

**MINUTES**  
**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES**  
**BOARD MEMBER TRAINING**  
**April 27, 2021 - 10:00 A.M.**

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

Mary Schwantes – Good morning, everybody. Thank you all for joining us today and welcome to today’s Board training session, for the Board of Funeral, Cemetery, and Consumer Services. So, we have four (4) newly appointed Board members, who I’ll introduce shortly, and then we’ll introduce all the Board members in a few minutes. First, however, because it’s a public meeting, let’s get some opening remarks out of the way. My name is Mary Schwantes. I am the Director of the Division of Funeral, Cemetery, and Consumer Services. Today is Tuesday, April 27, 2021. It is 10:00 AM Eastern Time. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. The sole purpose of the meeting today is to provide information and training on The Sunshine Law, etcetera, to the new Board members and to provide refresher training on these matters to our long-term Board members. No other matters will be presented before the Board this morning. This meeting is being held by videoconference. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to Board members and interested persons. Both the link and call in number is on the agenda that has been made available. The call in number and other information relating to the Board meeting has also been published on the Division’s website. Although Division staff are no longer telecommuting, the Division staff present for this meeting are in their individual offices in order to comply with social distancing requirements resulting from the ongoing pandemic. LaTonya Bryant is recording the meeting, and minutes will be prepared.

As this is a videoconference of the Board, there are some items I need to draw your attention to. For one, as a general rule, please do not utilize your video camera for the meeting, unless you are a Board member, Board counsel, a presenter at today’s training session, or an authorized Division employee. Since the only matter before the Board today involves Board training issues, there should not be a need for any persons other than Board members and the presenters to have their video camera or audio on. Additionally, we need everyone that is on the call, including Board members, to please put your phone or audio feed on mute if you are not speaking. The ambient noise coming from someone’s phone or audio, which is not muted, can cause severe disruption to the meeting. If you are not muted, you may be muted by the Division staff. As a result, please make sure to unmute your phone or audio feeds when you are preparing to speak. Also, if you’re using your computer or smartphone for your audio feed, please remember to speak directly into the microphone on your device. To do otherwise negatively impacts the recording of this meeting.

Having said all of that, and normally we have a lot more people on the call than we do today, but we would like to keep the meeting as informal as possible. So, each presenter will control the meeting during his or her presentation. Board members, if you have questions during the presentation, please raise your hand. Either the presenter or Department staff will be sure to identify you so that your question can be addressed. For the recording, please remember to identify yourself for the record each time you speak. This is especially important as we have some new voices on the Board, which our staff are not used to yet, and would not be able to easily identify when they’re preparing the minutes for this meeting. As a final reminder, Board meetings, including this training session, are public meetings under Florida law, and anything sent via chat is subject to a public records request. This feature should only be used for technological issues participants may be experiencing. For all inquiries in chat, please direct to me. I’ll be monitoring the chat feature during the presentations and, as necessary, will forward your inquiry to LaTonya or someone who can assist in the resolution of your problem. So, that’s the gist of opening remarks that you also will hear before the regular meetings of the Board.

So, before jumping into the subject matters that are listed on the agenda for today’s training session, I want to go ahead and introduce the Board members. I’m going to start with the new Board members, and then

introduce our long-term members. And I kept saying older members, and I will try not to do that to you guys. So, it's long-term members. Anyway, although most of you should be able to see the names of those attending in the video squares on your screens, please wave out when I call your name. Since this is recorded public meeting, and we have a lot to cover, you know, it's more difficult when you have virtual meetings like this of any kind, to really get to know each other pretty well in a short space of time, so we're not doing any icebreakers or anything like that, of course. But if you have something short you'd like to say, please go ahead. Otherwise, we'll just continue. So, Sanjena Clay? Ms. Clay fills one of our consumer positions. And, Ms. Clay, if you'll raise your hand and wave at people. I think that they've got speakers on. Ms. Clay, can you hear us? There we go. There may be a little bit...are you experiencing a delay in the video feed?

Ms. Sanjena Clay – No. It's a delay in my hand. I broke my wrist earlier.

Ms. Schwantes – Sorry to hear that, OK. Well, we're glad to have you with us. Thank you for joining. Chris Jensen? Mr. Jensen fills one of the funeral director positions and he is our only member from the Panhandle Area. So, Chris, if you want to say hi.

Mr. Christian Jensen – Good morning. Glad to be here.

Ms. Schwantes – Thank you, sir. Jay Lyons fills the monument establishment position. Rabbi Lyons?

Rabbi Jay Lyons – All right. Glad to be part of the Board. I think there was another member of the Board who was from Palm Beach County also. I saw it on the public announcements. So, whoever that is, we'll have to lobby together to have all in-person meetings in West Palm Beach.

Ms. Clay – Ok, that's me, I'm available for today if you'd like.

Rabbi Lyons – All right.

Ms. Schwantes – And we have John Williams. Mr. Williams fills the consumer CPA position, which has been vacant since 2017. So, we're very glad to have his experience on the Board at this time. Mr. Williams?

Mr. John Williams – Good morning, everybody. Looking forward to working with each and every one of you. Appreciate it.

Ms. Schwantes – Ok. Now, I go back and forth, and you're going to catch me. I do it all the time. I go back and forth between the formality of using your last names and first names. We have two (2) Mr. Williams now, so it's going to get confusing by just using the last names. But anyway, welcome to our new Board members. Now I want to introduce our long-term Board members and we'll start, of course, with our Board Chair, Jody Brandenburg. Mr. Brandenburg has served on the Board for over fifteen (15) years, and he is the leader of all of our regular Board meetings. So, he fills the position of the funeral director, who's associated with a cinerator. That's the only position we have like that on the Board. So, Mr. Brandenburg, did you want to say anything?

Mr. Jody Brandenburg, Chair – I wanted to say good morning to everyone and welcome aboard. Certainly, I look forward to working with you for the betterment of the profession, the industry, and of course the citizens of Florida. So, thank you for volunteering your time and energy, and presence to be with us. Thank you.

Ms. Schwantes – Thank you, sir. Our Vice Chair is Keenan Knopke. Mr. Knopke fills one of the funeral director positions and also serves on one (1) of the Board's Probable Cause Panels, Probable Cause Panel A. Right?

Mr. Keenan Knopke – That is correct. Good morning.

Ms. Schwantes – Good morning, sir. Speaking of Probable Cause Panels, Darrin Williams, our other consumer member, serves on Probable Cause Panel B. Mr. Williams, did you want to say something? Mr. Darrin Williams? That's going to get confusing.

Mr. Darrin Williams – Good morning, everyone. Welcome new members. Glad to see everyone.

Ms. Schwantes – Good morning. Lew Hall fills one of the cemetery positions. I don't believe he's on the call. He may join us later. Andrew Clark fills the other cemetery position. I want to congratulate Mr. Clark on his reappointment to the Board. Mr. Clark, did you want to say anything?

Mr. Andrew Clark – Thank you, Mary, and good morning. I look forward to working alongside each of you.

Ms. Schwantes – Thank you. And, finally last but not least, is Ken Jones. Mr. Jones is the only member of the Board who is not appointed by the Governor. He is the statutory designee of the State Health Officer and also heads the Department of Health's Bureau of Vital Statistics. Welcome, Mr. Jones.

Mr. Ken Jones – Good morning everyone.

Ms. Schwantes – Morning. And that's the full Board. And that is having all ten (10) positions filled for the first time in at least four (4) years. So, we are very excited about this opportunity to have a full Board present and available for our meetings. So, welcome, everybody, and again, thank you all for your service. So, we'll get right into the subject of today's training session. At this point, you've all been provided with an agenda for today. I'm going to give a brief overview of the Department and the Division. It's going to be very brief. And then Ellie will discuss the roles of the Board versus those with the Division. Then, our Board Counsel, Rachele Munson...Rachele, you want to say hi? They've met everybody else.

Ms. Rachele Munson – I'm just going to say good morning again. I'm so excited to see so many faces. Welcome to the Board.

Ms. Schwantes – It is nice. It is nice. Thank you. And Marshawn Griffin, who is Counsel with the Office of General Counsel (OGC) within our Department. Hi Marshawn, good morning.

Mr. Marshawn Griffin – Good morning.

Ms. Schwantes – The two (2) of them together going to address Sunshine Law and other legal related matters. And finally, I'll wrap some things up at the end with administrative matters and closing. And our long-term Board members are going to be really glad to hear that this training is going to take the place of the training that normally occurs during one of our regular Board meetings annually. So, we won't be doing this again. I saw Mr. Clark clapping. So, we won't be doing this again this year, but we appreciate everybody attending for this training session. The long-term Board members are already very familiar with a lot of this. They've been listening to us talk about some of it during the course of many years here and certainly are familiar with our Department Staff, Division staff. So, most of what I'm about to say, some of it I covered with Ellie when we talked with the new Board members briefly before, and some of it may be new. I'm going to try to cover some of this briefly regarding the Department and the Division. And then, like I said, I'll segue over to Ellie and she can talk about the difference in the roles between the two (2).

## **2. Department/Division Overview**

The Department of Financial Services is headed by, of course, Chief Financial Officer, Jimmy Patronis. It has over 2000 employees just for our Department, in twenty-one (21) divisions and offices. So, for example, you heard me talk about the Office of General Counsel. It is a separate Division on its own. It just goes by the

term office. We also house and provide administrative services to the Office and Insurance Regulation and the Office of Financial Regulation, who have separate employees. The 2000 employee number does not include those offices. The CFO appoints Deputy CFOs to oversee the various divisions within our Department, and divisions are grouped under these Deputy CFOs. Our Division is included in what is considered to be the enforcement group. So, that includes the Division of Investigated Fraud, the Fire Marshall's Office, the Public Assistance Fraud Division, and the Workers' Comp Division. That's pretty much it, with regard to that. And then Julie Jones is the Deputy CFO who oversees this enforcement group, which again includes our Division. Ours is the smallest Division within the Department, and also the only one that works with a Board in this capacity. So, it is a very unusual situation, for the Department as a whole, basically. Because, while other Divisions may work with Boards, they do not share regulatory authority with a Board like we do. And, Ellie will get into that more, I think, in a bit.

So, just to give you a little bit of information about our Division itself, our Division, in conjunction with the Board, of course, regulates the death care industry in Florida. We regulate approximately 10,000 death care professionals, and twenty-three (23) different types of licenses. The largest categories of licenses are preneed sales licensees, funeral director and embalmer combination licensees (these are individual licenses, if you will), and then funeral establishment licensees. That's the largest numbers within those categories. We also regulate cinerator facilities, embalming facilities and approximately 171 of the estimated 3000 to 5000 cemeteries that are in the state of Florida. Our primary functions, we have five (5) primary functions. We do licensing of the professionals, inspections (which are conducted annually), examinations and investigations. And then we also, of course, provide administrative services for this Board.

