and need to go into full time skilled nursing facilities and they can have no more than \$2000 of assets to their name. Therefore, upon the death of that preneed contract beneficiary, where the preneed contract has been marked irrevocable, to pay the money from the trust to anyone other than another funeral establishment or deathcare Licensee that performed the services will be considered by the Department of Children and Families in the State of Florida to be Medicaid fraud. So, I will give you a great example of why I would disagree with my colleague about paying the estate. The purpose is to take the money away from the estate of the preneed contract beneficiary meaning nobody is going to get the money in the future. So I decide that I am going to go into a nursing home and I buy a \$50,000 preneed contract from Mr. Knopke's establishment and I tell my family members beforehand that when I die, go down the street and get a \$695 cremation. Now, \$50,000 should not be coming back from Mr. Knopke's establishment into the estate or into any person's hand. Unfortunately, the Medicaid folks in the State of Florida, the Department of Children and Families, does not have a good mechanism set up for how to deal with this scenario but that is a legislative problem and not something that regulators can solve. Neither the Department of Children and Families nor this regulatory Board can solve that problem at the present time. The appropriate thing to do is if the Licensee becomes aware that an irrevocable preneed contract was fulfilled by another Licensee they should pay the other Licensee from the trust for the goods and services provided. If there is money left over, it just sits in the trust until the Legislature figures out what to do about this problem because the funeral establishment, the preneed seller in the State of Florida, has no authority to go to the trust and withdraw all of the money, none whatsoever under their trust agreement or under their preneed contract. So, I agree wholeheartedly with the Division's recommendation that the provider be paid by the original seller for the goods and services provided and then that provider can make a refund to the family for what they paid if it so desires, but the preneed seller has no legal capacity to distribute money from trust on an irrevocable preneed contract to the estate or to any individual else it could be itself a subject for the Department of Children and Families a participant in Medicaid fraud.

Mr. Mueller stated that he agrees with the Department's analysis as far as it goes, however, both scenarios deprive the seller of the opportunity to perform. As far as I am concerned, the answer to the family is the estate owns rights to this contract so assign them to someone else.

Ms. Wiener stated that the problem is with the irrevocable nature of that contract. Mr. Mueller identified another hole in our legislative scheme. In the State of Florida, preneed contracts are not, under the Chapter, actually assignable to another beneficiary. That is an absolutely great idea and the Legislature should put that into our statute.

Mr. Williams stated that outside of Chapter 497, the trustee has an obligation to make sure that these funds when they are withdrawn from the trust go to the appropriate parties. If the selling party is not the one who fulfilled the contract, they are under no obligation to withdraw those funds either. In fact, the trustee could be held liable for withdrawing those funds if the selling party did not fulfill that contract. So, it crosses a couple of different chapters in the state and it is a problem.

Ms. Wiener stated that it is a legislative problem more than anything.

Mr. Shropshire stated that if the preneed seller who sold the contract tells the trustee to send them the proceeds as the contract has been fulfilled and the seller then sends those proceeds to the fulfilling actual at-need performing entity, there is no exposure to the trustee there.

Mr. Williams stated that he does not see a problem that. The problem comes when the selling firm refuses to do that because you cannot require them to do that nor can the trustee. That is the problem. When it happens the way Mr. Shropshire just described that is probably the best and safest way for all concerned for it to happen and we would counsel our clients to do it that way.

Mr. Jim Atwood agreed because you have the trust agreement that states what the trustee can do and the trustee's agreement is with the seller so the seller has to advise the trustee that the contract has been fulfilled and provide the documentation that is required. The money goes back to the seller. The seller then gives it to whoever performed the services and they are the ones who need to make a refund to the families if there is one required.

Mr. Shropshire stated that there appears to be an agreement that the preneed seller can direct and pay the proceeds to the actual performing entity. The Division goes further and says that they have to.

