

Minutes of Meeting
Board of Funeral, Cemetery and Consumer Services
October 1, 2008 - 10:00 A.M. to 5:00 P.M.
Betty Easley Conference Center
4075 Esplanade Way, Room 152
Tallahassee, FL 32399

I. Call to Order and Roll Call

Mr. Greg Brudnicki, The Chair, called the meeting to order at 10:00 am.

Mr. Doug Shropshire, Executive Director, requested to make the usual prefatory comments for the record and then take the role.

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. This is a meeting of the Board of Funeral, Cemetery, and Consumer Services. Today is October 1, 2008. The meeting is occurring in the Betty Easley Conference Center in Tallahassee, FL.

Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. My Assistant, Ms LaTonya Bryant, is recording these proceedings.

At this time I will take the role and Board members will please respond with "aye" or "present" when I call their name:

PRESENT:

Greg Brudnicki, Chairman
Jody Brandenburg, Vice-Chairman
Justin Baxley
Powell Helm
Nancy Hubbell
Tracy Huggins
Ken Jones
Gail Thomas-DeWitt
Catherine Zippay

ALSO PRESENT:

Doug Shropshire, Executive Director
Anthony Miller, Assistant Director
Deborah Loucks, Board Counsel
Tad David, Department Counsel
James Gellepis, Department Staff
LaTonya Bryant, Department Staff
Karen Duehring, Department Staff
Tim Wheaton, Department Staff

Mr. Chair, we have a quorum for the business before the Board.

II. Action on the Minutes

A. August 6, 2008

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on August 6th.

Ms. Deborah Loucks stated that Diane Guillemette was Board counsel for that meeting.

MOTION: Mr. Powell Helm moved to adopt the minutes of the meeting with the recommended amended. Ms. Catherine Zippay seconded the motion, which passed unanimously.

B. September 3, 2008 Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on September 3rd.

MOTION: Ms. Tracy Huggins moved to adopt the minutes of the meeting. Mr. Justin Baxley seconded the motion, which passed unanimously.

III. Old Business

A. Application(s) for Monument Establishment Retailer

1. Phoenix Cremation Society Inc d/b/a Affordable Memorials & Cemetery Lots (Longwood)

The Department received the application on July 30, 2008 and all of the required documentation was received by September 16, 2008. The Department completed a background check of all officers which revealed no criminal history.

The application was previously before the Board but was tabled as there was a question about whether the presence of the reference to cemetery lots in the name of the applicant indicated that the applicant should be licensed as a burial rights broker. The applicant advised that they do not intend to engage in any sale of cemetery lots. The seller of the business to them retained that portion of the business. The applicant will be a licensed entity even if they were to engage in the burial rights broker business as they would not have to obtain a separate license for that business. The Division recommends approval of the application.

MOTION: Mr. Ken Jones moved to approve the application. Ms. Gail Thomas-Dewitt seconded the motion, which passed unanimously.

IV. Application(s) for Funeral Establishment

A. Recommended for Approval

1. ICS Cremation & Funeral Home Inc (Lake City) (Tentative)

There is no known disciplinary or criminal record for the applicant. There is, submitted to the Board, in association with this application, a proposed settlement stipulation for disciplinary violation by Mr. Gary Miller calling for a \$3000 fine on Mr. Miller for exceeding the scope of his license as a direct disposer. In reference to that settlement stipulation, please note that all references in the stipulation and waiver

document to Lakeland were errors and should be read as Lake City. There is an agreement with Mr. Miller through his attorney Wendy Wiener that all references to Lakeland should be understood to Lake City and that the document if approved by the Board will be changed to that affect. There are no prior disciplinary actions against Mr. Miller or against any of the ICS entities and there are no prior complaints against Mr. Miller. The present complaint against Mr. Miller was not by a consumer, although it is a serious matter. There are no prior complaints against the ICS entities in Lake City. There is one prior complaint against the ICS entity in Cape Coral, which was a direct disposal establishment.

In approximately October 2007, the Department received a complaint against that Cape Coral direct disposal establishment that they had included their name in an obituary that was published in a newspaper. The file was ultimately closed on the basis that no violation could be proven. The direct disposal establishment in Cape Coral, which is not the applicant here, asserted that they had not placed the obit and instead the consumer had placed it. Our investigator Dianna Patterson contacted the newspaper and was advised by the newspaper that they accepted obits directly from consumers and that it was the newspaper's practice to inquire of the consumer in that case what entity had handled the disposition and the newspaper put the entity's name in the obit. It was on that basis, inadequate evidence, that the file was closed.

The Division has conducted an inspection of the proposed site for the funeral home and found that it does comply with the 1250 sq ft space requirement. One of the Division's more experienced investigators, Tina Williams, was assigned to conduct the inspection and was cautioned to assure that there was no double counting of space for square footage because there are 3 entities at that location, all affiliated with the same company, ICS. Ms. Williams reported that the minimum 1250 sq ft of space was present. This included the embalming area, which is operating currently under the centralized embalming facility license. This was included in the space that the applicant was given credit for against the 1250 sq ft requirement because the applicant has represented it will be giving up its centralized embalming facility license if this funeral home license application is approved and that the centralized embalming facility would become the prep room in the funeral home. On the basis of these requirements and remarks of the Board, the Division recommends approval of the application for funeral establishment license and approval of the attached settlement stipulation for a \$3000 fine on Mr. Gary Miller for exceeding the scope of his direct disposer license and operating other than at a licensed direct disposal establishment.

Mr. Helm questioned whether the fine is due prior to the license being issued.

Mr. Shropshire stated that pursuant to the settlement, the fine should be paid within 60 days of the Board's approval of the settlement.

