

**MINUTES**  
**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES**  
**February 2, 2017 - 10:00 A.M.**  
**Department of Financial Services**  
**2020 Capital Circle SE, Alexander Bldg. #230**  
**Tallahassee FL 32301**

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

Mr. Jody Brandenburg, Chair –Welcome to the Board of Funeral, Cemetery, and Consumer Services meeting. It's February 2, 2017. Ms. Simon, will you make the preliminary remarks and do a roll call, please?

Ms. Ellen Simon – Yes Mr. Chairman. My name is Ellen Simon. I am Assistant Director of the Division of Funeral, Cemetery, and Consumer Services. Today is February 2, 2017 and it is 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 and extra copies are located in the front of the meeting room. This meeting is occurring in Tallahassee FL. LaTonya Bryant is recording this meeting and minutes will be prepared. Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission.

At this time, Mr. Chairman, may I take the roll?

Chair – Please do.

Ms. Simon:

Joseph "Jody" Brandenburg, Chairman  
Keenan Knopke, Vice Chair  
Jean Anderson  
Francisco "Frank" Bango {**ABSENT**}  
Andrew Clark  
James "Jim" Davis {**ABSENT**}  
Lewis "Lew" Hall  
Powell Helm  
Ken Jones  
Vanessa Oliver

**Also noted as present:**

Tom Barnhart, Board Legal Advisor  
James "Jim" Bossart, Department Counsel  
LaTonya Bryant, Department Staff  
Jasmin Richardson, Department Staff  
Lashonda Morris, Department Staff  
Nicole Singleton, Department Staff

Ms. Simon – Mr. Chairman there is a quorum for the business of the Board.

Chair – Thank you. Would you like to make some remarks?

Ms. Simon – Yes. Thank you for the opportunity. It's with great sadness on my part and hope for his happiness that Mr. Shropshire announced his retirement. His last day was Tuesday. He had been in State government service for over thirty-four (34) years and he had been with the US Military Service for approximately twenty-three (23) years. He announced that he

has many grandkids and he is looking forward to spending lots of time with them. I wish him congratulations and hope for his future that he has lots of fun and satisfaction in his retirement.

Chair – Thank you.

**2. Action on the Minutes**  
**A. January 5, 2017**

Chair – The first item on our agenda is the action on the minutes from January 5, 2017.

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

**3. Old Business**  
**A. Renewal of Preneed License**  
**(1) Pershing Industries, Inc. D/B/A Vista Memorial Gardens (Miami Lakes)**

Ms. Simon – This item is really informational only as the renewal has already been completed. We are simply updating the Board as to the requirements of the licensee.

Chair – Thank you.

**4. Disciplinary Proceedings**  
**A. Settlement Stipulation(s)**  
**(1) Waiver of Probable Cause**  
**(a) Related Cases – Division No. ATN- 27399**  
**1. Harmon Funeral Home, Inc.: Case No. 198968-16-FC; Division No. ATN- 27399 (F041947 – Funeral Establishment)**

Ms. Simon – Mr. Jim Bossart will be representing the Office of the General Counsel.

Mr. Jim Bossart – Mr. Chairman?

Chair – Please.

Mr. Bossart – Members of the Board, my name is Jim Bossart. I represent the Office of the General Counsel of the Department. The investigation inspection that was done in this case support allegations that Harmon Funeral Home, Inc. is liable to the following violations. Harmon Funeral Home is a Florida funeral establishment doing business in Tampa FL holding license number F041947. At all times material to this case, John Harmon was the owner and also the funeral director in charge of the funeral within the meaning of s. 497.380(7), F.S. An inspection revealed that Harmon Funeral Home was entering into preneed contracts despite the fact that the funeral establishment did not have preneed license in violation of Section 497.452(1)(a) and 497.466(1), Florida Statutes; as well as Rule 69K-8.005(2), Florida Administrative Code, which requires licensure. The funeral home has waived a finding of probable cause in this case and entered into a proposed Settlement Stipulation for a fine of \$1,500 and the Department recommends that you approve this settlement.

Chair – Thank you. Is there anyone here representing Mr. Harmon or is Mr. Harmon here?

Mr. Bossart – They indicated to me that they would not be attending.

Chair – Mr. Harmon? Hearing no response. Thank you.

Mr. Keenan Knopke – Question please?

Mr. Helm – Do you have how many contracts was it that he did preneed? Do you have any idea?

Mr. Bossart – No sir. They were recommending that contracts were being funded by life insurance policies and there were only several contracts in the file. I'd say there was about three (3). There were many life insurance policies but only a few contracts.

Mr. Helm – So the money had been put away?

Mr. Bossart – From the life insurance, yes.

Mr. Helm – Ok.

Mr. Bossart – But in fairness, Mr. Harmon never accepted any money I don't believe. I don't think there was any evidence of that.

Mr. Knopke – Mr. Chairman?

Chair – Please.

Mr. Knopke – There's a list in the packet that I believe are contracts that may be tied to insurance. Looks like there's probably 75 or 80.

Chair – That starts on Page 24?

Mr. Knopke – Page 24, yes sir.

Chair – Any other questions or comments?

**MOTION:** Mr. Knopke moved to approve the Settlement Stipulation with an administrative fine of \$1500. Mr. Hall seconded the motion, which passed unanimously.

***2. Harmon III, John W.: Case No. 198972-16-FC; Division No. ATN- 27399 (F046608 – Funeral Director and Embalmer)***

Ms. Simon – Again, Mr. Bossart is presenting.

Mr. Bossart – Thank you, sir. This is the case relating the preceding case. Mr. John Harmon has a funeral director and embalmer license under Chapter 497, F. S. holding license number F046608 and at all times material, John Harmon was the FDIC for Harmon Funeral Home, Inc., under the meaning of s. 497.380(7), F.S. He is also the owner of the facility. An inspection revealed that Harmon Funeral Home was entering into preneed contracts despite that the fact that the funeral establishment did not have preneed license in violation of Sections 497.452(1)(a) and 497.466(1), Florida Statutes; as well as Rule 69K-8.005(2), Florida Administrative Code. The Respondent entered into a proposed Settlement Stipulation for a fine of \$1,000 and the Department recommends that you approve this settlement.

**MOTION:** Mr. Helm moved to approve the Settlement Stipulation with an administrative fine of \$1000. Ms. Jean Anderson seconded the motion, which passed unanimously.

***(2) West, James R.: Case No. 197855-16-FC; Division No. ATN-27298 (F044774 – Funeral Director and Embalmer)***

Ms. Simon – Again, Mr. Bossart is presenting.

Mr. Bossart – The Division alleges that the Respondent failed to comply with the Consent Order issued by the Board on February 12, 2016. A Consent Order was issued against the Respondent last year for various violations of Chapter 497, F.S. and required him to pay a \$2500, which he failed to do. On October 14, 2016, Mr. West's license was suspended for failure to pay the fine. Rather than pay the fine, Mr. West has stipulated that he shall surrender his License to practice as a funeral

director and embalmer and shall never again apply for licensure in this state as a funeral director and embalmer or any other category of individual or corporate licensure issued by the Board. The terms of the Settlement Stipulation seem to be reasonable under the facts and circumstances of the case and the Department requests that the Board approve this Settlement that Mr. West surrender his license.

**MOTION:** Mr. Hall moved to approve the Settlement Stipulation, which calls for the Respondent to surrender his License to practice as a funeral director and embalmer and shall never again apply for licensure as a funeral director and embalmer or any other category of individual or corporate licensure issued by the Board. Ms. Vanessa Oliver seconded the motion, which passed unanimously.

**5. Application(s) for Preneed Sales Agent**

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

Ms. Simon – The applications 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.

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

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

- (1) *FuneralCE (43)*
- (2) *International Order of the Golden Rule (2201)*
- (3) *National Funeral Directors and Morticians Association, Inc. (15608)*
- (4) *National Funeral Directors Association (136)*
- (5) *New Jersey Funeral Service Education Corp (7002)*
- (6) *The Dodge Institute for Advanced Mortuary Stu (81)*

Ms. Simon – The majority of the Continuing Education Committee and the Division recommends approval of the applications for the number of hours indicated.

