

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
February 5, 2015 - 10:00 A.M.
Department of Financial Services
Tallahassee, FL 32301

1. Call to Order, Preliminary Remarks and Roll Call

Mr. Jody Brandenburg, Chair called the meeting to order at 10:00 am.

Mr. Doug Shropshire - As a preliminary matter, let me state for the record that my name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is February 5, 2015; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to interested persons. The meeting is occurring in the Alexander Building in Tallahassee FL. My Assistant, Ms LaTonya Bryant, is recording the meeting and will be preparing minutes of the meeting.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. Participants are requested to keep in mind the necessary protocol that only one person may speak at a time.

At this time I will take the roll and Board members will please respond clearly with "present", as preferred, when I call their name:

Joseph "Jody" Brandenburg, Chairman
Keenan Knopke, Vice Chair
Jean Anderson
Andrew Clark
Lewis "Lew" Hall
Powell Helm
Ken Jones
Richard "Dick" Mueller
Vanessa Oliver

ABSENT:

James "Jim" Davis

Mr. Shropshire – Mr. Chairman we have a quorum and the Board may proceed to address the matters on the agenda.

Also noted as present:

Tom Barnhart, Board Legal Advisor
Ellen Simon, Assistant Director
LaTonya Bryant, Department Staff
Linje Rivers, Department Counsel
Jasmin Richardson, Department Staff
LaShonda Morris, Department Field Staff
Christine Moore, Department Staff

Chair – I think it would be appropriate to welcome our new counsel, Tom Barnhart. Thank you for being here with us. We are glad that you will be serving with us on this Board.

Tom Barnhart – Thank you. I look forward to working with you.

The Chair confirmed that the Board members had received their packets in a timely manner.

2. **Action on the Minutes**

A. *January 8, 2015*

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on January 8, 2015.

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

Chair – I would like to declare my affiliation with SCI Funeral Services of Florida and that affiliation will in no way impact my ability to make fair and impartial decisions on anything coming before this Board today.

3. **Disciplinary Proceedings:**

A. *Settlement Stipulation(s)*

(1) *Waiver of Probable Cause*

(a) *Carriage Florida Holdings, Inc. d/b/a Evergreen Memorial Gardens: Case No. 159824-14-FC; Division #ATN-20951 (F058284)*

Mr. Linje Rivers – The next three (3) items on the agenda involve Carriage Florida Holdings d/b/a various Licensees, but they all are under a financial examination that was conducted at each establishment. The facts of each case are similar but we would ask that you vote on the settlements separately. The Division alleges that the Licensee failed to provide the Division with accurate work papers during the financial examination. After completion of the examination, the Licensee provided the Division with more accurate work papers. If there are any questions, they can be submitted to their counsel, Ms. Wendy Wiener. Carriage FL Holdings d/b/a Evergreen Memorial Gardens has agreed to a pay of fine of \$2,250. The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Keenan Knopke – Am I to understand correctly that the exam was for 2003 and it is 2015 or 2014 whatever we want to call this time of the year.

Ms. Wendy Wiener – Yes.

Mr. Knopke – And we did not have adequate work papers? Did the cemetery refuse? How did we not do that?

Ms. Wiener – This is Wendy Wiener. I am counsel for Carriage Florida Holdings (“Carriage”). The initial work papers that were provided were indeed in accurate in many respects. The company had acquired the subject cemetery, in fact in all three (3) of these cases it is the same answer to this question. These were properties that were acquired by the company. They went through several conversion processes. Carriage did a conversion to all of its data over the course of time. If the examination had been conducted much closer to 2003 these issues might not have occurred. There was in fact inaccurate work papers submitted originally. We ultimately involved Jim Atwood to consult. We corrected and finalized work papers and resolved all other matters that were wrong.

Mr. Knopke – Were the deficits under Carriage ownership or the prior ownership.

Ms. Wiener – The deficits largely disappeared over the course of correcting the work papers. The inaccurate work papers reflected a significant deficit and then over the course of time as the work papers and as we drilled down, it was a long process. Phone calls with Mr. Rivers, the examiners and Mr. Atwood. Once we drilled down the deficits were virtually eliminated.

Mr. Knopke – So the \$132k really is not the right number.

Ms. Wiener – I do not believe that that was the ultimate number.

Mr. Rivers – I do not believe that is the number.

Ms. Wiener – No, no I think that was the starting number from the original examination and then as we drilled down I believe it was a much smaller number and Jim if you have a recollection of that number.

Mr. Jim Atwood – No I do not.

Ms. Wiener – It was a much smaller number by the time we were done.

Mr. Knopke – Why are you all agreeing to the \$132,666.87 in the Board package as being the deficit if that is not the real number? It does not make sense.

Ms. Wiener – The discipline was related to the inaccurate work papers and not to the deficit amount. There is not discipline based on the deficit amount.

Mr. Rivers – I believe that once the accurate work papers were submitted it eliminated the deficit that was originally determined.

Mr. Knopke – Ok then I will direct the question to Mr. Shropshire. Why do we have even the deficit shown if it does not exist or did not exist?

Mr. Shropshire – That is the exam report. You are looking at the initial findings by the examiner. That report is then routinely in all exams given to the Licensee for comment and if the Licensee thinks it is wrong then they start providing us the information but we do not revise the initial record. That is the initial starting point. In this case in fact the Licensee was able to convince our examiner, through the corrected work papers, that most of the initially asserted deficit was not actually there.

Mr. Knopke – That answers that question. My last question I will ask to Mr. Shropshire or to the Department is why twelve (12) years to do an exam? If I am wrong in that time period please tell me but I mean it says for 2003. I know I have gotten an exam multiple times since 2003 where I am at and I would hope other places have but maybe not.

Mr. Shropshire – Well the average age since last exam for our overall database of preneed Licensees I believe last time I looked is slightly less than three (3) years. That is the average. In this case, when I came on Board in June of 2008 there was quite a backlog. That three (3) year figure is the result of a lot of work. This exam, as you can see, went through the end of exam period of November 30, 2012 and that exam probably was started in 2009 as indicated by counsel. It is a very frustrating process of iteration of these work papers when we have the Licensees acquiring existing entities that did not have very good work papers or they have tried to absorb them into the acquiring entity's processes and it has gotten confused and obscured and it took three (3) years to get to the report.

Mr. Knopke – I was just taken back a little bit to see 2003 and actually I thought it had to be a typo.

Mr. Shropshire – No.

Ms. Wiener – This matter was ongoing for a number of years.

MOTION: Mr. Jones moved to approve the Settlement Stipulation as recommended by the Department. Mr. Powell Helm seconded the motion, which passed unanimously.

(b) Carriage Florida Holdings, Inc. d/b/a Forest Lawn Memorial Cemetery; Case No. 159822-14-FC; Division #ATN-20952 (F058284)

Mr. Rivers – The Division alleges that the Licensee failed to provide the Division with accurate work papers during the financial examination. After completion of the examination, the Licensee provided the Division with more accurate work papers. Carriage FL Holdings d/b/a Forest Lawn Memorial Cemetery has agreed to a pay of fine of \$2,250. The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. If you have any questions they can be presented to either myself or counsel for the Respondent.

Chair – Just as additional information, has any deficiencies found been resolved adequately?

Ms. Wiener – Absolutely and I apologize for not bringing this part of the file with me. I do not recall if there were actually any deficiencies at all. If there were they were nominal and not \$132k for that other cemetery or any significant number and they were all resolved.

MOTION: Mr. Helm moved to approve the Settlement Stipulation as recommended by the Department. Mr. Lew Hall seconded the motion, which passed unanimously.

(c) Carriage Florida Holdings, Inc. d/b/a Garden of Memories: Case No. 159820-14-FC; Division #ATN-20953 (F058284)

Mr. Rivers – The Division alleges that the Licensee failed to provide the Division with accurate work papers during the financial examination. After completion of the examination, the Licensee provided the Division with more accurate work papers. Carriage FL Holdings d/b/a Gardens of Memories has agreed to a pay of fine of \$2,250. The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

MOTION: Mr. Hall moved to approve the Settlement Stipulation as recommended by the Department. Mr. Mueller seconded the motion, which passed unanimously.

(d) Groover, Rick: Case No. 162136-14-FC; Division #ATN-23203 (F029334)

Mr. Rivers – The Division alleges that the Licensee entered into a contract for cremation services with a consumer. The Licensee failed to cremate the decedent in a timely fashion. Rick Groover has agreed to a pay of fine of \$1000. The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Helm – I need to disclose my affiliation with Rick Groover and Groover Funeral Home. It will not affect my ability to do remain fair and impartial.

Ms. Lisa Coney – I am with Dignity-SCI Funeral Services of Florida. I am here for Rick Groover and Groover Funeral Home. We made a mistake and I would like you all to know that the funeral director in charge, Mr. Groover, corrected that mistake before we were ever in receipt of a complaint from the State. Quite simply the cremation authorization, we had a very efficient secretary who filed the cremation authorization in the funeral home file before sending it to the crematory. When it came to Mr. Groover's attention he immediately met with the family, met with the crematory. Identification was never in question but arranged for Ms. Schecht to have a private identification time with her mother. Mr. Groover was at the crematory at 6 o'clock the next morning that it was open so that her cremation would be our first priority. This was an unintentional one time simple human error and we did agree to this to bring closure to it but I would point out to you that in a more egregious case last year fines were significantly less than those proposed for this. Mr. Groover is also here in his own defense should you have any questions for him as well.

Mr. Hall – As an owner I would probably say I would rather it happen later than happen before like the other case that you brought up earlier because you cannot return on that. In an act of fairness and consistency, can the Division share with us or remind us what those fines were for that case a year ago that was similar in nature because these seem to be substantially higher.

Mr. Rivers – I am not entirely sure which case you are referring to.

Ms. Coney – The cremation case in question that I am referring to was a Baldwin Brothers case where Baldwin Brothers, in April of last year, came in front of the Board for performing a cremation prior to receiving medical examiner authorization, which I would think is far more serious in nature. In that case the crematory, direct disposer, two (2) funeral directors and the funeral home were all complicit, I am sure not intentionally, in that error going forward. In all of those cases, the fines that this Board imposed and voted unanimously on every case to reduce the fines that the Legal Division proposed and all are

significantly less. The highest fine is the same as the fine against funeral director Groover. All are significantly less. They were reduced to \$500 against the funeral home, reduced to \$500 against the funeral director, reduced to \$1000 against the direct disposer, reduced to \$750 against the crematory, reduced to \$500 against the funeral director of the crematory and reduced to \$1000 against the funeral director in charge that met with the family and forwarded the file for cremation without authorization. In this case, we had authorization and made a mistake and filed it. I mean it is totally regrettable. When Mr. Groover met with the family he did everything in his power to take immediate actions to remedy that and the family actually indicated to him that they were wholly satisfied with his efforts. Weeks later we became aware that there was a written complaint against us and obviously acted immediately to respond.

Mr. Rivers – I would like to make a distinction in that case. That was a self-reporting incident where the Licensee reported to the Division that they had violated the statute, so that is one distinction, as well as, this Settlement Stipulation was agreed upon by both parties. Going forward, both parties thought that this was a fair settlement.

Mr. Shropshire – Ms. Coney, do you know off hand was that an informal hearing, those earlier cases or were they Settlement Stipulations?

Ms. Coney – They were settlement stipulations that the Board overturned and reduced by half or more unanimously.

Chair – I think that as importantly as anything that we have heard, I think the Board members would probably like to hear what steps have you taken to assure this will not occur with another family.

