

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
April 7, 2011 - 10:00 A.M.
Doubletree Hotel Tampa Westshore Airport
4500 West Cypress Street
Tampa, FL 33607

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 April 7, 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 Doubletree Hotel Tampa Westshore Airport in Tampa, 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
Jean Anderson
Lewis "Lew" Hall
Powell Helm
Tracy Huggins
Ken Jones
Col. Don Stiegman
Gail Thomas-DeWitt, Vice-Chairman

ABSENT:

Nancy Hubbell

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
Robyn Jackson, Department Counsel
Linje Rivers, Department Counsel
Jasmin Richardson, Department Staff

Mr. Shropshire requested that the Tampa and Orlando Staff, along with their supervisor Mr. Thurman Lowe, come forward. Mr. Lowe stated that it was a privilege today to be present in this environment and not in some of the other capacities dealt with on a daily basis. Mr. Lowe thanked the Chair for allowing staff the opportunity to be present. Mr. Lowe introduced: the

Tampa team - Kurt Schuller, Suzie Helms and Chris McMurray; and the Orlando team – Tina Williams. Mr. Lowe stated that these staff members service a significant portion of the State of Florida and added that it is a privilege to serve alongside them.

The Chair questioned whether the Board members had any questions for Staff. There was a negative response from the Board members. The Chair thanked Staff and added that the Board really appreciates them as they are the heartbeat of what goes on out in the field.

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

2. Action on the Minutes

A. March 10, 2011

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on March 10, 2011.

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

3. Disciplinary Proceedings: Informal Hearings, Facts Not Disputed (Section 120.57(2))

A. Motion for Determination of Waiver and for Final Order by Board

(1) All Florida Crematory, Inc: Case No. 111338-10-FC (SR1-597146973) (Probable Cause Panel B)

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

Ms. Mary K Surles stated that this was an Administrative Complaint filed by the Department on November 23, 2010 and was served upon the Respondent in which the Department did not receive a response or correspondence to the Administrative Complaint.

The Respondent did not receive authorization from a medical examiner to cremate a decedent's body. After receiving faxed documents from the responsible funeral home the Respondent's employee contacted the FDIC who had told the Respondent's employee that he had the authorization for cremation back at his office. The Respondent's employee relied on this representation from the funeral home and cremated the decedent's body before actually receiving the cremation authorization from the medical examiner. The medical examiner has not provided an authorization for cremation in this case and the ME could not determine the cause of death of the decedent's body.

Based on the information, the Department filed a Motion for Determination of Waiver and for Final Order. Attached to that Motion was the Department's Administrative Complaint with an Election of Proceeding form which was never submitted or no correspondence was received from the Respondent in this case.

The Department believes at this time it is appropriate at this time for the Chair to entertain a motion that the Respondent did not respond to the Administrative Complaint and therefore waived their right to elect a method of resolution in this matter.

MOTION: Mr. Ken 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. Col. Don Stiegman seconded the motion, which passed unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact in the investigative report.

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

The Department contends that the Board's findings of fact support a finding of violations of Florida Statutes as charged in the Administrative Complaint and that the Respondent is in violation of Florida Statutes as set forth in the Administrative

Complaint. It is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law in the Administrative Complaint.

MOTION: Mr. Lew Hall moved to adopt the Conclusions of Law. Col. Stiegman seconded the motion, which passed unanimously.

The Chair questioned whether there is someone representing the Respondent present.

Mr. Alan B Taylor, counsel for the Respondent, stated that unfortunately the incident described did take place. The crematory was deceived by the third party who had sought the cremation. The Department did provide the Administrative Complaint. The reason the proposed Stipulation for Consent Order was not entered into was because Mr. Long's father was dying and did ultimately pass away. Mr. Long was away caring for his father and he also had some health issues, but it was his intention to resolve this without having to delay additional time before this Panel. Very strong safeguards have been implemented and staff has been educated in reference to what took place so that it will not happen again. Keep in mind that the crematory has never had any kind of issue in this respect in the past. This is truly a deception that occurred upon the Respondent who recognizes the importance and significance of what happened. The Department had some recommendations regarding suspending the cinerator's license.

Ms. Surlles stated that the Department's recommendation for penalty in this case is an administrative fine of \$5000, 1 year suspension of the Respondent's cinerator facility license, which will be tolled for 15 days to allow the Respondent to forward its current cremation cases to another licensed cinerator facility that can accept the Respondent's cremation cases. The Respondent would also provide any testimony in any Department cases in the future.

Mr. Taylor stated that the Respondent has been fully cooperative with regards to the Department's investigation. It does not appear that a suspension in any way would serve any further the interest of this state. Originally, under the Consent Order Stipulation, the Department was seeking a \$2500 fine and 2 years probation. The Respondent recognizes that as a result of the failure to have executed that, the Respondent has been placed in the position of coming here and unnecessary taking up the time of this esteemed Board. Taking that quantum leap to a suspension versus probation is not appropriate, certainly if there are costs or additional fines. The Respondent believes they are responsible for that and should pay the fine of \$5000 but would need some time to do so as they are not a large operation. If the suspension is made, essentially the Respondent would be put out of business. We have several employees; 2 of who supplement their social security income on our work; 1 full time employee with an 18 month old baby. The Respondent would certainly welcome the maximum fine, all costs, probation that is required and perhaps anything else that might be in the form of assurance to the Board and the Department that we are serious about this. The Respondent recognizes the harm and also exclusively provides the services for cremation and then separately through the funeral home for burial services for indigents for the County of Volusia, both Grady County directly and the Medical Examiner's Office. That of course fulfills a public need at a practical cost to the County so the Respondent asks that the Board at least consider what is being proposed today to avoid a suspension of the license that would ultimately result in the business having to be shut down.

The Chair stated that the County burials are through a different licensed facility though, not All Florida Crematory.

Mr. William Long stated that they are the only funeral home that does provide cremations for the County's indigent cases. Altman-Long and All Florida Crematory do have that contract with the County.

The Chair stated that counsel mentioned burials.

Mr. Long stated he handles all the burials through the County's Indigent Program as well.

The Chair questioned the number of cremations per year done through the cremation facility.

Mr. Long stated that they are averaging about 100 cremations per month through the facility.

Mr. Jones questioned what safeguards have been implemented to prevent this from happening in the future.

Mr. Long stated there is a very astringent protocol that is followed. There is a checklist that was developed originally which has again safeguarded the facility from any situation arising like this in the past. Those safeguards have worked for 8 years and then 2 years since this incident occurred. However, Ms. Surles suggested that we receive the actual copy of the medical examiner's cremation authorization. The Respondent was relying on the licensed funeral director to provide us with those cremation authorization numbers from the medical examiner, but since her suggestion we have implemented that in addition to the astringent checklist being followed now.

Mr. Jones questioned whether the facility would cremate if there is an ME case without written approval from the ME.

Mr. Long responded, "Absolutely not."

Mr. Taylor stated that several other aspects were put into place including the fact that if there is any question or doubt, the FDIC is required to be notified and if not that person would be terminated on the spot. If the FDIC cannot be reached, the person should contact Mr. Taylor's office to review and assist the client through the issue and comply with the law.

Col. Stiegman requested clarification on the difference between suspension and probation.

Ms. Allison Dudley stated that during the period of suspension, the Department is asking for a year in which the Respondent would not be able to operate at all. With probation, the Respondent would be able to operate but would have to be more careful. They would still be subject to violations, but the Board would probably look at those more harshly if they are committed during the probation.

Col. Stiegman questioned whether there is more supervision than normal during probation.

Ms. Dudley stated it depends on the type of probation. The Board could impose some type of supervisory aspect of the probation.

Mr. Shropshire stated that the Board could direct that 2 special inspections be done of the facility at random during the probation

Ms. Surles commented that if any special inspections are done, those should be at the licensee's own expense.

Mr. Taylor stated that the Respondent would be acceptable to any of these suggestions and also if need be the costs for those inspections.

MOTION: Mr. Jones moved for an administrative fine of \$5,000 and 2 years probation. Col. Stiegman seconded the motion, which passed with 1 dissenting vote.

Mr. Taylor requested the Respondent be granted 90 days to pay the fine.

The Chair stated that is not part of the motion. The Chair questioned when fines are due.

Ms. Surles stated that 30 days is the norm.

(2) McLellan, David: Case No. 111504-10-FC (SR1-656438701) (Probable Cause Panel A)

Mr. Linje Rivers stated that the Respondent was the responsible funeral director in charge at Constantino Funeral Home on the date an inspection was conducted. During the inspection it was determined that the Respondent was not practicing with an active funeral director's license. During which time, the Respondent entered into multiple contracts with customers. It was also determined that the Respondent did not have his license displayed in a conspicuous manner in the funeral establishment.

The Department filed an Administrative Complaint on September 29, 2010 which was served on Respondent by certified mail on October 4, 2010. The Department received Respondent's response that he did not dispute any of the Department's factual allegations and did not desire a hearing on the matter.

Based on this information the Department filed a Motion for Determination of Waiver and For Final Order by Hearing not involving disputed issues of material fact as well as a notice of supporting documentation.

MOTION: Ms. Thomas-Dewitt moved that the Respondent waived their right to elect a method of resolution in this matter. Ms. Huggins seconded the motion, which passed unanimously.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact in the investigative report.

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

The Department contends that the Board's findings of fact support a finding of violations of Florida Statutes as charged in the Administrative Complaint and that the Respondent is in violation of Florida Statutes as set forth in the Administrative Complaint. It is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law in the Administrative Complaint.

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

The Chair questioned whether there was anyone present representing the Respondent. There was a negative response.

Mr. Miller stated that the Respondent called the Division on April 6, 2011 and indicated he would not be present as he is recovering from a recent heart transplant.

As for the penalty, the Department recommends an administrative fine of \$1,500 and 1 year probationary term to commence upon execution of the Final Order.

Mr. Helm questioned what the probation would apply to.

Mr. Rivers stated it would be against the Licensee.

Mr. Helm questioned whether the Respondent has a license.

Mr. Rivers stated that the Respondent has since become active.

MOTION: Mr. Hall moved for an administrative fine of \$1,500 and 1 year probation. Ms. Huggins seconded the motion, which passed with 1 dissenting vote.

***B. Motion for Hearing Not Involving Disputed Issues of Fact and Request for Final Order
(1) Marchbank, Clifford: Case No. 111345-10-FC (SR1-597143051) (Probable Cause Panel B)***

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

Ms. Surles stated that on November 23, 2010, the Department filed an Administrative Complaint against Respondent alleging that Respondent was the responsible funeral director in charge of the cinerator facility for All Florida Crematory, Inc. As the responsible funeral director in charge of the cinerator facility Respondent is responsible for ensuring that the cinerator facility and the employees of the cinerator facility comply with all applicable Federal, State laws and rules of the Board.

On March 31, 2009, the decedent's body was cremated by an employee of All Florida Crematory, Inc. without the employee having received authorization for cremation from the Medical Examiner. Although an employee for All Florida Crematory was told by the funeral director in charge of the funeral establishment handling the final arrangements for the decedent, that the Medical Examiner's authorization for cremation had been received, when in fact it had not, the employee relied on the verbal representation made by the funeral director in charge of the funeral establishment handling the decedent's final

arrangement and embalmed the body without having actually received the authorization for cremation from the Medical Examiner.

On November 23, 2010, the Department filed an Administrative Complaint which was served on the Respondent by certified mail. The Respondent received the Administrative Complaint and provided a written statement in lieu of a hearing in this matter. Based on this information, the Department has filed a Motion for Hearing Not Involving Disputed Issues of Fact and requests a Final Order be entered.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact in the investigative report.

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

It is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law in the Administrative Complaint.

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

The Department recommends an administrative fine of \$5,000 and 1 year suspension of the Respondent's funeral director's license.

The Chair questioned whether there was someone representing Mr. Clifford Marchbank.

Mr. Taylor stated that Mr. Marchbank is present and requested that the Board impose probation instead of a suspension. The Respondent accepts the fine and the cost of the investigation to be paid.

Mr. Shropshire asked that the Respondent raise his right hand to be sworn in. "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. Clifford A Marchbank, Jr. answered, "Yes I do." Mr. Marchbank stated that Mr. Taylor has presented the facts. The only thing he can add is that it did happen the way it presented. Mr. Marchbank stated they received a call from the funeral director they were working for that day and as far as he knew, it was a true Medical Examiner's authorization number. That authorization number turned out to be a bogus number, but there was no way for the funeral home, the staff or Mr. Marchbank to have known that which is why the cremation was done. Later it was determined, when the Medical Examiner called to investigate the cause of death, that all of this happened and it was an erroneous number. Mr. Marchbank stated they met with Mr. Hill, who ran the incinerator at the time, and suspended him indefinitely. New laws, rules and procedures were placed into effect. Everything possible was done to ensure this would never happen again. Since then, more serious procedures and rules have been implemented to ensure that the State or the County would never have to go through this again as far as this facility goes.

