

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
October 7, 2009 - 10:00 A.M. to 5:00 P.M.
Hawthorn Suites Lake Buena Vista
8303 Palm Parkway
Orlando, FL 32836

THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order and Roll Call

Mr. Greg Brudnicki, The Chair, called the meeting to order at 10:02 am.

Mr. Doug Shropshire requested to make the usual prefatory comments for the record and then take the roll.

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 public meeting of the Board of Funeral, Cemetery, and Consumer Services. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. The meeting is occurring at the Hawthorne Suites Hotel in Orlando, FL. Members of the Board are present. Members of the public have been invited to listen as this is a public meeting. My Assistant, Ms LaTonya Bryant-Parker, will be taking minutes of the meeting and recording it.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brudnicki, runs the meeting. Persons desiring to speak should initially ask the Chair for permission.

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

PRESENT:

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

ABSENT:

Justin Baxley
Ken Jones

ALSO PRESENT:

Doug Shropshire, Executive Director
Anthony Miller, Assistant Director
Allison Dudley, Board Counsel
Thomas "Tad" David, Department Counsel
James Gellepis, Department Staff
LaTonya Bryant-Parker, Department Staff

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

2. Action on the Minutes

A. August 5, 2009

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on August 5th.

MOTION: Ms. Gail Thomas-Dewitt moved to adopt the minutes of the meeting. Mr. Jody Brandenburg seconded the motion, which passed unanimously.

B. September 2, 2009 – Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on September 2nd.

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

3. Disciplinary Proceeding(s)

A. Mathelier, Marie M (F023426), Case No. 103365-09-FC (Probable Cause Panel B)

Mr. Tad David stated this action comes before the Board upon a Settlement Stipulation for Consent Order. Monique & Loriston Community Funeral Home (“Monique & Loriston”) is a licensed funeral establishment in the State of Florida, having been issued license number F040153. Following an investigation to a complaint received by the Department, it was determined that Marie Mathelier, the funeral director responsible for Monique & Loriston, practiced embalming at Wright Embalming Services located at 1725 Opa Locka Boulevard, Miami, Florida, for at least three months before she found out, from a Department examiner, that Wright Embalming Services was not licensed by the Department.

In mitigation, Ms. Mathelier has stopped using the unlicensed facility to practice embalming and Ms. Mathelier has agreed to provide testimony, if called upon, in any related Department case.

The Respondent violated Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(d), 497.152(5)(e), 497.380(1), and 497.386(1), Florida Statutes. The Respondent has elected to enter into a settlement stipulation. The terms of the Settlement Stipulation for Consent Order require the Respondent to pay \$4,000 in an administrative fine, pay \$1,500 in Department costs, and be placed on two years probation.

The Department’s recommended penalty is within the disciplinary guidelines, pursuant to Chapter 69K-30, Florida Administrative Code, and the Division is in agreement with the terms of the Settlement Stipulation for Consent Order.

Mr David requested that the Board approve the Settlement Stipulation at this time.

Ms. Tracy Huggins recused herself as she served on Probable Cause Panel B at the time the case was presented.

MOTION: Mr. Brandenburg moved to accept the Settlement Stipulation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. Monique & Loriston Community Funeral Home (F040153), Case No. 103367-09-FC (Probable Cause Panel B)

Mr. David stated that this is the establishment license related to the same matter with the same underlying facts. Monique & Loriston Community Funeral Home (“Monique & Loriston”) is a licensed funeral establishment in the State of Florida, having been issued license number F040153. Following an investigation to a complaint received by the Department, it was determined that Marie Mathelier, the funeral director responsible for Monique & Loriston, practiced embalming at Wright Embalming Services located at 1725 Opa Locka Boulevard, Miami, Florida, for at least three months before she found out, from a Department examiner, that Wright Embalming Services was not licensed by the Department.

In mitigation, Ms. Mathelier has stopped using the unlicensed facility to practice embalming and Ms. Mathelier has agreed to provide testimony, if called upon, in any related Department case.

The Respondent violated Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(d), 497.152(5)(e), 497.380(1), and 497.386(1), Florida Statutes. The Respondent has elected to enter into a settlement stipulation. The terms of the Settlement Stipulation for Consent Order require the Respondent to pay \$4,000 in an administrative fine, pay \$1,500 in Department costs, and be placed on two years probation.

The Department's recommended penalty is within the disciplinary guidelines, pursuant to Chapter 69K-30, Florida Administrative Code, and the Division is in agreement with the terms of the Settlement Stipulation for Consent Order.

Ms. Huggins recused herself as she served on Probable Cause Panel B at the time the case was presented.

MOTION: Mr. Helm moved to accept the Settlement Stipulation. Ms. Zippay seconded the motion, which passed unanimously.

Mr. Helm questioned whether the other individuals mentioned are being investigated.

Mr. Shropshire stated he would consult with Mr. Helm off the record concerning that issue.

4. Section 120.57(2) Hearing(s) – No disputed material facts
A. Disciplinary Proceeding (Probable Cause Panel B)
(1) Creal, Robert Lee Jr (F047014), Case No. 102454-09-FC

Mr. David stated that the circumstances of this case are basically that the Respondent is an embalmer employed by Creal Funeral Home. On or about October 2, 2008, Division Examiners conducted an inspection of Creal Funeral Home and found the Respondent in the prep room in the process of embalming a body. At the time of the inspection, the Respondent's license had expired and was delinquent and therefore was not in good standing. The Division filed an Administrative Complaint and service was obtained pursuant to ch. 120 by certified mail on May 18th of this year. At this time, no election of proceeding response has been received from the license. Therefore the Division requests that the Board grant the Department's pending motion to determine a waiver finding that the Department properly served the Respondent and that no timely response has been filed. As a result, the Respondent has waived the right to elect a method of resolution of this matter.

Mr. Shropshire suggested that the Chair query the audience to see whether there was anyone in attendance representing Mr. Creal as there appears to be someone standing behind Mr. David.

Ms. Allison Dudley stated that the Board should first vote on the motion that the Respondent has waived his right to a formal hearing since he did not respond to the proceeding.

Mr. David stated that the motion is the Respondent has waived his right to elect a method of resolution, which then would be up to the Division to determine what type of proceeding would be appropriate.

Ms. Huggins recused herself as she served on Probable Cause Panel B at the time the case was presented.

MOTION: Mr. Brandenburg moved to affirm the Respondent waived the right to elect a method of resolution of this matter. Mr. Helm seconded the motion, which passed unanimously.

Having found that the Administrative Complaint was properly served and that no response was received, the Department states that it is appropriate at this time for the Board to entertain a motion that the factual allegations as alleged in the Administrative Complaint are the findings of fact to be found in this case.

MOTION: Ms. Thomas-Dewitt moved to affirm that the factual allegations as alleged in the Administrative Complaint are the findings of fact to be found in this case. Ms. Zippay seconded the motion, which passed unanimously.

Pursuant to that finding the Department would state that the findings of fact support the finding of a violation of Florida Statutes as charged in the Administrative Complaint. At this time, it would be appropriate for the Respondent to provide whatever mitigating evidence available.

Mr. Shropshire stated as a matter of routine, witnesses are sworn in. Mr. Shropshire requested that Mr. Robert L Creal Sr raise his right hand. "Do you solemnly swear the testimony you are about to give in this proceeding is the truth, the whole truth and nothing but the truth so help you God?"

