

MINUTES
BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES
RULES COMMITTEE MEETING
(ANDREW CLARK, CHAIR – SANJENA CLAY – CHRIS JENSEN – DARRIN WILLIAMS)
VIDEOCONFERENCE MEETING
SEPTEMBER 30, 2025 – 10:00 A.M.

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

Ms. Mary Schwantes – Good morning. Mr. Clark, are you ready for us to begin?

Mr. Andrew Clark – Good morning. I am.

Ms. Schwantes – Good morning. I'm going to go ahead and read the opening statements. My name is Mary Schwantes. I'm the Division Director for the Division of Funeral, Cemetery, and Consumer Services. Today is Tuesday, September 30, 2025, and it's approximately 10:00 a.m. This is a public meeting of the Rules Committee for the Board of Funeral, Cemetery, and Consumer Services. This meeting is being held via video conference. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting, as well as all meeting materials, has been made available to all interested persons. Information relating to this meeting has also been published on the Division's website. Ms. LaTonya Bryant is recording the meeting and minutes will be prepared.

The purpose of this meeting is to conduct the business of the Rules Committee. Specifically, the Committee will be revisiting sixteen (16) of the eighty-seven (87) rules contained in Chapter 69K Florida Administrative Code, that it previously reviewed in July and August. The Committee previously determined that these sixteen (16) Shared Rules should be revisited for possible development. As you know, there are three (3) rule review deadlines under SB108 and newly created s. 120.5435, Florida Statutes. The first is a report due October 1st, which must set out the rules which are being reviewed this year and a five-year plan for the review of all rules. The second report is due January 1st and must include detail as to what the agency plans for each of the reviewed rules, whether it should be changed, repealed, or left the same. By April 1st, all rules which the agency determines should be open for development must be open and in the rulemaking process. The information and decisions we are working on today is for the January 1st report. This is the first time we've used a videoconference for purposes of the Rules Committee, and there are a few procedural matters that may differ from normal Board meetings. I don't know that we will have an issue with this today since I don't see anybody attending by phone. But anyway, I'll go through some of this.

As a general rule, please do not utilize your video camera for the meeting unless you are a committee member, Board counsel, or an authorized Division employee. At this meeting, public comments will be taken during the review of each rule. Comments should be lifted limited only to that particular rule at that time and ultimately only to the rules which are listed in the agenda, which are the 16 rules which the Committee will be revisiting today. This is the way we're going to handle the public comments on each rule. Turn your video camera option on when we have reached the agenda item on which you want to be heard and raise your hand to be called upon. Then turn your video camera option off again as soon as your matter has been addressed by the Committee. After receiving comments from those attending with video cameras, we will ask if there are any public comments from those attending by phone. Again, unless somebody appears by phone, I don't think that's going to be an issue. But in that way, we're hoping that we can make sure that everybody who wants to be heard on an issue can be recognized by the Chair to express their concerns.

As always, we need everyone on the call who's not speaking to place their phone or audio feed on mute. The ambient noise coming from someone's phone or audio which is not muted causes severe disruption to the meeting and if you're not muted, you may be muted by Division staff. As a result, you may need to call back into the meeting because that may be the only way to unmute your phone. Also, if you're using your computer or smartphone for your audio feed, please remember to speak directly into the microphone on your device. To do so otherwise, negatively impacts the recording of this meeting.

Just as in a live meeting, persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Committee Chair, Andrew Clark, runs the meeting. Persons desiring to speak

should initially ask the chair for permission and make sure that they are recognized and acknowledged by the Chair Clark before they speak. At this time, I'll call roll. Andrew Clark?
Chair Clark – Present.

Ms. Schwantes – Sanjena Clay?

Ms. Sanjena Clay – Present.

Ms. Schwantes – Chris Jensen?

Mr. Chris Jensen – Present.

Ms. Schwantes – Darrin Williams?

Mr. Darrin Williams – Present

Ms. Schwantes – Thank you, sir. There is a quorum for the business of the Committee. For our records I'll also need to do a roll call of other members of the Board to confirm if they are attending the meeting in the audience. I think, since again we don't have anybody on phone, I will just note that I see Ms. Peeples and I did see Mr. Ferreira. Is there anybody else from the Board whose name I have not called? Hearing none. Mr. Chair, would you like for me to continue with the rest of the agenda items?

Chair Clark – Yes, please. Thank you.

Ms. Schwantes – Thank you.

B. Action on the Minutes
(1) August 19, 2025

Ms. Schwantes – These are for the Committee's review and possible consideration of adoption. Assuming approval by the Committee, they will be presented to the Board for review at its October 9th meeting. We do need action on that.

MOTION: Ms. Clay moved to approve the minutes. Mr. Williams seconded the motion, which passed unanimously.

Ms. Schwantes – Thank you.

C. Action on the Report and Recommendations to Board
(1) Report and Recommendations from Meeting on August 19, 2025 – Addendum A

Ms. Schwantes – In your materials is the proposed report and recommendations to the Board from the Committee's meeting on August 19th. This report sets out the results of the Committee's revisit of fifty (50) rules last month. Of the fifty (50) rules, the Committee determined that no changes were needed to twenty-two (22) of the rules and that twenty-eight (28) rules should be revisited. Sixteen (16) of those rules, the Shared Rules, are on today's agenda for review. With your approval of the report, we would like to present it to the Board at its October 9th meeting. Committee action is needed on the plan. It needs to be submitted to the Board for consideration at the Board's October meeting, in order to meet the October deadline. We do need action on that, please.

MOTION: Mr. Williams moved to approve the report and recommendations. Mr. Jensen seconded the motion, which passed unanimously.

Ms. Schwantes – Thank you, again.

D. Overview of Materials Provided

Ms. Schwantes – As we get into the details of today's review, I wanted to give you a brief overview of the materials that are provided for this review session.

(1) For Committee Use During Meeting

(a) Rules Review Workbook Prepared for Rules Committee September 2025 – Addendum B

Ms. Schwantes – This workbook is needed for today's use. I've tried to simplify this a good bit from the last meetings, only including public and Committee comments and the ultimate decisions from the prior meetings. So, you'll no longer see the table we worked on with all of the questions that came from Section 120.5435. The last table following each rule is for our use today in noting any comments or decisions.

(b) Written Public Comments Received from Wendy Wiener – Addendum C

Ms. Schwantes – These are the written public comments received in preparation for today's meeting. As with the last meeting, we only received written comments from Wendy Wiener on behalf of FCCFA and SCI. No other written comments were received. We can discuss these in detail as we go through the rule review, and it should be noted that while Ms. Wiener included a copy of all the rules being discussed today, she had no proposed changes on four (4) of the rules. You'll see those listed on Page 1 of Addendum C. Are we good so far? Mr. Chair, with your approval the Committee can now begin its review of the rules on the agenda today. For this I suggest the Committee members look at the workbook, Addendum B, but you have Addendum C readily available so that they can consider as applicable as we go through the process. And since I did note that Ms. Wiener is on the call, I would suggest too that we ask her during public comment for any comments she wants to make on her changes. Shall I start?

Chair Clark – That would be great. Thank you.

E. Shared Rules – For Revisit (16 TOTAL)

(1) 69K-5.0025 – Inactive Preneed Licenses

Ms. Schwantes – This rule begins on Page 3 of the workbook. Again, the only thing I need to really summarize here, and I'm not going to go through that every time because we all know that these were voted to be open, but there were public comments received at the last meeting. Ms. Wiener suggested written comments for this one, and that is found on Addendum C, Page 2. I think we should open it for public comments at this time.

Chair Clark – Ms. Wiener?

Ms. Wendy Wiener – I'll just stay on camera since most of these comments come from me, or all of the comments come from me on behalf of both FCCFA, its members, and SCI. We spoke about this in some detail at the last meeting, but the requirements set forth in this rule for inactive licensees simply aren't enforced, they aren't relevant, they aren't a thing, so we would suggest striking paragraph five (5) and renumbering the remainder of the rule.

Chair Clark – Thank you, Ms. Wiener.

Ms. Schwantes – Are there any further public comments? Hearing none. Committee members, what we're really trying to get to today is this is the final chance for you to take a look at these sixteen (16) rules prior to what's needed for the January first report, which is when we have to file with JAPC, whether we're going to open the rule for changes or repeal it or leave it alone. As we're going through these, consider in mind there may be some, for example, that you decide not to do anything with this time or otherwise. The other thing to mention to you is that the Department is still reviewing these rules. I have notes on some that I know on which the Department is going to be suggesting changes. Those again will be more grammar, technical, links, etc., and not Board duty related. So as we go through, if you want to go ahead and pursue, for example, make recommendations to the Board that Ms. Wiener's suggestions be, this is an example, be pursued, keep in mind that we will, for most of these rules, be coordinating with Board counsel and our OGC Rules counsel on the language that ultimately will go before the Board, because we would want to incorporate what the Department's changes would be. Does that make sense?

Chair Clark – Yes, it does make sense. The only question I have is if we were to agree, like in this case, if we say, you know, the inactive preneeds is not enforced. So, if the Committee agrees that number (5) should be removed, that will take a motion and then a second, and then that's when Board counsel will start working on the final language. Is that correct?

Ms. Schwantes – I think we could do that, or we could do it in two (2) votes. Ms. Munson raised her hand so she may have some comments on this, but I was thinking probably two (2) votes. One would be, yes, definitely open for rule development. And second, if you want to pursue what Ms. Wiener has suggested, or if you might have something else that you want to do. Ms. Munson, what did you have in mind?

Ms. Rachelle Munson – I was just clarifying that. I wanted to just confirm whether this Committee, in this meeting, was going to prepare rule language. That's like wordsmithing at this meeting, so that at the Board meeting, whenever this is presented, it will be voted on. Are we just determining what to do? I mean, I just wanted to confirm. For this example, this is simple. Ms. Wiener is suggesting that just we delete, so that's just removing the language. There will be some of these where you want to reword them, and I just wanted to confirm, because that's a very open discourse to say how you want to say something, or are we just going to vote to, yes, we definitely want to change his language. We'll come back with a new language, maybe at my responsibility or somebody. I don't know. I just was confirming that. Deletions are easy. Wordsmithing is a little more time consuming, and that's also fine for today.

Ms. Wiener – Mr. Chair?

Chair Clark – Yes, Ms. Wiener?

Ms. Wiener – To Ms. Munson's comments, I did make sort of a lot of rewording changes, add here, delete here. So, this one, super simple, because we were just taking away. But as you go through these, you'll see that in some places we've added language, we added a definition to one of them, things like that. So, what we did not do are the kinds of things that we think the Department will do on the back end. And that is any necessary sort of truing up of language that they may just want to like maybe the name of a form is no longer accurate or something of that nature. That we did not do, but we did make substantive recommendations on all manner of changes, words, inclusions, and deletions.

Chair Clark – Thank you, Ms. Wiener. So, for the Committee, if I understand kind of what we were talking about, I think the next step would be just to have a vote to confirm that we do want, we agree that substantive changes need to be made, we'll vote on that and then we can have a discussion about what changes do we want to see made and then we'll make a vote on that. So, do we have a motion to confirm that changes are needed.

MOTION: Ms. Clay moved that changes are needed. Mr. Jensen seconded the motion, which passed unanimously.

Ms. Schwantes – Mr. Chair, the Committee's next step would be to review what Ms. Wiener has suggested if that's the one that the Committee wants to pursue.

Mr. Jensen – May I ask a question?

Chair Clark – Yes, Mr. Jensen.

Mr. Jensen – A question for Ms. Schwantes. When Ms. Wiener mentioned some of this stuff getting cleaned up on the back end, I noticed in the comments here we have a thing to include email along with mail. Is that some of the things you're talking about?

Ms. Schwantes – Correct.

Ms. Wiener – Yes,

Ms. Schwantes – Mr. Jensen, anything that's procedural or technical changes like links, sometimes grammar, sometimes the use of - remember how we talked about how the rules say Board, Division, Department interchangeably, we want to make that consistent as we make changes through these rules. And I know that one of the things the Department has been looking

at, and we do have our counsel on phone as well, but I know one of the things we've been looking at is to delete the sub paragraphs on the statutory authority. It just makes it easier, so you don't have to go back and change it every time the sections change as a result of legislative changes.

Mr. Jensen – Very good.

Ms. Schwantes – Things like that will be interwoven into the Board's duty related changes. I'm trying not to use the word substantive, because Ms. Munson got on to us a little bit about that last time, but the changes that you all would like to see that have to do with Board duties. So, Mr. Chair, I think that another motion is needed at this time regarding Ms. Wiener's proposal. Or further discussion.

Ms. Munson – May I?

Ms. Schwantes – Yes, please Ms. Munson.

Ms. Munson – May I just confirm for clarification that the entire deletion of (5). I believe the first sentence is requested to be removed because it just doesn't happen anymore, I think is what I'm understanding. And the second sentence is requested to be removed, the additionally sentence, because the Department has the authority to do it anyway, so you don't need to make a statement about it. I just want to make sure that everyone understands why we're doing what we're doing.

Ms. Wiener – And that's exactly right. The second sentence is already set forth in law. So, I think part of the goal of this exercise is to eliminate rules that simply restate the law because we don't need a bunch of rules coming up, the rules when the law already says what it says. And the first section, first sentence is we simply don't do that anymore, or ever, I'm sorry. We never did that.

Chair Clark – Ms. Munson, did you have anything else, or is that ok?

Ms. Munson – No, I have nothing else. I just, you're about to vote on whether or not to delete it. I wanted to make sure the Committee understood why they were voting to delete it or not.

MOTION: Chair Clark moved to delete (5) and then renumber six (6) to make current (6) to the new (5). Ms. Clay seconded the motion, which passed unanimously.

Ms. Munson – This is going to be a standing statement. I think Director Schwantes has just entered a statement regarding this. Wherever you see rulemaking authority and law implemented, if there's a subsection, like it says, 497.103(1), law implemented 497.465(7). The (1) and the (7) is going to be removed when we present this for rulemaking because I think that I believe that there's now a movement or a request by JAPC that we no longer include subsections. So that's just going to be standing. We're {inaudible} voting on it but just know that's what's going to happen. If we open it up for development, I'm not going to do it with every rule, only those that we open for development. We will eventually get to every rule, but when we open it up, I'm going to take those subsections off.

Chair Clark – Thank you.

Ms. Schwantes – Kind of along those lines of what Ms. Munson said, and again, this is something we're all working through for the first time, every time we have one of these meetings, we're at a next phase in what's totally new to us. And so ultimately the rule as presented for development is not going to look like what Ms. Wiener has proposed, because again, the other changes will be brought in that Ms. Munson referred to and that the Department's working on, at least on the Shared Rules. But I just wanted to make sure that we're all on the same page on that.