Ms. Wiener stated that she does not think the Division can tell them that they have to. Unfortunately, the contract is irrevocable and it is a contract with the party that bought the contract naming a particular beneficiary. Now, just as an aside, in order to make a preneed contract the purchaser has to be the beneficiary because of the language of our statute, which requires the purchaser to certify that he/she is an applicant for or a recipient of the Public Assistance, so purchaser equals beneficiary. There is no concept in Chapter 497 of the assignment of the right to fulfill a preneed contract so it is a real hole in our statutory scheme. I do not think that the Division can require a preneed Licensee to do anything regarding an irrevocable preneed contract other than treat it as completely irrevocable. This backend deal that happens where another Licensee fulfills the contract and then the original preneed seller of the irrevocable contract can put the monies in the hands of the provider tends to work out and it avoids an allegation of Medicaid fraud but I do not think the Department can discipline a Licensee for refusing to do that because simply put irrevocable means irrevocable forever and ever and there is nothing that anyone can do to change that until we change our law.

Mr. Knopke questioned whether the family, of the deceased that made the irrevocable, could go to a court to get the judge to order that the money be paid.

Ms. Wiener stated that they could try but she doubts that any Licensee would object to that. Someone earlier described it as a potential win fall to the seller but there is no win fall to the seller as this is just money sitting in trust. Nobody is benefitting from this. Everyone would love for the Legislature or a court of competent jurisdiction to give them some direction that alleviates the potential that they are going to be participating in Medicaid fraud, but until such time as that occurs we are stuck with irrevocable preneed contracts and money sitting in trust until either the Licensee voluntarily pays it to someone else who certifies they provided goods and services or until the Legislature or court tells them to do otherwise.

Mr. Knopke stated that they would have to certify that they provided the necessary goods and services in an amount equal to or greater than what was put into trust.

Ms. Wiener concurred.

Mr. Atwood stated that probate court in the state of Florida has jurisdiction over that because you are dealing with the decedent.



Mr. Mueller stated that when you get right down to it, this whole thing is Medicaid fraud. Allowing the customer to say he has an asset which he does not have is a way to screw you and me out of our tax money and pay it to someone though they have assets but says that they do not have assets.

Ms. Lisa Coney questioned what happens to the status of this draft because she would wave in support to Ms. Wiener's comments. I have tons of experience with these kinds of questions and concerns: fulfilled, unfulfilled, request for refunds in varying amounts. I do not want to think that anyone is intentionally committing fraud and I certainly do not want to be a part of that intentionally or unintentionally. I do not think that this could go forward at all in its current form. I also think that under Section 8 where the Division says that it does not have authority but may be entering conversation with consumers ultimately saying we do not have authority so your only remedy would be to enter a civil suit might be giving legal advice that our examiners should not be giving. If we do not have authority we do not have authority and should just simply be saying we do not have authority. Again I wave in support on Ms. Wiener's comments but I am curious where this goes because I do not think that it could go out in any form that it is in right now.

Mr. Shropshire stated that the Division's intention is to revise the draft and bring back a revised version to the Board.

*C. Payments of Sales Tax and Finance Charges in CPTF Claims (For Discussion)*

**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 *MS*  
DATE: 4-3-14 Board meeting  
RE: CPTF Claims, payment of sales tax and finance charges

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The issue raised here is whether a Consumer Protection Trust Fund (CPTF) claimant whose preneed contract was not honored, can claim for and be paid from the CPTF for sales taxes and finance charges they prove they paid for the preneed contract .

Assume for the sake of this discussion, that it is proven:

- that the claimant purchased a preneed contract from a chap. 497 licensee;
- that the claimant paid the seller of the preneed contract an amount identified on the preneed contract as sales tax.
- that the claimant paid for the preneed contract by installment payments and in connection therewith the seller charged and the claimant paid, a finance charge.
- that thru no fault of the claimant, the preneed contract was not honored.

Section 497.456, "Preneed Funeral Contract Consumer Protection Trust Fund," at subsection (9), provides as follows (emphasis added):

(9) If restitution is paid to a preneed contract purchaser or her or his estate in accordance with this section, the amount of restitution paid shall not exceed the gross amount of the **principal** payments made by the purchaser on its contract.

