

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
February 1, 2018 - 10:00 A.M. (CST)
Sheraton Bay Point Resort
4114 Jan Cooley Drive
Panama City Beach FL 32408

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

Mr. Jody Brandenburg, Chair –Good morning, everyone. Welcome to the Board of Funeral, Cemetery, and Consumer Services. It's Thursday, February 1, 2018, in Panama City Beach. Ms. Simon, would you please make the preliminary remarks and take the roll call, please?

Ms. Ellen Simon – Yes, Mr. Chairman. My name is Ellen Simon. I am Assistant Director for the Division of Funeral, Cemetery, and Consumer Services. Today is February 1, 2018. This is a public meeting of the Board of Funeral, Cemetery, and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to all interested persons and extra copies are located in this meeting room. This meeting is occurring in the Sheraton Hotel in Panama City Beach FL. Ms. LaTonya Bryant is recording the meeting and minutes will be prepared. Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board's Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. At this time, Mr. Chairman, I will take the roll:

Joseph "Jody" Brandenburg, Chair
Keenan Knopke, Vice Chair
Jean Anderson
Francisco "Frank" Bango
Andrew Clark
James "Jim" Davis {**ABSENT**}
Lewis "Lew" Hall
Powell Helm
Ken Jones
Darrin Williams

Also noted as present:

Mary Schwantes, Executive Director
Tom Barnhart, Board Legal Advisor
James "Jim" Bossart, Department Counsel
Matthew Daley, Department Counsel
LaTonya Bryant, Department Staff
Jasmin Richardson, Department Staff

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

Chair – Thank you. I want to welcome Darrin Williams, our newest Board member, our newest colleague. Mr. Williams is from Jacksonville FL and we're sure glad to have you on the Board, proud to have you on the Board, and congratulations on your appointment to the Board.

Mr. Darrin Williams – Thank you. {applause}

2. Action on the Minutes
A. January 4, 2018

Chair – Having a quorum, we'll move forward with action on the minutes of the January 4, 2018, teleconference.

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

3. Old Business

A. Disciplinary Proceeding(s)

(1) Settlement Stipulation(s) (Probable Cause Panel B)

(a) Marcells Cremations, Inc.: Case No. 198424-16-FC; Division No. ATN-27205 (F050427 – Direct Disposal Establishment)

Ms. Simon – This case will be presented by Mr. Bossart, from the Office of the General Counsel.

Mr. Jim Bossart – Mr. Brandenburg?

Chair –Mr. Bossart?

Mr. Bossart –My name is James Bossart, and I represent the Department of Financial Services in this matter. As Ms. Simon pointed out, I just take a moment to remind the Board that this matter was before you at the December meeting as an informal proceeding but was continued to discuss a possibility of a settlement. This is the case of Marcells Cremations, Inc., Case No. 198424-16-FC. Marcells Cremations, at all times relevant to this proceeding, was a Florida licensed direct disposal establishment, under license number F050427, and doing business in Miami-Dade County, FL. The direct disposal establishment violated ss. 497.386(2), 497.386(4), F.S., and Rule 69K-33.001(2)(a), F.A.C., by failing to maintain unembalmed human remains at a temperature of 40 degrees Fahrenheit or below, and is therefore subject to discipline pursuant to ss. 497.152(1)(a) and (b), F.S. Based on the foregoing, Respondent violated ss. 497.386(2), 497.386(4), F.S., and Rule 69K-33.001(2)(a) and (2)(i), F.A.C., by failing to maintain unembalmed human remains at a temperature of 40 degrees Fahrenheit or below, and is therefore subject to discipline.

The Respondent and the Department have entered in to a proposed stipulation for a fine of \$1500. The Department recommends that the Board approve this Settlement Stipulation.

Ms. Jean Anderson – Mr. Chairman, I served on Probable Cause Panel B and I am recusing myself.

Chair – Thank you. Mr. Williams?

Mr. Williams – Yes, sir?

Chair – Ms. Anderson just disclosed that she was on the Probable Cause Panel in this case. When you're on a Probable Cause Panel, you recuse yourself from the vote. Ms. Wiener, are you here just to answer questions or would you like to address the Board?

Ms. Wendy Wiener – I am. I'm simply here to answer any questions.

Chair – Mr. Hall?

Mr. Lew Hall – Your clients not here? You're answering for her?

Ms. Wiener – Correct.

Mr. Hall – Of course my concern is the pictures and stuff in the report. They're deplorable. My concern is, what assurance do we have that this has been corrected and, from her perspective, if you look at the reports, it tells us when the bodies come in from the funeral homes. It doesn't tell us how long they've been deceased prior to or what condition were they in when they arrived at her facility. In our business, we're going to have bodies that come to us that are decomposed. Unfortunately, that's the nature of the business. However, half the bodies, in her cooler, were decomposed. So, my concern is how long does she think the cooler was down and what steps have been taken. She had over half of them, so that's highly unusual.

Ms. Wiener – Mr. Hall, so let me address your questions in three (3) parts.

Mr. Hall – Okay.

Ms. Wiener – At this moment, the only charges, for which you are seeking to impose discipline, are related to the failure of the refrigeration.

Mr. Hall – Okay.

Ms. Wiener – As to the amount of time that the failure of the refrigeration existed, I would caution that the facts are not really at issue at this time because of the nature of the proceeding. However, your Board packet does contain materials that I believe are now a matter of public record and that you can refer to, which contain her affidavit as to the facts leading up and the ongoing nature of the refrigeration unit that was fixed and then broken and so on. As for your assurance as to what will happen in the future, I have cautioned my client that I suspect that there will be repeat inspections with regard to this refrigeration. I would be super surprised if those did not occur, and of course those can occur without notice. So, I would expect that the Division would be following up on this matter, and as I said, I personally can't guarantee that it will not be the case, but I have cautioned her that the Division will be checking up, based upon this Settlement Stipulation and the Administrative Complaint.

Mr. Hall – Do you know if she documents when they come in from other facilities, the times or conditions when they arrive?

Ms. Wiener – I don't know the answer to that question. No.

Mr. Hal – So we don't know if they arrived under those circumstances or whether it was because her refrigeration was down.

Ms. Wiener – Without just purely speculating, I would suggest that if the Division's examiner/inspector had been concerned about that that it would have been a part of the Administrative Complaint. The Administrative Complaint, which of course I re-reviewed in anticipation for this meeting, really only addresses the failure of the refrigeration. So beyond that, that's what we're here for on the settlement.

Chair – Board members, any other questions? We have a Settlement Stipulation before us.

MOTION: Mr. Keenan Knopke moved to approve the Settlement Stipulation, requiring the Respondent to pay a fine of \$1500. Mr. Jones seconded the motion, which passed unanimously.

B. Licensure Reinstatement

(1) Noble, Ronald: Case No. 134081-13-FC; Division No. ATN-17635 (F046246)

Ms. Simon – Mr. Noble's attorney, Ms. Daughton, is present today and I believe she has a presentation to the Board.

Chair – Thank you. Ms. Daughton?

Ms. Maureen Daughton – Mr. Brandenburg, good morning. Members of the Board, my name is Maureen Daughton. I'm here representing Ron Noble. Mr. Noble is present this morning, as well as his wife, who's here in the audience. Mr. Noble is here this morning, pursuant to the entry of a stipulated consent agreement, Consent Order, which was unanimously approved by this Board in 2015. The Consent Order is for resolution of disputed factual allegations, which were alleged against Mr. Noble. I believe you have been presented with copies of the minutes from that 2015 meeting.

There are three (3) parts of the Consent Order. The first part is call for the suspension of Mr. Noble's funeral director and embalmer's license for a period of twenty-four (24) months. That period has concluded. I believe it would have concluded in August of 2017. Pursuant to the Consent Order, at the conclusion of the twenty-four (24) month period of suspension, Mr. Noble was required to appear in front of the Board and demonstrate good moral character necessary to resume his practice. That is why we're here this morning and we're ready to present that. I just want to touch on the other two (2) portions of the Consent Order. There is an additional condition that says that Mr. Noble was to pay a fine of \$2500 to the Division. I want to

let you know that that has been taken care of and that has been paid. Lastly, at the conclusion and assuming the Board reinstates his license, which is our respectful request this morning, Mr. Noble would again be placed on probation for a period of six (6) months, which would not begin to run until his license was reinstated.

Mr. Noble, during the period of suspension, which ran from 2015 to 2017, has continued operating his monument business, under his license, which was not impacted by the suspension of his funeral director and embalmer's license. That license remains in good standing and has continuously since its issuance in 2017. Mr. Noble has not been arrested or had any criminal issue arise during the period of his suspension. We have submitted, to the Division, letters in support of Mr. Noble's demonstration of good moral character. We did not draft those letters. I did not draft those letters. Mr. Noble did not draft those letters and we really saw a cross section of the people in the community that he has had dealings with in Fernandina Beach. You have letters from elected officials, former elected officials, a chaplain, an owner of a funeral home, and a member of a charitable organization that Mr. Noble has participated in and been very engaged in during the period of suspension that he has worked with. It's our position that those letters tell the story of someone who is involved in the betterment of his community. He is reliable, he is compassionate and of good moral character.

I know we have new Board members who were not on the Board at the time this Settlement Agreement was entered in to. I think it's important to note for the record, and I don't want to go back through all of the facts unless there are questions and we certainly will, this matter was never reported to law enforcement. Mr. Noble, if this matter had gone to hearing, and it was contested through litigation with the Department. We had depositions, we had discovery. Had this matter gone to hearing, it's our belief that the evidence would have shown that Mr. Noble admittedly embezzled \$29k and that he paid that back in 2005. I have, if the Board members wish to see it, a satisfaction which indicates that that payment was made, and that is what we think the evidence would have shown. Let me say one other thing about Mr. Noble, before I turn it over to him to address the Board. Mr. Noble is someone who has participated, in particular, in the last two (2) years, with something called the Optimist Club. The Optimistic Club is a group that the motto of this club is friend of youth and its mission is to provide things for disadvantage children that they would not normally have. So, that's something that he has been very involved with, and I think that addresses his moral character. I'm happy to answer questions. I'd like you to hear from Mr. Noble. So, Mr. Chair, is that appropriate at this time?

Chair – Yes. Mr. Noble?

Mr. Ronald Noble – Mr. Chair?

Chair – We need to swear you in, please.

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

Mr. Noble – I do. Mr. Chair?

Chair – Yes?

Mr. Noble – My name is Ron Noble. Over twelve (12) years ago, I made a very poor decision, which brought shame, not only to me, but my family, my fellow-workers, my colleagues in the profession. Since my license was suspended, I've re-doubled my efforts to become a better person in the community and to my fellowman, strangers, or friends. I respectfully request that you consider reinstatement of my license.

Chair – Thank you. Are you finished?

Mr. Noble – Yes sir.

Ms. Simon – Mr Brandenburg, I just wanted to see if there was anyone in the audience to speak on this matter.

Chair – I have a question. Since your funeral director and embalmer's license was suspended for the last two (2) years, have you been employed at a funeral home?

Mr. Noble – I'm on a part-time basis with Green Pine Funeral Home in Yulee and I serve as an attendant, like one would first do before they ever went into the funeral business. I drive the funeral coach, the flowers, open the door. That type of thing.

Chair – Do you have any type of interaction with families where you participate in the funeral arrangements?

Mr. Noble – No sir.

Chair – What about directing a funeral?

Mr. Noble – No sir.

Chair – Thank you.

Mr. Noble – You're welcome.

Chair -Any other questions? Mr. Knopke?

Mr. Knopke – During that time with Green Pine, have you done anything in the preparation room?

Mr. Noble – No sir.

Mr. Knopke – Okay. That was all for now.

Mr. Noble – May I readdress that?

Mr. Knopke – Sure.

Mr. Noble – I have assisted the funeral director in dressing and casketing remains, but I've kept my communicable disease thing in order.

Mr. Knopke – But you've not done anything that would fall under the term of embalmer or embalming?

Mr. Noble – No sir.

Chair – Mr. Jones?

Mr. Jones – For both of you, you mentioned and you brought up the minutes from the prior meeting. Also, in those minutes, there was a second audit. Did we ever get the results of a second audit?

Ms. Daughton – We have not received the results of a second audit. I don't believe the Division ever received any documentation of a second audit.

Mr. Jones – Did the Division?

Ms. Simon – No, the Division did not receive that.

Mr. Jones – Okay. Nothing further at this time.

Mr. Hall – Mr. Chair?

Chair – Mr. Hall?

Mr. Hall – In our previous minutes, to address the fact that there was a civil judgment for \$250k. Is that a correct statement?

Ms. Daughton – Yes. A civil judgment was obtained. If I might, Mr. Chair?

Chair – Please.

Ms. Daughton – A civil judgment was obtained. There was litigation that was instituted against Mr. Noble in 2007. That litigation asserted \$383k, and I believe you may have a letter Mr. Cascone, who brought that litigation. Mr. Cascone was only counsel for that matter for two (2) years, during which nothing occurred. There was no discovery, there was no hearing, there was no deposition. Mr. Cascone was relieved by different counsel. They engaged in discovery. Mr. Noble was paying for counsel. Mr. Noble could no longer pay for counsel, so his counsel withdrew. There was a mediation, at which Mr. Noble was unrepresented, which lasted about eight (8) or nine (9) hours. At the conclusion, of which, Mr. Noble executed a Consent for the civil judgment. I think it's important. The civil judgment just indicates that Mr. Noble consents to the amount of the judgment. It does not state that he admits that he embezzled \$250k, because he does not. That civil judgment was recorded in 2011. Mr. Noble filed bankruptcy in 2014, in the Federal District Court. Notice went out creditors, including the owners of that judgment. They did not file an objection and it's been discharged.

