

# Memorandum

**To:** Board of Funeral, Cemetery, and Consumer Services

**From:** Mary Schwantes, Executive Director

**Date:** July 26, 2023

**Re:** Summary Report of Rules Committee Meeting 6-8-2023

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On June 8, 2023, the Rules Committee (the "Committee") of the Board of Funeral, Cemetery, and Consumer Services (the "Board") met in Tallahassee, Florida. The meeting began at 1:00 p.m. Committee members present were Joseph Brandenburg (Committee Chair), Ken Jones, and Bill Williams.

The following issues were discussed. The issues are listed in the order in which they appeared on the Committee meeting agenda. Minutes from the meeting are additionally attached for informational purposes. For each issue in which the Committee made a recommendation, the issue will be placed on the agenda for a future Board meeting for discussion by the Board and appropriately noticed.

## ***Embalming Requirement for an Establishment to Remain a Training Agency for Internship Licenses***

Rule 69K-18.004, Florida Administrative Code, concerns intern training agencies. Subsection (3) of the rule provides that "in order to be approved as an embalmer intern training agency, a funeral establishment shall have performed at least forty (40) embalming cases per year for each intern it is applying to train in order to demonstrate its ability to provide such embalmer interns with the necessary intern training and experience." The related form used in registering as a training agency is Form DFS-N1-1749, which is titled "Registration as a Training Agency."

At its November 3, 2022, meeting the Board voted to reduce the number required to 20 embalming cases per year.

*Committee Meeting Results:* No additional recommendations were made by the Committee. Proposed rulemaking will be presented to the Board in the future regarding Rule 69K-18.004, Florida Administrative Code, and the related form to effectuate the November 3, 2022, Board decision.

### ***Problems Faced by Funeral Service Program Students in Accessing Required Courses***

This issue was initially discussed before the Board at its November 3, 2022, meeting. There are no relevant chapter 497, Florida Statutes, or rule chapter 69K, Florida Administrative Code sections pertaining to college course access.

*Committee Meeting Results:* No recommendations on this issue; the Board does not have authority in these matters.

### ***Requirements Regarding National Board Exam in Florida***

Concerns were expressed regarding the declining passage rates by Florida students taking the National Board Exam. Discussion was held as to whether the state requirements for this exam should be changed. The primary possible solutions discussed were (1) lowering the passage rate from 75% to 70% or less and (2) completely eliminating the National Board Exam from Florida requirements for licensure.

Numerous statutes and rules are potentially impacted by this issue. All relevant rule and statutory language will be presented to the Board when this issue is placed on the agenda for discussion.

*Committee Meeting Results:* The Committee recommended that the relevant rules, including sections 69K-16.001 and 69K-16.002, Florida Administrative Code, be reviewed to determine if the National Board Exam requirement should be eliminated from the requirements for Florida licensure. Any changes to the substantive rules will also result in the necessity for changes to the related forms. This issue will be placed on the agenda for a future Board meeting for full discussion and possible rulemaking.

### ***LLCs and Impact on Current Application Forms***

Based on discussions which occurred during the Board meeting on May 4, 2022, the Committee considered if changes needed to be made to Form DFS-N1-1718, titled "Business Entity List of Principals," to better clarify the meaning of "principal" so as to make it clearer for LLC applicants.

*Committee Meeting Results:* The Committee did not have recommendations to the Board on this issue. However, the Committee agreed that Form DFS-N1-1718 should be modified to better clarify the issue. Since forms are the responsibility of and fall under the authority of the Department, the Department will review and pursue any appropriate changes to the use of the word "principal" in the form.

***Resolution of Any Discrepancies Between Section 69K-8.005, F.A.C., and Section 497.459, F.S., Involving Refunds on Insurance Funded Preneed Contracts***

Based on discussions which occurred during the May 4, 2022, Board meeting, this issue arose as to whether there is any conflict between the referenced statute and rule as it relates to refunds on insurance-funded preneed contracts. Discussion at the Committee meeting appeared to add clarity to the refund issue.

*Committee Meeting Results:* Upon consideration, the Committee did not have recommendations to the Board on this issue.

***Rule 69K-8.006(6), F.A.C., as it Relates to a Licensee's Flexibility to Acquire Certain Merchandise at the Time of Need or Fulfillment***

Concerns were expressed regarding the difficulty licensees face in providing merchandise that was specifically defined in a preneed contract (e.g., a specific casket model) at the time of need, particularly if the defined item is no longer readily available to the licensee.

*Committee Meeting Results:* The Committee recommended that Rule 69K-8.006, Florida Administrative Code, be reviewed by the Board to address this issue. This issue will be placed on the agenda for a future Board meeting for full discussion and possible rulemaking.

**MINUTES**  
**BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES**  
**RULES COMMITTEE MEETING**  
**JUNE 8, 2023 – 1:00 P.M.–3:22 P.M.**

**A. Welcome/Introduction**

**Ms. Mary Schwantes** – Good afternoon. Today is June 8, 2023, and it's approximately 1:00 P.M. This is a public meeting of the Board of Funeral, Cemetery, and Consumer Services. This meeting is being held in-person at the Department of Revenue, Capital Circle Office Center, on Shumard Oaks Boulevard in Tallahassee FL. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting as well as the meeting materials has been made available to all interested persons. Information relating to this Committee meeting, including the meeting materials, has also been published on the Division's website. Ms. LaTonya Bryant is recording the meeting and minutes will be prepared.

Persons speaking are requested to come up to the podium and identify themselves for the record each time they speak. Non-Committee members speaking are also asked to at least initially, state your name and spell your last name for the record. This will greatly assist our staff in preparing the minutes from the meeting. All participants are respectfully reminded that the Committee Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission and make sure that they are recognized or acknowledged by Chair Brandenburg before they speak. If you've not done so, please sign in at the table located by the door and be sure to include your email address. There are also small forms available for you to use if you wish to speak on a particular topic on the agenda. We have six (6) topics scheduled on the agenda today. I will briefly describe the topic, then ask the individuals who raised the topic if they wish to address the Committee. Again, please wait to be recognized by Chair Brandenburg before speaking. In the interest of time, we would encourage all to keep their presentations brief, preferably lasting no more than three (3) minutes. Committee members may have questions of the presenters. When appropriate, the Committee Chair may then request comments from the public. The forms you filled out at the sign-in table will assist us in making sure all who wish to comment on each agenda item are provided opportunity.

At this time, I'd like to introduce those sitting at the head table and Department staff who are attending. We have Committee Chair, Jody Brandenburg, Committee member, Ken Jones, and Committee member, Bill Williams. Rachelle Munson, who is Senior Assistant Attorney General with the Office of the Attorney General is here and serves as counsel for the Board of Funeral, Cemetery, and Consumer Services. And to my right is Ellen Simon, our Assistant Division Director for the Division of Funeral, Cemetery, and Consumer Services. From the Office of the General Counsel, Marshawn Griffin, our Chief Legal Counsel, Kimberly Marshall, Attorney Supervisor, and Jared Woliver, Senior Attorney. And from the Division, LaTonya Bryant, our Administrative Assistant III, Jasmin Richardson, our Financial Specialist, and Crystal Grant, Financial Examiner/Analyst I. I'd also like to recognize the following Board members who are attending in the audience: Jill Peoples, Board Chair, Todd Ferreira, Sanjena Clay, and Chris Jensen. Did I miss any Board members that I didn't see come in?

**Chair Jody Brandenburg** – No.

**Ms. Schwantes** – I think we got them all. And with that, that ends the opening statements. Mr. Chair, are you ready for me to go on to the next item?

**Chair Brandenburg** – Please proceed.

**Ms. Schwantes** – Thank you, sir. The issues in agenda items B (1) through (3) were all raised during the Board's videoconference meeting held on November 3rd. Materials provided with the agenda on these items include the following: the November 3, 2022, minutes. Please see item "W" on pages 53 through 67 of the minutes. Item W that day was *Topics for Discussion as Referenced During 8/4/2022 Board Meeting*, which is the date when the issues were first introduced during the Executive Director's Report and Public Comments sections of that meeting. The issues were noticed for the November 3rd meeting, briefly discussed that day, and referred to this Committee for additional discussion and possible action as needed. *Topics for Board Discussion as Referenced During August 4th, 2022, FCCS Board Meeting*. That document was also included in the materials. It contains communications from licensees and others pertaining to the issues raised and discussed at the November

3rd meeting. It also contained relevant portions of the August 4th Board meeting. I'll refer to these documents as necessary in introducing each of the agenda items under B (1) through (3).

**B. Issues Raised During FCCS Board Meeting on 11/3/2022:**

**(1) Embalming Requirement for an Establishment to Remain a Teaching Firm for Internship Licenses**

**Ms. Schwantes** – This issue concerns Rule 69K-18.004, Florida Administrative Code, regarding intern training agencies. Specifically, subsection (3) of the rule provides that, "In order to be approved as an embalmer intern training agency, a funeral establishment shall have performed at least forty (40) embalming cases per year for each intern it is applying to train in order to demonstrate its ability to provide such embalmer interns with the necessary intern training and experience." The sub clause contains a similar provision requiring that a training facility have performed at least forty (40) funeral services per year for each funeral director intern it is applying to train. However, it is the embalming requirement that is of concern here. Relevant Florida Statutes, for example, Section 497.370(3), provide the Board with authority to adopt rules establishing the intern program and criteria for embalmer intern training agencies and supervisors. It is the rule itself which establishes the number of embalming cases and other criteria required. The form related to this rule is Form DFS-N1-1749, which is titled Registration as a Training Agency, also provided in the Committee meeting materials. This form is used by licensed establishments when applying to become a training agency for either funeral director interns or embalmer interns. There's only one (1) form used for both types of intern programs. Approved training agencies are not required to file any other forms, annual or otherwise, regarding the number of embalming cases handled each year. Any change to the rule will also necessitate a change to this form.

As a reminder, rulemaking on forms falls under the purview of the Department and would be followed up on separately from any Board action that is taken as a result of this Committee's recommendations. The information on the forms is included primarily for quick reference and so that Committee members in particular know how this information is being obtained by the Department. As a final note on this issue, the Board voted at its November 3rd meeting to reduce the number required to twenty (20) embalming cases per year. That vote is on page 57 of the November 3rd minutes. I believe the matter was referred to this Committee for final recommendations on that and/or guidance on any other related changes that should be made to the rule. The issue regarding embalming cases was raised in the communication from Cheryl Lankford of Lankford Funeral Home and Howard Beckham with the Florida State College at Jacksonville. Ms. Lankford's email communications and the presentations of both at the Board's November 3rd meeting are included in the materials for this meeting. Is Ms. Lankford present? I didn't see her earlier. I know Mr. Beckham is present. He's here today representing both Florida State College at Jacksonville and the Independent Funeral Directors of Florida. And so, I would ask that, first of all, do you want to address the Committee on this issue? And if so, also, Mr. Beckham, as you address the Committee, if you would identify which entity you're representing or both, and please come up to the podium. Mr. Chair, is that okay?

