

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
October 3, 2019 - 10:00 A.M.
St. Petersburg College Health Education Center (AUDITORIUM)
7200 66th St. N
Pinellas Park FL 33781

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

Mr. Jody Brandenburg, Chair – Good morning, everyone. Welcome to the Board of Funeral, Cemetery, and Consumer Services. This is our October 3, 2019 meeting. We're at St. Petersburg College Health Center Auditorium. As I call the meeting to order, I'd like to recognize Professor Kevin Davis. Thank you so much for having us. Will the students please stand? We want to recognize you. You are the future of our profession. What you do determines what our profession will look like in the future. So, we're laying the foundations and we want you to build upon those foundations. Thank you so much for choosing this profession. I know that you'll get many rewards for it. Thank you very much. Professor Davis, it really is an honor to be here. It was an initiative that we have to visit and have Board meetings at all the schools and all the associations around the State of Florida. So, being here is an honor. This is a beautiful facility. Thank you so much for everything that you do every day to promote the profession. Thank you.

Kevin Davis – We're glad you came.

Chair – Thanks. By the way, those that are coming to the podium or coming to address the Board, right here in front of us, there's an open space and microphone there if you're addressing the Board. Mary Schwantes, the Director of the Division of Funeral, Cemetery, and Consumer Services, thank you for helping set everything up and for being our leader. Would you please address us?

Mary Schwantes – Absolutely. Thank you, Mr. Chair. Good morning, everybody. I wanted to introduce staff. These ladies keep us in gear here. First, I have Ellen Simon, Assistant Division Director. She's to my left. The lady in orange who again is one of the folks that helps keep us totally in order around the meetings in Jasmin Richardson. She's also our licensing specialist and expert. So, particularly for students, that's a name that you would like to know going forward. LaTonya Bryant, our Administrative Assistant, is in the front. We have two (2) of our field staff with us today. Donald Carr, who is one of our examiners, and Gene Brimmer, one of our investigators. We have sixteen (16) field staff and they are always busy with inspections, examinations, and investigations. So, thank you all for coming. I also wanted to ask if there are any association members or representatives here today? We have four (4) death-care industry associations in Florida. The first is the Florida Cemetery, Cremation and Funeral Association (FCCFA). If there are representatives, if you all want to introduce yourselves.

Lisa Coney – I'm Lisa Coney and I am the Vice President of FCCFA.

John Ricco – John Ricco, Executive Director.

Ms. Schwantes – The Independent Funeral Directors of Florida (IFDF), I wasn't sure if anybody was here from them or not. I don't see anybody. Florida Morticians Association (FMA)? Do you ladies want to introduce yourselves.

Cecilia Lawson – Cecilia Lawson, Lawson Funeral Home, Florida Morticians Association.

Katina Davis – Katina Davis with Chandler's Funeral Home, Florida Morticians Association.

{inaudible speaker} – Jacksonville.

Ms. Schwantes – Thank you all. And I saw someone raise their hand for IFDF. Would you like to introduce yourself?

Irving Sanchez, III – Irving Sanchez, III, St. Petersburg FL. Sanchez Rehoboth Mortuary and Cremation Services.

Ms. Schwantes – Thank you. And finally, we have the Florida Monument Builders Association (FMBA). Is anyone here from FMBA. Okay, I believe that's it. Thank you, Mr. Chair.

Chair – Ms. Simon, will you please make your preliminary remarks and accomplish the roll call?

Ms. Ellen Simon – Yes, Mr. Chairman. My name is Ellen Simon. I am Assistant Director for the Division of Funeral, Cemetery, and Consumer Services. Today is October 3, 2019. It is approximately 10:05 A.M. 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. This meeting is taking place in Pinellas Park FL at the St. Petersburg College Health Education Center. An agenda for this meeting has been made available to all interested persons and extra copies are located in this room. Ms. LaTonya Bryant is recording the 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's Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. At this time, I will call the roll:

Joseph "Jody" Brandenburg, Chair
Keenan Knopke, Vice Chair
Jean Anderson
Andrew Clark
Lewis "Lew" Hall
Powell Helm
Ken Jones
Darrin Williams

Also noted as present:

Mary Schwantes, Executive Director
Tom Barnhart, Board Legal Advisor
Marshawn Griffin, Department Counsel
James "Jim" Bossart, Department Counsel
LaTonya Bryant, Department Staff
Jasmin Richardson, Department Staff
Gene Brimmer, Department Staff
Donald Carr, Department Staff

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

Chair – Thank you.

2. Action on the Minutes
A. September 12, 2019

Chair – The first item on our agenda is the Action on the Minutes of the September 12, 2019 meeting.

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

3. Old Business
A. Informational Item – Monthly Report Requested by the Board
(1) Mitchell, Ivan W. (Funeral Director and Embalmer)

Ms. Simon – In April 2019, Ivan Mitchell's concurrent intern license application was approved with the condition that he be placed on a 12-month probation and submit a monthly report from the owner of Waldon Funeral Home on the 1st of every month. That report, for September, is attached as part of your package. If there are no questions?

Chair – The Chair would entertain a motion to eliminate the requirement for the monthly reporting going forward. Is there a motion?

MOTION: Mr. Ken Jones moved to eliminate the requirement for the monthly reporting going forward. Ms. Jean Anderson seconded the motion, which passed unanimously.

B. Informal Hearing Not Involving Disputed Issues of Material Fact (section 120.57(1), F.S.)
(1) Recommended for Renewal
(a) Boynton Memorial Chapel, LTD (F019300)

Ms. Simon – An application for preneed main licensure renewal was received by the Division on or about April 2, 2019. The Board considered the application at the June 18, 2019 Board meeting and determined that the licensee did not meet the net worth requirements. As that time the Board ordered that the renewal be granted, but that the renewed license be suspended, with the imposition of the suspension stayed for sixty (60) days. Additionally, the Board found that if the applicant provides the current statement of Personal Assets and Liabilities of by Stormet Norem, along with the agreement that the entity will continue trusting 100%, then the suspension shall never take effect.

On July 23, 2019, an Order renewing license subject to conditions, reflected in the Board’s Order, was filed. The applicant subsequently filed a request for an Informal Hearing not involving Disputed Issues of Material Fact.

Chair – Thank you. Yes?

Wendy Wiener – Good morning, Board members. I’m Wendy Wiener. I represent Boynton Memorial Chapel. We filed the request for informal hearing because between the time of the Board meeting and the time that the Order was issued by the Board, the accountant for the licensee corrected the financials so that they do show well more than an adequate net worth to approve the license without conditions. So, you will see in your Board package that the financials are for much more than \$100k.

Chair – Thank you. Is there a motion?

MOTION: Mr. Keenan Knopke moved to approve.

Chair – That motion is to affirm the Order renewing subject to conditions?

Mr. Knopke – Yes.

Ms. Wiener – Well, that Order required that he submit a personal guarantee and do other things that were necessary because the company did not meet the adequate net worth, but now the company does meet the adequate net worth by well more than is required and so we would ask that you simply approve the preneed license without the conditions.

Chair – Is that part of the Board information that we have?

Ms. Wiener – Yes. I believe if you scroll down to pages 4-6 you will see the restated net worth of \$854,543.

Chair – I do see that and I do see that on page 5.

Mr. Knopke – Mr. Chair I was making the motion at least to get to discussion to approve it without conditions, because my question will be, what has changed in six (6) or eight (8) weeks from what has been history over the last 20+ years of being upside down.

Ms. Wiener – Mr. Norem is going through a particular personal situation that required that he make certain financial disclosures to the court system, and in doing so, he had to engage a new certified public accountant to make an assessment of his financial situation. In doing so, they discovered that the real property on the financials had been understated for a number of years. So, as you know, Boynton Memorial Chapel’s financial statements were in a particular condition for a number of

years and they were ever improving, but they weren't at the net worth number and so, the accountant has included a note here in the footnotes about why there was an adjustment, and that's also why he included the prior numbers, which show the negative net worth as well as the new number. I am not a certified public accountant, as you may know, so I would ask that you refer to the statement that he makes as to the net worth.

Chair – Thank you. So, we have a motion, and is there a second?

Ms. Simon – If Mr. Knopke could repeat the motion.

MOTION: Mr. Knopke moved to approve the renewal. Mr. Jones seconded the motion, which passed unanimously.

Chair – Thank you.

Ms. Wiener – Thank you.

4. Disciplinary Proceedings

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

(1) Probable Cause Panel A (Related Cases – Division Nos. ATN-29647, ATN-30805, ATN-30837, ATN-30188)

(a) Creal Funeral Home and Cremation, Inc.: Case Nos.: 230303-18-FC, 229947-18-FC, 223574-18-FC, 221574-18-FC; Division Nos.: ATN-29647, ATN-30805, ATN-30837, ATN-30188 (F082115)

Ms. Simon – Mr. Marshawn Griffin will be presenting for the Department.

Mr. Knopke – Mr. Chair?

Chair – Mr. Knopke?

Mr. Knopke – Just for the record, let me recuse myself. I'm on Panel A.

Chair – Thank you.

Marshawn Griffin – Before I begin, is there a representative from Creal Funeral Home here?

George Woodie – Yes sir.

Mr. Griffin – The above-referenced matter is presented to the Board for consideration of the Motion for Final. Order by Hearing Not Involving Disputed Issues of Material Fact (Motion) in the matter of Creal Funeral Home and Cremation (Respondent). At all times relevant to the Administrative Complaint filed in this matter, Respondent was licensed as a funeral establishment, license number F085792. On or about June 12, 2019, the Department filed a thirteen (13) count Administrative Complaint alleging that Respondent engaged in the following:

- Violated a provision of Chapter 497, Florida Statutes.
- Failed to maintain an embalming room with running water.
- Failed to practice minimum sanitary practices relating to its preparation room.
- Committed fraud, deceit, negligence, incompetency, or misconduct in the practice of activities regulated by Chapter 497, Florida Statutes.
- Filed a false report with the Department
- Practiced beyond the scope of the licensure held
- Made preneed arrangements without holding a preneed license
- Guaranteed the price of goods and services without following the procedures of Part Four of Chapter 497, F.S.
- Failed to provide a consumer with a general price list.

Respondent filed an untimely Election of Proceeding in this matter. However, as the Respondent did not dispute any of the Department's factual allegations as contained in the Administrative Complaint, the Department, out of an abundance

of caution, waives the untimely filing, accepts the filing of the Election of Proceeding form, and submits this proceeding to the Board to be conducted in accordance with sections 120.57(2) and 497.153(4)(b), Florida Statutes. A copy of this memo, along with a copy of the Motion for Final Order by Hearing Not Involving Disputed Issues of Material Fact have been sent via U. S. Mail to Respondent's last known address of record.

Chair – Thank you. Is there anyone representing Creal Funeral Home and Cremation? Please come forward.

Mr. Woodie – Good morning.

Chair – Good morning, sir. Would you please be sworn in?

Ms. Simon – Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Woodie – Yes, I do.

Ms. Simon – Please state your name for the record.

Mr. Woodie – George B. Woodie.

Chair – Thank you, Mr. Woodie. Did you want to address the Board?

Mr. Woodie – Yes. As to the allegations, if the Board has any questions, I would like to answer them according to the counts that have been levied against the funeral home.

Chair – Are you owner of Creal Funeral Home?

Mr. Woodie – Mrs. Thomas is here. I'm the licensed funeral director in charge currently at Creal Funeral Home.

Chair – Are you owner?

Mr. Woodie – No sir.

Chair – Okay. Thank you. So, we have before us, awaiting a motion for Final Order of the Hearing Not Involving Disputed Issues of Material Fact. Is there a motion?

MOTION: Mr. Powell Helm moved to adopt the allegations of the facts as set forth in the Administrative Complaint. Mr. Hall seconded the motion.

Chair – Mr. Barnhart?

Tom Barnhart – Mr. Woodie, this is your chance to offer evidence of mitigation of the possible penalty in this case, because some of the possible penalties include suspension or revocation. So, this is your chance to offer mitigation.

Mr. Woodie – As to Count 1, where there was no running water in the facility. On that particular day when the inspector came, the water had been shut off, but it was turned back on the very next day. It was shut off for nonpayment. That's the reason for the non-running water. As far as the ceiling, the holes in the ceiling, those have both been taken care of. All of these violations were under the care when Mr. Leon Thomas was the owner of the funeral home. He passed away June 2018. So, most of these violations have been corrected. As far as Count 3, about the cases of bodies being handled, Ms. Hadley was listed as the embalmer. She did not embalm those bodies, so she did not sign the monthly report. When the inspector came around in November, the report wasn't signed by her because the wrong information was on the reports. Once the right information was put on the Cases of Bodies Handled, she did sign those. As to Count 5, where preneed was listed on the website, that was immediately taken off, after the inspector noted it. As far as the preneeds go with Alpine Health, those

monies have been returned to the Nursing Home. As for any other preneed, all that money rests with Columbian Mutual Life Insurance Company. So, there's been no harm done to the consumer.

I'm just here to represent. Mr. Thomas was a personal friend of mine. He had been ill. He was already ill when the inspection was being done. I would say he probably didn't use his best judgment, but he did pass away June 2018. He leaves behind a wife and two (2) kids. They could not be here today. His kids could not be here because one (1) is in college and the other one (1) is in high school. His wife is present today.

Mr. Barnhart – Mr. Woodie, what is your position?

Mr. Woodie – I became the licensed funeral director in charge of the facility in August of this year.

Mr. Barnhart – I thought you said Mrs. Thomas is the FDIC now.

Mr. Woodie – No, I am.

Mr. Barnhart – You are?

Mr. Woodie – Yes sir. Mrs. Thomas is not a licensed funeral director.

Mr. Barnhart – Can you summarize the next counts? I think there were thirteen (13).

Mr. Woodie – The counts about the preneed?

Mr. Barnhart – I believe you are on number 5 or you may have gone on to another count. I wasn't sure.

Chair – Counts 6 – 13.

Mr. Woodie – The preneed, those monies are with Columbian Mutual Life Insurance Company. The funeral home did not collect those monies. The monies are with the insurance company, so no harm has been done to the consumer. The money is still there. I realize they shouldn't have been written, but all of these things were done under Mr. Thomas' leadership, when he was over the funeral home. He has since passed away and this funeral home has been operating by the rules and regulations of Chapter 497 and the Administrative Code, ever since his death.

Chair – What about all the funeral arrangements being made by those persons not licensed to make funeral arrangements, and embalmings being done by those people not licensed as embalmers?

Mr. Woodie – I don't have any knowledge of any embalmings being done by people that are not licensed. Any arrangements that were made by non-funeral directors, I'm not aware of that either.

Chair – The reports that we have and the sworn affidavits of witnesses indicate that those unlicensed activities were prevailing. That they were the common activities, not exceptions, that had happened on arrangements, after arrangement, after arrangement.

Mr. Woodie – Well, sir, I can't speak to that because I know I have seen families for this funeral home. What was being done at the funeral home, I have no knowledge of, but as far as my knowledge goes, Tina Hadley was the FDIC. At one point, it was Mr. Ronald Dur. I think that when that was done they were making funeral arrangements with those families, as far as I knew.

Chair – Ronald Dur, Sr. being on at-need funeral contracts of families that he never saw, and pre-signing at-need funeral home contracts so that there would be a funeral director's signature on it, but having never met with families.

Mr. Woodie – Mr. Brandenburg, I can't dispute that, nor can I confirm that that was being done.

Chair – Would you agree that those activities were egregious?

Mr. Woodie – I would agree that they are illegal. You shouldn't do that. You should sit down with a licensed funeral director in charge to make funeral arrangements. I'm not aware that that was being done. I saw many families for Mr. Thomas, when he was living. So, he would call me to come see a family, but I can't attest to that. He's gone. He's deceased now. I don't know if he saw families or not, Mr. Brandenburg. I really don't.

Chair – This case embodies many of the unlicensed activity that we hear whispers about or things that might be happening out there in the profession and the industry. Due to the investigative work that's been done, it indicates that there are many violations. So, I just feel like this particular case deserves the harshest of penalties, If there are any Board members that want to speak, now is the time to speak. Mr. Hall?

Mr. Hall – Did you read the package that we got with the charges?

Mr. Woodie – I did but I was not privy to what is being charged. I knew that he saw families back in 2016, but this is the packet I have right here. I don't know if it's the same one.

Mr. Hal – I mean, because Mr. Brandenburg said that there's unlicensed activity on the at-need side, the preneed side, forged contracts. You got an FDIC that lives in Georgia. There was nobody there. She couldn't represent the firm as FDIC living in Georgia. I agree with Mr. Brandenburg. Is there any explanation you can give at all as to why this operation should continue? We have to consider the public here.

Mr. Woodie – What was being done prior to, all I can say is now, as of right now, since Mr. Thomas' death in June 2018, this funeral home has been operating according to Chapter 497. All I can say is that under my watch things have been done according to how they are supposed to be done and they will continue to be done according to how they are supposed to be done. I just want to try and keep this place open so I can help provide for Mrs. Thomas and her two (2) children.

Chair – Mr. Williams?

Mr. Williams – In Count 6, do you have any evidence showing repayment?