(2) 69K-5.012 – Application and Renewal Procedures for Broker of Burial Rights License

Ms. Schwantes – This rule begins on Page 4 of the workbook and the comments and today's table are all found on Page 5. Ms. Wiener did propose changes on this one. They are found on Addendum C, Page 3.

Ms. Wiener – Mr. Chair, shall I address those comments?

Chair Clark – Yes. We'll open it for public comment.

Ms. Wiener – Wonderful. So, two (2) changes suggested here, bringing the renewal fee for burial rights brokers in line with other renewal fees. So, that's the change to subsection (1)(b). We proposed an additional subsection (3) to make it clear that licensees that hold burial rights brokers licenses shall only engage in activities for which they are licensed. We discussed a little bit at the last two (2) meetings the fact that burial rights brokers regularly go to individuals in the community and buy cemetery spaces and buy people's preneed contracts, amass a little grouping of cemetery spaces and a preneed contract, and then they resell those to other people. That is not what a broker does. That's what cemeteries do and what preneed sellers do. So, this law simply makes clear in a fairly short number of words, that the burial rights brokers can only engage in those activities set forth in s. 497.281 and specifies that they're prohibited from purchasing interment rights and merchandise or services for the purposes of selling those items to a third-party. Just like if you were a real estate broker, that is when you find party A that wants to sell and party B that wants to buy and you bring those together. That's what burial rights brokers are intended to do. You would not be acting as a real estate broker if you simply bought a bunch of houses and then sold them to somebody or various people. That would be a different kind of activity. So, this language is intended to clarify the statutory limitations.

Chair Clark – Thank you, Ms. Wiener. Do we have any other public comments? Hearing none. And again, for the Committee, our first consideration would be to make a motion to keep this open, then we can have discussion about proposed language.

MOTION: Mr. Jensen moved that changes are needed. Mr. Williams seconded the motion, which passed unanimously.

Mr. Jensen – Discussion, Mr. Chair?

Chair Clark – Yes, Mr. Jensen.

Mr. Jensen – Yes, I do agree with what Ms. Wiener is saying. I almost think we need to take this a little bit further. Some of the comments, I'm just wondering, if we've got a burial broker out there, I think they should have to be required to have a license for every cemetery they're dealing with. So, you know, if you have a broker and they got lots in this cemetery, that cemetery, and the other cemetery, I think they should have to have a license for each individual cemetery they're dealing with. I don't know if that's addressed somewhere or not. And also, I had one other comment here. I see here in one of the paragraphs it's talking about like \$5 for an unlicensed fee or should we not get rid of that? I do agree these fees need to come up to the standards of some of our other licenses.

Ms. Wiener – Mr. Chair, may I address?

Chair Clark – Ms. Wiener?

Ms. Wiener – Yes, thank you. So, Mr. Jensen, I disagree that we would want to have these brokers tied to any cemetery at all because that's actually the very point. They're not supposed to hold a cemetery space in any cemetery. That's for a cemetery to do. Instead, they're supposed to find a person out in the world who wants to sell their space at any given cemetery and find another person out in the world that wants to buy that space. They bring them together and they get a commission or get paid for that in some way. So, I would say the less we tie them to a given cemetery, the better. If we were to attach them to specific businesses, I think they would be further emboldened to continue violating the law or going outside of the scope. As to your second point, I definitely think we want to keep them paying the unlicensed activity fee like all other licensees are required to do.

Mr. Jensen – Mr. Chair, may I?

Chair Clark – Yes.

Mr. Jensen – Ms. Wiener, I'm definitely agreeing with you. However, I'm looking at this saying, you know, the unlicensed activity fee, we need to be a little, maybe a little bit more stringent on that. The reason I say each cemetery is I understand

what you're saying, but looking at this from the public's perspective, I understand that it's only an internment right that they bought. But if you look at their things, probably 80% of the ones out there say deed on them. So how are we getting around that? Because they think, you know, a deed, they immediately equate that to a house. And, you know, even though they don't own that spot, they just own the right to be interred there, most of the things that they get from cemeteries say deed on.

Ms. Wiener – Well, the burial rights brokers aren't actually selling the space, not selling it. Instead, what they're actually doing is bringing a buyer to the cemetery to transfer the space and the cemetery in fact charges a transfer fee. But the fact that the cemetery doesn't have to find another buyer for that space or doesn't have to repurchase space from the current owner, that's what the broker is getting paid for. So, I think it would be nearly impossible to require a burial rights broker to be in any way related to any particular business because they may find someone that wants to sell an internment right in an area of the state that's totally not where they are. So, then they would have to somehow become licensed by that cemetery. And I think the most important point is right at this moment, our statutory scheme doesn't contemplate that at all. And so, what you're talking about would really be an overhaul of the burial rights broker section of the Florida law. And I think the Division counsel had their hand up. I saw that a moment ago, flash up.

Ms. Schwantes – Mr. Chair, Megan Herring has her hand up when you have an opportunity.

Chair Clark – I'm sorry. I didn't see it. Who has their hand up?

Ms. Schwantes – Megan Herring. And to be honest, that's my fault because I did not specify to put your camera on and just hold your hand up since there are so few people. And so, she did it electronically.

Chair Clark – Ok. So, I'm going to give Mr. Jensen just one chance to respond to Ms. Wiener's last comment then I'll get to Ms. Herring.

Mr. Jensen – Thank you, Mr. Chair. I'm just looking at this from the public's perspective because I have run across people and they say, well, it says deed right here, why can't I sell it? So, you know, and we raised the transfer and the lot fee and Ms. Weir, I think you are a proponent of that, that went from \$50 to a lot of places are what, \$250 now? So, you know, and I'm sure that was in reaction to this right there, you know, because you got that fee. But as you know, and I know most 99% of these cemeteries, they're not going to buy these lots back for anywhere close to market value, unless they're just a really good deal. So how do we protect the public when they're walking around with a piece of paper that says deed on it?

Ms. Wiener – Well, they can sell their internment right. They don't need a burial rights broker to do that. They can go to their neighbor next door and say, hey, we're moving out of town, but we have these amazing spaces down here at Culley's around the corner from where I live, and would you guys like to buy these spaces? And if the neighbors say yes, then those two (2) parties can go to the cemetery. They don't have to have a burial rights broker at all. Instead, a burial rights broker comes into play if I say, hey, I'm moving out of town and I call a burial where it's broken, I go, I have these spaces, but I don't need them anymore. Their job is to find a buyer for them. And then those parties go get that cemetery to transfer the lot. But what they're doing and what our changes are intended to prevent is they go, oh, you don't want these spaces anymore? Well, let me buy them. Now they hold the spaces and now they are acting as a cemetery in essence because they are then reselling cemetery land to other people. And it's not even so much an issue with regard to the land itself. That's less the issue. The real problem with burial rights brokers, and the other thing we're seeking to address in this change, is that they also buy people's preneed contracts. And a tenant of Florida law is that you can't sell preneed what you cannot deliver at-need. That's why if you want a preneed license to sell services, you have to have an at-need license to sell services, either via cemetery or funeral home. So, they're holding contracts that they're selling. So, they're selling contracts for services and merchandise that they cannot actually provide on an at-need basis. And so, we think that this change stays within the confines of the statutory authority, which we always have to be, I know Ms. Munson is like, she's watching out for that because we can't go beyond the statutory authority. We have to be implementing an actual statute in every rule. And we think that this change does that, stays in the confines of the current law and does make it clear what that law entitles a licensee to do. But I wholly support your efforts to revise this law entirely but that's a question for another day.

Chair Clark – Thank you, Ms. Wiener. Anything else, Mr. Jensen?

Mr. Jensen – I'm good, Mr. Chair. Thank you.

Chair Clark – Ms. Haring?

Ms. Megan Herring – Thank you, Mr. Chair, and apologies for the hand-raising. I'll turn my camera on next time. So, listening to this discussion between Ms. Wiener and Mr. Jensen, I just wanted to redirect you to the title of this rule. This is a procedures rule, so this is what forms and what fees and what requirements need to be fulfilled to apply for a license. So, while I understand that this may be within the confines of the statute this may not be within the single subject of rule requires. So this rule specifically is talking about procedures and while this is a change the Board is entitled to make, I would caution the Board about where they are putting changes and if that change follows the subject matter of the rule, because at this point the subject matter would then be changing to what a licensee is allowed or is not allowed to do instead of how do I apply for a broker or rights license?

Chair Clark – Thank you, Ms. Herring. Ms. Munson, and then I'll go to Ms. Wiener.

Ms. Munson – My comment is with regard to this suggestion that the license fee be increased to match others. I just would like to remind the body that any type of fee increase will subject the Department to review the cost of that. You know, whenever we do rulemaking, you all get tired of me asking the same questions and the SERC questions, just as a reminder, because this may come up with for thought and other rules as well. Will the proposed rule amendment have an adverse impact on small business? That's going to require you to determine yes or no. Or will the proposed rule amendment be likely to directly or indirectly increase regulatory costs to any entity, including government, in excess of \$200,000 in the aggregate in Florida within a year after the implementation of the rule? So, if the Board does not get a No to that, the Department will have to do a SERC, which is a very comprehensive analysis, fiscal analysis, before any of that rule change can be contemplated. And I'm just putting that on the table not to deter or encourage, but that's what fee increases, and any type of increase presents as a consideration for this body. I just wanted to mention that. Thank you.

Chair Clark – Thank you, Ms. Munson. Ms. Wiener?

Ms. Wiener – Thank you. So, Department Counsel does raise an important point, and I would recommend a further change to this rule so that we change the title of the rule so that there's not another rule where this limitation really could be placed, but I think it's an important distinction. And so, we could certainly change the name of the rule to Application, Renewal Procedures and Limitations for Broker of Burial Rights License, so that we can sweep everything up into this rule because she does make a good point. And with this definition, it is somewhat limited to those procedural components, but by changing the title, I think that that would satisfy JAPC, although my experience with JAPC is much more limited than either of the other lawyers on this call that work for the state.

Ms. Munson – I may note that that type of change may not actually achieve our goal because then the title, if it's reworded that way, is more than one subject, right? It's application, and instead of this looks like it's just procedures the way it's written now. That way it's talking about application and also including procedures. I know Ms. Herring may have a comment about it but just as food for thought, that may not cause you to get your single subject.

Chair Clark – Thank you. Ms. Herring?

Ms. Herring – Thank you, Mr. Chair. While changing the title may incorporate that policy change, I don't think that will get through JAPC. I think they would have an issue with us changing a procedure rule into more of a substantive rule. Yes, I see your look, Ms. Munson. Instead of like changing it in more of what a licensee can and can't do. So, another thought is to, of course, make a new rule. That would be outside of the rule review process right now. So, in that vein, that may allow for more discussion and more time to flush out language and get more comments from the public about what that would entail. Or additionally, it could be a statutory change.

Chair Clark – Thank you, Ms. Herring.

Ms. Schwantes – Mr. Chair?

Chair Clark – Yes, Ms. Schwantes?

Ms. Schwantes – Just some food for thought as the Committee's thinking about this. All these points are very valid what Ms. Herring brought up, Ms. Wiener, and Ms. Munson. I think for our purposes today, we're trying to get the information that we need for that January 1st report, which is what we're going to do with the existing rules. Ms. Herring is correct that opening a new rule would not be part of today. The Committee could decide to revisit this again. We could bring it up even though it would not be part of the Board rules that we plan to discuss at the next meeting, we could bring it up again at the next meeting. But after that, I really need to be able to say by January 1st for that January 1st report because everything's got to go back before the Board for approval before we file that January 1st report. We have to know for that report whether it's going to be a change, stay the same, or repeal. And for a lot of these, if the issues are just too much for this purpose for the January 1st report, then it may be the kind of a thing that is put off to another review time or after the April 1st deadline that we've currently got.

Chair Clark – Could it be appropriate, because I agree, and Mr. Jensen, I don't know if you have any other thoughts, but I agree with everything Ms. Wiener says so far. Increasing the fee, I think, makes sense. We've talked about it in previous meetings, clarifying what's in bounds and out of bounds. If there's a way to do it through rulemaking, I think that would be ideal from my perspective. But it sounds like maybe for today's purposes, potentially, the motion could be to increase the fee with an understanding if the Committee, agrees, that we tackle this new (3) at some point. If we agree it does need to be addressed, but we understand that it can't be addressed today. It sounds like we can at least move forward with 69K-5.012 with the fee increase, as long as we know this is something, if the Committee agrees, we'd like to address at some point. Would that be fair?

Mr. Jensen – Is that a motion?

Chair Clark – Just move forward with the fee increase but figure out a way to clarify what's inbound and out of bounds for this particular license.

Ms. Schwantes – Mr. Chair, I just wanted to also add, Ms. Munson was correct also, of course, what she about how that we would have to answer the question, do the studies and stuff like that. There are only seventeen (17) licensed burial broker licenses, so it's a very small group and I would not think that under those circumstances that kind of a report, I forgot what you called it, but that kind of report that you were talking about.

Ms. Munson – Do we know the amount? What would the new fee be?

Ms. Schwantes – They are suggesting raising the fee from \$150 to \$250 per licensee. I also am not sure. I looked at this and read it as if that's the initial application fee, not the renewal fees. And so, I just want to point out that that might also be an issue as we tweak this further. But if the intent is that it should be not only the initial application fee, but the renewal fees, we may want to look at it. And that's something I know Ms. Herring has been doing a large study of all of our statutes and rules.

Ms. Munson – So the renewal fee is currently \$100?

Ms. Schwantes – It's a \$100 difference.

Ms. Munson – The renewal fee is currently \$100? Okay. Actually, in (2), is that what I'm reading or am I not?

Ms. Schwantes – Yes, it says renewal fee of \$100 there. That is correct. In subparagraph two. Currently, the initial application fee is \$150, and the renewal fees are \$100, but I did note that Ms. Wiener in her initial public comments today made a comment about changing the renewal fee as well, and I don't know whether she intended that one change that's in there to be for both or what.

Ms. Wiener – It's just, that's where the fee is referenced, so I didn't really have an intention specifically one way or the other. I was just trying to true this fee up to make it consistent with other licenses.

Ms. Schwantes – The initial application fee or for the renewal fees?

Ms. Wiener – Well, this fee refers to, it's hard to tell by looking at this document what it actually refers to.

Ms. Schwantes – Subparagraph (2) in the rule does talk about the renewal fee of \$100.

Ms. Wiener – So, I guess that would be the renewal fee. It doesn't say what the application fee is, I guess is my question, or point. That appears to be the renewal fee, but this rule applies to applications and renewals, but that's the only fee that's set forth therein.

Ms. Schwantes – And actually, that's what we're saying, (1)(b) talks about a non-refundable license fee currently \$150...

Ms. Munson – Which is the application fee.

Ms. Schwantes – It is. The very last sentence in (2) talks about a renewal fee of \$100.