**Chair Brandenburg** – Yes. I do want to mention, again, that this issue came up before the Board. And after a lot of discussion and a lot of input into it, the Board agreed that their recommendation is twenty (20). So, if you have something other than that, please let us know. But otherwise, twenty (20) has been the number that has been proposed before the Board and approved for the Board.

**Mr. Howard Beckham** – Thank you. My name is Howard Beckham, B-E-C-K-H-A-M. I am the Program Director of Florida State College at Jacksonville for Funeral Services. I've also been asked to speak on behalf of the IFDF, I guess as a committee member or something to that effect, on this. Ms. Lankford asked me to speak on her behalf. Yes?

**Ms. Schwantes** – Mr. Beckham, do you have a suggestion other than the twenty (20)?

**Mr. Beckham** – I'd just like to {inaudible}, Mr. Brandenburg, that the twenty (20) is the number that we had talked about. The same reasons we gave last time at the Board meeting several months ago because of the changes, the increase of cremation rates, and the smaller funeral homes who don't do forty (40) embalmings per year have a chance to serve as places for training for interns in the State of Florida.

**Chair Brandenburg** – I think everybody has an understanding of that.

**Mr. Beckham** – That's all I wanted to say.

**Chair Brandenburg** – And I appreciate your affirmation of it. And thank you for agreeing to the twenty (20).

**Mr. Beckham** – If there's any other questions, I'll be happy to answer.

**Chair Brandenburg** – Thank you.

**Mr. Beckham** – Thank you.

**Ms. Schwantes** – Mr. Brandenburg, Ms. Wiener also said that she wanted to speak.

**Chair Brandenburg** – Ms. Wiener?

**Ms. Wendy Wiener** – I waive.

**Chair Brandenburg** – Okay.

**Ms. Schwantes** – Okay.

**Chair Brandenburg** – Ms. Coney? She's waiving, literally.

**Ms. Schwantes** – Those were the only comments that we had unless anybody has any others.

**Chair Brandenburg** – Good. Okay. Thank you for your input in that. And Mr. Davis? Professor Davis?

**Mr. Kevin Davis** – Kevin Davis with St. Petersburg College. Just as the National Board has changed, there is a section, a domains section over preparation of the body. So maybe we could expand the definition and not just say embalming, but let's say ready for ID viewing and such like that, so we can expand this. As we see less and less embalmings in the funeral home, but they still are preparing bodies. So maybe we can expand that definition, and I support the twenty (20), too.

**Chair Brandenburg** – Good. Thank you, professor. Anyone else to comment on this? Okay, next item.

**Ms. Schwantes** – Before we go on to the next item, was there any further action that the Committee wanted to recommend regarding any further changes?

**Mr. Bill Williams** – Do we need a motion at this point?

[Inaudible Comment]

**Ms. Schwantes** – I just was asking if the Committee needed to take any kind of action on this. And this is really a question for the Board counsel. Do they need to take any kind of a vote on whether or not any additional changes to the rule need to be made particularly based on Professor Davis's comments?

**Ms. Rachelle Munson** – Good afternoon. This Committee does not need to take any additional action regarding the number of embalmings that have previously been recommended and supported by the Board. That matter has been addressed by the Board previously. I believe this venue was set to discuss to see if there were any other considerations that could be made to the point made by, I believe, Mr. Davis regarding -- I believe the request was to expand the definition. I'm not certain what particular statutory authority there is to expand the definition as suggested. So, I don't think that at this particular time we may not have the necessary authority to do so.

**Chair Brandenburg** – Thank you.

**Ms. Schwantes** – Mr. Chair, may I go on to the next item?

**Chair Brandenburg** – Please.

**Ms. Schwantes** – Okay. Thank you, sir.

*(2) Problems Faced by Funeral Service Program Students in Accessing Required Courses*

**Ms. Schwantes** – This topic was raised in communications from Cheryl Lankford of Lankford Funeral Home, Beatriz Cains, who is a student at St. Petersburg College, and Angela Awbrey, an apprentice at Stephenson-Nelson Funeral Home. The communications and subsequent presentations of the November 3rd Board meeting are included in the meeting materials. There are no related Chapter 497 statutes or Chapter 69K rules pertaining to college course access. I would ask if any of the ladies I referred to are here today, and if so, do you want to address the Committee? And seeing and hearing none, we did have a few cards presented for people who might be interested in talking on this item. The first is Ms. Wiener.

**Ms. Wiener** – Waives.

**Ms. Schwantes** – Ms. Wiener waives. The next, I believe was Professor Beckham, and he is coming to the podium.

**Mr. Beckham** – Again, Howard Beckham, B-E-C-K-H-A-M. A question on this about the Florida Statutes don't address this at all. It is under the previews of the state college, requirements of individual state college and the General Board of Regents in Tallahassee, which governs your educational requirements. St. Petersburg has their president, their board of directors, which is the way their college does things. Miami-Dade, as we do at Florida State College, Jacksonville. I understand that a lot of people want to get in the funeral program. Our applicants have greatly increased in the last couple of years. Miami has an abundance of adequate candidates getting in. I think less than -- I have over two hundred (200) applications right now for the fall and I only can admit thirty (30). So, I have a lot of unhappy people. I'm sure Miami Dade has unhappy people who can't get in or can't get classes because one, finding people that teach these classes is not easy. We have a span of control. Those who in management know what span of control is. We only have so many, I'm only able to admit twenty-seven (27) students. I have to get an override to go to thirty (30), and that has to be approved by the dean and the provost of the college and the college president, just to add those extra students. So, we do have a lot of people wanting to get into the programs, wanting to get into classes, but we are limited in funeral service education by the number of people we can find that were willing to come into the programs or qualified to teach. They're willing to get a bachelor's degree and master's degree or more to do so, to be able to teach these classes. So, it is something that we wish we could solve easily, but it's not a problem, one, I don't think can be addressed by the Funeral, Cemetery, and Consumer Services Division. It's something to address on the college level.

**Chair Brandenburg** – Just to be understood, Chapter 497 and Rules 69K, do not pertain to this at all.

**Mr. Beckham** – I'm not infallible, but I couldn't find it. Anybody can? Any one of the attorneys present?

**Chair Brandenburg** – You're not infallible, no one can find it.

**Mr. Beckham** – I understand. But if somebody can tell me where that is, I'd like to know.

**Chair Brandenburg** – Thank you for your discussion on that.

**Ms. Schwantes** – I believe that Ms. Coney had also filled out a card on this and she is coming up to the podium, perhaps.

**Chair Brandenburg** – Ms. Coney?

**Ms. Coney** – No, thank you.

**Ms. Schwantes** – Ms. Coney waives. Thank you. Going on to the next agenda item then, Mr. Chair?

**Chair Brandenburg** – Please.

**Ms. Schwantes** – Thank you.

*(3) Requirements Regarding National Board Exam in Florida*

**Ms. Schwantes** – This issue was initially raised by Howard Beckham, funeral services program director and professor at Florida State College at Jacksonville. The issue was raised during the Public Comment section at the Board's August 4th meeting, and again presented by Mr. Beckham for discussion at the Board's November 3rd meeting. Very briefly summarized, Mr. Beckham has expressed concerns regarding the declining passage rates by Florida students taking the National Board Exam and questioned if the state requirements for the exam should be changed. All relevant Board minutes and other materials have been provided with the agenda for this meeting. Specifically included in the materials are relevant statutes relating to the Board's authority to establish rules on required examinations for licensure and the related rules. Rule 69K-16.001, F.A.C., on the examination for embalmer applicants, sub subsection (2)(a) requires that the applicant obtain a score of 75% on the Funeral Services Science section of the National Board Exam. Rule 69K-16.002, F.A.C., regarding the examination for funeral director applicants, subsection (2) requires that the applicant obtain a score of 75% on the Funeral Service Arts section of the National Board Exam. Sample forms relating to these requirements were included in the Committee meeting materials for information purposes. Specifically, we included the form for application for a combination funeral director and embalmer license by internship and examination. We also included the form used by applicants who have taken another pre-licensing examination. For example, one that is not the National Board Exam, who are asserting that the exam that they took was equal to or more stringent than the National Board Exam. The forms are included so that the Committee members can quickly see how this information is requested in the application process. Again, any required follow up on forms comes under the authority of the Department. Mr. Beckham, did you want to address the Committee on this issue? He's the one that raised it first. And Mr. Beckham is coming to the podium. Thank you, Mr. Beckham.

**Mr. Beckham** – I'm the one who endorsed education and endorsed having some sort of way to engage referencing the education that students are receiving, in that by giving some sort of testing and things like that. I think that's important. I think the NBE has been, for many years, the standard. I would ask maybe Kevin Davis to volunteer to correct me if I'm quoting him incorrectly here. But Kevin has been teaching for over thirty (30) years the same basic material for the NBE preparation and the student pass rates have continued to decline over the years. COVID has not helped that. I will give them that. Also, there have also been some studies done by the American Board and by others that if the pass rate was changed to 70% instead of 75%, that you would have almost everybody pass. I know I get the scores from The Conference, the International Conference of Funeral Service Examining Boards, and at 70%, almost every one of my students would pass. So, they're missing by one and a half points generally per pass when they do not pass.

**Chair Brandenburg** – So, what percentage?

**Mr. Beckham** – Sir?

**Chair Brandenburg** – What percentage would be the pass rate if it was 70% compared to 75%?

**Mr. Beckham** – I'm only speculating on this, Mr. Brandenburg.

**Chair Brandenburg** – Speculate.

**Mr. Beckham** – I would speculate 90%.

**Chair Brandenburg** – Compared to?

**Mr. Beckham** – I have a confirmation of checking of the head from Mr. Davis.

**Chair Brandenburg** – Compared to?

**Mr. Beckham** – Compared to 65% or 70%.

**Chair Brandenburg** – Thank you.

**Mr. Beckham** – So, the testing agency uses something called psychometrics to design their test at the NBE. The psychometrics, you take a test question, the test question is rewritten by psychologist to a level of difficulty. From what I understand by listening to Ms. Paull at The Conference, if the test question is gotten right or correct too often, they'll remove it from the test.



