

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
TELECONFERENCE MEETING
July 9, 2015 - 10:00 A.M.

1. Call to Order, Preliminary Remarks and Roll Call

Mr. Jody Brandenburg, Chair – I would like to call to order the Board of Funeral, Cemetery and Consumer Services' Teleconference meeting. It is July 9, 2015. Mr. Doug Shropshire, will you make the usual preliminary remarks for the record and then call the roll.

Mr. Doug Shropshire – Yes, Mr. Chairman. My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is Thursday, July 9, 2015. The time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting had been made available to interested persons. The meeting is occurring by Teleconference with some members of the public here with the Division staff here in the Pepper Building, in Tallahassee, Florida. The call in number has also been made available to the public. Members of the Board are participating by phone. My assistant, LaTonya Bryant, will take minutes of the meeting, which is being recorded. Board Counsel is also appearing by teleconference.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. All persons participating by phone are asked to place their phones on mute at all times while listening. I repeat, please place your phones on mute at all times while listening. We ask this to enhance the audio quality of the Teleconference. If any Member or participant is disconnected they can call back to the same number called initially. Participants are respectfully reminded of the necessary protocol that only one person may speak at the time.

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

PRESENT (via phone):

Joseph "Jody" Brandenburg, Chairman
Keenan Knopke, Vice-Chairman
Jean Anderson
Andrew Clark
James "Jim" Davis
Lewis "Lew" Hall
Powell Helm
Richard "Dick" Mueller
Vanessa Oliver

ABSENT:

Ken Jones

Also noted as present:

Tom Barnhart, Board Legal Advisor (via phone)
Ellen Simon, Assistant Division Director
LaTonya Bryant, Department Staff
Jasmin Richardson, Department Staff
LaShonda Morris, Department Staff

Mr. Shropshire – Mr. Chairman there is a quorum for the business of the Board.

2. Old Business

A. Recommended for Approval with Conditions

(1) Cemetery Professionals, LLC (F019496) (Atlantic Beach)

Mr. Shropshire – This application for renewal of a preneed license was presented at the June 25, 2015 Board meeting on the addendum for Non-Renewing Preneed Licensees (Not Renewing as of June 30, 2015). On June 26, 2015, the Licensee contacted the Division indicating that they wish to renew the license in order to continue selling preneed for the current renewal period. Licensee has provided all documentation for renewal, paid a late fee in the amount of \$1,000, and requests consideration for renewal of its preneed license. The above identified Licensee seeks renewal of their preneed license pursuant to s. 497.453, FS, effective July 1, 2015

DIVISION REMARKS:

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$134,218, against a minimum required net worth of \$20,000. Licensee was renewed with conditions per Consent Order filed March 10, 2011 to trust at 100%.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$271,458, against a minimum required net worth of \$100,000. Licensee was renewed with conditions per Consent Order filed March 10, 2011 to trust at 100%.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$ 295,964, against a minimum required net worth of \$100,000. Licensee was renewed with conditions per Consent Order filed March 10, 2011 to trust at 100%.

2014 RENEWAL (7-1-2014): Licensee reported net worth of \$ 275,294, against a minimum required net worth of \$100,000. Licensee was renewed with conditions per Consent Order filed March 10, 2011 to trust at 100%.

CURRENT RENEWAL (7-1-2015): Licensee reports a net worth of \$ 315,755, against a minimum required net worth of \$100,000.

Licensee's current renewal application package was received by the FCCS Division on or about June 29, 2015, and the application for renewal was due to be filed with Division by no later than April 1, 2015. On May 4, 2015, the FCCS Division mailed a Notice to Licensee, advising the Licensee that the Department had not received its 2015-2016 annual preneed license renewal application that was due on April 1, 2015.