Mr. Woodie – I brought a copy of the check and I can pull up on my phone where the payment was made back to the nursing home.

Mr. Williams – Has that been submitted to the Department?

Mr. Woodie – No, but I can prove that right now, today. The monies were returned.

Chair – Mr. Williams?

Mr. Williams – So, to the Department, has there been an inspection conducted since the initial inspection to see whether there has been any progress?

Ms. Simon – If I could just have one moment. I believe that the last inspection that we had was in 2018. I can't find it right now, but I believe that we did do one.

Mr. Williams – Thank you.

Chair – Thank you.

Mr. Woodie – I was present when the inspection was done this year. There weren't any violations. The only thing was they said we were using the wrong form for the Monthly Report of Cases of Bodies Handled. That was it.

Mr. Clark – Mr. Chairman?

Chair – Yes, Mr. Clark?

Mr. Clark – When was the ceiling repaired in the prep room?

Mr. Woodie – The ceiling was repaired approximately about two (2) or three (3) months ago, I think.

Mr. Clark – When did you begin working there?

Mr. Woodie – I became a licensed funeral director and embalmer just last month, but I started really helping out around April or May. So, that's when the monies were paid back. When I got this and seen all these things, I went to make corrective measures.

Chair – We'll need a motion to accept the Findings of Facts and the Conclusions of Law.

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

Chair – Any other questions or comments?

Mr. Helm – Mr. Chair?

Chair – Mr. Helm?

Mr. Helm – Mr. Woodie, I'm sorry, but I have to ask you this question. Do you realize that they said you left blank contracts signed there at the funeral home?

Mr. Woodie – No sir.

Mr. Helm – You don't know that's in this report?

Mr. Woodie – No. I haven't gotten it. This is what I received in the mail.

Chair – Did you ever sign blank contracts?

Mr. Woodie – No sir.

Chair – For the funeral home?

Mr. Woodie – No sir.

Chair – At-need?

Mr. Woodie – I saw families when I came and I signed the contracts when I saw them.

Chair – Did you sign any blank contracts, at-need?

Mr. Woodie – No.

Chair – Preneed contracts?

Mr. Woodie – No. I've never made a preneed arrangement for Creal Funeral Home. Only at my own funeral home.

Chair – I guess the question is did you sign, whether you made the arrangements or not? Did you sign?

Mr. Woodie – No.

Chair – Okay. Thank you.

Mr. Helm – Do you know Mrs. Webb?

Mr. Woodie – I do.

Mr. Helm – I don't know whether it's appropriate to read what she said or not.

Chair – Yes.

Mr. Helm – (Reading from audio transcription of recorded statement of Allison Webb):

7 MR. SCHULER: Do you know who George Woodie

8 is?

9 MS. WEBB: Yes.

10 MR. SCHULER: What did George Woodie do at the
11 funeral home?

12 MS. WEBB: Nothing really. He has his own
13 funeral home over at Westside. He left me signed
14 contracts.

15 MR. SCHULER: But Mr. Woodie, George Woodie,
16 would leave blank contracts that he signed for you
17 to use when meeting with families?

18 MS. WEBB: Yes.

Mr. Woodie – That is incorrect. She's not telling the truth. I didn't want to get into a lot of things. She's a disgruntled employee.

Mr. Helm – I understand that. Do you realize this is all we've had to look at and we don't have your side of the story at all?

Mr. Woodie – I have no knowledge of what her testimony was. This is the first I'm hearing about it.

Chair – Her interview was under oath, so you'll know.

Mr. Woodie – And I'm under oath right now as well.

Chair – Yes you are.

Mr. Woodie – Right.

Mr. Jones – Mr. Chair? Mr. Woodie, it shows here that you were a registered agent for Creal as a July 27, 2018. Is that correct?

Mr. Woodie – Yes, after Mr. Thomas passed away.

Mr. Jones – But a July 27, 2018 is correct?

Mr. Woodie – 2018 or 2019?

Mr. Jones – It says 2018 right here.

Mr. Woodie – Yes, his wife changed the corporation and put me down as a registered agent.

Mr. Jones – I just wanted to establish the year. Thank you.

Chair – Board?

Mr. Barnhart – Any motion as to penalty?

Mr. Hall – I think due to we had 376 pages of material...was this provided to them? Does he have copies of what we got?

Ms. Simon – I am not certain whether the funeral home asked for the copies. This has been public information.

Mr. Hall – Okay. It bothers me a little bit, the seriousness of this, that you all didn't step forward and request that, if you didn't, and look at this before it come before the Board. We got 376 pages of it, thirteen (13) counts and some of them like running water and fixing the ceiling, I could deal with that. The fact of multiple people testifying that blank contracts were signed, people seeing families at-need, people seeing them for preneed without licenses, people embalming bodies without licenses. That one's difficult for me. I don't see a choice myself, but I would make a motion to revoke the license.

MOTION: Mr. Hall moved for revocation of the license. The Chair seconded the motion, which passed unanimously.

Chair – Thank you.

(b) Hadley, Tina: Case Nos.: 221577-18-FC, 230309-18-FC, 223578-18-FC; Division Nos.: ATN-29647, ATN-30805, ATN-30188 (F082115)

Ms. Simon – This case has been withdrawn from the agenda.

Mr. Griffin – Ms. Hadley timely filed an Election of Proceeding; however, she requested a hearing by telephonic conference. The Election of Proceeding form itself gives an option by written appearance or appearance in person at a Board meeting. However, in a supplemental filing that she submitted with that Election of Proceeding, she requested a hearing by telephonic conference. She was advised that that was essentially not an option. However, in an abundance of caution she reached out again to me this week inquiring about the telephonic conference set-up and she was advised that that's not an option. So, she was presented four (4) options: the option to appear here personally at this meeting; appear via written submission; or move it to December. In an abundance of caution, since I did not receive a response from her, I would request that we move this to the December Board meeting for discipline there.

Mr. Helm – Is she going to be able to make the December Board meeting?

Mr. Griffin – The Department would be of the position that, I can't guarantee that she would, but it's the Department's position essentially that if we give her the opportunity and she doesn't show up, then at that point she's kind of exempted herself or waived her right to be present or involved in the hearing.

Mr. Jones – Does that need a motion?

Ms. Simon – No, I don't believe so.

Mr. Barnhart – No. But it will be scheduled for December as far as we know.

Mr. Griffin – Yes sir.

Chair – So, that also is the Division’s recommendation?

Ms. Simon – Yes sir. The Department’s recommendation from the Office of the General Counsel and yes, we support the Office of the General Counsel.

Chair – Thank you.

(2) Probable Cause Panel B

(a) AMLOSGI, LLC d/b/a AC Marchbank Family Funeral Home: Case No.: 243122-19-FC; Division No.: ATN-32404 (F187258)

Ms. Simon – This case will be presented by Jim Bossart.

Ms. Anderson – Mr. Chair, I served on Probable Cause Panel B. I’m recusing myself from this case and the related cases listed on the agenda.

Chair – Thank you for your disclosure, Ms. Anderson.

Jim Bossart –Mr. Chairman, may I proceed?

Chair – Please do.

Mr. Bossart – Thank you. Members of the Board, my name is James Bossart, and I represent the Department of Financial Services in this case. The above-referenced matter has been scheduled for an informal hearing to consider the attached Motion for Final Order by Hearing Not Involving Material Facts. At all times material to this complaint, AMLOSGI, LLC d/b/a AC Marchbank Family Funeral Home ("Respondent") is currently licensed under Chapter 497, Florida Statutes, as a funeral establishment, license number F187258, and is doing business in Deltona, Florida.

On July 2, 2019, the Department filed an Administrative Complaint alleging Respondent is liable for the following violation: The Division conducted an investigation of Respondent and alleges that Respondent engaged in activities licensed under Chapter 497, Florida Statutes, with an expired license. Based on the foregoing, Respondent violated section 497.152(5)(b) and 497.380(3), Florida Statutes, by engaging in activities licensed under Chapter 497, Florida Statutes, with an expired license. Respondent is therefore subject to discipline pursuant to section 497.152(5)(b), Florida Statutes.

Respondent did not request either a formal proceeding to be conducted in accordance with section 120.57(1), Florida Statutes, nor an informal proceeding to be conducted in accordance with section 120.57(2), Florida Statutes, and has consented to the immediate entry of a Final Order adopting the Administrative Complaint and the imposition of any sanctions that the Board sees fit to impose. A copy of this memo, along with a copy of the Motion for Determination of Waiver and For Final Order by Hearing Not Involving Disputed Issues of Material Fact, have been sent by U.S. Mail to Respondent's last known address of record. The Department feels that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact as set forth in the Administrative Complaint.

MOTION: Mr. Helm moved to adopt the allegations of the facts as set forth in the Administrative Complaint. Mr. Jones seconded the motion.

Mr. Bossart – Thank you, sir. The Department also contends that the Board’s findings of fact support a finding of the violations of Chapter 497, F.S., as charged in the Administrative Complaint, and would ask that the Chair entertain a motion finding the Respondent in violation of the statutes as charged in the Administrative Complaint.

MOTION: Mr. Helm moved to find the Respondent in violation of the statutes as charged in the Administrative Complaint. Mr. Hall seconded the motion, which passed unanimously.

Mr. Bossart – Thank you, sir. The Department also offers at this time the evidence of the investigative report with attached exhibits. A copy of which has been previously furnished to the Board to establish a prima facie case for the violations as alleged in the Administrative Complaint.

MOTION: Mr. Jones moved to receive the investigation file into evidence. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Bossart – The Department recommends the following penalty of a \$300 administrative fine.

Chair – Is there anyone representing Marchbank Family Funeral Home? Marchbank Family Funeral Home? Marchbank Family Funeral Home? Hearing no response. Is there a motion?

MOTION: Mr. Jones moved that the Respondent shall pay a \$300 administrative fine. Mr. Knopke seconded the motion, which passed unanimously.

- (b) *Related Cases – Division No. ATN-30483*
- (i) *Hickson Funeral Home: Case No.: 230160-18-FC; Division No.: ATN-30483 (F040342)*

Ms. Simon – This case will also be presented by Mr. Bossart.

Mr. Bossart – May I proceed, Mr. Chairman?

Chair – Please do, Mr. Bossart.

Mr. Bossart – Thank you. Again, this is James Bossart representing the Department of Financial Services. The above-referenced matter has been scheduled for an Informal Hearing to consider the attached Motion for Final Order by Hearing Not Involving Disputed Issues of Material Fact. Respondent is a funeral establishment licensed under Chapter 497, Florida Statutes, license number F040342, in Arcadia, Florida.

On May 24, 2019, the Department filed an Administrative Complaint against Respondent, alleging Respondent failed to practice minimum sanitary practices relating to the management of biomedical waste, failed to maintain a Bodies Handled Report, and failed to produce and maintain an itemized price list of merchandise and services. Based on the foregoing, Respondent failed to meet the requirements of Sections 497.152(1)(a), 497.152(12)(b), 497.382(1), Florida Statutes, and Rule 69K-21.003(7), Florida Administrative Code, and is subject to discipline.

The Administrative Complaint was served on Respondent by certified mail on May 28, 2019. Included with the Administrative Complaint was a notice informing Respondent that the failure to respond in writing within twenty-one (21) days of publication or by June 17, 2019, would constitute a waiver of the right to request a proceeding on the matters alleged in the Administrative Complaint, and an Order of Suspension or Revocation by the Board would be entered against Respondent.

The Department did not receive an Election of Proceeding form or any other written response from Respondent by June 17, 2019. The Department did receive an Election of Proceedings form from Respondent on June 28, 2019. The Respondent's Election of Proceedings form was filed untimely. However, as the Respondent did not dispute any of the Department's factual allegations as contained in the Administrative Complaint and requested to submit a written statement and documentary evidence to the Board in lieu of a hearing, the Department out of an abundance of caution waives the untimely filing, accepts the filing of the Election of Proceedings form, and submits this proceeding to the Board to be conducted in accordance with sections 120.57(2) and 497.153(4)(b), Florida Statutes.

A copy of this memo, along with a copy of the Motion for Determination of Waiver for Final Order by Hearing Not Involving Disputed Issues of Material Fact, have been sent by U.S. Mail to Respondent's last known address of record. The Department

feels that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact as set forth in the Administrative Complaint.

MOTION: Mr. Knopke moved to adopt the allegations of the facts as set forth in the Administrative Complaint. Mr. Helm seconded the motion.

Mr. Bossart – Thank you, sir. The Department contends that the Board’s finding of facts support a finding of the violations of Chapter 497, F.S., as charged in the Administrative Complaint. It would be appropriate at this time for the Chair to entertain a motion finding the Respondent in violation of the statutes and the rule as charged in the Administrative Complaint.

MOTION: Mr. Knopke moved to find the Respondent in violation of the statutes and rule as charged in the Administrative Complaint. Mr. Williams seconded the motion, which passed unanimously.

Chair – At this time, is there anyone representing Hickson Funeral Home? Hickson Funeral Home? Hickson Funeral Home? Hearing none.

Mr. Bossart – Mr. Chairman, Mrs. Hickson called me the other day and said due to their advanced age they wouldn’t be able to attend, but it should not interpret the fact that they’re not here as any disrespect to the Board. The Department also offers at this time the evidence of the investigative report with exhibits. A copy of which has been previously furnished to the Board to establish a prima facie case for the violations as alleged in the Administrative Complaint. The Department would ask that the Respondent be fined an administrative fine of \$1500.

Chair – Mr. Barnhart?

Mr. Barnhart – Board members, as I read your penalties, the rule violation and s. 497.382, F.S. call for a Notice of Noncompliance for a first offense. You can oppose a penalty for s. 497.152(12)(b), F.S., but the range for first offense is \$250 to \$1000 fine, plus cost, and probation or suspension up to one (1) year. So, I think we ought to stay within the guidelines of that violation. If you want to give a penalty or fine, have it be no more than \$1000, and issue a Notice of Noncompliance for the other two. (2).

Chair – So the range is \$250 to \$1000?

Mr. Barnhart – Right.

Chair – Thank you.

Mr. Clark – Mr. Chairman?

Chair – Mr. Clark?

Mr. Clark – If we look on page 34, in the Board packet it shows that {inaudible} material in five-gallon buckets. And when the examiner asked what was in there, the licensee said, “the insides” and was planning to bury them at the cemetery. I don’t know that \$1000 is sufficient.

Chair – My question is, is that \$1000 per violation?

Mr. Barnhart – For one violation of s. 497.152(12)(b), F.S.

Chair – What about for the rule?

Mr. Barnhart – Rule 69K-21.003, F.A.C., as I read our rules, provides for a Notice of Noncompliance for a first offense, and for s. 497.382(1), F.S., I believe it calls for a Notice of Noncompliance.

Mr. Knopke – Mr. Chair?

Chair – Mr. Knopke?

Mr. Knopke – Reading what Mr. Clark brought to our attention: it was four (4) buckets that we’re talking about; there’s no Bodies Handled Reports for 2017; no embalming disclosure and no cemetery disclosure; and no GPL. Is that all a part of what we’re talking about?

Mr. Barnhart – If it’s included in one (1) of the three (3) offenses that were mentioned in the Administrative Complaint.

Mr. Knopke – Mr. Bossart?

Mr. Bossart – I don’t think so. No sir. Only the three (3) counts.

Mr. Knopke – Okay. I’m looking for a way to support Mr. Clark’s concern about the viscera.

Chair – Exactly. Ms. Simon?

Ms. Simon – I have a way to support that. Two (2) ways. There is a prior Order that was issued against Hickson Funeral Home, in 2014. Additionally, there are aggravating factors that you can cite to deviate, if you want to, from the disciplinary guidelines.

Mr. Knopke – And the aggravating factors would be the fact that there were four (4) buckets of remains and the intent to bury them somewhere in the cemetery?

Ms. Simon – If I could just have a moment. Mr. Barnhart?

Mr. Barnhart – I wouldn’t cite those as aggravating circumstances unless they’re well within the violations that are listed in the Administrative Complaint.

Mr. Knopke – I would argue that the family members of the four (4) remains that were not put back where they belong would be thoroughly aggravated, if not totally disgusting. Whether that meets the threshold of the aggravating circumstances, it sure meets the threshold of something else.

Chair – Unfortunately, it’s part of our documentation, but it’s not part of the Administrative Complaint. Unfortunately.

Mr. Knopke – Unfortunately. Thank you.

Chair – Ms. Simon?

Ms. Simon – I can read the aggravating factors that are available in Rule 69K-30.001, F.A.C., if you prefer.

Chair – Please do.

Ms. Simon – Okay. These are aggravating and mitigating:

- (a) The danger to the public;*
- (b) The length of time since date of violation;*
- (c) The number of complaints filed against the licensee;*
- (d) The length of time licensee has practiced;*
- (e) The actual damage, physical or otherwise, caused by the violation;*
- (f) The deterrent effect of the penalty imposed;*
- (g) The effect of the penalty upon the licensee’s livelihood;*
- (h) Any efforts for rehabilitation;*
- (k) Related violations against a license in another state including findings of guilt or innocence, penalties imposed and penalties served; and*
- (l) Penalties imposed for related offenses under these guidelines.*

I would assume that what would be related if the Board finds in this matter would be either the danger to the public; the number of complaints as evidenced by the prior Final Order; perhaps the deterrent effect, but that would be something that the Board would have to decide.

