

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
December 5, 2019 - 10:00 A.M.
Embassy Suites by Hilton Jacksonville Baymeadows
9300 Baymeadows Road
Jacksonville FL 32256

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’ meeting. It’s December 5, 2019. We’re at the Embassy Suites in Jacksonville FL. Ms. Simon, would you please make your opening remarks and do the roll call, please?

Ms. Ellen Simon – Yes, Mr. Chairman. My name is Ellen Simon. I am the Assistant Director for the Division of Funeral, Cemetery, and Consumer Services. Today is December 5, 2019, and it is approximately 10:00 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. An agenda for this meeting has been made available to interested persons, and extra copies are located in this meeting 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 Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. At this time, Mr. Chairman, 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
Max McCann, Department Counsel
LaTonya Bryant, Department Staff
Jasmin Richardson, 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. November 7, 2019

Chair – The first item on our agenda is the Action on the Minutes of the November 7, 2019 meeting.

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

3. Old Business
A. Amended Petition of Chapter 11 Trustee for Work & Son, Inc. for Disbursement of Trust Investment Option Funds
(1) Recommended for Approval

(a) Work & Son, Inc.

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

Marshawn Griffin – Good morning.

Chair – Good morning.

Mr. Griffin – This is the matter of an Amended Petition of Chapter 11 Trustee for Work & Son, Inc. for Disbursement of Trust Investment Option Funds. The Chapter 11 Trustee that has been appointed to oversee the operations of Work & Son Sarasota Memoria Inc, d/b/a Sarasota Memorial Park; Work & Son - Royal Palm Acquisition, Inc. d/b/a Royal Palm South; and Work & Son - Osiris, Inc. d/b/a Royal Palm North Cemetery (herein collectively referred to as "Work & Son"), has filed an Amended Petition for the Disbursement of Trust Investment Option Funds ("Amended Petition").

The Amended Petition requests Board approval to withdraw funds that are held in Trust Investment Options ("TIOs"). Work & Son currently has TIOs policies that are associated with its Pre-Need Trust Fund and its Care & Maintenance Trust Fund. The Amended Petition seeks to withdraw funds from TIOs that are associated with its Care & Maintenance Trust Fund. Work & Son is requesting Board approval to withdraw these funds from the Care and Maintenance Fund associated with Work & Son-Sarasota Memorial, Inc., d/b/a Sarasota Memorial Park, license number F039746 for the purpose of remedying several outstanding problems with the premises of the Work & Son properties. The Department has no objection to Work & Son's Amended Petition.

Robert Wahl – Good morning.

Nicholas Krohn– Good morning.

Chair – Good morning.

Ms. Simon – For swearing purposes, as an attorney, Mr. Wahl wouldn't need to be sworn in, but, Mr. Krohn could you please raise your right hand to be sworn in?

Mr. Krohn– Yes.

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

Mr. Krohn – I do.

Ms. Simon – Please state your name for the record and spell your last name.

Mr. Krohn – My name is Nicholas Krohn (K-R-O-H-N).

Ms. Simon – Thank.

Mr. Wahl – I'm Robert Wahl. I'm the attorney for the Chapter 11 Trustee, Stanley Murphy. Mr. Krohn is here with me. He works for {inaudible} Consulting, which is a consulting firm that was employed by the Trustee, with Bankruptcy Court approval, to assist the Trustee in carrying out his duties, including the investigation of the assets and liabilities of the debtor; and which incorporates investigations the Trustee has that's ongoing concerning these TIOs. As Mr. Griffin stated, we are seeking to have the TIO policy proceeds that are associated with the Care and Maintenance contracts to be withdrawn as the policies. As death certificates are obtained for people under the life insurance policies, if they die, and they are submitted to take the proceeds from those life insurance policies to use for care and maintenance items for all the different debtor's facilities. Through the investigation, the Trustee has learned that these policies were issued in 1993 or 1994, some 25-26 years ago, and before Clifford Work, who is the stockholder of these debtors, before he was associated with any of these debtor entities. And they were issued even before the predecessor of Clifford Work had acquired the property, The Loewen Group. So, these are very old policies. There's limited information. We have subpoenaed both the life insurance company and the Trustee, Argent Trust Company, to obtain information.

Through that information, we've gleaned that currently there are fifty-eight (58) life insurance policies having a death benefit of \$1,005,000, for which the Trustee has obtained death certificates and has submitted for payment under those life insurance policies. The Trustee has also learned, because it's an ongoing investigation, trying to determine the status of the insureds, whether they are still alive or not, an additional twenty-six (26) policies for which they have sought death certificates from the Florida Department of Health or similar agencies in other states that for which they located the insurers death that have a death benefit of \$130,000. The investigation into the status of the insureds is still going on. For example, we've determined that there are three (3) policies that were issued for which the insured would be over 100 years old that we have not found death certificates for. There are twenty-six (26) policies for people whose insureds' life would be between 90 – 100 for an additional \$142,000. If you take the age from 80 on, there would be a total of seventy-six (76) policies that have a death benefit of \$411,000. This is all in addition to the ones that we've already submitted death certificates for. So, there's quite a large amount of funds out there that the Trustee desperately needs to use to remedy the problems at these various facilities.

The primary problem we're having now in the care and maintenance, since our last time here before the Board in August, we have a problem with the mausoleums at Royal Palm South. We hired an engineer and architect, with Bankruptcy Court approval. They came back with the reports. We actually submitted the project manual out for bidding and it came out to be approximately \$785,000 to remedy just those three (3) mausoleums. Since then, the City of St. Petersburg has issued code enforcement violations that we had to attend the Code Enforcement Board Hearing. They gave us until mid-April to remedy the problems with those mausoleums or we will face a \$200 a day fine. I think it would almost be impossible at this point to remedy completely all those facilities, even if we had the money, but we do believe that if we show progress to the City, they won't impose those fines. That's what our belief is. So, our priority is to use these funds to try to get the mausoleums into a place that's no longer a safety issue for the public.

Back in August we came for the Board to approve stipulations concerning the Care and Maintenance Fund. We worked closely with the Department concerning the audits and ultimately it was determined that the Care and Maintenance Funds had been overfunded, when you group them together for all of the facilities. And the Court approved a stipulation that allowed us to withdraw approximately \$150k of the overfunding. So, based on the Department's audit, everybody agrees our Care and Maintenance funds were in compliance. That audit didn't even take into consideration the extra funds from the TIO policies. So, we're in compliance with the care and maintenance requirements and we need the proceeds from these life insurance policies. We want them to be limited to use for care and maintenance items at the facilities with the primary being the mausoleums and then any excess funds after that would be used for all the other items at the facilities.

Chair – Just a couple of questions, if I may. The bulk of the fifty-eight (58) policies, \$1.5 million...

Mr. Wahl – It's \$1,005,000.

Chair – Okay.

Mr. Krohn – And he misspoke. It's about 190 policies, not 58.

Mr. Wahl – I'm sorry. The 58 policies were [inaudible].

Chair – How were these discovered? What type of investigation was used to discover these?

Mr. Krohn – Originally, when we took over, they're listed as just a separate line item on the debtor's trust funds. So, you have a trust fund for each park. It's a separate line item that just has a TIO investment option and a dollar amount. That's just how they were given to us from the very start. They were there. We just had no idea, any information about or what they were.

Chair – How certain are you that these are unencumbered?

Mr. Wahl – Meaning that there's not a lien on them?

Chair – Yes.

Mr. Wahl – No one's indicated to us that there is a lien on these funds. I would assume that the Trustee, Argent, or the predecessor trustee would have informed us if there was a lien. I don't know if the trustee would be able to lien these insurance policies. I would be surprised if they would. That may be a violation of their duties.

Chair – We've seen violations.

Mr. Krohn – I've never heard of an encumbered on a normal life insurance policy. That's kind of what it is. It's just very small amounts. There's just a lot of them. As far as our knowledge, there isn't liability associated with these.

Chair – I guess mine was more of a heads up {inaudible}.

Mr. Krohn – I understand.

Mr. Wahl – It would be interesting, the interplay with the Bankruptcy Court, if someone attempted to assert a lien on those. The Bankruptcy Court may have a perfection issue.

Keenan Knopke – I have some questions now.

Chair – Mr. Knopke?

Mr. Knopke – is the 58 a part of the 189?

Mr. Wahl – Yes.

Mr. Knopke – So there's a total of 189 TIO policies. Where did the money come from? Which park provided the money to buy those policies? Whose trust fund are they in right now?

Mr. Wahl – Sarasota's.

Mr. Krohn – We're not entirely sure where the money came from. As Mr. Wahl said, we subpoenaed the insurer. The current Trustee has only been the trustee for not even two (2) years right now, and they've given us very minimal records because they're so old. They're twenty-five (25), twenty-six (26) years old. We can't exactly say for sure where the money came from that paid for these originally. It was so long ago. We just know that the policies were funded. I wish I knew more.

Chair – Are they enforced at this time?

Mr. Krohn – Yes.

Wendy Wiener – Good morning. I think I can help with this. Wendy Wiener, general counsel for FSI. The policies that are at issue are actually assets of the FSI Master Trust. First, to answer your question Mr. Chairman, they could not be encumbered by any sort of lien because that trust enjoys the spin-thrift protection that Chapter 497, F.S., affords, which makes it out of the reach of creditors. So, there could not be any sort of lien or encumbrance on those policies. Those policies came in to the FSI Master Trust upon a transfer from another trustee. What happened was many years ago, before Mr. Work bought the property, the trust funds, and for those of you around long enough to remember Starr Walbridge and that craziness, the policies were purchased by the trust as investments of the trust. So, the funds for purchasing the policy came from the trust, so instead of buying a stock or a bond, they bought insurance policies, and those do reside in the FSI Master Trust.

Chair – Thank you. Any questions? Mr. Williams, do you want to address the Board?

Bill Williams – Only if you have a question.

Chair – Mr. Hall?

Mr. Hall – Just for our assurance, there's no access that Mr. Work has to these funds at all? It's solely at your discretion?

Mr. Krohn – Correct. It's almost not even at my discretion. When I find the information, as a death certificate to hopefully redeem these policies, I give it to FSI. They investigate it, forward the information to the trustee, and the insurance company to do their investigation that comes back to our trust, which then I have to ask for the Board's permission to use the funds.

Mr. Hall – Does Mr. Work still work for the cemetery?

Mr. Krohn – Yes.

Mr. Hall – What type of salary does he get from the cemetery at this point? What are his duties?

Mr. Krohn – He does the same operations he was doing before the filed Chapter 11, and his salary is \$100k per year.

Mr. Wahl – His application to be employed was approved by the Bankruptcy Court. So, the trustee is the one that's actually responsible for the funds, all the bank accounts. He has no authority over any bank accounts or any funds. He does do matters such as dealing with grounds crew and day to day matters, but he doesn't have any authority over any of the financial matters. Under the bankruptcy laws, if anything was to be done out of the ordinary course of business that would have to Bankruptcy Court approval. So, there's another level of oversight.

Mr. Hall – Do you know roughly what the income is generating from the cemeteries at this point in sales, etc.?

Mr. Krohn – A net income?

Mr. Hall – The gross income from the sales. Are they still producing sales from lots, etc.?

Mr. Krohn – Definitely. It's a vibrant company and they're doing fine.

Chair – Thank you. Mr. Helm?

Powell Helm – You're pulling all of the money out of Sarasota Memorial. Does that leave Sarasota Memorial short? I know they're all tied together, but it seems like you may be robbing Peter to pay Paul, so I just want to understand.

Mr. Krohn – I don't know why everything was put in Sarasota. For example, when we came in here in August, the overfunding was also tied to Sarasota, but the funds came from everywhere. The Bankruptcy Court determined that these entities financial matters have been so intertwined that it would not be financially feasible to view them as separate entities, and substantively consolidated all the entities for all purposes. In the Bankruptcy Court they're viewed as a single entity and there are pressing needs with the Royal Palm South on the Mausoleums.

Mr. Helm – One of the reasons I don't believe that Sarasota Memorial and Royal Palm are always tied into the same group, Wendy mentioned previous owners and I think that {audible}, so that's why I am inquiring why are you taking from Sarasota.

Mr. Krohn – Right now, we're one unit. That's how we're dealing with it. The audit has shown that all of these were in compliance with the care and maintenance. In fact, Sarasota was the entity that was grossly overfunded, which this Board approved, using those funds, last August to correct the deficiencies in the other cemeteries, and also to remit the overfunding.

Ms. Wiener – I think I can help on this one too. May I answer Mr. Helm's question? Those policies cost money to the trust. They don't throw off any income like an asset in a care and maintenance trust would that would be then available to the cemetery for care and maintenance. So, by approving this request, you will actually free up money for the care and maintenance of the cemeteries in total. When TIOs are held in trust, they don't generate income, but the licensee still has to pay a fee on them, so they actually cost money instead of generating income.

Chair – Thank you.

Mr. Helm – I have one more.

Chair – Yes?

Mr. Helm – When this money comes to the cemetery, who’s in charge of spending that money?

Mr. Wahl – That would be the trustee.

Mr. Helm – Mr. Work has nothing to do with it?

Mr. Wahl – No.

Mr. Helm – He doesn’t see that any of that money is spent?

Mr. Wahl – All checks are written by the trustee.

Mr. Krohn – He has no control over how its spent, when its spent, or anything. We have normal day to day operation bills and payables that we get that he’ll set everything up and we go in there and we’ll oversee and check everything. We sign off on the checks and we mail them, but as far as the reason we’re here, the mausoleum repair, we went out and hired the engineer and the architect. He has no oversight as far as any controls.

Chair – Thank you. Do we have a motion on Work and Son’s Amended Petition?

MOTION: Mr. Hall moved to approve the Amended Petition. Mr. Darrin Williams seconded the motion, which passed with one (1) dissenting vote.

Chair – Thank you.

Mr. Wahl – Thank you.

Chair – Tommy Hazouri is a Jacksonville icon. Tommy Hazouri was former mayor of Jacksonville, served in the House of Representatives, served on the Board of Education for several terms, in Jacksonville. He has been on the Jacksonville City Council and is incoming President of the Jacksonville City Council. Tommy Hazouri is with us today and he has asked me for permission to address the Board. Mr. Hazouri?

Tommy Hazouri – I just want to welcome you all on behalf of the City of Jacksonville. I know you’ve been all over the state. As a former state legislator for twelve (12) years, I certainly respect the job that all of you do and what you do for the citizens. You know, to me, I’ve always said whether you’re a president or governor or city official/mayor, that the health, safety and welfare of your community is what it’s all about for any elected or appointed position, and you all certainly meet that criteria and I thank you. I can’t help but say, I know you got a long agenda, for those of you who may have been around funeral directors for many years, you may recall when Tom Gallagher was our treasurer or comptroller, when we had our own issue here in Jacksonville of the Morning Glory Funeral Home, which the director had stored a number of bodies in a little room that was discovered. And Tom Gallagher, who I served with in the Legislature came over. It was shock and awe for all of us, but you all took care of business and we appreciate that. I do want to present, and I didn’t know that we even did certificates of welcome, but on behalf of the City Council, the Mayor and the citizens of Jacksonville, we present to your office, or pass it around, The Florida Board of Funeral, Cemetery, and Consumer Services. I’m not going to read all of it, but it tells us what you do for the citizens in the area of funeral directors, cemeteries and consumer services. To you, Mr. Chairman, who’s been on this Board since its inception, I guess in 2005, and before that I guess it was the Board of Funeral Directors. You all were here for a while. I hated losing all of the various Boards. It’s like an instant Chamber of Commerce flew into Tallahassee with the Board of Nursing, the Board of Financial Affairs, and this Board, when Lou Ritter was the Director. I want to welcome you all and thank you all for being here. Enjoy our hospitality. You have a terribly long agenda, and to finish by 1:00 is going to be an amazing feat. We can’t even do that on the City Council. Thank you very much. God bless you all and welcome to the bold new city of the south. Thank you.

{Applause}

Chair – Thank you so much. We appreciate this very much.

A. Board Update (Verbal)

(2) Miserere Guild of Hillsborough County, Inc. d/b/a Resurrection Cemetery (Seffner)

Ms. Simon – Mr. Knopke requested that there be an update at every in-person Board meeting for Miserere Guild of Hillsborough County, Inc.

Ms. Wiener – On that, I don't have an update. As I said at the last in-person meeting, there are meetings of the Zoning Board that are to occur in mid-December, so, ask me again in February and I will definitely have an update then. Queen of Angels is the Catholic Diocese in Orlando and that cemetery is coming along and I expect to present the Phase 2 license application along with its preneed application and trust agreement and contract for approval at the February Board meeting.

Chair – Thank you.

Ms. Wiener – Thank you.

Chair – Any questions, Mr. Knopke?

Mr. Knopke – No, thank you.

Chair – Thank you.

4. Disciplinary Proceedings:

A. Settlement Stipulations

(1) Related Items (Division No. ATN-30793) (Probable Cause Panel A)

(a) Everglades Crematorium LLC: Case No.: 231985-18-FC; Division No.: ATN-30793 (F059115)

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

Mr. Knopke – Mr. Chair?

Chair – Yes, Mr. Knopke?

Mr. Knopke – I was on Probable Cause Panel A. I will recuse myself from Items 4. A. (1) (a) – (b) and 4. B. (1) - (5).

Chair – Thank you.

Mr. Griffin – Everglades Crematorium, LLC (Respondent) is a cinerator facility licensed under Chapter 497, Florida Statutes, license number F059115, and doing business in West Park, Florida. Respondent failed to verify the identity of two cremated remains by comparing the identification label to the cremation documents and the crematory log in violation of the uniform standard procedures.

Based on the foregoing, Respondent failed to verify the identity of cremated remains by comparing the identification label to the cremation documents and the crematory log in violation of the uniform standard procedures in accordance with section 497 .608(2), Florida Statutes, and Rule 69K-22.007(1) and (5)(a), Florida Administrative Code, and is therefore subject to discipline pursuant to section 497.152(1)(a) and (8)(a), Florida Statutes. Respondent has entered into a proposed stipulation. The proposed stipulation provides as follows: Respondent shall pay an administrative fine of \$2000.00 and its license shall be placed on probation for a period of one (1) year.