The Division is regularly staffed, with twenty-five (25) full-time employees, and two (2) OPS employees. Now currently, we are down. We have two (2) vacancies. Those vacancies are a direct result of the pandemic budget cuts. So, we are currently operating with just twenty-five (25) employees. We are located in four (4) areas within Florida. We have staff in offices in Tallahassee (that's our largest office and the main office), Tampa, Orlando, and Fort Lauderdale. We'll talk about funding a little bit later in the presentation towards the end. I just wanted to give you that kind of an overview. In terms of the different functions that we perform, I talked about only having twenty-five (25) people, sixteen (16) of the positions are field staff, and they're the ones that conduct the inspections, examinations, and investigations. In FY19/20, and, of course, we operate on a fiscal year, like all other Florida State Government agencies, anyway. In FY19/20, which runs from July 1 to the end of June the following year, we conducted over 1900 inspections, investigations and examinations, and that is even with the pandemic shutdown and the other challenges that we faced over this last year. So, I'm very, very proud of our team. I think they do an excellent job in all they do. And, again, of course, like I said, we licensed 10,000 licensees, and so, therefore, our Licensing team, which is based here in Tallahassee, stays extremely busy all year round. So, that's kind of some basics about us. We work very closely with our Office of General Counsel. That's the group that Marshawn's in. That's the Department's legal advisors. And of course, we also work very closely with Board Counsel, Rachele Munson. Rachele is with the Attorney General's Office. And, so, I'm going to, at this point in time, turn it over to Ellie to go over some of the differences between the responsibilities of Board versus those of the Division. And then, Ellie, if you'll just transition on over to Rachele when you're done. And I'm going to be available, but I will put that on so if anybody has issues, just let me know. And again, welcome everybody. It's good to see you.

### **3. Roles of Division and Board Members**

Ms. Simon – Thanks, Mary. Good morning everyone. Can you hear me well? Am I coming through? Ok, great.

Chair – Just a little echo, Ellen, but everything is fine. We can hear you good enough.

Ms. Simon – Thanks. I think everybody's phone is on mute, so the echo should be cut down a little. Thank you, Mr. Brandenburg. Before I go into the roles of the Division and the Board members, I want to go into a

little bit of the legislative intent for the Board and the regulatory scheme of the Board of Funeral Cemetery and Consumer Services. The Legislature recognizes that purchasers of preneed burial rights, funeral, or merchandise services, merchandise or funeral and burial services may suffer economic harm if purchase money is not set aside for future use, as intended by the purchaser. And that the failure to maintain the cemetery grounds property may cause significant emotional distress. And it is because of that, and in the interests of the public welfare that it is necessary to regulate preneed sales and cemeteries in the state. However, restrictions shall be imposed only to the extent necessary to protect the public from significance or discernible harm or damage, and not in the manner in which will unreachably simply affect the competitive market. Additionally, the Legislature deems it necessary in the interest of public health and safety to establish minimum qualifications for entry into the professions and occupations of embalming, funeral directing, cremation, direct disposition, and monument sales. And to regulate such activities, and to provide for swift and effective discipline for those practitioners who violate the law. It is the position of the Division that a confrontational manner is not necessary to effectively carry out our regulatory duties. In performing our mission, the goal of the Division is to provide exceptional customer service to the professions and businesses regulated by Chapter 497, Florida Statutes, while protecting the public. Your role as a Board member is to assist in that endeavor.

General meeting procedures apply to Board meetings. For example, filing motions and voting. Meetings must be conducted in a professional and efficient manner. The Attorney General's Office also plays a part in the process, as Ms. Schwantes mentioned. While the Department of Financial Services' attorneys serve as prosecutors in disciplinary cases, attorneys from the Department of Legal Affairs, including Ms. Munson, serve as legal advisors to the Board. So, I think that you can see that regulation of the licensed professionals is a shared responsibility of the Board, the Attorney General's Office, and the Division. As in any effective partnership, each partner has clearly defined roles. Although not all inclusive, let me discuss the general description of the roles of each partner.

As for the Division, the Division is tasked with protecting the health, safety, and welfare of the citizens of Florida. By the way, these roles may overlap to some extent. It is also the responsibility of the Division to arrange for Board meetings, prepare agendas, handle correspondence, provide information to applicants, and perform all routine administrative tasks and other duties as delegated by the Board. The Division also guarantees effective and efficient performance of Board service functions, applications, processing, education, and testing services. Lastly, the Division receives and investigates complaints. I'll go into some more of the responsibilities of the Division later on.

As Board members, you are appointed by and accountable to the Governor. You also protect the health, safety and welfare of the citizens of Florida. You participate in establishing or enforcing requirements for licensure and standards of professional practice. You determine whether discipline is warranted against a licensee who commits a violation of the legal and professional standards of practice, and decide which penalties should be imposed. Board members attend regularly scheduled Board meetings and review materials submitted by the Board staff prior to the meeting. Board members are responsible to serve on committees that make recommendations to the full Board, i.e. Probable Cause Panels. As discussed earlier, both Darrin Williams and Keenan Knopke currently serve on our Probable Cause Panels. The Board members are responsible for applying the statutes, rules, and regulations of the profession in an unbiased and fair manner, while remaining cognizant of avoidable conflicts. Board members are responsible to be well informed on all matters relative to the operation of the Board and the Department. They must also practice in rulemaking, which complements and specifies the general provisions of the respective profession's practice act. Press inquiries - So, let me go into that just a little bit. If you get press inquiries, and we discussed this with all of the new Board members, as well as Board members in general. When you get press inquiries, you are essentially an employee of the Department, as you are an OPS employee. As such, you can easily direct all press inquiries to our Press Office, and I can provide the Press Office's telephone number for you and the e-mail address. And, if you could let us know when you receive a press inquiry, that would be very helpful. The Board members are responsible for forwarding documents received as Board members to the Division Office, and we've discussed that before. Any documentation, any emails,

any letters that you receive regarding Board business, should be forwarded along to the Division, because we are the keepers of public record for the Board.

Now the Office of the Attorney General, Department of Legal Affairs, which is Ms. Munson, that Office serves as legal advisors to the Board. The primary responsibility of this attorney is to represent the interests of the citizens of the State. Ms. Munson is also responsible for attending the meetings of the Board and its committees. She's responsible for drafting rules and orders and representing the Board in license denial hearings, rule challenges, and other litigation involving the Board and its members.

Now, as I mentioned, the Division is responsible for the administrative and support functions of the Board. Let me set out a list of responsibilities common to this Board office. We establish meeting locations and dates, negotiate meeting room sites, and hotel accommodations and secure contracts. We prepare travel authorizations for Board members and staff. We notify the Office of the General Counsel of meetings and deadline dates in order to submit Board materials. We notice meetings in the Florida Administrative Register. We send agendas to Board members, and I don't know if you can tell but much of this work is done by Ms. Bryant. We confirm with the Office of the General Counsel agendas for the Probable Cause Panel meetings. We post agendas to the Board webpage. We review application files and materials for accuracy. When we have in-person meetings, we pack all necessary materials, including files, recording equipment, and member nameplates. Now, that's all pre-Board meeting.

During the meeting, the Division is responsible for inspecting and arranging the meeting rooms upon arrival at the location, assuming we're meeting in-person. The Division is responsible for ensuring each member has adequate working space. Again, this feels a little odd, because we haven't had an in-person meeting in a while, but these are the responsibilities during in-person meetings. The Division is responsible for ensuring that directions to meeting rooms and meeting names, dates, and times are posted clearly. We are responsible for ensuring that all attendees have signed in and collecting sign in sheets. We assist the Chairperson, the Executive Director, and the members during the meetings. We record meeting notes, Board actions, and minutes. We prepare additional documents and copies as necessary. We ensure hotel staff is aware of staff and Board members needs and requests. We ensure that members' accommodations are adequate, and we ensure destruction of confidential materials.

Now, post meeting, the Division is responsible for reviewing the meeting notes for immediate action items or items for future meeting agendas. We are responsible for preparing Board meeting compensation requests. We're responsible for submitting Board member and staff, travel vouchers for processing. We submit all purchase receipts for processing. We prepare meeting minutes. We enter disciplinary actions and denials into the computer database where applicable. When received from Board counsel, we prepare Notices of Intent to Deny, Orders and Final Orders. And when we receive the same Consent Orders from the Office of the General Counsel, we also prepare the Orders, the Consent Orders from them. We track the compliance with discipline as necessary. And those are the responsibilities of the Division and the Board. Does anybody have any questions? Hearing no questions, let's move on to Ms. Munson to deal with the Ethics portion of the agenda. Ms. Munson?

#### 4. Ethics

Ms. Munson – Well, Good morning, again, Board. I think that everyone, I can speak for staff to some extent, but for the Office of the Attorney General, again, I'd like to extend some personal thanks to each of you. For our senior Board members, this is going to sound so much like a refresher, but the information is so important. And I do give the disclaimer upfront that some of my information sounds like I'm bringing down a hammer, but I'm just going to provide some legal information that hopefully will keep everyone out of trouble. And although it may sound very strict and very serious, I appreciate you taking it that way. but understand that you don't have to worry about or have a care in the world if we just do our very best to work within the guidelines. And my role as Board counsel is to help you do just that. So, this is definitely

going to be an experience that is something that you will enjoy. And it's a service to our citizens of the State of Florida. So, again, we say, thank you,

This topic on Ethics is probably the one that may be the most important of the areas that I'm going to discuss, because your service as a Board member is to the extent that Florida government is concerned, very serious to the point where I wanted everyone on the Board to be fully aware that your actions taken individually, as well as collectively, will be under the scrutiny of all of your licensees, the public in general, the legislative and judicial branches of the Government. You understand that you're all here as Governor appointees. And with that responsibility, all eyes are on you, because we serve the citizens in Florida, and we don't have the luxury of our actions being conducted in a manner that will not support that public trust. So, when I state that you are accountable to the Governor, I say it to the extent of understanding that if there's any deviation from that public trust, he's actually authorized to suspend any member, any Board member from Office, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his or her official duties, or even a commission of a felony. And these are things that we don't talk about often, and we probably will never talk about it again, but in new Board member training it's important, at least, that I highlight that information.

