

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
February 3, 2011 - 10:00 A.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg, Rm. 230
Tallahassee, FL 32301

1. Call to Order, Preliminary Remarks and Roll Call

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

Mr. Doug Shropshire made the following prefatory comments for the record:

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is February 3, 2011; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. The meeting is occurring in person at the Alexander Building in Tallahassee, FL. My Assistant, Ms LaTonya Bryant-Parker, will be taking minutes of the meeting and recording it in addition to that.

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.

Mr. Shropshire took the role and the following members were present:

PRESENT:

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

ABSENT:

Jean Anderson

Mr. Shropshire advised the Chair that there was a quorum present and the Board may proceed to address the matters on the agenda.

Also noted as present from the Department of Financial Services:

Allison Dudley, Board Counsel
Anthony Miller, Assistant Director
LaTonya Bryant-Parker, Department Staff
Mary K Surles, Department Counsel
Bill Tharpe, Department Counsel
Linje Rivers, Department Counsel
Jasmin Richardson, Department Staff

The Chair questioned whether all Board members received their packets. There were positive responses from the Board members.

2. **Disciplinary Proceedings: Informal Hearings, Facts Not Disputed (Section 120.57(2))**
 - A. *Disciplinary Proceeding*
 - (1) *Motion for Determination of Waiver and for Order by Board (Probable Cause Panel A)*
 - (a) *Altman-Long Funeral Home: Case No. 110794-10-FC (SR1-597143051)*

Ms. Nancy Hubbell recused herself as she was on Probable Cause Panel A.

Ms. Mary K Surles presented the Board with a copy of the disciplinary guidelines involved in this case for violations charged in the Administrative Complaint.

Ms. Surles stated that an Administrative Complaint was filed on September 29, 2010 alleging that Altman-Long Funeral Home violated sections of Chapter 497, F. S. and Chapter 69K, F.A.C. by failing to file with the Department at least 6 Cases Embalmed and Bodies Handled Reports from May 2008 thru June 2009. A Notice of Scriveners Error was filed yesterday correcting the funeral establishment's license number in paragraph one of the Administrative Complaint.

Election of Proceedings on this Administrative Complaint was obtained by certified mail and the Department received the Respondent's notice for an informal hearing in which the Respondent does not dispute any of the Department's factual allegations and waives its right to a hearing in this matter.

The Department believes that it is appropriate at this time for The Chair to entertain a motion adopting the allegations set forth in the Administrative Complaint.

MOTION: Ms. Gail Thomas-Dewitt moved to adopt the Findings of Fact. Mr. Lew Hall seconded the motion, which passed unanimously.

Ms. Surles stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Chapter 497 Florida Statutes and Chapter 69K Florida Administrative Code as charged in the Administrative Complaint filed by the Department. At this time, it is appropriate at this time to entertain a motion adopting the Conclusions of Law as set forth in the Administrative Complaint.

MOTION: Ms. Thomas-Dewitt moved to adopt the Conclusions of Law. Mr. Helm seconded the motion, which passed unanimously.

The Chair questioned whether there was anyone present representing Altman-Long Funeral Home. There was a negative response.

Ms. Surles offered the investigative report with exhibits provided to the Board to establish a prima facie case for the violations alleged in the Administrative Complaint. The Department recommends as a penalty, an administrative fine of \$2,500, 2 years probation with the Respondent to file within the first 6 months of probation the missing Cases Embalmed and Bodies Handled Reports referred to in the Administrative Complaint. Failure to timely file with the Department Cases Embalmed and Bodies Handled Reports during the time of probation will constitute grounds for the Department to suspend the funeral establishment license for 6 months.

MOTION: Mr. Jones moved for an administrative fine of \$2,500, 2 years probation with the Respondent to file within the first 6 months of probation the missing Cases Embalmed and Bodies Handled Reports referred to in the Administrative Complaint. Failure to timely file with the Department Cases Embalmed and Bodies Handled Reports during the time of probation will constitute grounds for the Department to suspend the funeral establishment license for 6 months. Mr. Hall seconded the motion, which passed unanimously.

The Chair disclosed his affiliation with SCI Funeral Services of Florida Inc and stated it would not affect his decision to remain fair and impartial.

- (b) *Marchbank, Clifford: Case No. 110795-10-FC (SR1-597143051)*

Ms. Hubbell recused herself as she was on Probable Cause Panel A.

Ms. Surles presented the Board with a copy of the disciplinary guidelines involved in this case for violations charged in the Administrative Complaint.

Ms. Surles stated that an Administrative Complaint was filed on September 29, 2010 alleging that Clifford Marchbank violated sections of Chapter 497, F. S. and Chapter 69K, F.A.C. in that the Respondent, as the Funeral Director in Charge for Altman-Long Funeral Home failed to ensure that at least 6 Cases Embalmed and Bodies Handled Reports from May 2008 thru June 2009 were filed with the Department.

Service of this Administrative Complaint was obtained by certified mail and the Department received the Respondent's notice for an informal hearing in which the Respondent does not dispute any of the Department's factual allegations in the Administrative Complaint and waives his right to a hearing in this matter.

The Department believes that it is appropriate at this time for The Chair to entertain a motion adopting the allegations of fact as set forth in the Administrative Complaint.

MOTION: Ms. Thomas-Dewitt moved to adopt the Findings of Fact. Col. Don Stiegman seconded the motion, which passed unanimously.

Ms. Surles stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Chapter 497 Florida Statutes and Chapter 69K Florida Administrative Code as alleged in the Administrative Complaint filed by the Department. At this time, it is appropriate at this time to entertain a motion adopting the Conclusions of Law as set forth in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the Conclusions of Law. Mr. Helm seconded the motion, which passed unanimously.

The Chair questioned whether there was anyone present representing Clifford Marchbank. There was a negative response.

Ms. Surles offered the investigative report with exhibits provided to the Board into evidence to establish a prima facie case for the violations alleged in the Administrative Complaint. The Department recommends as a penalty, an administrative fine of \$1,500, 2 years probation and failure to timely file with the Department Cases Embalmed and Bodies Handled Reports as the Funeral Director in charge will constitute grounds for the Department to suspend the funeral director and embalmer license for 6 months.

Ms. Thomas-Dewitt questioned whether the stipulation that Mr. Marchbank never is allowed to serve as FDIC. Ms. Thomas-Dewitt expressed concern over the fact that Mr. Marchbank did not put forth any effort to respond to the Department.

Mr. Allison Dudley stated that she was unsure if the Board could do this permanently, but maybe as a term of probation.

Ms. Thomas-Dewitt stated that it was done in the past by the 470 Board.

Ms. Surles stated that the Board could request, as a term of probation that the licensee has to appear before the Board and show that he has been rehabilitated and that he has the character and good faith to practice in this industry.

The Chair added that during the 2 year probation, Mr. Marchbank cannot be the FDIC in charge.

Mr. Shropshire questioned whether Mr. Marchbank is currently the FDIC of any establishment.

Ms. Surles stated that she believes he is but would have to confirm and get back to the Mr. Shropshire.

Mr. Shropshire stated that the Board should consider the effect this would have on the establishment and perhaps they should be given 30 days to obtain a new FDIC and allow Mr. Marchbank to serve in the interim.

MOTION: Mr. Jones moved for an administrative fine of \$1,500, 2 years probation during which time Mr. Marchbank cannot serve as an FDIC and must appear before the Board prior to the termination of his probation to satisfy that he is capable of practicing in this industry. Col. Stiegman seconded the motion, which passed unanimously.

Mr. Shropshire belatedly recognized the new Deputy CFO, Mr. Paul Whitfield, who is in attendance today. Mr. Shropshire apologized as he should have done so at the beginning of the meeting.

Mr. Helm stated that it appears Michael Morales was a funeral director at the time and questioned why Mr. Morales was not charged.

Ms. Surles stated that there was an Administrative Complaint addressing Mr. Morales' issues as well. It was specifically during the time period that these 6 cases were not filed. The Department felt it was correct to hold the FDIC responsible. Ms. Surles was uncertain as to whether there was an investigation in which the Department sought after Mr. Morales.

Mr. Helm stated it appears Mr. Morales wrote up an at-need contract on May 5, 2008, but he did not resign until December 31, 2008.

Ms. Surles stated that she would have to go back and look at the Department's records. It appears there was a case opened up for Mr. Morales, but if there was not it was because there was not a case at the time or probable cause was not found in that matter. Ms. Surles stated she would check into it and get back to Mr. Shropshire.

(2) Motion for Determination of Waiver and for Order by Board (Probable Cause Panel B)
(a) E A Stevens Funeral Home, P.A.: Case No. 109801-10-FC (SR1-592894078)

Ms. Tracy Huggins recused herself as she was on Probable Cause Panel B.

Ms. Surles presented the Board with a copy of the disciplinary guidelines involved in this case for violations charged in the Administrative Complaint.

Mr. Anthony Miller provided the Board with a response from the Respondent to be considered as a part of this case.

Ms. Surles stated that the Department filed an Administrative Complaint on September 27, 2010, which alleges the Respondent, E A Stevens Funeral Home, violated sections of Chapter 497, Florida Statutes and Chapter 69K, Florida Administrative Code, by allowing the owner of E A Stevens Funeral Home, an unlicensed individual, to practice funeral directing by meeting with families and making funeral arrangements. The Administrative Complaint additionally alleges that the Respondent operated with a delinquent and inactive funeral establishment license for approximately 10 weeks before the license renewal fees were paid to the Department. Lastly, it alleges that the Respondent's prices listed on a statement of funeral goods and services for a decedent were either not listed on the general price list and/or were excessive of the prices indicated on the April 1, 2008 general price list for the Respondent.

The service of the Administrative Complaint was obtained by certified mail and the Department received the Respondent's notice for an informal hearing in which Respondent does not dispute any of the Department's factual allegations and elected to submit a written statement and documenting evidence to the Board in lieu of a hearing in this matter

The Department believes at this time that it is appropriate for the Chair to entertain a motion adopting the allegations of fact set forth in the Administrative Complaint, as filed by the Department.

MOTION: Ms. Thomas-Dewitt moved to adopt the Findings of Fact. Mr. Jones seconded the motion, which passed unanimously.

Ms. Surles stated that the Department believes it is appropriate at this time to entertain a motion adopting the Conclusions of Law as set forth in the Administrative Complaint.

MOTION: Ms. Thomas-Dewitt moved to adopt the Conclusions of Law finding that the Respondent is in violation of the Florida Statutes as alleged in the Administrative Complaint. Mr. Jones seconded the motion, which passed unanimously.

Ms. Surles stated that the Department contends that the Board's Findings of Fact and findings of violations that the Respondent has violated sections of Chapter 497, Florida Statutes and Chapter 69K, Florida Administrative Code, as charged in the Administrative Complaint.

Mr. Helm questioned whether there is still a case given the response provided by Mr. Miller.

Ms. Dudley stated that someone that makes a complaint does not have control over whether the case goes forward or not. The Department can still go forward even if the complainant wants to withdraw the complaint.

Mr. Shropshire stated that the Board may have questions for the Respondent so Mr. Shropshire requested that the Respondent raise his right hand to be sworn in so that the testimony would be creditable. "Do you solemnly swear the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Kennedy Stevens answered, "I do."

The Chair questioned whether Mr. Stevens had any comments.

Mr. Stevens answered, "No sir."

Ms. Surles stated as to the penalty in this matter, the Department has taken into consideration not only the facts in the instant case but also the Respondent's prior discipline. The Department would recommend revocation in this case of the funeral establishment license for E A Stevens Funeral Home and restitution be paid by the Respondent in the amount of \$8,582.57 to the beneficiary of Gwendolyn Smith-Clark and \$8,582.57 to the beneficiary of Chester Smith, III. If the beneficiaries cannot be located for the Department to disburse the funds then the Department is to remit the total funds to the Bureau of Unclaimed Property.

Mr. Hall questioned how Mr. Stevens is running his establishment without a license. The FDIC indicates that she is an office manager at another firm. There is no record of any other funeral directors there.

Mr. Stevens stated that Mr. Michael Williams is the licensed funeral director there.

Mr. Hall stated that the reports also indicate that Mr. Stevens is the person handling the funerals.

Mr. Stevens stated that he did not understand Mr. Hall's comment.

Mr. Hall questioned whether Mr. Stevens is a licensed funeral director.

Mr. Stevens answered, "No I am not."

Mr. Hall stated that Mr. Stevens indicated that he met with the family, handled the funeral, made the arrangements, did the service, went to the gravesite, etc.

Mr. Stevens stated that he was not the only one there. A licensed funeral director was there, but that was his family.

Mr. Hall stated that the law does not provide for this just because it is your family.