MOTION: Mr. Powell Helm moved to approve the Settlement Stipulation, requiring the Respondent to pay an administrative fine of \$2000.00 and its license shall be placed on probation for a period of one (1) year. Mr. Hall seconded the motion, which passed unanimously.

(b) Mena, Geronimo Jr.: Case No.: 231982-18-FC; Division No.: ATN-30793 (F042156)

Ms. Simon – Again, representing the Department, Mr. Griffin.

Mr. Griffin – Geronimo Mena, Jr. (Respondent), was licensed as a direct disposer and preneed sales agent under Chapter 497, Florida Statutes, license number F042156. At all times material to this complaint, Respondent was the direct disposer in charge (DDIC) of Everglades Crematorium LLC, a licensed cinerator facility (cinerator facility) under Chapter 497, Florida Statutes, license number F059115, doing business in West Park, Florida.

The cinerator facility failed to verify the identity of two cremated remains by comparing the identification label to the cremation documents and the crematory log in violation of the uniform standard procedures. Based on the foregoing, the cinerator facility failed to verify the identity of cremated remains by comparing the identification label to the cremation documents and the crematory log in violation of the uniform standard procedures in accordance with section 497 .608(2), Florida Statutes, and Rule 69K-22.007(1) and (5)(a), Florida Administrative Code, and is therefore subject to discipline pursuant to section 497.152(1)(a) and (8)(a), Florida Statutes. The Respondent as the DDIC of the cinerator facility 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 \$2000.00 and his license shall be placed on probation for a period of one (1) year.

MOTION: Mr. Jones moved to approve the Settlement Stipulation, requiring the Respondent to pay an administrative fine of \$2000.00 and his license shall be placed on probation for a period of one (1) year. Mr. Knopke seconded the motion, which passed unanimously.

Ms. Simon – This next item belongs to Vangie Scott. Ms. Scott is also on the agenda on Item 20, Request to Renew Licensure. If we could handle them both at the same time, Mr. Brandenburg.

Ms. Jean Anderson – Mr. Chairman?

Chair – Yes, Ms. Anderson?

Ms. Anderson – I served on Probable Cause Panel B and I am recusing myself.

Chair – Thank you. Does the Board have a strong feeling about having both of these together or do you want them separate? If not, we'll move forward with both of them together.

Ms. Simon – Thank you, Mr. Brandenburg.

(2) Scott, Vangie: Case No.: 223491-18-FC; Division No.: ATN-30639 (F044038) (Probable Cause Panel B)
20. Request(s) to Renew License
B. Conditional Recommendation
(1) Scott, Vangie

Ms. Simon – In terms of licensure, Vangie Scott applied to renew her Funeral Director and Embalmer license (F044038) on August 30, 2019. Ms. Scott answered “yes” to the criminal history question, and the criminal history was later confirmed. Ms. Scott’s criminal history includes the following:

- On February 1, 2018 the licensee entered a plea of guilty to one (1) count of Burglary of a Dwelling (2nd degree felony) and three (3) counts of False Imprisonment (3rd degree felony) and was adjudicated guilty.
- In January 2013, the licensee entered a plea of nolo contendere to one (1) count of Grand Theft (a 3rd degree felony).

This matter was on the agenda for the November 2019 Board meeting. However, the matter was withdrawn to be rescheduled for the December Board meeting, to accompany the disciplinary matter also on the December agenda. The Division would recommend that the licensure be renewed only if the Board accepts the Settlement Agreement in the disciplinary case. If the Board does not accept the Settlement Agreement, the Division is recommending denial based upon several statutes and rules which Mr. Barnhart will provide. Mr. Griffin?

Mr. Griffin – Vangie Scott (“Respondent”) is a funeral director and embalmer, licensed under Chapter 497, Florida Statutes, license number F044038, in Monticello, Florida. The Department conducted an investigation and found that Respondent 1)

failed to disclose her plea to felony on her application for renewal of licensure and 2) entered a plea to a crime that relates to her ability to practice under Chapter 497, Florida Statutes, in violation of sections 497.142(10)(c)2.; 497.152(1)(a), (4)(e), and (4)(h), Florida Statutes.

Respondent's license expired on August 31, 2019. On or about August 30, 2019, Respondent filed an application for the renewal of her license. The application is currently pending. Respondent timely filed a response to the Administrative Complaint and requested a formal administrative hearing pursuant to section 120.57(1), Florida Statutes. The case at the Division of Administrative Hearings is currently being held in abeyance pending the outcome of Respondent's license renewal and the Board's decision regarding the potential stipulation in the above referenced cause.

If the Board approves Respondent's application for renewal of licensure, Respondent and the Department have entered into a proposed Settlement Stipulation to resolve the disciplinary case against Respondent. The proposed stipulation provides as follows: Respondent's license shall be suspended for six (6) months and Respondent shall pay an administrative fine in the amount of \$7,500.00 within sixty (60) days of an entry of a Consent Order in this matter. The Department requests that the Board approve this Settlement Stipulation.

Chair – Ms. Wiener, are you of counsel?

Ms. Wiener – I am, Mr. Chairman, and I am here simply to answer any questions.

Chair – Thank you. Mr. Helm?

Mr. Helm – When will the six-month probation start?

Mr. Griffin – It's not probation, sir, it's a suspension.

Mr. Helm – Okay, when will that start?

Mr. Griffin – If you approve the license effective tomorrow, her license would immediately be suspended effective tomorrow.

Chair – And that's the license she doesn't have. It'll be suspended tomorrow.

Mr. Griffin – She's filed an application for renewal, so if you granted the application for renewal, then yes.

Mr. Wiener – Mr. Chairman, she does currently have her license, because when you deny a renewal request and a request for hearing is submitted, that keeps the license enforced during that time period. So, she has been practicing throughout this entire time period, and the license, if renewed, would immediately be suspended, as Mr. Griffin said.

Chair – Thank you. Mr. Williams?

Mr. Williams – Mr. Chair, so would there be two (2) motions that we need to address at this time? The first motion would be to renew or not renew the license and the second would be the stipulation.

Mr. Tom Barnhart – This is just for the stipulation, the disciplinary case.

Mr. Williams – Should we not address the renewal first?

Mr. Griffin – You can't impose the discipline unless the license is renewed. You can't suspend a license that doesn't exist.

Mr. Williams – Can we address the renewal first?

Mr. Barnhart – This discipline is for a prior act. What they want to do is to consider the cases together. If you wanted to approve everything, you could make a motion to approve both, but if you wanted to talk about the application for renewal first then you can talk about that as well. They want an action to take care of both at the same time. I think the discussion is open for both, right?

Mr. Williams – So what would be your recommendation on how we should handle it, the order?

Mr. Barnhart – My feeling about this case is that the stipulation should not be approved. That's the way I feel about it. If it was not approved, then we could get to the application for renewal of licensure at the end of the meeting. I think Ms. Simon said it was number 20 on the agenda. I don't think you have to rule on both of them at the same time, unless you want to.

Mr. Williams – Okay.

Mr. Knopke – Mr. Chair?

Chair – Mr. Knopke?

Mr. Knopke – Ms. Wiener or Mr. Griffin, the crimes that occurred were back in 2013?

Mr. Griffin – One was 2013, the other was I believe 2018 or 2016.

Ms. Wiener – I think it was 2016, but it didn't make its way through the court system until 2018.

Mr. Knopke – Okay, and all this time she has been practicing as a funeral director even though she filled out her renewal incorrectly or correctly?

Ms. Wiener – In 2013, she had a shoplifting crime that she failed to disclose and that generated a disciplinary case after she had already been renewed and was in the normal course of business. In 2016, she got caught up in a turmoil that resulted in her, on advice of counsel, actually pleading guilty to a crime. She ran out of money and she pled guilty and as so many people do, she got caught up in a bad situation. That is the crime that she did disclose on her license application for renewal.

Chair – What were those crimes?

Mr. Griffin – The 2013 case was one (1) count of grand theft. The 2018 or the case that was resolved in 2018 was one (1) count burglary of a dwelling and three (3) counts of false imprisonment.

Chair – Thank you.

Ms. Wiener – And, to your point, she has been practicing throughout this time period without any incident or any allegation whatsoever that she has failed to meet all of her obligations under Chapter 497 as relate to the practice of funeral directing and embalming.

Mr. Knopke – So, if we approve this, six (6) month suspension of her license then she's good to go assuming she comes up with \$7500.

Ms. Wiener – That is correct and I know that she is prepared to pay that fine within the timeframe established here. I would note that the discipline that you are imposing is really guided by our old disciplinary guidelines, the ones that have been redone, but because of the timeframes of these cases, the old disciplinary guidelines apply and the settlement to which she has agreed is actually far in excess of what is set forth in those disciplinary guidelines. They really contemplate about a maximum of a \$5000 fine. If you [inaudible] the two offenses together and the timeframe there's really no basis for revocation set forth in those disciplinary guidelines.

Mr. Knopke – We've got somebody here accused of grand theft. We got somebody that burglarized a dwelling and imprisoned three (3) people, false imprisonment or whatever you want to call it. One is the 2013 grand theft and the other in 2016. Has there been in the court, or was she requiring counseling or anything like that?

Ms. Wiener – Yes. She was required to make restitution and fulfill the obligations of the court system, which she has done. I believe that she remains on probation, which she has fulfilled all of those obligations. I don't know if you have the background on all of the issues at hand, but the grand theft charge was a shoplifting charge. She had enough stuff to meet the

\$300 criteria, so that was the shoplifting charge. The burglary and false imprisonment, if you read through that it reads a lot like a domestic squabble with her significant other at the time, from whom she is now not in contact and no longer involved with.

Mr. Knopke – Is she still on probation?

Ms. Wiener – Yes.

Mr. Knopke – For how long?

Mr. Griffin – She was put on five-year’s probation. I think the judgment and sentence from that criminal case is part of your Board packet, but I believe it was five-year’s probation with the standard terms and conditions.

Mr. Knopke – Okay, that’s fine. Five (5) years from 2016?

Mr. Griffin – 2018.

Ms. Wiener – 2018.

Mr. Knopke – So, she’s going to be on probation until 2023?

Ms. Wiener – She will. She will be petitioning for early termination, if possible. Currently she’s exploring an Ineffective Assistance of Counsel case against the lawyer that represented her at the time, but who knows where that goes.

Chair – Mr. Barnhart?

Mr. Barnhart – Mr. Griffin, what was the range of discipline for the violations listed in the Administrative Complaint?

Mr. Griffin – In the amended Administrative Complaint there are three (3) counts. So, as to Count 1, the maximum penalty that you could impose is a reprimand, a \$1000-\$2500 fine and six (6) months – one (1) year probation. As to Count 2, the most serious penalty that you could impose is six (6) months – one (1) year suspension. As to Count 3, it would be a reprimand plus a \$1000-\$2500 fine plus six (6) months – one (1) year probation. The Settlement Stipulation contemplates basically what we were constrained by under the rules at the time, because this is a disciplinary case, which means that the license gets the benefit of the rules in place at the time the violation occurred. So, this case would be disposed differently if it occurred a different time.

Mr. Barnhart – Wouldn’t you agree that there are aggravating circumstances in this case that would allow the Board to go outside of the range of penalties described?

Mr. Griffin – There would be aggravating circumstances, however, I would point out that the Department wrote these rules. These aren’t rules that were handed down by the Legislature. We wrote them and we have to treat all of these as a first offense because she has no prior discipline, as to these charges. And so, the presumptively correct penalty for a first-offense violation of a crime that speaks to a person’s ability to practice Chapter 497, F.S., is a reprimand and a \$1000-\$2500 fine. There may be grounds for aggravation, but our own rules presume that suspension, revocation is not the correct {inaudible}.

Mr. Barnhart – But suspension was within one (1) of those guidelines, was it not?

Mr. Griffin – That’s only as to failure to disclose and that’s why the Settlement Stipulation includes a period of suspension to take that into account.

Ms. Wiener – And a much higher fine than would be required under the guidelines.

Mr. Hall – Mr. Chair?

Chair – Mr. Hall?

Mr. Hall – I’m one Board member that agrees with Mr. Barnhart. I can’t believe we’re even debating this from the perspective of someone that has multiple felony accounts. I think she would have had prior discipline from us had she been honest and forthcoming on the application renewals. She answered “no” to those and didn’t disclose that or she probably would have already been disciplined. I think it’s a sad day in our industry if we have to sit and approve a felon to be licensed in our industry. I hear what you’re saying, sir, as far as what the options are, but as far as I’m concerned, I would make a motion to deny. I can’t see that happening.

Chair – Mr. Williams?

Mr. Williams – I concur with Mr. Hall. I was getting ready to make a motion to deny the Settlement Stipulation presented.

Mr. Barnhart – For the motion, do you want it to just apply to the stipulation being presented and then we can get to the other matter later on in the meeting?

Mr. Williams – Yes.

MOTION: Mr. Williams moved to deny the Settlement Stipulation. Mr. Hall seconded the motion, which passed unanimously.

Chair – Thank you. Now let’s go on to Item #20. I’ll give Board members time to get there.

Ms. Simon – Board members, I previously read to you the coversheet and the recommendation of the Division. The recommendation for the Division was if the Settlement Stipulation is approved that the renewal of licensure be granted. However, if it was not approved, as it would not, that the renewal of licensure be denied.

MOTION: Mr. Williams moved to deny the request for licensure renewal. Mr. Hall seconded the motion.

Ms. Wiener – Mr. Chairman? As to this issue, really it’s back to the second issue, I think the tricky part and something that you may want to keep in mind is that this matter now will go back to the Division of Administrative Hearings for a formal hearing, where these same disciplinary guidelines will be presented and facts will be found, and the ALJ will not have any real choice, unless the ALJ finds aggravating factors to recommend beyond the penalty guidelines, which are lower than the Settlement Stipulation that was proposed. So, that’s a lot of time and a lot of expense and the record here today is built in a way that will establish that at the Division of Administrative Hearings, the ALJ in her Conclusions of Law will not really have much option other than what’s set forth in your penalty guidelines.

Mr. Barnhart – Are you saying the record here this morning will be presented as evidence at the disciplinary matter?

Ms. Wiener – I would say that because we will have a new challenge, which will be to the denial of her license that what has happened today will become an issue in the administrative hearing, I would expect.

Mr. Barnhart – I think the standards of proof are different. When she goes to renew her license, I believe she’s going to have the burden of proving that she is fit for licensure, so I think the standards of proof are different between disciplinary matters and clear and convincing evidence. The burden is going to be on her to prove. That’s my opinion.

Ms. Wiener – It will be by a preponderance of the evidence.

Mr. Barnhart – Not clear and convincing.

Ms. Wiener – Correct, but the question, I guess for Mr. Barnhart would be assuming that the ALJ finds the facts as alleged, the disciplinary guidelines by which she’ll be bound in recommending her Conclusions of Law and her penalties will not be able to go beyond the...

Mr. Barnhart – Then I would suggest that there are aggravating circumstances in this case, certainly. It's clear to me that there are. They may not be able to be proven, but I think there are aggravating circumstances in this case where the Department would be able to go beyond the standard range of penalties.

Ms. Wiener – Would you be so kind as to state what those circumstances are?

Mr. Barnhart – I don't think we need to get into the record of criminal offenses. I don't think we need to do that here.

Ms. Wiener – But in order for this Board to vote to go beyond...

Mr. Barnhart – You're talking about the disciplinary matter. They're simply denying the stipulation at this point. That's what the motion is.

Ms. Wiener – Right.

Mr. Barnhart – That means you have to come up with a different stipulation or go the formal.

Ms. Wiener – I suspect that one of the reasons that they are voting to deny the stipulation is because you suggested to them that there are aggravating circumstances that would allow for them to go beyond the penalty guidelines.

Mr. Barnhart – This Board is free to reject my advice. I try to represent them and give advice, but they are free to make their own decision and they do. I'm not a Board member. They have a tough job at making decisions.

Chair – So, there's been a motion made to deny and it's been seconded. All those in favor, aye?

Board members – Aye.

Chair – And any opposed? That motion carries. Thank you.

Mr. Griffin – I just wanted to ask does the Board have a potential counter-settlement before we proceed?

Chair – No. Board? Counter-settlement? Mr. Helm?

Mr. Helm – Do we need to indicate a reason for the denials?

Mr. Barnhart – Not for a stipulation. I think the discussion is clear that you're not comfortable with the elements of the stipulation.

Chair – I want to take a moment to recognize Howard Beckham. Mr. Beckham is the FSCJ Funeral Services Program Director, newly appointed Director. I believe you have some students with you? Will the students please rise?

{Applause}

Chair – My usual statement is that you're the future of the profession and to thank you for choosing this as your profession. The responsibilities that go with choosing this profession are indeed great and the opportunities for your satisfaction in the profession are great. Again, we want to recognize you as the future. Mr. Beckham, did you want to say anything to the group?

Howard Beckham – I just want to thank you, Mr. Chairman, for the recognition and thank you to the Board for all of the work you do in helping to guide our profession through the minefields which it seems {inaudible} from time to time. We appreciate that very much. We have a very good group of people. We have about thirty (30) students currently at the college. We're creating more everyday it seems. The program is progressing forward and we look forward to a great future for these young people as they work to go forward and some of these that are changing careers, we hope they have success in these new careers they're choosing as well. Thank you very much.

Chair – Thank you for being here.

B. Material Facts Not Disputed (Section 120.57(2) Hearings) (Probable Cause Panel A)

(1) Affordable Cremation Solutions, Inc.: Case No. 241091-19-FC; Division No.: ATN-30428 (F068240)

Ms. Simon – Is there anybody in the audience representing Affordable Cremation Solutions, Inc.? Hearing no response. Mr. Griffin is representing the Department.

Mr. Griffin – The above-referenced matter has been scheduled for an informal hearing to consider the Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact. Respondent is a direct disposal establishment licensed under Chapter 497, Florida Statutes, license number F068240.

On September 25, 2019, the Department filed an Administrative Complaint alleging Respondent or its employees, sold a total of fourteen (14) preneed contracts to Florida consumers without having a valid preneed license. In addition, Respondent conducted business with an expired direct disposition license and failed to have a direct disposer in charge reasonably available to the public during business hours. Based on the foregoing, Respondent violated sections 497.452(1)(a), 497.152(5)(b), and 497.604(1), 497.604(8)(b), Florida Statutes, and is subject to discipline.