Mr. Robert L Creal Sr answered, "I do." First off, I am not here to fight the Board, but am at the mercy of the Board. The charges are false and unfair. The inspector is using his imagination. The inspector stated a body was in the process of being embalmed. When the inspector asked when the last embalming was, I told him yesterday, but yet he is saying that the body was being embalmed at that time. My son is not employed as an embalmer as his license is under suspension. Mr. Creal added that he has been very confused and has sought advice from the Board and any other sources to no avail. The inspector is basing his assumption on the fact that when he came into the funeral home, one of my secretaries for some reason or another said, "Robert that man is here again and there are bodies in the morgue." Mr. Creal stated when he came out of the office to ascertain what was going on, the inspector bumped into him trying to get through the garage door first, so he back up to let him through. At that time, Robert Creal Jr was coming out of the morgue. There were bodies in the morgue but there was no embalming going on. Mr. Creal Jr said he was in the morgue cleaning up. The inspector stated in the complaint that my son was dressed for embalming and I was dressed in a coat and tie to meet the public. The inspector did not see any embalming going on. He used his imagination. Just because someone is in the morgue does not mean they are embalming a body. No bodies were being embalmed that day at all. Mr. Creal Jr voluntarily went in to clean whatever he could. There has been some confusion quite a while because his license was suspended because they claimed he was operating a funeral home from the jail. At the time, we had three funeral directors on staff. In addition to him there were four funeral directors, even though he was in jail. He was not operating the funeral home from the jail. The license was suspended and the Board held renewal fees for a length of time. It was finally cleared it. The fine was first placed against me. This has been an issue that is unable to get cleared up.

Mr. Creal Sr stated that he was first exposed to funeral services at age sixteen when he began working in a funeral home and was licensed in '47 and '48. Mr. Creal Sr added that he has served as President of the Florida Morticians and served as a Board member for 6 years under Bob Graham. We are not violators of the law. We are abiding citizens, but there are other circumstances that have been opposed on me. Authorities have advised since I was only a high school graduate, after being in the business 27 years, I was told that my gains were illegally and would be taken away from me. Our plight is to offer funeral service and alleviate family grief. I have been in business 52 years and worked 15 years for other people before that. Mr. Creal Sr added that he has not been able to get any understanding of the law. I was accused of burying too many bodies in relation to competitors. There is no law stating how many bodies one can handle.

Mr. Brandenburg stated that Mr. Creal Sr stated there had been no embalmings since the day before. However, the inspection report indicated that the master trocar was still active and in the remains when the inspector entered the preparation room.

Mr. Creal Sr stated this is not true. The trocar was in the sink and was not being used. The inspector did not see any active work in the morgue when he went in.

Mr. Shropshire questioned whether this was Mr. Creal Sr or Mr. Creal Jr.

Mr. Creal Sr answered "Sr."

Mr. Shropshire advised Mr. Creal Sr that the case is not against him.

Mr. Creal Sr stated it is against the funeral home.

Mr. David stated that Mr. Creal's statement would confuse the situation. This matter before the Board is only related to Mr. Creal Jr, his activities and status of licensure. As the waiver shows, the Administrative Complaint was properly served and Mr. Creal Jr had adequate time to respond and submit and evidence, statement or response that the wanted to.

Mr. Shropshire stated that Mr. Creal Jr could speak to the Board if he so desires.

Mr. Shropshire requested that Mr. Robert L Creal Fr raise his right hand. "Do you solemnly swear the testimony you are about to give would be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Creal Jr answered yes. Basically what my father said is true. I was cleaning the preparation room and there was no embalming done. Mr. Clarence Wilson Jr is our licensed embalmer, as well as my father, at this time.

Ms. Thomas-Dewitt questioned whether there is any reason why Mr. Creal Jr did not respond to the allegations prior to this meeting.

Mr. Creal Jr stated it is probably just his fault that he did not respond.

MOTION: Mr. Brandenburg moved to accept the charged statutory violations in the Administrative Complaint as the conclusions of law of the Board. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. David stated at this point it is up to the Board to determine the penalty for this matter. The Department is going to recommend revocation of the license. The penalty guidelines for the violations herein, most notably s. 497.152(5)(b), call for a six month to one year suspension plus costs and possibly a referral to the State Attorney's office for misdemeanor to criminal prosecution. There are aggravating circumstances present that the Department feel would allow the Board to consider revocation of the license. There is also a violation of ss. 497.152(1)(a), 497.152(4)(h), 497.157(1) and 497.380(6), F.S. S. 497.157(1) also has a recommended penalty of six month to one year suspension plus costs. The aggravating factors that the Department feel necessitates a revocation in this matter are as enumerated under Rule 69K-30.001(2):

(a) The danger to the public; The license, as shown by the recitations in the Administrative Complaint and by other information, is continuing unlicensed activity.

(b) The length of time since date of violation; In this matter, an administrative fine was imposed upon Mr. Creal Jr on July 15, 2005. The inspection where the unlicensed activity was noted was in October 2008. Mr. Creal Jr had over three years to correct this problem.

(f) The deterrent effect of the penalty imposed; Because of the previous penalties and the previous activities, it appears that no penalty would deter illegitimate activity on the part of this licensee and therefore revocation would be appropriate.

(h) Any efforts for rehabilitation; There really has been no effort or attempt for rehabilitation. The Respondent has not contacted the Division or Staff to inquiry whether anything could be done.

(i) The actual knowledge of the licensee pertaining to the violation; The prior final order in the record clearly stated that failure to comply with the terms of the settlement would result in suspension. It gave the licensee plenty of notice of what was going on.

(j) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations; It appears Mr. Creal Jr refuses to stop his activities or to bring those activities in line with the appropriate laws governing this profession.

Mr. David stated that the Department recommends revocation as the appropriate penalty.

Mr. Creal Sr stated that Mr. David stated they are continuing to endanger the public. Mr. Creal Jr is not embalming. This is only an assumption that he is embalming. The inspector did not see an actual embalming. It would not serve any worthwhile purpose for the community to revoke Mr. Creal Jr license. Mr. Creal Sr requested that Mr. Creal Jr license be reinstated.

The Chair questioned whether the motion would be to revoke the personal license or that of the funeral home.

Mr. David stated this is only Mr. Creal Jr personal license.

The Chair questioned the reason for the Department receiving no response from Creal Jr or Creal Sr. Mr. Creal Sr stated he communicated to the Board and to the State to no avail. The Department sent the information and no one responded. It is hard for the Board to be compassionate for someone who does not respond.

Mr. Creal Sr stated that they were not trying to rebuttal the Board.

Mr. David stated that the fact that the license is suspended does not remove this Board's jurisdiction and authority over that license. In the testimony by both Mr. Creals, the Board can find mitigating circumstances, but the Department feels like the aggravating circumstances justify revocation.

MOTION: Mr. Brandenburg moved to revoke Mr. Creal Jr license based on the aggravating circumstances presented. Mr. Helm seconded the motion, which passed unanimously.

B. *Embalmer Apprentice, Denial of Application*
(1) *Anderson, Gaile – NOI-2009-114*

Mr. Shropshire stated that this item has been tabled at the request of Ms. Anderson's attorney.

C. *Preneed License, Denial of Application*
(1) *Marvin C Zanders Funeral Home, Inc., Case No. 102726-09-FC*

Mr. David stated that the documents presented to the Board outline the procedural history of this matter. This is regarding the application submitted to the Board October 14, 2008 that was denied January '09. There was some previous activity on a previous application. Mr. David requested that the Board review and standby the factors that determined the denial at the January meeting.

Mr. Maston O'Neal stated that he would be responding to both letters of denial; one on April 2, 2008 and the other from January 7, 2009. As far as item 3 on the April 2, 2008 case, this was the sell of preneed contracts without authority. This is a felony and was handled in Orange County Florida Criminal Court, Case No. 01-CF-014242. A complete certified copy of the proceeding was submitting showing all the ins and outs of the case. The judge withheld adjudication and fined \$5000 with 3 years probation; all of which have been satisfied.

As far as item 4 of the 2008 case, Consent Order dated August '07 was entered by the Board setting up an administrative fine of \$2500 and one year probation, all of which has been taken care of and satisfied.

In response to #2 of the January 7, 2009 indicated that the background check showed that Mr. Zanders pled guilty to felony violation under s. 497.495, F.S. for sell of preneed contracts with or without valid certificate of authority. This is Orange County Florida Case No. 14242, which was referenced above and a complete certified copy has been forwarded for inclusion in the Board file.

In response to Item 3 of the January 7, 2009 Final Order dated December 12, 2002 adjudicating a settlement of Case No 8625-F-9/01 and 8625a-F-9/01, a consolidated case. Mr. Zanders was disciplined for selling preneed contracts. The Consumer Protection Trust Fund would have to assume the money when it was determined how much should be put into the trust account. A trust account was established. An improper trust account was established as soon as this was detailed as to how much should be put in. It was entrusted to the State organized or acceptable trust fund. The Final Order entered December 12, 2002 states that he would comply with all of the provisions of the Stipulation to Consent Order, which he has done. The complete copy of the Stipulation to Consent Order has been filed and should be in the Board's material today.