Rule 69K-10.002, "Disbursement From the Preneed Funeral Contract Consumer Protection Trust Fund," at sections (5)-(7), provides as follows (emphasis added):

(5) As used herein the term "Restitution" means the disbursement of funds to a preneed licensee or other entity that is licensed by state law to provide services at-need from the Preneed Funeral Contract Consumer Protection Trust Fund after fulfillment of a previously breached contract. After fulfillment, interest accrued in a merchandise trust account or any similar account shall be transferred with the principal to the fulfilling preneed licensee or provider.

(6) If a preneed licensee or provider has been assigned a breached contract by the purchaser, owner or beneficiary and is willing to completely fulfill the breached contract, an application for disbursement of funds to the purchaser, owner or beneficiary of a breached contract will not be considered by the Board. In addition, a purchaser, owner or beneficiary of a breached contract that would otherwise form the basis of a claim for restitution who cancels the contract and receives funds from a trustee will not be considered for restitution from the Preneed Funeral Contract Consumer Protection Trust Fund.

(7) Notwithstanding the provisions of subsection (5) or (6), direct monetary disbursements of funds from the Preneed Funeral Contract Consumer Protection Trust fund will be made directly to the purchaser, owner or beneficiary if both of the following conditions exist:

(a) **Funds up to the amount paid on the breached contract** do no exist in trust or one of the alternatives to trust as outlined in Sections 497.458, 497.462 and 497.464, F.S., so long as the purchaser, owner or beneficiary has not received funds from the trustee...

#### Division's Analysis

The Division has understood the intent of 497.456(9), quoted above, as being to prohibit payment of claims for consequential damages. Claimants often assert that they should be paid the additional costs they had to incur to purchase at need, at today's prices, the same goods and services as were in the preneed contract they purchased years ago (consequential damages). But because of section 497.456(9), we must tell claimant that we cannot pay such consequential damages from the CPTF. That is, the most the claimant can be paid is the amount they paid for the preneed contract.

The Division believes that barring payment of consequential damages was the sole intent of the Legislature in 497.456(9), and that the use of the word "principal" was not intended to convey a further limitation on payments from the CPTF.

I assure you that the prohibition on paying consequential damages makes many CPTF claimants understandably upset. It would be in effect rubbing salt in the wound to tell them we also cannot pay the finance charges and sales taxes they paid for the preneed contract.

The Division has not been able to discern any policy reason why the Legislature would have intended to distinguish between payments by the consumer for a casket, as versus finance charges and sales taxes charged by the preneed contract seller on the preneed purchase of the casket. From the consumer's perspective, payment of finance charges and sales taxes was not optional. The loss of the dollars paid for finance charges and sales taxes hurts the consumer just as much as the dollars paid specifically for the casket, or the grave opening and closing, etc. If there is no policy reason to prohibit such payment from the CPTF, then such prohibition is arbitrary and capricious. We do not assume that the Legislature acts in an arbitrary or capricious manner. We seek an interpretation that avoids an arbitrary and capricious result. Application of these concepts in this case leads us to conclude that by use of the word "principal" the Legislature simply meant to refer to payments by the consumer for the preneed contract, as versus payments for substitute merchandise and services the consumer had to purchase once the preneed contract was not honored.

We believe the Board implicitly recognized and accepted this interpretation when it included the phrase "**funds up to the amount paid on the breached contract**" in rule 69K-10.002(7)(a).

The FCCS Division's interpretation results in fewer consumers who are angry at the deathcare industry, or at least results in significantly reduced levels of anger and hostility of consumers as regards the Industry. Coincidentally, this outcome is, in our opinion, the best outcome for the industry.

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The Division has not conducted any empirical study of how many CPTF claims involve finance charges and sales taxes. The Division's Christine Moore, who processes all the CPTF claims, advises that in her experience there are relatively few CPTF claims that involve finance charges and sales taxes.