Ms. Coney – Again, the identification was never in question. We already have extensive cremation procedures in place to make sure that no more egregious errors occur. Mr. Groover also took the time to retrain everybody on his staff as to the practical procedures of how to handle the paperwork. He changed the white board so that there would be a tracking of the time that an individual is at the crematory. In this crematory and in every crematory we do a daily refrigeration check for the condition of remains and who is in our care and custody. We have also implemented a five (5) day report so that if any individual is in our care for five (5) days, regardless of the circumstances, it is automatically elevated to that crematory's management so that we can find out. It is not unusual for somebody you know to be in your care for an extended period for any number of reasons but it will never be more than five (5) days without us knowing who, why and making sure that no other family experiences this kind of delay. We come hat in hand because we know we made a mistake. We made a mistake and we fixed it before the Division ever got involved and we regret that Lucille Schecht was delayed. Fortunately her funeral services were not planned for weeks after that so it did not delay any celebration of her mother's life and again the family indicated to us that they were wholly satisfied. When Mr. Rivers and I discussed this, I did share my concerns that I thought that the level of fine was high given the circumstances and told him that I would stand in front of you and obviously the decision is yours as to whether or not you would consider more leniency.

Chair – Any questions or comments to Mr. Rivers or Ms. Coney.

Mr. Clark – I believe this was prefunded. Was there ever any discussion of offering financial restitution to the family?

Ms. Coney – You know, I think and Mr. Rivers may speak to this better, but I think in the heat of this the primary concern was oh my gosh, we are so sorry we let you down, let us fix this. The family indicated that they were happy and never requested anything so the services were done.

Mr. Clark – But they were not.

Ms. Coney – Right. It did not come up. It certainly could but it did not. It was not requested and the services were completed. It would not be unusual to do that. We certainly have and would refund under any type of customer service concerns but when he was handling this the primary focus was attending to her immediate needs, seeing that the cremation was done, returning the cremated remains as expedited as possible and the family never indicated that they were displeased after that point. In fact, exactly the opposite as they said that they were pleased and the son-in-law of the decedent was an attorney. His specific words were thank you and once we get this taken care of we consider this done.

Mr. Hall – I would agree with Mr. Rivers in his statement as to the self-reporting. I think that was very important in that case on Baldwin and I do not think we want to discourage someone from coming before the Board to say we are human, things are going to happen, we made a mistake. I think that is why a lot of those adjustments were made. I still say if it was my firm and I had to choose between the delay in it or it happen prematurely and then maybe somebody have another issue, I know which one I would pick there. Can you tell me what the amounts were between the establishment and FDIC on the last one, the Baldwin case?

Ms. Coney – The FDIC at Baldwin was reduced from \$2500. \$500 was brought up and not approved and then \$1000 was approved unanimously. The funeral home was reduced to \$500. The FDIC of that funeral home was reduced to \$500. The direct disposer who performed the cremation was reduced to \$1000.. The crematory was reduced to \$750. There was another funeral director. I did not study the thousands of pages involved in that. I went to the Minutes of last April’s Board meeting so I just have the numbers. This case is being brought forward on disciplinary provisions ss. 497.152(1)(a) and (1)(b), which are sort of catchall provisions for violation of any provisions of the Chapter and for negligence which we clearly admit that we were negligent in filing too quickly and not communicating better with the crematory and under s. 497.607, F.S. Under ss. 497.152(1)(a) and (1)(b), the disciplinary provisions allow for aggravating and mitigating circumstances. I would hope that these are mitigating and allow for the Board to accept or reduce based on those circumstances. They allow for anything from a reprimand to \$1000 per incident. Like I said, those are the kind of catchall things so this is really one (1) incident. S. 497.607, F.S. does not have disciplinary proceeding guidelines because it comes over from the old 470 Board and in Rules we never got to that point. So this is short of major aggravating factors or repetitive behavior or anything that is absolutely not present in this. We are at the high-side of those recommendations. Actually, \$1500 is over.

Mr. Rivers – Let’s just keep in mind that the Licensees did agree to this Settlement Stipulation.

Mr. Jones – I appreciate what you are saying and I have to agree with Mr. Rivers. If this was not before us as a Settlement Agreement I would definitely understand where you are coming from.

MOTION: Mr. Jones moved to approve the Settlement Stipulation as recommended by the Department. Mr. Clark seconded the motion, which passed with three (3) dissenting votes.

(e) SCI Funeral Services of Florida, Inc., d/b/a Groover Funeral Home at Mansion Memorial Park: Case No. 162135-14-FC; Division #ATN-23203 (F040897)

Mr. Rivers – The Division alleges that the Licensee entered into a contract for cremation services with a consumer. The Licensee failed to cremate the decedent in a timely fashion. The Licensee has agreed to a pay of fine of \$1500. The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Ms. Coney – This is the same set of circumstances. This obviously at \$1500 is over the recommended guidelines for the two (2) provisions that have them. Yes, we did agree. There were not a lot of alternatives to agreeing and when I agreed I did inform Mr. Rivers that I would come in front of you with the mitigating circumstances. So you know what they are and if there is any opportunity for consideration I would certainly appreciate it.

Mr. Jones – I propose accepting the settlement and reducing the fine to \$1000 like the companion case.

Mr. Shropshire – Mr. Barnhart, would we legally have to go through the steps of rejecting this Settlement Stipulation and the Board make a counter-proposal.

Mr. Barnhart – I think you move to adopt the Settlement Stipulation with the provision that the fine be reduced to \$1000 and if that passed it would be proper.

Mr. Shropshire – But you would not have on record then that the subject, the Licensee, accepted the counter-offer.

Ms. Coney – We absolutely accept any rejection that you offer.

Mr. Shropshire – There is some issue here. I believe that the Department has some prerogatives in this matter in that, and I am not going to make an issue of it, but when we have a Licensee who has agreed to a settlement and then comes here and peaches their own settlement, in this case apparently Mr. Rivers knew, so I am not going to make a point of it. I believe the Department may have some prerogatives to say No the matter goes back and resumes in formal disciplinary process.

Mr. Barnhart – Well, I think the Board has the power to adopt, to approve or adopt or amend a Settlement Stipulation. They are the ones who decide discipline and I think they certainly have the power to agree to reduce it if it is voted upon.

Mr. Shropshire – There is no settlement before the Board unless the Department brings it forward. There is not a settlement between the parties because it is the Department who prosecutes the cases.

Mr. Barnhart – So are you saying that the Department does not agree to this and that you want to withdraw the stipulation?

Mr. Shropshire – Not in this case because it appears that Ms. Coney told Mr. Rivers that she was going to do this but I want to preserve the point.

Mr. Rivers – I was not aware that she was going to come in here and do this.

Mr. Shropshire – Well, in any event, I do not think \$500 is worth it on this point but I can foresee cases where the Department would be of the position where no there is no settlement before the Board if you reject this one.

Mr. Barnhart – Then it would be proper to bring this back either as a formal or informal hearing.

Mr. Shropshire – Yes sir, but in this case the Department does not have an objection of going this way because it is a \$500 reduction but I would like to preserve that point of procedure.

Ms. Coney – The Board has done this on many, many, many occasions in the past for any number of reasons and has done it exactly the way you said where the original stipulation was rejected and the second was adopted if approved.

Mr. Shropshire – It has been done in the past but I point out to you that this in the long term may not be beneficial to you because it may affect the Department's willingness to enter into proposed stipulations and settlements when they are not in fact apparently going to be settlements when you get to the Board level.

Ms. Coney – I understand.

Mr. Shropshire – To make it clear, the Division, in this case, does not have objection to this going the way the Board has indicated it wants it to go.

MOTION: Mr. Jones moved to approve the Settlement Stipulation as recommended by the Department with the provision that the fine be reduced to \$1000. Mr. Hall seconded the motion, which passed with two (2) dissenting votes.

B. Material Facts Not Disputed (Section 120.57(2) Hearings)

(1) Probable Cause Panel B

(a) Daniel A Newsome d/b/a Graves Sites, LLC: Case No. 147250-14-FC; Division #ATN-21440 (F050030)

Mr. Rivers – I know there may be some confusion as to the Licensee's name. I know that some Board members expressed some concern over who exactly is being disciplined in the case. The Licensee is Daniel A Newsome d/b/a Grave Sites, LLC not James A Newsome. On March 7, 2014, the Department filed an Administrative Complaint, alleging that the Licensee entered into a contract and received a \$4,850 payment from a consumer for installation of a monument. The Licensee failed to install and provide the monument to the consumer, and the Licensee did not provide a refund that the consumer requested. The Division was unable to effectuate personal service on the Licensee. Therefore, the Division served the Licensee by way of publication in the Arcadian on the following dates: November 20 and 27, 2014, and December 4 and 11, 2014. The Licensee failed to respond to the publication within 21 days from the date of the final publication notice. Therefore, the Division is presenting this case to the Board for a hearing not involving material facts in dispute.

Mr. Helm – I need to recuse myself from this one.

Ms. Anderson – I need to recuse myself as I served on Probable Cause Panel B in this matter.

MOTION: Mr. Mueller moved to find that the Respondent was properly served, failed to respond and has waived its rights to request a proceeding in this matter. Mr. Clark seconded the motion, which passed unanimously.

Mr. Rivers – The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

MOTION: Mr. Mueller moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers – The Department contends that the Board’s Findings of Fact support a finding of the violations of Chapter 497, F.S. as charged in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Mueller moved to adopt the Conclusions of Law. Mr. Clark seconded the motion, which passed unanimously.

Chair – Is there anyone representing Daniel A Newsome d/b/a Grave Sites, LLC or James Newsome? There was a negative response.

Mr. Rivers – Under Rule 69K-11.001, F.A.C., in the presence of aggravating or mitigating circumstances, which is supported by clear and convincing evidence, the Board shall be entitled to deviate from the guidelines as presented by rule. Considering the severity of the violations and the degree of harm to the consumer, the Department would ask that the Board deviate from the penalty guidelines. The Department recommends that the Board issue a \$2500 administrative fine, revoke the licensure of Grave Sites LLC and order the Licensee to pay restitution to the consumer in the amount of \$4850.

Mr. Shropshire – Can we get some clarity? Is the Respondent James Newsome or Daniel Newsome?

Mr. Rivers – Daniel Newsome.

Mr. Shropshire – Daniel Newsome is the correct Licensee.

Mr. Rivers – Correct, doing business as Grave Sites, LLC. We will submit that the Licensee’s failure to respond to the consumer or present the consumer with their monument or even give them back their refund would satisfy the aggravating factors enumerated under (3)(b) (1) and (2), the severity of the violation and the degree of harm to the consumer in that they were out of money and the monument. It is appropriate at this time for the Board to consider those factors.

Chair – In any motion that we make too, I would like for part of that motion to be that any future 497 application submitted, Mr. Newsome must personally come before the Board.

Mr. Jones – Because this is going against his license and the facility’s, correct? That is what I wanted to clarify.

Mr. Rivers – Well, I believe there was already discipline on his individual license at the previous Board meeting.

Ms. Vanessa Oliver – Is this the same individual who has the outstanding warrants in Arcadia or is that somebody else.

Mr. Rivers – I have no knowledge of that.

Ms. Oliver – Okay, then it is somebody else.

Mr. Helm – It is the same person.

Mr. Clark – Are we aware as to whether the family had to purchase a different monument from a different company.