Ms. Wiener – Oh, I see. Listen, burial rights brokers, though there are only seventeen (17) of them registered, are a real problem, especially for cemeteries. So, my clients would support making the barrier to entry higher than it currently is. So, I encourage any changes, but I totally missed that second fee in (2). My apologies for that.

Ms. Munson – But we don't want to do it, just for the record, for public record, to make anything harder, because its market open competitive, all that type of stuff. That type of language you probably, so whatever reason you do it, it just can't be for. And I'm just going to wait to hear what this body votes on, on what the change is and where those changes are so I can make a note.

Chair Clark – Yes, the only thing I would add is I remember it being brought up before that it wasn't punitive, it was just one of the lowest fees out there. So, I think we were trying to get it in line with some of the other fees. Mr. Jensen?

Mr. Jensen – Yes, I think we're all trying to get to the same place, so to speak, and I kind of like what you said, Mr. Chair. Can you put that in the form of a motion so we can move on?

Chair Clark – I will certainly try. I will make a motion that the language be changed, for the application and renewal fee, and I think by statute it's limited at \$250, so I would put both at \$250. As part of my motion, for the Division's consideration, is to allow this Committee to review the limitations of this license at a subsequent Rules Committee meeting. That would be my motion.

MOTION: Chair Clark moved that changes are needed, as stated. Mr. Jensen seconded the motion.

Chair Clark – We have a motion to increase the fees with an understanding that we will try to address the limitations of this particular license at a subsequent meeting, and it's been seconded. Any discussion on the motion?

Ms. Munson – Just clarification, Ms. Schwantes, is that the standard renewal fee, \$250?

Ms. Schwantes – I don't remember off the top of my head and I {inaudible}.

Ms. Munson – So, for the renewal portion of it, \$250 or what is consistent with standard renewal fees would probably be the motion.

Chair Clark – I'm fine with that.

Mr. Jensen – Second.

Chair Clark – Ms. Schwantes, is that okay?

Ms. Schwantes – We can take a look and see. I know that the renewal fees differ by the different types of licenses, so it's not going to be a standard. I also don't know what the statutory maximum is on the renewal fee. We need to take a look at that. I honestly didn't think about it until we started talking and Ms. Wiener said renewal.

Chair Clark – Yes, I did look at 497.281 before and I know it said not to exceed \$250, but I don't recall if it was the application or renewal. So, I'm okay with that. Mr. Jensen, are you okay with that minor change to the motion?

Mr. Jensen – Yes. Absolutely.

Chair Clark – Thank you. Mr. Jensen.

Ms. Clay – Just for clarification.

Chair Clark – Yes, Ms. Clay?

Ms. Clay – I'm sorry. So, are we saying that your motion will be contingent upon staff clearing the language?

Chair Clark – Essentially, yes.

Ms. Clay – Okay.

Ms. Schwantes – As to the renewal fee only.

Chair Clark – All right we have a motion and it's been seconded. All those in favor say Aye.

Committee members [Unison] – Aye.

Chair Clark – Any opposed? And that motion carries.

Ms. Schwantes – Thank you.

(3) 69K-5.0125 – Minium Records to be Maintained by Burial Rights Broker; Inspection of Records

Ms. Schwantes – This rule is found on Page 6 of the workbook and your tables for your public comments, etc. begin on Page 7 with today's table on Page 8. Written comments were received on this rule from Ms. Wiener, and they are found on Addendum C, Page 4.

Chair Clark – Any public comment? Ms. Wiener?

Ms. Wiener – Thank you. So, in this particular rule, we added a definition of Division because it was missing from that rule. It may not be necessary depending on what happens with the way that, as Ms. Schwantes has said, on the back end of this process, the Department will go through and sort of true up the terms used for the regulator. So that might not be necessary. But the real point was to make sure that records that are required to be maintained by the rule, you can require them to come to the offices or the Divisions offices or whatever offices we want to call them for inspection. Right now, one of the other problems with burial rights brokers is that they are unable to be inspected because most of them don't have an office. They're not bricks and mortar businesses. They're not required to have any offices. They're not required to maintain their records in any other way other than as set forth in this rule. And frankly, most of them carry them around in the trunk of their car. And they don't end up getting examined because that makes life hard. So, this would simply be an addition to the rule to require that when an inspection of these records is required that they produce the records at the Division's office, Department's office, at the regulator's offices, whatever that would be. So, from my perspective, you could, if you agree to that substance, you could approve this change and then the Division and Department staff will work together to make sure that the name of the regulator that is appropriate becomes what's referenced in this rule, because it might be Department's offices, it might not be Division's offices.

Chair Clark – Thank you, Ms. Wiener. Any other public comments? Hearing none. Mr. Williams?

Mr. Williams – Okay, thank you so much, Mr. Chair. So, a couple of questions, Ms. Wiener. If you give me some background, and you may have explained it, but I'm still not grasping why we lined out the licensee or registrant. That's question one. And question two is, how do we come with the two-year concept? Like, is there a reason why its two years?

Ms. Schwantes – Mr. Williams, I believe you might be looking at a different rule. We're looking at 69K-5.0125.

Mr. Williams – Oh, I thought you said we were on Page 6.

Ms. Wiener – You jumped ahead.

Mr. Williams – Okay, no problem.

Ms. Schwantes – It's Page 4 of Addendum C.

Mr. Williams – Got it.

Chair Clark – Mr. Jensen?

Mr. Jensen – Yes, one comment here on what Ms. Wiener is saying. While I agree with the majority of it, the one part I have a little issue with is requiring these people to have maybe an office. I mean, I think they need to be in line with the Department's other licenses. I know a lot of removal companies that run right out of their house. So, you know, they have a physical location. I think they should be required to have a physical location, but it could be their home. I do agree with having to maintain records, you know, and so forth for Department inspection. But I mean, are we overstepping here a little bit by saying that they've actually got to have a separate office?

Ms. Wiener – I don't personally think that the law would support the requirements for a physical office for this license type and I think part of the problem in the past has been because I have talked to the field staff about this when we have had issues with burial rights brokers to ask them why are they not being inspected? How is this? And if they do maintain records at their homes, a lot of times we've heard that the Department is not comfortable with going to someone's actual home to inspect the records and/or the records drive around in the back of their car or wherever. So, this would be, and these kinds of records are in theory transient in nature. And so, this would simply require that they bring the records to the regulator when it is time for them to be inspected. Mr. Jensen, I'm identifying a pattern with you, and that is that you need to get on the Legislative Committee, because you've got a lot of really good ideas, but I think they need statutory change to support them.

Chair Clark – Mr. Jensen, any other questions?

Mr. Jensen – No, I'm good. I understand what she's saying. I just didn't want to go too far in this. And if the Department calls and says, hey, I'm going to inspect your records, you know, there needs to be a physical location, which I think could be their house. But if they say, hey, let's meet at, you know, X, Y, Z, and we'll go over your records. I just wanted to be in line with every other license we have. I'm just looking for uniformity here. So that's it, but I did understand what she's saying.

Chair Clark – And Ms. Herring, I saw your hand, but I just wanted to follow up with Ms. Wiener on one thing. I think I understand the intent of the additional language, but did you allow for a digital examination of records if there was a broker that was scanning their files? I'm just asking if you think that would work.

Ms. Wiener – Sure.

Chair Clark – Okay. Ms. Herring?

Ms. Herring – Thank you, Mr. Chair. The Department does have authority regarding the records and like Mr. Jensen said, the Department will be reviewing and making sure any records and any requirements of licensees match. And I would point the Board to 497.103(2)(a)(4), which gives the Department explicit authority to do this. So, this is something that is taken under

consideration in our review and will be addressed with Division staff who is regulating this and therefore we could get the manner and either the Division or the Department that reference correct to make sure it's in line with everything.

Chair Clark – Thank you, Ms. Herring. Are there any other public comments? I know we've started to get into some of the language, but I think we need to vote to just confirm that we still believe this rule should be opened and we'll need a motion for that.

MOTION: Mr. Jensen moved to keep this rule open. Mr. Williams seconded the motion, which passed unanimously.

Ms. Wiener – So, Mr. Chair, to address your concern about perhaps expanding this concept so that electronic inspection would be a solution, we could change the language in new (3) to say, the records required to be maintained pursuant to this rule shall be available for inspection at the Divisions offices at the request of Division staff or at or maybe at the Divisions offices or by means acceptable to the Division staff. Something to bring that concept in so that if they do have everything scanned in and they can simply provide that or allow access to it, that works also. But right now, and it's my understanding that these burial rates brokers records are simply not being inspected.

Chair Clark – Yes. I agree. The last one I knew, they were absolutely in their truck or their car, so you are correct. Committee, any other questions or discussion?

Ms. Schwantes – Mr. Chair?

Chair Clark – Yes?

Ms. Schwantes – I just wanted to point out that a lot of the fine-tuning on the language that Ms. Wiener is talking about is also what Ms. Herring was talking about, and that is that this turns into a procedural type of a function that the Department would be working on as to exactly how it's done. If we know, and Ms. Herring please let me know if I'm saying this incorrectly, but if we know that the Committee wants take action to make sure that the records are available to the Department, then the Department will work on the how. Is that correct, Ms. Herring? For purposes of the Committee's vote on this, the Committee has already discussed about how the terminology of Division versus Department, et cetera, it's going to get trued up by the Department when we make those final proposed changes, and perhaps could just do the same thing with regard to sub (3) and just let us know what your preferences are on this Board related duty, if you will and then we'll work on the procedure.

Chair Clark – Okay, thank you, Ms. Schwantes. Ms. Munson?

Ms. Munson – And this is just for my clarity. Because we voted to open this up, and I think we just did it again in this meeting, are we still going to try to modify language from the Board's perspective, or are we not going to do that and turn it over to the Department, which would require us to change our vote to open this for rulemaking?

Ms. Schwantes – And that was my next question as well. Thank you, Ms. Munson.

Ms. Munson – Oh, okay, I'm sorry.

Ms. Schwantes – No, I appreciate it.

Chair Clark – The way I was thinking about it is, and the reason I brought up would we allow them to email their files is it would be on them to scan and keep their files current. But if for nothing else, for, I guess, the group's discussion, just to note, I'm one of several Committee members here, but, at least as you're thinking about some of the procedural changes, just know that's, like, the intent or the way I'm thinking about it. I don't know how to answer your question Ms. Munson other and then I agree, it needs to be clear that these files will be expected and then absolutely turn it over to the Division to figure out how they do that. But I do think it's important to say they have files that are important to families, and they should be looked at. So, I think that's what we're trying to do, but if you're saying that that's all procedural and we'll take care of it, then.

Ms. Munson – I'm not suggesting it's all procedural at all. I'm just wanting the Committee to be clear that what portion of this are we wanting to change, because that's the rule language we're going to have to come back with. That's all. I'm just trying to

keep these lanes clear, because if we toss it back to the Department, they may not pick that mantle up about what you were discussing in this meeting.

Chair Clark – Okay.

Ms. Schwantes – Mr. Chair, I would also like to clarify that we would need to be careful in perhaps how some of this is worded because there is no annual inspection requirement on burial brokers. That would have to be a statutory change if that's what you're looking for. But Ms. Wiener did, I think, try to compromise on this language, certainly in terms of just saying that the records must be made available to the Division upon request. And then the how of that goes to the Department.

Chair Clark – I agree. The records should be maintained and available for inspection. I'll make that as a motion, in fact, that records are maintained and available for inspection, understanding there will be some wordsmithing, and we'll take a look at that. Ms. Munson?

Ms. Munson – Okay, I'm just curious. Where is that change? I mean, sub (4) requires the records maintained. And in sub (4), it references inspection. So, I'm just curious. Maybe I'm talking about something different than what the group is talking about.

Ms. Wiener – Where is sub (4)?

Ms. Munson – Records required to be maintained under this rule shall be kept until the later of the following dates and A and B are under it.

Mr. Jensen – Wouldn't number five (5) be more appropriate to what we're talking about?

Ms. Munson – We're talking about the record maintenance, and I thought that was addressed in four (4), and five (5) talks about additional inspection criteria. So, I just wanted to make sure, are we modifying this? What about this language does not meet the need of what this comment addresses?

Mr. Jensen – Actually a good point.

Ms. Wiener – Are you referring to what's in the statute or what's currently in the rule?

Ms. Munson – I'm reading Page 6 of the materials.

Ms. Schwantes – May I Mr. Chair?

Chair Clark – Yes, Ms. Schwantes.

Ms. Schwantes – There is something I caught when I was looking at these materials. So, the rules as presented by Ms. Wiener only go to sub (3) on this matter. But when you go back to the workbook on 5.0125, it does pull the entire rule, and the entire rule does have a sub (4) and a sub (5). And I think we're basically {inaudible} in our discussions on what Ms. Wiener presented, but Ms. Munson correctly points out that the rule actually has additional language, which I think may have been part of what Mr. Williams was getting at before, too, but I don't know.

Ms. Wiener – I think he's referring to the next rule. The last version that was in the original workbook, I'm not sure it had all of that rule because when I pulled that over, I pulled the language directly from that workbook, but if the language is already built in...

Ms. Munson – But it may not say what you're wanting it to say. That's just my clarification.

Mr. Jensen – Mr. Chair?

Chair Clark – Yes, Mr. Jensen?

Mr. Jensen – Just to point out, Ms. Munson mentioned it was Page 6, but in the workbook, actually Page 7 is where it states all these things.

Ms. Schwantes – Thank you.

Ms. Munson – You're correct. I was between two (2) pages. Thank you.

Ms. Wiener – So I guess my question then would be for the Division. Does this actually happen? Are inspections happening? I think the language that I was proposing was meant to address the fact that these records are not being inspected. And, when my team looked at this, we did not have the rest of this rule. So, my bad, if that's the case. It does say that they'll be inspected. So, this change wouldn't need to be made under with (4) and (5) in place, so long as (4) and (5) are actually being enforced.

Ms. Schwantes – Mr. Chair, I can address that. Again, there is no annual inspection requirement that we do with these burial brokers. However, on an investigation, and you know, if there are complaints, we will open investigations, we will request records and we are able to get records from the brokers.

Ms. Wiener – Well, (5) actually says the Department shall inspect the records at least once every two (2) years.

Ms. Schwantes – I was speaking about annual inspections.

Ms. Wiener – Right. Even stronger than the language that I was proposing. So, I would say disregard this change entirely. I think in the original workbook, maybe there was a piece missing and that's why we all got it in our heads that we needed to do something, or maybe it wasn't, and we all got it in our heads that we needed to make a change. But I think if the rule as written is being enforced, then we don't need a change. This change is not material.

Chair Clark – I agree. And I know we have a motion and a second on the table, but I'll withdraw my motion if Mr. Jensen agrees.

Mr. Jensen – Agreed.