Mr. Baxley questioned Mr. Miller's relationship to ICS Cremation and Funeral Home Inc.

Mr. Shropshire requested that counsel for the applicant respond. Mr. Shropshire added that Ms. Wendy Wiener is counsel for the applicant and for Mr. Miller.

Ms. Wendy Wiener stated that it is not clear what Mr. Miller's role will be at the new location. However, Mr. Miller has obviously been disciplined for exceeding the scope of his direct disposer license. The applicant assures whatever role Mr. Miller is placed in, he will be fully licensed for it. Mr. Miller is actually currently hospitalized for a heart condition and there is no certainty whether he would continue his employment there.

Ms. Loucks requested that the Board approve the settlement stipulation separate from the issue of the license.

MOTION: Mr. Jones moved to approve the settlement stipulation. Ms. Zippay seconded the motion, which passed unanimously.

Mr. Baxley questioned whether Gary Miller was working under Henry Ford's authority when he stepped outside the boundaries of his license.

Ms. Wiener responded no. Mr. Ford had nothing to do with this particular situation.

MOTION: Ms. Huggins moved to approve the application. Ms. Nancy Hubbell seconded the motion, which passed unanimously.

2. *Russell Haven of Rest Cemetery d/b/a Russell Haven of Rest Cemetery and Funeral Home (Green Cove Springs)*

The application for a Funeral Establishment was submitted on July 28, 2008. The application was complete when submitted and a deficiency letter was not sent to the applicant; however the applicant had to go through the process of un-dedicating the cemetery land to accommodate the funeral establishment. The letter requesting to undedicate the land was received on September 11, 2008. The Funeral Director in Charge will be Geoffrey Gaver (F043536). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on September 12, 2008. The Division recommends approval of the application.

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

V. Application(s) for Direct Disposal Establishment

A. *Recommended for Approval*

1. *Edgley Cremation Services (Riviera Beach)*

This application has been filed due to a change in location. The current licensed location is 1638 Donna Road, West Palm Beach, FL 33049. The new address location will be 4128 Westroads Drive Riviera Beach, FL 33407.

The application for a Direct Disposal Establishment was submitted on April 28, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 13, 2008. The Funeral Director in Charge will be John Edgley (F042261). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on September 12, 2008.

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

VI. Application(s) for Cinerator Facility

A. *Recommended for Approval*

1. *Edgley Crematory Inc (Riviera Beach)*

This application has been filed due to a change in location. The current licensed location is 1638 Donna Road, West Palm Beach, FL 33049. The new address location will be 4128 Westroads Drive Riviera Beach, FL 33407.

The application for a Cinerator Facility was submitted on April 28, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 13, 2008. The Funeral Director in Charge will be John Edgley (F042261). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on September 12, 2008.

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

VII. Application(s) for Centralized Embalming Facility

A. Recommended for Approval

1. Palm Beach Removals Inc (Riviera Beach)

This application has been filed due to a change in location. The current licensed location is 1638 Donna Road, West Palm Beach, FL 33049. The new address location will be 4128 Westroads Drive Riviera Beach, FL 33407.

The application for a Centralized Embalming Facility was submitted on April 28, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 13, 2008. The Funeral Director in Charge will be Linda Smith (F043278). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on September 12, 2008.

Mr. Brandenburg questioned whether the applicant was previously licensed as a removal service and are now changing to centralized embalming.

Mr. Shropshire responded no. They were licensed as a centralized embalming facility before and currently and changing location requires submittal of a new application for the license.

MOTION: Mr. Jones moved to approve the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

VIII. Application(s) for Removal Facility

A. Recommended for Approval

1. LGM Transport LLC (Holt)

The application for a Removal Service was submitted on August 4, 2008. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on September 8, 2008. The fingerprint cards for all principals were submitted and returned without criminal history. The removal service passed its inspection on September 15, 2008.

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

IX. Application(s) for Preneed Sales Agent

A. See Addendum A

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

Mr. Brandenburg disclosed his affiliation with SCI Funeral Services of Florida, Inc.

Ms. Deborah Loucks questioned whether this would impact his decision making ability to render a fair and impartial decision regarding any of the matters before the Board today.

Mr. Brandenburg responded no.

Ms. Huggins disclosed her affiliation with The Simplicity Plan.

Ms. Loucks questioned whether this would impact her decision making ability to render a fair and impartial decision regarding any of the matters before the Board today.

Ms. Huggins responded no.

X. Application(s) for Preneed License Branch

A. Recommended for Approval - See Addendum B

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

XI. Application(s) for Florida Laws and Rules Examination

A. Recommended for Approval - Addendum C

1. *Funeral Director and Embalmer – by Endorsement*
 - a. *Jettke, Alexandra B*
 - b. *Mills, Tyice D*
 - c. *Rediske, James A*
2. *Funeral Director and Embalmer - by Internship*
 - a. *Douglas, Nathaniel M*
 - b. *Franco, Elizabeth*
 - c. *Fuller, Juliana*
3. *Direct Disposer*
 - a. *Edgley, Diane M*
 - b. *Foss, Michelle*
 - c. *Kinnett, Terry L*
 - d. *Sullivan, Brittany G*
4. *Embalmer*
 - a. *Rotton, Carol L*

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

Ms. Loucks questioned whether the Department has the authority to issue licenses referenced on Addendum A.

Mr. Shropshire responded yes. Under the Statutes, a clean application for a sales agent license results in automatic issuance of a license.

Ms. Loucks questioned whether ratification by the Board is needed.

Mr. Shropshire responded no.