Mr. Hall – I think my concern is regardless of what the number is, whether it's the \$30k you're saying he repaid, or the \$250k or whatever the number is, any of those numbers are thefts. He took something that did not belong to him.

Mr. Daughton – Yes sir.

Mr. Hall – You're standing here today telling us about the moral character of the individual and requesting we give him a license to go back before the public to write preneed, to do funerals, etc., exposing the public to that risk again. I think that concerns me. Now your issue that you brought up stating that the other funeral home didn't come back in. In some point in time, they probably got to figure we're throwing good money after bad, so we're not going to proceed with that. I think we expressed our concern at the last hearing here with us that they didn't cooperate with our inspectors. I think they were in hopes that the license would be reinstated and there was some form of recovery for them there. At least there was concern on my part as to why they didn't give our inspectors what they needed and participate with us in the investigation. Those are the concerns that I have. I don't know how you can make me feel better on that.

Ms. Daughton – Mr. Chair, may I respond?

Chair – Yes.

Ms. Daughton – Thank you. Mr. Hall, I appreciate that. The record that you have in front of you and the record that you have at the Division is limited. I can only tell you that if this matter had gone to full hearing, the testimony, which I would have been able to establish, and was able to establish in deposition, is that the only reason that the litigation was instituted is because Mr. Noble would not leave Nassau County. In other words, was continuing to practice within that community. While I understand your concern about the restitution, that had very little to do with the institution of the litigation and the obtaining of the judgment.

Mr. Hall – But the restitution of \$30k, when this man under testimony today is saying he took it, he made a mistake, he's owning up to that, but he did take that, so that does affect the moral character of an individual.

Ms. Daughton – May I respond?

Chair – Yes.

Ms. Daughton – I understand that, but I think at the posture that you're in now, you know, those were the allegations that were in front of you in 2015, and when we came in and agreed to the discipline, the discipline is for the embezzlement of the funds. You can't punish him respectfully. I don't believe it would be appropriate to punish him twice for the same behavior. Remember, these allegations are almost fifteen (15) years old. This was in 2004 and 2005. He has repaid that debt. So, with all due respect, and I understand the concern, but I do not believe it is appropriate to use that as the basis to determine he does not have good moral character, sir.

Mr. Jones – Mr. Chair?

Chair – Yes, Mr. Jones?

Mr. Jones – Question for the Division, but a question for Mr. Noble first. You have a monument license that was effective, when? When did you start your business?

Mr. Noble – Mr. Chair, may I respond?

Chair – Absolutely.

Mr. Noble – 2006.

Mr. Jones – Any complaints on his monument license, from 2006 forward?

Ms. Simon – Ms. Richardson?

Ms. Jasmin Richardson – Well I can't speak on complaints, but there's no disciplinary action against that license.

Mr. Jones – Okay. Second question. One of the concerns I have in reading the minutes, and I remember from the prior minutes also, trading services for preneed, taking a firearm. I don't know if that was the only case. I don't have the whole minutes. As Mr. Hall said, it's kind of a concern there for your employer if you're taking personal goods for services that you're rendering for your employer. Can you give me some information on that? Again, we're going back to character as to your reference, please.

Mr. Noble – Mr. Chair? May I respond?

Chair – Yes, go right ahead.

Mr. Noble – That particular case was with a former employee who had sold everything that he had, his house, and he was going to travel, so he wondered if we would trade two (2) cremations for an AR15 that he had, and I said I think we could probably do that. Well, I'd really forgotten about it and then Mr. Heard located that preneed and asked me about it and I told him that I would sell that gun and deposit those monies into the preneed account, which I did. I divided it up between the two (2). He came to me as a personal favor. It wasn't something I was trying to sneak in surreptitiously.

Mr. Jones – That's the only time?

Mr. Noble – Yes sir.

Mr. Jones – Thank you.

Chair – Mr. Knopke?

Mr. Knopke – Question for Ms. Simon and probably for staff. Does he have a preneed license for his monument dealership?

Ms. Simon – I don't believe so.

Mr. Knopke – Okay. Have you sold any preneed through your monument establishment?

Mr. Noble – No sir.

Mr. Knopke – If I remember correctly, from the minutes and so forth, this case never went to a State Attorney, there was never anything down that road.

Ms. Daughton – That’s correct. It was never...Mr. Chair, may I respond?

Chair – Yes.

Ms. Daughton – It was never referred, it was never reported to the police, and it was not reported to the Division until 2011.

Mr. Knopke – During that time period, from 2004 until 2011, was there discussion between Mr. Noble and Mr. Heard about the amount and paying it back, or was there just all of a sudden...

Ms. Daughton – Again, this is kind of outside the record that you have, but the evidence, if we had to go to hearing, we believe would establish that in 2005, after the satisfaction for the \$29k was paid, that my client was encouraged to leave and he actually did. He actually wound up, for a time, in Tallahassee, in Leon County. It was only when he came back that the lawsuit was instituted in 2007. Once the lawsuit was instituted, then you have lawyers involved, so there was no further discussion between the two.

Mr. Knopke – But the lawsuit you talk about, not the State Attorney?

Ms. Daughton – Correct. It was a civil lawsuit.

Mr. Knopke – Not criminal?

Ms. Daughton – Not criminal.

Mr. Knopke – It doesn’t concern me; it just makes me wonder. If somebody had taken whatever amount of money that’s been talked around, \$30k, \$380k, \$250k, somewhere in there, I would have thought somewhere along the way that somebody would have picked up the phone to law enforcement advising of the problem. The other part of that, though, is it makes me wonder a lot about, not so much Mr. Noble, but the firm he worked for, as to what really was going on in between the two of them. I’m not asking you to disclose that. It’s just that his character is in question because of the amount of money and the fact that he admitted it. That’s there. The other part of it isn’t there and that’s the part between the two parties that you can’t give me, unless Mr. Heard or his representative decided to give me.

Ms. Daughton – May I respond?

Chair – Please.

Ms. Daughton – I appreciate that concern. I can just tell you what the sequence of events was, and I wasn’t representing Mr. Noble at that time. But again, we come back to the point that, with respect, this Board unanimously approved this Consent Stipulation, this punishment, and to now go back, I understand the concern, but I’m just not sure that’s appropriate to take that amount and use that against him as evidence that he doesn’t have good moral character. Again, we agree it’s a theft. We’re not disputing that. We also have evidence that it was paid back and that’s all we can do at this point.

Chair – Thank you.

Mr. Andrew Clark – Mr. Chairman?

Chair – Yes?

Mr. Clark – When was the \$29k paid?

Mr. Tom Barnhart – I think she said 2005.

Ms. Daughton – February 7, 2005.

Mr. Clark – I understand that we never got the results of the audit. At the time, the Division alleged that he embezzled \$250k. My question to the Division is whether that is still the Division's position that it's \$250k?

Ms. Simon – I believe that the information that we have and our position is based on the documentation we had, which provides for the lawsuit that took place. We do not have any evidence outside of that for the \$250k.

Mr. Clark – So nothing has been provided to mitigate the \$250k claim?

Ms. Simon – No, and nothing has been provided subsequent the second audit to corroborate.

Mr. Clark – Thank you. I appreciate that. I think what Mr. Hall, and Mr. Knopke you just said that it seems like you're in a position as we agreed to this suspension now we can move on as long as we establish good character, but when I read the minutes, Mr. Helm asked the question, "Does he realize he may not get his license?" It seemed like your response was affirmative and you did understand.

Ms. Daughton – May I respond, Mr. Chair?

Chair – Yes.

Ms. Daughton – Mr. Clark, thank you for the question, because I'm not saying that because his license is suspended that this Board should automatically reinstate it, because I don't think that's the agreement that was entered in to in 2015. I think the agreement that was entered in to, and I would refer to Mr. Barnhart's comments within the record is that we have to come forward with a showing of good moral character. That's our burden and we feel that's why we're here today to do that this morning, but I also would caution that, so it's not an automatic and I'm not suggesting that it is, but I think what Mr. Barnhart suggested in his comments, and I don't mean to speak for you, but was that if there is not some new matter that has occurred, please correct me, between 2015 and 2017, that there may not be a legal basis not to reinstate. That's all I have.

Chair – Thank you. Mr. Helm?

Mr. Helm – Mr. Noble, the letter in our packet from Jackie Hayes states, "*I met Mr. Noble as he faithfully served the needs of families through the services of Oxley-Heard Funeral Home. I have continued to maintain a relationship with him as he currently is serving families with Green Pine Funeral Services.*" "Serving families", what does that mean?

Mr. Noble – It means assisting on funerals. Mr. Hayes, actually it's Reverend Hayes, and I have known each other for over twenty (20) years, and while I was at Oxley-Heard, he used to sit in on arrangements with me and families. He never sat at an arrangement with me at Green Pines, because there never was one. I can see where he could easily assume because I was there and he knew me as a funeral director before that he thought I was serving families, but I never saw a family, made funeral arrangements, other than drive the funeral coach, open the door, hand out memorial cards.

Mr. Helm – My question would be, if I'm being honest, if we had Mr. Hayes here under oath, would he say that?

Mr. Noble – Mr. Chair?

Chair – Yes?

Mr. Noble – Yes sir.

Chair – Thank you.

Ms. Simon – Mr. Chairman?

Chair – Yes?

Ms. Simon – One more edification, as Mr. Clark and Mr. Jones have referred to the minutes this morning, I just want to make sure that the record is clear. The minutes from the August 2015 meeting were passed out to the Board members. They were not included in the original packet. Additionally, is there anybody in the audience that would like to speak to this matter? Thank you.

Mr. Hall – Mr. Chair?

Chair – Just a moment. Would you repeat that, please?

Ms. Simon – Yes sir. Is there anybody in the audience that would like to speak to this matter?

Chair – There's a gentleman there.

Unidentified person – Yes ma'am.

Chair – Please come up. Your name, please, and we'll need to swear you in.

Mr. Buck Heard – My name is Buck Heard. I'm from Moultrie GA.

Chair – May we swear you in?

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

Mr. Heard – The best that I know it, yes ma'am.

Chair – Would you like to address the Board?

Mr. Heard – Yes sir, I would, please. My name is Buck Heard, as I stated. I live in Moultrie GA. I've been a licensed real estate broker in the State of Florida, a licensed auctioneer in the State of Florida and Georgia for over thirty (30) years. During that period of time, I spent ten (10) years on the Georgia Board of Auctioneers, which licenses auctioneers in our state, so I can empathize with y'all, sitting here in this position, trying to protect the public of the State of Florida, as well as the visitors and the tourist that come here who need the services of your professions. Now, it's been stated that Mr. Noble, and I have a letter of nullification from Mr. Stalcup where Ron Noble did exchange a rifle shotgun for a preneed service. When that came to the attention of Oxley-Heard, Ron admitted to it and was told to replace the money in the account. To my knowledge, he didn't replace all of it and this couple has sent this letter to my brother stating that they have moved and wanted to transfer this to the funeral home where they are now, but that fund is short, because of the actions of Mr. Noble. It is noted that Mr. Noble signed this Consent Judgment for over \$250k. If he didn't take the money, he wouldn't have admitted to it. So, it's proven that Mr. Noble has, on many occasions, taken the money, embezzled the money, defrauded this couple and we don't know of any others that may come to light. I'm sure Mr. Noble has lived a good life in the last ten (10) or fifteen (15) years and participated in the Optimus Club and things of that nature. He's admitted to working at the Green Pine Funeral Home. Y'all in the funeral home business, it's such a fine line of serving families and opening the door, driving the flower car. If a family comes in, they need a service, they want to talk about it, what goes on in the prep room is behind closed doors. Only you and he actually knows. There's no way to determine. It's noted that Mr. Noble has not told the truth, on many occasions. This is not, as his attorney said, y'all are in a position to punish Mr. Noble. This has nothing to do with punishing Mr. Noble, at all. This is here to protect the public, the people of Florida, the people who come to visit this state that need this profession. As I served on the Georgia Auctioneers Commission, we were charged with protecting the public. It does not make sense to give a license to someone to deal with the public, to put them in a position to defraud the public, as they have in the past, to give them that opportunity to do it again. We all know that you just don't change the spots on a dog. It just don't happen. Thank you.

Chair – Mr. Barnhart?

Mr. Barnhart – Mr. Heard?

Mr. Heard – Yes sir?

Mr. Barnhart – You testified that this exchange about a firearm. When did that occur, to the best of your knowledge?

Mr. Heard – In 2014, this letter was written from a Mr. Lonnie Stalcup. He had worked for Jack at Oxley-Heard Funeral Home on a part-time basis, from time to time, and he was somewhat familiar with the preneed arrangements. He and his wife went in to make this preneed arrangement. They came in prepared to write the check. Mr. Noble proposed to them.

Mr. Barnhart – On behalf of who?

Mr. Heard – Sir?

Mr. Barnhart – On behalf of what company?

Mr. Heard – He was working for Oxley-Heard Funeral Home, at the time.

Mr. Barnhart – In 2014?

Mr. Heard – Yes sir. Well, no. This was prior to that. I don't know when this occurred, but this is when Mr. Stalcup wrote this letter to my brother, Jack, and he said that Mr. Noble proposed to him that he would take the gun and that he personally would fund the account, which he didn't.

Mr. Barnhart – Was he working for Oxley-Heard at the time?

Mr. Heard – Yes sir.

Mr. Barnhart – Mr. Noble was?

Mr. Heard – Yes sir.

Mr. Barnhart – So, we're going back at least to 2004 or earlier?

Mr. Heard – Yes sir. Somewhere in there.

Mr. Barnhart – Okay.

Chair – Thank you.

Mr. Heard – Yes sir.

Chair – Mr. Helm?

Mr. Helm – You said that your name is what?

Mr. Heard – Buck Heard.

Mr. Helm – Are you any relationship to the funeral home?