Chair Clark – Thank you. So, Ms. Schwantes, it sounds like we actually need to vote that, for our purposes, for the Board, we don't need to open it up, knowing that the Division will still look at it. I'll make that as a motion that we reopen our previous vote of changes need to be made.

MOTION: Chair Clark moved to reopen the previous vote. Mr. Jensen seconded the motion, which passed unanimously.

Chair Clark – Now, I'll make a motion that changes are not needed for this rule at this time for the Board's consideration.

MOTION: Chair Clark moved that no changes are needed. Mr. Jensen seconded the motion, which passed unanimously.

Ms. Schwantes – Thank you.

(4) 69K-9.001 – Advertising

Ms. Schwantes – This rule begins on Page 8 of the workbook with the tables carrying over to Page 9. Ms. Wiener made written comments on this proposal as an Addendum C, Page 6.

Ms. Wiener – And Lauren Pettine from my office is going to address this, I think. We shall see. There she is. She is.

Ms. Lauren Pettine – Yes. I am.

Chair Clark – Yes, Ms. Pettine?

Ms. Pettine – I believe there are a couple of adjustments that were ultimately made on this rule in order to true this rule up with the applicable rulemaking authority and the law implemented. The law implemented on this is 497.276, which is explicitly for cemetery companies and the records for cemetery companies. And it states that the licensing authority may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of a cemetery company. As I understand, this law has been applied more globally to advertising records of various licensees and registrants, and so the adjustments to the language are to clarify that the law being implemented is just cemetery companies. Regarding the inclusion of two (2) years, this is consistent with the burial rights broker documentary information regarding maintaining records for two (2) years during the inspection period as well as consistent with the cremation records required to be held by funeral establishments. Keeping advertising media, especially in the digital age, for an indefinite period of time can become burdensome on licensees and so two (2) years seemed like a reasonable time frame.

Chair Clark – Thank you, Ms. Pettine. Are there any other public comments? Hearing none.

Mr. Williams – Mr. Chair?

Chair Clark – Yes, Mr. Williams?

Mr. Williams – So I guess this is the one I'm looking at. We are on 9.001. I renew my questions because my thing is if the cemetery companies are regulated, why are we scratching out licensees or registrants and how do we come up with the two-year piece?

Ms. Pettine – If I may? Scratching out the licensee or registrant is because, as I understand, this regulation is currently being applied to funeral establishments, preneed licensees, other registrants or licensees. When the law implemented on this does not cover other licensees, the law that is being implemented is exclusively for cemetery companies, and so this would true up with the current law implemented. I did look through the other statutes to see if it was possible to simply change the law implemented, but I did not see reference to advertising materials in Chapter 497 for any other types of licensees. So, this is simply to condense the scope in such a way that the rule is no longer being utilized in an over broad way. Two (2) years, I simply used two (2) years because there are other instances of record keeping that are currently at two (2) years. However, should the Board decide that they wanted to go with a different timeframe, that would be acceptable as well. The statute does not currently include a timeframe.

Mr. Williams – Mr. Chair, may I have a follow-up?

Chair Clark – Yes, Mr. Williams.

Mr. Williams – I guess my question is whether the cemetery company is regulated in some kind of way by the Division? If that answer is Yes, wouldn't they be some type of licensee or registrant?

Ms. Pettine – If I understand your question correctly your question is that moving licensee and registrant and placing just cemetery company seems like an unnecessary change because a cemetery company is a licensee or registrant. Am I understanding that correctly sir?

Mr. Williams – Yes. So, if the cemetery company is regulated in some form by the Division, I'm thinking the language of licensee or registrant should remain because they are in some form regulated by the Division. So, if there's no regulation over cemetery companies, then I can understand your statement. But if the Division is regulating the cemetery company, they then become a licensee or a registrant of the Division, which in turn the language needs to be the same.

Ms. Wiener – Let me jump in here for just a second. I certainly think we could say each cemetery licensee, but what's a registrant? That's not a term that the Division uses.

Mr. Williams – I think registrant is either/or, that's how I was reading it, as licensees or registrants. So, it is depending on what category you want to place it. But my thing looking at this is if the Division is regulating or have some oversight of the

cemetery company, then that in turn means it falls under the Division to ensure X, Y, and Z is adhered to. That's how I was reading. So, my thing is keeping licensee or registrant, now I'm fine with the two (2) years if there's some reason behind that, but I think we should keep the licensee or registrant because it gives a perception that cemetery companies are no longer regulated by the Division. That's how I view it.

Chair Clark – Ms. Pettine?

Ms. Pettine – Yes. If I may respond, I'm completely fine with utilizing the language each cemetery licensee or registrant. My current concern is that the language of licensee or registrant as it currently stands is overbroad because it affects other licensees, and the law implemented does not contemplate this particular regulation applying to say preneed licensees, funeral establishment licensees. That was the reason for the change. However, if you'd prefer to keep the language of licensee or registrant as long as it's clarified in either the title with the cemetery advertising records or clarified by stating each cemetery licensee, that would also be perfectly acceptable.

Mr. Williams – Director Schwantes, am I off keel on this or does that make sense? I'm just I'm just curious, from the Division's standpoint.

Ms. Schwantes – Mr. Chair, may I?

Chair Clark – Yes.

Ms. Schwantes – Just to clarify, we register exempt cemeteries, we license other cemeteries, but we do not license or register abandoned cemeteries, historical cemeteries, etc. And I know Mr. Williams is very familiar with those as he works with the Division of Historical Resources on those issues. So, I don't know if that helps to address it. I don't have a problem with leaving the language the way it is because in my mind it keeps it from suggesting that it applies to ones that we don't regulate.

Ms. Wiener – I would think we would want to make sure that in the exempt cemetery law that the advertising laws are among those that we have to comply with. Exempt cemeteries are excused from nearly every cemetery law that there is. If we want to keep registrant here, then we need to double back to the list of statutes that exempt cemeteries are obligated to comply with. If they're obligated to comply with the law that's implemented here, then you could leave registrant, as long as that title is changed. But if they're not obligated to comply with the advertising laws, then I would think that we would want to leave licensee and drop registrant.

Chair Clark – Thank you, Ms. Wiener. Ms. Munson?

Ms. Munson – I think the problem, and if I'm mistaking Ms. Pettine, let me know, the problem with leaving the law implemented is that it only kind of limits this entire consideration to cemeteries, because that's the statute that deals with cemetery regulations. But we want advertising to apply to everybody or every entity where advertising could legally be applied, is what I'm understanding in this discussion. So, if we just took that law implemented out and you said we couldn't find a replacement we may just have to defer to the Board's authority to make rules, which would take us back to 497.103 and maybe just leave it at that and in the language, itself identify which entities advertising actually applies to. I mean You're right, leaving at 276 does not, it's incorrect. That would have been something that we would have needed to strike. But advertising and some type of regulation of advertising is apparently obviously important. So, we might need to tweak the language, whether or not we leave registrant or not, I don't know. I think a licensee, I'll let you guys go back and forth with that, but I think we might be able to get away with the law implemented and rulemaking authority just being the same since you have the authority to make rules to govern and advertising would be one of the things you're doing to govern. But we'll have to figure out like who this advertising requirement applies to.

Chair Clark – I'm going to go to Ms. Simon. I saw Board Chair Peebles come on camera, so I can get you right after Ms. Simon, and then I'll get you, Mr. Jensen.

Ms. Ellen Simon – Thank you, Mr. Chair. Regarding 69K-9.001, I think that the fix would be, so this does not apply simply to the cemeteries, is as Ms. Munson suggested, taking out or deleting 497.276 from the rulemaking authority as well as the law implemented. But in terms of licensee or registrant, besides for exempt cemeteries, and I could be wrong about this, the only

registrant is a training facility. I think that that is the only other registrant under our law> Regardless, I think that taking registrant out of here would be appropriate. I understand that exempt cemeteries are registered but there is no law or statute that the cemeteries need to follow anything other than that in 497.260. One more point. You know, I could see ten (10) years ago, or twenty (20) years ago, us making the argument, or somebody making the argument that this is so onerous on licensees, so onerous, maybe it's thirty (30) years ago, which is when the world actually took effect about that time, so onerous because you have to maintain paper, or you have to maintain VCR tapes, or you have to, you know, but you don't need to do that now. Maybe I just don't understand what the onus is on a licensee to maintain this documentation when I would think it's relatively easy to maintain it now and that those are my only comments. Thank you.

Chair Clark – Ms. Pettine?

Ms. Pettine – Thank you. The onus is that the definition of advertising has become broader and broader. It could refer to every single individual webpage and link on a webpage that somebody is utilizing for their business. It could refer to copies of all kinds of documents that are updated. It could refer to every single Facebook post, every single Instagram post, every single mailer that they send out for an indefinite period of time. So it isn't that it's just paper, it's that it's onerous to go through and document all of the advertising that is published or broadcast on the electronic media as well, which is why I would recommend a shorter timeframe for the maintenance that's more consistent, whether that's two (2) years, five (5) years, whatever the Board feels is correct.

Ms. Wiener – Or until the next examination period.

Ms. Pettine – In regard to the language of registrant for exempt cemeteries, I did just go and confirm this rule is implementing 276(3). That is actually an exemption for the cemeteries. The cemeteries that are exempt are only required to comply with 276(1). So, it may make sense to remove registrant from the language and just maintain cemetery licensee. And then in regard to Ms. Munson's point, I really did make an effort to go and try to find consistent authority for the maintenance of these advertising in 497.103. It was my original intention in preparing the draft for this to provide you with an updated law implemented and I couldn't find it in the statute, but perhaps you can find better authority if you're working on language yourself.

Chair Clark – Thank you. Mr. Jensen?

Mr. Jensen – Yes. Just to comment here kind of along the lines of what everyone else is saying, what we're trying to do here is just make sure that these folks who get this license are under the same purview as everybody else in the Department. And it just seems to me, if we do remove the word registrant, then it would be a licensee which would fall under the purview of the Department and have to follow the rules that all the other licensees follow. So, I would think that would be the easiest solution.

Chair Clark – Thank you, Mr. Jensen. And I'll just add, for me, I mean, the two (2) years makes a lot of sense. I was pretty vocal on previous meetings that it needs to be a reasonable timeframe. I like the two (2) years. The licensee I'm fine with. But is it just cemeteries or is it any licensee? I think that's what I'm struggling with. because it's a pretty change if we're just saying this only applies to cemeteries. I don't know. Ms. Munson, I saw your hand up.

Ms. Munson – Yes, I was just going to and follow up to Ms. Pettine's question. I was keeping it very general because 497.103(1)(a) defines Board's authority. It's like the subject to provisions of this act of this section, all authority provided under this chapter, including rulemaking authority relating to the following matters is vested solely in the Board and the Board shall be deemed the licensing authority as to such matters. And (1)(a) just says authority to determine any and all criteria, and I'm thinking advertising may be a part of licensure, because that's the closest I could come, to be honest with you, under this chapter as to which this chapter vests discretion in the licensing authority. Because it spoke of discretion, because it was so broadly written, I was thinking it could possibly apply to include this advertising issue. Because as you notice in the next section, Solicitations, there is a statute that speaks specifically to solicitations and that's 497.164. So, they don't have a special statute that speaks specifically to advertising. So, I was trying to put it under a broad umbrella and that appeared to be the closest that it could fit in. There may be another, I cannot confirm that I've done a deep, deep, deep, deep dive to say no other statute would fit, but I don't see where that one would be rejected because it's so broadly stated.

Chair Clark – Thank you, Ms. Munson. Committee members, if my notes are right, we still need to vote on whether we want to open this up, and then we can talk about motions for any changes. Do we have a motion to keep 69K-9.001 open for changes?

MOTION: Mr. Jensen moved to keep 69K-9.001 open for changes. Ms. Clay seconded the motion, which passed unanimously.

Mr. Jensen – Mr. Chair?

Chair Clark – Mr. Jensen?

MOTION: Mr. Jensen moved to remove the word registrant.

Chair Clark – I'm asking just to be clear. Any changes to the amount of time that records would need to be kept?

Mr. Jensen – Yes, sir. I apologize. I agree with the two (2) years. I do like that as well because right now it's, I mean, I got a file this big of all my advertisers from all these years and it's a little cumbersome. And as we know, you know, the purview of the Department is mainly looking at, you know, what the licensees are putting out there, but you know, prices very seldom come down. So, I think two (2) years is sufficient.

Chair Clark – Thank you. Ms. Pettine, give me one second. Committed, do we have a second?

Mr. Williams – I'll second.

Chair Clark – Right before we open up discussion, Ms. Pettine, I saw your hand and then Ms. Schwantes. Ms. Pettine?

Ms. Pettine – I also wanted to reassure the Board and the Division that this is not the only advertising regulation that exists. There is also language that is unique to, I believe, preneed and funeral homes in Rule 69K-29.001. So, by clarifying that this is only applying to cemeteries, it would not necessarily halt the Division's authority to continue to be consistent with their requirements for ensuring that misleading or fraudulent advertising isn't out there in the world.

Chair Clark – Thank you. Ms. Pettine. I just pulled that up. Is it...

Ms. Pettine – It's 29.001(4).

Ms. Munson – It's a chapter on advertising.

Chair Clark – But I don't see that it talks about keeping records.

Ms. Pettine – It does not, but that doesn't mean that we don't still have the authority to. The requirements to maintain the advertising records versus the requirements to be able to take action on misleading advertising are contained in separate rules. So, I wanted to reassure the Board that by limiting the cemetery records to the applicable rule, it would not prevent the Division from being able to take action in the event that advertising becomes a problem.

Ms. Munson – So why do we have 9.001? Why can't we just include the information that we're wanting to include that's in 9.001 in 29.001? This looks duplicative to me. Ms. Pettine, feel free.

Ms. Pettine – Of course, thank you. This may be because there was a specific statute in the cemetery rules regarding the authority of the Board to do this. I don't know that it's necessarily duplicative. I just think that it has been applied in some instances outside of the scope of the rule which it is implementing.

Ms. Munson – But if we put it in 29.001, it would still apply to cemeteries, correct?

Ms. Pettine – I don't see why not.

Ms. Munson – That's what I'm saying. It just appears to be...that one rule, 9.001. I don't know, you guys can help me make sense of it. I mean, it looks like the rest of this is about, I don't know, 9004 is Consumer Brochure, I'll have to read that more closely, I guess. But that's the only rule that addresses advertising, and it's one sentence, and then you have a whole chapter, 69K-29.001, that discusses advertising.

Chair Clark – I think that's clear, Ms. Munson, and the only thing is I don't see in 29.001, any requirement to keep record of the historical {inaudible}.

Ms. Munson – Right. So, if we were to open it, I mean, that would require rulemaking, but I don't know if you want to keep rules on the books that I mean, I think this is the type of stuff that is potentially confusing. To individuals who are in the industry or just maybe not trying to piece together how does advertising apply to me and have to look at two (2) or three (3) different rules to find the answer. I don't know though. I mean, the answer would be, you're right, you'd have to open 29.001 up for rulemaking to include the issues of 9.001. I'm just quickly reading over. I know 29.001 is not on our list today, but...