Please understand that the attendance at the meetings is very important. We would ask if you are unable to attend any of the public meetings, that you would advise the staff, whether it be through the Director, the Assistant Director or any designee of their staff. I think that if an absence is noted, it's normally expected to be excused, because normally three (3) unexcused absences could be grounds for removal. We never deal with any issues like that. But again, it's another issue that I think is important, at least to underscore. With regard to financial interest and financial disclosures, each of you, because of your appointed status, are required to file under s. 112.3144, Florida Statute, you're actually required to submit a financial disclosure form. I think for most of you, it would be Form One, and you do so at the beginning of your service, and you're also going to be required to file one annually. I think that you are also required to file one at the end of your service within sixty (60) days of removal or departure from office. And this is information that will be helpful only because of your status as an appointee of the Governor. The information is confidential, but nonetheless required and I'm sure that staff will be able to assist you with that filing status just to ensure that everyone is in complete compliance. I'm not going to talk too much more about the Financial Disclosures. There are a lot of details that surround the type of information that you'll be needing to disclose, but it's very general. We all have to do it. As a public servant from the Office of the Attorney General, I have to do it as well. I think that many governmental employees who serve on this level have to do the same thing. And I can assure you it's nothing that will cause you to provide any pause or anything of that nature. It's just an idea that your public service is definitely one of importance, and I think all aspects of it is probably becomes some level of record for our wonderful Sunshine State.

Ethics itself is governed by s. 112, Florida Statutes, Part III, and it actually defines a code of conduct for all public employees and public officers. Board members actions, like I indicated before, are scrutinized very closely, both individually and collectively. I'm going to talk a little bit more when I discuss just a few things under The Sunshine Law, but I totally encourage the opportunity, for example, for Ms. Clay and Rabbi Lyons to have lunch since they are in the same geographical area. I would just note that if you do so that you have no discussion about any Board matters, because that would be a violation of what I'll get into further when I discuss The Sunshine Law. So, little things like that, we may not normally think about, but it would be my job and my duty just to keep things at the forefront of your minds as we move forward in conducting the business of the State. Other things we may not think about is gifts. And this is all very well defined, again, in Chapter 112, Florida Statutes. Whether or not we can accept gifts? The amount of the gifts we can accept. The information is outlined there. When we want to receive any type of honoraria or payment of services, and money of any kind, there are distinctions as to what you can and cannot do. We have to avoid conflicts of interest, any type of impropriety or the appearance there. And we always would like to remain mindful that everything that we are doing, even when we think, and I'm going to respond to Rabbi Lyons, that we think may not be noticeable, probably is noteworthy. Rabbi Lyons, please feel free, and

feel free for anyone during any of this discussion, at least during my discussion, to ask any questions you have. Rabbi Lyons?

Rabbi Lyons – Oh, yes. Thank. I'm sorry. Just real quick, where is that law outlined in writing? I just didn't catch where it is.

Ms. Munson – Yes. Anything regarding the Ethics requirements for public offices or employees is in Section 112, Florida Statutes. Part III, and I can provide a follow-up memo. I think I might have provided something to our existing Board members previously, but I will definitely provide an extended follow-up memo to all of our Board members with the statutory references so you can just kind of have it as a reference guide.

Rabbi Lyons – Thank you.

Ms. Schwantes – Very quickly, if I might?

Ms. Munson – Please.

Ms. Schwantes – One thing I did not bring up earlier, I was just going to cover it at the end, but by the end of the week we expect that you all will receive a manual that covers everything we're covering today, but we wanted to be able to finalize it after our talks today. Just to make sure there's not anything that we needed to add to it. So, you are going to get the items and in writing, like Rachelle indicated. Thank you.

Ms. Munson – That's pretty much the general discussion, I think, that I can share on Ethics without going too much into the weeds, or the grain of it. But, probably the most important thing to take away from Ethics is that you're representing the State of Florida, and sometimes we think that our representation is perhaps not that important, because it's just a Board member. There's no such thing as just a Board member. The Governor appointed you with good cause and with a well-reasoned basis. And it is not uncommon for individuals who understand that you are in the role that you are is going to perhaps or have the opportunity, I should better state, to look at your conduct and things you may say that you may think may not matter and repeat or use it in a sense that could very well reflect on the Board. "Board member or Chair Brandenburg was at a luncheon and I could not believe what he was doing or I could not believe what I heard him say." And it's not going to be Jody Brandenburg if they know you in the role as Chair Brandenburg. So, we don't just think about that often but it's something that I think we should think about. It is probably an area of maybe the three (3) areas that I'm going to discuss that usually can create issues for Board members. And if you're not accustomed to working in public government or in The Sunshine, these are things that we just don't normally think about, because why would we. We're used to having our private lives. So, I'm not going to say much more about it, but I welcome any questions that you may have about it. At this time, or before we actually conclude the new Board member training, I will share with you, I will follow up with my personal information. I live with my cell phone. At the Office of the Attorney General, because of COVID, we have been working remotely. I think that's about to change soon. So, I will also provide my office number, but if you ever feel you have a question any time of day, weekday, or weekend, I would just encourage you to do not hesitate to give me a call, because that's why I'm here. I want to be available for anything Board related, at any time for matters that will reflect on your duties and responsibilities as a Board member. If there is nothing else regarding Ethics, if it's OK with Ms. Simon and Director Schwantes, I'm going to move right into The Sunshine Law discussion.

Ms. Simon – Of course.

## 5. The Sunshine Law

Ms. Munson – Seeing that there's no objection, let me just talk a little bit about The Sunshine. I kind of gave a brief intro when I gave a teaser regarding Rabbi Lyons and Ms. Clay having lunch together. And that's a pretty good precursor because that's what The Sunshine Law actually is all about. It reminds us that our

activity as Board members in this public service is in The Sunshine. We are not allowed to meet more than one (1) Board member. Two (2) Board members can never meet if there's any type of discussion regarding any Board matters, unless the meeting is publicly noticed. There are rules and the statute that even require how many days it has to be noticed. If it is less than that seven (7) days, if it's five (5) days and you have a meeting, that's a violation of The Sunshine Law. This area is pretty technical. So, it probably would be equally important to Ethics, but I still give it a little bit. I hold Ethics as the number-one tier for consideration, because it guides us in everything we do, but a reminder that all of our conduct is in The Sunshine. It's almost like it's sister, so I'd like us to keep that in mind. And when I say more than one (1) Board member meeting or communicating, and it meets the requirement that it's done in The Sunshine, {inaudible}. You may find yourself, well, we didn't have lunch, but I sent a text. Well, that's a meeting That's a conversation. That's something, and again, all of these discussions are with the caveat that it relates to Board business. So, I'm just going to remind you to refrain from any type of written discussions, including e-mails or texts. Any type of information where more than one (1) Board member communicates with each other about Board matters. It has to be properly noticed. And the information has to be made available for anyone who wants to see it, review it, scrutinize it. It has to be made available for them because, of course, all of our conduct is in The Sunshine. Information regarding The Sunshine Law is found in Chapter 120, F.S. I think specifically, The Sunshine Law is discussed in s. 120.66, F.S. And again, I'm going to follow up with all of these statutory references so you don't have to find yourself inundated with trying to keep up with where everything can be found. But there's very clear statutory references to what the responsibilities are.

I think, when I mentioned earlier regarding the requirements for attendance at the meetings, I wanted to talk a little bit more about that. S. 286.012, F.S., speaks a little bit about the requirements of Board members attending meetings. But not only do you have to attend the meetings, unless you have an opportunity to or a legal basis not to participate, every Board member is required to vote on every matter that comes before the Board. And, I'm just going to discuss briefly what those two (2) or three (3) areas that would allow you not to vote, and anything outside of that pretty much are areas where you're required to vote. You will notice that at the meeting sometimes Chair Brandenburg, in his leadership, might want to clarify whether everyone voted. You might notice Ms. Simon to say when the votes are called to question, "Did we take a vote on that?" Those questions are important because when we have our public meetings, of course, because first, they've been properly noticed. They're all recorded. And you're going to have individuals on these calls, or when we return to an in-person environment, you're going to have individuals that are just going to come off the street or licensees who are interested in just seeing you face to face to figure out what you're doing, and they're going to want to hear, they're going to be a participant or an observer, perhaps, in the record that's being created. Because everything that happens at the meeting, is the record of what that meeting involved. I say that only to note that I want you to know that your presence matters. I guess, sometimes, individuals who become a part of organizations, Boards, other services, they may feel sometimes that they are place holders. When it comes to public service, it is absolutely the opposite of that, so much so that there's a record of every yay in every nay, and I think you might be familiar with that in looking at other areas, But, not so much if you may have some type of feelings perhaps about certain issues that you'd rather not provide a public announcement about. We're not going to have the opportunity to do that in situations such as this, except for example, if you find yourself with a conflict of interest in the matter that's before the Board, and you need to recuse yourself. First of all, if there's ever any matter that comes before the Board that you feel there may be a conflict involved, you are required as a Board member to disclose the conflict. At least identify, I know this person. I know the owner, I have had some type of interaction. You don't have to go in detail, but you need to put it on record so they'll never be a question as to, "Hmm, Member Clark voted on something, but that was his brother." I mean, we just don't want that to happen. Of course, I don't know the personal life of Mr. Clark, so I'm just using that, of course, as an example. Note that if you at least disclose it, but feel it does not create a bias, you can still vote on it. You're just making a public note for the record of that particular conflict, and you'll make a public statement that despite the conflict, I feel that I can vote without prejudice or bias and you still have an opportunity to vote. If you feel as though you can't because of that relationship, you will be required to recuse yourself. The record will reflect it, the minutes will reflect it and the meeting will go forth without your participation in the vote.

There was some previous mention about Probable Cause Panels. I know that Attorney Griffin will go into much more detail regarding what that is, but that's a preliminary disciplinary stage. As you've heard Member Williams and Member Knopke to be Probable Cause Panel members. If you participate in the Probable Cause Panel, you cannot by law vote on the matter because you have had some initial review of the materials, and you're not in a position to actually vote on it once it comes before the Board for a full decision. Short of that, you're going to be required to vote and you may find yourselves called to the carpet if it's not clear, whether these meetings are virtual or in-person, that you actually gave a yay or nay, but the record would need to reflect that everyone in fact voted. Again, it's to avoid any type of impropriety, or more importantly, I think even the appearance of impropriety. I'm just going to say, there's one other thing about our public meetings. Ex parte communications are prohibited. And by that, I just mean you are not allowed to have any discussion about matters that relate to Board information outside of the public setting. I think I've touched base on that a little bit, but I will share with you, because as an Assistant Attorney General with the Office of the Attorney General, we kind of work with various Boards, and I have worked with a few Boards where Board members know each other so well, and this was before, perhaps the virtual setup, they would be at a meeting in a table, in front of everyone in the audience, and they would, I'm watching, perhaps the Chair and another member text back and forth about something. And it would be problematic. It would be a situation where as soon as the break would come or as soon as I had the first opportunity to tell them, and it's not a scolding, it's just a protective action just to make sure that you understand if you were to do that, that phone that you care very dearly about, you've just created a public record, and we'll talk about it more with Public Records. You violated The Sunshine Law by not having whatever that information is publicly properly recorded. And I think when matters are made clear to that extent, Board members begin to understand better that everything I say I really cannot with another Board member, do it in a manner that would violate the Sunshine Law. And again, these are very technical issues. I think that Director Schwantes and Ms. Simon get to give you a lot of feel good stuff. And I think that Attorney Griffin and I are going to give you some stuff that kind of stings a little bit, but the sting is with love and I just want you to always know that it's better to feel the sting than to be bitten, because that's not such a pleasant experience. And I've kind of been on both sides of itself. Regarding the Sunshine Law, I don't know if there are any general questions. I'm not wanting to overlook any matters, but I know that some of this sounds like it's common sense, but I think I would be remised. Please, Rabbi Lyons.