As of June 29, 2015, the FCCS Division has received a completed application for renewal and Licensee has demonstrated that it meets the minimum required net worth for renewal. The Division recommends that Licensee be approved subject to the following conditions:

- 1) That if approved, Licensee continues to comply with terms of probation, and
- 2) That Licensee continues trusting at 100%, as per Consent Order filed March 10, 2011 with the Division.

Ms. Vanessa Oliver – Mr. Shropshire, can you tell me if the Applicant is current on their restitution?

Mr. Shropshire – Ms. Oliver, Ms. Simon made an inquiry in that regard yesterday. Ms. Simon, would you address that issue?

Ms. Ellen Simon – Good Morning. I had reached out to Cemetery Professionals and asked them where they were on the balance of their restitution as they had not paid over the last couple of months. They had a balance of \$3540 that had not yet been paid. I received an email yesterday evening from Nader Rayan. It stated, "The last time you spoke with Amanda, I got the impression that based on the conversation with Amanda about this matter. Then after review of the emails you sent because of your July 6th email, I reviewed the emails that came to the conclusion that my assumption on the information I got from Amanda prior to her going to the hospital for a severe kidney infection was that we were cleared with Riverview." Essentially what he is saying is as a result of this email he did not realize that the bill had not been paid so what he wanted to do was clear this out entirely with one (1) payment. He included a copy of a check for \$3540 that was made to Riverview for the remaining balance. I am unclear whether the check has actually been sent or if it has been cleared. So what I would recommend that the Board do is approve the license conditionally on the fact that this payment has been made.

Mr. Shropshire – So our recommendation would be to approve it subject to the condition of confirmation that the check to Mr. Rayan sent Ms. Simon has in fact been presented and paid.

Mr. Keenan Knopke – Once the check is cleared, are they still on probation after that?

Mr. Shropshire – Yes, I believe so.

Mr. Knopke – That was the way I read it, but I wanted to make sure because it was also in the stipulation that they said they could petition for early termination.

Chair – Have we determined whether there were any preneed contracts written from July 1st to present?

Mr. Shropshire – No. As we speak here Mr. Chairman, we do not know the answer to that.

Chair – Could we verify that at some point?

Mr. Shropshire – Yes sir.

Chair – I would like to see the Division’s recommendation with the discussion on the restitution and contingent upon them not writing any preneed without a license from July 1st to present day.

MOTION: The Chair moved to approve the application subject to the conditions that the Licensee continues to comply with terms of probation, Licensee continues trusting at 100%, as per Consent Order filed March 10, 2011 with the Division, proof that the check to Mr. Rayan sent Ms. Simon has in fact been presented and paid and confirmation that the Licensee has not written any preneed without a license from July 1st to present day. Mr. Andrew Clark seconded the motion, which passed unanimously.

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

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

4. Application(s) for Continuing Education Course
A. Recommended for Approval without Conditions – Addendum B
(1) Florida Cemetery, Cremation & Funeral Association (75)
(2) Florida Morticians Association, Inc (133)
(3) FuneralCE (43)
(4) International Cemetery, Cremation and Funeral Association (22808)
(5) LifeNet Health of Florida (22608)
(6) National Funeral Directors and Morticians Association, Inc. (15608)
(7) National Funeral Directors Association (136)
(8) Selected Independent Funeral Homes (137)

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

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

5. Application(s) for Approval as a Continuing Education Provider
A. Recommended for Approval without Conditions – Addendum C
(1) Kates-Boylston Publications (23010)

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

MOTION: Mr. Powell Helm moved to approve the application(s). Mr. Lew Hall seconded the motion, which passed unanimously.