Mr. Rivers – I believe they would go to the Board for the Consumer Protection Trust Fund issues.

Mr. Shropshire – Is this a preneed contract, Mr. Rivers?

Mr. Rivers – I believe it might have been an at-need contract.

Mr. Clark – My question is do we know if they have had to go somewhere else to get the memorial placed for their loved one.

Mr. Rivers – I am not entirely sure.

Chair – Can we ask Mr. Helm that question? He has recused himself.

Mr. Barnhart – No. If he has been recused he cannot participate.

Chair – He can recuse himself from the vote but not from discussion.

Mr. Barnhart – From participation, too and discussion.

Mr. Clark – If they have had to spend more money I do not know if we could deviate and refund them more money. I guess they would have the Consumer Trust Fund.

Mr. Shropshire – Unless this was a preneed contract, they have no access to the Consumer Protection Trust Fund.

Mr. Hall – Can we do the restitution for whatever loss they had and another contract if they exceeded the \$4850?

Mr. Shropshire – I believe so. Yes.

Mr. Hall – This would leave the restitution open so that if they had additional expenses it would make them whole.

Mr. Shropshire – The Division certainly would have no objection to that.

Mr. Mueller – What about referral to criminal authorities criminal authorities? Could that be a part of the motion too?

Mr. Shropshire – Mr. Rivers do you recall if the file indicates there has been a complaint by the consumer to law enforcement or a referral?

Mr. Rivers – The file does not indicate that.

Chair – In fact, there is a detective's name, I believe and business card in the packet.

MOTION: Mr. Hall moved for a penalty of revocation, \$2500 administrative fine, restitution to the consumer in the amount of \$4850 plus additional expenses incurred to make the contract whole and Mr. Newsome must come before the Board for any Ch. 497 license application submitted. Mr. Jones seconded the motion, which passed unanimously.

Chair – Page 65 of our Board packet indicates a business card for a Detective Wingate.

(b) New Horizon Funeral Chapel & Cremation, Inc.: Case No. 154917-14-FC; Division #ATN-22305 (F057661)

Mr. Rivers – An Administrative Complaint was filed against the Licensee alleging violations of the Funeral, Cemetery, and Consumer Services Act. More specifically, on September 16, 2014, a Probable Cause Panel (the "Panel") was convened to determine whether sufficient evidence existed to pursue administrative action against the Licensee. The Division of Funeral, Cemetery, and Consumer Services (the "Division") determined the Licensee sold contracts before acquiring a preneed license, accepted funds from a consumer for a preneed contract without depositing the funds in trust, failed to make timely deposits

sufficient to offset preneed trust fund liabilities, utilized preneed contracts that were not filed and approved by the Board of Funeral, Cemetery, and Consumer Services, made unauthorized trust fund withdrawals, failed to make timely and sufficient remittances to the Preneed Funeral Contract Consumer Protection Trust Fund, and failed to make timely and sufficient remittances to the Regulatory Trust Fund. The Licensee returned an Election of Proceeding form to the Division indicating a desire to submit a written statement and documentary evidence to the Board in lieu of a hearing.

Ms. Anderson – I need to recuse myself as I served on Probable Cause Panel B in this matter.

MOTION: Mr. Mueller moved to find that the Respondent was properly served and requested a proceeding in this matter. Mr. Clark seconded the motion, which passed unanimously.

Mr. Rivers – The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

MOTION: Mr. Knopke moved to adopt the Findings of Fact. Mr. Helm seconded the motion, which passed unanimously.

The Chair – Is there anyone here representing New Horizon Funeral Chapel & Cremation, Inc.? There was a negative response.

Mr. Rivers – The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Knopke moved to adopt the Conclusions of Law. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Rivers – As to penalty, under 69K-11, F.A.C., the maximum fine that can be imposed is a \$1000 administrative fine and a two (2) probation and that would be the Department's recommendation in this case.

Mr. Helm – Does he have a license now?

Mr. Rivers – Correct. He does have a response that was included in the packet.

Ms. Oliver – Have all of the trust deficiencies been corrected at this time?

Mr. Rivers – I do believe they have. I would have to defer to the examiner before I could give you a definite answer on that.

Mr. Hall – The name sounded familiar to me. Back in 2011, this individual was before the Board. Mr. Helm had asked a question in reference to some discrepancies on the preneed at that time. Ms. Surles was not clear on them and was going to check on the contracts being signed by him and get back to Mr. Shropshire. That was in the minutes of February 2011. Is there anything in the Division's records that show any other discipline that we are aware of that came before this individual?

Mr. Shropshire – This is the case against the entity not the individual and I do not believe there is any prior discipline on this entity.

Chair – Let me call your attention to Page 64 of the electronic packet that speaks to fines or penalties. The recommendation was a \$1000 and two (2) years of probation and that certainly falls within those guidelines mentioned.

Mr. Mueller – Mr. Chairman I think the issue of the restitution to the Trust Fund is important here too. Can we get a better answer on that?

Ms. Oliver – Mr. Chair can we include something in there that all trust deficiencies have to be corrected within ten (10) days of today's date or the license is suspended? Is there something we could do to ensure that those trust deficiencies are corrected?

Chair – Yes, I believe that could be included in a motion. Part of this paragraph includes making restitution.

Mr. Knopke – Can we check with the representative from FSI or IFDF to see if they trust through either of their networks?

Mr. Helm – It has Michele’s name on it.

Chair – Please identify yourself.

Ms. Michele Hood (Independent Funeral Directors of Florida) – This client has not contacted me in reference to this examination. I was unaware that he had deficiencies that needed making up until I saw the Board packet. I honestly could not tell you whether he made good on those.

Mr. Shropshire – One option would be to table the matter so that we could definitively ascertain and report back to the Board if the deficiencies have been corrected. I am pretty confident though that since this case is based on the exam report, if there were deficiencies and they had not been corrected they would be a part of the case.

Mr. Rivers – That would be true.

Mr. Shropshire – But we could table it and report back to you.

Chair – Or the motion could include if restitution has not been made it must be made.

Mr. Shropshire – I would almost prefer to let us check on it and report back to the Board.

MOTION: Mr. Knopke moved to table this matter. The motion failed due to the lack of a second.

Mr. Helm – I was alright with this until Michele stood up and said she did not know anything about and her name is written in here three (3) times indicating that he spoke to her so that could be cause to doubt.

Chair – We have a lot of facts on this case and if we table this it just drags it out until another in person meeting.

Mr. Hall – Would Mr. Shropshire feel there are more teeth in Ms. Oliver’s suggested motion.

Mr. Shropshire – That motion is fine and the only reason I kind of preferred the other one is because if we go that route then we do a Final Order and if he does not pay it we will just start another disciplinary case against him. So it would be six (6) or nine (9) months down the road before that gets here but hopefully he would correct the deficiencies and there would not be an issue. I do not feel strongly either way. That is fine if the Board wants to conclude the case today.

Mr. Helm – Which way would the Division rather have it?

Mr. Shropshire – My preference would be to let us report back to you. I am kind of disappointed that the man is not here. He did write a pretty good letter but between now and then I would try and have counsel press him to come before the Board.

Mr. Helm – So you are asking us to table it?

Mr. Shropshire – That would be my preference.

Mr. Rivers – I believe the next in person Board meeting is in Jacksonville in April.

2nd MOTION: Mr. Knopke moved to table this item to the next in person meeting, encourage Licensee to be present and request that the Department confirm whether the money has been deposited or not. Mr. Helm seconded the motion, which passed unanimously.

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

Mr. Shropshire – The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

B. Recommended for Approval with Conditions (Criminal History)
(1) Ritz, Michael J (Appointing Entity: NorthStar Cemetery Services of Florida, LLC.)

Mr. Shropshire – On September 18, 2014, the Department received an application from Mr. Ritz. Mr. Ritz answered “No” to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was confirmed, Mr. Ritz did have one criminal infraction that required disclosing. Mr. Ritz was asked to provide an explanation for the inaccuracy on his application. Mr. Ritz’s explanation “I misread the statements in letter B.”

Mr. Ritz pled guilty to Obtaining Property in Return for Worthless Check in May 2004, and his sentence included probation, court cost and fines, which occurred in Pinellas County, Florida. Upon request he disclosed all required information. Applicant has several strong references. His references include one from his employer, NorthStar Memorial Group/Grace Memorial Gardens, who would employ him if he gets his PSA license; NorthStar indicate they know of his past record but feel he is rehabilitated.

The Department assessment is that if issued a preneed sales agent license, Mr. Ritz would not pose an unreasonable risk to the members of the public who might deal with him in preneed transactions. The Division recommends that his application be approved subject to the terms & conditions of the executed stipulation for licensure calling for twelve (12) full months of probation.

Mr. Shropshire – Mr. Ritz, it is our practice to swear in persons who wish to address the Board. Would you raise your right hand? Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

Mr. Michael Ritz – I do.

Mr. Shropshire – Please state your full name again.

Mr. Ritz – Michael James Ritz and again I submitted the letter through the Department and I am very embarrassed about my background. It was a simple mistake and I hope that I can continue in this field.

Chair – Mr. Ritz, have you read and understand the stipulation for licensure that you signed and agreed to.

Mr. Ritz – Yes sir.

Mr. Helm – In Chuck Horvath’s statement for you he says “We ask the State of Florida to reconsider his appointment for preneed sales license. Michael has not been selling since first notification.” Were you already selling?

Mr. Ritz – Based on a temporary license, yes.

Mr. Helm – So a temporary license was already issued?

Mr. Ritz – That is correct.

Chair – That is quite common and that is usually the way the licenses are issued.

MOTION: Mr. Knopke moved to approve the application subject to the condition of for twelve (12) full months of probation. Mr. Mueller seconded the motion, which passed unanimously.

C. Recommended for Approval without Conditions (Criminal History)
(1) Iannacone, Tara J (Appointing Entity: American Burial & Cremation Service, Inc.)

Mr. Shropshire – On November 18, 2014, the Department received an application from Ms. Iannacone. Ms. Iannacone answered “Yes” to Applicant Background Questions. Ms. Iannacone’s criminal history includes a plea of guilty in October 2010 to misdemeanor shop lifting, value of under \$200, in New Jersey. She was fined \$1,151 and received a suspended sentence of 30 days in jail. All fines have been paid.

At October 2, 2014, Board meeting, the Board approved Ms. Iannacone’s application for licensure as a Concurrent Internship. As of January 20, 2015, the Division of Funeral, Cemetery and Consumer Services has received no complaints concerning this Applicant as a Concurrent Internship license or otherwise. Thus, the Department assessment is that if issued a preneed sales agent license, Ms. Iannacone would not pose an unreasonable risk to the members of the public who might deal with her in preneed transactions. The Division recommends approval without conditions.

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

(2) Jackson, Eugenia E (Appointing Entity: Restlawn Cemeteries & Cremation Gardens, LLC)

Mr. Shropshire – On November 26, 2014, the Department received an application from Ms. Jackson. Ms. Jackson answered “Yes” to Applicant Background Questions. Ms. Jackson’s criminal history includes a plea of guilty in October 2013 to misdemeanor Speeding and Driving While License Suspended or Revoked, in Adel, Georgia. She was fined \$1,280 and received 12 months probation. All terms of probation have been completed.

Ms. Jackson has several strong references. Her references include one from her employer, Restlawn Cemeteries & Cremation Gardens, LLC, who would employ her if she gets her PSA license; Restlawn Cemeteries & Cremation Gardens, LLC indicate they know of her past record but feel she is rehabilitated. Thus, the Department assessment is that if issued a preneed sales agent license, Ms. Jackson would not pose an unreasonable risk to the members of the public who might deal with her in preneed transactions. The Division recommends approval without conditions.