As to item 4, the Settlement and Stipulation for Court Order in 86432 was treated in Item 4 of the previous letter of intent to deny.

All the sanctions issued by the Board, as well as the criminal court, have been timely satisfied and all probation has been completed. Mr. Zanders filed a fingerprint card, which was submitted to FDLE that shows all criminal records in the FDLE dossier as well as the FBI. There is no way you can hide public records and there was not intent to hide the public records. It was improperly done in the original application filed. It has been supplemented with the corrected one and the cases were supported in both Notices of Intent to Deny. No sales contracts have been lost anywhere. They have all been accounted for, put in the proper place and the monies have been put in the proper accounts. Mr. Zanders has a financially established organization as shown by his annual reports and the bank records for January 1, 2009 thru August 31, 2009. Mr. Zanders was audited earlier this year by Mr. Aldon Asher and found without any conflicts whatsoever.

The Board was submitted 19 letters from persons with substance in the community who have known Mr. Zanders and his character for most of his life. They have all recommended that he be authorized to sell preneed contracts because of the fact of the things he has done to improve in the community and he is known for his character and efforts to improve the community and its growth. The youth have greatly benefited by Mr. Zanders.

Mr. Zanders knows that preneed sales cases must be followed absolutely by the Statutes, by the Division Rules and the Division approved papers. Mr. Zanders has set his office and has adjusted his lifestyle and office business style to compare a completely separate situation. He has qualified persons in place to handle the sell of preneed right down to the Statutes, Rules and approved forms. He can carryout the specific and specified needs of preneed sales.

Mr. David stated that the Department believes that the criminal and disciplinary record detailed in the record and in the Notice of Intent simply demonstrate a history of a lack of trustworthiness that would afford Mr. Zanders the opportunity to deal with preneed trust funds or preneed arrangements. As we all know, those arrangements require a lot more trustworthiness than at-need arrangements.

MOTION: Ms. Tracy Huggins moved to affirm the initial decision to deny renewal. Mr. Brandenburg seconded the motion, which passed unanimously.

D. Preneed License, Denial of Renewal
(1) Elijah Bell's Funeral Services, LLC (Pompano Beach)

Mr. Shropshire stated that the initial decision to deny was made on June 24, 2009 at a meeting of the Board.

Mr. Anthony Miller stated that the licensee had not submitted an application for renewal as of the Board's preliminary decision at its June 24, 2009 meeting to deny renewal. Subsequent to the Board's denial of renewal at its June 24, 2009 meeting, the licensee submitted an application to renew, with required financial statements. The application shows the required net worth is exceeded. The licensee has paid the \$1000 late penalty for late filing of the application for renewal and related financial statements. The Division recommends that the Board reverse its original decision and approve renewal of the preneed main license.

MOTION: Mr. Brandenburg moved to reverse the original decision and approve renewal of the preneed main license. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(2) Hawkins Funeral Home, PA (Sarasota)

Mr. Shropshire stated that the initial decision to deny was made on June 24, 2009 at a meeting of the Board.

Mr. Helm recused himself.

Mr. Miller stated that the licensee was denied renewal based on the net worth of \$18,619 at the June 24th meeting, which is below the required net worth of \$40,000. During an informal hearing held at the August Board meeting, a representative of the licensee stated that new financials would reflect an increase in the net worth to \$38,645 due to a \$20,000 increase in capital. It was also represented that an additional \$12,000 had been added to equity that would increase the net worth to approximately \$10,000 over the required net worth. However, the \$12,000 increase was not reflected in the updated financial statement. On October 1, 2009, the licensee submitted revised financial statements which show a net worth of \$47,082.69 satisfying the net worth requirement. Based on the revised financial statements the Division recommends the Board reverse its initial decision and approve renewal of the preneed main license.

MOTION: Mr. Brandenburg moved to reverse the initial decision and approve renewal of the preneed main license. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(3) Mohn, Lewis W. & Martha P. (Seminole)

Mr. Miller stated that based on the licensee's most recent balance sheet, the actual net worth is (\$35,307). The licensee has submitted a recent appraisal of their house at \$180,000 with a \$100,000 mortgage leaving \$80,000 in equity in the home. The licensee has executed a pledge of equity in the house to cover preneed obligations. However, this still only brings them up to \$44,693 in aggregate net worth when you take \$80,000 less the \$35,307. The Applicant's most recent financial statement shows a (\$62,260) net operating loss for the 12 months reported.

Mr. Miller suggested that the Board hear the licensee's presentation prior to the Division making its recommendation.

Mr. William R Miller, Funeral Director in Charge at the Lewis Mohn Funeral Home requested to speak.

Mr. Shropshire stated as a matter of routine, witnesses are sworn in. Mr. Shropshire requested that Mr. William R Miller raise his right hand. "Do you solemnly swear the testimony you are about to give in this proceeding is the truth, the whole truth and nothing but the truth so help you God?"

Mr. W Miller answered yes. Mr. W Miller stated that at the last meeting, he had been on vacation for quite some time and some of the information submitted was incorrect. The one document submitted that has 2007 with all the 2008 reports attached has the wrong date as it is 2008. When the accountant typed it up they put 2007, which is incorrect. One of the things that someone on the Board recommended was that the salaries were too high for the business taken in. After discussing that with Ms. Mohn a decision was made to let one of our employees go, which should save about \$60,000 a year with overtime and help with the net worth. Ms. Mohn also had her home appraised and a letter was written to the Board to use the amount of money that was on the home to help the bottom line, so she pledged that also. 100% of all the preneed sales that we do are insurance. The public is protected in that way. The only way that we could receive funds is if the person passes and we send in the death certificate. We do not go out and solicit. If we do not have our license, it puts us at a disadvantage and puts our competitors at quite an advantage. Mr. W Miller requested that the Board reconsider with the information that the licensee is moving forward to get the bottom line straightened out. We never intend on having a trust. It is always going to be insurance so that the consumer is protected as 100% of those funds are sent to the insurance company.

Ms. Nancy Hubbell questioned whether Ms. Mohn takes a salary.

Mr. W Miller stated that Ms. Mohn is 84. She gets social security and a salary. Mr. W Miller added that Ms. Mohn's salary is less than his but he is the one doing most of the work.

Ms. Hubbell stated that in most businesses the owner gets the majority of the payroll.

Mr. A Miller stated that the required net worth of \$80,000 is not satisfied so the Division would recommend that the Board affirm its initial decision to deny renewal.

The Chair stated it would seem like after 50 years the licensee would have built up some equity.

Mr. Shropshire requested that Mr. Kevin Hazlip raise his right hand. "Do you solemnly swear the testimony you are about to give in this matter is the truth, the whole truth and nothing but the truth so help you God?"

Mr. Kevin Hazlip answered yes. Mr. Hazlip stated that he was asked to assist. In the very beginning there was confusion when the Board sent the information to them, they were unsure how to attack the deficit but now they do. As a result of getting a really good understanding of having to attack those deficits, they are trying to respond. Ms. Mohn has put up her own personal residence in full and has signed the document. The licensee is serious about this and is taking an active role in putting up as much of their own personal assets as they can for the business. Realizing they needed to attack the deficit even further, they went ahead and laid off a funeral director which has put additional stress on the other staff. While they do not meet the net worth requirement, they are asking for the provision that allows them to continue to sell if they would continue to trust 100% or sell insurance.

MOTION: Ms. Tracy Huggins moved to affirm the initial decision to deny renewal. Ms. Thomas-Dewitt seconded the motion, which passed with 2 dissenting votes.

(4) *Packer Funeral Homes, Inc. (Sarasota)*

Mr. Helm recused himself.

Mr. Miller stated that the actual net worth regarding the licensee's most recent financial statements is (\$81,258). The required net worth is \$40,000. In addition, the licensee reports a (\$21,652) operating loss for the calendar year 2008, per enclosed Profit and Loss Statement.