6. **Application(s) for Florida Law and Rules Examination**
 - A. **Informational Item (Licenses Issued without Conditions) – Addendum D**
 - (1) **Funeral Director and Embalmer (Endorsement)**
 - (a) *Allen, April A*
 - (b) *Kasler, Christopher S*
 - (2) **Funeral Director and Embalmer (Internship and Exam)**
 - (a) *Shank, Philip S*

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

7. **Application(s) for Internship**
 - A. **Informational Item (Licenses Issued without Conditions) – Addendum E**
 - (1) **Funeral Director**
 - (a) *Rudolph III, James W (F084883)*
 - (2) **Funeral Director and Embalmer**
 - (a) *Barnhart, James W (F031547)*
 - (b) *Herrera, Roberta A (F084820)*
 - (c) *Keyser, Lia (F084777)*

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

8. **Application(s) for Embalmer Apprenticeship**
 - A. **Informational Item (Licenses issued without Conditions) – Addendum F**
 - (1) *Gonzalez, Jazmin (F084881)*
 - (2) *MacDonald, Thomas S (F084805)*
 - (3) *Peters, Gloria (F084882)*

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

9. **Application(s) for Registration as a Training Agency**
 - A. **Informational Item (Licenses issued without Conditions) – Addendum G**
 - (1) *Countryside Funeral Home Inc (F057660) (Anthony)*
 - (2) *Unity Memorial Funeral Home East Corp (F076110) (Apopka)*

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

10. **Consumer Protection Trust Fund Claims**
 - A. **Recommended for Approval without Conditions – Addendum H**

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

MOTION: Mr. Mueller moved to approve the claim(s) for the amount indicated on the Addendum entitled "Amount Recommended." Mr. Hall seconded the motion, which passed unanimously.

11. Application(s) for Funeral Establishment
A. Recommended for Approval *with Conditions*
(1) *Beggs Funeral Homes Inc (Monticello)*

Mr. Shropshire – A change of ownership application was submitted on May 28, 2015. The application was incomplete when submitted. All deficient items were returned on June 16, 2015. The Funeral Director in Charge will be Edward Beggs (F045284). As stated in the letter dated May 19, 2015, Beggs Funeral Homes Inc will assume all existing preneed liabilities of the locations listed. All fingerprint information was returned without criminal history. The Division is recommending approval with subject to the condition(s) as follows:

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

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

(2) *Beggs Funeral Homes Inc (Tallahassee)*

Mr. Shropshire – A change of ownership application was submitted on May 28, 2015. The application was incomplete when submitted. All deficient items were returned on June 16, 2015. The Funeral Director in Charge will be James Sircy (F045312). As stated in the letter dated May 19, 2015, Beggs Funeral Homes Inc will assume all existing preneed liabilities of the locations listed. All fingerprint information was returned without criminal history. The Division is recommending approval subject to the condition(s) as follows:

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

- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.

MOTION: Mr. Hall moved to approve the application subject to the conditions recommended by the Division. Ms. Jean Anderson seconded the motion, which passed unanimously.

(3) *Heritage Family Funeral Care LLC d/b/a E Dale Gunter Funeral Home & Cremation (St Petersburg)*

Mr. Shropshire – A change of ownership application was submitted on June 15, 2015. The application was complete when submitted. The Funeral Director in Charge will be E Dale Gunter (F044263). As stated in the letter dated June 15, 2015, Premier Funeral Plans LLC (sister entity to Heritage Family Funeral Care LLC) will assume all existing preneed liabilities of the locations listed. All fingerprint information was returned without criminal history. The Division is recommending approval subject to the condition(s) as follows:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the Applicant in the application and related materials provided to the Board or FCCS Division by the Applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment(s) under the application(s) herein passes an onsite inspection by a member of Division Staff.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.
- 8) That there be receipt by the Division, within 45 days of this Board meeting, proof of Fictitious Name Registration by Applicant with the Florida Department of State.

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

12. *Application(s) for Monument Establishment Retailer and Monument Retail Sales Agreement(s)*
A. *Recommended for Approval without Conditions*
(1) *Young Family Monument Company, LLC (Crawfordville) – (Retailer License)*

Mr. Shropshire – This application is being filed for a new monument establishment retailer license. The application was received on June 11, 2015 and no deficiencies were noted on the application. The sole owner and member of the LLC will be: LeHarve F. "Skip" Young, Jr. If approved, Applicant will utilize the attached monument retail sales agreement which is also being presented for approval at this teleconference meeting.