B. Recommended for Approval (Criminal History)

1. Funeral Director and Embalmer - by Internship

a. Prestwood, Roy V

Mr. Prestwood submitted an application on September 11, 2008. The application was complete upon submission. Mr. Prestwood pled No Contest to Impersonating a Law Enforcement Officer during the Commission of a felony. He was ordered to serve one year probation and to pay court costs in the amount of \$1,253. All sanctions have been completed.

Based on Mr. Prestwood's attached explanation of the criminal record (his letter dated Sept. 17, 2008), and the letters of recommendation he provides (included herein), the Division believes that there is no adequately supportable basis for a finding that Mr. Prestwood lacks good character or has a demonstrated history of lack of trustworthiness or integrity in business or professional matters

Mr. Brandenburg stated that one of the reports indicated "during the commission of a felony causing death or injury", but this information was not on the coversheet presented to the Board. Mr. Brandenburg questioned the death or injury caused.

Mr. Shropshire stated that the only criminal charge against Mr. Prestwood was his plea of no contest to impersonating a law enforcement officer. "False Impersonation of a Law Enforcement Officer during the Commission of a Felony Causing Death or Injury" is just the official terminology. There was no injury or death to anyone.

Mr. Roy Prestwood agreed.

Mr. Helm questioned whether Mr. Prestwood had any other charges.

Mr. Prestwood stated there was no other charge. His attorney advised he would save a lot of money if he pled no contest to avoid going to trial.

MOTION: Ms. Hubbell moved to approve the application. Ms. Zippay seconded the motion, which passed unanimously.

C. Recommended for Denial

1. Funeral Director and Embalmer – by Endorsement

a. Mason, Kameron P

Mr. Mason pled guilty to Scheming to Defraud, Grand Larceny and Failure to Deposit funds on April 27, 2000. Mr. Mason was sentenced to six months incarceration, four hundred hours community service and five years probation. Upon pleading guilty, Mr. Mason surrendered his license to the New York Board. He has since completed all sanctions imposed upon him by the courts and has also been reinstated by the New York board.

The Division recommends denial of this application for reasons stated in writing in the Board packet.

Mr. Kameron Mason stated that he did not receive in writing what the reasons were. However, Jasmin advised that it was based on his past criminal history regarding the funeral history.

Mr. Shropshire questioned whether, in an effort to be absolutely fair to the applicant, the Board would like to hold the item in abeyance to allow Mr. Mason to review what was said to the Board in writing.

The Chair agreed.

XII. Application(s) for Internship

A. Recommended for Approval – See Addendum D

1. *Abner, Adrian D*
2. *Ebbecke, Susan L*
3. *Ellis, Michael J*
4. *Rice, Dana P*
5. *Roberts, Troy A*
6. *Schad, William J*
7. *Young, Brea L*

Mr. Brandenburg stated that there was no applicant name listed next to Wells Memorial Funeral Home.

Mr. Shropshire stated the Michael J Ellis has voluntarily withdrawn his application at this time and intends to resubmit at some later point.

Ms. Corinne Olvey stated that both Gonzalez and Wells are SCI properties, so it appears that Young would be completing her internship under both funeral homes.

Mr. Shropshire stated that an approval would ensure that Brea L Young would be approved to train at both facilities.

MOTION: Mr. Jones moved to approve the application(s) with the exception of Ellis. Ms. Zippay seconded the motion, which passed unanimously.

XIII Application(s) for Embalmer Apprentice

A. Recommended for Approval – See Addendum E

1. *Girard, Holly J*
2. *Keating, Daniel R*
3. *Times, Theodus T*
4. *Wright, Michelle*

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

XIV. Application(s) for Continuing Education Course Approval

A. Recommended for Approval – See Addendum F

1. *Batesville Management Services. #86*
2. *Cremation Association of North America. #90*
3. *Florida Funeral Directors Association #75*

4. *Florida Morticians Association, Inc. #133*
5. *Funeral Review.com, LLC #122*
6. *National Funeral Directors & Morticians Assoc #120*
7. *National Funeral Directors Association #136*
8. *Pinellas County Funeral Home Association #58*
9. *Practicum Strategies #65*
10. *Southeast Tissue Alliance #108*

MOTION: Mr. Brandenburg moved to approve the application(s). Ms. Hubbell seconded the motion, which passed unanimously.

XV. Application(s) for Registered Training Facility

A. Recommended for Approval – See Addendum G

1. *Funeral Directing and Embalming*
 - a. *Thorne’s Mortuary Inc-F040004 (Funeral Directing/Embalming) (Stuart)*
2. *Funeral Directing*
 - a. *Gonzalez Funeral Home-F040984 (Tampa)*
 - b. *National Cremation Society-F041931 (North Fort Myers)*

MOTION: Mr. Baxley moved to approve the application(s). Ms. Zippay seconded the motion, which passed unanimously.

XVI. Consumer Protection Trust Fund Claims

A. Recommended for Approval - See Addendum H

Mr. Bill Swain, Consumer Advocate, Florida Funeral, Cemetery, Consumer Advocacy, stated that he would like to present a question to the Board for information. The mother, of a client, died out of state and had prepaid funeral arrangements with Funeral Depot. At the time of death, the daughter tried to contact Funeral Depot, but was unable to do so because they have voluntarily relinquished their license and filed for bankruptcy. In this situation, the daughter went ahead and made funeral arrangements with a local funeral home out of state. Mr. Swain checked to see whether the contract she had in Florida had been trusted and it had been. Funeral Depot was in default as the daughter tried to contact them and was unable to do so. The client should be awarded the money that has been trusted. Mr. Swain questioned whether the daughter would have a valid claim against the Consumer Protection Trust Fund if the funeral arrangements in Indiana cost more than what is available.