Mr. Shropshire requested that Mr. Thomas Packer raise his right hand. "Do you solemnly swear the testimony you are about to give in this matter is the truth, the whole truth and nothing but the truth so help you God?"

Mr. Thomas Packer answered yes. Mr. Packer stated that his situation is very situation to the Mohn's. The biggest problem has been all personal assets are in real estate. Mr. Packer thanked the Board and stated he realizes he does not stand a chance.

Mr. Miller stated that the Division recommends that the Board affirm its denial of renewal of the preneed main license. Accordingly the Division suggests a motion to adopt the factual and legal basis for the denial as set forth in the Notice of Intent and deny renewal of licensure.

MOTION: Ms. Thomas-Dewitt moved to affirm the initial decision to deny renewal and to adopt the factual and legal basis for the denial as set forth in the Notice of Intent and deny renewal of licensure. Ms. Zippay seconded the motion, which passed unanimously.

5. Old Business

A. Application(s) for Removal Service

(1) Recommended for Approval

(a) MBV Transport Inc (Sarasota)

The application for a Removal Service was submitted on June 12, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on July 21, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The application appeared on the agenda for the September 2, 2009 conference call. At that time, the Board had questions on whether the applicant's son could be listed as an officer since he was only sixteen years old. It has been determined that only an adult, eighteen years or older, can be listed with the Division of Corporations as an officer of a corporation. Mrs. Visacki has since modified the officers with the Division of Corporations, removing Michael Visacki as President. The removal service passed its inspection on August 13, 2009. The removal service is recommended for approval.

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

B. Notice of Change in Location – Funeral Establishment and Request to Undedicate Cemetery Land

(1) The Kuzniar Group, LLC d/b/a First Coast Funeral Home (Jacksonville)

(2) Cemetery Professionals, LLC d/b/a Beaches Memorial Gardens (Atlantic Beach)

This matter initially appeared on the Aug. 5, 2009 agenda but was subsequently pulled off the agenda before consideration by the Board.

The Division understands that the two licensees identified above are currently under common ultimate control. The licensees are represented in this matter by attorney John Rudolph.

The funeral establishment licensee desires to move their funeral establishment from its current location, to certain dedicated cemetery property at the cemetery identified above. The aspect of the transaction that requires Board approval is the undedication of 1,250 square feet of cemetery land.

The applicable statutes are s. 497.380(12)(b) (funeral establishment change in location), and s. 497.270 (undedicating cemetery land).

The funeral establishment would be moved to a building already existing on the cemetery grounds and that currently houses the cemetery administration function. The funeral establishment would not take up the entire building. The funeral establishment would have one part of the building, and the cemetery administration function would be in another portion of the building.

FCCS Division staff has inspected the portion of the building where the funeral establishment would be moved to, and it passed the inspection for use as a funeral establishment. The funeral establishment would have the required minimum 1,250 square feet of space.

The cemetery licensee seeks to undedicated 1,250 square feet of cemetery land, for use as a funeral establishment. The cemetery licensee represents to the FCCS Division that the cemetery will have at least 30 acres of dedicated cemetery land remaining after the requested undedication. Based on preliminary survey documents that the FCCS Division has reviewed, the FCCS Division believes that the representation is accurate, but the FCCS Division believes that there should be submitted a final definitive survey establishing the specific location of the 1,250 square feet being undedicated, and establishing that at least 30 acres of dedicated cemetery land will remain after the undedication. The cemetery licensee advises that such a survey will be provided shortly.

There is currently an administrative complaint (AC) pending against the funeral establishment, and an AC against the cemetery. The licensees have disputed the allegation in the ACs. The ACs are being dealt with pursuant to the disciplinary procedures specified in ch. 497, and are not currently ripe for presentation and consideration by the Board. The FCCS Division does not believe that there is anything alleged in the ACs that would, if proven, be a bar to the requested undedication of cemetery land that is the subject matter of this current matter.

FCCS Division field staff advises that approving the moving of the funeral establishment to the cemetery grounds will allow more efficient and effective regulation of the two licensees, since they are under common ultimate control.

The approval of the undedication and moving of the funeral establishment will not be effective until the FCCS Division acknowledges in writing to the cemetery licensee, receipt of a survey establishing the specific location of the 1,250 square feet being undedicated, and establishing that at least 30 acres of dedicated cemetery land will remain after the undedication.

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

6. Application(s) for Preneed Sales Agent
A. Informational Item - 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.

7. Application(s) for Preneed Main License
A. Recommended for Approval
(1) Shane Obert Funeral Home, Inc. (Chipley)

The Department received the application on June 18, 2009 and no deficiencies were noted on the application. A completed background check of all officers revealed no criminal history. It should be noted that the Applicant answered "yes" to Section 9(f), "Has the applicant ever been the subject of any bankruptcy proceeding or had a judgment filed against it, either present, past or pending?" In response, the owners, Shannon and Mary Obert, submitted detailed financial information, letters of personal reference, and other supporting documentation in reference to a Chapter 7 bankruptcy filed in 1997. Mr. Obert also provided a court document regarding the disposition as proof that the bankruptcy was successfully completed and discharged on January 31, 2000.

Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (SouthTrust Estate & Trust Co.) and pre-arranged funeral agreement. The applicant submitted an application for a funeral establishment license which was approved by the Board on April 8, 2009.

The Applicant's financial statements as of June 30, 2009 reflect the following:

Acquired Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	13,933

The Division recommends approval with the conditions: probation for 12 months and 100% trusting during those 12 months of operation.

Mr. Bill Williams questioned whether the Board would allow 100% trusting or insurance during that probationary period.

Mr. Shropshire stated the Division recommended 100% trusting during the 12 month period but would have no objection to 100% trusting or insurance-funding.

MOTION: Mr. Brandenburg moved to approve the application subject to 12 months probation with 100% trusting or insurance funding during that time period. Mr. Helm seconded the motion, which passed unanimously.

8. Application(s) for Preneed License Branch

A. Recommended for Approval

- (1) *Jones-Gallagher Funeral Home LLC d/b/a Helm-Gallagher Funeral Home & Cremation Services LLC (Green Cove Springs)*

The Division recommends approval contingent upon Board approval of the funeral establishment license that is also before the Board.

MOTION: Mr. Helm moved to approve the application contingent upon approval of the funeral establishment license being subsequently approved at this meeting. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

9. Preneed License Renewal(s)

A. Recommended for Denial

- (1) *AM Seigler Funeral Home, P.A. (Mulberry)*

Due to a Division oversight, the licensee did not receive the 2009 preneed license renewal packet and therefore was inadvertently omitted from the June 24, 2009 Board meeting Agenda. The above license renewal is recommended for Board denial based on the following:

Does not meet minimum net worth requirements of Rule 69K-5.0016 (3):

Total Preneed Contracts:	\$	540,905
Required Net Worth:	\$	60,000
Reported Net Worth:	\$	(148,289)
Reported Net Worth 2008 renewal:	\$	(78,441)

As noted above, the net worth trend is negative. In addition, the "Statement of Operations" submitted by this renewal applicant indicates a (\$91,426) operating loss for the 12 months ending 12-31-08; see s. 497.453(2)(c), Florida Statutes (ability to discharge liabilities as they become due in normal course of business...").

The December 31, 2008 Renewal Statement identifies 100% of all outstanding preneed sales as insurance funded.

In June 2008, the Licensee submitted a letter requesting Board consideration based upon the value of the real estate and property, which was valued at \$825,000 as of October 23, 2007. The December 31, 2008 balance sheet reflects building and land value as \$392,548. The Stockholder's Equity section of reflects \$(421,784) for Treasury Stock. The Board considered the treasury

stock issue for the June 2008 renewal and voted to approve the renewal application pending receipt of a personal guarantee from owner Mark Seigler. The Division notes that there are no preneed trust liabilities to be covered by a personal guarantee.

The Division issued a deficiency notice on August 19, 2009 stating that the renewal application would be recommended for denial due to the lack of net worth. As of September 21st, the Division had not received a response. The Division recommends denial based on failure to comply with 497.453(2)(b) & (c).

Mr. Shropshire requested that Mr. Harry Sponaugle raise his right hand. "Do you solemnly swear the testimony you are about to give in this proceeding is the truth, the whole truth and nothing but the truth so help you God?"

