

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
August 6, 2015 - 10:00 A.M.
Hilton Orlando/Altamonte Springs
350 S Northlake Blvd
Altamonte Springs FL 32701

1. Call to Order, Preliminary Remarks and Roll Call

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

Mr. Doug Shropshire - As a preliminary matter, let me state for the record that my name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is August 6, 2015; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to interested persons. The meeting is occurring at the Hilton Orlando/Altamonte Springs in Altamonte Springs FL. My Assistant, Ms LaTonya Bryant, is recording the meeting and will be preparing minutes of the meeting.

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

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

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

ABSENT:

James "Jim" Davis

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

Also noted as present:

Tom Barnhart, Board Legal Advisor
Ellen Simon, Assistant Director
LaTonya Bryant, Department Staff
James "Jim" Bossart, Department Counsel
Jasmin Richardson, Department Staff
Tina Williams, Department Field Staff

2. Action on the Minutes

A. June 25, 2015

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on June 25, 2015.

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

B. July 9, 2015

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on July 9, 2015.

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

3. Old Business

A. Recommended for Denial

(1) Application(s) for Removal Facility

(a) H&H Funeral Services LLC (Debary)

Mr. Shropshire – This matter has been before the Board previously, specifically at the July 15, 2015 meeting at which the Board tabled the application because of concerns regarding the name of the removal service. As initially presented, the application indicated the license would be in the name of H&H Funeral Services and there was some concern that this suggested that this Applicant could engage in providing funeral services, which was not the case of course. The Applicant was subsequently approached after the Board meeting and agreed to do business under the name H&H Trade Services. The removal facility subsequently filed for a fictitious name with the Division of Corporations. The name registered is “H&H Trade Services.” Subject to the Board’s decision that issue appears to have been resolved. However, subsequent to the July Board meeting, the Division came into possession of information indicating that the Applicant had done business for at least one (1) month, since June 2015, prior to obtaining licensure. An affidavit from the Division’s inspectors, Miriam Del Valle, is attached to the material provided to the Board. There are at least three (3) incidents in which the Applicant appears to have done business with Newcomer Funeral Home prior to the licensure. The Division therefore, upon review of all of the material, recommends denial of the application. The Division understands that there is a representative of the Applicant here.

Chair – Is there anyone here representing H&H? Would you like to address the Board? It is customary for you to be sworn in before giving any statements before the Board.

Mr. Shropshire – Will each of you raise your right hands? Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

Mr. Leonardo Stubbs – I do.

Mr. Matthew Ryan Molnar – I do. Good Morning. Thank you for reviewing our case. I will try to be brief. I began with H&H Trade Services in July 2014. I have enjoyed working with this company because, out of many other trade services that exist, this company pays their people well and insist on treating every removal with military dignity and respect. It was founded by Veterans of the United States Marine Corps and the United States Army and insists on every removal being handled with the highest degree of care. This company has done removals in the states, including Florida, before deciding to offer me the chance to start a permanent ranch in Florida this year. There are forty-one (41) states with no licensing required of removal services, including the state of Ohio. We researched the law in Florida prior to beginning operations and called the Division of Funeral, Cemetery and Consumer Services for some guidance. Our opinion and understanding of our situation was that a funeral home could employ anyone as an agent to do removal on their behalf. That the person who did that removal be either an employee of the funeral or an independent contractor acting on behalf of the funeral home would be okay. We thought the only need for licensing would be to work for a direct cremation society or government agencies that do not have a license to allow their employees to do removals on their behalf. That is why we applied for a license at all. So that we could expand our clientele to those that require license in order to do their removals. We have been informed that we were incorrect in our understanding of the law but an explanation cannot be given as to why a funeral home may hire anyone at any time and immediately send them on a descendant removal but for the funeral home may not hire one (1) of our independent contractors to do the removal. As soon as we found out we were in noncompliance, we ceased operations and tried to get further clarification. Florida Funeral, Cemetery and Consumer Services had informed us that they will never recommend H&H Trade

Services to be granted a removal license. This is after we were recommended to be given a license last month pending change of our name, which we did immediately. Personnel in this office have threatened our clients with fines, sanctions and even threatened to revoke their funeral establishment license if they would use us to help with any removals. We have made every effort to abide by every rule and regulation and will continue to do so. If the Board does not grant H&H Trade Services a removal license today, H&H will likely be forced to cease operations in Florida. I have moved my three (3) boys and my wife 1200 miles to do so. This is not just a job for me. It is my life. We have received many compliments as we started here with different facilities, funeral homes and hospitals.

Mr. Stubbs – What we have done and what we have been informed about, they have done no injury in regards of the removals. I have handled the embalming operations for Newcomer. They hired me as an independent contractor. The understanding that we got in hiring an independent contractor is that anyone can be a removal man that we can hire today and send them on a removal thirty (30) minutes from now versus someone who wants to be able to do removals for a funeral home and also outsource themselves to other facilities such as the medical examiner and other different hospice facilities and tissue banks that may want our services. So, we are asking that the Board please reconsider the decision on this. We took the initiative on making sure that we did not cross any laws or follow any faults. We want to make sure that we do everything according to the State of Florida's guidelines.

Chair – On H&H Funeral Services invoice from June, there were several items on there that were called "Standard Embalming" for H&H to Newcomer. Can you explain?

Mr. Stubbs – Standard embalmings would be an autopsy and straight embalming directly from the place of death, whether it be the house or hospital, going straight to the hospital.

Chair – And this was performed by H&H Funeral Services?

Mr. Stubbs – This was performed by me because I am hired through H&H Funeral Services to work on behalf of Newcomer Funeral Home.

Chair – Where were these embalmings done?

Mr. Stubbs – They were performed at Newcomer Funeral Home.

Chair – Are you a licensed embalmer?

Mr. Stubbs – Yes sir. I am a licensed funeral director and embalmer.

Mr. Keenan Knopke – The embalmings that you were just addressing, were those remains for Newcomer or other firms?

Mr. Stubbs – Newcomer. They have been signed, documented and placed on the monthly establishment report.

Mr. Knopke – So they were first calls that came to Newcomer, Newcomer in turn hired H&H to make the removal?

Mr. Stubbs – Whether it be the removal, or them doing their own removals, H&H is hired in order to do the overflow. Anything as far as embalming services and things of that nature, they do contact H&H to let them know that there is an embalming that they would like for us to take care of, which in turn H&H would contact me to notify me that Newcomer has an embalming that needs to be satisfied. I will get any issues or concerns that may come up with that case does not go through H&H but directly through Newcomer Funeral Home.

Mr. Knopke – Newcomer hires H&H, H&H in turn hires you and then you go to Newcomer to do the embalmings?

Mr. Stubbs – Correct

Mr. Knopke – Are you an employee of Newcomer?

Mr. Stubbs – Yes, as an independent contractor.

Mr. Knopke – So you are not an employee, you are a contractor?

Mr. Stubbs – Correct

Mr. Knopke – That just opens a whole other window to my door. It seems like that is unlicensed activity in a licensed facility through H&H, acting as a funeral home. Is H&H's relationship to Newcomer a subsidiary, an independent company, no relationship in ownership or anything like that?

Mr. Stubbs – No. It is more of a contracted company, something of a temp to hire service, in a sense.

Mr. Knopke – The affidavit indicates that H&H has done three (3) first calls for Newcomer. Is there more than that in this time period?

Mr. Stubbs – Since the issue of the cease and desist?

Mr. Knopke – Since you all opened your doors whenever that was. It was clearly before the last Board meeting, based upon the affidavit. How many have there really been?

Mr. Stubbs – As far as removals, I cannot speak on. That would be on Matt to speak on. I know that they have had some discussions in regards to the removals and everything else. I have handled the embalming and the monthly reports regarding the embalming that have come through Newcomer.

Mr. Knopke – How many embalming have you done?

Mr. Stubbs – Since I have been with Newcomer, it has been an average of probably thirty (30).

Mr. Knopke – And that has been since when?

Mr. Stubbs – It has been since the middle of May.

Mr. Knopke – Mr. Molnar, how many removals have you done for Newcomer or for anybody for that matter since you all opened your doors.

Mr. Molnar – We have strictly done about a good hundred or so, just strictly with Newcomer.

Mr. Knopke – And in that whole time period you thought that because Newcomer called you...

Mr. Molnar – I was confused about it, yes. As soon as the Board called us about it, we stopper operations immediately. We figured since we were under Newcomer rules and we abide by what they tell us to do when we pick up, we thought that we were okay to go.

Mr. Knopke – Based upon them telling you that you could do this?

Mr. Stubbs – Not only that but also looking at how the state laws are written in regards to the fact of hiring an employee in order to make removals. If you can hire an employee that can be CDC certified within two (2) hours and go out and make a removal, what would be the difference in hiring an outside independent contractor?

Mr. Knopke – That employee though is operating under that employer's license. The statute is clear that a removal company has to be licensed.

Mr. Stubbs – That is the issue that we ran into that we were questioning because we did not have a clear understanding of the licensure.

Chair – As a licensed funeral director and embalmer, and having passed and studied the Rules and Law of Chapter 497, F.S., did it ever occur to you that H&H was required to be a licensed removal service?

Mr. Stubbs – I informed them that they needed to look into the removal service but the embalming portion that they hired me for was never an issue.

Chair – When did you inform them of that?

Mr. Stubbs – That was something that we spoke of when we initially spoke on hiring me to become the embalmer and I spoke with them as far as asking what other services would be provided, asking them to make sure that they get clarification with the State also making sure that they have clarification with the funeral home and clients they may be working with.

Mr. Andrew Clark – Mr. Stubbs, you talked about the monthly embalming report. Whose report are you putting it on?

Mr. Stubbs – That is on Newcomer's monthly report that I sign my name on.

Mr. Clark – What is the benefit of being contracted through H&H versus just being contracted with Newcomer?

Mr. Stubbs – That was the arrangement that was set. Newcomer was a client that was presented to me through H&H.

Mr. Shropshire – Just to set out the Division's analysis, this very interesting question of whether there was something illegal, contrary to Ch. 497, F.S., in this arrangement by which the embalmings were performed by subcontract between Newcomer and H&H, and so we have given that a lot of thought. Our analysis is that the core requirements of the Florida Statutes are that the embalmings must be performed by a Florida licensed embalmer and it must be performed at a Florida licensed facility. Those are the two (2) core requirements and those have been met here. We are not aware of any, although it is a highly unusual in our experience, this overflow arrangement, we cannot find any that indicates that it is illegal per say. We liken it somewhat to the practice of a small establishment might occasionally call in a retired embalmer who is still has an active license to help them with a overflow whereas some of their staff is out sick or so on. To my knowledge, that has never been questioned as to its legality as long as that retired embalmer still holds current licensure. Although we included that in the coversheet to the Board, I would recommend that you not take that piece of the case as ground for the action. The Division considers this case borderline as to whether there should be a denial. We did recommend denial but we consider it borderline. In this Applicant's favor, they did apply before anyone caught them. It is not that they were caught and then told that they had to apply. They came to us originally and then we found these things out, so I think that weighs somewhat in their favor. I would remark to the Board that there have been occasions in the past that if the Applicant was willing to pay a fine say of \$1000 at this point in proceedings to address the violation they have committed by acting prior to licensure, the Board has in some instances granted the licensure subject to their agreement to pay a fine. I just mention that to the Board if the Board would want to consider that possibility.

Mr. Knopke – Mr. Shropshire, I understand what you just said that the embalming was done by a licensed embalmer in a licensed facility. I understand that part. The fact that the arrangements for that went through an unlicensed facility or firm or whatever kind of bothers me. There may be nothing in the statutes about it but that is the part that much bothers me here because it is kind of like brokering where they are going to do this and that bothers me and the fact that the facility that they brokered through was supposed to be licensed to make the removal.