Mr. Marchbank apologized to the Board for taking up its time today and requested that the Board reconsider the recommendation of suspension to allow him to work.

The Chair questioned what other duties Mr. Marchbank is responsible for other than supervising the crematory.

Mr. Marchbank stated that he is also the FDIC of Altman-Long Funeral Home.

The Chair questioned whether Mr. Marchbank has ever had any disciplinary action against his license.

Mr. Marchbank stated that he had, just last month on another issue that had nothing to do with the community or anything. It was in regards to an embalming report not being filed within a timely fashion. Mr. Marchbank added that up until that point,

35 years as a Licensee, he had never had any violations in any of the 3 states he is licensed in; New York, New Jersey and Florida.

Ms. Thomas-Dewitt expressed concern over the carelessness in Mr. Marchbank accepting the authorization over the phone.

Mr. Marchbank stated that the paperwork had been faxed but the authorization number was omitted. The funeral home called to advise that the cremation could not be done without the authorization number. The funeral director's response was, "I have the authorization from the Medical Examiner. I am not in my office at this time. I will call it in to you as soon as I get back to the office." Later that afternoon, he called it in to the office and gave it to the secretary who in turn wrote it on the burial permit.

Ms. Thomas-Dewitt stated that she still is concerned that Mr. Marchbank was comfortable enough with not getting the number ahead of time because although Mr. Marchbank was comfortable with the funeral director that was a very careless act.

Mr. Marchbank agreed and reiterated that the facility has taken steps to correct that and to ensure that it would never happen again with the procedures that have been put in place. The facility is now insisting that they actually have the medical examiner's authorization in hand prior to cremation.

Ms. Thomas-Dewitt stated that the monthly report is an administrative duty that is due every month. Ms. Thomas-Dewitt questioned Mr. Marchbank's reason for not submitting that report on time. Although that is not the issue, Ms. Thomas-Dewitt was trying to establish Mr. Marchbank's practice.

Mr. Marchbank stated that at the time, he had just taken over as FDIC and was working with the secretary trying to get administratively together. Mr. Long's father was very sick at the time, so he was unable to be of assistance so Mr. Marchbank was sort of winging it along, therefore that duty was neglected. Once it was discovered, the report was done and it was within the Department's reach within 30 days of the notification.

Mr. Jones questioned whether the Department substantiated the fact that the funeral director called in number later and whether everything investigated is correct.

Ms. Surles stated that in speaking with the investigator with the Medical Examiner's office, Ms. Tara Clark, this number, a number was generated on April 2nd. The Respondent indicates that they were provided a number; it may not have been the same number.

Mr. Jones questioned whether the Department called to verify that the funeral direct in question did call in a number and they in fact thought it was accurate.

Ms. Surles stated that all the paperwork was submitted and a call was made to the funeral establishment. The funeral director that was handling the body of the decedent later called in an authorization number, which was written down by the secretary at the Altman-Long funeral establishment.

Ms. Thomas-Dewitt questioned whether this occurred prior to the cremation.

Ms. Surles stated it was on the same day as the cremation, but it was prior to the cremation.

Col. Stiegman questioned how a suspension would affect Mr. Marchbank's employment.

Ms. Thomas-Dewitt stated the establishment would have to get another FDIC.

Mr. Taylor stated that the establishment is small and does not have the depth to bring somebody new in. In regards to the lateness of the embalming reports, that person was terminated. There were too many unreliable inconsistencies in regards to her position. Things appear to be under control, so to relieve Mr. Marchbank in his capacity would substantially set the facility back and in addition would affect Mr. Marchbank's ability to support himself and his family.

The Chair requested that Mr. Long be sworn in.

Mr. Shropshire asked that Mr. Long raise his right hand to be sworn in. "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. Long stated that they are a 2 man operation. Mr. Marchbank is his only funeral director and has been with him for 15 years. Mr. Marchbank's livelihood depends on the supplemental income received from the funeral home. If Mr. Marchbank is suspended, Mr. Long states he has no choice but to let him go as he would have to replace him with another funeral director. A suspension would affect them both as they have a 15 year relationship and Mr. Marchbank has never been in front of the Board before in 35 years. Mr. Long would have no choice as he could not afford to keep Mr. Marchbank on in any capacity other than a funeral director.

Mr. Hall questioned how long Mr. Long has had a business relationship with the other funeral home.

Mr. Long stated it has been about 2 years but the funeral director had also built a trust as he had filled in part-time with them embalming, meeting with families, directing funerals so we had faith in him as a Licensee to fulfill his duties under the laws of the state.

Mr. Hall questioned whether Mr. Long would be able to accept the responsibility if Mr. Marchbank were to be placed on probation for a year with the fact that he could not be the FDIC.

Mr. Long stated that he would have to absorb the cost of another funeral director as they are a 2 man operation and are barely getting by as it is. It would be very difficult.

The Chair questioned the funeral establishment's volume.

Mr. Long stated that they have a 98% cremation rate and about 300 calls per year.

The Chair added 1200 through the cinerator facility.

Mr. Long stated that includes 7 independent contractors utilizing the facility as well.

MOTION: Ms. Thomas-Dewitt moved for an administrative fine of \$5,000 and 1 year suspension. Col. Stiegman seconded the motion, which passed with 2 dissenting votes.

4. Disciplinary Proceedings: Proposed Settlements and Applications by Related Parties

A. Settlement Stipulation for Consent Order and Proposed Consent Order (Probable Cause Panel A)

(1) Coney Brothers Funeral Home: Case No. 108535-10-FC (SR1-581524816)

Ms. Robyn Jackson stated on April 6, 2010, the Department filed a three-count Administrative Complaint against Respondent. Count I alleges that Respondent held a body without embalming or refrigeration for more than 72 hours. Count II alleges that Respondent failed to properly affix identification to a body. Count III alleges that Respondent failed to maintain a clean and sanitary preparation room. That was from a January 2009 inspection.

Respondent appears to have violated Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(h), 497.171(1)(d), and 497.386(2), 497.386(4), Florida Statutes; and Rule 69K-21.003(5), Florida Administrative Code. Respondent has elected to enter into a settlement stipulation and waive its right to a hearing in this matter. The terms of the Settlement Stipulation for Consent Order require the Respondent to pay \$1,000 as an administrative fine and \$250 in costs of investigation and prosecution. The settlement also provides for Respondent's license to be placed on probation for a period of one year.

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

Mr. Hall disclosed a business relationship with this firm as they sometimes rent a limousine from his establishment but that it would not affect his ability to remain fair and partial.

Ms. Thomas-Dewitt questioned whether there is an agreement with a firm for refrigeration.

Mr. John Rudolph, representing the Respondent, indicated that there is such an agreement.

Ms. Thomas-Dewitt questioned the reason why this agreement was not utilized.

Mr. Rudolph stated when they called the refrigeration facility was full, so this caused the delay in getting the body to the crematory for refrigeration purposes. They had someone handling this body and the person made a mistake by not putting the tag on the body and sending it to the crematory or finding some other place to get it.

Ms. Thomas-Dewitt stated that was quite a delay, over 72 hours. For non-embalmers, that is the difference between a body visibly viewed and non-viewable.

Mr. Hall questioned whether Mr. Rudolph was familiar with the letter submitted to the Board by the Respondent.

Mr. Rudolph stated that the Respondent accepts responsibility.

Mr. Hall stated that there was also mention of body found that was faced down. Mr. Rudolph questioned whether Mr. Rudolph had any information on that issue.

Mr. Rudolph stated that was the person hired to do it and they found out the body was there.

Ms. Jackson stated that there were 2 bodies in the complaint; the body that was not properly affixed with the tag and the body that was held for over 72 hours. One of those bodies was the one that was discovered faced down; however, there was no probable cause found to proceed with a violation based on those facts. The Department did research that issue but determined there was not a statutory violation associated with those facts.

Ms. Thomas-Dewitt questioned the overall penalty range.

Ms. Jackson stated that the penalty range for each violation would be different:

497.152(1)(a) and 497.152(1)(b) – a reprimand and a fine of \$1000-\$2500 plus cost (low end) – 6 months to one year probation (high end)

497.152(4)(h), 497.171(1)(d) – are not enumerated

497.386(2), 497.386(4) – a fine of \$500-\$1000 plus cost (low end) – 6 months to one year probation (high end)

Mr. Hall questioned whether the Board has the authority to remove the training facility license.

The Chair stated that the Board could make it a part of the Consent Order, but it would have to go back to the Respondent. The Board can modify, alter or not accept the Consent Order.

Mr. Shropshire concurred and stated that the Board could make a counter-offer to the Respondent.

Ms. Jackson reiterated that the Department's recommendation is \$1,000 as an administrative fine, \$250 in costs and probation for a period of one year. This establishment had a clean inspection in June 2009. The Inspector specifically indicated that the violations that were alleged in the Administrative Complaint had been corrected.

MOTION: Ms. Huggins moved to accept the Settlement Stipulation. Mr. Jones seconded the motion, which passed with 2 dissenting votes.

(2) Ford, Sonji C: Case No. 108542-10-FC (SR1-581524816)

Sonji C. Ford (License Number: F046960 ("Respondent")) is currently licensed in this state as a Funeral Director/Embalmer and is the funeral director in charge of Coney Brothers Funeral Home, a licensed funeral establishment. On April 6, 2010, the Department filed a three-count administrative complaint against Respondent. Count I alleges that Respondent held a body without embalming or refrigeration for more than 72 hours. Count II alleges that Respondent failed to properly affix identification to a body. Count III alleges that Respondent failed to maintain a clean and sanitary preparation room.

Respondent appears to have violated Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(h), 497.171(1)(d), and 497.386(2), 497.386(4), Florida Statutes; and Rule 69K-21.003(5), Florida Administrative Code. Respondent has elected to enter into a settlement stipulation and waive her right to a hearing in this matter. The terms of the Settlement Stipulation for Consent Order require the Respondent to pay \$1,000 as an administrative fine and for Respondent's license to be placed on probation for a period of one year.

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

Ms. Thomas-Dewitt stated that she is concerned that a person would allow someone's loved one to sit in a funeral home for over 72 hours and do absolutely nothing. That is detrimental to a body. As professionals, we are supposed to restore and preserve the decedent. Even if that particular refrigeration facility was full, the Respondent could have sought refrigeration elsewhere.

Mr. Helm questioned whether the establishment has other funeral directors.

Mr. Rudolph stated that the Respondent was not present and he did not have the answer to Mr. Helm's question. Mr. Rudolph stated it appears there is as there was someone else who did this.

Mr. Helm questioned whether the Respondent is the FDIC.

Mr. Rudolph stated that is why the Respondent accepted responsibility for this.

MOTION: Mr. Jones moved to reject the Settlement Agreement and offer a counter with the terms that the Respondent pays \$2500 as an administrative fine, 1 year probation and the Respondent must complete training the Department deems adequate. Ms. Huggins seconded the motion, which passed with 2 dissenting votes.

Mr. Shropshire questioned whether Mr. Rudolph would be authorized to accept the Board's counter offer.

Mr. Rudolph stated he would have to speak with his client about the offer.

(3) *Restlawn Cemetery, Inc: Case Nos. 10979-10-FC & 112631-10-FC (SR1-431473641 & SR1-573545351)*

Ms. Surles stated that on March 8, 2010, the Department filed an Administrative Complaint that alleges the Respondent failed to remit funds into the Care and Maintenance Trust Fund; failed to make timely deposits into the trust accounts within thirty (30) days following the close of the calendar month in which the payment was received; sold burial rights on contracts before the contracts were written; charged prices on contracts that were more than what was indicated on the general price list for Respondent; and burials were found in spaces other the ones indicated on the contracts reviewed by a Department Examiner.

If the Board accepts this Settlement Stipulation, the Respondent's license will be placed on two (2) years of probation to run concurrent with Department case number 110596-10-FC with the special condition that if the Department has reasonable cause to believe that the Respondent has not timely deposited funds into the trust accounts that the Department will immediately suspend the license of Respondent for thirty (30) days.

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

B. *Settlement Stipulation for Consent Order and Proposed Consent Order (Probable Cause Panel B)*

Ms. Huggins recused herself from the next 2 cases as she was on Probable Cause Panel B.

(1) *White, Kimberly: Case No. 103362-09-FC (SR1-589806921)*

Ms. Surles stated that on July 21, 2010, the Department filed an Amended Administrative Complaint against Respondent alleging that Respondent is the funeral director in charge of Wright & Young Funeral Home (hereinafter "Wright & Young") and represented to a Broward County Circuit Judge that Wright & Young charged \$7,150 for the storage of a decedent's body as the "hard cost" incurred by Wright & Young when in fact the general price list for Wright & Young did not indicate a storage fee and Wright & Young was only charged \$350 by the storage/refrigeration company.

The Department also alleged in the Amended Administrative Complaint that Respondent knew and/or should have known that Wright & Young allowed the operation of an unlicensed facility located at 1725 Opa Locka Boulevard, Opa Locka, Florida which Respondent used to store and embalm bodies. Respondent also filed and/or caused to be filed a false and/or fraudulent death certificate to be submitted to the Office of Vital Statistics for a decedent for which Respondent has not corrected the burial place of the decedent.