**MOTION:** Mr. Hall moved to approve the applications. Ms. Oliver seconded the motion, which passed unanimously.

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

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

- (1) *Funeral Director (Internship and Exam)*
  - (a) *Wilson, Eric L*
- (2) *Funeral Director and Embalmer (Endorsement)*
  - (a) *Anaya, Josiah L*
- (3) *Funeral Director and Embalmer (Internship and Exam)*
  - (a) *Healey, Lianna L*
  - (b) *Lewis, Trent A*
  - (c) *Wilson, Laura E*

Ms. Simon – The applications 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 (Internship and Exam)*
  - (a) *Jones, Vancinia L*

Ms. Simon – The applicant submitted an application to become a Combination Funeral Director and Embalmer on November 23, 2016. The application was complete when submitted. Applicant's original application for concurrent internship license came before this Board at its February 9, 2012 Board meeting. The Division recommended denial because of a criminal record. However, the Board ultimately approved the application. Applicant has a criminal record, to wit:

- In 1998 applicant pled guilty to felony Possession of Cocaine, and Driving Under the Influence, in Circuit Court, Broward County, FL. Ms. Jones was placed on two years' probation, and fined of \$250. Ms. Jones did not disclose this 1998 criminal proceeding in her application for this license. The Division learned about this portion of her criminal record from other sources.

The Division is recommending approval without conditions.

Mr. John Rudolph – I'm John Rudolph standing in for Wendy Wiener on this.

Chair – Mr. Rudolph, do you want to address the Board or are you just here to answer questions?

Mr. Rudolph – To answer any questions. I believe this has been before the Board before.

Chair – Thank you.

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

Chair – Good job.

Mr. Rudolph – Thank you.

**(2) Funeral Director and Embalmer (Endorsement)**  
**(a) Bricault, Steven M**

Ms. Simon – The applicant submitted an application to become a Combination Funeral Director and Embalmer on January 3, 2017. The application was complete when submitted. The applicant submitted a fingerprint card with was returned with criminal history. Applicant has a criminal record, to wit:

- In 2014 applicant pled no contest to Reckless Driving. The applicant was ordered to pay a fine of \$300.

The Division is recommending approval of licensure if the applicant is successful on the Florida Laws and Rules examination.

**MOTION:** Mr. Knopke moved to approve the application if the applicant is successful on the Florida Laws and Rules examination. Ms. Oliver seconded the motion, which passed unanimously.

**C. Recommended for Approval without Conditions (Review of Education)**  
**(1) Funeral Director and Embalmer (Endorsement)**  
**(a) Wallace, Robert W**

Ms. Simon – The applicant submitted an application to become a Combination Funeral Director and Embalmer on December 13, 2016. The application was incomplete when submitted. All deficient items were returned on January 13, 2017. The applicant submitted a fingerprint card with was returned with no criminal history.

The applicant is coming before the Board because he currently cannot provide proof of graduation from Simmons School of Embalming and Mortuary Sciences in Syracuse, NY. The school is no longer open and the applicant cannot obtain records of his transcripts and does not have a copy of a degree. His initial Connecticut license was issued November 1, 1992, lapsed on July 31, 1996 but was reinstated on July 6, 2016. At the time his license was initially issued, Florida only required a course of Mortuary Science. We have provided to the Board a copy of the law in Connecticut to equate the laws and requirements of Florida. The Division is recommending approval without conditions.

Mr. Robert Wallace – Morning Mr. Chairman.

Chair – Mr. Wallace?

Mr. Wallace – Yes sir?

Chair – Do you want to address the Board or are you here to answer questions?

Mr. Wallace – I will answer questions, but my wife and I recently transplanted and I'm just looking to continue my profession in Florida.

Chair – As its customary when you come before the Board, may we swear you in?

Mr. Wallace – Of course.

Ms. Simon – Please raise your right.

Mr. Wallace – Yes.

Ms. Simon – Do you swear to tell the truth, the whole truth and nothing but the truth?

Mr. Wallace – I do.

Chair – Thank you. Go right ahead.

Mr. Wallace – Thank you, Mr. Chairman. Again, my educational records seem to have been lost with the closure of a school and the National Conference can't seem to find my test scores from the national test so I am requesting, by endorsement, to be licensed and to be allowed to take the test and to be licensed in the State of Florida. Any questions for me?

Mr. Hall – How many different states were you licensed in up North?

Mr. Wallace – Just in Connecticut.

Mr. Hall – Just in Connecticut?

Mr. Wallace – Just Connecticut.

Mr. Hall – Connecticut's Board has no record of this when you became licensed?

Mr. Wallace – They can't find it. Their archives don't show the records either. No. We've asked them to check and I believe they've noted that in an official document to the State of Florida.

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

Mr. Wallace – Thank you Mr. Chairman. Thank you Board.

***D. Recommended for Denial (Adverse Licensing History)***  
***(1) Funeral Director and Embalmer (Internship and Exam)***  
***(a) Jones, Michelle N***

Ms. Simon – The applicant submitted an application for the Combination Funeral Director and Embalmer license on November 3, 2016. The application was complete when submitted. A fingerprint result was returned for a previous application with no criminal history. The applicant has a recent adverse licensing history. At the December 1, 2016 Board meeting, Ms. Jones was issued a fine of \$1000, which was to be paid in 30 days. As of January 18, 2017 the fine had not been received and as a result, the Division is recommending denial.

Mr. Jones – Question, Mr. Chair?

Chair – Mr. Helm was first.

Mr. Helm – On your fines' report, it says she paid it on January 8<sup>th</sup>.

Chair – In light of any unresolved confusion on the subject, we could make a motion to approve subject to payment of the fine and if the fine is not paid then deny it. Would that be appropriate, Mr. Barnhart?

Mr. Tom Barnhart – Right. We could give her like thirty (30) days or some kind of timeline to make her payment and if she doesn't then we would deny it.

Chair – Thank you.

Mr. Helm – Do we have to give her a timeline? I mean she hasn't paid it already. She's already had that time. She had thirty (30) days when the fine was issued. If she hasn't paid it, I don't see why we would give her another...

Mr. Barnhart – You don't have to give her any time at all. I think you'd have to give her notice and give her some time to come up with the money if she hasn't paid it. It wouldn't make any sense to say no you can't do it unless you have already got it paid.

Ms. Simon – If I may interrupt? I apologize for the error. It is that she has paid. At this point, the Division is recommending approval. I apologize for that again.

Mr. Helm – I'm sorry. I didn't catch it until last night.

Chair – Good catch. Good job.

Ms. Simon – Actually, because of her adverse history in the past, we would recommend that the license be approved subject to the condition of a \$1000 fine and probation for one (1) year.

Mr. Helm – You lost me.

Ms. Jasmin Richardson – Well, at least probation.

Mr. Helm – You want to add your probation on to....

Ms. Simon – Typically, when somebody has previous history, we enter into a settlement agreement with them in advance of them being on the Board agenda and I believe that typically we include a fine as well as probation on that.

Mr. Helm – She's already paid the fine. I would understand if you want to do the probation, but I don't understand the fine.

Chair – This is in addition to the other fine. That's been cleared and now they are recommending a \$1000 fine and one (1) year probation.

Mr. Helm – Well I don't understand why you're recommending that.

Ms. Simon – I know that typically if this had come up and she had paid her fine let's say six (6) months ago, I would think in the past we have assessed on a settlement agreement an additional fine and cost for licensure as well as probation. However, if the Board is not interested in doing that, probation would be acceptable of course.

Mr. Knopke – Mr. Chair, I've got a question.

Chair – Please.

Mr. Knopke – If I'm reading the first document correctly, at the December 1, 2016 Board meeting, Ms. Jones was issued a fine of \$1000 with a Consent Order, which was to be paid in 30 days? I assume that thirty (30) days starts when she gets the notice from the Department that she's got thirty (30) days to pay. Is that correct? I'll direct that either to Ms. Simon or staff. When does the thirty (30) days start?