Mr. Stevens stated he understands this now after all of this came about.

Mr. Hall added that Mr. Stevens still could not conduct the service even when there is a licensed individual on the premises.

Mr. Stevens stated that he understands this.

Mr. Hall questioned which casket the family ended up getting.

Mr. Stevens stated that the family received the Cardinal.

Mr. Jones questioned whether Ms. Taylor is the Funeral Director in Charge as of today.

Mr. Stevens stated that Ms. Taylor has been gone for about a year now.

Ms. Thomas-Dewitt questioned whether this is reflected in the Division's records.

Ms. Surles stated that she believes this is reflected as Ms. Taylor is now working for Poitier.

Ms. Thomas-Dewitt stated that Ms. Taylor was working for Poitier then as well.

Ms. Surles added in speaking with Ms. Taylor she learned that Ms. Taylor is now an office manager with Poitier.

Mr. Jones stated that the documentation reflects that Ms. Taylor worked for the Respondent on an as needed basis.

Ms. Thomas-Dewitt questioned how an FDIC works as needed. The FDIC has to be readily available to the public.

Mr. Stevens stated that Ms. Taylor was most of the time.

Mr. Hall stated if Ms. Taylor was full time at another establishment, there is no way she could be available to them. The documentation reflects Ms. Taylor basically came by to sign off on paperwork for Mr. Stevens, who was doing the work and handling everything.

Mr. Jones questioned who was doing the embalmings.

Mr. Stevens stated that Mr Maurice Dixon handled the embalmings.

MOTION: Mr. Hall moved for revocation of the funeral establishment license for E. A. Stevens Funeral Home and restitution in the amount of \$8,582.57 to the beneficiary of Gwendolyn Smith-Clark and \$8,582.57 to the beneficiary of Chester Smith, III. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Col. Stiegman questioned what recourse the Department would have to enforce the restitution if the license is revoked.

Ms. Dudley stated it would go to Collections and go through their process.

Ms. Jasmin Richardson stated that the Department's records indicate that as of May 17, 2010 Michael Williams is the FDIC of E. A. Stevens Funeral Home.

(b) Taylor, Charlotte: Case No. 109802-10-FC (SR1-592894078)

Ms. Huggins recused herself as she was on Probable Cause Panel B.

Ms. Surles presented the Board with a copy of the disciplinary guidelines involved in this case for violations charged in the Administrative Complaint.

Ms. Surles stated that the Department filed an Administrative Complaint on October 12, 2010, which alleges the Respondent, Charlotte Taylor, violated sections of Chapter 497, Florida Statutes and Chapter 69K, Florida Administrative Code, by allowing the owner of E A Stevens Funeral Home, an unlicensed individual, to practice funeral directing by meeting with families and making funeral arrangements without her being present. Additionally as the FDIC for E. A. Stevens, the Respondent allowed the operation of the funeral establishment with a delinquent and inactive license for approximately 10 weeks before the license renewal fees were paid to the Department. The Respondent's signature also appears on a statement of funeral goods and services for a decedent that reflects prices that were either not listed on the general price list and/or were excessive of the prices indicated on the April 1, 2008 general price list for E. A. Stevens Funeral Home.

The service of the Administrative Complaint was obtained by certified mail and the Department received the Respondent's notice for an informal hearing in which Respondent does not dispute any of the Department's factual allegations and waived her right to a hearing in this matter

The Department believes at this time that it is appropriate for the Chair to entertain a motion adopting the allegations of fact set forth in the Administrative Complaint.

MOTION: Mr. Helm moved to adopt the Findings of Fact. Col. Stiegman seconded the motion, which passed unanimously.

Ms. Surles stated that the Department contends that the Board's Findings of Fact and findings of violations that the Respondent has violated sections of Chapter 497, Florida Statutes and Chapter 69K, Florida Administrative Code, as charged in the Administrative Complaint. The Department believes it is appropriate at this time to entertain a motion adopting the Conclusions of Law as set forth in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the Conclusions of Law finding that the Respondent is in violation of the Florida Statutes as alleged in the Administrative Complaint. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Ms. Surles stated since the Respondent has waived her right to a hearing in this matter, the Department believes that it is appropriate at this time for the Board to entertain a motion finding the Respondent did violate the statutes alleged in the Administrative Complaint.

MOTION: Ms. Thomas-Dewitt moved to find that the Respondent is in violation of the Statutes as alleged in the Administrative Complaint. Mr. Helm seconded the motion, which passed unanimously.

The Chair questioned whether there was anyone present representing Charlotte Taylor. There was a negative response.

Ms. Surles stated that the Department also offers an investigative report with exhibits, a copy of which has been furnished to the Board into evidence to establish the prima facie case for the violations alleged in the Administrative Complaint. As to the penalty in this matter, the Department would recommend a fine of \$5000 and a one year suspension of Ms. Taylor's funeral director and embalmers license.

Mr. Helm questioned whether Ms. Taylor is currently serving as an FDIC.

Ms. Richardson stated she would check on this.

The Chair questioned the cost as it may be feasible for the Department to start recovering some of the cost of these investigations. The Chair requested a cost calculation of the investigations.

Mr. Shropshire indicated that this information would be provided as requested by the Chair. In any event, just as a protective measure, if Ms. Richardson is unable to ascertain for sure, the Board could approve the recommendation with the provision that if Ms. Taylor is in fact the FDIC anywhere, the establishment would have 30 days to replace her.

Mr. Jones questioned whether Ms. Taylor would have to appear before the Board after the one year suspension or whether it automatically renewed.

The Chair stated it would be an automatic reinstatement unless there was a provision that Ms. Taylor must appear before the Board.

Mr. Jones stated he was inquiring for clarity.

MOTION: Mr. Helm moved for a fine of \$5000 and a one year suspension of Ms. Taylor's funeral director and embalmers license with the provision that if Ms. Taylor is in fact the FDIC anywhere, the establishment would have 30 days to replace her. Mr. Hall seconded the motion, which passed unanimously.

(c) Brevard Memorial Funeral Home: Case No. 110450-10-FC (SR1-428066325)

(d) Napert, William: Case No. 110449-FC (SR1-428066325)

Ms. Huggins recused herself as she was on Probable Cause Panel B.

Ms. Surles presented the Board with a copy of the disciplinary guidelines involved in these cases for violations charged in the Administrative Complaint.

As a matter of procedure, Mr. Shropshire requested that the Board's legal counsel to address the issue that there may be a motion to continue or table the case by the Licensee's counsel, Ms. Wendy Wiener.

Ms. Dudley stated that she understands there is going to be a motion to table this case and Ms. Wiener will offer more explanation. This should be addressed before Ms. Surles gets into her presentation.

Ms. Wendy Wiener stated that this case is about an unauthorized embalming process that began at a facility. The Licensees are not in any way trying to diminish that or get out of discipline, but the concern is that the wrong Licensees are currently named in the Administrative Complaint. Brevard Memorial was contacted by a local Hospice. The Hospice meant to identify South Brevard Funeral Home but they identified Brevard Memorial Funeral Home. In doing so, Brevard Memorial sent its transportation to pick up the body of the deceased and take it to its embalming center, which was not Brevard Memorial but another sister facility called Florida Memorial. While there, a mistake did occur and that fact is not being disputed. However, at this point, the Board has potential discipline against Brevard Memorial Funeral Home, where the body never went and most importantly and perhaps most egregiously if the Board were to go forward today against the FDIC at Brevard Memorial. The FDIC at Brevard Memorial is only involved in this case because the funeral home at which he is FDIC was incorrectly identified by this particular Hospice. It is not appropriate to sully a 30 year record of no discipline for this gentleman who has been FDIC with discipline when perhaps the FDIC at the location where the error actually occurred should be the appropriate party. Ms. Wiener requested that the Board defer this matter until a future meeting so that we can work with the Division and the Department's legal counsel to make sure that the correct Licensees are in fact being disciplined. This is not an effort to not be disciplined, but an effort to discipline the correct Licensee.

Ms. Surles stated that it is the Department's understanding that this Administrative Complaint was served on the Respondents in this matter and while this is an informal hearing, Ms. Wiener has filed a Request for Informal Hearing pursuant to 120.57(2) and in that Ms. Wiener stated that there were no disputed issues of fact and therefore the facts are set forth in the Administrative Complaint, which was filed on November 10th. The Department believes we should go forward while the facts have been admitted and as you have seen in your packets, the Bodies Handled Report is actually documented as Brevard Memorial where the body of the decedent is listed there with an embalmer, signed by the FDIC Mr. William Napert in this case. It is a little late for counsel to now raise the issue with nothing more than just her word. The Department contends that we should go forward as an informal hearing and the Board should hear the case based on the information provided to the Board. It is very clear that the body was taken in by Brevard Memorial as they were the responsible funeral home that took this body in when contacted by a family member early in the morning and later they embalmed the body when the rightful funeral home came to pick up that body. It is very clear there was an embalming that took place on a decedent that should have never taken place as they were notified early in the day. Whether the body was taken to that funeral establishment or another location where that funeral establishment uses to embalm bodies is not the issue here. The issue is the unauthorized embalming. There has never been any authorization provided from this family because there was a direct cremation with another funeral establishment.

Ms. Wiener stated that the reason the facts are not disputed is because Brevard Memorial was incorrectly contacted by the Hospice. The issue about the facility is less concerning than the issue of the FDIC who literally had no contact with the family or with the deceased other than he is FDIC at a location that was incorrectly named by a Hospice. To proceed on the case against Mr. Napert would be potentially to hang discipline around the neck of an individual with a perfect record for 30 years when he literally had nothing whatsoever to do with this situation.

The Chair stated that the case against Brevard Memorial is the issue presently before the Board, not the case against William Napert.

Ms. Wiener stated that it is. The question is whether Brevard Memorial should be the appropriate Licensee for discipline or whether the appropriate Licensee is Florida Memorial where the error actually took place. The Respondent had asked in the Motion to Continue that both of the cases be deferred so that the appropriate parties would be identified. Brevard Memorial was in fact the body wrongly identified by the Hospice. The name does appear on the Brevard Memorial Bodies Handled Report because they were incorrectly called by the Hospice and the body incorrectly got to the care center for Brevard Memorial. Ms. Wiener added that a bad precedent is established by rushing forward to discipline Licensees that may not be the appropriate Licensees to be disciplined.

Ms. Dudley stated it appears we are getting into a factual dispute. If there is a factual dispute, then it should not be an informal it should be a DOAH hearing.

Ms. Wiener stated perhaps that is the case. There is certainly no prohibition to withdrawing the request for formal hearing and when a dispute of facts arises, the appropriate thing is to forward the case to the Division of Administrative Hearing. Perhaps that is the appropriate action for the Board to take at this time because this question has arisen. The Respondent requests to withdraw the request for informal hearing and have the Division forward it to DOAH. In the meantime, we will be able to figure out who the right Licensees are and get back to the Board.

Ms. Surles questioned whether Ms. Wiener would be providing the Department with some information.

Ms. Wiener responded, "Absolutely."

Ms. Dudley stated if the Board goes forward, Ms. Wiener is alleging that there is a valid dispute of facts. When she originally filed her Election of Rights, she stated there were no disputed facts and she just wants to offer mitigation. Now we have a dispute that should really be decided by an administrative law judge as evidence taken. Any time that arises, the Board should not go forward with the informal hearing and it should be referred to the DOAH for a judge to make that determination. It appears Ms. Surles is in agreement and therefore Ms. Dudley recommends that the Board not go forward and have this proceed to the Division of Administrative Hearing unless at some in the interim they can come back to the Board and stated that they have now agreed on the facts and present a settlement. By law, we really cannot go forward.

The Chair questioned the Board's options at this point.

Ms. Surles stated the Department will refer the case to DOAH or try to settle the case and bring it back to the Board.

The Chair questioned whether this is for both cases.

Mr. Helm questioned why the case was not withdrawn before now.

Ms. Wiener stated unfortunately, it was due to timing circumstances.

MOTION: Mr. Jones moved to refer the case to DOAH if the Department cannot reach a settlement agreement with the Respondent. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(e) Lincoln Memorial Gardens of Ocala, Florida: Case No. 110696-10-FC (SR1-663608354)

Ms. Huggins recused herself as she was on Probable Cause Panel B.