If the Board accepts this Settlement Stipulation; the Respondent will pay an administrative fine in the amount of \$7,000; Respondent's license will be placed on probation for four (4) years with the special condition that Respondent will not practice as a funeral director in charge while on probation; Respondent will successfully complete a Florida Laws and Rules Course and successfully complete three (3) hours of Ethics.

Mr. Jones disclosed his employment with the Department of Health, Office of Vital Statics and stated that it would not affect his ability to remain fair and impartial in this matter.

MOTION: Ms. Huggins moved to accept the Settlement Stipulation. Col. Stiegman seconded the motion, which passed unanimously.

(2) *Wright and Young Funeral Home: Case No. 103361-09-FC (SR1-507591226)*

Ms. Surles stated that on July 21, 2010, the Department filed an Amended Administrative Complaint against Respondent alleging that representatives of Respondent stated to a Broward County Circuit Judge that Respondent charged \$7,150 for a storage fee on a decedent's funeral bill as the costs Respondent directly incurred from the storage/refrigeration company when in fact Respondent was charged only \$350 by the storage/refrigeration company. Respondent also filed and/or caused to be filed a false and/or fraudulent death certificate to be submitted to the Office of Vital Statistics for a decedent for which Respondent has not corrected the Florida Certificate of Death as to the burial place of the decedent.

The Department also alleged in the Amended Administrative Complaint that Respondent knew and/or should have known that Wright Embalming facility located at 1725 Opa Locka, Opa Locka, Florida was being operated as an unlicensed embalming facility and Respondent used Wright Embalming to store bodies for dressing and casketing.

Further, Respondent allowed Terrence Wright to hold himself out as a director, officer and/or CEO for Respondent without ever reporting this affiliation to the Division.

If the Board accepts this Settlement Stipulation, the Respondent will pay an administrative fine in the amount of \$10,000. Respondent's license will be placed on probation for six (6) years and will not operate the facility at the location of 1725 Opa Locka, Opa Locka, Florida, without having a properly issued license to operate such. Neither Respondent nor any owner, director, officer or employee of Respondent will attempt to recover any amount over and above the \$350 refrigeration and storage fee, and neither Respondent nor Terrence Wright will represent that Terrence Wright is the owner, CEO, president, director or any other corporate capacity which Terrence Wright does not hold with Wright & Young unless it has been provided in writing to the Florida Department of Corporations and to the Department of Financial Services.

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

C. Settlement Stipulation for Consent Order and Proposed Consent Order (Waiver of Probable Cause)

(1) Collins, Julie: Case No. 114207-11-FC (SR1-696425623)

Mr. Rivers stated that the Department conducted an investigation at Forest Meadows Funeral Home and found that William Johnson, Jr. was responsible for the cremation of the wrong body. Mr. Johnson failed to get the proper authorization from the family to perform this function. Julie Collins is the FDIC at Forest Meadows. As FDIC, Ms. Collins is responsible for supervising all the actions of her employees.

Ms. Collins agreed to pay a \$2,500 fine. In lieu filing an Administrative Complaint against the Respondent, the Respondent was offered a Settlement Stipulation for Consent Order, which was accepted. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

MOTION: Col. Stiegman moved to accept the Settlement Stipulation. Ms. Huggins seconded the motion, which passed unanimously.

(2) Forest Meadows Funeral Home and Cemeteries, Inc: Case No. 114205-11-FC (SR1-672819887)

Mr. Rivers stated that the Department conducted an investigation at Forest Meadows Funeral Home and found that William Johnson, Jr. was responsible for the cremation of the wrong body. Mr. Johnson failed to get the proper authorization from the family to perform this function. Julie Collins is the FDIC at Forest Meadows. As FDIC, Ms. Collins is responsible for supervising all the actions of her employees.

Forest Meadows has agreed to pay a \$5,000 fine. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

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

(3) Johnson Jr, William A: Case No. 114206-11-FC (SR1-696425623)

Mr. Rivers stated that the Department conducted an investigation at Forest Meadows Funeral Home and found that William A. Johnson, Jr. was responsible for the cremation of the wrong body. Mr. Johnson failed to get the proper authorization from the family to perform this function.

Mr. Johnson agreed to pay a \$5,000 fine and have his funeral director and embalmer license suspended for 1 year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Mr. Hall seconded the motion, which passed unanimously.

(4) Moncalieri, William: Case No. 114208-11-FC (SR 1-619558898)

Mr. Rivers stated that the Respondent was a licensed preneed sales agent at Eternal Rest Memories Park & Funeral Home in Dunedin, Florida. On or about September 15, 2008, the Respondent was placed under arrest and charged with injuring or removing a tomb or monument, dealing in stolen property, petty theft and trespassing. It was determined that Respondent stole approximately 110 bronze vases from Eternal Rest Memories Park and sold them to a local scrap yard, the cost of the bronze vases exceeded \$13,000. The Respondent entered a plea of no contest and was sentenced to nine months in jail.

Therefore the Department requests that the Board revoke the Respondent's license for a period of 10 years.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

In lieu of filing an Administrative Complaint against Respondent, the Respondent was offered a Settlement Stipulation for Consent Order which he accepted and is being presented before you today. Should you wish not to accept the Settlement for Consent Order then an Administrative Complaint will be filed against the Respondent.

Mr. Helm questioned why there was no fine imposed.

Mr. Rivers stated that the Respondent had to pay restitution.

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

(5) *Restlawn Cemetery, Inc: Case No. 110596-10-FC (SR1-627953631)*

Ms. Surles stated that on January 21, 2010, the Department conducted an examination of Respondent and determined that the Respondent failed to accurately maintain the lot, plot space in which every burial was made; to properly assign burial spaces; to properly place a vault without causing an encroachment on another burial space; to ensure that every contract did not contain the signature of the consumer and/or cemetery representative for the date of sale; to maintain accurate account receivable records; and to remit timely and sufficient funds to the Care and Maintenance Trust Fund.

The State Attorney's Office filed criminal charges against Mr. Bernard Mitchell in which Mr. Mitchell has plead guilty to, including but not limited to, money laundering, racketeering and grand theft. Mr. Mitchell will be sentenced on May 9, 2011.

The Respondent entered into a Settlement Stipulation with Respondent after considering the facts in this case.

If the Board accepts this Settlement Stipulation, the Respondent will pay an administrative fine the amount of \$500; pay Department costs in the amount of \$250, and Respondent's license will be placed on two (2) years of probation with the special condition that if the Department has reasonable cause to believe that the Respondent has not timely deposited funds into the trust accounts that the Department will immediately suspend the license of Respondent for thirty (30) days.

Mr. Helm questioned whether Mr. Mitchell caused all these problems.

Mr. Rudolph responded that Mr. Mitchell did in fact do so. Ms. Eunice Wilson is 93 years old and present today. When it was determined that there were trust fund deficiencies because of monies that were not put into trust, Ms. Wilson immediately cut a check for that amount and put it into the trust.

Mr. Helm questioned whether Mr. Mitchell was responsible solely.

Mr. Rudolph stated that Mr. Mitchell was in charge of filling out the lot cards, he was writing up the contracts, he used an invalid preneed contract at Restlawn to sell something but the money never went into trust. The criminal case is proceeding. Mr. Mitchell has pled guilty but the sentencing will determine whether there is any restitution.

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

(6) *Rubin, Joseph: Case No. 110767-10-FC (SR1-559808901 and SR1-595177884)*

Ms. Surles stated that after reviewing the Department's investigative files having report number SR1-559808901 and SR1-595177884 a Settlement Stipulation was offered to the Respondent along with a Waiver of Probable Cause and Confidentiality. On January 26, 2011, the Department received the Respondent's executed Settlement Stipulation and executed Waiver of Probable Cause and Confidentiality.

The Settlement Stipulation alleges that Respondent failed to provide reimbursements to consumers in a timely manner; failed to properly disclose costs prior to providing the services; misrepresented the benefits, advantages, conditions, or terms of contracts to provide any services or merchandise; misrepresented pertinent facts and pre-paid contract provisions relating to

funeral or burial merchandise or services; misrepresented the amount advanced on behalf of the consumer for services including gratuities, airfare, and other costs; assessed fees and costs that had not been disclosed to the customer in connection with transactions; failed to disclose the components of the prices for alternatives offered by Respondent; and failed to make required refunds, in violation of Sections 497.459(4), 497.282(2), 497.152(9)(d) and (f), 497.152(10)(d) and (e), 497.152 (11)(g), 497.468(2), 497.152(12)(a), and 497.152(13)(b), Florida Statutes. In order to avoid formal litigation of this matter, Respondent has determined that it is in his best interest to accept the settlement terms and conditions by entering into this Settlement Stipulation.

If the Board accepts this Settlement Stipulation, the Respondent will be required to pay an administrative fine in the amount of \$4,000.00, Respondent's license will be placed on probation for two (2) years, and Respondent will complete a Florida Law and Rules course, three hours of Ethics, and provide the Department with written proof of completion of both.

Mr. Helm stated that on Page 4 of the Order, the Respondent wrote in "or his representative." The Respondent himself should appear before the Board.

Ms. Wendy Wiener stated that was a requirement of the prior Chapter 470 Board. Mr. Rubin's situation is that he is the only funeral director at his location. So Mr. Rubin would certainly attend a meeting unless there is an emergency or a funeral that he has to handle at that time. The intent is for Mr. Rubin to absolutely be there but in the event that there was some circumstance where he could not be there then the Department had agreed that his representative could attend the meeting for him. That is typically what is done. The Board has not been requiring in-person appearances to terminate probation.

Ms. Thomas-Dewitt concurred with Mr. Helm.

Ms. Wiener stated that if a situation arises the day before the meeting or something comes up, the Respondent would have to reschedule his appearance to the next meeting at which he could appear.

Ms. Thomas-Dewitt stated that would be acceptable.

Ms. Dudley stated as it is drafted, the Respondent would just have to attend a meeting before the probation could be lifted. So if he cannot attend the meeting, he would remain on probation until he could attend the next meeting. Ms. Dudley questioned whether Ms. Surles is okay with what the Respondent has written in.

Ms. Surles stated that she was aware of this and in trying to settle the case Ms. Surles wanted to be able to present the Settlement Stipulation as it was presented for the Board's consideration. It is up to the Board.

Ms. Dudley stated that if the Board does not want a representative to attend then the Board would have to reject the agreement and make a counter offer basically to have the Settlement Agreement the way it was before he wrote that in.

Ms. Wiener stated that she could accept that change on behalf of the Respondent. Ms. Wiener cautioned the Board that this is a significant departure from what has been required of other Licensees. The Board has not been requiring in-person appearances to terminate probation. Lots of people got put on probation, even today and it does not appear they were given in-person requirements. Ms. Wiener requested if that is going to be a requirement that it be imposed upon all Licensees that are placed on probation.

The Chair stated that each case is decided individually so the Board is not going to either set a precedent or reject a precedent on what is being done on this case.

Mr. Rudolph stated that is the language for when you want to terminate the probation early or when the license has been revoked. Mr. Rudolph added that he has never seen a Licensee having come back before the Board before their probation is lifted.

The Chair stated that the Board is able to do so.

Ms. Dudley stated that it is perfectly legal. Although this Board may not have been doing so, most Boards do require an appearance.

MOTION: Mr. Helm moved to reject the Settlement Stipulation and counter with the terms of the original Settlement Stipulation to remove the written statement by the Respondent. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Ms. Wiener accepted the counter offer on behalf of the Respondent.

(7) *Rubin Memorial Chapel, LLC (Preneed License): Case No. 110768-11-FC (SR1-559808901 and SR1-595177884)*

Ms. Surles stated that after reviewing the Department's investigative file a Settlement Stipulation was offered to the Respondent along with a Waiver of Probable Cause and Confidentiality. On January 26, 2011, the Department received the Respondent's executed Settlement Stipulation and Waiver of Probable Cause and Confidentiality.

The Settlement Stipulation alleges that Respondent failed to provide reimbursements to consumers in a timely manner; failed to properly disclose costs prior to providing the services; misrepresented the benefits, advantages, conditions, or terms of contracts to provide any services or merchandise; misrepresented pertinent facts and pre-paid contract provisions relating to funeral or burial merchandise or services; misrepresented the amount advanced on behalf of the consumer for services including gratuities, airfare, and other costs; assessed fees and costs that had not been disclosed to the customer in connection with transactions; failed to disclose the components of the prices for alternatives offered by Respondent; and failed to make required refunds, in violation of Sections 497.459(4), 497.282(2), 497.152(9)(d) and (f), 497.152(10)(d) and (e), 497.152 (11)(g), 497.468(2), 497.152(12)(a), and 497.152(13)(b), Florida Statutes. In order to avoid formal litigation of this matter, Respondent has determined that it is in its best interest to accept the settlement terms and conditions by entering into this Settlement Stipulation.