Mr. Shropshire – Yes, and to your point, it bothers us. We see it as a potential vehicle for abuse and possible evasion of the law. Unlike in the funeral establishment law and the funeral director law, there is a specific requirement that a funeral director can only operate in affiliation with a funeral establishment. There is no similar requirement on the embalmer side. That requirement on the funeral director side was added within the last five (5) years I think. So, we share your concerns and maybe it is something legislatively you would want to look at, but I do not believe presently that the law prohibits this particular type of arrangement. Again, that retired embalmer might for instance have formed an LLC or corporation just for some tax purposes because they regularly get called out for that and if we had been presented with that we would not have thought that was any significance so I do not know that it is significant here but we do share your concerns at a policy level.

Mr. Lew Hall – Mr. Shropshire, is the key to it though, that if the check had been coming from Newcomer to the embalmer and not to an unlicensed group as a removal service, my concern is not only now from what you are saying here but what prevents him from doing cremations, brokering those as Keenan said and those type of things. They are licensed as a removal service and that is why we went back to them and said change the name because we do not want these other things involved and maybe that is why the name was that to begin with because they knew that they were going to expand into embalming, cremations, etc. To me the key is that if the check to this gentleman had been coming from Newcomer for the embalming, I would not have an issue with it but since he is being paid by the removal service that what causes me some grief.

Mr. Shropshire – As I say, it causes us concern but as always we have to go back to the statutes and we have to identify something in the statute specifically that prohibits this middle-man entity from acting in a role. Now if they dealt with the public to any degree they would be in clear violation, but so far they are not interacting with the public. They are interacting with another properly licensed funeral establishment that interacts with the public. I am open to suggestions if anyone can find something in the statutes because it does give us some concern but I cannot find anything at this point.

Chair – I think that we should hearken back to the unlicensed activity before they were granted a license and that should be our main focus on this matter.

Mr. Mueller – I am sympathetic based on the Applicant's testimony. I think I would move approval of the application with an administrative fine of \$1000 and one (1) year probation.

Mr. Shropshire – Mr. Chairman may I address the Applicants and ask them if they were willing to accept that if it was the Board's decision?

Mr. Molnar – Yes we would.

Mr. Shropshire – Mr. Barnhart, do we need any further clarification?

Mr. Tom Barnhart – No. I think if that was made as part of the motion and they agree to it as a condition, it could be done.

Mr. Clark – In this business model, you connect with other funeral homes or do you only connect with Newcomer?

Mr. Stubbs – We connect with other funeral homes.

Mr. Clark – And what services do you tell them you provide?

Mr. Stubbs – We connect with other funeral homes and what we have provided to them informing them that we will be providing removal services once we clear any hurdles with the State, but we can provide embalming and funeral directing services.

Chair – I would prefer that question be answered by Mr. Molnar as part of H&H rather than you, who is not a part of H&H.

Mr. Molnar – Mr. Stubbs is a part of H&H with us. He would help out for removals if need be so he would be a part of us. Not just the director/embalmer.

Mr. Stubbs – So in regards to what we are saying is as far as when we speak to clients, one of the clients that we have dealt with is Newcomer. I, as myself, have been doing my own as an independent funeral director but Newcomer has been the only client we have dealt with.

Mr. Knopke – Mr. Chairman, I know you wanted to deal only with the unlicensed activity, but my concerns go back to the fact that they are dealing with the public. If you look at the statement, they are making removals from homes whereby they are running in and meeting with the public. Now, they are being directed to go there on behalf of Newcomer but this unlicensed entity is dealing with the public and not just with Newcomer. Now Newcomer has called them, and I understand how the system works, but they are making contact with the public. At this point I am concerned about what might be said at that

point and how they are representing Newcomer or anybody else for that matter. This whole arrangement does not look good to me.

Mr. Hall – I believe he just made the statement too that they would offer to the other funeral homes embalmings and funeral directing. Well if we do not have the issue on the embalmer side, Mr. Shropshire says we do on the funeral director side, so there is a major problem I would have.

Mr. Molnar – Just to go back to what I said before, we have gotten nothing but compliments from going on house calls and being represented by Newcomer. This is how we dress to pickup. I have noticed some other transporting companies that go in shorts, t-shirts and flip flops. I have gone to Hospice facilities and to me that is just disrespectful. I would not want anyone picking me up in shorts, t-shirts and flip flops. Newcomer stated that they have gotten more compliments since we started.

MOTION: Mr. Mueller moved to approve the application with an administrative fine of \$1000 and one (1) year probation. Ms. Jean Anderson seconded the motion, which motion failed with six (6) dissenting votes.

Mr. Hall – I hear what you are saying and I too agree with Mr. Mueller. I have sympathy for you in the fact that you brought your family down here and you are trying to do the right type job. I just think you are trying to expand beyond the removal license that is there for you and do things that you are not capable of doing there. When I heard your initial presentation to the Board, I felt a resentment in that we want to play by the rules we want to do it right, but we do not like the rules you are giving us. In other words, there are other states that do not require it. But you are not there, you are here. Everyone sitting at this table plays by those rules and you need to, too. I think you may need to reexamine what type license you actually need. Do you want an establishment license to carry on with what you are going to do and then contract with them? I think you are just trying to expand it beyond what you are qualified to do with that removal license. That is my opinion.

Mr. Clark – I agree. Mr. Stubbs, we are not discussing unlicensed activity in regards to your license. Your ability to embalm for funeral homes or help out in the example Mr. Shropshire gave of a retired director wanting to help out where needed, I think that is fine. I think doing it through a removal service is unacceptable. That is the difference. We have to separate your skills as a funeral director separate from the removal service.

Mr. Hall – Could Newcomer write the check to you and not to the removal service? Can you all come up with something in your business model? Like he said, those funeral homes that you are working can pay you to come in and do that.

Mr. Stubbs – Would there need to be a separation between the two (2), as far as differentiating? As a funeral director, my duties and details regarding removals and things of that nature, does that not qualify me to be separate and under a removal license or would I still have to be a separate entity versus them applying for their own removal license?

Chair – The way I understand it, if you are an employer of Newcomer and they ask you to make a removal, you are able to make that removal.

Mr. Stubbs – Independent or full-time employee, correct?

Chair – Yes.

Mr. Clark – To take it a step further, for your consideration, if you had your own LLC or your funeral directing services separate from the removal services, I personally do not have a problem with that. You are just saying, “I am a funeral director. Call me if you need me,” whether it is Newcomer or somebody else.

Mr. Stubbs – So if I incorporated removal services into what I do then what ramifications now do I run into because as a funeral director I am allowed to make removals, correct?

Mr. Clark – That is correct.

Mr. Shropshire – No, if you are employee of the funeral establishments. Employee is a technical term. You get a W2 from them.

Chair – But otherwise, you have to be a licensed removal service, even if you are a funeral director, even if you are an embalmer.

Mr. Stubbs – Understood.

Mr. Knopke – And, if I may add, if the removal service is licensed as a removal service, you can only perform those duties allowed there. You cannot become a funeral director and play funeral director there. You can play removal. No different than a direct disposal establishment who employs a funeral director.

Mr. Stubbs – They have to separate themselves from the funeral home as far as making sure that they do not perform funeral establishment work versus a direct disposer's.

Mr. Knopke – Correct and I think that the same would apply to a removal company that is licensed.

Mr. Mueller – Seems to me like you guys need some legal representation. Mr. Shropshire, would we run into a deemer date if we tabled this application again?

Mr. Shropshire – Staff shows the deemer date calculated as October 21, 2015, but I think it would be preferable to ask them if they would waive the deemer date in order to prevent a vote by the Board at this meeting. If Mr. Barnhart agrees, perhaps he could do the inquiry.

Mr. Barnhart – If you want to continue this, it would be best if you waived the deemer. If you wanted to try and revise your application or submit a new application you might be better served by getting a continuance and waiving the deemer because if you do not I understand from the vote that you would probably be denied and I do not think you want a denial from this Board on your record, but that would be up to you.

Mr. Stubbs – Explain that to me again.

Mr. Barnhart – The deemer clause requires the Board to make a vote of either approval or denial within ninety (90) days of the time the application is deemed to be complete. It does not mean you have to wait any period of time to get this change or advise you are submitting an application. It just means that they have to make a vote. We are asking you just for a little bit of protection that you waive the deemer just so that you can get your application to be in a better posture for the Board to consider.

Chair – If their application for licensure is denied, are they still able to come back and make another application for licensure?

Mr. Barnhart – They can do that but most likely they would not want a denial on their record straight out of the box, so to speak.

Mr. Stubbs – So in order to somewhat avoid a denial or basically put ourselves in a better posture, waiving the deemer would be our best option?

Mr. Barnhart – I think so. I cannot advise you on that. It is up to you.

Mr. Mueller – That is what I think you need, in my position. I am not a funeral director, I am a cemetery guy, but I do not think you want to be back here thrashing this out another time with the wrong information in front of you. That is why I think you need legal representation. Mr. Shropshire is it possible for us to vote to table or they could ask to withdraw or delay their application?

Mr. Shropshire – Either way would work I believe. The Board is strongly recommending that you obtain counsel. My understanding is that H&H does removals for Newcomer in other states. Is that correct?

Mr. Stubbs – Correct

Mr. Shropshire – So you are trying to grow into Florida. I would emphasize to you that you really do not want a denial on your record. You can judge for yourself what the Board’s majority might vote today if you put them in the position where they have to vote. Again, I urge you to give careful consideration. If you are willing to say we waive the deemer and we request the Board table the application, but again that is your call.

Mr. Molnar – If we would raise the fine and put us on like a five - (5) year probation, could that be considered? I do not know what else to say. I do apologize from the deepest of our hearts too that we did this without. The main reason that we applied for this license was to get the coroner’s contracts. The contracts were up next year, two (2) years, so we had a little bit of time to get our license. Again, I did not realize that we were doing this. I did not mean to come down here and break any laws. Like I said, I moved my family down here and I really wish you guys would consider. Put me on a ten - (10) year probation. Put me on whatever fine you guys want to do. I will do what it takes.

Chair – During the time of your unlicensed activity, what was your revenue from those sources, in dollars?

Mr. Molnar – Per pickups you mean?

Chair – Total revenue income from removals.

Mr. Molnar – Removals were \$80 per pickup.

Chair – During the time of your unlicensed activity, what was the total revenue?

Mr. Molnar – About \$2000 a month is what I was getting.

Mr. Shropshire – I hate to do this, but what is bothering the Board I think is basically the embalming and funeral directing side of the issue. Perhaps if you would make some type of representation that H&H will not utilize the embalming and funeral servicing side of their business model unless they come back to the Board and explain to the Board and get the Board’s approval for that, perhaps that might change the Board’s mind. Do you understand what I am saying? I do not know whether the Board would be interested in this but it is a possibility because of your situation. In other words, the application today would be strictly for approval to do removals by H&H, none of the funeral directing and embalming at this point. Then perhaps you would go back and see counsel who are very knowledgeable in Chapter 497 issues and get with them and work out something and come back to the Division and the Board. That is what I am suggesting the Board might hear and be amenable to.

Mr. Jones – Answering your question, as far as what we can do, because that was going to be something I was thinking about. If we look like probation and a fine, it is strictly for removal services and anything beyond that you violate that probation. Is that something that is agreeable to you?

Mr. Molnar – Yes

Mr. Shropshire – I would ask that we hear from Mr. Stubbs on that since he is the one primarily affected.