So, it tells me when students are getting something right, they will take off and try to replace it with something more complex. I don't understand that goal to make it more complex when we're teaching. We cannot see what they're testing on. Those of us who get the privilege of being on the question-writing committee have to sign a confidentiality document. We can't reveal what we're taught or see at that point. I'm unfortunately on that panel starting next week for three (3) days, so I can't tell you what's being discussed and how they're tailoring their questions. But I was asked to be on that panel for whatever reason, I don't know. A lot of states are getting away from the NBE as the sole source of testing. Right now, sixteen (16) states have their own state licensing that they design. Many of them do not go through The Conference. They have educators. All the educators in this state have had conferences that we were willing to write the state exam on science...

**Chair Brandenburg** – States that have their own exams, what are their pass and failure rates?

**Mr. Beckham** – Much higher pass rates. Alabama is the closest state to us. Texas is getting ready to execute that. They have five (5) mortuary schools in Texas and the five (5) mortuary schools are combining together to write the exam.

**Chair Brandenburg** – Mr. Jones?

**Mr. Ken Jones** – The states that have developed their own, are they designed where they can like go from Texas to Alabama?

**Mr. Beckham** – Portability depends upon the state they're going into. Just as the portability coming into Florida is based upon what portability laws are allowed here in the State of Florida. Right now, I believe, and I, again, could be corrected, if somebody has had a license in another state and they have had no dings on their license for five (5) years, they could apply for reciprocity. Is that correct?

**Ms. Wiener** – Yes.

**Mr. Beckham** – Okay.

**Mr. Jones** – With or without the National Board?

**Mr. Beckham** – That would be the portability. They would not have to have the National Board.

**Mr. Jones** – Okay.

**Mr. Beckham** – We had an instance recently with a gentleman in California where he's the funeral director, he didn't have to have any state exam, but he had twenty (20) years of experience in California and all he has to do is pass state Laws and Rules Exam. So, we have that instance. The Conference does, how do I say this, try to align themselves to promote their agendas. There's just -- you know, they have a monopoly on this. They're not regulated by anybody, they're not accountable to anybody. Their boards aren't accountable outside. They are not accountable to the American Board of Funeral Service Education. They're not able to be reviewed what they're testing. They do get information from the American Board or what American Board is teaching, but they won't tell us what they're testing on other than there's these many questions on this particular subject.

**Mr. Jones** – Do we know the revenue stream on the fails and retakes?

**Mr. Beckham** – I do have some information on that.

**Mr. Jones** – Is that okay?

**Chair Brandenburg** – Yes.

**Mr. Beckham** – This is from the NBE. If I may quote this, from Mr. Lechner who is a retired US Army Colonel and is at Cincinnati College of Mortuary Education. Last year, the NBE cost \$570 to take Liberal Arts and Sciences. The student fails both {inaudible} \$285 for each retake of each individual section. And according to 2020 the annual report, The Conference, last one that was available online, Revenues were \$1,745,483 with expenses of \$1,282,730. And then retakes, estimated retake

revenue was \$416,385, basically for the retakes for the students. So, it is a very significant revenue stream for less than seven (7) people who work for that company, agency, or whatever you want to call it. Now, you know, I recognize that 497 does allow other tests to be given, other exams. It was getting the state funeral directors exam from The Conference and then starting January of this year, The Conference decided to do away with it, and they went to the Arts NBE for the funeral directors to take, which has caused some complications elsewhere. I suggest that we look at, or form a committee, and examine whether we can come up with exams in our own state that are viable for our state, all Arts and Sciences, for what we're educating students with to take and be a fair assessment of their skills. That's one alternative. Two (2) states, Delaware and Nevada, have told The Conference that 70% will be passing in their state and The Conference has had to adopt that, to allow 70%. That's an easy adjustment there, but that's the American Board's problem. That's not the state's problem. The goal is, you know, we're educating a lot of students. I have students that when they look at these test results from the NBE and a lot of them are afraid to take it because they see that failure raise. I mean, fortunately right now, I'm in a positive on both sides for this year. It hasn't always been the case. I've always been good on arts; sciences have been challenging for the students. There are some things like chemistry. For those of you who are funeral directors sitting up here, if you recall how much chemistry you actually used in the prep room and the necessity to have chemistry as something you need to have. You have all the chemical companies that do a great deal of scientific research on the different chemicals they create. And you can just read on the bottles what this chemical is for, and with the years of experience in the prep room, you pretty well know what's going on with these chemicals working in your experience as embalmers.

I have yet to have any families ask me what a canopic jar is. Some of you may know what a canopic jar is, but we have a whole course, three (3) hours on history of funeral directing going back to the Egyptians. And Abraham Lincoln's funeral is fascinating. I will tell you it's a fascinating read. Well, what does it have to do with what we do today? We are spending a lot of hours on things that really aren't that needful. What about hospitality? Hospitality is something we do every day. There are some funeral homes, and people are represented in this room, that are dedicated to hospitality. I cannot fit a hospitality course into funeral service because I'm teaching things that they know we will never use. Hospitality will be something they will use in the State of Florida. Why can't I teach them how to be more effective as funeral directors and embalmers to do their job for the people in the State of Florida, to waste their time on things they'll never need, will never use? That's what I'd like to know. How come we can't tell people outside the state, "this is what Florida needs, this is what the people of Florida want, and this is what we have to do?" There are certain restrictions on different aspects we need to look at to review those. How can we serve the people of Florida? Consumer Affairs is the last part of the name of this Division. Let's look at the consumer, let's concentrate on serving that consumer, allowing us to teach our students what that consumer wants or needs and to be able to be of service to them. So, [inaudible] 69K, you have the ability to look at different alternatives. Changing the pass rate of the State of Florida. That could be something we could do. Developing our own arts and sciences exams and whatever else we need to do to help people of Florida go forward. We have an entity, which is talking to people of Minnesota, and you'll find that the same thing Minnesota has is what people of Florida have. Well, we're different. We have different needs. We have different ideas, and we have different populations. So that's my goal from that standpoint. The Conference, you know, granted the recent test breaks targets 2023 that have improved. But I think the Board needs to seriously look at this. If it would be by a task force to do something in a timely manner, that would be great. I appreciate you for letting me go over time.

**Chair Brandenburg** – Ms. Munson?

**Ms. Munson** – Just a quick question, because I want the record to be clear. Are you requesting that the passage score be lowered for the purpose of allowing more applicants to pass?

**Mr. Beckham** – I'm saying that's an option. I'm not requesting per se that. I'm saying that is an option. I wish to give options. I'm not this Committee.

**Ms. Munson** – No, no. Again, I just want the record to be clear. When the full Board has an opportunity to discuss again, the Committee may discuss again. Is it your request that the passage rate be lowered?

**Chair Brandenburg** – Is that your request?

**Mr. Beckham** – I think it would not be a bad thing. I'm giving you a political answer, aren't I?

**Ms. Munson** – You are.

**Mr. Beckham** – I think that I don't have any objection to that. So, I'll say, yes.

**Ms. Munson** – So, it is your request then?

**Mr. Beckham** – I'm saying these are options and alternatives.

**Chair Brandenburg** – Thank you so much.

**Mr. Beckham** – Is there anything else, ma'am?

**Ms. Munson** – No. Thank you, sir.

**Ms. Schwantes** – The others who have indicated they wanted to speak are Board member Chris Jensen.

**Chair Brandenburg** – Hello, Mr. Jensen.

**Mr. Chris Jensen** – Good afternoon, Mr. Brandenburg. I'm Chris Jensen. I'm on the Board of Funeral, Cemetery, and Consumer Services. I'm also a licensed funeral director and embalmer in Florida and Alabama. Just a quick comment on this, I do like what Mr. Beckham said about having our own test. I do think that is something that could benefit this state. There is a lot of things that are on the national tests that are not relevant in today's world, so I do agree with that. However, I wanted to state on the funeral directors that I talked to and, you know, people like Mr. Brandenburg, you know, I don't even know if they had paper when he did his license, but there's a lot of ways to study for that test. And the funeral directors I speak to would not be in favor of waiving any sort of test, especially the National Board test, until such time, as we might could get an optional test that covers the information that we need to. As far as changing the pass rates and so forth, I don't think that's the answer. I think people need to know their stuff. If The Conference and the schools, you know, are going with that, you know, Mr. Beckham is going to spend three (3) days next week there, maybe the schools and The Conference ought to get together and make sure the schools are teaching the right material if they're having problems with the pass rate. You know, that could be an option too. Maybe The Conference needs to back down on that a little bit about not letting you have any information and give you something. I realize they're making money from the retest and, you know, a state test could benefit. You know, in Colorado, you can put out a sign, you don't have {inaudible}. So, I don't know that that's a be-all, end-all. That's why I like the national test and coming in here and we all know what's happened in Florida. Anybody that's spending any time in this business in Florida, I mean, it was a wild west until we started getting some regulations. And if we keep lowering, it's going to go back to that. Thank you, Chair.

**Chair Brandenburg** – Thank you, Mr. Jensen.

**Ms. Schwantes** – Lisa Coney had indicated she wanted to speak on this topic. Ms. Coney?

**Ms. Wiener** – I'm going to go first and then Ms. Coney.

**Ms. Schwantes** – Okay.

**Ms. Wiener** – Ms. Coney, if that's okay?

**Ms. Schwantes** – Ms. Wiener had also indicated she wanted to speak on this topic.

**Chair Brandenburg** – Thank you, Ms. Coney. Go right ahead.

**Ms. Wiener** – Good afternoon. Wendy Wiener, WRW Legal, representing lots of the industry. So, I think we have an opportunity, if we're going to open this rule, with regard to National Boards to clarify, regarding a comment Mr. Beckham made regarding s. 497.374, related to licensure by endorsement. The law was amended last year or year before last, to make it clear that a licensee with a valid license in good standing to practice in another state that has engaged in full-time funeral directing for at least five (5) years is entitled to licensure by endorsement. There is no obligation in this law that that applicant show proof that they have passed the National Boards or even state Boards. We take at their word that they've been licensed

in good standing for five (5) years and then they get a license. I don't think you'll find anywhere in s. 497.374 that there is any support for a position previously taken, but not recently taken by the Board that was set to deny a licensee for failure to have taken the National Boards. So, in as much as we can clarify that in the rule, I think that we would certainly be doing a service. The last two (2) applicants that have come before the Board from California, neither of whom took the National Board Exam were licensed based on their years of experience and their timeframe. So maybe that's a problem that has sort of solved itself. But in as much as the current Board members will not always be the Board members, I certainly think we could clarify that by way of the administrative rule.

**Chair Brandenburg** – Ms. Munson, do you have a comment on whether or not the National Board passage is relevant on an endorsement application from another state?