The Administrative Complaint was served on Respondent on September 27, 2019. On October 4, 2019, Respondent timely filed an Election of Proceeding alleging that it was not disputing any of the Department's factual findings and that it did not desire a hearing. Based on the Respondent's Election of Proceeding, Respondent is waiving its right to request a proceeding based on the matters as alleged in the Administrative Complaint. Provided that the Board adopts the factual findings contained in the Department's Administrative Complaint, the only matter for the Board to consider is the discipline to impose in the case. 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 US Mail to Respondent's last known address of record. At this time, it would be appropriate for the Chair to entertain a motion determining whether the Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint.

Chair – Is there a motion?

MOTION: Mr. Helm moved that Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint. Mr. Hall seconded the motion, which passed unanimously.

Mr. Griffin – Now that the Board has determined that Respondent has waived its right to request a proceeding in this matter, the Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of the facts, 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, which passed unanimously.

Mr. Griffin –The Department asserts that the Board's findings of fact support a finding of the violations of Chapter 497, F.S., as charged in the Administrative Complaint. It is appropriate at this time for the Chair to entertain a motion finding the Respondent in violation of the statutes as charged in the Administrative Complaint.

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

Mr. Griffin – The Department recommends the following penalty in this case: That the Board impose a fine of \$1000 per violation of s. 497.152(1)(a), F. S., and impose a \$300 for Respondent's failure to timely renew its license and to impose one-year probation per count, except for the failure to timely renew, to run concurrent with one another. In total, is recommending the Board impose a fine of \$15,300 and a one-year probation.

Chair – Is there no one representing Affordable Cremation? I know that that was asked before.

Mr. Hall – Is this the same individual that was tied to Beaches?

Chair – Yes, it is. Mr. Kuzniar is named throughout this and was running the operation. He was Amanda’s husband during the difficult times there. Subsequently, their relationship changed. But, if you’ll remember, he was disciplined and the license was revoked by this Board for some embezzlement charges at another place that he was a salesman for.

Mr. Helm – Mr. Barnhart, is there a way for him to get more probation?

Mr. Griffin – Each count carries a one-year probation. That was the Department’s recommendation.

Mr. Helm – That’s what I thought you said, but then you said one-year.

Mr. Griffin – You can do one-year per count, so it would be fifteen (15) years of probation, it it’s the Board’s pleasure.

Mr. Barnhart – I would think two (2) or three (3) years, or something like that. Don’t you think, Mr. Griffin?

Mr. Griffin – Fifteen (15) is the max.

Mr. Barnhart – I think two (2) or three (3) would be reasonable.

MOTION: Mr. Williams moved that the Respondent shall pay a fine of \$15,300 and a three-year probation. Mr. Hall seconded the motion, which passed unanimously.

(2) Concepcion, Darice: Case No.: 233390-18-FC; Division No.: ATN-31614 (F090618)

Ms. Simon – Is Darice Concepcion present? Hearing no response. Mr. Griffin?

Mr. Griffin – The above-referenced matter has been scheduled for an Informal Hearing to consider a Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact. Darice Concepcion, (Respondent) is a preneed sales agent licensed under Chapter 497, Florida Statutes, license number F090618.

On February 7, 2019, the Department filed an Administrative Complaint against Respondent alleging that Respondent entered a plea to a felony directly related to her ability to practice her profession under Chapter 497, F.S., specifically Obtaining Benefits Under Public Assistance Programs by Fraud. Based on the foregoing, Respondent violated Section 497.152(2), F.S., and is therefore subject to discipline.

The Administrative Complaint was served on Respondent by publication on October 6, 13, 20, 27, 2019. Included with the Administrative Complaint and the Notice of Publication was a notice informing Respondent that the failure to respond in writing within twenty-one (21) days of the last date of publication or by November 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 November 17, 2019, or for any date thereafter. This fact is attested to by the Affidavits executed by the Division Executive Director, Mary Schwantes, and the agency clerk, Julie Jones.

Respondent's failure to file a response constitutes a waiver of the right to request a proceeding on the matters alleged in the Administrative Complaint. Therefore, the Department requests the Chairman of the Board to entertain a motion finding that Respondent Darice Concepcion was served with the Administrative Complaint by publication containing a Notice of Rights and an Election of Proceeding form, that she failed to respond with the allotted twenty-one (21) day period, and has, therefore, waived her right to request a proceeding involving disputed issues of material fact in this matter.

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.

Chair – Is there a motion?

MOTION: Mr. Helm moved that Respondent Darice Concepcion was served with the Administrative Complaint by publication containing a Notice of Rights and an Election of Proceeding form, that she failed to respond with the allotted

twenty-one (21) day period, and has, therefore, waived her right to request a proceeding involving disputed issues of material fact in this matter. Mr. Jones seconded the motion, which passed unanimously.

Mr. Griffin – Now that the Board has determined that Respondent has waived her right to request a proceeding in this matter, the Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of the facts, as set forth in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the allegations of the facts as set forth in the Administrative Complaint. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Griffin – 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. Andrew Clark moved to find the Respondent in violation of the statutes as charged in the Administrative Complaint. Mr. Jones seconded the motion, which passed unanimously.

Mr. Griffin – As to penalty, the Department recommends the following in this case: That the Board impose a reprimand and a \$2500 fine as dictated by the disciplinary statutes from 2018.

Mr. Williams – Was there any probation considered?

Mr. Griffin – Under the disciplinary guidelines, it’s only a reprimand. Violation of s. 497.152(2), F.S., is a reprimand and a fine of \$1000 - \$2500.

Chair – Anything else, Mr. Williams?

Mr. Williams – No.

Chair – Any other questions or comments?

MOTION: Mr. Jones moved to impose a reprimand and a \$2500 fine as dictated by the disciplinary statutes from 2018. Mr. Knopke seconded the motion, which passed with one (1) dissenting vote.

(3) D & L Real Estate Investments LLC d/b/a Faith Memorial Gardens: Case No. 227930-18-FC; Division No.: ATN-28609 (F080517)

Ms. Simon – Is anybody here representing this entity? Hearing no response. Mr. Griffin?

Mr. Griffin – The above-referenced matter has been scheduled for an Informal Hearing to consider a Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact. D & L Real Estate Investment LLC d/b/a Faith Memorial Gardens (Respondent) is a cemetery company licensed under Chapter 497, Florida Statutes, license number F080517. On September 25, 2019, the Department filed an Administrative Complaint against Respondent alleging that Respondent failed to maintain an adequate balance in the trust fund. Based on the foregoing, Respondent has violated sections 497.152(1)(a) and (1)(b), 497.266(1) and 497.268(1)(a), F.S., and Rule 69K-7.001(1), Florida Administrative Code, and is therefore subject to discipline.

The Administrative Complaint was served on Respondent on September 27, 2019. On October 3, 2019, Respondent timely filed an Election of Proceeding alleging that it was not disputing any of the Department’s factual findings and that it did not desire a hearing. Based on Respondent’s Election of Proceeding, Respondent is waiving its right to request a proceeding on the matters alleged in the Administrative Complaint. Provided that the Board adopts the factual findings contained in the Administrative Complaint, the only matter for the Board to consider today is the discipline to impose in the case. 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 US Mail to Respondent’s last known address of record. At this time, it

would be appropriate for the Chair to entertain a motion determining whether the Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint.

Mr. Clark – Mr. Chairman, I just want to state for the record that I have an affiliation with Donald Clark, no relation, but that affiliation will not prevent me from voting.

Chair – Thank you. Is there a motion?

MOTION: Mr. Williams moved that Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint. Mr. Helm seconded the motion, which passed unanimously.

Mr. Griffin – Now that the Board has determined that Respondent has waived its right to request a proceeding in this matter, the Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of the facts, 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. Jones seconded the motion, which passed unanimously.

Mr. Griffin – 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. Williams seconded the motion, which passed unanimously.

Mr. Griffin – As to penalty, the Department recommends the following in this case: That the Board impose a \$1500 fine to be paid within ninety (90) days of a Final Order in this matter and to suspend Respondent's license until compliant with its remittances to the Care and Maintenance Trust Fund.

Mr. Hall – Mr. Chair?

Chair – Mr. Hall?

Mr. Hall – It's not that imposed to the fine, but my concern is what if a family needs a burial during the suspension period? What if there's a death that has occurred, if you're suspending their license during that period?

Chair – That's a good question.

Mr. Hall – I don't mind penalizing them, but I don't want to penalize the family that may need an internment there.

Mr. Griffin – The guidelines for a violation of the statute are \$1000 - \$2500 fine and suspension until compliant. So, if that's the concern, I think that maybe we can go towards the higher end of the fine perhaps or...

Mr. Hall – May I ask another question, Mr. Chair?

Chair – Yes.

Mr. Hall – I believe it showed that part of this was being reimbursed for care and maintenance? In the letter, she stated she made a couple of checks payable to FSI, so there was maybe \$3000 left to catch it up.

Mr. Helm – Mr. Chair, I believe it's \$3802, and they said they talked to FSI about payments.

Chair – Mr. Williams, will you please be sworn in?

Ms. Simon – Mr. Williams, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. B. Williams – I do.

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

Mr. B. Williams – Bill Williams with FSI. I don't know the answer to your question. We're checking into it right now to see if we can find out that answer.

Mr. Hall – Of the \$9000, I think it shows two (2) checks that they've alluded to have been paid, which leaves it around \$3000.

Mr. Helm –\$3802 and they said they talked to you all about payments.

Mr. B. Williams – We're finding out now.

Mr. Hall – About making monthly payments?

Mr. Griffin – If we could, if it would be the Board's pleasure, if we could just delay this matter or move it down to bottom of the disciplinary agenda to give FSI time to corroborate that.

Chair – I want to ask you and the Board would we consider, instead of the suspension, a probationary period to try and get this back into compliance?

Mr. Griffin – I think that we can argue that since the Care and Maintenance Trust Fund is for the protection of the public, essentially to ensure that the cemetery's grounds are maintained upon the dissolution of the company that that would give the Board permission to exceed the disciplinary guidelines or go outside. Although, I guess there's an argument to be made that a suspension until compliant is a penalty, that probation is outside but just to err on the side of caution, the Department would argue that the failure to make these remittances is a threat to the public and therefore would give the Board permission to go outside and impose a period of probation, as an aggravating factor.

Chair – Thank you. So, we have a decision to make.

Mr. Hall – I think I would make that motion. I like that better than the suspension, so we don't create additional harm to the public. But then, if they don't pay those monthly payments to catch up, immediately it triggers a suspension. Is that correct?

Mr. Griffin – Well, what would happen then is it would be a violation of the Consent Order and then furthermore, because the Board's Order would be occurring in 2019, we'd be operating under the new disciplinary guidelines and if I recall correctly, under the new disciplinary guidelines for even a first violation of s. 497.152(1)(a), F.S., we'd be able to impose suspension, so yes.

Mr. Hall – We could do the \$1500 fine, two-year probation, and if they miss that payment on the care and maintenance then it would be suspended.

Mr. Griffin – I don't know, but this may be complicating things a little bit, but I feel like we would probably need some sort of written agreement between FSI and the licensee to hold them to it.

Chair – Hold them to?

Mr. Griffin – Basically we're saying if they are not making the monthly payments then...

Mr. Barnhart – I don't think we can do that in an informal hearing setting. I would think we'd need that in the form of a stipulation. I think we just need to stick to what we can order during that informal hearing.

Mr. Hall – Could we go with this motion but simply request the FSI give us a report?

Mr. Barnhart – You could ask them, but I don't think you can make that a part of the Order.

Ms. Wiener – FSI will provide whatever is requested by the Board.

Mr. Hall – Going back to the motion again, it was \$1500 fine, two years of probation, and then if they don't pay it, they're suspended.

Mr. Griffin – If they don't pay the fine or the monthly payments?

Mr. Hall – The monthly payments. Well, either.

Mr. Barnhart – I think what we'd have to do is if they did not comply with the Final Order then we'd have to have a probable cause proceeding to prove the alleged new violation. And this payment is due within ninety (90) days, correct?

Mr. Griffin – My recommendation was within ninety (90) days, but the Board is free to disregard that.

Mr. Barnhart – Within thirty (30) days, like usual?

Mr. Hall – Let's do thirty (30).

Mary Schwantes – Could we clarify the motion again?

Mr. Barnhart – A \$1500 fine to be paid within thirty (30) days and a two-year probation.

MOTION: Mr. Hall moved that the Respondent shall pay a \$1500 fine to be paid within thirty (30) days of a Final Order in this matter and a two-year probation. Mr. Williams seconded the motion, which passed unanimously.

Mr. Knopke – Mr. Chair?

Chair – Yes?

Mr. Knopke – And I'll ask counsel, first. Can I make a comment about what we just did?

Mr. Barnhart – They've already voted on this matter.

Chair – About what who just did?

Mr. Knopke – About the case that was just completed, D & L Real Estate.

Chair – After the fact?

Mr. Knopke – Yes. I recused myself, because I was on the Probable Cause Panel.

Chair – Please do.

Mr. Knopke – The comment is you can't suspend a cemetery license, well you can, but keep in mind what you're doing. You're going to put them out of business to whatever families they're serving, but also, you're going to create a situation of who's going to run it. If they're out of business, they're not going to be able to open the doors to the office. They're not going to be able to answer the phones or anything without violating the law. So, you're effectively shutting them down and shutting the public out. So, if our rules put us in that position, we need to address that and look at it from a different angle. I understand the need to get the money in the bank, but just be careful, because this is one of those things where once they are they are.

Chair – I think the Board was pretty nimble in the way that we handled that.

Mr. Knopke – They were very nimble, but just kind of keep in mind that if you go through the process of getting to this point {inaudible}.

Chair – Mr. Barnhart?

Mr. Barnhart – Keep in mind, Board members, that the rules also provide for mitigating circumstances {inaudible} to take care of certain situations that {inaudible}.

Chair – Thank you.

Mr. Knopke – Thank you.

(4) Hadley, Tina: Case Nos.: 221577-18-FC, 230309-18-FC, 223578-18-FC; Division Nos.: ATN-29647, ATN-30805, ATN-30188 (F033608)

Ms. Simon – Is Ms. Hadley in the audience?

Mr. Griffin – Ms. Hadley will not be present today. I believe she sent an email correspondence to me, which was forwarded to the Board. I believe everybody should have a copy of it, the approximate three (3) or four (4) paragraph letter.

Chair – That would be this letter?

Mr. Griffin – No, that's the email. The letter that Mr. Williams is holding up.

Chair – Thank you.

Mr. Griffin – And if any Board member doesn't have a copy, I have courtesy copies.

Chair – I see that. Thank you.

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. Tina Hadley (Respondent) was licensed as a funeral director and embalmer, license number F033608. Respondent was the funeral director in charge for Creal Funeral Home and Cremation (Creal), a funeral establishment, license number F085792.

On June 12, 2019, the Department filed a seven-count Administrative Complaint alleging that Respondent as FDIC for Creal was liable for the following violations:

- Creal violated a provision of Chapter 497, Florida Statutes.
- Creal failed to maintain an embalming room with running water.
- Creal failed to maintain minimum sanitary practices relating to its preparation room.
- Creal practiced beyond the scope of the licensure held
- Creal made preneed arrangements without holding a preneed license
- Creal guaranteed the price of goods and services without following the procedures of part four of Chapter 497, Florida Statutes.
- Creal failed to provide a consumer with a general price list.

The Administrative complaint also alleged that Respondent personally committed fraud, deceit, negligence, incompetency, or misconduct in the practice of activities regulated by Chapter 497, Florida Statutes, filed a false or incorrect report with the Department, and failed to sign the Bodies Handled Report. Based on the forgoing, Respondent violated ss. 497.152(1)(a), (1)(b), (4)(g), (5)(a), (11)(d), 497.382(1), 497.452(1)(a), F.S., and Rule 69K-21.003(1)(e), F.A.C, and is therefore subject to discipline, pursuant to s. 497.380(7), F.S. The Administrative Complaint was served on Respondent by certified mail on June 14, 2019.

On July 3, 2019, Respondent timely filed an Election of Proceeding alleging that she was not disputing any of the Department's factual findings and requested a hearing by written submissions. Based on Respondents Election of Proceeding, Respondent is waiving her right to request a proceeding on the matters alleged in the Administrative Complaint. Provided that the Board adopts the factual findings contained in the Department's Administrative Complaint, the only matter for the Board to consider is discipline to impose in the instant case. 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, as well as the Board packet and investigative file have been sent by US Mail and email to Respondent's last known address of record. At this time, it would be appropriate for the Chair to entertain a motion determining whether the Respondent has waived her right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint.

MOTION: Mr. Helm moved that Respondent has waived her right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint. Mr. Hall seconded the motion, which passed unanimously.

Mr. Griffin – Now that the Board has determined that Respondent is not contesting the factual allegations in the Administrative Complaint, the Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of the facts, as set forth in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the allegations of the facts as set forth in the Administrative Complaint. Mr. Hall seconded the motion, which passed unanimously.

Mr. Griffin – The Department 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. Williams 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. Griffin – As to penalty, the disciplinary guidelines contained in Rule 69K-30.001, F.A.C., for the allegations as charged in the Administrative Complaint provide for a maximum of \$17,500 in fines and seven (7) years of probation. The Department is asking that the Board revoke Respondent, based on the following two (2) aggravating factors contained in Rule 69K-30.001(2), F.A.C.: (2)(d) – The length of time that the licensee has practiced. Ms. Hadley has been licensed as a funeral director and embalmer since November 1997, so that means she's been in practice for about twenty-years (22) years. So, given the nature of these violations, we're not dealing with somebody who's new to the industry that maybe got in over their head; (2)(g) – The effect on livelihood. One of the Department's allegations in the Administrative Complaint is that Ms. Hadley is actually employed as a basketball coach in Georgia. If you look at the ALIS profile that's contained within the Board packet as well as some of the supporting documentation, I believe she is the basketball coach at McEachern High School. So, this is essentially really not impacting her livelihood since she is not really a funeral director but a basketball coach. The Department is recommending revocation, however, if the Board does not find aggravation present then a fine of \$17,500 and seven (7) years of probation.