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

D. Recommended for Approval *without* Conditions (Adverse Licensing History)

(1) Ballou, Linda C (Appointing Entity: SCI Funeral Services of Florida, Inc.)

Mr. Shropshire – The Applicant submitted an application for licensure as preneed sales agent on November 20, 2014, there were deficiencies noted on the application. The review of the *Qualification Questions* revealed adverse licensing history, to wit: Ms. Ballou was approached by sophisticated broker-dealers who duped many persons involved as insurance sales people to sell high interest promissory notes which appeared to be guaranteed by an insurer. Other than these promissory notes Petition has never been involved in the offer of sale of any securities (except for on occasion a variable life policy).

On or about June 20, 2000, Ms. Ballou (Petitioner) signed an “Offer of Settlement” with the Securities Exchange Commission (SEC), which the SEC accepted and as to Petition, the Order was made...”without admitting or denying any of the findings contained herein...” The Order also states that anything therein was “Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission...” Hence, nothing in the SEC’s Order may be used to prejudice Petitioner in her non-resident application before the Department of Financial Services, Division of Agent and Agency and any use by the Department would be improper. Petitioner was at the time of the underlying events an insurance agent, mainly offering and selling long-term care insurance to the public. Subsequently, application denied, due to Securities Exchange Commission event, the Department of Financial Services, Division of Agent and Agency believed Ms. Ballou to be untrustworthy, or incompetent to hold a license in which she applied for “Life Including Variable Annuity & Health (0215)” agent.

Ms. Ballou requested a hearing before the Department of Administrative Hearings (DOAH). Thus, On October 18, 2004, the Administrative Law Judge agreed and recommended that the Department issue the Petitioner a Non-resident Life and Variable Annuity Agent License.

Since, January 11, 1996, to the present, Petitioner has been duly authorized to conduct business on behalf of various insurance companies. Ms. Ballou sincerely desires for her application to be approved. So, that she can continue to work in the

profession she loves. Ms. Ballou has been very candid and cooperative with the Division's staff. The Department assessment is that if issued a preneed sales agent license, Ms. Ballou would not pose an unreasonable risk to members of the public who might deal with her in preneed transactions. The Division recommends approval without conditions.

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

(2) Wells, Johnny R (Appointing Entity: Neptune Management Corp.)

Mr. Shropshire – The Applicant submitted an application for licensure as preneed sales agent on November 26, 2014, there were deficiencies noted on the application. The review of the *Qualification Questions* revealed adverse licensing history, to wit: On or about June 27, 1997, Mr. Wells signed a Settlement Stipulation for a Consent Order to residing in Florida and selling insurance under a non-resident license, pursuant to F.S. ch. 626.

Mr. Wells sincerely desires for her application to be approved. So, that she can continue to work in the profession she loves. Ms. Wells has been very candid and cooperative with the Division's staff. The Department assessment is that if issued a preneed sales agent license, Mr. Wells would not pose an unreasonable risk to members of the public who might deal with her in preneed transactions. The Division recommends approval without conditions.

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

5. Application(s) for Continuing Education Course Approval

A. Recommended for Approval without Conditions – Addendum B

- (1) *American Academy McAllister Institute of Funeral Service #9808*
- (2) *C.O.E. Continuing Education #21808*
- (3) *FuneralCE #43*
- (4) *International Order of the Golden Rule #2201*
- (5) *National Funeral Directors Association #136*
- (6) *New Jersey Funeral Service Education Corp #7002*
- (7) *Selected Independent Funeral Homes #137*
- (8) *Thanos Institute #80*
- (9) *The Dodge Institute for Advanced Mortuary Stu #81*

Mr. Shropshire – The majority of the Continuing Education Committee and the Division recommends approval of the application(s) for the number of hours indicated on Addendum B in the right hand corner.

MOTION: Mr. Mueller moved to approve the application(s). Mr. Clark seconded the motion, which passed unanimously.

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

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

- (1) *Funeral Director and Embalmer - by Endorsement*
 - (a) *Hudson, Michael*
 - (b) *Kintz, Monica G*
- (2) *Funeral Director and Embalmer - by Internship*
 - (a) *Brisbine, Daniel D*
 - (b) *Fulton, Montalvis*
 - (c) *Le Blanc, Josiah E*
 - (d) *Williams, Renvy R*

Mr. Shropshire – The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

B. Recommended for Approval with Conditions (Criminal History)

- (1) *Funeral Director and Embalmer – by Internship*

(a) Cunningham, Courtney

Mr. Shropshire – Applicant, Mr. Courtney Cunningham, applied for a concurrent internship license in 2011. Applicant's concurrent internship application disclosed a criminal record.

- In 2009 Applicant pled no contest to misdemeanor possession of marijuana in Gwinnett County, GA. The Applicant was sentenced to 12 months probation, fined \$395 and was required to complete a substance abuse program, or an equivalent program. The Applicant completed the probationary period.
- In 2011 Applicant pled no contest to misdemeanor possession of paraphernalia, in Florida Circuit Court. The Applicant was sentenced to six months probation, fined \$276 and was sentenced to perform three days on a work crew with the Alachua County Court Services.

The internship application came before the Board at its June 23, 2011 Board meeting, and after significant conversation with the Applicant at the meeting, the Board approved the internship application, subject to a probation that included random drug testing. Applicant successfully completed the drug tests and the internship.

By applications dated November 30, 2012, Applicant applied for a temporary and a permanent Funeral Director and Embalmer license. The applications were deficient when submitted, because Mr. Cunningham had passed the Science section, but not the Arts section, of the National Conference Exam. Passing the Conference exam is not a requirement for an internship license, but it is a requirement for the funeral director & embalmer license.

Pursuant to Division's conversation with Applicant, the November 30, 2012 applications were set aside, so that Applicant could retake the Arts section of the Conference exam. Applicant re-took the Arts section of the exam on January 9, 2013, and on April 9, 2013, but failed on both occasions. Applicant retook the exam on August 1, 2014, and passed.

Applicant subsequently contacted the Division and asked that his November 30, 2012 application be acted on. Accordingly, the November 30, 2012 application for funeral director & embalmer license is now before the Board. If the Board approves same, Applicant will be authorized to take the Florida Law and Rules Exam, and upon passing same, will be issued his funeral director & embalmer license. After reviewing the material, the Division believes that this Applicant would not pose a risk to members of the public, if granted the internship. The Division recommends approval without conditions.

Mr. Shropshire – Sir it is our practice to swear in persons who wish to address the Board. Would you raise your right hand? Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

Mr. Courtney Cunningham – I do.

Mr. Shropshire – Please state your full name.

Mr. Cunningham – Courtney G Cunningham.

Mr. Shropshire – Thank you sir.

Chair – Would you like to address the Board?

Mr. Cunningham – I would just like to tell the Board that I made a simple mistake a couple of years ago. I have learned from that mistake, I have matured a lot and would like to continue in the death care industry. I have not been in trouble since that happened five (5) years ago. I learned from my mistake and would like to proceed in my profession.

Chair – What have you been doing in the Industry the last five (5) years?

Mr. Cunningham – I have been funeral attending, just completed my internship, I have a good rapport with the families I deal with, I have not received any complaints from any of the families. I made a simple mistake, off the clock, being around the wrong company. I have changed my company and learned from my mistake. Obviously it is still haunting me although it has been five (5) years. I am just ready to put it behind me and proceed.

Chair – Have you been meeting with families?

Mr. Cunningham – Yes sir.

Chair – Embalming?

Mr. Cunningham – No sir.

Chair – Is that part of your concurrent internship?

Mr. Cunningham – Yes sir.

Mr. Shropshire – Mr. Chairman may I clarify? I think I indicated in my remarks that this was an application for internship but it is an application to take the Law and Rules Exam, which would be his final step. If you approve his application then he would take the exam and when he passes it he would be a funeral director and embalmer.

Chair – Thank you.

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

7. Application(s) for Internship

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

(1) Funeral Director and Embalmer

- (a) Currier, Lisa E (F081939)**
- (b) Guevara, Genesis (F081962)**
- (c) Norman, Kendall H (F081815)**

Mr. Shropshire – The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

B. Recommended for Denial (Criminal History)

(1) Funeral Director and Embalmer

- (a) Jones, Vancinia L**

Mr. Shropshire – This Applicant appears before the Board at this meeting seeking to have her concurrent internship renewed for an additional year.

Applicant's original application for concurrent internship license came before this Board at its February 9, 2012 Board meeting. The Division recommended denial because of a criminal record.

- In 1998 Applicant pled guilty to felony Possession of Cocaine, and Driving under the Influence, in Circuit Court, Broward County, FL. Ms. Jones was placed on two years' probation, and fined of \$250. Ms. Jones did not disclose this 1998 criminal proceeding in her application for this license. The Division learned about this portion of her criminal record from other sources.
- On September 6, 2011 Applicant was found guilty of misdemeanor refusal to submit a breathalyzer (BAL) test, in violation of s. 316.1939(1), FS, in County Court, Miami-Dade County, case number 0092STJ. Applicant was ordered to pay \$500 fine and \$383 in surcharges. Applicant was also placed on a 12 months probation that began on September 6, 2011 which she is currently still serving. Applicant did disclose this matter in her application.
- On September 6, 2011, Applicant was found guilty of misdemeanor violation of s. 316.193(3), FS, (causing damage to property while DUI), Applicant was ordered to pay \$1000 fine, \$647.50 surcharges and \$50 Public Defender costs. Applicant did disclose this matter in her application.

The Applicant appeared before the Board at the February 9, 2012 Board meeting and answered questions by the Board. The Board ultimately approved the application. The materials presented to the Board at the February 9, 2012 Board meeting, and the minutes of the meeting relating to this matter were provided in the Board packet.

The Division believes the following statutes and rules are applicable.

An Applicant for an **embalmer** license by examination, must serve a one year embalmer internship; see 497.368(2)(b). Section 497.370 controls embalmer internship; that statute says nothing about extending or renewing an embalmer internship.

An Applicant for **funeral director** license must also serve a one year internship, see 497.373(2)(c). Funeral director internships are controlled by s. 497.375, and subsection (4) of that statute expressly provides that a funeral director internship may be extended for an additional 12 months "*due to illness, personal injury, or other substantial hardship beyond her or his reasonable control....*"

Where an Applicant is seeking a funeral director & embalmer combination license, s. 497.377 allows the required internships to be served concurrently, pursuant to rules authorized by the Board, see 497.377:

497.377 Concurrent internships.— The internship requirement for embalmers and funeral directors may be served concurrently pursuant to rules adopted by the licensing authority.

Rule 69K-18.003(3)(c) & (d), relating to renewing a concurrent internship, provides as follows (emphasis added):

69K-18.003 Concurrent Internships.