If the Board accepts this Settlement Stipulation, the Respondent will be required to pay an administrative fine in the amount of \$4,000.00, Department costs in the amount of \$250.00 and Respondent's license will be placed on probation for two (2) years.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Mr. Hall seconded the motion, which passed unanimously.

(8) *Rubin Memorial Chapel, LLC (Funeral Establishment): Case No. 110769-11-FC (SR1-559808901 and SR1-595177884)*

Ms. Surles stated that after reviewing the Department's investigative file a Settlement Stipulation was offered to the Respondent along with a Waiver of Probable Cause and Confidentiality. On January 26, 2011, the Department received the Respondent's executed Settlement Stipulation and Waiver of Probable Cause and Confidentiality.

The Settlement Stipulation alleges that Respondent failed to provide reimbursements to consumers in a timely manner; failed to properly disclose costs prior to providing the services; misrepresented the benefits, advantages, conditions, or terms of contracts to provide any services or merchandise; misrepresented pertinent facts and pre-paid contract provisions relating to funeral or burial merchandise or services; misrepresented the amount advanced on behalf of the consumer for services including gratuities, airfare, and other costs; assessed fees and costs that had not been disclosed to the customer in connection with transactions; failed to disclose the components of the prices for alternatives offered by Respondent; and failed to make required refunds, in violation of Sections 497.459(4), 497.282(2), 497.152(9)(d) and (f), 497.152(10)(d) and (e), 497.152 (11)(g), 497.468(2), 497.152(12)(a), and 497.152(13)(b), Florida Statutes. In order to avoid formal litigation of this matter, Respondent has determined that it is in its best interest to accept the settlement terms and conditions by entering into this Settlement Stipulation.

If the Board accepts this Settlement Stipulation, the Respondent will be required to pay an administrative fine in the amount of \$4,000.00, Department costs in the amount of \$250.00 and the Respondent's license will be placed on probation for two (2) years.

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

(9) Wilson-Eichelberger Mortuary, Inc.: Case No. 110593-10-FC (SR1-624105065)

Ms. Surles stated that Mrs. Eunice Wilson, owner of Respondent, contacted the Division regarding allegations that a former employee, Bernard Mitchell, had misappropriated trust funds. As a follow-up the Division conducted a financial examination in October 2009, and determined that there was a deficiency of \$51,319.99 in the Preeed Trust Fund for the period ending September 30, 2009. The Respondent failed to remit preneed contracts to the trustee; failed to make timely and sufficient remittances to the Consumer Protection Trust Fund in the amount of \$6 for the period ending September 30, 2009; failed to make timely and sufficient remittances to the Regulatory Trust Fund in the amount of \$24 for the same period; used unapproved preneed contracts for a preneed sale; failed to honor the guaranteed price of a service on a preneed contract; and failed to properly refund to the consumer for overpayments on a preneed contract. Respondent's owner, Mrs. Eunice Wilson, immediately deposited into the trust funds for Respondent the identified deficient amounts.

The State Attorney's Office filed criminal charges against Mr. Bernard Mitchell in which Mr. Mitchell has plead guilty to, including but not limited to, money laundering, racketeering and grand theft.

The Respondent entered into a Settlement Stipulation with the Department after considering the facts in this case.

If the Board accepts this Settlement Stipulation, the Respondent will pay an administrative fine the amount of \$500, pay Department costs in the amount of \$250, and Respondent's license will be placed on two (2) years of probation with the special condition that if the Department has reasonable cause to believe that the Respondent has not timely deposited funds into the trust accounts that the Department will immediately suspend the license of Respondent for thirty (30) days.

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

D. Settlement Stipulation for Consent Order and Proposed Consent Order and Applications by Related Parties

(1) Landmark Funeral Home, Inc (Hollywood)

(a) Settlement Stipulation for Consent Order and Proposed Consent Order: Case No. 108626-10-FC (SR1-622977511) (Probable Cause Panel B)

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

Ms. Jackson stated that Landmark Funeral Home, Inc. (License Number: F055287) ("Respondent") is currently licensed in this state as a Funeral Establishment. On May 3, 2010, the Department filed a two-count administrative complaint against Respondent. Count I alleges that Respondent placed advertisements stating that Respondent could provide "pre-arrangement services." These advertisements were either illegal solicitations for preneed services (for which Respondent does not have a license) or misleading with regard to whether Respondent could provide preneed services. Count II alleges that owner Jonathan Shaw misrepresented to the Board the involvement of Valerie Panciera-Reith and Irving Panciera in order to obtain Respondent's establishment license.

Respondent appears to have violated Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(f), 497.152(4)(g), 497.152(5)(a), 497.152(9)(e), 497.152(9)(f), 497.157(1), 497.166(1), and 497.452(1)(a), Florida Statutes and Rule 69K-29.001(2), Florida Administrative Code. The Respondent has elected to enter into a settlement stipulation and waive its right to a hearing in this matter. The terms of the Settlement Stipulation for Consent Order require the Respondent to pay \$7,500 as an administrative fine and cease and desist from utilizing advertisements offering "pre-arrangements." Additionally, a representative of Respondent will appear at the Board meeting to clarify Mr. Shaw's representations regarding Valerie Panciera-Reith and Irving Panciera and answer any questions posed by the Board.

Contemporaneous with this settlement agreement, Respondent is also filing a change of ownership application to transfer ownership of the establishment from Mr. Shaw to Kevin Reith.

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

Mr. Brady Cobb, representing the Respondent, stated that he does not want to belabor this because the Board has been dealing with this matter for quite some time and are probably intimately familiar with it than he. This is a matter which is in large part unfortunately a family feud that has found its way to the regulatory process. The Respondent is here today with hopes of ending that process and move forward. There was an audit that occurred at the funeral home this past week. There was found to be no violations of preneed services offered and no preneed contracts. The Department has been provided with documentation to substantiate that the ads regarding preneed listed in the Yellow Book advertisement were pre-fabricated ads and as soon as the Respondent saw that "preneed" was in there and there was not a license, the Respondent wrote a letter to Yellow Book requesting that it immediately be withdrawn. Regarding Mr. Shaw's statement, Ms. Panciera had her own lease with that building to provide bereavement services as she is a licensed bereavement counselor. The Department was provided with a copy of the lease and a copy of the phone bill proving that Ms. Panciera has a separate phone line. The Department has verified in their most recent site visit and audit that there has been no preneed violations and the Respondent requests that the Settlement Stipulation for Consent Order be approved.

The Chair stated that there is no dispute of the facts in this case and there is a Settlement Stipulation for Consent Order before the Board.

Mr. Cobb stated that he is a little confused what Ms. Wiener would be discussing and how her standing to actually raise those points in light of the fact that the Settlement Stipulation for Consent Order is agreed to and there are no issues with the facts.

Ms. Wiener stated that she represents the complainant that filed the complaint with the Division. This Board has never prohibited any member of the public from speaking on any issue whether they any relationship to it. It would be quite telling if today is the day that the Board stop allowing interested parties to comment. This proposed discipline is so grossly inconsistent with other discipline that this Board has imposed, even today. Mr. Shaw made blatant misrepresentations to this Board in an effort to get his license and this Board, on August 5, 2010, considered the only other case of its kind that has come before it and in that case the license was revoked with instructions that the Licensee never be permitted to come before the Board again. That is the case of Torres and Metropolitan Monument.

This is not a case about a family dispute. This is a case about subterfuge and a gentleman coming before this Board and telling the members point blank that Valerie Panciera-Rieth would not be involved. Despite the representation of Ms. Jackson, the Applicant to acquire the funeral establishment is Valerie Panciera-Rieth. That is unlawful as she has already been found to be untrustworthy by this Board. Deceit and misrepresentation were the basis for that. Ms. Panciera-Rieth cannot be the President and secretary of the company that acquires Landmark Funeral Home. This Board is required to make a finding under s. 497.380(4), that an Applicant and its principals be found to be of good moral character and not found to be untrustworthy in their business dealings. Ms. Panciera-Rieth has already been found to be that and so this Board cannot, under the Law, grant her license application.

Ms. Dudley, as Board counsel, objected to all this and advised that the Board is here to discuss the settlement agreement and Ms. Wiener does have the right to speak on the settlement agreement about the issues that are presented. The Board is not considering the application at this point and needs to deal with the issues in the Administrative Complaint that have not been denied and the settlement agreement. Ms. Dudley recognizes Ms. Wiener objection but cautioned that she stick to her reasons for objecting and not the application.

Ms. Wiener stated that she would address the applications at a later time. The only reason for the mentioning of the applications is because Ms. Jackson made reference to the applications. It appears the message being conveyed is that it does not matter that Jonathon Shaw stood before the Board and made misrepresentations to get an application approved because a new person is going to come in and own the Licensee. Well it does matter. The only precedent that this Board has ever established is that when an individual comes before the Board and makes a blatant misrepresentation then your license is revoked. Pursuant to the stipulation that was signed for the Consent Order, the Licensee was to immediately stop advertising preneed. The advertisement came down today. It has been on the internet up until this morning. However, it is still in writing in Yellow Book and perhaps the Respondent has requested that it be taken down, but it is part of a website. Anyone who knows what a website is like knows that a post can be taken down as quickly as it is put up. There is still a preneed

advertisement up for Landmark Funeral Home, today. They have thwarted the law and their obligation to this Board to tell the truth in their licensing application so this discipline of \$7500 and their apology is wholly insufficient. The license should be revoked.

Ms. Jackson stated that the case Ms. Wiener referred to involving Mr. Torres involved his involvement with a previously revoked Licensee, Orlando Cuevas. The Board had significant issues with Mr. Cuevas such that he was deemed not to be fit to hold a license and that was one of the major aggravating factors that the Board found when they made the decision to revoke Mr. Torres' license. In this instance that is not the case. What we have here are Licensees who have not been disciplined. Ms. Wiener appears to be speaking of the application that Ms. Panciera-Rieth filed. There was a Notice of Denial that was issued. There was a Petition for a Formal Hearing but at some time later Ms. Panciera-Rieth requested that the Board entertain a motion to withdraw the application. The Board denied that motion to withdraw and so the Notice of Denial stood. It appears that is different legally than the Board making findings about a particular Applicant or a particular Licensee. This is not exactly the same situation here. The aggravating factors do not appear to rise to the level to impose a revocation so that cannot be the Board's position here. The Board can accept the Settlement Stipulation, reject it and counter-offer or reject it outright. However, Ms. Jackson cautioned that if the Board decides to reject the case outright, the Department will take this case to the Department of Administrative Hearings and must prove up the allegations in our complaints by clear and convincing evidence, which they have very high standards. It is a possibility that the Board will get nothing in this case.

Mr. Cobb stated he would like to focus on the Consent Order first, but a lot of what Ms. Wiener is spending her time on is stuff that would be dealt with in part 2. Just to jump ahead of the ball a little bit, the letters have been provided to the Department that almost day after the ad came out a letter was sent advising this was an improper ad, we cannot reference we have preneed, please take it down. The response from Yellow Book indicated once the ad is up, it's up, when it expires it expires. The online portion has been taken down after repeated attempts but when it is printed in the Yellow Book itself, it is in there. A lot of allegations have been made. The Department's staff went into that funeral home on Monday and conducted a full examination and found no preneed contracts or any other violations. That is more telling than anything the Board would hear from Ms. Wiener or Mr. Cobb.

Ms. Wiener stated that this case and the Torres case are precisely the same. There was a Notice of Denial issued. The basis, which was sought by your Counsel from the Movent was misrepresentation and deceit. That was the basis for the denial of the license. The basis for the revocation of the license in the Torres matter was that Mr. Torres has been associated with someone found by this Board to be untrustworthy. A condition of licensure of Landmark Funeral Home was that there be no affiliation with Valerie Panciera-Rieth and Irving Panciera, particularly because of the previous denial and the basis for that denial. There is simply no distinction here. This is just like that case and revocation is the only respectable outcome.

Ms. Thomas-Dewitt questioned whether Ms. Wiener could provide the Board with proof that as of today the preneed ad was still online.

Ms. Wiener stated the Board could view it online at YellowBook.com or she could pull it up on her computer. The ad is still up today online. Ms. Wiener agreed that the ad cannot be removed from everyone's book.

Mr. Helm questioned whether the Board could address the Consent Order.

Ms. Dudley reiterated that every case is different. The Board is not addressing the Torres case so the Board has to take everything case by case and should not get into what happened 2 meetings ago with some other case and should just focus on this case.

Mr. Cobb stated that he has a copy of the letter requesting the ad be removed.

Ms. Thomas-Dewitt stated she has a copy as well, but it is just interesting that there would be an ad online today regarding the issues being addressed today because if this is a violation that is presently going on, the Board should be knowledgeable of that.

Mr. Helm stated that what is being discussed really has nothing to do with the Consent Order as far as he can see. It appears to have more to do with the applications for licensure.