In any event, the Division intends to continue to recommend payment of CPTF claims consistent with the Division's interpretation stated above, unless the Board directs the Division otherwise.

The Division recognizes that reasonable minds can differ on this matter, and the Board will want to hear from any persons who disagree with the Division's interpretation.

Mr. Mueller stated that he disagrees with the Department's analysis especially as it pertains to finance charges. If the customer had borrowed the money from someone else to make the purchase, the customer would have had to pay these fees and the person who loaned the money would earn the interest over the term of the loan. The seller in this case, the cemetery or the funeral home, is no different than any other lender of money. As for sales tax, the seller has paid the sales tax to the state and has no recourse to get it back. I agree with the statute as I interpret it to say that principle is all that the customer is entitled to.

Mr. Knopke agreed with Mr. Mueller's interpretation. The desire by the Department to make consumers as happy as possible is wonderful, but unless you pay for the current day price that they had to pay, anything you do will not make them happy. The unfortunate part is that they bought something or their family member bought something, that firm went out of business for whatever reason or is unable to perform and their only recourse is to get whatever money back they can. The statute does not allow that nor was that ever the intent.

Mr. Shropshire stated that it does make a big difference, in the Division's experience, to the consumer. The reality of the situation is the consumer is unhappy so they are grateful to get what they can but if they are told they are not entitled to the finance charge and sales tax then they go to their legislator and the Division responds to the legislator's claim. It just looks so arbitrary that they can get back everything but the sales tax and the finance charge when the reality is they paid those finance charges and the sales tax and are not getting anything for it. It puts the Industry and the Division in such a bad light with the legislator who then gets these conceptions about the Industry. It just seems so pennywise and pound foolish because there is \$9 million in the CPTF so why be parsimonious in handing it out when every year we are worried that the Legislature is going to take it away anyways in a sweep. If we can find any colorable way to maximize payment on these claims why not do it to the extent possible defuse the anger of these consumers against the Industry.

Mr. Rudolph stated that the biggest problem is if you make that interpretation that you can pay finance charges and sales tax then that is on a reading of a statute that has not changed since 1993. Mr. Rudolph questioned whether the Division would go back through all of the CPTF claims that have been paid since 1993 and reimburse the claimants because that is what this is going to result in. I agree with Mr. Mueller to a certain extent and I agree with Mr. Shropshire to a certain extent but the statute says principal and it has always been interpreted as the amounts paid for the services and merchandise purchased. It does not include the finance charge and it does not include sales tax. The big issue with sales tax is it has been paid to the Department of Revenue arguably. The customer would have to make the application to the Department of Revenue for a refund. If you gave them back the sales tax and you fulfill it and pay sales tax, another person fulfills and pays sales tax then you have a double payment of sales tax. Any time there is sales tax owed and you need to refund it that customer has to make an application to the Department of Revenue to have that sales tax refunded.

Mr. Mueller stated that he does not disagree with the Department's position as to the amounts but it is important to at least have the Board make the decision to refund the extra money and that may not even be proper given my interpretation of the statute.

Mr. Shropshire stated that the reality is, to the best of my knowledge since June 2008 when I came on board, that Christine Moore was paying sales tax and finance charges and they have been included in the claims that have been paid every since. According to Ms. Moore, that is how she was trained to do it. So maybe at some long distant time they were not paid but it has been part of the claims since Ms. Moore has been handling it prior to 2008.

Mr. Knopke stated that he does not believe sales tax and finance charges were paid from 1993 to 2001.

Mr. Shropshire stated that the Division would certainly abide by the Board's sense of the matter.

Mr. Jones stated that he has heard several times that the statutes need to be looked at and he agrees. There are some things that the Board needs to revisit and have the Division look at.

Mr. Rudolph stated that he would feel more comfortable with a statutory change rather than for the Board to do it right now.

Mr. Jones questioned whether this could be accomplished by a rule.