Ms. Loucks stated it really is not appropriate for the Board to answer the question at this time. There is a procedure that has to be followed to file a claim. Ms. Loucks advised the Board not to answer the question as they do not have any of the information to go ahead and process the claim.

MOTION: Mr. Jones moved to approve the claim(s). Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

XVII. Application(s) for Monument Establishment Sales Agent

A. See Addendum I

These are clean application(s) where there have been no disciplinary or criminal history noted. This addendum is an informational report. No Board action is needed. The Division has issued these licenses as the Statute requires.

XVIII. Application(s) for Monument Establishment Retailer

A. Recommended for Approval

1. South Georgia Monument (Waycross, GA)

The Division recommends approval of the application.

Ms. Hubbell questioned whether a Georgia LLC is required to be authorized to do business in the State of Florida or can they just be a Georgia corporation with a Florida license.

Mr. Shropshire stated that it is his belief that they are required to be approved to do business in Florida. That is a question on the usual checklist item. They would be required to be approved.

Ms. Hubbell questioned page 2 having "centralized Embalming Facility" circled with a date available for inspection.

Mr. James Gellepis stated that was an error on the application. The application was online and that is an error that was not corrected, but it needs to be revised to eliminate that question.

Ms. Hubbell questioned whether they are required to have a facility in Florida or if they can just operate. The Statutes were unclear.

Mr. Shropshire stated that his interpretation of the Statute is it does not specifically require a Florida address. This is taken in context with certain case law from the insurance agent arena where the Florida Legislature attempted to prevent a non Florida resident from obtaining insurance agent licensure to do business in Florida and the courts ruled that was unconstitutional. In the absence of the expressed requirement that there be a Florida address, the applicant could be licensed with a Georgia address. There are admittedly some open legal questions on this so the Division is going one step at a time on it.

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

B. Previously Approved by Department (For Board Ratification)

- 1. Jo Chapman Memorials, Inc (Fernandina Beach, FL)***
- 2. Martin C Nelson d/b/a Precious Memories Monuments (Cooper City, FL)***
- 3. Noble Monument Company Inc (Fernandina Beach, FL)***
- 4. Wilson-Wolfe Inc d/b/a Sweet Dreams Memorials (Plant City, FL)***

The application(s) for Monument Establishment license should have been presented to the Board for decision. However, the applications were approved by the Division, acting under the erroneous understanding that the Division was authorized to approve Monument Establishment applications.

The application(s) were clean (no criminal or disciplinary record).

To correct the Division's error in approving this application(s), it is necessary for the Board to review this application(s) and, if the Board sees fit, to ratify the Division's action.

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

XIX. Contract(s) or Other Related Form(s)

A. Forethought Federal Savings Bank

1. 70/30 Funeral Planning Agreement [Forms T4072-03, T4072-02B and T4047-03]

Staff recommends approval subject to Department receipt of two print-ready copies within 60 days.

MOTION: Mr. Brandenburg moved to approve the agreement pending Department receipt of two print-ready agreements within 60 days. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

2. 90/10 Funeral Planning Agreement [Forms T4077-04, T4077-01B and T4047-03]

Staff recommends approval subject to Department receipt of two print-ready copies within 60 days.

MOTION: Mr. Brandenburg moved to approve the agreement pending Department receipt of two print-ready agreements within 60 days. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

3. 70/30 Funeral Planning Agreement which FFSB uses for a particular client [Forms T3035-02, T3038-02 and T3039-02]

Staff recommends approval subject to Department receipt within 60 days of two print-ready copies.

MOTION: Ms. Zippay moved to approve the agreement pending Department receipt of two print-ready agreements within 60 days. Ms. Huggins seconded the motion, which passed unanimously.

B. Fred Hunter Memorial Services, Inc.

1. Purchase Agreement

Staff recommends approval subject to the following conditions:

1. Add amounts to be trusted and amounts to be allocated to interment rights, merchandise, services and cash advances in boldface type on signature page.
2. Revise from "Bureau" to "Department" on signature page.
3. Department receipt within 60 days of two print-ready copies.

MOTION: Mr. Baxley moved to approve the agreement pending revisions being made and Department receipt of two print-ready agreements within 60 days. Ms. Huggins seconded the motion, which passed unanimously.

2. Financial Accommodation Addendum to Purchase Agreement

Staff recommends approval subject to the following conditions:

1. #5, Allocation of payments: This section would not be in accordance with Allocation of Payments in the Purchase Agreement thus needs to be removed.
2. Department receipt within 60 days of two print-ready copies.

MOTION: Mr. Jones moved to approve the agreement pending revisions being made and Department receipt of two print-ready agreements within 60 days. Ms. Hubbell seconded the motion, which passed unanimously.

C. Monument Retail Sales Agreements

1. Mosley Monuments, Vaults & Caskets, Inc (DeFuniak Springs, FL)

Staff recommends approval of the agreement.

Mr. Helm questioned whether the number handwritten in the top right-hand corner is the contract number.

Mr. Shropshire responded yes.

Mr. Helm stated "contract number" should be preprinted so that the number is not written in on each contract.

Ms. Corinne Olvey stated that the Statute requires that preneed contracts be sequentially prenumbered, which is not the same as the contract number. This is probably representation that the contracts would be sequentially prenumbered.

The Chair questioned whether the number should be printed and not written on the contract.

Ms. Olvey stated that it probably would be if this were not a draft.

Mr. Shropshire stated that the Department would amend its recommendation that the form be approved subject to the condition that they submit an actual copy of the approved form showing the prenumbered contract number.

Mr. Helm stated that although it is not a requirement, the Board could recommend that the contract contain information regarding "lefts" and "rights".