- (1) This rule implements Section 497.377, F.S.
- (2) GENERAL.
 - (a) An Applicant for concurrent internship must meet all the separate requirements for the funeral director internship, and the embalmer internship. An Applicant for concurrent internship shall complete and file with the Division form DFS-N1-1732, "Application for Concurrent Intern License," which is incorporated by reference in Rule 69K-1.001, F.A.C. The application shall be accompanied by payment of the application fee specified on the form. The application fee is nonrefundable.
- (3) LENGTH OF INTERNSHIP.
 - (a) One year of full-time internship training served concurrently, consisting of both funeral director and embalming activities shall be required to satisfy the requirement of a concurrent internship under Section 497.377, F.S. "Full-time" shall be deemed and construed to mean training comprising at least 40 hours each week for at least fifty weeks.
 - (b) A concurrent internship shall not begin prior to approval of the internship application by the Board. A concurrent internship shall be deemed to begin on the day after the Board approves the internship application; provided, an intern may on the internship application request an internship start date of up to 21 days after Board approval of the internship application, and such request shall be granted.
 - (c) The funeral director portion of a concurrent internship shall terminate at the end of the 365th day after the internship began, **unless renewed by the Board pursuant to Section 497.375(4), F.S. A funeral director internship may not be extended, but may be renewed subject to the requirements of Sections 497.375(4)(b) and (c), F.S.**
 - (d) **The embalmer portion of the concurrent internship may not be renewed pursuant to Section 497.375(4)(b), F.S. The embalmer portion of a concurrent internship shall terminate 365 days after issuance of the concurrent internship license, unless extended due to personal injury or illness of the intern as specified in Rule 69K-18.001, F.S.**

- (6) No person shall be issued more than one concurrent internship license in their lifetime.

The bolded portions above, applicable to concurrent internships, are consistent with the rules applicable to persons taking only an embalmer internship, see 69K-18.001(5); and regarding persons taking only a funeral director internship, see rule 69K-18.002(7).

Note that pursuant to 69K-18.003(2)(a), the concurrent internship must comply with the separate requirements for a funeral director internship, and an embalmer internship. Thus the statutes and rules pertaining to funeral director internships, and embalmer internships, are pertinent.

The rules regarding renewing a funeral director internship, are more liberal than the rules regarding extending an embalmer internship. It is the Division's understanding that this difference in the rules is intentional by the Board, and relates to an understanding by the Board that there is significance in the legislature's failure to expressly authorize extending or renewing an embalmer internship in the embalmer internship statute, while the legislature expressly allowed extension of a funeral director internship, in the funeral director internship statute. Note, among other things, that persons interested in embalming may perform an embalmer apprenticeship of up to five years (see 497.371), while there is no equivalent provision for persons interested in funeral directing.

A person may only be issued one concurrent internship license, and only one funeral director internship license, in their lifetime (See Rule 69K-18.003(6); 69K-18.002(10)).

The Division believes the Applicant herein must be denied for the following reasons:

- 1) The embalmer portion of the concurrent internship may not be renewed, and may be extended only upon a showing of illness or personal injury. See 69K-18.003(3)(d). The Applicant herein does not assert illness or personal injury, and accordingly, the embalmer portion of the internship may not be extended.
- 2) The request to extend the funeral director portion of the internship must be made BEFORE the original internship period ends. See rule 69K-18.003(3)(c), referring to s. 497.375(4); see 497.375(4)(c), "*if the funeral director intern demonstrates her or his failure to complete the internship before expiration of the license....*" And see rule 69K-18.002(7)(c): "*The application to renew internship must be filed before the initial internship period ends. No renewal shall be granted if the application to renew is not filed before the end of the initial internship period.*" The Applicant's initial concurrent internship commenced on **February 20, 2012**, and therefore the first concurrent internship ended on **February 20, 2013**, unless a request to renew same was received prior to that date. This request to renew that internship was not made until December 2014, and was not timely, and therefore must be denied.

The Division is recommending DENIAL of the request.

Mr. Shropshire – Ma'am, would you raise your right hand please? Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

Ms. Vancinia Jones – I do.

Mr. Shropshire – Please state again your full name.

Ms. Jones – Vancinia Levone Jones.

Mr. Shropshire – Thank you ma'am.

Chair – Do you want to address the Board?

Ms. Jones – Yes sir, I would like to address the Board. My name is Vancinia Levone Jones. I was here before to get an internship. I completed nine (9) months at McWhite's Funeral Home, in which I endured hardship, harassment and I also filed a case with EEOC with Natasha Nelson. She has also refilled for retaliation because there is evidence of retaliation. I filed a case with her a year ago. I also sent the Board a letter stating what I was going through at the funeral home. It was submitted to Jasmin Richardson. I noticed that in a year I had not heard anything from the Board and I emailed the Director of the Board. In turn, the Assistant Director, Ms. Ellen Simon, gave me a call the same day and told me that they did not receive that information as a complaint. It was placed in my monthly reporting. Jasmin had placed it in the monthly reporting instead of putting it with a complaint. So she told me that she did have the complaint in front of her. She told me to pull up the email and file a complaint and submit the letter again. I was contacted by a young lady a year after the effect on Facebook. She stated that she was Mr. McWhite's niece. She wanted to get my EEOC investigator's name and number. She wanted to also file a case against him for the same matter. There is another young lady that has also submitted a letter to you

all, the Board Members. She asked for Ms. Ellen Simon's email and I gave it to her. Her name is Ashley Monroe. I submitted the information from EEOC. I submitted the letter from Ashley Monroe. I also have a funeral home in Delray, Strong and Sons Funeral Home, that will allow me to complete and finish my internship. I also submitted a letter from the Director. I drove here by myself from Pompano Beach FL, 448 miles. This is not just a job to me. This is a passion that I have. I have no family in the funeral business and I am alone. My uncle, Bishop Howard McMillan, is here with me. He is a resident of Tallahassee FL. My cousin Rosa Tucker had to take her husband to the VA's office and was not able to be here today but she is letting me lodge in her home. I am asking the Board to please, please give me another chance to complete the internship. I endured hardship at McWhite's. At Strong and Sons, the door is open for me. They are willing to let me complete the internship. Please consider and let me do another year. I promise I will not let you down. If you look at the reviews you can see what I went through at that place. I have letters that are backing me up. I have evidence. It is not hearsay. I ask you to please consider and allow me to complete my internship. I drove this long ways because I have a passion for this. It is not just a job to me. I really have a passion. I am straight out of Miami-Dade College. All I wanted to do was just do a career that I have a passion for. I tried to complete my internship. I did the nine (9) months but due to the circumstances I could not. I endured harassment and all. I filed cases. I have even informed Jasmin Richardson with a letter a year ago and nothing was said. So I even emailed the Director a year after and that is when the young lady came to me and asked me for the information so that she could go through the same channels that I went through because he has to be stopped. He knows that we are vulnerable. He knows that we need this internship to get our license and I had to put up with this. Now I have to drive all the way back home, 448 more miles back to Pompano. Please do not let me go without having this internship, please! Strong and Sons is waiting on me. They are waiting to allow me to complete the internship. Please! I am asking you to please take this into consideration. Thank you.

Chair – Thank you ma'am. Are there any questions from the Board? Statutorily, for additional internships and by rule, what are we statutorily allowed to do as a Board?

Mr. Barnhart – If it is a statute that definitely prohibits her from completing it that would be one thing, but if it is a rule that would be violated in this particular case if she were allowed to complete it, she would have the option to file a petition for variance of waiver. That is not before the Board right now but that might be an option for her to pursue if the Board believes that we would be breaking a rule by allowing her to complete her internship at this time. If you would like, I could just give you some groundwork about what that would involve at a later date. If she wanted to pursue that then she would have to file a Petition for Variance or Waiver of a Rule and then that would have to be advertised in the Florida Administrative Register for about two (2) weeks before you could hear it. That would be the only option that I know of if the Board believes that the rules require her to be denied, for example. I could read that standard to you although it is not before you now.

Chair – No, I do not that we would need that right now.

Mr. Barnhart – That might be an avenue that she could pursue though if the Board did not believe that she should be entitled to complete her internship under the present circumstances.

Chair – Do you understand the dilemma that the Board has that by statute and by rule it appears that we are not able to grant you an additional internship? Not by decision of the Board but by rule and statute.

Ms. Jones – I understand the rule and statute.

Chair – If any Board members that want to comment on this and figure out a way that we can fulfill whatever the Board's pleasure may be, please do.

Ms. Oliver – I did have a question, and maybe it is for Mr. Shropshire, about an embalmer apprenticeship or other options that are available outside of an internship. I am not exactly familiar with all of the options out there.

Mr. Shropshire – I do not think the embalmer apprenticeship is relevant to this case because she wants to become a funeral director and doing an embalmer apprenticeship will not "check that box" she needs checked to get the funeral director and embalmer's license.

Chair – Maybe Ms. Oliver needs to understand what the difference is between an apprenticeship and an internship. Would that help?

Ms. Oliver – Sure, that would be helpful.

Mr. Shropshire – The apprenticeship is strictly on the embalmer side of the matter and cannot involve any funeral director activities.

Ms. Oliver – So it has to be separate?

Mr. Shropshire – Yes it has to be separate.

Chair – You could be an embalmer apprentice before you take any schooling, any exams or anything. You could go directly into embalmer apprenticeship supervised by a training agency and a licensed embalmer. For the internship, you must have completed the educational portion.

Ms. Oliver – Thank you.

Mr. Hall – If I understand from counsel, there is an avenue that she can approach. Are you able to tell us what the cost and timeframe would be?

Chair – I cut Mr. Barnhart short on that because I wanted to make sure that the understanding of why we are going there is because there is nothing that we can do statutorily and by rule.

Mr. Barnhart – If she is prohibited, by the rule from doing what she wants to do, she could file a Petition for Variance or Waiver of that particular rule(s) that might prevent her from doing what she wants to do. She could file this petition with the Board and it would have to be advertised for approximately two (2) – three (3) weeks and then it would have to be noticed for another meeting, in person or teleconference. So then she would have the ability to argue that this is a substantial hardship to her within the meaning of Chapter 120, F.S. and within the meaning of your rules. I do not believe substantial hardship is defined in your rules but from what I read I feel there is a possibility that this could rise to that level because, for me, if the things she has said in her letter and the other person's letter are true then it might rise to the level of unfairness and there may be a way for her to be able to continue if the Board believed that the Petition for Variance or Waiver was well founded.

Mr. Knopke – Has your situation with the EEOC been resolved? From what I read in here, if I read it correctly, they did not find any reason to pursue this any further.

Ms. Jones – They did not find any witnesses but the young lady came a year later and she is also applying with that same investigator but my case was reopened, as far as retaliation because I do have witnesses stating that he has told other funeral homes to not hire me, within that three (3) month time period that I did have to find a funeral home to allow me to complete it. That is why we are going back in and now I have a retaliation case open against him through EEOC with Ms. Natasha Nelson.

Mr. Knopke – So that case is back open?

Ms. Jones – Yes sir it is back open.

Chair – Ms. Jones, on your original application you did not disclose a criminal history and on the most recent application you did not disclose a criminal history. So perhaps on future applications coming before the Board you may want to affirmatively disclose that.

Ms. Jones – I did mention to Jasmin Richardson and she said that you all had that information so I did not have to submit it on the application. She said the criminal history was already submitted so I did not have to submit that information again.

Chair – On the questions that were asked you checked “no” for the three (3) questions regarding criminal history. You may want to disclose it when it comes before us so that it is disclosed and not have to be found out in other ways.

Ms. Jones – Yes sir.

Mr. Helm – Mr. Chairman, going back to what you referred to, I read the rules and statute several times and I do not see where we have a choice. Now she can do what Mr. Barnhart mentioned later if she wants to but I am going to stick with the Division and recommend denial.

Mr. Shropshire – Mr. Barnhart, would it be possible or advisable to query the Applicant as to whether she would like to perhaps table her application or ask the Board to table it?