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

B. *Recommended for Approval with Conditions*
(1) *Young Family Monument Company, LLC (Crawfordville) – (Sales Agreement)*

Mr. Shropshire – Young Family Monument Company, LLC submits a monument retail sales agreement for approval. If the form is approved, it is to be used for the sale of monuments through its monument retailer establishment whose application is also being presented at this Board teleconference meeting. The Division is recommending approval subject to the condition that two full sized print-ready copies are received by the Department within 60 days of this Board meeting.

MOTION: Mr. Helm moved to approve the agreement subject to the condition that two full sized print-ready copies are received by the Department within 60 days of this Board meeting. Mr. Davis seconded the motion, which passed unanimously.

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

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

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

Mr. Shropshire – These are applications for Preneed Branch licensure and the Division recommends approval.

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

15. Application(s) for Removal Facility
A. Recommended for Approval with Conditions
(1) H&H Funeral Services LLC (Debary)

Mr. Shropshire – An application for a Removal Facility was received on May 21, 2015. The application was incomplete when submitted. All deficient items were received on June 29, 2015. The fingerprint cards for all principals were returned with no criminal history. The Division is recommending approval subject to the condition that the facility passes an onsite inspection by a member of Division Staff.

Ms. Wendy Wiener – The name of the entity is H&H Funeral Services LLC but I do not see another licenses form. Is it okay for a removal service to hold itself out as funeral services? I had a couple of questions from people about that over the course of the last few days.

Mr. Shropshire – Well, we are not aware of any specific prohibition in that regard. It would only be violation of Chapter 497, F.S. if it was causing confusion or could be classified as deceit or misrepresentation to the public. Removal services are not allowed to deal with the public so I think our position would be that unless we could show that they were holding themselves out to the public, the name is not something that we could object to.

Ms. Wiener – I was just looking for clarification because their name will be H&H Funeral Services so it struck me and a couple of people who inquired about it this week that that could be misleading to consumers looking in the phonebook and seeing H&H Funeral Services but if the Board is good with that then I am good too.

Mr. John Rudolph – Well I have the same concern that Wendy has.

Mr. Knopke – I agree with Ms. Wiener and Mr. Rudolph. You are holding yourself out there as a funeral home just by using the term funeral services.

MOTION: Mr. Knopke moved to deny the application based upon the use of the term funeral services in the name when they are not allowed or licensed to provide funeral services. Mr. Hall seconded the motion.

Chair – Is there anyone on the call representing H&H Funeral Services LLC? There was a negative response.

Ms. Wiener – I certainly do not want to cause these people not to be able to begin their business when they thought that they were going to be able to. I probably should have raised this issue earlier. Perhaps, the Board would consider approving their license contingent upon them changing their name to remove the words Funeral Services from their name.

Chair – We have a motion on the floor and it has been seconded. Is there any change desired by the Board member making the motion?

Mr. Knopke – Mr. Shropshire, were they sent a letter saying they were going to be approved or there were no conditions or concerns?

Mr. Shropshire – Jasmin, would they have been given any kind of notice?

Ms. Jasmin Richardson – They get notified that their application will be on the agenda and the agenda states that it would be recommended for approval so there has been no communication to the Applicant advising that they could not use the name. Therefore, they are not aware that the name would be an issue.

Mr. Shropshire – The Division supports the suggestion by Ms. Wiener that either the Board passes the application and reschedule it for the next Board meeting and in the interim we would get with them so see if they are willing to change the name and represent this or approve it conditioned upon that happening.

Mr. Knopke – Do we have a deemer issue?

Mr. Shropshire – Our staff says that the deemer date would be October 21, 2015. The application was received May 26th, so we would have at least until the August meeting.

