

**MINUTES**  
**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES**  
**December 2, 2009 - 10:00 A.M. to 5:00 P.M.**  
**Department of Financial Services**  
**2020 Capital Circle SE, Alexander Bldg #230**  
**Tallahassee, FL 32301**

**THIS MEETING IS OPEN TO THE PUBLIC**

**1. Call to Order and Roll Call**

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

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

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is December 2, 2009; the time is approximately 10:00am. This is a 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 Alexander Building in Tallahassee, FL. 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. Brandenburg, 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:**

Jean Anderson  
Jody Brandenburg, Chairman  
Lewis "Lew" Hall  
Powell Helm  
Nancy Hubbell  
Tracy Huggins  
Ken Jones  
Col. Don Stiegman  
Virginia "Ginny" Taylor  
Gail Thomas-DeWitt, Vice-Chairman

At this time, Mr. Shropshire recognized our 4 new Board members: Ms. Jean Anderson, Mr. Lew Hall, Col. Don Stiegman and Ms. Ginny Taylor.

**ALSO PRESENT:**

Doug Shropshire, Executive Director  
Anthony Miller, Assistant Director  
Allison Dudley, Board Counsel  
Thomas "Tad" David, Department Counsel  
Robyn Jackson, Department Counsel  
Mary K Surles, Department Counsel  
James Gellepis, Department Staff  
LaTonya Bryant-Parker, Department Staff  
Karen Duehring, Department Staff  
James Deason, Department Staff

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

**2. Action on the Minutes**

**A. October 7, 2009**

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on October 7<sup>th</sup>.

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

**B. November 4, 2009 – Teleconference**

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on November 4<sup>th</sup>.

**MOTION:** Ms. Gail Thomas-Dewitt moved to adopt the minutes of the meeting. Ms. Ginny Taylor seconded the motion, which passed unanimously.

**3. Disciplinary Proceeding(s)**

**A. Proposed Settlements**

**(1) Epps Mortuary, Inc. (F041896), Case No. 103974-09-FC (Probable Cause Panel A)**

Ms. Robyn Jackson stated Epps Mortuary, Inc. is a licensed funeral establishment located in Lake Wales, Florida, having been issued license number F041896. Lawrence J. Epps, Jr., a licensed funeral director and embalmer, is the Funeral Director In Charge of Epps Mortuary. On March 26, 2009, a Division Examiner conducting a routine inspection of Epps Mortuary discovered a body in the preparation room that was either improperly embalmed or not embalmed. As a result, the body—which had been in Mr. Epps' possession for approximately three months—was seeping fluids and was infested with maggots and insects. The Department issued an Emergency Order on April 22, 2009, restricting the practice of embalming at the establishment and requiring enhanced reporting regarding the handling of dead bodies. A one-count Administrative Complaint based on the March 26, 2009 inspection was filed on May 26, 2009.

In mitigation, Mr. Epps and Epps Mortuary continue to comply with all provisions of the Emergency Order and have been fully cooperative with the Department in this matter. Additionally, neither Mr. Epps nor his establishment has ever been the subject of a complaint related to the care or handling of bodies or an unsatisfactory inspection.

Epps Mortuary violated Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(h), 497.386(2), and 497.386(4), Florida Statutes; and Rule 69K-21.003(5), Florida Administrative Code. The Respondent has elected to enter into a settlement stipulation. The terms of the Settlement Stipulation for Consent Order require the Respondent to pay \$2,500 in an administrative fine, pay \$250.00 in Department costs, and be placed on two years probation. Additionally, Epps Mortuary will be responsible for ensuring that Mr. Epps is in compliance with all terms of the Settlement Stipulation for Consent Order entered in Case No. 103975-09-FC. The Settlement Stipulation also removes the restrictions imposed by the Emergency Order and provides that Epps Mortuary will voluntarily dismiss its appeal of the Emergency Order, currently pending before the Second District Court of Appeal.

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. Lawrence J Epps, Jr stated he was sorry for what had happened because of certain circumstances. The establishment makes every effort to comply with Florida Statutes and have been in business for 33 years. This was a situation that happened, which should not have. The necessary changes have been corrected. To prevent this from happening in the future, the licensee has enrolled in St Petersburg College and is scheduled to begin January 11<sup>th</sup> for 16 weeks.

Ms. Taylor questioned the circumstances which led to the body being in the embalming room for 3 months.

Mr. Epps stated the family was contacted about this person, who was properly embalmed. Mr. Epps stated that he has been embalming since 1969 and this is the first time this has happened. The family refused to take care of the body or make any further contact. Certain individuals in the community were responsible for ensuring that this person was taken care of but they never followed through with it. Time elapsed and within a couple of weeks prior to the inspection, the body went through some changes. Also, the body was found out in the elements. Mr. Epps added that he gives the bodies the most respect.

Mr. Epps stated he tried to handle the situation but was unable to obtain permission for cremation as the death certificate indicated there would be a burial. The Medical Examiner advised in order to change this to cremation, the Affidavit would have to be changed on the death certificate. There was no one authorized to make the change. The County stated they would not do it as the deceased was an illegal immigrant. When the Inspector came arrangements had already been made to bury the body. A funeral was held. The Inspector came between the transition of the body being placed in the casket, having the funeral and the body being buried.

**MOTION:** Mr. Jones moved to accept the Settlement Stipulation for Consent Order. Ms. Tracy Huggins seconded the motion, which passed unanimously.

**(2) *Epps, Lawrence J Jr (F043918), Case No. 103975-09-FC (Probable Cause Panel A)***

Ms. Jackson stated Lawrence J. Epps, Jr. is a licensed funeral director and embalmer in the State of Florida, having been issued license number F043918. Mr. Epps is the Funeral Director In Charge of Epps Mortuary, Inc., a licensed funeral establishment located in Lake Wales, Florida. On March 26, 2009, a Division Examiner conducting a routine inspection of Epps Mortuary discovered a body in the preparation room that was either improperly embalmed or not embalmed. As a result, the body—which had been in Mr. Epps' possession for approximately three months—was seeping fluids and was infested with maggots and insects. The Department issued an Emergency Order on April 22, 2009, suspending Mr. Epps' right to embalm and imposing other restrictions on the establishment. A one-count Administrative Complaint based on the March 26, 2009 inspection was filed on May 26, 2009.

In mitigation, Mr. Epps continues to comply with all provisions of the Emergency Order and has been fully cooperative with the Department in this matter. Additionally, neither Mr. Epps nor his establishment has ever been the subject of a complaint related to the care or handling of bodies or an unsatisfactory inspection.

Mr. Epps violated Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(h), 497.386(2), and 497.386(4), Florida Statutes; and Rule 69K-21.003(5), Florida Administrative Code. The Respondent has elected to enter into a settlement stipulation. The terms of the Settlement Stipulation for Consent Order require the Respondent to pay \$2,500 in an administrative fine, pay \$250.00 in Department costs, and be placed on two years probation. As a special condition of the probation, Mr. Epps will successfully complete a four-credit class and clinical lab course on embalming. The Settlement Stipulation also removes the restrictions imposed by the Emergency Order and provides that Mr. Epps will voluntarily dismiss his appeal of the Emergency Order, currently pending before the Second District Court of Appeal.

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.

**MOTION:** Mr. Helm moved to accept the Settlement Stipulation for Consent Order. Col. Don Stiegman seconded the motion, which passed unanimously.

**(3) *Poitier Funeral Home (F040569), Case No. 97540-08-FC (Probable Cause Panel B)***

Mr. Tad David stated Poitier Funeral Home, Inc. ("Respondent") is currently licensed in this state as a Funeral Establishment. On April 20, 2009, the Department filed a three-count administrative complaint against Respondent. Counts I and II allege that Respondent filed false Bodies Handled Reports for the months of September and October of 2007. Count III alleges that Respondent operated without a Funeral Director in Charge and/or failed to notify the Board of Funeral, Cemetery and Consumer Services' office of the designation of Respondent's Funeral Director in Charge as required by the Funeral, Cemetery and Consumer Services Act.

The Respondent appears to have violated Sections 497.152(4)(g), 497.380(7) and 497.382(1), F.S. and Rules 69K-20.001(1)(d), 69K-20.001(1)(g) and 69K-21.008, FAC. The Respondent has elected to enter into a Settlement Stipulation and waive its right to a hearing in this matter. The terms of the Settlement Stipulation for Consent order require the Respondent to pay \$1,500 as an administrative fine, pay \$250 in Department costs and have is license placed on two years probation.

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

Mr. David stated that he contacted several individuals at the funeral home regarding the issues with the Bodies Handled Reports and has explained to them what the issues were. It appears they understand what has to be done to file an accurate report. The owner, Mr. Poitier, and one of the FDICs were planning to attend, but he took sick at the beginning of the week and was unable to make the meeting. Mr. Poitier has signed the Settlement Stipulation and agrees to all of the terms.

Ms. Thomas-Dewitt questioned who the FDIC was when the allegations took place.

Mr. David stated it appears to have been Mr. Walter Wilson.

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

Col. Stiegman recused himself as he served on Probable Cause Panel B at the time the case was presented.

**MOTION:** Mr. Jones moved to accept the Settlement Stipulation for Consent Order. Mr. Helm seconded the motion, which passed unanimously.

**(4) *Poitier Funeral Home (F040885), Case No. 97544-08-FC (Probable Cause Panel B)***

Mr. David stated Poitier Funeral Home, Inc. ("Respondent") is currently licensed in this state as a Funeral Establishment. On April 13, 2009, the Department filed a two-count administrative complaint against Respondent. Counts I allege that Respondent filed false Bodies Handled Reports for the months of September 2007 with the Board. Count II alleges that Respondent failed to notify the Board of Funeral, Cemetery and Consumer Services' office of the designation of Respondent's Funeral Director in Charge as required by the Funeral, Cemetery and Consumer Services Act.

The Respondent appears to have violated Sections 497.152(4)(g), 497.380(7) and 497.382(1), F.S. and Rules 69K-20.001(1)(d), 69K-20.001(1)(g) and 69K-21.008, FAC. The Respondent has elected to enter into a Settlement Stipulation and waive its right to a hearing in this matter. The terms of the Settlement Stipulation for Consent order require the Respondent to pay \$1,500 as an administrative fine, pay \$250 in Department costs and have is license placed on two years probation. Additionally, Bernard C Poitier, Respondent's owner, must complete three hours of continuing education in ethics.

The Department's recommended penalty is within the disciplinary guidelines, pursuant to Chapter 69K-30, FAC 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.

Col. Stiegman recused himself as he served on Probable Cause Panel B at the time the case was presented.

**MOTION:** Mr. Helm moved to accept the Settlement Stipulation for Consent Order. Ms. Taylor seconded the motion, which passed unanimously.

**B. *Recommended Order for Issuance of Final Order***

**(1) *Emerald Coast Funeral Home, Case No. 97372-08-FC (Proposed Exceptions) (Probable Cause Panel A)***

Ms. Allison Dudley stated this hearing is being conducted pursuant to 120.569 and 120.57(1), Florida Statutes. The purpose of this proceeding is to consider the recommended order issued by the administrative law judge in this cause.

No new evidence will be admitted because this proceeding is not a de novo review. It must be confined to the record together with the recommended order.

The Board may adopt the recommended order as its final order or the Board may reject the administrative law judge's Findings of Fact or Conclusions of Law and interpretation of administrative rules over which it has substantive jurisdiction.

If you reject any Conclusion of Law, you must state with particularity the reasons for rejecting or modifying such Conclusion of Law or interpretation of administrative rules. You must also make a finding that the substituted Conclusion of Law is as or more reasonable than that which was rejected or modified.

If you wish to reject any of the Findings of Fact, you may not do so unless you determine from a review of the complete record that the factual findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Rejection or modification of Conclusions of Law may not form the basis for rejection or modification of Findings of Fact.

If you wish to alter the recommended penalty, you must state with particularity the reasons for the departure and you must cite to the record in justifying the action.

Since exceptions have been filed (in one of these cases) to the Conclusions of Law, the procedure will be that each party will be allowed a brief opening statement and then the Board will consider the exceptions. Once the exceptions have been considered, the Board should make the appropriate motion to deal with the Findings of Fact and the Conclusions of Law in the recommended order. Finally, the Board will consider and resolve the issue of what penalty, if any, is appropriate.