Mr. Heard – Yes sir, that's my brother, Jack Heard. I serve on the Board of Directors and Vice President of the company at this time.

Mr. Helm – Thank you.

Chair – Thank you. Any questions of Mr. Heard?

Mr. Knopke – Mr. Chair?

Chair – Yes sir, Mr. Knopke?

Mr. Knopke – Why didn't you or Jack refer this to law enforcement?

Mr. Heard – There's a good reason for that and I really appreciate you bringing that up. Y'all being in the funeral home business and the profession, we all realize that bad press is good for nobody. Putting Ron in jail, and if we had prosecuted or if Jack had prosecuted, because at that time I wasn't on the Board of Directors, but if Jack had prosecuted Ron it would have shown up in all the papers. It would have drawn a tremendous amount of unwanted press to your profession. Ron agreed to pay back the money and that he would leave town and would no longer be involved in the things going on in Fernandina, so Jack chose that position not to prosecute Ron, based upon him leaving, leaving us along, leaving Jack alone and going on. The statute of limitations ran out. It was better for the profession, the funeral home and the city and the town, not to prosecute. And there was no malice to prosecute Ron and put him in jail. That wasn't going to do anything. So, when Ron didn't leave, Jack proposed to try and collect his debt. That's when Mr. Noble put everything into his wife's name. Jack got some lawyer to try and collect it and that's when Ron filed bankruptcy, so he had no intention of paying the money back. If he was going to pay it back, he would have made some sort of payment schedule, like Mr. Heard, yes I did it, here's my consent, I want to pay you back, I want to do what's right, so let's get on the easy payment plan here; \$25 a week or whatever to make some effort, but there was none of that made. There was no intention to pay that money back whatsoever. Thank you.

Chair – Thank you, Mr. Heard.

Mr. Heard – Thank you, gentlemen.

Chair – Mr. Barnhart?

Mr. Barnhart – Ms. Daughton, did you mention before that the \$29k was paid back in 2005, but I take it there was no satisfaction of judgment later from Oxley-Heard Funeral Home. Correct?

Ms. Daughton – There was a satisfaction of loan that Mr. Heard signed. If you look at the stipulated judgment in the civil case, they actually deducted from the amount, and I think it's in excess of \$29k. It may have been \$31,500 or somewhere in that neighborhood, but that's in the record. Mr. Chair, if I could just briefly respond to what the Board has heard?

Chair – Are there any other questions you have at this time?

Mr. Barnhart – Not right now.

Chair – Yes, Ms. Daughton?

Ms. Daughton – The only point that I would make is that all Mr. Noble agreed to, in the entry of that 2011 Consent Final Judgment is that he has consented to the entry of the judgment with respect to the amount, which was \$250k. Nowhere in the record has he ever admitted that he took that money. He admits that he embezzled approximately \$29k and that that was paid back in 2005.

Chair – Thank you.

Ms. Daughton – Thank you.

Mr. Knopke – Mr. Chair, one other question?

Chair – Mr. Knopke?

Mr. Knopke – To Ms. Simon, other than this incident, is there any record of discipline against Mr. Noble in any of his practice, whether it's his monument company, as a funeral director since then, or whenever?

Ms. Simon – No, Mr. Knopke.

Mr. Knopke – Okay.

Chair – Mr. Hall?

Mr. Hall – Was the civil judgment heard by a judge or jury?

Ms. Daughton – It's actually not. Thank you, Mr. Hall for the question. That was the result of a mediation. This case has never been adjudicated in front of a judge or a jury.

Chair – Thank you for that clarification.

Ms. Daughton – Thank you for the question, Mr. Hall.

Chair – Mr. Barnhart?

Mr. Barnhart – Ms. Daughton, do you know how that figure was arrived at and was there any breakdown of what it was?

Ms. Daughton – Mr. Barnhart, I don't. I deposed Mr. Heard for approximately three (3) hours, and I have the transcript. I have never been able to get any documentation of where that amount comes from. Now, I can tell you that the amount that Mr. Cascone first alleged, \$363k or thereabout, was taking the initial \$29k and then using the conversion statute and using treble damages. Mr. Heard testified that that amount was really treble damages, which I'll let you explain exactly what that is, but that was not what was taken.

Mr. Barnhart – When you say Mr. Heard, you're not referring to the gentleman that just spoke here this morning, are you?

Ms. Daughton – No, I'm referring to Jack Heard, who was the employer of Mr. Noble at Oxley-Heard.

Chair – Mr. Knopke?

Mr. Knopke – I didn't really have a question. It was more of a comment that I'll make later.

Chair – Mr. Barnhart?

Mr. Barnhart – If no one has any additional questions, I can...

Mr. Hall – Just one. Mr. Noble, as the gentleman explained, I would agree with him that if someone accused me of taking \$250k, I wouldn't sign it if I didn't do it. Can you explain that to us?

Mr. Noble – Mr. Chair?

Chair – Yes?

Mr. Noble – I didn't know I could "not" sign it. I wasn't aware that I could "not" sign it.

Mr. Hall – You weren't aware that you didn't have to sign it?

Mr. Noble – No I was not.

Ms. Daughton – Mr. Noble, were you...I'm sorry. May I?

Chair – Let me make sure I understood Mr. Noble's response to Mr. Hall's question. What was your response, Mr. Noble?

Mr. Noble – My response is, when we went to mediation and the figure was put before me, I did not know that I had the option of not signing it.

Chair – Were you represented by counsel?

Mr. Noble – No sir.

Chair – Yes ma'am?

Ms. Daughton – Mr. Brandenburg, that was my point that Mr. Noble was not aware of his legal rights. He had run out of money to pay his lawyer, so he and his wife attended mediation on their own.

Chair – I'm glad I made that point for you.

Ms. Daughton – I appreciate that, sir.

Chair – Board?

MOTION: Mr. Knopke moved to reinstate the license, per the terms of the Settlement Stipulation.

Mr. Knopke – I still go back to the fact of no criminal charges in 2004, no complaint to this Board or to the Department until Mr. Noble left town and came back, from Mr. Heard or the firm at all. There's just something else missing in this deal.

Mr. Jones – What is your probation that you're proposing.

Mr. Knopke – Isn't it six (6) months? In the original Settlement.

Ms. Simon – Yes sir.

Mr. Knopke – I think that's what we've agreed to. He's presented letters from the community. We've also had somebody from the firm state opposite, but I go back to what I just said. No criminal charges. No formal complaint to this Board. He's admitted it, he's paid some of it back, but he's met the terms that we agreed to two (2) years ago.

Mr. Jones – I'm concerned, if I may speak, of the probation not being sufficient to satisfy my concerns. I just feel the probation proposed, I would not support the probation portion. That's the reason I was asking.

Mr. Knopke – I would ask the Chair or the Department if we can change that, I would feel better with it being longer, but the fact that that's the agreement that this Board entered in to, I don't know that we can change that. Mr. Barnhart, I guess I'll direct that to you.

Mr. Barnhart – Board members, I think the way you should look at this is these acts that were complained of happened I think in 2003-2004, so I think that's about the time you should start looking at whether this man has exhibited good moral character since that time. There was no prosecution. As troublesome as it may be, there's nothing illegal about filing bankruptcy, and as I understand it, in a bankruptcy you always put down the amount that people claim you owe them even if you don't agree with it so that it can be discharged. I think you need to look at 2003-2004 and examine the record of Mr. Noble since that time, not just the last two (2) years. I think it should be pointed out that Mr. Noble has kept his license. He never lost his license. He's not applying for a new license. He's asking for reinstatement and there might be some conditions that would be agreeable that the Department would feel good about and the Board can feel good about it, but Mr. Noble has kept his license, even though it was suspended for two (2) years. The good conduct should go back to look at 2003 and the last fifteen (15) years because that's the acts which gave rise to the complaints.

Chair – Ms. Simon?

Ms. Simon – Yes, Mr. Brandenburg, before we go forward on the second, if the Board is likely to reinstate licensure, in 2017, there was a renewal payment that was due that was not paid. It was \$380. We request that that be made part of any judgment today.

Mr. Knopke – Mr. Chair?

Chair – Mr. Williams?

Mr. Williams – Is there a motion on the floor currently? Has it been amended? I'm just trying to follow the motion because of the discussion.

Chair – Yes, thank you. Good question. There's a motion made, but it has not been seconded.

Mr. Williams – Okay.

Mr. Knopke – I'd like to withdraw my motion and make a new one.

Chair – Motion is withdrawn. New motion is?

2nd MOTION: Mr. Knopke moved to reinstate the license, per the terms of the Settlement Stipulation, to include \$380 renewal payment and two (2) year probation. Mr. Jones seconded the motion, which failed with five (5) dissenting votes.

Chair – The motion does not carry, so we're back to entertaining other motions.

Mr. Knopke – Mr. Chair?

Chair – Yes?

Mr. Knopke – I'll try again.

Ms. Simon – Before you do, if I may?

Mr. Knopke – Sure.

Ms. Simon – From a legal standpoint, although I realize I'm encroaching on Mr. Barnhart's domain, I am concerned about the legal basis for denying the reinstatement at this time. The reason I'm concerned about that is there was indeed a Consent Order issued in 2015 and at that time there was discussion of the discipline being twenty-four (24) month suspension followed by a six (6) month probationary period. There was also discussion, during that time, that the only way that we could really deviate from that at the end of the two (2) year period is if something else had happened during that two (2) year period. So, I am concerned if there is a denial today, which the Board could very well do, but if there is a denial the Department may not prevail when it comes to any sort of denial at DOAH.

Chair – Mr. Knopke?

Mr. Knopke – I'll make a third motion.

3rd MOTION: Mr. Knopke moved to reinstate the license, per the terms of the Settlement Stipulation, to include \$380 renewal payment and three (3) year probation. Mr. Jones seconded the motion.

Mr. Williams – Question?

Chair – Mr. Williams?

Mr. Williams – What is the Division’s recommendation? In the notes it states that the Division would withhold its recommendation until after the presentation.

Ms. Simon – Thank you, Mr. Williams. I believe that based on the evidence that we’ve heard today, and again my concern is that if the Board denies, I do not know if that would prevail at DOAH, and because of what was stated at the 2015 August meeting as well as what was in the Consent Order, and what we’ve heard today, our recommendation would be reinstatement of licensure.

Mr. Jones – Can I ask one question? Do you know what DOAH is, Mr. Williams?

Mr. Williams – No.

Mr. Jones – Would you clarify DOAH.

Chair – I was going to ask Mr. Barnhart to make sure that our new Board member knows what DOAH is, please.

Mr. Jones – Thank you.

Mr. Barnhart – DOAH is an acronym for the Division of Administrative Hearings and they have jurisdiction over cases where there’s a disputed issue of material fact raised by the person that the proceeding is going against. If there is a disputed issue of material fact, it’s called a formal hearing and that’s governed under s. 120.57(1), F.S. If it’s an informal hearing that can come before the Board, then there’s no dispute as to any of the facts alleged in the Administrative Complaint and it would come before the Board as an informal hearing.

Mr. Williams – Thank you. Follow up question? Ms. Simon, in the recommendation are you asking for any type of suspension because you only mention a recommendation to reinstate?

Ms. Simon – Mr. Williams...go ahead, Mr. Barnhart.

Mr. Barnhart – I think the suspension or something like that is out of the question at this point because of the prior Stipulation and Consent Order. There might be some questions about what conditions of probation might be imposed that would protect the public.

Chair – My concern is that the Consent Order says *“Immediately following the term of the suspension, Respondent’s funeral director and embalmer’s license shall be placed on probation for a period of six (6) months.”* That was agreed to and approved by the Board. My concern is that if we add more probation to it that it might not hold up. I think Ms. Simon was saying that?

Ms. Simon – Only in terms of the recommendation. The original Consent Order was for two (2) year suspension followed by six (6) month probation.

Chair – Unless something new came before the Board.

Mr. Barnhart – I don’t think that was in the body of the Stipulation but I think that was in the nature of the discussion, which took place during that time. I think Ms. Daughton, in her statement, said that they would be agreeable to a six (6) month probation upon reinstatement. So I don’t think they’re opposed to at least six (6) month probation.

Chair – I believe that’s in the Consent Order.

Mr. Barnhart – But the Settlement said upon immediate completion of the suspension that there would be six (6) month probation, but that six (6) months has come and gone also from the direct writings of the Stipulation and Consent Order. But I think they understood that the Department was not ready to proceed with that probation because of some allegations which had to be investigated.

Chair – Let me call to your attention, *“Immediately following the term of the suspension, Respondent’s funeral director and embalmer’s license shall be placed on probation for a period of six (6) months.”*

Mr. Barnhart – Which would have started in August of 2017, which would now be concluded.

Chair – Got it.

Mr. Jones – Mr. Chair, if I may ask? If the motion on the floor that has been seconded is agreed upon by them, that would supersede anything there. So my question is, if they agree to Mr. Knopke’s motion that’s been seconded, before the vote, I just want to make sure they agree, if that was to pass.

Chair – Good point. Ms. Daughton?

Ms. Daughton – Thank you. We would agree to a modification if the Board votes to reinstatement with payment of the late fee, which we couldn’t pay because of this proceeding, we would be agreeable to three (3) years of probation. Understanding the concern that’s been expressed by the Board, I’ve talked to my client and he would be agreeable to that.

Mr. Jones – Thank you.

Chair – So there’s a motion before the Board, and it’s been seconded. Mr. Helm?

Mr. Helm – May I ask a question?

Chair – Please do.

Mr. Helm – This is for Mr. Barnhart. What we’ve heard here today, could this be considered something new? Mr. Heard’s testimony? Is that not relative to the case?

Mr. Barnhart – Well I think it’s very old at this point. It’s twelve (12) years old and the statute of limitations for most actions in the administrative realm is five (5) years. So, it would be my opinion that it’s too remote in time.