Mr. Bill Tharpe stated that the License related to a cemetery sitting on 21.5 acres in Marion County, Florida, which had been owned and operated by the Cunningham family for many years. There were 4 family members who operated the cemetery. The Division of Corporations lists Mr. Algernon Cunningham as president. The license is currently suspended pursuant to an Emergency Order of Suspension issued by the Department last June. The Order was properly served on the Licensee. The Licensee, in fact never requested a proceeding nor did they appeal the Emergency Order. Following an investigation and examination by the Division, the Department presented evidence to Probable Cause Panel B (Al Hall and Tracy Huggins). Probable cause was found on that day and administrative charges were prepared. The evidence that was presented to the Panel has been provided to the Board for today's meeting. An 11-count Administrative Complaint was filed:

Count I – Alleges Algernon Cunningham as president of the licensee/cemetery, mortgaged the cemetery property in connection with a \$550,000 Note, without the knowledge of the Board, Division or the Department.

Count II – Alleges there was a default on payments under the mortgage. The mortgage holder initiated a foreclosure action and the property was ultimately taken back by the mortgage holder. The licensee lost the property. In connection with that civil action, the Cunningham family was also ordered off the property. The mortgage holder, as owner of the cemetery property, applied for and received its own license to operate the cemetery and is operating the cemetery at this time.

Count III – As part of the compliance exam that was conducted by the Division after the property was mortgaged, there was a notarized letter sent to our examiner indicating that the property was not mortgaged, when in fact it was.

Count IV – They did not renew their license for 2010.

The next 5 counts are based on the compliance exam that covered the period of March 1, 2007 – April 30, 2010.

Count V – For a 36-month period, no monies were deposited into the Care and Maintenance Trust Fund, leaving a deficiency of more than \$22,000.

Count VI – Inaccurate records of burials completed and burial spaces sold.

Count VII – Ground vault installations were not consistent with their records.

Count VIII – Certain vault locations were encroaching on adjacent burial containers.

Count X – Compliance exam found that there were changes in the records of the contracts. The amounts of payment and other information on the contracts were changed without being initialed by anyone.

Count XI – Alleges they violated this Board's order because they were on probation for a 2-year period from April 20, 2006 at which time they were required to update their records and pin all the developed property of the cemetery, but that did not occur.

Mr. Tharpe stated that the pending Motion for Determination of Waiver reflects the many efforts the Department made to serve this Licensee by both certified mail and personal service. When those efforts failed, notice of the Administrative Complaint was published in a Marion County newspaper in accordance with s. 120.60(5) and the last of those 4 publications was September 23, 2010. The Department attempted to serve it on the 2 addresses of record along with 2 additional addresses obtained from the Secretary of State's office. The Department had hoped that the attorney representing them in the civil action would accept service of the Administrative Complaint, but he would not. There was no response to the Administrative Complaint following the 21 days after service and no request for proceeding.

Mr. Tharpe requested that in regards to the Department's pending Motion for Determination of Waiver, which was filed on January 18, 2011, that the Board find that the Administrative Complaint was properly served and that no response has been received and that the Licensee has waived its right to a proceeding.

MOTION: Mr. Jones moved that the Respondent did not respond to the Administrative Complaint and therefore waived their right to elect a method of resolution in this matter. Mr. Hall seconded the motion, which passed unanimously.

Mr. Tharpe stated having found that the Administrative Complaint was properly served and no response was received the Department requests that the Board consider a motion adopting the factual allegations contained in the Administrative Complaint as the Findings of Fact in this case.

MOTION: Ms. Thomas-Dewitt moved to adopt the allegations of fact in the Administrative Complaint as Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Mr. Tharpe stated that having found that the Licensee has committed the factual allegations set forth in the Administrative Complaint, the Department believes it is appropriate at this time for the Board to entertain a motion adopt the violations cited in the Administrative Complaint as its Conclusions of Law in this case.

MOTION: Ms. Thomas-Dewitt moved to adopt the Conclusions of Law finding that the Respondent is in violation of the Florida Statutes as alleged in the Administrative Complaint. Mr. Hall seconded the motion, which passed unanimously.

The Chair questioned whether there was anyone present representing Lincoln Memorial Gardens of Ocala. There was a negative response.

Mr. Tharpe stated that the Department recommends that the license be revoked for the following reasons: By unlawfully mortgaging the property and loosing the property the Licensee has in essence abandoned its control or authority over the licensed premises and also for the reason of the false statement to the examiner regarding the fact that this property had been mortgaged; 10 of the 11 Counts and 23 of the 28 statutes cited include the penalty of revocation for the violation; failure to fund the care and maintenance fund; extremely poor recordkeeping; inconsistent interment space records; vault encroachments; changes in contracts; violation of the Consent Order of 2006. Also there were 4 prior disciplinary actions against this Licensee. In 1999 there was a citation issued for recordkeeping problems. In 2001 a Final Order was issued relating to trust fund deficiencies and recordkeeping errors. In 2004 there was an Emergency Order issued based on trust fund deficiencies. In 2006 there were recordkeeping and trust fund problems again. Based on the penalty guidelines and the aggravating factors the Department recommends that the license be revoked.

Mr. Jones questioned clarification on Mr. Tharpe's statement that the mortgagee now owns the cemetery and has a license.

Mr. Tharpe stated that the entity that loaned the money and had the mortgage foreclosed and took over the cemetery property. That entity is now licensed.

Mr. Shropshire added that in 2010, the lender, GM-1 did file an application for that license. It came before the Board on a stipulation, one of the conditions of which was that they understood that this action against the current Licensee had to proceed and their license application for that cemetery was approved subject to revocation of this license. GM-1 has been operating the cemetery and is doing a very good job.

Mr. Jones questioned whether the action to revoke the license would affect the current owner.

Mr. Shropshire advised that the action before the Board was in regard to the Cunningham family when they ran the cemetery. The cemetery is still referred to as Lincoln Memorial but the license name is different now.

Mr. Helm questioned how it is possible to revoke the cemetery license when the Licensee no longer owns the cemetery.

Mr. Shropshire stated that this is done to get it legally revoked on the record.

Mr. Helm questioned what good is the license if they do not own the cemetery.

Mr. Shropshire stated that it is absolutely no good at all but unless the Board goes through these legal proceedings, they would of record still have the license.

Col. Stiegman questioned who would be responsible for the deficits to the care and maintenance trust fund once the license is revoked.

Mr. Shropshire stated there was another stipulated term that the new licensed cemetery owner agreed to that they would be restoring the trust fund.

Mr. Hall questioned whether the funeral home is still licensed.

Mr. Shropshire stated that the funeral home's license was already revoked.

Ms. Richardson concurred and added that the funeral home has already been licensed to someone else.

The Chair questioned whether it was GM-1.

Ms. Richardson stated it was a different entity but the same owner.

MOTION: Mr. Jones moved for revocation of the cemetery license. Mr. Hall seconded the motion, which passed unanimously.

3. Disciplinary Proceedings: Proposed Settlements (and applications by related parties)

A. Settlement Stipulation for Consent Order and Proposed Consent Order

(1) Cemetery Professionals d/b/a Beaches Memorial Gardens: Case No. 103192-09-FC (SR 1-326181793 and SR1-326181755) (Probable Cause Panel A)

Ms. Hubbell recused herself as she was on Probable Cause Panel A.

Ms. Surles presented the Board with a copy of the disciplinary guidelines involved in this case for violations charged in the Administrative Complaint and a slightly revised Settlement Stipulation proposal. This Settlement Stipulation does not change any of the material terms it specifies times the Department will receive \$2,000 annually.

Mr. Shropshire stated that the Department is requested that the Board rule on the Settlement Stipulation just presented which shows Ms. Surles signature date of January 20, 2011.

Ms. Surles concurred.

Mr. Helm questioned whether the \$2000 is being used to recover the cost of the investigation.

Ms. Surles stated in essence it will but this would also cover future examinations upon completion of those during the 2 years. The Respondent will pay the Department \$2000 within 30 days after the Department completes the examination.

Mr. Helm stated that the Department spent a lot of time on this and the Respondent is only paying what is really owed. The Respondent is not being disciplined at all.

Mr. Shropshire stated that this is the dilemma that is so frequently faced concerning cemeteries. They have financial problems and then just put an extra big fine or imposing big cost just exacerbates the problem that they are before the Board on to begin with. There are no good answers usually as to what to do with a cemetery in financial problems so the Department generally does not seek to make their financial problems worst by imposing costs that they are probably not able to pay.

Mr. Jones questioned whether the probation of 4 years and 100% trusting are still a part of the settlement.

Ms. Surles answered yes.

The Chair questioned whether the \$75,000 from the Respondent to the trustee is being remitted in \$1000/month payments.

Ms. Surles stated that the total amount owed to the trustee is \$75,554.58 and the Respondent will make installments over the course of the probationary period. The Respondent is scheduled to pay \$1000 the first 12 months and \$1,765.41 for the last 13 months.

The Chair questioned whether there is any reason to believe that the Respondent would be able to comply or whether the Board is prolonging something that has been going on since 2006.

Mr. Alan Winter, on behalf of the Respondent, presented the Board with some information prior to the meeting. Mr. Winter apologized for Ms. Kuzniar not being in attendance today. The Board was provided documentation from Ms. Kuzniar's OBGYN, as Ms. Kuzniar is at 3rd trimester term. In fact, 2 days ago, Ms. Kuzniar entered St. Luke's Hospital with a kidney problem that is related to the pregnancy, so that is why she is not present. In the past Ms. Kuzniar has always been in attendance whenever she has been on the Agenda.

Mr. Winter thanked Ms. Surles for her efforts in this case. Through her efforts, 2 stipulations have been brought before the Board and Mr. Winter asked, on behalf of Ms. Kuzniar who has signed the stipulations, that the Board adopt those stipulations and sign Orders consistent with them. The second item presented to the Board was a packet that shows the first payment that was remitted in early January. A system has been worked out where what we are doing is re-trusting contacts that need to be refunded or re-trusted. So, the payments would be made to FCI and then specific entries were made as to specific contracts that were deficient. That is the system that we will go through and Ms. Kuzniar has made this promise and intends in good

faith to complete. Yes, there is an issue that there is only a finite amount of money, but Ms. Kuzniar would not sign a stipulation that she did not believe in good faith that she could complete, so she has already started that process. That was a requirement by Ms. Surles and Ms. Kuzniar was happy to do that. The most important thing in all of this is at the conclusion of the 4 years, the citizens of Florida will be protected by the repayment and re-trusting of these accounts. Mr. Winter requested that the Board adopt the Order.

The Chair questioned who Amanda Rayan was.

Mr. Winter stated that Ms. Kuzniar was recently married to Mr. Rayan. Ms. Kuzniar is professionally known as Amanda Kuzniar. It appears she has not changed her name yet with the Board.

Mr. Hall questioned whether there are any specific guidelines regarding what would happen if the payments are not made.

Ms. Surles stated if Ms. Kuzniar does not comply with these terms, that would be a violation of the Final Order and a new Administrative Complaint would be issued for failing to make payments in this matter.

Mr. Winter stated that Ms. Kuzniar understands that a violation of either of these stipulations would also subject her to a loss of her license, the funeral home's license.

Mr. Helm questioned whether there is a system in place to confirm the payments are made.

Ms. Surles stated that the installments would be made to the trustee and the trustee would notify the Department within the timeframe specified in the Settlement Stipulation. This money should be paid to the trustee and upon receipt the trustee would provide the Department with written notification of the payment. The Respondent is also to notify the trustee for which accounts the payments are to be applied.

Ms. Thomas-Dewitt questioned whether the Board could add a stipulation that if a payment is missed it would be grounds for automatic suspension of the license so the issue would not have to come back before the Board and the Respondent would have to cease and desist operating at that time.

Ms. Dudley stated that would be a counter-offer to the current Settlement Agreement. The Board could make a counter-offer, but Mr. Winter would have the option to accept it today or wait and discuss it with the Respondent, but it would not dispose of the cause today unless Mr. Winter has authority to accept a counter-offer.

Mr. Winter stated that he does have the authority to accept a counter-offer. In all discussions with Ms. Kuzniar, she has every intention of completing the 4 years of probation and timely making every payment. Ms. Kuzniar would not have signed this if she did not feel the business could not support these payments. Mr. Winter added he would have no problem with the counter-offer and would assume the Department would have to amend the stipulation, unless it could just be on the record today.

Mr. Shropshire stated that the Board can suspend a cemetery's license, but as a practical matter, the Board cannot close a cemetery. People are dying, they are expecting to be buried there next to their loved ones, etc. Mr. Shropshire urged the Board to think about the recommended stipulation very carefully as it is not wise to put the Division in that box.

Ms. Thomas-Dewitt questioned how the Board regulates the cemetery if the Respondent is just tapped on the hand. There are so many issues with cemeteries and they should be under stern discipline as well so that they can comply with the law.