Rabbi Lyons – Ok. Jay Lyons. I think you're supposed to announce that. So, how does it work with Board members interacting with a licensee? In other words, if I, as a licensee, had an issue that might come before the Board, and I knew somebody on the Board, just because I'm a funeral director and they're a cemetery, you know, some relationship like that. In a very upright, no shenanigans way I might ask them for advice. Are we, as Board members, allowed to give advice to a licensee on a matter that might appear in front in front of the Board?

Ms. Munson – Ok, so my suggestion in a situation like that would be, I'm thinking that you know them, so your relationship with them existed prior to your role as a Board member. So, they may already be comfortable coming to you about information such as this. But, now that you are a Board member, I would suggest that you direct most of those discussions to the staff where I know that Ms. Simon and Director Schwantes would be more than happy to address. What you will be doing, quite honestly if they approach you about any type of issue, is you're going to give your opinion, because your opinion is not Board action, but it could be perceived as more action. It very well could be information that you share, recommendations that you give that once they actually come before the Board, for one you're going to have to disclose that you had that discussion if you're comfortable doing so. Second, you're going to have to publicly disclose that despite that discussion, you are more than willing to vote on the matter and hopefully it doesn't give the appearance of impropriety. But third, the outcome may be very different after full vote of the Board and perhaps what your recommendation was. And you can feel free to let them know if you really feel comfortable discussing it with them, because relationships prior to your role as a Board member most definitely existed. Let them know you can't speak on behalf of the Board, but according to the statute, according to rule, this is what normally is required. If you're going outside of that type of discussion, however, I would feel more comfortable if you direct those inquiries to staff.

Rabbi Lyons – Ok. Thank you.

Ms. Munson – I'm really, really big about coloring in the lines. I kind of was raised that way, and any time I kind of go too far on the perimeter, or even outside of it, it's an area of discomfort for me. So, I kind of just carry that over in all of the practice that I have regarding any type of professional conduct. So, I would be most comfortable if it's those type of issues that outside of rule or statute reference directing them to staff. Anything else about The Sunshine Law? Well, Ms. Simon, if I may, I can move right into Public Records?

Ms. Simon – That would be great, Thank you.

## 6. Public Records

Ms. Munson – Alright, Public Records, Chapter 119 of the Florida Statutes, covers most of everything you're ever going to need to know about public records. I'm just going to touch on a few things that we may not think about. My presentation today is more to highlight nuanced information more than the black letter. I'll hit the big bold points, but I want to talk about things that we don't normally think about. Everything you do that you could put in writing or is reproduce that has to in any way reference any Board action, you just created a public record. I mean, you're doing so as a Board member, and it's regarding Board information or matters relevant to the oversight of the Board. So, understanding just as a baseline what public record is, and I want to just maybe identify that it would be all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings. I mean, the statute really outlines it, and again, I'm not going to go into the weeds, but what you may not think about is your e-mails. We live in an age, and we have done so for so many years now, where we don't have too many phone conversations. Or if we do, I mean, we're quick to send an e-mail. Just send me a copy. If it's in any way related, it's a public record. I have gone as far as to suggest, I may even use the word advise Board members of other Boards that if you get information from the staff, or you send something to the staff that's related, and of course, you're never, remember, we're never sending information to Board members to each other. That never is going to happen. That is an underscore, bold, all caps never.

Board information. But, of course, you're going to communicate with staff. And that may be a very likely situation. So, when you do so, you'll notice for example, that when Ms. Simon and Director Schwantes sends you stuff, it's probably blind copied, and they're going to suggest you do not hit reply all because reply all means that everyone's getting the same communication back and forth shared amongst each other. That would be the violation. So, you would just reply to staff. And, many Board members have found it just easier. If they are, not saying less organized, but just more comfortable for their own organizational stance, to create even a separate e-mail. So, on that they may have their general email (funeral@gmail.com). I'm welcoming Board Member Lyons by using him as an example for so many things. So, it may be Lyonsfuneral@gmail.com, where he's decided to create his own e-mail depository where any type of communication he gets from staff or sends to staff, he's only going to file it over there. So, if there's ever a question about it, it's not intermingled where all of your personal e-mail is going to have to be pulled out of it, and you're going to have to seek and find. There's a period of time, and I don't want to be quoted on how long it is, that we have to retain those public records. So, you don't want to say that you deleted it. I mean, even with my function at work, I never hit delete. I have to hit archive. I don't care if it seems like it's just junk mail, I hit archive, because I really don't know how much of this information may be called upon. I am very careful with it. And that really, probably would not apply to you to that extent, but the type of communications that you're going to receive from Ms. Simon and Director Schwantes is specifically the type of information that you may want to have a special depository so that you can put your hands on it, or for recordkeeping purposes, you can always find and have access to it. I will say that what's not public record is probably just a finer area. There are some things that are confidential. Your financial interest is not going to be public record.

Again, Attorney Griffin will go into detail about the probable cause information, but any preliminary disciplinary case that's under consideration, that's private. It doesn't become public, I think, until ten (10)

days after probable cause is actually determined to have been found by the Probable Cause Panel. So, that information has to remain confidential until that time period. Any information that is deemed confidential is required to remain confidential until the time period has expired for it no longer to be considered confidential. Any disclosure of confidential information, for those who may be involved in the Probable Cause Panel or any other information that you come across that is considered confidential, it's actually a misdemeanor of the first degree. It's something that we don't think about very often, but it's information that we should. So, for example, if Member Williams were to sit on the Probable Cause Panel and it was determined that whatever that particular issue was that the panel found it to constitute probable cause, he can't say anything about it for at least ten (10) days after probable cause is found. If they found that there was no probable cause, you can't say anything about it, like ever, because it's still confidential. And any violation of that, and this is technical, we never see it, because who's going to know you said something. I mean, but just so you understand the ramifications of it, because it's a violation and considered a misdemeanor of, I think, first degree, its punishable by a term of imprisonment not to exceed one (1) year, and a fine not to exceed \$1000. It can actually result in removal of office. So, keep in mind that as a public servant, when you run across the public, the confidential information, you have to keep it confidential. And when you are obtaining or retaining the information is public, you got to understand it's a public record. And, if I say nothing else about public records consideration, I'd like to just underscore those two (2) distinctions. And it's just a matter of, honestly, the bookkeeping, the housekeeping, and the understanding. And I think once those three (3) tiers are met, the Office of the Attorney General is here to make sure that if there's any lack of clarity as to what's what, we're here to provide that type of clarification. But I think if we stay within the lines, we're good. I don't know if we have any questions about public records or anything of that nature. I'll be happy to address them at this time. And if not, am I turning it over, at least for the initial presentation, Ms. Simon, to Attorney Griffin?

Ms. Simon – Actually, has the Administrative Procedures Act been handled?

Ms. Munson – That's what's next. I don't know how much of it. I think, let me just double check, because I did get the information. Let me start. We're going to follow the outline that I think we worked with, so Attorney Griffin, I'll start. I did see the notes that were in red, and I'll let you pick up with the red.

Ms. Schwantes – Thank you.

## **7. The Administrative Procedures Act**

Ms. Munson – The Administrative Procedures Act is the next item on your agenda. It is the holy grail of what we do. We can abbreviate the APA. It is Chapter 120, F.S. All of our proceedings are governed by the Administrative Procedures Act. It tells us how to conduct the hearings. It tells us when to get them, how to notice them, what to expect. So, when I speak about Chapter 120 or most of our sections, it's always the Florida Statutes that I'm referencing, and it governs all State Agencies, Boards, Commissions, and Councils. It is our holy grail. It is the single most important item of governance for what we do regarding our oversight of our Board work. Most of our questions outside of our conduct is going to be answered by the APA. I'll talk a little bit about the meetings, hearings and workshops. We've already talked about it briefly. I talked about the noticing of them seven (7) days prior for just our normal business meetings, and there's a procedure. I mean, the Department really has to make sure that the timelines are met, because if a meeting, for example, is not properly noticed, and I've been involved where we've had, especially in this virtual environment, we've had a GoToMeeting setup with a Board and it was noticed properly, and the GoTo link, when we tried to do the meeting, didn't work. But, they were able to get another GoTo link that was active and live, and they could get everybody on. And I had to explain to the Executive Director that that's great that we got it to work, but we can't have a meeting, because anyone who may have wanted to participate in the meeting would not have had prior knowledge and were not properly notice about this new GoToMeeting. So, I mean, it's things as technical as that. We have to make sure that all of the requirements that's provided by statute, and in very much detail, if I can share with you, that they are followed. And, it depends on the type of meeting. If it's some type of hearing, there's a fourteen (14) day notice for some

things. Some things require a twenty-one (21) day notice. But as far as our world is concerned in our regular business meeting, it's a seven (7) day notice. I would like to note that there are different types of issues that will come before the Board for review. I think that comment will be the best segue for me to talk a bit... Yes? Chair Brandenburg, yes?

Chair – Would you please further define public notice for the group.

Ms. Munson – Ok, absolutely. Specifically, when I reference public notice, the requirements that this group will be getting together to discuss any information related to the Board, would require the Department to, in the Florida Administrative Register, actually post a notice that is available for all the public to see at least seven (7) days prior to our meeting dates containing the details for the purpose of that meeting. It would need to identify the time, the date, the purpose, and how the meeting will be conducted, whether it's by telephone, by virtual attendance, or in-person. Any error in that type of notice would make that notice defective and would make the opportunity to meet void. And those type of details fall completely on the Department and staff. So, when Director Schwantes introduced Ms. Bryant, she has a lot on her shoulders, because it's that type of information that I think she does every single meeting. And it's the type of information that is not merely ministerial, because it can make or break your opportunity to discuss the business. I'm sure that Ms. Simon and Director Schwantes can go into greater detail about that. Maybe Attorney Griffin will go into it, with regard to licensing. There are certain deadlines that have to be met. If licenses are not approved by a certain time, normally within ninety (90) days of the application being complete, they can be deemed complete. So, the Board very carefully strategizes on when they have to meet, what items will be on that agenda, so they can meet the necessary timelines. So, that information that may be relevant to the Board are not necessarily just approved without proper review. So, Ms. Bryant, in her duties has the very, very Yeoman's responsibility of making sure that all of those details are properly recorded in every Florida Administrative Register for every meeting that is had. And when I say public notice, it does not just relate to meetings. It is anything that this Board does that would require a meeting of at least two (2) members. So, even if you have a committee that got together, I don't know if this Board often meets regarding any committee activity. Normally, it's full Board activity. But, any members that amount to more than two (2) require the type of notice with that type of detail in it, or failure to do so, and a meeting takes place in the absence of those requirements being met is a very serious violation of, not only the APA, but also the Sunshine Law requirements. And the responsibility would actually fall on the Department to ensure that it's done properly. Chair Brandenburg, any additional detail, of course, I'd be more than happy to share.