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

Mr. David stated that the entire record from the underlying DOAH hearing should have been provided in the Board packet.

The Chair confirmed that all Board members had received the information.

Mr. David stated included in that packet were the 3 exceptions to the Recommended Order and 1 exception to the recommended penalty, filed by the Department. The violations in this case as detailed in the Recommended Order and the Department's exceptions can be summarized as followed. The violations found by the Administrative Law Judge (ALJ) in this case center on the change in ownership of Emerald Coast Funeral. The current owner, Carriage Cemetery Services, Inc is a Texas corporation with its principal place of business in Houston, TX. The former owner, Carriage Services of Florida, Inc was a Florida corporation with its principal place of business in Ft Myers, FL. On May 4, 2000 these 2 corporations merged. As a result of the merger, the Florida license holder, Carriage Services of Florida, ceased to exist. As you know, licenses under the Florida Funeral, Cemetery and Consumer Services Act are not transferable. Carriage Services of Florida was the license owner, therefore when Carriage Services of Florida ceased to exist, the surviving corporation, Carriage Cemetery Services, was not licensed. Upon the merger, Carriage Cemetery Services did not file the appropriate application and fees nor did they submit to the requisite inspection. This did not constitute a scrivener's error. Since May 4, 2000, Carriage Cemetery Services, Inc has continued to represent the license of Carriage Services of Florida as its own. This is improper and is a violation as found by the ALJ. The Administrative Complaint was served upon the Respondent on February 20, 2009. The hearing in this matter was held on July 9, 2009; 9 years after the change in ownership and at least 9 months after Emerald Coast received notice of the deficiency by way of the Administrative Complaint. Emerald Coast is still operating by utilizing the license obtained and owned by Carriage Services of Florida, an entity that does not legally exist. At no time has Carriage Cemetery Services filed or attempted to file an application for change of ownership with the Division. In conclusion, the Department renews and reiterates its position taken in the exceptions filed in this case and each point made in this presentation are cited to the record in those exceptions.

Mr. Derek León stated he would be representing Emerald Coast Funeral Home and Mr. Jeffery Kevin Watts. Mr. León, on behalf of Emerald Coast and Mr. Watts, requested that the Board accept The ALJ's Recommended Order as a Final Order of the Board. It is incumbent upon the Board that it reviews the entire record of the case before as here a penalty can be increased against a license holder. There were 3 pending counts brought against Emerald Coast and Mr. Watts. Count I

against Emerald Coast and Mr. Watts was the most serious of the allegations. It was two identical counts against the individual funeral director and Emerald Coast that alleged that Emerald Coast and Mr. Watts had failed to treat human remains with dignity and respect as required by law. After a full day evidentiary hearing, after testimony from 8 witnesses including 2 experts, and reviewing approximately 20 or so exhibits, the only textbook used by all 49 Colleges of Mortuary Science being the predominant piece of evidence clearly established and as The ALJ recognized...

Mr. David objected as the exceptions have not been filed regarding the Count that Mr. León is going into. The Department did file any exceptions in the Watts case and did not file any exceptions related to that particular Count even in the Emerald Coast Funeral Home case, therefore, it is irrelevant.

Ms. Dudley stated she understood Mr. David's objection but the Board should allow Mr. León to continue without allowing him to get too far into things that are irrelevant, but allowing him to explain the background into all of this.

Mr. León stated that the only purpose of this is background because it is incumbent upon the Board to review the entire record. Before the Board is not only the adoption of The ALJ's Recommended Order on Count II but also the adoption of Counts I, as to both Mr. Watts and Emerald Coast. As previously mentioned, after a full day evidentiary hearing, after testimony from 8 witnesses including 2 experts, and reviewing approximately 20 or so exhibits, the only textbook used by all 49 Colleges of Mortuary Science being the predominant piece of evidence, The ALJ dismissed both Counts I against Mr. Watts and Emerald Coast, which can be found on Page 11 Paragraph 29 of the Recommended Order, characterizing the arguments and the allegations against Mr. Watts and Emerald Coast as absurd (Page 17, Paragraph 48), dispatching with the remaining evidence as being neither creditable nor competent on Count I (Page 18, Paragraph 49).

Given these findings, given the tenor of that full evidentiary hearing, Mr. León stated that he was equally surprised to be before the Board arguing exceptions to Count II. Count II was the less serious of the allegations, the one put on the back end of the Administrative Complaint, the one having to do with licensure, a very important requirement under Florida law, but certainly unbalanced in respect to Counts I and II. On this issue Mr. León stated he only had a few points to make and requested that the Board consider these. The question of licensure governed by 497.380(12) simply states a change in ownership of a funeral establishment shall be promptly reported pursuant to the procedures established by Rule and shall require relicensure of the funeral establishment, including re-inspection and payment of applicable fees. It is a question of law. The purpose of this statute is obviously to give the Department an opportunity to come in, find out who the new owners are and ensure they know what they are doing and are not a danger to the public or the consumers that are buying their services. The new owner needs to be licensed. That is the purpose of the statute. It is not a "gotcha" statute. It is not intended to drudge up 9 years of a scrivener's error in the application process that was filed to go back retroactively 9 years and seek to impose a greater penalty than the letter of reprimand suggested by The ALJ. The evidence during the hearing was totally undisputed. Carriage Funeral Holdings, Inc. is the ultimate parent and the hierarchy. In 1997 it was the parent, in 2000 it was the parent and 2009 it is the ultimate parent with the same owners, the same shareholders, the same individuals that have operated Emerald Coast. Carriage Funeral Holdings owned Carriage Services of Florida. In 2000, that company merged out of existence. It merged with Carriage Cemetery Services, Inc. An intermediate company merged out of existence, but the ultimate owner stayed exactly as it was before. During trial, Emerald Coast stated they were unaware of the scrivener's error that had caused the lack of notice from the merger that occurred and did not provide the appropriate notice required by the Board, but nevertheless the statute only requires a change of ownership be promptly known to the Department. So Emerald Coast argued because its ultimate parent, the owners that have operated this business since 1997 never changed a change in ownership was not required. The ALJ herself noted that the statute was unclear and does not define what a change in ownership is. The ALJ nevertheless disagreed and stated it was a minor violation of law, so in 2000 Emerald Coast should have notified the Department of the change in intermediate owner, so a letter of reprimand was recommended.

Mr. León stated the next point is also significant because it relates to the severity of the violation. Mr. David suggested that this has been going on for 9 years. Emerald Coast has a valid license. It is licensed to perform the services that it has performed under this statute. Nothing in the statute, nothing issued by the Department, nothing anywhere has suggested that the license has become invalid or that Emerald Coast has been operating without a valid license. Emerald Coast's wall displays a license that has been issued in the name of Emerald Coast Funeral Home, issued October '09 and is valid until November 30, 2010. Emerald Coast has paid its renewal fees that have been accepted by the Department, has been the subject of numerous inspections in the last 9 years, never once raising an issue regarding the intermediate ownership change, and it has a valid license to this day. Something suggesting that a license was invalidated automatically 9 years ago is simply

inaccurate. The Judge found that the license holder remains the same. Emerald Coast Funeral Home has a valid license. Nothing she found affected the validity of that license. Certainly the statute does not suggest that a failure to notify the Board of a change in ownership invalidates a license automatically. The Administrative Complaint, Count II, Paragraph 4 states "at all times relevant to the allegations of this Administrative Complaint you, Emerald Coast Funeral Home, were licensed as a funeral establishment and as an apprentice intern training agency pursuant to the provisions of Chapter 497." This is the Department's own allegations stating that Emerald Coast, as of February '09, was a licensed funeral home. Nothing has changed or suggests that this is now incorrect. There are no allegations in any of the evidence before the Board that suggests that the license was somehow invalidated. That is a critical point because the Department is requesting the Board to increase the recommended penalty of a letter of reprimand because Emerald Coast Funeral Home has been operating without a license for 9 years. That is simply not true. For these reasons, Mr. León urged the Board to adopt The ALJ's Recommended Order in its entirety as the Final Order of the Board. Mr. León asked the Board to note in particular the Finding of Facts by The ALJ that there was no evidence that Emerald Coast intentionally elected not to notify the Department regarding its change in ownership or that it was trying to hide such change. The very first time the licensee became aware of the scrivener's error (Page 19, Paragraph 53) was in fact when they were served with the Administrative Complaint.

Mr. David stated if the Board would review the record and go to the transcript, Page 159 Line 5 thru Page 160 Line 15 and in the Recommended Order at Paragraph 4, the Board would see that the only scrivener's error revealed on the record was an error in Carriage Services of Florida's 1998 change of ownership application, where the word "Funeral" was inserted. They did not submit an application in 2000 therefore there could not have been a scrivener's error. The Department is alleging they did not submit anything notifying of the change of ownership. The requirement in the law is not that the Department/ Division be notified, but it lays out the procedure by which they should be notified: complete the application, pay the fees and submit to a reinspection. The Respondent is asking the Board to ignore the corporate identity and structure that they set up. The validity of the Conclusions of Law is up to the Board. Mr. León pointed out they have a license on their wall. That license is owned by Carriage Services of Florida. The allegation in the complaint is that they represented the license of another as their own. Mr. León and The ALJ seemed to concentrate on there was no intent. Intent is not required. The statute states that the Division shall be notified by this procedure. Mr. León read part of Paragraph 53 from the Recommended Order, but Mr. David requested to read another part of Paragraph 53 which reads "however, irrespective of an interpretation of federal tax law, the evidence clearly establishes that Carriage Services of Florida was the original owner of Emerald Coast and was merged out of existence in 2000." At that point, a change of ownership occurred and Emerald Coast should have notified the Department of the change of ownership. Emerald Coast did not submit a change of ownership application in violation of ss. 497.380(12)(a) and 497.152(1)(a), which is the Conclusion of Law found by the ALJ. The validity of a license under these statutes is a Conclusion of Law that the Board may interpret under the standards outlined by Ms. Dudley.

Ms. Dudley stated that Mr. David has requested, at least for one of the exceptions, for the Board to find that no valid license existed. Ms. Dudley questioned whether Mr. David would agree that is a Finding of Fact as well.

Mr. David questioned whether Ms. Dudley is referring to the validity of the license.

Ms. Dudley stated it may be mixed with the Conclusions of Law but it still appears to be a Finding of Fact.

Mr. David agreed.

Ms. Dudley questioned whether Mr. David could point to the record where there is competent substantial evidence that the license did not exist.

Mr. David referred to testimony by Ms. Karen Duehring (Page 140 Line 4 thru 141 Line 2 of the hearing transcript).

Ms. Dudley stated her reason for asking is if the Department decides to take the position that the license did not in fact exist, those pages would have to be cited in the record. The Board should go through each requested exception and hatch out what Mr. David is asking for and see whether the Board agrees with each one, starting with Page 6. The first exception The Department is requesting is an exception to Paragraph 6 of the Recommended Order. On Page 5 of the exception, areas have been highlighted that the Department takes issue with. Mr. David indicated these are labeled Findings of Fact when in reality there are some Conclusions of Law included so I may be fine to move those Conclusions of Law to a different part of the Final Order and making a finding that those are not actually Findings of Fact. The second issue is that there are a number of

contradictory statements, in the Department's opinion, in the Recommended Order. The ALJ found that Carriage Services ceases to exist and also found that Emerald Coast did not file such a notification, but in her analysis did not find that was a very big deal. The ultimate issue for the Board to decide is whether you want to overturn the ALJ's findings on these issues. The main issue is the change of ownership and whether Emerald Coast failing to file the proper notification means that their license did not exist anymore.

Mr. Jones questioned that Emerald Coast was still paying their renewal fees, which were still being accepted by the Department for licensure, up until today.

Ms. Dudley stated that is her understanding.

Ms. Thomas-Dewitt added there was still a change of ownership.

Ms. Dudley agreed. The big issue is when someone changes ownership and does not file the necessary paperwork, whether that necessarily means they are practicing without a valid license. The Board will have to decide whether that is the Conclusion of Law you want to take from this issue concerning change of ownership.

Ms. Thomas-Dewitt stated she would take that stand. If there is a change of ownership that is not reported to the Department, regardless of whether the fees are being paid, they are still operating under the current establishment.

Ms. Huggins stated she understands that but it's the same owner with a different name. It would be a lot clearer if it was changing hands completely between 2 separate companies.