Ms. Dudley stated that is a good point. In the Administrative Complaint, the Respondent is not charged with continuous violations. It pertains to those violations that they found during the investigation. If there is something continuous going on then a new case should be opened up and should be routed through the Probable Cause process.

Ms. Wiener provided the Board with a copy of the online ad via her computer. Ms. Wiener added that there was a video up but it has since been removed.

Mr. Cobb confirmed that the Board received a copy of the November letter requesting that the ad be removed.

Mr. Hall stated originally he understood this to be a Consent Order to handle this particular order. The Board would rule on the license being transferred in the next 2 items. It appears Ms. Wiener is saying because of the continuous problems, the Board should rule on the existing licenses now before they are transferred. Mr. Hall questioned whether this is correct and whether the Board has that ability.

Ms. Wiener concurred. Just because these licenses will be transferred is no reason not to take appropriate disciplinary action against the existing Licensee. The location of ownership will be transferred and that will be a completely new license, immaterial to this place.

Ms. Jackson stated that one of the conditions of the Settlement Stipulation is that the application will be put in. If the Settlement Stipulation is approved and the transfer of ownership is not approved, then the Department would have to go back to the drawing Board on the settlement because it is a condition.

Mr. Helm questioned whether the settlement states that the Board has to accept the application.

Ms. Jackson answered that it does not.

Mr. Hall stated that it was his understanding that if the application was not approved, it would negate the Consent Order.

Ms. Jackson stated she believes they would have to go back because the understanding of the parties is that is a condition of the settlement but the settlement stands alone for these purposes.

Ms. Huggins questioned where this is spelled out in the Consent Order.

Ms. Jackson deferred to Mr. Cobb as he has a different understanding.

Mr. Cobb stated that the Consent Order requires the license to be filed and it has already been filed. If the Consent Order that has been agreed to and there are no disputed issues of fact is approved, then the Board has the ability to consider the other 2 matters which respectfully have been inappropriately inserted into the consideration of the Consent Order. Mr. Cobb agrees with Ms. Dudley's analysis of considering the Consent Order and then moving forward with the applications.

Mr. Hall questioned whether if the Consent Order is approved and for some reason the application is denied, whether that would negate this Consent Order.

Ms. Jackson stated she would stand corrected on that as the Settlement Stipulation stands alone and requires the Respondent to file a change of ownership application, which they have done.

Ms. Huggins stated that she does not see that in the Settlement Stipulation.

Ms. Jackson stated that it appears they are not looking at the same Settlement Stipulation.

Ms. Dudley concurred as she does not see it in her copy either.

Ms. Wiener stated that if one of the conditions of the Settlement Stipulation was to require an application by Kevin Rieth, the Board does not have one. The Board has an application by Landmark Funeral Home, Inc. Its president is Valerie Panciera-Rieth.

Ms. Dudley requested to see the signed copy that Ms. Jackson has in her file.

Ms. Jackson stated Ms. Dudley may be correct as there may not be a change of ownership issue. Ms. Jackson stated that it is not in the Settlement Agreement but it was something that had been discussed. Ms. Jackson apologized as the document controls and it is not in the Settlement Stipulation.

Ms. Dudley confirmed that the Board received the same document that Ms. Jackson has.

Mr. Shropshire questioned if the Board approves the Settlement Stipulation and rejects both of the applications whether, in the Respondent's view, the Settlement Stipulation would still stand.

Mr. Cobb requested that he have a moment to confer with his client prior to making a representation.

Mr. Shropshire stated that the Board would have to allow this as it is a fundamental issue.

Mr. Cobb stated that the disciplinary action would stand on its own.

Ms. Wiener questioned whether the Board has heard from Mr. Shaw.

Mr. Cobb responded that the he addressed the Board as Mr. Shaw's representative that Ms. Panciera-Rieth had her own lease. Mr. Irving Panciera is the owner/landlord of the building and is free to be around the building for which he owns and is not involved. Ms. Panciera-Rieth has her own separate lease for her bereavement services.

Ms. Wiener called the Division's attention to documents it already has evidencing that Ms. Panciera-Rieth, in a video on the Landmark website, actually refers to Landmark Funeral Home as hers.

Ms. Jackson objected. If Ms. Wiener has a separate complaint, she is free to file it but it is inappropriate for the Board to hear additional allegations other than the ones contained in the Administrative Complaint.

The Chair stated that the Consent Order is before the Board at this time not the applications.

Ms. Wiener stated that this goes to specifically to information that the Division has that Mr. Shaw made blatant misrepresentations to the Board and in exchange the Board is going to fine him \$7500 implying that it is okay even though he received his license by making misrepresentations.

MOTION: Ms. Thomas-Dewitt moved to reject the Settlement Stipulation for Consent Order. Col. Stiegman seconded the motion, which passed unanimously.

(b) Application for Funeral Establishment, Change of Ownership: Approval with Conditions

Mr. Shropshire stated that an application for a Funeral Establishment was received on November 8, 2010. The application was incomplete when submitted. All deficient items were returned on December 10, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Kevin Reith (F028016). The establishment passed the inspection on December 17, 2010.

During this same April Board Meeting, a Settlement Stipulation for Consent Order will be presented to the Board, regarding Landmark Funeral Home in Case No.: 10826-10-FC. The settlement stipulation relates to an investigation regarding Landmark Funeral Home, while under the ownership of Jonathan Shaw. Kevin Reith (proposed new owner) was the FDIC at the time of the investigation and is the current FDIC. However, Mr. Kevin Reith and Valerie Panciera-Reith have not had any

administrative complaint(s) filed against them regarding this investigation or any other investigation. They both have no prior disciplinary record. The Division is recommending approval with the following conditions:

- (1) That the closing occur within 60 days of the date of this Board meeting.
- (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.
- (3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.

Mr. Helm questioned whether the rejection of the Consent Order has any weight on the applications.

Ms. Dudley answered, "No."

Ms. Wiener stated that she was confused about who the Applicant for the change of ownership is. The Board packet includes, behind the cover sheet where it indicates that Kevin Rieth is the Applicant, an application from Landmark Funeral Home, Inc. indicating that it's President and Secretary is Valerie Panciera-Rieth and its Vice President and Treasurer is Kevin Rieth. This Board has already rejected a license application by an Applicant where Valerie Panciera-Rieth was President based upon denials and misrepresentations and a finding of untrustworthiness. That prohibits this Board under s. 497.380(4), F.S. from making the requisite finding of trustworthiness in business dealings. Even, however, if it is Kevin Rieth that is the President and the Applicant, although that is not what the materials indicate, the Division is in possession of significant information indicating a lack of trustworthiness on Mr. Rieth's part including testimony solicited by Landmark's own attorney from a consumer that Mr. Rieth misrepresented himself as another and made significant misrepresentations to her. There are various pending consumer complaints against Mr. Rieth. Mr. Rieth was FDIC of Landmark Funeral Home when it continued to violate the law and make advertising indicating the ability to sell preneed when in fact there was no preneed license. This Board cannot find that either Mr. Rieth or Mrs. Rieth have the requisite trustworthiness in business dealings that is required in order for the Board to grant them a license. That is not a permissive statute. It is a mandatory obligation of this Board. It simply does not exist here, so this license application cannot be approved.

Mr. Shropshire requested a ruling from the Legal advisor. The majority of what was just heard is not of record in this proceeding and could not be relied on as a basis for the denial.

Ms. Dudley agreed 100% and expressed concern that we are getting off track as none of the information is contained in the materials before the Board. If this application is denied, Ms. Dudley would potentially have to go to the Division of Administrative Hearings and prove what Ms. Wiener states and there is nothing in the packet to support it. Ms. Dudley recommended that the Board disregard Ms. Wiener's comments as this is a little different than a settlement agreement where someone has made a complaint. This is an application, so Ms. Wiener does not have as much leeway as she was given during the Consent Agreement to speak on this.

Ms. Wiener called the Board's attention to the February 2009 Board meeting minutes whereby this Board rejected an application by Valerie Panciera-Rieth. That is public record. It is of record and is precedent by this Board. As long as Ms. Panciera-Rieth is listed as President or any part of, any principal of the Applicant, the application cannot be approved.

Mr. Cobb agreed again with Ms. Dudley. Mr. Cobb stated that Ms. Panciera-Rieth made a motion to withdraw her application regarding the issue that Ms. Wiener raises.

Ms. Wiener stated that the motion was denied.

Mr. Cobb stated that the motion to withdraw an application is a lot different than a denial.

Ms. Wiener stated that the motion was denied. The denial stands and prohibits the Board from approving this license application.

Mr. Hall questioned whether the Board could refer back to information provided in past Board meetings in reference to this case.

Ms. Dudley stated since it is not before the Board so if something is being remembered and the Board wishes to use that as a basis, we need to see if we have the opportunity to continue this matter to see if we can get those items and make them part of the record. Ms. Dudley stated that she personally could not recall all of the details from a meeting that occurred 6 or 7 months ago, so the Board should not rely on what other people's personal recollections are.

Ms. Wiener stated that the Applicant's application actually indicates that it had a license application denied. That is already of record in the Board's documents.

Mr. Helm questioned whether there is anything the Board can do to get this cleared up as he does not feel comfortable with everything that is going on.

Mr. Shropshire stated that his take on this case is that it started with a family dispute. There is no question that Mr. & Mrs. Rieth jumped the gun on trying to get their preneed business going and they would have paid a significant fine for that. The Division has not received a single, actual injured consumer complaint. The Division has only had a handful of consumers referred by Mark Panciera, but there have been no actual complaints directly from consumers. The Division is absolutely confident that Landmark has not accepted a penny in actual preneed funds. They have unquestionably jumped the gun on advertising for preneed anticipating that they would be granted a license. A huge amount of time and effort has been spent on this and the Division has "bigger fish to fry" and Mr. Panciera should be required to compete with them. The Torres matter was accompanied by a background of very numerous and injured consumers.

Mr. Helm stated that this Board was lied to and questioned whether there is anything the Board can do about this.

Mr. Shropshire agreed that Mr. Shaw did lie to the Board but has tried to place that in the bigger context. The Rieth's were trying to get into the business and were pushed into a corner by their brother and yes, they lied to the Board. The context is whether it is sufficient enough to keep them permanently out of the business. Mr. Shropshire does not think so. Maybe \$7500 is not enough to vindicate the Board's position but other than going back to the disciplinary settlement and counter-offering to them and basically giving them a fresh start, it is not apparent how this would be settled because Ms. Wiener will be back before the Board no matter what happens with additional complaints.

Ms. Wiener stated that the complaints were filed by consumers.

Mr. Helm stated that he did not necessarily agree with Mr. Shropshire's remark concerning Ms. Wiener as she was standing up for what she believes in.

Mr. Shropshire stated that he did not mean that personally to Ms. Wiener.

Mr. Helm stated that he understands that but he is having a hard time with this one as he does not like being lied to but it appears to be presented that that the Board cannot do anything it.

The Chair stated that it is not as black and white as an approval or denial. If there is some common ground in between there, placing some additional stipulations on the license that may make the Board feel more comfortable.

Mr. Cobb questioned whether probation, which has not been included on anything, would make the Board feel more comfortable. Mr. Cobb added that if the Settlement Stipulation for Consent Order had been accepted, Mr. Shaw would have been out. The Board would still have Mr. Kevin Rieth as the person on the license with greater control to govern his conduct.

Ms. Wiener stated that Mr. Rieth is not the Applicant. The Applicant is Valerie Panciera-Rieth. To approve this license application the Board must find that the Applicant is of good moral character and trustworthy in business dealings. The Board has found that Ms. Panciera-Rieth is not. This is not a matter for discussion. The Board cannot approve a license for Ms. Panciera-Rieth as a principal of a funeral establishment. It is as clear as the statute that is in front of you, s. 497.380(4), F.S.

Mr. Cobb stated that the Applicant is Landmark Funeral Home.

Mr. Hall agreed but indicated that Ms. Panciera-Rieth's name is all over the application before the Board. The concern of the Board members is that Mr. Shaw was more less an investor. Mr. Rieth was the FDIC at the time when all the evidence was presented. Now Mr. Cobb is asking the Board to feel better that Mr. Rieth will be running the establishment but he is the same person that was in charge when all these things happened. Mr. Hall questioned how the Board is supposed to feel better about that.

Mr. Cobb stated that the Board should feel better because now they would have Applicants that they have licensure control over. No matter what complaints or depositions Ms. Wiener would like to produce, Department staff went out to Landmark on Monday of this week and there were no violations found, no preneed services. Mr. Cobb added that the Applicant would not object to being placed on a probationary period for the Department to come in and audit at whatever intervals recommended if this would provide a level of comfort to the Board. The Applicant only wants to do business. Mr. Irving Panciera founded this business and sold it to his son and unfortunately the son went against his sister. There was not \$1 of preneed services sold to any consumer from Landmark and there was not one contract written. Mr. Cobb added he would be very interested to see any proof besides depositions and allegations, some of which are subject of a defamation lawsuit by the Rieth's against Mr. Mark Panciera that he did make statements to the Board in a letter, which was found that he was given notice that those statements were false by the person who made them. This is a family dispute that should not be before this Board. The licenses should be approved and the Applicant is agreeable to working with whatever stipulations or whatever is going to make the Department feel at ease to prove this Applicant has a right to be in this business.