Mr. Barnhart – We could ask her if she would like to continue or table it. If she did I think the Board would want to get her to waive the deemer statute, which would probably apply here, and allow her the opportunity to file such a petition and keep her application open while she did it.

Mr. Shropshire – It seems like we are in a dilemma here. I do not want to put her to useless work if the Board is to be inclined to deny her anyways but if there was substantial evidence that the Board is inclined to at least hear it then perhaps it would be advisable to ask the Board to table the application and waive the so call deemer and then file this petition to waive the application of the rule.

Mr. Barnhart – If the petition was properly filed, it would become the Board’s business at a later meeting so the Board would have to consider it. It is probably too early to see what the Board may do because we do not have the petition in front of us and we have not had enough time to really study everything she may put in her petition but that may be a way for her to ultimately get to where she wants to go. It sounds to me like if you asked for a vote this morning that the Board would most likely deny the application and you probably do not want to do that at this point but that is totally up to you.

Ms. Jones – No, I do not want to do that.

Mr. Barnhart – Would you like to get a continuance and table this to allow you time to have some time to file a Petition for Variance or Waiver?

Ms. Jones – Would I have guidance on how to go about doing that?

Mr. Barnhart – You would not get it from anybody here because we cannot advise you. You would only be able to get it through a private attorney, friends or someone that could advise you but it could not be anybody from this group right here.

Ms. Jones – So would I be petitioning to get my internship license through the Board? Can you make it clearer to me, please?

Mr. Barnhart – You would be petitioning the Board to waive or not apply the provisions of these rules that the Board feels they would have to enforce if they were to take a vote this morning. I can help you just as far as telling you where the rules and statute are and what you have to do. I can give you those guidelines but I cannot advise you.

Ms. Jones – Thank you.

Chair – Would you care to explain the deemer?

Mr. Barnhart – The Board generally would have to rule upon your application within ninety (90) days from the point that the application is deemed to be complete, so just to protect the Board and the Division we would like you to waive the deemer which means you are allowing the Board to go beyond the ninety (90) days to rule upon your application so they would be able to continue this matter as well. Do you understand that?

Ms. Jones – Yes most definitely. I was wondering if we could do maybe a conference call.

Mr. Barnhart – Well that would be up to Mr. Shropshire and the Board staff as to whether this would come up in an in person meeting or whether we would need to schedule a teleconference meeting or put it on one of the teleconference meetings which are scheduled in the future.

Ms. Jones – Okay. That gives me hope. Thank you.

Mr. Shropshire – So do you waive the application of the deemer provision?

Ms. Jones – Yes I do.

Mr. Shropshire – And you want to have your application today tabled and not heard today?

Ms. Jones – Yes.

MOTION: Mr. Mueller moved to table the application. Mr. Jones seconded the motion, which passed unanimously.

8. Application(s) for Embalmer Apprenticeship

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

- (1) *Burton Jr, Kenneth L (F071871)*
- (2) *Lambert, Lindsay (F082262)*
- (3) *Thompson, Tracie L (F071493)*
- (4) *Weimer, Daniel V (F081816)*

Mr. Shropshire – The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

B. Recommended for Approval without Conditions (Criminal History)

- (1) *Witherspoon, Charles*

Mr. Shropshire – Unless Mr. Witherspoon is here today and wishes to address the Board and proceed, the Division is withdrawing this application for further consideration and discussion with the Board’s legal advisor.

Chair – Is Mr. Witherspoon here? Is there anyone representing Mr. Witherspoon present? There was a negative response.

9. Application(s) for Registration as a Training Agency

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

- (1) *Q L Douglas Funeral Home LLC (F065078) (Jacksonville)*
- (2) *Van Orsdell Kendall Dr Funeral Chapel (F040221) (Miami)*

Mr. Shropshire – The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

10. Notification(s) of Change in Location

A. Informational Item – Addendum G

- (1) *Gallaher Services Inc d/b/a Mortuary Services of Florida (F071575) (Fort Myers)*
- (2) *SCI Funeral Services of Florida Inc d/b/a National Cremation & Burial Society (F058288) (Jacksonville)*

Mr. Shropshire – This item is informational only and does not require Board action.

11. Consumer Protection Trust Fund Claims

A. Recommended for Approval without Conditions – Addendum H

Mr. Shropshire – The Division recommends approval of the claim(s) for the amount indicated on the Addendum entitled “Amount Recommended.”

Mr. Mueller – Since our last meeting I asked staff to start including the last page of the packet to reflect the current balance in the Consumer Protection Trust Fund, how many claims were submitted, how much was paid in, how much was paid out, etc. Thanks to the Division for including that.

Chair – That is good information.

MOTION: Mr. Knopke moved to approve the claim(s) for the amount indicated on the Addendum entitled “Amount Recommended.” Ms. Anderson seconded the motion, which passed unanimously.

12. Application(s) for Cinerator Facility
A. Recommended for Approval with Conditions
(1) Cedar Bay Funeral Home LLC (Jacksonville)

Mr. Shropshire – An application for a Funeral Establishment was received on December 1, 2015. The application was incomplete when submitted. All deficient items were returned on January 14, 2015. The Funeral Director in Charge will be Deborah Cartwright-Clough (F043653). The fingerprint cards for all principals were returned with no criminal history. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Mueller moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division Staff. Ms. Oliver seconded the motion, which passed unanimously.

13. Application(s) for Funeral Establishment
A. Recommended for Approval with Conditions
(1) Creal Funeral Home and Cremation Inc (St Petersburg)

Mr. Shropshire – An application for a Funeral Establishment was submitted on October 14, 2014. The application was incomplete when submitted. All deficient items were returned on December 15, 2014. The Funeral Director in Charge will be Ronald Derr (F043603). This funeral establishment is not the qualifying entity for a preneed Licensee. The current owner, Mr Creal, passed away on September 10, 2014. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Helm moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division Staff. Mr. Jones seconded the motion, which passed unanimously.

Chair – On a change of ownership, if the previous owner dies and someone makes an application to the Board that they are the new owner and they are granted the license as the new owner, how do we assume that they purchased it or were bequeathed it? What do we do to check that other than they have an application and now they have license? And here comes Ms. Richardson to the podium. Will you please identify yourself for the record?

Ms. Jasmin Richardson – I am Jasmin Richardson with the Division. For this particular Licensee, well for any Licensee, we do request a copy of the sale agreement. We were submitted a copy of the purchase agreement from the attorney.

Chair – I did not see anything on this particular one but from time we have had some come before us that says their natural order of descendent and they are applying for licensure.

Ms. Richardson – We normally do. I do not ever recall not asking for it but we normally have it on file.

(2) E S George Funeral Enterprise Inc (Miramar)

Mr. Shropshire – An application for a Funeral Establishment was received on December 1, 2015. The application was incomplete when submitted. All deficient items were returned on January 14, 2015. The Funeral Director in Charge will be Deborah Cartwright-Clough (F043653). The fingerprint cards for all principals were returned with no criminal history. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Ms. Oliver moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division Staff. Mr. Clark seconded the motion, which passed unanimously.

(3) *Memories Funeral Home LLC (Miami)*

Mr. Shropshire – An application for a Funeral Establishment was received on September 23, 2014. The application was incomplete when submitted. All deficient items were returned on December 17, 2014. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Walter Wilson (F043712). The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

Mr. Helm – On the application, the refrigeration and cremation does not match up with the letters to contract service provided. The application says Evergreen but the letters are from Sky Light and Florida Funeral Homes.

Chair – Are you requesting that Staff check this out and it be a condition of approval?

Mr. Helm – That would be fine.

MOTION: Mr. Helm moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division Staff and confirmation of the refrigeration/cremation agreements. Ms. Anderson seconded the motion, which passed unanimously.

14. Application(s) for Monument Establishment Sales Agent
A. *Informational Item (Licenses Issued without Conditions) – Addendum I*

Mr. Shropshire – The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

15. Application(s) for Preneed Main License
A. *Recommended for Approval with Conditions*
(1) *Westside Funeral Home, Inc. (Palmetto)*

Mr. Shropshire – The Department received the application on October 24, 2014 and deficiencies were noted on the application. All deficiencies were resolved as of December 30, 2014. There are two principals in this application: George Woodie, and his uncle, Richard Woodie. Applicant has advised the Division that Applicant will be present at the Feb. 2015 Board meeting, to answer questions in this matter.

In the application herein disclosure was made by Richard I. Woodie of a felony charge that occurred in 2007. As disclosed by Mr. Woodie, he was charged with driving while his Driver’s License was revoked as a habitual offender, to which he pled guilty and was given 18 months probation. Upon completion of 9 months of the probation, the court withheld adjudication, and Mr. Woodie paid all mandatory court costs and fines due at the time. No further action was taken.

Additionally, Applicant answered ‘Yes’ to Section 6, question (a) “Have you ever had any death care industry license revoked, suspended, fined, reprimanded, or otherwise disciplined by any regulatory authority in Florida or any other state or jurisdiction? Please see below referenced notations regarding this disclosure.

- In 1996, a Final Order was filed against a funeral establishment of which Richard Woodie was a 50% owner. This funeral establishment was Westside Funeral Home (License # F040891) located at 704 11th St West, Palmetto, FL 34221. This is a different location as compared to the funeral establishment that would be the qualifying entity of this preneed main Licensee. The funeral establishment was ordered to pay an administrative fine of \$900, was placed on probation for 2 years, and all FDIC's of the establishment were required to complete and pass the Florida Laws and Rules Examination.
 - Establishment license and FDIC license not conspicuously displayed
 - Cracks in embalming room floor (sanitary violation)
 - Licensee could not produce a copy of prior inspection report, nor inspection rules and criteria
- In December 2009, a citation was issued against the current Licensee, Westside Funeral Home, Inc. (F040644), located at 204 7th St West, Palmetto, FL 34221 in the amount of \$600. The fine was paid as of January 2010. The Citation violations were:
 - FE license expired December 1, 2008, and was not renewed until January 15, 2009.
 - The FDIC's license expired August 31, 2009 and was not renewed until 9-14-09.
 - Prep room exhaust fan inadequate to change air twelve (12) times per hour.
 - FDIC license not correctly displayed at public entrance.
 - Late filed monthly bodies handled reports.

Applicant obtained its qualifying funeral establishment license (F040644) in 2004, and if approved, Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement.

The Applicant's financial statements as of December 31, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	276,908

The establishment is recommended for approval subject to the condition of two (2) years probation.

Mr. Helm – Just one (1) of the principles has a criminal history, correct?

Mr. Shropshire – Yes, I believe that is correct.

Chair – Is there a representative here of Westside Funeral Home?

Mr. Shropshire – Sir, it is the Board's practice to swear in any witnesses who will address the Board. Would you raise your right hand sir? Do you solemnly swear the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

Mr. George Woodie – I do.

Mr. Shropshire – Please state your full name.

Mr. Woodie – George Woodie.

Mr. Shropshire – Thank you sir.

Chair – Mr. Woodie would you like to address the Board or are you just here to answer questions?

Mr. Woodie – I am here to answer questions if need be.

Mr. Helm – The only reason I said what I said is I knew there was no criminal history on this man so that was the reason I said that.

Mr. Shropshire – Correct, I believe that is correct. Yes sir.

Mr. Knopke – Mr. Woodie I am looking in the Board packet where your financial statement on your balance sheet, two (2) of the three (3) bank accounts of December 31, 2013, because that is the most recent, are both negative. Is that just by the scope of accident or they were overdrawn?