Chair – Thank you. I have one question. As we went through this, and maybe others, where the FDIC is one or two or three states away. How are they being compensated? Do we have an idea, do we have a feel of how much they are being compensated? Did that come up in the investigation?

Mr. Griffin – It did not come up in the investigation. I do some cases with the Insurance Agent and Agency side of things with the Department of Financial Services, and often what you will see is similar to the funeral directors, insurance agencies have to have what's called an agent in charge. Except, the Insurance Agent and Agency statute requires the agent in charge to be a much more involved part of the operation than our funeral directors in charge. So, what you'll see in some places, especially like larger cities, is a person who cannot get the required licensure to be an agent in charge will find somebody, get their credentials, offer to pay them to say they're agent in charge in name only and then go that way.

Chair – I know that we just had another case that we ruled on and the FDIC for many years, and his affidavit indicated that he was in Tennessee and he had never visited the location. We need to see what we can do to tighten some loopholes on that legislatively, perhaps somewhere down the road. That's my comment.

Mr. Griffin – Statutorily I think all that s. 497.380, F.S., requires for a funeral director to do is essentially be a glorified switchboard operator. To give you a great hypothetical, if you could have twenty-four (24) people, one (1) person on call each hour of the day, but you had 100% guarantee that they would show up if called to something, you could effectively be a funeral director in charge because you can always make sure that somebody can get to the funeral establishment, not your personally.

Chair – Thank you.

MOTION: Mr. Jones moved to revoke the Respondent’s license. Mr. Hall seconded the motion, which passed with one (1) dissenting vote.

Ms. Simon – Mr. Jones, did that include that you found the aggravating factors that were stated by the prosecuting attorney, Mr. Griffin?

Mr. Jones – Yes.

Ms. Simon – Okay. That motion did.

Chair – Thank you.

*(5) Related Cases – Division Nos. ATN-32300 and ATN-32161
(a) McWhite, Albert R. Sr.: Case Nos.: 245288-19-FC, 245293-19-FC; Division No.: ATN-32300 (F046972)*

Ms. Simon – Is Mr. McWhite here?

Albert McWhite – Yes, he is.

Ms. Simon – Please come forward. Mr. McWhite, before we begin, if you could 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. McWhite – Yes ma’am.

Ms. Simon – Please state your name and spell your last name for the record.

Mr. McWhite – Albert McWhite, M-C-W-H-I-T-E, licensed funeral director of McWhite’s Funeral Home.

Ms. Simon – Thank you. Mr. Griffin?

Mr. Griffin – 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. Albert R. McWhite Sr. (Respondent) was licensed as a funeral director and embalmer under Chapter 497, Florida Statutes, license number F046972. Respondent is the owner and FDIC of McWhite’s Funeral Home, a funeral establishment licensed under Chapter 497, Florida Statutes, license number F041320.

On September 25, 2019, the Department filed an Administrative Complaint against Respondent, alleging Respondent, as FDIC of McWhite’s Funeral Home, mishandled the remains of two (2) deceased infants by losing the remains of one (1) infant and presenting the remains of the other infant as the remains of the lost infant. Pursuant to s. 497.380(7), F.S., Respondent as the FDIC for McWhite’s Funeral Home is liable for these violations. Based on the foregoing, Respondent violated Sections 497.152(1)(a), 497.152(1)(b), and 497.152(13)(a), Florida Statutes, and is therefore subject to discipline.

The Administrative Complaint was served on Respondent by certified mail on September 28, 2019. On October 21, 2019, Respondent timely filed an Election of Proceeding alleging that he was not disputing any of the Department’s factual findings and requesting a hearing by written submissions. Based on Respondent’s Election of Proceedings, Respondent is waiving his right to request a proceeding on the matters as alleged in the Administrative Complaint in a formal contested hearing.

Provided that the Board adopts the factual findings contained in the Department’s Administrative Complaint, the only matter for the Board to consider is discipline to impose in the instant case. 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 US Mail and email to Respondent’s last known address of record. At this time, it would be appropriate for the Chair to entertain a motion determining whether the Respondent has waived his right to a s. 120.57(1) Hearing based on the Respondent’s response to the Administrative Complaint.

Mr. Helm – Mr. Chair, I have a question.

Chair – Mr. Helm?

Mr. Helm – By adopting this, does that mean we cannot ask Mr. McWhite any questions?

Mr. Griffin – No, you can. The way to think of it is these hearings are basically separated into two (2) sections. There's the guilt or innocence phase, determining whether or not they violated the statute. Then a phase to determine what penalty to impose. So, based on Mr. McWhite's response, he's not disputing the factual allegations, but he is permitted to provide evidence and testimony in favor of arguing for a penalty.

Mr. Barnhart – For a lesser penalty?

Mr. Griffin – Yes sir.

MOTION: Mr. Helm moved that Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint. Mr. Hall seconded the motion, which passed unanimously.

Mr. Griffin – Now that the Board has determined that Respondent is not contesting the factual allegations in the Administrative Complaint, the Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of the facts, 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, which passed unanimously.

Mr. Griffin – 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. Griffin – As to penalty, the Department recommends the following in this case: That the Board impose a \$5000 fine and to place Respondent on a two-year probation. Now I'll cede the floor to Mr. McWhite for his presentation.

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

Mr. McWhite – I'm here to answer questions.

Chair – Thank you. Any questions? No questions? Mr. Hall?

Mr. Hall – In reading some of the material, we see the babies were born about four (4) days apart. One was a male, one was a female, if I understand it right, and they were tagged and identified before they were embalmed, etc. Do you know what created the issue of not being able to identify them or what cause it? Has it been fixed?

Mr. McWhite – When the babies came in, they had their mother's last name. And then, when I made the arrangements, they gave them a name. Basically, when I went in to dress them, I basically mixed them up. I did it myself.

Mr. Hall – Has it been resolved with the cemetery yet?

Mr. McWhite – Yes. They had a court case and it's been settled. I've apologized many times before the settlement so everything is resolved right now.

Chair – Mr. Griffin, is it appropriate for me to ask the question for us to jump ahead to see what the recommendation would be for McWhite's Funeral Home?

Mr. Griffin – It's going to be the same thing. As it was alleged in the Administrative Complaint, I believe that the only count that has a penalty recommendation in each count is s. 497.152(1)(a), F.S., and under the disciplinary guidelines, it's a \$1000-\$2500 fine and six (6) months to one (1) year probation. The recommendation will be the same for both.

Chair – Thank you so much. I didn't know if I was permitted to do that. Mr. Helm?

Mr. Helm – Mr. McWhite, what happened to JMC?

Mr. McWhite – He was buried. He was supposed to be a cremation. We had his service for the other baby's service and we buried him.

Mr. Helm – I thought LW went in his spot?

Mr. McWhite – No. JMC's service was the second service, but we had LW's before his service, but we had the wrong baby. They saw the baby and had a full service and we buried the baby, but it was JMC baby.

Mr. Helm – I guess my question would be were both babies taken care of?

Mr. McWhite – Yes.

Mr. Helm – I totally missed where JMC was taken care of.

Mr. McWhite – JMC was supposed to be cremated. I was basically doing it just to help out, but I buried him so I allowed him to stay buried and I bought a headstone for the baby.

Mr. Helm – Thank you.

Chair – So, we're here to consider and \$5000 and two years is merely a recommendation. So, as the Board, we always pray for the Wisdom of Solomon. You've heard me say that before. We're not always granted that wisdom, but we try. Mr. Helm?

Mr. Helm – Is there any other disciplinary action against Mr. McWhite?

Mr. Griffin – No. It was just these two (2) cases, as far as I know.

Mr. Helm – In the past?

Mr. Griffin – Oh, in the past? I don't think it was alleged in the Administrative Complaint.

Mr. Barnhart – Mr. McWhite can testify.

Mr. McWhite – No sir. I don't have anything.

Chair – Mr. McWhite says no. Mr. Jones?

MOTION: Mr. Jones moved that the Respondent shall pay a \$3000 fine and be placed on a two-year probation. Mr. Helm seconded the motion, which passed unanimously.

Ms. Simon – Mr. Helm, although it was not alleged, I do see that there was prior discipline against Mr. McWhite in 1995.

Chair – Thank you.

(b) McWhite's Funeral Home: Case Nos.: 245284-19-FC, 245292-19-FC; Division No.: ATN-32161 (F041320)

Ms. Simon – Mr. Griffin?

Mr. Griffin – 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 F041320.

On September 25, 2019, the Department filed an Administrative Complaint against Respondent, alleging Respondent mishandled the remains of two (2) deceased infants by losing the remains of one (1) infant and presenting the remains of the other infant as the remains of the lost infant. Based on the foregoing, Respondent violated Sections 497.152(1)(a), 497.152(1)(b), and 497.152(13)(a), Florida Statutes, and is therefore subject to discipline.

The Administrative Complaint was served on Respondent by certified mail on September 28, 2019. On October 21, 2019, Respondent timely filed an Election of Proceeding alleging that it was not disputing any of the Department's factual findings and requesting a hearing by written submissions. Based on Respondent's Election of Proceedings, Respondent is waiving its right to request a proceeding on the matters as alleged in the Administrative Complaint.

Provided that the Board adopts the factual findings contained in the Department's Administrative Complaint, the only matter for the Board to consider is discipline to impose in the instant case. 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 US Mail and email to Respondent's last known address of record. At this time, it would be appropriate for the Chair to entertain a motion determining whether the Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint.

MOTION: Mr. Helm moved that Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint. Mr. Jones seconded the motion, which passed unanimously.

Mr. Griffin – Now that the Board has determined that Respondent has waived its right to request a proceeding in this matter, the Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of the facts, as set forth in the Administrative Complaint.

MOTION: Mr. Williams moved to adopt the allegations of the facts as set forth in the Administrative Complaint. Mr. Clark seconded the motion, which passed unanimously.

Mr. Griffin –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. Clark 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. Griffin – As to penalty, the Department recommends the following in this case: That the Board impose a \$5000 fine and to place Respondent on a two-year probation. Now I'll cede the floor to Mr. McWhite.

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

Mr. McWhite – Answer questions?

Chair – Thank you. Is there a motion?

MOTION: Mr. Jones moved that the Respondent shall pay a \$3000 fine and be placed on a two-year probation. Mr. Hall seconded the motion, which passed unanimously.

Chair – Thank you. Thank you for coming before the Board, Mr. McWhite.

Mr. McWhite – Thank you all.

C. Material Facts Not Disputed (Section 120.57(2) Hearings) (Probable Cause Panel B)

Ms. Simon – Is there anyone here representing this entity? Please step forward. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Daniel Davis – Yes.

Ms. Simon – Please state your name and spell your last name for the record.

Mr. Davis – Daniel E. Davis, Jr., D-A-V-I-S.

Ms. Simon – Thank you, sir.

Mr. Griffin – May I be excused for one moment?

Ms. Anderson – Mr. Chair, I served on Probable Panel B in this case. I'm recusing myself.

Chair – Thank you for that declaration, Ms. Anderson.

Mr. Griffin – So, just as a procedural matter, it was brought to my attention that Davis & Davis filed an Election of Proceeding with the Department that was received yesterday. It is untimely. Although it did request a formal hearing, it did not allege any disputed issue of material fact. I just wanted to inform the Board of this. However, it is well past the twenty-one (21) day window. So, the Department would assert that he's waived his right to have a formal hearing, however, he has not waived his right to be heard as to the issue of punishment and discipline.

Do you need a motion from the Board?

Mr. Griffin – In an abundance of caution, yes?

Mr. Helm – What kind of motion?

Mr. Griffin – Actually, it's the motion that we would normally do.

Mr. Barnhart – A motion to approve the waiver?

Mr. Griffin – Yes. We'll get to that in due course.

MOTION: Mr. Helm moved that Respondent has waived its right to a s. 120.57(1) Hearing based on the Respondent's response to the Administrative Complaint. Mr. Clark seconded the motion, which passed unanimously.

Mr. Griffin – The above-referenced matter has been scheduled for an Informal Hearing to consider the attached Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact. Davis & Davis Funeral Services LCC (Respondent) is a funeral establishment licensed under Chapter 497, Florida Statutes, license number F091066.

On October 25, 2019, the Department filed an Administrative Complaint against Respondent alleging that Respondent sold four (4) preneed funeral contracts without the benefit of licensure, Based on the foregoing, Respondent violated Sections 497.152(1)(a), 497.152(5)(a), 497.152(11)(d) and 497.452(1)(a), Florida Statutes, and is therefore subject to discipline.

The Administrative Complaint was served on Respondent by certified mail on October 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 November 18, 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 received an Election of Proceeding form from Respondent; however, it was untimely. The fact

that we did not receive a response by November 18, 2019, is attested to by the Affidavits executed by the Division Executive Director, Mary Schwantes, and the agency clerk, Julie Jones.

Respondent's failure to timely file a response constitutes a waiver of the right to request a proceeding on the matters alleged in the Administrative Complaint. Therefore, the Board moved finding that Respondent Davis & Davis Funeral Services LLC Corp was served with the Administrative Complaint by publication and containing a Notice of Rights and an Election of Proceeding form, that it failed to respond timely within the allotted twenty-one (21) day period, and has, therefore, waived his right to request a proceeding involving disputed issues of material fact in this matter.

Now that the Board has determined that Respondent has waived its right to request a proceeding in this matter, the Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of the facts, 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. Knopke seconded the motion, which passed unanimously.

Mr. Griffin –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. Williams seconded the motion, which passed unanimously.

Mr. Griffin – As to penalty, the Department recommends that the Board imposes a reprimand, a \$7500 fine, and a two-year probation. The methodology behind that is that was four (4) counts of a violation of the actionable statute or disciplinable statute in the Administrative Complaint with s. 497.152(1)(a), F.S. The penalty recommendation for that is \$1000 - \$2500 per count and six (6) months to one (1) year probation. So, the methodology was imposing a fine of \$1875 per count for a total of \$7500 and then six (6) months of probation per count for a total of a two-year probation. At this point, I will cede the floor to the representative from Davis & Davis.

Chair – Thank you. Any questions for Mr. Griffin? Mr. Davis, do you want to address the Board or are you here to answer questions?

Mr. Davis – I'd like to address the Board.

Chair – Please do address the Board. Feel free.

Mr. Davis – On the twenty-one days, I thought it was twenty-one business days, so that's why it was mailed the 21st of November. I don't know why they just received it, because I overnighted it to Tallahassee.

Mr. Griffin – Even if it was the 21st of November, it would still be untimely.

Chair – Still untimely.

Mr. Davis – I never wrote a preneed. We didn't sell preneed. We passed out cards of different people who sold insurance and preneed. We weren't aware, until the State came and told us, that on one of them, someone had added our name, Davis & Davis, to one of their contracts. It wasn't a Davis & Davis contract. The insurance rep did not work for me. That's the reason I disputed the charge.

Chair – Did you maintain the paperwork for the prearrangements in the funeral home?

Mr. Davis – No sir.

Chair – So, you had no record?

Mr. Davis – No clue.

Chair – Did you compensate this person who was selling preneed on your behalf?

Mr. Davis – No sir.

Mr. Knopke – Mr. Chair?

Chair – Mr. Knopke?

Mr. Knopke – On the insurance contract, have you seen what was written? The insurance contract that was written?

Mr. Davis – After the State brought it in, yes.

Mr. Knopke – Were the prices on there your prices?

Mr. Davis – I don't think so, but I pass out my pricelist. So, I don't know if it was a family who came in and asked for a pricelist and then sat with that rep, and that's how they came up with the prices of what they wanted and expected.

Mr. Knopke – But were they your prices? Yes or no?

Mr. Davis – I don't remember. I didn't look at the prices. I didn't look that thoroughly into it because I said I didn't do this.

Mr. Knopke – Have you ever met the agent that represents...

Mr. Davis – She doesn't represent, but I have met the young lady.

Mr. Knopke – How many times? Is she a regular visitor to the funeral home? Let's put it that way.

Mr. Davis – No. She just sent cards and I have other cards that are there, and I just pass them out, because in the black community, a lot of people can't get insurance, so I try to help them with getting those final expenses. I don't get anything out of them doing a preneed or whatever. I don't get any money from that.

Mr. Knopke – But on your website, you advertise preneed and go into quite a bit of detail about (inaudible), to preneed, preplan, so forth and so on.

Mr. Davis – It was a template that Dodge made for us. They were doing a special. They said that they would make it and I want to say they just take everybody's and do it the same way. Once we did see it, we had them to take it off.

Mr. Knopke – How long had it been out there on the internet?

Mr. Davis – I'm not sure. It wasn't on the front page of it. You had to go through the pages. It was somewhere else small.

Mr. Knopke – Was it on the toolbar on the front page?

Mr. Davis – I don't remember.

Mr. Griffin – If you'll refer to page 49 or 127, I believe that that shows where the preneed section was shown on the website. Pages 48 through 57.

Mr. Knopke – To get to this page, was it across the top toolbar on the homepage of the website?

Mr. Griffin – I'm without knowledge of that at this time.

Ms. Simon – Mr. Knopke?

Mr. Knopke – Yes ma'am?

Ms. Simon – I think on page 66, there is a showing of the front page.

Chair – Also 63, 64, and 65.

Mr. Griffin – I think it's circled on page 65.

Mr. Knopke – It looks like it was on the homepage.

Chair – Did you say you had or had not met the insurance agent?

Mr. Davis – Yes, I have met her. I've met quite a few. Like I said, I have a bunch of cards of different agents.

Chair – Thank you. Mr. Williams?

Mr. Williams – Mr. Davis, have you had any type of business dealings with the person in question, prior to this incident?

Mr. Davis – No. I was introduced to her from a past part, when I first started off as Dallas & Davis. Then it went to Davis & Davis and I know she goes around to the different funeral homes and she wrote for different people.

Mr. Williams – Has this agent wrote preneeds before for you?

Mr. Davis – Yes.

Mr. Williams – So, you do have a relationship in some type of way.

Mr. Davis – No, because I don't do preneed. I just pass out her cards when people come to the funeral home asking about preneed. I tell them that she does final expenses and write for insurance companies.

Mr. Williams – Okay.

Mr. Griffin – Just to be clear, the person in question is Early Mae Hicks. She's kind of a repeat flyer. I know that she's popped up in prior cases. I think specifically I know I saw her in Creal, which we dealt with in October.