Ms. Schwantes – And actually to clarify, 29.001 would be on the five-year plan. It is a Board rule, but not for review this year.

Ms. Munson – Not for review this year, which we know that's modifiable.

Ms. Schwantes – Agreed.

Ms. Munson – Because I think when we start going through these rules, we're going to find some overlap and we're going to have to at the end of the day, make it kind of make the most sense. Or else when we open 29.001, we can leave 9.001. When we open 29.001, we could go back to 9.001 and then delete it.

Ms. Pettine – Just to sum up, Rule 69K-9001 should not currently apply to funeral establishments or preneed licensees because it is implementing a cemetery-specific law. So, despite the way...

Ms. Munson – So the language was saying with the exception of whatever...

Ms. Pettine – So, I think there's a question right now about whether it would make more sense for you to maintain some kind of advertising records retention for all licensees, in which case you will need to make a more significant adjustment to this law. Or my edits were provided to simply clarify the way that the law should currently work, which is that it should only be applying to the cemetery licensees.

Ms. Wiener – You mean rule.

Ms. Pettine – Yes.

Ms. Munson – But the Department should know, the Board should know that you have two (2) rules on the books addressing advertising. That is the type of stuff we're supposed to be cleaning up. That's all.

Mr. Jensen – Mr. Chair?

Chair Clark – Yes. Mr. Jensen?

Mr. Jensen – Yes, I do agree with Ms. Munson. We are supposed to be cleaning this up. So, I mean, I would defer to our attorney and tell us exactly how to do that. It sounds like a lot of legal talk needs to be done behind the scenes. I mean, we know what we're wanting to change, but I'm no legal scholar and it's hard to get all the wording exactly right. So, I mean, is there some way we can vote on that to do that?

Ms. Clay – Mr. Chair, as I'm understanding it, we just need to add that. It's all a part of advertising, right?

Chair Clark – And Ms. Munson can correct me if I'm wrong. I think that's right. The challenge before us is 69K-29.001, because we've not taken that up to open. But what I heard Ms. Munson say is we could take action on what's in front of us, the

advertising, the two (2) sentences that's before it. And then when we do get to 29.001, we can say, hey, this is duplicative. Let's eliminate the other one. Is that right, Ms. Munson?

Ms. Munson – That that would be a solution. I would just really make sure that we go back and do that so we're not at the end of this comprehensive rule review process having two (2) rules on the books and different chapters about advertising.

Chair Clark – Ms. Clay, did that help?

Ms. Clay – That did help. At this point What are you requesting of us, Mr. Chair?

Chair Clark – Well, we have a motion We have a motion for, this is 69K-9.001. The motion is to eliminate the word or registrant and add language at the end, essentially to keep materials for two (2) years. So, the motion is to remove the word registrant and add for two (2) years. And that's been made as a motion, and it's been seconded. Any other discussions on the motion? Hearing none, all those in favor say aye.

Committee members [Unison] – Aye.

Chair Clark – And any opposed? And that motion carries.

Ms. Schwantes – Thank you.

(5) 69K-17.0036 – Course Required for Initial Licensure

Ms. Schwantes – This rule can be found on Page 9. The tables begin on Page 10 with the table for today's review on Page 11. Ms. Wiener made comments on this with proposed language found in Addendum C, Page 7.

Ms. Wiener – Thank you. One comment there was just to change two (2) hours to one (1) hour. This is the request of many of my licensee clients who are also FCCFA members.

Chair Clark – Thank you, Ms. Wiener. Any other public comments? At this time, it would be appropriate to entertain a motion to keep this rule open or not. Do we have a motion?

Mr. Jensen – May I have a question here, Mr. Chair?

Chair Clark – Yes.

Mr. Jensen – Yes, so I do notice, and I happen to be licensed in multiple states. Some other states, you know, they require a one-hour communicable disease course. Florida generally requires two (2) hours. I don't really, I mean when I look at this anybody that's a funeral director or dealing with communicable disease type things really learns this stuff on day one in school. So, I don't know, I might tend to agree maybe lower it to one (1) hour because sometimes they're defined as, you know, some of these communicable disease classes are continuing ed courses that are two (2) hours, and you may have to do two (2) of them together. And with the way the continuing education credits are lined out, it would make it a lot simpler when renewing the licenses to have a one (1) hour. I do understand what you're saying, Ms. Wiener. I'm just kind of trying to wrap my head around it. Other than making it more convenient for the funeral directors, what would be the purpose of this, to change it to one (1) hour?

Ms. Wiener – My clients said it is commonplace in many other states, and they think that the necessary information can be conveyed in an hour and please try to change it to an hour. I don't have a philosophical reason to go with two (2) hours versus one (1) hour. I do think two (2) hours is a bit of an outlier. Our consulting practice covers almost forty (40) states and two hours is a Florida thing, not really an anywhere else thing.

Mr. Jensen – Yes, and as I noted, Mr. Chair. So, I would like to make a motion.

MOTION: Mr. Jensen moved to keep this rule open. Ms. Clay seconded the motion, which passed unanimously.

Chair Clark – Ms. Wiener, I have one question. I know there was discussion about the last sentence quite a bit, previous Committee meetings that I'm just, I know you didn't make any recommendations to change that, so I just didn't know if you had any comments on it.

Ms. Wiener – Thank you, Mr. Chair. We did talk about that. Should it be a shorter period of time? Should it be a longer period of time? There was no consensus as to a change. I don't know that my clients would be averse to shortening that time to maybe twelve (12) months prior to, but the renewal period tends to be an every other year thing. And so, I think that's probably, I see Ms. Schwantz is nodding her head. I think that's probably why twenty-four (24) months is tied into this rule. So, we just didn't propose a change to that.

Chair Clark – Thank you for clarifying that. Any other questions or discussion? Hearing none.

MOTION: Chair Clark moved to change it to a one (1) hour credit for communicable disease. Mr. Jensen seconded the motion, which passed unanimously.

(6) 69K-18.001 – Embalmer Intern Training Program

Ms. Schwantes – I will note that this is one of the rules Ms. Wiener copied over into her public comments, but that there were no suggested changes to it. And with that, it should be up for public comment, Mr. Chair.

Chair Clark – Let's open this for public comments. Mr. Ferreira?

Mr. Todd Ferreira – Yes, sir. Thank you. Good to be with you guys today. As we go through our meetings, we see a continuous flow of folks that need their extensions on their internships and these types of things. I think if we made a form change on our internship application that basically states that the applicant has passed their National Board exam and make that a prerequisite on the application, we would clean up a lot of this mess that we're dealing with. I know, not to go back, but that's the way it was thirty (30) years ago. You know you took your National Board then you start your internship. And maybe let's look at the internship. Maybe instead of a it goes six (6) months, just to kind of clean things up. I want to start the discussion the conversation so it would basically have your National Boards out of the way passed start your internship and then we can discuss you know right now it's a year maybe we drop it down to six (6) months.

Chair Clark – Thank you, Mr. Ferreira.

Ms. Jill Peebles – Mr. Chair, I got my mic going, but I can't get my camera going. I appreciate Mr. Ferreira's comments, but I think we need to be careful about stating right now, trying to change internship from twelve (12) months to six (6) months because people are coming back to us needing longer time. So, I think we really need to kind of hold that in our back pocket to another time before we kind of bring that up for discussion. That's just my comment. Reducing requirements is only going to reduce the type of individual you have in the industry, so I think we really need to be very cautious reducing internship from twelve (12) months to six (6) months. Thank you, sir.

Chair Clark – Thank you, Ms. Peebles. Mr. Ferreira?

Mr. Ferreira – I understand what you're saying, and I agree with that. I think we have to be careful. A lot of the extensions that we're granting are because they can't get through their National Board test. So certainly, having that test done and passed prior to the internship sounds doable and I'm okay with the 12-month. The last thing I want to do is what I call dumbing down what we're doing here but cleaning things up so we are not having to deal with all these extensions and having the National Board taken and passed prior to internship makes common sense to me. Thank you.

Ms. Peebles – Mr. Chair?

Chair Clark – Just one second. I completely agree, Mr. Ferreira, and Ms. Peebles' comment as well. I wish there was a way and I've been trying to think of language that would encourage students, they should be taking their National Board as soon as they're done with school. However, I know that's not the norm. But I would agree with what you just said in that they should

take these National Boards during this 12-month period of time, and I'll add, I think extension should only be granted due to illness or personal injury. If it's because I didn't pass my National Boards in the last twelve (12) months, my opinion as it relates to rulemaking. So, and all of that is intended to encourage folks to take the National Board as soon as possible. We heard from Mr. Beckham, I know Mr. Davis has said it. These program directors have said, the sooner they take it after completing the class, the higher success they have in passing National Boards the first time. So, if there's a way through rulemaking to encourage or require even, I think that's what we should be doing, in my opinion. Ms. Schwantes?

Ms. Schwantes – Yes, sir. I don't know that we can require that, since it's not statutory. I think a lot of the changes that you all are talking about would require legislative changes. And so, I would recommend, we don't have any written proposals on this, I would recommend that this not be opened at this time for change because it looks like from what you all have discussed from what I've heard from industry representatives anyway, that the real issues are legislative in nature.

Ms. Peeples – Mr. Chair, may I make a comment regarding your comment and Mr. Ferreira's, please, sir? I can't get my camera up, so I can't put my hand up.

Chair Clark – Yes.

Ms. Peeples – Thank you. I've said it multiple times in Board meetings, and this is a recording. I'll say it again. I took my National Board the day before I graduated. It was required. That's how it was. So, I think the issue we're having is in the schools, in the curriculum, in the teaching. I think that it's coming from outside sources to where the schools are not encouraging, they may be saying but not encouraging the students to take the National Board prior to. And Mr. Chair, I do agree with you. A lot of these waivers that are coming through in request for petition of waiver is for other circumstances that could have been avoided. So, I think you're on the right track there. So, I appreciate that. And I know this is kind of not the time or the place to go forward in depth, but we need to have a little bit more discussion on this. Thank you.

Chair Clark – Thank you, Ms. Peeples. Mr. Ferreira?

Mr. Ferreira – So, wouldn't this be a simple form change where we ask the question on the application? Have you passed your National Board test?

Ms. Schwantes – If it's not a requirement, we can't put that on there as a question. I mean, a question is simply a question otherwise, but it's not a requirement that they do that before they do an internship. As a matter of fact, are not these statutes that we changed several years ago to allow students who have passed 75% of their education to come in and begin their internships? Statutory changes?

Mr. Ferreira – It was changed. Yes.

Ms. Schwantes – So, to add a requirement that they have to take a National Board before they can begin doing an internship kind of takes away from those changes in that we would then be saying that if you want to start an internship before you complete your education, you've got to take the National Board any time when you're up to about 75% of the way finished. I don't know educationally where they would be at that time. So, this is again, why I go back to, these are legislative changes in nature.

Chair Clark – I understand. Thank you, Ms. Schwantes. Mr. Ferreira, did you have anything else?

Mr. Ferreira – I'm listening.

Chair Clark – For our committee members, based on Ms. Schwantes' comments, it sounds like some of the potential changes that have been previously discussed as well as those that have been discussed today may require a legislative change, for the Committee's benefit. The only other thing that I know Mr. Jensen and I brought up previously was sub (5), if there was a way to clarify to get an extension, but again, Ms. Schwantes, I think you're probably right. Everything that we want to do with this rule is going to require a legislative change.

Mr. Ferreira – So, do any of the attorneys on this call want to weigh in?

Ms. Munson – My comment, and I think I might have made it before. I don't know if there's authority for you to require these individuals to take this exam, take the Boards prior to. I mean, I kind of combed through the statutes a little bit and I don't see where it's a requirement. I want to piggyback as inappropriate or not on the comment that Ms. Peebles made. It seems like this issue would be much greatly corrected if at the schools, they include this in their curriculum to make it some type of incentive or something to take the Boards. I mean, that would do it. So, I think we're trying to fix something that if we don't have a clear legal way of doing it, doesn't mean there's not another way out there. And I think maybe with all of the associations and stuff, and this is not my lane, but I think that would really, really address the problem.

Chair Clark – Thank you, Ms. Munson. Mr. Davis is here. Mr. Davis? We can't hear you. Looks like he's trying.

Mr. Jensen – Mr. Chair, may I make a comment in the interim here?

Chair Clark – Sure.

Mr. Jensen – Yes, just to kind of talk about what Ms. Peebles said. It was a requirement of the school I went to, to pass the National Boards before I actually got my diploma. And I do understand that. I think most of the, at least some, I know Mr. Beckham would prefer to be able to tell students I got to pass the National Boards before they graduate, but I think there's something legislatively where they can't require that. I don't know, but I'm thinking that may be the case. I do know the schools do highly, highly encourage them to do that, which is a good thing. If we're stuck legislatively here, just like even we've had a big problem with the Board on these extensions and you mentioned it, Mr. Chair, if we're stuck legislatively, then, we're kind of beating a dead horse.

Chair Clark – Agreed. Mr. Davis is making progress I can tell. We'll give him just another second because I would be interested to hear his prospective.

Ms. Munson – Well while we're waiting may I just confirm. I'm having a problem flipping back and forth. Is direct supervision not defined anywhere like in the definition section?

Ms. Schwantes – I don't think.

Ms. Munson – It's not?

Ms. Schwantes – I don't think so.

Chair Clark – Mr. Davis are you with us?

Mr. Kevin Davis – I don't know if you can hear me. Can you hear me?

Chair Clark – Yes.

Mr. Davis – Okay. I'm sorry. I'm retired now so I've lost all my computer skills. So, take a look at how St. Pete College can require someone to take a third-party test to graduate. The reason why schools used to do that because the American Board used to require us that students must take the National Board exam. Once that got removed, we couldn't force a student to take a third-party test to graduate from our school, as long as they met the curriculum requirements. So that's how schools got away from it. But us schools, we pound it into our graduates to take that National Board as soon as they are certified. So, if you got a way to motivate students, once they don't, we have no leverage over them. We're all ears here at the schools. So yes, the problem is, legislative. It says 75% of the curriculum to start internship. So, you're stuck trying to make a form say you got to take it.

Chair Clark – Thank you, Mr. Davis.

Ms. Peeples – Mr. Chair, in regard to Ms. Munson's comment, on Page 6 of 158 of Florida Statute 497, (29) says direct supervision means supervision by a licensed and then it goes to (a) and (b) funeral director or embalmer. So, it is denoted on Page 6 of 158 of Florida Statute. Thank you.

Ms. Schwantes – Mr. Chair?

Chair Clark – Thank you, Ms. Peeples. Ms. Schwantes?