Mr. Woodie – I was not aware of that. Was it by the end of the year 2013?

Mr. Shropshire – Mr. Woodie would you like to look at the document?

Mr. Woodie – Yes.

Mr. Knopke – I am looking at the “Cash in Bank – Fifth Third Bank” (-\$37.31) and “Cash in Bank – Fifth Third Bank Checking” (-\$1005.85). The savings account has money, \$35k so I am not doubting but when it popped up I thought if we got that issue how are we going to keep our preneed funds right.

Mr. Woodie – I just think those were the matter of a timing issue. Our assets have always been pretty solid. We have not had any problems of bounced checks or anything of that nature.

Mr. Bill Williams (FSI) – It is really not usual that at year end fiscal accounting sometimes with them moving money back and forth between checking and savings accounts to have funds in transit. For this to show up it has happened with companies that I have operated before.

Mr. Knopke – I have concerns about the Applicant and will probably vote for it with the condition but he does a regular stream of skirmishes by either not renewing license, not doing things, having issues in his prep room. They concern me. They are not preneed related but it may show a pattern. That is all. Thank you.

Chair – Do you want to comment in any way more specifically to this application?

Mr. Woodie – We submitted this application because there is a need for us to do preneed. We have clientele that wants to do it and we want to be able to offer it and assure that the next generation of our family is secure. As far as the violations go, I think the last time we had one was in 2009. It had something to do with exhaust and when the inspector did come back through everything was confirmed. The exhaust fan was actually working so well that we put a piece of paper down and it suctioned it. When he came back he did not think it worked again but it always worked.

Chair – Have you had a preneed license before?

Mr. Woodie – I think we did have a COA at one time way back but we have not had one in quite some time. It was called a Certificate of Authority at that time.

Chair – There is a lot of detail in having a Certificate of Authority and selling preneed.

MOTION: Mr. Clark moved to approve the application subject to the condition of two (2) years probation. Mr. Mueller seconded the motion, which passed unanimously.

16. Application(s) for Preneed Branch License
A. Recommended for Approval without Conditions – Addendum J

Mr. Shropshire – The Division recommends approval of the application(s).

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

17. Contract(s) or Other Related Form(s)
A. Trust Transfer(s)

(1) Recommended for Approval with Conditions
(a) Heritage Funeral Services, Inc. d/b/a Whitehurst-Powell Funeral Home (Crestview) (F019188)

Mr. Shropshire – Heritage Funeral Services, Inc. d/b/a Whitehurst-Powell Funeral Home (Whitehurst-Powell) seeks approval of the below proposed trust asset transfer, and appointment of successor trustee as more specifically set forth in Attorney's letter dated January 8, 2015.

Item 1) Proposed Trust Transfers

Whitehurst-Powell seeks approval of the transfer of its existing Preened Funeral Services and Merchandise Trust Agreement (dated December 29, 1995), 70/30 trust, from SunTrust Bank, N.A. to the FSI 1993 Trust Agreement under Sabal Trust Company (Sabal), as administered by Funeral Services Inc. (FSI). If approved, wherein Sabal is or will be trustee, all as more specifically set out in Attorney's letter dated January 8, 2015.

Item 2) Approval of Successor Trustee

Whitehurst-Powell seeks approval of appointment of Sabal as successor trustee for its existing trust, ss. 639.149 Master Preened Funeral Service Trust Agreement, 90/10 trust as identified in the attached letter from Attorney dated January 8, 2015.

Division Recommendation:

Subject to the conditions set forth below, the FCCS Division recommends:

- A) Approval of the proposed trust transfer as identified in Item 1 above; and
- B) Approval of Sabal as successor trustee as identified in Item 2 above.

Conditions recommended by FCCS Division:

- 1) That the representations of Whitehurst-Powell, as set forth in Attorney's letter dated January 8, 2015, be deemed material to the Board's decisions herein.
- 2) That within 90 days of this Board meeting Sabal provide the FCCS Division (ATTN: LaShonda Morris), the effective date of the transfer and certifications, stated as following:
 - a) That Sabal provides a letter signed and dated by one of its officers, certifying that it meets one or more of the applicable criteria in s. 497.266(1), and s. 497.458(1)(b), to act as trustee of the trusts to be transferred to Sabal pursuant to Attorney's letter dated January 8, 2015.
 - b) A letter from Sabal, signed and dated by one of its officers, stating:
 - That Sabal provides a certificate stating the dollar amount of trust assets being transferred as identified under Attachment 1, as referenced in Attorney's attached letter dated January 8, 2015.
 - That Sabal provides acknowledgement of receipt of the amount of trust assets being transferred as specified under the former trust, as identified under Attachment 1, as referenced in Attorney's attached letter dated January 8, 2015.
- 3) That the Board's executive director, for good cause shown, may extend the compliance time frame for the above specified conditions, an additional 90 days.

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

18. Executive Director's Report

- A. Extension(s) Granted – NorthStar Funeral Services of Florida, LLC/NorthStar Cemetery Services of Florida, LLC (Informational)**

GARDNER, BIST, WIENER, BOWDEN,
BUSH, DEE, LAVIA & WRIGHT, P.A.
ATTORNEYS AT LAW
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*BOARD CERTIFIED REAL ESTATE ATTORNEY

January 9, 2015

Doug Shropshire, Director
Division of Funeral, Cemetery and Consumer Services
Doug.Shropshire@myfloridacfo.com

Re: NorthStar Funeral Services of Florida, LLC / NorthStar Cemetery Services of Florida, LLC

Dear Doug:

As you know, we represent NorthStar Funeral Services of Florida, LLC, and NorthStar Cemetery Services of Florida, LLC (NorthStar). On March 6, 2014, the Board approved the funeral establishment and cemetery license applications submitted by NorthStar, with the condition that the transactions close within 60 days (i.e., May 5, 2014). Subsequently, the Division granted extensions on the closing deadline. In early September, all save one of the transactions closed, and the licenses were issued. The exception was the cemetery known as "The Gardens."

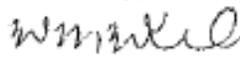
On November 4, 2014, we notified the Division that the closing date for "The Gardens" remained uncertain due to litigation. An extension of time to close until January 15, 2015 was requested and granted.

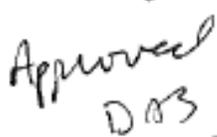
At present the court case has been decided, and our client informs us that the order should be finalized by mid-February. In this case, NorthStar expects to complete the transaction by late Spring 2015.

Therefore, we would like to request additional time to enable NorthStar to complete the transaction, until May 15, 2015, at which time we will revisit this matter, if necessary.

Please let us know if you require additional information.

Sincerely,


Wendy Russell Wiener


DOB 1-14-2015
Doug Shropshire, Director
Funeral & Cemetery Division
850-413-4096

B. Update re: Conference Exam Issue (Informational)



Contact: Dalene Paull
Executive Director, The International Conference of Funeral Service Examining Boards, Inc.
director@theconferenceonline.org
479-442-7076 Ext. 9

FOR IMMEDIATE RELEASE: December 12, 2014

The Conference Announces Settlement of AAMI Litigation and Return to Regular Testing Schedule for AAMI Students in May 2015

The International Conference of Funeral Service Examining Boards ("The Conference"), the American Academy McAllister Institute of Funeral Service, Inc. ("AAMI"), and Mary Margaret Dunn are pleased to announce the resolution of the litigation filed by the Conference in the Southern District of New York against AAMI and Ms. Dunn.

In its lawsuit, the Conference alleged copyright infringement and misappropriation of trade secrets related to the National Board Examination ("NBE") program, as well as tortious interference with test takers' confidentiality obligations to the Conference. AAMI has denied the allegations. The Parties have entered into a confidential settlement agreement resolving the litigation. AAMI has agreed to a permanent injunction prohibiting the activities alleged in the lawsuit and has instituted processes to promote the integrity of the NBE and the licensure process. This includes the creation of a Director of Academic Integrity position within the school, whose duties will include the preparation and implementation of an academic integrity program. AAMI looks forward to working with the Conference to better ensure the security of the NBE and to clarify the lines between educational curricula and preparation for entry-level licensure examinations.

The parties recognize and agree that the integrity of the examination and licensure process undertaken by Conference member boards is paramount to the public-protection mission of all parties involved. The Conference has committed considerable resources to replacing questions retired from the item bank and will continue to take all necessary measures to ensure the validity, reliability and defensibility of the NBE examination program.

The Conference is also pleased to announce that, as of May 2015, the standard continuous testing schedule for the administration of the NBE will be available to AAMI candidates.

Questions can be directed to the Executive Director of The Conference.

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Chair – Can the Board members remind me of the case that we had coming before us and what did we do?

Mr. Hall – It was in Orlando.

Mr. Clark – I think it was approved but it was not unanimous.

Mr. Shropshire – It was subject to a condition. Jasmin, do you remember what the condition was?

Mr. Jones – I think the condition was the accreditation from the school, if I remember correctly.

Mr. Shropshire – He had a period of time in which to either have the Conference approve his exam or that we would yank it.

Ms. Richardson – Well Lisa Coney just said that he has since withdrawn his application. I have not received information withdrawing his application from our system. However, his examination was not accredited. The National Conference did invalidate his scores and there was period in which he could not take it for five (5) years and he does have to pay some type of fine. So they did not validate his scores and there are other avenues he has to go through before he can reapply to take the examination again.

C. Background on CPTF Defunct Seller, Martha Solomon Memorial Funeral Home (Informational)

MEMORANDUM
Department of Financial Services
Division of Funeral, Cemetery, and Consumer Services

TO: Board Members (Board of Funeral, Cemetery, and Consumer Services)
 FROM: Douglas Shropshire, Division Director *DAS*
 DATE: 1-12-2015
 RE: CPTF Claims re Martha Solomon Memorial Funeral Home

Feb. 2015 Board meeting

Attached is a background summary regarding Martha Solomon Memorial Funeral Home, which is the source of several CPTF claims appearing on the CPTF claims list for this Board meeting. The preneed contracts in issue were sold by Martha Solomon Memorial Funeral Home in the period approximately 1998 - 2006.