Mr. Helm – Did we put a stipulation on somebody’s character?

Mr. Barnhart – Not specifically. I think, as far as a probation, you would want to talk about things that might be instituted to protect the public from that point. As I said before, I think good moral character that might be in question here is what’s happened since these allegations were made back in 2003-2004, and I haven’t heard anything that would change, in my opinion. I think Mr. Heard said that the allegations he brought up were some time in 2005. So, we’re going back about twelve (12) or thirteen (13) years now, and I don’t think I’ve heard anything that would cause me to question good moral character for that period of time.

Mr. Helm – The whole case went back that far.

Mr. Barnhart – The whole case.

Mr. Helm – That’s when it happened.

Mr. Barnhart – Right.

Mr. Helm – I don’t see where time has anything to do with it.

Mr. Barnhart – I don’t know if there’s a provision in the funeral law, but sometimes that five (5) year statute of limitations can be extended if the State Agency did not know about the allegations. I think someone said that they were not even apprised of this problem until like 2011 or something, so I think that’s the only reason why it was not stale at that point, but we’re talking about going back twelve (12) or thirteen (13) years at this point.

Chair – So, we have a motion before us, and it's been seconded and we're ready for a vote. All those in favor, aye?

Board members – Aye.

Chair – And any opposed?

Board members – No.

Chair – May I have a roll call please.

Ms. Simon – Yes. Mr. Hall?

Mr. Hall – No.

Ms. Simon – Mr. Williams?

Mr. Williams – No.

Ms. Simon – Mr. Bango?

Mr. Bango – No.

Ms. Simon – Mr. Jones?

Mr. Jones – Yes.

Ms. Simon – Mr. Knopke?

Mr. Knopke – Yes.

Ms. Simon – Mr. Helm?

Mr. Helm – No.

Ms. Simon – Ms. Anderson?

Ms. Anderson – No.

Ms. Simon – Mr. Clark?

Mr. Clark – Yes.

Ms. Simon – That is the same vote as last time, 5 to 3.

Chair – And the motion does not carry. Board, what is your pleasure?

Mr. Helm – Mr. Barnhart, I'm asking for your help here.

Mr. Barnhart – Well, there's only two (2) options really. We've had two (2) motions where reinstatement has been denied. Unless there is some other way to break that posture then the only other alternative would be a motion to deny reinstatement with a list of reasons why.

Ms. Simon – If I may?

Chair -Yes.

Ms. Simon – I think it's important to note that right now, the license we're talking about is Mr. Noble's funeral director and embalmer reinstatement. We're not talking about a preneed. I know that that's been eluded to during this conversation, but we're not talking about granting a preneed license in this matter.

Chair – He's never had a preneed license.

Ms. Simon – I understand, but we've talked about preneed, we've discussed it and I want to make sure that the Board is aware that he does not have that ability.

Chair – Mr. Hall?

Mr. Hall – If his funeral director and embalmer's license is reinstated, he does not need a preneed license.

Mr. Knopke – Correct.

Mr. Hall – That would come as an automatic.

Chair – I think she was talking about a preneed main license.

Mr. Knopke – Mr. Chairman?

Mr. Hall – Do you follow what I'm saying, Ms. Simon?

Ms. Simon – I'm sorry. I may want to retract the statement I just made.

Mr. Hall – Okay.

Ms. Simon – As a funeral director and embalmer, you do have the ability to sell preneed, so I need to retract that.

Chair – Mr. Knopke?

Mr. Knopke – I'll try again.

4th MOTION: Mr. Knopke moved to reinstate the license, per the terms of the Settlement Stipulation, to include \$380 renewal payment and three (3) year probation, Mr. Noble cannot be FDIC during that time and in six (6) months shall provide the Board with written statements of good moral character. Mr. Jones seconded the motion.

Mr. Knopke - This is for his funeral director and embalmer's license. I want to make it clear that this has nothing to do with his monument company. That stands on its own and has stood on its own throughout this entire process.

Chair – Mr. Hall.

Mr. Hall – Mr. Chair, I think, for me anyway, some of my concern has been brought up that they felt this was an automatic when it come back and I looked back at the notes, I didn't understand it that way and I don't see the notes saying it that way. On page 11, it addresses the fact that she knows that they have to come back to apply for reinstatement. On the bottom of page 11, Mr. Clark discussed the possibility because we didn't have an audit done on it and by the time the two (2) year period was up, we should be supplied that audit back, which we didn't get today, to show those numbers. My concern is the fact that someone, whether it was mediated or whatever, just the fact that the individual says he was not represented by counsel. He's an adult individual. No one could force him to place his hand on that paper and make him sign that Consent Order. I don't understand that statement. Whether he had counsel there or not, I don't get that. I wouldn't sign anything like that that said I stole \$250k if I didn't do it. Mr. Barnhart brought up that the fact that he filed bankruptcy and he has a legal right to do so and he can wipe that out, but it doesn't negate the fact that he says he owed it and I believe he did owe it. From all the testimony

we've heard and the character issues, and he's testified that he took things that didn't belong to him, that was legal maneuver to wipe out that debt, in my opinion. So, I have an issue with that. You may not owe it anymore legally, but morally you do if you took it and it did not belong to you. So that's the struggle that I'm having. Whether we add however many months of probation, my concern is, as we talked earlier, protection to the public and I don't believe we have it here.

Chair – Mr. Hall, do you want to follow that with a motion?

Mr. Helm – We have a motion on the floor.

Chair – I'm sorry. I thought we voted on it.

Mr. Knopke – I kept trying. I think my current motion is four (4) year probation, no FDIC, and every six (6) months he either appears or sends a statement to the Department telling us that he's not done anything wrong, no moral issue.

Mr. Barnhart – I wrote down three (3) years. Did you say four (4) years?

Mr. Knopke – Yes, four (4) year probation is what it was, because I failed on three (3). Just trying to move this thing along. Four (4) year probation, no FDIC during that period, and every six (6) months he either appears or sends a statement to the Department telling us that he's not done anything wrong, from a moral issue. That being said, I realize Mr. Hall's concern. I've got the same concern, Lew, with all due respect, but when I look at the thing in the big picture, he's done everything we've asked him to do to this point. The firm itself never came forward. We've heard today that they didn't even participate in providing us with additional information from our request two (2) years ago. Today, Mr. Heard did come, and I acknowledge that. He's run a business, a monument company, since 2006. There's been no issue, per staff, filed against that, him or there. You and I both know as small of an industry as we have, had he done something that would have constituted funeral directing, whether at Green Pine or anywhere else, the word would have gotten around, because I can guarantee the words around about this whole scenario, and somebody would have heard about it and made a complaint. As small as we are, there's gossip everywhere. That hasn't occurred that anybody stepped up to say, and in an effort to bring this plane in for a landing, I'm trying to get us to a point where we can agree, even if it's one of those you hold your nose and you move on with it. The firm that's been impacted the most, other than the first time today, this is the first time they've appeared. They didn't go to law enforcement. They didn't call the police to have him put in jail. Bad publicity is never good, but still again, \$250k-\$300k, I would have taken the bad publicity, because at the end of the day you would have looked like the good guy.

Chair – So there's a motion and second. Ms. Anderson?

Ms. Anderson – Four (4) year probation on what? You say we're not renewing his for FDIC.

Mr. Knopke – This would reinstate his license.

Ms. Anderson – Reinstatement his FDIC license?

Mr. Knopke – No, we would reinstate his funeral director and embalmer license, he would pay the licensing fee that he didn't pay in 2017 to renew, although counsel said they tried to and the Department said no. I don't care about that. They need to pay it in order to make it work. He can't be an FDIC of a firm anywhere in the State of Florida. He can work as a funeral director and work as an embalmer, as an employee, he could own one, but he couldn't be the FDIC. So he would have to have someone else in there playing checks and balances with him.

Ms. Anderson – Okay.

Chair – And it's been seconded?

Mr. Knopke – Yes. Didn't you?

Mr. Jones – Yes.

Chair – Mr. Williams?

Mr. Williams – Question, Mr. Knopke?

Mr. Knopke – Yes sir?

Mr. Williams – If you would care to accept my amendment to your motion to include letters or statements from the community speaking on his moral character during that six (6) month time period, I think that would go a long ways, because I think the essence of the conversation is dealing with his moral character. So maybe if we had some communication or letters or a representative to come and speak on his character on how he’s handled families since the time he was reinstated.

Mr. Knopke – I have no problem accepting that. It’s really whether they accept it.

Ms. Daughton – We accept.

4th MOTION (Amended): Mr. Knopke moved to reinstate the license, per the terms of the Settlement Stipulation, to include \$380 renewal payment and four (4) year probation, Mr. Noble cannot be FDIC during that time and in six (6) months shall provide the Board with written statements of good moral character and letters of recommendation from the community. Mr. Jones seconded the motion, which passed with two (2) dissenting votes.

Chair – Thank you.

Ms. Daughton – Thank you all very much. I really appreciate it.

Chair – You’re welcome.

4. Disciplinary Proceedings:

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

(1) Emmanuel Funeral Home: Case No. 204697-17-FC; Division No. ATN-27659 (F041280 – Funeral Establishment)

Ms. Simon – As you will make note on an email that was sent out a couple days ago that this was mistakenly put on the agenda as a Settlement Stipulation, but it is in fact a Hearing Not Disputing Material Issues of Facts. Mr. Daley will be presenting for the Office of the General Counsel.

Mr. Knopke – Mr. Chairman?

Chair – Yes?

Mr. Knopke – I was on Probable Cause Panel A and that Panel heard this case. I think it’s in the package in there.

Chair – Thank you, Mr. Knopke.

Mr. Knopke – It says B on the Agenda, but Ms. Simon and I have discussed it.

Chair – Thank you for that clarification. Mr. Daley?

Mr. Matthew Daley – Thank you. Matthew Daley for the Department. We’re here today on a Motion for Determination of Waiver and for an informal hearing on the matter of Emmanuel Funeral Home, the Respondent in this matter. There are two (2) issues for consideration. First, whether the Respondent waived its right to have a hearing contesting material facts under s. 120.57(1), F.S. The second issue is if that first issue is true, then what is the appropriate penalty to be imposed in this matter. What we are not here today to do is to discuss any of the material facts in the matter. That’s precisely what would have happened if a hearing had been requested in a timely manner and we had gone to DOAH. If waiver is found, then the facts are admitted and discipline is appropriate.

In this case, the Administrative Complaint was served on the Respondent by Certified Mail on June 26, 2017, seven (7) months ago. This was proper service under s. 120.60(5), F.S. The Notice of Rights attached to the Administrative Complaint informed Respondent that failure to dispute the material facts alleged in the Administrative Complaint within the twenty-one (21) day timeline would result in a waiver of the right to a hearing to contest those material facts. Rule 28-106.11(2), F.A.C., requires that a response to an Administrative Complaint must be received by the Agency within twenty-one (21) days of service. As of today's date, again, approximately seven (7) months later, Respondent has not requested a formal hearing. At this time, unless you'd like to say anything before that...

Mr. John Rudolph – I would like to say that my...

Chair – Just a moment. Are you requesting a motion?

Mr. Daley – Yes. I would say, at this time, it is appropriate for the Chair to entertain a motion finding that Respondent failed to dispute the material facts alleged in the Administrative Complaint within twenty-one (21) days of service and has therefore waived its right to a hearing under s. 120.57(1), F.S.

MOTION: Mr. Hall moved that Respondent failed to dispute the material facts alleged in the Administrative Complaint within twenty-one (21) days of service and has therefore waived its right to a hearing under s. 120.57(1), F.S.

Mr. Barnhart – We need to hear from Mr. Rudolph first.

Mr. Rudolph – My client did attempt to file...

Mr. Barnhart – Wait, wait. Before we rule on the motion, I think Mr. Rudolph should be able to present what their side is, because apparently they disagree. Is that right?

Mr. Rudolph – Yes. On June 27, 2017, Fritz Duvigneaud called me and he told me that Blue did all of the damages to the funeral home, so he fired him. There was a funeral director...

Mr. Barnhart – Before we get into facts, let's focus on the service issue.

Mr. Rudolph – On the service issue, he tried to serve the complaint and I'd like to have him sworn in and he'll talk about what he tried to do.

Chair – Go ahead.

Mr. Barnhart – Sir, would you state your name and I think Ms. Simon should swear you in.

Mr. Fritz Duvigneaud – My name is Fritz Gerard Duvigneaud.

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

Mr. Duvigneaud – Yes, I do.

Chair – Please address the Board. This is regarding the service of the Administrative Complaint.

Mr. Barnhart – It's not about the merits. It's about when you were served the Complaint.

Mr. Duvigneaud – Within the twenty-one (21) days, we responded to the Complaint.

Mr. Barnhart – When did you receive the Complaint?

Mr. Duvigneaud – On the date that it was sent to us, I don't have the date.

Mr. Rudolph – June 26th.

Mr. Duvigneaud – June 26th. But within the twenty-one (21) days we did respond and we called Ms. Tina Williams. She never received it. At that point I volunteered if I could physically bring it to her.

Mr. Barnhart – Can I stop you there? When did you respond to the Complaint and how?

Mr. Duvigneaud – In writing.

Mr. Barnhart – Did you mail it? Did you hand-deliver it? What did you do?

Mr. Duvigneaud – I volunteered to hand-deliver it to Ms. Tina Williams and she said just send it again. It's okay.

Mr. Barnhart – When did you do that? When did you hand-deliver it?

Mr. Duvigneaud – It was like fifteen (15) days after we received the Complaint and at that point we decided to fax it to Ms. Jasmin Richardson, because for some reason we mailed it and faxed it and she could not receive it.

Mr. Barnhart – Ok, so you hand-delivered it fifteen (15) days after you received it?