Chair – Board, what’s your pleasure?

Mr. Helm – If we make the motion, how much? You said \$1500?

Mr. Bossart – Yes.

Mr. Knopke – I’d make a motion for a \$3000 fine. The aggravating factors here are the prior discipline in 2014, and the complaints to go with that. The danger to the public is to have the four (4) buckets of human remains that one was identified that are left in the prep room for an undisclosed amount of time, as it we don’t see it in the report.

Mr. Bossart – It wasn’t in the report, sir.

Mr. Knopke – Okay. It’s on the report that somebody wrote. The fact that they were there and the intent was to place them in a cemetery without notifying the legal next of kin or having their permission.

Chair – Is there a second?

Mr. Clark – Mr. Chairman, I want to second that, but I want to point out this is not needles or soiled linens. This is viscera.

Mr. Knopke – Human remains.

Chair – Human visceral remains.

Mr. Barnhart – Do you want to add costs of any kind? Did you have costs?

Mr. Knopke – I’ll add costs to it, too.

Mr. Bossart - \$250 costs.

Chair – Mr. Hall?

Mr. Hall – The owners were not able to come due to their age?

Mr. Bossart – They’re ninety (90) years old, sir.

Mr. Hall – Who runs the location?

Mr. Bossart – That’s unknown.

Mr. Hall – Is it them?

Mr. Bossart – It must be them, sir. I was in contact with their son who is a licensed funeral director in Ft. Myers, but he didn’t represent that he was running their funeral home for them, so I’m not sure who’s running the funeral home, to be honest. Perhaps a further investigation would be good on that part. She did sound ninety (90) years old. I don’t think she was dishonest.

Chair – Ms. Simon?

Ms. Simon – I believe that the FDIC for Hickson Funeral Home is Eugene Hickson.

Chair – His case is coming up next, before us.

MOTION: Mr. Knopke moved that the Respondent shall pay an administrative fine of \$3000 and \$250 in cost based the aggravating and mitigating facts stated. Mr. Clark seconded the motion, which passed unanimously.

(ii) Hickson, Eugene: Case No.: 230171-18-FC; Division No.: ATN-30483 (F043837)

Ms. Simon – This case will be presented by Mr. Bossart.

Jim Bossart – Mr. Chairman?

Chair – Please do.

Mr. Bossart – Thank you. Members of the Board, the above-referenced matter has been scheduled for an Informal Hearing to consider the attached Motion for Final Order by Hearing Not Involving Disputed Issues of Material Fact. Respondent is a funeral director and embalmer licensed under Chapter 497, Florida Statutes, license number F043837. Respondent is owner and FDIC of Hickson Funeral Home, a funeral establishment licensed under Chapter 497, Florida Statutes, license number F040342 in Arcadia, Florida.

On May 23, 2019, the Department filed an Administrative Complaint against Respondent, alleging Respondent, as FDIC of Hickson Funeral Home, failed to practice minimum sanitary practices relating to the management of biomedical waste, failed to maintain a Bodies Handled Report, and failed to produce and maintain an itemized price list of merchandise and services. Based on the foregoing, Respondent, as FDIC, failed to meet the requirements of Sections 497.152(1)(a), 497.152(12)(b), 497.382(1), Florida Statutes, and Rule 69K- 21.003(7), Florida Administrative Code. Pursuant to section 497.380(7), Florida Statutes, Respondent is responsible for these violations, and is subject to discipline. The Administrative Complaint was served on Respondent by certified mail on May 25, 2019. Included with the Administrative Complaint was a notice informing Respondent that the failure to respond in writing within twenty-one (21) days of publication or by June 14, 2019, would constitute a waiver of the right to request a proceeding on the matters alleged in the Administrative Complaint, and an Order of Suspension or revocation by the Board would be entered against Respondent.

The Department did not receive an Election of Proceeding form or any other written response from Respondent by June 14, 2019. However, the Department did receive the Election of Proceeding form from Respondent's funeral establishment, Hickson's Funeral Home, in the companion case, Case No. 230160-18-FC, on June 28, 2019. Respondent's funeral establishment's Election of Proceeding was also filed untimely. However, as Respondent did not dispute any of the Department's factual allegations as contained in the Administrative Complaint and requested to submit a written statement and documentary evidence to the Board in lieu of a hearing, the Department out of an abundance of caution waived the untimely filing, accepted the filing of the Election of Proceeding form, and submitted the proceeding to the Board to be conducted in accordance with sections 120.57(2) and 497.153(4)(b), Florida Statutes.

A copy of this memo, along with a copy of the Motion for Determination of Waiver and For Final Order by Hearing Not Involving Disputed Issues of Material Fact, have been sent by U.S. Mail to Respondent's last known address of record. The Department feels that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact as set forth in the Administrative Complaint.

MOTION: Mr. Hall moved to adopt the allegations of the facts as set forth in the Administrative Complaint. Mr. Williams seconded the motion.

Mr. Bossart –The Department also contends that the Board's findings of fact support a finding of the violations of Chapter 497, F.S., as charged in the Administrative Complaint, and would ask that the Chair entertain a motion finding the Respondent in violation of the statutes as charged in the Administrative Complaint.

MOTION: Mr. Hall moved to find the Respondent in violation of the statutes as charged in the Administrative Complaint. Mr. Jones seconded the motion, which passed unanimously.

Chair – Is Eugene Hickson present? Eugene Hickson? No response.

Mr. Bossart – The Department also offers at this time the evidence of the investigative report with attached exhibits. A copy of which has been previously furnished to the Board to establish a prima facie case for the violations as alleged in the Administrative Complaint. We would ask that you accept.

MOTION: Mr. Hall moved to accept the investigation file into evidence. Mr. Jones seconded the motion, which passed unanimously.

Mr. Bossart – The Department recommends the following penalty. In this case, the Respondent's license shall be fined \$4500. In light of the discussion with the companion case, perhaps that would be open to discussion. Thank you.

Chair – Thank you.

Mr. Helm – Did you say \$4500?

Mr. Bossart - \$4500, based mainly on the violations of the previous Order from 2014.

MOTION: Mr. Knopke moved that the Respondent shall pay an administrative fine of \$4500, \$250 in cost, and two (2)-year probation based the previous case history in 2014. Mr. Hall seconded the motion.

Chair – Ms. Simon?

Ms. Simon – Mr. Knopke, was that the basis of the aggravating factors?

Mr. Knopke – Yes.

Mr. Jones – I was asking about probation. At his age, and the severity of this, I was just questioning.

Mr. Knopke – I'll add to the motion a 2-year probation.

Chair – So, there's been a motion made and it's been seconded.

Mr. Bossart – Can I request \$250 costs also, sir?

Chair – All those in favor, aye?

Board members – Aye.

Chair – And any opposed? And the motion carries.

Mr. Knopke – Mr. Chair?

Chair – Yes, Mr. Knopke?

Mr. Knopke – Can I ask Mr. Bossart if he heard any more from the son, who's a funeral director?

Mr. Bossart – No sir. I've bombarded him with letters, but I never got a response.

Mr. Knopke – So, he's not responding to anything?

Mr. Bossart – He talked to me several times. I sent him a letter and an email and asked him to provide further written documentary evidence and received nothing. I told his mother to have someone there and no response.

Mr. Knopke – Thank you.

Chair – Thank you.

B. Settlement Stipulations

(1) Probable Cause Panel A

(a) *Brown Memorial Funeral Home & Cremation Service LLC: Case No.: 243275-19-FC Division No.: ATN-32410 (F041798)*

Ms. Simon – Marshawn Griffin will be presenting for the Department. Is there a representative here today for Brown Memorial Funeral Home & Cremation Service? Hearing no response.

Mr. Knopke – Mr. Chair?

Chair – Yes, Mr. Knopke?

Mr. Knopke – I was on Probable Cause Panel A. Should I recuse myself from this?

Mr. Barnhart – Correct.

Mr. Knopke – Please consider me recused from Items 4. B. (1) (a) – (e).

Chair – Thank you for that disclosure.

Mr. Griffin – Brown Memorial Funeral Home & Cremation Service, LLC (“Respondent”) is a funeral establishment, licensed under Chapter 497, Florida Statutes, license number F041798, in Ocala, Florida. The Department conducted an inspection of Respondent and determined that Respondent engaged in activities licensed under Chapter 497, Florida Statutes, with an expired license, in violation of sections 497.152(5)(b) and 497.380(3), Florida Statutes. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00. The Department requests that the Board approve this stipulation.

MOTION: Mr. Jones moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Hall seconded the motion, which passed unanimously.

(b) *Erick L Wilson Funeral & Cremation Services PA: Case No.: 243598-19-FC; Division No.: ATN-32417 (F065077)*

Ms. Simon – Mr. Griffin?

Mr. Griffin – Eric L. Wilson Funeral & Cremation Services PA (“Respondent”) is a funeral establishment, licensed under Chapter 497, Florida Statutes, license number F065077, in Hollywood, Florida. On May 20, 2019, the Department filed a one count Administrative Complaint against Respondent alleging that Respondent engaged in activities licensed under Chapter 497, Florida Statutes, with an expired license. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00. The Department requests that the Board approve this stipulation.

MOTION: Mr. Hall moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Helm seconded the motion, which passed unanimously.

(c) *Jay-Johnson’s Funeral Home: Case No.: 243336-19-FC; Division No.: ATN-32418 (F041918)*

Ms. Simon – Mr. Griffin will be presenting for the Department.

Mr. Griffin – Jay-Johnson’s Funeral Home (“Respondent”) is a funeral establishment, licensed under Chapter 497, Florida Statutes, license number F041918, in Homestead, Florida. The Department conducted an inspection of Respondent and determined that Respondent engaged in activities licensed under Chapter 497, Florida Statutes, with an expired license and failed to use a Department approved form for its Bodies Handled Reports, in violation of sections 497.152(5)(b), 497.380(3), 497.382(1), Florida Statutes. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00. The Department requests that the Board approve this stipulation.

MOTION: Mr. Helm moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Williams seconded the motion, which passed unanimously.

(d) Manker Funeral Home: Case No.: 243589-19-FC; Division No.: ATN-32470 (F041821)

Ms. Simon – Mr. Griffin will be presenting for the Department.

Mr. Griffin – Manker Funeral Home (“Respondent”) is a funeral establishment licensed under Chapter 497, Florida Statutes, license number F041821. The Department conducted an inspection of Respondent. The Inspection revealed that Respondent engaged in activities licensed under Chapter 497, Florida Statutes with an expired license. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00. The Department recommends that the Board approve this Settlement Stipulation. The Department acknowledges that Respondent has already paid the \$300.00 administrative fine prior to the approval of this stipulation.

Chair – Thank you

MOTION: Mr. Knopke moved to approve the Settlement Stipulation, which required the Respondent to pay a fine of \$300 already received by the Department. Mr. Clark seconded the motion, which passed unanimously.

(e) Thorne’s Mortuary, Inc.: Case No.: 243591-19-FC; Division No.: ATN 32474 (F040004)

Ms. Simon – Mr. Griffin?

Mr. Griffin – Thorne’s Mortuary, Inc. (“Respondent”) is a funeral establishment, licensed under Chapter 497, Florida Statutes, license number F040004, in Stuart, Florida. On May 20, 2019, the Department filed a one count Administrative Complaint against Respondent alleging that Respondent engaged in activities licensed under Chapter 497, Florida Statutes, with an expired license. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00. The Department requests that the Board approve this stipulation.

MOTION: Mr. Jones moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Williams seconded the motion, which passed unanimously.

Chair – Just a general question. On all of these expired licenses, did they renew their license?

Ms. Simon – Yes sir.

Chair – Thank you.

(2) Probable Cause Panel B

(a) Bernardo Garcia Funeral Home (Hialeah) Inc.: Case No.: 243338-19-FC; Division No.: ATN-32416 (F040524)

Ms. Simon – Mr. Bossart?

Chair – Ms. Anderson?

Ms. Anderson – I served on Panel B, so I'm recusing myself on Items 4. B. (2) (a) – (e).

Chair – Thank you for that disclosure.

Mr. Bossart – Bernardo Garcia Funeral Home (Hialeah) Inc. ("Respondent"), is a funeral establishment licensed under Chapter 497, Florida Statutes, license number F040524. The Department conducted an inspection of Respondent. The Inspection revealed that Respondent engaged in activities licensed under Chapter 497, Florida Statutes with an expired license, and failed to use a Department approved form for its Bodies Handled Reports. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00 and acknowledges that it must use a Department approved form for its Bodies Handled Reports. The Department recommends that the Board approve this Settlement Stipulation. This is Mr. Luke Grabowski representing Bernardo Garcia.

Luke Grabowski – Mr. Chair, I'm just here for questions for the next three (3) before the Board.

Chair – Thank you. And your name is?

Mr. Grabowski – Luke Grabowski.

Chair – Thank you.

MOTION: Mr. Helm moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Knopke seconded the motion, which passed unanimously.

(b) Bernardo Garcia Funeral Home (Kendall) Inc.: Case No.: 243340-19-FC; Division No.: ATN-32414 (F041291)

Ms. Simon – Mr. Bossart?

Mr. Bossart – Thank you. Bernardo Garcia Funeral Home (Kendall) Inc. ("Respondent"), is a funeral establishment licensed under Chapter 497, Florida Statutes, license number F041291. The Department conducted an inspection of Respondent. The Inspection revealed that Respondent engaged in activities licensed under Chapter 497, Florida Statutes with an expired license, and failed to use a Department approved form for its Bodies Handled Reports. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00 and acknowledges that it must use a Department approved form for its Bodies Handled Reports. The Department recommends that the Board approve this Settlement Stipulation.

MOTION: Mr. Hall moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Clark seconded the motion, which passed unanimously.

Chair – Mr. Grabowski, your client does understand the approved form to be used for the report of bodies handled and hopefully will use that in the future?

Mr. Grabowski – Yes, Mr. Chair. I've confirmed that he's already corrected that, so he is only using the Board approved form from here on out.

Chair – Thank you so much.

Mr. Grabowski – No problem. Thank you, Mr. Chair.

(c) Bernardo Garcia Funeral Home (Westchester) Inc.: Case No.: 243497-19-FC; Division No.: ATN-32415 (F040997)

Ms. Simon – Mr. Bossart?

Mr. Bossart – Bernardo Garcia Funeral Home (Westchester) Inc. ("Respondent"), is a funeral establishment licensed under Chapter 497, Florida Statutes, license number F040997. The Department conducted an inspection of Respondent. The Inspection revealed that Respondent engaged in activities licensed under Chapter 497, Florida Statutes with an expired license, and failed to use a Department approved form for its Bodies Handled Reports. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine in the amount of \$300.00 and acknowledges that it must use a Department approved form for its Bodies Handled Reports. The Department recommends that the Board approve this Settlement Stipulation.

MOTION: Mr. Williams moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Grabowski – Thank you, Mr. Chair.

Chair – Thank you, Mr. Grabowski.

(d) Blue, Delawrence Charles: Case No.: 204708-17-FC; Division No.: ATN-27659 (F078465)

Ms. Simon – Mr. Bossart?

Mr. Bossart – Thank you. Charles Delawrence Blue, (Respondent) at all times relevant, was a funeral director and embalmer licensed under Chapter 497, Florida Statutes, license number F078465. Respondent, at all times relevant, was the funeral director in charge (FDIC) of Emmanuel Funeral Home, a funeral establishment licensed under Chapter 497, Florida Statutes, license number F041280 and doing business in Miami, Florida (funeral establishment).

On August 14, 2018, the Department filed an Administrative Complaint against Respondent. The Administrative Complaint alleges Respondent, as FDIC of Emmanuel Funeral Home, was responsible for the funeral establishment advertising under a different name from his licensed name, failed to display the name of the current FDIC, failed to properly maintain Bodies Handled Reports, failed to establish methods for logging complaints, and employed individuals who had not completed the required course on communicable diseases, in violation of sections 497.151(2), 497.152(1)(a), (4)(h), (14)(a), 497.162, 497.380(7), (14), and 497.382, Florida Statutes, and Rule 69K-29.001(4), Florida Administrative Code. The Respondent, as FDIC, and pursuant to section 497.380(7), Florida Statutes, is responsible for these violations.

Respondent has entered into a proposed stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine of \$2,000.00 and his license shall undergo a period of probation of one year. The Department recommends that the Board approve this Settlement Stipulation.

Chair – Thank you. Ms. Wiener?

Ms. Wiener – Just here to answer any questions.

Chair – Thank you. Mr. Hall?

Mr. Hall – Ms. Wiener, is this a continuance of what we did before with Emanuel? Delawrence was the FDIC.

Mr. Bossart – There were several FDIC's apparently.

Mr. Hall – The same inspections and so forth that we had before?

Mr. Bossart – Ms. Simon can answer that.