Ms. Dudley stated Ms. Huggins brings up a good point. Ms. Dudley questioned the definition of change in ownership.

Ms. Thomas-Dewitt stated there was a change of name.

Mr. Jones stated that the statute states change of ownership.

Ms. Dudley concurred.

Col. Stiegman questioned whether the Respondent agrees that this should have been done but there was an oversight or whether they disagree that this was required.

Mr. León stated the Respondent does not believe a change of ownership was required. This issue was contested but the ALJ found that this was required and recommended a letter of reprimand as the penalty.

Mr. Helm questioned the Division's position.

Mr. Shropshire stated that the Division's position is that the statute states it is a change in ownership and there was a change in the immediate owner. There was no change in ultimate control but there was a change in ownership. The prosecution's position is that the new owner was representing themselves under the old license.

Ms. Dudley stated for the purposes of this Order, we would have to cite to the record which would be page 139 – 147 of the transcript, which is the testimony of Ms. Duehring.

**MOTION:** Col. Stiegman moved to accept the exception and change the Conclusion of Law and Finding of Fact that the license did not in fact exist per pages 139 – 147 of the transcript, which is the testimony of Ms. Duehring. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. David stated in the second exception, Paragraph 53 of the Recommended Order echoes a finding of Paragraph 56 that Carriage Services of Florida, Inc was the original owner of Emerald Coast and was merged out of existence in 2000. That fact alone, as found in the Recommended Order, would only support the conclusion that the new owner of Emerald Coast was representing the license issued to another as their own.

Ms. Dudley stated that the violation alleged, s. 497.152 was not found by the ALJ. Now that the Board has found that they were operating without a valid license, the Board has to determine whether it agree with the interpretation that they were actually operating the license of another entity and whether there is competent substantial evidence to support that charge.

**MOTION:** Col. Stiegman moved to accept the second exception to 497.152(5)(c) that Emerald Coast did represent themselves with someone else's license, Pages 139 -147 of the transcript, Paragraphs 53 and 56 of the Recommended Order. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. David stated that the 3<sup>rd</sup> exception is related to the 2<sup>nd</sup> exception, because it was stated as a Conclusion of Law in the Recommended Order that Carriage Cemetery Services had not violated or that the violation alleged of 497.152(5)(c) should be dismissed.

Ms. Dudley questioned whether this was just done in exception 2.

Mr. David stated that exception 2 found the basis for the violation, but another paragraph had to be addressed in which the ALJ stated the violation of 497.152(5)c should be dismissed. The issue is that it cannot be dismissed and found as a violation.

**MOTION:** Ms. Thomas-Dewitt moved to accept the third exception. Mr. Jones seconded the motion, which passed unanimously.

**MOTION:** Mr. Helm moved to place the Conclusions of Law, Paragraph 6, to a different part of the Recommended Order. Ms. Thomas-Dewitt seconded the motion, which passed with one dissenting vote.

Ms. Dudley stated at this point it would be appropriate to discuss the penalty, as there is a recommendation for a reprimand from the ALJ.

**MOTION:** Ms. Huggins moved to accept the third exception. Col. Stiegman seconded the motion, which passed unanimously.

**MOTION:** Mr. Jones moved to accept all other parts of the Recommended Order that the Department did not take exception to. Ms. Huggins seconded the motion, which passed unanimously.

**(2) *Watts, Jeffery Kevin, Case No. 97373-08-FC (Probable Cause Panel A)***

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

Mr. David stated in this matter the Recommended Order was filed by the ALJ. The Department did not take exception to the ALJ's finding on the portion of the Recommended Order that applied to Mr. Watts.

Mr. León stated as to Counts I against Mr. Watts and Counts I against Emerald Coast, there have been no exceptions filed. The Respondent's position is that the Board should adopt the ALJ's Recommended Orders as to each of those Counts as its Final Order.

**MOTION:** Ms. Huggins moved to accept the Recommended Order. Ms. Taylor seconded the motion, which passed unanimously.

**C. *Request(s) for Modification of Consent Order***

**(1) *Mathelier, Marie M (F023426), Case No. 103365-09-FC (Probable Cause Panel B) and Monique & Loriston Community Funeral Home (F040153), Case No. 103367-09-FC (Probable Cause Panel B)***

On November 4, 2009, the Division received a request from Marie Monique Mathelier, requesting that the Board allow her to pay administrative fines and costs (related to the above-referenced cases) in installments. She indicated that she was unable to pay in full due to the slow economy.

The Settlement Stipulations for Consent Order were approved by the Board at the October 7, 2009 Board Meeting. The Consent Orders were issued on October 9, 2009. Ms. Mathelier and her attorney, Ms. Wendy Wiener, have been advised that her request will be presented at the December 2, 2009 Board meeting. If, after Ms. Mathelier's or her representative's presentation of this matter, the Board agrees to allow payment of the fines and costs in installments, the Division would recommend the following payment plan:

- (1) \$4000 initial payment due the day of the Board meeting (\$2000 for each case.
- (2) \$636.36 due the last business day for the months of January, February, March, April, May, June and July 2010.
- (3) \$636.37 due the last business day for the months of August, September, October and November 2010.
- (4) Amended Orders to memorialize any installment plans approved by the Board.

The Division has communicated in writing this proposed plan to Ms. Mathelier and Ms. Wiener. The Division recommends approval of the request.

Mr. Helm questioned whether there are any stipulations if the Respondent is late with any payment.

Mr. Anthony Miller stated currently, there is no stipulation. However, if it pleases the Board, the Division could add a stipulation.

Mr. Shropshire suggested if the Respondent would accept a stipulation that if any payment is late, 30 days or more, the license would be suspended until payment is received. Mr. Shropshire questioned whether this would be an acceptable stipulation to the Board and the Respondent.

Ms. Wiener stated this would be consistent with other Orders of the Board where fines are due so that would be acceptable to the Respondent.

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

Col. Stiegman recused himself as he served on Probable Cause Panel B at the time the case was presented.

**MOTION:** Mr. Helm moved to accept the Modification of the Consent Orders with the stipulation that if any payment is late, 30 days or more, the license would be suspended until that payment is received. Mr. Jones seconded the motion, which passed unanimously.

Ms. Wiener stated that she has \$4000 in money orders in hand and would process that through the Department of Financial Services at the Larson Building.

#### **4. Informal Hearings, Section 120.57(2), Facts Not Disputed**

##### **A. Disciplinary Proceeding**

##### **(1) *Brant Funeral Chapel (F040808), Case No. 103066-09-FC (Probable Cause Panel B)***

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

Col. Stiegman recused himself as he served on Probable Cause Panel B at the time the case was presented.

Ms. Mary K Surles stated the Administrative Complaint in this case alleges violations of Sections 497.152(1)(a), (1)(b), (5)(d), (5)(f), (10)(e), (11)(a) and (14)(b)1, F.S.

On April 30, 2009, the Department filed an Administrative Complaint alleging facts that Brant Funeral Services, LLC d/b/a Brant Funeral Chapel ("Respondent") received three (3) life insurance policies, in the respective amount of \$3500, \$1000 and \$5000, which were to be applied to funeral expenses of L.M. Respondent did not apply the life insurance policy in the amount of \$3500 nor did Respondent return the life insurance policy to the beneficiary of L.M. Respondent also operated a funeral establishment, Moody-Brant, located at 945 East Broadway, Ft Meade, Florida that had not been issued a funeral establishment licensure by the Department to operate as a "branch office" of Brant Funeral Chapel.

Brant Funeral Chapel is a fictitious name owned by Brant Funeral Service, LLC. The Respondent, Brant Funeral Chapel, located at 404 West Palmetto Street is owned by Brant Funeral Service, LLC, and Troy Brant is the manager of the limited liability company, Brant Funeral Services, LLC, that owns Respondent.

The Administrative Complaint was received by Troy Brant, in person, on July 31, 2009. In the Administrative Complaint were Notices of Rights informing the Respondent that failing to submit a response, within 21 days after the receipt date of the Administrative Complaint, would constitute a waiver, by the Respondent, of the right to a proceeding on the matters alleged in the Administrative Complaint and an Order by the Board would be entered against Respondent.

The Department is not aware of receiving a response in this matter and 21 days have passed for receiving a response. Therefore, the Department requests the Chairman of the Board entertain a motion finding that the Respondent was served with an Administrative Complaint containing Notice of Rights, that no response has been received by the Department and Respondent has waived its rights to a proceeding involving disputed issues of material facts in this matter.

**MOTION:** Ms. Thomas-Dewitt moved to affirm the Respondent waived the right to elect a method of resolution of this matter. Mr. Hall seconded the motion, which passed unanimously.

Having found the Administrative Complaint was properly served and no response received, the Dept. believes it is appropriate at this time for the Chair to entertain a motion adopting the factual allegations contained in the Administrative Complaint as Findings of Fact in this case.

The Department contends that the Board's Findings of Fact support a finding of a violation of Florida Statutes as charged in the Administrative Complaint.

**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. Anderson seconded the motion, which passed unanimously.

The Department believes that it is appropriate at this time to entertain a motion adopting the alleged violations charged in the Administrative Complaint as the Conclusions of Law in this case and finding the Respondent in violation of the Florida Statutes. The Department also offered exhibits, a copy of which was previously furnished to the Board and to the Respondent, into evidence to establish prima facie case for the violations alleged in this Administrative Complaint.

**MOTION:** Ms. Thomas-Dewitt moved to accept the charged statutory violations in the Administrative Complaint as the Conclusions of Law of the Board. Mr. Jones seconded the motion, which passed unanimously.

The Department recommends revocation and also finds aggravating circumstances pursuant to disciplinary Rule 69K-30.001(2), danger to the public. There was actual harm to the consumer by not giving the insurance policy back, which was not credited to the expenses of the funeral as reflected in the documents provided. There was a percentage amount that was to be taken. It indicates that a \$5000 amount would be received for funeral expenses when in fact it was not, based on the percentage to process the insurance policy. The deterrent effect of the penalty imposed basically is the Department does not want this action to repeat itself, as it actually did cause harm to the consumer. There have been no efforts of rehabilitation shown. In fact, Mr. Brant has not responded to the consumer's written letter that was submitted to the funeral establishment. There was actual knowledge of the licensee pertaining to the violations based upon written notice received by the funeral establishment from the complainant in this matter.

The Chair questioned whether there was anyone present representing the Respondent.

There was a negative response.

**MOTION:** Ms. Thomas-Dewitt moved to accept the penalty of revocation with aggravating circumstances for reasons stated by the Department. Mr. Hall seconded the motion, which passed unanimously.

Mr. Hall stated that the affidavits discuss the branch in Ft Meade with the unlicensed individual operating that branch, to whom has purchased it since then. The documentation indicates he was personal friends with the family. Therefore, he was

instructed by Mr. Brant to meet and continue to conduct funerals. This person has since purchased that problem. Mr. Hall requested that the Division submit a letter to branch advising they have to be in school. This individual was in school, had three classes, but he is not an intern.

The Chair questioned whether Mr. Hall is relating to unlicensed activity.

Mr. Hall responded yes. There is an FDIC. Just as the owner, he has the right to own the business, but he still cannot see families. He is not an apprentice so he does not have the right to work under anyone else's license.

The Chair questioned whether Mr. Hall is requesting a letter of guidance be sent by the Division.

Mr. Hall responded yes.

Mr. Shropshire stated that the Division would look into the matter and send the appropriate letter.

**(2) *Creal Funeral Home, Inc. (F040554), Case No. 102451-09-FC (Probable Cause Panel B)***

Ms. Jackson stated the Administrative Complaint in this case alleges violations of Sections 497.151(2), 497.152(1)(a), 497.152(1)(b), 497.152(4)(g), 497.152(4)(h), 497.152(5)(d), 497.152(9)(e), 497.152(12)(f), 497.152(14)(a), 497.157(1), 497.380(6), and 497.382(1), Florida Statutes; and Rules 69K-20.001(1)(d), 69K-20.001(1)(g), 69K-21.003(1), 69K-21.003(5), 69K-21.003(7), 69K-21.005(1), and 69K-21.006, Florida Administrative Code.