Ms. Simon – If I may, Mr. Knopke. The thirty (30) days would begin at the date of the execution of the Order, which was December 9<sup>th</sup>.

Mr. Knopke – The fine schedule under the Executive Director's report reports that it's logged in on January 8<sup>th</sup>. I'm not adding or subtracting really good today, but that seems like it's less than thirty (30) days that she got it there, if that report is correct.

Ms. Simon – Ms. Richardson?

Ms. Richardson – Okay, yes, that might be correct, but it had to go to Finance and Accounting first so at the time that we processed the coversheet, we had not received it. So when they log it into the pay log, they do log it in as the date that Finance and Accounting received it, not when it is put into our system. We work on two (2) different systems, so at the time that we processed the coversheet we did not see that the payment had been completed.

Mr. Knopke – But then I would argue that everybody, unless they paid within a week of the Board meeting, probably is going to be late in your system to be logged in because if they send it over to the other place and it takes two (2) thereabout to get to you.

Ms. Richardson – Mostly, this is a unique situation. She had already submitted the application and she had requested to put it to the side until you all had reviewed the disciplinary action and Consent Order, so then we put the application forward for the next Board meeting. It's more of a unique situation. We don't normally, typically get the applications this close.

Mr. Knopke – I'm just thrown over the fact that we're coming back to she's paid her fine, she was good. Now we got another fine for something else for her to pay evidently because she was late of some nature, unless I'm just totally confused here.

Ms. Simon – Mr. Chairman, may I respond?

Chair – Please do.

Ms. Simon – I understand the confusion in this. As another fact, even taking into Finance and Accounting and anything of that nature, it appears that it was delivered to the Department on the 8<sup>th</sup>.

Mr. Knopke – Okay.

Ms. Simon – And if it was the 8<sup>th</sup> it was actually off because it would have been thirty-one (31) days as opposed to thirty (30), but that's really inconsequential for this conversation. However, the Board chooses to do this, like I said, in the past regardless of whether the fine was late or not when we have a previous Consent Order, a previous adverse history, I was under the impression that we had assessed a monetary amount as well as probation but that is up to the Board.

Mr. Knopke – Ms. Simon, I believe that's what we've done in the past, but I guess at this point if we made a deal with her and the deal was the Board approve \$1000 fine and no probation then that's the deal. I mean I don't know, unless she does something wrong. I don't know that she's done anything else wrong other than one (1) day late, is there a reason to add a year, two (2) years or an hour's worth of supervision. Just a thought.

Ms. Richardson – I believe in the last meeting and reading over what we did, we did not assess a probation because she was at the end of her internship and therefore she did not have a license at that time. So there was no need to assess a probationary period. It was just a fine. And then you all decided that because she was coming back before the Board to submit an application to take the Florida Law and Rules Examination and become licensed you would address that at that time.



Mr. Barnhart – Board members, I think my recommendation would be to approve this applicant because it appears to me that the only reason why she was being recommended for denial was the belief that she had not paid her fine. I didn't see anything else that would prohibit her from being licensed.

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

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

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

**(1) Funeral Director**

**(a) Block, Carol T F061193**

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

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

**(1) Funeral Director and Embalmer**

**(a) Glenn, Diedra L**

Ms. Simon – The applicant submitted an application to become a Concurrent Intern on August 23, 2016. The application was incomplete when submitted. All deficient items were returned on December 21, 2016. The applicant submitted a fingerprint card with was returned with criminal history. Applicant has a criminal record, to wit:

- In April 2016, Ms. Glenn pled guilty to possession of marijuana. She spent three days in jail and was fined \$197.50.

The Division is recommending approval without conditions.

Mr. Knopke – Mr. Chairman?

Chair – Yes?

Mr. Knopke – I apologize. I glanced over this. I didn't read it in total. Was this Ms. Glenn's first offense? I've not dug too deep into this so it may be there.

Ms. Simon – I believe that this was the only offense that was revealed and was the only offense listed on the application.

Chair – Any other questions or comments?

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

**9. Application(s) for Embalmer Apprenticeship**

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

**(1) Bostic, Jerome M F135349**

Ms. Simon – The applications 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 (Review of Education)**

**(1) Phillips, Toby**

Ms. Simon – The applicant submitted an application to become an Embalmer Apprentice on November 14, 2016. The application was complete when submitted. The applicant submitted a fingerprint card with was returned with no criminal history. The applicant is requesting to come before the Board because he currently cannot provide proof of a high school diploma or equivalent. Mr. Philips is from the UK and could not obtain a copy of his high school diploma. Mr. Phillips did

supply some certifications from a college he attended and a letter from the college. The Division is recommending approval without conditions.

Chair – Is Mr. Phillips here? Mr. Phillips? Hearing no response.

Mr. Helm – Question? Did anyone talk to this Mr. Phillips? Is it that he couldn't get it or they wouldn't send it to him?

Ms. Richardson – I've spoken to him and to the SCI representatives. He could not get the information either from the school or a school that he went to. I guess it's been so long ago.

Mr. Helm – So basically they wouldn't give it to him. If he's contacted them it means they wouldn't give it to him. I don't understand that.

Mr. Knopke – May I interject?

Chair – Mr. Helm, are you finish sir?

Mr. Helm – Yes.

Chair – Ok. I'm sorry. Mr. Knopke?

Mr. Knopke – I'm just adding to him. There's an email in here in the package from a Carole Ward [CAWard@nnc.ac.uk](mailto:CAWard@nnc.ac.uk) regarding his transcript. It says "I am afraid we only keep student's records for ten years. I have checked our systems for you and cannot find any information." So if they only keep them for ten (10) years...

Mr. Helm – Ok.

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

*C. Recommended for Denial (Criminal History)*  
*(1) Simmons, Lenord*

Ms. Simon – The applicant submitted an application to become an Embalmer Apprentice on November 10, 2016. The application was incomplete when submitted. All deficient items were returned on December 14, 2016. The applicant submitted a fingerprint card with was returned with criminal history. Applicant has a criminal record, to wit:

- In February 2007, Mr. Simmons pled no contest to possession of cocaine. Mr. Simmons was sentenced to 90 days in jail (31 days credited) and court costs and fees of \$531.50.

Based upon the applicant's prior criminal record, the Division is recommending denial.

Ms. Oliver – Mr. Chair?

Chair – Yes ma'am?

Ms. Oliver – I guess I'm of the opinion that this crime, he hasn't had any more recent criminal history since ten (10) years ago; it's ten (10) years ago this month I think, that we know of?

Ms. Simon – We're unaware of any criminal history since then.

Ms. Oliver – I think that's remote enough in time that I don't have any problem approving him. I don't know what the will of the Board is, but that's just my opinion.

Chair – Is Mr. Simmons here? Mr. Simmons? Hearing no response.

Mr. Knopke – Mr. Chair?

Chair – Yes?

Mr. Knopke – If Ms. Oliver will make the motion to approve, I'll second it. If she doesn't then I'll make the motion to approve.

**MOTION:** Ms. Oliver moved to approve the application. Mr. Knopke seconded the motion.

Mr. Jones – Is there any additional information before we vote on this that's related to this applicant that the Department wishes to share?

Ms. Simon – Unfortunately, the Division is in a posture that the Division has presented all information available.

Mr. Jones – Thank you.

Mr. Knopke – And my second isn't based upon the length of time, but the letters of recommendation from people that are in the file. I'll assume the one from his wife is probably a little prejudice so I'll take that one off the table but I think I would want one from my wife.

Chair – And there's no indication of any prior criminal history or subsequent criminal history, am I correct?

Ms. Simon – Actually, there's no indication of any subsequent criminal history and all criminal history relevant by statute and rule has been provided.

Mr. Clark – I'll just say for the record I think it's disappointing that he's not here. If the future is our industry in funeral service knowing that this is something that he's had to carry for ten (10) years and he's going to have to carry for a long time, I would have appreciated if he would have been here. I'm making the assumption that he's trying to start a career in funeral service.