Ms. Wiener – Mr. Blue was FDIC, but for a very short period of time. So, I believe you're going to see a parade of FDICs come before you over some of these issues. I would comment that every one of the violations about which Mr. Delawrence Blue is charged were ministerial in nature. None of them were actually perpetrated by him. He came into the matter and actually

tried to work together with the Division to resolve all of the problems, and those that he could impact were resolved well prior to the reinspection of the facility that occurred no more than a month later.

Mr. Hall – Is this just a continuance of him as the FDIC from the discipline pertaining to the funeral home from probably a year ago?

Ms. Wiener – Yes. And as I said, I think you’ll probably see a number of these cases come before you.

Chair – Thank you.

Mr. Hall – Was there any probation imposed?

Mr. Bossart – Yes sir, one year.

Chair – A fine of \$2000 and one-year probation is the stipulation. Is there a motion?

MOTION: Mr. Jones moved to approve the Settlement Stipulation, requiring the Respondent to pay an administrative fine of \$2,000.00 and his license shall undergo a period of probation of one year. Mr. Helm seconded the motion, which passed unanimously.

Mr. Knopke – Mr. Chair?

Chair – Mr. Knopke?

Mr. Knopke – May I ask Mr. Bossart a question? Just so we’re clear, based upon the complaint, he was charged for August 9, 2016 to approximately February 1, 2017?

Mr. Bossart – That’s correct.

Mr. Knopke – A \$2000 penalty for five (5) months?

Mr. Bossart – Yes sir. That’s his term of employment, whatever it was.

Mr. Knopke – I understand. Thank you.

Chair – Thank you.

(e) Ponte Vedra Valley, Inc.: Case No.: 243547-19-FC; Division No.: ATN-32446 (F040678)

Ms. Simon – Mr. Bossart will be presenting for the Department.

Mr. Bossart – Ponte Vedra Valley, Inc. (“Respondent”) is currently licensed under Chapter 497, Florida Statutes, as a funeral establishment, license number F040678, and is doing business in Ponte Vedra Beach, Florida. The Division conducted an investigation of Respondent and alleges the following: On November 30, 2018, Respondent’s license as a funeral establishment expired and was not renewed until January 15, 2019.

Based on the foregoing, Respondent violated sections 497.152(5)(b) and 497.380(3), Florida Statutes by operating a funeral establishment, without holding a valid license, and is therefore subject to discipline. Respondent has entered into a proposed stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine of \$300.00. The Department recommends that the Board approve this Settlement Stipulation.

MOTION: Mr. Hall moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$300. Mr. Clark seconded the motion, which passed unanimously.

Chair – Students, I know you don't have all the information that we have, but I would encourage you to take a look at Florida Statute, Chapter 497, and the accompanying Rule 69K, Florida Administrative Code. So, usually when you look up the rules and the statues on the Division's website, you pull up Chapter 497 and Rule 69K. Chapter 497 addresses everything in the industry: funeral, cemetery, preneed, crematories, removal services, brokers of burial rights, and on and on and on. But, everything in the profession, everything in the industry is regulated by Chapter 497 and Rule 69K. So, take a look at that. It's eye opening. Also, some of you, down the road, will take on the responsibilities of FDIC (funeral director in charge) at your locations. That is a special responsibility that is addressed in Chapter 497 and Rule 69K. So, if you're asked to be a funeral director in charge of a funeral establishment, make sure that you understand the responsibilities that are included in that and pay special attention because there are violations that can be directly attributed to you being the funeral director in charge at that location. So, I'm giving you some advice that I hope you will accept and do something about it. Again, thank you, students.

5. Application(s) for Preneed Sales Agent

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

Ms. Simon – This item is informational only. Pursuant to s. 497.466, F.S., the applicants have been issued their licenses and appointments as preneed sales agents.

B. Recommended for Approval with Conditions

(1) Quigley (III), Edwards Matthews (Appointing Entity: Baldwin Brothers Memorial Care Services, Inc.)

Ms. Simon – Is Mr. Quigley present in the audience?

Edwards Quigley, III – Yes ma'am.

Ms. Simon – Please step forward. On August 12, 2019, an application for licensure as preneed sales agent was filed by Baldwin Brothers Memorial Care Services Inc. for Edwards Matthews Quigley, III, disclosing adverse license history as noted on the application. As noted in the **Background Questions** on the application, the adverse license history is as follows:

In 2002, Mr. Quigley left his position as an Investment Adviser Representative with AG Edwards & Sons, Inc., and in 2004, regulatory action was taken by the NASD against Mr. Quigley's license as an Investment Adviser. Mr. Quigley was cited to be in violation of Section 10(B) of the SEC Act, Rule 10B-5 and NASD Conduct Rule 2110 and 2330(E) relating to unauthorized transactions effected on a customer's behalf without providing notice to his member firm, AG Edwards. As of December 8, 2004, Mr. Quigley consented to all sanctions and findings, and was barred from association with any NASD member in any capacity.

The Division is recommending approval subject to the terms & conditions of the executed stipulation for licensure which states that the licensee be on 12 full months of probation.

Chair – Good morning, Mr. Quigley.

Mr. Quigley – Good morning.

Mr. Knopke – Let the record reflect that my brother is President of Baldwin Brothers, and my relationship with my brother will not impair me from making an impartial decision on this application.

Chair – Thank you for that disclosure. Mr. Quigley, are you here to address or merely to answer questions?

Mr. Quigley – Merely to answer questions.

Chair – Thank you. Board members, any questions of Mr. Quigley? Board?

MOTION: Mr. Clark moved to approve the application subject to the terms & conditions of the executed stipulation for licensure which states that the licensee be on 12 full months of probation. Ms. Anderson seconded the motion, which passed with one (1) dissenting vote.

Chair – Good luck, sir.

Mr. Quigley – Thank you.

C. Recommended for Denial

(1) Swan, Bruce (Appointing Entity: Faith Chapel Funeral Services LLC)

Ms. Simon – On June 28, 2019, an application for licensure as preneed sales agent was filed online by Faith Chapel Funeral Services LLC for Bruce A. Swan, and no deficiencies were noted on the application. There was no criminal history reported on the application. Thus, a temporary preneed sales agent license was issued for Mr. Swan; however, during the review of Mr. Swan's background check it was revealed that there was reportable adverse license history that required disclosure.

Mr. Swan was notified of his temporary preneed sales agent license suspension, and a revised application was submitted by the applicant's attorney fully disclosing Mr. Swan's adverse license history action, along with a completed Adverse License History Form on August 30, 2019. The review of the *Background Questions* revealed Adverse License history, to wit:

In 2004, Mr. Swan was charged with a misdemeanor for embezzlement and larceny in the fourth degree in the State of Connecticut. At the time of being charged with theft, Mr. Swan was serving as a sales counselor at a local funeral home and was found guilty of participating in a scheme to defraud SCI Connecticut Funeral Services Inc. by the State of Connecticut Superior Court. As of May 3, 2004, Mr. Swan was sentenced twelve (12) months of incarceration, which was suspended; 36 months of probation, prohibited from doing future work as a funeral director in a funeral home or opening a funeral home business, and ordered to pay restitution in the amount of \$14,372. As of today, Mr. Swan has satisfied all conditions of his probation and has completed payment of restitution.

The Division is recommending denial of the application for licensure based upon a 497.152(2), 497.368(1)(c), and 497.373(1)(c), Florida Statutes, and rule 69K-1.008, Florida Administrative Code.

Chair – Thank you, Ms. Simon. Ms. Wiener?

Ms. Wiener – Good morning, Board. Wendy Wiener representing applicant, Bruce Swan. I'd like to make a few prefatory remarks and then provide you with some information from Mr. Swan's employer, then offer Mr. Swan to provide some comments that he has prepared for the Board. First, I want to make clear that Mr. Swan did not fail to disclose his criminal record. As you can see from the letter, I believe it's page 2 in your packet, his employer took it upon himself, Mr. Atwood, to prepare and submit the application for preneed sales agent license while Mr. Swan was actually away from the office on vacation. That's an unfortunate situation, but, in point of fact, Mr. Swan knew of his obligation to report his criminal history. He had just been through the process with this very Department as a matter of going through the licensure process to become an insurance agent. So, he had just been through the process with the Division of Agent and Agency Services at the Department. He knew that this would be information that had to be provided to the Department, particularly given the question that is asked on the application. However, as Mr. Atwood notes, he did the application assuming that there was not a criminal history because he knew of Mr. Swan's insurance agent license issuance. So, once Mr. Swan learned about that, Mr. Atwood, who is a client of mine, Faith Chapel, called me. We withdrew the initial application and resubmitted the application, which contained completely all of the information.

That being said, the most important thing that you have to do this morning is to apply the test of whether there is evidence that Mr. Swan will be a danger to the public. I'm sure that each of you has read through the Board packet and you may find what he did in his criminal history to be repugnant, and that's not at all inappropriate. But that's not the question. The question that has to be applied and it's pointed out to you in the Board packet by reference to the rule, is whether there is a demonstration that he will be a danger to the public, and you're not going to hear any evidence that he has been or will be a danger to the public. He continued to be licensed as a funeral director after the commission of the crime. He served his probation, he fulfilled all terms, and he has continued to be an active licensee, both in the death-care space and in the insurance space, for many years, and has done so successfully over the more than fifteen (15) years since this very regrettable incident occurred. So, I would like to read you a statement from Mike Atwood who intended to be here today to speak on Mr. Swan's behalf, but he has a health issue with some family that he is attending to.

Chair – It was one of the early pages.

Ms. Wiener – Actually, Mr. Chairman, this is a different statement from Mr. Atwood that I also feel you should hear because it is compelling and I think it will go to your central concern, your only concern today, which is whether Mr. Swan will be a danger to the public.

Chair – Do you have a copy of that for the Board?

Ms. Wiener – I don't. He didn't provide it to me in way of a letter. He sent this to me by email, but he sent it on his way away to attend to some health concerns. So, if you'll indulge me, it's very brief and I'll just read it into the record.

Chair – Is it brief?

Ms. Wiener – It is very brief, yes. *“Chairman Brandenburg, and other Board members, please accept my apologies for not being in attendance at today's proceedings. I'm out of state attending some health issues with my father and stepmother. I do, however, humbly ask that you reconsider the Division's recommendation regarding the license issue pertaining to Mr. Bruce Swan. I've spoken with several of his peers and all have had nothing but positive things to say about him. In the few months that I have known Mr. Swan, he has exhibited himself to be a man of high integrity and someone that I feel confident will represent Faith Chapel Funeral Home's highly regarded reputation in our community. I am so confident that I will take personal responsibility for his actions, as a representative of Faith Chapel. Clearly, he made a mistake in the past and I believe we can all agree he has paid a price for it. His record since that time is unblemished and I have no doubt that that will continue to be the case. I ask you to please allow him to become licensed in the State of Florida.”* And that is from Mike Atwood, who is the owner and operator of the preneed licensee that is the sponsoring entity. At this time, I would like to offer the microphone to Mr. Swan and I know the Division will want to swear him in so that he can make a statement to you.

Chair – I'd like to call on Mr. Griffin.

Mr. Griffin – I can speak to the decision that ultimately led to him being licensed with the insurance license. I was present at the meeting where his matter was discussed. Essentially, under the Florida Insurance Code, normally when an applicant has a felony criminal history, or any criminal history, the Department is permitted to basically impose a disqualifying period from licensure. When we reviewed Mr. Swan's, we basically were in a position where according to s. 626.207, F.S., we were required to grant his license because even though he pled to, he was initially charged with a felony that was directly related to the Financial Services industry, which would have been a permanent bar from licensure. However, because the charge was ultimately amended down to a misdemeanor that was related to the Financial Services industry, by statute, there's only a seven (7) year disqualifying period. And since he had completed his sentence in well more than seven (7) years from the time that he was making the initial application, the Department basically could not use the actual facts as a basis to deny. But had it remained a felony, he would not be licensed as an insurance agent. The Department would not have granted him the license.

Chair – Thank you. Ms. Wiener? You mentioned he has a funeral director's license. I note that the South Carolina funeral directors and embalmer's license was revoked, as well, due to failure to report during the licensing process.

Ms. Wiener – Mr. Swan will address those facts during that time period, but the fact of the matter is that he had moved away from South Carolina and didn't recognize that that's what was happening in that administrative process, but he'll address that for you momentarily. I would remind you that notwithstanding that the conviction could have been for a felony or for anything else, the fact of the matter is that the conviction was for a misdemeanor.

Ms. Simon – Please raise your right hand to be sworn. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Bruce Swan – I do.

Ms. Simon – Please state your name for the record.

Mr. Swan – My name is Bruce Swan.

Ms. Simon – Mr. Chairman?

Chair – Yes? Go right ahead.

Mr. Swan – Dear Board members, as I stated, my name is Bruce Swan and I am new to Pensacola FL for about three (3) or four (4) months. I moved here with my wife and I work for Trust 100, which is third-party marketer, and I'm a preneed counselor trying to be at Faith Chapel Funeral Homes. Thank you very much for taking some time to hear my side of the story and everything that happened. In May of 2004, I was convicted of a misdemeanor, in which I received a three (3)-year probation, which I completed. I also paid restitution immediately after the charge, when everything was first coming to light. The misdemeanor charge was the result of a group of preneed salespeople and sales managers, in an effort to retain our commission's payment prior to them changing the commission schedule, with my employer at the time. So, we would receive a commission based on an amount of money then on the total sale of the funeral. So, after a certain number of years they had changed the commission schedule and again I was very much a part of the group of sales agents and sales managers that got together and decided to add a miscellaneous charge on the side that they paid as opposed to the non-guaranteed sides that they did not pay. So, it was 100% my wrongdoing, with my employer, in receiving commissions from them. I never, ever, ever once harmed, took a dollar, a penny, from a current customer. So, there was no harm there. That's what happened with that. It was a dreadful mistake. I wish I was never a part of it, but I was.

So, I'll kind of go through the South Carolina. In June of 2008, I applied for a funeral director and embalmer's license. On the application form, I failed to disclose the incident of my arrest in Connecticut. The fact that it came out in 2012 from South Carolina, I had already moved to Texas with Trust 100 to take a job there. So, they had sent me all the paperwork on failure to disclose my misdemeanor charge. I was required to pay a fine of \$500, in which I did. Again, at that time, I had already been living in Texas working at a funeral home there. So, in December of 2011, I was hired by Trust 100 to move to Texas to be a sales manager of a few locations in Dallas-Fort Worth, but to receive my license, I had to send in all of the paperwork documenting my criminal background history. So, I had to get all of the paperwork from the State of Connecticut, from the police records, to the court documents, to the conclusion all the way through. So, I had everything on hand. I even had duplicate copies. So, when I got my license in Texas, everything was sent to them. They went through everything, and they gave me a one-year probation and gave me my license. And again, this was right around December or January 2011 and 2012.

Ms. Wiener – Did you successfully complete that probationary period?

Mr. Swan – Successfully completed that probationary period of one (1) year without incident as well. So, back in Texas, I was a sales manager at Lucas Funeral Homes, which is in Dallas-Fort Worth, along with Biggers Funeral Home as a sales manager. I helped many, many families over the years. Thousands of families. I've been a licensed embalmer, funeral director since 1992. I went to Gupton-Jones Mortuary School up in Atlanta GA. For the past nine (9) years, I received the Presence Club Award, with Global Atlantic Life Forethought, and have been on trips every year with them. I think I've been a very good member of the funeral business for the last twenty-seven (27) years.

Ms. Wiener – How long have you had an insurance agent's license?

Mr. Swan – I had one in Connecticut. When this all happened, they did not revoke my license, but I did not renew it, because for about five (5) years I got out of the business. So, when I went through all these problems in Connecticut, the funeral director's Board did not revoke my funeral director's license and the insurance Board did not revoke that either, back in Connecticut, but I did not renew it because I went into another business. And that's what brought me to 2008, when I went to Charleston SC.

Ms. Wiener – But how longer were you licensed as an insurance agent?

Mr. Swan – In Texas, from 2012, January 2012.

Ms. Wiener – And over the course of that time, do you have any estimation of how many consumers you have sold insurance policies to?

Mr. Swan – 1500 to 2000.

Ms. Wiener – Have there been any incidents, consumer concerns, disciplinary matters?

Mr. Swan – There's been no concerns, no disciplinary matters, no problems.

Ms. Wiener – Go ahead. I'm sorry for interrupting.

Mr. Swan – Okay. Texas is not a reciprocal state with Florida, because I have a preneed license, and it's different here in Florida with the insurance license. So, when I took my Florida exam, I passed that with a 92. I was assigned an agent. Her name is Tiffany Chambers, with the Florida Insurance Licensing. I dealt directly with her. After reviewing my application, I had to send her all of my paperwork, which I had ready to go. They were all certified copies and there were 79 pages that got mailed off. On June 13th, Ms. Chambers called me to confirm that everything was good with my Florida license and I was able to come work in Florida. So, that's what the plan was. So, in June of this past year, my wife and I moved from Texas to Pensacola FL. June was a busy month for us. We were moving and I went on the Global Atlantic Awards trip. Then our daughter came and visited us here in Florida, so Mike Atwood, the owner, said why don't you just start July 8th, which was on a Monday. So, I said great, I'll be there July 8th to start. And he also said I sent in all the paperwork so you're going to be ready to go with the State of Florida when you get, because at that point I had already been appointed with Global Atlantic, also NGL in the State of Florida. At that time, he did not know about my background.