Mr. Duvigneaud – No, I volunteered to hand-deliver it. She said no, it wasn't necessary. I can just email it again, which we did.

Mr. Barnhart – When did you mail it?

Mr. Duvigneaud – We never mailed it. We emailed it. We faxed it to Ms. Tina Williams.

Mr. Barnhart – Mr. Daley, do you know of any email that was received that responded to the Complaint?

Mr. Daley – I do not. However, again, focus attention on the Notice of Rights in the Administrative Complaint. It says *"The Licensee has the right to request a proceeding to contest this action by the Board pursuant to sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, Florida Administrative Code. The proceeding request must be in writing, signed by a representative for the Licensee, and must be filed with the Department within twenty-one (21) days of receipt of this notice."* It goes on to say, *"The request must be filed with the Department Agency Clerk, Julie Jones, Florida Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0390."* I don't know of that email at all, and even if it were to exist, I would say that that is not a proper response.

Mr. Barnhart – Sir, did you return the Election of Rights with your email? Did you scan the document and send it in with your email? Do you have any proof that you sent an email?

Mr. Duvigneaud – We sent it by email to Ms. Tina Williams, maybe not to the Department directly. We also faxed it to Ms. Jasmin Richardson at the State.

Mr. Barnhart – Why didn't you send it to the person that's listed on the Complaint, the Election of Rights?

Mr. Duvigneaud – Ms. Tina Williams made about eight (8) trips to our office and we understood that if we give it to her it would be directed to the proper department.

Chair – There's nothing to indicate that you responded. There's nothing that indicates you responded. Much less the twenty-one (21) days up until today, there's no indication that you responded in writing.

Mr. Duvigneaud – Ms. Tina Williams, the inspector from the State, acknowledged having received it. When she came to the office we gave it to her, we emailed it to her, prior to that we faxed it and we even sent it to Ms. Jasmin Richardson.

Chair – Ms. Simon?

Ms. Simon – I believe that it was sent to Ms. Richardson right after the twenty-one (21) day period. The Department has no record, as the Chair mentioned, of having received a response to the Administrative Complaint.

Chair – Thank you.

Ms. Simon – I think there was a motion.

Mr. Daley – Also, if I may, briefly?

Chair – Yes.

Mr. Daley – It's my understanding that at the time that you allegedly sent in this email that you were represented, by counsel, so I don't know how this would have been perceived as an appropriate request for a hearing. I've been in talks with counsel since even before the Administrative Complaint ever went out and never heard anything about an attempted request for a hearing that got lost somewhere.

Mr. Clark – Mr. Chair?

Chair – Yes?

Mr. Clark – I think it's fair to note that it is not uncommon, if you have a violation, to reach out to an inspector. So I don't think, if that's what occurred, and his first response was let me call Tina, that's not uncommon, but it would have been nice to have that evidence. That would be helpful is all I'm saying. Reaching out to an inspector is not uncommon as a licensee, but certainly the instructions on how to proceed are very clear. It would be nice to have that evidence of you reaching out to Ms. Williams.

Chair – There's a motion made and is there a second?

Mr. Clark – Second.

Chair – All those in favor, aye?

Board members – Aye.

Chair – And any opposed? And that motion carries.

Mr. Daley – At this time, I believe it is appropriate for the Chair to entertain a motion adopting the Findings of Fact alleged in the Administrative Complaint as the Board's Findings of Fact in this matter and finding Respondent in violation of Chapter 497, F.S., as alleged in the Administrative Complaint.

MOTION: Mr. Hall moved to the Findings of Fact alleged in the Administrative Complaint as the Board's Findings of Fact in this matter and finding Respondent in violation of Chapter 497, F.S., as alleged in the Administrative Complaint.

Mr. Barnhart – Excuse me, Board members. Before you vote on that motion, the Respondent always has a right to provide mitigating evidence before you take a vote on it.

Chair – We're not voting. We just have a motion and we don't have a second yet.

Mr. Williams – Second.

Chair – It's been seconded now.

Mr. Barnhart – I thought the motion was to adopt the Findings of Fact and Conclusions of Law.

Mr. Daley – Yes, and if I may briefly. I believe the appropriate time to consider mitigation would be after the Findings of Facts are adopted and the violations found and any consideration of what the appropriate discipline would be, I believe is the appropriate time to consider mitigating and/or aggravating factors.

Mr. Barnhart – Can you give us a synopsis of what the case is about? Just for the record. We’ve had no discussion of the offenses being alleged.

Mr. Daley – Yes. It’s a Twenty-Four (24) Count Administrative Complaint. There are allegations of guaranteeing the price of goods and of services at a future date. There are a couple of advertising violations. There’s a handful of Bodies Handled Report violations. There are a handful of violations involving employees who did not have the proper training on communicable diseases. There are a couple of more here and there, but that’s the gist of it.

Mr. Rudolph – Can I respond?

Mr. Barnhart – I think it’s correct that the Board can now vote and then discuss proposed penalties. As for your mitigation, then you can present.

Mr. Rudolph – Okay.

Chair – So there’s a motion made, and it’s seconded. All those in favor, aye?

Board members – Aye.

Chair – And any opposed? And that motion carries.

Mr. Daley – Would you like to go first, or would you like me to go first?

Chair – Mr. Rudolph?

Mr. Rudolph – Well, I’d be happy to make my statement.

Chair – Yes.

Mr. Rudolph – On June 27, 2017, Fritz Duvigneaud called me and he told me that Blue did all of the damage to the funeral home, so he fired him. There was a funeral director, who was friends with Blue, and she took a picture of the website, so he hired her as the FDIC of the Miami office and Fritz Duvigneaud is the FDIC of the Lake Worth funeral home. All of the allegations in that complaint are the fault of Delawrence Charles Blue and I’ve given you copies of his license. But he was the one who put that, if you look on this affidavit, this thing I gave you, the first one shows his statement that says on the 28th of September 2016 at 10:15, I was informed by Ms. Tina Williams about a personal Facebook post, dated 21-May-16. I deleted it immediately. Please call me at 786-268-9653 with any questions or comments. If you look at page 3, it says his personal website, “We also enter in to unfunded prearrange contracts with families that want to lock in today’s low prices before they increase. Our unfunded prearrangements cost you \$0 upfront. However, we will honor today’s low prices whenever you need it in the future.” That was on his personal Facebook page. The things behind it are how hard Mr. Duvigneaud worked to get that released. So, Mr. Delawrence, Mr. Blue was the one that caused all the damage to the funeral home and he’s responsible for everything, and to me, if you look at those allegations to the complaint, he committed every one of them and he should have had his license suspended. My client tried the best he could to serve that but it wasn’t served. I think that it is my opinion that Mr. Delawrence, Mr. Blue, as we call him, was the one who’s responsible for everything under that complaint. He destroyed the funeral home. When he came in and he saw that he destroyed it, he immediately fired him. And they searched him for preneed contracts, but they could never find one. He tried to respond to the complaint. He did everything he could to respond to the complaint.

Chair – So, Mr. Blue is responsible for Mr. Duvigneaud not having the required course in communicable disease?

Mr. Rudolph – No, he was supposed to sign him up for it, but he didn't. Blue was supposed to sign him up for it but he didn't.

Chair – And count after count after count?

Mr. Rudolph – Every one of those counts, that's him. He destroyed the funeral home and he fired him for it. Everything in those counts was the fault of Delawrence Charles Blue, LFD, and he did all that stuff. And he had his personal website, his personal Facebook page where he put this thing up that said they were doing preneed without a license, but they never have done preneed.

Chair – Report of bodies handled?

Mr. Rudolph – Again, that was Mr. Blue. He was supposed to do it.

Chair – This funeral establishment license is responsible.

Mr. Rudolph – Yeah, but as soon as he came in and saw it, he fired him.

Chair – Complaint log?

Mr. Rudolph – That was his responsibility, too, to do it.

Chair – Mr. Hall?

Mr. Hall – So, from the Division's perspective, it's as long as I have an FDIC, as the owner, I have no responsibility?

Mr. Rudolph – But he fired him immediately.

Mr. Hall – The buck stops here. What you're saying is because he's the FDIC, he's got that individual in place to manage, oversee it, but the owner himself has no responsibility.

Mr. Rudolph – But once he came in and saw it, he fired him. Then he replaced him with this girl, who was his friend on Facebook, and she had taken a picture of the thing and it's in there.

Mr. Daley – If I may, Mr. Chair?

Chair – Yes.

Mr. Daley – A few responses to that. First, it's preposterous to suggest that Blue was responsible for everything. I'm not sure if you're familiar with all of the allegations in the Administrative Complaint, because some of the things occurred before Blue was appointed as FDIC, so that's just a preposterous suggestion. Second, as many of you are noticing, it's also preposterous to suggest that the funeral establishment is not at all responsible, because as we've discussed before, the building and the piece of paper don't commit violations. It's the people who work there who commit the violations and the funeral establishment is responsible for those. So, even just assuming *arguendo* that Blue is responsible for everything while he was there, there are still other violations before he got there and even if he is responsible, the funeral establishment is also responsible.

Mr. Rudolph – No, as soon as he came in and saw it he fired him.

Mr. Daley – Yes, you've said that.

Mr. Rudolph – So he's responsible for everything in that complaint.

Chair – We're not even supposed to be disputing the facts of the case. It's already been acknowledged and agreed upon. The facts of the case.

Mr. Rudolph – Well I tried to do it at that point but nobody would let me. Go ahead.

Mr. Duvigneaud – May I?

Chair – Just a moment. Go right ahead.

Mr. Duvigneaud – {inaudible} acknowledge that some of the complaints one (1) broken tile from 1000 sq. ft. room. One (1) tile, that has a line in it and I got wrote up for that. It was about 1 o'clock in the afternoon. When Ms. Tina Williams came back at 8 o'clock in the morning, the next day, that tile was already replaced. When she turned on the water, the inspector, Tina Williams, she put her hands on it and she said the water is cold. I said please give it time. It's going to warm up. She said it takes too long. We got written up for that, as well. On Thursday, when we see Tina Williams...

Mr. Daley – I apologize. I have to interject, to the extent this is speaking to mitigation, I understand, but to the extent you're challenging the material facts, I don't.

Chair – Go right ahead.

Mr. Duvigneaud – May I? When we got our first visit by Inspector Tina Williams, that was on February 1, 2018. That was a Thursday.

Chair – That's today.

Mr. Duvigneaud – No, that was September 28th.

Mr. Rudolph – 2016.

Mr. Duvigneaud – Yes, 2016. Inspector Tina Williams met with Joseph Santiago LFD, Azina Williams LFD, Rolley Lovett LFD. Nadine Maignon was currently in charge. We placed Sgt. Blue, LFD including myself, an unannounced visit. Ms. Tina Williams did not announce she was coming. When she came in she met seven (7) licensed funeral directors and she stayed there for 7-8 hours and everything went smooth. There were no problems. Shortly after that, Delawrence Blue started calling her at 2-3 o'clock in the morning. I don't know if any of you, maybe Ms. Jasmin Richardson may have experienced it. Mr. Blue is deranged. He has PTSD syndrome coming from the Army. When he started calling Ms. Williams at 2-3 o'clock in the morning, sending her texts, she came back eight (8) times after the first inspection. At that time, she came ready to punish us because of Mr. Blue's behavior, disturbing her in the middle of the night. I'm not a doctor. I have no idea that Mr. Delawrence Blue had problems, but after we found out that he had problems we terminated his employment in August '15 because he was causing us too much damage. Some of the complaints, Ms. Tina Williams came back just because Blue upset her. Me, myself as a licensed funeral director, I took the communicable disease course over and over again. I always comply. We are in full compliance.

Mr. Daley – I have to interject again. That's a clear dispute of the material facts. I don't know where any of these facts are coming from. They're not supported by anything other than the testimony here today.

Mr. Rudolph – Sworn testimony.

Chair – Counsel, have you advised your client that there's no disputing of the facts?

Mr. Rudolph – Well, we have the right...

Chair – He's talking about mitigation.

Mr. Rudolph – Yes and all this is for mitigation because Sgt. Blue is the one that destroyed that building. He did everything wrong and he should have been the one that this complaint was filed against. There were two (2) inspections. They came through and they looked for preneed contracts. They couldn't find them. They looked in their cars and they couldn't find them. He's never written a preneed contract.

Mr. Daley – How does that mitigate something that wasn't alleged?

Mr. Rudolph – Well, you're alleging that he did preneed sales.

Mr. Daley – No. Have you read the Administrative Complaint?

Mr. Rudolph – I read the Administrative Complaint and everything in that Administrative Complaint is against, should be against Charles Blue because he was the one who did it all.

Mr. Barnhart – Mr. Rudolph, can you point to the complaint and show us where the violations are regarding preneed?

Mr. Rudolph – It says...

Chair – What Count?

Mr. Rudolph – This is Count IX. It says, *"In May of 2016, Duvigneaud, Nadine Maignan ("Maignan"), Lovett, Jean-Baptiste Edmond ("Edmond"), and Blue performed embalming for Respondent."* That was only Blue.

Mr. Barnhart – And that refers to preneed?

Mr. Rudolph – Well, let's see.

Mr. Hall – Nos. 9 and 10 of Count I?

Mr. Rudolph – Count I? Yeah, *"Section 497.152(11)(d), Florida Statutes, provides that "guaranteeing the price of goods and services at a future date" without possessing a pre-need license constitutes grounds for disciplinary action."* Well, he was the one who put it on the website and he was the one who was saying they were doing preneed without a license.

Mr. Daley – If I could clarify?

Mr. Duvigneaud – Mr. Chair, may I?

Mr. Rudolph – And that's the same as Count II.

Chair – Counsel?

Mr. Daley – What Mr. Rudolph was saying a moment ago is no one ever found any preneed contracts.

Mr. Rudolph – Yeah.