Chair – Thank you very much for that clarification.

Ms. Munson – Thank you, sir. I'm only going to say a couple of things before I turn this over to Attorney Griffin, and the information would relate to this extent regarding some information that will come before the Board, in addition to the licensing and other matters. Our office, the Office of the Attorney General, we're actually required to review any Petitions for Variance and Waivers that come before the Board and any Petitions for Declaratory Statements. All of these items are referenced in Chapter 120, F.S., different sections of 120. Declaratory Statements are in s. 120.565, F.S. I think Petitions for Variance and Waivers are in s. 120.542, F.S. And that may not sound like a big deal, but the reason it's a big deal is because, again, because we operate in The Sunshine, individuals may come before the Board, parties may come before the Board requesting some type of special consideration. And it would need to be an item that specifically as it relates to them, perhaps created some type of hardship if they follow the statute as written, or if they follow the rule as written. And a Petition for Variance and Waiver, for example, gives them an opportunity to come before the Board and say, "Listen, I know that you have this rule on the books, but I have a special situation, and if I follow the rule it's going to create a substantial hardship for me. Would you please consider allowing me to operate or to waive the rule, or perhaps to provide a variance to the rule so that I can do things a little bit differently?" And the Board will have an opportunity to look at their situation specifically. And understand that this is not a change in rule. This applies only to this party, to this individual, to this establishment, and only for that singular purpose. If it comes up again for another purpose or situation

similar to it two (2) months later, it does not apply. It would require a new petition of that particular rule. So, those actually come before the Board, and where we don't see very many declaratory statements, which address concerns about the way statutes are written, understand that a statute is pretty much etched in stone.

Anything that's written in statute pretty much will be adhered to. And every rule that's put on the books has to be supported by statute. If you have a rule that, in any way, conflicts or deviates from what the statute requires, the rule is, I would think the legal term would be void, but any action supporting a rule that does not support statute is definitely erroneous. Any effort to do something that is not supported by rule or statute is considered non-rule authority and is also prohibited. So, the rules and statutes exist with purpose and provide a level of governance that we try not to deviate from, only because when we are giving consideration to the citizens of Florida, they need a framework to work within. And, if it's kind of willy-nilly or folk are doing things different ways just generally, or folk are operating on a consistent basis outside of what a role requires, it is prohibited activity, considered non-rule policy, and the Board can find themselves in a rule challenge, which would involve a litigious could probably result in litigious conduct and would be at the expense of the Board. So, we want to be very careful in making decisions as a Board that comply with existing rule. And in the absence of doing so, we have to understand that the incentive for doing so is being a law-abiding Board. The disincentive for doing so is that it can hit the Board in a monetary fashion that if there was a lawsuit that was ever filed and it is determined that the Board's activity is non-rule policy, the Board would very likely be responsible for attorney fees and all the other fees that normally are involved in any type of litigious activity. So, it's an area that I work very closely with only because I do not want the Board to be on record for having any conduct which is public record in violation or consistent or demonstrative of non-rule policy. It's not only to this Board, it's every Board. And, it is not uncommon for a member of the public or anyone else, because we're under the scrutiny at all at times, to say, "Wow, did they just do that? Did they have the authority to do that?" They have to have standing to bring a rule challenge, but if they do and the Board is on the losing end of that challenge, it is problematic, not definitely, but problematic. And I think I should probably move on to Marshawn after statements like that.

Mr. Marshawn Griffin – So, one of the biggest way that the Administrative Procedures Act affects the Board is through hearings involving substantial interest, which are governed by Section 120.569, and Section 150.57, Florida Statutes. Basically, what happens is that anytime the Board takes action such as a denial of licensure, filing an Administrative Complaint, it triggers an entryway into a hearing involving substantial interest. So, there are two types of hearings involving substantial interests. The first are Hearings Not Involving Disputed Issues of Material Fact, or Hearings Involving Disputed Issues of Material Fact. And to kind of give you an example between the two (2), we'll speak a little bit more about this, especially in conjunction with discipline. The easiest way to describe it would be, for example, if the Board is denying somebody's application for licensure, and the person has filed this application and the Board has, for example, said, "We are denying you because of a prior criminal record." If the licensee says, "You know what, Board? I don't believe I have this criminal record. Somebody else entered a plea to this crime, it wasn't me." They would be disputing a material fact underlying the Board's decision. In which case they'd be entitled to what's called a Formal Administrative Hearing, which happens at the Division of Administrative Hearings (DOAH), before an Administrative Law Judge (ALJ). And a hearing at the Division of Administrative Hearings is basically akin to a miniature trial or a trial with a judge instead of a jury. On the other hand, if the licensee, and we're going to go back to the same example of if the Board denies based on criminal record, if the licensee says, "You know what? I'm not disputing the facts, I am the person that entered a plea to that crime. However, Board, I think a different outcome is warranted." Then, they're entitled to what's called a Hearing Not Involving Disputed Issues of Material Fact. The Board is empowered by statute to hear matters whether not involving disputed issues of material fact. In which case, what would happen is, is that the licensee would come before the Board and basically, you know, the facts aren't in dispute, it's just the conclusion of the outcome that's supposed to be dictated by those facts. The Board would be able to hear, you know, arguments for what conclusion the Board should draw, and then the Board we get to take action based off of what it feels is appropriate in accordance with law and rules. So, that's kind of a brief overview, like a 50,000-foot view of hearings involving substantial interest.

And then moving on from that, we'll talk about licensing, and Attorney Munson kind of described earlier the licensing context. So, at the beginning of licensure, somebody submits an application for licensure. They provide the Board and the Department with a certain list of materials, applications, and certain fees. Once an application is submitted it begins a ticking clock, or more specifically a ticking clock. The Department has ninety (90) days to grant or deny an application for licensure. Now, the Department and Board have the ability to ask the licensee or applicant to provide certain information. But it's kind of one of those things where the first time we ask for clarifying information, once they provide that information, that kind of stops the clock while we're waiting for that information from the licensee. But once they comply with that request for information, the clock starts running again. And if we hit that 90-day mark, and we haven't made a decision affirmatively, whether to grant or deny, by statute the licensee is entitled to have their license granted. So, it is very important that these timetables get matched so that we can avoid a deemer, and that's kind of the language, it's called Deemed Granted, to avoid a deemer of licensure. Now, an application for licensure triggers one of those hearings involving substantial interest. So, just like the example I used before, if the applicant wants to dispute the factual basis underlying the Board's denial of an application, they have an opportunity to go to that hearing at the Division of Administrative Hearings. If the licensee says, "I don't dispute the underlying facts," then it's a matter that will be held and determined by the Board itself. I think that pretty much covers everything related to licensure and the Administrative Procedures Act and hearings involving substantial interests.

Ms. Munson – Ok, I think that's kicked back to me then, and we can move into the rulemaking process. This is kind of probably the nuts and bolts of the services that the Office of the Attorney General provides to boards, commissions and councils that exist. I mean, we are the only area in state government that actually has the brain-trust of rulemaking. Many other Departments, just in general, will come to the Office of the Attorney General if there is a question on rulemaking. This is much of what we did. So, with every board, or commission, or council that were assigned to rulemaking is a big deal. With this Board, and with every board, there are Department rules and there are Board rules. With this Board in particular, there are Department rules and there are Board rules. I say that only to mean that some of the rules with other areas are very distinctively clear, Department Rule, Board rule. With this Board, there sometimes appears to be a little bit of overlap, need for classification, and I'm underscoring that only to state that your jurisdiction as a Board only relates to rules that pertain directly to the Board that are considered Board rules. There may be Department rules on the books that we just have no jurisdiction over, because they're Department rules, but if it's a Board rule, and if there's anything about that Board rule that you'd like to change, you have complete authority to do just that. You don't like the way it's worded, you think you may want to just kind of create a different type of opportunity for your licensees. As long as what you're trying to do does not violate any existing statute, you can give consideration as to whether or not that change is going to present a conflict or confusion to Department rules. So, we're going to probably have to discuss or consult with the Department regarding the potential impact of the Department rule. Again, we have no jurisdiction over it, but we can give consideration because what we want to do is make sure that the licensees are very clear as to what their expectations are. Because all they know, they don't know Department or Board rules. They just know that these are the rules they have to follow. So, we want to make it as clear them as possible, but I just want you to understand fully that your authority regarding any rules that relate to the Board, that fall within or are consistent with statute, that it's very wide and very broad, and runs very deep. They're your rules, and that's one of your primary responsibilities, and I don't want to say leverage, but it's an area of authority that you have, as do many Boards that they used to make their profession more viable. Make sure that what the expectations are, they are clear and that the individuals who are expected to abide by them understand pretty much what they are needing to do.

The rulemaking process, having said all of that, however, is very grainy. I mean, once we decide to change a rule amend it in any way, even repeal a rule, which is probably the easiest thing to do, if you have a rule on the books and you say, I think this rule is not necessary. You have the authority to just get rid of it. I would just caution you that if you're getting rid of a rule, you're not getting rid of any guidance that exists on the books that actually served a purpose. But, if you feel it may be duplicative to maybe what the statute says, there's normally rules, to some extent, that are duplicative to statutory language, but they're done or

provided again for clarity to the members that rely on it from the profession. So, where a repeal of a rule could be helpful, I would just be very careful to make sure that it is, in fact, the intent of the Board to remove it from the books. The process, however, like I indicated where I say that it's a bit grainy, is because it is. If you have the desire to change or amend a rule, we get together as a group publicly. We discuss it. Some Boards actually have workshops to figure out where the language should be. I worked with a Commission very recently, who had done some changes to some language, and they knew in advance that their profession, their community, might have some problems with it. So, they had about three (3) or (4) workshops to kind of engage the community, the profession, to get their insight to see what type of language that could possibly fly. Because, when we start making the amendments, what we don't necessarily want, and we can't stop it, but if we can head it off in any way, we try to be proactive. We want to make sure that the language that we are considering makes sense, and there won't be too much of a feeling from the community that we serve or the profession that we serve, that it's more problematic than not. So, if we find that we are changing some language, it goes through so many different stages, and I'm just going to briefly identify what they are because, honestly, you would probably put a straw to your head if I go into that level of detail that is really involved in the rulemaking process, I would not do that to my child or my best friend.