MOTION: Mr. Helm moved to approve the agreement with the recommendation and pending Department receipt within 45 days of two print-ready agreements. Mr. Jones seconded the motion, which passed unanimously.

DISCUSSION: Ms. Olvey questioned whether these are preneed contracts or monument retail sales contracts.

Ms. Loucks stated that this is a monument establishment sales contract.

Ms. Olvey stated that these contracts are not required to be sequentially prenumbered, only preneed sales contracts are.

*2. Phoenix Cremation Society Inc d/b/a Affordable Memorials & Cemetery Lots
(Longwood, FL)*

Staff recommends approval of the agreement.

MOTION: Mr. Helm moved to approve the agreement pending Department receipt within 45 days of two print-ready agreements. Mr. Baxley seconded the motion, which passed unanimously.

3. *South Georgia Monument LLC (Waycross, GA)*

Staff recommends approval of the agreement.

Mr. Keenan Knopke questioned whether the company is selling vaults, doing disinterments or reinterments.

The Chair stated that this is probably an all encompassing contract.

Mr. Knopke stated that the applicant is not licensed to do vault sales.

Mr. Shropshire stated that the Division does not have an answer to what use it makes to the information on the contract.

MOTION: Mr. Jones moved to defer the agreement for clarification. Ms. Hubbell seconded the motion, which passed unanimously.

***** ITEM HELD IN ABEYANCE *****

XI. Application(s) for Florida Laws and Rules Examination

C. Recommended for Denial

1. Funeral Director and Embalmer – by Endorsement

a. Mason, Kameron P

The Division recommends denial of this application for reasons stated in writing.

Mr. Kameron Mason questioned the information indicating that he has been previously disciplined, or had action taken against him for unlicensed practice.

Ms. Loucks stated that the applicant's license in New York was disciplined and that is why the question was answered yes.

Mr. Mason stated that he was guilty and sentenced by the court of law in New York State. Mr. Mason completed the sentence, community service and probation. Mr. Mason feels he has paid his debt to society regarding these inequities. The applicant spent 23 years in the funeral industry without any complaints of any type.

MOTION: Ms. Thomas-Dewitt moved to deny the application based on the criminal history. Mr. Baxley seconded the motion, which passed unanimously.

Mr. Mason added that he is currently licensed in New York State.

XX. Chairman's Report (Oral)

None

XXI. Executive Director's Report

A. Rules passed out of Rules Committee

Board members were provided a summary of 3 rules that have been passed out the Rules Committee with a recommendation that these 3 rules be approved.

1. *Rule 69K-25.004 Application Procedure for Limited license for Retired Professionals During Times of Critical Need*

This rule was approved by the Rules Committee at its meeting on September 19, 2008. The Division and the Rules Committee recommends that the Board approve the Rule and authorize the Division to proceed with the required rulemaking activities and have the Rule adopted.

MOTION: Mr. Jones moved to approve the rule and authorize the Division to proceed with the required rulemaking activities and have the Rule adopted. Mr. Baxley seconded the motion, which passed unanimously.

2. *Rule 69K-6.009 Identification Tags – Acceptable Materials, Locations and Methods of Affixing*

This rule was approved by the Rules Committee at its meeting on September 19, 2008. The Division and the Rules Committee recommends that the Board approve the Rule and authorize the Division to proceed with the required rulemaking activities and have the Rule adopted.

Mr. Jones questioned whether the electronic id marker stays on the decedent or is it removed.

Mr. Shropshire stated it stays on the body. It is a passive device somewhat similar to what is used in many department stores; when an electronic reading device comes near the tag, it excites the electronic tag to transmit information concerning the name of the decedent, date of death and that type of data.

Mr. Brandenburg stated that it is quite commonly used in underground utilities.

MOTION: Mr. Jones moved to approve the rule and authorize the Division to proceed with the required rulemaking activities and have the Rule adopted. Ms. Zippay seconded the motion, which passed unanimously.

3. *Rule 69K-12.001 Installation of Monuments*

These are amendments to the existing rule. The amendments were approved by the Rules Committee at its meeting on August 12, 2008. Subsequent to the August 12, 2008 Rules meeting, Mr. John Rudolph had advised that the amendments would cause certain problems. Mr. Rudolph is present and would probably like to address the Board. Mr. Don Ray is also present and would probably want to address the Board on this matter. The Division and the Rules Committee recommends that these amendments, as presented today, be approved and that the Board authorizes the Division to proceed with the required rulemaking activities and have the amendments adopted.

Mr. Helm suggested adding “if required by cemetery” after “a scaled sketch” in (4).

Mr. Shropshire questioned whether Mr. Helm meant if the cemetery requires a scaled sketch, then the monument establishment shall comply.

Mr. Helm agreed.

Mr. Knopke stated that he requested that “scale” be added to the rule, but after talking with Mr. Helm, he agrees with him.

Ms. Loucks questioned whether “If required by the cemetery,” would be placed in from of “The application shall include...”

Mr. Helm agreed.

Ms. Zippay questioned the second line, “...it may require...” would cover that contingency. Mr. Helm stated it would not.

The Chair stated that it could read “The application may require a scaled sketch...”

Ms. Loucks agreed that it would probably be quicker to change “shall” to “may”.

Mr. Brandenburg stated that would apply to everything plus the scale.

Ms. Loucks agreed and questioned whether the Board would like to go back to “If required by the cemetery.”

The Chair answered yes.

Mr. Rudolph suggested adding “if required by the cemetery,” after the word “include”.

Mr. Rudolph stated that his argument on the language in (3) has been that the practice of his client, Vista Memorial Gardens, has been to allow outside monument installations at the same time as the cemetery does installations, which is before they open for work from 7a – 9a and after they close from 3p – 7p. The interpretation of normal business hours could be when you open yourself to the public. Understand that you have to make it more restrictive by amending the bylaws, Vista would then be forced to do so and come before this Board to restrict it to when they have been doing it for the last 20 years.