Mr. Daley – It's never been alleged, there's nothing in there saying that we found a preneed contract here. It clearly states, *"guaranteeing the price of goods and services at a future date,"* and for precisely the reason you pointed out, it has not been alleged that there was a preneed contract. Those are two (2) separate violations under two (2) separate statutes.

Mr. Rudolph – This is what he said.

Mr. Daley – That's not even part of the record or our file. I don't even know where that comes from.

Mr. Rudolph – This came from his personal webpage. He says we enter in to unfunded prearrangements with families and want to lock in today's low prices before they increase. Our unfunded arrangements cost you \$0 upfront.

Mr. Daley – This is totally irrelevant because it's not even germane to any of the allegations in the Administrative Complaint so it certainly cannot speak to mitigation of one or more of them.

Mr. Rudolph – Well you're saying he was guaranteeing prices but he didn't.

Chair – Just a moment. I see you. Go right ahead.

Mr. Duvigneaud – Thank you, Mr. Chair.

Mr. Daley – The information in this packet, at least what Mr. Rudolph is pointing to currently, a Facebook post, has nothing to do with any of the allegations in the Administrative Complaint. The only thing it could possibly speak to is to directly attack the material fact in a way that we've already established cannot happen at this proceeding. You can't enter a plea of guilty to something and then later at sentencing say you should consider as mitigation that by the way I didn't do it. Here's some uncontradicted evidence.

Chair – Thank you. Mr. Helm?

Mr. Helm – Mr. Barnhart, can you get us back on track here? I think we're chasing rabbits. Where are we on this?

Mr. Barnhart – Mr. Daley, I just wanted to ask you, what is the basis of the evidence that supported Count II?

Mr. Daley – Counts I and II were both supported by a phone call to the establishment to ask about the website because in addition to having a different name than is on the license, there's also some language on the website that indicated preneed may be a concern. Then an individual who picked up the phone for Respondent answered questions about the website, also said we do not engage in preneed sales, but we can however guarantee the price for the future. That's specifically why these charges were alleged and the preneed sales was not alleged.

Mr. Rudolph – That was Blue who answered the phone.

Mr. Barnhart – So your mitigation, Mr. Rudolph, basically is that one individual caused all these problems and it was not the responsibility of the funeral home or if it was the responsibility of the funeral home, the Board should go easier on the funeral home because it was one person that was out of control and no one seemed to be supervising this person properly or what?

Mr. Rudolph – Well he was put in charge of it, but as soon as he went in there, he fired him.

Mr. Barnhart – As soon as he was appointed FDIC, they fired him?

Mr. Rudolph – No, when he walked in there he saw there was damage that he caused and so he fired him. And then he put this woman, who had been his friend on Facebook, and she took a picture of it and he put her as the FDIC in Miami and he's the FDIC of the one in Lake Worth. So, this is a case where Charles, at 2 o'clock in the morning, I got a call from him and he was drunk.

Mr. Daley – This is irrelevant.

Mr. Barnhart – Okay. So, there seems to be a lot of allegation which predate the appointment of Mr. Blue as FDIC. Would that be a fair statement?

Mr. Rudolph – A lot of allegations?

Mr. Barnhart – In the complaint regarding when certain violations occurred.

Mr. Rudolph – Yes.

Mr. Barnhart – Predated Mr. Blue's appointment as FDIC, correct?

Mr. Rudolph – I don't think so. When was he appointed FDIC?

Mr. Duvigneaud – Right away.

Mr. Daley – Approximately August 2016, I believe is when Mr. Blue was appointed FDIC.

Mr. Barnhart – I believe paragraph #6 says August 9, 2016. It seems to me there are a lot of complaints prior to that as well as after.

Chair – Mr. Duvigneaud, you had your hand up earlier and wanted to address us, I believe.

Mr. Duvigneaud – Yes, thank you, Mr. Chairman.

Chair – Very briefly.

Mr. Duvigneaud – Sgt. Blue advertised we guarantee prices in his personal Facebook, which I have absolutely no control of.

Chair – That has nothing to do with the allegations here. Mr. Hall?

Mr. Hall – How long did this individual work for you?

Mr. Duvigneaud – Mr. Delawrence Blue started employment in 2014. At that time there was...

Mr. Hall – How long before you terminated him?

Mr. Duvigneaud – We terminated him in August 2015.

Mr. Hall – But you assume, and I think everybody at this table would like clarification on this, what you're saying is if I hire an individual that runs off the track, I as an owner and some of these others are not responsible for that individual. His actions represent you at the establishment. That's what I'm hearing. Is that correct? Is that your argument?

Mr. Duvigneaud – His actions, what he does in his personal Facebook, I have no control of, but when I noticed that he's calling people, Inspector Tina Williams, and other people at 2-3 o'clock in the morning, sending a text "I can't sleep" that really caught my attention. I'm not a doctor. I'm not qualified to evaluate him, but once I saw that he had a serious ordeal in the military that has gravely altered his mental capacity, to even render some simple tasks, I very quickly terminated him.

Mr. Hall – But as an employee of yours, you're responsible for his actions. Are you not?

Mr. Duvigneaud – Not in his personal Facebook. Emmanuel Funeral Home does not sell preneed. We never...

Mr. Rudolph – If he didn't know about it, how could he report it?

Mr. Hall – We're not just talking about this. There's twenty-four (24) counts.

Mr. Rudolph – Yeah, and they're all against him.

Mr. Duvigneaud – A broken tile because Ms. Tina Williams got some personal vendetta against Sgt. Blue because he's disturbing her at 2-3 o'clock in the morning. That's his favorite time to call people, to text people. And I complied, and like I said to Inspector Tina Williams, the hot water, if it's taking too long to get hot, I'll replace it the next day. The broken tile on the floor, she came in the next day at 8 o'clock in the morning. The tile was changed. I had a gentleman that held the door, the gate of the car, so that we could pull the body out. He does not handle bodies, but we {inaudible}, just to comply with Inspector Tina Williams. She came back eight (8) times to the funeral home looking for dirt after Mr. Blue upset her.

Chair – Thank you.

Mr. DuVigneaud – I mean looking, searching for dirt, but I complied with everything. There's no proof that we sold preneed. We never sold preneed.

Chair – Mr. Daley, what is your recommendation?

Mr. Daley – The penalty guidelines suggest an appropriate penalty would include an administrative fine between \$15,000 and \$36,000, and probation ranging from six (6) to twelve (12) years. Rather than imposing such a lengthy probation period, I would suggest a suspension of one (1) year followed by (2) year probation. I recommend splitting the difference between the low end and the high end of the financial penalties, which would be \$25,500 in fines, and that's with just basic almost entry level penalty guideline recommendations for twelve (12) of the counts and twelve (12) of the counts are citation level offenses, so that's ranging at approximately \$250 per count there. Additionally, as you can probably tell, this has been a difficult battle for the Department at every step of the way. There has been, what I would describe as, an excessive amount of investigative and litigation resources ported to this case, so I would suggest that perhaps the Board would consider the imposition of costs, as well.

Chair – Do you have an estimate on the costs?

Mr. Daley – I would estimate \$2500.

Chair – Thank you.

Mr. Rudolph – And again, can I restate that it was Mr. Delawrence Blue who did every single thing in that case.

Chair – Thank you.

Mr. Rudolph – My client has fixed everything in his funeral home.

Chair – Thank you.

Mr. Daley – At this point, it is appropriate for the Chair to entertain a motion imposing discipline.

Chair – Is there a motion?

Mr. Hall – Call he restate his probation, fine and so forth?

Mr. Daley – Yes. I would suggest a one (1) year suspension followed by (2) year probation, administrative fine of \$25,500, and \$2500 in administrative costs. Again, that's about the middle level of the penalty guideline ranges.

Chair – Mr. Helm?

Mr. Helm – Does the Division have a record of any disciplinary action against his firm, that we know of, previously?

Mr. Daley – There was one (1) minor violation, I don't remember exactly what it was, but it was unrelated and that was years ago. Nothing significant.

Mr. Rudolph – But he didn't do it.

Mr. Daley – Again, at the time of that violation, Blue was not the FDIC.

Mr. Helm – How long for the probation, sir?

Mr. Daley – Two (2) years.

Mr. Barnhart – Would that be following the suspension period?

Mr. Daley – Yes it would.

Mr. Williams – Mr. Chair?

Chair – Yes, Mr. Williams?

MOTION: Mr. Williams moved to approve a one (1) year suspension followed by (2) year probation, administrative fine of \$25,500, and \$2500 in administrative costs. The Chair seconded the motion, which passed with two (2) dissenting votes.

Chair – Thank you.

Mr. Daley – Thank you.

Mr. Barnhart – How much time are they given to pay the fines and costs?

Mr. Rudolph – This is absolutely ridiculous.

Mr. Daley – Thirty (30) days is standard.

Mr. Barnhart – Is that what the Board would like, within thirty (30) days?

Chair – Yes.

Mr. Rudolph – This was all Delawrence Blue’s fault.

Mr. Daley – Thank you.

5. Application(s) for Preneed Sales Agent
A. Informational Item (Licenses Issued without Conditions) – Addendum A

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

6. Application(s) for Continuing Education Course Approval
A. Recommended for Approval without Conditions – Addendum B
(1) Education Workers Group (11208)
(2) International Order of the Golden Rule (2201)
(3) Kates-Boylston Publications (29810)
(4) Matthews International (30408)
(5) National Funeral Directors and Morticians Association, Inc. (15608)
(6) National Funeral Directors Association, Inc. (136)
(7) The Dodge Institute for Advanced Mortuary Stu (81)

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

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

7. Application(s) for Florida Law and Rules Examination
A. Informational Item (Licenses Issued without Conditions) – Addendum C
(1) Funeral Director (Internship and Exam)
(a) Booth, Cadence M
(2) Funeral Director and Embalmer (Endorsement)

- (a) *Burchfield, Erin*
- (b) *Gray, Lee E*
- (c) *Kaye-Campbell, Teehan K*
- (d) *Liwo, Vicki*
- (e) *Roldan, Karen L*
- (3) *Funeral Director and Embalmer (Internship and Exam)*
 - (a) *Davis, Robert D*
 - (b) *Hazelwood, Richard*

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

8. Application(s) for Internship

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

- (1) *Funeral Director*
 - (a) *Farmer, Logan M (F230714)*
- (2) *Funeral Director and Embalmer*
 - (a) *Green, Breanna M (F234500)*
 - (b) *Henry, Auntrese J (F236645)*
 - (c) *Stanton, Peyton M (F233839)*

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

B. Recommended for Approval without Conditions (Criminal History)

- (1) *Funeral Director and Embalmer*
 - (a) *Taylor III, Charles E*

Ms. Simon – An application for a Concurrent Internship license was received, by the Division, on November 28, 2017. The application was incomplete when submitted. All deficient items were returned on January 3, 2018. A background check revealed a relevant criminal history:

- In November 2008, Mr. Taylor pled guilty to Operating a Vehicle while Driver’s License was Revoked. Mr. Taylor was sentenced to 4-days probation.

The Division is recommending approval without conditions.

MOTION: Mr. Knopke moved to approve the application. Mr. Clark seconded the motion.

Chair – Yes sir? Are you just here to answer questions, if need be?

Mr. Charles Taylor – Yes sir.

Chair – A motion has been made to approve and it’s been seconded. All those in favor, aye?

Board – Aye.

Chair – And any opposed? The motion carries.

Mr. Helm – Do you have your driver’s license?

Mr. Taylor – Yes sir.

Chair – Congratulations.

Mr. Taylor – Thank you, sir.

9. **Application(s) for Embalmer Apprenticeship**
A. **Informational Item (Licenses Issued without Conditions) – Addendum E**
(1) *Farmer, Logan M (F230714)*
(2) *Rebello, Shannon M (F022382)*
(3) *Sapp, Brittany L (F086774)*
(4) *Weeks, Tracy L (F233840)*
(5) *Williams, Selena N (F234667)*

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

10. **Application(s) for Registration as a Training Agency**
A. **Informational Item (Licenses Issued without Conditions) – Addendum F**
(1) *Unity Funeral Home (F041428) (Deland)*

Ms. Simon – This item is informational only. The Division has reviewed the application and found it to be complete and that the applicant met the requirements to be a training agency pursuant to Rule 69K-1.005(12)(b), F. A. C. The Division has previously approved this item.

11. **Consumer Protection Trust Fund Claims**
A. **Recommended for Approval without Conditions – Addendum G**

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

MOTION: Mr. Clark moved to approve all the claim(s), for the monetary amounts indicated. Mr. Helm seconded the motion, which passed unanimously.

12. **Amendment(s) to Cemetery Bylaws**
A. **Recommended for Approval with Conditions**
(1) *Dr. Phillips Cemetery (Orlando)*

Ms. Simon – Amended bylaws for Dr. Phillips Cemetery have been submitted for approval by the Board. In accordance with Rule 69K-6.003, F.A.C., notice has been published in the *Orlando Sentinel* of Orlando, and in the December 19, 2017 Florida Administrative Register. The Division’s review finds that the proposed bylaws do not unreasonably restrict use of burial rights, increase costs to burial rights owners, nor unreasonably restrict competition. The Division is recommending approval subject to the condition that no adverse comments are received, by the Division within the allotted period of 30 days, as set forth in Rule 69K-6.003(3).

Chair – Is there a motion?

Mr. Knopke – I have a question for Ms. Simon.

Chair – Mr. Knopke?

Mr. Knopke – The current bylaws, were they originally submitted to the Department and approved?

Ms. Simon – I believe they were, which is why they were on the agenda today. The changes have been outlined in red.