The circumstances of this case are The Respondent is a licensed funeral establishment located at 1940 7<sup>th</sup> Avenue, St. Petersburg, Florida. On September 26, 2008, Division Examiners conducted a routine inspection of Creal Funeral Home and found numerous violations, including an unsanitary and inadequately stocked preparation room, licenses not displayed as required by law, lack of a complaint log or procedure for handling complaints, employing an embalmer without a valid license, casket prices improperly displayed, and no written agreements for services. Many of the violations noted during the September 26, 2008 inspection were previously noted during inspections in March 2008, May 2007, and June 2006. Additionally, it was found that Mr. Creal, funeral director in charge, failed to file the required Monthly Reports of Cases Embalmed and Bodies Handled from January 2003 through December 2008.

Service of this AC was obtained by publication on August 7, 2009, August 14, 2009, August 21, 2009, and August 28, 2009 in the St. Petersburg Times.

As of this date, Respondent still has not filed an Election of Proceeding form or any other documentation in this case to dispute the allegations contained in the Administrative Complaint. The Department would ask that the Board at this time grant the Department's pending Motion for Determination of Waiver, filed on November 10, 2009, finding that the Department properly served Respondent with the Administrative Complaint, no timely response was received by the Department, and that Respondent has waived the right to elect a method of resolution of this matter.

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

Col. Stiegman recused himself as he served on Probable Cause Panel B at the time the case was presented.

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

Having found the Administrative Complaint was properly served and no response received, the Dept. believes it is appropriate at this time for the Chair to entertain a motion adopting the factual allegations contained in the Administrative Complaint as Findings of Fact in this case.

**MOTION:** Mr. Helm moved to affirm that the factual allegations as alleged in the Administrative Complaint are the Findings of Fact to be found in this case. Mr. Jones seconded the motion, which passed unanimously.

Mr. John Rudolph stated that Mr. Creal is here to answer any questions that the Board may have. Being in a position where the facts cannot be contested, Mr. Rudolph requested to speak about what went on. The Board, at one of its previous meetings, revoked the license of Mr. Creal's son stating that his son was embalming without a license. This was based on an examination report where the Examiner saw the son come out of the embalming room, and then the Examiner noticed there was a trocar in the body. The son was found to have been embalming.

Mr. Rudolph questioned whether Mr. Creal ever authorized his son or knew that his son was embalming.

Mr. Shropshire stated if those types of remarks are going to be made, it would be appropriate to swear Mr. Creal in. Ms. Jackson objected as this case has already been considered by the Board. If the Board would like to consider this kind of testimony in mitigation, that would be appropriate. However, as to the fact of whether or not Mr. Creal Jr was embalming, the time for contesting that fact has passed.

Ms. Dudley questioned whether Mr. Rudolph is offering this as mitigation.

Mr. Rudolph responded that this is all mitigation.

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

Mr. Robert Creal Sr answered "I do."

Mr. Creal Sr stated he thought the Inspector was using his judgment. Just because he was on the premises does not mean he was embalming. Mr. Creal stated that his son is sick and he has been dealing with it. Some of the facts leading up to this have been oppression and disgust, but he was not embalming. To be coming out of the embalming room did not mean he was embalming. The Inspector complained about how he was dressed and how I was dressed, but that really did not prove the fact that he was actually embalming. The Inspector also mentioned "blood spattered walls," but the way our embalming room is constructed, there is no way for blood to spatter the walls as each table was at least 6' - 8' away from the wall. There were some weather deteriorations that caused the ceiling to sink, which was repaired. There was a flush-type sink, which was a special unit that was broken. It took some time to find and locate replacement, but it was replaced. Ventilation was restored and the establishment concentrated on trying to serve its families.

Mr. Creal Sr added that he worked for other funeral homes for 15 years prior to getting into the business. Following his initial ownership, he had an 18-month court action and was able to relocate and build a new facility, which we practice out of and have expanded over a period of years. This facility has been dedicated to the alleviation of grief for the families and has never knowingly turned a family down for service if they have put forth any kind of effort. Mr. Creal Sr feels the community would be very disappointed if his business was eliminated. Mr. Creal Sr apologized and requested the Board's consideration to consider some of the problems and facts that lead to violations that require time for a resolution.

The Chair stated that over the years, inspection after inspection, deficiencies were found and were not corrected. The Chair questioned Mr. Creal's intentions for the future to ensure total compliance.

Mr. Creal Sr stated at this point he would do anything necessary to be in compliance with the laws.

Mr. Rudolph requested that Mr. Creal Sr address the role his wife played in the funeral home.

Mr. Creal Sr stated he and his wife were partners. She was a retired teacher. Once married, she worked with the funeral home after hours and she was his right hand. They were together for 50 years prior to her passing, which created a problem in the operations of the business. Dealing with a sick son has also been a problem. There are experiences and instances that should not be divulged in public as they would destroy other peoples' lives. Mr. Creal Sr stated that his wife was very active in the business. Mr. Creal Sr added that he inadvertently set his problems aside to try and serve the public and there have been no complaints from the public being served.

Mr. Hall questioned whether anyone tried to block or impede the Inspector from entering the prep room when Mr. Creal Jr was there.

Mr. Creal Sr stated that was incorrect. No one tried to stop or impede the Inspector from entering the preparation room. There was an instance where I came out of the door and the Inspector was passing the door, but he was never stopped or hindered. Mr. Creal Sr stated he always cooperated with the Inspector. Mr. Creal Sr requested a chance to correct any deficiencies so that he may continue to operate and fulfill his life's purpose.

The Chair questioned whether Mr. Creal Sr is the Funeral Director in Charge.

Mr. Creal Sr answered yes.

The Chair questioned whether there are any other funeral directors on staff.

Mr. Creal Sr stated there is a part time funeral director.

Mr. Rudolph questioned whether Mr. Creal Sr would be willing to complete the missing Bodies Handled reporting forms and submit them to the Department.

Mr. Creal Sr stated that he would, but it will take some time to reconstruct the records.

The Chair questioned the Respondent's approximate call volume.

Mr. Creal Sr stated at one point it was up to 300, but right now he is down to about 100.

Ms. Taylor questioned whether the Respondent has any immediate plans to bring someone in to assist and correct the problem in hand.

Mr. Creal Sr stated that he does have a part-time Funeral Director/Embalmer.

Ms. Taylor questioned the plans for a full-time person to accept that responsibility.

Mr. Creal Sr stated he would if he could find someone.

Mr. Helm questioned whether Mr. Creal Sr has done anything at this point to correct the deficiencies.

Mr. Creal Sr answered yes.

Mr. Helm questioned Mr. Creal Sr.'s records.

Mr. Creal Sr stated he has adequate records of contracts and authorization forms.

Mr. Rudolph questioned whether it is true that Mr. Creal Sr could not account for at-need contracts.

Mr. Creal Sr stated there may have been one or two, but every family signs a contract or agreement.

Mr. Jones questioned whether Mr. Creal Sr has since submitted any monthly reports.

Mr. Creal Sr stated that he is working on them but has not submitted any yet.

Mr. Shropshire stated he understood that the Respondent has talked to the Prosecutor regarding the recommended penalty and is in agreement with that penalty and would not object.

Ms. Jackson stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Florida Statutes as charged in the Administrative Complaint.

The Department believes that it is appropriate at this time to entertain a motion adopting the alleged violations charged in the Administrative Complaint as the Conclusions of Law in this case and finding the Respondent in violation of the Florida Statutes.

**MOTION:** Ms. Thomas-Dewitt moved to accept the charged statutory violations in the Administrative Complaint as the Conclusions of Law of the Board. Mr. Jones seconded the motion, which passed unanimously.

Ms. Jackson stated that the Department recommends the following in this case: 2 years probation, \$5,000 fine, \$250 in costs of prosecution.

**MOTION:** Mr. Helm moved to accept the penalty. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

**(3) Creal, Robert Lee Sr (F043220), Case No. 102452-09-FC (Probable Cause Panel B)**

Ms. Jackson stated the Administrative Complaint in this case alleges: violations of Sections 497.151(2), 497.152(1)(a), 497.152(1)(b), 497.152(4)(g), 497.152(4)(h), 497.152(5)(d), 497.152(9)(e), 497.152(12)(f), 497.152(14)(a), 497.157(1), 497.380(6), and 497.382(1), Florida Statutes; and Rules 69K-20.001(1)(d), 69K-20.001(1)(g), 69K-21.003(1), 69K-21.003(5), 69K-21.003(7), 69K-21.005(1), and 69K-21.006, Florida Administrative Code.

The circumstances of this case are: The Respondent is a licensed funeral director and embalmer and Funeral Director In Charge of Creal Funeral Home, Inc., a licensed funeral establishment located at 1940 7<sup>th</sup> Avenue, St. Petersburg, Florida. On September 26, 2008, Division Examiners conducted a routine inspection of Creal Funeral Home and found numerous violations, including an unsanitary and inadequately stocked preparation room, licenses not displayed as required by law, lack of a complaint log or procedure for handling complaints, employing an embalmer without a valid license, casket prices improperly displayed, and no written agreements for services. Many of the violations noted during the September 26, 2008 inspection were previously noted during inspections in March 2008, May 2007, and June 2006. Additionally, it was found that Mr. Creal failed to file the required Monthly Reports of Cases Embalmed and Bodies Handled from January 2003 through December 2008.

Election of Proceedings: Service of this AC was obtained by publication on August 7, 2009, August 14, 2009, August 21, 2009, and August 28, 2009 in the St. Petersburg Times.

As of this date, Respondent still has not filed an Election of Proceeding form or any other documentation in this case to dispute the allegations contained in the Administrative Complaint. The Department would ask that the Board at this time grant the Department's pending Motion for Determination of Waiver, filed on November 10, 2009, finding that the Department properly served Respondent with the Administrative Complaint, no timely response was received by the Department, and that Respondent has waived the right to elect a method of resolution of this matter.

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

Col. Stiegman recused himself as he served on Probable Cause Panel B at the time the case was presented.

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

Having found the Administrative Complaint was properly served and no response received, the Dept. believes it is appropriate at this time for the Chair to entertain a motion adopting the factual allegations contained in the Administrative Complaint as Findings of Fact 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. Mr. Jones seconded the motion, which passed unanimously.

Mr. Rudolph stated that the mitigation from the previous case would apply to this case as well.

The Department contends that the Board's Findings of Fact support a finding of a violation of Florida Statutes as charged in the Administrative Complaint.

Ms. Jackson stated that the Department believes that it is appropriate at this time to entertain a motion adopting the alleged violations charged in the Administrative Complaint as the Conclusions of Law in this case and finding the Respondent in violation of the Florida Statutes.

**MOTION:** Mr. Helm moved to accept the charged statutory violations in the Administrative Complaint as the Conclusions of Law of the Board. Ms. Hubbell seconded the motion, which passed unanimously.

The Agency also offered exhibits, a copy of which was previously furnished to the Board and to Respondent, into evidence to establish a prima facie case for the violations alleged in the Administrative Complaint.

As to the penalty, the Department recommends 2 years probation and a \$5,000 fine.

**MOTION:** Mr. Helm moved to accept the penalty. Ms. Anderson seconded the motion, which passed unanimously.

Ms. Thomas-Dewitt questioned whether Mr. Creal understands that \$10,000 is due within 30 days.

Mr. Rudolph answered yes.

Mr. Creal Sr requested that the Board consider his economic situation.

Mr. Shropshire stated that the Division would have no objection to allow the first \$5000 to be paid in 60 days and 2nd \$5000 in 180 days, if the Board was so inclined.

Mr. Creal Sr stated who would consider this and make efforts to do so.

The Chair stated that this would have to be the agreement or the license would be suspended.

**MOTION:** Ms. Thomas-Dewitt moved to accept the penalty schedule as \$5000 to be paid in 60 days and 2nd \$5000 to be paid in 180 days. Ms. Taylor seconded the motion, which passed unanimously.

## 5. Old Business

### A. Application(s) for Funeral Establishment

#### (1) Recommended for Approval with Conditions

##### (a) Timothy E Kitchens Funeral Home Inc (Riviera Beach)

The application for a Funeral Establishment was submitted on January 29, 2009. Attachment A. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 1, 2009. The fingerprint cards for all principals were submitted and returned with criminal history. The application was originally on October 7, 2009 Board meeting agenda. Due to deficiencies noted by the Department during the inspection, the application was tabled. The applicant has since resolved all deficiencies and passed inspection on October 23, 2009. The Funeral Director in Charge will be Timothy Kitchens (F046499).