Ms. Schwantes – Yes, thank you Ms. Peeples. I actually had my hand up to correct myself on that for Ms. Munson's benefit as well. Given that, the Department is still reviewing this rule as to whether or not we need to make changes to it. There were already changes made not long ago, it looks like, because at least the links are in the correct format. But I would say that with the concerns regarding the definition of direct supervision contained in the rule itself, perhaps the best way to approach this would be that if the Department recommends changes to it, that we will take that out as being redundant as well. And then that way it does not have to go back to the Board or this Committee or anything like that, if the Committee decides not to open it.

Ms. Munson – I lost my camera, by the way, I don't know why. So, I'm still here. I agree with that.

Chair Clark – Thank you, Ms. Schwantes and Ms. Munson. Ms. Herring?

Ms. Herring – Thank you, Mr. Chair. We are talking about 69K-18.001?

Ms. Schwantes – Correct.

Ms. Herring – So these 69K-18 rules, the Department is actually not reviewing them this year. We are reviewing these in year three (3).

Ms. Schwantes – Okay. My mistake. I was looking at a table that was presented to me before, and I assumed, since it didn't say change that meant that you all were still looking at it. So, that's my mistake. However, that is something that could be corrected if and when these changes need to be made, or if there are legislative changes, then we have to come back to these rules.

Mr. Jensen – So, Mr. Chair, I'm a little confused as to where we're at. So, if we're stuck legislatively, which I agree with most of the things said here, so are we voting to open this or keep it?

Chair Clark – We have voted to open. Because of the discussion, I think it would be appropriate to make a new motion to say after further discussion, we do not need to open this rule for Board consideration.

Mr. Jensen – I'll make that motion.

MOTION: Mr. Jensen moved that there be no changes. Ms. Clay seconded the motion, which passed unanimously.

Chair Clark – And Ms. Schwantes, if you're okay with that, I think we should take a quick 10-minute break.

Ms. Munson – Okay, thank you.

Chair Clark – We'll take a 10-minute break. We'll be back at 12.15. Thank you.

Ms. Wiener – At 2 p.m., I have two (2) other calls I have to go to and so if we're still going at two, which it seems like we might be, Lauren will take over for me.

Chair Clark – No problem, thank you.

Ms. Wiener – You bet. So, if I just disappear, that's what happened.

*****BREAK*****

Ms. Schwantes – Mr. Chair, I see Mr. Williams is also on the call right now. So, we do have all members of the Committee present. Would like for us to go ahead and get started.

Chair Clark – That'd be great. Thank you, Ms. Schwantes.

(7) 69K-18.002 – Funeral Director Intern Training Program

Ms. Schwantes – This rule begins on Page 13 of your workbook. This is a long rule. The table's containing the prior comments are found on Page 18, and the table for today's notes is found on Page 19. There are no written proposals received on this rule.

Chair Clark – Thank you, Ms. Schwantes. Are there any other public comments for today's meeting? Hearing none. For the Committee's benefit, at quick glance, I believe these are the similar concerns as the previous matter. So do we have a motion?

Mr. Jensen – Mr. Chair, may I?

Chair Clark – Yes.

Mr. Jensen – So, as I understand this, we're sort of legislatively bound by this. And is that what you're referring to as a previous matter? We were legislatively bound as to what we can do. So, I would probably make a motion here for no change.

MOTION: Mr. Jensen moved that there be no changes. Chair Clark seconded the motion, which passed unanimously.

Ms. Schwantes – Thank you, Committee members.

(8) 69K-18.003 – Concurrent Internships

Ms. Schwantes – This rule begins on Page 19 of the workbook, the tables with prior comments begin on Page 20, and the table for today's review is on Page 21. No proposals, proposed language on this rule.

Chair Clark – Any public comments? Hearing none.

MOTION: Mr. Jensen moved that this rule does not need to be opened. Ms. Clay seconded the motion, which passed unanimously.

(9) 69K-20.001 – Report of Cases Embalmed or Bodies Handled

Ms. Schwantes – This rule begins on Page 22 with the tables on prior public comments beginning on the same Page. The table for notes for today's meeting is found on Page 23. The proposed language was received from Ms. Wiener. It is on Addendum C, Page 19.

Chair Clark – We'll start with public comments. Ms. Wiener?

Ms. Wiener – Thank you. We talked about this at the last in-person meeting. Simply a change to conform this to other documents that require inspection to tie this to the time that the Division has conducted a regular inspection of the licensee as opposed to a 36-month period. While the Division is in the normal routine of inspecting, more often than that, I know sometimes inspections get delayed and thirty-six (36) months seems an arbitrary timeframe. And so those Bodies Handled Reports would be pursuant to the proposal maintained until they're inspected during a regular inspection, and then there would be no longer any need to retain them.

Chair Clark – Thank you, Ms. Wiener.

Ms. Schwantes – Mr. Chair, may I?

Chair Clark – Yes, Ms. Schwantes.

Ms. Schwantes – If the Committee is interested in this language or something along these lines, I would suggest changing regular to annual inspection as defined in our statutes.

Ms. Wiener – Yes, and we have no objection to that.

Chair Clark – Any other public comment for 69K-20.001? Hearing none. The Committee will need to entertain a motion to open this rule or not.

MOTION: Mr. Jensen moved to keep this rule open. Ms. Clay seconded the motion, which passed unanimously.

Mr. Jensen – Mr. Chair, if I may?

Chair Clark – Yes.

MOTION: Mr. Jensen moved that changes are needed. Ms. Clay seconded the motion.

Ms. Schwantes – To clarify, that is changing regular to annual.

Chair Clark – Correct. We have a motion to adopt the proposed language with changing regular to annual inspection and it's been seconded. All those in favor say aye.

Committee members [Unison] – Aye.

Chair Clark – And any opposed? And that motion carries.

Ms. Munson – I hate that I'm not on screen. Could you identify the change again for me?

Chair Clark – The recommended language would be the elimination of the last part of sub (2), we would eliminate for thirty-six (36) months after the month to which the form relates and replace that with until such time as the Division has conducted an annual inspection of the licensee.

Ms. Munson – Thank you.

Chair Clark – Ms. Schwantes?

(10) 69K-21.009 – Disinterment Reporting

Ms. Schwantes – This rule begins on Page 23 of your workbook. The tables from prior comments beginning on that Page going on to Page 24 where at the end you'll find the table for today's meeting. There were written comments received in Addendum C, Page 20, and those were Ms. Wiener's proposals.

Chair Clark – Thank you, Ms. Schwantes. We'll open it up for public comment. Ms. Wiener?

Ms. Wiener – Thank you. This rule, which I doubt has ever been enforced, and I suspect no one has ever complied with it ever, has some odd requirement that you send in your Cases of Bodies Handled Report to the Board by mail no later than ten (10) days of the month during which a disinterment occurred. Those disinterments do get recorded on the Bodies Handled Report as is set forth earlier in the rule. It simply eliminates this odd requirement to send it to the Department. And it will simply be an entry on the Bodies Handled Report, which as we just contemplated will be retained if this rule is ultimately amended until the next annual inspection of the licensee.

Chair Clark – Thank you, Ms. Wiener. Ms. Peeples?

Ms. Peeples – Thank you, Mr. Chair. Ms. Wiener very well said and good recall from our couple of previous Rules Committee meetings, but this was an enforced rule many years ago to where we would have to go to the Health Department request a disinterment permit. So, when the health Department changed their rules and they didn't require it anymore, which kind of came back over to 470, the Board I was previously on, then when we went to 497, kind of had a little tweaking to the rule. So technically we don't have any type of disinterment reporting anymore except as you mentioned on the Bodies Handled Report. So, it's kind of a rule that if it does stay in place, we'll just sit there because it really doesn't have any teeth to it, so to speak.

Ms. Wiener – Well, you would have to include the entry on your Bodies Handled Report still pursuant to this rule. The only thing we're changing here is that it would eliminate the mailing it ten (10) days after the next month end requirement.

Ms. Peeples – Right. And there is no more disinterment permit that's given, is the thing. So, there is no permit that you get, you just put it on your Bodies Handled Report and that's the only thing you have to do. Thank you, Mr. Chair.

Chair Clark – Thank you, Ms. Peeples. Mr. Jensen?

Mr. Jensen – Yes, to what Ms. Wiener did say. I did follow the rule, but I don't know why it's there.

MOTION: Mr. Jensen moved to keep this rule open for changes. Chair Clark seconded the motion, which passed unanimously.

Mr. Jensen – Motion, Mr. Chair?

Chair Clark – Yes.

MOTION: Mr. Jensen moved to strike the last sentence of the paragraph under 69K-21.009. Ms. Clay seconded the motion, which passed unanimously.

(11) 69K-22.007 – Standard Uniform Procedures for Removal of Cremated Remains and Postcremation Procedures

Ms. Schwantes – This rule begins on Page 25 of the workbook with the tables with prior comments beginning on Page 26, and today's table beginning on Page 27. A written proposal was received from Ms. Wiener is found on Addendum C, Page 20.

Chair Clark – Any public comments? Ms. Wiener?

Ms. Wiener – Thank you. We really discussed this in some length at the last two (2) Rules Committee meetings, and really the best that we could come up with to improve the language under subsection (3)(d) was that the particles would have to be processed are pulverized until they are granulated particles unrecognizable as human remains. We tried on a lot of different options. We also entertained just leaving the language as it is, took into consideration the comments from the public and from Board members on how the new processors process slightly differently than the old processors, and ultimately the best we could come up with to improve upon this is unrecognizable as human remains. Likewise, we have no objection to leaving this rule as it is. So, change it or don't change it. Pretty easy on this one.

Chair Clark – Thank you, Ms. Wiener. Mr. Davis?

Mr. Davis – Yes, when we take a look at it in the rule there, it says that you must attach identification to the urn. In the statutes, it says place it in the urn. So, you have a contradiction between the rule and the statutes on this, as it's written.

Chair Clark – Thank you, Mr. Davis. Any other public comment?

Mr. Jensen – Mr. Chair?

Chair Clark – Mr. Jensen?

MOTION: Mr. Jensen moved to open this rule for changes. Mr. Williams seconded the motion, which passed unanimously.

Mr. Jensen – Mr. Chair?

Chair Clark – Mr. Jensen?

Mr. Jensen – As Ms. Wiener said, the granulated particles is a big concern, not only for the industry, but also for the Department. There has been some discussion as to exactly what does that mean. I appreciate what Ms. Wiener added, but I disagree with the part a little bit, unrecognizable as human parts. I don't know how you can get that except as a powder because there are always going to be very small bone fragments in there. That's what human cremains are, processed bones. There's no flesh or anything. It's just processed bones. So, I don't know if we're going too far. And that's a very subjective term as a human or can't be recognizable as human remains. So, while I agree with most of what Ms. Wiener proposed, maybe I need a little feedback here. I know that on a couple of occasions, the Department has raised concerns as to exactly how far does that need to go. So, and if you look at the comments there, I mean, I kind of raise that as, you know, what are granulated particles defined as? Well, I don't know how we can get to that answer. Ms. Wiener says she studied it and couldn't get to that answer. So, I don't know exactly. But if we remove the word unrecognizable as human remains, I mean, anybody in the industry can recognize that as human remains. And most of the public can also. They're going to say, oh, look at that. So, I don't know. I don't know how we get there on this. So, a little bit of help from the legal experts I would appreciate.

Ms. Munson – If that is a question thrown out to me, the term unrecognizable in and of itself is vague. I don't even know what that means legally. So that's a beginning point right there. So, I don't know.

Ms. Wiener – I personally think this may be a situation where the perfect is the enemy of the good here. I don't know how much better we will be able to actually get than what is currently in the rule, which as I said, I agree with Ms. Munson, unrecognizable may also not pass muster with JAPC. We were trying to draw a distinction between human remains and cremated human remains here, but I agree with Mr. Jensen that human cremated remains are fairly recognizable as cremated human remains. So again, we are perfectly trying to leave this sort of as it is, which is broad enough to give the Division authority and the Board authority that it needs to go after those who aren't in compliance, but also not so specific as to inhibit the regulator's capacity to regulate.

Mr. Jensen – Mr. Chair?

Chair Clark – Yes.

Mr. Jensen – A quick question for Ms. Schwantes or someone from the Department there. So, I do know that the Department has had a little bit of trouble distinguishing the line in the past, but I'm also thinking here, so if we left it up to the Department, it would still have to come before the Board for a final thing, so maybe that's what we should do. That way you've got leeway, because some of them are atrocious, I agree, but it's hard legally, determining where the line is. And I don't know how we clean it up legally is what I'm thinking and what Ms. Wiener just said. Maybe we just leave it like it is and then if somebody does determine well that doesn't look good then it would be up to the Board to decide that. Would that be a suggestion for the Department, or no?

Ms. Schwantes – May I, Mr. Chair?

Chair Clark – Yes.

Ms. Schwantes – I think that's a valid point. This matter has been raised already and fully discussed at the two (2) prior Committee meetings. The only proposed language change that we have is what Ms. Wiener suggested. It has been, I can remember, Chair Clark inviting the industry to make comments on this and this is what we've got. And given that and the other comments that you have made, the Department certainly recommends no change.

Chair Clark – I agree, Ms. Schwantes. And Mr. Jensen, to your point, I would just add, because I've been on the Board a while, but I agree it does come before the Board, and the Board does take action when needed. So, based on the way it's written currently...Ms. Wiener?

Ms. Wiener – I would just say what Mr. Davis said gave me cause for concern. However, if the rule is contrary to the law, then we should look at that. But I cannot find that reference in the statute.

Ms. Schwantes – I agree.

Ms. Wiener – I can't find a requirement that the disc be inside with the cremated remains. And I know that is no longer the practice much. I still have some licensees that do that, but most do not put the disc inside the cremated remains or inside the urn. So, if Mr. Davis has a reference that he wants to yell out, that would be helpful, but I can't find it.

Mr. Davis – It's 497.171(c). It says identification goes inside the urn.

Mr. Jensen – Which doesn't have to be inside the cremains. I know at our locations, we zip-tie it to the outside of the bag and then put it all inside the urn.

Ms. Munson – If the dead human remains are cremated, proper identification shall be placed in the container or urn containing the cremated remains.

Ms. Schwantes – And where is the language in the rule itself? {Multiple speaks}

Ms. Wiener – {Inaudible} 21(4)(b), which really seems to speak to when there are multiple containers specifically. I think the rule in sub (c) requires that the tag be on the outside of the bag and that the bag go in the urns, which is consistent with what Mr. Jensen said, which is consistent with what most licensees I'm aware of do. So, I would say that this rule does not need a change per se.

Chair Clark – Thank you, Ms. Wiener. Ms. Peebles?