Mr. Knopke – Okay. When I read through the existing bylaws, there’s some things there that are inconsistent with the law and I have concerns about that, but I wasn’t sure if Dr. Phillips Cemetery, because it’s, I don’t know that it’s been operating as a not for profit, but it’s kind of a community cemetery and a very nice one, in the Dr. Phillips area of Orlando. I don’t know

that it's ever submitted rules and regulations to the Department, when they were originally required to, for approval, back then.

Mr. Simon – I believe that the bylaws have been previously presented to the Board and the only items that the Board would be reviewing today are the items that are in red, under tracking changes.

Mr. Knopke – Okay. The ones that are crossed out and added?

Ms. Simon – Yes.

Mr. Knopke – Okay. Thank you.

MOTION: Mr. Knopke moved to approve the amendments subject to the condition that no adverse comments are received, by the Division within the allotted period of 30 days, as set forth in Rule 69K-6.003(3). Mr. Bango seconded the motion, which passed unanimously.

13. Application(s) for Change of Ownership (Collective Items)

A. Barbara Falowski Funeral & Cremation Services, Inc. (Ft. Lauderdale)

(1) Recommended for Approval with Conditions

(a) Application(s) for Transfer of Preneed License

(2) Recommended for Approval without Conditions

(a) Petition(s) for Variance or Waiver (Training Agency)

Ms. Simon – Barbara Falowski Funeral & Cremation Services, Inc., a Florida company, seeks approval of an application for transfer of a preneed license (Preneed License # F019482) based upon a change in ownership. Additionally, an application for a training facility has also been submitted. As to the latter, the Applicant has filed a Petition for Waiver of the requirements of Rule 69K-18.004, Florida Administrative Code. The applications are being submitted due to a stock purchase wherein both William and Lizbeth Frenier are each acquiring 50% ownership (100% combined) of the corporation from Barbara Falowski. A background check of the principal(s) for the business revealed no relevant criminal history. More specifically, the entity that is being acquired is as follows:

- 1) Barbara Falowski Funeral & Cremation Services, Inc., preneed license #F038704, physical address: 300 SW 6th St, Ft Lauderdale 33315
- 2) Barbara Falowski Funeral & Cremation Services, Inc., physical address of training facility to be located at licensed funeral establishment (#F233880): 300 SW 6th St, Ft Lauderdale 33315; FDIC – Carrie Bustamante #F045027

Enclosed are the applications regarding the above listed property, as well as the Petition for Waiver. If this application is approved, Applicant will continue to sell trust-funded preneed through Funeral Services, Inc. (Live Oak Banking Company), and utilize its approved pre-arranged funeral agreement form(s). Applicant is acquiring all preneed assets and liabilities for this location and is assuming responsibility for any outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced location. The Division has no record of disciplinary action regarding Applicant. The Applicant's financial statements as of December 31, 2016, reflects the following:

Outstanding Preneed Contracts	= \$	440,334
Required Net Worth	= \$	60,000
Reported Net Worth	= \$	118,721

The Division is recommending approval subject to the following conditions:

- 1) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.
- 2) That the Petition relating to continuation of training agency status be approved, so that the training agency status of said locations be continued under the new owners, provided there has been no dispute by the public within 30 days of the date the request was published.

Chair – Is there a motion?

Mr. Hall – Mr. Chair?

Chair – Mr. Hall?

Mr. Hall – On the variance for the training facility, how many interns are there and how many embalming calls are they doing?

Ms. Simon – I don't know how many interns there are at the facility now. Do you, Ms. Richardson?

Ms. Richardson – No ma'am.

Ms. Simon – As to your second question, the only way the previous owners could have qualified as a training facility is that they had the requisite 40.

Chair – Ninety-one (91).

Mr. Hall - Ninety-one (91) embalmed cases?

Chair – Yes.

Mr. Hall – But we're not confident on how many interns are there, Ms. Richardson?

Ms. Richardson – Unfortunately, we do not count those. They are basically with the honor system. They know that they have to have forty (40), per intern.

Mr. Hall – But, we're licensing those interns there.

Ms. Richardson – Right, but we do not collect that data.

Mr. Hall – But, I mean, if I know I've got ninety-one (91) cases that we've embalmed there and if you tell me there's three (3) interns there, I know that we have a problem. Do we know how many licensed interns we have?

Chair – Is there a motion to approve with the conditions?

MOTION: Mr. Knopke moved to approve the applications subject to the conditions recommended by the Division. Mr. Bango seconded the motion, which passed with one (1) dissenting vote.

Mr. Knopke – Ms. Simon, is there any way for us, in the system, to track how many interns there are there in the future?

Ms. Simon – Actually, I don't believe that that is part of the application process right now. That is not a requirement under our...

Mr. Knopke – Scheme of things?

Ms. Simon - ...scheme of things.

Mr. Knopke – Okay.

Ms. Mary Schwantes – If it would be an enhancement, we would love to do that, with the new systems.

Mr. Knopke – Okay. It would be.

Chair – I would like to see that. It would give us a certain amount of comfort. Good point.

Mr. Barnhart – Was there a vote on the Petition for Variance or Waiver?

Chair – It was altogether.

Mr. Barnhart – Okay.

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

A. Recommended for Approval *with* Conditions

(1) Florida Cremation Society LLC (Ocala)

(a) Application(s) for Cinerator Facility

(b) Application(s) for Direct Disposal Establishment

(c) Application(s) for Transfer of Preneed License

Ms. Simon – Florida Cremation Society LLC (FCS), a limited liability company, seeks approval of applications, based upon a change in ownership, for both a direct disposal establishment and a cinerator facility. The Applicant additionally requests approval of an application for transfer of a preneed license. The applications are being submitted due to a change of ownership wherein Patricia Roberts, co-owner, is acquiring the remaining shares of Kenneth E. Roberts, former co-owner. The sole owner and principal of the Applicant is now Patricia C. Roberts, and her completed background check revealed no relevant criminal history. More specifically, the entities that are being acquired is as follows:

- 1) Florida Cremation Society LLC, a licensed direct disposal establishment, license #F040670, physical address: 708 SW Second Ave, Ocala
- 2) Roberts Funeral Home of Dunnellon LLC, a licensed cinerator facility, license #F108918, physical address: 708 SW Second Ave, Ocala
- 3) Florida Cremation Society LLC, a licensed preneed main, license #F019388, physical address: 708 SW Second Ave, Ocala

Enclosed within the Board package are the separate applications regarding the above listed properties and application for transfer of a preneed main license. If approved, Applicant will continue to sell preneed through Independent Funeral Directors of Florida (IFDF) and use its approved prearranged funeral agreement form(s). Applicant is acquiring all preneed assets and liabilities for these locations and is assuming responsibility for any outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced locations. The Division has no record of disciplinary action regarding FCS. The Applicant's financial statements as of December 31, 2016, reflects the following:

Outstanding Preneed Contracts	= \$	1,034,596
Required Net Worth	= \$	100,000
Reported Net Worth	= \$	139,931

The Division is recommending approval subject to the following conditions:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be substantially on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the applicant in the application and related materials provided to the Board or FCCS Division by the applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment(s) under the application(s) herein pass an onsite inspection by a member of Division Staff.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.

Chair – I'd like to disclose my lifelong friendship with Kenneth and Patricia Roberts. I certainly mourn his death. We were just great friends for over sixty (60) years. We went to school together in Dallas and that will in no way affect my ability to make a fair and impartial decision. Therefore, I'd be honored to move for approval with the recommendations.

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

Chair – Thank you.

- (2) *Roberts Funeral Home of Dunnellon LLC (Dunnellon)*
 - (a) *Application(s) for Cinerator Facility*
 - (b) *Application(s) for Funeral Establishment*
 - (c) *Application(s) for Transfer of Preneed License*

Ms. Simon – Roberts Funeral Home of Dunnellon LLC (Roberts), a limited liability company, seeks approval of an application for change of ownership of both an existing funeral establishment and cinerator facility. Additionally, the applicant seeks approval to transfer a preneed license. The applications are being submitted due to a change of ownership wherein Patricia Roberts, co-owner, is acquiring the remaining shares of Kenneth E. Roberts, former co-owner. The sole owner and principal of the Applicant is now Patricia C. Roberts, and her completed background check revealed no relevant criminal history. More specifically, the entities that are being acquired is as follows:

- 1) Roberts Funeral Home of Dunnellon LLC, a licensed funeral establishment and training agency, license # F040901, physical address: 19939 E Pennsylvania Ave, Dunnellon
- 2) Roberts Funeral Home of Dunnellon LLC, a licensed cinerator facility, license # F108919, physical address: 19939 E Pennsylvania Ave, Dunnellon
- 3) Roberts Funeral Home of Dunnellon LLC, a licensed preneed main, license # F019306, physical address: 19939 E Pennsylvania Ave, Dunnellon

Attached to this packet are the three separate applications. If approved, Applicant will continue to sell preneed through Independent Funeral Directors of Florida (IFDF) and use its approved prearranged funeral agreement form(s). Applicant is acquiring all preneed assets and liabilities for these locations and is assuming responsibility for any outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced locations. The Division has no record of disciplinary action regarding Roberts. The Applicant's financial statements as of December 31, 2016, reflects the following:

Outstanding Preneed Contracts	= \$	1,553,912
Required Net Worth	= \$	100,000
Reported Net Worth	= \$	490,545

The Division is recommending approval subject to the following conditions:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be substantially on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the applicant in the application and related materials provided to the Board or FCCS Division by the applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment(s) under the application(s) herein pass an onsite inspection by a member of Division Staff.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.

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

15. Application(s) for Monument Establishment Sales Agent License
A. Informational Item (Licenses Issued without Conditions) – Addendum H

Ms. Simon – This item is informational only. Pursuant to s. 497.554(3)(a), F.S., the applicants have already been issued licensure as monument establishment sales agents.

16. Application(s) for Preneed Main License
A. Recommended for Approval without Conditions
(1) Affordable Burial and Cremation, LLC d/b/a Aden Funeral Home (Tampa)

Ms. Simon – The Department received the application on December 26, 2017, and all deficiencies were resolved as of January 19, 2018. The principals and members of the LLC will be: Kyle Brizendine, Tara Brizendine, Brian Buchert, Danielle Buchert, Jarod Rouch, Nathan Hobson, David Chambers, Wil Floyd, and Carlton Floyd. A completed background check of all officers revealed no criminal history. Applicant’s qualifying funeral establishment license was issued as of December 4, 2017. If approved, Applicant will sell insurance-funded preneed through Great Western Insurance Company and use their approved pre-arranged funeral agreement.

Documentation establishes that principals Kyle Brizendine and David Chambers disclosed that they filed for Chapter 7 and Chapter 13 bankruptcy, respectively. Mr. Brizendine’s Chapter 7 bankruptcy was granted as of 2005 and discharged in 2016, by the Western District Court of Texas. Additionally, Mr. Chamber’s Chapter 13 bankruptcy was discharged in 2008 by the Middle District Court of Florida. Notarized statements and court documentation evidencing the disclosed bankruptcies have been provided. These were personal bankruptcy actions that occurred more than ten (10) years ago, and both actions have been discharged with all debts having been fully satisfied. The Applicant’s financial statements as of December 31, 2017, reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	60,644

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

17. Application(s) for Removal Service
A. Recommended for Approval without Conditions
(1) W-Y-S Pro Med Transportation LLC (Pensacola)

Ms. Simon – An application for a Removal Service was received on November 15, 2017. The application was incomplete when submitted. All deficient items were received on November 30, 2017. A background check of the principals revealed no relevant criminal history. The facility passed its inspection on January 3, 2018. The establishment is recommended for approval without conditions.

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

18. Related Items (Southern Monument & Vault LLC)
A. Southern Monument & Vault LLC (Chipley)
(1) Recommended for Approval without Conditions
(a) Application(s) for Monument Establishment Retailer License

Ms. Simon – Southern Vault & Monument Company LLC has submitted an application for a monument establishment retailer license. The application was submitted on December 4, 2017 and all items were resolved as of January 22, 2018. A completed background check revealed no criminal history. This application is being filed, by Brandon D. Wilkes, for a new monument establishment retailer license, and if approved, Applicant will operate as a monument establishment retailer at the above specified location and utilize the attached monument retail sales agreement.

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

(2) Recommended for Approval with Conditions
(a) Application(s) for Monument Establishment Sales Agreement

Ms. Simon – Southern Vault & Monument Company LLC submits a monument retail sales agreement for approval. If the form is approved, it is to be used for the sale of monuments through the monument retailer establishment which was previously granted at this Board meeting. The Division is recommending approval subject to the condition that the Board approves the application for monument retailer establishment license; and two (2) full sized print-ready copies are received by the Department within 60 days of this Board meeting.

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

19. Executive Director's Report
A. Operational Report

Ms. Simon – The Operation Report will be given, by our Division Director, Ms. Mary Schwantes.

Ms. Schwantes – Thank you. Thank you, Mr. Chair.

Chair – Please.

Ms. Schwantes – I have a few things that I want to bring to the Board's attention and to the industry members who are here, so I'll try to not take too long. First, on behalf of the Division, we want to add our welcome to Darrin Williams, who joins the Board for the first time today. All appointments are subject to Senate confirmation and I am pleased report that the Senate confirmation on our three (3) recent reappointments was held on Tuesday, so congratulations again to Mr. Brandenburg, Mr. Knopke, and Mr. Hall on their reappointments to the Board. There's one (1) consumer position that remains vacant, technically, since September. That's a position for a certified public accountant. There is no new news from the Governor's Office regarding an appointment to fill this position, but we will keep you posted.