Mr. Harry Sponaugle answered yes. Mr. Sponaugle stated that one of the reasons this occurred is because of the two accounting methods used to come to the value of the company in question. Most accounting firms use the cost accounting basis, which is a legally accepted method to reduce the tax liability of any corporation or business that happens to hire their firm and that is what they did. They come up with an appraised value of \$380,000. Actually, we believe that the cost accounting method, which is the most acceptable method as far as getting actual value of a property, which we feel will bring us well over the \$60,000.

When Mr. Seigler's father passed away a few years ago, he remodeled the entire funeral home. Mr. Seigler spent \$560,000+ in remodeling. He went before a bank and got a loan for the bulk of the remodeling. It is difficult to believe that any bank would give a funeral home that kind of a loan who did not have a net worth of at least \$60,000 in property, stocks, furniture and things of that nature you would always have in a funeral home. Since that time, the remodeling has been completed and now under the cost accounting method, which we feel is the most adequate and accurate method to judge the actual value of the property. It was evaluated over a year ago now at \$825,000, which we feel will bring us well over the \$60,000 threshold that the Board is demanding we have now.

Mr. Sponaugle added in addition to that, Mr. Seigler has never used trust to prefund funerals. He has always used insurance funded pre-trust. Mr. Seigler has over \$500,000 of trust. Everyone knows of the horror stories indicating the troubles with trusts. There are all kinds of disputes. People are losers who buy these trusts. Insurance is a very simple concept. You buy the policy that you want. The face amount of the policy is what you buy. When an event occurs, you get paid, the funeral director gets paid, the taxes are paid and everybody is happy. That is the way they have operated successfully for 92 years. There has never been a complaint lodged against Seigler Funeral Home for any kind of preneed dispute. Everyone, including the Board, wants to insure that the public is protected from the abuses of preneed sales. Abuser are found primarily if not wholly in trust, not insurance. Mr. Seigler's is the only funeral home in our community and has been there for 92 years. Mr. Seigler is a very reputable person and runs a very reputable firm.

Mr. Sponaugle added that he has been in the funeral business 47 years and was working when there was no such thing as a preneed. Mr. Sponaugle stated that he is proud to work for Mr. Seigler and requested that the Board reconsider the idea of denying Mr. Seigler's ability to continue to write preneed that are strictly and always will be insurance funded.

Mr. Brandenburg stated that Mr. Sponaugle indicated they have always written insurance funded prearrangements, but he mentioned there is over \$500,000 in trust.

Mr. Sponaugle stated he misspoke. There is no trust at all. The \$500,000 is insurance. There are hundreds of families appreciative of the service provided. Nobody has ever been turned away for lack of funds.

MOTION: Ms. Huggins moved to deny the application based on the licensee not meeting the net worth. Ms. Thomas-Dewitt seconded the motion, which passed with 3 dissenting votes.

10. Continuing Education Course Approval(s)

A. Recommended for Approval – Addendum B

- (1) International Cemetery and Funeral Association #4**
- (2) International Order of the Golden Rule #2201**
- (3) Jewish Funeral Directors of America, Inc. #66**
- (4) M.K. Jones & Associates, Inc. (MKJ Marketing) #9605**

- (5) *National Funeral Directors Association #136*
- (6) *SCI Management – Dignity University #99*

The Continuing Education Committee and the Division recommends approval of the application(s).

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

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

- A. *Recommended for Approval - See Addendum C*
 - (1) *Funeral Director and Embalmer - by Internship*
 - (a) *Crucet, Keila K*
 - (b) *Smith, Lynda B*
 - (c) *Young, Brea L*
 - (2) *Funeral Director and Embalmer-by Endorsement*
 - (a) *Bakey, Lawrence J*
 - (b) *Kinne, Scott E*
 - (3) *Direct Disposer*
 - (a) *Miles, Tara T*

The Division recommends approval of the application(s).

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

- B. *Recommended for Approval (Criminal History)*
 - (1) *Funeral Director and Embalmer - by Internship*
 - (a) *Francis, Charlotte*

The applicant submitted an application to become a Funeral Director and Embalmer by Internship and Examination. The application was submitted on August 5, 2009. The application was complete and a deficiency letter was not sent to the applicant.

Mrs. Francis' application for a Concurrent Internship license appeared before the Board on August 6, 2008 and was approved by the Board with knowledge of her criminal background. In the Applicant's favor, the court only sentenced her to probation, suggesting that the court did not believe her offense was extremely serious.

In view of the preceding, the Division is recommending approval of this application with the condition of the enclosed stipulation for licensure, which, among other things, imposes the following conditions: 24 month probation; restrictions on license during the probation (e.g. no employment as an FDIC); fingerprinting every 6 months during probation, to reveal any additional arrests..

Ms. Huggins disclosed her affiliation with the Applicant.

The Chair questioned whether the Applicant has agreed to the Stipulation.

Mr. Shropshire responded yes.

Ms. Dudley questioned whether Ms. Huggins' affiliation would affect her ability to remain fair and impartial of this application.

Ms. Huggins answered no.

MOTION: Ms. Thomas-Dewitt moved to approve the application with conditions as set out in the Stipulation for Licensure dated September 21, 2009. Ms. Zippay seconded the motion, which passed unanimously.

- (2) *Direct Disposer*
 - (a) *Taylor, Judith*

The applicant submitted an application to become a Direct Disposer. The application was submitted on August 10, 2009. The application was incomplete and a deficiency letter was sent to the applicant. All deficient items were returned on September 14, 2009.

The Division is recommending approval of this application.

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

- 12. **Application(s) for Internship**
 - A. *Recommended for Approval – Addendum D*
 - (1) *Funeral Director and Embalmer*
 - (a) *Gainous, Alonia P*
 - (b) *Heaton, Jeffrey Scott*

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

- 13. **Application(s) for Embalmer Apprentice**
 - A. *Recommended for Approval – Addendum E*
 - (1) *Mayfield, John*
 - (2) *Powers, Richard A*

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

- B. *Recommended for Approval (Criminal History)*
 - (1) *Nicholson, Enoch O*

The applicant submitted an application for an Embalmer Apprentice License. It was submitted on August 28, 2009 with no deficiencies. Applicant has a criminal record. The same criminal record was reviewed by the Board at its April 8, 2009 board meeting in connection with Applicant's then pending application to become a Direct Disposer. The Board at the April '09 meeting approved the Direct Disposer application subject to the terms and conditions of a Stipulation for Licensure signed by Applicant, which imposed: a 24 month probation; special reporting every 60 days; and restrictions on the license during the probation. Applicant is currently in compliance with the terms of that prior Stipulation for Licensure.

The Division is recommending approval of the Embalmer Apprentice License subject to the following conditions: Applicant will hold the Embalmer Apprentice license in a probationary status for its entire duration; any violation of the terms and conditions of the Direct Disposer Stipulation for Licensure approved by the Board in April 2009 will be deemed a violation of the probationary status of the Embalmer Apprentice license, and will subject the Embalmer Apprentice license to the same summary suspension as Applicant agreed to in the April 2009 Stipulation for Licensure.

MOTION: Ms. Thomas-Dewitt moved to approve the application with conditions specified by Division Ms. Huggins seconded the motion, which passed unanimously.

- 14. **Registration(s) as a Training Agency**
 - A. *Recommended for Approval – Addendum F*
 - (1) *Funeral Directing/Embalming*

(a) Hudson Memorial Chapel Inc (F049500)

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

15. Consumer Protection Trust Fund Claims

A. Recommended for Approval - Addendum G

The Division recommends approval of the claim(s).

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

B. Recommended for Denial

(1) Funeral Depot (Beneficiary: Henson, Ruth E)

On April 18, 2007, Ruth E. Henson purchased a pre-need contract from Funeral Depot in the amount of \$1,078.00. The contact was paid in full prior to Funeral Depot going out of business on April 3, 2008. Ms. Henson passed away on April 13, 2009.

As the otherwise covered provider for the defaulting company, Sinai Memorial Chapel purchased a Batesville blue metal casket from Aurora Casket Co., Inc. in the amount of \$643.00 for the fulfillment of Ms. Henson's preneed contract. Payment was confirmed in the amount of \$643.00.