**MOTION:** Mr. Knopke moved to direct the Department through its legislative efforts to propose a change to the statute to reflect what the Division is proposing and submit it to the Legislature with this Board's support. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Knopke stated that would hopefully help better protect the consumers but take the Department out of the interpretation position and also out of the anger of the consumers as well as putting everyone on notice as to what really is the law.

Mr. Helm questioned how this would help the Department right now. Mr. Helm stated that he does not believe the Division should change its current process.

The Chair stated that Mr. Knopke's motion would not change what the Division is currently doing.

Mr. Helm questioned whether this was the way the Division took it.

Mr. Shropshire stated that he really did not have a clear understanding.

Mr. Knopke stated that his motion was not to advise the Division to stop. The motion was to get Mr. Shropshire the authority to continue what he is doing.

Mr. Helm added that the Division needs help right now also.

Mr. Knopke stated that the Division should not change its procedures.

Mr. Williams questioned the liability if the Division continues its current procedure and refunds every penny that the consumer paid into a preneed contract that cannot be performed, which is the intent of the Consumer Protection Trust Fund.

**MOTION:** Mr. Helm moved that the Division should continue with its current procedure unless otherwise instructed legislatively. Ms. Anderson seconded the motion, which passed unanimously.

*D. Use of Cinerator Facility Refrigeration by Other Licensees (Informational)*



Date: 3-19-2014

Lee Longino  
SCI Funeral Services of Florida Inc.  
2550 Highlands Blvd North  
Palm Harbor, FL 34684

Mr. Longino:

On 3-18-2014 you inquired as follows:

I write to ask for confirmation from the Division of Funeral, Cemetery & Consumer Services that Florida Statutes section 497.606(9)(d) does not prohibit a licensed cinerator facility from accepting and storing dead human remains where such remains are not intended to be cremated. Florida Statutes section 497.386(1) provides that "a person may not store or maintain human remains at any establishment or facility except an establishment or facility licensed under this chapter or a health care facility, medical examiner's facility, morgue, or cemetery holding facility." Section 497.606(d) provides that a licensed cinerator facility may not accept for cremation or otherwise dispose of materials other than dead human remains in a retort. Please confirm that section 497.606(9)(d) does not have the effect of precluding a licensed cinerator facility from accepting and storing dead human remains that are not intended to be cremated, assuming that the licensee does so in full compliance with the provisions of Florida Statutes Chapter 497 pertaining to the storage and maintenance of dead human remains.

The statutory provisions you refer to, read as follows:

497.386 Storage, preservation, and transportation of human remains.—

(1) A person may not store or maintain human remains at any establishment or facility except an establishment or facility licensed under this chapter or a health care facility, medical examiner's facility, morgue, or cemetery holding facility.

497.606 Cinerator facility, licensure required; licensing procedures and criteria; license renewal; regulation.—

(9) REGULATION OF CINERATOR FACILITIES.—

(d) A cinerator facility licensed under this section shall only receive dead human bodies for cremation. A cinerator facility may not receive other materials, or medical, hazardous, and biohazardous waste, for the purpose of disposal in a retort.

This will confirm that it is the understanding of the Division of Funeral, Cemetery, and Consumer Services that section 497.606(9)(d) does not have the effect of precluding a licensed cinerator facility from accepting and storing human remains in its refrigeration cooler, even though such remains are not intended for cremation.

This Division understands the legislative intent regarding s. 497.606(9)(d), as being that the legislature did not want cinerator facilities licensed under Chapter 497 to receive, handle, or cremate anything other than human remains. This reflects a legislative sensitivity to a common consumer view that it is disrespectful to a deceased's human's remains, and upsetting to many surviving loved ones, to think that their loved one was stored or cremated in the same cooler or cinerator which yesterday held or cremated someone's pet dog, or a bag of medical waste from a local doctor's office. Moreover, cremating pets and medical waste in the same cinerator as human remains are cremated, creates the possibility that cinerator residue of a cremated dog or medical waste may become included in the remains of subsequently cremated human body; such a possibility would usually be highly disturbing to many families being provided the cremated ashes of what they think is only their loved one. Whereas, there is nothing inherently disrespectful in storing multiple sets of human remains in the same cooler, regardless of the intended final disposition.