So, having said that, once you put it on the book, as everything else, it's properly noticed. We have to send it through an organization that technically is established by our executive branch and supported by our legislation. It's an accountability team. And they just want to look at everything first, to make sure that this looks like it's ok. And that's before it actually hits the public books. But after they check off on it and say, and it takes about fourteen (14) days after they check it off, and be like, OK, this looks like all the four (4) corners are hit, we can go ahead and let you publish it. Then when you publish it, everyone sees it. And when I see everyone, I mean the public. So, there are certain organizations, associations that are out there just looking at what type of changes the profession is making. So, they are very, very mindful of any rulemaking that's going on. But even if no one from the public says anything, we have a branch of the legislation, the Joint Administrative Procedures Committee (JAPC), and this is really all that they do, I mean day in and day out, before they have breakfast, this is what they do. They comb through the rules, and if we're not making any changes to the rules, they comb through the existing rules to see if they're supported. This is what they do. But when we decide we want to make some change, all antennas are up and they have a staff of attorneys that look at every single letter that we're changing. And they want to make sure one, that it still complies with the statute. They want to have a reason why we're doing it. They have complete, but not just them. When I say the public sees it, the entire public can do this. But, they don't have a staff doing it, JAPC does, and they do it and at with its full strength. It is not uncommon. As a matter of fact, it is extremely common. Whenever we have any type of rule language that we're looking to change and it's published, then our office gets letters, we call them JAPC letters, that we have to respond to and they ask from the least minuscule item about the change. Like, why is the statute referenced, to a major substantive concern. And we have to respond to it. And of course, if we get any type of comment, public comment, or JAPC comment, it's going to come before the Board. You're going to have to look at it. I'm going to have to discuss it with you, and we're going to have to answer it. We have timetables that we have to work within to respond to it and we have to provide a justification. It doesn't necessarily stop the process, but it behooves us to work in tandem or with some level of consistency.

We are not a communal group where JAPC is on our team, but I will share with you, it is my primary goal, when it comes to rulemaking, to make sure that the JAPC attorney that is assigned to this Board, is on our team. Like, if you have any questions, can we talk about it? This rule is important to the Board. What do we need to do to make this go? Those type of discussions, they're not necessarily inappropriate. I'm careful how I make them, but I understand what the Board is trying to do, and I think it's my role to do whatever I can, as you're advocate and counsel to get it done. So, that actually happens. We've not done much since I've been Board counsel regarding rulemaking, but the little that we've done, I think this Board has seen the JAPC letters and JAPC response letters and it's just been a very little bit of it. So, I just wanted underscore that. Rulemaking is a big part of what we do. We have to make sure that any changes that we're making are not in violation of any type of enormous regulatory cost additions to the profession. The Department is

going to have to explain. I ask questions that specifically address the cost of what this rule change may involve. I ask questions as to whether or not the change should be deemed a minor violation. Normally, they are not. And within the last two (2) years, our Governor has required that we ask the question, whether or not the rules should include a Sunset Provision. Do we want this rule to remain on the books indefinitely? Or is there a time certain that we would like the rule to be revisited, giving it an expiration date? And that's kind of a new development, but I can honestly say that in some of the rulemaking I've done with other Boards, when it has gone to the very initial stage, even prior to it being published, that regulatory team that I've referenced has sent me back a comment. Why doesn't this will have a Sunset Provision? They look at everything about rulemaking to the nth degree from the inception of the of the rulemaking process to the very end of it. And for many of us, it is an area that we don't necessarily, I'm not going to say enjoy, because I understand this is a public meeting, but I will say that we tread very carefully in it, because we understand all of the thorns that come in developing that rose of a rule, if we ever get to the end of it. If I can use that as an analogy.

I'm going to talk a little bit about Antitrust issues later on, but I wanted to mention when it comes to rulemaking that we even look at rulemaking to the extent to determine whether or not some of these changes create issues that somehow interfere with maintaining a competitive environment in our profession. And I say that only during this section of the discussion, only to note that the Office of the Attorney General has an entire branch that their sole responsibility is to identify Antitrust issues. And I mentioned that in a rulemaking process, which I was fairly recently involved, the Antitrust area or branch of the Attorney General's Office contacted me because the Board wanted to make a change, and one of the attorneys from that particular office asked, "Rachelle, how does this not impact Antitrust?" And when I say that everything about rulemaking is looked upon by everyone that can have even a remote involvement to it, I just wanted it to be clear that once we decide to do any rulemaking, once we get it to the books, like, the rule is effective and adopted, and if everything goes well, it may take maybe three (3) months. But, if there is any type of public comment, if there's any situation where we have to revisit some of the language, do a notice of change, it can take up to a year. If a rule is open for development and not closed within a year, it becomes dead and we have to restart the process again. So, of course, we do everything that we can to get it done within the three (3) months. And that is ideal. Very often, that's not the experience, but we definitely will get it done within a year. Unless we find ourselves with, and I think this Board has done previously, just made a decision that we don't need to do it. We'll just withdraw the rule and reissue a notice of withdrawal. And life goes back to what it was before. But, I underscore that because the rulemaking process is in the prime responsibility with the Office of Attorney General does. And, whenever this Board is interested in making any type of changes to the rules, whether it be an amendment, or repeal, or an addition, it will be my first and foremost responsibility to make sure that it gets from its initial stage of the filing of the effort to its adoption stage, prayerfully within a three-month timeframe. And I think that might be my entire coverage.

I don't know if Attorney Griffin mentioned anything about the judicial review process, and that's kind of a little outside of rulemaking, but I just want you to know that whenever the Board makes any type of decisions regarding any of those disciplinary proceedings, any variances or waiver, any petition for declaratory statement, and an individual or the Department may feel that they disagree with it, they have an opportunity to appeal it. Your decision making is not final until it is deemed final. Most notices or any type of orders that are issued out of our office, or anything issued out of the Office of General Counsel usually has appeals rights attached to it, and depending on the type of action it's either twenty-one (21) or thirty (30) days to appeal it. And once any of those who chooses to do the appeal in a timely fashion will find themselves coming back before the Board, depending on the action, for additional review or going to the District Court of Appeal, if a Final Order has been issued from this particular Board, or going to DOAH if it's an administrative matter with a disputed issue of material fact. I think this was previously referenced by Attorney Griffin. I think that may be the last time I speak for this particular presentation, so I'm going to use this opportunity to just mention a couple of things that are not necessarily highlighted on the agenda, but I wanted to just make brief mention of them that affect Board members. A couple of things, actually.

I wanted all Board members to be mindful of the Dual Officeholding requirement, or better stated prohibition. Something we may not think about. The fact that you've been appointed to this particular Board sometimes just demonstrates that your public service is such that everybody wants you to do something for them with regard to public service. I would just encourage you that if you find yourself being asked to participate in another Board, or if you are participating on another Board, or there's some other level of public service that you're involved in, feel free to alert me first. I more than likely will immediately direct you to the Florida Commission on Ethics. This is what they do every day to identify whether your alternate public service is a conflict that would require you to maybe remove or resign from the Board. What the Dual Officeholding Prohibition specifically states, and I think it's made available to you. The information is in the Florida Constitution, Article II, Section 5(a). It states, and I don't want to misstate it, so I'll just refer to it. *"No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein,"* and it has some exceptions. And those exceptions would be, if you were maybe in a position where you're only having an advisory authority, or something of that nature, and it can get kind of gray sometimes. But, the reason I'm stating that is, it seems like more often than not, we're finding ourselves in positions where Board members may be on other Boards, or may be involved in other areas and didn't even think to understand that there could be a conflict. The fact that it's the Florida Constitution and it says that you can only hold one (1) office at the same time, and I've worked with individuals who served on Boards for years, and then they decided to run for Education Commissioner or something like that, literally understood that they had to resign from the Board before they could pursue their endeavors to run for School Board Commissioner or something of that nature. Because their service on a statewide regulatory board may seem like it's not that big, and their wanting to be a school Board commissioner is being, they're kind of like the same as far as public service is concerned, and they literally had to resign from their existing Board to even officially run, they gave the Board notice once that was clear. Something else that one may not realize is if you find yourself in a Dual Officeholding position, it is your most recent assignment that actually prevails, which means maybe you were a member of a board for ten (10) years. And you were just appointed to, let's use this as an example, this Board. You would kind of be forced to resign from the other Board because it's this Board, because it's more recent in time, that actually would supersede any type of Board service requirement. So, if you're thinking about it, if there's a question, it's really good to look into. When the information that's going to be disseminated in writing and shared, the Florida Commission on Ethics, their direct contact information is going to be made available to you. Our office interacts with them very regularly, and they are very, very helpful. And what they provide better than anything else is some type of statement, or opinion, or something, it is very, very helpful to get it to them in writing that if any question ever comes up in the future, once it's kind of been vetted by their office, you're good to go. I mean, if we operate on the assumption, however, that's another issue and it's an area that's probably not even worth the risk. It's just something that you'd want to clarify beforehand, if possible.

I'm not going to definitely bore you with Antitrust, but I am going to say that all boards, this Board, of course being no exception, based on a ruling by the, and I'm trying to think, it's North Carolina State Board of Dental Examiners versus the Federal Trade Commission. This is back in 2015. It was determined by the Supreme Court that Antitrust considerations are not only relevant but governing. Meaning, and there may be, and you're not going to hear about this a lot, but I just want you to know this is an area that's always going to be. It's like a little rabbit that's going to be on the table in consideration of everything that we're doing. I want to make sure that we're never violating any Antitrust laws. And, my only comment about it is, we want to make sure that all market participants have an opportunity to do just that. Be active, competitive market participants. We don't want to offer any unnecessary restrictions to the open, competitive market. And we want to make sure that the Board's activity in any review of information does not provide any restrictions in that vein as well.

Now that I have completely put that stern in your head, I'm more than happy at this time to take any questions in general that you feel might relate to your role as Board members that directly would overlap with my responsibility to you. My closing statement is probably to the extent that I understand that Assistant Director Simon and Director Schwantes are responsible to the Department, and I know that Attorney Griffin is responsible to make sure that all those discipline cases in his office are handle with the

necessary protocol and with the legal oversight that's required. My role, I need you to understand, it's personal. I am here for you. I want you to understand that my job is to make sure that if you have any questions about what you should or shouldn't do, if you have any questions about your role as a Board member, if you have any questions about what can I do not to get in trouble here or something very similar to what Member Lyons just mentioned. If you have any questions about any conduct or anything that you feel me may offer some type of conflict. That is why I will share my cellphone with you. That is why I am required to attend every meeting to make sure that the Board members are doing just what they're supposed to be doing. I am not Big Brother or Big Sister, so to speak. But, I am here, as an individual, through the venue of the Office, of the Attorney General, to make sure that all of the activity that is presented in public record, in public view makes everyone, not only look good, but remain compliant with the rules that we're required to govern, because when I say, and this probably does that apply to this Board, but when I say individuals exist for a purpose of looking to see what you're doing wrong, they actually exist. I thought, surely someone else has lives to do better things with, but they actually do exist. So, my number-one concern is to make sure that each of the Board members in each of the Boards or commissions that I'm associated with, don't have a worry in the world. Now, when I'm away from you that's why you have my cell phone, because I want you to be comfortable at all times. Because, you're service to the State of Florida is just that important. So, I am now going to stop. I see that Ms. Simon and Director Schwantes are looking at me and I'm going to just say thank you again. I so look forward to your work, those who are new, and the continued work of those who have done such an amazing job thus far. It's definitely my pleasure. I'm done.