Mr. Stubbs – In coming to H&H, I wanted them to expand their operations from what model they sat in front of me and I wanted to make sure that they did not operate illegally, improperly or anything of that nature. If it requires me to remove myself, as far as embalming or funeral directing operations and setting in another tone or another way as far as dealing with Newcomer or that client and it allows them to have their approval, for this young man, yes I will step out.

2nd MOTION: Mr. Knopke moved to approve the application strictly for removal services with an administrative fine of \$3000 and three (3) years probation, with the understanding that they do not do any funeral directing or embalming work. Mr. Jones seconded the motion, which passed with one (1) dissenting vote.

Mr. Clark – Mr. Stubbs could continue to do that through Newcomer as an independent contractor.

Mr. Hall – Mr. Stubbs understands that if he does that outside of Newcomer his license is in jeopardy.

Mr. Stubbs – Yes sir.

- (2) *Request(s) for a Modification of a Stipulation Order*
- (a) *Gallaher, John: Case No. 157224-14-FC; Division No. ATN-22598 (F042170)*

Mr. Shropshire – This item has been withdrawn from the agenda due to health issues on Mr. Gallaher’s part and will be presented at a subsequent meeting.

4. Disciplinary Proceedings

A. Settlement Stipulation(s)

(1) Probable Cause Panel A

- (a) *Noble, Ronald: Case No. 134081-13-FC; Division No. ATN-19934 (F046246)*

Mr. Jim Bossart – The above referenced matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with the Respondent, Ronald Noble. The Division alleges that on August 8, 2011, a civil judgment was entered against Ronald Noble, licensed funeral director, for stealing, embezzling and/or converting funds from a funeral home for his own personal use in the amount of \$250,000. There were no criminal charges. Ronald Noble has agreed to a suspension of his funeral director and embalmer license for a period of two (2) years. Following the term of the suspension, Ronald Noble shall be placed on probation for a period of six (6) months. Additionally, Ronald Noble shall pay an administrative fine of \$2500. The terms of the Settlement Stipulation are deemed reasonable under the facts and circumstances of this case. The Department requests that the Board approve the Settlement and issue the Consent Order to conclude this matter.

Mr. Knopke – I want to recuse myself, as I served on Probable Cause Panel A in this matter.

Chair – Are you representing Mr. Noble?

Ms. Maureen Daughton – Yes, for the record, my name is Maureen Daughton and I am here as counsel for Mr. Noble.

Mr. Hall – Mr. Chairman, my concern is that I think this is the third time we have reviewed this case. I do not think anything has changed in the facts to it than other than this being the third counsel for the case that we have dealt with. It is a substantial amount of money. There are serious problems in the case dealing with everything from embezzlement from the funeral home to preneed cases in the funeral home and I am just really concerned about public safety beyond that two (2) years. I know we are taking the license for two (2) years but with the seriousness of it, I think it needs to be permanent.

Ms. Daughton – Good Morning. This matter has come before the Board, as Mr. Hall has indicated on I believe it was two (2) other occasions. I do stand as Mr. Noble’s second counsel. The last time since we were here before the Board of October 2014, this matter has been at the Division of Administrative Hearings. As that case has gone on, we have engaged in discovery. The Division has engaged in discovery as well as Mr. Noble and I as his counsel. Through that discovery process different facts have come to light. The complainant in this case has also been deposed. As we have gone through discovery, we have gone through a period of good faith negotiations. While I understand this Board’s review is limited to the record that you have in front of you there are additional facts which I think counsel for the Division understands as well as myself and that is why the settlement that is before you is here. I did want to point out and I am certainly here to answer questions, Mr. Noble is here with his wife. The allegations that are in front of you are from 2005. Mr. Noble has had his license as a funeral director since 1972, his embalmer license since 1971 because I believe at that time they were separated. This is not a matter that was referred to Law Enforcement in 2005. There was some restitution made in the amount of \$30k. The judgment that was referred to has been discharged, is no longer enforceable, was not contested by the complainant in bankruptcy court. I am here to answer questions if there are any. This was vigorously litigated in terms of discovery. We are requesting that the Board approve this settlement.

Mr. Helm – I believe I read in this where after the two (2) year suspension he has to come back before the Board. Does he realize he may not get his license then?

Ms. Daughton – I think what Mr. Noble realizes and what we discussed with counsel is that we would have to come back in front of the Board and show that he has been demonstrating good faith through his employer and we would expect that the Board would act reasonably and given the information that is presented at that time that his license would no longer be suspended.

Mr. Helm – My question to you is does he realize he may not get his license then?

Ms. Daughton – I think what we realize is if we make the showing within the agreement that we have with the Division that his license will be renewed. So if we do not do our part and if something occurs in that two (2) year period, yes, we certainly think the Board would consider that and decide what to do but we have no indication that there are going to be any bumps in the road. We expect that we will be back in front of this Board if this is approved, in two (2) years requesting with all sorts of good letters that we be allowed to continue and that our license be reinstated.

Mr. Barnhart – I believe if you approve this Settlement that you would have little or any ground to deny him at the conclusion of that time period unless something else occurred. I think the intent here is if you accept the Settlement Agreement that he would almost be automatically approved after this suspension was settled. I do not think you would be able to act as if this is a brand new Applicant because you would be accepting this as this discipline for this act.

Mr. Helm – Well why would it have to come back before the Board?

Mr. Barnhart – It sounds good but I do not think you would really have any legal grounds to deny the license if he comes back after serving the suspension. There has been no criminal prosecution that you could cite to and this Settlement Agreement would be your acceptance of the discipline for this case.

Mr. Hall – To counsel, do you feel that prosecution was not sought in hopes of payment of restitution if he could continue work the restitution would be paid back to that firm?

Ms. Daughton – Mr. Hall, I do not believe that is why prosecution was not requested or sought in 2005.

Mr. Hall – That is when it started but there was like three (3) or four (4) different occasions that they came back to him that different amounts of money was located that was missing. Correct? And what is in my packet.

Ms. Daughton – I understand that is what is in your packet. Let me just say, because I think I can go a little outside your packet, the information that we would present at hearing is that my client acknowledges embezzling \$30k. That money was paid back with 2005. I have a receipt indicating that that was received. My client was basically advised if he practiced elsewhere, in a different location that this matter would not be brought back up again. My client returned to Nassau County in 2007, at which time the complaint was filed alleging embezzlement amounts up to \$350k. Of that, that includes the original amount, the \$30k and as I was advised at the complainants deposition that the rest of that was liquidated damages. Then there was a second audit, which I have still not seen, which the Department/Division does not have. That is my understanding. At which time the amount of \$250k was alleged, so the number has changed. I do not know why it was not referred to law enforcement back when it was first discovered.

Mr. Hall – Would agree it probably gives the appearance to the Board if you look at that and the statement you just made re: go to another county and practice and we will not push it but then you come back and we do. Maybe that is in hopes that they could get restitution paid back on that so with me looking at the packet that is what it would appear to me.

Ms. Daughton – Mr. Hall, I think looking at the packet there is probably a reasonable inference. All I am saying is that we have had the ability to do some discovery and if there was some documentation which supported the amount I think we would have seen it so I do not know. I do not know.

Mr. Clark – I understand that if we were to reject this Settlement Stipulation and come up with a new one, they would have to agree with it. I understand that. However, is it possible to suspend the license for two (2) years and just require reappearing before the Board and eliminate the probation and fine at this point? It would be a suspended license for two (2) years. Obviously there is information that still has not come out. Ms. Daughton is waiting for an audit. We have not seen the results

of the audit. So if we give the process some time to work itself out on this case on the civil side and then the Board would take a look at it in two (2) years.

Mr. Barnhart – I think the problem with that is we would not have any finality of anything. As I understand it bankruptcy has discharged the debt. That case is so old there is not going to be any criminal prosecution at this point in the present statute of limitations. If you rejected the Settlement I would assume it would go back to the Division of Administrative Hearings (DOAH) for a formal hearing. The only way that could be avoided is if they came up with a different stipulation.

Chair – There can be modifications suggested on the Settlement Stipulation and if they agree with it then it would be in effect.

Mr. Barnhart – If counsel had authority at this meeting to agree to it then you could come to a final vote today or you could table this decision and come up with a different Stipulation and give them some guidance as to what might be acceptable to the Board.

Ms. Oliver – Have we heard from Oxley-Heard at all?

Mr. Bossart – There is correspondence in the file. They have been less than forthcoming with evidence as to the documentary evidence as to the documentary evidence of the supposed embezzlement. I hope the Board is not confusing this consent judgment in a civil case for \$250k where they do recite embezzlement and conversion with a Final Order from the DOAH. We will still be required to prove the underlying circumstances or transactions and repeated requests from the funeral home we met with from some strange responses to put it bluntly. So there is concern on the Department about whether to prove to case at all.

Mr. Hall – Is there any action that can be taken against an establishment when they refuse to cooperate and provide that information to you when you are trying to do an investigation?

Mr. Shropshire – Probably but I would not want to cast Oxley-Heard as being uncooperative at all. They are fine folks. We asked them early on if we could get a copy of their accountant's review by which you came up with this big number. They never were able to provide it. They tried and I think what happened was they did not ever have to go that far. The Respondent was just agreeable to that number at that point in time. So they never actually did a detailed accounting that we could offer up in evidence and that is our evidentiary problem. Basically you would be asking the Administrative Law Judge (ALJ) to find against him just on the basis of that civil settlement statement and our counsel tells us that there is considerable question about whether the ALJ would be willing to do that.

Mr. Bossart – As of today, Mr. Noble is guilty of not paying on a civil judgment and no further than that. It is doubtful how far we would get with the DOAH.

Mr. Barnhart – And that judge is going to discharge, correct?

Mr. Bossart – That is my understanding.

Mr. Barnhart – So he is not guilty of anything at this point.

Mr. Bossart – Technically no

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

(2) Probable Cause Panel B

(a) Garfield, Todd Preston: Case No. 161234-14-FC; Division No. ATN-23282 (F042410)

Mr. Bossart – The circumstances of this case are alleged as follows. Mr. Todd Garfield is a licensed funeral director and embalmer and is currently employed by the Garfield Funeral Home. I assume that is a family business. Mr. Garfield was employed by the Fuller Funeral Home as FDIC, located in Naples FL. Back in 2009 Mr. Garfield pled no contest to a 3rd degree

felony arising from Mr. Garfield's alleged misuse of the corporate gas card issued to Fuller Funeral Home for personal purchases. The time period of the alleged misuse was approximately one (1) year and the amount was slightly less than \$7000. The Division alleges that Mr. Garfield may have violated the provisions of Chapter 497.152(2), Florida Statutes, and related rules, by entering a plea of no contest to a 3rd degree felony charge. Mr. Garfield has agreed to pay an administrative fine of \$500 and he will be issued a letter of reprimand. The terms of the Settlement Stipulation are deemed reasonable under the facts and circumstances of this case. Mr. Garfield has apparently made full restitution to the funeral home. The Department requests that the Board approve the Settlement and issue the Consent Order to conclude this matter.

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

MOTION: Mr. Knopke moved to approve the Settlement Stipulation as presented by the Department. Mr. Clark seconded the motion, which passed unanimously.

5. Application(s) for Preneed Sales Agent

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

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

**B. Recommended for Approval without Conditions (Criminal History)
(1) Brown, Karlene P (Appointing Entity: StoneMor Florida Subsidiary, LLC.)**

Mr. Shropshire – On March 16, 2015, the Applicant submitted an application for licensure as preneed sales agent, there were no deficiencies noted on the application. However, during the review of Ms. Brown's background a criminal infraction was revealed. Thus, she was asked to provide an explanation for the inaccuracy:

Ms. Brown's explanation, "I realized that I was not convicted of a felony and inaccurately assumed that this domestic disturbance incident was not going to affect my ability to receive a license to sell preneed. Still I realize that I should have put an explanation of my pleading guilty of striking Genada".