The Chair questioned Vista’s normal business hours.

Mr. Rudolph stated that normal business hours are 9a – 3p.

The Chair questioned whether Vista only installs monuments before 9a and after 3p.

Mr. Rudolph answered yes.

The Chair questioned if a customer comes in at 11a and a marker was supposed to be installed 3 weeks ago and it never happened, and the woman is screaming to have the marker put in, would the cemetery say sorry we can not install it until after 3p.

Mr. Rudolph stated that is his understanding from Vista. Mr. Rudolph suggested adding “when the cemetery installs monuments” after “...during normal business hours...” If the cemetery installs a monument at 1p, that would give the monument establishments the right to say anytime there is a mistake in my monuments, I have to come in a correct it right away, as long as it does not interrupt the other revisions. Most cemeteries that install monuments all day long have to allow outside monument dealers to come in all day long as long as it does not interrupt with a burial. In this case, by putting this

language in, it would give the outside monument dealers the exact right that the cemetery has and the exact same access the cemetery has to install monuments.

Mr. Helm questioned whether the cemetery works from 7a – 7p everyday.

Mr. Rudolph stated they do not install monuments everyday. Monuments are installed from 7a – 9a before the cemetery opened to avoid having this done while public is visiting graves. Vista has made a decision to install monuments after everyone is gone.

Mr. Helm that the rule was intended to be fair for all. The rule, as it is presented by the Rules Committee, is a very fair rule.

Ms. Huggins questioned whether Vista’s bylaws stated that they only install monuments from 7a – 9a and from 3p – 7p.

Mr. Rudolph stated that it is not in their bylaws, but it is in their operating procedures. Everyone has abided by the operating procedures.

Ms. Huggins stated that in accordance with the proposed language, Vista would still have to grant the monument companies access from 9a – 3p.

Mr. Rudolph stated that Vista does not want a monument installed during the time the public is present, in an effort not to interrupt families. This is a good decision for customers and it has been in place for a number of years.

The Chair stated that most people visit cemeteries before 9a and after 3p, when they are not at work.

Mr. Jones questioned where the time the cemetery installs monuments would be published.

Mr. Rudolph stated it would be published in the operating procedures.

Mr. Jones stated that the operating procedures do not have to go before the Board and could change.

MOTION: Mr. Helm moved to approve the rule with the addition of “if required by the cemetery,”. Mr. Brandenburg seconded the motion, which passed unanimously.

C. Legislative matters (verbal report)

On September 26th, the Board members and industry group should have received an email document entitled Division of Funeral, Cemetery and Consumer Services Collected FCCS Legislative Proposals. There were 11 items on the list that consisted of all the items the Division has so far exposed to the industry for comment. Apparently there have been some similar proposals circulating within the Industry, but they were not quite the same. The item is located on the Division’s website.

D. Tim Wheaton’s attendance at the North American Cemetery Regulators Association Conference

Mr. Tim Wheaton stated it was his privilege to represent the Department at the 23rd Annual Conference of NCRA, an association of regulators from various States and Canada. The conference is open to all

cemetery Regulators. 11 States and 2 Canadian Provinces (18-20 individuals) were able to attend this year. Attendance was lower than usual due to state budgets.

In general the association maintains a forum for discussion of problems, trends and other concerns in the death care industry. It promotes uniformity in legislation, policies and forms while recognizing and respecting the various laws of different jurisdictions.

The association drafts and makes available basic forms for the industry which may be used as a guide for their particular needs.

The intent is to create meaningful, useful and frequently requested documents that:

1. Incorporate best practices
2. Serve as models or guidelines
3. Can be easily modified to meet your specific needs

The forms are generic in nature because laws vary in different jurisdictions. Copies can be found at: <http://www.cemeteryregulators.org>

New York is now offering Certification of Crematory Operators. New York State requires that their crematory operators be certified within a year of hire. The operators complete a day long course with CANA – Notable improvements in operations – cleaner facilities, better following of management procedure. On the green side, companies have reduced emissions through more efficient operation.

Some cemeteries in the Mid West have had problems with raiding trust funds. Several arrests have also been made.

Each involves millions of dollars taken from trust funds. Transfer of trust to small Indiana bank. The Cemetery owner controlled the activity of trust. Mortgages on cemetery property (prior to purchase) Debentures issued with no value. Consumers invested in Hedge funds operated by Cemetery Owner. Distant relatives were used as front persons for the companies.

Body Farms – Ohio noted that they have locations in their state used for the forensic study of decomposing bodies. Bodies are placed in various situations to discover the effects of weather, soil, insects etc. for scientific purposes. Apparently whenever a community finds out about the experiments, they move the location.

Mr. Shropshire stated that the single greatest benefit of the Division participating in the annual meeting is the networking aspect so that when the Division has a question, we have personal acquaintance with regulators in other states and can therefore call them and receive information they normally would not give out.

E. New personal safety equipment policy for field staff

Ms. Karen Duehring thanked the facilities that have insisted that the examiners wear safety equipment and have provided it on occasion. Within the next few weeks, this will not be necessary. All of our field staff will have gloves, shoe covers, masks and chemical splash coveralls, which hopefully they would not have to use. Additionally, the examiners will be taking part in training programs that are still under development; one on infectious disease and one on communicable disease.

The Chair questions whether the examiners are given shots.

Ms. Duehring responded that efforts are on the way to ensure all the examiners have the Hepatitis vaccination, which was the only one recommended by the CDC.