Chair – Help me out. Do we have a motion?

Mr. Barnhart – There was a motion and a second, I believe.

Chair – We do have a motion and a second to approve? All those in favor aye?

Board members – Aye.

Chair – And any opposed?

Board members – Aye.

Chair – Can we have a roll call?

Ms. Simon – May I call the roll call?

Chair – Please.

Ms. Simon – Mr. Hall?

Mr. Hall – No.

Ms. Simon – Ms. Oliver?

Ms. Oliver – Aye.

Ms. Simon – Mr. Clark?

Mr. Clark – No.

Ms. Simon – Mr. Knopke?

Mr. Knopke – Yes.

Ms. Simon – Mr. Jones?

Mr. Jones – No.

Ms. Simon – Ms. Anderson?

Ms. Anderson – Yes.

Ms. Simon – Mr. Helm?

Mr. Helm – Yes.

Mr. Barnhart – 4-3 in favor.

Chair – What does a tie vote do?

Mr. Barnhart – It says the deemer clause would be invoked April 10<sup>th</sup>. If that's true, then you could have another meeting where you could consider it in March. I think everyone has indicated. Wasn't that a motion to approve?

Chair – Yes.

Mr. Barnhart – A 4-3 vote.

Chair – I haven't voted. What does a tie vote do?

Mr. Barnhart – A tie vote would generally require the person to apply for a license pursuant to the deemer clause, in which he would be going through the Department to get the license as opposed to you granting a license. Based on a tie vote there would be no reason for you to recuse yourself so you would need to break the tie. There's no reason why there should be...

Ms. Simon – The seven (7) votes did not include the Chair.

Chair – I've not voted. It's 4-3.

Mr. Barnhart – Correct, but there'd be no reason that I know of that he would recuse himself from voting.

Chair – I've not recused myself and I have not voted. My question was if I vote no, that's a tie and what are the effects of that?

Mr. Barnhart – If it were a 4-4 vote then the person could apply for licensure through the Department and be granted a license that way.

Chair – Be granted or denied?

Mr. Barnhart – Be granted a license through the Department.

Chair – Through the Department and not through the Board?

Mr. Barnhart – Right. The deemer clause. It's a tie vote so the Board, unless you would table this based upon this action, if there's a 4-4 vote then they could apply for a license through the Department pursuant to the deemer clause, s. 120.60, F. S.

Mr. Knopke – Mr. Chair? May I ask a question of Mr. Barnhart?

Chair – Yes?

Mr. Knopke – Wouldn't a tie vote cause it to fail?

Mr. Barnhart – No. Not on a motion to approve.

Mr. Knopke – Okay.

Chair – I vote no. So it's 4-4. Anybody, for the record, now that the vote is in?

Mr. Helm – Mr. Chair? Whether it's appropriate or not, I would ask the other members that voted no if there's something I'm not seeing why. Maybe I should have voted no too, but I don't see it. So, do you understand what I'm saying? Or is there a reason why they're voting no that maybe we should look at?

Mr. Barnhart – If I could just add something. Many times in the context of licensing, crimes are divided up into either crimes of moral turpitude or not a crime of moral turpitude. Possession of a drug by itself is not a crime of moral turpitude, but it would be if they were convicted or pled guilty of criminal context to possession and sell of drugs, for example. The sell or delivery of drugs brings them into the context of a crime of moral turpitude so this type of crime would not be viewed as being as egregious as a crime of moral turpitude. If that helps at all.

Mr. Helm – It didn't.

Mr. Knopke – Again, I looked at it and it's ten (10) years ago. It appears it was a one-time thing, based upon the background check and so forth that we have available to us. If it was two (2) years ago or three (3) years ago, it's a whole different world. It's ten (10) years ago. He's obviously done a good job keeping himself away from trouble since then. I don't believe that there's a distribution. He was caught with cocaine. As I look at some of the people, some of the situations we've approved over the years, the Board prior to me and with me, it seems we've approved other things that seem to be more egregious or at least as bad as this and approved it. Maybe with conditions but approved it. That's why if Ms. Oliver wasn't going to make the motion, I was, but I think the record speaks for itself.

Chair – Ms. Simon?

Ms. Simon – As we have taken the vote and the vote is 4-4 I believe we can move on to the next case as the applicant is right now to go through the Department as opposed to the Board. That's the impression I'm under by the advice of Mr. Barnhart.

Mr. Barnhart – Unless a Board member wanted to reopen the case for reconsideration, then you could go to the next case.

Chair – Your explanation of what happens on a tie swayed me to vote that way so I understand that this person can still be licensed by the Department.

Mr. Knopke – Mr. Brandenburg, I'm going to respond to you that way if you'd let me.

Chair – Of course.

Mr. Knopke – If the Division is recommending denial and his only option now is to approach the Division about approval, his chances of getting approved are pretty slim, if not over with, by a tie vote.

Mr. Barnhart – Mr. Chairman, that should be no hindrance at all for the person to be licensed, the fact that there's a 4-4 vote, because that's separate procedure, licensure through the deemer clause. The Department, in my opinion, will not have any

discretion as to say we're not going to give it to you because we recommended denial or the vote was 4-4. I think the Department would have to process that application as an approved application.

Mr. Knopke – Okay.

Mr. Barnhart – That's my opinion.

Chair – Mr. Hall?

Mr. Hall – I would just say I understand the argument of Ms. Oliver and Mr. Knopke. I do think though that cocaine, whether it's being distributed or whether it's being used, is a serious charge. So I agree with Andrew from the perspective of I think if that individual was here and felt the importance of being here before us, I'd agree with Mr. Knopke. We've probably done some in the past that were maybe worse. I think that if he'd been here and let us talk to him and ask those questions and see this individual I think probably some votes would have went the other way.

Mr. Knopke – Mr. Chairman? I'd like to make a motion to reconsider and, as part of the motion, ask the applicant to appear at the next in person Board meeting.

Mr. Barnhart – Well I don't think we have the authority to require the person to come.

Mr. Knopke – Well I'd still make the motion to reconsider and place this item on the next in person Board meeting.

Mr. Barnhart – Which would be just past the deemer date. April 13<sup>th</sup> is the next in person and the deemer date, according to what I saw, is April 10<sup>th</sup> so it would be just past the deemer date.

Ms. Simon – We can put this on the teleconference.

Mr. Knopke – In all honesty I'd like to see the person, at this point, in person. I agree with Mr. Hall that this is a serious thing that he's done, but I still think ten (10) years is a long time. A lot can change in somebody's life for the good or bad and he was at the edge of bad when he was arrested and convicted and if he's been clean since then he's that most closer to the edge of being good and trying to make a life for himself. That's all.

Ms. Simon – At this point, where are we at in a legal posture, Mr. Barnhart?

Mr. Barnhart – If the Board members felt the same way you could move to reopen the case and once you reopen the case move to vacate the motion you just took and put it on the March agenda.

Mr. Knopke – I'll make that motion.

Mr. Helm – It won't be in person then.

Ms. Anderson – Right.

Mr. Barnhart – It will be a telephone meeting.

Mr. Knopke – Then I guess what I would do at that point at the telephonic meeting, if he is on the call, I would ask that he waive the deemer to go to the April meeting and if not, then...

Mr. Barnhart – And the Board still could ask him that anyway in the meantime. The next meeting is in Jacksonville, face to face, and he's apparently in Jacksonville now, so that might be a good strategy.

Ms. Simon – Well then, might I suggest, the way things are going that you move to vacate the vote. Then what would happen is we would either set it on the March agenda, with a motion to set on the March agenda, or if during that period of time if the applicant has waived the deemer clause then set it on the April agenda.

**MOTION:** Mr. Knopke moved to reopen the case. Ms. Oliver seconded the motion, which passed unanimously.

**MOTION:** Mr. Knopke moved to vacate the previous vote then moved to defer the item to the March teleconference; or if during that period of time if the applicant has waived the deemer clause then the item will be deferred to the April meeting. Mr. Hall seconded the motion, which passed unanimously.