Mr. Shropshire stated he recognizes this. Again, there are often no good answers regarding cemeteries that are especially in their declining years economically. Mr. Shropshire cautioned the Board as it may be the consumers of Florida that end up paying the price when the cemetery is shut down. The Department would have to start a receivership proceeding that is a long, complicated expensive proceeding. As a practical matter, as long as there is any reasonable hope, it is usually best to work with the existing Licensee.

Mr. Winter suggested that the language be amended to state that the automatic suspension of the license basically is in play unless the license holder rectifies the problem within 30 days. Therefore giving them the opportunity to correct what might just simply be a payment lost in the mail.

Ms. Thomas-Dewitt stated in essence it would be 60 days; the Respondent misses the payment, then she has 30 days to rectify it.

Mr. Winter stated that appears to be a nice safeguard if it is simply an administrative problem. Again, Ms. Kuzniar expects to comply fully.

Mr. Keenan Knopke stated having been involved with receiverships in the past, they just do not happen real quick, as Mr. Shropshire is trying to suggest. It takes months to get in front of a judge and in the meantime the license is gone and the consumers are the ones left holding the bag. Mr. Knopke added that he understands what the Board is trying to get to, but urged them not to tie Mr. Shropshire's hands where the consumers are calling the CFO or the Deputy CFO.

Mr. Jones questioned whether Mr. Shropshire is comfortable with the last proposal or whether that is still a concern for the Department.

Ms. Huggins stated that 8(g) states exactly what the Board needs it to say: *"(g) Failure to successfully complete any terms or conditions stated herein within the specified time limit shall be grounds for immediate suspension of Respondent's cemetery license and preneed license pursuant to Section 497.153(5)(c), Florida Statutes, and referral of the debt to the Department's collection agency..."* The Board should just leave it at that and wait to see what happens.

MOTION: Mr. Jones moved to accept the Consent Order. Ms. Huggins seconded the motion, which passed unanimously.

(2) *First Coast Funeral Home: Case No. 103200-09-FC (SR 1-409068727, SR1-509025821, SR1-509270492)*
(Probable Cause Panel B)

Ms. Huggins recused herself as she was on Probable Cause Panel B.

Col. Stiegman recused himself as he was on Probable Cause Panel B.

Ms. Surles presented the Board with a copy of the disciplinary guidelines involved in this case for violations charged in the Administrative Complaint.

Ms. Surles stated that provided for the Board's consideration and acceptance is a Settlement Stipulation in the matter of Cemetery Professionals d/b/a First Coast Funeral Home in which the Department filed an Administrative Complaint on May 7, 2009 for violations of Chapter 497, Florida Statutes and Chapter 69K, Florida Administrative Code by failing to maintain written agreements that indicated a signature by a funeral director or a date; that Amanda and Stephen Kuzniar alleged met with families and completed at-need contracts without being licensed as funeral directors; later had at-need contracts signed by a FDIC for the Respondent; the Respondent alleged did not maintain its funeral establishment license in a conspicuous manner visible to the public during an inspection. Settlement terms are provided in the Settlement Stipulation for Consent Order and the Department would ask that the Board adopt the Settlement Stipulation and enter a Consent Order.

Mr. Helm questioned whether Ms. Kuzniar has any type license.

Mr. Winter stated that Ms. Kuzniar has a preneed sales agent license, which is required now for 100% trusting.

The Chair questioned who the current FDIC is.

Mr. Miller stated that he would research this information.

The Chair questioned how long the Respondent had been waiting on families without a license.

Ms. Surles stated that it was alleged did not maintain its funeral establishment license in a conspicuous manner visible to the public.

The Chair stated he was referring to acting as a funeral director without having a funeral directors license.

Ms. Surles stated that the complaint was issued in May 2009. There were allegations made that they were meeting with families. They were working with a funeral director, but they would have the FDIC sign the contracts after the Kuzniars met with the family. Ms. Surles stated that she could not be more specific as it went through several FDICs. Ms. Surles added it appears to have been about 18 months.

Ms. Richardson stated that the current FDIC is David Burriss. Mr. Burriss has been effective since November 22, 2010.

Mr. Winter stated as to the FDIC, that was one of the issues in dispute from a factual standpoint between him and Ms. Surles. The most important allegation was the posting of the name of the funeral director, not whether the funeral director was in attendance.

Mr. Shropshire stated that the Administrative Complaint alleges that in the period of August 14, 2007 through December 14, 2007, First Coast conducted its business in an inappropriate fashion in that they allowed Amand and Stephen Kuzniar, who were not licensed funeral directors to meet with families. So it appears to have been 5 months.

Mr. Helm questioned whether it would be inappropriate to place a term of probation on Ms. Kuzniar's preneed sales license.

Mr. Shropshire stated Mr. Winter may not be authorized to agree to that.

Mr. Winter stated as to that specific request, he is not authorized to do so as he has not had that discussion with Ms. Kuzniar.

Mr. Helm questioned the Board's options at this point.

Ms. Dudley stated that the Board could reject the Settlement Agreement and make a counter-offer. Ms. Dudley stated that the Respondent can accept anything the Board offers to them, regardless of the guidelines, but if the Board goes beyond the guidelines and the Respondent rejects the offer, the Board would not get that down the road.

The Chair stated that there is a difference in closing down a cemetery vs. closing a funeral home.

Mr. Shropshire questioned whether Mr. Helm is seeking some type of provision along the lines of, if there is further credible evidence that Ms. Kuzniar has acted again as an unlicensed funeral director that there would be an immediate suspension.

Mr. Helm stated he would like to see something more than just a slap on the wrist. This is not the first time this has been before the Board. It just keeps showing up and it is going to keep showing up if the Board does not do something.

Mr. Hall stated that the action would have to be against the establishment license since Ms. Kuzniar only has a preneed sales license.

Mr. Helm stated that he believes the Board should do something like that.

Mr. Shropshire questioned whether Mr. Winter would be authorized on behalf of the Respondent to accept a term of if the Division determines there is reasonable cause that there has been unlicensed activity at the establishment that the Respondent agrees that there may be an emergency suspension issued forthwith without further process.

Mr. Winter stated that he does have that authority. Mr. Winter noted that Stephen Kuzniar has not been involved in this facility for over 2 years. That issue came before the Board because there was a change of control of name. Any dalliance by Mr. Kuzniar should not be a concern anymore. Ms. Kuzniar, by signing this stipulation, understands that there are educational requirements that she has to complete as part of the probation and would not have signed it if she did not feel that she could comply strictly with it.

The Chair stated that statements by the funeral directors in charge indicate that Ms. Kuzniar was waiting on families without a license, not just Mr. Kuzniar.

Ms. Dudley stated if Mr. Winter is willing to amendment and if the Board wants to make a motion to accept the agreement with the amendment that Mr. Shropshire stated, then we can go forward with that.

Mr. Winter stated that he does have that authority.

Mr. Shropshire cautioned Mr Winter that Mr. Winter's client is giving up a lot of due process regarding the summary suspension proposal.

Mr. Winter stated that he would assume as part of that due process there would, after a summary suspension, be a subsequent hearing based on this finding.

Mr. Shropshire agreed. The Department would issue an Administrative Complaint pursuant to Chapter 120. The Respondent could contest it but would be under suspension at that time.

Mr. Winter concurred.

MOTION: Mr. Helm moved to accept the Consent Order with a term that if the Division determines there is reasonable cause that there has been unlicensed activity at the establishment that there be an emergency suspension issued forthwith without further process. Ms. Hubbell seconded the motion, which passed unanimously.

(3) *Robyn Constantino: Case No. 111505-10-FC (SR 1-656438701)*

Mr. Linje Rivers stated that the circumstances around this case are the Respondent was a Funeral Director in Charge and owner at Constantino Funeral & Cremation Services. The Department conducted in inspection at Constantino Funeral & Cremation Services. Multiple violations were discovered during the course of the inspection. Allegations included but were not limited to violations for an inactive funeral director working at the establishment, the FDIC not ensuring that all funeral directors making arrangements had a valid license and FDIC not ensuring that all funeral directors' licenses were displayed conspicuously in the funeral establishment. Ms. Constantino, as the Funeral Director in Charge of the establishment, was responsible for making sure these violations did not occur. Ms. Constantino has waived probable cause and has entered into a settlement agreement. The Licensee agrees to pay a fine of \$1000.

Mr. Helm questioned whether the Division has checked to ensure all the violations have been corrected.

Mr. Shropshire stated that he does not have the answer to that right off hand.

Mr. John Rudolph confirmed that everything was resolved. The funeral director who indicated he had a valid license was immediately fired once the Examiner learned that he was not licensed.

MOTION: Mr. Hall moved to accept the Consent Order. Ms. Huggins seconded the motion, which passed unanimously.

(4) *Related matters, Landmark Funeral Home*

(a) *Change of Ownership, Application for Approval, Landmark Funeral Home Inc. (Hollywood)*

(b) *Proposed Settlement, Disciplinary Case: Case No. 108626-10-FC (SR 1-622977511) (Probable Cause Panel)*

Mr. Shropshire stated that these 2 items had been withdrawn from the Agenda at the request of the Licensee.

4. Application(s) to Acquire Control of an Existing Cemetery Company

A. *Recommended for Approval with Conditions*

(1) *Sunnyside Cemetery, Inc. (St Petersburg)*

S. 497.264, Florida Statutes, provides that “(2) Any person or entity that seeks to purchase or otherwise acquire control of any cemetery licensed under this chapter shall first apply to the licensing authority and obtain approval of such purchase or change in control.”

The application was received by the Division on December 21, 2010 and no deficiencies were noted on the application. This application is for a change of control only. The cemetery is currently owned by three (3) siblings: John T. McQueen, William B. McQueen, and Margaret McQueen. John T. McQueen is purchasing the shares of the stock of the corporation from the other two (2) siblings and current owners, William B. and Margaret McQueen, making John T. McQueen the sole owner of 100% of the shares of the corporation. The licensee is Sunnyside Cemetery, Inc located at 5300 19th Street North, St Petersburg, FL 33714, and will remain the same. The Applicant principal and sole owner will be: John T. McQueen. A completed background check of all officers revealed no criminal history.

The Applicant’s financial statement as of November 30, 2010 reflects the following:

Required Net Worth	= \$	50,000
Reported Net Worth	= \$	174,994

Approve subject to conditions as follows:

1. That closing occurs within 60 days of the date of this Board meeting, and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
2. Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant’s attorney, addressed to the Division, certifying that closing has occurred and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
3. Receipt by the Division within 75 days of this Board meeting, of a copy of the Stock Purchase Agreement, executed by all parties, and any and all amendments thereto, also fully executed.

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

5. Application(s) for Preneed Sales Agent

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

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

6. Application(s) for Preneed Main License

A. Recommended for Approval with Conditions

(1) GF Ventures LLC d/b/a Glick Family Funeral Home (Boca Raton)

The Department received the application on November 10, 2010 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on November 30, 2010 and all deficiencies were resolved as of January 10, 2011. A completed background check of all officers revealed no criminal history. Applicant will be trusting at 100% and will utilize the pre-approved IFDF Master Trust Agreement and Pre-arranged Funeral Agreement. On December 2, 2010 the Board approved the application for the qualifying funeral establishment license with conditions and the license was issued on December 22, 2010 (F062802).

The Applicant’s financial statements as of December 8, 2010 reflect the following:

Acquired Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	11,700

Recommendation is for approval of the application with conditions that the Board approves the application subject to the terms and conditions of the attached Stipulation for Licensure, in which Applicant agrees, among other things, to 100% trusting and to 24-months (2 years) of probation.

Col. Stiegman questioned whether the Board needed to be concerned with the statement “among other things.”

Mr. Shropshire stated that some of the other terms in the Stipulation include the Applicant has indicated and is now bound to use the IFDF Trust using the forms that have been approved along with various other terms like that.

Mr. Helm questioned whether the basis of the 2 years probation is because this is a new Applicant.

Mr. Shropshire stated that the reality is yes because it is new and their net worth is \$11,700.

Mr. Hall questioned how the Applicant was able to get their Receivables up to \$550,000 so quickly. On the assets it shows Notes Receivable \$550,000.

Mr. Shropshire stated it appears Mr. Hall is referring to the financials of the principal, Timothy Glick, and not the Applicant.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to the terms and conditions of the Stipulation for Licensure, in which Applicant agrees, among other things, to 100% trusting and to 24-months (2 years) of probation. Mr. Jones seconded the motion, which passed unanimously.