D. Report: Payment of Disciplinary Fines and Costs (Informational)

Monthly Report of Fine and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 February 5, 2015 Board Meeting
 Date of Report: January 22, 2015

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC dba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$5,250 \$5,000 38,859.57	9/6/2012 12/7/2012 35 mo pymts	YES YES Status Pending	Licensee monthly restitution payments are current.
All Points Removal Service	Oct-14	130794-13	\$1,000	11/24/2014	No	The Legal Department issued a notice of intent for failure to make payments pursuant to the October Order.
Buy and Sell Cemetery	Dec-14	154941-14-FC	\$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50		See Note D	
Larry M. Saunders	Dec-14	154919-14	\$500	1/24/2015	Yes	
Chestnut Funeral Home	Dec-14	154927-14-FC	\$500	1/24/2015	Yes	
Reddick Funeral Home	Dec-14	151717-14-FC	\$250	11/24/2014	Yes	
Jay Monument & Vault a/k/a Jay Monument & Vault Inc.		153256-14-FC	\$5000 and 13 years of renewal fees		No	No license.
Melvin Jones		151723-14-FC	\$250	11/24/2014	Yes	
Ruskin Memorial Park Association	Dec-14	161244-14	\$1,000	2/24/2015	Yes	
Restlawn Cemetery, Inc.	Dec-14	160014-14-FC	\$500	1/23/2015	Yes	
Wilson-Eichelberger Mortuary	Dec-14	160017-14-FC	\$500	1/24/2015	Yes	

Richard Alford	Aug-14	Multiple cases	\$2,000	No definitive date required. License revoked	See Note D
Janorise Stone	Nov-14	144432-13-FC	\$1,500	12/25/2014	Yes
Sumner Granite & Bronze, Inc.	Aug-14	Multiple cases	\$2,000	No definitive date required. License revoked	See Note D
Larry Locke	Dec-14	139606-14-FC	\$5,000	January 31, 2015	See Note D
Cremation Services of Mid-Florida	Dec-14	139614-13-FC	\$5,000	January 31, 2015	See Note D
Rogers Funeral Home	Dec-14	150303-14-FC	\$3,000	January 23, 2015	See Note D
Delvis Rogers	Dec-14	150301-14-FC	\$3,500	January 23, 2015	See Note D
Melvin Jones	Oct-15	151723-14-FC	\$250	11/24/2014	Yes
Roderick Stevens	Nov-15	145032-13-FC	\$2,000	See Note EE	No. Expected by April 2015
<p>A. When payment in full becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment.</p> <p>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.</p> <p>C. The Order re this case is still in process, so no Due date is not yet established.</p> <p>D. Due date has not passed, as of the date of this report.</p> <p>E. As of the date of this report, monthly payments were current.</p>					

Mr. Hall – Were we able to have an update on the ones that came through since the mailing?

Ms. Ellen Simon – Do you have any specific ones in mind?

Mr. Hall – The ones for Locke and Cremation Services.

Ms. Simon – We received an indication that it has been paid.

Mr. Hall – Rogers?

Ms. Simon – We have not gotten confirmation of that.

19. Chairman's Report (Oral)

Chair – The next in person meeting will be held in Jacksonville at the Embassy Suites Jacksonville Baymeadows.

Mr. Hall – Ms. Simon has been assisting us in our area where we had a director that passed away unexpectedly. We have been talking back and forth and I think we kind of agreed that maybe an inspector might go into that facility and just check.

Chair – Can you clarify because you said a director passed?

Mr. Hall – A funeral director passed.

Chair – Was he the owner of an establishment?

Mr. Hall – Yes. It was just a store front and I made her aware of it when it happened. Of course the concern is the preneed contracts that are there and they are starting to call us and some of the people in the area about what to do with the preneed. There is not a Licensee there. My thought was should we have an inspector go in and see what because I did not know. The son had contacted us and he did not know what they were going to do. Should we try to secure those preneed contracts if they are going to close the establishment? Maybe you could shed some light on this.

Mr. John Rudolph – I represented Russell Funeral Home. I have been talking to Brian about that and he is going to sell it. I am going to assist him with selling it. He understands that they cannot do anything at this time. It is still going through the probate to where it will be given to the three (3) sons but it will be sold to a third party.

Mr. Hall – We have had some contact with him on some issues. Not saying that they were trying to secure additional business or anything, just trying to bring in receivables and that type of thing. Do they have a requirement now to cover their signage and stuff there or do you know?

Mr. Rudolph – They have been told by me, well Brian has been told by me that they cannot see any customers and if anyone calls they have to say they are not in business. I can tell them to put a cover over the sign to make sure.

Mr. Hall – I did not know what our requirements were for signage once someone passed away.

Ms. Simon – The inspector went out this morning and we need to look at the report afterwards.

Chair – Thank you Mr. Rudolph for that clarification.

Mr. Jones – The Department of Health also uses the Division's database to verify facilities and funeral directors licenses. Based on what you just said, my question is then do you get notice or is there a requirement if a funeral director dies that you get notice of that license and if you do how can I work with you to make sure that I get notice that I have a deceased funeral director so that I can go into my system and also delete a licensed individual and a user of the Department of Health's system? So that is of concern to me.

Ms. Simon – In terms of our database I believe that this license has already been cancelled as a result of the death. At least that individual license has.

Mr. Shropshire – But it is happenstance whether we learn of the death.

Chair – There is no requirement.

Mr. Jones – So there is no requirement for the funeral director or the family or someone to report that this individual is deceased and the license is no longer valid?

Ms. Simon – No.

Mr. Jones – I am just talking family. If I have got a license sitting there of an individual whether it is a family or whatever I got an establishment working, I have a funeral director who is now deceased, I do not want someone using that license and signing death certificates or "doing business as." I am just looking at from the Division's standpoint and the Department of Health where we are holding hands here, this is something that we want to discuss.

Ms. Simon – Hopefully we will continue to have conscientious Board members that will let us know if someone were to pass away.

Mr. Jones – I think we will have a good discussion.

Ms. Simon – Yes.

Mr. Shropshire – The reality is we usually do not find out until they do not renew.

Mr. Jones – And I get the death record but it does not tell me that it is a funeral director.

Chair – Had this not been an owner we might not even be discussing this.

Mr. Jones – But being it has come up, I want to look at some way to eliminate your risk and my risk as far as license and licensed individual working within the Department of Health, so we will have some discussions. Thank you very much.

Ms. Oliver – Mr. Chair I did want to see if at some point we want to have a discussion about where we as a Board want to do about deviation from settlement agreements. I think we should really consider what Mr. Shropshire said. I think it does and can leave some level of uncertainty and frustration with the Department if you enter into a settlement agreement and then they come before the Board and ask for a reduction when they have already agreed to a fine amount. I think that individuals we are applying discipline against, they have an option to accept findings of fact and to plead their case before the Board if they do not like the options or the settlement amounts that the Department is proposing. I just wondered what everyone else thought about that going forward.

Mr. Jones – I agree.

Chair – Typically the first time that the Board members see anything about the case a Settlement Stipulation has been done and the Board members have had no input into it at all. So any discomfort from the Board members would be along those lines that we had no input, but that was by choice by the two (2) parties also.

Mr. Hall – I would agree. I see Mr. Shropshire's point from the perspective of why do we want to go through the procedure of trying to negotiate it if it is up for grabs when it comes to the Board meeting. In the Board meeting, consistency is what I like to see and that is what I was trying to approach earlier on the other case but I have seen the fines go up as much as I have seen them come down too. So I do not know how we get that balance but I understand his side too.

Chair – Many times their representatives have had to reach out by phone and contact the principals to advise of a change in the stipulation and question whether they accept it. We would either come back at that same meeting or at a subsequent meeting to agree or disagree. Good point and well taken.

Mr. Helm – I do not want to get into a long discussion but I think what Ms. Oliver is asking is if there is a way they could agree to a stipulation without a fine.

Mr. Barnhart – I would not recommend that you enter into a stipulation without an agreement on the fine before you sign on the dotted line. You would not want to go forward with a stipulation if the Department, Division or the Board would expect a fine and there is no provision of it in the stipulation because you would not be able to impose a fine, unless you wanted to say a fine to be determined.

Mr. Helm – If you are the Respondent you want to get it settled so you do not have any choice but to sign whatever fine they decide.

Mr. Barnhart – Well they do have a choice. They can go into a formal or informal hearing. In a way it is not a stipulation unless you agree with all of the essential terms.

Ms. Wiener – That is an informal hearing if you agree to all the facts and you want to fight about the fine.

Mr. Clark – There are times where the cost to retain counsel to fight it is just not worth it for the Licensee so you just take the fine, but you may not agree with it.

Mr. Barnhart – If you come to the meeting with open terms in a stipulation and the other side thinks that the penalty determined by the Board is too high then you do not have a stipulation and you have waisted all that time. So I think that is another aspect of not agreeing to everything before you come in.

Mr. Hall – How much time does your reps put in on that to put that together before they come to the meeting would you say?

Mr. Shropshire – It is fairly substantial in most cases. I could see cases where we might, I do not think it has ever been done but I have thought of doing it, do a stipulation where we agree that the maximum fine that the Board could impose under the settlement would be x dollars and we might allow them to come in here and contest but we have never done that. On the

other hand I think it is great. It is what is objectionable when the party impeaches their own settlement, but if the Board on its own initiative looks at the facts and says well we think this is excessive and wants to go for something less and says it on the record, typically the Division has no problem because ultimately that is the Board's prerogative to make the decision about what the fine is. It is just the party coming forward and impeaching the settlement and catching us unaware. It this is not the case, I am not in the slightest suggesting that Lisa does that, but we are not prepared in this venue to disprove the things they say. They can spin any story they want and we are not in the position to disprove it.

Ms. Simon – Since Mr. Rivers is not here, I feel I have to say something on his behalf. I know that he spends time speaking with either defense counsel or the Licensee in making arrangements for the Settlement Agreement, which is agreed to by all parties. If it is not agreed to, as Ms. Wiener said, it could go to an informal hearing easily or a formal hearing at DOAH. There are definitely options. When it comes here on a Settlement Agreement it is because both parties have agreed to the terms of the Settlement Agreement and that it is in their best interest to enter into the Settlement Agreement.

Mr. Rudolph – I want to remind you that when I signed the Settlement Agreement with Collison, it was a \$1000 settlement and I told MaryK that I was going to come before the Board and argue that there was no violation and I do not believe there was a violation. I was told by counsel at that time that because my client signed it, it could not be changed. I think if you sign a Settlement Stipulation that is a negotiated thing that you have been put through and you are the one who signed it. I understand when the Board wants to raise the fine. That has happened to me before. I go to my client, talk to them, the Board raises the fine and we agree to it. But reducing the fine and I have seen it happen a number of times with the Board, I think the way the Division has looked at these things and the way the Division has negotiated them that there should not be any reduction of a fine if a party has agreed to it. If they feel that they should do something and I advise my clients of this, if you do not want to pay a fine go to hearing because you can get attorney's fees if you are right. In that Collison case I could have flown to New York, proven that their case was wrong and I could have come back. I file for attorney's fees on almost every case and that is what I am going to have to do because once we sign a Settlement Stipulation I cannot argue it. I understand that, my clients understand that, but the Division needs to also understand that I will be trying to get attorney's fees where there is a misreading of the law. So that is my two (2) cents.

Mr. Hall – Why would you say the sword should not cut both ways though? If you can raise it you should be able to reduce it.

Mr. Rudolph – Well for one, when you raise it, you are looking at it and you are saying it is more egregious. Then I have the opportunity to go to my client, talk to my client and say they have raised it by \$500 so do you want to still go forward; yes I do because I have quoted them a fee of \$20k to go to hearing. So that is a business decision and they can do it. But when you sign and agree to it I do not know that you can come in and argue that it should be less. That is just my thought.

Mr. Mueller – When I talked to staff about this issue in the past, I think I got an answer that the actual amount of time that our attorneys spend on the case has no bearing at all on determining the amount of the fine. Is that somewhat correct?

Mr. Shropshire – The fine is determined by the penalty rule primarily.

Mr. Mueller – That seems a little odd to me but I understand that it is statutory.

20. Office of Attorney General's Report (Oral)

None

21. Administrative Report

The Administrative Report was provided to the Board via the Agenda.

22. Disciplinary Report

The Disciplinary Report was provided to the Board via the Agenda.

23. **Upcoming Meeting(s)**
- A. *March 5th (Teleconference)*
 - B. *April 2nd (Embassy Suites Jacksonville Baymeadows)*
 - C. *April 30th (Teleconference)*
 - D. *June 4th (Teleconference)*
 - E. *June 25th (Tallahassee)*

24. **Adjournment**

The meeting was adjourned at 11:59 a.m.