

Minutes of Meeting
Board of Funeral, Cemetery and Consumer Services
April 8, 2009 - 10:00 A.M. to 5:00 P.M.
Hawthorn Suites Lake Buena Vista
8303 Palm Parkway
Orlando, FL 32836

I. Call to Order and Roll Call

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

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

As a preliminary matter, let me state for the record that my name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. This is a meeting of the Board of Funeral, Cemetery, and Consumer Services. Today is April 8, 2009. The meeting is occurring at the Hawthorn Suites Lake Buena Vista in Orlando, FL. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. My Assistant, Ms LaTonya Bryant, is recording these proceedings.

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

PRESENT:

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

ALSO PRESENT:

Doug Shropshire, Executive Director
Tammy Teston, Deputy Chief Financial Officer
Anthony Miller, Assistant Director
Allison Dudley, Board Counsel
Jim Bossart, Department Counsel
James Gellepis, Department Staff
LaTonya Bryant, Department Staff
Thurman Lowe, Department Staff
Tina Williams, Department Staff
Aldon Asher, Department Staff

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

II. Action on the Minutes

A. February 4, 2009

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on February 4th.

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

B. March 4, 2009 Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on March 4th.

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

III. Disciplinary Proceeding(s)

A. Abbey Affordable Cremation and Funeral Service: Case No: 87262-08-FC

Mr. Jim Bossart stated this is a resubmission from the December 3, 2008 Board meeting. Case originates from a May 21, 2008 probable cause determination by the Board and the subsequent filing of an Administrative Complaint, alleging that Respondent funeral establishment violated Section 497.452(1)(a), Florida Statutes by selling 52 pre need funeral contracts to Florida consumers without holding a valid pre need funeral license. Respondent contends that a third party agent actually sold the pre need funeral contracts and assigned the benefits to Respondent without Respondent's knowledge or approval. However, the insurance company records indicate Respondent to be the owner of the pre need contracts. Evidence supports the conclusion that Respondent violated the enumerated statutes.

The Board on December 8, 2008 rejected the proposed settlement stipulation and made a counteroffer requiring the Respondent, in addition to the previously agreed to terms, to contact each pre need funeral contract purchaser and notify him or her of the right to cancel the contract. Sample letters are included in this packet. The Respondent has elected to enter into this settlement stipulation.

Department Recommendation: Approve the Settlement Stipulation for Consent Order assessing Respondent a \$2,000.00 fine; undergoing a six month period of probation; and agreeing not to sell pre need funeral contracts in the future without obtaining a pre need funeral license. In addition, the Respondent shall contact each consumer who purchased a pre need funeral contract by letter and inform them that the contract is not binding and that they have the voluntary option of cancelling the contract. Sample letters are included in the packet.

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

B. *Evergreen Memorial Park Cemetery, Inc.: Case No. 97370-08-FC*

Mr. Bossart stated this case originates from an October 27, 2008 probable cause determination by the Board and the subsequent filing of an Administrative Complaint, alleging that Respondent cemetery was not being maintained, in violation of Section 497.262, Florida Statutes.

Evidence supports the conclusion that Respondent violated the enumerated statutes and administrative rules. The Respondent has elected to waive a formal proceeding in this matter and enters into this settlement stipulation.

Once the Administrative Complaint was filed and the case got going, it was discovered this was not really a cemetery. It is an old graveyard in a poor section of Miami. There have been no burials for at least 20 years. The graveyard is being maintained by families out of their own private resources. Pictures and copies of checks have been provided indicating they are trying to maintain the graveyard. In light of that, the Department entered into a Settlement Stipulation for Consent Order requiring Respondent to continue to maintain the cemetery in a dignified manner and make a good faith effort to comply with Section 497.262, Florida Statutes, including retention of the lawn mower service to mow and trim and to pick up litter. Payment of an administrative fine is waived.