Ms. Peebles – Thank you. Ms. Wiener and Mr. Jensen, our process here at our facility is that the metal disc is attached with a zip tie to the bag itself, which goes into either a temporary plastic container or the urn. And then if we have multiple, because of the large amount of cremains, then we have an identification that we use, but we put something in every bag before it's zip tied, just in case we have multiple bags from that. So that kind of is consistent, Mr. Jensen. Mr. Chair, I see you're shaking your head, kind of what is done at our firms. Thank you.

Chair Clark – Thank you, Ms. Peebles. Yes, I agree. What's being described, I think, is the current industry standard and I just feel like it aligns with the way it's written. I know we had a motion to open.

Mr. Jensen – Well, Mr. Chair, I wanted to touch just for a minute on (5)(b). I think we have a little bit of an issue here. Where it says under releasing cremated remains, (b) says release the cremated remains to a representative of the funeral or direct disposal establishment. That doesn't make any sense to me. Should we not put there a legally authorized person or something of that nature? And one of the lawyers, I'm sure, has a better term than that. But, I mean, why are we releasing cremains to the funeral or direct disposal establishment? What is that covering?

Ms. Wiener – This is where the crematory itself, which does not interact with the public, has cremated. So, a cinerator facility is not the one that releases to the legally authorized person. That would be done by the funeral establishment or direct disposal establishment that arranged for the cremation. So, I think this rule is still consistent with what is contemplated in law.

Mr. Jensen – Mr. Chair, may I?

Chair Clark – Yes.

Mr. Jensen – Yes, I understand the meaning of it, but looking at this from a layman's term, I do not see in this rule exactly what you're saying that it applies only to cinerator facilities. So, I'm just thinking for the sake going forward. do we need to clean that up, or are we okay with this?

Ms. Wiener – Mr. Jensen, it's in the very first sentence of the rule, a cinerator facility operator shall follow its written procedures for all of these things.

Mr. Jensen – Yes, okay. I mean, I do see that. But to me, okay, I understand what you're saying. And I guess it can, you know, I it a little bit differently from the public's view. I understand what this is all about, but I was just thinking maybe we need to clean it up, but that's okay. If we're okay like we are, then that's fine.

Chair Clark – And maybe Mr. Jensen, if there is an opportunity to clarify releasing cremated remains to a person, that may be addressed in a different rule.

Mr. Jensen – Yes, and it probably is if we go to 497 under, you know, cremation, I'm sure that it is addressed there. I just didn't know. I think when my initial comments when we were looking at this the first time was, you know, just cleaning it up a little bit. That's what we're kind of concentrating on. But if we're ok here in the legal minds say we're ok, that's really all that matters. So, I'm good with that.

MOTION: Mr. Jensen moved that there be no changes. Chair Clark seconded the motion, which passed unanimously.

Ms. Munson – Can I just ask just for my personal edification? In that rule, I guess it's (3)(b), the non-magnetic metal? Help me understand what that is. Remove all other metal from the cremated remains using a magnet and or forceps for non-magnetic metal. So, what does that mean? Just for me.

Mr. Jensen – Well, it could be a rubber piece in a knee. It could be, you know, some dental stuff is non-magnetic, although most is. But after the cremation is done, usually a magnet is run over what's left to try to get any metal out because it messes up your processor and dulls your blades. But I have seen some prosthetics that have been inserted into bodies nowadays that are not metal anymore. So, I mean, I assume that's what that is.

Ms. Munson – If it is a magnetic metal, what do you do? Just to help me. I'm trying to make it for lay person make sense. That's all.

Ms. Wiener – Ms. Munson, you run a magnet across the top of the cremated remains and that picks up any metal, but stainless steel is not magnetic. So, for stainless steel, you sift through and there are mechanisms that sift the cremated remains. And then once you have those, then you can remove those with forceps. That's what they are.

Ms. Munson – So there are no special requirements for this stainless steel, the non-magnet, no special requirements for that?

Ms. Wiener – You use forceps for them. I think interestingly that parenthetical is intended to further define why you would use forceps.

Ms. Munson – Oh.

Ms. Wiener – Because you use a magnet when you have magnetic metal and then forceps are for non-magnetic metal, but oddly they have parentheses there. When the Division is cleaning up, I don't know if we have to open this rule for the Division to do its cleanup, but when the Division's cleaning up, probably after the word forceps, there should be a comma and no parenthetical.

Ms. Munson – To the word forceps, and/or forceps,...

Ms. Wiener – {Inaudible} magnetic metal.

Ms. Munson – The only reason I'm bringing it up is because like I indicated at the beginning with these rules, even though we're not opening them up for rulemaking for substantive reasons, we probably are still going to need to delete those sub paragraphs in the rulemaking and law implemented. So, it will come to the attention of JAPC or whoever is looking at them, and I promise you, when they look at it, they're going to look at the rule, they're just not going to look at these technical deletions. So, if there's a question that may come up that stuck out to me that was one of them, I was just bringing it to the Board's attention. Don't be surprised if some of these rules that we are not opening up because we are deleting or cleaning up the rulemaking and law implemented, it still does not come before you with questions. I guess that is my little underscore point. Any time I see a parenthesis in a rule, it's just a red herring. Thank you, Chair. I would like to say something before we go to the next rule, just because I couldn't get my audio for the former rule.

Chair Clark – Yes.

Ms. Munson – And it was for the 21.009. Again, like we put a pin 9.001 that dealt with advertising. I can just suggest to the Board that we also put a pin in 21.009 because 6.007 correlates with the same subject matter. So, whenever we get back to this, it could be duplicative. So, I think we should just make a side note that we're going to delete that last sentence, but whenever we do rulemaking on 6.007, to some extent, we might look again at 21.009. Thank you.

Chair Clark – Thank you, Ms. Munson. I know we had a motion and a second. Did we vote? I'm sorry.

Ms. Munson – Oh, I'm sorry. That was my fault. I'm sorry.

Ms. Schwantes – It wouldn't hurt to do it again.

Chair Clark – Certainly doesn't hurt. I do know we have a motion not to open, and it's been seconded. All those in favor say aye.

Committee members [Unison] – Aye.

Chair Clark – And any opposed? And that motion carries. Thank you, Ms. Schwantes. Sorry about that.

Ms. Schwantes – Thank you, sir.

(12) 69K-23.001 – Manner of Application

Ms. Schwantes – This rule begins on Page 27 with all of the former comments beginning on Page 27 carrying to 28 and the table for today's meetings on 28. There has been written proposal on this to basically repeal it. It looks like that's correct, right Ms. Wiener, to repeal the rule?

Ms. Wiener – Yes ma'am.

Ms. Schwantes – That is found on Addendum C, Page 22.

Chair Clark – Thank you. We'll open it up for public comments. Ms. Wiener?

Ms. Wiener – This is just an incredibly old, outdated rule that no longer has any applicability. We're not two (2) calendar months prior to the first day of the scheduled examination, but since examinations are no longer scheduled per se, and certainly not scheduled like this rule says, this whole rule will make them happy. We can get rid of a rule by rule.

Chair Clark – Thank you, Ms. Wiener. Any other public comments?

MOTION: Mr. Jensen moved to open this rule. Ms. Clay seconded the motion.

Chair Clark – I have a procedural question, Ms. Schwantes. I know we have a motion to open, but if the intent is to repeal or

close would that be a more appropriate motion?

Ms. Schwantes – Yes. At this point we can yes and just move to repeal.

Mr. Jensen – Revise my motion to repeal.

Chair Clark – Thank you. Ms. Clay do you revise your second to repeal this rule?

Ms. Clay – Yes.

Mr. Jensen – That was my second part of the motion to just get rid of it. But I assumed we had to do the first part first. But if we do it all at once, that's fine.

Chair Clark – We can do it all at once. Thank you, Mr. Jensen. We have a motion to eliminate this rule and it's been seconded. All those in favor say aye.

Committee members [Unison] – Aye.

Chair Clark – And any opposed? And that motion carries.

(13) 69K-23.003 – Renewal of Direct Disposer Licenses

Ms. Schwantes – This rule begins on Page 28 of the workbook of the tables with public comments beginning on Page 29 and the table for today's meeting on Page 30. A proposal was received from Ms. Wiener and that is found in Addendum C, Page 23.

Chair Clark – We'll open it up for public comment. Ms. Wiener?

Ms. Wiener – Thank you. We proposed eliminating the first sentence of sub (3). The Division no longer mails renewal notices to anyone, including direct disposers.

Chair Clark – Thank you, Ms. Wiener. Ms. Herring.

Ms. Herring – Thank you, Mr. Chair. This is something that the Department will be addressing when we open this rule.

Ms. Schwantes – That is correct. We do email notices.

Chair Clark – Correct. For the Committee, it sounds like what was just brought up will be addressed separate from our consideration. Any other discussion? Ms. Clay?

Ms. Clay – I was going to ask if we need a motion on that, in as much as the staff is opening that up, do we need to act on it at all?

Ms. Munson – Yes.

Chair Clark – I believe the appropriate motion to consider would be to not open it for our consideration knowing that it will be addressed through the Division.

Ms. Munson – Yes.

Ms. Schwantes – That is correct.

Mr. Jensen – So Mr. Chair, am I to understand that on your concerns here, which I do agree with, on your comments in the subsections here, that the Department's going to handle that and there's no need for us to discuss it? Is that right?

Chair Clark – That is correct.

MOTION: Mr. Jensen moved that there be no changes. Ms. Clay seconded the motion, which passed unanimously.

(14) 69K-24.040 – Licensure of Centralized Embalming Facilities

Ms. Schwantes – This rule begins on Page 30 of the workbook. Your tables and comments begin on the Page with the today's review notes table beginning on Page 31. Proposal was received from Ms. Wiener and is found on Page 24 of Addendum C.

Chair Clark – We'll open it up for public comments. Ms. Wiener?

Ms. Wiener – Thank you. A full-time embalmer in charge can be responsible for two (2) centralized embalming facilities. We changed the law on what people can be in charge of, so that should just be stricken, and it's unnecessary to revise it because it will be in the law as adopted.

Chair Clark – Any other public comments? Ms. Herring?

Ms. Herring – Thank you, Mr. Chair. If that is a statutory requirement and is written in the law, that is also something the Department will be removing in our review as well.

Chair Clark – Thank you, Ms. Herring. I believe I was the one that brought this up previously, so I'll make a motion.

MOTION: Chair Clark moved to not open this rule for changes. Ms. Clay seconded the motion.

Ms. Schwantes – {Inaudible}.

Ms. Wiener – Ms. Schwantes, you and I are about to say the same thing.

Ms. Schwantes – I'm actually not sure that I was. I was going to ask Ms. Herring to clarify that this is one of the ones that the Department is looking to change because I had still under review on mine, which meant at a different time. Is it a "this year" thing?

Ms. Herring – Yes, that one will be reviewed this year. I just believe the chart I gave you hasn't been updated. In a few weeks, however, because it is a licensure rule, we will be redoing the procedure part of this. So, since we are opening it and if it's a repeated statutory requirement, we can take that out.

Ms. Schwantes – Thank you.

Chair Clark – Thank you. Ms. Wiener, is that okay? I saw your hand go up.

Ms. Wiener – Absolutely. I was under the impression that even if the Department was going to do something with it, you still had to vote to open the rule, which I got from like two (2) rules ago. But if it's not necessary to open it because the Department will eliminate this concept, this line from this rule, because that's no longer what the statute says, then that works for me too. It's just this isn't what the law says. The law says two (2).

Chair Clark – Thank you, Ms. Wiener. Ms. Herring?

Ms. Herring – You're correct, Ms. Wiener. It just depends on what necessarily the change is. I believe the rule previously was more of like a policy change, so that's not something that we can do. So, when we get further down the line in the rulemaking process, that's the thing that we will come to.

Ms. Wiener – Sounds great.

Chair Clark – Thank you. So, we have a motion not to open and it's been seconded. Any other discussion on the motion? Hearing none, all those in favor say aye.

Committee members [Unison] – Aye.

Chair Clark – And any opposed? And that motion carries.

(15) 69K-31.001 – Procedure Required

Ms. Schwantes – This rule begins on Page 31 of the workbook with the public comment tables beginning on Page 32, and today's review table found on Page 33. Ms. Wiener proposed change to this that is found on Addendum C, Page 25.

Chair Clark – We will open it up to public comments. Ms. Wiener?

Ms. Wiener – Actually I'll defer to Ms. Pettine on this. She made these changes.

Chair Clark – Thank you. Ms. Pettine?

Ms. Pettine – In regard to looking at some of the edits on the procedure required, and it was really just intended to clean up some of the language to be more consistent. For instance, the inclusion of the word scattering for placement in a scattering garden or pond. Inclusion of the records retention requirement to crematories, which I believe is consistent with current Division practice, as well as clarification that records can be stored in an electronic format. And then the removal of the word local simply because we are in Florida. There are federal waterways all around us. So, I thought that the removal of that language would make it more consistent with language throughout the other. If you have any questions regarding any specific edits let me know.

Ms. Schwantes – Ms. Pettine, where is the word local removed?

Ms. Pettine – It was in subsection (1)(f), where it states scattering or placement in areas where no local prohibition exists. Given that we're in Florida and there are federal lands, federal waterways, it makes the most sense to simply remove that language.

Ms. Schwantes – Thank you. It's just one I missed when I was highlighting before.

Chair Clark – Thank you, Ms. Pettine. Any other public comments?

Mr. Jensen – Mr. Chair, I do have a question for Ms. Pettine, since she did this. So, when it's talking about the ways of disposition where it can be at sea, and there was an interesting point just raised because there are rules all over Florida where you've got to be a certain distance from shore or further shore, so to speak. You can't be in bays and things of that nature. I know that people don't really honor that, but legally in our profession, we have to honor that if we're scattering them. So, is that covered or is it not covered? I was a little confused by what was just said.

Ms. Pettine – It is covered one way or another by another prohibition. It felt like the language of local prohibition is simply just unnecessary. It doesn't do any particular work to specify a local prohibition.

Mr. Jensen – I understand.

Ms. Wiener – And so I think to your point, Mr. Jensen, subsection (a) is a little further modified by subsection (f). There are laws in place that prohibit scattering at sea within a certain number of miles from coasts and other things. And so, because those laws are in place, it need not be included in the rule.

Mr. Jensen – Okay. Thank you. I appreciate that.

Ms. Clay – Mr. Chair, then is it appropriate to make a motion to open this rule up?

Chair Clark – Yes, it is.

MOTION: Ms. Clay moved to open this rule. Mr. Jensen seconded the motion, which passed unanimously.

Mr. Jensen – Mr. Chair?

Chair Clark – Yes?

MOTION: Mr. Jensen moved to accept the proposed written changes by Ms. Pettine. Ms. Clay seconded the motion, which passed unanimously.

Ms. Pettine – Thank you.