Ms. Schwantes – Thank you, Rachele, very much. Marshawn, did you want to go ahead with the Disciplinary Proceedings?

#### **8. Disciplinary Proceedings**

Mr. Griffin – Yes. So, kind of like Rachele mentioned, Rachele represents the Board. I basically work on behalf of the Department and the Office of General Counsel. I oversee the Office of General Counsel (OGC) and any attorneys that prosecute cases before the Board. So, I'm going to start off the disciplinary discussion by starting about how does a case get from a complaint by consumer, or an inspection by the Department to possibly being in front of the Board. So, the Department may receive a complaint from a consumer, they may conduct an inspection and discover violations. And once the investigatory staff starts that process, you know, they receive the complaint and then they determine whether or not there's what's called legal sufficiency for the Department to conduct an investigation. Legal sufficiency is basically, think of it as is the complaint alleging something that's within the jurisdiction of the Department to enforce and conduct that violates some provision of Chapter 497, Florida Statutes, or Rule 69K Florida Administrative Code. If the investigator determines there's at least something to start with, with this complaint, but we need a little bit more, the investigator is then going to take steps to reach out to the consumer complainant and potentially the subject licensee to get documents that are required to kind of complete their investigation. Now, once the investigator has determined that there is legal sufficiency to proceed with a complaint, they're going to reach out to that licensee and give them twenty (20) days to respond to the complaint. And, this twenty (20) day period is provided for by statute. Every licensee has a right to these twenty (20) days. Now, a licensee is not compelled to provide a response within that twenty (20) days, but if they do provide a response, then that information is going to be considered by the investigatory staff, as well as the Office of General Counsel, if the file does progress to them. Now, during the investigation, the investigator acts basically and the Division acts as a fact finder. They're out there, and they're going to speak to witnesses. They're going to request documents, like I previously discussed, and they're going to try to obtain anything that they need to determine, with a pretty good degree of certainty, whether or not a violation has occurred. Now, there is one caveat or one type of violation that once the investigators determine the violation exists, it kind of gets tracked through a different track, and that's allegations of unlicensed conduct. Pursuant to Florida Statutes, the Board does not have authority to act on matters of unlicensed conduct, or the Board's authority is limited to licensees. So, unlicensed conduct does not go unpunished. The Department and the Division can take action. However, it progresses through a different channel, wherein the Office of General

Counsel basically immediately goes to filing what's called a Notice of Intent to Issue an Emergency Order of Suspension, or, sorry, a Notice of Intent to Issue a Cease and Desist. And then, ultimately, an Order to Cease and Desist following. However, for cases involving wrongdoing or misconduct by licensees, once the investigation is complete, the matter will be referred to the Office of the General Counsel if the investigator determines that there's a sufficiently legal basis to move the case on. So, once a file is referred to the Office of the General Counsel, what happens is that the OGC receives a copy of the investigatory packet. Sometimes they'll receive information about the prior discipline up the licensee. And, what OGC is going to do at this point is we're going to review the file again and we're going to determine whether or not there's a legally sufficient basis to go forward with this matter. So, you have to think of like every case we get, there's kind of like a funneling of that. So, the Division may investigate a thousand cases in a year, but out of those thousand cases, maybe only 200 of those cases will be referred to OGC. Out of those 200 cases, OGC may determine that either there's not a legally sufficient basis to proceed with the complaint or that some other disposition would be warranted of the matter. And so, more of those cases from that 200 are going to get filtered down to actually getting forwarded with the Office actually filing formal administrative action. So, once OGC has reviewed the file and determined this case should go forward, or in the alternate, if they review the file and determine we need a little bit more information, they're going to reach out to the investigator to kind of get that additional information. But, once OGC has determined the file is sufficient, that there's facts good enough to go forward with an AC (Administrative Complaint), they're going to draft a draft Administrative Complaint. Now, that draft Administrative Complaint, once it's prepared, it's going to be submitted to a Probable Cause Panel. And the Probable Cause Panel is going to get the draft Administrative Complaint, the investigative file, and then any additional information that the Office of General Counsel or the Department investigator has kind of compiled since the investigative file was prepared.

So, if you're serving on a Probable Cause Panel, your job is to determine whether or not there's probable cause. Now I know what you all may be thinking. What is probable cause? Great question. So, the easiest way I can describe probable causes this: Is there a legally sufficient basis to find that a violation of Chapter 497 has occurred, and if so, is the licensee the one that has committed that violation? So, to kind of put it in the simplest terms, I want you all to imagine that eating a ham and cheese sandwich was a violation of Chapter 497, Florida statutes. So, if you're on the Probable Cause Panel, your job is to look at the Administrative Complaint and the investigatory file and determine if there is a licensee that's accused of eating something that's a ham and cheese sandwich. If so, does the Administrative Complaint and the investigatory file contain enough evidence to support that, that licensee ate a sandwich consisting of ham and cheese? Now, when you're making that determination, you're only allowed to look at the four corners of the complaint and the investigatory file, nothing else. So, a licensee's prior disciplinary history, what you may know outside of the documents in the investigatory packet, you cannot consider. Each time somebody comes before the Probable Cause Panel you need to assess that particular case based on the merits of only what's in front of it. So, if you're on the Panel, the panel will consist of at least two (2) members, but there's usually three (3) members, and it takes a majority vote by the Panel to determine whether or not there is probable cause. Now, if the Panel looks at the file and determines there is not a legally sufficient basis, using my prior example, there's an allegation that the licensee had a ham and cheese sandwich, but there's no allegation in the packet that there was ham on the sandwich, so as a Probable Cause Panel member, it's your obligation and your responsibility to say there's not probable cause here. Now, if the Probable Cause Panel determines that there's not probable cause, then the OGC has to make a decision of whether or not to attempt to proceed with the case, or just let it go. However, if the Panel determines there is probable cause, then that allows the Office of General Counsel to move forward with filing a formal Administrative Complaint against the licensee.

So, let's move on to the Administrative Complaint. So, the licensee is basically going to be provided the same Administrative Complaint that the Panel was provided with. And, accompanying that complaint is going to be a document called an Election of Proceeding and Notice of Rights. The Administrative Complaint has to be served on the licensee. There's several different methods that the Department has to serve an Administrative Complaint, but the important part is that once the licensee has been served with the

complaint, a clock starts running, and they have twenty-one (21) days in which to submit to the Department, or the Division, something called an Election of Proceeding. That Election of Proceeding has basically three (3) different categories. There's category one, which is the licensee says, "Department, I don't dispute any of the facts in the Administrative Complaint. And on top of that, I don't want to have a hearing. I submit myself to the Board for you to impose discipline." In that case, what's going to happen is, is that the matter will be referred to the Board for an informal hearing at one of the regularly scheduled Board meetings. At that Board meeting, the Department will basically present, we'll file a series of motions. One motion basically asking you to adopt the facts as alleged in the Administrative Complaint, one motion defined as the Department submitting as evidenced the investigatory file, as well as any supplemental materials. And, then the Department will ask the Board to impose discipline. Now, even though the licensee has waived the right to have a formal hearing, the licensee is still permitted to appear at the hearing and basically speak on their behalf before the Board decides to impose discipline. The second option that a licensee has is to say, "I don't dispute the Department's facts, but I would like to have a hearing on this matter." And, in which case it fundamentally doesn't differ too much from the first option. OGC still issues a packet to the Board to be considered at a Board meeting with the Administrative Complaint, investigatory files and supplemental materials. There's still the series of motions, and the licensee still has an opportunity to appear before the Board and basically state their case before the Board imposes discipline. The final box that they have to check is that, "I dispute the Department's facts and I would wish for a formal administrative hearing." Now in that case, the first thing that OGC is going to do is, is that in order to request a formal administrative hearing, the petition has to have a certain set of facts. You have to have a certain set of facts or details. The most important one is that you actually have to allege a disputed issue of material fact. So, to go back to my prior example of the ham and cheese sandwich and mystery licensee, an example would be if the licensee said, "I'm disputing. I request a disputed issue involving material fact, and I'm alleging that I never had a ham and cheese sandwich." That would be an example of a sufficient allegation of disputed issue of material fact, because the Department is alleging this person had a ham and cheese sandwich. The licensee is claiming that they didn't, at which point we would refer the matter to the Division of Administrative Hearings for a formal hearing. Now if the licensee makes a request for a formal hearing, but fails to allege a disputed issue of fact, then OGC will refer that before the Board for the Board to basically tell the individual we've received your petition, however, it's insufficient. And in which case, the Board can enter an order basically dismissing the petition that the licensee has submitted, and giving the licensee additional time to submit a facially sufficient petition to obtain a formal hearing. So, that kind of almost restarts the clock again. And if the licensee doesn't submit an updated petition, then it's treated as though they waived their right to a hearing, but if they submit a corrective petition or a petition that says they're not disputing facts, then we will deal with it accordingly.

So, moving on. So, you will all pretty much be dealing with the informal hearings. I think I kind of discussed that. Now, the important thing is this. At these informal hearings, the discipline you can impose is regulated, governed by rule and statute. We are creatures of rule and statute, which means there are a set of guidelines, and if you're imposing discipline, you have to follow or fall within those guidelines. Now, those guidelines can be found in Rule 69K-30.001, Florida Administrative Code. The most important thing to remember is this; anytime you're putting a penalty or crafting a penalty that falls within the guidelines, you're good to go. But the guidelines do invest the Board with the ability to craft penalties that are outside of those guidelines. And, so the penalties can be less than what the guidelines require. They can be more than what their guidelines require. In either of those cases, if the Board ever wants to go outside of the penalty guidelines, there are a list of mitigating and aggregating factors that are contained within that rule that I just described. When the Board is seeking to aggravate or mitigate, they have to clearly state on the record the factors that they're using for mitigating an aggravation. Basically, show your work, kind of in a sense. Treat it like a math class. That needs to be apparent on the record, so that if somebody appeals the case, we, as OGC can clearly state that the Board went outside, know they went above what was called for by the penalty guidelines, but here is the clear factual basis for why they went above, and here's the legal basis for why they went above. So just remember, anytime you're going outside of the guidelines, it always has to be justified.