7. Continuing Education Course Approval(s)

A. Recommended for Approval without Conditions – Addendum B

- (1) *APEX Continuing Education Solutions #4201*
- (2) *Independent Funeral Directors of Florida, Inc #135*
- (3) *M.K. Jones & Associates, Inc. #9605*
- (4) *National Funeral Directors Association #136*
- (5) *Pinellas County Funeral Home Association #58*
- (6) *Practicum Strategies #65*
- (7) *Selected Independent Funeral Homes #137*

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

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

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

A. Recommended for Approval without Conditions – Addendum C

- (1) *Funeral Director and Embalmer – by Endorsement*
 - (a) *Carter, Tyran P*
- (2) *Funeral Director and Embalmer – by Internship*
 - (a) *Campbell, Robert C*
 - (b) *Hearns, Mario D*

The Division recommends approval of the application(s).

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

9. Application(s) for Internship

A. Recommended for Approval without Conditions – Addendum D

- (1) *Funeral Director and Embalmer*
 - (a) *Dunne, Mary R*
 - (b) *Giacco, Logan M*
 - (c) *Moats, Amanda L*
 - (d) *Moody, Jeffrey M*
 - (e) *Shorter Jr., Michael D*

The Division recommends approval of the application(s).

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

B. Approval with Conditions – Criminal History
(1) Funeral Director and Embalmer
(a) Altman-Kingwell, Heather

The Applicant submitted an application to become a Concurrent Intern on January 13, 2011. The application was complete when submitted. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- In 1998 Applicant pled guilty to felony grand theft, in Florida Circuit Court. Applicant explains that she was stealing to support her drug habit.
- In 2000 Applicant pled guilty to felony possession of heroin, and resisting arrest with violence, in Florida Circuit Court.

Ms. Altman-Kingwell appeared before the Board at its October 7, 2010 meeting, seeking an embalmer apprentice license. The Division recommended denial of the application at the October 2010 meeting, based on the criminal record. However the Board, after questioning Applicant at the October 2010 meeting, and after careful consideration of the matter, approved the application for embalmer apprentice license, subject to conditions which Applicant stipulated to, including random drug testing and 24 month probation.

Applicant now seeks a concurrent internship license. Pursuant to the stipulation for the embalmer apprentice license, Applicant has so far been required to take one random drug test, which she passed. Applicant's supervisor under the embalmer apprenticeship license advises that Applicant has performed satisfactorily.

Because the Board has previously reviewed the criminal history and determined it is not a bar to licensure, the Division is not renewing its recommendation for denial.

Approve subject to the terms & conditions of the attached stipulation for licensure signed by Applicant and dated January 21, 2011.

The Chair questioned if the Applicant were to be drug tested today whether she would test drug-free of any illicit or illegal drugs.

Ms. Heather Altman-Kingwell answered yes.

Mr. Shropshire stated under the prior Stipulation, the Applicant had been required by the Division to take one of the six random drug tests and she did pass it.

Ms. Jasmin Richardson confirmed this.

MOTION: Mr. Jones moved to approve the application subject to the terms & conditions of the Stipulation for Licensure signed by Applicant and dated January 21, 2011. Ms. Huggins seconded the motion, which passed unanimously.

10. Application(s) for Embalmer Apprentice
A. Recommended for Approval without Conditions – Addendum E
(1) Legree, Patricia K
(2) Plaksin, Scott J
(3) Waites, Kay L
(4) Wilson, Mindy

The Division recommends approval of the application(s).

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

11. Registration(s) as a Training Agency
A. Recommended for Approval without Conditions – Addendum F
(1) Funeral Directing

- (a) *Funeraria Memorial Plan-Coral Gables (Miami) (F040310)*
- (2) *Funeral Directing and Embalming*
 - (a) *George H Hewell and Son Funeral Home Inc (Jacksonville) (F040211)*

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

- B. *Recommended for Approval with Conditions – Adverse Licensing History***
 - (1) *Funeral Directing and Embalming*
 - (a) *Amanda E Granger-Epps d/b/a Epps Memorial Funeral Home (Lake Wales) (F058806)*

The Applicant submitted an application to become a Registered Training Facility. The licensee meets the necessary numerical requirements for both Funeral Directing and Embalming.

The Applicant has advised that one of the proposed training supervisors, Lawrence Epps, has an adverse licensing history. In October, 2009, Lawrence Epps was, by this Board, placed on probation for two years, ordered to take and pass a three hour embalming class and one hour embalming clinical course, and ordered to pay \$2500 in fines and \$250 in costs. Mr. Epps has paid the fine, taken/passed the classes, but remains on probation.

The Division is recommending approval subject to the condition that Lawrence Epps not be allowed to supervise interns and apprentices during the duration of his probation.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to the condition that Lawrence Epps not be allowed to supervise interns and apprentices during the duration of his probation. Mr. Helm seconded the motion, which passed unanimously.

- 12. *Change in Location of Establishment***
 - A. *Informational Item (Licenses Issued without Conditions) – Addendum G***
 - (1) *AAA Alpha & Omega Cremation Center (Fort Lauderdale) (F039928)*
 - (2) *Jacobs Funeral Services LLC (Boca Raton) (F040152)*

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

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

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

- 14. *Application(s) for Direct Disposal Establishment***
 - A. *Recommended for Approval with Conditions***
 - (1) *Florida Cremations Services LLC (Opa-Locka)*

An application for a Direct Disposal Establishment was received on December 16, 2010. The application was incomplete when submitted. All deficient items were returned on January 13, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Terence O’Dea (F042664). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

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

- 15. *Application(s) for Funeral Establishment***
 - A. *Recommended for Approval with Conditions***

(1) Ponger-Karnes Funeral Home PA d/b/a Ponger-Kays-Grady Funeral Home (Wauchula)

An application for a Funeral Establishment was received on December 30, 2010. The application was incomplete when submitted. All deficient items were returned on January 13, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Allyson Ponger (F044169). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Hall moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

16. Application(s) for Removal Service

A. Recommended for Approval without Conditions

(1) Orlando Metro 1st Call Inc (Ocoee)

An application for a Funeral Establishment was received on December 30, 2010. The application was incomplete when submitted. All deficient items were returned on January 13, 2011. The fingerprint cards for all principals were returned with no criminal history. The removal service passed its inspection on January 18, 2011. The Division is recommending approval without conditions.

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

17. Trust Transfer Request(s)

A. Recommended for Approval with Conditions

(1) Highland Memorial Park Association, Inc d/b/a Hiers-Baxley Funeral Services (Ocala)

(a) Transfer of Ch 497.417 (pre 2005) Preneed Funeral Trust and Ch 497.417 (pre 2005) Cemetery Merchandise and Services Trust from SunTrust Bank to Regions Bank

Highland Memorial Park Association, Inc. d/b/a Hiers-Baxley Funeral Services has appointed Regions Bank as successor trustee and requests transfer of the above mentioned trust accounts currently held by SunTrust Bank to Regions Bank. The transfer includes the trust accounts for the Preneed Funeral and the Cemetery Merchandise and Services Trust Funds for the preneed and cemetery that is currently owned by Highland Memorial Park Association, Inc. d/b/a Hiers-Baxley Funeral Services. Regions Bank will continue to operate under the existing trust agreements (please see attached). The Division recommends approval with the condition that certification of the transfers is received by the Department within 60 days of this Board Meeting date.

MOTION: Mr. Hall moved to approve the request with the condition that certification of the transfers is received by the Department within 60 days of this Board meeting date. Col. Stiegman seconded the motion, which passed unanimously.

18. Request to Strike Certain Law & Rules Exam Questions

A. Request by Michel Kavaklian-D'Annecy

Mr. Kavaklian-D'Annecy (Applicant) submitted an application to sit for the Florida Law and Rules examination and for a Direct Disposer license on August 3, 2010. His application was approved at the September 2, 2010 Board meeting. Mr. Kavaklian-D'Annecy has taken the law & rules exam several times, and has not yet passed it. His most recent score was 72%. Pursuant to rule 69K-16.001, he must take and pass the Florida Law and Rules examination with a score of 75% or higher.

Applicant advises that several of the questions he answered incorrectly related to embalming. Applicant does not assert that his answers to the embalming questions were correct, but rather, that he should not be required to answer law & rules questions regarding embalming, because he only wants a direct disposer license, and direct disposer's do not embalm. Applicant indicates that but for the embalming questions he answered incorrectly, his score would have been higher than 75%.

The Division advised that it understands from the Applicant that the questions in issue did not relate to embalming technique or embalming science, but instead related to law and rules applicable to embalming.

Due to issues of exam confidentiality, the Division advised it had the questions in issue available at the Feb. Board meeting, but had not included them in the materials for the Feb meeting.

The Division noted the Applicable Statutes.

Section 497.103(1) (c) and (d) FS (2010) provide as follows:

497.103 Authority of board and department; Chief Financial Officer recommendations.--

(1) BOARD AUTHORITY.--Subject to the provisions of this section, all authority provided under this chapter, including rulemaking authority, relating to the following matters, is vested solely in the board, and the board shall be deemed the licensing authority as to such matters:

(c) Authority to specify the content of examinations for licensure, both written and practical, and the relative weighting of areas examined, and grading criteria, and determination of what constitutes a passing grade.

(d) Authority to strike any examination question determined before or after an examination to be inappropriate for any reason.

Section 497.144(2) FS (2010) provides as follows:

497.144 Licensing; examinations, general provisions.--

(2) After an examination has been administered, the board may reject any question that does not reliably measure the required competency.

The Division noted that it is a requirement for direct disposer licensure that the Applicant takes and passes the Law & Rules exam. See s. 497.602(3)(d), Florida Statutes:

(3) ACTION CONCERNING APPLICATIONS.--A duly completed application for licensure under this section, accompanied by the required fees, shall be approved if the licensing authority determines that the following conditions are met:

(d) The Applicant has passed an examination prepared by the department on the local, state, and federal laws and rules relating to the disposition of dead human bodies.

The Division advised that currently, the same bank of Law & Rules exam questions is used for all categories of Applicants who must take and pass the law & rules exam (funeral directors, embalmers, direct disposers). The Division does not see in s. 497.602(3)(d), any indication that the Law & Rules exam questions should be limited to the direct disposer category of licensure. The questions in issue are drawn from the law and rules under Chapter 497, and therefore appear to the Division to be proper under s. 497.603(3)(d). All direct disposer Applicants are and have been required to take and pass the Law & Rules exam from the same bank of questions which Applicant's questions are drawn from.

The Division is recommended denial of Mr. Kavaklian-D'Annecy's request.

Mr. Michel Kavaklian-D'Annecy approached the podium to make a statement. Mr. Shropshire requested that the Applicant raise his right hand to be sworn in and asked him "Do you solemnly swear 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. Michel Kavaklian-D'Annecy answered, "I do."

Mr. Kavaklian-D'Annecy thanked the Board for allowing him to present his case today.

The Chair noted that the materials provided indicate that The Chair was copied on a letter; however the Chair stated that he did not receive the letter but did receive a phone call from applicant.

Mr. Kavaklian-D'Annecy advised the Board as follows. He stated that he submitted a letter to the Board. The Board requires that the candidate for an exam passes with 75% of correct answers out of 50 questions. Mr. Kavaklian-D'Annecy failed the test as he answered 72% of the questions. Upon review of the failed exam, Mr. Kavaklian-D'Annecy determined that some of the missed questions related to embalming and is therefore requesting that the Board strike 2 of the 50 questions and base his score on a 48 question test. Mr. Kavaklian-D'Annecy added that all of the correspondence he received from the State indicates the Applicant would be tested on the Florida Law and Rules examination. After the exam, Mr. Kavaklian-D'Annecy received

the results which indicate that the direct disposer should pass 75% or better of the Florida Law and Rules examination and the Funeral Service Arts and Science portion of the National Board examination. Mr. Kavaklian-D'Annecy felt that he was questioned on the examination for a license that he was not applying for as he has never studied Arts and Science; embalmers study Arts and Science. Therefore, Mr. Kavaklian-D'Annecy is requesting that the Board strike the 2 questions that he missed.

Col. Stiegman questioned whether anyone else who has taken the test ever complained about the questions.

Mr. Shropshire stated during his tenure, the Division has not received any such complaints.

Ms. Richardson added that she has not received any complaints about the examination. She noted that there have been some that have failed the exam, retaken it and passed it subsequently.

Ms. Hubbell questioned whether there are any limitations on the number of times allowed to sit for the exam.

Mr. Shropshire answered no.

MOTION: Mr. Jones moved to deny the request for failure to satisfy the requirement of s. 497.602(3)(d), Florida Statutes, re taking and passing the law & rules exam as the statute does not give the leeway to vary from it. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Col. Stiegman questioned whether there could possibly be different questions the next time the test is given.

Mr. Shropshire stated there is a bank of questions and there is no way of knowing which of the questions will be on the exam.

Col. Stiegman stated that it is possible the next test may not include any questions related to embalming.

Mr. Shropshire answered, "Conceptually, yes sir."