**10. Application(s) for Change in Location**

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

- (1) *Baldwin Brothers Memorial Care Services Inc. d/b/a Baldwin Brothers (FE) (F078706) (Orlando)*
- (2) *Eternal Cremation Services LLC (DDE) (F061573) (Dunedin)*
- (3) *Forbes Funeral Home Inc. (FE) (F060873) (Macclenny)*
- (4) *National Cremation Society (DDE) (F040981) (Port Charlotte)*

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

**11. Consumer Protection Trust Fund Claims**

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

Ms. Simon – The Division recommends that these claims be approved for the monetary amounts indicated.

**MOTION:** Mr. Knopke moved to approve the claim(s) for the monetary amounts indicated. Mr. Clark seconded the motion, which passed unanimously.

**12. Application(s) for Broker of Burial Rights License**

**A. Recommended for Approval without Conditions**

- (1) *Littlestone Brotherhood LLC (Hialeah)*

Ms. Simon – The application was received on January 4, 2017 and no deficiencies were noted on the application. The Department completed a background check of Applicant which revealed no criminal history. Discussion or correspondence has been had with the applicant and he is aware that right now this is a business of one. The LLC will be licensed as a broker of burial rights, however, if he is to hire any other individual to exercise the brokerage then that individual would also have to be licensed. Based upon that the Division is recommending approval without conditions.

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

**13. Application(s) for Change of Ownership (Collective Coversheet)**

**A. Recommended for Approval with Conditions – Dale Woodward & Son Funeral Home, Inc.**

- (1) *Application(s) for Funeral Establishment*
  - (a) *Dale Woodward & Sons, PA d/b/a Dale Woodward Funeral Home (F040347) (Holly Hill)*
  - (b) *Dale Woodward & Sons, PA d/b/a Dale Woodward Funeral Home (F040348) (Ormond Beach)*
- (2) *Application(s) for Transfer of Preneed License*
  - (a) *Dale Woodward & Sons, PA d/b/a Dale Woodward Funeral Home (F019246) (Holly Hill)*

Ms. Simon – Dale Woodward & Son Funeral Home, Inc. (Dale Woodward), a corporation, seeks approval for the following applications for a change of ownership: two funeral establishments (F040347) and (F040348), and an application for transfer of a preneed license (F019246). The applications are being submitted due to a change of ownership as a result of the death of the previous owners, Dale and Marilyn Woodward, wherein all ownership interests have been divided and transferred to the decedents' heirs: Tracy M. Woodward, Dale D. Woodward, Jr., and Kelly Vanest. The fingerprints for the principals were returned without criminal history. More specifically, the entities that are being acquired is as follows:

- 1) Dale Woodward & Sons, PA d/b/a Dale Woodward Funeral Home, a licensed funeral establishment, license # F040347, physical address: 167 Ridgewood Ave, Holly Hill

- 2) Dale Woodward & Sons, PA d/b/a Dale Woodward Funeral Home, a licensed funeral establishment, license # F040348, physical address: 1780 Ocean Shore Blvd, Ormond Beach
- 3) Dale Woodward & Sons, PA, preneed license #F019246, physical address: 167 Ridgewood Ave, Holly Hill

Enclosed in your packets, are the separate applications regarding the above listed properties. If approved, Applicant is acquiring all preneed assets and liabilities for these locations and assuming responsibility for any outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced locations. The Division has no record of disciplinary action in regard to Dale Woodward & Son Funeral Home, Inc. The Division is recommending approval subject to the following conditions:

- 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 substantially 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 pass an onsite inspection by a member of Division Staff.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.

**MOTION:** Mr. Helm moved to approve the application subject to the conditions recommended by the Division.

Chair – I see historical information, but I don't see individual financials for the new owner. I see a financial income statement for the business but I think we've always required person financial statements for the owner.

Ms. Simon – Ms. Morris?

Ms. Morris – Typically, whenever we have a transfer of preneed license, because it applies to the entity, we generally ask for the financial statement for the entity versus the owners unless it's the change of control for a cemetery.

Chair – Got it. Thank you.

Mr. Knopke – Question?

Chair – Go right ahead.

Mr. Knopke – Are they approved to be a training agency? Do we know?

Ms. Richardson – I can check.

Chair – And while you're checking on that, we do have a motion so let's just hold it right there, with the motion without a second. Mr. Jones, will you help me remember that please?

Mr. Jones – Yes sir.

Chair – I'd certainly like to see this included in the change of ownerships if they are a training agency.



Mr. Knopke – At some point it's going to come back to us and we'll have approval backwards and that's the only reason I was asking the question.

Chair – And it's much smoother for the apprentices and the interns.

Mr. Knopke – I don't want them to lose any time.

Chair – Right.

Ms. Richardson – Yes, both of them do. However, there's the training agency waiver.

Mr. Barnhart – It has to be requested in writing.

Mr. Knopke – May I ask Mr. Helm if he would amend his motion of approval with conditions and add a condition that if they want their training agency to continue that they should send that in? That's not the way to do that?

Ms. Richardson – No.

Mr. Knopke – Ok.

Chair – Thank you. Mr. Helm has a motion to approve with conditions. Has it been seconded?

Mr. Hall – Second.

Chair – It's been seconded. And all those in favor, aye?

Board members – Aye.

Chair – And any opposed? That motion carries. Thanks for your input, Mr. Knopke, on that.

Mr. Knopke – You're welcome.

Chair – That would be something to consider on future applications to request that maybe they may want to look at that.

**14. Application(s) for Funeral Establishment**  
**A. Recommended for Approval with Conditions**  
**(1) DeMarco Family Funeral Home LLC (Spring Hill)**

Ms. Simon – An application for a Funeral Establishment was received on December 5, 2016. The application was incomplete when submitted. All deficient items were received on December 29, 2016. The Funeral Director in Charge will be James Klausch (F044291). All fingerprint cards have been returned with no criminal history. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

**MOTION:** Mr. Knopke moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Helm seconded the motion.

Chair – I recognize Mr. Rudolph.

Mr. Rudolph – I represent DeMarco Family Funeral Home. This is Mr. Klausch.

Chair – Mr. Klausch, do you want to address the Board or are you here to answer questions?

Mr. James Klausch – I'm here to answer questions.

Chair – Motion has been made for approval with conditions and it has been seconded. All those in favor, aye?

Board members – Aye.

Chair – And any opposed? The motion carries.

Mr. Rudolph – Thank you.

Chair – Great counsel. Thank you.

***(2) McCormick Funeral Home & Cremation Services LLC (Fort Lauderdale)***

Ms. Simon – An application for a Funeral Establishment was received on December 12, 2016. The application was incomplete when submitted. All deficient items were received on December January 6, 2017. The Funeral Director in Charge will be Julie McCormick (F028198). All fingerprint cards have been returned with no criminal history. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

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

Chair – At this time, I would like to declare my affiliation with SCI Funeral Services of Florida. This affiliation will in no way impair my ability to make fair and impartial decisions on any cases coming before the Board today.

***(3) SCI Funeral Services of Florida Inc. d/b/a Aycock AT Tradition (Port St. Lucie)***

Ms. Simon – An application for a Funeral Establishment was received on January 6, 2017. The application was complete when submitted. The Funeral Director in Charge will be George Seliga (F042791). All fingerprint cards have been returned with no criminal history. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

Chair – Ms. Coney?

Ms. Lisa Coney – Lisa Coney with SCI Dignity Memorial on behalf of Aycock. The “AT” was just because the sign was in all caps, so we’re not actually “AT” Tradition for the purpose of license issuance.

Chair – So it should be not caps?

Ms. Coney – Just “At.”

Chair – Not the @?

Ms. Coney – No, not that. The signage was in all caps but this is not how that’s going to appear in the yellow pages.

Chair – We didn’t swear you in.

Ms. Coney – I swear it’s not “AT.”

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

Chair – Thank you.