Chair – Yes.

Mr. Knopke – When did you get your website from Dodge?

Mr. Davis – It had to be either 2016 or 2017, because we did a name change.

Mr. Knopke – When did you have them take it off your website?

Mr. Davis – As soon as it was brought to our attention.

Mr. Knopke – And that was?

Mr. Griffin – I believe that there's a letter from them in the Board packet. I want to say it's around page 45, 46.

Mr. Knopke – And around that date was what? I remember seeing it. I just don't remember what page it is on.

Mr. Griffin – I believe it would be page 60. It would appear that they sent the correspondence to the Department on March 10, 2017, as indicated by the fax coversheet, on page 59.

Mr. Knopke -So, it had been out there for a while. More than a couple of weeks, I would guess. Do you remember approximately the month you put it up or changed the name?

Mr. Davis – No I don't. Not off the top of my head.

Mr. Knopke – You changed the name of your business and you don't remember the approximate month? I'm not being sarcastic about this, but was it cold outside?

Mr. Davis – It may have been about April.

Mr. Knopke – So, April. Let's assume it was around that time period and you sent the letter a year later. During that time, you never happen to look at your website or {inaudible} the company that probably gave it to you for free had put out there saying about your business? They could have put something out there that said something really bad and hurt your business and you would have never known.

Mr. Davis – Like right now.

Mr. Knopke – Thank you.

Chair – Aside from these four (4) preneed contracts, what total number of preneeds to you have on file?

Mr. Davis – I have none.

Chair – Mr. Helm?

Mr. Helm – I'm a little bit confused. The Division conducted an investigation at the funeral home. Is that correct?

Ms. Simon – Yes, I believe so.

Mr. Helm – Is that not where they found the four (4) preneed contracts?

Ms. Simon – Yes.

Mr. Davis – No.

Ms. Simon – I'm sorry. I'm looking at it right now, sir.

Mr. Griffin – If I could direct the Board members to page 40 of the Board packet. It has Investigator Kurt Schuller, who was the primary investigator. It would appear that the way that this investigation began was looking into the affairs of Early Mae Hicks and basically kind of seeing who all she had done business with. *“During a separate complaint investigation, it was discovered Mrs. Early Hicks, a licensed insurance agent with Columbian Life Insurance Company was entering into insurance funded preneed contracts. Mrs. Hicks was a licensed preneed sales agent until on or about 10/31/2005. Examiner Schuller requested information regarding all policies written by Early Hicks from Columbian Life Insurance Company. The information provided indicated she had been writing insurance funded preneed contracts for numerous funeral homes in the Tampa Bay area including Davis & Davis Funeral Services.”*

Mr. Helm – So, it's possible that he didn't have those records at his funeral home?

Mr. Griffin – Yes. The investigation would support that. At least according to Investigator Schuller.

Mr. Helm – Okay. Thank you.

Chair – Mr. Hall?

Mr. Hall – I just had a question. On page 63, it shows a sample of what they are going to set up for you on the website. It shows preneed and it's circled there and it was on your website also along with forms the could enroll in. At no time you never saw any of those?

Mr. Davis – No. No one ever used it to enroll or sign up.

Mr. Hall – My question is it looks like Dodge gave you a sample of what they were going to do on your website and it circled preneed. They gave you an example of what they were going to do and later your name was on there and it's still on there. So, at that point did you never say to them, look we don't do preneed?

Mr. Davis – Yes.

Mr. Hall – So, when it went up on your site you never bothered to check it to see that they got that off for you?

Mr. Davis – Because it was supposed to have been removed. If you clicked it wasn't supposed to be there. You didn't find it if you clicked on the front page of the preneed. I was found deeper down where I didn't go into depth with.

Mr. Hall – Did the agent express to you that she was writing final expense instead of preneed?

Mr. Davis – Yes.

Mr. Hall – Do you know the difference?

Mr. Davis – The preneed I always figured that I could do it, if she was writing preneed and I would take the money. Final expenses would be she would hold the money and put it into escrow and it could be used anywhere. And preneed you're locked in.

Mr. Hall – You missed on both of those. Preneed, you'd have to be licensed with the Division and the funeral home could lock in the costs and stuff. Final expense is totally different. She could write that and keep that in her file. It's just like a life policy, but it's not a preneed contract. That's why I was wondering if that why she had the files and you didn't, but I'm not even sure if Columbian writes final expense. We write for Columbian. Have for years, but I don't know that they write final expense at all. Mr. Griffin, you said that this is the same lady that was writing for Creal?

Mr. Griffin – Yes. We had several. I believe that was the last two (2) of the seven (7) counts involving her. I handle the intake of the cases from the Division to the Office of the General Counsel and I've seen her at least three (3) or four (4) times in the last three (3) or four (4) months in cases that I have assigned.

Chair – I remember Early Mae Hicks from that.

MOTION: Mr. Knopke moved that the Respondent shall pay a \$3000 fine and be placed on a two-year probation. Mr. Jones seconded the motion, which passed with one (1) dissenting vote.

Chair – Thank you.

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.

6. Application(s) for Continuing Education Course Approval
A. Recommended for Approval without Conditions – Addendum B
(1) APEX Continuing Education Solutions (4201)
(2) Cremation Association of North America (16008)
(3) Education Workers Group (11208)

- (4) *Matthews International (30408)*
- (5) *National Funeral Directors and Morticians Association (15608)*
- (6) *National Funeral Directors Association (136)*

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

MOTION: Mr. Hall moved to approve the applications. 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) *Ryze Claim Solutions (36611)*

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. Williams moved to approve the application. Mr. Hall 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.

Chair – We see a lot of repeats on here, don't we.

Mr. Hall – Mr. Chair? Would it be possible for us to even get a break down on what the claims have been at Beaches? I know we looked at that and we offered to cover some of that because of the new owners coming in and taking over to try to get it up to speed, but it seems that me that it's a lot more than what we anticipated. Is it possible for us to get a grand total, maybe, Ms. Simon?

Ms. Simon – We can look in to that. Yes, Mr. Hall, but the claims that have been made are no different than any other claims. So, the claims that have been made under Beaches, we're not handling them differently as we are any other entity.

Mr. Hall – Ok.

Chair – Would you be able to give us a break down from the beginning? Just the number of the claims and the dollar amount. Is that what you want Mr. Hall?

Ms. Schwantes – Let us look into that please sir.

Chair – Thank you.

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

Chair – At this time, let's take a little break here. Why don't we reconvene at 12:20, p.m.

*****BREAK*****

Ms. Simon – Board member, if we can recall Item #20 on your agenda:

- 20. **Request(s) to Renew License**
 - B. *Conditional Recommendation*
 - (1) *Scott, Vangie*

Ms. Simon – Mr. Barnhart?

Mr. Barnhart – Thank you.

Mr. Knopke – Mr. Chair, do we need a motion to recall?

Chair – No. At this point, Mr. Barnhart is going to give us some direction.

Mr. Barnhart – Ms. Wiener, are you representing Vangie Scott on the application for renewal?

Ms. Wiener – Yes.

Mr. Barnhart – Do you want to make a presentation on her behalf first and then I'll advise the Board?

Ms. Wiener – Has the matter been recalled? I thought that her renewal license application was denied.

Mr. Barnhart – I think the vote we took was just for the stipulation.

Ms. Simon – Mr. Barnhart, it was for both. So, if you want to recall it, that's what we're doing, but it was for both.

Mr. Barnhart – I didn't understand it to be for both. Okay. Then we'll have to bring that matter up before the Board again.

Ms. Simon – Okay. So, if we can bring that matter before the Board right now, Item #20. Can we have a motion to reopen that matter?

MOTION: Mr. Knopke moved to reopen the matter. Mr. Hall seconded the motion, which passed unanimously.

Ms. Simon – Mr. Barnhart, when we were here, there was a vote already taken, so we're at that point. There was a vote taken to deny the application to renew licensure.

Mr. Barnhart – But it is now reopened, correct?

Ms. Simon – Yes.

Mr. Barnhart – Okay, Ms. Wiener would you like to make a presentation to the Board for Ms. Scott on the request for renewal.

Ms. Wiener – Certainly. Ms. Scott did not fail to disclose her criminal history with regard to this license application. She disclosed it and provided all of the information. I believe that that information is in your Board packet. If you review it, you will see that what happened in that situation is that Ms. Scott was involved in a long-term romantic relationship. That relationship turned sour and Ms. Scott was caught up in an event one evening, which she absolutely denies she played any part in. She was in fact shot during that. She did not discharge a firearm. She claims that she did not do any of the things that she is alleged to have done there, including burglary or false imprisonment. She has provided information that she was not wearing the clothes that she is alleged to have been wearing. She, like many people in her financial circumstances, retained counsel and that lawyer advised her to plead guilty to the lesser offenses and she did. Ms. Scott has practiced without a blemish on her license for the entirety of her licensure. Other than her failure to disclose her shoplifting charge following her 2013 crime, not recognizing that, like many people don't, the way that the application is worded, she didn't recognize that she needed to disclose that. It had nothing to do with funeral directing and embalming. She did not disclose it. Ultimately, she will be penalized for that, if in fact she retains her licensure and that was a part of the agreement that she was willing to make with you today. I'd be happy to answer any other questions that I can with regard to her fitness for license. A lot of her community, people that have bought funerals from her employer will testify, if this matter ultimately proceeds to hearing, with regard to that, her fitness and the care and compassion with which she serves the funeral buying public.

Chair – Are you suggesting that we should just totally disregard the testimony of witnesses, that she did nothing?

Ms. Wiener – No, I'm not at all. We're in a bit of a weird position right now just because this is all wrapped up together. The stipulation and the license renewal, it's all wrapped up together. But it is wrapped up together in her capacity to serve the funeral buying public and the public that needs embalming services, and about that you will hear that she has done nothing but a great job over the course of any subsequent hearing, if one is to occur. So, no. I'm not. I'm regretful that the Board declined to enter into a settlement agreement with her so that she could move forward with her licensure. I believe that the evidence that is in your packet shows you that the thing that keeps her from her license renewed was a, domestic squabble isn't the right word, but a situation involving her longtime romantic partner.

Mr. Jones – Mr. Chair, if I may? Ms. Wiener, when you're discussing that, when you read this and you read all the witness testimonies, you read the detective that asked her if she had a mask, did she do all of this. We've got contradictory stories back and forth. I give the benefit of the doubt. Did she fire a gun at the individual that shot at her? This whole thing is convoluted. So, to say that that's just a domestic relationship is putting it very lightly.

Ms. Wiener – No, no. She got messed up in a bad situation that evening. That's why I refer you to your Board packet because I'm not giving it its full color. That full color is there. There's no doubt about that. I didn't anticipate being at this juncture. We anticipated that the license would be renewed and then immediately suspended and that the Board would accept the Settlement Stipulation, which is well in excess of the penalty guidelines. Otherwise, I would have had her here so that she could provide testimony to you herself. Unfortunately, she's not because we didn't think that we had that and she had funerals to attend to today. What you can see in there is that there's a lot of conflict among that, and you can see in there that she claims that she was wearing a pink jumpsuit, hot pink jumpsuit and not a black head to toe outfit involving a mask. There are photographs that are available to you that may actually even be in your Board packets that show that pink jumpsuit that she was wearing.

Chair – Remind us again where she's working that she had to attend to a funeral today.

Ms. Wiener – She had funeral business to attend today. I reached out to her, but we really didn't think she needed to be here.

Mr. Barnhart – Where's she working?

Ms. Wiener – She works for Al Hall. Tillman's? Is that the name? Yes, Tillman's. But I didn't ask her to come. I didn't think that we were at that posture.

Ms. Simon – Mr. Barnhart?

Mr. Barnhart – Board members, if you will remember that while it was not this particular application, back in 2013, Ms. Scott was convicted of grand theft. At that time, when she was in the process of renewing her license or attempting to renew she should have disclosed that to you so that could be dealt at that time. I don't believe she did. She may have even failed to disclose a second time. I'm not sure yet because I haven't seen it in the record, but it certainly has been a long period of time lapsing between the first offense and when she finally did disclose it to the Department. I think that is a crime related to the practice or the ability to practice funeral directing and embalming, as well.

Ms. Wiener – Shoplifting?

Mr. Barnhart – Grand theft conviction. Grand theft, stealing, I definitely believe it's a crime relating to the practice of funeral directing and embalming, in my opinion. If any of you believe it is not, let's have some discussion about that. I'm open to that, but I believe it is. And then, the second crime, the four (4) additional convictions, three (3) for false imprisonment and one (1) for burglary of a dwelling, I think are very serious criminal offenses. Since 2010, the Legislature put in your statute that effective that date, even a request to renew a license, every licensee comes under the same provision that they must be able to show that they are not a danger to the public. In this case, that is in question. Much like the same provisions you'll be dealing with later on in this meeting with Mr. Williams, I have a list of statutory provisions, which I think you should consider in whether or grant or deny this renewal. I can cite those and you can be looking at those now: ss. 497.141(5)(a), 497.142(10), 497.152(2), that's the crime related to the ability to practice. Then the separate provisions for funeral directors are ss. 497.373(1)(c) and 497.368(1)(c), for embalmers. I believe when some applies for licensure or applies for renewal that the burden of proof is upon them in view of these criminal offenses. If they have the burden to prove that they are fit for licensure, then that's why I believe that the Board should deny this renewal application. Of course, if it is denied then she

would certainly have the right to contest all of these findings, either in DOAH through a formal hearing or appearance before the Board, informal. That would be my recommendation.

Ms. Wiener – Mr. Chairman, might I respond to those statutory citations that Mr. Barnhart just gave you?

Chair – In just a moment. Mr. Knopke?

Mr. Knopke – Just a couple of questions. The 2013 shoplifting? Any idea what was shoplifted?

Ms. Wiener – I believe it was a number of small items and they added up to the \$300 limit, which is grand theft.

Mr. Knopke – Okay.

Ms. Wiener – I believe she was at Sears and had a handful of things.

Mr. Knopke – And you advised her not to be here today?

Ms. Wiener – I didn't advise her not to be here today. I didn't tell her that it was necessary for her to be here today.

Mr. Knopke – Mr. Barnhart or Ms. Simon, do we have any deemer issues in this matter?

Mr. Barnhart – I believe there are. I don't think they've been waived in this case. Have they been waived?

Ms. Wiener – I don't think we have a deemer problem here.

Mr. Griffin – Because they were waived...this case at DOAH was initiated in September and we contemplated that this issue was going to come up. So, there's no deemer issue.

Ms. Wiener – If we haven't formally waived deemer, we could certainly waive deemer. If it's the Board's preference to have Ms. Scott present during its February in person meeting to address her license renewal and the issues with her criminal conduct, I can certainly have her available at that meeting. Mr. Barnhart cited a number of statutes for you as a basis for denial. If we go to a formal hearing on the denial, unless the Department is able to prove aggravating factors, which it may be able to, but I would argue that it would not likely be able to prove aggravating factors, then this Board will only be able to, even if she's found to have violated those crimes, impose the penalties provided by the penalty guidelines. And those are less than the penalties that she had agreed to in the prior matter.

Mr. Barnhart – Board members, I do not agree with that at all. I think they're two (2) separate matters. One is discipline and one is a licensing issue. What happens or doesn't happen at the DOAH level, on the discipline, I don't think it's going to impact your decision on whether she's fit for licensure or not.

Mr. Knopke – Mr. Chair, may I finish from a minute ago?

Chair – Yes.

Mr. Knopke – Thank you. The fact that we don't have a deemer issue. The fact that this is as convoluted of a situation that we've run into in quite some time. The fact that she's currently practicing without an issue, working for a funeral home. I would ask that we consider postponing this to the February meeting where we can hear her. Let her come tell her story, whether it's colorful or not or whatever, but make her own case for it, and we can ask all the questions we want of her at that point.

Chair – She would always have the opportunity to petition the Board to appear before the Board for reconsideration if we deny it. Mr. Helm?

Mr. Helm – I'm totally confused because I thought we denied this already. What are we doing?

Mr. Barnhart – I thought we were just discussing the stipulation. I know we had discussion about {inaudible}. I thought the vote was only for the stipulation itself that is being presented by Mr. Griffin and Ms. Wiener. I've always felt they were separate matters, so I didn't get a chance to give any instructions to the Board or recommendations to the Board about what I believe should be done with the request for renewal. So, that went through, and I was still thinking #20 was coming up.

Chair – We voted not to accept the Settlement Stipulation and then we transitioned directly into 20 (B).

Mr. Barnhart – I guess I totally missed that, because I thought it was just for the stipulation.

Mr. Knopke – Mr. Chair? In light of what he said, there's confusion all around this thing. I would say let's let the dust settle, let her come and speak, and I realize she can come at any point, but why go down that road if we are talking about it.

Chair – Because she is continuing to practice.

Mr. Knopke – That's true.

Ms. Wiener – And she will continue to practice. Even your denial, I will challenge that denial with a Notice of Formal Hearing. So, she will continue to practice until that time.

Mr. Knopke – Let's postpone, let it continue...it's going to continue either way. I'd love to hear her make this case. Not Ms. Wiener or anybody else, personally.

Ms. Simon – Mr. Knopke?

Mr. Knopke – Yes ma'am?

Ms. Simon – I appreciate your stance. This is a matter that's been going on since 2016. I know you would like to hear from Ms. Scott, but I don't think hearing from Ms. Scott is going to change your opinion one way or another on this matter. I know that you like hearing from the licensees. I would suggest that if you would like to hear from Ms. Scott, you do so at the end of this process other than now. You had already voted to deny her licensure. Nothing has changed since then. These are not complicated matters. Nothing is going to change by the next Board meeting we have. We voted once. The only reason that we are voting again is because Mr. Barnhart brought this up and there were no statutory citations listed the first time as the basis for denial. We are essentially clearing up the record now, and that was the purpose.

Ms. Wiener – Ms. Simon, I would suggest that when a Board member has requested to hear from an applicant it could be a violation Ms. Scott's due process to prohibit her from coming before the Board in February to address the issue of the denial.

Ms. Simon – I hear you, Ms. Wiener, but I do not agree.