**Ms. Munson** – So, my only comment would be if the statute already speaks to it, the rule would be redundant. So, there won't need to be any rulemaking if it's covered. If there is a discussion among Board members as to whether or not to accept an endorsement candidate, and the National Boards is somehow used as an issue for discussion, the statute always trumps. So, I feel that entertaining rulemaking for that purpose that's already covered by the statute may be unnecessary. And I only say that because once you open a rule for rulemaking, as we all know, it's sometimes to the extent of a Pandora's box because it's not just what we want to change that may be under review, but it's anything else that's in the language. So, I'm very careful with that.

**Chair Brandenburg** – Thank you for the clarification.

**Ms. Wiener** – I absolutely agree. I think the statute is perfectly clear. There's nothing in s. 497.374 that makes reference to an applicant for endorsement that has five (5) years of experience taking a state test. The section of the law that the Board relied on when it was going to deny another California licensee who was a nun with thirty-two (32) years of experience as a funeral director in California was subsection (3) that says, "State, regional, or national examinations and requirements for licensure in another state shall be presumed to be substantially equivalent to, or more stringent than the examination of requirements in this state unless found otherwise by rule." And then subsection (4), which says, "Each applicant for licensure by endorsement must pass the examination on local, state, and federal laws and rules related to disposition of human bodies," which is required under Section 497.373. We all know that to be what we call Laws and Rules, and it's no coincidence that we call that exam Laws and Rules because that's what it's called in the statute. So, in as much as there is clarity and we accept that there is clarity, I think that's great, but there has obviously not been some clarity. So perhaps whatever way clarity can be achieved so that we don't continue to have this as an issue. If you've got five (5) years of experience and you're in continuous good licensure standing and you are currently actively licensed in your state, you should be filing an application and getting approved without having to come to the Board and prove that you were a nun with thirty-two (32) years of experience who's had no discipline and no nothing. And there was a move to disapprove her before we withdrew her because there was a claim that she cannot pass the National Board. So, I'm trying to avoid situations like that. And if the statute is clear and we're all clear, that's great. But if we're going to have to bring this to the Board every time, then it should be clarified in a rule because it must not be clear in the statute.

**Ms. Munson** – So, I just have a quick question. Do you know of any circumstance where you would have an issue with admitting an applicant who did not have any National Board certification without the discipline, of course, existing?

**Ms. Wiener** – No. And that was hotly debated in adopting this legislation. We're in a funeral director shortage in Florida and all over the country. And that's why it's a five-year requirement. Some states have where you can come in if you've been licensed for a month, for twelve (12) months, you can waive in if you've been licensed anywhere. We have a five-year in good standing engaged in full-time funeral director requirement. If you meet that, then frankly, it doesn't matter if you've taken the National Boards or not because you have been doing this job for five (5) years and obviously there's not a problem with you.

**Chair Brandenburg** – Thank you.

**Ms. Munson** – I'm going to say thank you except that I think I recall some of the comments from the particular meeting, one particular meeting that I recollect is that the whole substantial equivalent issue is, I think you should...

**Ms. Wiener** – I am only because substantially equivalent doesn't matter. This law says if you've got five (5) years of experience, you can be approved by endorsement. That says it has to be substantially equivalent if you have to take it. It doesn't require that an applicant by endorsement take a substantially similar test. It simply requires that if you take a test, that it will be deemed substantially equivalent unless there is evidence to the contrary.

**Ms. Munson** – Just to be clear for the Board to understand, for the Committee to understand, and I don't have the full legislative intent information on the way the statute was written, but it could suggest that an individual or an applicant with five (5) years' experience, no matter what type of work they performed, if they were not documented in any way of having any type of negative experience, we will have to assume based on, I believe Ms. Wiener's interpretation of this reading, that without any type of examination credential, without any type of discipline, there is no additional need for review. I believe that's what...

**Ms. Wiener** – I wrote this legislation. I'm well aware of its intent. You can check the legislative history on it. I wrote this very language for this law. The intent is to bring in people with five (5) years of experience. What is required by the Board, and I think appropriately, is they have to prove by letter, by employment records that they've been engaged in full-time licensed practice for the five-year period immediately preceding them coming into the state. So, I mean, it's not nothing. If you've got five (5) years in a state and you're a licensed funeral director and you don't have trouble, that was the intent, to take away all the barriers to entry and get us some of these funeral directors from other states who want to relocate to Florida, where we badly need funeral directors.

**Chair Brandenburg** – And still the rules and laws exam.

**Ms. Wiener** – Of course, and absolutely the Laws and Rules, which is required in subsection (4). You've got to take Laws and Rules. I mean, yes, you need to know Florida in order to get the Florida to help your Florida license.

**Chair Brandenburg** – Thank you.

**Ms. Wiener** – Thank you.

**Ms. Schwantes** – Mr. Chair, Ms. Coney had wanted to speak.

**Ms. Coney** – Lisa Coney, Dignity Memorial-SCI Funeral Services of Florida, and I also served as the Government Affairs Chair for FCCFA. I was very engaged in writing that same legislation, and we had originally proposed two (2) years because if you haven't learned how to be a funeral director in the two (2) years of COVID, then you can't learn. So, anybody who is serving anywhere as a funeral director in the last recent history is ready to work. So, I absolutely agree with Wendy on this point. And in part of the discussion of the preparation for that legislation were candidates from Arizona, where nothing is required, Colorado, where nothing is required, California, where you can be a funeral arranger, sit with families at need in an arranger position without the Sciences portion of that and not be a licensed funeral director and not have Boards. So that was absolutely the intent and what we hope will continue to have happen. To the university's points, to Mr. Beckham and Mr. Davis's points, I think that the idea of having a state test is great. I think we could tailor that in a way that absolutely reflects what we do. Florida does have a higher cremation rate. That probably should represent more of the test. Most of us now have a higher rate of celebrants and celebrations and hospitality, to use Mr. Beckham's word, and that should be represented more on the test. And in looking at 497 just now, we define an embalmer, but we don't define embalming. And embalming absolutely could be body handling tasks, or how often we see families that don't want embalming, but we want to coach them to set features and to do washing, do preparation so that even if they don't choose embalming, they're choosing something that's going to give them a good lasting memory in spite of that. I just got the question today, "I have an open casket church service tomorrow; they don't want embalming. What do we do?" And I'm telling them to get a waiver, you know, all the legal things, but please talk to them about preparing their loved one in a way that it's going to be a last memory that's meaningful to them. That's not embalming, but it certainly is something that can and should be covered by a course and it's not. As to the percentage, I mean a college course is considered passing at 70%. Maybe that person is not the brightest crayon in the box. Hopefully, their employers are going to help them along the path and make sure that their work product is exactly what we would want. I don't know that I would support 70%, but that is considered passing in any other college environment except the National Board. So, it's fair.

**Chair Brandenburg** – Thank you.

**Ms. Coney** – Thank you.

**Chair Brandenburg** – Board members, any questions, or comments on these articles?

**Mr. Williams** – Yes. Just a question for maybe the general audience out there. Is there any appetite at all for just dropping the National Board? Keep the educational requirements, drop the National Board, still acquire the state Board, and go from there? Would anybody be opposed to that? Just out of curiosity.

[Background chatter - inaudible]

**Mr. Williams** – The question was this. What would be the appetite for just dropping the National Board requirements, period? Require the individuals to still have the same educational requirements that are required and to take the State Board Exams, still have your internships, apprenticeships, but just drop the National Board. What's the appetite? Really?

**Chair Brandenburg** – So those that wish to take the National Board can still take the National Board to protect themselves if they go to other states that require the National Board but not required in Florida?

**Mr. Williams** – Right.

**Ms. Schwantes** – Professor Davis would like to speak, if you don't mind, Mr. Chair?

**Chair Brandenburg** – Professor Davis?

**Mr. Davis** – Why I am in support of that, Bill is I've been teaching now since 1988. It used to be the National Board Exam used to give us results back from what our students did so we can make them better. They don't do that anymore. Ever since the compromise of test questions, they've shut down the results given to the school, so we don't know how our students do. So, if they fail, we don't know. And going back at St. Pete College, I can tell you the average student that doesn't pass the National Board scores a 72. I can tell you, last year I had four (4) students that got 74. So, does that mean they're incompetent because they got a 74 when they just served their internship, and then at the end of their internship they didn't pass the Board so now they're incompetent? I have an issue with that if they didn't have any concerns during their internship. And I will tell you today, as a learner it's much different. The National Board is a memorization test. Nobody memorizes anymore since they've got a phone. I can probably go around the room and say, "Can you name me five (5) different phone numbers?" And you can't because you can't remember, but the majority of people got to do this. And as a beginning funeral director, you memorized all phone numbers, but now nobody does. And I will tell you, AI is on the horizon and it's here and today's students are going to utilize AI. We just need to get ahead of that, you know, otherwise we're going to get wiped out.

**Chair Brandenburg** – At one time, Florida did not require the passage of a National Board Exam to get your license. So many people that wanted to stay in Florida after they graduated from mortuary science school did not take the National Board Exam. I took it as kind of a practice for my State Board Exam, I had no intention of leaving Florida to go to another state that required it. But Florida did not require it for many, many years.

**Mr. Jones** – You said you don't get feedback. So, from an educational standpoint or college, how do you deal with no feedback nor no information on the National Boards?

**Mr. Davis** – So every year you try to increase your board scores. You throw everything against the wall, see if anything sticks, to see if anything changes.

**Mr. Jones** – That's a kind of chaotic situation.

**Mr. Davis** – We used to get breakdowns that showed what they scored in sociology and in restorative art. And if we have low scores, we can bump up that curriculum. Now we get a generic pass/fail. That's all the applicant gets now too, is pass/fail.

**Mr. Jones** – Really?

**Mr. Davis** – Yes. They get no results from the National Board because they're proprietary and those test questions are their moneymakers, so they don't want any of that released out.

**Mr. Jones** – Thank you.

**Mr. Davis** – So they don't even give the applicant their scores because they're afraid they're going to go and tutor another applicant. So, they got rid of that so that there's no one out there who can say they got 100. We used to all get Board scores until The Conference shut down releasing them.

**Mr. Jones** – I was looking at it from an educational standpoint how you can help your students that failed at least getting feedback from the Board that's positive, but okay.

**Mr. Davis** – The American Board has been asking The Conference that for a long time.

**Mr. Jones** – And they basically they just cut it off.

**Chair Brandenburg** – Thank you.

**Ms. Schwantes** – Mr. Chair, thank you. I just want to kind of reign things in just a little bit regarding this topic. We've gotten a little bit off topic on this. The Rules Committee is here to address the rules that pertain to the passage rate and to the national exam. The statutes require a National Board Exam passage, so if there is going to be...