**15. Application(s) for Monument Establishment Sales Agent License**  
***A. Informational Item (Licenses Issued without Conditions) – Addendum H***

Ms. Simon – The applications 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.

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

**A. Recommended for Approval without Conditions**

**(1) Lawson Funeral Home & Cremation Services, Inc. (St Petersburg)**

Ms. Simon – The Department received the application on December 6, 2016 and all items resolved as of January 11, 2017. The officers and principals of the corporation will be: Benjamin E. Lawson (majority holder), Benjamin F. Lawson, Cecilia N. Lawson, and Stephanie C. Lawson. A completed background check of all officers revealed no criminal history. Applicant obtained its current qualifying funeral establishment license (F061572) as of September 2010.

It should be noted that a disciplinary citation was issued by the Division against the Applicant in December 2016. As a result, the Applicant had to pay a fine in the amount of \$250.00. The citation was paid as of January 5, 2017. If approved, Applicant will sell insurance-funded preneed through Great Western Insurance Company and use its approved pre-arranged funeral agreement. The Applicant’s financial statements as of September 30, 2016 reflects the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	414,521

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

**17. Application(s) for Preneed Branch License**

**A. Recommended for Approval with Conditions – Addendum I**

Ms. Simon – The Division is recommending approval.

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

**18. Application(s) for Removal Service**

**A. Recommended for Approval with Conditions**

**(1) Fubar Enterprises Inc. d/b/a Superior Mortuary Transport (Lauderdale Lakes)**

Ms. Simon – An application for a Removal Service was received on December 23, 2016. The application was complete when submitted. All fingerprint cards have been returned with no criminal history. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

Chair – Can you spell the letters of the first name of the applicant?

Ms. Simon – Yes sir. The letters of the first name of the applicant are F U B A R.

Chair – I thought that was correct. Thank you.

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

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

**A. Recommended for Approval with Conditions**

**(1) Request(s) for Trust Transfer**

**(a) Premier Funeral Plans, LLC (F038703) (St Petersburg)**

Ms. Simon – This is actually an informational item only. This was just to place the Board on notice of the trust transfer. If there are no questions as to that?

Chair – It's listed on the agenda as approval with conditions.

Ms. Simon – Yes sir, but this was actually an item to place the Board on notice.

Chair – Got it. Thank you. I had that in my notes.

**(2) *Preneed Funeral Planning and Preneed Trust Agreements***  
**(a) *ClearPoint Federal Bank & Trust (Batesville, IN)***

Ms. Simon – In accordance with ss. 497.458 and ss. 497.464, Florida Statutes, ClearPoint Federal Bank & Trust hereby submits the above named funeral planning and trust agreements for approval of the trusting of preneed funds and to be utilized by various licensed preneed establishments. The Division is recommending approval subject to the conditions as follows:

- 1) That ClearPoint provides to the Division the above listed trust agreements, fully executed by all parties, within 60 days of this Board meeting.
- 2) That ClearPoint provides to the Division two (2) print-ready copies of the above listed funeral planning agreement.

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

**20. *Executive Director's Report***

***A. Update on El Guille Bronze Manufacturing, Inc. (Hiialeah) (Verbal)***

Ms. Simon – Last month we had this on the agenda and we have looked into the matter to ascertain some of the facts that lead to licensing being granted last month and we are still continuing to look into that at this time.

***B. Request Extension - Chambery Family Funeral Home and Cremations (Palm Coast) (Action)***

Ms. Simon – If you will recall last month on the agenda, Chambery Family Funeral Home and Cremations was on the agenda requesting licensure and they had indicated at the time that within thirty (30) days they would be available for inspection. At that time, we indicated that their license was approved, however, it would be denied if within thirty (30) days they were not available for that. Subsequent to that time, Mr. Chambery has requested an extension based on the fact that the facility was unable to undergo an inspection and they are requesting an additional thirty (30) days. The Division would request that the Board approve that request.

Mr. Knopke – I'll make the motion simply because I never believed they could get it done in thirty (30) days before.

Chair – You questioned that at the time.

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

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

Ms. Simon – This item is informational only and has been brought up previously during the agenda. If there are no questions regarding the report?

Monthly Report of Fines and Costs Assessed and Paid  
 Division of Funeral, Cemetery and Consumer Services  
 February 2, 2017 Board Meeting  
 Date of Report: January 23, 2017

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Ana Alicia Logan	Dec-16	183122-16-FC	\$1,000	1/8/2017	Paid in Full	
StoneMor Florida Subsidiary LLC D/B/A Atlantis Cremation and Volusia Crematory	Dec-16	173610-15-FC	\$1,500	1/8/2017	Paid in Full	
Damon Baker	Dec-16	196641-16-FC	\$2,500	3/8/2017	Note D	
Derryck Richardson	Dec-16	197853-16-FC	\$1,000	1/8/2017	Paid in Full	
Gregory Dunphy	Dec-16	196605-16-FC	\$2,500	1/11/2017	Not current	Forwarding to Legal to take action
Michelle Jones	Dec-16	183130-16-FC	\$1,000	1/8/2017	Paid in Full	
Richardson's Family Funeral Care, Inc	Dec-16	197852-16-FC	\$1,000	1/8/2017	Paid in Full	
Gerald Ross	Dec-16	196644-16-FC	\$2,500	1/8/2017	Paid in Full	
RJ Gainous Funeral Home, Inc.	Dec-16	196621-16-FC	\$2,500	1/8/2017	Paid in Full	
Ty Lohman	Dec-16	173624-15-FC	\$1,000	1/8/2017	Paid in Full	
Stevens Brothers Funeral Home	Dec-16	166459-15-FC	\$1,750	1/8/2017	Paid in Full	
Thomas J. Cohen	Dec-16	192750-16-FC	\$1,000	1/8/2017	Paid in Full	
Ross Family Mortuary	Dec-16	196632-16-FC	\$1,000	1/8/2017	Payments are current	
Auxiliadora Funeria Nacional	Dec-16	175615-15-FC	\$4,000	1/8/2017	Paid in Full	
Cremations of Greater Tampa Bay	16-Dec	192741-16-FC	\$2,000	1/8/2017	Paid in Full	
Clarence P. Wilson Junior	Jun-16	169221-15-FC	\$1,500	10/9/2017	Paid in Full	
Affordable Monument Company	Jun-16	184198-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Patricia Narciso	Jun-16	184202-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Clifford N. Robinson d/b/a CN Robinson Memorials	Jun-16	178019-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Clifford Nathaniel Robinson	Jun-16	178002-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Ronald Noble	Aug-15	134801-13-FC	\$2,500	8/1/2017	Note D	
James West	Feb-16	165110-14-FC & 165112-14-FC	\$2,500	3/14/2016	Note A	Settlement surrendering licensure will be presented at the February 2017 Board meeting.

**21. Chairman's Report (Verbal)**

Chair – Regarding Vista and Pershing Industries, this Board approved a Settlement Stipulation sometime back. At the April meeting, I am requesting that the Division, in the agenda packet, provide Board members with a copy of this Settlement Stipulation and on the terms and conditions of the Settlement Stipulation, I would like for the Division to report back to the Board, compliant or not compliant with the individual items on the terms of agreement. So that's for the April meeting.

Ms. Simon – Yes sir.

Chair – Please. Thank you.

Ms. Simon – Do you have a further report, Mr. Chairman?

Chair – I don't think so. Thank you.