Upon request, Ms. Brown disclosed her background and cooperated with the Division's staff, to wit: On or about September 2, 2010, Ms. Brown pled guilty to Battery Domestic Violence, and her sentence included 1 day in jail, 12 months probation, complete Batterers Intervention Program within 210 days, complete 50 hours of community services by December 1, 2010, and pay court cost and fines in the amount of \$845.50, which occurred in Marion County, Florida.

Ms. Brown's indicates in her attached written explanation that at the time of the criminal incident she was in a heated argument with ex-husband, while still living together. She went to get her cell phone, thought she was about to be struck and swung back with the cell phone in her hand and inadvertently scratched her ex-husband's nose with the cell phone.

Ms. Brown has several strong references. Ms. Brown has the support of a StoneMor Florida Subsidiary LLC supervisor in Florida, Mr. Jeffrey Hiliker who is very much aware of her past record and do not feel this offence will in any way affect her ability to serve as a preneed advisor. The Department assessment is that if issued a preneed sales agent license, Ms. Brown would not pose an unreasonable risk to the members of the public who might deal with her in preneed transactions. The Division recommends approval.

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

(2) Slagter, Robert D (Appointing Entity: Martin Funeral Home and Crematory)

Mr. Shropshire – On July 20, 2015, the Applicant submitted an application for licensure as preneed sales agent, there were deficiencies noted on the application. The review of the qualification questions revealed a previously issued temporary Preneed Sales Agent license and criminal history, to wit: On December 24, 2008, Mr. Slagter was issued a temporary Preneed Sales Agent license. However, due to non compliance with the criminal history background check, Mr. Slagter's temporary Preneed Sales Agent license, expired without being converted to a permanent Preneed Sales Agent license.

On October 8, 2013, Mr. Slagter pled guilty to Operating While Impaired, and his sentence included attend victim impact panel and pay court cost and fines in the amount \$1,890.00, which occurred in Clinton County, Michigan. Mr. Slagter disclosed his background. Mr. Slagter has the support of Martin Funeral Home and Crematory, owner, Ms. Susan King, who is very much aware of his past record.

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

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

6. Application(s) for Continuing Education Course Approval

A. Recommended for Approval without Conditions – Addendum B

- (1) *Apex Continuing Education Solutions #4201*
- (2) *International Order of the Golden Rule #2201*
- (3) *Kates-Boylston Publications #23010*
- (4) *M.K. Jones & Associates, Inc. #9605*
- (5) *Miami-Dade College Funeral Service Dept #114*
- (6) *National Funeral Directors Association #136*

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

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

7. Application(s) for Approval as a Continuing Education Provider

A. Recommended for Approval without Conditions – Addendum C

- (1) *Ericksen Arbuthnot (23608)*
- (2) *PDH Academy (23408)*

Mr. Shropshire – The majority of the Continuing Education Committee and the Division recommends approval of the application(s) on Addendum C.

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

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

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

- (1) *Funeral Director (Internship and Exam)*
 - (a) *Sabb, Charlotta M*
- (2) *Funeral Director and Embalmer (Endorsement)*
 - (a) *Martinez, Johanna*
- (3) *Funeral Director and Embalmer (Internship and Exam)*
 - (a) *Iannacone, Tara J*
 - (b) *Lee, Sarah K*
 - (c) *Harris, Terrance L*
 - (d) *Mason, Randi S*
 - (e) *Roy, Jane B*
 - (f) *Thomas, Kathryn K*

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

- B. Recommended for Denial**
 - (1) Funeral Director and Embalmer (Endorsement)**
 - (a) Cremer, Shawn P**

Mr. Shropshire – The application has been withdrawn from the agenda in order to publish notice of the waiver that he is requesting from Chapter 497, F.S. and the rule requiring a 75% passing rate. This application will be represented to the Board.

- (2) Funeral Director and Embalmer (Internship and Exam)**
 - (a) Singleton, Tebbie**

Mr. Shropshire – The application has been withdrawn from the agenda at Mr. Singleton’s request and I believe it will probably be resubmitted in some other version at a future Board meeting.

9. Application(s) for Internship

- A. Informational Item (Licenses Issued without Conditions) – Addendum E**
 - (1) Funeral Director and Embalmer**
 - (a) Kersey, Eric (F058281)**
 - (b) Mitchell II, Priestly L (F072696)**

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

- B. Recommended for Approval without Conditions (Criminal History)**
 - (1) Funeral Director and Embalmer (Internship and Exam)**
 - (a) Lowery, Michael**

Mr. Shropshire – The Applicant submitted an application to become a Concurrent Intern on July 9, 2015. The application was complete when submitted. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- In 2011, pled no contest to Reckless Boating, court costs \$665, complete safe boating course and prohibited from operating a boat in Monroe County for six months.

The criminal history was seen at the April 2013 Board meeting. The Division is recommending approval without conditions.

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

10. Application(s) for Embalmer Apprenticeship

- A. Informational Item (Licenses Issued without Conditions) – Addendum F**
 - (1) Pemberton, Timothy W (F085404)**
 - (2) Roe, Johnnie L (F085246)**
 - (3) Thomas, Marc L (F079117)**
 - (4) Walker, Mitchell A (F085247)**

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.

11. Consumer Protection Trust Fund Claims

- A. Recommended for Approval without Conditions – Addendum G**

Mr. Shropshire – The Division recommends that these claims be approved for the amounts indicated in the column titled “Amount Recommended.”

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

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

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.

13. Application(s) for Funeral Establishment
A. Recommended for Approval with Conditions
(1) A B Coleman Mortuary Inc (Jacksonville)

Mr. Shropshire – A change of ownership application was submitted on May 8, 2015. The application was incomplete when submitted. All deficient items were returned on July 6, 2015. The Funeral Director in Charge will be Andrew Coleman III (F046931). As stated in the letter dated June 29, 2015, A B Coleman Mortuary Inc will assume all existing preneed liabilities of the locations listed. All fingerprint information was returned without criminal history. The establishment passed its inspection on July 20, 2015.

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

Chair – I want to disclose my affiliation with SCI Funeral Services of Florida and this affiliation will in no way affect my ability to make a fair and impartial decision on this case or any other case coming before the Board today.

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

(2) Baldwin Brothers Memorial Care Services Inc d/b/a Baldwin Brothers (Ormond Beach)

Mr. Shropshire – An application for a Funeral Establishment was submitted on July 8, 2015. The application was complete when submitted. The Funeral Director in Charge will be Christian Ingram (F042920). The fingerprint information was returned with criminal history for one of its principals.

Criminal History:

Evans P. Baldwin criminal history has been presented to the Board in 2010 when he was granted a preneed agent license, at the June 27, 2013 Board meeting when he applied for and was granted a Funeral Director Intern license and again at the July 11, 2013, October 3, 2013, November 7, 2013, March 6, 2014 and September 4, 2014 Board meetings when he applied to be a principal of an Establishment. The preneed sales agent license was approved with conditions. He was ordered to be placed

on two years' probation which was completed in May 2012. The Funeral Director Intern license was approved without conditions. The Funeral Establishment application was approved without conditions.

The criminal recorder Evans Baldwin consists of one incident, as follows:

- 1) On September 25, 2002 Applicant, then age 17, while driving a car at approximately 9:00 PM in Winter Park, struck a woman on a bicycle that he asserts he never saw, and caused her death. Applicant did not stop at the scene. Applicant asserts he pulled over at gas station a little way further on, and saw people apparently helping the victim, and heard emergency vehicles going to the scene, and decided to drive home. At home that same night he told his girlfriend that he had struck a bicyclist and he could hear her screaming. The next day, when his step-mother noticed the damage to the car Applicant had been driving, Applicant told her he had fallen out of a tree onto the car and damaged it. It was not until Oct. 5, 2002 that Applicant told his parents the truth. His father went to see an attorney to obtain advice and representation for Applicant. On Oct. 14, 2002 the attorney for Applicant delivered a letter to the highway patrol, revealing Applicant's involvement, which the police were not previously aware of.

- 2) Thereafter, on or about January 4, 2004 Applicant pled guilty to the felony charge of leaving the scene of an accident with death, in Florida Circuit Court, Orange County. His sentence included 5 years supervised probation, 150 hours of community service including 10 hours of speaking to groups in victim awareness programs using a photo of the victim, his driver's license was restricted to business driving for one year, he had to pay the victim's funeral costs, and court costs were imposed. He has successfully completed the court-ordered probation.

The Division is recommending approval subject to the condition that the establishment passes an onsite inspection from Division Staff.

Mr. Knopke – Mr. Chairman, let me declare my relationship with my brother who is president of Baldwin Brothers and that relationship will not affect my decision on this Applicant.

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

(3) D M Baker Mortuary LLC (Jacksonville)

Mr. Shropshire – An application for a Funeral Establishment was submitted on June 10, 2015. The application was incomplete when submitted. All deficient items were returned on July 6, 2015. The Funeral Director in Charge will be Donna Mullins-Prince (F045442). The fingerprint information was returned without criminal history.

The Division is recommending approval subject to the condition that the establishment passes an onsite inspection from Division Staff.

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

B. Recommended for Denial

(1) Gallaher Services Inc d/b/a Mortuary Services of Florida (Fort Myers)

Mr. Shropshire – A change of ownership application was submitted on May 20, 2015. The application was incomplete when submitted. All deficient items were returned on July 17, 2015. The Funeral Director in Charge will be Stephen Barreto (F047456). The establishment is not the qualifying entity for any preneed Licensee. All fingerprint information was returned without criminal history. Per the letter, signed by Georgina Ronick, the change of ownership occurred in February 2015.

The current establishment (F071575) and principal Georgina Ronick both has adverse licensing history.

- 1) On April 8, 2015 both Gallaher Services and Georgiana Ronick were ordered to pay \$3166.66 and were both placed on probation. A Department Examiner conducted an investigation and had alleged that at need contracts were not being properly executed: pre signed, blank, at need contracts were made available for use by unlicensed employees and over 90 unauthorized preneed contracts were sold without the required licenses.

- 2) While the FDIC was not properly supervising the Applicant, Ms. Ronick was the office manager for the Applicant.
- 3) It was during this period that Ms. Ronick met with at least one family outside the presence of a licensed funeral director.
- 4) It was during this period that Ms. Ronick met with family members and entered into preneed contracts. While Ms. Ronick is herself a licensed preneed sales agent, she entered into these contracts on behalf of the funeral establishment when the funeral establishment was not licensed to sell preneed.
- 5) As a preneed Licensee, Ms. Ronick failed to take the proper course of action. By doing so, at the most culpable she was fraudulent, by entering into preneed licenses while knowing she was not permitted to do so; and at the least culpable she was negligent and incompetent by not knowing she was not permitted to enter into preneed contracts.
- 6) By entering into these contracts, she indirectly implied to customers that the funeral establishment was licensed to enter into preneed contracts.
- 7) The Applicant had 100% ownership of the business in February 2015 yet she did not apply for a Change in Ownership of the establishment until May 2015

The pertinent statutory provisions applicable to this matter are as follows:

Section 497.380(4), Florida Statutes provides the following:

... A duly completed application accompanied by the required fees shall be approved and the license issued if the proposed funeral establishment has passed an inspection pursuant to rule of the licensing authority, *the licensing authority determines the Applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters, and the Applicant otherwise is in compliance with all applicable requirements of this chapter.*

Section 497.152, Florida Statutes, which provides the following:

This section sets forth conduct that is prohibited and that shall constitute *grounds for denial of any application, imposition of discipline, or other enforcement action against the Licensee or other person committing such conduct.*

* * * * *

(1)(b) Committing fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

* * * * *

(5)(a) Practicing or offering to practice beyond the scope permitted by this chapter and rules adopted under this chapter for the type of licensure held or accepting and performing professional responsibilities the Licensee knows, or has reason to know, the Licensee is not competent to perform.