Mr. Knopke – I'll still say I'd like to hear from her. We're not gaining anything by moving forward. I know it's been a long time. I know it's been since 2016. Why move forward when there's something we may hear there that may change this whole thing? Or at least change some of it.

Chair – Thank you. Mr. Hall?

Mr. Hall – I agree. I think we're dealing with an applicant that has multiple felonies, charges here. She had every right to appear here today. No one stopped her from being here to voice her concerns or tell what she wanted to tell about the situation. Nobody stopped her from that. She had that right. I think to continue on is just dragging it out. Like I said, there's multiple felony counts and she did not come back and list that on any of the applications to us, or she might've had the charges before, but to come back and say well you have a right that you can collect a penalty of \$7500, which is more than the normal for that charge, I don't think you allow someone to buy in on this. You don't give them the right of if you made the mistakes, you had felony counts, but for a price we'll let you buy in. I don't agree with that. I think we do what's right. We voted, we move forward. That's just my opinion.

Mr. Griffin – I will point out the DOAH Hearing. Even if we get out of the abeyance tomorrow, we will not have a ruling by February. Just with the timetables at DOAH, we will not have a ruling by February.

Chair – Thank you.

Mr. Barnhart – Board members, I don't think that's critical, because as I've said before, I think they're two (2) separate matters. There's two (2) different standards of proof. Two (2) different burdens of proof. I think they can go independently. I don't think the outcome of this will necessarily keep you from voting upon a renewal license. It is totally different.

Mr. Griffin – If I could, and I'm not trying to argue for or against, I'm just trying to provide the Board with this information. I don't anticipate losing at DOAH, but I wouldn't be a decent trial attorney if I didn't anticipate the prospect of losing. If I go to DOAH on the disciplinary matter and they do not suspend her license or they put her on probation, then I think you've already got your answer as to how whether or not to grant or deny the license will go. So, I just want to kind of let the Board know, because if they say put her on probation then in what world would it make logical sense for a judge to say you've broken the rules, I think you should be put on probation, but you're such a danger that I'm not going to let you get your license. That just doesn't jive.

Mr. Barnhart – That issue will not be before this judge. It's just the disciplinary matter. The decision for licensing, that's why you're on the Board. That's why you invest hours and hours into reviewing these cases, trying to protect the public and doing what's right for your industry. So, I implore you not to mix up those two (2) different things.

Ms. Simon – But, Mr. Barnhart, isn't it the same test? We're going to be testing her fitness for licensure. It's not the same test?

Mr. Barnhart – It's strictly a disciplinary matter. If Mr. Griffin proves the charges, then the next step is what penalty should the judge recommend. The Board is not bound like the ALJ [inaudible] these penalties.

Mr. Griffin – You're not, but essentially the ALJ is kind of tipping their hand. If the ALJ says that you shouldn't be revoked, you should be put on probation, commonsense would dictate they're not going to turn around and say deny the license.

Mr. Barnhart – I disagree. This is their job. Fitness for licensure is your job. It's not the ALJ's job.

Mr. Griffin – But it's going to become the ALJ's job.

Mr. Barnhart – No it's not.

Ms. Wiener – Of course it will.

Mr. Barnhart – Not unless you let it.

Ms. Wiener – That's not true, Mr. Barnhart. What will happen is, the disciplinary case goes forward. At the disciplinary level, if the ALJ simply says probation is the appropriate response, and then when we go to the hearing on the denial of the license, where an ALJ has already ruled that she's not unfit, it would be hard for this Board's lawyer to prove unfitness to win that case on the denial of the license. It's why it's all tied together.

Mr. Barnhart – I don't agree.

Mr. Hall – Maybe we explain to that judge that she's already on probation, the courts already have her on probation and it's continuing.

Ms. Wiener – And then we'll show the court, as is absolutely a fact that there has been no issue with her probation. She's fulfilled every term except that she hasn't lived long enough to get out of the time period.

Mr. Hall – I think we've been arguing over how much money did she take at Sears. We don't know.

Ms. Wiener – We do know.

Mr. Hall – I don't care if it's \$10 or \$5000.

Mr. Barnhart – It was enough to make a grand theft conviction.

Mr. Hall – If you take something that doesn't belong to you, you're a thief. It doesn't matter what amount she took. Maybe that's all she could get in her purse. I don't know, but she's a thief and she has multiple felony charges against her and we keep arguing that her character or integrity is there. I don't believe it is.

Ms. Wiener – But the reason that we're arguing that is because notwithstanding that you feel compelled by your heart to go one direction, as a regulatory body, you're constrained by the law and you're constrained by the disciplinary guidelines that are imposed upon you by the fact that a Board, not this Board per se, but a Board adopted those guidelines and has to live by them, and that's the legal fact. It might not feel good to you, as a Board, but the law is what's driving the outcome in this case. The law is what is driving the decision making. And so, again, I'm happy to bring Ms. Scott for the in-person meeting in February if that's the Board's pleasure.

Chair – Thank you. As we move forward on this, if there is a motion for denial from the Board members, we need to make sure that we delineate the items that Mr. Barnhart based his statements upon so that that can be included for the record as the reason for denial. So, if the motion is made, it would be made with the reasons for denial based upon what Mr. Barnhart will remind us of.

Ms. Simon – If we could do that right now. Mr. Barnhart, please state those statutory violations.

Mr. Barnhart – The crimes that have to be listed in the application for issuance or renewal come from ss. 497.141(5)(a) and 497.142(10), F. S. Then the reasons you might include if you want to deny the renewal application are ss. 497.152(2), crime related to the ability to practice, then the standards for funeral directors that I don't believe she has proven that she meets are s. 497.373(1)(c), F.S. and for embalmers s. 497.368(1)(c), F.S.

Chair – Thank you for that information. Board, what's your pleasure?

Mr. Helm – I don't know how to make the motion.

Mr. Barnhart – It would be either a motion to grant the renewal application for Ms. Scott, or a motion to deny the renewal application.

Mr. Helm – We've already denied it.

Mr. Barnhart – Right, and what Ms. Simon explained was that I didn't get the chance to explain to the Board that if you were going to deny the application, you would need to cite certain statutory violations and the Rule 69K-1.008, F.A.C. Those would be the reasons that you might use to deny this request for renewal.

Chair – Essentially, that was the reason that we opened this back up.

MOTION: Chair moved to deny the renewal application based upon the statutory violations and Rule stated by Mr. Barnhart. Mr. Hall seconded the motion.

Mr. Helm – Question?

Chair – Yes?

Mr. Helm – Do we not have to rescind the first denial?

Mr. Barnhart – This has never been acted upon.

Mr. Helm – Yes it has.

Ms. Wiener – Yes it was.

Mr. Knopke – Yes it was.

Chair – But we opened it back up.

Mr. Barnhart – We reopened this part back up.

Mr. Helm – But we didn't take the denial off. I'm just trying to do this the right way.

Chair – Mr. Williams?

MOTION: Mr. Williams moved to rescind the original motion for denial and moved to deny the renewal application based upon the statutory violations and Rule stated by Mr. Barnhart. Mr. Hall seconded the motion, which passed with one (1) dissenting vote.

9. Application(s) for Florida Law and Rules Examination

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

- (1) *Funeral Director (Endorsement)*
 - (a) *Blackwell, Marianna*
- (2) *Funeral Director and Embalmer (Endorsement)*
 - (a) *Kirk, Meriah*
 - (b) *Manuel, Melvin E*

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) *Embalmer*
 - (a) *Fischer, Ashley N F348933*
- (2) *Funeral Director*
 - (a) *Francis Jr., Nathaniel F400811*
 - (b) *Wilson, Ralph E F053086*
- (3) *Funeral Director and Embalmer*
 - (a) *Poitier, Juselle A F089479*
 - (b) *Rodriguez, Sylvia E F322042*
 - (c) *Valero, Roxana F401501*

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

11. Application(s) for Embalmer Apprentice

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

- (1) *Gonzalez-Marvaldi, Kendruja I F402618*
- (2) *Legge, Randall B F401518*
- (3) *Mankowski, Gabriela M F400776*
- (4) *Schmidt, Amanda D F404860*

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

12. Application(s) for Registration as a Training Facility

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

- (1) *Lawrence J Epps Jr d/b/a Epps Memorial Funeral Home (F300009) (Lake Wales)*

- (2) *L.C. Poitier Funeral Home, LLC (F349628) (Pompano Beach)*
- (3) *SE Combined Services of Florida LLC d/b/a Tampa Care, Administration & Training Center (F078942) (Tampa)*

Ms. Simon – This is an informational item. The Division has reviewed that applications listed and found them to be complete and that the applicants have met the requirements to be a training agency. Pursuant to Rule 69K-1.005, F. A. C., the Division has previously approved these applications.

13. Application(s) for Monument Sales Agent

- A. Informational Item (Licenses Issued without Conditions) – Addendum I**
 - (1) *Daube, Jennifer (F404070) (Gainesville)*

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

14. Application(s) for Change of Ownership (Collective Coversheet)

- A. Recommended for Approval with Conditions**
 - (1) *Foundation Partners of Florida LLC d/b/a Ammen Family Cremation and Funeral Care*
 - (a) *Application(s) for Cinerator Facility*
 - (b) *Application(s) for Direct Disposal Establishment*
 - (c) *Application(s) for Funeral Establishment*
 - (d) *Application(s) for Transfer of Preneed*

Chair – Mr. Clark?

Mr. Clark – Thank you, Mr. Chairman. I'd like to state for the record my affiliation with Foundation Partners Group of Florida. I will recuse myself from 14. A. (1) and (2).

Chair – Thank you, sir.

Ms. Simon – Foundation Partners of Florida, LLC (Foundation), a limited liability company, seeks approval of the following applications based upon a change of ownership: four (4) funeral establishments, a direct disposal establishment, a cinerator facility, and four (4) preneed branch office licenses. More specifically, the entities that are being acquired is as follows:

- 1) South Brevard Funeral Home – Ammen and Ammen PA d/b/a Ammen Family Cremation and Funeral Care, a licensed funeral establishment, license # F069411, physical address: 4001 S. Hopkins Ave, Titusville, FL 32780
- 2) South Brevard Funeral Home – Ammen and Ammen PA d/b/a Ammen Family Cremation and Funeral Care, a licensed funeral establishment, license # F041888, physical address: 950 Malabar Rd SE, Melbourne, FL 32907
- 3) South Brevard Funeral Home – Ammen and Ammen PA d/b/a Ammen Family Cremation and Funeral Care, a licensed funeral establishment, license # F053540, physical address: 1286 S. US Highway 1, Rockledge, FL 32955
- 4) East Coast Cremation, a licensed direct disposal establishment, license # F041972, physical address: 1005 S. Hickory Street, Melbourne, FL 32901
- 5) South Brevard Funeral Home – Ammen and Ammen PA d/b/a Ammen Family Cremation and Funeral Care, a licensed funeral establishment, license # F041850, physical address: 1001 S. Hickory Street, Melbourne, FL 32901
- 6) Space Coast Crematory, a licensed cinerator facility, license # F040883, physical address: 1001 S. Hickory Street, Melbourne, FL 32901

Enclosed are the separate applications regarding the above listed properties and application for a preneed branch office license. If approved, Applicant is acquiring all preneed assets and liabilities for these locations and is assuming responsibility for any outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced locations. The Division has no record of disciplinary action regarding Foundation. A background check for Robert Bukala, listed sole member and owner of the LLC for Foundation revealed no criminal history.

The Division is recommending approval subject to the following conditions:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.

- 2) That the closing on the transaction shall be substantially on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the applicant in the application and related materials provided to the Board or FCCS Division by the applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment(s) under the application(s) herein pass an onsite inspection by a member of Division Staff.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.
- 8) That the Applicant files for the Fictitious Names Ammen Family Cremation and Funeral Care and Space Coast Crematory within 30 days of the Board meeting.

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

Ms. Simon – Just to be clear, that was for all four (4) funeral establishments, the direct disposal establishment, the cinerator facility, and the four (4) preneed branch offices?

Chair – All six (6) listed.

Mr. Jones – Correct.

Chair – Thank you.

(2) Foundation Partners of Florida LLC d/b/a Beach Funeral Homes & Cremation Services

- (a) Application(s) for Cinerator Facility***
- (b) Application(s) for Funeral Establishment***
- (c) Application(s) for Transfer of Preneed***

Ms. Simon – Foundation Partners of Florida, LLC (Foundation), a limited liability company, seeks approval of the following applications based upon a change of ownership: two (2) funeral establishments, a cinerator facility, and two (2) preneed branch office licenses. More specifically, the entities that are being acquired is as follows:

- 1) Vieira Funeral Homes LLC d/b/a Beach Funeral Homes & Cremation Services, a licensed funeral establishment, license # F052125, physical address: 1689 South Patrick Drive, Indian Harbour Beach, FL 32937
- 2) Vieira Funeral Homes LLC d/b/a Beach Funeral Homes & Cremation Services, a licensed funeral establishment, license # F052124, physical address: 4999 North Wickham Road, Melbourne, FL 32940
- 3) Viera Crematorium LLC d/b/a Viera Crematory a licensed cinerator facility, license # F060612, physical address: 4999 North Wickham Road, Melbourne, FL 32940

Enclosed are the separate applications regarding the above listed properties and application for a preneed branch office license. If approved, Applicant is acquiring all preneed assets and liabilities for these locations and is assuming responsibility for any outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced locations. The Division has no record of disciplinary action regarding Foundation. A background check for Robert Bukala, listed sole member and owner of the LLC for Foundation revealed no criminal history.

The Division is recommending approval subject to the following conditions:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.

- 2) That the closing on the transaction shall be substantially on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the applicant in the application and related materials provided to the Board or FCCS Division by the applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment(s) under the application(s) herein pass an onsite inspection by a member of Division Staff.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.
- 8) That the Applicant files for the Fictitious Names Beach Funeral Homes & Cremation Services and Viera Crematory within 30 days of the Board meeting.

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

15. Application(s) for Funeral Establishment

A. Recommended for Approval with Conditions

(1) Baldwin Brothers Memorial Care Services Inc d/b/a Baldwin Brothers (Port Charlotte)

Ms. Simon – An application for a Funeral Establishment was received on September 5, 2019. The application was incomplete when submitted and completed on September 19, 2019. The Funeral Director in Charge will be Ruth Anne Yeats (F047012). A background check of the principals revealed the following criminal history as well as adverse licensing history:

Criminal History:

Evans P. Baldwin's criminal history was presented to the Board on the following occasions: in 2010 when he was approved for a preneed agent license; at the June 27, 2013 Board meeting when his Funeral Director Intern license was approved; and at the July 11, 2013, October 3, 2013, November 7, 2013, March 6, 2014, September 4, 2014, October 1, 2015 and April 2017, Board meetings when he applied to be a principal of an Establishment.

- On or about January 4, 2004, Baldwin pled guilty to the felony charge of leaving the scene of an accident with death, in Florida Circuit Court, Orange County. His sentence included 5 years supervised probation, 150 hours of community service including 10 hours of speaking to groups in victim awareness programs using a photo of the victim, a one-year restriction on his driver's license for business purposes only, payment of the victim's funeral costs, and court costs. He successfully completed the court-ordered probation.

Adverse Licensing History:

On May 1, 2014 the licensee was ordered to pay a fine in the amount of \$500.00 for failing to ensure that its personnel received approval from the Medical Examiner's Office prior to conducting a cremation. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

Mr. Knopke – Mr. Chairman?

Chair – Yes, Mr. Knopke?

Mr. Knopke – Let the record reflect that my brother is president of Baldwin Brothers and the fact that he's my brother will not influence my decision in any way, shape or form.

Chair – Thank you so much for that.

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. Williams seconded the motion, which passed unanimously.

Chair – Thank you, Ms. Wiener.

Ms. Wiener – Thank you.

(2) Coney Funeral Home Inc (Lakeland)

Ms. Simon – An application for a Funeral Establishment license due to a Change of Ownership was received by the Division on May 22, 2019. The application was incomplete when received and complete on October 6, 2019. The Funeral Director in Charge will be Sonji Coney Williams (F046960). A background check of the principals revealed no relevant criminal history. The change in ownership is due to a change in the entity’s principals adding Andrew Williams as a corporate officer. A search of adverse licensing history revealed the following disciplinary actions against the entity:

- On December 12, 1994, an administrative fine of \$796.00 was assessed for aiding and abetting an unlicensed person.
- On December 1, 1997, an administrative fine of \$1,000.00 was assessed and the entity was placed on probation for 6 months for having been disciplined by a regulatory agency in any jurisdiction for any offense that would constitute a violation of Chapters 470, 245, 382, 406, 497, or 872, or that directly relates to the ability to practice under Chapter 470.
- On October 10, 2007, an administrative fine of \$1,000.00 was assessed for failing to renew the establishment license, failing to assure compliance with all applicable law and rules, and failing to have the price of any casket offered for sale clearly marked on or in the casket.
- On April 6, 2010, an administrative fine of \$1,000.00 was assessed and the entity was placed on probation for 1 year for holding a body without embalming or refrigeration for more than 72 hours, for failing to properly affix identification to a body, and for failing to maintain a clean and sanitary preparation room.

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

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

(3) Legacy Options Bonita Springs LLC (Bonita Springs)

Ms. Simon – An application for a Funeral Establishment was received by the Division on October 22, 2019. The application was complete when submitted. The Funeral Director in Charge will be Michael Hoyt (F210956). A background check of the principals revealed no reportable 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.

Mr. Helm – Mr. Chair?

Chair – Yes, Mr. Helm?

Mr. Helm – They checked that refrigeration would be maintained onsite but then they attached something that said they would be using somewhere else. I think they just made a mistake.

Chair – Staff can confirm that at some time after the Board meeting, if that was an error.

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. Jones seconded the motion, which passed unanimously.

(4) The Warden Group LLC d/b/a Funerals by T.S. Warden (Fernandina Beach)

Ms. Simon – An application for a Funeral Establishment was received on September 17, 2019. The application was incomplete when submitted and completed on October 7, 2019. The Funeral Director in Charge will be Tyrone Warden (F042941). A background check of the principals revealed no relevant criminal history. A search of discipline orders revealed the following

adverse licensing history: On February 15, 2016, The Warden Group LLC (F077572) and Tyrone Warden (F042941) were cited \$250.00 each for advertising to sell prearrangements without a preneed license on their website. 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. Williams moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Hall seconded the motion, which passed unanimously.