Ms. Anderson stated that she does not feel comfortable voting on this and questioned what a continuance would do.

The Chair questioned what would the Board accomplish that has not already been heard today. The Chair added that the motion could be forthcoming but advised he did not know what else would come before the Board.

Ms. Thomas-Dewitt stated that on Page 5, Section 6 of the application, Ms. Panciera-Rieth did circle yes as having an application denied.

Mr. Cobb stated that was after the request to withdraw was denied.

Ms. Wiener stated that the basis for that denial is what is relevant because if the basis for that denial was that she did not have the appropriate net worth that would not be because of untrustworthiness. The Board has to find Ms. Panciera-Rieth as the principal of the Applicant to be trustworthy in her business dealings in order to approve this application under the Board's statute. Ms. Panciera-Rieth cannot be licensed on probation or under conditions. The Board is simply unable under the law to issue a license to someone unless it affirmatively finds that that someone is trustworthy in business dealings and because of the basis of the prior denial, Ms. Wiener submitted to the Board that this is a legal impossibility.

Ms. Dudley stated that it is not a legal impossibility. Having a denial of an application does not automatically deem her untrustworthy. Trustworthiness is something that the Board is going to have to decide but it is not as broad as Ms. Wiener has stated.

Ms. Jackson stated that because Ms. Panciera-Rieth did have an individual preneed license at the time that she applied for that establishment license on which the notice of denial was issued, the Division opened a case based on the same allegations and the Department declined to prosecute and closed that case without action.

Ms. Wiener stated that is totally irrelevant to the basis of the denial in February '09.

MOTION: Col. Stiegman moved to deny the application based on the fact that the Applicant has been previously denied, she's the principal and is untrustworthy. Ms. Thomas-Dewitt seconded the motion, which passed with 2 dissenting votes.

(c) Application for Preneed Main License: Approval with Conditions

The application was withdrawn by the Applicant.

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

5. **Old Business**

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

(1) *Recommended for Approval with Conditions*

(a) *MacQuarrie, Barbara (Appointing Entity: International Cremation Society, Inc.)*

On March 11, 2011, the Department processed Ms. MacQuarrie's 1st installment of \$1,250, pursuant to DFS Order filed on 2-3-2011, case no. 110900-10, copy of order and installment are attached.

The Division does not believe Applicant will be a threat to the public if the license applied for is issued and is recommending approval subject to the condition that the Applicant timely pay the fine as specified in Consent Order 110900-10.

Mr. Joseph Indelicato stated that the Applicant has paid the entire amount set out in the Consent Order and has completed the training required by the Consent Order. Mr. Indelicato requested that the Board approve the license.

Mr. Helm questioned whether the complete fine was paid.

Mr. Shropshire requested confirmation from Mr. Anthony Miller that the Applicant has paid the entire fine or just the first installment.

Mr. Miller stated that the Division received confirmation that the entire fine has been paid.

Mr. Indelicato stated that he had a copy of the Applicant's certificate of completion with a perfect score.

Col. Stiegman mentioned that the Consent Order references licensure with a condition of 2 years probation, but the Division's recommendation did not include this condition.

Mr. Shropshire stated that the Applicant is on probation in the separate disciplinary matter, which is not before the Board today.

Mr. Miller stated that the Consent Order is designed that if the Board does approve the license, the 2 years probation would be part of the approval.

Mr. Shropshire stated that he stands corrected.

MOTION: Mr. Jones moved to approve the application with 2 years probation. Ms. Anderson seconded the motion, which passed unanimously.

(b) *Smith, David G. (Appointing Entity: Daytona Memorial Park, Inc.)*

The Board tabled this application at its March 2011 meeting, and asked for additional information on the nature of the misrepresentations for which Applicant was disciplined by the DFS Division of Agent and Agency Services in 2005.

On December 2, 2010, the Department received an application for licensure from Mr. Smith. On February 15, 2005 the DFS Division of Agent Licensing issued a Consent Order adopting a settlement stipulation. Mr. Smith agreed to suspension of his insurance agent license for 12 months, in regard to allegations that he misrepresented the terms of health insurance policies. In January 2007 the Agent's Division re-instated his insurance agent license, and same is currently in good standing.

July 2009 Applicant was found guilty of DUI, in Volusia County, Florida.

Additional Information re 2005 disciplinary action

The 2005 disciplinary action against Mr. Smith was based on allegation that he sold medical insurance as all-inclusive major medical coverage, whereas in fact there were significant limitations to the coverage. The Board received an example of the complaint, an affidavit dated September 23, 2003, by consumer Roger Biederman along with the Applicant's letter of reply to the allegations, dated December 30, 2004.

The Division recommends approval subject to the terms & conditions of the attached stipulation for licensure, dated February 17, 2011, putting the Applicant on probation for the first 12 months of licensure as a preneed sales agent.

The Chair requested that the Applicant raise his right hand to be sworn in.

Mr. Shropshire asked, "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. David G Smith answered, "I do."

The Chair questioned whether the Applicant would like to address the Board or answer questions.

Ms. Wiener stated that a question had arisen at the last Board meeting and so Mr. Smith is simply here to answer the question about the nature of the discipline under his prior license.

Mr. Smith stated that he was licensed by the State of Florida in June 1999. He worked for a company called Mega Life and Health Insurance Co., Americans for Financial Security. Mr. Smith added that he worked for the company up until he had a suspension; he came home one day and found a surprising letter in his mail that they were taking away his license for misrepresentation. During that period of time, the Applicant sold some 350 policies and understands there were 4 or 5 complaints against him. Mr. Smith stated that under no circumstances did he ever misrepresent anybody and does not like to be called a liar or a crook, because he is not. At that period of time Mr. Smith wrote a long letter to the Insurance Finance Department as he was recommended to do after being on the phone with "Kathy" for an hour and a half. "Kathy" stated it appears a very nice person is in a bad situation here and recommended that Mr. Smith write a letter asking that the suspension be dropped and possibly a fine. Mr. Smith wrote the letter, but the suspension was not dropped. The suspension began February 15, 2005.

Mr. Smith was very depressed and very upset about the whole thing and really figured he would not go back into the insurance business. About a year and a half later Mr. Smith realized that his name was out there and it was bad and he did not like it so he decided to find out what he could do to get his Health Insurance License back. The Applicant was advised to send \$5.00, sign the letter provided, go have your picture taken and Mr. Smith got his license back. Mr. Smith added that it appears that if he had done something wrong, he should have been retrained. After that, Mr. Smith worked in the insurance business for a year with a company called Monumental Life and Health Co. without any problems.

The Applicant only worked 1 year out of the last 6 years. Mr. Smith decided to get active again since he worked in the cemetery business 20 years ago. Mr. Smith answered an ad in the paper with the Lohman Funeral Home, went in, filled out the application and here he is.

Col. Stiegman questioned whether this is an Application for Preneed Sales Agent License.

The Chair confirmed this.

Col. Stiegman stated that the last page of the Applicant's letter dated February 3rd refers to a Preneed Funeral and Cemetery license. Col. Stiegman questioned whether this is an error on the Applicant's part.

Ms. Wiener stated that was just a misstatement by the Applicant as he would only be licensed as a preneed sales agent if approved. The sponsoring licensee is in good standing.

Mr. Hall questioned whether there was any truth in the complainant's claim that Mr. Smith had changed their policy from a major medical policy to a basic hospital plan.

Mr. Smith stated that the company sold a plan called a "Health Choice Plan." It was a plan with options that you could design. Mr. Smith stated that he absolutely never changed anybody's policy. Many people wanted to save money on their premium. One of the complainants had a policy paying \$1100+. Mr. Smith met with him 3 times prior to the purchase of the policy. The premium was \$650 a month. The complainant designed the policy leaving out things that he did not want. Mr.

Smith stated that he never sold it as a major medical policy. In addition to that, Mr. Smith was always very particular about telling people they had a 3 day cancellation notice, and when the policy came in the mail, they had 10 days to review it and refund it if they did not like it.

Mr. Hall stated there is a drastic difference in a basic hospital plan and a major medical plan. A person who would replace a major medical plan with a basic hospital plan whether Mr. Smith advises them to or not, puts their family at a huge risk financially. If they have a heart condition or cancer, this could destroy them financially. So in the complaint, this family states they had a major medical and they bought a basic hospital from Mr. Smith. In the information provided to the Board, the family claims they did not find this out until they went to the doctor and they actually paid more money for that contract than the one they had.

Mr. Smith stated that was absolutely not the case. First of all, they were all individually written policies so they had to go through underwriters. So if you were working with anyone with preexisting conditions, they would not be approved.

Mr. Hall questioned whether Mr. Smith is stating that the packet is incorrect in that the gentleman stated he had a major medical plan before.

Mr. Smith stated that he never said that at all.

Mr. Hall questioned whether Mr. Smith read the complaint filed.

Mr. Smith stated that he never saw the complaint as it was handled by the company that he was working for at the time. Mr. Smith added that the only thing he did was call and talk to "Kathy" on the phone, representing himself. At the time, Mr. Smith called 678-LAWYERS as he was very upset about it. It came to the point that Mr. Smith would receive representation and would have to go into hearings on each individual case. This would probably cost upwards of \$25,000, so Mr. Smith just let it drop.

Mr. Hall questioned whether there was a replacement form signed when the individuals replaced that coverage.

Mr. Smith answered, "Yes, we had all those forms."

Mr. Hall stated he has a great concern. If the complaint is correct from those individuals, it appears those families were put at great financial risk. Mr. Hall expressed his concern over Mr. Smith meeting with families on a preneed basis and would be inclined to deny the application.

Ms. Wiener stated if the Board's pleasure is to deny, perhaps the application could be tabled until the next meeting so that Mr. Smith could address Mr. Hall's concerns specifically as Mr. Smith has not seen the information in the packet.

Mr. Hall stated that the Board requested that the last meeting.

Ms. Wiener disagreed. There was just a question raised. In fact the Division was contacted as to whether there was anything else needed and Mr. Smith was advised to just come in case there were any questions. The Applicant certainly would have done that if we thought that was necessary.

Mr. Hall stated that at the last meeting the Board requested an explanation on what the complaints were.

Mr. Shropshire concurred.

Mr. Hall added that Mr. Smith had the opportunity between the last meeting and now to look at that and be ready to answer the questions of the Board.

Ms. Wiener stated that the problem is Mr. Smith did not know exactly what questions would be asked and what the concern was. Ms. Wiener added that she understood that the question had to do with the nature of the misrepresentation, which Mr. Smith has responded to but if there are specific questions then obviously that is relevant; but rather than the Applicant having

to reapply and explain it at that time, if the Board would table the matter until next meeting, Mr. Smith could get explanations for each of the specific complaints.

Mr. Hall stated that he is concerned about the issuance of specialty licenses under the preneed section for persons untrained who are not prepared, as they could damage or hurt the public.

Ms. Wiener stated that the complaints being referenced are just allegations by consumers as there are no findings by the Department of Insurance as to those issues.

Mr. Hall stated that the Department suspended his license.

Ms. Wiener stated that voluntarily, Mr. Smith agreed to suspension of his license rather than fight the allegations but those were not conclusions of a regulatory authority.

Mr. Hall stated that Mr. Smith indicated when he arrived home, the license was already suspended and he decided not to fight after that.

Mr. Smith stated that he said he made several calls to lawyers to have someone represent him and found out it would cost upwards of \$25,000 to clear his name so he just let it go at that point.

Mr. Hall stated that Mr. Smith testified that he went home and was surprised there was a letter from the Department.

Mr. Smith stated that he went home in December and found the letter. Mr. Smith added that he did not even know there were complaints about him.

MOTION: Mr. Hall moved to deny the application based on untrustworthiness and the Applicant's previous discipline. Ms. Thomas-Dewitt seconded the motion, which passed with 2 dissenting votes.

*****BREAK*****

6. Request(s) to Relocate Cemetery Records

A. Recommended for Approval without Conditions

(1) Serenity Gardens LLC d/b/a Serenity Memorial Gardens (Lakeland) (F039368)

Serenity Gardens, LLC d/b/a: Serenity Memorial Gardens requests Board approval to relocate cemetery records currently located at Serenity Memorial Gardens, 3350 Mall Hill Road, Lakeland, FL 33809 to the location at 1811 Richmond Road, Lakeland, FL. This building is to be used solely as a storage facility and is adjacent to the centralized embalming facility on the property of Gentry-Morrison Funeral Home, which is under common ownership with Serenity Gardens, LLC.

The licensee affirms the records will be housed securely in fire-proof file cabinets. Pursuant to Rule 69K-6.005, records will be available for review at the licensed facility or an alternative site of the cemetery company if approved by the Board.

Mr. Hall disclosed his affiliation with Serenity Gardens LLC and stated that it would not affect his ability to remain fair and impartial.