Now, we've talked about basically the informal hearing process and a little bit about the formal hearing process. Let's talk about the other big thing and the most important thing to discipline, which is the settlement process. As I talked about earlier with that funneling, very few cases will actually go forward to an informal hearing or a formal hearing. Similar to the criminal justice system, most cases are going to be disposed of through a settlement, which is basically analogous to a plea bargain. And in those circumstances, what has happened is that the licensee and the Department have come up with a proposed resolution for the case, which is always going to take the form of some combination of probation, a fine, and in some cases suspension, in other cases revocation. And, then there can be other conditions with respect to the violation that has occurred. If the Department and the licensee wish to settle the matter, what will happen is they will enter into a kind of a contract called a Settlement Stipulation for Consent Order. The Department signs it and the licensee signs it as well. That's not the end of it. Those Settlement Stipulations, those terms have to be accepted by the Board. So, what will happen is, is that the Department will present the Board with the investigative file, the Administrative Complaint if one has been drafted, and the Settlement Stipulation for Consent Order. Then it will be up to you, the Board, to decide if you're fine with these terms, in which case you can approve the terms of the Settlement Stipulation. You can decide you don't like these terms, as they're either too harsh or not harsh enough, in which case you can reject the Settlement Stipulation. But, on top of rejecting the Settlement Stipulation, the Board can actually propose a counter-offer. So, just remember if you see a Settlement Stipulation, that's not the end all be all. You, as the Board, are vested with the discretion to come up with a wise decision, a decision that falls within the confines of the law. So, at any point in time, you're invested with that authority to if you don't like these terms, and propose something different. Now, once those new terms have been proposed, the licensee has another chance to kind of decide whether or not they'd like to accept those terms, because they've come to that meeting basically under the presumption that this is how it's going to be settled. So, if things change, they need to be given time to basically decide whether or not they want to accept the new terms. If the licensee would like to accept that counter-offer, then an appropriate order will be issued adopting the terms of the Board's counter-offer. If the licensee says it's too much to swallow and they don't like these new terms, then basically the licensee and OGC go back to where they were before the negotiations happened, in which case the matter may proceed forward with an informal hearing or the matter may proceed forward as a formal hearing.

The one big thing I probably should have mentioned a little earlier back is that except in matters where a licensee has waived their right to elect a hearing, which is essentially they failed to timely file something stating that they'd like to have a formal or informal hearing, if you begin the process of an informal hearing and a licensee begins disputing material facts, then it is the responsibility of the Board to say we cannot hear this matter. And OGC will also do its job. If we're in the middle of an informal hearing where the licensee still has the right to pick a hearing and the licensee begins disputing material facts, then OGC may jump in and advise the Board that although this was referred to you, we need to pull this back and send it to the Division of Administrative Hearings. It's very important that if there's a disputed issue of fact in an informal, where the licensee has a right to still elect a hearing that we do not hear issues of disputed material fact, because that is outside of the realm that the Board has authority to rule on. So, the one thing I will point out is that if matters go to the Division of Administrative Hearings for a formal hearing, then the Board's work is not done on the matter. What will happen is that the Department, OGC and the licensee will have this formal hearing. And at the end of the hearing the Administrative Law Judge is going to issue something that's called a Recommended Order. That Recommended Order is going to come back before the Board, and the Board will have to decide whether or not to basically adopt that Recommended Order, in issuing its Final Order. And there are certain instances where the Board has the authority to basically disregard the findings in the Recommended Order, and I believe that they'll be outlined within the training documentation you will receive. So, once the Board has that Recommended Order, the Board has the authority to enter a Final Order, which does constitute the final discipline in that matter. But, it's important to understand that in cases where the Board issues a Final Order, that that gives a licensee a right to appeal, which means that the licensee can elect to take the matter to the District Court of Appeal, if they think the Board or the ALJ got something wrong, and then it will go through the formal appellate process. Anything that's resolved via a settlement, thankfully does not attach with those, or at least a Settlement Stipulation

and Consent Order do not attach those appellate rights. That's always something we put in the stipulation to say nobody's appealing this. So, once the Board accepts a stipulation and the Consent Order is issued, that matter is done. So, I think that that's kind of a pretty good overview of the disciplinary process, how a case goes from a complaint to getting before the Board. Does the Board have any questions I can answer? Ok. Well, then I think that that concludes my discussion of the disciplinary process. It's been a pleasure to speak with you all.

Ms. Schwantes – Thank you. I want to thank Rachele, Marshawn and Ellie, all three (3) for their presentations today. Before I talk about budget issues and some of the other administrative issues, I know Ellie had a couple of things she wanted to mention regarding the Board packets and a follow up. Ellie?

Ms. Simon – Well, as you all know, we have a Board meeting coming up next week on May 6<sup>th</sup>. The Board packets will go out either Wednesday or Thursday this week. They go out electronically. Depending upon the security that is on your computer, it could take approximately fifteen (15) to twenty (20) minutes to download the Board package. If your security is higher, the higher the security is the longer it will take. So, give yourself that type of breathing room when you get the package, know that it may take that amount of time. And, Mr. Griffin mentioned that in terms of the deemer date, if an application is submitted, the Board has ninety (90) days to decide on the application or the application is deemed completed. In each Board packet, there's a coversheet. And the Board members that are currently on the Board and have been, may be wondering why it always states on the coversheet that the Board package, when originally received or the application package when original received wasn't completed. It was completed on such and such a date. Well, the date that it was completed is the date that that ninety (90) days starts to run. So, that's why you get that information on your coversheets. And for the new Board members, you'll see that the coversheets pretty much summarize the application or the type of matter that is before the Board in that instance. So, if you have any questions, as we mentioned before, about the pending Board packages, don't hesitate to give me a call. And, as you know, I will be reaching out to you either Tuesday or Wednesday of next week, before the Board meeting on May 6<sup>th</sup>. Thanks so much.

Ms. Schwantes – Thank you.

**9. Administrative Issues:**  
**a. Operating Budget**

Ms. Schwantes – So, we have a couple of administrative issues to talk about, and then we'll wrap up things. So, first of all, with regard to the funding for this Division, we didn't talk about that earlier. We are not supported by what people typically think of as your state tax dollars. So, we are funded by the licensing fees, the disciplinary fines, and interest earned on the accounts that are administered through the State Treasury. And so, our total revenue annually is about \$3.03 million to \$3.26 million per year. It varies, depending on the amount of interest, and also depending on the license renewal periods, because as you all know, some of our licenses renew every other year instead of annually. And so, you'll see when you see the budget sheets, later in the year, we usually present them around February to the Board, you will see the fluctuation from year to year. Our annual Operating Budget is approximately \$2.43 million. Now, the annual Operating Budget is what we control within the Division. The Department controls what is called the Non-Operating Budget. The Non-Operating Budget includes our IT support, our legal support, and, of course, administrative support from the CFO's Office, and such. That is, approximately \$1.24 million, So, you will hear us talk about this as well in future meetings. One of our biggest concerns from a funding perspective is long-term funding. And by saying that, if you just do the math, what happens with these revenues that come in, they are placed in an account for our benefit that is within what's called the Regulatory Trust Fund. And, you just think of that account as a savings account. If you have around \$3 million coming in, but annually you have about \$3.4 million going out, you're exceeding your revenue is what I'm getting at. And so, every year our savings account, if you will, takes a hit. Within the next ten (10) years, assuming no changes are made to any of our operating systems, which are very outdated, to personnel levels, to anything, status quo. Within ten (10) years, at the end of that 10-year period, we expect

that the trust fund savings account, again, will be down to approximately \$500,000 for our Division. So, as you can see, that is a huge concern. We will be addressing this in the future. This was not the year to do it, clearly. So, that's kind of it in a nutshell, regarding funding. Having said that, and having talked about the budget stuff, I do want to point out that there is a lot of cost savings benefits to being part of a larger agency, like the Department. And as an example of that, if we have another Division, we have other Divisions that handle regulatory matters. Regulation of Agents licenses, for example. If that Division were to need an upgrade to their operating systems, it would be possible for us to piggy back into that so that we are able to share the cost savings of, you know, more buyers purchasing a particular system. Same thing with regard to our automobiles, our State automobile pool. We are able to take advantage of the State automobiles that are available. And so, we do not usually have to purchase as a Division, our own cars. Having State vehicles to use saves significantly on the rental vehicle fees, so that saves on our travel expenses. Again, that's within our Operating Budget and we can control that. So, that's a little bit about the funding on it. And, again, usually in February, we present the overall budget and much more detail with that, about that to the Board.

#### **b. Travel Reimbursement Information**

Ms. Schwantes – I've already talked with the new members that when we go back in-person meetings, and we certainly hope that that will happen in the future at some point, that you are reimbursed for your travel. The reimbursements are at the state rate, which is controlled by section 112.061, F.S., and that statute will be referenced in your materials following this meeting. That statute sets out the per diem rates as well as the allowed maximums on hotels and things like that. Your travel has to be authorized in advance, and as I already pointed out to you all in earlier conversations individually with our new Board members, although you may elect to travel first class in some circumstances, or stay in an upgraded hotel room, you are only reimbursed as if you are a State employee. And, so you are reimbursed state rate. And LaTonya Bryant is your primary contact for purposes of if you have any questions regarding travel or at the end of your travel when you're ready to process to try to get reimbursements. So, we will have more information about all of that in the manual we discussed, which, again, we try are trying to get out by the end of this week, and that will give you, I hope, in addition to a little bit more detail on what was discussed today, a good reference on both the statutes, contact information and other matters that are coming up.

#### **10. Adjournment**

Ms. Schwantes – One final thing that we've covered today sorry. One final thing that I wanted to mention has to do with your appointments, with the new appointments and of course the reappointment. By statute, you're appointed by the Governor, and it requires Senate Confirmation. Unfortunately, this year the appointments were not made by the Governor until after the committees legislatively had already met. And so, my understanding is that there will not be Senate confirmation this year. That we can look to that for next year. So, I just wanted to be sure that you all knew that. I think that's it. Again, I wanted to thank everybody. Does anybody have any questions? Board members? Mr. Brandenburg, did you want to say anything?

Chair – We certainly appreciate the presenters and the attention of the Board members and we'll get our packet on Thursday and begin to study. And, then getting ready for the Board meeting the following Thursday. So, again, thank you, Mary. Thank you, Ellen. Thank you, Rachelle. Thank you, Marshawn. And of course, our illustrious administrator, LaTonya Bryant. How could we ever do what we do without LaTonya? So that's my comment, Mary.

Ms. Schwantes – Thank you, sir. And with that, ladies and gentlemen, we are adjourned. Thank you all again, and welcome to Board.

Ms. Clay – Thank you. Have a good day.

The meeting was adjourned at 12:17.