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DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF FUNERAL, CEMETERY AND CONSUMER SERVICES *Funeral, Cemetery &
Consumer Services*

IN RE BOYD-PANCIERA FAMILY
FUNERAL CARE, INC.
D/B/A PANCIERA MEMORIAL HOME,

Petitioner.

**PETITION FOR EMERGENCY WAIVER OF
RULE 69K-18.004, FLORIDA ADMINISTRATIVE CODE**

Petitioner, BOYD-PANCIERA FAMILY FUNERAL CARE, INC. (BOYD-PANCIERA), is a corporation which was formed as the result of the merger of Panciera Memorial Home, Inc. and Boyd Funeral Home, Inc. on May 15, 2009. The former entities were both approved training agencies and trained embalmer interns and funeral director interns. BOYD-PANCIERA intends to submit an Application For Approval As Training Agency; however, BOYD-PANCIERA has been informed by Division staff that it cannot qualify for approval because it (as a corporate entity) has not performed at least 40 embalming cases and/or 40 funeral services per year for each intern to be trained at the funeral establishment. Pursuant to Section 120.542, Florida Statutes, and Rules 28-102 and 28-104, Florida Administrative Code, BOYD-PANCIERA hereby requests a waiver of Rule 69K-18.004, Florida Administrative Code, and as grounds thereof states:

Petitioner's Name and Address

BOYD-PANCIERA FAMILY FUNERAL CARE, INC.
6400 Hollywood Boulevard (FE License: F054856)
Hollywood, Florida 33024
Telephone Number: (954) 983-6400

Name and Address of Petitioner's Attorney

Wendy Russell Wiener, Esq.
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For purposes of this Petition, please direct all correspondence and communication to
Petitioner's attorney.

Applicable Portion of Rule and Statute Rule Implements

Applicable Portion of Rule:

BOYD-PANCIERA is requesting a waiver of, or clarification regarding, Subsection (3)
of Rule 69K-18.004, Florida Administrative Code, which states:

- (3) In order to be approved as an embalmer intern training agency, a funeral establishment shall have performed at least 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. In order to be approved as a funeral director intern training agency, a funeral establishment shall have performed at least 40 funeral services per year for each intern it is applying to train in order to demonstrate its ability to provide such funeral director interns with the necessary intern training and experience.

Statute that Rule Implements:

The statutes that the portion of the Rule implements are sections 497.370 and 497.375,
Florida Statutes (2009).

Type of Action Requested

The Type of action requested is a waiver of, or clarification regarding, Rule 69K-18.004(3), Florida Administrative Code.

**Reasons Why the Waiver Requested
Would Serve the Purpose of the Underlying Statute**

The purpose of the relevant law is to ensure that embalmer and funeral director interns are trained in a funeral establishment with a level of experience necessary to provide interns with sufficient training and experience. The Petitioner, BOYD-PANCIERA, is a newly formed entity which is the result of the merger of two well-established funeral companies, both of which owned locations approved as training agencies. Indeed, the actual location to be approved as a training agency is the very location approved as a training agency for the former Boyd Family Funeral Homes, Inc. (Training Agency License #1235). The same persons still own the location; however, it is owned along with other established funeral professionals. The funeral establishment for which approval is being requested and its current owners have the requisite experience to qualify for approval.

**Specific Facts that Demonstrate a Substantial Hardship or a
Violation of Principles of Fairness that would justify a Waiver for the Petitioner**

Construction of the relevant rule subsection to prohibit approval of the BOYD-PANCIERA location as a training agency defies the purpose of the rule and will present a substantial hardship on the persons currently being trained at the location. The rule is intended to ensure that persons “coming into” the funeral business cannot be approved to train interns until they have sufficient experience to qualify as trainers. The rule’s intent will certainly be

thwarted by denial of the request by BOYD-PANCIERA to be approved as a training agency, because the owners of BOYD-PANCIERA are all experienced funeral professionals. The newly formed BOYD-PANCIERA entity is a compilation of two established funeral companies, each with the experience necessary to qualify for approval, and in fact approved, to train interns. This is not a situation in which there is a “new” company that has not obtained the experience required to serve as a training agency.

Facts that Make the Situation an Emergency

As previously noted, Panciera Memorial Home, Inc. and Boyd Family Funeral Homes, Inc. were both approved training agencies and were training interns when the companies merged into BOYD-PANCIERA. If BOYD-PANCIERA is not approved as a training agency, the effect will be of substantial detriment to those interns in training.

Facts that Show that Petitioner will Suffer an Immediate Adverse Effect

Petitioner, BOYD-PANCIERA, will suffer an immediate adverse effect if it is not permitted to apply to be, and to be approved to be, a training agency. Its current interns, training up to the date of merger, will be required to seek an alternative training agency. BOYD-PANCIERA will be unable to train interns, as its component entities were able to do before the merger.

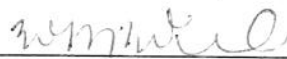
SUMMARY

BOYD-PANCIERA has demonstrated that this Emergency Request for a Waiver of Rule 69K-18.004(3), Florida Administrative Code, meets all of the requirements set forth in Rules 28-104.002, and 28-104.004, Florida Administrative Code, and Section 120.542, Florida Statutes. It has shown that the waiver will serve purpose of the underlying statute; has set forth facts

demonstrating that it and its interns will experience a substantial hardship if the waiver is not granted; has set forth facts that evidence the emergency nature of the request and has shown that it will suffer an immediate adverse effect. The relevant rule subsection is intended to ensure that interns are trained at locations with the requisite experience. BOYD-PANCIERA is such a location. No qualifications relevant to the rule subsection have changed between the day before and the day after the merger, other than an alteration in the corporate structure of the owner of the location. The rule subsection should not be used to remove the approval to train interns from two established funeral companies simply because the companies merge into one. The qualifications of BOYD-PANCIERA are those of the other two licensees combined.

Therefore, BOYD-PANCIERA respectfully requests that the Division grant this Petition and waive the application of Rule 69K-18.004(3), Florida Administrative Code to BOYD-PANCIERA.

Respectfully submitted this 18th day of May 2009.



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