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

7. 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.

8. Application(s) to Transfer a Preneed Main License

A. Recommended for Approval with Conditions

(1) Darens Funeral Home Inc d/b/a International Funeral Home (Clearwater)

S. 497.453(4), Florida Statutes, provides in pertinent part as follows: “(4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE.-- (a) Each [preneed main] licensee under this section shall provide notice as required by rule prior to any change in control of the licensee. Any such change is subject to disapproval or to reasonable conditions imposed by the licensing authority, for the protection of the public to ensure compliance with this chapter, based upon criteria established by rule, which criteria shall promote the purposes of this part in protecting the consumer.”

This is an application for transfer of a preneed license from Direct to the Public Casket and Urn Gallery, Inc d/b/a International Casket & Urn Gallery to Darens Funeral Home, Inc d/b/a International Funeral Home. This application is being filed due to a change in ownership of the preneed license which was previously under the sole-ownership of Faye Raye. As a result, the preneed establishment and contracts is being acquired by Darens Funeral Home Inc d/b/a International Funeral Home, of which Daren Sternad is the sole owner and officer. The application was received on February 9, 2011 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on February 25, 2011 and all deficiencies were resolved by March 14, 2011. The qualifying funeral establishment license (F062913) was approved by the board on January 6, 2011. Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement. A completed background check of all officers revealed no criminal history.

The Applicant’s financial statements as of December 31, 2010 reflect the following:

Outstanding Preneed Contracts	= \$ 472,598
Required Net Worth	= \$ 60,000
Reported Net Worth	= \$ 268,131

The Division recommends approval 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: Col. Stiegman moved to approve the application subject to the conditions recommended by the Division. Ms. Anderson seconded the motion, which passed unanimously.

9. Application(s) for Preneed Branch License

A. Recommended for Approval without Conditions – Addendum B

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

10. Application(s) for Continuing Education Course Approval

A. Recommended for Approval without Conditions – Addendum C

- (1) Academy Of Graduate Embalmers of Georgia, Inc #69
- (2) American Academy McAllister Institute of Funeral Service #9808
- (3) Florida Wilbert, Inc #6801
- (4) FuneralCE #43
- (5) Independent Funeral Directors of Florida, Inc #135
- (6) International Order of the Golden Rule #2201
- (7) National Funeral Directors Association #136
- (8) Pinellas County Funeral Home Association #58
- (9) SCI Management - Dignity University #99
- (10) Selected Independent Funeral Homes #137
- (11) The Dodge Institute for Advanced Mortuary Stu #81

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

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

- 11. **Application(s) for Approval as a Continuing Education Provider**
 - A. *Recommended for Approval without Conditions – Addendum D*
 - (1) *Carriage Services, Inc #12408 (Houston, TX)*

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

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

- 12. **Application(s) for Florida Law and Rules Examination**
 - A. *Recommended for Approval without Conditions – Addendum E*
 - (1) *Funeral Director – by Internship*
 - (a) *Mitchell, Veronica L*
 - (2) *Funeral Director and Embalmer – by Endorsement*
 - (a) *Dreiling, Daren D*
 - (b) *McClain, Media L*
 - (3) *Funeral Director and Embalmer – by Internship*
 - (a) *Adams, Freddie L*
 - (b) *Akin, Kimberly A*
 - (c) *Beggs, Judson T*
 - (d) *Broas, Stephen K*
 - (e) *Cabrera Ramirez, Jorge*
 - (f) *Craig, Justin M*
 - (g) *Ellis, Janet L*
 - (h) *Jenkins, Richard F*
 - (i) *McGan, Sean W*
 - (j) *Salter, Trina L*

The Division recommends approval of the application(s).

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

- B. *Recommended for Approval without Conditions (Criminal History)*
 - (1) *Funeral Director*
 - (a) *Zanders, Helen R*

The Applicant submitted an application to become a Funeral Director by Internship on October 22, 2010. The application was incomplete when submitted. All deficient items were returned on January 24, 2011. The Applicant submitted a fingerprint card and was returned with criminal history.

Ms. Zanders pled nolo contendere to a Misdemeanor Battery Charge on August 3, 2006. She was ordered to pay restitution in the amount of \$1668.29, court costs in the amount of \$210, placed on six months probation. As a condition of the probation, Ms. Zanders was ordered to complete an anger management course and thirty hours of Alternative Community Service.

The Division is recommending approval without conditions.

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

- 13. **Application(s) for Internship**
 - A. *Recommended for Approval without Conditions – Addendum F*

- (1) *Funeral Director and Embalmer*
 - (a) *Mouriz, Christopher M*
 - (b) *Richards, Tameica J*
 - (c) *Tillman, Melissa M*

The Division recommends approval of the application(s).

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

- B. *Recommended for Approval without Conditions (Criminal History)***
 - (1) *Funeral Director and Embalmer*
 - (a) *Hasley, Douglas E*

The Applicant submitted an application to become a Concurrent Intern on February 7, 2011. The application was incomplete when submitted. All deficient items were returned on March 1, 2011. The Applicant submitted a fingerprint card and was returned with criminal history.

Mr. Hasley pled nolo contendere to a Misdemeanor DUI charge on November 8, 2007. He was ordered to pay fine and costs in the amount of \$570 placed on probation for twelve months; his license was revoked for eleven months, ordered to complete DUI school and Victim's Awareness Program and complete fifty hours community service.

The Division is recommending approval without conditions.

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

- 14. Application(s) for Embalmer Apprentice**
 - A. *Recommended for Approval without Conditions – Addendum G***
 - (1) *Bencini, Antonio*
 - (2) *Meahl, Eileen M*
 - (3) *Straughn, Kenneth W*

The Division recommends approval of the application(s).

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

- B. *Recommended for Denial***
 - (1) *Cook, Andrea N*

The Applicant submitted an application to become an Embalmer Apprentice on January 13. The application was incomplete when submitted. All deficient items were returned on February 9, 2011. The Applicant submitted a fingerprint card and was returned with criminal history.

Ms. Cook pled guilty to Felony Burglary of an unoccupied structure in April 2009. She was ordered to pay restitution in the amount of \$191 and court costs in the amount of \$393. She was also placed on probation for eighteen months.

No person may be licensed as an embalmer unless they are of good character, ss. 497.368(1)(c) and 497.369(1)(b)2, Florida Statutes. The Division is recommending denial.

Mr. Helm disclosed his affiliation with Ewing Funeral Home and stated that it would not affect his ability to remain fair and impartial.

Mr. Shropshire asked that the Applicant raise her right hand to be sworn in. "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."

Ms. Andrea Nicole Cook answered, "Yes I do."

The Chair questioned whether Ms. Cook would like to address the Board.

Ms. Cook stated that she would and thanked the Board for the opportunity to be heard. Ms. Cook stated when she was younger she made a bad decision, which she does completely regret as she was naïve and gullible. Since then Ms. Cook has been enrolled in college and working fulltime at Ewing Funeral Home assisting with services and office work. Ms. Cook added that she has a good working relationship with the funeral directors and she completely enjoys the area of work that she is in. Ms. Cook requested that the Board please give her a chance to excel, to become an embalmer's apprentice and eventually become a funeral director so that she will not have a denial on her record.

The Chair requested that the Applicant explain the circumstances of the Felony Burglary of an Unoccupied Structure in April 2009.

Ms. Cook stated that she was in a relationship and being naïve and gullible, she went along with a bad decision with her boyfriend. They were leaving an apartment and decided to go to the clubhouse and take some patio furniture. It was a very bad decision.

Ms. Anderson questioned why Ms. Cook went to the clubhouse.

Ms. Cook stated that they were leaving the apartment complex and took patio furniture from there.

Ms. Thomas-Dewitt questioned whether Ms. Cook would provide some actual letters of character to show that the Applicant has remorse and is a changed person.

Ms. Cook stated that May would make a year that she has been working at Ewing Funeral Home and questioned whether Ms. Thomas-Dewitt would like a letter of recommendation from her boss.

Ms. Thomas-Dewitt stated she is requesting something that would show Ms. Cook's character because the Board was only presented with the negative.

Mr. Jones questioned why Ms. Cook indicated that she did not have any criminal history on her application.

Ms. Cook stated it was an error on her part as she viewed it to mean criminal history in the funeral home.

Ms. Thomas-Dewitt questioned whether Ms. Cook is currently on probation.

Ms. Cook answered no. Ms. Cook added that she has completed all probation hours, community service and paid back restitution.

The Chair questioned whether Ms. Cook realizes if the Board were to approve her apprenticeship that if she did invest the time, energy and expense into going to Mortuary or Funeral Service College that the application for licensure would come under scrutiny again because of the felony conviction. Just because the process today may grant Ms. Cook an apprenticeship this does not give the Applicant a free pass for what might come before the Board for further licensure.

Ms. Cook stated she was hoping there was a timeframe on it.

The Chair stated that is separate and apart from what is being considered today.

Mr. Shropshire questioned whether the Applicant would be willing to waive the deemer.

The Chair stated that the deemer is May 27th and would be after the May meeting.

Mr. Shropshire stated that would be a Teleconference meeting.

Ms. Thomas-Dewitt stated that she would prefer the Applicant appear before the Board.

The Chair requested that Ms. Dudley explain the deemer date issue to Ms. Cook.

Ms. Dudley stated when applying for a license in Florida, the Applicant has the right for the license to be approved or denied within 90 days, so if the Board does not follow through with that the application would be deemed approved. The Board is prepared to deal with the license application regardless. In order to continue the matter and allow time to collect the letters of recommendation, Ms. Dudley questioned whether Ms. Cook would be willing to waive her right to have that 90 day review.

Ms. Cook questioned whether that would mean she would find out sooner.

Ms. Dudley stated that the Applicant would find out later, but if she goes forward today without waiving her rights it may be a denial.

Ms. Cook stated that she would waive her 90 day right.

MOTION: Ms. Thomas-Dewitt moved to defer the application to the June 23rd meeting. Col. Stiegman seconded the motion, which passed unanimously.

(2) Foster, James J

The Applicant submitted an application to become an Embalmer Apprentice on February 10, 2011. The application was incomplete when submitted. All deficient items were returned on February 28, 2011. The Applicant submitted a fingerprint card and was returned with criminal history.

In 2006, Mr. Foster pled nolo contendere to a Misdemeanor DUI charge. Mr. Foster's license was revoked for six months; ordered to pay \$924.26 in court costs and placed on probation for a year.

In 2008, Mr. Foster pled nolo contendere to the Sale of Tobacco Products to a Minor. Mr. Foster was ordered to pay \$443 in court costs and to perform ten hours of community service.

In 2009, Mr. Foster pled nolo contendere to a Misdemeanor Breach of Peace, Disorderly Conduct charge. Mr. Foster was ordered to pay \$409 in fine and costs and take an anger management course.

No person may be licensed as an embalmer unless they are of good character, ss. 497.368(1)(c) and 497.369(1)(b)2, Florida Statutes. The Division is recommending denial.

Mr. Shropshire asked that the Applicant raise his right hand to be sworn in. "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. James Joseph Foster answered, "Yes I do."

The Chair questioned whether Mr. Foster would like to make a statement to the Board or answer questions.

Mr. Foster stated that he understands he has 3 misdemeanors on his record. They were all immature decisions that Mr. Foster learnt from. Mr. Foster went to work for Brownlie -Maxwell a year and a half ago to assist with removals. Mr. Foster became interested in the embalmer process and decided this is a career path that deeply interested him and that he wanted to go forward with. Mr. Foster gave it a lot of thought, discussed it with the company and applied for the apprenticeship, which was denied for those criminal reasons. Mr. Foster is willing to take any steps possible to prove that will not be a factor and it will never happen again. Mr. Foster thanked the Board for the opportunity to address them.

Ms. Huggins requested clarification on the 2009 charge for Breach of Peace, Disorderly Conduct and questioned whether it was domestic.

Mr. Foster stated that he and his best friend were at a get together and took joking a little too far which resulted in an altercation between the two. Mr. Foster no longer associates with that friend but there were reconciliations made between the two after Mr. Foster had completed the court ordered process.

The Chair questioned whether Mr. Foster is currently on probation.

Mr. Foster answered, "No Sir."

Ms. Thomas-Dewitt requested that Mr. Foster explain the charge for the Sale of Tobacco Products to a Minor.

Mr. Foster was working a job and felt he needed a supplemental income, but finding a night job was difficult. Mr. Foster did find several hours a week at a convenient store. Mr. Foster stated he cannot blame the situation on not having ample training and does accept the fact that he should have been more thorough in checking the license of the person that he sold to. Once that happened, Mr. Foster decided to focus on his main income. Mr. Foster completed everything that was asked of him.

The Chair questioned what Mr. Foster learned from the Anger Management course.

Mr. Foster stated that he learned several different ways to not get himself into a situation that could result in becoming angry. A lot of it was they actually took base on people that drink alcohol or get themselves in situations that cause you to lose your temper, which caused Mr. Foster to not really drink a whole lot ever.