So, I received my license. Went to work. We got a call on August 5th or 6th from the funeral home asking me not to sell preneed because I was not properly licensed. I had no idea what was going on. I said there has got to be a mix up. Everything went through the State of Florida. Everything got sent in. I received my license. So, they said there's an issue. I called in to the State and obviously found out why we're here today. So, in my closing words, I'm going to say this. My words today cannot convey the shame, the embarrassment, the sadness that I personally went through, I put my parents through, I put my coworkers through, I put my friends through. I'm embarrassed and I'm ashamed and I hope nobody else does that, but you know what? People make mistakes. I was 32 years old and I made a mistake. I was a part of a group. So, in saying that, please, I ask you to give me my license. I've been a good member of the funeral industry. I take a lot of pride in this work. I've worked for good funeral homes. I'm working for one right now. My current owners are fantastic. I look forward to being here in Florida for the rest of my life. I'm 49 years old. So, I'm here today to ask you to change your mind and grant me my preneed license.

Chair – Mr. Barnhart?

Mr. Barnhart – Ms. Wiener, did you have something else to say?

Ms. Wiener – I was just going to close in saying that you have not heard a single centile of evidence that Mr. Swan has been or is likely to be a danger to the public, in Florida. And that is the only test that can be applied in this particular situation and the test that the Board must adhere to. There's simply no evidence on which to support such a concluded conclusion and so we would ask that you vote to approve his license. If it would make the Board feel more comfortable, Mr. Swan is absolutely amenable to a probationary period, to periodic reports to the Board, to having his employer periodically report to the Board on his interactions with staff. We would also again remind you that Mr. Atwood said that he will be personally responsible for Mr. Swan's actions.

Mr. Barnhart – Board members, I would like to add some statutory provisions as well as our rule as things you should consider in deciding what to do with this application. Ms. Wiener mentioned, "*does not create a danger to the public.*" That's under s. 497.141(5)(a), F.S. The other provisions that might apply here, and it's up to you to apply them or not. S. 497.152(2), F.S., involves crimes related to the practice. I think the crime here relates to the practice of the funeral history. S. 497.152(3), F.S., identifies previous discipline, as a ground that constitutes a proper denial. That's the revocation of license in South Carolina in 2012. S. 497.453(2)(f), F.S., states that the applicant must have good character and have no demonstrated history of lack of trustworthiness or integrity in business or professional matters. Under s. 497.466(5)(a), F.S., from what I understand, it doesn't sound like he was even eligible for a temporary preneed license with the criminal record. So, I think you should put those statutes into consideration when you're deciding this case. Thank you.

Chair – Thank you. Mr. Helm?

Mr. Helm – Ms. Wiener, you made a statement in your opening statement about him always being a funeral director. Is that correct? You made that statement? He's kept his license?

Ms. Wiener – He was licensed as a funeral director.

Mr. Helm – He kept his license is what you said.

Ms. Wiener – He did keep his license in Connecticut as a funeral director, notwithstanding this particular situation. Have you been licensed as a funeral director in other states?

Mr. Swan – No.

Ms. Wiener – If I intimated that, I didn't mean to, because I'm not...

Mr. Swan – I still have my Connecticut funeral director's license.

Ms. Wiener – You do still have that?

Mr. Swan – Yes, I still have it today. I pay every year.

Mr. Helm – But they prohibited you from doing future work as a funeral director in the funeral home and you still had your license?

Mr. Swan – No. Part of the deal, from my employer, while I was on probation, I was not allowed to work as a funeral director, for the three (3) years I was on probation.

Mr. Griffin – If I may? I think that that prohibition is from the Order of Probation in the criminal case.

Mr. Helm – It was part of that?

Mr. Griffin – Yes. So, it's not part of any sort of administrative regulatory. That was the court saying as a condition of your probation, you cannot do this.

Mr. Helm – I misread that then.

Chair – Anything else, Mr. Helm?

Mr. Helm – No.

Chair – Mr. Williams?

Mr. Williams – Question, Mr. Barnhart? Can you repeat the good character statute?

Mr. Barnhart - S. 497.453(2)(f), F.S., and then the others were S. 497.152(2), S. 497.152(3), and the danger to the public section is s. 497.141(5)(a), F.S., and our Rule 69K-1.008, F.A.C., comes into play. The other was ss. 497.466(5)(a) and (c), F.S.

Ms. Wiener – Mr. Chairman?

Chair – I'd like to refer to an affidavit by the arresting officer that says, "*Bruce Swan boasted to other sales counselors about his fraudulent scheme and how much he was profiting. He suggested to others they should too engage in this fraudulent activity.*" "*When Swan was describing how he had defrauded the company, he was very brazen about his scheme.*" And also, the harm to the public. When the death occurred, the customer had one (1) contract and the servicing home had another contract because of the fraudulent activity involved in this scheme. That would affect the customer.

Mr. Knopke – Mr. Chair, may I ask Mr. Swan some questions?

Chair -Mr. Knopke? Please.

Mr. Knopke – Good morning, sir.

Mr. Swan – Good morning.

Mr. Knopke – Some of this you've already talked about, but I'm going to ask it again for the record. My first question, I'm going to direct it to Ms. Simon, though. It says in the opening statement, in the paragraph under the Division's remarks, it states that, "*In 2004, Mr. Swan was charged with a misdemeanor for embezzlement and larceny in the fourth degree.*" In the package further back, it refers to Larceny in the 5th degree. Is there a difference?

Ms. Simon – Mr. Knopke?

Mr. Knopke – Yes ma'am?

Mr. Griffin – In Connecticut, both of them are misdemeanors.

Mr. Knopke – Okay, because this was from the State of Connecticut, dated May 28, 2019, where it describes the charges as Larceny in the 5th degree. You already answered the question of whether Mr. Atwood knew your record or not. You said he did not know your record.

Mr. Swan – At the time, no. Again, I had not even started work yet. He hired me through Trust 100. He probably knew about it not shortly thereafter. That's when we realized we got a problem.

Mr. Knopke – But through the interview process, were you interviewed directly by Mr. Atwood?

Mr. Swan – I was not.

Mr. Knopke – Okay.

Mr. Swan – I was brought in from Global Atlantic and Trust 100 who was in account for what they were looking for. A preneed person.

Mr. Knopke – Okay. So, they didn't disclose it to Mr. Atwood?

Mr. Swan – They did not.

Mr. Knopke – You said you made your restitution of \$14,372.

Mr. Swan – That's correct.

Mr. Knopke – Is that your personal part or was that the entire restitution for all the theft?

Mr. Swan – That was my part. What it was, it was the commissions paid on the non-guaranteed part, and I made that immediately after the charges were told. Before I went to court, everything was paid. It was commissions received on the non-guaranteed.

Mr. Knopke – Okay. That was on your part.

Mr. Swan – That's correct.

Mr. Knopke – I remember reading there was about thirty (30) other people involved.

Mr. Swan – Yes, thirty plus (30+).

Mr. Knopke – What was the total amount of fraud by everybody? Do you know?

Mr. Swan – Well, at the time, the reason why my number was the highest is I was the number one sales rep in the northeast region. It involved Massachusetts, Connecticut, Rhode Island, and New Jersey. Again, there was thirty plus (30+) people that actually, over the course of six (6) months, ended up getting fired from the employer.

Mr. Knopke – But you don't have any idea what approximate total dollar amount was?

Mr. Swan – I was the #1 dollar amount, because I was the top producer. I do not know the total. I would say it was certainly less than \$100,000 total.

Mr. Knopke – A lot of money. Okay. Thank you. You've answered the question about still being an embalmer, funeral director and embalmer.

Mr. Swan – Yes sir. 2362 is my Connecticut license number.

Mr. Knopke – Counsel addressed the Florida issue I was going to ask. If you went back to Connecticut tomorrow, you theoretically could be hired as a funeral director?

Mr. Swan – Yes, I could be a funeral director.

Mr. Knopke – In Texas, any reported issues?

Mr. Swan – Zero reported issues.

Mr. Knopke – No complaints by customers?

Mr. Swan – Sir, I learned my lesson on this. I made a major mistake back then. I have been a much better person for it. I was dead wrong.

Mr. Knopke – Okay. In the affidavit of the arresting officer, it describes “when completing the insurance-funded prearrangement agreement, Bruce Swan would place a piece of paper between some of the copies or fold under one of the copies to prevent one of the carbon entries from appearing on at least one of the copies. On this blank or incomplete copy, Swan would make several changes and would submit this altered copy to the sales office to fraudulently receive sales commissions not due him. The original page was provided to the customer and the true correct copy was placed in the funeral home file, therefore ensuring the customers were not defrauded. This also concealed the fraudulent activity. On one hundred sixty-one (161) of these contracts, Bruce Swan defrauded the company for a total of \$14,372.54.” Prior to starting this, I assume the company told you they were changing the commission schedule?

Mr. Swan – That is correct.

Mr. Knopke – So you were aware of the change?

Mr. Swan – I was.

Mr. Knopke – And you probably figured a potential financial impact on you?

Mr. Swan – Correct. It affected many of us and that's kind of what the group spoke about. We were dead wrong.

Mr. Knopke – But the mentality at the time was we'll figure out a way to get around it.

Mr. Swan – To get the commission, yes. It was to receive the commission on the total policy. Yes.

Mr. Knopke – You could have gone to work someplace else.

Mr. Swan – Absolutely. I was wrong.

Mr. Knopke – Mr. Chair, those are all my questions at the moment.

Chair – I want to disclose my affiliation with SCI Funeral Services of Florida LLC and that affiliation will in no way affect my ability to make a fair and impartial decision on this case or anything coming before the Board today.

Ms. Wiener – Mr. Chairman, can I ask Mr. Swan to address the comments that you pointed out in the affidavit? You made comments. You didn't really ask it in the form of a question, but I would like for him to address the nature of his communication with the arresting officer.

Chair – Sure. Let me get there. Just a moment. Yes, I'm there.

Mr. Swan – I had heard what you said. What was your question?

Ms. Wiener – Well, I don't think he asked a question, per se, so I'll ask the question.

Chair – I didn't have a question.

Mr. Swan – Oh, okay.

Chair – Thank you.

Ms. Wiener – As you heard, it seemed as though you and perhaps were quite brazen in your conversations with the arresting officer about the criminal activity. Why so? How did that all happen and can you explain?

Mr. Swan – Yes. In my opinion, I disagree. There was a group of about five (5) or six (6) of us that originally came up with this idea, in talking about trying to recover the commission dollars we just lost, probably a month or two before that, and then started doing it. I was not the very first person to do it, but that's not here or there. I was still wrong. But again, as it started to work, people started talking about it. Again, our superiors, our managers, knew about it. They just kind of turned their head. Again, it does not make it right. I was 100% wrong for it, but it was not cut-off from day one. To my defense, the people above me knew it was going on. It also affected their paycheck. So, there was never really any {inaudible} to stop, they just basically turned their heads and left it there as a grey area. It didn't really come to light until a contract was found in Houston. Again, it does not make the situation right. I'm not saying that by any means, but that's how it really went down.

Ms. Wiener – And so is it your testimony that your supervisors were aware of the fraudulent scheme and that they were receiving commission overrides on those amounts of commissions?

Mr. Swan – Absolutely.

Ms. Wiener – Were those supervisors terminated as well?

Mr. Swan – Yes. VP of Sales, Northeast Region.

Chair – Thank you.

Mr. Jones – Mr. Chair?

Chair – Yes?

Mr. Jones – In that statement, under (7), it states that you also asked Gary Szewczyk and Mary Koch-Decshaine to participate. So, you didn't solicit them to participate? And she later stated that you were the one that encouraged her to, and she did. Can you address that?

Mr. Swan – Yes. Again, first off it was all wrong. But as more and more people started doing it, other people were obviously talking about it and wondering, because everybody had just lost a percentage of their commission from what they were

collecting. If I could just back up a little bit. For about three (3) to (4) months, the whole group got together. We were a little frustrated that they cut our commissions, so we stopped collecting cash advances altogether on the non-guaranteed, because our thought process was it's easier for somebody to buy an \$8000 funeral than a \$10,000 funeral. So, we stopped collecting, and then the people above us wanted to have that volume, make sure it's included, because the people above us needed to show the volume. So, that's kind of how it all got started and then as the ball started rolling, more and more people were doing it and having questions on how to do it. It typically happened if you went out for happy hour after work or something like that. Again, it was dead wrong and I wish I was never ever a part of this, but I was.

Chair – At that point in time, did you realize that it was fraudulent activity?

Mr. Swan – I don't think you're really going to believe this answer, but at that time, I truly didn't think the significance of it was going to be sitting me here today.

Chair – Did you realize it was fraudulent activity?

Mr. Swan – My personal opinion? I thought it was a grey area. I didn't think I was going to get arrested and have a criminal record for the rest of my life. I did not.

Chair – Did you know it was wrong?

Mr. Swan – Yes. I think it was probably not the best move, but I certainly didn't think it was criminal.

Chair – Thank you.

Mr. Jones – You did not?

Mr. Swan – I did not think it was criminal because our superiors knew what was going on.

Mr. Jones – You did not think \$14,000 and one hundred sixty-one (161) contracts falsified was wrong?

Mr. Swan – That was definitely wrong. That was absolutely wrong.

Ms. Wiener – I think you said you didn't realize it was criminal activity.

Mr. Swan – I didn't realize it was.

Mr. Jones – My question was where he said he didn't think it was wrong. Can you clarify the \$14,000 and one hundred sixty-one (161) contracts?

Mr. Swan – Once it all really came out, yes, dead wrong. Again, I wish I had never been a part of this. I was. It's a stain on my record forever.

Chair – Thank you. Did you say you had a motion?

Mr. Jones – No sir, I just said no further questions.

Chair – Thank you.

Mr. Knopke – I've got another question.

Chair – Mr. Knopke?

Mr. Knopke – Did you give any consideration to the impact on your employer? I mean it's a financial impact at some point.

Mr. Swan – I don't think I was thinking that, but again, after it all came to light, yes. I should not have been a part of it. I was a part of the group that did it.

Mr. Knopke – Okay.

Mr. Swan – I made a mistake fifteen (15), sixteen (16) years ago. Absolutely.

Mr. Jones – If I may? One more. Mr. Swan, at the end of your statement a little while ago, you apologized to your family and others, but I didn't hear anything to the company.

Mr. Swan – I said to my coworkers.

Mr. Jones – Your coworkers?

Mr. Swan – Yes. I said that.

Mr. Jones – The company that you took the money from was not included in your statement. I'm just going back to what you said.

Mr. Swan – I'm sorry for not clarifying that. My coworkers were the people I worked with. I'm sorry for not declaring that a little more, but that was my coworkers.

Ms. Wiener – So, you meant that more broadly?

Mr. Swan -Absolutely

Ms. Wiener – Just one point of clarification. I want to make sure that I understand and I believe that Mr. Knopke pointed this out in the affidavit of the arresting officer. The consumers received everything that they paid for on their contracts, correct?

Mr. Swan – Correct.

Ms. Wiener – It was simply that you took the cash advance items, and when you wrote up the contract to the consumer, it showed on the consumer's contract but you move it over into a commissionable section on the company's version of the contract?

Mr. Swan – Correct. I did.

Ms. Wiener – But the consumers did receive what they were entitled to?

Mr. Swan – Everything. There's no consumer at all who lost one penny. It was against the company, which I did.

Ms. Wiener – And you take responsibility for it?

Mr. Swan – I do.

Mr. Hall – Mr. Chair? A question?

Chair – Go ahead, Mr. Hall.

Mr. Hall – My concern is the age you were at. You're an adult person. You knew what wrong and what was right. Your company gave you new contracts. You knew what the new rules were. If you didn't like that, as Mr. Knopke pointed out, you could have went somewhere else and worked. We keep going to the fact that no consumers were hurt, but the company was. The people that granted you a job and gave you a job to provide income to your family and so forth, you decided to do it to them, basically is what your testimony is. You decided to say, I don't like it so I'll fix it. It's pretty blatant, from what I'm

seeing in the evidence and what you testified to. You didn't hurt the consumer probably, and it would be interesting to know if Mr. Atwood would sign off if you hold him financially responsible {inaudible} claims back to the trust on this individual.

Ms. Wiener – Of course, and he would have to be because he is the preneed main licensee. So, I would say to you that yes, not only will he say that personally as he has told me and as he told you through the statement, but also as a preneed licensee he would be responsible for that.

Mr. Hall – Personally. No claim back to the trust.

Ms. Wiener – To the Consumer Protection Trust Fund? Yes, I don't believe that a Consumer Protection Trust Fund would apply in that kind of case.

Mr. Hall – I know that. He's saying he'll be totally responsible, but I don't know that that helps me in this case, but if you have this come up in the future, if no one comes and says they'll be totally responsible, I believe in this person and I'll sign off personally to do that.

Ms. Wiener – I believe that is what he has told you.

Mr. Hall – I feel reluctance there. If you don't believe it, why should I?