**Mr. Williams** – I'm not sure if they do that. I'd like to have that conversation if we can. I don't think the statute requires the National Board Exam.

**Ms. Schwantes** – It specifically speaks in one area or at least one as to The Conference and the...

**Mr. Williams** – S. 497.103, I believe it is. Let me see if I can get back to it.

**Ms. Schwantes** – I'm going to have to find it too.

[Background Conversations]

**Ms. Schwantes** – Mr. Chair and Ms. Munson, Ms. Peeples would like to speak, is that appropriate?

**Chair Brandenburg** – Just wait. Just a moment.

[Background Conversations]

**Ms. Schwantes** – Just a moment, please.

[Background Conversations]

**Ms. Wiener** – So, Bill, are you looking at 497.103?

**Mr. Williams** – That's what I'm trying to find, and I can't.

**Ms. Wiener** – It gives the Board the authority to specify the content of examinations for licensure, both written and practical, and the relative weighing of areas examined, and grading criteria and determination of what constitutes a passing grade. Is that what you're after?

**Ms. Schwantes** – No.

**Mr. Williams** – No, there's more than that. It says the Board has the ability, something to the effect, to determine what will be accepted or not accepted, including the National Board.

**Ms. Wiener** – Authorities to specify which national examinations or parts thereof shall or shall not be required or accepted regarding Florida licensure?

**Mr. Williams** – Shall or shall not, correct.

**Chair Brandenburg** – Shall or shall not.

**Ms. Wiener** – Shall or shall not.

**Mr. Williams** – That's correct.

**Ms. Wiener** – And I was going to add that there's no evidence from the states that don't have National Board requirement anymore, that their funeral directors are any less competent, less capable, less well-meaning, well serving than Florida licensees or other licensees that are required to take the National Boards.

**Chair Brandenburg** – Thank you. Chairwoman Peeples?

**Ms. Jill Peeples** – Thank you, Mr. Brandenburg. I'm Jill Peeples, Peeples Funeral Services Inc. in Jacksonville and also DFS Board Chair. What I was just showing to Ms. Wiener was if you look at Florida Statute 497.374(4), it states, "Each applicant for licensure by endorsement must pass the examination on the local, state, federal laws and rules relating to the disposition of human bodies, which is required under 497.373, which shall be given by the licensing authority." If you go to Rule 69K-25.001(2), it says, "The Board of Funeral, Cemetery, and Consumer Services determines that persons who have successfully completed a course embracing at least the subject specified in 497.368(1)(d)(e) of Florida Statutes at a school or college approved by the American Board of Funeral Service Education passed their embalmer," and I'm under the endorsement section, so coming on down, it says, "shall pass 75% of the National Board."

**Mr. Williams** – But that's the rule, correct?

**Ms. Peeples** – That's the rule.

**Chair Brandenburg** – Not a statute.

**Ms. Peeples** – So, but I think from a Board perspective where Board members are getting hung up is this says federal laws. In s. 497.374, it says, "local, state, and federal laws." Ms. Wiener stated that her interpretation is the funeral rule, you know, which is a federal law from the Federal Trade Commission. I look at it as National Board Exam because National Board, you can take from state to state as Mr. Brandenburg so eloquently stated it earlier. So, I think it would help the Board composition if the Rules Committee would consider, as Mr. Beckham kind of suggested, reducing the percentage required to pass the National Board to 70% as Mr. Davis also said that most of the applicants are between 70% and 74% because we already have it, Ms. Munson, in the rule itself. From that perspective, would that take care of your comment?

**Ms. Munson** – Well, my comment is probably or possibly based on a lot of different issues. The purpose of all of the rulemaking is protection of the public. That's the purpose. We talk about, and I listen to the different rationales that's being presented, doing so to make it easier, having to get more individuals in this profession. The bottom line is protection of the public. I'm not hearing that in much of the discussion. When we make these types of changes, when we submit rulemaking for public comments, questions like that may come up. The Board needs to be in a position to address them. And if their response is going to be, "We needed to make it easier, not enough students are passing, the schools are having problems," it's going to have a glaring red light of the concern of addressing public interest and protection. So, I understand what most of the stakeholders may be interested in, but I am here from a rulemaking perspective. And that dialogue and rationale is absolutely essential.

**Chair Brandenburg** – Thank you.



**Ms. Munson** – And this is Florida though. I hear the comment of other states. Florida is not trying to match, at least legislatively, or by its Administrative Code, other states. We have one bar. The main bar is protection of the public. We don't have the luxury of going beneath it. So, when you're thinking about changes, that needs to be your leading and paramount thought.

**Chair Brandenburg** – Thank you. Ms. Peeples?

**Ms. Peeples** – Yes, sir. I'm going to refer to Ms. Wiener to let her finish her comment. Thank you.

**Chair Brandenburg** – Very briefly, please.

**Ms. Wiener** – Very, very briefly. Just one follow-up on that subsection (4) that we were just talking about in the endorsement provision. I think the key thing that differentiates that from the National Boards is that that section that requires the administration of an exam on local, state and federal laws and rules indicates very clearly that that is the exam given by the licensing authority. That's not the National Boards. That's the Division. So, it's Laws and Rules that's being spoken about in subsection (4). So let there be no mistake that this very clearly says that this is the exam given by the licensing authority. So, to my earlier comments, thank you.

**Chair Brandenburg** – Thank you. Okay. Next.

**Ms. Schwantes** – Do you want to go on, or did you have any further Committee discussion on this, sir?

**Mr. Williams** – I think I'm fine.

**Mr. Jones** – And Howard has his hand up, but no comments for me.

**Chair Brandenburg** – Thank you.

**Ms. Schwantes** – Mr. Beckham has his hands up. I don't know if you want to have him come up.

**Chair Brandenburg** – Mr. Beckham.

**Mr. Beckham** – Let me verify something, Mr. Chair. What Ms. Wiener said is correct, and I am glad she said that. We have a confusion sometimes between the State Laws and Rules Exams, and the National Boards, amongst not only people on the Board itself, but among the population. I think you've clarified that in that area. If you go to 497.373(2)(a), it says, "such as" concerning the National Board. It doesn't state it has to be the National Board. The State can replace the National Board whenever they choose to for this examination. Two, I did not appreciate being pushed to say that 70% was my recommendation or my personal recommendation. It was an option. Let the record show that I wanted to indicate that was an option, and that I was being pushed to say that it was my recommendation. That is not my recommendation. I don't make this decision. If I'd make this decision, you wouldn't have this meeting today. This is a decision for those who are legally represented to make these decisions. So, another thing is there are only certain members of this Board who have been in the field as funeral directors and embalmers and know what's required. We teach people in the funeral service education how to take an exam. That's what we do to the best of our ability. That is what we do. A year internship is where they learn to be funeral directors and embalmers in the field. Any questions?

**Ms. Munson** – Just a comment. So, I'd like to thank you for that clarification. Ms. Bryant, please make sure that the minutes indeed reflect that the information presented previously by Mr. Beckham was that lowering the pass score was an option. Another option as my notes indicate was perhaps developing our own test on the state level.

**Mr. Beckham** – That is correct.

**Ms. Munson** – So I would like to state for the record if there was any offense in that, I wanted to clarify with that particular item, and I thank you for clarifying your answer.

**Mr. Beckham** – I appreciate you. Thank you, and I appreciate you accepting my apology. I just want to make sure that's clear. Thank you very much.

**Chair Brandenburg** – Thank you.

**Mr. Beckham** – Any other questions?

**Chair Brandenburg** – I have no questions.

**Ms. Schwantes** – Mr. Chair, if I may? A question for Board counsel on this. Should there be any vote, or any other action taken by the Committee with regard to recommendations that would go before the Board on this matter?

**Ms. Munson** – Which matter was that? We've kind of conflated some matters.

**Ms. Schwantes** – I agree.

**Mr. Williams** – The first three (3).

**Ms. Munson** – Well, it can be collectively.

**Mr. Williams** – I agree.

**Ms. Schwantes** – With regard to the issue on...

**Ms. Munson** – So we've already addressed (1) and (2), but with item (3) we've conflated some matters.

**Ms. Schwantes** – And I agree with you, Ms. Munson. That is what I was trying to say earlier, is that it did morph from the initial topic of whether or not the exam passage rate should be lowered, which is in the rule, specified in the rule. The exam passage rate is in the rule. It is set out in the rule, and the Committee certainly has authority, and please Ms. Munson, correct me if I say anything wrong, to make a recommendation to the Board regarding the exam passage rate, and that is what the topic was. We morphed into other discussions, which I understand that if the rule is open through the rulemaking process before the Board, and subsequently with rulemaking hearings and stuff, it does become open to other clarification. And Ms. Wiener brought that up. To the extent that there was discussion on legislative intent, this Committee is only here regarding the rules. The matters that came up before the Board in prior Board meetings, there was disagreement on the meaning of the legislation. So, if clarification on legislation is needed, that is outside the purview of this Committee, and that's what I was getting to.

**Chair Brandenburg** – Board counsel brought up that that was the legislative intent, and that's why Ms. Wiener addressed the legislative intent. Is that correct, Ms. Munson?

**Ms. Munson** – That is correct, sir.

**Ms. Schwantes** – Yes, sir. Thank you. And in talking about the legislative intent, I mentioned that, but really, I just mean any clarification that is needed to legislation is brought up through a different process.

**Chair Brandenburg** – Okay.

**Ms. Schwantes** – Okay.

**Chair Brandenburg** – I don't know that the Rules Committee has a recommendation on B (3) that they want to deliver back to the Board, but I'm only speaking as the Chairman. Do you have any recommendations that you want to take back to the Board?

**Mr. Williams** – For B (3)?

**Chair Brandenburg** – Right.

**Mr. Williams** – Yes. I think we should get rid of a National Board Exam. I think we are going to take that back to the Board for discussion.

**Chair Brandenburg** – Mr. Jones?

**Mr. Jones** – I think it's worth a discussion.

**Chair Brandenburg** – Good.

**Mr. Williams** – Do we need a motion?

**Chair Brandenburg** – No, we don't need a motion on it, but that's understood, and we would and will bring this to the Board and bring it to their attention.

**Mr. Williams** – Do we need to do something for B (1), as a recommendation back to the Board as well?

**Ms. Munson** – We do not.

**Chair Brandenburg** – For B (1), I think we all agreed on the number twenty (20), which the Board had already agreed upon. And when we bring back to the Board that the Rules Committee confers with twenty (20) as the number.