The Chair questioned whether Mr. Foster was drinking alcohol at the time of this instance.

Mr. Foster answered yes. It was a gathering of friends who were drinking socially.

MOTION: Ms. Thomas-Dewitt moved to deny the application based on the Division's recommendation. The motion failed due to a lack of a second.

Mr. Foster stated that understands that his actions did show bad moral character and bad decision making but he has learned from those instances. Mr. Foster received a letter of recommendation from his boss that was submitted to the Board.

The Chair confirmed that the Board did receive the letter.

Mr. Foster requested that the Board allow him the chance to make this his future.

Mr. Hall stated that 2 of the problems listed are geared back to alcohol but even with that Mr. Foster is alluding to the fact that he continues to use alcohol.

Mr. Foster stated that he rarely drinks. It is typically at home; no longer in a social gathering as he no longer goes out.

Ms. Anderson questioned whether Mr. Foster would be able to produce additional character references.

Mr. Foster stated that he does not have any with him but would secure some and submit them to the Board.

The Chair questioned the deemer date.

Mr. Shropshire stated that the Division calculated it as June 29th. June 24th would be the next in person meeting.

Ms. Dudley questioned whether Mr. Foster understands he has a right to have his application heard within 90 days unless he waives that right. Ms. Dudley questioned whether Mr. Foster would be willing to waive his right as the next in person meeting will be at the end of June.

Mr. Foster answered yes.

Mr. Jones stated that Mr. Foster heard The Chair address the last Applicant about coming before the Board again if approved and the concerns of the Board. It is imperative for Mr. Foster to be a model individual. Mr. Jones questioned whether Mr. Foster has any concerns with accomplishing that.

Mr. Foster answered no.

MOTION: Mr. Jones moved to approve the application. Ms. Huggins seconded the motion, which passed with 3 dissenting votes.

Mr. Foster stated that he would not let the Board down.

Mr. Jones stated that is what the Board is counting on.

15. Registration(s) as a Training Agency

A. Recommended for Approval without Conditions – Addendum H

(1) Funeral Directing

(a) Anderson-McQueen Company (Largo) (F063607)

(b) Anderson-McQueen Company (St. Petersburg) (F063608)

(c) Anderson-McQueen Company (St. Petersburg) (F063606)

(d) Anderson-McQueen Company (Seminole) (F063610)

(2) Funeral Directing and Embalming

(a) Anderson-McQueen Company (St. Petersburg) (F063609)

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

16. Application(s) for Monument Establishment Sales Agent

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

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

17. Consumer Protection Trust Fund Claims

A. Recommended for Approval without Conditions – Addendum J

The Division recommends approval of the claim(s).

The Chair questioned who in the Division handles the claims.

Mr. Shropshire stated that Ms. Christine Lynn handles the claims.

The Chair stated that Ms. Lynn does a good job.

Col. Stiegman stated it appears to be a lot for just the second month.

Mr. Shropshire stated it is in essence due to the way ICS, which took over American Family Cremations, tends to aggregate them into batches and then they send them in every 4 or 5 months.

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

18. Application(s) for Direct Disposal Establishment

A. Recommended for Approval without Conditions

(1) Circles of Life Society Inc (Plantation)

An application for a Direct Disposal Establishment was received on March 7, 2011. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Frank Winninger (F044350). The Division is recommending approval without conditions.

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

19. Application(s) for Funeral Establishment

A. Recommended for Approval without Conditions

(1) Funeraria Latina Emanuel LLC (Miami)

An application for a Funeral Establishment was received on February 9, 2011. The application was incomplete when submitted. All deficient items were returned on February 28, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Rolley Lovett (F045610). The Division is recommending approval without conditions. The establishment passed its inspection on March 8, 2011.

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

(2) Kate Mayberry d/b/a Agape Funeral Home & Cremation Services, Gainesville (Gainesville)

An application for a Funeral Establishment was received on January 20, 2011. The application was incomplete when submitted. All deficient items were returned on February 8, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Jesse Burns (F043735). The Division is recommending approval without conditions.

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

B. Recommended for Approval with Conditions

(1) Carriage Florida Holdings Inc d/b/a Stanfill Funeral Home (Miami)

The application was received by the Division on March 8, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the facility will be William Martinez (F046455).

The Division is recommending approval with the following conditions:

- (1) That the closing occur within 60 days of the date of this Board meeting.
- (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.
- (3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.
- (4) That the establishment passes an on-site inspection by a member of the Division staff.

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

(2) Marvin C Zanders Funeral Home Inc (Apopka)

The application was received by the Division on February 3, 2010. The application was incomplete when submitted. All deficient items were returned on March 16, 2011. The fingerprint cards for all principals were returned with a criminal history background for Helen Zanders. The FDIC for the facility will be Omar Williams (F049256).

Ms. Zanders pled nolo contendere to a Misdemeanor Battery Charge on August 3, 2006. She was ordered to pay restitution in the amount of \$1668.29, court costs in the amount of \$210, placed on six months probation. As a condition of the probation, Ms. Zanders was ordered to complete an anger management course and thirty hours of Alternative Community Service.

Ms. Zanders is the daughter of the deceased Marvin Zanders. Marvin Zanders' will specifically divides the funeral home to the daughter.

The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

Mr. Shropshire asked that the witness raise her right hand to be sworn in. "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."

Ms. Beverly Zanders answered, "Yes I do swear that it is the truth and nothing but the truth." Ms. Zanders stated that she is Ms. Zanders' oldest daughter and is a licensed funeral director and embalmer. Ms. Zanders stated that the will that Helen Zanders possesses has not been filed in Court. The siblings are contesting that will because their father who sent them all to school and since Ms. Beverly Zanders was the one who obtained the license, Mr. Zanders would not will the funeral home to one person knowing that there were siblings. Ms. Zanders stated that the correct will has been filed. As of today, the will that Helen has stating that Mr. Zanders has willed the funeral home to her has not been filed in Court. Usually, according to the State law, after death, the will needs to be filed. As the oldest sibling, Ms. Zanders stated that there has been a lot of fraudulent activity going on prior to Mr. Zanders actually getting down sickly. The siblings are contesting the fact that this is a forged will. Ms. Zanders stated that her lawyer was not able to attend today's meeting. However, the case has been filed in court. Ms. Zanders added that she is leery because if it is such a valid will it should have been filed.

The Chair requested that Mr. Shropshire address the Board regarding the will.

Mr. Shropshire stated that the will provided to the Division within the last day or two by Helen Zanders is authenticated, witnessed and appears to be regular but there is no indication that it has been actually probated.

Ms. Zanders stated that the will has not been probated. Ms. Zanders stated that her father had siblings and other children. Ms. Zanders added that she is the legitimate one, the oldest one with the funeral director and embalmer license. The main thing is that the will has not been filed and is being contested because it is an illegitimate will based on the fact that there is forgery. To ask that ownership be transferred prior to probate is not within this jurisdiction.

The Chair stated that he would like to see the Board table this application until the Board is satisfied that any action taken re the change of ownership carries some legal weight as far as the probate court is concerned.

Col. Stiegman questioned whether this would affect the business since the owner is deceased.

The Chair stated that Mr. Zanders has been deceased since December.

Mr. Helm questioned whether Ms. Zanders is currently working in the funeral home.

Ms. Zanders answered that she does have her license and has worked with Mr. Zanders at different times but is not currently working in the funeral home as she is doing other things.

Mr. Hall questioned who is running the facility now.

Ms. Zanders stated that she has been told that Omar Williams is a licensed funeral director and embalmer at the facility and he is supposedly the person running it. Ms. Zanders added that she has heard even though Mr. Williams is the licensed funeral director and embalmer, Helen is still seeing families and consulting with families without being licensed.

The Chair questioned whether Marvin C Zanders was the sole owner of the funeral establishment.

Ms. Zanders stated that the funeral home was incorporated.

Ms. Thomas-Dewitt stated there has not been an update with the Division of Corporations as Helen Zanders is listed as the Vice President. Ms. Thomas-Dewitt questioned whether there should be an updated copy.

Mr. Shropshire stated that the paperwork from the Division of Corporations appears to be the new corporation created by Helen Zanders, the Applicant.

Ms. Richardson stated that it is actually a revision as it previously listed Marvin Zanders and Helen Zanders both as officers but Mr. Zanders name has since been removed. It is the same corporation.

Ms. Zanders stated that she has the original incorporation documents that indicate Mr. Zanders is the president and Helen Zanders is the vice president. Ms. Zanders stated that she is unaware of any amendment because prior to Mr. Zanders' death, Helen was still vice president and her dad was president.

MOTION: Mr. Jones moved to defer the application to a later meeting to allow the Division time to investigate the matter. Mr. Hall seconded the motion, which passed unanimously.

20. Request(s) to Extend Internship

A. Recommended for Approval with Conditions

(1) Nadekow, Candi J

Ms. Nadekow was issued a Concurrent Intern license on September 2, 2010. Per the letter submitted by the licensee, her daughter is in need of constant medical attention that will remove her from the internship duties for roughly seven weeks. Ms. Nadekow is requesting an extension for an additional seven weeks, which will make the expiration date of the internship license October 21, 2011. Staff is recommending approval of extending the internship license with the condition of extending it longer, if further medical treatment is necessary.

MOTION: Mr. Hall moved to approve the request with the condition of extending it longer, if further medical treatment is necessary. Mr. Helm seconded the motion, which passed unanimously.

21. Request(s) to Fund Preneed Contracts through Insurance

A. Recommended for Approval without Conditions

(1) GF Ventures LLC d/b/a Glick Family Funeral Home (Boca Raton) (F062802)

GF Ventures, LLC d/b/a Glick Family Funeral Home was approved on February 3, 2011 for its preneed license subject to the condition to trust at 100%. In addition, GF Ventures is requesting board approval to utilize National Guardian Life (NGL) to sell insurance-funded preneed contracts. NGL is an approved insurance provider, and the licensee will utilize NGL's pre-approved funeral agreement.

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

22. Chairman's Report (Oral)

None

23. Executive Director's Report

A. Revision to Rules 69K-6.003 and 69K-6.0052 (Action Required)

The revisions are needed based on a letter the Department received from Staff of JAPC which requested action to correct what they believe are some technical errors. The changes are not viewed as substantive.

The Division of Funeral, Cemetery, and Consumer Services recommended as follows:

1) That the Board approve the amendments to rules 69K-6.003 and 69K-6.0052 as provided to the Board in Attachment A, and authorize the Division to move forward with rulemaking to adopt the amendments, and in relation thereto authorizing the Division to: publish notice of rule development pursuant to s. 120.54(2); publish notice of intent to adopt the rule and form pursuant to s. 120.54(3)(a)1; to prepare and publish statements of estimated regulatory costs pursuant to s. 120.54(3)(b) and 120.541; and to file the rules for adoption pursuant to s. 120.54(3)(e)6, Florida Statutes.

2) That the Board finds that the rule amendments:

a. Will not have an impact on small business;

b. Are not likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

MOTION: Mr. Jones moved that the Board find as recommended by the Division. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. Sale of "Bench Rights" in Cemeteries (Informational)

The Board was provided a draft of a reply by the Division, to an inquiry the Division received in March 2011, concerning sale of bench rights in a licensed cemetery.

The Division intends to finalize and sent the reply, barring comment by the Board or others that reveals a flaw in the Division's analysis and conclusion.

Mr. Helm stated that the cremation is the final disposition, so if them putting the ashes in the bench does not appear to pose a problem.

Mr. Shropshire stated that generally speaking cremation is the end of jurisdiction of the Department except that when you take cremains and store them in a place for that purpose, it becomes a cemetery.

Mr. Helm questioned how Daytona 500, the universities and all the churches get by with putting up columbariums.

Mr. Shropshire stated that the Daytona 500 proposal died in the legislature.

Mr. Helm stated that all the churches have them.

Mr. Shropshire stated that the churches and universities have express exemptions in ch. 497 from that cemetery licensure requirement otherwise they would be considered cemeteries required to be licensed.

Mr. Helm stated that he did not know churches had to be exempt. Mr. Helm questioned whether each individual had to apply for exemption.

Mr. Shropshire stated that there is a statutory exemption for religious related institutions. The primary concern of the Department would be the potential shifting of part of the cost of the burial right to the bench right which would then reduce the amount that would have to be put into care and maintenance trust funds.

C. Preneed E-Contracts (Informational)

The Board received this documentation as an informational item. The Board had no comment.

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

None

25. Administrative Report

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

26. Disciplinary Report

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

27. Adjournment

The Chair commended the Board on a job well done.

Mr. Jones stated that the Department of Health, Office of Vital Statistics, is piloting the Electronic Death Registration System in April, Duval County Medical Examiner's Office. This will be expanded to District 4, Medical Examiner Coverage. As soon as that pilot is completed, once the system is tested in the field, Vitals Statistics will begin rolling it out. A registration schedule will be provided to the Board as an update.

The meeting was adjourned at 1:31 p.m.