Ms. Wiener – I don't have him here with me, but he has said he will personally be responsible for all of Mr. Swan's actions. So, to me, that means he personally and his preneed licensee, and so there would never be an occasion for there...he would have to be responsible for it. He couldn't bring a claim to the Consumer Protection Trust Fund, because you would say well of course Mr. Atwood, you agreed that you were going to be responsible for this so that one does not qualify. So, I do believe that that is his intention there. This incident occurred about sixteen...

Mr. Swan – 2001 and 2002, and got resolved in 2004.

Ms. Wiener – And so, a long time ago. What have you learned since then about integrity and in being a good licensee?

Mr. Swan – Follow the rules 100%. 100% black and white. I'm a black and white person.

Chair – Mr. Knopke?

Mr. Knopke – Mr. Swan, you stated a moment ago that the buyers were not impacted. How do you know that?

Mr. Swan – When you say impacted, I mean financially. Their funerals were completely secure with everything they had put towards their funerals.

Mr. Knopke – But how do you know that? And where I'm going, I'm going to be quick with it, is when they can't walk into the various funeral homes to have their funerals delivered, how do you know that there weren't issues? I don't believe that you can answer that but go right ahead and try.

Mr. Swan – I am quite friendly with the people that all work back in those funeral homes. One was my father's funeral home. Correct, I can't 100% certainly there weren't problems, but I have heard nothing from them that there were any problems for the family members.

Mr. Knopke – I would suggest to you that when there's a problem with a contract at the street-level versus the company-level, there's going to be a discussion about that before it gets to delivery. And that may have well delayed funerals or caused additional grief to family members.

Mr. Swan – Again, sir, I was wrong. I was wrong.

MOTION: Mr. Knopke moved to deny the application based upon the character of the individual, the blatant participation and solicitation, as well as other crimes, pursuant to ss. 497.453(2)(f), 497.152(2), 497.152(3), 497.141(5)(a), 497.466(5)(a) and (c), F.S., and Rule 69K-1.008, F.A.C. Mr. Hall seconded the motion, which passed unanimously.

Chair – Thank you.

Mr. Swan – Thank you all for your time.

Mr. Jones – Mr. Chair, can we take a ten (10) minute break?

Chair – Of course. Let’s take a break. I have 12:12. How about 12:25? 12:25.

*****BREAK*****

6. Application(s) for Continuing Education Course Approval
A. Recommended for Approval without Conditions – Addendum B
(1) FuneralCE (43)

Ms. Simon – Pursuant to s. 497.147, F.S., and Board Rule 69K-17.0041, F.A.C., the course presented has been reviewed by the CE Committee and the Committee, as well as the Division, recommends approval of the application for the number of hours indicated.

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

7. Application(s) for Approval as a Continuing Education Provider
A. Recommended for Approval without Conditions – Addendum C
(1) Florida National Cemetery (36208)

Ms. Simon – Pursuant to s. 497.147, F.S., and Board Rule 69K-17.0041, F.A.C., the application presented has been reviewed by the CE Committee and the Committee, as well as the Division, recommends approval of the application.

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

8. Consumer Protection Trust Fund Claims
A. Recommended for Approval without Conditions – Addendum D

Ms. Simon – The CPTF claims presented on the Addendum have been reviewed by the Division and the Division recommends approval for the monetary amounts so indicated.

Mr. Helm – Question?

Ms. Simon – Yes sir?

Chair – Mr. Helm?

Mr. Helm – Prestwood has two (2) more on here.

Ms. Simon – Mr. Helm, the last time we were here, I believe it was Mr. Knopke that questioned those items as to CPTF.

Mr. Helm – We both did.

Ms. Simon – Oh, both of you. Excuse me. I let Mr. Knopke know, and I apologize for not addressing it to the Board. When Prestwood sold its facility, they did not have a preneed license. So, anybody that would take over their facility would not be responsible for preneed that was sold in contravention of statute. If that makes sense.

Chair – Usually when we have a change of ownership that comes before us they are guaranteeing.

Ms. Simon – They are typically assuming liability. However, when an entity does not have a preneed license and enters into contracts in violation of our statutes, that provision is not bound in the contracts, in the agreements between the funeral home purchaser, because there are no liabilities to assume because there shouldn't be any money in trust and there shouldn't be any contracts outstanding.

Mr. Helm – So, we just \$14k out without trying to collect it?

Ms. Simon – They only people that we would collect it from is an entity that is no longer licensed. I believe Prestwood is revoked.

Mr. Helm – But they've been bought out.

Ms. Simon – They've been bought out, but the new owners aren't responsible for preneed that was entered into illegally, essentially.

Mr. Helm – What about the previous owner?

Ms. Simon – The previous owners have been permanently revoked, if I remember correctly, but revoked nonetheless. As a result of being revoked, we do not have authority over them. What further action can we take? I would need to look into that.

Mr. Helm – I'm not disputing you. I don't believe Prestwood's license was revoked. They just sold out. I thought {inaudible}.

Ms. Simon – May I have just one moment? Ms. Richardson?

Ms. Richardson – They were not revoked, they were bought out. However, they do not have a preneed license or did not, so there's nothing in the contract for the purchase to be liable for anything that they've sold.

Mr. Helm – What I'm saying is, this is our Consumer Protection Trust Fund.

Ms. Simon – Yes sir.

Mr. Helm – So, they stole this money from that, if you want to say that.

Ms. Simon – Yes.

Mr. Helm – So we won't try to go after it?

Ms. Simon – I believe that when this was originally written up, it was because of criminal actions that were being taken against Mr. Prestwood, Jr.

Mr. Helm – I may be the only one who feels this way, but I feel like they just stole \$14k from us.

Ms. Simon – Yes sir. And I believe that that's what the criminal charges may be linked to.

Mr. Knopke – Excuse me, Mr. Chair?

Chair – Mr. Knopke?

Mr. Knopke – Ms. Simon, does the statute require us to reimburse consumers or other firms who ask for reimbursement if the seller was never licensed or never contributed to the fund?

Ms. Simon – Very good question, Mr. Knopke. If the seller was licensed by the Board, in the capacity of a funeral establishment, then the Consumer Protection Trust Fund would be paying for those claims regardless of whether they were licensed as a preneed main licensee.

Mr. Knopke – Okay. In this case, Prestwood was not?

Ms. Simon – Prestwood was not licensed as a preneed main licensee.

Mr. Knopke – They did not contribute to the fund.

Ms. Simon – Correct, but they were licensed as a funeral establishment.

Mr. Knopke – Okay, but they're not licensed as a preneed seller. The consumers that they did sell to, what gives them the right to make the claim. In this case, it appears that the funeral home made the claim. What gives either the funeral home or the consumer the right to come to that fund for reimbursement?

Ms. Simon – I'm paraphrasing the statutes, but the way I understand it is if the Board has granted or if the funeral establishment has been granted licensure under Chapter 497, and they're under the auspices of the CPTF. If they should choose to go against the statute, selling preneed when they're not licensed to do so, the consumers can rely on a funeral establishment's right to sell to them or to do anything, because the funeral establishment has been licensed by the Board. Whether they've been licensed to sell preneed or not, the consumer has the protection of being licensed by the Board.

Mr. Knopke – I'm not arguing, I'm trying to have a discussion.

Ms. Simon – Yes sir.

Mr. Knopke – Then why do we license certain funeral homes to sell preneed and others we either deny or they don't make application, but yet the ones that don't make application for a preneed license they get the protection that everybody else pays for, meaning the sellers, yet they don't have to contribute to it. It just seems to me either it's being interpreted incorrectly or too broadly, or maybe we need to redefine the law a little bit to say what's actually covered and what isn't covered. Even earlier today we may have a firm that was up here that had {inaudible} that we don't know about. Just use Prestwood as an example. No preneed license, yet we're paying preneed claims for the people that sold them. Not the new firm.

Ms. Schwantes – Mr. Chair, may I address these?

Chair – Please.

Ms. Schwantes – First, to Mr. Knopke's question. Obviously, the intent of the Legislature, we can't go back and indicate all of that, however, the current interpretation is the most consumer-friendly of the interpretation. I would think that it was in the Board's best interest and the industry's best interest for that interpretation to remain. I understand your question. I had similar questions when I first came on with the Division, in terms of interpretation and in terms of the language. But when you read the language of the statute itself it does permit that kind of interpretation of that. Going to Mr. Helm's question. You're asking for restitution?

Mr. Helm – Yes.

Ms. Schwantes – You're asking for restitution either to the consumers or the Consumer Protection Trust Fund. There are limits, either way.

Mr. Helm – Either way?

Ms. Schwantes – From what you're gathering.

Mr. Helm – I understand that we need to protect consumers. I don't have a problem with that. What I'm saying is these people stole from us. Can we not go after these people?

Ms. Schwantes – Under the statutes that this Division is guided by, we have limited authority. Very limited authority, and we do not have authority to pursue criminal action against the licensees. However, I would point out that this Division is part of a Department that has other divisions (Fraud). We work with those divisions and also with law enforcement agencies throughout the State to assist in providing information or whatever is needed to help prove cases in the criminal realm to try to get restitution back. We actually have been successful in some of that, but it is not something that the Division or this Board has specific authority to go after. Does that make sense?

Ms. Simon – Ms. Richardson just provided Rule 69K-10.002(2), F.A.C., which discusses the request for restitution from CPTF, and it states that *“Restitution will only be made if the preneed licensee or otherwise covered provider was licensed as a preneed licensee or was regulated under chapter 470, F.S., when the contract was written.”*

Mr. Helm – I understand protecting the consumer. I don't have a problem with that. I'm just saying we shouldn't just let them walk away with that money.

Ms. Schwantes – Understood.

Chair – Thank you.

Ms. Schwantes – Thank you.

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

9. **Application(s) for Florida Law and Rules Examination**
- A. **Informational Item (Licenses Issued without Conditions) – Addendum E**
- (1) **Funeral Director (Endorsement)**
 - (a) *Barnes, Robert N*
 - (2) **Funeral Director (Internship and Exam)**
 - (a) *Weeks, Abigail*
 - (3) **Funeral Director and Embalmer (Endorsement)**
 - (a) *Chubenko, Gregory B*
 - (b) *Chubenko, Peter M*
 - (c) *Kinner, Stacey*
 - (d) *Willett, Lori L*
 - (4) **Funeral Director and Embalmer (Internship and Exam)**
 - (a) *Gray, Jeffrey L*
 - (b) *Orrett, Amanda-Mae*
 - (c) *Vazquez, Monica*
 - (d) *White, Samuel J*

Ms. Simon – This is an informational item. Pursuant to Rule 69K-1.005, F. A. C., the Division has previously approved these applications.

10. **Application(s) for Internship**
- A. **Informational Item (Licenses Issued without Conditions) – Addendum F**
- (1) **Funeral Director**
 - (a) *Frazier Jr., Randy R F389850*
 - (b) *McCutcheon, Glen E F371359*
 - (2) **Funeral Director and Embalmer**
 - (a) *Augustin, Shanna F386625*
 - (b) *Brown, Saundra M F389851*
 - (c) *Davis, Cheryl L F091791*

- (d) Flanigan, Keelin B F392061*
- (e) Ingram, Clarencia Q F073926*
- (f) Jackson, Shawn B F390735*
- (g) Moore, Jakari K F390329*

Ms. Simon – This is an informational item. Pursuant to Rule 69K-1.005, F. A. C., the Division has previously approved these applications.

B. Recommended for Approval with Conditions (Criminal History)
(1) Funeral Director and Embalmer
(a) Baumann, Suzanne

Ms. Simon – An application for a Concurrent Intern license was received by the Division on August 6, 2019. The application was complete when submitted. A background check revealed a relevant criminal history as follows:

On or about July 10, 2006, Ms. Baumann, formally known as Suzanne Juhasick, was convicted of the following:

- 1) Five (5) counts of Possession of a Controlled Substance (a misdemeanor in Pennsylvania but a felony in Florida),
- 2) Three (3) counts of Delivery of a Controlled Substance (felony),
- 3) One (1) count of Criminal Conspiracy (F1), and
- 4) One (1) count of Criminal Use of Communication Facility (F3).

She was sentenced to 24 months Intermediate Punishment on Electronic Monitoring to be followed by three (3) years of probation. The Division is recommending approval subject to the condition that the license is placed under one-year probation.

Mr. Clark – Mr. Chairman?

Chair – Yes.

Mr. Clark – I'd like to state my affiliation with FPG of Florida and Anderson McQueen Funeral Home. I will recuse myself but am available to the Board for questions.

Chair – Thank you. Suzanne Baumann? Suzanne Baumann?

Ms. Wiener – I'm here for FPG, if there are any questions.

Chair – Thank you. Ms. Bauman, would you please be sworn in?

Ms. Simon – Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Suzanne Baumann – I do.

Ms. Simon – Please state your name for the record.

Ms. Baumann – Suzanne Baumann.

Chair – Thank you. Do you want to address the Board or are you here for questions?

Ms. Baumann – For any questions.

Chair – Thank you. Any questions, Board?

Mr. Helm – Were you a user?

Ms. Baumann – I was. I have fifteen (15) years clean.

Mr. Helm – That was my next question. How are you doing with that?

Ms. Baumann – Well. Great. It's a much better life.

Chair – If you had to walk out the door today and take a drug test, what would the results be?

Ms. Baumann – It would be clean.

Chair – Thank you.

MOTION: Mr. Knopke moved to approve the application subject to the condition that the license is placed under one-year probation. Mr. Helm seconded the motion, which passed unanimously.

Chair – Thank you.

Ms. Baumann – Thank you.

Chair – Good luck.

Mr. Helm – Good luck.

Ms. Baumann – Thank you.

11. **Notification(s) of Change in Location**
 - A. **Informational Item – Addendum G**
 - (1) *Broward Funeral Choices Inc (F077061) (Oakland Park)*

Ms. Simon – This is an informational item. The establishments listed have applied for a change of location of their businesses. The only criteria for approval is that the new locations pass inspection by the Division.

12. **Application(s) for Monument Establishment Sales Agent License**
 - A. **Informational Item (Licenses Issued without Conditions) – Addendum H**
 - (1) *Hampton, Andrea J F390412*
 - (2) *Hampton, Roger F390411*

Ms. Simon – This item is informational only. Pursuant to s. 497.554(3)(a), F.S., the Division has previously approved this application.

13. **Application(s) for Change of Ownership (Collective Coversheet)**
 - A. **Recommended for Approval with Conditions**
 - (1) *Forest Lawn Memorial Gardens Cemetery of Lake City, Florida, Inc (Lake City)*
 - (a) *Application(s) to Acquire Control of an Existing Cemetery Company*
 - (b) *Application(s) for Cinerator Facility*
 - (c) *Application(s) for Preneed Main License*

Forest Lawn Memorial Gardens Cemetery of Lake City, Florida, Inc (Forest Lawn), a corporation, seeks approval for an application for a cinerator facility license, an application to acquire control of a cemetery company, and an application for a preneed main license at the below listed locations. The change of ownership is due to the death of Theodore L. Guerry, Sr., former owner of the corporation, wherein Mr. Guerry's ownership interests are being transferred to the successor owner: Amy B. Guerry. The background check for the principal was returned without criminal history. More specifically, the entities that are being acquired is as follows:

- 1) Forest Lawn Memorial Gardens Cemetery of Lake City, Florida, Inc, a licensed cinerator facility, license # F020757, physical address: 264 SW Forest Lawn Way, Lake City
- 2) Forest Lawn Memorial Gardens Cemetery of Lake City, Florida, Inc, a licensed cemetery, license # F039557, physical address: 3956 S US Hwy 441, Lake City
- 3) Forest Lawn Memorial Gardens Cemetery of Lake City, Florida, Inc, a licensed preneed main, license # F0319252, physical address: 3956 S US Hwy 441, Lake City

Included in the Board packets were the separate applications regarding the above listed properties. Applicant confirms that if there are currently any unfulfilled preneed contracts sold, the obligation to fulfill those preneed contracts will be assumed by the new owners. If approved, Applicant will continue to sell trust-funded preneed contracts through First Florida Trust.

The Division recommends approval of the applications referenced above, subject to the following conditions:

- 1) 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.
- 2) That the establishment(s) under the application(s) herein pass an onsite inspection by a member of Division Staff.
- 3) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities, (if any), of the location(s) being acquired.
- 4) That the Applicant registers the fictitious name Forest Lawn Crematory with the Division of Corporations within 30 days of the Board meeting.