(16) 69K-100.035 – Courses of Study; Criteria; Procedures for College or University to Obtain Approval

Ms. Schwantes – This rule begins on Page 33 of the workbook, with the tables with prior comments on Page 34, and the table for today's review found on Page 35. Although a full copy of the rule was provided in Ms. Wiener's notes, no proposed changes were made to it by her, on behalf of the FCCFA or SCI, and there were no other course-written comments received.

Chair Clark – Thank you, Ms. Schwantes? Any public comments? Hearing none. I guess I have a question. It may be for Ms. Herring, or it may be for Ms. Munson. Ms. Munson, you brought up that Type 1, 2, and 3 courses of study is not referenced in statute. Does that mean that's something that needs to be cleaned up that's separate from the work that we're doing?

Ms. Munson – This is the time to do the cleanup, quite honestly, because like I said, this is our statement in support of this Senate bill legislation that we looked at the rules and when we looked at that rule number, we did the things we needed to do with it. So, we put this in this in the first section of our five-year plan.

Chair Clark – Thank you.

Mr. Jensen – So what was the answer to that? Was that yes, or no?

Ms. Munson – I kind of said yes to that, because this is the time to do it. This is the year we picked to do it, so.

Mr. Jensen – Okay.

MOTION: Mr. Jensen moved to open this rule. Ms. Clay seconded the motion, which passed unanimously.

Mr. Jensen – Ms. Munson, what do we do now? I know you had some comments on this, so I would like to hear what your proposal is here.

Ms. Munson – If that language is not accurate, and I'm going to leave it to the professionals to tell me, we need to modify it so that it will read accurately. They have these different types of courses of study, Type 1, Type 2., and I don't know if that's accurate. I mean, I have no idea.

Mr. Jensen – {Inaudible} three (3) courses offered anywhere in Florida. I do know that. And I think Mr. Beckham made a comment as to that fact as well. So, you know, we definitely need to strike that.

Ms. Munson – What we're doing now is looking at it and determining exactly what you're doing. If it doesn't apply, we need to strike it. Or if it reads, and it's not in compliance in any way, we need to modify it.

Chair Clark – Mr. Jensen, do you have any other questions?

Mr. Jensen – Mr. Chair, I do understand what she's saying. And like I said about the Type 3 courses, I just don't know how to legally put this at legalese to appease the lawyers here. So, I guess I we as a Board would probably need some help to get the

language correct here, but I do agree that it needs to be cleaned up. I just don't know what language we can use.

Ms. Munson – They need to be deleted.

Mr. Jensen – Yes, and Mr. Chair, I do know Type 3 courses needs to be deleted. There are none offered at any school in Florida.

Chair Clark – And I also know the address needs to be updated. That's noted already. Ms. Wiener?

Ms. Wiener – Is that true? You cannot study to just be an embalmer?

Mr. Jensen – That is true. The state offers a license for that, but anytime you enroll, there are only two (2) different things. You can have a funeral director certificate, or you can have an associate in science, which includes funeral directing and embalming. That's the only two (2) courses that I know of that are offered. And the certificate part, you know, just came to be several years ago.

Ms. Wiener – I mean, we don't really use this nomenclature of Type 1 and Type 2. I think this rule probably came into being when we created what we now lovingly refer to as funeral director only licensure, and maybe at the beginning we were going to make reference. It looks like that's probably true. It looks like this rule was created in 2012 and that's when we included funeral director only. If we don't use the references to Type 1 and Type 2 anymore, then this rule probably needs some fairly significant overhaul to eliminate a number of paragraphs or at least references.

Ms. Munson – So when you were asking, Mr. Jensen, about the legalese, honestly where the work is, it is going to come from you guys as to what actually applies so we can know what to delete.

Mr. Jensen – Okay. Yes, I just don't know how to do it. And I think we're sort of on the same page here, Mr. Chairman. Maybe we could get the FCCFA to pay Ms. Wiener to come up with legalese on this.

Ms. Munson – The Board can't do that. Just let me get that clear for the public. The Board can't do that.

Ms. Wiener – Let me ask a question of the licensing authority. Does the licensing authority approve courses of study? I don't think so. Because the premise of this entire rule is to like build out courses of study that will be approved by the licensing authority. If the licensing authority is not going to the schools and approving their courses of study, then this entire rule should be repealed because...

Ms. Munson – Honestly, honestly, I'm sorry, Ms. Wiener.

Ms. Wiener – No, no, you go.

Ms. Munson – I was just going to say that this entire chapter is entitled this Division. So, I don't even know what the Board, I mean, I don't even know how it's a Board rule. How the Board is involved.

Ms. Wiener – I don't think anybody, I don't think anyone at the Department, Division, licensing authority generally approves courses inside of the colleges and universities that offer these programs. And maybe Ms. Schwantes will say that they do, but I don't think that they do. And if they don't, then this rule is totally meaningless because all it is doing is sort of building out this concept of these courses of study and then how you might go about getting them approved. But, and maybe Mr. Davis can come back on and tell us if he ever sought approval for the course of study with a form. We have a form for that. That's my catchphrase, but you guys can use it.

Chair Clark – And I was going to add to Mr. Jensen's point, while we don't offer an embalmer only in Florida, they may outside of Florida. But I also agree, I don't know that we're approving courses of study. So, I just saw Ms. Peebles come online. Ms. Peebles.

Ms. Peeples – Thank you, Mr. Chair. I'm going back to 470 when I was honored to be appointed to that Board. The 470 Board, under the Division, approved courses of study. Then, when it came to 497, back as you see the authority in this particular rule of 8-14-2012, and then it goes to history of October 16, 2013, it went to where the American Board of Funeral Service Education is who approves study now for the different colleges and universities. So, Ms. Schwantes, you may want to add something to that, but the Division itself does not approve the course as a study. It's through the American Board of Federal Service Education now, but it used to be done many years ago through the 470 Board, not the 497. Thank you.

Chair Clark – Thank you, Ms. Peeples. Mr. Jensen?

Mr. Jensen – Yes, just to piggyback on what Ms. Peeples just said, it's kind of a three-tier process. The schools are predicated basically on the accreditation of the ABSFE, so they are approved through that. And even on the licensing for the Department, it currently says on there an ABSFE approved course. So, every base is pretty much covered with that, but I do see the rule as a little redundant. I mean, it needs to be cleaned up for sure, because there are some issues there.

Ms. Wiener – But if you're not approving, if the state is not, if no school is submitting the DFS-N1-2041, which is the application for approval of a course of study, because the State does not approve courses of study, then we should repeal this rule in its entirety.

Ms. Munson – I agree.

Ms. Wiener – And then if it goes back, if it becomes a thing again, then we can make a new rule, but this rule is just sitting out there as dead weight.

Mr. Jensen – Mr. Chair, I would tend to agree with that. I'd like to make a motion, let's just repeal it completely. And I think Ms. Munson said she agreed with that as well.

Ms. Munson – I did.

MOTION: Mr. Jensen moved to repeal this rule. Chair seconded the motion.

Chair Clark – Ms. Wiener, can you read that form number again? I apologize.

Ms. Wiener – DFS-N1-2041.

Chair Clark – Thank you, sorry, I just wanted to write that down.

Ms. Schwantes – Mr. Chair, it's in the very last sentence of the rule.

Chair Clark – I'm sorry, Ms. Schwantes, what was that?

Ms. Schwantes – It's in the very last sentence of the rule. It's highlighted.

Ms. Munson – In the very last sentence.

Chair Clark – Okay, I got it.

Ms. Wiener – So if the rule is repealed, will that form automatically go away? The answer I think should be yes, but I don't know if that'll happen.

Ms. Schwantes – Ms. Herring, do you want to address that?

Ms. Herring – I believe it will, but I will check with my supervisor.

Mr. Jensen – And Mr. Chairman, may I make a comment along those same lines?

Chair Clark – Yes.

Mr. Jensen – Yes, and I think it's redundant in the sense of the Department's applications clearly state ABSFE approved course of study. So, on all their applications that I've seen, that's what it does. So, it's kind of the third tier down. So, you know, I think that is covered. So, we don't really need the redundancy. Thank you.

Ms. Schwantes – Mr. Chairman, Ms. Simon came on and I would like for her to comment.

Chair Clark – Ms. Simon?

Ms. Simon – In this matter, I was looking up at the rule, the last change to the rule. Actually, it was created in 2012, and I see it in the Florida Administrative Code how it was created at that point. It didn't exist prior. I don't know what exactly happened in 2012. I would think that the changes we're talking about occurred before then.

Ms. Wiener – In 2012, that's when we adopted the funeral director only. Back before then, you had to be a funeral director and embalmer, but in 2012, legislation was put forward to try and bring more people, like people with hospitality backgrounds and other customer service backgrounds into the fold. And so that's when we added the legislation that contemplates people with four-year college degrees in other things as long as they're in a funeral director only course of study, then they can have a license. So, I think this all follows along with that, but consistent with what Ms. Peebles said, I think it was also the practice back under 470 Board to approve these, but now it's just, this has fallen out of favor.

Ms. Simon – But if it was under the 470 Board to approve these, then that would have been before 2012.

Ms. Wiener – Probably just not a rule though.

Ms. Wiener – We have never used this rule since the time I've been here. There has been nothing. We haven't approved the courses. I remember in one of the meetings we had, I believe Howard Beckham started speaking as to the Type 1 course and Type 2 and he started going on about the certificate that you could achieve, but we've never used it, as a licensing authority that the Division is. We've never used this rule since I've been here, like I said, in 2014.

Chair Clark – Thank you Ms. Simon. Ms. Peebles, did you have something you wanted to add?

Ms. Peebles – Thank you. I'm looking up the statute really quick, but the form is on the website for the Division that Ms. Wiener had denoted, DFS-N1-2041. It is there, but I was looking at kind of looked through the statute to see if it was mentioned in statute, but I don't remember it ever being used as Ms. Simon mentioned for a university college or other entity to have to complete that form.

Ms. Wiener – And by the way, the law was changed in 2010. So that tracks that it took a couple of years once we picked up rulemaking again and got going with that.

Ms. Munson – So, if I may? Whether the Department chooses to use this form, and I don't know why it would, but it's nothing to do with the Board, and that's the only part of it that seems to be an open question as to any relevance. I would really think that there's no reason not to repeal this rule.

Ms. Wiener – I agree.

Mr. Jensen – So Mr. Chair, we have a motion and a second. Do we vote now?

Chair Clark – We have a motion to repeal. Any other discussion on the motion? Hearing none, all those in favor say aye.

Committee members [Unison] – Aye.

Chair Clark – Any opposed? That motion carries.

F. Summary Regarding Meeting Results and Future Plans

Ms. Schwantes – This is where I just wanted to both summarize what we've come up with today. So, I'm going to go over the rules we've talked about today so that we all have it on record. And I'm going to skip the 69k part.

- 5.0025 will be open for change.
- 5.012 will be open for change.
- 5.0125 is a do not open, no change.
- 9.001 is open.
- 17.0036 I didn't mark down, so I'd have to go back and look.

Ms. Munson – It's open, changing it to an hour.

Ms. Schwantes – Thank you.

- 18.001 is do not open, no change.
- 18.002 is do not open, no change.
- 18.003 is do not open, no change.
- 20.001 would be open for change.
- 21.009 is open for change.
- 22.007 is do not open, no change.
- 23.001 is open for repeal.
- 23.003 is do not open, no change.
- 24.040 is do not open, no change.
- 31.001 is open for change.
- 100.035 is open for repeal.

So out of the sixteen (16) rules, we have narrowed it down to two (2) that will be recommended for repeal, and only seven (7) that will be open for change. The others are do not open, no change.

Ms. Munson – If I may?

Ms. Schwantes – Yes.

Ms. Munson – Just because I know we're going to leave the rules, just putting a pin in it again. Having this one last rule in Chapter 69K-100, it looks like such an outlier. I think this needs to go somewhere else. I don't know why we go from Chapter 33 to Chapter 100. Just with this one rule in it, dealing with direct affiliations with establishments, I think we need to, whenever we put that on the list, because it's kind of just sticks out there like in the middle of an ocean. Under the topic of Division of Funeral, Cemetery, and Consumer Services, it doesn't look organizational.

Ms. Schwantes – I think it does. The reason, if you recall, that we have this weird assortment of rules on this is because the Department took the Shared Rules for part of its overall 20% that it had to meet in its review this year. So, we also had to look at all of the Shared Rules and the ones that you've just referenced in the remaining a part of that Section in 69K are not part of the Shared Rules. So that's why it was not on any of the reviews this this year. I'm not sure how this will work in the future when we look at the five-year plan. We've already submitted that. We can revise that in a year as we go forward, but even if we were to leave it the same and then begin this whole review again it may be at that time that what we want to do is review it by chapter instead of, and by chapter I'm talking about the major sections within chapters, rather than having it done Shared Rules versus Department Rules versus Board Rules kind of situation, but that's for a future day. That is how we got to this point. So, as discussed, the August 19th meeting minutes and the Committee report that you've already approved today will be provided to the Board at its October meeting next week for review and approval. So that's getting that much further.

Our next Committee meeting will be by videoconference on Monday, October 20th, beginning at 10 a.m. Written comments and proposals are due by close of business two (2) weeks before, which falls on Monday, October 6th. Those twelve (12) rules being discussed at the October 20th meeting are all Board Rules which the Committee determined should be revisited again to

consider proposed language. We also expect that the minutes and report from today's meeting will be ready for Committee review and approval on the October 20th meeting. Assuming they're approved, those minutes and report then get presented to the Board for review at its November meeting.

As we get a little bit closer and come to crunch time between the December Board meeting and when the January 1st report is due, we may need to look at, for example, a delegation of authority to the Committee Chair to review the minutes and the proposed report from the next meeting so that we don't have to have another meeting of the Committee just to review those matters before the December Board can discuss that next time. I just kind of wanted to give you an overall idea of where we are just to get things out the door on January 1st. Unless anyone has any questions, those are all of the summary comments that I had regarding these matters today.

Chair Clark – Thank you, Ms. Schwantes.

G. Chair's Remarks

Chair Clark – I'll just add, first thank you to you, Ms. Simon, for keeping us organized and on track, and the workbooks have been incredibly helpful as a committee member, so thank you. Thank you to Ms. Munson. Ms. Herring is providing guidance and clarity. I think this is the first time we've done this, so we appreciate your expertise. Ms. Wiener continued thanks for providing language and feedback prior to these meetings. I know it's helpful for me and also helpful to the other Committee members. To Mr. Ferreira, the Board Chair, Ms. Peeples, thank you for joining us today. And for my fellow Committee members, thank you for your time, for coming prepared. This is important work that we're doing, because, again, we've never endeavored on something like this. So just thank you.

H. Adjournment

Chair Clark – And with that, the meeting is adjourned.

Ms. Schwantes – Thank you, all.

Ms. Munson – Thank you.

The meeting was adjourned at 1:28.