**Mr. Williams** – Agreed.

**Chair Brandenburg** – Right.

**Ms. Munson** – If I may, Chair Brandenburg? And, to clarify, the discussion that's occurring during this Rules Committee meeting will, one, be reflected very clearly in the very complete and comprehensive minutes that Ms. Bryant takes for certain, because they're word for word. And two, when the item comes up for discussion at the next designated Board meeting, it will be again open for discussion in that venue as well. At some point, if there is any language to be presented, then that language will then go before the Board for its review and vote, and then it will be open for rulemaking, for public comment, and everything else that is assigned to the rulemaking process. I don't know how familiar everyone is with what this rulemaking process looks like. It is not a short process. It can be lengthy, and with the types of discussions and feedback and information, I thought it only fair to share that description for the benefit of those who may not otherwise know.

**Chair Brandenburg** – Thank you.

**Ms. Schwantes** – Mr. Chair, should I go on?

**Chair Brandenburg** – Please do.

**Ms. Schwantes** – Thank you, sir.

#### **C. Issues Raised During FCCS Board Meeting on 5/4/2023:**

**Ms. Schwantes** – These two (2) issues were raised during the Board's recent May 4<sup>th</sup> meeting. Relevant portions of the draft minutes from that meeting were provided with the agenda for this meeting.

##### *(1) LLCs and Impact on Current Application Forms*

**Ms. Schwantes** – This issue was initially raised by Board member Chris Jensen during the Old Business portion of the May 4<sup>th</sup> meeting and came up several times afterwards. Briefly summarized, Mr. Jensen questioned if the applications in these cases were correct, in that the applicants completed information on the forms regarding a business entity list of principals when the

applicants in fact involved LLCs. Following the meeting, I asked the Office of the General Counsel to do some research on the difference between corporate principals versus LLC members, et cetera. Kimberly Marshall, Attorney Supervisor with the Office of the General Counsel prepared the business entities comparison chart, which was included in the meeting materials. She's here to answer any questions the Committee may have regarding her findings. The OGC has determined that the term can be used by the Board and Department on its forms as a general descriptor for any person with an ownership or management interest in a business. This is additionally supported by Section 497.005(63), Florida Statutes. That is the section that has to do with definitions. It specifically provides that "principal" means and includes the sole proprietor of a sole proprietorship, all partners of a partnership, all members of a limited liability company regarding a corporation, all directors and officers and all stockholders controlling more than 10% of the voting stock, and all other persons who can exercise control over the person or entity. Licensure application procedures are set out in Rule 69K-1.005 which refers to application forms which are adopted by rule, which is our forms rule, Rule 69K-1.001. The form used for all business applications on these issues is form DFS-N1-1718, the Business Entity List of Principals. It was included in the meeting materials. Division staff check information, as it is filed with the Department of State, and we do not question information filed with that agency. So, if it matches what we receive, we proceed with that. I know I've said many times already that the forms are the responsibility of and fall under the authority of the Department. In this case, however, and particularly with the legal clarification provided, we would ask if the Committee recommends that changes are needed to the form to further clarify the matter? And Mr. Jensen is present and did indicate he wanted to address the Committee on this issue. Mr. Chair?

**Chair Brandenburg** – Mr. Jensen?

**Mr. Jensen** – Yes, sir. So, I did raise this with you, Mr. Chair. I also have an Economics degree, and in business school, they teach us that in an LLC, you can be it manager or member, which is indicated by this chart that was put together. However, it clarifies on the list of principals, it is a little confusing to most people out there if you look at the list of principals. But I think as Ms. Schwantes just stated that if the Committee would change it under 497.005, the definitions, and just call everybody a principal, it would solve all the problems. That's all I have.

**Chair Brandenburg** – Thank you. Committee members, do you agree that that should be brought up to the Board meeting? Change it to principals?

**Mr. Williams** – Sure.

**Mr. Jones** – I agree.

**Chair Brandenburg** – Okay. Thank you. Thank you, Mr. Jensen.

**Ms. Ellen Simon** – I'm sorry, if I may? S. 497.005 that defines principal is a statute and it is not up for discussion with the Board from the Rules Committee?

**Chair Brandenburg** – Okay. So, we don't need to be bringing it before the Board.

**Mr. Williams** – Let me make a comment.

**Chair Brandenburg** – Mr. Williams?

**Mr. Williams** – Just so everybody understands, an LLC, if you have ownership in an LLC, you're a manager or you're a member. You can also be an officer in an LLC, president, vice president, treasurer, commodore, wherever you want to be. But that doesn't necessarily mean that you're a member or an owner of that company. So, there is a difference. If, in fact, the individual's a principal and they own stock in that company, if they're also a member, then that would be considered a principal. Okay? Anybody disagree? Can we take that to the Board?

**Chair Brandenburg** – Does it need to be taken to the Board?

**Mr. Jones** – If it's statutory/

[Multiple Speakers]

**Chair Brandenburg** – Beg your pardon?

**Ms. Schwantes** – Ms. Wiener is asking to speak on this issue.

**Chair Brandenburg** – Ms. Wiener?

**Ms. Wiener** – Very briefly.

**Chair Brandenburg** – Thank you.

**Ms. Wiener** – I think this might address Mr. Jensen's concern, and also clarify. So, the one weirdness about this statute or about our form is that instead of defining members and stockholders, if we change the word stockholders to owners, then that would sweep up members and shareholders. Would that address your concern, Mr. Jensen?

**Mr. Jensen** – Yes, ma'am. It would. [Inaudible]

**Ms. Wiener** – You mean change the rule to say principals, because principals is already defined?

**Mr. Jensen** – In the statute.

**Ms. Wiener** – Ah, yes. Okay. Sure. So, he's saying in the rule, adopt a change to the form that says, "Meeting any of the following descriptions," and instead of this list of people, it would say, "Identify all principals as set forth in the 497.005."

**Mr. Jones** – Is it just a form change?

**Ms. Wiener** – Yes. It would just be a form change because the form is adopted by rule, which I think is how it found its way to you guys.

**Ms. Schwantes** – Actually the forms fall under the purview of the Department. So, what we would do with this information is we'll take a look at it further, but we'll decide to modify the form.

**Ms. Wiener** – Sounds great.

**Chair Brandenburg** – Yes. I have about 2:25. Shall we take a 10-minute break, and then we'll be back at 2:35? Thank you.

\*\*\*\*\*BREAK\*\*\*\*\*

*(2) Resolution of Any Discrepancies Between Section 69K-8.005, F.A.C., and Section 497.459, F.S., Involving Refunds on Insurance Funded Preneed Contracts*

**Ms. Schwantes** – This issue was also raised during the May 4<sup>th</sup> Board meeting by Board member Chris Jensen. Relevant portions of the draft minutes from that meeting were provided with the agenda for this meeting. The issue first arose during discussion on item B during the meeting, which had to do with the approval of a revised preneed sales agreement. The contract was approved by the Board. However, the question came up as to whether there is any conflict between the listed statute and rule as it relates to refunds on insurance-funded preneed contracts. Relevant portions of the draft minutes as I said from the Board's May 4<sup>th</sup> video conference meeting were included in the materials for this meeting, and the question for the Committee is: does the Rule 69K-8.005 need to be modified to better comply with Section 497.459 Florida Statute. And Mr. Jensen is present. Mr. Jensen, did you want to address the Committee on this issue?

**Mr. Jensen** – I do.

**Ms. Schwantes** – He's coming to the podium. Mr. Chair?

**Chair Brandenburg** – Go right ahead.

**Mr. Jensen** – Okay. Thank you, Mr. Chair. If you're looking at this under Florida Statutes 497.459(a), which under the 459, it says, "Cancellation of default on preneed contract required notices." So under (a) it says, "A purchaser, by providing written notice to the preneed licensing, may cancel services, facilities, and cash advance items portions of a preneed contract at any time and shall be entitled to a full refund of the purchase price allocable to such items," okay? That is under required notice, and I know what the detractors are going to tell me. Well, that doesn't say anything about insurance. So go over here under the same statute, 497.459, go to (6)(a). The first word there says all preneed contracts. It doesn't say only trust contracts, it doesn't say only insurance preneed contracts, it says all preneed contracts are cancelable and reimbursable as provided in this section. Okay? One other thing I want to point out over here is under the Florida Administrative Code 69K-8.005, which is Preneed Contract Funded by Life Insurance, number 3, "Any insurance policy used to fund a preneed contract must be sold in a manner that complies with section 626.785." Number 4, again, it says, "All preneed contracts funded by an insurance must meet the requirements of 497.282 in regard to Section 497.282(8). The contract must contain the following provisions." It has a list of provisions there. I realize those provisions do not say that it must have 100% cancellable on the services and cash advances. However, my question here is, does this supersede this other, over here, 497.459? The way I read this is 497.459 covered all preneed contracts, and if it's an insurance-funded preneed, they still have to abide by those same rules. So that's what I'm asking the Committee to please look at and let me know. I don't care if it's on there or not, but I would think that if it covers all preneed contracts, then it should be on there. Thank you, Chair.

**Chair Brandenburg** – Thank you.

**Ms. Schwantes** – Mr. Chair, Wendy Wiener wanted to speak.

**Chair Brandenburg** – Ms. Wiener?

**Ms. Wiener** – All right, 69K-8.005, I wrote this rule back in the late '90s, and I think the key here is the intention is that indeed every preneed contract is cancelable. There is nothing about an insurance-funded preneed contract that makes it irrevocable unless it's been made irrevocable for purposes of an {inaudible} or are a recipient of public assistance. So, they are cancelable, and they're cancelable within thirty (30) days. And within thirty (30) days, you get all your money back no matter what, because under the insurance laws, that's what's called the free-look period. And if you buy an insurance policy in the State of Florida, you cancel it within thirty (30) days, you get all your money back. After thirty (30) days, our law on trust-funded preneed requires that you refund monies paid. So let me give you an example. If Mr. Jensen sells a preneed contract for \$10,000, and he receives \$1, and on day thirty-one (31), the person wants to cancel, what does Mr. Jensen have to refund? \$1. It's because you refund what you receive. A refund is defined in Black's Law Dictionary as the return of money paid. When you do an insurance-funded preneed, you as the preneed licensee do not get even so much as \$1. Instead, you sell the preneed contract and then a licensed insurance agency, if sold at your funeral home, must be a licensed insurance agency, sells an insurance policy, and that insurance policy is assigned to the funeral home for purposes of funding the preneed contract.