**22. Office of Attorney General's Report**

**A. Attorney General's Rules Report (Informational)**

**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES RULES REPORT  
JANUARY 2017**

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
69K-7.0012	Care and Maintenance Trust Fund Withdrawals	04/07/2016	4/12/2016	4/22/2016	RN 6/20/2016 JAPC Ltr 7/7/2016 NOC 8/12/2016 NOC 09/08/2016	10/07/16	10/27/16
69K-27.001	Embalmer Apprentice Program	06/30/2016	05/24/2016	5/31/2016	RN 10/12/2016 JAPC letter 11/03/2016 JAPC response letter 01/03/2017 Filing date TOLLED 01/03/2017		
69K-1.005	License Application Procedures	10/13/2016	09/08/2016	09/09/2016	RN 11/02/2016 Notice of Change/Withdrawal / Public hearing submitted to FAR 01/17/2017 for 04/13/17 hearing date		
69K-16.0001	State Examination for Funeral Industry Professionals	12/01/2016	10/13/2016	10/27/2016	RN 12/19/2016		

Mr. Barnhart – Board members you’ll see the activity down at the very bottom on the State Examination for Funeral Industry Professionals the effective date has changed to February 7<sup>th</sup>. I think if you recall that was the change where you decided to add a paragraph 4 to the rule, which has to do with if someone applies for licensure underneath the Law and Rules Examination, the criteria is that if they pass the examination within twenty-four (24) months of the application date that that would be a valid score but if it was more than twenty-four (24) months since they passed the exam then it would not be counted as a valid. Are there any questions about that? Next month you’re going to have, I believe, the Embalmer Apprentice rule to look over and hopefully approve that. I think we’re at a place where JAPC is almost satisfied with everything so we’ll be presenting that to you at the next meeting. That’s all I have for rules report, unless there are questions.

***B. Board Members’ Quasi-Judicial and Quasi-Legislative Responsibilities (Informational)***

Mr. Barnhart – If you’d like to print this out, I think it would be better if Ms. Simon would just send it to you in an email. I had some difficulty printing it off the disc. Let’s just take a few minutes to go through this. Basically it talks about your duties as a Board member in terms of Quasi-Judicial or Quasi-Legislative. I don’t have these pages numbered, but the first few pages are like the introduction for Quasi-Judicial. Then the first page I want to talk about is the one that says Quasi-Judicial actions. I think that’s page number 5. Any time you consider a disciplinary case, whether it be a Settlement Agreement or an informal hearing, you’re going to be acting like a judge in a sense. You’re going to be deciding what should be done about that particular case. Also, when you’re on a probable cause panel, it’s somewhat Quasi-Judicial to consider new applications for licensure. In these types of actions, it’s really important for you not to have any kind of communication with anybody on the outside or among other Board members about the validity of the case or any issues about the case. You shouldn’t be in contact with anybody about the disciplinary cases until you get here at a public meeting, unless it’s for something from the Board office if the Board office or Ms. Simon would like you to have or some communication from the office. And it’s real important that you confine your decision to what’s in the record that you are provided by the Department. You should not go out on your own fact-finding search trying to find newspaper articles or anything else that’s going to be outside of the record. Everybody needs to be looking at the same information and that would be the information provided to you by the staff in your meeting material. If you come across something that you think the Board should see, then I would recommend that you contact Ms. Simon and provide that to her, but not to anybody else. If she has any questions, she can give me a call and we can discuss it. It’s very important. There was just recently a case where it got reversed on appeal because the Board members were not all looking at the same material before they made the vote, so it’s not just something that never comes up. It is real important to limit yourself to what you are provided by Ms. Simon and staff. That goes for petitions for declaratory statements, petitions for variance of waivers and that sort of thing. Also, of course, you get requests for approval of CE courses as part of the application process. Next page gives you more details about the Quasi-Judicial. It’s very important that you vote in all cases unless you just have a valid reason where you have to recuse yourself or you have some sort of bias for or against someone. Unless that’s present you should be voting in every case. And of course, probable cause is a good reason for you not to be voting on a disciplinary matter when it comes before the Board. Next page, ex parte communications were within the amount of communications that we talked about where you have something before the Board. If someone approaches you about something, the best reaction would be “stop I can’t talk to you about that outside of a public meeting.”

Because if you do talk about it then you're going to disqualify yourself from being able to vote on that in the upcoming meeting. Next page is talking about solely based on the record. It is probably good to make a copy of this just to be able to refer to it for future meetings if you have any questions and of course if you have any questions you can contact me as well. The first page that talks about Quasi-Legislative actions. This is where you engage in the rulemaking process primarily. There are many instances in the Florida Statutes where you are given rulemaking authority. Sometimes it's discretionary and sometimes it is mandatory. Of course we'll try to guide you through that type of action. There is a case out there called *Sloban vs. Florida Board of Pharmacy*, which is an important, it doesn't involve your particular practice act, but it's a decision that really impacts a lot of Board activity. In that case, they found that the Legislature did not have the authority to give the Board of Pharmacy rulemaking authority and that was going to apply to all Department of Health Boards. There is a very similar provision in the Department of Business and Professional Regulations' statute that is very well impends upon that as well.

Chair – How is that case spelled?

Mr. Barnhart – Sloban... S L O B A N vs. Florida Board of Pharmacy. I can provide that case to you through Ms. Simon, if you'd like to read that. It's a pretty interesting case. It's a Florida Supreme Court case. The next one talks about voting conflicts about the fact that you are on the Board and you need to participate unless there's a very good reason why you should recuse yourself, and it gives examples. Then the next page talks about avoiding anticompetitive actions. Of course we've talked about in previous meetings about the North Carolina Dental Board case, which has resulted in a number of cases popping up across the United States involving claims of Boards acting in anticompetitive ways. Of course I can also provide that case. It started out with a FTC investigation and has developed from there. More things about the Quasi-Legislative capacity, what you need to do, rulemaking decisions. Rulemaking, generally you want to entertain and receive any kind of a comment you have from industry professionals, from associations, from anybody else that's interested in your practice and that's why we sometimes have these rule hearings or workshops where this flow of information can come from. You will have a public hearing in conjunction with your April meeting in January about the change of ownership rule, so that's coming up in April. There are standards, of course, about being in a Quasi-Legislative capacity. You must try to assure that the rule is supported by logic or necessary facts. It cannot be arbitrary. If the rule cannot be adopted without thought or reason or is irrational therefore it cannot be capricious. Do you have any questions about the presentation? It's pretty basic but sometimes we get caught up on what our functions are in any particular matter that may come before you.

## Board Members' Quasi-Judicial and Quasi-Legislative Responsibilities:

When Am I (Like) a Judge?  
When Am I (Like) a Legislator?



Edward A. Tellechea  
Florida Office of the Attorney General

## ARTICLE IV EXECUTIVE

- SECTION 6. Executive departments.—All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:
  - (a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.
  - (b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

## Non-Executive Authorities delegated to the Boards:

- In Chapters 120, 456, and professional practice acts, the Florida Legislature has delegated limited legislative authority (**quasi-legislative**) to the Boards and has authorized the Boards to exercise limited judicial like authority (**quasi-judicial**) in certain articulated instances.





## Quasi-Judicial Action:

- The action taken and discretion exercised by public administrative agencies or bodies that are obliged to ascertain facts and draw conclusions from them as the foundation for official actions.



## Quasi-Judicial Actions:

- Consideration of Disciplinary Cases - Settlement Agreements, Recommended Orders, Hearing Not Involving Disputed Issues of Fact (Informal Hearings), Waiver Cases, and any related motions.
- Finding Probable Cause
- Consideration of Licensure Applications and Licensure Hearings
- Petitions for Declaratory Statements
- Petitions for Variance or Waiver and subsequent administrative hearings.
- Approval of CE Courses and Providers and any subsequent administrative hearings.

## When acting in a Quasi-Judicial capacity you need to act like a judge:

- 1) Hear and decide matters on the agenda except those in which disqualification or recusal is required.
- 2) Must be faithful to the law and not be swayed by partisan interests, public clamor, or fear of criticism.
- 3) Maintain order and decorum in proceedings before the Board.



## When acting in a Quasi-Judicial capacity you need to act like a judge:

- 4) Must be patient, dignified, and courteous to respondents, witnesses, lawyers, and others with whom Board members deal in an official capacity, and shall require similar conduct of board counsel and of staff.
- 5) Accord to every person who has a legal interest in a proceeding before the Board, or that person's lawyer, the right to be heard according to law.
- 6) Must not initiate, permit, or consider ex parte communications, or consider other communications made to him or her outside the presence of the parties concerning a pending or impending proceeding.