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

(2) Gateway-Forest Lawn Funeral Home & Crematory Inc. (Lake City)
(a) Application(s) for Funeral Establishment
(b) Application(s) for Preneed License

Gateway-Forest Lawn Funeral Home & Crematory Inc, a corporation, seeks approval for an application for a change of ownership of a funeral establishment (F040174), and an application for a preneed main license (F019203) at the below listed locations. The change of ownership is due to the death of Theodore L. Guerry, Sr., former owner of the corporation, wherein Mr. Guerry's ownership interests are being transferred to the successor owner: Amy B. Guerry. The fingerprints for the principals were returned without criminal history. More specifically, the entities that are being acquired is as follows:

- 1) Gateway-Forest Lawn Funeral Home and Crematory Inc, a licensed funeral establishment, license # F040174, physical address: 3596 S Highway 441, Lake City, FL 32056
- 2) Gateway-Forest Lawn Funeral Home and Crematory Inc, a licensed preneed main, license # F019203, physical address: 3596 S Highway 441, Lake City, FL 32056

Included in the Board packets were the separate applications regarding the above listed properties. Applicant confirms that if there are currently any unfulfilled preneed contracts sold at this location, the obligation to fulfill those preneed contracts will be assumed by the new owners. If approved, Applicant will continue to sell trust-funded preneed contracts through First Florida Trust (Live Oak Banking Company), administered by Funeral Services, Inc (FSI), and utilize their approved prearranged funeral contract forms. The Division recommends approval of the applications referenced above, subject to the following conditions:

- 1) 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.
- 2) That the establishment(s) under the application(s) herein pass an onsite inspection by a member of Division Staff.
- 3) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities, (if any), of the location(s) being acquired.

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

14. Application(s) for Broker of Burial Rights
A. Recommended for Approval without Conditions

(1) Carlos Gonzalez (Pembroke Pines)

Ms. Simon – The application was received on August 20, 2019 and there were no deficiencies noted on the application. The Department completed a background check of Applicant’s principal and owner, Carlos Gonzalez, which revealed no criminal history. The Division is recommending approval without conditions.

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

15. Application(s) for Cinerator Facility

A. Recommended for Approval with Conditions

(1) NorthStar Funeral Services of Florida LLC d/b/a Memorial Park Crematory (St. Petersburg)

Ms. Simon – An application for a cinerator facility was received on August 1, 2019. The application was complete when submitted. The Funeral Director in Charge will be Stacy Adams (F045437). A background check of the principals revealed no relevant criminal history. The facility is recommended for approval subject to the condition that the facility passes an onsite inspection by a member of Division Staff.

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

16. Application(s) for Direct Disposal Establishment

A. Recommended for Approval with Conditions

(1) Affordable Choice Cremation LLC (Stuart)

Ms. Simon – An application for a direct disposal establishment was received on September 3, 2019. The application was complete when submitted. The Funeral Director in Charge will be Thomas Conway Jr (F054393). A background check of the principals revealed no relevant 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, which passed unanimously.

17. Application(s) for Funeral Establishment

A. Recommended for Approval with Conditions

(1) Garfield Memorial Group Inc. d/b/a Garfield Funeral & Cremation Services (Ft. Lauderdale)

Ms. Simon – An application for a funeral establishment was received by the Division on August 1, 2019. The application was complete when submitted. The Funeral Director in Charge will be Todd P. Garfield (F042410). A background check of the principals revealed a relevant criminal history that has previously been reviewed by the Board at the August 2015 meeting. A copy of the criminal history form and court documentation, along with the Consent Order issued resulting from the August 2015 Board meeting, has been provided as a part of this Board packet. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

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

(2) J E Cusack Mortuary LLC (Deland)

Ms. Simon – An application for a funeral establishment license due to a change of ownership was received by the Division on July 10, 2019. The application was incomplete when received and complete as of August 29, 2019. The Funeral Director in Charge will be Rodney Rucker Sr (F043119). A background check of the principals revealed no relevant criminal history. This funeral establishment is not the qualifying entity for a preneed license. The change in ownership is due to the passing of the current owner. 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 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 executed 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.

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

18. Application(s) for Preneed Main License
A. Recommended for Approval without Conditions
(1) *Q L Douglas Funeral Home LLC (Jacksonville)*

Ms. Simon – The Department received the application on March 11, 2019, and deficiencies were noted on the application. A deficiency letter was issued as of April 2, 2019 and Applicant contacted the Division to request more time to resolve all deficiencies and provided a notice of waiver of the deemer date. All deficiencies were resolved as of August 1, 2019. This is an application for a new preneed license. The sole principal and owner of the corporation will be: Quinton L. Douglas, and a completed background check of the officer revealed no criminal history. Applicant's qualifying funeral establishment license (License # F076321) was issued as of December 1, 2018. If approved, Applicant will sell insurance-funded preneed through Great Western Insurance Company and use their approved pre-arranged funeral agreement. The Division is recommending approval without conditions.

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

(2) *Sanchez Rehoboth Mortuary and Cremation Services LLC (St Petersburg)*

Ms. Simon – The Department received the application on August 22, 2019 and all items were resolved as of September 12, 2019. The principal of the LLC is Irving Sanchez III. A completed background check of all principals was returned without criminal history. Applicant's qualifying funeral establishment license (License # F349637) located at the above address was issued as of April 1, 2019. If this application for preneed license is approved, the Applicant will offer preneed services including the sale of insurance-funded preneed through Homesteaders Life Company, utilizing Homesteaders' pre-arranged funeral agreement form(s). The Division is recommending approval without conditions.

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

B. Recommended for Denial
(1) *SW Florida Funeral and Cremation Services Inc. (Punta Gorda)*

Ms. Simon – This item has been withdrawn from the agenda.

Ms. Wiener – Mr. Chairman?

Chair – Yes, Ms. Wiener?

Ms. Wiener – Thank you. I represent the applicant on this item that has been withdrawn from your consideration, but I did want to just very briefly take a moment to let you know, because I don't really want the statements regarding the investigation to go unanswered, because now they are in your Board packets and they are a matter of public record and you probably all read them. All of the issues that are noted in your Board packet have been addressed and were addressed within days of matters coming to the attention of this licensee. Frankly, they have nothing to do specifically with a preneed operation, but we recognize the Division's concern about the prior operations there. This licensee took over for an absolutely failing group of licensees and they are working hard to get things under control, get forms changed, get signs up, get procedures in place. The owners are experienced owner/operators coming from out of state to rescue and want to work with the state to restore this operation to a fully compliant and a benefit to the community. So, I just wanted to let the Board members know that anything that is cited in that Board packet, every single one of those items has been addressed. If you have any specific questions about how they were addressed, I have all of the information here.

Chair – I don't have any question about how they were addressed. With the withdrawal, is there a plan to reapply?

Ms. Wiener – The item was withdrawn from the Board agenda. I believe we are working with the Division to bring that back to you in November.

Chair – Thank you.

Ms. Wiener – Thank you.

Mr. Barnhart – I just didn't know if it was going to come back in November. If not, we need a waiver.

Ms. Wiener – Right now, we're working towards bringing it back in November. We are working with the Department because this was, as we said, an absolute failure this operation was, so they're really working hard to try and be the good rescuer.

Chair – No deemer concerns?

Mr. Barnhart – Not if we hear it by November's meeting.

Ms. Schwantes – That's the plan.

Mr. Barnhart – If we don't, then we'll either need to entertain a deemer or rule on it at the November meeting.

Chair – Thank you.

Ms. Wiener – Thank you.

19. **Application(s) for Removal Facility**
 - A. **Recommended for Approval with Conditions**
 - (1) **LWNB Removal Services LLC (Ocoee)**

Ms. Simon – An application for a Removal Service was received by the Division on August 16, 2019. The application was incomplete when submitted and completed on September 19, 2019. A background check of the principals revealed no relevant criminal history. The facility is recommended for approval subject to the condition that the facility passes an onsite inspection by a member of Division Staff.

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

20. **Contract(s) or Other Related Form(s)**
 - A. **Recommended for Approval with Conditions**
 - (1) **Preneed Sales Agreement**

(a) First Guaranty Insurance Company (Salt Lake City, Utah)

Ms. Simon – FGIC submits the attached preneed sales agreement form for approval: *Preneed Funeral Agreement and Assignment Statement of Funeral Goods and Services* (Form SFGS-08/19-FL(FGIC)). If approved, this agreement is to be used for the sale of insurance-funded preneed funeral goods and services by various licensed preneed main establishments and their related preneed branches. The Division recommends approval subject to the condition that two (2) full sized print-ready copies of each contract are received by the Department within sixty (60) days of this Board meeting.

MOTION: Mr. Helm moved to approve the agreement subject to the condition that two (2) full sized print-ready copies of each contract are received, by the Department, within 60 days of this Board meeting. Mr. Clark seconded the motion, which passed unanimously.

(b) Investors Heritage Life Insurance Company (Frankfort, KY)

Ms. Simon – IHLIC submits the attached revised preneed sales agreement form for approval: *Guaranteed Insurance Funded Statement of Funeral Goods and Services and Preneed Funeral Agreement* (Form SFGS-FL(G – 08-2019)). This preneed sales agreement was previously approved by the Board at its July 11, 2019 Board meeting. IHLIC has amended this approved agreement, as outlined within your Board packet. If approved, this agreement is to be used for the sale of insurance-funded preneed funeral goods and services by various licensed preneed main establishments and their related preneed branches. The Division recommends approval subject to the condition that two (2) full sized print-ready copies of each contract are received by the Department within sixty (60) days of this Board meeting.

MOTION: Ms. Anderson moved to approve the agreement subject to the condition that two (2) full sized print-ready copies of each contract are received, by the Department, within 60 days of this Board meeting. Mr. Knopke seconded the motion, which passed unanimously.

21. Request(s) to Renew License

A. Recommended for Approval with Conditions

(1) Funeral Director and Embalmer

(a) Cunningham, Courtney (F065144)

Ms. Simon – Is Mr. Cunningham present? Please come forward. Mr. Cunningham has applied to renew his Funeral Director and Embalmer license (F065144) on September 9, 2019. Mr. Cunningham answered “yes” to the criminal history question; as well as provided the criminal history form and court documentation indicating the following criminal charges:

- On January 30, 2019 Mr. Cunningham pled nolo contendere to Possession of Marijuana Under 20 Grams (misdemeanor); adjudication was withheld and Mr. Cunningham was sentenced to twelve (12) months supervised probation.

The Division is recommending approval of the renewal with the condition that the license is placed on twelve (12) months of probation.

Chair – Good afternoon, Mr. Cunningham.

Courtney Cunningham – Good afternoon.

Chair – Are you here to address the Board or do you just want to answer questions?

Mr. Cunningham – I just want to apologize for my actions.

Ms. Simon – If you could please raise your right hand to be sworn in. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Cunningham – I do.

Ms. Simon – Please state your name for the record.

Mr. Cunningham – Courtney Cunningham.

Chair – Thank you. Board, any questions?

Mr. Knopke – Mr. Cunningham, was this the first time you'd been caught?

Mr. Cunningham – No sir. I actually have priors from the past.

Mr. Knopke – How many?

Mr. Cunningham – Maybe three (3).

Mr. Knopke – Okay. Are you still using?

Mr. Cunningham – Actually, I'm prescribed for medical use, but I don't use on an illegal standpoint.

Mr. Knopke – You have a card that says you can buy it legally?

Mr. Cunningham – Yes, I do have a card.

Mr. Knopke – Okay. The under twenty (20) grams mentioned here, what were you doing with it? What were the plans?

Mr. Cunningham – Actually, that particular time, I was in the car with some people. The car was pulled over and some marijuana was found. No one wanted to take ownership or possession of it, so basically everyone in the car was charged.

Mr. Knopke – So, in the other circumstances prior to that, was it the same scenario in a car or somewhere with other people, or was the other ones where you were caught?

Mr. Cunningham – Just standing around on the outing scene. Like a weekend outing or something like that.

Mr. Knopke – That's all my questions, Mr. Chair.

Chair – Thank you. Any other questions? Board?

Mr. Knopke – One more.

Chair – One more from Mr. Knopke.

Mr. Knopke – I'm sorry. You're currently licensed now as a funeral director?

Mr. Cunningham – Yes sir, but it's being held up right now.

Mr. Knopke – I understand that, but prior to that?

Mr. Cunningham – Yes, I was still licensed.

Mr. Knopke – How long have you been licensed?

Mr. Cunningham – Since 2015.

Mr. Knopke – Okay. Were these other prior incidents prior to that...

Mr. Cunningham – No sir. This right here happened earlier this year, in January.

Mr. Knopke – Right. This one did, but you said there were a couple of other ones.

Mr. Cunningham – They happened before my internship. Way back before my internship. I would say the latter part of 2008 and 2010.

Mr. Knopke – Okay. Thank you, sir. That’s all, Mr. Chair.

Chair – Thank you. Mr. Jones?

Mr. Jones – On the prior, was that marijuana or something else.

Mr. Cunningham – All of my priors have been marijuana, sir.

Mr. Jones – Okay. And those would have been seen with he came up in 2015, so it was already looked at. Okay.

Mr. Clark – Mr. Chairman?

Chair – Mr. Clark?

Mr. Clark – Where are you working right now?

Mr. Cunningham – I was the Funeral Director in Charge for Anderson-Hence Funeral Home.

MOTION: Mr. Clark moved to approve the renewal with the condition that the license is placed on twelve (12) months of probation. Mr. Williams seconded the motion, which passed with two (2) dissenting votes.

22. Executive Director’s Report

A. Proposed Board Meeting Schedule 2020 – 2022

Ms. Simon – At this time, I’ll turn the meeting over to the Division Director, Mary Schwantes.

Ms. Schwantes – Thank you. Thank you, Mr. Chair. Again, we want to thank Professor Davis and staff here for assisting in arranging this meeting here at the school. Also, to the students for hanging with us, through this Board meeting. You can see that they can be pretty long, at times. Also, I hope that he students have taken the opportunity to meet with the industry representatives, the association representatives, and of course Board members as possible, during the meeting or breaks.

Board members, you have before you a proposed calendar for 2020 – 2022. This continues the Board initiative that was set out a few years ago where we have one (1) meeting per year in conjunction with an association conference. The 2020 meeting will be held in conjunction with the FCCFA Conference in July, in Boca Raton. One meeting per year is held at one of Florida’s Mortuary Colleges. In 2020, in October, the meeting will be held at the Florida State College in Jacksonville. One meeting each year in or near four (4) key cities: Tallahassee, Tampa, Orlando, and Jacksonville. So, the 2020 calendar requires Board action, and we ask that the Board approve the 2020 calendar allowing the Department authority to change the dates and locations as may be necessary, due to weather conditions or hotel situations.

Chair – Is there a motion?

MOTION: Mr. Williams moved to approve the 2020 calendar allowing the Department authority to change the dates and locations as may be necessary, due to weather conditions or hotel situations. Mr. Clark seconded the motion, which passed unanimously.

B. Operational Report

Ms. Simon – The Operational Report will be given by Mary Schwantes, the Division Director.

Ms. Schwantes – The Division is going paperless. We’re heading that way. We’ve been putting out warnings about this. We have been sending, in the past, notices regarding renewal, in the mail. That’s changing with the cemetery renewals that are due December 31st, those were emailed to the cemeteries yesterday and hope that this will continue with all licensees. So, the cemetery renewals are due December 31st of this year. Those are the only notices that this Division will send out, regarding renewals.

Ms. Schwantes – That ends my report, Mr. Chair. Thank you.

Chair – Thank you.

C. Rulemaking

Ms. Simon – This regards rulemaking. The Division of Funeral, Cemetery, and Consumer Services is requesting permission to open Rule 69K-12.002, Florida Administrative Code, to make modifications dictated by section 497.553(6)(a), Florida Statutes. It would be appropriate at this time for you to vote on opening that rule.

MOTION: Mr. Hall moved to approve the Division’s request to open the rule. Mr. Jones seconded the motion, which passed unanimously.

Ms. Simon – Included in your Board package was suggested language for the amended rule. It would be appropriate at this time to approve the suggested amended language in Rule 69K-12.002, Florida Administrative Code.

69K-12.002 Procedure for Licensing a Monument Establishment.

- (1) Each person desiring to obtain a license as a monument establishment shall apply to the Department by submitting the following:
 - (a) A completed application for License of a Monument Establishment, Form DFS-C-MON1, effective 3-3-97, which is hereby incorporated by reference and available by mail from the Department of Financial Services, Division of Funeral, Cemetery, and Consumer Services, 200 East Gaines Street, Tallahassee, Florida 32399-0361. The application for license must be completed and signed within thirty (30) days prior to receipt by the Department; and
 - (b) A non-refundable application fee of \$450 which shall be the fee for the biennial licensing period beginning October 1 of each odd numbered year or any part thereof.
 - (c) The biennial renewal fee for a Monument Establishment license shall be \$250.
- (2) Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within forty-five (45) days from the date of request. Failure to respond to the request within forty-five (45) days from the date of request shall be construed by the Department as grounds for denial for failure to complete the application, and the application shall be denied pursuant to Section 120.60(2), F.S.
- (3) Amendment of Application. An applicant may amend the application for license as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from its receipt for filing. Otherwise, the application may be amended only with prior permission from the Department. Requests to make changes which are material to the application or to the Department’s evaluation of the license filed at any time after the application has been received shall be deemed by the Department to be grounds for denial, and a new application for license, accompanied by the appropriate filing fee, shall be required.
- (4) Withdrawal of License. An applicant may request withdrawal of a license prior to a determination of the registration being made by the Department by submitting a written request that the license be withdrawn.
- (5) Refunds. If the license is withdrawn or denied, the license fee is non-refundable.
- (6) Upon approval of the license, a license will be issued for the remainder of the biennial license period.
- (7) A change in location of a monument builder shall be promptly reported to the licensing authority by submitting completed form DFS-N1-xxxx, Florida Administrative Code, which is incorporated by reference in rule 69K-1.001 and is available at _____ along with a payment in the amount of \$250.