Mr. Knopke – So we will have time for them to change it before August?

Mr. Shropshire – Yes sir.

Mr. Tom Barnhart – Debarry is very close to Orlando so perhaps this could be rescheduled for the August meeting in Altamonte Springs.

Mr. Shropshire – Yes that certainly could be done.

2nd MOTION: Mr. Knopke moved to defer the application to the August meeting. Mr. Hall seconded the motion, which passed unanimously.

16. Executive Director's Report
A. Update re: Conference Exam Issue (Informational)

Mr. Shropshire – This is an update on the issues they continue to have concerning the security breach to American Academy McAllister Institute of Funeral Services in New York.



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

FOR IMMEDIATE RELEASE: June 24, 2015

The Conference Continues Investigation of Individuals Involved in NBE Security Breach at AAMI

As part of its ongoing effort to protect the security of the National Board Examination (NBE) and the validity of examination results, the Conference is continuing its investigation of individuals involved in the unprecedented security breach discovered at the American Academy McAllister Institute of Funeral Service, Inc. ("AAMI"). The Conference is continuing to identify AAMI graduates who received confidential NBE content prior to testing, or who breached their confidentiality obligations to the Conference by sharing NBE questions, answers and answer choices, or other highly sensitive information regarding the NBE with AAMI faculty and students after taking the exam. These actions not only provided an unfair advantage to test takers at AAMI but also caused significant damage to the Conference in that the compromised questions/answer choices had to be deleted from the NBE item database. The Conference was required to develop new exam questions and temporary segregated test formats specifically for AAMI students and graduates.

The Conference's current investigative efforts include the review of a large volume of documents seized from AAMI's campus pursuant to an *ex parte* seizure order granted by a federal judge in the Conference's prior lawsuit against AAMI. Individuals who are identified as having participated in the security breach will be notified and will be given an opportunity to respond to the Conference with any information they would like considered during the investigation. In appropriate circumstances, actions taken by the Conference may include invalidation of NBE scores, with an opportunity to re-take the examination. For those individuals who shared examination content after testing, the Conference may impose restrictions on future access to the examination.

"To deal with such an egregious case of exam piracy is always tough," said Conference President Hari P. Close, II. "Decisions to invalidate candidate scores are never taken lightly, but the Conference remains committed to fulfilling our obligation to provide exam results that the funeral service profession, the states, and the public can rely on. The integrity of the NBE program has never been compromised on such a grand scale, so we are still reeling from the effects of what was happening at AAMI."

The Conference will be issuing notices of investigation to affected individuals on a rolling basis until its identification of involved individuals is complete. Notwithstanding the Conference's documentary evidence of their participation, some of the AAMI graduates whose NBE scores have been invalidated as a result of the Conference's investigation have filed lawsuits against the Conference, its Executive Director, and current and former members of its Board of Directors, challenging the Conference's right to take action in response to the security breach. The Conference has moved to dismiss several of the lawsuits on various legal grounds. Media reports have indicated that AAMI is funding the litigation filed by test takers against the Conference, and that the attorney hired by AAMI to represent the test takers will not be advising test takers regarding any potential claims they may have against AAMI.

"Unfortunately, when faced with evidence that an individual had access to exam content before taking the NBE, the validity of that person's passing score is in question," said Close. "The Conference has a duty to ensure that passing scores are valid, and we would be acting irresponsibly if we turned a blind eye to the situation. The Conference believes strongly in its right to protect its exam, and we will do so vigorously as we defend ourselves against these lawsuits."