## When acting in a Quasi-Judicial capacity you need to act like a judge:

7) When considering Quasi-Judicial matters before Board, members must make their decisions solely based on the record as set forth in the agenda materials. Board members may not use any outside sources of information to make decisions especially when considering Recommended Orders and when finding probable cause.

- No discussion with outside sources
- Put aside any personal knowledge of the circumstances surrounding the case
- Do not do any independent research
- Ignore media coverage



## Quasi-Legislative Action:

Limited authority delegated to agencies by the Legislature to make regulatory policy pursuant to specific delegated authority set forth in statute.

More Simply Put: Rulemaking



## When acting in a Quasi-Legislative capacity you can act like a legislator:

1. Consider all rule proposals on the agenda except those in which you may be disqualified due to a conflict of interest.

### 112.3143 Voting Conflicts. -

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

## When acting in a Quasi-Legislative capacity you can act like a legislator:

Example 1: Acupuncturist who sits on the Florida Board of Acupuncture votes for a standard of practice rule that requires all Florida licensed acupuncturists to use disposable acupuncture needles. This same acupuncturist's spouse owns and operates the only Florida company that sells and distributes disposable acupuncture needles. Conflict of Interest?



Example 2: Physician Board member votes to reduce licensure renewal fees for all Florida licensed physicians. Conflict of Interest?

## When acting in a Quasi-Legislative capacity you can act like a legislator:

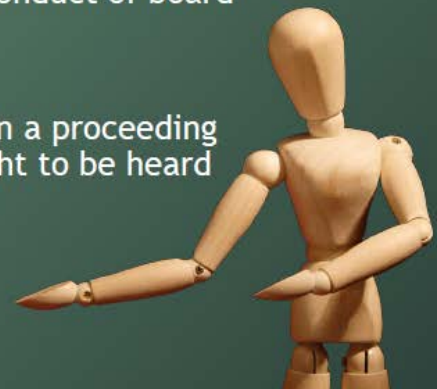
2. Must be faithful to the law
  - Specific rulemaking authority
  - Avoid anticompetitive actions



How about avoiding partisan interests, public clamor, or fear of criticism?

## When acting in a Quasi-Legislative capacity you can act like a legislator:

4. Must be patient, dignified, and courteous to interested parties, witnesses, lawyers, and others with whom Board members deal in an official capacity, and shall require similar conduct of board counsel and of staff.
5. Accord to every person who has a legal interest in a proceeding before the Board, or that person's lawyer, the right to be heard according to law.



## When acting in a Quasi-Legislative capacity you can act like a legislator:

6. May initiate, permit, or consider ex parte communications, may consider other communications made to you outside of the Board meeting. In other words, its ok for people to lobby you on rulemaking issues.
7. Rulemaking decisions can be based on personal knowledge and information obtained from a broad spectrum of sources.
  - May discuss with outside sources
  - May consider your personal knowledge on the issue
  - May do independent research
  - Ignore media coverage?



## When acting in a Quasi-Legislative capacity you can act like a legislator:

8. Must make sure that all the information used by Board members when making rulemaking decision become part of the official rule record.
9. Must assure that the rule is supported by logic or the necessary facts, i.e. it can't be arbitrary. The rule cannot be adopted without thought or reason or is irrational, i.e. it can't be capricious.





# Questions?

Chair – Thank you. Anything else to report?

Mr. Barnhart – I think that’s all I have.

## 23. Administrative Report

The information was provided on the Agenda.

## 24. Disciplinary Report

The information was provided on the Agenda.

## 25. Upcoming Meeting(s)

- A. March 2<sup>nd</sup> (Teleconference)
- B. April 13<sup>th</sup> (DoubleTree by Hilton Jacksonville Airport)
- C. May 18<sup>th</sup> (Teleconference)
- D. June 29<sup>th</sup> (Tallahassee)
- E. July 13<sup>th</sup> (Teleconference)
- F. August 3<sup>rd</sup> (Altamonte Springs)
- G. September 7<sup>th</sup> (Teleconference)
- H. October 5<sup>th</sup> (DoubleTree by Hilton Tampa Airport Westshore)
- I. November 2<sup>nd</sup> (Teleconference)
- J. December 7<sup>th</sup> (Tallahassee)

## 26. Adjournment

Chair – Is Mr. Knopke here?

Mr. Jones – He just stepped out.

Chair – I think Mr. Knopke wants to address the Board.

Ms. Simon – Board members, I believe that there was a question regarding Mr. Chambery and the case on the Executive Director’s report that the Board had granted the extension for thirty (30) days. However, it was brought up that maybe we should do sixty (60) days in order to provide him with sufficient time for any confusion that may be going on with the County and the City. If that’s what the Board would want to do, then we would need a motion to reopen, well, Mr. Barnhart can say what may be necessary.

Mr. Barnhart – Well it’s not on the agenda, correct? You can just move to open consideration of that prior case.

Chair – Does anyone have any interest in that?

Mr. Hall – This was for the funeral home license, correct? We’ve done an inspection on it after the construction is completed.

Chair – Correct.

Mr. Hall – So this will have been sixty (60) days with the thirty (30) we gave him today?

Chair – Yes.

Mr. Hall – So we would have the option to come back in the thirty (30) days if we wanted to extend it?

Chair – Yes, at his request.

Ms. Simon – Yes. Absolutely.

Chair – Board members? Good of the cause? Anything at all? Mr. Jones you got anything going on in your end of the world?

Mr. Jones – Just to give an update to industry. We, as far as Vital Statistics, Department of Health, are looking at additional automation with your EDRS death system. Hopefully within the next several months, we’ll be able to sign a contract with our vendor. Our goal within the next two (2) years is to move our death system you currently use to a full web-based more user friendly system. We’ll be putting together some user groups to generate some ideas. We will be reaching out to your industry as well as physicians, medical examiners currently using the system asking what are some of the things you would like to see in the new system. Just wanted to update you that we will be moving forward looking at some automation and trying to improve the system you’re currently using. Thank you.

Chair – Thank you. Good of the cause? Mr. Knopke?

Mr. Knopke – Yes sir. Thank you. We all know that everything we read on the internet is real and its facts. I have a Facebook page and I think just about everybody in this room probably has one that they look at. Some probably participate in more actively than others. I try to not be active, but in this case while rather than posting it back, there was a post this morning that didn’t catch me off guard by any means. In fact, it reiterated something I believe, but you know we always hear about the bad things about people or things or situations. One popped up on me this morning that I thought, you know, we all know he does a good job. He’s involved in his community and so forth, but there’s times when they just go a little bit, not too far, just a little bit more than you would normally expect. There was a post this morning from a Melissa Maxwell Nichols to Lew Hall and it reads, “Thankful for you and Anita and all you do for the youth of Polk County. You have made a difference in the lives of these kids, not by purchasing their market animals, but by believing in them and having faith in them. you have planted a seed in these young adults that they will remember forever. My kids are blessed to have you always in their corner cheering them on! That may be my only one soft-sappy moment ever so enjoy it – with Taeler Dupre and Reggie Nichols.” Lew, you do it and we know you do it in the community, but when somebody does something like that for you it shows what kind of people really are in the industry and I just want to thank you.

Chair – Thank you for reading that. Any more comments, good of the cause?



Ms. Coney – Mr. Chairman, I thought that Deb Gilmore was going to be here and I wasn't sure if anyone else was going to say anything, but for anybody that's been involved with the Board for some time I wanted to let you know that Tim Claiborne passed away. It was Christmas time. He was very young, fifty-eight (58), which now that my husband is sixty-five (65), fifty-eight (58) sounds really really young. It was unexpected but if you wanted contact information for his family or Mobile Gardens where he was last helping the funeral and cemetery industry, I'd be happy to provide that, but I just wanted to share. Tim was an incredible mentor and a wonderful man and gone way too soon.

Chair – Thank you. We appreciate that.

The meeting was adjourned at 11:21 a.m.