Applicant's CEO and president, Timothy Kitchens (TK), has a criminal record. See Attachment B.

- In 2004 TK pled no contest to the 2<sup>nd</sup> degree felony of unarmed burglary of a structure/conveyance. In his attached letter, TK asserts that the matter related to an argument between him and his girlfriend. He was sentenced to 2 years community control, and 2 years of probation.
- He was subsequently charged with violation of probation, but that charge was dismissed.
- In or about 2002 TK was charged with "child abuse without great harm"; this charge was not ultimately prosecuted.

Applicant's check for the application fee for the license here applied for, was returned for non-sufficient funds. See Attachment C. Applicant thereafter made the check good.

In April 2009 the FCCS Division received a complaint that TK was soliciting at-need business. The FCCS Division conducted an investigation. The complaint and investigative report is at Attachment D. The investigative report did not document the allegations except for one instance, in which TK, having been initially contacted by the girlfriend of the deceased, and realizing that she was not a legally authorized person, TK called the mother of the deceased. This matter will be processed for possible disciplinary action pursuant to normal channels.

Attachment E is TK's response to the complaint.

Attachment F is letters provided by TK, from clients expressing satisfaction with TK's professional performance. Some of the letters seem to indicate that the clients were a somewhat unclear as to whether they were dealing with L.C. Poitier funeral home, where TK was employed, or with a funeral home operated by TK.

The Division recommends Approve with conditions as follows: 1) That applicant shall be on probation for 24 months after issuance of license.

**MOTION:** Col. Stiegman moved to deny the application based on the criminal history. Ms. Taylor seconded the motion, which passed with 2 dissenting votes.

**\*\*\*THIS APPLICATION WAS READDRESSSED LATER IN THE MEETING\*\*\***

The Chair stated there was a request for the Board to readdress this item. The Chair requested that Mr. Kitchens come forward and raise his hand to be sworn in.

Mr. Shropshire asked, "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Kitchens answered, "I do."

Mr. Shropshire stated he was not exactly sure of the posture of the matter. It appears to be in the posture of a motion to reconsider the denial.

Ms. Dudley concurred.

Mr. Kitchens stated that he has wanted to become a funeral director since he was a child. He completed school and always wanted to own his own funeral home. Mr. Kitchens stated he has worked very hard to get where he is. A lot is weighing on today's decision. In regard to the criminal part, there were some things Mr. Kitchens was accused of that he declares he did not do. Mr. Kitchens stated that his character in the community is excellent as he is a church-going, Christian man. Mr. Kitchens added that he has worked very hard to establish the proposed funeral home for approval. Mr. Kitchens requested that the Board reconsider its decision because what appears on paper is not what appears before them today. Mr. Kitchens stated that he is a great family man and is very active in the Florida Morticians Association of which Ms. Thomas-Dewitt is a part of, and is also the State Chaplin of the District in his region. Mr. Kitchens thanked the Board for the opportunity to speak. Mr. Kitchens stated that he is aware of things that have gone on in funeral services that are unethical, but declares he has never done any of those things, not to say that the Board is accusing him of any of those things. A lot of people want the Timothy E Kitchens Funeral Home to open.

Mr. Shropshire requested permission to advise Mr. Kitchens of the posture and procedure to be followed. At this meeting the Board has initially denied the application. Excluding this motion for reconsideration, what will happen is the Division office will send Mr. Kitchens a Notice of Intent to Deny Licensure, which will include the option to request either a formal hearing before an administrative law judge or an informal hearing to come back before this Board. Mr. Kitchens would have to admit the criminal record but would have a chance at that proceeding to try and explain it more fully, to offer mitigation, consult an attorney to help you. Mr. Shropshire stated that he is not trying to dissuade Mr. Kitchens from moving forward today, but

Mr. Kitchens may want to go that route to make the really best case and request an informal hearing and come back before the Board at a subsequent meeting. Mr. Shropshire stated he wanted to ensure Mr. Kitchens was aware he had that opportunity. This is not the end of the line for this case under the law.

The Chair stated there was not a motion for reconsideration.

Mr. Shropshire stated that Mr. Kitchens has made a verbal petition for reconsideration.

Ms. Dudley stated that the Board could vote to deny the request for reconsideration.

Mr. Shropshire stated Mr. Kitchens could withdraw his petition and wait to hear from the Division.

The Chair questioned whether the Board voted to deny.

Mr. Shropshire answered yes.

The Chair concluded there is no other motion before the Board. Mr. Kitchens was offered an opportunity to address the Board and there is no other motion to reconsider the denial.

Mr. Shropshire stated if the Board's legal counsel agrees that Mr. Kitchens has effectively filed a petition for reconsideration then it is before the Board.

Ms. Dudley concurred. There was an oral motion to reconsider. The Board should decide whether or not to reconsider the case right now.

**MOTION:** Col. Stiegman moved to deny the request to reconsider. Mr. Helm seconded the motion, which passed with 1 dissenting vote.

***B. Informal Hearings, Section 120.57(2), Facts Not Disputed***  
***(1) Embalmer Apprentice***  
***(a) Anderson, Gaile NOI-2009-114***

Mr. Miller stated that this matter originally came before the Board at the June 24, 2009 Board Meeting at which time the Board voted to deny Ms. Gaile Anderson's application for licensure as an embalmer apprentice based upon the Applicant's criminal history. In 1993, Ms. Anderson pled guilty to the felony of conspiracy to commit bank fraud. The Applicant subsequently violated the probation imposed in the same criminal case. Ms. Anderson has elected an informal hearing. As such, the facts of her criminal history are not in dispute.

Mr. Joseph Ripley stated the Applicant had some problems in 1993, which are not in dispute. Ms. Anderson was a single lady trying to raise three kids. She found a man who came into her life and got her involved in a criminal matter. Ms Anderson has served her penalty for that. As a result, Ms. Anderson lost her job, was unable to keep up with the terms of the restitution and therefore had to complete 6 months in a half-way house. Ms. Anderson has since rehabilitated herself and has completed the course of study, earned an A.S. degree at the college in Jacksonville. There is a letter from Roy Weimert, Faculty Director of the College, recommending her. Ms. Anderson has also written a letter to the Board. There is also a letter from Rev. William Bellamy, who has accepted her to become an apprentice. Mr. Ripley pleaded to the Board to accept that a person can rehabilitate herself and requested that the Board grant a conditional approval with any restrictions the Board cares to impose.

Mr. Helm questioned what would happen if the same situation presented itself to Ms. Anderson.

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

Ms. Gaile Anderson answered "I do." Ms. Anderson stated that she is 14 years older, has been married twice, been divorced twice so right now, it is about giving back to the families and the community. Ms. Anderson stated she could not really say what would happen but she is older and would not make that same mistake again.

Ms. Thomas-Dewitt questioned whether Ms. Anderson is aware that if approved for apprenticeship, each time she would have to continuously appear before the Board to be approved and would possibly take the risk of not being approved down the line.

Ms. Anderson stated she was not aware of this but is aware now.

Mr. Miller stated that the Division would recommend that the Board affirm its initial decision to deny the application for embalmer apprentice. Accordingly, the Division would suggest a motion to accept the factual and legal basis for the denial set forth in the July 8, 2009 Notice of Intent to Deny Application for Licensure.

**MOTION:** Ms. Hubbell moved to reverse the Board's initial decision to deny the application. Mr. Jones seconded the motion, which failed with 7 dissenting votes.

**MOTION:** Col. Stiegman moved to affirm the Board's initial decision to deny the application. Mr. Hall seconded the motion, which passed with 3 dissenting votes.

**6. Application to Acquire Control of an Existing Cemetery Company**

**A. Recommended for Approval with Conditions**

**(1) Cemetery Professionals, LLC d/b/a Beaches Memorial Gardens to acquire control of Beaches Memorial Park (Atlantic Beach)**

The application was received on July 16, 2009 from Cemetery Professionals, LLC d/b/a: Beaches Memorial Gardens for authority to acquire control of Beaches Memorial Park, Atlantic Beach, FL. A notice of deficiencies was issued by the Division on August 6, 2009. The deficiencies noted were addressed by the Applicant on September 21, 2009. The Applicant's sole principal, Amanda Kuzniar, acquired full interest in Cemetery Professionals, LLC in a final judgment of dissolution of marriage.

A completed background check of Ms. Kuzniar revealed criminal history from 1999 stemming from a conviction in a case involving felony hit and run and misdemeanor assault with infliction of serious injury. This history was disclosed to the Board in February, 2006, when the initial application to acquire control by Mr. and Mrs. Kuzniar was approved by the Board. Ms. Kuzniar states she was a juvenile at the time and the court records were to have been sealed.

Change In Control Issue. Notwithstanding that Applicant filed this application, Applicant, through its attorney Alan Winter, asserts that there is no change in control. The cemetery license is held by an LLC (Cemetery Professionals LLC), and the issue relates to changes in control of the LLC, resulting from a divorce.

Previous to a divorce decree dated 8-24-08, the LLC had 2 members who were both managers: husband and wife, Stephen Kuzniar (SK) as LLC President, and Amanda Kuzniar (AK) as LLC Vice-President. The 8-24-08 divorce decree relating to Stephen and Amanda Kuzniar provides at page 8 as follows: *"The parties own two (2) corporations to wit: Cemetery professionals, LLC, and the Kuzniar Group, LLC. The wife shall have sole and exclusive ownership, use and possession of all shares of stock and all interest in both corporations including all assets owned by the businesses."*

The FCCS Division believes that this was a change in control, in that prior to the divorce decree AK could not unilaterally act to direct the operations of the LLC, because she was only one of two members and managers of the LLC, and she and SK had to agree on any decisions. Whereas after the divorce decree AK does not need to consult SK and may unilaterally direct the operations of the LLC.

Pending Actions. Cemetery Professionals, LLC is currently subject of a Division administrative complaint as a result of deficiencies found in an examination and audit performed for the period through December, 2006. The action is due to a reported \$44,000 deficit found in the preneed trust. The applicant has stated through counsel that the deficit is a pre-

acquisition issue which was not disclosed to the Kuzniars at the time of the initial purchase. The liability is under dispute, and the Applicant states that any findings are the result of negligence and not criminal intent. Procedural violations that were found in the examination have been corrected.

The Division recommends that the application be approved subject to the finding that there has been a change in control of the cemetery. The Applicant, through its counsel, asserts that under the facts of the case, there has been no change of control. The Division disagrees and believes there has been a change in control.

Mr. Allen Winter acknowledged the statement by the Division and thanked the Board for allowing the Applicant to appear. There has been a second application for Ms. Kuzniar's second LLC, The Kuzniar Group, which apparently was breached too late and did not make today's calendar. This is unfortunate as it is a similar issue, although, in that case, there is no argument about the fee that was already paid in full. Mr. Winter thanked the Division for the recommendation and requested that the Board follow the recommendation of the Division and vote for approval.

**MOTION:** Mr. Helm moved to approve the application with conditions stated by the Division. Ms. Taylor seconded the motion, which passed unanimously.

**7. Application(s) for Preneed Sales Agent**

**A. Informational Item - Addendum A (Licenses Issued Without Conditions)**

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

**B. Recommended for Approval with Conditions (Criminal History)**

**(1) Forman, Jr., Aubry S. (Appointing Entity: SCI Funeral Services of Florida, Inc.)**

On September 16, 2009, the Department received an application submitted by SCI Funeral Services of Florida, Inc. (SCI) on the behalf of Mr. Forman. Mr. Forman answered "Yes" to Applicant Background Questions, "Has the PSA applicant ever been convicted or entered a plea in the nature of no contest." However, during the submission of the application by SCI staff the question was answered incorrectly. SCI staff inadvertently indicated that Mr. Forman had no criminal history when in fact he did.

The criminal history includes one (1) offense relating to one incident of misdemeanor DUI in 2005, which occurred in Bradenton, Florida. Mr. Forman disclosed all required information.

The Department's assessment is that if issued a preneed sales agent license, Mr. Forman would not pose an unreasonable risk to members of the public who might deal with him in preneed transactions. The Division recommends that the application be approved subject to probation for a period of one (1) year.

**MOTION:** Ms. Huggins moved to approve the application subject to probation for a period of one (1) year. Mr. Helm seconded the motion, which passed unanimously.