The purpose of the Preneed Contract Consumer Protection Trust Fund is to provide restitution to preneed contract purchasers and their estates due to a preneed licensee's or otherwise covered provider's failure to provide the benefits of a preneed contract.

The Board shall determine to its satisfaction that the preneed licensee or otherwise covered provider does not possess the financial means to deliver or provide the prearranged merchandise or services.

The Department reviewed the documentation submitted by Sinai Memorial Chapel. After reviewing Sinai Memorial Chapel documentation and request, our office contacted Funeral Services, Inc. and confirmed that \$656.87 was paid to Sinai Memorial Chapel for the fulfillment of Ms. Henson's contract.

As the otherwise covered provider Sinai Memorial Chapel did not fail to provide the benefits of the preneed contract. However, if adequate funds were not available in the preneed trust fund, Sinai may only obtain up to the amount paid on the breached contract from the Preneed Funeral Contract Consumer Protection Trust Fund. The trust funds did exist and funds were paid to Sinai Memorial Chapel in the amount of \$656.87.

The cost to fulfill the preneed contract was less than the amount Sinai Memorial Chapel received from FSI the trust company, \$13.87 over the cost to fulfill. The Department has determined that there is not validity to Sinai Memorial Chapel claim for reimbursement.

No preneed contract purchaser shall have any vested rights in the Preneed Consumer Protection Trust Fund.

Staff recommends denial of the above referenced claim and all necessary documents have been enclosed for your review.

Mr. Shropshire requested that Mr. Steven Fischman raise his right hand. "Do you solemnly swear the testimony you are about to give in this proceeding is the truth, the whole truth and nothing but the truth so help you God?"

Mr. Steven Fischman answered yes. The Funeral Depot contracts, some of them are direct cremations and caskets that are out of state, the monies are in there trusted. Those that were trusted, it is minus the VSP. If we get a call from Illinois at 3am, I have to fulfill that contract, talk to the family, put everything together, find a firm and insure I get the right price, make 10-15 out of state calls and spend 3-7 man hours. My professional services have value so I do not see why only the money paid for what the expenses are, or why can't a profit be made up to the face amount of the contract.

Mr. Shropshire stated that the Department's position is the cost to fulfill the preneed contract to Sinai was less than the amount Sinai received from FSI.

Mr. Fischman concurred. Mr. Fischman questioned whether this profit is against the rules.

Mr. Shropshire stated no. The Department is not seeking a refund of the \$13.87, but Sinai is seeking the rest of the contract amount from the CPTF and that is where the line is drawn.

Mr. Fischman questioned the face amount of the contract originally.

The Chair stated it was \$1,078.

Mr. Fischman stated he was able to get the cost down to \$600+. That is wholesale and I'm a retailer so I make the profit between the differences. Mr. Fischman questioned whether he was paid the difference.

Mr. Shropshire stated he did not understand the question.

Mr. Fischman stated if the contract was \$1000 but the VSP only has \$650, and the cost to him to provide the services is \$695 he still would be entitled to the \$1000 that was contracted by the CPTF as that is the only reason he would take the contracts and do this. Mr. Fischman questioned why he would do this for nothing. Mr. Fischman stated the CPTF is supposed to make up for the VSP that was not there and he is supposed to get the face amount, which is the original agreement with the Board previous to Mr. Shropshire coming in. Mr. Fischman stated he should be entitled to the contract amount. Other than that, what would be the incentive to take over Funeral Depot as I do not get any interest off the trust; all I do is facilitate the contract.

Mr. Shropshire stated the Division has searched in vain for an agreement between Sinai and the Division to handle the Funeral Depot contracts and if there is such an agreement, it has not been located.

Mr. Fischman stated there is no agreement either way. The agreement should be based on fairness and common sense.

The Chair pointed out that Mr. Fischman just said there was an agreement.

Mr. Fischman stated there was a verbal agreement that Diana Evans put in his lap because it was an emergency situation. Mr. Fischman offered to do so because he had the experience as he took over Grossberg and Son. That is the way Sinai has been reimbursed up to the time there was a shift in Board management.

Mr. Shropshire stated this does present a good fundamental question to the Board. Simply stated, the preneed contract was for a casket. Sinai was able to provide a casket for the amount of funds in the FSI trust account and he had a little left over. The question for the Board is whether Mr. Fischman should be paid the balance on the preneed contract out of the Consumer Protection Trust Fund. Mr. Shropshire stated it is a fair question and one that should be answered by the Board. Our position has been to be protective of the Consumer Protection Trust Fund and since he got enough money to actually pay the cost for performing the contract, the Division said no, but the Board may feel differently.

Mr. Fischman stated this is a new territory for him and sometimes guidelines have to be created for situations not anticipated. Mr. Fischman requested the Board consider that in the future Sinai would be entitled to at least the face amount of the contract, as there are 15-20 more contracts to be submitted.

Mr. Shropshire suggested that Mr. Fischman would have to conceive the other half of that argument is that the cost to perform the contract is more than the original contract price, Mr. Fischman would have to eat that difference. Mr. Shropshire stated if Mr. Fischman wants the money when he can make a profit, he is also going to have to go on record as taking the risk.

Mr. Fischman stated he is currently doing that. Funeral Depot is a uniquely very difficult situation as it is all out of state. There was no law set up to create a fence where someone in the State of Florida could not sell preneed with the trust outside the State of Florida. That has caused a significant reason for some judicial focus on this particular problem so that it does not happen anymore.

Mr. Brandenburg questioned whether the original contract was written for merchandise only or services and merchandise.

Mr. Fischman stated some are different and he was not sure as he did not come here to address the Henson contract but to address the particular issue overall but this gives us the opportunity to discuss it.

Mr. Brandenburg stated if Mr. Fischman provided merchandise only and the contract was for merchandise and services that makes a difference in this particular case.

Mr. Fischman questioned why that would make a difference.

Mr. Brandenburg stated that difference would be Mr. Fischman only provided merchandise not services.

Mr. Fischman stated whether he provided merchandise or service, he is still in business, wholesale/retail relationship with the consumer, so all of a sudden I'm a wholesaler not a retailer.

Ms. Michele Hood stated Mr. Fischman would not be paid on services he did not perform.

Mr. Fischman stated he did not say he did not do services he did not fulfill.

Mr. Brandenburg stated that is his question.

Mr. Fischman stated if it is just a casket sale/merchandise or whether it is service, it does not make a difference, because if it is a direct cremation, and I call Illinois and they say direct cremation is \$1089 and I only have a \$1000 contract, I call four other firms to get it under \$1000 so that it does not cost more than the face amount of the contract. But then the reimbursement is less than the face amount.

Mr. Brandenburg stated the issue before the Board today is Ruth E Henson.

Mr. Fischman concurred and stated this brings up a reason for more focus on this situation. Mr. Fischman stated he is not looking to solve the problem right now, but he advised Mr. Shropshire that he would like to speak to him privately about the issue. This is something that had to be said as it is very important because in the future when there is a situation similar to this one, at least there would be some guidelines and some benchmarks providing an incentive for the funeral home to take over that business and take care of it for the consumers and the families. Mr. Fischman stated he has been doing this for 4-5 years. Some money is made here and there, but only if the price is negotiated and things get done. Mr. Fischman added as far as Ruth Henson goes, whether it was service or merchandise, he provided professional service to get that contract done. Therefore he feels he should be entitled to the VSP or up to the face amount of the contract and the difference.

Mr. Shropshire suggested that the Board table the matter to allow him time to discuss the issue with Mr. Fischman.

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

Mr. Helm questioned who received the \$1078.

Mr. Shropshire stated it was received by the defunct preneed seller, Funeral Depot.

Mr. Fischman stated Funeral Depot stole that amount. Sometimes they trusted the amounts collected and sometimes they did not.

Mr. Helm questioned who the \$1078 was trusted with as indicated in the documentation.

Mr. Fischman answered FSI.

Mr. Shropshire stated in fact that was not the amount trusted. Less than that was trusted and they frequently did not trust what they said they trusted.