When the contract is canceled, then that assignment is dissolved, and the consumers still has the insurance policies that they purchased. Maybe it's a paid-in-full policy and they have it, and they could do anything they want. They can take it to another funeral home to fund a preneed contract. They can take it to a car dealer and assign it as collateral for the new car they want to buy. They can change the beneficiary and leave it to their kids if their kids listen to them. But the point is the preneed licensee has received nothing, so the preneed licensee has to refund nothing. They simply are obligated to terminate the assignment, severing the insurance policy as a funding vehicle because there's no longer a preneed contract to be funded by a life insurance policy. And it would be wholly inappropriate for a funeral home that did not have a preneed contract to be assigned a death benefit because there's no insurance [inaudible] of the funeral home against the insurance policy in the life of the insured. So, the insured takes their insurance policy, and they do whatever they want with it. If they cancel their insurance policy, what we wrote in this rule back in the '90s is that on the preneed contract that is funded by life insurance, it has to tell the customer on a contract form what happens if they then decide to cancel their life insurance policy. Sometimes they get all their money back, sometimes they get way less money than they paid. Sometimes they get more money than they paid. It depends on the terms of the life insurance policy, but the point is from a preneed contract perspective, there absolutely is 100% compliance with 497.459. It is cancelable just like any other preneed contract. Question?

**Chair Brandenburg** – Thank you.

**Ms. Wiener** – Thank you.

**Ms. Schwantes** – Ms. Coney had indicated she wanted to speak.

**Chair Brandenburg** – Ms. Coney? She's saying no. Does this clarify the refund?

**Mr. Williams** – As an individual who manages trusts, it's clear as mud. But yes, I think it clarifies it. It does.

**Mr. Jones** – Yes.

**Chair Brandenburg** – The statute is already there, and the rule is already there. Okay, next item.

**D. Other Matters:**

*(1) Rule 69K-8.006(6), F.A.C., as it Relates to a Licensee's Flexibility to Acquire Certain Merchandise at the Time of Need or Fulfillment*

**Ms. Schwantes** – This issue was added to the Committee agenda at the request of IFDF. Representing IFDF here today is Howard Beckham. And Mr. Beckham, would you like to summarize the issue for the Committee? Mr. Chair?

**Chair Brandenburg** – Thank you for being here today.

**Mr. Beckham** – Thank you, Mr. Brandenburg. Howard Beckham, B-E-C-K-H-A-M. In this case, I'm representing the request of the IFDF. And it's basically something that can happen and has happened in the past. As we know, different manufacturers change merchandise over time. A lot of preneed contracts are equal. That might add the area of a contract related to merchandise. I'm not {inaudible. All contracts have to be approved by the Board in sanctions. So, but there's times too where vendors are changed or acquisitions may be made by certain companies of other companies, and they may or may not do business with that particular vendor any longer. They may not be beneficiary of certain discounts or contracts of the preneed. I will tell you that I do read in the 497.152 about the description. And having done a few preneed trusts over the years, I very carefully detailed the description of the merchandise that was on there; 18-gauge casket, brown color, swing bar handles, velvet interior, so forth and so on.

**Chair Brandenburg** – What about manufacturer?

**Mr. Beckham** – I didn't always do manufacturer, unless it stated manufacturer on the contract.

**Chair Brandenburg** – And if it is?

**Mr. Beckham** – If it stated a manufacturer, then I would -- and I will say in my defense, because the preneed contracts I wrote, it said, equal to or greater than this model.

**Chair Brandenburg** – If not available?

**Mr. Beckham** – If not available.

**Chair Brandenburg** – Right. But if still available, then that must be supplied.

**Mr. Beckham** – And that is the conundrum that I face, Mr. Brandenburg. Now, in situations where I've had, and maybe I'll, you know, keep checking on our sergeant of arms here, ready to take me to jail, I'm going to admit something here. I have had families, which in preneeds, wanted to do something else, but they didn't have the money. Then I would say, well, here's what I could do. Here's a document, I can exchange this casket for this casket, and I have this much money between, which would allow you to buy a better flower piece, for instance, or to buy a better wall, things like that. But you have to acknowledge it. That is in 69K-8.006(4). It says, the last part that says there, under four, it says, unless the purchaser or next of kin authorizes the delivery of different product.

**Mr. Williams** – Give us the cite one more time, please.

**Ms. Munson** – 69K-8.006(4).

**Mr. Williams** – Sub (4)?

**Ms. Munson** – The last section in (4).

**Mr. Beckham** – In the last section of (4). Did you locate that?

**Mr. Williams** – Yes.

**Mr. Beckham** – And so I would provide a documentation, I would show them the current price of that casket versus the current price of the alternative and give them the option to switch the funds. If I did that wrong, I certainly apologize. I hope I don't go to jail for that. But that would be what you have to do in my opinion, legally. And Ms. Wiener or any other attorney in the room, I would ask you to comment on that. If you are upfront with the family, you know, and as I spoke with Ms. Munson earlier, if nothing, I'm about consumer affairs in this business. Protecting the consumer should be first in our motto, in what we do. And so, you have to be upfront and honest to protect these consumers with everything you do and serve, even if the cards are not in your favor. So that's where I see it. So, if you you're not doing business with that Aurora, Matthews Aurora, and it says on there, Matthews Aurora J337, burgundy, whatever, and you have another manufacturer, let's say Batesville 245. That's a similar casket, and you're a Batesville dealer. Ask the family if they would approve of you substituting this casket. I don't see a harm of that, but it has to be equivalent, same gauge, same interior or better, swing bar handles if appropriate and so forth and so on. I don't want to belabor the point. That's the situation as I see it. Any questions or comments?

**Chair Brandenburg** – Well, I think you've described the flexibility and you've shown the rule. So, thank you for that.

**Mr. Beckham** – If there's any attorney to make any correction for what I said, please do. Thank you.

**Chair Brandenburg** – Thank you.

**Ms. Schwantes** – Mr. Ferreira wanted to speak on this issue.

**Chair Brandenburg** – Thanks. Todd?

**Mr. Todd Ferreira** – I'm Todd Ferreira, F-E-R-R-E-I-R-A, with Ferreira Funeral Services. I wanted to share a little bit about this particular situation. I'm going to give you another type of scenario when you don't have access to a family. Like Mr. Beckham said, you know, if the family is sitting in your office, then certainly that is the right way to do things. However, if the family is at another funeral home down the street, that's where things get hairy. So, the situation is, let's say that Mr. Jensen goes out and purchases XYZ funeral home, and his obligation is to fulfill those preneed contracts. And he's got a family that uses a funeral home down the street. And the funeral home down the street says, well, basically, you have to use this name brand casket, but Mr. Jensen doesn't do business with that casket company or maybe that casket company or vault company isn't supplying that area. So, what happens in a competitive market is he has no access to the family. The family is down the street. So, this group of people down the street are putting doubts in the minds of these customers sitting in their office about him because Mr. Jensen wants to say, let's use the same quality. I'm going to give you equal quality or better, but it's just not going to have the sticker on it. The sticker is different, but it's basically the same unit.

**Chair Brandenburg** – What does the preneed contract say in your example?

**Mr. Ferreira** – So the preneed contract states swing bar handle, 18-gauge, tufted interior, you know, the whole nine yard. But it has the name of the manufacturer that Mr. Jensen has no account with.

**Chair Brandenburg** – Does that preneed contract say, “are similar or the same quality and materials?”



**Mr. Ferreira** – No, sir.

**Chair Brandenburg** – Okay.

**Mr. Ferreira** – It would be a standard contract.

**Ms. Wiener** – Most contracts do have that provision on them. If you're using an FSI contract, [inaudible] that says merchandise may be substituted with equal or better [inaudible] value.

**Mr. Ferreira** – But what happens is we go to the rule and the rule states that if the manufacturer is still in business and that casket is still produced, then we have to use that manufacturer and that casket, which I think is crazy. What do you think?

**Chair Brandenburg** – Mr. Williams?

**Mr. Williams** – I'm looking for statutory authority for the rule. Can somebody help me out with that?

**Ms. Munson** – You're looking at me only because I don't know if there's a statute that specifically says this, but there's a statute that gives the Board authority to identify how to administer this scenario. So, there's not a statute for every letter of every rule, and some of the rules are completely duplicative of statute, but a lot of the language and rules comes from the authority given in statute to define what will this look like what's the term of this, what's the pass rate on this? It's provided by that.

**Chair Brandenburg** – Thank you. Ms. Wiener, how did you write this?

[Laughter]

**Ms. Wiener** – Sir, I did not write this. And this one actually, I think, I don't know if Mr. Williams asked the question or who did about statutory authority, but I think this one's probably somewhat lacking in statutory authority. This particular provision that does give licensees a lot of headache and heartache. In subsection (4) of 69K-8.006, which says if subsection (3) applies, which means I gave you a Matthews Rosewood, I'm making up names, but a manufacturer and a model, if you use the manufacturer and the model in your presentation, you must include the manufacturer and the model on your contract. I totally get that, and I think that's totally worthwhile. That's subsection (3). Subsection (4) says, if subsection (3) applies, then the preneed licensee, so the one who wrote the contract, maybe not the one fulfilling the contract, but the one delivering the merchandise, shall deliver the specific product, manufacturer, and model, which was sold if the product is available at the time of need or fulfillment, unless the purchaser or next of kin authorizes the delivery of a different product. What that actually does in real life is, because although preneed contracts are not transferable, licensees in Florida often accept one another's preneed contracts. And by accept, I mean they will sell the people the stuff on the prices of the preneed contracts, and they'll take the money provided by whoever wrote the preneed contract in the first place. So, if you're doing that, and maybe you are not a Matthews Funeral Home, that is not available to you at that time that you are obligated to fulfill. So, all that particular provision of the rule does is to cause confusion and consternation and problems when that is the case. And contracts change. In 1982, maybe I was a Matthews casket seller, in 1999 maybe I'm not a Matthews casket seller.

**Chair Brandenburg** – Because they're out of business.

**Ms. Wiener** – Well then, there you go. And there you go. So, the situation is if you eliminated subsection (4) and you just kept (3) and (5), you probably resolved this problem entirely. And I'm not sure that you would find any specific statutory authority to require that they fulfill on the manufacturer and model.

**Ms. Schwantes** – Mr. Griffin would like to speak.

**Chair Brandenburg** – Mr. Griffin?

**Mr. Marshawn Griffin** – You have the statutory authority to approve the language in the contract. S. 497.103(1) is your authority to modify this language, and [inaudible] get involved with the mechanical statutory authority for that.

**Ms. Wiener** – I think detractor number 1 was actually supporter number 1, because we're not suggesting that if you show them a Matthews Rosewood, you shouldn't write Matthews Rosewood. If you tell them that's what they're getting, then you should write it on your contract and that contract can be approved. The part that I think suffers from a lack of statutory authority is this requirement about delivering the specific item from the contract if it is available at all.