The Conference's prior lawsuit against AAMI alleged that the security breach involved a systemic, longstanding effort by AAMI President Mary Margaret ("Meg") Dunn and other AAMI faculty to improperly solicit and gather from AAMI test takers highly confidential information about questions and content appearing on the exam, for purposes of sharing that content with future AAMI test takers to improve AAMI students' success rate on the NBE. *The International Conference of Funeral Service Examining Boards, Inc. v. American Academy McAllister Institute of Funeral Service, Inc. and Mary Margaret Dunn*, No. 1:13-cv-07605, United States District Court for the Southern District of New York. The Conference's lawsuit against AAMI was settled in December 2014, as announced in the Conference's prior press release dated December 12, 2014, available here: <https://theconferenceonline.org/the-conference-announces-settlement>. Among other things, AAMI agreed in the settlement to a court-ordered permanent injunction prohibiting the activities alleged in the lawsuit and the creation of a Director of Academic Integrity position at the school.

As always, individuals with information regarding any previous or potential NBE security breach are encouraged to contact the Conference at 479-442-7062, exams@theconferenceonline.org, or <https://theconferenceonline.org/report-concern>. By working together, members of the funeral services profession and the Conference can ensure not only the security of the NBE, but the continued value that a passing score on the NBE represents as a credential.

B. Proper Treatment of "Preneed Goodwill" (Informational)

Mr. Shropshire – The issue came up at the June 25th Board meeting and the Board asked the Division to look into this and see if the explanation of the accounting treatment given to the Board appeared to be in accordance with GAAP. We have looked into it and the Division finds that the explanation given does in fact comply with GAAP.

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

TO: Board Members (Board of Funeral, Cemetery, and Consumer Services)
FROM: Douglas Shropshire, Division Director *DS*
DATE: 6-26-15
RE: Proper Treatment of "Preneed goodwill"

The 6-25-15 Board meeting the Board was presented a balance sheet of a renewing preneed license (Restlawn), that showed as an asset "preneed goodwill." The Board was provided an explanation of of the entry as follows (paraphrased).

Accounting Treatment of Acquired PreNeed Sales

- The total face value of all outstanding PreNeed contracts is recorded as a Long-term Liability to Deferred PreNeed Sales.
- Outstanding receivables are recorded as an Other Asset to Deferred PreNeed Receivables.
- The trusted portion of the consumer payment is recorded as an Other Asset to PreNeed Trust, and
- **The non-trusted portion (if any) of the consumer payment that has previously been received by the selling company, and not acquired, is booked as an Other Asset to Acquired PreNeed Goodwill.**

The Division believes that the above explanation, and showing preneed goodwill as an asset on the balance sheet in the Restlawn case, is consistent with GAAP, and is a proper accounting practice.

However, the creation of the goodwill asset account is done primarily to make the accounting entries balance, in terms of debits and credits. Since the entire face value of the preneed contract is recorded as a credit to a liability account, some way must be found to record equal debits to assets accounts. And in many cases the only way to make the entries balance as regards acquired preneed contracts, is to create a preneed goodwill asset account, and record a debit to that account, for the non-trusted portion (if any) of the consumer payment to the preneed licensee who sold the preneed contract and from whom the current preneed licensee has acquired the preneed contract. Whether preneed goodwill as shown on a balance sheet is really an "asset" in the real world sense of the term "asset", is sometimes questionable, and depends on the facts of the case.

GAAP requires that Goodwill should be tested annually for impairment in accordance with FASB Statement of Financial Accounting Standards No. 142. The first step of the goodwill impairment test, used to identify potential impairment, compares the appraised fair value of the invested capital of a reporting unit with the carrying (book) value of its invested capital amount, including goodwill. If the appraised fair value of the reporting unit exceeds its carrying amount, goodwill of the reporting unit is not considered to be impaired. If the carrying amount of the reporting unit exceeds the appraised fair value, the second step of the goodwill impairment test is necessary in order to measure the amount of impairment loss, if any.

The second step of a goodwill impairment test, compares the implied (appraised) fair value of the reporting unit's goodwill with the carrying amount of that goodwill. In order to determine the amount of impairment (if any), a full purchase price allocation valuation must be performed in the same manner as when a business combination is determined.