16. Change in Location of Establishment
A. Informational Item - Addendum H

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

17. Application(s) for Monument Establishment Retailer
A. Recommended for Approval with Conditions
(1) B&B Graphic Design, Inc. d/b/a B&B Monuments (Fernandina Beach)

B&B, being unaware of the requirements for licensure of Monument Establishments under s. 497.550, Florida Statutes, did in or about the first half of 2009 sell four grave monuments in the northeast Florida area.

In May 2009, B&B was advised by field staff of the Division of Funeral, Cemetery, and Consumer Services that B&B was in violation of Ch. 497, Florida Statutes, by acting as a Monument Establishment without licensure. Pursuant to instructions by said Division field staff, B&B completed those 4 transactions and then B&B did promptly terminate its Monument Establishment activity and applied for licensure under Ch. 497, Florida Statutes.

The application was received on June 24, 2009 and deficiencies were noted. A deficiency letter was sent on July 9, 2009 and the applicant resolved all deficiencies by July 15, 2009. The Department completed a background check of all officers which revealed no criminal history.

Approval is subject to payment of a \$500 penalty for unlicensed activity, as per Stipulation agreement.

MOTION: Mr. Brandenburg moved to approve the application subject to payment of a \$500 penalty for unlicensed activity. Ms. Huggins seconded the motion, which passed unanimously.

(2) Bonnie's Memorials, Inc. (Starke)

The application was received on March 11, 2009 and deficiencies were noted. A deficiency letter was sent to the applicant on March 18, 2009 and the applicant provided a response on March 30, 2009. All outstanding deficiencies were resolved by June 10, 2009. The Department completed a background check of all officers which revealed no criminal history.

As a follow-up to a consumer complaint against Greenwood Cemetery, on May 28, 2009, a Division examiner visited the applicant's location in Starke, Florida and observed the applicant fully operating without a valid license. A copy of the investigation report is attached. Based on the Division's investigation (SR1-600829388), the Division determined that the applicant, operated a monument establishment retail business without a valid license.

Previously, Ms. Johns held a valid monument establishment license from 1995 until September 30, 2005. In 2006, Ms. Johns relinquished ownership and sold the establishment to her son, Chris Durban, who applied for a new monument establishment license in May 2006, but the application was not approved due to Mr. Durban's failure to resolve all outstanding deficiencies. Ms. Johns reacquired the business. According to Ms. Johns, it was her understanding from Mr. Durban that her son's application had been approved and the entity was operating in compliance with Chapter 497.

Prior to entering into the settlement stipulation with the applicant, the Division confirmed that the consumer complaint, referenced in the attached examiner's investigation report, had been resolved, and that the consumer's monument was successfully installed.

The Division recommends approval of the settlement stipulation and the application. If approved by the Board, the applicant will be shall be subject to a \$1500 fine, \$250 in costs and 24 month probation.

Mr. Shropshire requested that Ms. Bonnie Johns raise his right hand. "Do you solemnly swear the testimony you are about to give in this matter is the truth, the whole truth and nothing but the truth so help you God?"

Ms. Bonnie Johns answered yes.

Mr. Helm questioned whether Ms. Johns understands and agrees with the settlement stipulation.

Ms. Johns responded that she agreed and signed everything.

MOTION: Ms. Huggins moved to approve the application subject to a \$1500 fine, \$250 in costs and 24 month probation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

18. Application(s) for Funeral Establishment

A. Recommended for Approval

(1) American Funeral Partners of Florida Inc d/b/a James A. McKee Funeral Homes (North Port)

The application for a Funeral Establishment was submitted on July 2, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on August 19, 2009. The Funeral Director in Charge will be Michael Palumbo (F042289). The fingerprint cards for all principals were submitted and returned without criminal history. The application is recommended for approval. The establishment passed its inspection on September 16, 2009.

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

(2) Florida Cremation Care Inc (Maitland)

The application for a Funeral Establishment was submitted on August 24, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on September 10, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Sara Fredericks (F042162). The establishment passed the inspection on September 17, 2009. The Division is recommending approval for this establishment.

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

(3) Floyd's Funeral Home LLC (Clermont)

The application for a Funeral Establishment was submitted on July 30, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 26, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Rodney Rocker (F043119). The establishment passed the inspection on September 15, 2009. The Division is recommending approval for this establishment.

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

(4) Helm-Gallagher Funeral Home & Cremation Services LLC d/b/a Helm Funeral Home (Green Cove Springs)

The application for a Funeral Establishment was submitted on July 30, 2009. The application was complete when submitted and a deficiency letter was not sent to the applicant. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Kenneth Crosby (F045258). The establishment is recommended for approval with the condition of passing the inspection. The inspection is scheduled for September 24, 2009.

The Chair questioned whether the inspection was passed.

Mr. Shropshire he did not have that information at this time.

Mr. Joe Gallagher stated that the Inspector did come and approved everything.

MOTION: Mr. Brandenburg moved to approve the application subject to passing the inspection. Ms. Huggins seconded the motion, which passed unanimously.

(5) Integrity Funeral Services Inc (Tampa)

The application for a Funeral Establishment was submitted on July 30, 2009. The application was complete when submitted and a deficiency letter was not sent to the applicant. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Clifford Robinson (F043269). The Division recommends approval of this establishment with the condition of passing the inspection. The inspection is scheduled for September 22, 2009.

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

(6) Mitchell & Mitchell Mortuary Inc (Sanford)

The application for a Funeral Establishment was submitted on June 5, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 26, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Bernard Mitchell (F043273). The Division recommends approval of this establishment with the condition of passing the inspection. The inspection is scheduled for September 23, 2009.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to passing the inspection. Ms. Huggins seconded the motion, which passed unanimously.

(7) Pinder Memorial Chapel Inc (Opa-Locka)

The application for a Funeral Establishment was submitted on August 12, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 26, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Rosalind Pinder (F043106). The Division recommends approval of this establishment. The establishment passed its inspection on September 11, 2009.

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

B. Recommended for Approval with conditions (Criminal History)

(1) Timothy E. Kitchens Funeral Home Inc (Riviera Beach)

The Division is withdrawing this item due to some complications on the inspection issue.

19. Application(s) for Direct Disposal Establishment

A. Recommended for Approval

(1) Accent Cremation Consultants Inc (Deltona)

The application for a Direct Disposal Establishment was submitted on August 31, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on September 14, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Direct Disposer in Charge will be Susanna Morales (F056071). The Division recommends approval for this establishment. The establishment passed its inspection on September 17, 2009.

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

20. Application(s) for Removal Service
A. Recommended for Approval (Criminal History)
(1) D Removal Services LLC (Miami)

D Removal Services LLC is currently licensed (F054901) to operate at 22507 SW 94 Path, Miami. The licensee desires to change location to the address shown above, which requires relicensure under rule 69K-24.010. The new location passed its inspection on September 11, 2009.

The applicant's current license was approved at the April 8, 2009 board meeting, subject to probation for one year (April 2010), due to a criminal record. The applicant's current license is in good standing. There have been no complaints against the licensee since the license was issued. The Division is recommending approval of this application subject to probation through April 2010.

MOTION: Mr. Helm moved to approve the application subject to probation through April 2010. Ms. Zippay seconded the motion, which passed unanimously.

(2) Johnny Pride d/b/a All County Removal Service (Jacksonville)

The application for a Removal Service was submitted on May 15, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on June 9, 2009. The removal service passed its inspection on July 23, 2009.

Mr. Pride has disclosed in his application that he has a criminal history; details are enclosed. The FCCS Division is recommending denial of the application. However, the FCCS Division considers this to be a very close case:

- Mr. Pride has some very strong letters of reference in the enclosed materials.
- The offense was committed in 1996 and he pled guilty in April 1997. He has had no subsequent criminal law problems.
- He previously held a removal service license, issued by the former Ch. 470 Board in August 1998. We have no indication he had any disciplinary problems under that license. He let the license expire in 2001.
- He has indicated a willingness to accept a reporting probation.

However, the criminal offense was for armed robbery and for that reason the Division feels compelled to recommend denial.