* * * * *

(9)(f) Directly or indirectly making any deceptive, misleading, or untrue representations, whether oral or written, or employing any trick, scheme, or artifice, in or related to the practice of a profession or occupation regulated under this chapter, including in the advertising or sale of any merchandise or services related to the practice of the profession or occupation.

After reviewing all of the materials in this matters and for the reasons specifically set out in the written materials provided to the Board for this meeting and because of Ms. Ronick’s previous disciplinary history and because of her conduct while employed by Gallaher Services Inc., the Division is recommending that this application be denied.

Chair – Ms. Ronick, would you please be sworn in?

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

Ms. Georgina Ronick – I do. I would like to start off by addressing the Board and mentioning that Mr. Gallaher has not been with the company since January 29th of this year. At that time, he turned over the rest of his shares to me so he has not been involved with the company at all since that date. I am happy to answer any questions that the Board might have regarding why we are being recommended for denial in the hopes that maybe I can answer some questions that you are not aware of, of things that have taken place that have not been addressed.

Chair – You acquired the company in January?

Ms. Ronick – Yes sir. Well actually I was given five (5) shares of the company in January of 2014, but I did not acquire 100% of the shares until January 29, 2015. Mr. Gallaher actually has been gone from the company since then and I have a letter stating that. I registered the company under my name as sole proprietor on the 20th of February of this year.

Chair – So since January you have owned it in fact and are you aware that there is a requirement for change of ownership?

Ms. Ronick – I was aware of that. However, I was diagnosed with breast cancer at that time and since then I have been going through treatment and very invasive surgery and it has taken up my entire life. Basically, I did not have the energy to. I was hoping that I would feel better sooner than I did. That is the reason for the delay. I believe that I applied for it sometime in June but I wanted to pay off all of the fines first to show that in good faith that I had done what we were penalized for in hopes that that would help with the decision but I have not been well. Actually I postponed further treatment to be here today.

Mr. Hall – Who has been running it since you've been ill?

Ms. Ronick – The funeral director and my office manager. I have actually been out for about six (6) months.

Mr. Hall – Most of the fines and things that you referred to when we met in that last meeting was stemmed back to you running that, correct? Mr. Gallaher has been out for a while and he had some fines and stuff and then you were fined and the establishment but it was from your operation and control of that company then that created those fines and violations then, correct?

Ms. Ronick – No, that is not correct at all. I was hired by Mr. Gallaher as a prearrangement counselor. I actually had a current prearrangement license at the time when he hired me. I had no idea that the establishment did not have a prearrangement license. In the charges against us it said that I did prearranging for two (2) years. That was incorrect. I did it for probably six (6) months. Most of the violations were insurance commitments that were made two (2) years prior to me coming on board that he had a relationship with Homesteaders Insurance. I had worked previously as a prearrangement counselor for other companies, large corporations and just ignorance on my part I just assumed he had a prearrangement license and he did not, but the minute that I was aware of the fact that he did not of course I stopped because I was not happy with being fined. I barely had a traffic ticket in my entire lifetime and now I am being fined for doing something illegal. I was not happy with that at all. The fine is paid. The establishment's fine is paid. We were placed on two (2) years probation, so I am doing my penance for all of that. I even paid the establishment license that actually I thought Mr. Gallaher should have paid but because he is ill also I just did not want to upset the applecart anymore. He has been ill for quite some time, two (2) years now. So I think a lot of the mistakes that Mr. Gallaher made were based on the fact that he is ill going through extensive radiation treatment. I think it affected his thinking and we actually have a very difficult time with him over the last year and a half.

Mr. Knopke – It says in the paperwork here that a funeral director left signed at-need contracts. Did you meet with at-need families to make funeral arrangements?

Ms. Ronick – Never. No sir. Never

Mr. Knopke – Yet, you all agreed to that in the Stipulation and in the fine. Is that correct?

Ms. Ronick – No, that was not stipulated that I met families at-need. I was charged with prearranging without the establishment having a license. I was never charged with meeting families at need. I am not a funeral director.

Mr. Knopke – Let me read to you what it states in the packet. "On April 8, 2015, both Gallaher Services and Georgina Ronick...

Ms. Ronick – Excuse me. Can I just ask you which one (1) you are referring to? Are you referring to the establishment charge, my charge or Mr. Gallaher's charge, because there were three (3) different ones?

Mr. Knopke – I am referring to the Division's coversheet, Page 1 of 41 in our packets is what I am referring to.

Ms. Ronick – Oh, I know what you are referring to.

Mr. Knopke – “The current establishment (F071575) and principal Georgina Ronick both have adverse licensing history. On April 8, 2015 both Gallaher Services and Georgiana Ronick were ordered to pay \$3166.66 and were both placed on probation. A Department Examiner conducted an investigation and had alleged that at need contracts were not being properly executed: pre signed, blank at need contracts were made available for use by unlicensed employees and over 90 unauthorized preneed contracts were sold without the required licenses.” I am speaking to the at-need contracts. If you did not use them who did?

Ms. Ronick – I am sorry but I still do not understand the question. I am admitting that I met with families to prearrange, assuming that the establishment had a prearrangement license. I never met with a family at-need as a funeral director, ever.

Mr. Knopke – Were you the office manager?

Ms. Ronick – I was.

Mr. Knopke – You were the office manger so you were responsible for the office?

Ms. Ronick – I was.

Mr. Knopke – It states here that blank at-need contracts were made available for use by unlicensed employees. So I would assume if they were made available, I am trying to figure out who would have used them. Could that have been you or were there other unlicensed employees there?

Ms. Ronick – No. There was only one other person besides myself, Judy M (sp), who is an intern, who is with me today. Mr. Gallaher, you know I cannot speak for Mr. Gallaher. Mr. Gallaher had some very unconditional practices. It is one of the reasons we are no longer business partners. The purpose of a pre-signed contract seems to me, I know that it looks like if he is not in the funeral home then someone else can take care of the arrangements. I would not have put myself in that position, ever and I did not.

Mr. Knopke – It goes on to say in the packet, “It was during this period that Ms. Ronick met with at least one family outside the presence of a licensed funeral director.”

Ms. Ronick – Okay, I will explain that to you. I was in the office one (1) day. A family came in. Mr. Gallaher and Ms. M. were out doing a funeral. I explained to the family that I could not take down any of the information on the vital statistics that they would have to wait and make an appointment for when the funeral director was there. That was the only incident that ever occurred and I turned them away. So that is not true. That is not correct. I have not seen this before written anywhere. It was not on the charges that I was given so this is very, very new to me. I know that it was a charge. I had heard of it but I had explained it to our then attorney at the time.

Mr. Knopke – So what you are saying is that you have never done any unlicensed activity on the at-need side of the business, ever?

Ms. Ronick – That is correct.

Mr. Knopke – And you are saying that you had no knowledge that your employer and business partner did not have a preneed license to sell preneed?

Ms. Ronick – That is correct. As foolish as it sounds, yes. Well I do not come from this Industry. I come from a completely different Industry in Finance and I was just starting to get my feet wet. It was pure ignorance. I had worked prior for a larger corporation doing preneed and just assumed that if I am able to get a preneed license the establishment has one (1), but that was not the case.

Ms. Oliver – Mr. Barnhart, if we vote to deny this application, what then? She owns the shares but what happens?

Mr. Barnhart – She would have the right to request a formal or informal hearing to contest the denial. So she could either go to DOAH for a formal hearing or she could ask for an informal hearing before the Board.

Ms. Ronick – So, if there is going to be a denial the denial is going to be based on the prior accusations that we are already doing penance for, the two (2) years probation and the fines that have already been paid? Is that what this is all based on?

Mr. Shropshire – I think that would have to await the actual making of a motion and the statement of the grounds for denial.

Ms. Ronick – I do not understand. I thought issue had been resolved and that we had moved forward from that, so I am a little confused.

Mr. Barnhart – Previous discipline is grounds for denying a license so that would be a possible ground. Then there is some evidence that you may have been operating without a license without a prior approval on the transcript.

MOTION: The Chair moved to deny the application because of Ms. Ronick’s previous disciplinary history, because of her conduct while employed by Gallaher Services Inc and she operated without getting prior approval from the Department. Mr. Helm seconded the motion, which passed unanimously.

Ms. Ronick – So what do I do from here? What are my options from here?

Mr. Barnhart – You will receive an Order denying the application and then your two (2) options as I just explained that if you can identify material issues of disputed facts, you can ask for a hearing in front of DOAH and if not then you would be entitled to an informal hearing before the Board.

Ms. Ronick – How do we take care of families that we currently are servicing?

Mr. Barnhart – That would be a question for Mr. Shropshire or Ms. Simon.

14. Application(s) for Preneed Main License
A. Recommended for Approval with Conditions
(1) A B Coleman Mortuary, Inc. (Jacksonville)

Mr. Shropshire – The Department received the application on May 8, 2015 and a deficiency letter was sent to the Applicant on May 18, 2015. All deficiencies were resolved as of June 2, 2015. This application for a preneed license is being filed due to a change of ownership of the Applicant principals. Arlene B. Coleman is assuming 100% ownership of the Corporation via a stock purchase sales agreement where Ms. Coleman is purchasing all outstanding shares of stock of A.B. Coleman Mortuary, Inc. Ms. Coleman will ultimately be the sole owner and operator of the establishment. A completed background check of all officers revealed no criminal history.

Applicant submitted an application for change of ownership of the qualifying funeral establishment license (F041180), which was previously approved at this meeting. Applicant currently holds a preneed license under License #F065167, which was approved for renewal at the June 24, 2015 Board meeting, but will relinquish this license, and will honor all preneed contracts from the existing preneed Licensee (F065167) under the new preneed license, if approved. Applicant will continue to sell insurance-funded preneed through Homesteaders Life and use its pre-approved Preneed Funeral Agreement and Assignment form. The Applicant’s financial statements as of December 31, 2014 reflect the following:

Acquired Preneed Contracts	= \$	770,528
Required Net Worth	= \$	100,000
Reported Net Worth	= \$	551,000

It should be noted that the Applicant’s Statement of Operations Income Statement shows that they have incurred in 2014 a net operating loss of \$174,000 and my understanding from my staff’s interaction yesterday with the Applicant was that the cause of the loss was that they lost the Indigent Care Contract for Duval County and in view of this net loss and subject to the Applicant’s explanation, I do not see any why that loss is going to be corrected readily so presumably they are going to continue to incur losses. The Division is recommending approval subject to the conditions that:

- 1) The Application for Change of Ownership of the qualifying funeral establishment license is approved subject to the stated conditions.
- 2) All preneed obligations of the preneed Licensee under its current controlling party shall continue as its obligations under its new controlling party.
- 3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Share Sales Agreement, executed by all parties, and any and all amendments thereto, also fully executed.
- 4) The Applicant engages in 100% trust or insurance of the preneed sales under the preneed license.

Chair – Mr. Coleman, please let us swear you in.

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

Mr. Andrew B Coleman III – I do.

Mr. Hall – Are there adjustments you could make, after losing that contract, to offset those losses? Will you be reducing staff and things of that nature to help offset those losses?

Mr. Coleman – That is correct.

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

(2) Lampkins Patterson Cremation and Funeral Service Inc (Jacksonville)

Mr. Shropshire – The Department received the application on June 30, 2015 and the application was complete with the exception of a completed background check for one of the principals of the Applicant, Darryl Patterson. No other deficiencies were noted on the application. The principals and co-owners of the corporation will be: Renaldo Lampkins and Darryl Patterson. A completed background check for Mr. Lampkins revealed no criminal history. Applicant obtained its current qualifying funeral establishment license (#F082115) as of January 15, 2015, and, if approved, will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement.