RULEMAKING AUTHORITY 497.103(1) FS. LAW IMPLEMENTED 497.550, 497.551 FS. HISTORY—NEW 3-3-97, FORMERLY 3D-30.050, 69K-100.050, AMENDED 10-5-09.

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MOTION: Mr. Knopke moved to approve the suggested amended language in Rule 69K-12.002, Florida Administrative Code. Mr. Hall seconded the motion, which passed unanimously.

Ms. Simon – Lastly, it would be appropriate for you to approve the form referenced within the amendment of the rule, which is included as part of your Board package.



DEPARTMENT OF FINANCIAL SERVICES
Division of Funeral, Cemetery & Consumer Services
 200 East Gaines Street
 Tallahassee, FL 32399- 0361

Notice of Change in Location of Monument Builder

This form is used to report a change in location of a monument builder, and to request an inspection of the proposed new location, pursuant to s. 497.380(12)(b), Florida Statutes. Operations at the new location may NOT start until an inspection of the new location by the Division of Funeral, Cemetery, and Consumer Services (Division) is conducted and passed. This form is NOT used to report a change in ownership of a monument builder. This form should be filed BEFORE the new location is ready for inspection, because the Division will need some lead time to schedule the inspection. This form requires payment of a \$25 new license fee (to reflect the new address) and \$225 inspection fee.

Fill out, sign, and mail this form, with your check in the amount of \$250, payable to "Dept. of Financial Services," to:
 Department of Financial Services
 Revenue Processing Section
 P O Box 6100
 Tallahassee, FL 32314-6100

1) Name of monument builder as shown on license:
2) License # of monument builder:
3) Current address (street, city, state, zip):
4) Proposed new address (street, city, state, zip):
5) Date the new location will be ready for inspection:
6) Name of monument builder's contact person:
7) Phone number of person name above: () -
8) Email address of person named above:
Signature of monument builder representative _____ Date signed _____
Questions? Call Division staffer Jasmin Richardson at (850)-413-3039

DFS RECEIPTS SECTION
 BT TYCL FT
 V 2600 E \$225
 Form DFS-N1-xxxx
 Rev 7/2010; Rule 69K-1.001, F.A.C.

MOTION: The Chair moved to approve the form referenced within the amendment of the rule, Florida Administrative Code. Mr. Knopke seconded the motion, which passed unanimously.

D. Report Payment of Disciplinary Fines and Costs

Ms. Simon – This is the report of the payment of disciplinary fines and costs. That is informational-only.

Monthly Report of Fines and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 October 3, 2019 Board Meeting
 Date of Report: September 18, 2019

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
AJ Manuel Funeral Home, Inc.	1-Aug-19	243597-19-FC	\$300	19-Sep-19	No	D
AJ Manuel Funeral Home, Inc.	1-Aug-19	243599-19-FC	\$300	19-Sep-19	No	D
Alphonso West Mortuary, Inc.	1-Aug-19	244891-19-FC	\$300	9/19/2019	No	D
Cannon Funeral Home, LLC	1-Aug-19	243574-19-FC	\$300	19-Sep-19	Yes	D
Dean Lopez Crematory	1-Aug-19	243540-19-FC	\$300	19-Sep-19	Yes	D
Dean Lopez Funeral Home (Big Pine)	1-Aug-19	243538-19-FC	\$300	19-Sep-19	No	D
Dean Lopez Funeral Home	1-Aug-19	243534-19-FC	\$300	19-Sep-19	No	D
Final Waters LLC d/b/a Todd Ferreira Funeral Services	1-Aug-19	243523-19-FC	\$300	19-Sep-19	Yes	D
L C Poitier Funeral Home:	1-Aug-19	243541-19-FC	\$300	19-Sep-19	Yes	D
Stone Brothers Funeral Home, Inc	1-Aug-19	243593-19-FC	\$300	19-Sep-19	Yes	D
Vior Funeral Home Inc.	1-Aug-19	243587-19-FC	\$300	19-Sep-19	Yes	D
Holmes Funeral Directors	1-Aug-19	218173-19-FC	\$3,000	16-Sep-19	No	D
Alberta Leonardo	1-Aug-19	218178-19-FC	\$2,000	16-Sep-19	No	D
Derryck Theodis Richardson Jr.	1-Aug-19	221194-19-FC	\$1,500	16-Sep-19	Yes	D
Heath Funeral Chapel, Inc.	1-Aug-19	243577-19-FC	\$300	16-Sep-19	Yes	D
Heath Funeral Chapel, Inc d/b/a Polk County Crematory	1-Aug-19	243580-19-FC	\$300	16-Sep-19	Yes	D
SCI Funeral Services of Florida LLC-Naples d/b/a						
Hodges Funeral Service of Naples Memorial Gardens	Agust 1, 2019	233405-18-FC	\$1,500	16-Sep-19	Yes	D
SCI/Florida Memorial d/b/a Florida Memorial Gardens	1-Aug-19	209459-17-FC	\$2,000		Yes	D
Florida Keys Crematory	1-Aug-19	243502-19-FC	\$300	16-Sep-19	Yes	D
Miami Funeral Services & Crematories, Inc d/b/a National Funeral Homes	1-Aug-19	243639-19-FC	\$300	25-Sep-19	Yes	D
Miami Funeral Services & Crematories, Inc d/b/a Auxiladora Funeria Nacional	1-Aug-19	243636-19-FC	\$300	25-Sep-19	Yes	D
BK's Removals	Jun-19	230157-18-FC	\$1,500	24-Aug-19	Yes	A
Reed's Runeral Home	Jun-19	230173-18-FC	\$2,000	24-Aug-19	No	A
Hubert C. Reynolds Junior	Jun-19	and 236982-18-	\$5,250	24-Aug-19	No	A
William Manker	18-Apr-19	200600-16-FC	\$10,000	5/27/2019	No	Immediate Final Order issued
Reynaldo Lampkins	12/6/2018	200645-16-FC	\$4,000	2/21/2018	No	Immediate Final Order issued
A. When payment in full becomes past due, the FCCS Division works with the DFS Office of the General Counsel to enforce payment. B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report; also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs C. The Order re this case is still in process, so no Due date is not yet established. D. Due date has not passed, as of the date of this report. E. As of the date of this report, monthly payments were current.						

23. Chairman's Report (Verbal)

Chair – About ten (10) years ago, Governor Rick Scott appointed a consumer member to this Board. This consumer member has served with honor, distinction, and has been a part of the Board, and has also been on one of our Panels for Probable Cause. This Board member continues to serve on this Board and will continue to serve until a replacement is appointed by the Governor. So, I would like to take this opportunity to honor, by resolution and recognition, from the Boar, for distinguished services by Jean Anderson.

{applause} {standing ovation}

Ms. Anderson – Thank you. That’s wonderful.

Chair – Thank you so much. Ms. Anderson, I’ll give you the opportunity to take the mic if you would like to.

Ms. Anderson – I can’t. I just couldn’t. Thank you. Thanks so much.

Chair – Okay. We understand. Board, by your agreement, we also have a similar resolution for Mr. Bango, who’s not with us today, but thank you, Mr. Bango for your service as well.

24. Public Comments (Verbal)

Ms. Simon – Is there anyone in the audience that would like to submit public comment on any of the items on today’s agenda? Hearing no response. While it is not on your agenda, it may be appropriate at this time for Mr. Knopke to request an update.

Mr. Knopke – I just wanted to request from Ms. Wiener an update on the Catholic Cemetery. What is the status of that?

Ms. Wiener – I thought you might ask. I didn’t see it on her, but I got prepared anyways because I figured even if it wasn’t, someone was going to ask. So, things are moving along and it looks like the log jam is in the process of being broken, with regard to interacting with the County, and they have what they believe will be their final zoning hearing on November 4th. On November 26th, that is the deadline for them to receive the, it’s called the Recommendation, but it’s the Response from that zoning hearing. Following that, Mr. William Malloy, who is the land use lawyer that has been retained by Miserere, will take the final step, which is to obtain the letter that we need to get to the Board so that the license can be issued.

Mr. Knopke – So, it’s going to get done by the end of the year?

Ms. Wiener – That’s the plan. Yes. This is a governmental process about which I know very little, except that snails are blowing people’s hair back with the speed with which the process moves. Thank you.

Chair – Thank you for the update.

Mr. Knopke – Just to follow up on that for the students, what occurred is we had a new application for a cemetery over in Hillsborough County. A part of the application process is you’re supposed to have certain improvements in place. In this case, they thought they did. As it turned out, they didn’t. So, I wanted to ask and I’ve asked Ms. Wiener and the Department just about every meeting for a status on it because I want to make sure everybody understands that no matter {inaudible} or how far you are, the steps that are outlined in the law, we all need to follow. {Inaudible}, you go through this process, and I don’t think there was any fault on their part. {Inaudible} there’s a process and everyone needs to follow it. Thank you.

25. Office of Attorney General’s Report

A. Attorney General’s Rules Report

Ms. Simon – Mr. Barnhart?

Mr. Barnhart – You see the Rules Report in front of you. We’ve gotten several rules open to development. Our next in person meeting in December, we should have proposed language for a number of these rules for your anticipated approval.

**BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES RULES REPORT
OCTOBER 2019**

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
69K-7.015	Trust Agreements and Trustees.		08/12/2019(RD)	08/20/2019 Vol.45/No.162			
69K-18.001	Embalmer Intern Training Program.		08/12/2019(RD)	08/20/2019 Vol.45/No.162			
69K-18.002	Funeral Director Intern Training Program.		08/12/2019(RD)	08/20/2019 Vol.45/No.162			
69K-18.003	Concurrent Internships.		08/12/2019(RD)	08/20/2019 Vol.45/No.162			
69K-21.007	Responsibility of Funeral Director in Charge.		08/12/2019(RD)	08/20/2019 Vol.45/No.162			
69K-25.0025	Licensure by Military Experience; Funeral Directors, Embalmers, and Direct Dispositors; Licensure Renewals of Spouses of Armed Forces Members	10/4/2018	10/19/2018 1/3/2019 (Notice of Change) 3/7/19 (Second Notice of Change) 4/19/19 (Third Notice of Change)	10/29/2018 Vol. 44/211	11/14/2018 – Vol. 44/222 11/20/2018 – JAPC letter rec'd 12/11/2018 - JAPC response 12/7/2018 – JAPC letter rec'd 12/27/2018 - JAPC response 1/16/2019 Notice of Change – Vol. 45/11 1/15/19 JAPC letter rec'd 1/18/19 – JAPC response 1/18/19 – Rule TOLLED 3/15/19 – Second Notice of Change published – Vol. 45/52 3/22/19 – JAPC letter rec'd 3/28/19 – JAPC response 4/29/19 – Third Notice of Change published – Vol. 45/83	5/22/19	6/12/19

B. Update on Government in the Sunshine, Public Records, Conflicts of Interest, etc.

Mr. Barnhart – I’ll try to be brief. This book here, the Government in the Sunshine manual, believe it or not, it’s a \$40 book, but you can get the whole thing online at www.myfloridalegal.com. It’ll answer every question you might have about Government in the Sunshine and public records. Let me just get into a couple of reminders here. I’m not going to take an hour or two. My aim is to keep this to about ten (10) minutes or so. Let me just go over some of the things that you’ve probably read or heard before. I just want to bring a few things to update you or refresh your memory.

Sunshine Law: We’ve had the Sunshine Law, believe it or not, for over fifty (50) years. It doesn’t seem that long because only about the last 20-25 years has a lot of emphasis been put on it. As you may recall just reading the newspaper or you look online and see that all across the state people are making mistakes with the Sunshine Law and public records violations, in all levels of government. The Sunshine Law applies to the right of access at both the state and local levels. In the absence of the statutory exemptions, Sunshine Law applies to any gathering of two (2) or more members of the same board to discuss some matter which could foreseeably come before that board for action. So, whenever you have basically more than one (1) board member at a meeting or any kind of gathering, be very careful. It’s better if you just have one (1) person attending certain meetings so that violations don’t come up. If you are there just to gather information and you did not participate in any discussion there should not be a problem. Sometimes people get in trouble when they’re at a meeting and are called upon to answer questions and feel like they have to answer because they were called upon, but please refrain from any type of discussion of matters that might come before the Board at a future meeting.

Board members may not engage in private discussion with each other about Board business, either in person or by telephoning, emailing, texting or any other form of electronic communication. Be careful about what you put on social media, including Facebook, if you have such an account. We’ve had some problems with other boards where some board members might be commenting on things when they shouldn’t, basically in terms of {inaudible} come up before the Board again. While an individual Board member is not prohibited from discussing Board business with staff or non-Board members, these

individuals may not be used as a liaison communicating information between Board members. For example, a Board member cannot ask staff to poll the other Board members to determine their issues on a Board issue. I've seen some boards try to use staff as kind of a pass-through to see what the other Board members' position might be on a matter. That's not proper. Please refrain from that.

The scope of the Sunshine Law, there's three (3) basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of these meetings must be given; and (3) minutes of the meetings must be prepared and open for public inspection. The scope of the Sunshine Law applies to a lot of {inaudible} boards as well this Board and other commissions. Staff meetings are not normally subject to Sunshine Law. Staff committees, if they're in the process of gathering information for decision making and such or presentations for the full board, those meetings should be advertised and open to the public.

Only the Legislature may create an exemption from the Sunshine Law, by a 2/3 vote. Exemptions from the Public Records law does not allow a Board to close a meeting. Instead, a specific exemption from the Sunshine Law is required. An example of a closed meeting might be a meeting to discuss a potential settlement of a legal proceeding or review the case. While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to man non-disruptive videotaping, tape recording or photography at public meetings.

If something comes up once you provide public comments, they cannot be forced to disclose their name or their affiliation. It's just a part of the open government law. Section 286.0114, F.S., provides for the opportunity to speak before the Board during a meeting on an agenda item. This Board, in my opinion, has been very good about allowing people to speak about those agenda items. There's civil penalties and criminal penalties for violating the Sunshine Law.

Public Records: If you receive an email from somebody and it involves Board business or an application or a disciplinary matter, my suggestion would be to forward it immediately to Ms. Schwantes and let the Board take possession of that email and to maintain possession and a record of it, {inaudible} because the more you get involved in something as opposed to just forwarding it on, that could force you to recuse yourself later if it comes up before the Board. All documents, papers, letters books, maps, tapes, sound recording, data processing software, etc., including electronic communications can be public records and needs to be maintained by the agency. Of course, they have retention records that apply to each.

Public Records Requests: You're probably not going to get very involved in this, but if you do get involved with it, generally, on advice of your counsel, which would be some outside counsel, they may recommend that you expose all of the different emails that you received from the Department regarding a particular matter and you would need to keep a lot of emails. I know the policy of getting rid of Board materials from the meetings, but you probably want to keep your emails in a separate archive if it's related to public business.

Responding to Public Records: There is no set time for responding to public record requests. If you get one, normally I would contact the Executive Director of the Board or Ms. Simon for some guidance on how to respond to that and what kind of time you have to respond to such request.

Voting Requirements: Let me go over voting requirements briefly. Voting requirements sometimes get to be confusing. There's basically only a three (3) times where you can recuse yourself from voting on an agenda matter. One of course is when Ms. Anderson or Mr. Knopke were a part of the Probable Cause Panel. You heard today that they recused themselves from those disciplinary cases which involved them as they reviewed the information to determine whether probable cause supported the issuance of an Administrative Complaint. Does anybody know the other two (2) reasons where it may not be appropriate? I think Mr. Clark mentioned one today where he recused himself because of a conflict of interest, I believe. Conflict of interest is defined as a situation in which regard for a private interest tends to lead to disregard in the public duty for your use. If such a voting conflict occurs, the member may abstain or may vote after disclosing the nature of the special interest.

I don't know if I mentioned the Commission on Ethics, but they are also a very valuable resource for answering any questions you may have. They have a lot of resources on their website: CommissionOnEthics.com or it may be CommissionOnEthicsFL.com. In your search engine, just put in Florida Commission on Ethics. They have a really good resource for cases and for general guidance. They are available for answering informal opinion requests, which comes very

quickly as opposed to the formal written requests. A member is not required to vote when that member is recused. Recusal is required when that member is disqualified for bias, prejudice or interests. The requirement for recusal applies both when the bias is in favor of the party as well as somebody who's adverse to the party.

Chair – Thank you for that update. As we all know, that is a requirement that this Board go through training on Sunshine Law. I will say that it's always at the top of our minds with everybody that I know of on this Board. I think we're totally compliant. Thank you, members.

26. Administrative Report

The information was provided on the Agenda.

27. Disciplinary Report

The information was provided on the Agenda.

28. Upcoming Meeting(s)

A. November 7th (Teleconference)

B. December 5th (Jacksonville – Embassy Suites by Hilton Jacksonville Baymeadows, 9300 Baymeadows Road)

29. Adjournment

Chair – If there's no other comments. Board members, any comments? Thank you.

The meeting was adjourned at 1:29 p.m.