In other words, as part of the second step, the entity must allocate the appraised fair value of a reporting unit to all of the assets and liabilities of that unit (including any unrecognized intangible assets) as if the reporting unit had been acquired in a Business Combination (see SFAS 141) and the fair value of the reporting unit was the price paid to acquire the reporting unit.

C. Funeral Directors in Charge (Informational)

Mr. Shropshire – A question arose at the June 25th Board meeting as to whether a funeral director could be FDIC at both, one (1) establishment and one (1) cinerator facility. The Law is clear that a funeral director cannot be FDIC at two (2) establishments of any type. We do not see any basis for ruling that they cannot be the FDIC at an establishment and a cinerator facility at the same time.

Mr. Helm – That is just at the same location, correct?

Mr. Shropshire – Well not necessarily, because generally they are the same location.

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

TO: Board Members (Board of Funeral, Cemetery, and Consumer Services)
FROM: Douglas Shropshire, Division Director 
DATE: 7-9-2015
RE: Funeral directors in charge

(1) A question arose at the 6-25-2015 Board meeting, as to whether a funeral director could be a funeral director in charge at both an establishment and a cinerator facility.

(2) The applicable statutes are as follows:

Section 497.380(7), Florida Statutes.

(7) Each licensed funeral establishment shall have one full-time funeral director in charge and shall have a licensed funeral director reasonably available to the public during normal business hours for the establishment. The full-time funeral director in charge is responsible for ensuring that the facility, its operation, and all persons employed in the facility comply with all applicable state and federal laws and rules. The full-time funeral director in charge must have an active license and may not be the full-time funeral director in charge of any other funeral establishment or of any other direct disposal establishment.

Section 497.606(8):

(8) SUPERVISION OF FACILITIES.—Each cinerator facility shall have one full-time licensed direct disposer or licensed funeral director in charge for that facility. Such person may be in charge of only one facility. Such licensed funeral director or licensed direct disposer shall be responsible for making sure the facility, its operations, and all persons employed in the facility comply with all applicable state and federal laws and rules.

(3) The above statutes provide in effect that a single funeral director may not be funeral director in charge of more than one establishment, and a single funeral director may not be funeral director in charge at more than one cinerator facility. But the Division finds no prohibition in the statutes on a single funeral director being at the same time the funeral director in charge of one establishment and one cinerator facility.

17. Upcoming Meeting(s)

- A. *August 6th (Altamonte Springs – Hilton Orlando/Altamonte Springs)*
- B. *September 3rd (Teleconference)*
- C. *October 1st (Fort Myers – Embassy Suites Fort Myers-Estero)*
- D. *November 5th (Teleconference)*
- E. *December 3rd (Tallahassee)*

Mr. Helm – Mr. Chairman, in regards to H&H being deferred to the August meeting, are they going to be notified so that they know what is going on?

Mr. Shropshire – Certainly, of course, we will tell them what the issue is and ask them whether they are willing to change the name. If they are we will advise them to do so and we would report to the Board at the August meeting that they in fact have changed it. Jasmin has pointed out to me that the principals are in Ohio and they have an affiliate that is trying to open here. The principals from Ohio may not be able to attend the meeting but if they have changed the name by that time there should not be any issue anyways but we will be in contact with them.

Mr. Mueller – Will they be advised that the application would be rejected if they do not change the name?

Mr. Shropshire – We will certainly tell them that the Board had grave concerns but I cannot tell them that they will be rejected. I will tell them that that certainly is a significant possibility but they would have to wait the outcome of that August meeting.

Mr. Rudolph – I would think that if they just changed their application to say that the name given to the public will not be the name that they have. They could do a d/b/a because really what you are concerned about is what the people are going to see not who the entity is that owns them.

Chair – That is a good suggestion and when we contact them that should be a part of our recommendation as an option.

18. Adjournment

The meeting was adjourned at 10:30 a.m.