The Applicant’s financial statements as of June 24, 2015 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	122,756

There was a problem that the principal and co-owner, Darryl Patterson fingerprint criminal history form had not been received by the time the Board packets were prepared, but his fingerprint has subsequently come back clean so they meet the net worth and the Division recommends approval without conditions.

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

Chair – Before we take a break, Mr. Shropshire wants to address the Board for consideration during the break of an off the agenda item.

Mr. Shropshire – There is an applicant by the name of Joseph L Myrtetus of Orlando FL. He came before the Board at its June meeting on an application for licensure of a funeral director and embalmer by internship and examination. He has a criminal history. The Board tabled the matter because they wanted to hear from the Applicant. The Applicant is here today. However, through oversight of the Division, his application packet is not on the agenda. However, we have application packets here we would like to distribute them to the Board and during the break we would ask that the Board review the packets and then hear Mr. Myrtetus’ application after the break. Jasmin will distribute the application packets to the Board.

Chair – We will break until 11:45a.

*****BREAK*****

Chair – I would like to call the meeting back in to order and add to the agenda the gentleman that was just before us for licensure as a funeral director and embalmer by internship and examination.

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

Mr. Joseph L. Myrtetus – Yes I do.

Mr. Shropshire – Again, this Applicant appeared at the June 2015 Board meeting on an application for funeral director and embalmer license by internship and examination. The Division recommended approval subject to the stipulation for license which provided for two (2) years probation. The Board tabled the matter and indicated it wanted to hear in person from the Applicant so the Applicant is here. Inadvertently the matter was left of the agenda for this particular meeting, but as the Chair has indicated for good cause showing the application has been inserted on this agenda for this August 6, 2015 Board meeting because the Applicant is here and he was under the impression that his application was going to be heard today.

Chair – Please let the record reflect that all Board members have the packet before them and have had an opportunity to review it. Sir, would you like to make a statement? You have been sworn in already. Are you here to make a statement or are you here to answer questions of the Board?

Mr. Myrtetus – I am here to answer questions.

Mr. Helm – It said you were ordered to attend DUI school and drug rehabilitation. Why were you ordered to do that?

Mr. Myrtetus – I had a DUI.

Mr. Helm – Well this was in 2014 when you had the domestic violence with your daughter.

Mr. Myrtetus – That was because she was on drugs herself and I intervened. I was trying to stop it, her and her boyfriend. They recommended that her and me both get classes.

Mr. Hall – What have you been doing since your license went null and void? What is your livelihood?

Mr. Myrtetus – I have been working in construction, very hard work.

Mr. Hall – In as early as January 2015, you had the charge again and it said habitual offender. Are there additional DUIs on the list or what is this telling me?

Mr. Myrtetus – I was driving on the revoked list. I did that three (3) times and became habitual and that is why they made it a felony.

Chair – Since January of 2015, can you describe to us any activities that you have been charged with during that interval from then to now?

Mr. Myrtetus – No. There has not been anything, no charges. I am a current member of Alcoholics Anonymous. I have a problem. My father has a problem. My grandfather had a problem. I am coming up on three (3) years sobriety and I am doing the best I can.

Chair – If your license is approved here, do you have a job awaiting you?

Mr. Myrtetus – Not waiting for me but I have leads. It would be really helpful. This is my passion. I grew up on top of a funeral home. My father was a funeral director. My grandfather was a funeral director. This is my passion. I really want to get back into it.

Chair – And you have completely read and understand the stipulation for licensure?

Mr. Myrtetus – Yes I have.

Chair – And you are agreeing to that?

Mr. Myrtetus – Yes.

Chair – It is going to be a change in your life and your activities that you have displayed.

Mr. Myrtetus – Yes, being a law abiding citizen.

MOTION: Mr. Helm moved to approve the application subject to the condition recommended by the Division. Ms. Anderson seconded the motion, which passed with one (1) dissenting vote.

Chair – The next time this Board is in Orlando, this is not a stipulation, but will you come before this Board and say hello to us?

Mr. Myrtetus – I sure will. Thank you very much.

Chair – We are concerned about you.

Mr. Myrtetus – I really appreciate it. I really do.

Chair – We want everything to go well for you.

Mr. Myrtetus – Thank you very much.

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

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

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

16. Renewing Licensees With Criminal Records Since Initial Licensure

Mr. Shropshire – These are Licensees seeking renewal of their funeral director and embalmer license. However, they have incurred a criminal record since initial license issuance. Section 497.141, F.S., provides that the Board may not renew a license under Ch. 497 regarding an Applicant that has a criminal record required to be disclosed under s. 497.142(10), which criminal record arose after original licensure, unless the Applicant demonstrates that renewal of the license does not create a danger to the public. Said law has been in effect since 2011, but this current renewal cycle is the first time the Division has had access to the state criminal database so as to ascertain which Licensees coming up for renewal have a criminal record arising subsequent to original licensure. These matters come before the Board upon the following identified individual's applications to renew their Funeral Director, Embalmer, Funeral Director and Embalmer or Direct Disposer license, which is scheduled to expire August 31, 2015.

A. Recommended for Approval without Conditions
(1) Baker, Theodore (F042454)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Resisting Officer Without Violence – Misdemeanor – Pled No Contest – 10/17/2012*
- *Drug Paraphernalia, Unlawful Possession, Manufacture, Delivery, Transportation, Advertisement or Retail Sale – Misdemeanor – Pled No Contest – 1/17/2012*

The sentence imposed was relatively light. No jail time was imposed. This suggests to the Division that the court found significant mitigating factors in the Defendant's favor. The Licensee has not had any disciplinary action taken against him in Florida, nor is the Division aware of any disciplinary action against the Licensee in any other state. In view of all the above, it appears that the criminal incident was an isolated event and that the Licensee is rehabilitated and would not pose a danger to the public if the license is renewed. The Division is recommending approval of the renewal without conditions.

Ms. Oliver – Mr. Shropshire, since is the first time I believe that we have gone through this exercise with all of these items in 16, can you maybe just give us a quick rundown of how the Division made its recommendations or what criteria the Division might have used in making its recommendations.

Mr. Shropshire – The Division, first of all, is guided by the Board's historic treatment regarding DWIs and traffic related offenses. Historically, the Board has not viewed those as bars to licensure initially therefore our position was that they would not be a bar to renewal. After that, probably, our next criteria would be whether it was a misdemeanor or a felony. Then, after that, we would be guided primarily by what the sentence was and most significantly whether the criminal court imposed any jail time because it is the Division's belief that the criminal court that impose sentence, that its evaluation of the seriousness is very much reflected in whether it imposed jail time or not. If it did not impose jail time, our feeling is typically that the court did not believe it was going to be repeated, that it was not in the overall spectrum of offenses, that is was not that extremely serious. Those are primarily the criteria the Division has used in making its recommendations in this first time through this process but acknowledging it is a very imperfect and subjective process going from case to case. It is very difficult and some of the gradations are very fine. The difference between one (1) case and another and when you get into that situation and you start drawing a line, sometimes it necessarily appears somewhat arbitrary but you draw a line somewhere. We certainly try not to be arbitrary.

Chair – Thank you. Good question.

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

(2) Chambers, David (F044982)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- o ***Driving Under the Influence – Misdemeanor – Found Guilty – 12/20/2011***

The Division is recommending approval of the renewal without conditions.

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

(3) Gerhardt, Steven (F042168)

Mr. Shropshire –The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- o ***False Business Records: Omit True Entry – Misdemeanor – Pled Guilty – 5/20/2004***
- o ***Petit Larceny – Misdemeanor – Pled Guilty – 5/20/2004***

The Licensee has no other criminal record in Florida and no other criminal record in any other state to the knowledge of the Division. The Licensee has not had any disciplinary action taken against him in Florida, nor is the Division aware of any disciplinary action against the Licensee in any other state. The crimes were committed in 1998, approximately 17 years ago. The sentence imposed was relatively light. The sentence was probation and restitution (no jail time). This suggests to the Division that the court found significant mitigating factors in the Defendant's favor. In view of all the above, it appears that the criminal incident was an isolated event and that the Licensee is rehabilitated and would not pose a danger to the public if the license is renewed. The Division is recommending approval of the renewal without conditions.

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

(4) Kurfiss, Donald (F043941)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Improper Exhibition of a Firearm – Felony – Pled No Contest – 11/18/2014*

The sentence imposed was relatively light. No jail time was imposed. This suggests to the Division that the court found significant mitigating factors in the Defendant’s favor. The Licensee has not had any disciplinary action taken against him in Florida, nor is the Division aware of any disciplinary action against the Licensee in any other state. In view of all the above, it appears that the criminal incident was an isolated event and that the Licensee is rehabilitated and would not pose a danger to the public if the license is renewed. The Division is recommending approval of the renewal.

Mr. Knopke – Mr. Chairman, let me state for the record that I want to recuse myself. I was approached by a third party and provided information that has not been provided to the Board.

Chair – Was this information provided to any other Board members?

Mr. Knopke – I do not know. It did not occur here. It occurred at my office. It was a vendor that happened to drop by and opened his mouth. He will not be used by our firm any longer.

Chair – Thank you. Are you Mr. Kurfiss?

Mr. Donald Kurfiss – Yes sir. I am here to correct one (1) error on there. It is not a felony what I was convicted of.

Chair – Let us swear you in, please.

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

Mr. Kurfiss – It is.

Mr. Shropshire – Please state your full name.

Mr. Kurfiss – Donald Gregory Kurfiss.

Chair – What would you like to say to the Board?

Mr. Kurfiss – I was originally charged with three (3) felonies; aggravated assault with a firearm, which I pled to three (3) misdemeanors that were improper display of a firearm so that is what the final plea was. I just wanted to get you corrected on that.

Chair – Thank you.

Mr. Jones – Do we have that?

Mr. Shropshire – Mr. Kurfiss is correct. In looking at the judgment, the plea was nolo contendere to three (3) first degree misdemeanors, so the Division was in error in indicating it was a felony.

MOTION: Chair moved to approve the renewal. Mr. Clark seconded the motion, which passed unanimously.

***B. Recommended for Denial
(1) Adams, Charles (F042986)***

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Willful Violation of an Injunction for Protection Against Repeat Violence, Sexual Violence or Dating Violence, Etc. (A Misdemeanor – Misdemeanor – Found Guilty – 5/2/2013)*
- *Battery – Misdemeanor – Found Guilty – 5/2/2013*

- *Stalking, Aggravated (Repeated After Injunction) – Felony – Found Guilty – 5/2/2013*
- *Criminal Mischief (2 Counts) (Damage \$200 to \$1000) – Misdemeanor – Found Guilty – 9/2/2010*
- *Willful Violation of an Injunction for Protection Against Repeat Violence, Sexual Violence or Dating Violence, Etc. (A Misdemeanor – Misdemeanor – Found Guilty – 9/2/2010)*
- *Willful Violation of an Injunction for Protection Against Repeat Violence, Sexual Violence or Dating Violence, Etc. (A Misdemeanor – Misdemeanor – Found Guilty – 9/2/2010)*
- *Threatening to Throw, Project, Place or Discharge Any Destructive Device – Felony – Found Guilty – 9/26/2007*

The Division will not be able to provide a recommendation until it is determined whether the Licensee has appeared at this Board meeting and if so, evaluation of the Licensee's demeanor and presentation, if any, to the Board. The Licensee has been advised of the meeting and invited and asked to attend.

Chair – Is Mr. Adams present? There was no response.