Ms. Thomas-Dewitt suggested that Mr. Kavaklian-D'Annecy study a little more and tries again.

Mr. Kavaklian-D'Annecy concurred.

19. Chairman's Report (Oral)

None

*****BREAK*****

20. Presentation to Board

Mr. Jones introduced Ms. Branch Ocampo with the Medical Examiner's Commission and the Missing Endangered Persons Information Clearinghouse, both housed within the Florida Department of Law Enforcement. At the last Medical Examiner's Commission meeting, Ms. Ocampo presented this presentation and was asked to present it to this Board. The information should be very informative for this group and this Industry also.

Ms. Branch Ocampo stated that a joint initiative was started in 2006 to focus on our unidentified deceased in Florida. Staff provides information and resources for law enforcement and medical examiners to assist in helping to identify the unidentified and finding the missing. Ms. Ocampo made a 20 minute presentation regarding "*Medical Examiners Commission & Missing Endangered Persons Information Clearinghouse Joint Initiative to Identify Florida's Unidentified Deceased.*"

21. Executive Director's Report

- A. *CEP Investments, Inc d/b/a Prevatt Funeral Home Case No. 106814-09-FC – Follow-up Inspection Pursuant to the Board's Request (Informational)*

During the October 2010 Board Meeting, the Board approved a Settlement Stipulation for Consent Order in the above-referenced matter. As part of the Board approved settlement terms, the Board requested that the Division conduct an inspection of the licensee's procedures to ensure that deceased bodies were being refrigerated within 24 hours, as required by Section 497.386(2), Florida Statutes. An Amended Final Order, incorporating the approved settlement terms, was issued December 13, 2010. A copy of the Amended Final Order is attached.

The Division conducted the requested inspection on October 29, 2010. That inspection confirmed that the licensee was in compliance with Section 497.386(2), Florida Statutes.

The licensee has paid the \$2500 fine and \$250 costs as required by the Amended Final Order.

B. Rulemaking Procedures Responding to Executive Order 11-01 (Informational)

Mr. Shropshire advised the Board as follows: As you may know, Executive Order 11-01, signed January 4, 2011 by Governor Scott, mandated that all state agencies reporting to the Governor submit proposed rule developments and amendments to the Office of Fiscal Accountability and Regulatory Reform. That Office will evaluate the proposed rules and amendments to determine any impact on job creation, expansion and retention in our state, as well as any fiscal impacts that proposed rules and amendments may have on Florida's businesses. Chief Financial Officer Jeff Atwater (CFO) fully supports the spirit and intent of the Governor's executive order. Pursuant to direction from CFO Atwater, DFS' General Counsel has enacted a similar review process for DFS rules, and for rules being promulgated by entities, such as the Board of Funeral, Cemetery, and Consumer Services, that are within DFS. It is my intention to use the DFS review process for the recently approved rules of the Board, to assure that the spirit and intent of the Governor's Executive Order is complied with.

C. Vacancy on Board of Funeral, Cemetery and Consumer Services (Informational)

Mr. Shropshire advised the Board as follows: As you may know, there is a vacancy in the Board of Funeral, Cemetery, and Consumer Services, due to the resignation of Ms. Ginny Taylor. Ms. Taylor filled a cemetery seat on the Board. Accordingly, the vacancy must be filled by a person "whose primary occupation is associated with a cemetery company licensed pursuant to this chapter." See s. 497.101(2), Florida Statutes. Ms. Taylor's term would have normally expired on September 30, 2011, and it is anticipated that this vacancy will be filled for the remainder of that term.

Pursuant to s. 497.101(1), Florida Statutes, Chief Financial Officer Atwater will select and submit a slate of three nominees to the Governor, and per the cited statute, the Governor selects from among the CFO's nominees.

Any person desiring to be considered for the vacant seat should submit a completed and signed "Questionnaire for Gubernatorial Appointments," to Ms. LaTonya Bryant-Parker, of the Division of Funeral, Cemetery, and Consumer Services, in time to be actually received by her **BY NOT LATER THAN** close of business on Feb. 8, 2011. The Questionnaire form is attached hereto. In addition, the Questionnaire form may be obtained by contacting Ms. LaTonya Bryant-Parker at 850-413-3039, or by downloading it from the website of the Division of Funeral, Cemetery, and Consumer Services (<http://www.myfloridacfo.com/funeralcemetery/>), in the "Announcements" section. Ms. Bryant-Parker's address is: Division of Funeral, Cemetery, and Consumer Services, ATTN: LaTonya Bryant-Parker, 200 East Gaines Street, Tallahassee FL 32399-0361. Her email address is LaTonya.Bryant-Parker@MyFloridaCFO.com. Completed Questionnaires may be mailed, or scanned to PDF format and emailed to her.

Please note that interested persons are of course certainly free to send their completed Questionnaire to the Governor's office. However, to assure that the CFO is aware of your interest in being appointed to the Board, please make sure you get at least a complete copy of your completed and signed Questionnaire to Ms. Bryant-Parker as indicated above.

The Funeral & Cemetery Division will forward all Questionnaires it receives, to the CFO's appointments office (Ms. Susan Miller).

D. Memorandum of Analysis re: Can Capital Gains be Withdrawn from a Care and Maintenance Trust (Informational)

Mr. Shropshire advised the Board that the Division released an informational copy of a memorandum of analysis on whether capital gains can be withdrawn from a cemetery Care and Maintenance Trust Fund. The Division's position in conclusion is that they cannot except in 2 very limited circumstances:

- 1) With the Board's expressed permission on a case by case basis.
- 2) It can be withdrawn to pay the capital gains taxes.

E. Error in Noticing January 2011 Board Meeting; Ratification of Decisions at Jan. 2011 Board Meeting (Action Required)

Mr. Shropshire referred to materials on this issue provided to the Board for their Feb. 2011 meeting, and advised the Board as follows:

Pursuant to Chp. 120, Florida Statutes, all meetings of entities such as this Board must be noticed in advance in the Florida Administrative Weekly, at least 7 days prior to the meeting.

The Division failed to comply with the above requirement as concerns the January 6, 2011 teleconference meeting. The error occurred in connection with the process of packing and moving the Division offices from Alexander Building, to Pepper Building. The Division staff member responsible for getting the notice of the 2011 Board meeting schedule to the Florida Administrative Weekly, was distracted by additional duties in the moving process, and was late in getting the notice to the FAW for publication. This staffer has been uniformly reliable in the past, and this was an isolated error. The Division had the required notice published, but it was late. Notice of the January 6, 2011 Board meeting was published in FAW on January 7, 2011.

Fortunately, because the January meeting was a teleconference meeting, there were no contested matters on the agenda. More specifically, there were no license application denials, and the disciplinary matters on the January 2011 agenda came before the Board on settlement stipulations signed by the licensees, and were accepted by the Board.

Nevertheless, in order for the Board's decisions at the January meeting to be valid, it will be necessary for the Board to ratify those decisions at a properly noticed meeting.

The materials provided to the Board and the public for the Feb. 2011 Board meeting, included a complete copy of the Jan. 2011 Board meeting agenda, showing on that January agenda how the Board had voted on each matter on that Jan. 2011 agenda. Mr. Shropshire advised that he had with him at the Feb. 2011 Board meeting, a full set of the materials from the January 2011 Board meeting, in case any Board member, or member of the public, desired to review same.

The Chair asked whether any person in attendance at the Feb. 2011 Board meeting, including any Board member, wished to speak concerning any matter listed on the January 6, 2011 Board meeting agenda. No one indicated a desire to speak.

The Division recommended that the Board ratify its decisions made at the January 6, 2011 meeting. The Division apologized for the error and the resulting inconvenience to the Board.

MOTION: Mr. Jones moved that the Board to ratify all its decisions made at the January 6, 2011 meeting. Ms. Thomas-Dewitt seconded the motion, which then passed unanimously.

F. Approval of Minutes, January 6, 2011 Board Meeting (Action Required)

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on January 6, 2011.

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

Ms. Thomas-Dewitt excused herself from the meeting due to her flight schedule.

G. Jewish Burial Society of Pinellas County, Inc. (JBSPC) – Request for Board Position Regarding Proposed Stipulation for Transfer and De-Licensure of a Licensed Cemetery and Transfer of Related Outstanding Preneed Contracts (Action Required)

Mr. Shropshire noted that this matter is put before the Board at the request of Applicant, Jewish Burial Society of Pinellas County, Inc. (JBSPC). Applicant is represented by attorney Wendy Weiner.

Applicant desires to take over ownership and operation of Chapel Hill Cemetery, which has a significant history of usage by persons of the Jewish faith, so that the Applicant has a special interest in the cemetery.

Chapel Hill Cemetery is currently owned and operated by Stewart Enterprises Inc. (SEI).

Chapel Hill Cemetery was, prior to June 23, 1976, owned and operated by a religious institution, to wit: Congregation B'nai Israel of St. Petersburg, Florida, Inc., so that it is believed by JBSPC, its Counsel and the Division, that Chapel Hill Cemetery would qualify as an exempt cemetery under s. 497.260(1)(d), Florida Statutes (2010), if JBSPC acquires Chapel Hill Cemetery. Applicant would operate the cemetery as exempt under the aforesaid exemption, if it acquires ownership of the cemetery.

Chapel Hill Cemetery has indicated willingness to assume responsibility for the outstanding preneed contracts related to Chapel Hill Cemetery.

Applicant advises through their counsel that SEI has preliminarily indicated interest in the proposed transaction.

Applicant requests an indication from the Board whether the Board would approve the proposed transaction if the parties were to execute the attached proposed Stipulation.

Applicant advises they are facing certain external decision deadlines, for reason of which they asked that the matter be reviewed by the Board at this Feb. 2011 meeting even though it was not finalized so that they could get a sense perhaps from the Board whether the Board was inclined favorably on a preliminary basis.

The Chair questioned whether the Division has a recommendation.

Mr. Shropshire stated that he was approached today by Ms. Wiener with a somewhat modified version of the stipulation that is before the Board. Mr. Shropshire added that he had not had time to review it but it does not appear that there are any problems.

Ms. Wiener stated that there are some hard deadlines in the contract that the parties are facing and the issue of the cemetery being held as an exempt cemetery is really not the controversial issue at all in this, but Mr. Shropshire and we thought it appropriate to enter into a stipulation just so that everybody knew where they stood, which might avoid some problems that have happened with other cemeteries going from licensed to exempt that have happened in the past. After Mr. Shropshire sent this to me, he asked that I confer with sellers' counsel, Mr. Ted George. Mr. George had a couple of inconsequential changes to the document previously submitted to the Board. Ms. Wiener provided the Board with copies: 1 clean copy and 1 redline copy. It looks like a lot of changes only because primarily the change had to do with the entity that owns the cemetery. There was a merger at Stewart of which the Division is aware and so the cemetery is not owned by Memorial Park Cemetery, Inc. It is actually owned by SE Cemeteries of Florida, Inc., so the Board will see lots of redlining but the vast majority of it has to do with that. In paragraph 15, Stewart, who is referred to as SEI in the document, was going to be required to assist with burial records for the course of a year. JBSPC does not believe that would be necessary nor does Stewart wish to obligate itself to assist with burial records that it has no control over. It will turn the burial records over to the new owners and the new owners will assume responsibility for maintaining those burial records.

The Chair questioned what expertise the new owner has to do so.

Ms. Wiener stated she was not expecting that question. The entity is comprised primarily of individuals that were former owners of the cemetery. The cemetery was formerly owned by Congregation B'nai Israel prior to 1976, which is what qualifies it to be held as an exempt cemetery at this juncture. The people that will be operating the cemetery is a board comprised of

the cemetery committee from B'nai Israel as well as the cemetery committee from another congregation close by, Temple Bethel. The Division actually has the Articles of Incorporation and the bylaws.

The Chair questioned whether all the interments rights held in that cemetery are members of the Jewish faith.

Ms. Wiener answered, "No." The cemetery primarily serves the Jewish community but it has non-Jewish sections and will continue to serve those as well.

The Chair questioned the approximate number of interments per year.

Ms. Wiener stated that she did not have the answer to that.

The Chair questioned whether there was a Stewart representative present.

Mr. Knopke stated back when he was with Stewart there was less than 50 a year.

Ms. Huggins disclosed her affiliation with Stewart and advised that it would not affect her ability to remain fair and impartial on this matter.