I want to talk a little bit about Preneed Remittance System that we are putting into play. This Spring, in time for the filing of the Quarterly Remittance Reports, from our preneed licensees, we plan to go live with the PNRS. That's what we're calling it. It's a new system that will allow our preneed licensees to report information online regarding preneed contracts written. The system will also allow online payments. More information will be sent out on this within the next few months. In the meantime, we need the Industry's help, in a few matters, and association representatives as well. If you sell preneed contracts, if you have members who sell preneed contracts, please remind them to make sure that they have provided us with their email information, because that is the way communications are going to occur, regarding this, and also that they have registered in the eAppoint system that's already out there. We understand that there are 75 preneed licensees who are not on that eAppoint system, so please spread the word that this is coming. There's more information coming about it. We are very proud of this and are working hard with the Department's Office of Information Technology to get it worked out in time for the next quarterly remittances. Of course, if you have any questions, as we move forward with the process, let us know.

We've talked about legislation. Some you know about; some you may not be aware of yet. The Department's bills, which include amended language regarding a withdrawal of funds from the CPTF (section 497.456) to benefit the Division, HB 1073 unanimously passed House Insurance & Banking Subcommittee with committee substitute last week, on the 23rd. It is now in Government Operations and Technology Appropriations Subcommittee. A hearing has not yet been scheduled, but after that it will go to Commerce Committee. So, it is moving and moving favorably so far. In the Senate, the identical bill, passed the Senate Banking and Insurance Committee with committee substitute, again on the 23rd. Both Committees were heard on the same day.

Mr. Jones – What's that bill number, Mary?

Ms. Schwantes – That bill is SB 1292.

Mr. Jones – Thank you.

Ms. Schwantes – And that is the identical bill. It is sponsored by Senator Stargel. The House bill is sponsored by Representative Hager. The Senate bill goes next to Children, Families, and Elder Affairs. A hearing is not yet scheduled. Then, after that it will go to the Appropriations Committee. Again, both bills moving forward and we're very pleased with the outcome.

I want to talk about the Veterans' Preference issues. Some of this we talked about at the last meeting. As mentioned at last meeting, the Department's bills also include an initiative involving Veterans' Preference. As it impacts Chapter 497, the Department's bills propose a waiver of the initial application fee for veterans and/or veterans discharged honorably within 24 months of their application. As amended, the bill waives the initial application fees for qualified veterans applying for individual licenses. We talked about this at the last meeting, but I want to be clear about what that bill does not do. It only applies to individual licenses. It does not waive any commercial application/licensing fees. It does not waive any exam or continuing education fees. It does not waive any renewal fees. There were further details regarding that bill were provided at the last meeting, and if anybody has any questions, I'll be happy to let them know.

What you may not have heard about is that there are two similar bills on Veterans' Preferences that are moving rapidly through both the House and the Senate. HB 0029 – Military and Veterans Affairs passed unanimously through the House Commerce Committee with committee substitute on the 24th. On the 29th, it passed the Local, Federal & Veterans Affairs Subcommittee unanimously. It's now in the Appropriations Committee with the hearing not yet scheduled. The identical bill is SB 1884 – Military and Veterans Affairs. It's on the Committee agenda for the Military and Veterans Affairs, Space, and Domestic Security for today, 2/1/18, at 11:30 a.m. After that, it goes to the Appropriations Subcommittee on Transportation, Tourism, and Economic Development and then to the Appropriations Committee.

These are broad bills impacting numerous agencies. These bills have much larger impact on Funeral & Cemetery than the Department's bills. The bills ease professional licensing fees and requirements for certain active military members, veterans, and their spouses, including creating fingerprinting requirement waivers, expanding initial licensure fee waivers, and effectively impacting the education/experience requirements. Just as an example of a few of the impacts, the fingerprinting requirements for honorably discharged veterans for 24 months following discharge for all individually licensed Funeral and Cemetery Services professions would be waived. So, that's a two (2) year window between when someone is honorably discharged and when they apply for licensure with us that we would not be doing criminal background checks, based on fingerprints. The Bill also requires that the Board of Funeral, Cemetery, and Consumer Services, as well as the DFS Division of Funeral, Cemetery, and Consumer Services, recognize applicable military-issued credentials for purposes of licensure as an embalmer, funeral director, or direct disposer. There's some question as to how that experience and education would be certified. There's been some amendments to the language going back and forth. I would recommend that the Board and the Industry take a look at these. They will have an impact. As amended, it provides a method for a member or veteran to certify their knowledge, training, and experience to gain credit in licensing for funeral directing, embalming, and direct disposing. Right now, it involves a requirement that the Board adopt rules specifying the forms and procedures to be used by persons seeking licensure under certain of the sections.

In addition to the veterans' bills that are outstanding, there are three (3) different issues, two (2) which I want to bring to your attention, that have to do with rules under the Florida Administrative Code. This would have impact on us as well. The first issues involve HB 791 and SB 1268 – Regulatory Reform 2018. These are known as the Red Tape Reduction Bills. Both bills aim to pare down the number of agency rules. The House Bill was approved on 1/30/18 by the House Oversight, Transparency & Administration Subcommittee. The Senate Bill has not started moving in committees yet. The Bills create the "Red Tape Reduction Advisory Council", a group appointed by the Governor, Senate President and House Speaker that would be tasked with annually reviewing the Florida Administrative Code for duplicative or obsolete rules. It would also look for agency rules that are "especially burdensome to business, or disproportionately affect businesses with fewer than 100 employees or revenue below \$5 million." The Joint Administrative Procedures Committee (JAPC) would then create a baseline number of agency rules included in the FAC in order to decrease the overall number of agency rules. Basically, what it is doing is it would mandate that for every rule that is created, and keep in mind we may need to be doing some rule creation if some of this other

legislation passes regarding veterans. For every one (1) that is created, two (2) have to be repealed. That's something we have to watch carefully on that.

There are two (2) other bills, HB 941 and SB 1410 on Administrative Procedures. The House Bill was approved on 1/30/18 by House Oversight, Transparency & Administration Subcommittee. The Senate Bill has not yet been heard in committee. These Bills are filed on behalf of the Joint Administrative Procedures Committee (JAPC), and essentially require agencies to periodically review all of the rules under their purview. I have not seen it yet, but someone suggested that it would be every five (5) years. After reviewing a rule, the agency determines that substantive changes to update a rule are not required, the agency must re-promulgate the rule to reflect the date of the review. So, that's a lot more work, if these are passed, in the rulemaking area. So, why did I bring it to your attention? It is going to have impact on the Board and I want to put a bug in your ear now so that you're all thinking about this. We don't need any decisions today or anything like that.

The Rules Committee for this Board has been extremely active over the last year working on disciplinary guidelines. If any of these are passed, even if it's just the veterans' bills, because of the amount of rulemaking that is going to be involved in any of this, then we will be providing more specific recommendations to the Board regarding this over the next months, so that as we see the outcome, I think the Board needs to consider continuation of regular meetings of the Rules Committee or perhaps an additional Rules Committee. I think that is something that I want to leave with you today and say please be aware of these bills. More information will follow.

The Rules Committee Meeting for this Board has been extremely active on the disciplinary guidelines over the last year. There has been five (5) or six (6) meetings. A tremendous job by the Committee and by Industry members. We very much appreciate all of the input from Industry members. The final meeting, we hope, of the Rules Committee on the disciplinary guidelines took place in Jacksonville, Florida on Thursday, January 18, 2018. This was the 5th (or 6th) meeting of the Rules Committee on the disciplinary guidelines. At this time, the guidelines are being finalized. All of the changes that were suggested, we're putting them into record, and prepared for publication and review at a Rulemaking Workshop, which is currently scheduled for Friday, March 2, 2018 in Tallahassee, Florida. Look for publication on that workshop soon. The guidelines will be discussed at the Workshop. Depending upon any challenges received, it is our hope that the guidelines may be finalized and presented to the Board for final review/approval at the next in person meeting in April.

Our next Board meeting is a telephonic meeting on Thursday, March 1, 2018. The next in person Board meeting will be in Orlando on Thursday, April 5, 2018. Finally, this is the first time that I'm aware of that the Board has met west of Tallahassee, in forever, from our research. So, this is the first time we've had to look for a hotel. I will thank very much LaTonya and Jasmin. LaTonya, as always, got us a great hotel here. I think it's been a lovely place. I hope that we will be able to get even greater attendance as we spread the meetings out to the different locations. I know that at least one of the associations forwarded the information about this meeting to their members in hopes that we would have greater attendance. We appreciate that. Other than that, thank you all for being here. We hope this has worked out for you as well. This ends the Operation Report. Thank you, Mr. Chair.

Chair – Thank you. Bill Williams has asked for time to address the Board and update the Board on Unitrust. Can you briefly do that, Mr. Williams?

Mr. Bill Williams – Maybe on a happier note, for some historical information for some legislature that was done. I'll be really quick. Well I wanted to just update the Board. We had an opportunity to do this at the Subcommittee Meeting of the Board a couple of weeks ago, but for the full Board's information, two (2) years ago we passed legislation, the Industry did, in the State of Florida called Unitrust or Total Return Trust Legislation. It allowed cemeteries to withdraw potentially more money from their Care and Maintenance Trust Funds than they had previously. To the best of my knowledge, we were the fourth state in the nation that's done that. The legislation passed. It has been very successful. We now have a year, under our belt, of experience. Some of the clients that are with my company have experienced a 233% increase in the amount of money they're able to withdraw from the Care and Maintenance Trust Fund. So, in my opinion, that's been a very successful piece of legislation. By the way, while continuing to grow the corpus at the same rate, if not better than before. We now have probably twelve (12) to fourteen (14) other states that are out there chasing the Florida legislation trying to push it. They see how important it is. I just thought you'd like to have an update on that. We're very proud of the fact that that legislation was passed and it's been very successful and helped cemeteries tremendously in this state. Thank you, sir.

Chair – Thank you.

Mr. Helm – Mr. Chairman?

Chair – Yes?

Mr. Helm – I’d like to say thanks to Bill. This is the first meeting he’s been to since he’s had the accident.

Chair – Well, he’s been to a lot of Rules Committee meetings.

Mr. Helm – I know that, but this is the first Board meeting. {Applause}

B. Report: Payment of Disciplinary Fines and Costs

Ms. Simon – This item is informational only. Are there any questions?

Monthly Report of Fines and Costs Assessed and Paid
Division of Funeral, Cemetery and Consumer Services
February 1, 2018 Board Meeting
Date of Report: January 22, 2018

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Donald Peter Koma	Dec-17	201961-17-FC; 169273-15-FC	\$1,500	3-Feb-18		
Abbey Affordable Cremation & Funeral Services	Dec-17	203837-17-FC; 201957-17-FC	\$1,500	3-Feb-18		
Kotrady-Hudgins Funeral Services, LLC d/b/a St	Oct-17	210062-17-FC	\$1,750	17-Nov-17	Paid in Full 11/2/2017	
Jeannette Royal	Jun-16	164613-14-FC	\$5,000	12-Jan-16	Note A	
<p>A. When payment in full becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment. B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report; also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs. C. The Order re this case is still in process, so no Due date is not yet established. D. Due date has not passed, as of the date of this report. E. As of the date of this report, monthly payments were current.</p>						

20. Chairman's Report (Verbal)

Chair – That was it.

Ms. Simon – Thank you.

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

Ms. Simon – Mr. Barnhart?

Mr. Barnhart – The only thing different from last month’s report is the inclusion of the January 18th meeting, which was either the fifth or sixth meeting, but I have the dates of five (5) meetings down there. We’ve been working pretty hard on that. Thank you to the Rules Committee and everybody else that’s had input.

Chair – Thank you. I appreciate that.

**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES RULES REPORT
FEBRUARY 2018**

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
69K-30.001*	Disciplinary Guidelines and Penalties for Funeral Directors and Establishments, Embalmers, Removal Refrigeration Services, Direct Disposers and Establishments, and Cinerator Facilities		03/24/2017 (RD)	04/14/2017			
69K-30.0021*	Minor Violations and Notice of Noncompliance for Funeral Directors and Establishments, Embalmers, Removal Services, Refrigeration Services, Direct Disposers and Establishments, and Cinerator Facilities		03/24/2017 (RD)	04/14/2017			
69K-30.003*	Citations for Funeral Directors and Establishments, Embalmers, Removal Services, Refrigeration Services, Direct Disposers and Establishments, and Cinerator Facilities (30.003)		03/24/2017 (RD)	04/14/2017			
69K-21.003	Inspection Criteria (Funeral Establishments).	09/07/2017	05/13/2017 (RD) 09/18/2017 (RN)	05/23/2017	09/26/2017 – Vol. 43/186	11/7/2017	11/27/2017
69K-33.001	Requirements Regarding Handling and Storing of Human Remains	10/05/2017	09/07/2017 (RD)	09/19/2017	10/18/2017 – Vol. 43/202	11/16/2017	12/6/2017

*Note: Rule Development for 69K-30.001, .0021 and .003 noticed together; however, each proposed rule can be amended separately if needed

*Note: Workshop on 69K-30.001, .0021 and .003 held June 6, 2017

*Note: Rules Committee Meetings on 69K-30 held June 28, 2017, August 18, 2017, October 10, 2017, November 9, 2017 and January 18, 2018.

22. Administrative Report

The information was provided on the Agenda.

23. Disciplinary Report

The information was provided on the Agenda.

24. Upcoming Meeting(s)

- A. March 1st (Teleconference)
- B. April 5th (DoubleTree by Hilton Orlando Downtown – Orlando)
- C. May 3rd (Teleconference)
- D. June 7th (Saddlebrook Golf Resort – Wesley Chapel/Tampa)
- E. July 12th (Teleconference)
- F. August 2nd (Tallahassee)
- G. September 6th (Teleconference)
- H. October 4th (Miami-Dade College – Miami)
- I. November 1st (Teleconference)
- J. December 6th (Embassy Suites by Hilton Jacksonville Baymeadows – Jacksonville)

25. Adjournment

Chair – Board members? Good of the cause?

The meeting was adjourned at 1:35 p.m.