Mr. Shropshire – With Mr. Adams not being here, the Division recommends denial of this renewal.

MOTION: Mr. Hall moved to deny the renewal. Mr. Jones seconded the motion, which passed unanimously.

(2) Barnes, Elissa (F048370)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Driving under the Influence, Causing Serious Bodily Injury to Another – Felony – Pled No Contest – 7/10/2014*

Ms. Barnes was sentenced to eleven (11) months in jail. The Division will not be able to provide a recommendation until it is determined whether the Licensee has appeared at this Board meeting and if so, evaluation of the Licensee's demeanor and presentation, if any, to the Board.

Mr. John Rudolph – I am John Rudolph and I represent Ms. Barnes and she is here to answer any questions.

Mr. Shropshire – Ms. Barnes would you raise your right hand? Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?

Ms. Elissa Ann Barnes – I do.

Chair – Would you like to address the Board or just answer questions?

Ms. Barnes – The accident actually occurred in 2013. I was convicted in 2014. I made a bad decision that evening. I got in my vehicle, hit another vehicle and injured some folks when I did so. As a result of that they went to the hospital and I went to the hospital. In 2014, I was convicted. It was first brought as a misdemeanor and once they determined it was injury to another it was brought to a felony. That is why the sentence was introduced in 2014. Since then I have taken steps to ensure that that does not happen. That was an atypical behavior of me. I have not had alcohol since that incident in 2013. I do not hang around folks that do consume alcohol. I am currently on probation for four (4) years. I have moved to Texas since then. I am in compliance with all of the requirements asked of me on my probation. I am presently employed at a crematory and I am in training to be crematory technician, so I am still pursuing the career and my hopes for coming before you is to be approved so that I can reciprocate my license in Texas.

Chair – What part of Texas?

Ms. Barnes – Houston TX, sir, just south of Houston TX.

Chair – And the firm where you are employed?

Ms. Barnes – It is called Cremate Texas.

Chair – They are not a part of Service Corporation International, are they?

Ms. Barnes – No sir.

Chair – Thank you.

Ms. Barnes – Also, as a result of that, I was incarcerated for nine (9) months. My husband has left me since. I have a three (3) year old daughter that I am raising on my own, with the help of my parents, of course. I just want to move forward from this incident. I am just a caregiver by nature. Being a funeral director is how I identify myself and to lose this would be losing who I am. Every since I was young this is all I have wanted to do, is to serve people. I would be lost if I could not move forward with my career. This was just a terrible decision, a mistake and I have taken steps so that this will not happen again.

Chair – Were you injured in this accident?

Ms. Barnes – Yes sir.

Chair – Have you attended any rehabilitation meetings, AA or anything of that nature?

Ms. Barnes – Yes sir. Against the advice of my attorney, I wrote apology letters to the victims of that accident before I was sentenced. That was not asked of me but I did that on my own accord. I also took myself to AA meetings and I attended those as well. I also attended a substance abuse program and successfully completed that. The meetings and the program were presented at the time of my sentence but she still imposed the jail time, which I did serve and the probation as well.

Mr. Mueller – Help me understand why a license in Florida affects your employment in Texas.

Ms. Barnes – I am trying to reciprocate my license to Texas.

Mr. Hall – That was going to be my question too. When did you start that process or where are you at on that process in Texas?

Ms. Barnes – Currently I am scheduled to take my law exam at the end of this month and I am also going before the Board on September 15th for review by them as well. I have made them aware of my charges.

Mr. Hall – Did you travel from Texas here for this meeting today?

Ms. Barnes – Yes sir.

Mr. Rudolph – She flew in yesterday.

Mr. Knopke – The people that were injured, what is their status, if you know?

Ms. Barnes – What I know is when I struck the vehicle, there were two (2) occupants. It was an SUV. There were four (4) occupants total. The two (2) in the front were restrained. The two (2) in the back were not restrained. As I hit them, the driver tried to overcorrect the vehicle and that in turn caused the vehicle to roll and overturn. The two (2) people in the back were ejected from the vehicle. The most severe injury was a fourteen (14) year old girl. Her pelvis was broken and there was some skin that was removed from her elbow that had to be sutured back.

Mr. Knopke – So other than the mental side of it, they have probably physically recovered?

Ms. Barnes – Yes sir. No one is in a wheelchair. There will always be a scar and I do have to live with that. I do think of that every day that that girl will have to live with that and that I put that there.

Mr. Shropshire – The Division recommends approval without conditions.

MOTION: Mr. Clark moved to approve the renewal. Mr. Hall seconded the motion, which passed unanimously.

(3) Jackson, Joseph (F043947)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Driving Under the Influence – Misdemeanor – No Contest – 5/5/2011*
- *Driving While License Suspended, Revoked, Cancelled – Misdemeanor – No Contest – 7/13/2011*
- *Driving Under the Influence – Misdemeanor – Guilty – 8/20/2014*
- *Driving Under the Influence – Felony 3rd Deg – Guilty – 8/20/2014*

Licensee was sentenced to four (4) years in prison and is currently serving that sentence. The Division recommends denial.

Chair – Is Mr. Jackson here? There was no response.

MOTION: Mr. Mueller moved to deny the renewal. Mr. Hall seconded the motion, which passed unanimously.

(4) Knauff, Joseph (F043258)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Unlawful Possession of a Controlled Substance (Possession of 20 Grams or Less of Cannabis) – Misdemeanor – Pled No Contest; FO – 10/15/2012*
- *Reckless Driving (WWRD, Wrong Way Reckless Driving) – Misdemeanor – Found Guilty – 6/4/2012*
- *No Valid Driver's License, License Invalid, Revoked or Suspended – Misdemeanor – Pled No Contest – 10/15/2012*

The Division will not be able to provide a recommendation until it is determined whether the Licensee has appeared at this Board meeting and if so, evaluation of the Licensee's demeanor and presentation, if any, to the Board.

Chair – Mr. Knauff, thank you for coming in. Will you be sworn in, please?

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

Mr. Joseph F Knauff – Yes sir I do.

Chair – Mr. Knauff, are you here to address the Board or just to answer questions?

Mr. Knauff – A little bit of both, if it is necessary. I have some things here that I would not mind passing out. I am extremely proud of my family's reputation. My daddy started about 1945 in Williston. I have not been in trouble at all with the Department or with this Board. I had an issue with some law enforcement, as you can see. I provided some letters as to my character. I do not think either of you know me but I thought it might be important that you at least see the kind of man I am.

MOTION: Chair moved to approve the renewal. Mr. Clark seconded the motion, which passed unanimously.

(5) Odom, Samuel (F043001)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Traveling to Meet a Minor to Commit an Unlawful Sex Act; Transmission of Material Harmful to a Minor; Transmission of Material Harmful to a Minor – Felony – Found Guilty – 11/19/2013*
- *Computer Pornography and Child Exploitation; Possess, Control or Intentionally View Sexual Performance by a Child – Felony – Found Guilty – 11/19/2013*

The Division recommends denial.

MOTION: Ms. Oliver moved to deny the renewal. Mr. Hall seconded the motion, which passed unanimously.

(6) Richardson, Derryck (F045502)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Giving Worthless Checks, Drafts and Debit Card Orders, More Than \$150 (Felony 3rd Degree – Felony – Pled No Contest – 1/10/2014*

The Division will not be able to provide a recommendation until it is determined whether the Licensee has appeared at this Board meeting and if so, evaluation of the Licensee’s demeanor and presentation, if any, to the Board.

Ms. Wendy Wiener – Wendy Wiener for Mr. Richardson. He is here to address the Board. He did obtain a letter from the victim in the worthless check charge. I do not have copies because he just brought it with him today. It is handwritten but it is actually notarized. I will present it to Division Director Shropshire who can consider it or if you prefer I can read it into the record. It is short, real short.

Chair – Read it into the record.

Ms. Wiener – “To the Board, regarding the judgment of Folmar’s vs. Derryck Richardson filed in open court 1/10/2014, Mr. Richardson has paid this in full and we are not owed any money. Folmar’s Gun and Pawn, Inc. has conducted business with Derryck Richardson for over twenty (20) years and we look forward to his continued business. If you need any more information, please call...” and he provides contact information.

Chair – Counsel, is Mr. Richardson going to make a statement to the Board or is he answering questions?

Ms. Wiener – Either or both.

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

Mr. Derryck Richardson, Sr. – Yes sir. The check that was in question, I think it took place in 2011. It was an incident with one (1) of my former employees. Once it was brought to my attention, I addressed it immediately. I took care of it immediately. I have been in business for nineteen (19) years. This is the most hurtful thing to have a criminal record or be called a criminal. That is hard. I addressed it immediately. I am very good friends with Mark, the young man who the check was written to. I do business with him still currently today. I hate that that happened but we addressed it and tried to take care of it immediately.

Ms. Oliver – It shows that adjudication of guilt was withheld in this case, so you were not technically convicted of a felony.

Mr. Richardson – That is correct.

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

(7) Waters, Lavell (F045237)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- *Breach of the Peace; Disorderly Conduct – Misdemeanor – Pled No Contest – 1/23/2012*
- *No Valid Driver’s License – Misdemeanor – No Contest – 7/28/2011*
- *Driving While License Suspended, Revoked, Canceled or Disqualified – Misdemeanor – No Contest – 1/10/2011*

The Division will not be able to provide a recommendation until it is determined whether the Licensee has appeared at this Board meeting and if so, evaluation of the Licensee’s demeanor and presentation, if any, to the Board.

Chair – Are you Mr. Waters?

Mr. Lavell Waters – Yes.

Chair – Would you like to address the Board?

Mr. Waters – Yes.

Chair – Please be sworn in.

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

Mr. Waters – Yes.

Mr. Helm – I have a brief question as this is really new grounds to all of us. Mr. Shropshire, I realize we did not wait on your recommendation last time. Do you want us to wait for your recommendation after discussion or do you want the Board to go ahead and make a motion.

Mr. Shropshire – The preference would be and the proper procedure is that at the end of the presentation that the Division makes a recommendation to the Board in each matter.

Chair – Thank you. Mr. Waters, go right ahead.

Mr. Waters – Within the last renewal, 2013, the Division was notified of my criminal history of the disorderly conduct charge, a misdemeanor. It was approved and verified by the Board in that case. The other charges of driving without a valid license, my citation, it was not knowingly driving with a suspended license nor was there a DUI. Both of those incidents arose in Daytona Beach Shores, a community that is notoriously known for getting behind you and running your license plate, which showed an expired registration. The reason my license was suspended in the first place was due to child support enforcement. Most certainly I am not a threat to the public or any consumer of funeral services.

Mr. Shropshire – Mr. Waters, do you currently have a driver's license?

Mr. Waters – Not at this time, no.

Mr. Shropshire – Where are you employed?

Mr. Waters – Trinity Memorial Chapel in Sanford FL.

Mr. Shropshire – You are employed at a licensed funeral establishment?

Mr. Waters – Yes I am.

Mr. Shropshire – And the name of it is?

Mr. Waters – Trinity Memorial Chapel.

Mr. Shropshire – Who does their removals for them?

Mr. Waters – Staff members

Mr. Shropshire – How many staff are there?

Mr. Waters – We all...

Mr. Shropshire – Well, you do not do any, do you?

Mr. Waters – No. I do not drive for anything. We have staff members who are capable of taking care of that.

Mr. Shropshire – Do you expect to be getting a driver’s license back?

Mr. Waters – Yes, very soon. I am in the process of narrowing down the arrears on my child support so that when I get that all behind me I will not have to keep going through the same changes with the driver’s license issue.

Mr. Shropshire – I notice that the violation, the three (3) of them, one (1) in January 2011, July 2011 and January 2012, there seems to be a rough patch you were going through. I wonder if you could explain that.