16. Application(s) for Preneed Main License

A. Recommended for Approval without Conditions

(1) A Good Shepherd's Funeral Home and Cremation Services LLC (Oakland Park)

Ms. Simon – The Department received the application on October 1, 2019, and deficiencies were noted on the application. All deficiencies were resolved as of October 21, 2019. This is an application for a new preneed license. The sole principal and owner of the corporation will be Dwayne Sheppard, and a completed background check of the officer revealed no relevant criminal history. Applicant's qualifying funeral establishment license (License #F080820) was issued as of October 3, 2014. 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. Knopke moved to approve the application. Mr. Helm seconded the motion, which passed unanimously.

17. Application(s) for Preneed Branch License

A. Recommended for Approval without Conditions – Addendum J

Ms. Simon – The applicants have applied for preneed branch licensure. The applications were complete without reportable criminal or disciplinary history. It appears that the applicants qualify for branch licensure and the Division recommends approval of the applicants.

Chair – Mr. Clark?

Mr. Clark – I'd like to declare my affiliation with FPG Florida. I will recuse myself.

Chair – Thank you.

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

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

A. Recommended for Approval without Conditions

(1) Preconstruction Performance Bond

(a) SCI Funeral Services of Florida FBA Caballero Rivero Southern (North Miami)

Ms. Simon – Caballero Rivero Southern intends to construct a 1315 casket space mausoleum with 310 niches. Pursuant to s. 497.272, Fla. Statutes, typically, a pre-construction trust must be put in place if sales are going to occur prior to completion. However, s. 497.272(8) provides that in lieu of the pre-construction trust fund, the cemetery company may provide a performance bond in an amount and by a surety company acceptable to the regulator. The licensee has submitted for approval a performance bond, in lieu of a pre-construction trust. The mausoleum project, and the bond, is summarized as follows:

- 1) SCI Funeral Services of Florida, LLC FBA Caballero Rivero Southern (F039497)
Address: 15000 West Dixie Highway, North Miami Beach, FL 33181
Project: 1315 casket space mausoleum with 310 niches
Bond Amount: \$1,776,763.20
Bond Number: SUR0056653
Surety Company: Argonaut Insurance

Cemetery agrees to complete said construction in accordance with the terms of the construction agreement with Mausoleums USA. The Division recommends approval of the preconstruction performance bond without conditions.

Chair – I'd like to declare my affiliation with SCI Funeral Services of Florida, LLC. That affiliation will in no way affect my ability to render a fair and unbiased decision on this or anything else coming before the Board here today.

MOTION: Mr. Helm moved to approve the pre-construction performance bond. Mr. Hall seconded the motion, which passed unanimously.

B. Recommended for Approval with Conditions

(1) Trust Transfer Request(s)

(a) Scarano Services Inc. d/b/a Joseph A. Scarano Pines Memorial Chapel (F019454) (Pembroke Pines)

Ms. Simon – Scarano seeks approval of the transfer of the following: Joseph A. Scarano Funeral Home, Inc. Preneed Funeral Trust (90/10 trust dated 11/13/90) and Joseph A. Scarano Funeral Home, Inc. Preneed Funeral Trust (90/10 trust, dated 7/5/94) under SunTrust Bank, N.A. to the First Amended and Restated Agreement and Declaration of Trust of Independent Funeral Directors of Florida, Inc. Master Preneed Trust Fund A under Argent Trust Company (Argent) and Cadence Bank, N.A. (Cadence). If approved, Argent and Cadence is or will be the successor co-trustees, all as more specifically set out in Mr. Wilson's letter dated October 22, 2019. The Division recommends approval subject to the conditions as follows:

- 1) That the representations of Scarano, as set forth in Mr. Wilson's letter dated October 22, 2019 be deemed material to the Board's decisions herein.
- 2) That within 90 days of this Board Meeting Argent and Cadence provide the FCCS Division (ATTN: LaShonda Morris), the effective date of the transfer and certifications including the following:
 - A letter signed and dated by one of its officers, certifying that it meets one or more of the applicable criteria in s. 497.266(1), and s. 497.458(1(b), to act as trustee of the trust to be transferred pursuant to Mr. Wilson's letter dated October 22, 2019.
 - A letter signed and dated by one of its officers, certifying the dollar amount of trust assets being transferred to the trust as identified in Mr. Wilson's attached letter dated October 22, 2019.
 - Acknowledgement of receipt of the amount of trust assets being transferred as specified under the former trust, as identified in Mr. Wilson's attached letter dated October 22, 2019.
- 3) That the Board's executive director, for good cause shown, may extend the compliance time frame for the above specified conditions, an additional 90 days.

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

C. No Recommendation

(1) Request(s) to Secure Loan to Complete Mausoleum Construction

(a) Osceola Memory Gardens (Kissimmee)

Ms. Simon – Osceola Memory Gardens, Kissimmee, Florida is looking to secure a loan in the amount of 850,000.00 through Centennial Bank for the portion of the construction and development costs associated with the completion of an existing mausoleum project. The mausoleum project is summarized as follows:

- 1) Osceola Memory Gardens, Kissimmee (F039522)
Address: 1690 Old Boggy Creek Road, Kissimmee, FL 34744
Project: Completion of Mausoleum consisting of 672 crypts and 78 niches
Loan Amount: \$850,000.00
Proposed Bank: Centennial Bank

Cemetery agrees to complete said construction in accordance with the terms of the construction agreement with McCleskey Construction Company. The Division noted that the Cemetery is in good standing with no active investigations and the last examination was completed on November 17, 2017. The examination noted two (2) infractions in regard to deposits made to the care & maintenance trust fund which were corrected, and a Certification of Corrections was signed by Terry Lee Roberts on November 30, 2017. It is appropriate at this time for a Board member to make a motion to approve or disapprove the loan.

Chair – Is this dedicated cemetery property that's being pledged towards this loan?

Ms. Simon – Is there a representative in the audience? Can you please raise your right hand and be sworn in? Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

Terry Roberts – I do.

Ms. Simon – Please state your name and spell your last name for the record.

Mr. Roberts – Terry Roberts (R-O-B-E-R-T-S).

Chair – Is this dedicated cemetery property that's being pledged towards the loan?

Mr. Roberts – It hasn't been dedicated cemetery property. We do have a mausoleum sitting on it. When we purchased this land originally in 1958, it was ten (10). This parcel we added on right next to it. I can't answer the question if it's been dedicated as cemetery property or not.

Mr. Knopke – May I ask?

Chair – Please.

Mr. Knopke – On the city or county records, do they show it as cemetery property? Is it considered part of Osceola Memory Gardens?

Mr. Roberts – It belongs to the cemetery.

Mr. Knopke – Ok. Have you made any burials on this land at all?

Mr. Roberts – No ground burials but mausoleums.

Mr. Knopke – Okay. So, where the mausoleum is being...

Mr. Roberts – It's right next door to the existing mausoleum.

Mr. Knopke – So, there's an existing building there, Terry, and you're building a new one?

Mr. Roberts – Yes.

Mr. Knopke – And you're mortgaging the land that the building sits on?

Mr. Roberts – Well, the bank wants to mortgage the land. Yes sir.

Mr. Knopke – That, for me, creates a problem. The statute says you can't mortgage cemetery land unless there's a good cause for it. *"497.270, F.S. Minimum acreage; sale or disposition of cemetery lands – (1) No land in a licensed cemetery may be sold, mortgaged, leased, or encumbered without prior approval of the licensing authority pursuant to procedures specified by rule. Such approval shall not be given unless it be shown that such approval would be in the public interest."* I'm sure you're going to tell me that the public interest is that there's no mausoleum there.

Mr. Roberts – Well, we're out of crypts and have been out for a year.

Mr. Knopke – My concern is if you can't pay the loan, or Mr. Russell doesn't step up and pay the loan, because he's personally guaranteeing this...

Mr. Roberts – Mr. Russell and myself are personally guaranteeing it.

Mr. Knopke – If for whatever reason you can't and bank ceases control of that in that unlikely event, the consumer kind of gets stuck out with a fence around it and can't visit those crypts. I don't know that I would vote against it, but I'm saying that it's a

unique situation, and in all honesty, I don't know that this group has ever looked at. Usually people come up with performance bonds as opposed to going down this road. And, Ms. Simon, the Department didn't make a recommendation?

Ms. Simon – No sir.

Mr. Knopke – I guess my concern is we're opening a new door here.

Ms. Simon – Understood.

Mr. Knopke – Ms. Simon, have we gotten...

Chair – Would you read that to us again, please? I'm sorry.

Mr. Knopke – No, I don't mind.

Mr. Roberts – Excuse me. I thought it said we could not encumber the land without prior approval.

Mr. Knopke – That is correct. It's under s. 497.270, F.S.: (1) *No land in a licensed cemetery may be sold, mortgaged, leased, or encumbered without prior approval of the licensing authority pursuant to procedures specified by rule. Such approval shall not be given unless it be shown that such approval would be in the public interest. The licensing authority may adopt rules establishing criteria for approval of the sale, mortgaging, leasing, or encumbering of cemetery land.*" I attempted to look for a rule. I did not find one. There could be one there. In the unlikely event that you all don't pay and the bank takes over the land, and in looking through the file the bank wanted some type of land or something other than personal guarantees. The question to the Department, and again let me state it for the record so that there's no question. I've known Terry for almost as long as dirt exists. I've also known Bob Russell almost that long. I think a lot of the people in this room, some of the older ones know both of them well. I'm very confident that they're not going to walk out on this deal. My concern here is the precedent being set for the next group that walks in the door and the next group after that that wants to do the exact same thing. Thus, the question, has the Department asked them for their personal financials, as we do on preneed renewals? That would make me comfortable. Not the bank having it, but you all having the opportunity to look at that and say that they have the ability to fix this if this loan goes south.

Ms. Simon – Mr. Knopke, if it's not within your Board package, we've submitted everything that was requested or sent in from the entity.

Mr. Knopke – Will you tell me if it's in there or not?

Ms. Simon – Yes sir.

Mr. Knopke – Because I got stuck on the issue and maybe didn't look far enough. If it's there, that's fine.

Chair – I don't believe it is.

Mr. Jones – I don't remember seeing it.

Mr. Roberts – I don't think the personal financials are included.

Mr. Knopke – Ok. Would you all be averse to submitting them?

Mr. Roberts – Not at all. It would not be a problem.

MOTION: Mr. Knopke moved to approve the request subject to receipt of acceptable personal financials (Terry Roberts, Robert Russell, Mike Russell) being received by the Department with thirty (30) days of this meeting. Mr. Williams seconded the motion, which passed unanimously.

Mr. Roberts – You'll have them.

Mr. Knopke – Thank you.

Mr. Helm – Mr. Chair, I have a question so that I can get a little education on the previous case. If this property was not connected to the cemetery, would it be fine?

Chair – That’s why I asked initially if it was dedicated cemetery property.

Mr. Helm – If this property was next door it would be fine?

Mr. Knopke – That’s why I was questioning whether there were burials and Mr. Roberts said no, there were entombments.

Mr. Helm – I understood what you were doing but I want to know {inaudible}.

Mr. Knopke – In there, it lays out how you can get approval.

Mr. Helm – Thank you.

Mr. Knopke – Thank you.

19. Consideration of the Recommended Order filed by the Division of Administrative Hearing’s Administrative Law Judge Lawrence Stevenson and Consideration of the Exceptions filed by Board Counsel

**A. Recommended for Denial
(1) Williams, Charles**

Chair – Mr. Barnhart has some remarks.

Mr. Barnhart – This next agenda item, for Mr. Charles Williams, is Mr. Williams in the audience? Charles Williams? Ok, Board members, let me explain briefly what we’re about to do. I don’t think we’ve done this for some time, and that is to consider exceptions in the Recommended Order. Mr. Williams applied for a license, and he reviewed the Recommended Order by the ALJ. Upon my review of the Recommended Order, I prepared a document entitled Exceptions to the Recommended Order. These are like objections that I have to the judge’s Recommended Order. Mr. McCann, Max McCann, from the General Counsel’s Office of the Department of Financial Services will serve as your legal advisor. During this time, I’m going to present the exceptions, but look to Mr. McCann for advice on what to do and Mr. McCann will help you through that. So, I’m going to be presenting each exception and then after each exception after some discussion, I will be looking for a motion to either grant or deny the exception, and I believe we’ll do that six (6) times, six (6) exceptions. The main reason I filed this was because we have deadlines and like fifteen (15) days after the Recommended Order was issued, not knowing what the Board would want me to do, I file Exceptions, which I believe are changes that should be made to the Recommended Order when you issue your Final Order, because you have a Final Order authority in this matter. Then that Final Order can be appealed to a District Court of Appeal. So that’s what I’m going to be presenting. Look to Mr. McCann for advice and I think that he’ll make sure that you vote yay or nay for each exception. Then, at the end, they’ll be a final vote as to whether you want to grant or deny the licensure. Are there any questions? Mr. McCann, did you want to say anything before I start?

Max McCann – No, thank you.

Mr. Barnhart – Okay. Board members, if you’ll bear with me, I’ll try to make this relatively short. I don’t want to just read the exceptions because I’m sure you looked through them.

Chair – We have those as part of our Board packet.

Mr. Barnhart – If you look at page 4 of 10, that’s the first exception, **Exception to Finding of Fact #58**. This is the only exception I have to what’s considered a Finding of Fact. I believe the ALJ made an error in his recitation of the issue. If you look at the part that’s underlined, that’s the part that I think should be included in your Final Order. What he said was, “Therefore, the only issues in this proceeding are Mr. Williams’s good character and whether granting him the license he seeks would create a danger to the public.” I believe this part of the Finding of Fact ought to include the language, “whether lewd and lascivious molestation of a child under 12 years of age relates to the practice of, or the ability to practice, the profession of funeral director and

embalmer under section 497.152(2):”. I believe the judge left that out of his summary of what the case was all about. Do you have any questions of me?

Chair – That’s one of your exceptions, and we’ll need to vote on agreeing or disagreeing?

Mr. Barnhart – Whether to accept it or not.

MOTION: Mr. Knopke moved to accept the Exception to Finding of Fact #58. Mr. Helm seconded the motion, which passed unanimously.

Mr. Barnhart – Okay. Thank you. The next exception I filed was at the bottom of page 4 of 10, [Exception to Conclusions of Law #72](#). I believe this Conclusion of Law relates back to the Finding of Fact. On page 5, you’ll see that the language there towards the bottom of the page that is lined out is what I think the Board should delete from its Final Order, because the ALJ said that, *“The Board’s Notice of Intent to Deny does not assert that Mr. Williams’ application is being denied because the felony in question was directly or indirectly related to or involving any aspect of the practice or business of funeral director [or] embalming under section 497.142(10)(c)1.”* I think he should add this language. If you’ll disregard the last line and a half at the bottom of the page. I think that found its way in there from another draft I had. If you could excuse that mistake and put a period after the word licensure in the next to last line. I think you should have, *“Applicant did not satisfy the requirements set forth in Section 497.141(5)(a), 497.152(2), 497.368(1)(c) and 497.373(1)(c), Florida Statutes. The Board also finds that applicant’s criminal activity relates to the practice of, or the ability to practice, the professions or occupations for which the applicant seeks licensure.”* If you have questions about this or are confused, you can ask me, but you can also ask Mr. McCann what you should do for this particular exception.

Ms. Simon – Mr. Barnhart, I believe when you said 497.371(1)(c), is that 497.373(1)(c)?

Mr. Barnhart – I meant to say 497.373(1)(c).

Chair – Thank you. Any questions? Is there a motion?

MOTION: Mr. Knopke moved to accept the Exception to Conclusions of Law #72. Mr. Hall seconded the motion, which passed unanimously.

Mr. Barnhart – The next one is top of page 6, [Exception to Conclusions of Law #80](#). And you can see there which language I propose should be lined out. What the judge did in this case was he was looking at a real estate case, which has a totally different statutory scheme for licensing. They have a provision that allows for basically someone to rehabilitate themselves if they had some kind of crime of moral turpitude or a crime related to the practice. They can establish good conduct at a later date and possibly be licensed and I don’t think the judge was correct in applying the standard in Chapter 475, Part 1, to your chapter, which is of course Chapter 497. And then, at the very end of that exception, I proposed to add the language there that you see underlined because the Florida Real Estate Commission in this Final Order rejected the paragraph that the ALJ [inaudible] in your particular case here, the Williams’ case. So, that would be my presentation. If you have any questions, please ask Mr. McCann.

MOTION: Mr. Williams moved to accept the Exception to Conclusions of Law #80. Mr. Hall seconded the motion, which passed unanimously.

Mr. Barnhart – Thank you. Page 7, about the middle of the page, [Exception to Conclusions of Law #81](#). There you can see the language that I propose to delete from the Recommended Order when you issue your Final Order. That is the judge’s opinion as to why Mr. Williams could be issued a license. My recommendation there is to accept that Conclusion of Law except for the language that I have lined out in the proposed language on page 7.

Chair – Is there a motion?

MOTION: Mr. Hall moved to accept the Exception to Conclusions of Law #81. Mr. Jones seconded the motion, which passed unanimously.

Mr. Barnhart – Top of page 8, [Exception to Conclusions of Law #82](#). As you can see, I propose to eliminate some of the language that I've lined out towards the bottom of page 8 and then at the top of page 9 I propose that you add the language I underlined, in that particular case, to put in your Final Order. Are there any questions about this exception?

MOTION: Mr. Williams moved to accept the Exception to Conclusions of Law #82. Ms. Anderson seconded the motion, which passed unanimously.

Mr. Barnhart – The last exception, [Exception to Conclusions of Law #86](#). As you can see, my proposal is to eliminate those two (2) lines that appear in the Recommended Order and substitute them with the language just below it, along with a Conclusion that you should enter a Final Order denying the application for licensure as a funeral director and embalmer.

Chair – Is there a motion to the exception?

MOTION: Mr. Jones moved to accept the Exception to Conclusions of Law #86. Mr. Williams seconded the motion, which passed unanimously.

Chair – Thank you for your presentation on that. Mr. McCann, do you have any instructions or direction or wisdom to grant to this Board.