F. 2009 Proposed Meeting Schedule (see attachment)

Mr. Shropshire stated that his preference would be to alternate Tallahassee and another city.

The Chair questioned whether a decision had to be made today or whether this could be determined at the next meeting.

Mr. Shropshire stated this does not have to be decided today. Mr. Shropshire offered to bring back at the next meeting a list of proposed locations, with every 3rd meeting outside of Tallahassee: meeting in Tallahassee, then a teleconference meeting and then a meeting somewhere else around the state.

Ms. Zippay stated there are no more straight flights anywhere in the State to Tallahassee. It is getting more difficult to get to Tallahassee.

The Chair stated cost may dictate that.

Mr. Shropshire stated the Division would study the schedule further and bring something back to the Board at the next meeting.

G. Report from Richard Baldwin, Examiner for Menorah Gardens, June '08 - July '08 (see attachment)

The Board members received a copy of the report from Richard Baldwin for the month(s) of June '08 - July '08. Mr. Baldwin continues to assist consumers.

*****ITEM TAKEN OUT OF ORDER*****

B. Finance Committee (verbal report re initial meetings)

The Finance Committee Chair, Les Klein, could not be present today and asked that Mr. Shropshire make a report to the Board regarding the Finance Committee's meetings on September 10 and 24, 2008. As the Board members may recall on September 8, 2008, Mr. Shropshire emailed to the Finance Committee a report, as required by statute, of estimated costs, fee collection and trust fund balance. The report is also posted on the Division's webpage. The report advised the Finance Committee that the Department believed fee increases were needed. The Finance Committee met initially on September 10, 2008, by teleconference. That meeting was primarily a planning and overview meeting. No extremely substantive work was undertaken at that meeting. However on September 24, 2008, a second meeting of the Finance Committee occurred. That meeting was held in the Alexander building here in Tallahassee. The meeting went from about 10am to roughly 3:30 or 4pm. All 3 Finance Committee members participated: Mr. Les Klein (Chair), Ms. Nancy Hubbell and Mr. John Williams. There were also industry members and representatives of the industry in attendance. Significant progress was made at the September 24th meeting in getting a grasp of the issues and facts involved. The single biggest element in the increase in expenses that is driving the need for a fee increase is an increase in the portion of the Department's administrative expenses that are allocated to the Division and the Board. These Department admin expenses are usually referred to in shorthand as the Admin Service Charge. To cut through the chase, the

Division has been informed that the Division and the Board have not been paying their fair share of Department admin cost and that in the past, the majority of the Division's share of the Admin Service Charge has been paid by other fee payers within the Department. In other words, the Division has been told that the Division and the Board have been significantly subsidized by other fee payers within the Department. The Division has been told that such subsidization must end. Under direction from the Legislature's budget staff and the pressure of tight budgets in other Department units, the Division has been advised that the admin service charge that the Division pays, that comes out of the Division's trust funds, which come from your fee payments, that the admin service charge will increase from approximately \$100,000 in the current fiscal year to approximately \$600,000 in fiscal year 09/10. Thereafter, the administrative service charge may go up or down each year depending on actual admin cost incurred by the Department. At the September 24th meeting, the Finance Committee received an in depth briefing from the Accounting Bureau Chief, Mike Alexander, on how the admin service charge works and how the Division and this Board's admin service charge is determined. No final decisions were made by the Finance Committee at the September 24th meeting. The Finance Committee has requested some additional information, which the Department and the Division is gathering and providing to the Finance Committee. The next Finance Committee meeting is set for October 28, 2008 in Tallahassee. However the Finance Committee did vote at the September 24th meeting to ask the Board to direct the Board's Rules Committee to begin work with the Division on language for revised consolidated fee rules. At this point, those revised rules would just have in essence an X for the amounts of the fees as fee increases have not been decided or approved. Therefore the Division asks the Board for a motion, made, seconded and carried approving the following recommendation of the Finance Committee: That the Board's Rules Committee shall begin work with the Division on language for revised consolidated fee rules, but those rules shall not specify any proposed fee increases unless and until the Finance Committee's Chair forwards, in writing, recommended fee increases to the Rules Committee. Any such rules would of course have to come before the full Board at a future meeting for approval or disapproval.

MOTION: Ms. Zippay moved that the Board's Rules Committee shall begin work with the Division on language for revised consolidated fee rules, but those rules shall not specify any proposed fee increases unless and until the Finance Committee's Chair forwards, in writing, recommended fee increases to the Rules Committee. Ms. Huggins seconded the motion, which passed unanimously.

Mr. Mike Alexander was asked to provide a summary overview to the Board today. Mr. Alexander is expected to arrive between 11:15 and 11:30. The summary presentation should take 20 – 30 minutes. Even though the Board is not being asked at this meeting to make any decision about fee increases, it is important that the Board hear Mr. Alexander's presentation so that the Board will have facts and will not have to depend on rumors as to how the admin service charge works.

*****BREAK*****

Mr. Mike Alexander stated that the Office of Administration was tasked by Legislature to come up with a cost allocation plan to allocate some of the administrative functions back to the business areas that use those functions. Mr. Alexander presented the Board members with 2 handouts.

The basic purpose of the cost allocation plan is to align those indirect costs that are paid for administrative functions back to the business areas that receive those services. In the past, at DFS, when the budget was set up, there were certain trust funds available to fund our administrative services. It did not necessary align with who used the services. This was recognized as a flaw in the way the Department was actually charging back to the trust funds and business areas. The Department has attempted to come up with a cost allocation plan. This is an ongoing process and is our first year of trying to do a cost

allocation plan, which would go into effect for fiscal year 09/10. Other Agencies that have been similar type functions advise that their cost allocation changes every year. As we learn more about our processes and allocate, keep in mind, these things will change over time.