Ms. Wiener stated that the other change has no bearing on the regulatory body. In one of the paragraphs, the private entities Stewart and JBSPC could enforce the stipulation against one another in a court of competence jurisdiction, but that has been stricken as we do not believe that is appropriate for a document that is for the regulator to also enter into. The other substantive change appears two other things. The time to transfer trust funds was shortened from 60 days to 30 days. In paragraph 20, reference is made to Attachment B, which is a list of preneed contracts. Stewart's counsel informs that they do not have a list, computerized or otherwise, of the contracts that they acquired when they acquired the cemetery. So the list that will be attached ultimately to the document at closing will be the list of the records, the preneed contracts that Stewart sold during its time. However, the cemetery will be operated as an exempt cemetery. The cemetery will, as Mr. Shropshire requested per the original draft of the stipulation, subject itself to the jurisdiction of the Division, the Board and if necessary the Division of Administrative Hearings with regards to any and all preneed contracts that will be assumed pursuant to the transaction.

Mr. Hall questioned whether the care and maintenance would also be under the Division's supervision as well.

Ms. Wiener responded that the care and maintenance trust fund will be maintained. When a cemetery becomes an exempt cemetery, then it is no longer bound to even maintain its existing care and maintenance trust fund. This cemetery has agreed to maintain the care and maintenance trust fund.

Mr. Hall questioned whether it would be under the Division's jurisdiction just as the preneed contracts.

Ms. Wiener responded that it would not be because it is exempt but the stipulation is certainly under the jurisdiction of the Division so if the cemetery violated that term it would be violating the stipulation and the Division would have recourse.

The Chair stated that the principal will not change.

Ms. Wiener stated per the stipulation, the income will be able to be taken out just in the same way that any other cemetery would take out, but not for any other extraordinary measures.

Mr. Hall questioned whether there is anything that would allow them to use the care and maintenance since they are exempt now.

Mr. Shropshire responded that they agree not to use it. The stipulation provides that they shall provide a copy of this executed stipulation to the trustee.

The Chair questioned the amount.

Ms. Wiener stated that she did not have the amount. Whatever the amount is that Stewart is presently holding will be transferred and maintained. This is a term of the stipulation that JBSPC has agreed to, which is a drastic difference in what happens in a normal exempt cemetery situation.

Mr. John Rudolph, attorney and public attendee, stated his only potential issue is where you have a preneed trust and preneed contracts being transferred to someone that does not have a preneed license. In years past, there has been a requirement that for those preneed funds, someone holding a PNL has to have responsibility for those contracts. There is a big issue about who is responsible for those preneed contracts. It does not appear that an exempt entity can take preneed trust funds, hold preneed contracts and receive funds on the preneed contract. Otherwise they would have to give into annual inspections, annual financial requirements, etc. This would create a precedent where anyone could transfer their preneed contracts to someone that is not licensed and they could take the funds and contracts then say they are going to fulfill them, but not be within the jurisdiction of this Department and have no oversight or financial ability to perform the contract.

Ms. Wiener stated anticipating that issue, there is absolutely no requirement in the Board's law or rules that a preneed licensee sell its preneed contracts to another preneed licensee. In fact, there are thousands of transactions that have happened in this state, many of which have been approved by this very Board where a licensee, perhaps a corporate licensee or an independent licensee, sells its funeral home or cemetery to another entity that is not also a preneed licensee. The protection in that case that is cited is that the Board still has jurisdiction over that entity because it is a "licensee." Well in this case, this entity is subjecting itself voluntarily to the jurisdiction of the Division. So there is exactly the same oversight over these preneed contracts as there would be over any other entity. There are funeral homes that change hands that have preneed contracts that are fulfilled by non-preneed licensees. There is no statutory authority for the argument that Mr. Rudolph is making nor is there statutory authority to scrutinize or even prohibit the entity to which preneed contracts will be assigned for fulfillment. A preneed license is not required to fulfill a preneed contract so a preneed contract can be assigned to a non-preneed licensee for fulfillment.

Mr. Rudolph stated that there is a provision in the statute that states no one can receive funds on a preneed contract unless they hold a certificate of authority and that is clear. Furthermore, if you factor a preneed contract, the requirement is the person who is factoring the preneed contract must put 100% of the funds received into trust.

The Chair stated that Mr. Rudolph is referring to receiving funds for payment of a preneed contract, not for fulfillment of the preneed contract.

Mr. Rudolph responded this is true but then you are having the trust funds transferred to someone who does not have a preneed license. Mr. Rudolph questioned whether all the contracts are paid in full.

Ms. Wiener responded that she did not know.

Mr. Rudolph questioned where all the money would go if there was money that was still owed on a Stewart contract and the trust funds are transferred and trust funds are transferred.

Ms. Wiener stated that historically that issue has been addressed in the way that we handle inactive preneed licensees and where a business is sold that has preneed contracts to a non-preneed licensee. Then, if there are payments received on those contracts, 100% of those monies must go to trust. That is a term of the stipulation and in fact we offered to Mr. Shropshire that if it would make him more comfortable, we could have the payments sent directly to the trustee and not pass through the hands of the exempt cemetery, if that would be the Board's preference. There is simply no statutory requirement or authority.

Mr. Shropshire stated he and Ms. Wiener have had extensive discussion on the very issue raised by Mr. Rudolph, and preliminarily he agreed with Mr. Rudolph's position. The Board should know that Mr. Shropshire has preliminarily taken the position with Ms. Wiener that if this goes forward, Stewart remains on the hook if for any reason the Society does not ultimately perform.

Ms. Wiener urged that there is no statutory authority to continue the obligation of a preneed licensee that assigns its preneed contracts to another entity that can fulfill. If this Board votes in that fashion, it would render uncertain thousand of transaction in this state that have occurred wherein Stewart, SCI, Carriage, individual funeral home owners have sold

locations with preneed contracts to other non-preneed licensees. So to suggest that an entity that had a preneed license that may no longer be in existence continues to be liable far exceeds the statutory authority for this Board. If taken to its logical conclusion, then you have an entity with a preneed license, has one location and it sells its location to someone who does not have a preneed license, there is no place in our statute where we continue the obligation for that preneed licensee. Ms. Wiener questioned whether the corporation has to remain up in running. Ms. Wiener questioned whether the State is responsible for the preneed contracts if the preneed licensee is an individual who dies. This is simply outside of the statutory authority of the Agency.

Mr. Shropshire stated that a distinction he would draw is that even if it is true as Ms. Wiener indicates that the Board has previously allowed the transfer of preneed contract responsibility from a preneed contract to a funeral establishment, was a licensed funeral establishment. This is different in that it would be a transfer to a totally unlicensed entity. The Division's fear of course is that it would circumvent the whole thrust of the preneed law if the preneed license could just take a book of business, sell it to some totally unlicensed entity and then be shed of the liability. That pretty much makes a mockery of the statutes. Mr. Shropshire regretted having to argue this, but it was understood that Stewart was still on the hook if the society did not perform.

Ms. Wiener stated that Stewart certainly is not agreeing to be obligated by preneed contracts. That is not part of their agreement in any way and there are Stewart representatives present who can speak for themselves. You will not find in the statute any obligation to transfer preneed contracts, to assign preneed contracts from one preneed licensee to another preneed licensee. The obligation is simply not in your statute and so because there is no obligation, the Board cannot also draw a distinction between an unlicensed entity and a licensed entity. Ms. Wiener added that she respects Mr. Shropshire's position but there is simply no statutory authority to require the transfer of a preneed contract from one preneed licensee to another.

Mr. Rudolph quoted s. 497.452(2)(a), F.S., "*No person may receive any funds for payment on a preneed contract who does not hold a valid preneed license.*" On an active where someone is abandoning a license and giving it to an exempt cemetery, I would characterize that as an inactive license, "*The preneed licensee shall collect and deposit into trust all of the funds paid for a preneed contract sold prior to becoming inactive.*"

Ms. Wiener questioned whether Mr. Rudolph was reading from the Rule.

Mr. Rudolph responded that he was reading from the Statute and the Statute overcomes any Rule.

Ms. Wiener stated that the Rule contemplates the very language of the Statute, which requires that the inactive preneed licensee, if that is how we would treat our exempt entity, must deposit into trust 100% of the funds collected as payments are made on outstanding preneed contracts.

Mr. Rudolph stated that all the funds that were collected on the contract must be put into trust. If you are doing a 70/30 Trust, then you must come up with the remaining 30% and the remaining 70% on the merchandise included in the trust. That is so that all of the funds paid on the preneed contract are available in trust to earn income so that if someone who does not have a license can fulfill that contract. If not and you are just transferring a 70/30 trust, then there could be an issue if the monies were not in trust, for her client to have to come back to the Board to request a Consumer Protection Trust Fund claim. 100% collected has to be trusted and it is unclear whether that has happened yet.

Ms. Wiener stated that the representative of Stewart, Esther Bateman, just advised that there is only \$16,000 outstanding on all preneed contracts. Ms. Wiener added that she understands Mr. Rudolph's point on the collecting of funds. A way to resolve that to the Board's satisfaction could be that any funds that are still owed could be sent directly to the trustee. JBSPC would happily notify all of the outstanding preneed contract holders prior to any payments being received to send those directly to the trustee. Of course you need not be a trustee to receive preneed funds. Pursuant to that same law, the provisions of that law do not apply to the bank or to the trust company. The remaining funds could be sent there.

The Chair questioned the current balance of the trust fund.

Unidentified person stated that there is \$134,000 in the trust fund. There are only 13 contracts.

Mr. Knopke questioned whether this is preneed.

Unidentified person responded yes.

Ms. Wiener stated that one thing she is concerned about establishing as a precedent is any precedent which will impair the thousand of transactions that have occurred in this state wherein a preneed licensee has assigned preneed contracts with the sale of a business to a non-preneed licensee. Ms. Wiener urged that this Board does not have the authority to find or rule or conclude that those transactions are somehow invalid that the former preneed licensee remains obligated. The nightmare that will ensue as a result of that is significant and for any of you who are licensees who have sold a business with preneed contracts associated with it to a non-preneed licensee, my guess is that you did not believe you would remain liable on those preneed contracts until they were fulfilled.

Ms. Lisa Coney stated that part of s. 497.452, F.S. was quoted but s. 497.452(1)(a), F.S. specifically states that, *"No person, including any cemetery exempt under s. 497.260, may sell, advertise to sell, or make an arrangement for a preneed contract without first having a valid preneed license."* Chapel Hill Cemetery under Beth B'nai or the Jewish Burial Society is not asking for the right to sell or advertise on a preneed basis at all. All they are asking for is the right to service on an at-need basis. The argument is not hitting home that they are not doing preneed; they are not asking for preneed; they are not making money from preneed. They are asking to be the servicing agent for existing preneed contracts which has happened a million times. Also 497.452(4) states the provisions of this section do not apply to religious- owned cemeteries. Ms. Coney added that she was unsure that or as if the same Section says that these provisions that are being quoted against the possibility of this existing do not apply to a religious owned cemetery. If we were to allow this to be a religious then none of these things being quoting would be a factor.

Mr. Shropshire stated that if in fact the transaction is that the Society would be the servicing agent for Stewart, then that is fine, but I do not think that is what is being contemplated.

Ms. Wiener stated that she believes Ms. Coney meant that the fulfilling entity would be the religious cemetery. The provision in (4), you would have to have been around a long time to know that actually was specifically for the Archdiocese in Miami to allow them to sell preneed even though they were an exempt cemetery. That does not speak to our issue specifically but you do not have to be a preneed licensee to buy a business with preneed contracts, get those payments, put them in trust and fulfill those contracts. It has happened over and over and over again in this state and there is no distinction between an exempt cemetery and a licensed cemetery. However, the distinction in this case is that in this particular situation, the parties seek to avoid any of the issues that have happened, issues that Mr. Rudolph alluded to, by voluntarily subjecting the exempt cemetery to the jurisdiction of the Division. So if anything goes wrong with the fulfillment with any of those preneed contracts, this Division, this Board and ultimately the Division of Administrative Hearings would have jurisdiction over JBSPC as being responsible to fulfill those contracts. The community feels very certain that it will be able to restore the cemetery to a thing of beauty, fulfill the preneed contracts that are outstanding and to saddle a seller with continuing obligations on preneed contracts that are by their terms assignable is completely outside of the authority of this Board.

Mr. Rudolph stated that every entity that he has known that was sold and had preneed contracts, the purchasing entity had to have a preneed license.

Ms. Coney questioned whether Mr. Rudolph is saying that a funeral home has to have a preneed license to fulfill a preneed contract.

Mr. Rudolph responded no. To buy a funeral home that home that has preneed contracts that entity that is buying it has to qualify for a preneed license.

Ms. Coney questioned whether Mr. Rudolph believes that every preneed contract being fulfilled in Florida is being fulfilled by someone with a valid preneed license.

Mr. Rudolph responded no. I am talking about contracts being assigned to them and they are not a licensee, as this is an exempt cemetery. Trust funds and payments are being transferred. Ms. Wiener states that they would be under the jurisdiction of this group, but what are the financial requirements.