**Chair Brandenburg** – That's (4) on the statutory report.

**Ms. Wiener** – On the rule.

**Ms. Munson** – On the rule.

**Chair Brandenburg** – I meant rule. Right.

**Ms. Munson** – If I may, Chair Brandenburg? I just want, again, for the record to reflect we're using this statutory authority language, maybe not always as appropriately as possible. When that rule may have been written, it may have been written because of whatever circumstances existed at the time that were relevant for the profession. So, if it no longer exists, removing the language, you're not removing it necessarily because there's no statutory authority, there may be changed circumstances that may be no longer necessary. So, a lot of these rules, and again, I think as Ms. Wiener indicated, may have been written, I don't know, years ago, and circumstances which existed, I think in all of the discussions that we've had today, are pretty much arising out of the fact that changed circumstances may impact some of them. So, the authority is not really a question [inaudible]. And I think that's where we are in discussion.

**Ms. Wiener** – Ms. Munson is absolutely right about that. We're using statutory authority in a very sloppy and artful way. There's authority to make a rule, and there's the law that you implement and how all of those things tie together. But this just seems to me language that sums up the words in today's transient society.

**Chair Brandenburg** – We have one more speaker that is waiving. I thank both of you. I would suggest to the Rules Committee members that we recommend that the full Board take a look at these rules and make a determination on what to do about these rules.

**Mr. Jones** – I agree.

**Chair Brandenburg** – Good point.

**Mr. Ferreira** – So, we have three (3) attorneys up here. I don't understand all the language.

[Laughter]

**Mr. Ferreira** – So, I want to make sure I'm getting my point across. So basically, I don't think we should be held to the manufacturer when we provide the merchandise. Does that make sense? Is that what I'm saying?

**Ms. Wiener** – What we're contemplating striking is this section that you would have to deliver that specific product just because it's available. If it's something that's still in your catalog and you're still delivering it, you've still got the contract, great. But if you're going to have to go to market on a single retail and pay some astronomical amount, then that would be eliminated from the requirement and you would be able to go to number 5, which would say the family can accept.

**Chair Brandenburg** – Right. With the permission of the consumer.

**Ms. Wiener** – With the permission.

**Mr. Ferreira** – Well, the problem is you don't have connection with the family. That's the problem. Think about this. The family is now at XYZ funeral. You don't have any connection to the family. You see where I'm going?

**Chair Brandenburg** – I do.

**Ms. Wiener** – So, the way to solve that problem, and we talk about this to our FSI clients all the time, don't include manufacturer and model number. Do a thorough description as our rule totally requires. We have the most thorough requirements for description anywhere in the United States, I would bet you. And if you thoroughly describe but you don't include, if you don't say, I'm going to deliver you at the time of need to Matthews Rosewood, but instead you say, I'm going to deliver an 18-gauge with swing bar and this and that, and this inside that outside, then you're good to go.

**Mr. Ferreira** – Right. But, when you fulfill a contract from the '80s, when they have the Batesville, Matthews, or whatever, or KLK out of Jacksonville. I got one yesterday, KLK, but they're not even around. So, you follow where I'm going with this?

**Chair Brandenburg** – Yes.

**Ms. Wiener** – I think the key is that if the product is unavailable, then you don't have to deliver it. Like you do have to tell the family, it's going to be different than on your contract. I'm not delivering this.

**Mr. Ferreira** – Okay. But the product is available. I just don't have an account with that company, or I don't do business with that company.

**Ms. Coney** – So that's not available to you.

**Ms. Wiener** – So is it available to you under that circumstance? If you can buy it from another funeral home, I don't think it's available to you as a seller of caskets, at that point. [Inaudible] I still think eliminating (4) which doesn't really seem to make any sense anymore, is probably the way to handle it.

**Chair Brandenburg** – It needs to go. It goes to the Board for overall description or discussion.

**Ms. Coney** – I would not want our consideration of a change to prohibit people from using a manufacturer's name because that might be the thing that makes the most sense to use a product code or a name or a type. But the requirement to deliver that exact name is what needs to change. I have always relied on the comparable or better at delivery without caring if it was product number ABC123. If, you know, so the --

**Mr. Williams** – If it was described as a Batesville primrose, 18-gauge, white, fixed handle, with urn ends, that's what you got to deliver. That's what the rule says.

**Ms. Coney** – Right. Well, that's to her point of eliminating number (4).

**Mr. Williams** – Right.

**Ms. Coney** – Even to the fact that it says next of kin authorizes and we don't use next of kin, we use legally authorized person, who is the purchaser or the next of kin. What does that mean? You know, family. What does family mean? I think that what we'd have to focus on is if that's the way you sell and if that's what you want to put in, that's certainly your right to do that. I don't want to prohibit any licensee from listing a product number if that's what works best in their sales presentation. However, at the time of delivery, if that is not available to the delivering licensee, maybe the change in both of those, a tweak in both of those, an elimination of sub (4), and a tweak of those because it's clear that the delivering licensee can rely on comparable or better at the time of delivery. Because there are a lot of licensees that can and do use a product code or use a manufacturer name, and there's nothing wrong with that as long as you can determine what does that product code or what does that manufacturer name relate to as far as workmanship, color, quality, gauge, swing bars, whatever. As long as you know what that is, and that's what you're delivering, that's what matters. So, let's not also create an unintended consequence by changing the way some licensees do currently work.

**Ms. Wiener** – And how many of you in this room that are licensees have purchased a location, and you get the contracts that you get, and you may not have agreements with other people. So, I think Ms. Coney's suggestion fixes all those problems and would address --

**Chair Brandenburg** – Well, you have to agree to honor the preneed contracts. I think it does need further discussion among the entire Board. Thank you. That's a good comment.

**Ms. Schwantes** – Can we go on to the next agenda item?

**Chair Brandenburg** – Please do.

#### **E. Public Comments**

**Ms. Schwantes** – This portion of the meeting has been set aside for public comments specifically on any rule issues which have not already come before the Committee, which may need to be addressed by the Board or its Rules Committee at a later date. Since issues that may come up during public comments have not been briefed for the Committee, there should not be any expectation that any issues raised during this section will be resolved today. It's merely to note it for future reference and perhaps action.

**Chair Brandenburg** – Anyone public comments? Come forward, sir, please. To the podium, please. Your name, please.

**Mr. Joseph VanCamp** – Hi, my name is Joseph VanCamp. I'm a member of the public from Naples. Thank you very much for having me. And thank you all for your service to the citizens of Florida. I'm here to address the Board about natural organic reduction as a death care option in Florida. Natural organic reduction is a green death care option that [inaudible] human remains in the soil over four (4) to six (6) weeks. It is referred to as in-vessel composting by the Environmental Protection Agency, and it's been used for decades in agricultural settings to incur large farm animals. And it's been used now in six states in the United States for human remains. Natural organic reduction sequesters carbon and heavy metals into the soil rather than volatilizing them into the atmosphere. The process itself requires 1/8 of the energy of cremation and also saves over one metric ton of carbon from being released into the atmosphere. Recent surveys say that 64% of Americans are interested in green burial, and 5.5% roughly are desiring natural organic reduction as their death care option. Natural organic reduction is legal in six (6) states. A few more are making it legal starting January 1, 2024, and nine (9) other states have legislation to define or regulate natural organic reduction. My purpose here in addressing the Board is to define current Florida law regarding natural organic reduction. Florida Statutes 497.005(22) says, "cremation also includes any other mechanical or thermal process whereby human remains are burned, pulverized, re-cremated, or otherwise reduced in size or quantity. I understand that this statute was purposefully left vague in order to allow use of alkaline hydrolysis as a death care option. It does seem that natural organic reduction by definition falls within the State's definition of cremation. So, my question is, what is the opinion of the Board on this matter and how could we initiate the regulatory process for natural organic reduction in Florida?

**Chair Brandenburg** – I think it should be addressed statutorily. And if you want something as specific as that, I think it has to be addressed statutorily.

**Ms. Munson** – So if I may? The question first, I believe, Ms. Wiener asked if you're applying for a license, but let's just hold off just for just a second. I just wanted to just kind of perhaps clarify. This is the Rules Committee meeting, so we're not going to be able to provide any information regarding what the full Board would do. It appears that you may have presented a statute that by your understanding may include for cremation, natural organic reduction. That legal perspective has not yet, I don't think, been established in the State of Florida. So, there may be an opportunity and Ms. Wiener would know better than anyone else, if there is any type of petition for it, or even reaction, or anything of that nature. But at this particular juncture, I believe Chair Brandenburg was going to indicate that the information that you have shared may be added, I don't know, to an agenda just explaining what was presented at this meeting. It's certainly going to be reflected in minutes.

**Ms. Schwantes** – May I?

**Chair Brandenburg** – Go ahead.

**Ms. Schwantes** – Okay. Thank you, Ms. Munson. That is correct. The minutes from this meeting will be presented to the Board for informational purposes, if nothing else. And I would also suggest my contact information is on the website. I'd be glad to talk with you after this meeting and make sure you have it. If you have suggestions along the lines of statutory

changes, this applies to anyone, any statutory change proposals, please send to my contact information online and we will see what we can do.

**Chair Brandenburg** – Thank you for coming forward. We appreciate you.

**Mr. VanCamp** – Thank you very much.

**Ms. Schwantes** – Is there anyone else who wanted to make a public comment? Mr. Brandenburg, I don't see any other hands up.

#### **F. Committee Chair - Final Comments**

**Chair Brandenburg** – I think we had a productive day. I think there were so many people that came forward with such good information. Ms. Munson?

**Ms. Munson** – No additional comments except to say that for the benefit of the Rules Committee, the Annual Regulatory Plan is becoming due, and I will be following up and including information that was apparently discussed at this meeting that Chair Brandenburg has indicated will be presented to the full Board for consideration. I'd like to thank everyone for your indulgence. And any comments that I made, I want to, again, underscore for purposes of this record that I'm addressing everyone purely from the perspective that the guidelines of our rules and laws would have me do. And I thank you for that opportunity, Chair Brandenburg.

**Chair Brandenburg** – I particularly want to thank Kevin Davis and Howard Beckham for coming in and certainly representing your educational institutions. And we value your comments very much. Board staff, you're always appreciated.

**Mr. Williams** – One comment?

**Chair Brandenburg** – Mr. Williams?

**Mr. Williams** – I'd like to publicly wish Wendy Wiener a happy birthday tomorrow. [Applause]

**Chair Brandenburg** – Happy birthday, counselor. Mr. Jones?

**Mr. Jones** – I'm good. Thank you, sir.

**Chair Brandenburg** – Okay. Again, thank you everybody for your indulgence and helpfulness and we'll move forward with many things that were discussed today. Thank you.

**Ms. Schwantes** – Thanks, everyone.

#### **G. Adjournment**

The meeting was adjourned at 3:22 p.m.