**8. Application(s) for Preneed License Main**

**A. Recommended for Approval without Conditions**

**(1) Resthaven Gardens, Inc. (Pensacola)**

The Department received the application on August 24, 2009 and a deficiency letter was sent September 1, 2009. Applicant's response to the deficiency was received on October 20, 2009. Applicant previously held a preneed license which expired on June 30, 2008 due to failure to remit filing of the preneed renewal statement (R-3).

An examination conducted by the Division revealed that during the period from July 1, 2008 through March 31, 2009, while their preneed license was expired, a total of 6 preneed contracts were sold by the Applicant. All monies were properly trusted for these contracts. Applicant explains through their attorney (see enclosed letter) that they never received the preneed license renewal forms because they were sent to the actual cemetery address, rather than the licensee's preferred mailing address, and

that the post office does not deliver mail to the actual cemetery address. This issue of writing preneed on an expired license will be dealt with through normal disciplinary channels, and approval of this application will be deemed a waiver of the violation of writing preneed contracts on an expired license. However, in view of the licensee's explanation for the failure to renew, the Division does not believe that in this case writing 6 contracts on an expired license is grounds to deny this application.

A completed background check of all officers revealed no criminal history. Applicant will use the pre-approved First Florida Bank and Trust Agreement (Synovus Trust Company) and Board approved pre-arranged funeral agreement. Applicant is currently licensed as a cemetery company.

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

Existing Preneed Contracts	= \$	203,629
Required Net Worth	= \$	50,000
Reported Net Worth	= \$	113,206

Col. Stiegman stated someone had to have received the renewal statements. If it had been refused the Post Office would have returned it.

Mr. Shropshire stated that the Division can not reliably state it was returned by the Department.

Mr. Helm stated as has happened in the past, the purchasers of the 6 contracts would need to be notified and advised that they would be entitled to a refund of 100%.

**MOTION:** Mr. Helm moved to approve the application subject to Resthaven notifying the 6 contract holders of their right to a refund of 100%. Ms. Anderson seconded the motion, which passed with 1 dissenting vote.

Mr. Shropshire stated that Mr. Miller would make a note that the Division would send such a letter to the contract holders.

***(2) The Faupel Group, LLC d/b/a Morgan Funeral Home and Cremation Services (New Port Richey)***

The Department received the application on September 4, 2009 and a deficiency letter was sent September 11, 2009. All deficiencies were resolved by October 28, 2009. Due to a change of ownership, the applicant is acquiring all preneed contracts that were written previously under Morgan Funeral Home, Inc. d/b/a Morgan Funeral Home and Cremation Services, of which \$655,605 are trusted and \$277,461 are insurance-funded. A completed background check of all officers revealed no criminal history. Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (BB&T) and pre-arranged funeral agreement. The applicant submitted an application for a funeral establishment license which was approved by the Board on June 3, 2009.

The Applicant's financial statements as of June 3, 2009 reflect the following:

Acquired Preneed Contracts	= \$	933,066
Required Net Worth	= \$	100,000
Reported Net Worth	= \$	119,964

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

**9. Application(s) for Preneed License Branch**

**A. Recommended for Approval without Conditions – Addendum B**

The Division recommends approval of the application(s).

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

10. **Continuing Education Course Approval(s)**  
A. *Recommended for Approval without Conditions – Addendum C*  
(1) *Aurora #129*  
(2) *Florida Morticians Association #133*  
(3) *Hospice Foundation #76*  
(4) *Independent Funeral Directors of Florida #135*  
(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. Taylor moved to approve the application(s). Ms. Huggins seconded the motion, which passed unanimously.

11. **Application(s) for Florida Laws and Rules Examination**  
A. *Recommended for Approval without Conditions – Addendum D*  
(1) *Funeral Director and Embalmer - by Internship*  
(a) *Ellenberg, Tami K*  
(b) *Jackson, Antonio K*  
(c) *Johnson, Arthur D*  
(d) *Lawson, Mary C*  
(e) *Lorne, Kevin M*  
(2) *Funeral Director and Embalmer-by Endorsement*  
(a) *Knoth, Diane L*

The Division recommends approval of the application(s).

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

- B. *Recommended for Denial*  
(1) *Funeral Director and Embalmer- by Endorsement*  
(a) *Powell III, Jack*

The applicant submitted an application to become a Funeral Director and Embalmer by Endorsement. The application was submitted on July 16, 2009. The application was incomplete and a deficiency letter was sent to the applicant. All deficient items were returned on September 1, 2009. Mr. Powell was convicted of Grand Theft in 1990 and Larceny in 2002. Mr. Powell has demonstrated a history of untrustworthiness. The Division is recommending denial of this application for the reasons and on the basis represented in the materials before the Board.

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

Mr. Jack Powell answered yes. Mr. Powell stated that he has held a license in Idaho for 20+ years where he practiced there prior to returning to Florida. Mr. Powell also successfully ran a trade embalming service for 10 years without a problem or complaint.

**MOTION:** Ms. Thomas-Dewitt moved to deny the application based on the reasons stated. Ms. Huggins seconded the motion, which passed with 2 dissenting votes.

12. **Application(s) for Internship**  
A. *Recommended for Approval without Conditions – Addendum E*  
(1) *Funeral Director and Embalmer*  
(a) *Cabrera Ramirez, Jorge*  
(b) *Chery, Luc G*

(c) *Johnson, Jr., William Albert*

The Division recommends approval of the application(s).

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

- B. Recommended for Approval with Conditions – Addendum E**
  - (1) *Funeral Director and Embalmer*
  - (a) *Hearns, Mario D*

The Division recommends approval of the application subject to the Training Facility being approved.

**MOTION:** Ms. Huggins moved to approve the application. Col. Stiegman seconded the motion, which passed unanimously.

**13. Application(s) for Embalmer Apprentice**

- A. Recommended for Approval without Conditions – Addendum F**
  - (1) *Berry, Jeffrey S*
  - (2) *Christy, Jennifer L*
  - (3) *Early, Dennis E*
  - (4) *Holt, William G*
  - (5) *McCaskill, Joseph M*

The Division recommends approval of the application(s).

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

- B. Recommended for Approval with Conditions – Addendum F**
  - (1) *Wallace, James R*

The Division recommends approval of the application subject to the Training Facility being approved.

**MOTION:** Ms. Huggins moved to approve the application with conditions as stated. Ms. Anderson seconded the motion, which passed unanimously.

- C. Recommended for Denial**
  - (1) *Richard, Jr., Samuel E*

Mr. Shropshire stated the application has been withdrawn from the Agenda as Mr. Richard indicated he would like to appear in person at a subsequent Board meeting.

The Chair questioned rather the deemer date would be an issue.

Mr. Shropshire stated the deemer date is in March, so Mr. Richard would be fine appearing before the Board in February.

**14. Registration(s) as a Training Agency**

- A. Recommended for Approval without Conditions – Addendum G**
  - (1) *Funeral Directing/Embalming*
    - (a) *Lewis W Mohn Funeral Home (F040373)*
    - (b) *WE-Gregg L Mason Funeral Home (F041706)*
  - (2) *Funeral Directing*
    - (a) *Stonemor Florida Subsidiary LLC d/b/a Scott Funeral Home*

The Division recommends approval of the application(s).

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

**15. Consumer Protection Trust Fund Claims**

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

The Division recommends approval of the claim(s).

**MOTION:** Ms. Huggins moved to approve the claim(s). Ms. Anderson seconded the motion, which passed unanimously.

**16. Application(s) for Monument Establishment Sales Agent, Licenses Issued Without Conditions**

- A. Informational Item - Addendum I*

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. Change in Location of Establishment, License(s) Issued without Conditions**

- A. Informational Item - Addendum J  
(1) The Beachwood Society (F041000)*

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

**18. Application(s) for Centralized Embalming Facility**

- A. Recommended for Approval with Conditions  
(1) Lawrence J. Bakey (Fort Myers)*

The application for a Centralized Embalming Facility was submitted on November 9, 2009. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The Funeral Director in Charge will be Lawrence Bakey (F058180). The fingerprint card was submitted and returned without criminal history. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the facility within 30 days of the closing and passing the inspection.

**MOTION:** Ms. Huggins moved to approve the application subject to Division receiving proper closing documents in regards to the sale of the facility within 30 days of the closing and passing the inspection. Ms. Taylor seconded the motion, which passed unanimously.

**19. Application(s) for Funeral Establishment**

- A. Recommended for Approval without Conditions  
(1) Neptune Management Corp d/b/a Neptune Society*

The application for a Funeral Establishment was submitted on July 23, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on August 11, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be George Scott, Jr. (F044266). The establishment passed its inspection on August 19, 2009. The establishment is recommended for approval.

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

**20. Application(s) for Direct Disposal Establishment**

- A. Recommended for Approval with Conditions  
(1) Cremations America LLC (Coral Gables)*

The application for a Direct Disposal Establishment was submitted on October 26, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on November 6, 2009. The

fingerprint cards for all principals were submitted and returned without criminal history. The Direct Disposer in Charge will be Gustavo Camacho, Jr. (F019712). The Division is recommending approval upon passing the inspection.

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

*(2) Gulf Coast Cremation Society Inc (Clearwater)*

The application for a Direct Disposal Establishment was submitted on October 26, 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 Direct Disposer in Charge will be Terry Beamer (F042714). The Division is recommending approval upon passing the inspection.

**MOTION:** Ms. Taylor moved to approve the application contingent upon passing the inspection. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

*(3) Socofi Capital and Mortuary Investments Inc d/b/a Quality Care Cremation and Shipping Services (Plantation)*

The application for a Direct Disposal Establishment was submitted on October 15, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on October 30, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Direct Disposer in Charge will be Rebecca Jean-Baptiste Ceva (F042114).

A search of Division records shows that one of the applicant's officers, Albert McWhite, was disciplined in 1995, by the former ch. 470 Board. The violation involved was aiding an unlicensed person by signing as funeral director an at-need funeral contract arranged by the unlicensed person. McWhite was fined \$750 and costs of \$356.80.

Ms. Corinne Olvey stated that direct disposers can only perform direct cremation so having "Shipping Services" in the name may be misleading to the consumer, as it usually involves embalming.

The Chair agreed. "Shipping Services" should not be a part of the name as it would be misleading to the public and outside of the scope of their abilities.

Mr. Albert McWhite stated he was under the assumption that shipping services of a direct disposer would entail embalming and shipping to other funeral homes, not for the family.

The Chair questioned whether he was referring to a removal service.

Mr. McWhite stated if a funeral home in New York called regarding a body in his area, he would pick up the body, embalm it and directly ship it to the funeral home, not the family.

The Chair stated this is not part of the scope of a direct disposer establishment.

Mr. McWhite stated he thought he had read that he would need a removal service and a place to do the embalming. Mr. McWhite questioned whether this is true.

Mr. Shropshire answered no.

The Chair stated that a direct disposer establishment, a removal service and a centralized embalming facility are three different license entities.

Mr. McWhite questioned which license a shipping service would fall under.

The Chair stated there is not a category for a shipping service. It appears they would have to be licensed under a funeral establishment.

Mr. Shropshire stated that Mr. McWhite would be exceeding the scope of a direct disposer's license if he entered into an agreement with the New York funeral home, even if the embalming is not done. Mr. McWhite simply could not enter into or even have it done by a licensed embalmer.

The Chair questioned whether Mr. McWhite is a licensed funeral director and embalmer in the State of Florida.

Mr. McWhite answered yes.

Mr. Shropshire stated that Mr. McWhite could not make any such agreement under a direct disposer's license.

Mr. McWhite stated he would have to remove it from the name. Mr. McWhite questioned how to obtain licensure to perform shipping services.

The Chair stated a licensed funeral establishment could perform shipping services.

Mr. McWhite stated he has a friend, with a warehouse, who performs direct cremations and direct ship outs.

Mr. Shropshire stated he should put Mr. McWhite under oath and ask that he repeat that assertion. Mr. Shropshire questioned whether Mr. McWhite would be willing to make the assertion under oath.

Mr. McWhite questioned whether he would have to disclose his friend's name.

Mr. Shropshire stated Mr. McWhite would have to answer the Board's questions. If Mr. McWhite does not answer the questions, the Board would act accordingly to their evaluation of the application.

Mr. McWhite questioned whether he could remove "Shipping Services" from the name.