Mr. Jim Atwood stated that the trust funds remain in trust. The new entity cannot pull them out. They are still obligated by the terms of the trust agreement and are only pulled out if it is fulfilled or cancelled. It is all in the same rules as before.

Mr. Bill Williams stated that they are still regulated by the Board and the Division as if they did have a preneed license because they have control of those preneed contracts pursuant to the statutes.

Ms. Coney stated that s. 497.452(2)(a) that Mr. Rudolph referenced that you cannot receive money from a preneed unless you have a preneed license; (2)(b) states that the provisions of (a) do not apply to a trust company. If the monies are staying in trust, with a valid trust company then the statutory reference Mr. Rudolph is making does not apply by statute.

Mr. Rudolph questioned whether there is a requirement that all the funds that are due on these preneed contracts must be paid directly to the trustee.

Ms. Wiener answered, "Absolutely, we will agree to that." That has been offered to the Division and will be agreed to.

Mr. Shropshire stated that the Division is hoping for some clever solution that would allow us not to have to address these big questions yet would allow her client to get the cemetery because the Division believes they are a very reputable outfit and would take good care of the cemetery. The Division would have to oppose going forward and would recommend against deciding today that as a matter of policy, preneed contracts and responsibility can be transferred to an unlicensed entity and the preneed entity that previously owned them is off the hook. The Division would oppose that at this point.

Ms. Wiener stated that she does not know where the Division's statutory authority to oppose it is.

Mr. Shropshire stated it may be one of those things that seems so obvious to the Legislature that they did not put it in the Statute because why would they require that you have a net worth and submit character sketches, if you can write the contract and immediately turn around and pass it to somebody who is completely unregulated and say, "We are shed of it; it is not our responsibility anymore."

Ms. Wiener stated that she understands but we are bound by the law and the rules as they are written and the laws and rules as written do not contemplate the assignment of a preneed contract to another preneed licensee. You will not find it in this statute; you will not find it in the rules. A conclusion by this Board to the contrary would be subject to judicial review.

Mr. Shropshire recommended that the matter be tabled.

The Chair questioned the consequences for tabling this Item.

Ms. Wiener stated that they are really on some hard deadlines. The unfortunate thing is this issue was brought to the Division's attention in the fall of last year regarding JBSPC acquiring the cemetery. The letter was sent in October of last year and the matter was not addressed.

Mr. Shropshire stated the issue then was whether this cemetery, if it was transferred, would qualify for the religious exemption. That was the issue primarily back then.

Ms. Wiener concurred but added that it was discussed whether they would hold preneed contracts or not. The issue has come more onto the floor because there is a problem with an exempt cemetery in the state that is completely unrelated to this entity so it has swooped into its grasp this organization that may forfeit its contract, ultimately lose its entire purchase price, because there is this requirement being imposed, which none of which are required. This Board does not have authority to decide whether something can be an exempt cemetery; you either are or you are not by the Statute. It also does not have authority to approve or disapprove the assignment of a preneed contract to a non-preneed license holder. So we are here in good faith offering a stipulation, offering jurisdiction to the Division, offering jurisdiction to the Board over the preneed contracts, offering to maintain the care and maintenance trust fund. Not one of which is an obligation of an exempt cemetery that they qualify to be in good faith, yet we are going to put this transaction at risk over something that there is no statutory authority to do.

Mr. Helm stated that he would like to see the Board help out with the deadline but there is no way that he could make a decision. Mr. Helm added that he does not like anyone standing before him telling him what he can or cannot do, so he would like to find out what he can or cannot do.

Ms. Huggins questioned whether Ms. Dudley had any guidance.

Ms. Dudley apologized as she missed this as being a part of the agenda.

The Chair stated that it was sent out as an addendum.

Ms. Dudley added that she has not fully researched this issue and cannot provide the Board much guidance at this point, but would defer to Mr. Shropshire's research on it.

Col. Stiegman stated that he is on the outside and does not know what is being discussed technically, but it appears they are making a mountain out of a mole hill. This is going from one trust company to another trusting outfit. Ms. Wiener is making every provision to care for the \$16,000 that is still outstanding.

Ms. Michele Hood stated that she appreciates the position and what the organization is trying to do to maintain the cemetery. The concern that I have is the precedent that we are setting. It is not just the \$16,000 that we are talking about on unpaid balances on preneed contracts. These contracts are trusted at minimum funding method, which 70% approximately of each contract that is placed in trust. Now what happens with that other 30% that Stewart had collected at some points when those contracts were initially sold? Ms. Hood stated that Stewart is not going to put that 30% back in trust to make 100% of those sales whole. That means that you now have an unregulated entity being responsible to make up the difference of that 30% to the consumer. If the entity does not have the funds to do so, then the Consumer Protection Trust Fund is on the hook. That is a horribly bad precedent to set, to basically put the Consumer Protection Trust Fund on the hook for that 30%.

Ms. Wiener questioned the difference between that and when a funeral home is sold to someone without a preneed license.

Ms. Hood stated that she has never seen a book of business from a preneed licensee sold to a non-preneed licensee. Any funeral home licensee can fulfill the contract but they do not own the contract.

Ms. Wiener stated that they do as they are assigned to them. In the closing document, there is an assignment and assumption agreement.

Ms. Hood stated that she has never seen than in 15 years.

Mr. Williams stated that he has seen it quite a few times. In fact, when they acquire them, those contracts end up on that entity's financial statements.

Ms. Hood questioned why they would be submitting financial statements if they did not have a preneed license.

Mr. Williams stated it makes no difference. It still ends up on their financial statements. They have a liability to fulfill those contracts.

Mr. Shropshire stated that he does not contest that it has been done many times in the Industry. My inquiries indicate that it has never come to the Board for an issue about whether the preneed licensee is off the hook. The two parties who did the deal, the person who acquired them is on the hook to that transferee but that does not mean that between the licensee and the regulator that the licensee is off the hook. Mr. Shropshire stated that he does not believe that precedent has ever been established. Mr. Shropshire added that he wanted to avoid having to address it here today.

Mr. Williams stated that the statute is very clear about what Ms. Hood is speaking to.

Ms. Wiener stated in this case, the cemetery agreed to be regulated in that same way. Under the Board's law, this cemetery could be sold by Stewart without any consideration by this Board. The cemetery would send in a notice that they are an

exempt cemetery because under the Statute they qualify to be held as an exempt cemetery. The preneed contracts can go with them because as an exempt cemetery there is no further obligation. This is all voluntary submission to jurisdiction that is not required by your law. Ms. Wiener added that she is a little concerned about the precedent it establishes for an entity to subject itself to jurisdiction when it is not supposed to be.

Mr. Hall stated that he is all for working it out and it sounds like a great program. Mr. Hall stated that he was a benefactor receiving some of Stewart's preneed contracts and what Ms. Hood is pointing out is true because it will not cover the cost of doing the funeral. When you service that account you better be ready because it will not even cover merchandise and the cost of covering that account.

Ms. Wiener stated that JBSPC is prepared for that.

Mr. Hall questioned how JBSPC is going to feel when they have to come out of pocket with money to service that preneed contract.

Ms. Wiener stated that they have done the due diligence on the preneed contract books sold by Stewart. They are comfortable with it and there is no statutory or regulatory authority for that to be the concern of the regulator. The concern of the regulator is if I go to get my preneed contract fulfilled and I do not get it fulfilled, then I got somebody to call and in this case just like in any other licensee case they have someone to call, the Division. JBSPC has subjected itself to the Division for the purpose of these preneed contracts which is not required. There are no funerals that have been sold there.

Ms. Huggins questioned what is refundable.

Ms. Wiener stated that nothing really is refundable.

MOTION: Col. Stiegman moved to accept the red stipulation. The motion died for lack of a second.

Mr. Shropshire stated that this is an awkward situation because the Division has not executed that Stipulation and has not agreed to execute that Stipulation.

The Chair questioned the Board's options.

Ms. Wiener questioned whether the Division has separate authority beyond that of the Board.

Mr. Shropshire answered, "No, but we cannot be compelled to enter into a stipulation, as we may ultimately have to recommend against the transaction."

Ms. Wiener questioned if the Board votes in favor of the transaction and to enter into the stipulation whether the Division could override that.

Mr. Shropshire answered no, but the stipulation being presented is a stipulation between the Division and Ms. Wiener's client. It is not a stipulation between the Board and the client.

Ms. Dudley stated procedurally, Mr. Shropshire needs to make a recommendation. By statute the Board should give that recommendation weight. Mr. Shropshire has not officially made a recommendation on the new documentation before the Board. It is being called a stipulation but technically it is not a stipulation at this point because the Division has not signed off on it, but the Board can look at that document and decide to accept the document even though it has not been stipulated to by the Division.

Mr. Jones stated that he would like to go through the materials, Mr. Shropshire has some research to do and Ms. Wiener is on a timeline. Mr. Jones stated that he does not want this to wait until the next meeting and questioned whether it is possible for the Division to do what needs to be done while giving the Board a chance to review this and advertise a special call to address this if the timeline is that sensitive.

Ms. Wiener stated that she can ascertain that it is extremely time sensitive because they have been trying to get to this point for a period of time. Ms. Wiener stated that holding it up until March is super problematic.

Mr. Shropshire stated that the March Board meeting would be the earliest because we would have to notice a special meeting. It could not get in until next Wednesday and would not be published until the following Friday and then you have to have 7 days beyond that, so you are practically at the March meeting.

Ms. Wiener stated that one of the concerns in this matter, as Mr. Shropshire is aware, is that if the transaction falls through this congregational group will have lost the entire purchase price, which is the deposit and that would be a travesty of justice when there is no statutory requirement or authority to do what you are contemplating doing, if it results in the entire deal falling through such that they lose a significant sum.

Mr. Jones questioned whether that is acceptable to determine the timeline.

Mr. Rudolph questioned whether the purchase agreement is subject to the approval by the Board.

Ms. Wiener responded of holding it as an exempt cemetery only. Whether it is an exempt cemetery is not really the issue. The issue all came up because of Restlawn.

Ms. Coney questioned whether it would be possible to entertain a motion to approve that would be subject to the Division's review of the redline.

Col. Stiegman stated that Ms. Wiener has explained the redline away. Col. Stiegman stated that he does not know what more the Division has to do as they have had it and are the ones who sent it.

Ms. Wiener stated that the Division just got the redline today.

Mr. Shropshire stated that he emailed Ms. Wiener late last week advising that the item would be placed on the agenda. Ms. Wiener was going to contact SEI and tell them that it was subject to the Division's understanding that SEI would remain on the hook if the Society did not perform. That was the understanding. Ms. Wiener apparently has had time to contact Stewart about it and Stewart will not agree to that deal so something has changed very significantly.

MOTION: Mr. Jones moved to defer to the March meeting. Mr. Helm seconded the motion, which failed with 4 dissenting votes.

Ms. Wiener questioned whether there is some other comfort the Division would need. We are talking about cemetery contracts with very little outstanding preneed that will go directly to a trustee under and authorized and approved trust agreement. As long as this Board has been in existence, precedential history of transfers and assignments have compacted non-preneed licensees. For this group to come in and acquire this cemetery, hold it as an exempt cemetery to which it is without dispute statutorily entitled.

Mr. Shropshire stated that the Division wants to see that transaction go forward. It is all about the precedential effect of it.

Ms. Wiener stated that this would be a new precedent.

Ms. Coney questioned whether the Board could allow this transaction to go forward and then deal in Rules and Statutes to prevent whatever the Division is concerned about from happening in the future. There is a vehicle, being the law and the rules that support the law. If the law and the rules support this transaction, this transaction should happen because if the Division has concerns about the structure that is in place, then we need to fix the structure, not penalize the Jewish Burial Society of Pinellas County.

Ms. Wiener stated that JBSPC would agree as offered previously that the Board can limit the effect of your stipulation by its term. To rule that this cannot happen is to go against your precedent and to establish a very negative precedent, but we can limit our terms to the terms of the stipulation under this proposed situation.

Mr. Shropshire suggested that the stipulation be understood to be limited to transfer of preneed to cemeteries that were previously licensed, owned and operated as religious institution cemeteries.

Ms. Wiener stated that is fine. This is an extremely unusual situation because of the exemption into which it falls.

MOTION: Mr. Jones moved to accept with the Division's recommendation. Col. Stiegman seconded the motion, which passed unanimously.

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

None

23. Administrative Report

The Administrative Report was provided to the Board via the Agenda.

24. Disciplinary Report

The Disciplinary Report was provided to the Board via the Agenda.

25. Adjournment

The meeting was adjourned at 1:24 p.m.