Mr. McCann – Yes, Mr. Chair. The Division recommends that the Board reject or modify the Findings of Fact and Conclusions of Law and enter a Final Order denying the Petitioner's application for licensure as a funeral director and embalmer.

Chair – Thank you. Is there a motion to that effect?

MOTION: Mr. Hall moved to enter a Final Order denying the Petitioner's application for licensure as a funeral director and embalmer. Mr. Williams seconded the motion, which passed unanimously.

Chair – Thank you, Mr. McCann.

Mr. McCann – Thank you.

Chair – We appreciate you being here with us.

Mr. McCann – Thank you very much.

20. Request(s) to Renew License
A. Recommended for Denial
(1) Allen, April (F086406)

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

21. Executive Director's Report
A. Operational Report

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

Ms. Schwantes – Just two (2) quick updates. The first, we've been getting questions about the application process. The CFO, as you know, has to nominate persons to fill each position to the Governor's Office and the Governor is the one who appoints the applicants to the Board. So, we expected that the nominees would be notified soon. There have been some changes in the CFO's Administration Office and there's a resulting delay from that. I do not know right now when those notifications will go out. So, I just wanted to give an update about that.

Also, normally, at the December meeting we present the Division's financials for the preceding fiscal year. There were some reconciliation issues regarding the format of the financials, as presented to the Board, so those are getting resolved and I expect to be able to present those either at the next Board meeting or probably since there's usually questions about them, I

think it'll be easier to discuss them in person, probably at the February meeting. So, other than that, if there are no questions, the next Board meeting is telephonic meeting in January. This ends the Executive Director's report.

Chair – Thank you.

Mr. Helm – Question?

Chair – Mr. Helm?

Mr. Helm – Ms. Schwantes, did we lose the loan that was appropriated for us?

Ms. Schwantes – Are you talking about the \$1.2 million?

Mr. Helm – Yes.

Ms. Schwantes – It is not lost. It has still been appropriated for us, but there's still back and forth discussion with legislative staff and others as to the appropriate use of the funds in terms of whether the replacement IT systems are in the cloud, whether they're not, etc. So, we have not been given spending authority for the money yet, but it is still appropriated.

Mr. Helm – How do you feel about it? Are we going to get it?

Ms. Schwantes – I certainly hope so.

Mr. Helm – That's not what I asked you.

Ms. Schwantes – Yes, I do think we're going to get it. I do not know when. If we get it this year, we're going to have to do something to try and have it carried over to next year, because I do not believe it's possible at this point for the systems to get replaced, to go through the contracting process, get a vendor and get the systems replaced by fiscal year end.

Mr. Helm – It's been going on for about two (2) years, hasn't it?

Ms. Schwantes – Yes sir. Just to clarify, I think Mr. Helm referred to it initially as a loan. It's not a loan. I just want to be sure that we're on the record correctly.

B. 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.

Chair – I can't believe that we collected everything. I think that's unprecedented. I think we have one (1) or two (2) down there, but it's unprecedented. That's good Board work there.

Monthly Report of Fines and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 December 5, 2019 Board Meeting
 Date of Report: November 22, 2019

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Amlosgi, LLC d/b/a AC Marchbank Family Funeral Home	10/3/2019	243122-19-FC	\$300	11/25/2019	Yes	
Hickson Funeral Home	10/3/2019	230160-18-FC	\$3,250	11/25/2019	Yes	
Eugene Hickson	10/3/2019	230171-18-FC	\$4,750	11/25/2019	Yes	
Brown Memorial Funeral Home & Cremation Service, LLC	10/3/2019	243275-19-FC	\$300			
Eric L. Wilson Funeral & Cremation Services PA	10/3/2019	243598-19-FC	\$300	5-Dec-19	Yes	
Jay Johnson's Funeral Home	10/3/2019	243336-19-FC	\$300	12/5/2019	Yes	
Manker Funeral Home	10/3/2019	243589-18-FC	\$300	12/5/2019	Yes	
Thome's Mortuary, Inc.	10/3/2019	243591-19-FC	\$300	5-Dec-19		
Bernardo Garcia Funeral Home (Hialeah) Inc.	10/3/2019	243338-19-FC	\$300	12/5/2019	Yes	
Bernardo Garcia Funeral Home (Kendall) Inc.	10/3/2019	243340-19-FC	\$300	12/5/2019	Yes	
Bernardo Garcia Funeral Home (Westchester) Inc.	10/3/2019	243497-19-FC	\$300	12/5/2019	Yes	
DeLawrence Charles Blue	10/3/2019	24708-17-FC	\$2,000	12/5/2019	Yes	
Ponte Vedra Valley, Inc.	10/3/2019	243547-19-FC	\$300	12/5/2019	Yes	
AJ Manuel Funeral Home, Inc.	1-Aug-19	243597-19-FC	\$300	19-Sep-19	Yes	
AJ Manuel Funeral Home, Inc.	1-Aug-19	243599-19-FC	\$300	19-Sep-19	Yes	
Alphonso West Mortuary, Inc.	1-Aug-19	244891-19-FC	\$300	9/19/2019	Yes	
Cannon Funeral Home, LLC	1-Aug-19	243574-19-FC	\$300	19-Sep-19	Yes	
Dean Lopez Crematory	1-Aug-19	243540-19-FC	\$300	19-Sep-19	Yes	
Dean Lopez Funeral Home (Big Pine)	1-Aug-19	243538-19-FC	\$300	19-Sep-19	Yes	
Dean Lopez Funeral Home	1-Aug-19	243534-19-FC	\$300	19-Sep-19	Yes	
Final Waters LLC d/b/a Todd Ferreira Funeral Services	1-Aug-19	243523-19-FC	\$300	19-Sep-19	Yes	
L C Pottier Funeral Home:	1-Aug-19	243541-19-FC	\$300	19-Sep-19	Yes	
Stone Brothers Funeral Home, Inc	1-Aug-19	243593-19-FC	\$300	19-Sep-19	Yes	
Vior Funeral Home Inc.	1-Aug-19	243587-19-FC	\$300	19-Sep-19	Yes	
Holmes Funeral Directors	1-Aug-19	218173-19-FC	\$3,000	16-Sep-19	Yes	
Alberta Leonardo	1-Aug-19	218178-19-FC	\$2,000	16-Sep-19	No	A
Denyck Theodis Richardson Jr.	1-Aug-19	221194-19-FC	\$1,500	16-Sep-19	Yes	
Heath Funeral Chapel, Inc.	1-Aug-19	243577-19-FC	\$300	16-Sep-19	Yes	
Heath Funeral Chapel, Inc d/b/a Polk County Crematory	1-Aug-19	243580-19-FC	\$300	16-Sep-19	Yes	
SCI Funeral Services of Florida LLC-Naples d/b/a Hodges Funeral Service of Naples Memorial Gardens	1-Aug-19	233405-18-FC	\$1,500	16-Sep-19	Yes	
SCI/Florida Memorial d/b/a Florida Memorial Gardens	1-Aug-19	209459-17-FC	\$2,000		Yes	
Florida Keys Crematory	1-Aug-19	243502-19-FC	\$300	16-Sep-19	Yes	
Miami Funeral Services & Crematories, Inc d/b/a National Funeral Homes	1-Aug-19	243639-19-FC	\$300	25-Sep-19	Yes	
Miami Funeral Services & Crematories, Inc d/b/a Auxiladora Funeraria Nacional	1-Aug-19	243636-19-FC	\$300	25-Sep-19	Yes	
BK's Removals	Jun-19	230157-18-FC	\$1,500	24-Aug-19	Yes	
Reed's Runeral Home	Jun-19	230173-18-FC	\$2,000	24-Aug-19	No	No longer licensed
Hubert C. Reynolds Junior	Jun-19	and 236982-18-	\$5,250	24-Aug-19	No	A

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.

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

Chair – I have no report

23. **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.

24. **Office of Attorney General's Report**
 A. **Attorney General's Rules Report**

Ms. Simon – Mr. Barnhart?

Mr. Barnhart – Ok Board members. First up is the Rules Report. Do you have any questions about the Rules Report?

Chair – None.

**BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES RULES REPORT
DECEMBER 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-21.001	Licensure Procedure; Consequences of Operating Prior to Licensure.		09/26/2019(RD)	10/03/2019 Vol.45/No.193			
69K-21.005	Display of Licenses.		09/26/2019(RD)	10/03/2019 Vol.45/No.193			
69K-21.007	Responsibility of Funeral Director in Charge.		08/12/2019(RD)	08/20/2019 Vol.45/No.162			
69K-24.034	Operating Procedures for Refrigeration Services.		09/26/2019(RD)	10/03/2019 Vol.45/No.193			
69K-32.002	Approved Courses.		09/26/2019(RD)	10/03/2019 Vol.45/No.193			

B. Proposed Rules: 69K-7.015, 69K-21.001, 69K-21.007, 69K-32.002 (Action)

Mr. Barnhart – I met with Ms. Simon, Ms. Schwantes and the rule attorney, Ms. Karniewicz, and this is what we'd like to propose to the Board members as changes in language for these particular rules. One rule was kind of outdated. The one about the HIV/Aids course. The others are because of legislation in the past legislative session. Have you had a chance to review the proposed language and deletions?

Chair – Tell us where that is.

Mr. Barnhart – If it's all in order, 69K-7.015, 69K-21.001, 69K-21.007, and 69K-32.002, F.A.C. If you are comfortable with those proposed changes in those rules, I think we can take a motion to approve the language in all four (4) rules.

Chair – Is there a motion?

MOTION: Ms. Anderson moved to approve the proposed changes to the language in Rules 69K-7.015, 69K-21.001, 69K-21.007, and 69K-32.002, F.A.C. Mr. Jones seconded the motion, which passed unanimously.

BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES
RULES REQUIRING BOARD ACTION

69K-7.015 Trust Agreements and Trustees.

(1) Any trust company ~~operating pursuant to chapter 660, F.S.,~~ or a state or national bank holding trust powers or a savings and loan association holding trust powers shall be considered a ~~t~~Trustee qualified to serve as a ~~t~~Trustee of a preneed trust under ~~s~~Section 497.458 or 497.464, F.S., or a pre-construction trust under section 497.272, F.S.

(2) Any trust company ~~operating pursuant to chapter 660, F.S.,~~ or a state or national bank holding trust powers shall be considered a ~~t~~Trustee qualified to serve as ~~t~~Trustee of a ~~c~~Care and ~~m~~Maintenance ~~t~~Trust under section 497.266, F.S.

(3) All ~~t~~Trust ~~a~~Agreements and all amendments thereto must be submitted to and approved by the Board of Funeral, Cemetery, and Consumer Services.

(4) Each ~~t~~Trust ~~a~~Agreement must provide for:

- (a) Resignation of the ~~t~~Trustee.
- (b) Replacement of ~~t~~Trustee by ~~t~~Trustor/~~s~~Settlor/~~g~~Grantor.
- (c) Transfer of assets of the ~~t~~Trust.

(5) No Change.

(6) Transfer of assets of any trust must be made only to a qualified ~~t~~Trustee as set forth in subsection (1) or (2), above, and only after written notice to the Department and the Board of the name, address, and location of the successor trustee; the effective date of the selection thereof; and the transfer of the assets which must be certified to by the replaced or resigned ~~t~~Trustee to which shall be attached a receipt thereof from the ~~s~~Successor ~~t~~Trustee.

Rulemaking Authority 497.103, 497.465(9) FS. Law Implemented 497.266, 497.285, 497.465 FS. History—New 4-25-94, Amended 4-6-03, Formerly 3F-7.015.

69K-21.001 Licensure Procedure; Consequences of Operating Prior to Licensure.

Applications for funeral establishment licensure shall be filed with the Department at least 30 days prior to the date the establishment is scheduled to open for business.

(1) No change.

(2) Each application shall include the name of the full-time funeral director in charge. ~~The individual so designated shall not be the full-time funeral director in charge of any other funeral establishment or the sole qualifying direct disposer in charge of a direct~~

~~disposal establishment.~~

(3) Through (4) no change.

Rulemaking Authority 497.103, 497.380 FS. Law Implemented 497.380 FS. History--New 2-13-80, Amended 3-26-84, Formerly 21J-21.01, Amended 10-21-91, Formerly 21J-21.001, Amended 2-17-00, Formerly 61G8-21.001.

69K-21.007 Responsibility of Funeral Director in Charge.

(1) Through (2) no change.

(3) Each full-time funeral director in charge shall be responsible ~~for only one funeral establishment and shall also be responsible~~ for making sure the funeral establishment and all persons employed in the establishment comply with all applicable laws and rules of the Board. This subsection shall not be construed to absolve funeral establishments or other persons from liability for their violations of such laws and rules.

Rulemaking Authority 497.103, 497.380 FS. Law Implemented 497.380 FS. History--New 12-29-91, Formerly 21J-21.007, Formerly 61G8-21.007.

69K-32.002 Approved Courses.

The following courses are approved by the Board as meeting the requirements of sections 497.367 and 497.378, F.S.:

(1) An approved communicable diseases ~~and HIV-AIDS~~ course must consist of a minimum 1-hour presentation for renewal and a minimum 2-hour presentation for initial licensure.

(2) Courses approved by the Department of Health, or any Board within the Department of Health pursuant to section 455.604, F.S., are approved, provided they meet the 2-hour minimum presentation requirement.

Rulemaking Authority 497.103, ~~497.367~~, 397.368, 497.369, 497.370, 497.373, 497.374, 497.378, 497.379, 497.602, 497.603 FS. Law Implemented ~~497.367~~, 497.368, 497.369, 497.370, 497.373, 497.374, 497.378, 497.379, 497.602, 497.603 FS. History--New 5-24-89, Amended 2-14-90, Formerly 21J-32.002, Amended 2-20-95, 9-18-95, 4-5-98, 4-14-02, Formerly 61G8-32.002, _____.

C. Rules Requiring No Action: 69K-21.005, 69K-24.034 (No Action)

Mr. Barnhart – There’s two (2) rules there, 69K-21.005 and 69K-24.034, F.A.C. Those are just technical changes brought about by letters from JAPC. Questions?

Chair – No.

BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES
RULES REQUIRING NO BOARD ACTION

69K-21.005 Display of Licenses.

(1) Through (3) no change.

(4) The photograph attached to the license pursuant to sections 497.380(14) and (15) and 497.604(10), F.S., shall be approximately two inches by two inches, not more than 6 years old, and permanently affixed to the displayed license.

Rulemaking Authority 497.103(1)(n), 497.103(5), 497.380(10), 497.604(9)(c) FS. Law Implemented 497.380(10), ~~497.380(14)~~, ~~497.380(15)~~, ~~497.385(1)(i)~~, 497.604(9)(c), ~~497.380(15)~~, 497.604(10) FS. History—New 12-19-90, Amended 5-20-93, Formerly 21J-21.005, 61G8-21.005, 3-19-12.

69K-24.034 Operating Procedures for Refrigeration Services.

Refrigeration services shall establish a system of identification of human remains received. This system shall be designed to track the identity of the remains from time of receipt until delivery of the remains to the authorized persons, or until otherwise disposed of in accordance with instructions from the authorized person.

Rulemaking Authority 470.040, 474.041, 497.103, 497.385, 497.386 FS. Law Implemented 497.385, 497.386, ~~497.388~~ FS. History—New 5-21-95, Amended 9-18-95, Formerly 61G8-24.034.

- D. SERC Checklist Rule 69K-7.015 (Action)*
- E. SERC Checklist Rule 69K-21.001 (Action)*
- F. SERC Checklist Rule 69K-21.007 (Action)*
- G. SERC Checklist Rule 69K-32.002 (Action)*

Mr. Barnhart – Next, we have four (4) different SERC Checklists. Looking at the checklists, it is Ms. Schwantes' estimation, and I agree with that, that there's no significant impact on small businesses. We see the different definitions of what small businesses are.

Chair – Can we take all those at the same time in a vote?

Mr. Barnhart – When it's time to vote, you sure can?

Chair – Is it time to vote?

Mr. Barnhart – Are you ready?

Chair – Yes.

MOTION: Ms. Anderson moved to approve the four (4) SERC Checklists for Rules 69K-7.015, 69K-21.001, 69K-21.007, and 69K-32.002, F.A.C. Mr. Jones seconded the motion, which passed unanimously.

Mr. Barnhart – I have one more question, which has nothing to do with any rules, but I have to ask it anyway. Does the Board want to consider a Notice of Noncompliance for the first violation of each one of these four (4) rules, which you just approved the changed language? It does not apply, so if you could do a motion to answer that question in the negative, that's what I'll pass on to JAPC and the Bureau of Administrative Code.

Ms. Simon – It's a required question, Board members.

Mr. Barnhart – So, if I can have a motion that we answer that question in the negative.

Mr. Jones – Motion.

Mr. Hall – Second.

Chair – And it's been seconded. All those in favor, aye?

Board members – Aye.

Chair – And any opposed? The motion carries.

Mr. Jones – Thank you, Mr. Barnhart.

Mr. Barnhart – That concludes my report. Thank you.

25. Administrative Report

The information was provided on the Agenda.

26. Disciplinary Report

The information was provided on the Agenda.

27. Upcoming Meeting(s)

- A.** January 2nd (Teleconference)
- B.** February 6th (Tallahassee – Betty Easley Conference Center, 4075 Esplanade Way, Room 166)
- C.** March 5th (Teleconference)
- D.** April 2nd (Tampa – Embassy Suites by Hilton Tampa Airport Westshore, 555 N Westshore Boulevard)
- E.** May 7th (Teleconference)
- F.** June 18th (Daytona Beach – TBA)
- G.** July 22nd (Boca Raton – FCCFA Annual Convention)
- H.** August 13th (Orlando – TBA)
- I.** September 3rd (Teleconference)
- J.** October 1st (Jacksonville – Florida State College at Jacksonville, Advanced Technology Center, 401 W State Street)
- K.** November 5th (Teleconference)
- L.** December 3rd (Gainesville – TBA)

28. Adjournment

Chair – Well again, the Board has exceeded expectations. What a great Board we have. Any questions, comments for the Board? Thank you for serving. You're appreciated. We're adjourned.

The meeting was adjourned at 1:43 p.m.