Ms. Huggins stated Mr. McWhite have to complete a new application.

Mr. Shropshire questioned whether Mr. McWhite would like to withdraw the application at this time.

Mr. McWhite questioned whether he would need to do this in order to remove the name.

Mr. Shropshire stated the application could be amended. In view of what has transpired here, it probably would not be a good idea to move forward today. Mr. Shropshire suggested that the Board table the matter to allow the Division to look at the matter a little closer.

Mr. McWhite questioned whether, in the interim, he should remove that portion of the name.

Mr. Shropshire suggested that Mr. McWhite contact Jasmin Richardson or Mr. Miller and they will advise. The matter would have to come back before the Board at a subsequent meeting.

Ms. Dudley questioned the deemer date.

Mr. Helm stated that the deemer date would be February 22<sup>nd</sup>.

Ms. Dudley stated there is a requirement that the Board address an application within 90 days unless the applicant waives that requirement. Ms. Dudley questioned whether Mr. McWhite would be willing to waiver that requirement so that the Board could consider the application at the February meeting.

Mr. Helm stated the Board would meet prior to the deemer date.

Ms. Dudley stated that it's so close and this would make it easier. Ms. Dudley questioned whether Mr. McWhite would have a problem with waiting.

Mr. McWhite stated that he has no problem waiting.

Ms. Thomas-Dewitt requested that Ms. Dudley remind Mr. McWhite of his duties as a licensee. Licensees are bound by law to report any unlicensed activity.

Ms. Dudley stated that Mr. McWhite has a responsibility, as a licensee, to report any violations you are aware of to the Board.

Mr. Rudolph stated it entails violations that are a danger to the health, safety and welfare of the citizens.

Col. Stiegman stated an onus is being placed on Mr. McWhite as he was unaware of the violation prior to appearing before the Board. Col. Stiegman questioned whether Mr. McWhite should withdraw the application.

Mr. Shropshire stated tabling would be more favorable to Mr. McWhite as he would not be required to pay another application fee.

Col. Stiegman questioned whether this presents an opportunity for Mr. McWhite to change the name.

Mr. Shropshire stated Mr. McWhite would be permitted to amend the application.

**MOTION:** Mr. Helm moved to defer the application. Ms. Huggins seconded the motion, which passed unanimously.

Mr. Shropshire requested that Mr. Miller consult with Mr. McWhite.

**21. Request(s) to Extend Internship**

**A. Recommended for Approval without conditions**  
**(1) *Felmey, Lorian* (F054394)**

Ms. Felmey was issued a Concurrent Intern License at the March 4, 2009 Board meeting.

Per the letter received from Ms. Felmey, her position was terminated at Lemon Bay Funeral Home on September 16, 2009, due to downsizing in the funeral establishment. FCCS Division staff have spoken to funeral establishment staff and confirmed that she was let go due to downsizing and not for cause, and in fact the funeral establishment urges approval of her request for extension.

Ms. Felmey was hired by Lakeland Funeral Home on November 2, 2009. The internship will need to be extended for a period of seven weeks, with the ending date April 23, 2010. The Division is recommending approval of extending the internship license.

**MOTION:** Mr. Helm moved to approve the extension for a period of seven weeks, with the ending date April 23, 2010. Ms. Huggins seconded the motion, which passed unanimously.

**B. Recommended for Denial**  
**(1) *Spates, Charles A* (F053084)**

Applicant, Mr. Spates, was issued a Concurrent Intern License at the December 3, 2008 Board meeting. Applicant performed satisfactorily in his 1<sup>st</sup> and 2<sup>d</sup> quarters, but was given an unsatisfactory rating for his 3<sup>rd</sup> quarter.

Mr. Spates is requesting an extension for one additional quarter to make up for the third quarter of his internship.

The Division recommends against extension of the internship for one quarter.

Ms. Huggins questioned whether this is the result of a disgruntle employee type situation or a truly, unsatisfactory performance.

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

Mr. Charles Spates answered yes.

Ms. Huggins questioned whether this is the result of a disgruntled working environment or whether Mr. Spates left and now the employer is upset.

Mr. Spates stated he did not leave and have been there since the beginning of the internship. Mr. Spates did not receive credit for the last quarter of the evaluation. Some mistakes that were made were not accepted, so Mr. Spates had to change supervisors and now reports to Mr. Samuel Gaines. Mr. Spates stated that Mr. Gaines advised him that he would sign off on the quarterly report forms for the quarter in which Mr. Spates did not receive credit for, if the Board extends the internship. Mr. Spates stated that he is unsure what mistakes were made.

The Chair questioned how Mr. Spates would subsequently obtain a license should the Board deny the request to extend the internship.

Ms. Thomas-Dewitt stated Mr. Spates would have to complete another full internship, 12 months.

Mr. Shropshire stated that the purpose of the request is to extend it one quarter so that Mr. Spates could obtain credit for the quarter that he is lacking. An internship is 12 consecutive months.

The Chair questioned how Mr. Spates would subsequently obtain a license should the Board deny the request to extend the internship.

Mr. Shropshire stated that Mr. Spates would have to apply for another internship but generally speaking, the Board does not allow it.

Col. Stiegman stated that Mr. Spates is already outside of the parameters.

Mr. Shropshire agreed. The Board has, on occasion, and the statute allows an extension for personal injury or illness. Although the Division is sympathetic with Mr. Spates, his circumstance does not appear to fall within the Rules for grounds for extending an internship.

The Chair stated that the Board just extended an internship because the Applicant had to find another job. That was also outside that scope.

Mr. Helm stated that was a result of the establishment downsizing. Mr. Helm questioned the name of the supervisor who did not approve the final quarter.

Mr. Spates stated that his former supervisor was Ms. Alwyn Gaines. Mr. Samuel Gaines is his current supervisor.

Col. Stiegman questioned whether the disqualification was for cause or just because Mr. Spates did not get along with Ms. Gaines.

Mr. Spates stated it appears to be because of their differences.

Ms. Thomas-Dewitt questioned how long Mr. Spates has known the Gaines' Family.

Mr. Spates answered, "All my life."

Ms. Thomas-Dewitt questioned whether Mr. Spates ever considered terminating with that establishment and completing the internship with another establishment.

Mr. Spates stated that he did not due to the respect he has for the Gaines' Family. Mr. Spates stated that he planned to complete the internship and then venture on to somewhere else.

Ms. Huggins stated that she did not understand how Mr. Spates still works there, is still being paid to work their, but they are unhappy with his work.

Ms. Thomas-Dewitt stated that Mr. Gaines has not submitted any documentation supporting Mr. Spates claim. Whereas, Ms. Gaines has submitted a form indicating that the work was unsatisfactory.

Ms. Huggins stated that the letter did not give a specific reason, except for his attitude.

Ms. Thomas-Dewitt questioned whether the matter could be tabled until the Board receives more information.

Mr. Shropshire stated that the Division contacted Ms. Gaines and requested something more specific, but this is all that was obtained. Mr. Shropshire recommended granting the extension now, if it is the Board's inclination to cut Mr. Spates some slack.

Ms. Huggins confirmed that Mr. Spates has a new supervisor.

Mr. Spates concurred.

Ms. Thomas-Dewitt questioned whether Mr. Gaines is actively involved in the funeral home or whether he is currently retired.

Mr. Spates stated that Mr. Gaines is active.

**MOTION:** Ms. Huggins moved to approve the extension for one additional quarter. Col. Stiegman seconded the motion, which passed unanimously.

**22. Petition for Waiver, Rule 69K-18.004**

A. Recommended for Approval without Conditions

- (1) Keystone America Inc d/b/a Hodges Family Funeral Home (Dade City)

Keystone America Inc d/b/a Hodges Family Funeral Home Inc. requests a waiver of Rule 69K-18.004. That Rule specifies that a funeral establishment must accumulate 40 cases before it can be approved as a training agency.

Keystone is acquiring Hodges Family Funeral Home (see application elsewhere in materials for 12-2-09 Board meeting). Hodges is currently an approved intern training agency. Without a waiver of the rule, after Keystone acquires the funeral establishment, training will have to be suspended until 40 new cases are accumulated. The training staff at Hodges will not be changing. The interruption of training agency status will be a serious problem for current interns at Hodges.

Under the circumstances, there appears to the FCCS Division to be no purpose in requiring Hodges to acquire 40 more cases after the acquisition, before training can resume.

The Division recommends approval of the request for waiver.

**MOTION:** Mr. Jones moved to approve the petition. Ms. Hubbell seconded the motion, which passed unanimously.

**23. Contract(s) or Other Related Form(s)**

A. *Monument Retail Sales Agreement*

- (1) *Recommended for Approval without Conditions*

(a) *Mississippi Marble & Granite Inc. d/b/a Ingram Marble and Granite (Defuniak Springs)*

Staff recommends approval of the agreement.

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

**24. Keystone America – SCI Applications**

*Division Director's background memo and related materials*

Mr. Shropshire stated that Item 24 contains a set of applications for approval of change of control concerning Keystone America and its acquisition by SCI. The first set of applications (A) related to a change of ownership from Hodges to Keystone. The Division is recommending approval of these applications with the conditions as stated in the materials which relate to evidence of closing the transaction.

Mr. Brandenburg disclosed his affiliation with SCI and stated it would not affect his decision to be fair and impartial.

**A. Applications re change of ownership, Hodges to Keystone. Recommended for approval with conditions**

**(1) Application to acquire control of existing cemetery: Keystone America, Inc. d/b/a Chapel Hill Gardens and Floral Memory Gardens to acquire Hodges Family Funeral Home, Inc. d/b/a Chapel Hill Gardens and Floral Memory Gardens (Dade City)**

The Department received the application on October 5, 2009 from Keystone America, Inc. for authority to acquire control via asset purchase of Chapel Hill Gardens and Floral Memory Gardens. A deficiency letter was sent to the applicant on October 15, 2009 and all deficiencies were resolved by November 12, 2009. The applicant, Keystone America, Inc. was formed in Florida on January 8, 1997 and is acquiring all of the assets and goodwill of Chapel Hill Gardens and Floral Memory Gardens from the current owner, Hodges Family Funeral Homes, Inc., as defined in the attached proposed Asset Sales Agreement. Closing of the sale has not yet been completed. The Applicant principals are: Steven A. Tidwell, James D. Price, Stephen M. Shaffer, and Brent N. Von Horn. A completed background check of all officers revealed no criminal history. Applicant currently holds a preneed main license and is applying for a preneed branch office license which is also being presented to the Board at this meeting. The Applicant's financial statement is in the name of Keystone America, Inc. d/b/a Kersey Funeral Home, current as of December 31, 2008 reflects the following: Required Net Worth = \$50,000 and Reported Net Worth = \$2,130,615.

**(2) Application re change of ownership, funeral establishment: Keystone America Inc d/b/a Hodges Family Funeral Home (11441 US Highway 301 Dade City)**

The application for a Funeral Establishment was submitted on October 5, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on November 6, 2009. The Funeral Director in Charge will be William Johnson (F045469). The fingerprint cards for all principals were submitted. One of the officers', Lindsey Palmer, was returned with criminal history. Ms. Palmer pled guilty to driving while impaired. The Division does not recommend any conditions based on the criminal history of Ms. Palmer. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing.

**(3) Application re change of ownership, funeral establishment: Keystone America Inc d/b/a Hodges Family Funeral Home (14046 5<sup>th</sup> Street Dade City)**

The application for a Funeral Establishment was submitted on October 5, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on November 6, 2009. The Funeral Director in Charge will be Michael Hodges (F032282). The fingerprint cards for all principals were submitted. One of the officers', Lindsey Palmer, was returned with criminal history. Ms. Palmer pled guilty to driving while impaired. The Division does not recommend any conditions based on the criminal history of Ms. Palmer. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing.

**(4) Application re change of ownership, funeral establishment: Keystone America Inc d/b/a Hodges Family Funeral Home (36327 State Road 54 Zephyrhills)**

The application for a Funeral Establishment was submitted on October 5, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on November 6, 2009. The

Funeral Director in Charge will be Lindsey Palmer (F042218). The fingerprint cards for all principals were submitted. One of the officers', Lindsey Palmer, was returned with criminal history. Ms. Palmer pled guilty to driving while impaired. The Division does not recommend any conditions based on the criminal history of Ms. Palmer. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing.