One of the benefits of the cost allocation plan is that it helps Legislature. Right now Legislature looks at a trust fund to see if that trust fund is collecting sufficient revenues to cover the business practice or if they come in and ask for additional spending authority whether they have the revenues to cover it. It is not a clear representation of what they are actually using today. This would also help managers who run these different programs determine whether any changes are needed. There are very few exceptions in DFS where it was not intended by Legislature that they would have sufficient revenues to cover their expenses. There are other mechanisms in place.

A Cost Allocation has never been done at DFS before. We went back and looked at expenditures for fiscal year 06/07 and 07/08 on an annualized basis from July 1st thru December 31st. The attempt was to determine who would be charged out to. These are called billable units. In most cases, billable units are Divisions. In some cases, because of the funding for that Division we had to go to a bureau level. In the case of Funeral and Cemetery, it is at their Division level. It was not possible to create one allocation method for each allocation area allocating out. Reason being, a number of different services are provided to different areas and would need to be allocated out using different methods. When we went back to look at the expenditures, in some cases, they had to come up with an estimate. Effective July 1st of this fiscal year additional measures are being used to track the expenditures applicable to each direct billable unit on a more accurate basis. The admin cost refers to the fee that is charged to someone else who performed the function.

The Chair questioned whether the Board members are included in the employees count.

Mr. Alexander stated that there are 14 OPS employees charged to FCCS. Personnel has been contacted to determine whether the Board members are include in that FTE OPS count, but they have not responded.

Mr. Brandenburg questioned the 39 listed on the spreadsheet.

Mr. Shropshire stated number would be the 25 FTEs and the 14 OPS combined. This is something the Finance Committee requested Mr. Alexander look into.

Mr. Shropshire pointed that the Information Services Allocation element is especially important. It comprises about half of the total admin service charge being accessed.

Mr. Alexander concurred. DIS is now using charge object codes in recording their time to identify who they are working for. This will be used as a mechanism to actually charge out to different billable units.

The Chair questioned whether consideration would be taken given the fact that if we are allocating expenses based on the number of employees, the weight of a Board member being an employee would not be the same as a regular employee. This Board makes approximately \$3000 a year amongst all members together. We need to ensure that when we are allocating expenses, it is not based on Board members being full time employees receiving the same amount of expenses as regular employees.

Mr. Alexander agreed. This was mentioned at the Finance Committee and we are trying to verify this with Personnel. If it turns out the Board members are included, this would be discussed with

Management to determine whether they would be taken off, the number would be reduced by the 10 Board members.

Mr. Loucks stated that Mr. Alexander stated it was based on the number of people they have to process paperwork for. The Department has to process Ms. Loucks travel because she is not an employee of DFS. There may have been a circumstance where someone else from OAG traveled in Ms. Loucks place and the numbers may reflect 2 employees for one position.

Mr. Alexander stated that is why all the OPS positions are being looked at to determine who they are.

Mr. Jones stated that it was mentioned that 50% of the allocation was for Information Systems, but it is not reflected on the information presented.

Mr. Alexander stated it is 50% of the total dollar amount being charged to DIS. Again this information just shows the percentages.

Mr. Jones questioned whether DIS was able to provide cost allocation based on prior years of change or through working agreements and whether DIS provided valid numbers.

Mr. Alexander stated they were able to determine the total cost for DIS. The question was how that total cost would be divided amongst the billable units.

Fiscal years 06/07 and 07/08 were used as a baseline to determine how this methodology would work. This is a starting point. In fiscal year 08/09 certain mechanisms are being utilized to better track some of the expenditures. We are currently working to reallocate the budget for the 09/10 fiscal year. In the past, we have had certain trust funds that would pay these types of services, but it was not in line with what they were actually using as far as services go. We are looking at using an Administrative Trust Fund, a working capital trust fund, to pay those expenditures out of. All the bills would be paid from this trust fund, but we would need transfer authority to pull money from the general revenue and the different trust funds to provide the cash to make these payments.

Mr. Shropshire stated that at the end of the last Finance Committee meeting the main thrust that the Committee wanted and has requested is to get specific dollar amounts instead of percentages so they can see where the real dollar effect is so that they can concentrate on those areas in order of priority.

Mr. Jones questioned whether there is sufficient budget authority under existing budget based on the cost allocation.

Mr. Alexander responded that he does not believe we do right now. Mr. Shropshire has been working with Budget on this issue.

The Chair questioned whether the Board would receive a quarterly report.

Mr. Shropshire stated that he has somewhat of a commitment from the Department that for 09/10, the Admin Service Charge would be \$600,000, but after that it could go up or down significantly apparently. The good side is that it is connecting the expense with the revenue side.

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

Ms. Loucks introduced Lisa McGlenn, an honors attorney working in the Administrative Law Bureau of the Attorney General's office for 6 months. Ms. McGlenn just passed the bar and is here observing.

Ms. Loucks stated this would be her last meeting as Board counsel. The new Board counsel will be Allison Dudley. Prior to working with the Attorney General's Office, Ms. Dudley was a prosecutor at the Department of Health prosecuting cases on behalf of the Board of Medicine. Ms. Dudley also worked as a Public Defender and in private practice after she got out of law school. Ms. Dudley is a very nice lady and is very smart.

Mr. Rudolph extended his thanks to Ms. Loucks for the admiral job she has done for this Board.

XXIII. Administrative Report

The Administrative Report was submitted to the Board on the Agenda.

XXIV. Disciplinary Report

The Disciplinary Report was submitted to the Board on the Agenda.

XXV. Adjournment

At 12:10 p.m., the meeting was adjourned.