Mr. Waters – Once I got stopped, then I had to go through Child Support, pay some money then go through DMV, get it approved and get validated again. When I went to court for each one (1) of those driver’s license issues, I went with a current license, therefore, no charges or any fees were assessed. Every six (6) months it was just a rough patch.

Mr. Shropshire – And the breach of peace, what was that related to?

Mr. Waters – That started out as a domestic violence charge, but it was reduced due to inaccuracies of the plaintiff’s statements by the prosecutor. They just gave me a misdemeanor disorderly conduct charge. What happened was the victim was a passenger in my vehicle. I was dropping her off and when she found out I was not going to go with her, I was going my own way, she proceeded to take my phone and my keys. So, what I did was I just reacted and tried to get her out of my vehicle. According to law enforcement, you cannot do that. If someone is in your home or your vehicle and you invite them in you cannot just push them out. You have to have them removed. There were no bruises. I did not hit her or anything. I am not abusive. I learned my lesson from that mistake.

Mr. Shropshire – Mr. Chairman, the Division recommends approval of the renewal.

MOTION: Mr. Knopke moved to approve the renewal. Mr. Clark seconded the motion, which passed unanimously.

(8) Williams, Todd (F050438)

Mr. Shropshire – The Licensee has incurred a criminal record subsequent to original licensure, as follows:

- o *Aggravated Assault With Deadly Weapon – Felony – Pled No Contest – 6/12/2013*

The Division will not be able to provide a recommendation until it is determined whether the Licensee has appeared at this Board meeting and if so, evaluation of the Licensee’s demeanor and presentation, if any, to the Board. The Division has indicated to the Board that it wanted to hear from him primarily because the offense was so close to the date of his licensure.

Chair – What was the outcome of the case?

Mr. Shropshire – He was sentenced to three (3) years probation, sir.

Char – Thank you. Mr. Williams, would you like to address the Board?

Mr. Todd Lemuel Williams – Briefly

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

Mr. Todd Williams – Yes sir. I just want to read this letter that I submitted to you all previously and then I will answer your questions.

Chair – I believe we have that as part of our record but you are certainly welcome to read it.

Mr. Williams – “I Todd L. Williams was involved in an altercation in September 2012 where I was arrested. I entered plea of nolo contendere to an offense of aggravated assault (deadly weapon) in June 2013. Instead of going to trial I opted with this plea. I was placed on three years of probation with the possibility of early termination (18 months), as long as I had no contact

with law enforcement. I will be able to get the court records expunged and live my life as I had done so prior to this offense. I was granted this leniency by the Judge Carlos Mendoza because I had no prior offenses. Early termination of probation was granted to me (18 months) in January 2015, as offered by the court because I fulfilled all obligations set before me. I am living a crime free life as I had done so before this situation and plan to further my career as a licensed funeral director and embalmer and someday I will be the owner of my very own funeral home.”

Mr. Mueller – Mr. Shropshire, do we have confirmation of the early termination of probation?

Chair – Yes, it is on Page 19.

Ms. Oliver – I see that adjudication of guilt was withheld so you were not technically convicted of a felony.

Mr. Williams – Yes ma’am.

Mr. Shropshire – So the police report indicates that “pointed a black semiautomatic handgun at the victim and threatened to shoot him” but we do not have any explanation in the police report of what led up to this. Can you give us a little background on what led up to this?

Mr. Williams – That was a case of road rage. An individual pulled out in front of me and kept stopping to try and get me to rear end them. I went around him and he followed me, he followed, he followed and then I called 911.

Mr. Shropshire – Did you know this person?

Mr. Williams – No, I did not know him. No sir.

Mr. Shropshire – The Division recommends renewal.

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

17. Trust Transfer Request(s)

A. Recommended for Approval with Conditions

(1) StoneMor Florida Subsidiary, LLC d/b/a Vista Funeral Home (Miami Lakes) (F038725)

StoneMor seeks approval of certain proposed trust asset transfers, all as more specifically set forth in its attorney, Wendy Wiener’s letter dated July 9, 2015. StoneMor is acquiring all of the assets and liabilities for the funeral and preneed location as indicated in Mrs. Wiener’s letter, which was approved at the June 25, 2015 Board meeting. As a result of this acquisition, StoneMor is requesting to transfer the above listed preneed trust accounts. StoneMor seeks approval of transfer of the trust assets as listed above of certain existing preneed trusts to Regions as successor trustee, from the current trustee, Fiduciary Trust. If approved, Regions will continue to operate under the existing trust agreements.

The Division is recommending approval subject to the condition(s) that:

- 1) Regions provide a certification statement that as trustee it meets the requirements of Rule 69K-7.015(1) or (2).
- 2) Regions provide a certificate stating the dollar amount of trust assets being transferred.
- 3) Regions provides acknowledgement of receipt of the amount of trust assets being transferred as specified under the former trust.
- 4) The effective date of the transfer and all above certifications are provided to the Division within 60 days of the date of this Board Meeting.

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

Mr. Knopke – Mr. Chairman may I ask Ms. Wiener a question about the transaction of Vista and StoneMor. Has that closed, has it not closed and maybe Mr. Rudolph wants to come on up to.

Ms. Wiener – The transaction has not closed but it is scheduled to close on time consistent with the representations made previously that it would be closing around mid to late August.

Mr. Rudolph – August 15 - 31

18. Executive Director’s Report

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

Monthly Report of Fines and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 August 6, 2015 Board Meeting
 Date of Report: July 22, 2015

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC dba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$5,250 \$5,000 38,859.57	9/6/2012 12/7/2012 35 mo pymts	YES YES NO	A balance of \$3,540.43 for restitution is due to Riverview and Cemetery Professionals is late in payment
Roy Vance Prestwood Jr.	Jun-15	139087-13-FC and 139091-13-FC	\$750 & \$2,000 respectively	10/10/2015		
Prestwood Funeral Home	Jun-15	139085-13-FC & 139093-13-FC	\$750 & \$2,000, respectively & Restitution of \$252.34	10/10/2015		
Ronald Nichols	Jun-15	171416-15	\$2,000	8/8/2015	Note D	
International Cremation Society	Jun-15	171407-15	\$3,500	8/8/2015	Note D	
Buy and Sell Cemetery	Dec-14	154941-14-FC	\$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50 \$62.50	\$62.50 initial payment/ \$62.50 First installment payment (paid)	On time	
Jay Monument & Vault a/k/a Jay Monument & Vault Inc.	Oct-14	153256-14-FC	\$5000 and 13 years of renewal fees	11/24/2014	No	Legal served licensee with a Notice of Intent on issuing an emergency order of suspension. Legal is in the process of issuing a notice of intent to issue a cease and desist order because of the status of the license.

Delvis Rogers	Dec-14	150301-14-FC	\$3,500	January 23, 2015	No	The Intent to Issue Emergency Action has been executed and was served in June. We are awaiting the order of suspension.
Georgina Ronick	Apr-15	157226-14	\$3,166	7/8/2015	Paid in full 5/28/2015	
John Gallaher	Apr-15	157224-14-FC	\$3,166	7/8/2015	Note D	
Gallaher Services, Inc.	Apr-15	157220-14-FC	\$3,166	7/8/2015	Paid in full 5/28/15	
New Horizon Funeral Chapel & Cremation, Inc.	Apr-15	154917-14-FC	\$3,500	5/9/2015	Paid in full	
<p>A. When payment in full becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment.</p> <p>B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report; also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs.</p> <p>C. The Order re this case is still in process, so no Due date is not yet established.</p> <p>D. Due date has not passed, as of the date of this report.</p> <p>E. As of the date of this report, monthly payments were current.</p>						

19. Chairman's Report (Oral)

None

20. Office of Attorney General's Report

A. Reliance Upon the Record (Informational)

Mr. Shropshire – Mr. Barnhart has provided to the Division, at our request, a very good memo for the Board members to keep in mind regarding reliance upon the record and not basing decisions on materials outside the record:

“I received a telephone call from a Board member who was inquiring as to whether it would be permissible to do outside research regarding a matter that the Board would need to make findings on. Whether the issue be one of discipline or licensure, the question essentially was whether a Board member could do their own digging to determine the appropriate outcome. Because this request came from a Board member, I was concerned that other Board members may also be questioning the scope of their investigatory prowess. As a result, I did my own research into this issue.

Board members sit as finders of fact on issues brought before them. It is well known that the Board is an administrative body and that, even when acting in a quasi judicial capacity, it is not limited by the strict rules as to the admissibility of evidence. That being said, Board members are not permitted to act upon their own information. United States v. Abilene & So. Ry. Co., 265 U.S. 274, (1924); The Licensees/Applicants must be fully apprised of the evidence to be considered, and must have the opportunity to cross examine witnesses, to inspect documentation, and to offer evidence in explanation or rebuttal. Interstate Commerce Commission v. Louisville & Nashville Railroad Company, 33 S. Ct 185 (1913); The Board members may only rely on the record, and the Licensees must be put on notice as to the factual circumstances the Board members are relying upon. Additionally, the Licensees at issue must be afforded the opportunity to confront their accusers. The Licensee must know what evidence is considered by the Board, and must be given an opportunity to test, explain, or refute. None of these safeguards are available when the Board secretly obtains information and bases its determination on that information. Even if the Board member were not keeping this information secret, the Licensee must have the opportunity to question the witness providing information to the Board member. The Licensee, as well as all Board members, must be fully apprised of all of the evidence considered, and nothing can be treated as evidence which is not introduced on the record. Case law provides that it would be improper for a Board member to base its decision or findings upon facts gathered from records not included in the record. Thorn v. Florida Real Estate Commission, 146 So.2d 907 (2nd DCA, 1962)

The direct answer to the Board member’s question is that no, a Board member is not permitted to conduct their own investigation. In other words, Board members may not call an attorney representing a Licensee/Applicant on the agenda and ask them for information related to that particular matter. Board members may not go to locales when Licensees/Applicants are located to do their own surveying. Board members, as the finders of fact, must only rely upon documentation attached to the agenda.”

Mr. Barnhart – If you determine that there are documents that you would like to see or that are missing and you want to see certain documents you can give me, Mr. Shropshire or Ms. Simon a call and see if that information can be provided prior to a meeting. If during the meeting you determine that there are documents or information you would like to see added you can bring it up at that point. Unless there is a deemer problem then cases can be taken to future meetings, but for the most part your packet material should be complete when you get ready for these meetings. If you see any other material you would be best advised not to read anything you might come across unless it is a part of a package that is prepared for every Board member. I come across any additional materials that I would like to be assured that your decisions and your votes are based upon the materials that are actually in the record and that is available to every Board member because it becomes very important that the other side be apprised of every document that you are considering before you make votes. Are there any questions about that?

Mr. Helm – I have a question on what Mr. Knopke just went through. If someone comes up to you and starts blabbing their mouth can you just cut them off?

Mr. Barnhart – Yes, you can put up your hands and say do not talk to me about that because it may come before the Board. Whenever you sense something that someone wants to talk to you about and it may be something that will come up in the future and you know it is going to come up, just say please stop, I cannot discuss it.

Mr. Helm – What if they continue?

Mr. Barnhart – Then you turn around and walk away.

Mr. Helm – I can see someone doing that just for that reason.

21. Administrative Report

The information was provided on the Agenda.

22. Disciplinary Report

The information was provided on the Agenda.

23. Upcoming Meeting(s)

- A. September 3rd (Teleconference)
- B. October 1st (Fort Myers – Embassy Suites Fort Myers-Estero)
- C. November 5th (Teleconference)
- D. December 3rd (Tallahassee)

24. Adjournment

The meeting was adjourned at 12:35 p.m.