(5) *Application re change of ownership, cinerator facility: Keystone America Inc d/b/a Cremation Center (11441 US Highway 301 Dade City)*

The application for a Cinerator Facility was submitted on October 5, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on November 6, 2009. The Funeral Director in Charge will be William Johnson (F045469). The fingerprint cards for all principals were submitted. One of the officers', Lindsey Palmer, was returned with criminal history. Ms. Palmer pled guilty to driving while impaired. The Division does not recommend any conditions based on the criminal history of Ms. Palmer. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing.

**MOTION - 24. A. 1-5:** Ms. Huggins moved to approve the applications pending the Division's receipt of the proper closing documents in regards to the sale of the establishment within 30 days of the closing. Mr. Jones seconded the motion, which passed unanimously.

**B. Applications re change of ownership, Keystone to SCI. Recommended for approval with conditions**

Mr. Shropshire stated the next set of applications (B) related to a change of ownership from Keystone to SCI. The Division is recommending approval of these applications with the conditions as stated in the materials which relate to evidence of closing the transaction.

(1) *Application re change of ownership, funeral establishment: SCI-Keystone America Inc d/b/a Kersey Funeral Home (108 E Stella Lake Drive Auburndale)*

The application for a Funeral Establishment was submitted on November 20, 2009. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The Funeral Director in Charge will be David Kersey (F044057). The fingerprint cards for all principals were submitted. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing and passing an inspection.

(2) *Application re change of ownership, cinerator facility: SCI-Keystone America Inc d/b/a Memorial Crematory (108 E Stella Lake Dive Auburndale)*

The application for a Cinerator Facility was submitted on November 20, 2009. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The Funeral Director in Charge will be David Kersey (F044057). The fingerprint cards for all principals were submitted. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the facility within 30 days of the closing and passing an inspection.

(3) *Application re change of ownership, funeral establishment: Keystone America Inc (as owned by SCI), d/b/a Hodges Family Funeral Home (11441 US Highway 301 Dade City)*

The application for a Funeral Establishment was submitted on November 21, 2009. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The Funeral Director in Charge will be Randal Bush (F044267). The fingerprint cards for all principals were submitted. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing and passing an inspection.

(4) *Application re change of ownership, funeral establishment: Keystone America Inc (as owned by SCI), d/b/a Hodges Family Funeral Home (14046 5<sup>th</sup> Street Dade City)*

The application for a Funeral Establishment was submitted on November 21, 2009. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The Funeral Director in Charge will be Michael Hodges (F032282). The fingerprint cards for all principals were submitted. The application is recommended for approval upon the

condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing and passing an inspection.

(5) *Application re change of ownership, funeral establishment: Keystone America Inc (as owned by SCI), d/b/a Hodges Family Funeral Home (36327 State Road 54 Zephyrhills)*

The application for a Funeral Establishment was submitted on November 21, 2009. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The Funeral Director in Charge will be Lindsey Palmer (F042218). The fingerprint cards for all principals were submitted. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing and passing an inspection.

(6) *Application re change of ownership, cinerator facility: Keystone America Inc (as owned by SCI), d/b/a Cremation Center (11441 US Highway 301 Dade City)*

The application for a Cinerator Facility was submitted on October 5, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the applicant. All deficient items were returned on November 6, 2009. The Funeral Director in Charge will be William Johnson (F045469). The fingerprint cards for all principals were submitted. One of the officers', Lindsey Palmer, was returned with criminal history. Ms. Palmer pled guilty to driving while impaired. The Division does not recommend any conditions based on the criminal history of Ms. Palmer. The application is recommended for approval upon the condition of providing the Division with proper closing documents in regards to the sale of the establishment within 30 days of the closing.

(7) *Application to acquire control of existing cemetery: Keystone America, Inc. (as owned by SCI), d/b/a Chapel Hill Gardens and Floral Memory Gardens, to acquire Chapel Hill Gardens and Floral Memory Gardens (Dade City)*

The application was received on November 20, 2009 from on behalf of Keystone America, Inc. (as owned by SCI after the closing of the proposed SCI-Keystone transaction), d/b/a Chapel Hill Gardens & Floral Memory Gardens, for authority to acquire control of Chapel Hill Gardens, Dade City, FL. The application was complete when submitted and a deficiency letter was not sent out to the applicant. The fingerprint cards for all principals were previously submitted. The application is submitted in conjunction with the application appearing on this agenda of Keystone America, Inc. d/b/a Chapel Hill Gardens and Floral Memory Gardens to acquire Hodges Family Funeral Home, Inc. d/b/a Chapel Hill Gardens and Floral Memory Gardens.

(8) *Application re preneed branches: "Hodges Family Funeral Home" under SCI Main Preneed License (Zephyrhills, Dade City, Dade City): 36327 US Hwy 54 Zephyrhills FL 33541, 11441 US Hwy 301 Dade City FL 33525, 14046 Fifth St Dade City FL 33525*

Due to an acquisition of Keystone America, Inc, SCI is acquiring the preneed branch office for the above 3 locations listed for Hodges Family Funeral Home. The applications for preneed branch office license were received on November 20, 2009 by the Division and no deficiencies were noted. Staff is recommending approval of these applications contingent upon Board approval of the funeral establishment licenses.

(9) *Application re preneed branch: "Kersey Funeral Home" under SCI Main Preneed License (Auburndale): 108 E Stella Lake Dr Auburndale FL 33823*

Due to an acquisition of Keystone America, Inc, SCI is acquiring the preneed branch office for the above location for Kersey Funeral Home. The application for a preneed branch office license was received on November 20, 2009 by the Division and no deficiencies were noted. Staff is recommending approval of these applications contingent upon Board approval of the funeral establishment licenses.

**MOTION - 24. B. 1-9:** Mr. Helm moved to approve the applications pending the Division's receipt of the proper closing documents in regards to the sale of the establishment within 30 days of the closing (and passing an inspection if applicable). Mr. Hall seconded the motion, which passed unanimously.

25. **Chairman's Report (Oral)**

The Chair took this opportunity and welcomed the 4 new members and thanked them for their active participation. The Chair added that he is looking forward to working with the members in the future.

**26. Executive Director's Report**

**A. Inspection Form for Bio-Cremation Facilities**

Mr. Shropshire stated as the Board knows, the Division has been considering whether there needs to be an amendment to the cinerator inspection form to address this new Bio-Cremation technology. The Division has decided that at this time there is no need to amend that inspection form. The Division will monitor and if it appears that problems arise or the need to amend arises, the item would be brought back before the Board.

**B. Request for Approval of 2010 Meeting Schedule**

ALL MEETINGS WILL BEGIN @ 10 a.m.

Thursday, January 7th	Conference Call
Thursday, February 4th	Tallahassee
Thursday, March 4th	Conference Call
Thursday, April 1st	Orlando
Thursday, May 6th	Conference Call
Thursday, June 3rd	Conference Call
Thursday, June 24th	Tallahassee
Thursday, July 15th	Conference Call
Thursday, August 5th	Tallahassee
Thursday, September 2nd	Conference Call
Thursday, October 7th	Orlando
Thursday, November 4th	Conference Call
Thursday, December 2nd	Tallahassee

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

**C. Request for Approval of Committee Appointments for Continuing Education and Rules Committees**

Continuing Education Committee: Tracy Huggins (Chair), Justin Baxley, Lew Hall and Jill Peebles

**MOTION:** Ms. Thomas-Dewitt moved to approve the request. Ms. Taylor seconded the motion, which passed unanimously.

Rules Committee: Jody Brandenburg (Chair), Mark Revitz (Vice Chair), Ken Jones and Bill Williams

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

**D. Request for Approval of Rulemaking regarding Crypt Venting Standards**

The Division recommends that the Board authorize the Division to proceed with rulemaking to adopt proposed Rule 69K-13.005. The effect of adopting proposed Rule 69K-13.005 will be to ratify what already exists in the 2007 Florida Building Code.

The Chair added that this has been before the Rules Committee and has been moved on.

Mr. Helm questioned whether there needs to be a minimum size for the vent.

Mr. Shropshire stated there does not appear to be a need for this.

**MOTION:** Mr. Jones moved to approve the request. Ms. Taylor seconded the motion, which passed unanimously.

*E. Request for Approval of Rulemaking regarding RGTF Fees*

The Rules Committee supports the proposed Rule amendment shown in Attachment A and recommends that the Board approve the commencement and completion of rulemaking activity to accomplish the suggested Rule amendment.

The Division believes that the customer in reality ultimately pays the RGTF fee in any case, so that identifying the fee in the preneed contract actually results in more complete disclosure to the customer and therefore the Division supports the proposed Rule amendment.

**MOTION:** Ms. Anderson moved to approve the request. Ms. Huggins seconded the motion, which passed unanimously.

Mr. Rudolph disagreed with the statutory basis for this Rule as it is based on the fact that it is not specifically prohibited from being on the preneed contract. The problem that you have is under the CPTF statute it specifically states that it cannot be on the contract and that it will be refunded if there is a default within the first 30 days. In a Regulatory Trust Fund claim, the licensee is acting as a taxing agency for the Department because that fund goes to the Department for its operations. If that fund is received in the initial payment, the fund would have to be remitted to the Department and it cannot be returned to the consumer. Secondly, under the RGTF, every time a preneed contract is written it would have to be charged, whether it is cancelled or not. This creates a couple of problems with refunds unless it is voluntarily given back. Mr. Rudolph recommended that the Board not allow this fee to be placed on the preneed contract.

Mr. Bill Williams respectfully disagreed with Mr. Rudolph. There is really nothing that prohibits you from putting anything on that preneed contract just like you would an at-need contract, as long as it falls within the FTC funeral rule. The consumer only item on that contract the consumer cannot turn down minimum service if you are under staff. If you put that on the contract if the consumer does not want it, it has to come off. The reality of it as it relates to refundability options is 100% of the monies paid by the consumer within the first 30 days are refundable to the consumer. There is nothing in the statutes that prohibits this. There is nothing wrong with putting this on the preneed contract as a specific line item. It is not a tax that the consumer is paying to the Division. This is not a requirement.

Ms. Huggins questioned whether this is like an admin fee.

Mr. Williams answered yes.

Ms. Huggins stated that the admin fee is nonrefundable.

Mr. Shropshire stated if the licensee identifies that \$6 fee as part of the purchase price, within the first 30 days, it has to be refunded. The licensee will have paid it to the Division and will not be receiving a refund of this.

Mr. Williams concurred.

*F. Request to Appoint Standing Committee to Review Cremation Procedures*

Mr. Shropshire requested that the Board appoint a small standing committee to review cremation procedures that are from time to time sent to the Division for Board approval, pursuant to s. 497.608(2), F.S. Mr. Shropshire asked that the Board delegate to the committee authority on behalf of the Board to review and approve cremation procedures.

The procedure envisioned would be similar to those used for continuing education course submissions. The cremation procedures would be filed with the Division. The Division would then forward them to the standing committee members for

review and comment. If the committee found them to be acceptable, the Division would advise the submitter that the procedures were approved; the Board would never see those cremation procedures.

If the committee recommends changes or further work on the cremation procedures, the licensee would be given the opportunity to revise and resubmit the procedures.

If the committee and the submitter are unable to reach agreement as to adequate procedures, the matter would be escalated to the full Board. Only the full Board could formally disapprove cremation procedures.

Col. Stiegman questioned whether the procedures are already spelled out in the statutes.

Mr. Shropshire stated that model procedures are spelled out in the statutes but are not required to be used. The licensee is permitted to come up with their own, as many of them do.

The Chair stated he would like to see the Board move forward with a small standing committee to include two experts: Bill McQueen, who has a law degree, a CPA and ownership interest in funeral homes in the St Petersburg area and is current president of the Cremation Association of North America; and Les Dyer, the crematory procedures expert, former president of the Cremation Association of North America and would certainly have the knowledge to review these procedures.

**MOTION:** Mr. Jones moved to approve the request. Mr. Hall seconded the motion, which passed unanimously.

*G. Report from Richard Baldwin, Examiner for Menorah Gardens, August - September '09 (see attachments)*

Informational item

*H. Training re Ethics Laws, Sunshine Laws and Public Records Laws*

The training was provided by Doug Shropshire via a PowerPoint presentation.

**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 1:51 P.M.