MOTION: Ms. Hubbell moved to approve the application with 24 month probation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

21. Contract(s) or Other Related Form(s)
A. Monument Retail Sales Agreement
(1) Recommended for Approval
(a) B&B Graphic Design, Inc. d/b/a B&B Monuments (Fernandina Beach)

Staff recommends approval of the agreement.

Ms. Lisa Lyons stated Terms and Conditions #3, the agreement is not subject to cancellation or countermand after acceptance, seems to prohibit the 30 day cancellation provided in 497.459, F.S. Suitable language would be in compliance with cancellation and default provisions provided by statute.

Mr. Shropshire stated if the Applicant is willing to make that amendment on the record, the Division would recommend approval subject to that amendment.

Mr. Helm stated he did not agree with the amendment as this is not a preneed contract.

The Applicant stated the Division provided here a sample of an approved agreement and this was the wording used.

Mr. Shropshire stated on reconsideration, the Division would recommend that the form be approved as presented.

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

- (2) *Recommended for Approval with Conditions*
- (a) *Bonnie's Memorials, Inc. (Starke)*

Staff recommends approval of the agreement.

MOTION: Mr. Brandenburg moved to approve the agreement subject to receipt of 2 print ready copies within 21 days. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

- 22. **Request(s) for Approval of C&M Trust Agreement and Request(s) for Approval of Change of Trustee**
- A. *Oaklawn Cemetery Association (Jacksonville)*
- (1) *Care & Maintenance Trust Agreement*

Pursuant to ss. 497.266 and 497.268, Florida Statutes, Oaklawn Cemetery Association requests approval of the enclosed Care & Maintenance Trust Agreement with Comerica Bank & Trust, NA for use in trusting required care & maintenance funds.

In conjunction with approval of the agreement, the applicant requests approval for a change of C&M trustee from Colonial Trust Company to Comerica, and for the transfer of care & maintenance funds currently held by Colonial Trust Company to Comerica.

Staff recommends approval of the above referenced request subject to the following condition: certification of the transfer of trust funds being received by the Department within 60 days of the Board meeting date.

MOTION: Ms. Thomas-Dewitt moved to approve the agreement subject to certification of the transfer of trust funds being received by the Department within 60 days of the Board meeting. Mr. Helm seconded the motion, which passed unanimously.

- (2) *Florida Preneed Trust Agreement*

Pursuant to ss. 497.266 and 497.268, Florida Statutes, Oaklawn Cemetery Association requests approval of the enclosed Preneed Trust Agreement with Comerica Bank & Trust, NA for use in trusting required preneed trust funds.

In conjunction with approval of the agreement, the applicant requests approval for a change of preneed trustee from Colonial Trust Company to Comerica, and for the transfer of care & maintenance funds currently held by Colonial Trust Company to Comerica.

Staff recommends approval of the above referenced request subject to the following condition: certification of the transfer of trust funds being received by the Department within 60 days of the Board meeting date.

MOTION: Mr. Brandenburg moved to approve the agreement subject to certification of the transfer of trust funds being received by the Department within 60 days of the Board meeting. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

- 23. **Trust Transfer(s)**
- A. *Kent Care of Florida, LLC, Inc., (Pensacola)*
- (1) *D/B/A: Abbey-Riposta Funeral Home (Tallahassee), D/B/A: Tallahassee Memory Gardens (Tallahassee)*

(a) Chapter 497 Preneed Funeral Trust from Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BB&T) to the Regions Bank Master Florida Preneed Funeral Trust Agreement

Kent Care of Florida, LLC, d/b/a: Abbey-Riposta Funeral Home and d/b/a: Tallahassee Memory Gardens, requests transfer of preneed funeral and cemetery merchandise funds held by Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BB&T) to the Regions Bank Master Florida Preneed Funeral Trust Agreement.

Staff recommends approval of the above referenced request subject to the following condition: certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Mr. Brandenburg moved to approve the request subject to certification of the transfers being received by the Department within 60 days of the Board meeting. Ms. Hubbell seconded the motion, which passed unanimously.

(2) D/B/A: Tallahassee Memory Gardens (Tallahassee)

(a) Chapter 497 Care & Maintenance Trust from Funeral Services, Inc. (FSI) Master Care & Maintenance Agreement (BB&T) to the Regions Bank Master Florida Cemetery Care and Maintenance Trust Agreement

Kent Care of Florida, LLC, d/b/a: Tallahassee Memory Gardens, requests transfer of cemetery care & maintenance held by Funeral Services, Inc. (FSI) Master Care & Maintenance Agreement (BB&T) to the Regions Bank Master Florida Cemetery Care and Maintenance Trust Agreement

Staff recommends approval of the above referenced request subject to the following condition: certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Ms. Huggins moved to approve the request subject to certification of the transfers being received by the Department within 60 days of the Board meeting. Ms. Zippay seconded the motion, which passed unanimously.

24. Presentation to the Board by Ms. Marcia Nesler, regarding her view that cemeteries should issue deeds rather than certificates or contracts, for cemetery spaces they sell. (Oral)

Director Doug Shropshire, Chairman Greg Brudnicki, Members of the Board, ladies and gentlemen, I'm Marcia Nesler. I'm here on behalf of the citizens of Florida who may not know that you do not get a deed. If you have a burial space, you just might get a contract, which could be altered or subject to the rules that they decide to put on there. It states that they can put roads in there, re-plot it, things like that. I feel that it is quite urgent that cemetery burial spaces or entombments be permanent for eternity and they should be protected by a deed, a registered deed. I understand that the Board has not taken any position on this situation, one way or the other, but Mr. Shropshire said one of the cons might be it costs a little more. Perhaps the purchasers of burial rights could be allowed to, if they want to pay a little more, get a deed, which could be recorded at the County records as this is supposed to be for eternity. In fact it would be nice if there could be title insurance, like when you buy a house. Not just subject to the rules of some cemeteries where they state if they happen to make a mistake they can easily move it to another location, they could re-plot it or anything. Where a deed would point out exactly what they are getting, what space, lot, section. I have a generic deed here. There is no name on it. It simply shows what really should be required by the State to protect purchasers of burial rights, by comparison of another generic contract here which really states nothing. It just simply states look at the contract. Well maybe the contract was not completely filled out, where as this one it says on the deed that the space, location and gravesite are spelled out. It is a registered deed. The State of Florida should be required to keep track of these things and issue deeds so that people do not get taken advantage of with just simply a certificate of ownership rights or contract. They need a registered deed. I would hope that the Board would consider this and make a recommendation because it is quite urgent. People don't know this. When they go out to buy a burial space, they assume they are protected. It is not until after they pay all their money they get a tiny thing that says about nothing. This is why I am urging the Board to adopt that the people are protected when they buy burial space or entombment with a deed. I would like to enter this into your record for the record. This is generic but it does show the two ways: a deed compared to simply a certificate. Thank you.

25. Chairman's Report (Oral)

None

26. Executive Director's Report

A. New Forms, Change in Location of Establishment (materials enclosed)

This goes along with previous information to the Board that approval of a change of location of these types of establishments is a ministerial act as long as they have an inspection. The forms have subsequently been revised. The \$225 fee for the inspection has been stricken from the form. The only fee associated with these forms would be the \$25 fee for issuance of a new license showing the new location. Rulemaking is being implemented to adopt these forms.

Mr. Brandenburg questioned why the \$225 inspection fee was eliminated if they are being inspected.

Mr. Shropshire stated legal counsel advises that the statute is not specific enough to justify the fee and JAPC would not approve the fee.

B. Report from Richard Baldwin, Examiner for Menorah Gardens, May '09 - July '09 (see attachments)

Informational item

C. Rules Committee Meeting set for November 4, 2009

Rules Committee has scheduled a meeting for November 4, 2009 and will follow immediately after the Board Teleconference. The specific agenda has not been published but Mr. Shropshire hopes to have it published on the website and to the Committee members within the week, in coordination with the Rule Chair, Mr. Brandenburg.

Mr. Shropshire added that there has been a meeting of the Committee on Trust Financial Issues set for November 20, 2009. Notice of the meeting was emailed out.

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

None

28. Administrative Report

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

29. Disciplinary Report

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

30. Adjournment

The meeting was adjourned at 12:11 P.M.