More specifically, we do not understand the legislative intent regarding s. 497.606(9)(d) as prohibiting the receipt of human remains for cooler storage on behalf of other Chapter 497 licensees. Thus, for example, a funeral establishment may, by agreement with a licensed cinerator facility, store human remains in a cinerator facility's cooler. This might be done because the funeral establishment has no cooler, or because the funeral establishment's cooler is full. Our experience is that it is relatively common that funeral establishments use the refrigeration cooler at crematories for temporary storage of human remains.

I note further that when a proposed funeral establishment seeks licensure, it must disclose to the Division and Board whether the funeral establishment will itself have on-site cooler facilities, and if not, it must show that it has made arrangements with another licensee to use that other licensee's cooler. From time to time such applicants will show that they have an agreement with a cinerator facility to use the cinerator facility's cooler. Historically, neither this Division nor the Board has taken exception to such arrangements as shown in an application.

Sincerely,

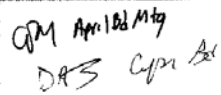


Douglas Shropshire  
 Director, Division of Funeral, Cemetery, and Consumer Services

Mr. Shropshire stated that this is just an informational item because it had perhaps some Presidential affect. It is a letter the Department issued concerning whether a Licensee can properly use the cooler facilities of a cinerator facility that they do not own for their mainline storage even though they do not intend to have the bodies cremated.

**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  
 April 3, 2014 Board Meeting  
 Date of Report: March 25, 2014

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Stanley Gunter-Butler	Jun-12	117958-11-FC	\$2,750	8/20/2012	Yes	Paid in full on 3/15/14.
Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC dba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$5,250 \$5,000 38,859.57	9/6/2012 12/7/2012 35 mo pymts	Yes Yes Note E	Monthly restitution payments are current.
Global Mortuary	Aug-13	122746-11-FC	\$800 \$7,200	9/19/2012 9 mo pymts	Yes No; See Note A	License suspended, based on an Emergency Order of Suspension issued 3/7/2014, in DFS Case No. 145024-13-FC, for failure to make required payments under the consent order.
Work & Son	Dec-13	Multiple cases	\$2,500	3/17/2014	Yes	According to the terms of the final order, the licensee is required to report monthly to the Division the progress of its efforts to make required corrections. Monthly report was received.
Affiliated Funeral Service	Feb-14	137272-13-FC	\$1,500		See Note C	
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 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.						

Mr. Knopke questioned whether the Division had any update on the Work & Son case.

Mr. Shropshire stated that Work & Son has provided their first and second monthly report so they are in compliance.



Ms. Wiener added that they have timely paid their fines and have accomplished many if not the majority of the things that are on the monthly status reports.

Mr. Mueller questioned whether the Board could see the reports in the future.

The Chair stated that the Division would be glad to share that information with the Board.

Mr. Knopke questioned whether Global Mortuary is in business or out of business.

Mr. Shropshire stated that Global Mortuary is out of business as their license is suspended and they are closed down. Field staff informed the Division that the facilities are closed.

Mr. Anthony Miller concurred.

Mr. Knopke questioned whether Global Mortuary had a preneed license.

Mr. Miller stated that Global did not have a preneed license. If there were some unauthorized preneed sales then the Department would look into that.

Mr. Mueller questioned whether unauthorized preneed sales are payable from the Consumer Protection Trust Fund.

Mr. Shropshire stated that they are if it was sold by a person who was a Licensee in some capacity under Chapter 497.

**19. Chairman's Report (Oral)**

The Chair stated that the next meeting would be a teleconference call on May 1<sup>st</sup> followed by a June 5<sup>th</sup> teleconference and a June 26<sup>th</sup> in person meeting in Tallahassee.

**20. Office of Attorney General's Report (Oral)**

None

**21. Administrative Report**

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

**22. Disciplinary Report**

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

**23. Adjournment**

The meeting was adjourned at 12:16 p.m.