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

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

A. *American Funeral Partners of Florida, Inc. d/b/a Charlotte Memorial Funeral Home and Memorial Gardens to acquire Charlotte Memorial Gardens (Punta Gorda)*

(a. American Funeral Partners of Florida, Inc., (hereinafter "American Funeral Partners" or "Buyer" or "Applicant") (A.J. Daoud, President) has filed an application for approval to acquire control via asset purchase of Charlotte Memorial Gardens Acquisition, Inc. (CMGAI), a licensed cemetery operating under license number F039725, and located at 9400 Indian Springs Road, Punta Gorda, Florida, which does business as Charlotte Memorial Gardens (CMG).

(b. A related application by American Funeral Partners for a preneed main license is also pending before the Board at this April 8, 2009 meeting, and this application should be considered by the Board in conjunction with that preneed license application.

(c. American Funeral Partners was formed in Florida on June 28, 2008 for this acquisition. A completed background check of all officers revealed no criminal history. The Applicant's principals are Abraham J. Daoud and David Deighton.

(d. American Funeral Partners' financial statement (current as of September 22, 2008), in the name of American Funeral Partners of Florida, Inc., reflects the following:

Required Net Worth	= \$ 50,000
Reported Net Worth	= \$130,000

(e. Currently, Charlotte Memorial Gardens is owned by "Funeral Services Acquisition Group Inc." (hereinafter FSAG or "Seller"), and FSAG is ultimately controlled by Service Corporation International (SCI).

(f. Currently, Charlotte Memorial Gardens operates as preneed branch number 000089, under preneed main license number F019323, which preneed main license is held of record by the same FSAG, ultimately controlled by SCI.

(g. There is a funeral establishment immediately adjacent to and operated in conjunction with Charlotte Memorial Gardens, and in Nov. 2008 this Board approved a change of ownership of that funeral establishment, from FSAG/SCI, to American Funeral Partners.

(h. As more fully set forth in the asset sales agreement, among the assets being purchased by American Funeral Partners, are the following: 1) the cemetery real estate; 2) equipment, vehicles, and personal property on the real estate used to operate the cemetery; 3) certain cemetery merchandise in inventory; 4) certain preneed contracts and related liabilities, and rights to preneed trust funds and insurance proceeds related to the preneed contracts; 5) Seller's rights and liabilities under certain contracts related to operation of the cemetery; 6) certain accounts receivable, utility deposits and other deposits; 7) Charlotte Memorial Gardens trade name, goodwill, customer lists, books of account.

(i. The preneed contracts to be transferred to American Funeral Partners are described on page 2 of the Asset Sale Agreement, at 1.1(f), as follows:

All preneed funeral and/or cemetery merchandise and/or service agreements generated in the operation of the Business that have not yet been serviced, cancelled or transferred as of the effective time (the "Preneed Agreements"), including contracts and accounts receivable associated therewith.

(j. The FCCS Division advised the parties that the Division was of the opinion that the preneed contracts to be transferred to American Funeral Partners and which American Funeral Partners was to become responsible and liable for, must be more definitively set forth in the record in this application.

(k. On 3-16-09 Mr. Lee Longino, President of SCI Florida, on behalf of Seller, provided to the Division by email certain materials, one of which was an Excel spreadsheet, identifying 1,858 preneed contracts that American Funeral Partners will become responsible and liable for under the sale agreement (see note A below), showing, among other things, for each of said 1,858 preneed contracts the contract number, purchaser name, sale date, sale amount, and, in column "T" entitled "Total Liability, the amount currently in trust for each contract, and showing the total trust liability, for all 1,858 preneed contracts, as being \$1,467,310, all as of 1-31-09 (said spreadsheet is hereinafter referred to as the "1-31-09 Preneed Contract List"; the document is over 25 pages long – the first and last page are provided herewith, as illustrative).

Note A: Said 1,858 number and related dollar amounts are subject to adjustment for preneed contracts fulfilled or cancelled between 1-31-09 and the date of closing of the sale from Seller to Buyer.

(l. In accordance with Rule 69K-5.006(3) and (4) (a), the Applicant requested a Division examination of the preneed merchandise and the care and maintenance trusts. The examiner's final report was issued on November 24, 2008. The exam and report, which addressed the period 11/01/2003 through 07/31/2008, indicated a \$1,812,035 deficit in the preneed trust, due to what appeared to be an unauthorized withdrawal from the corpus of the fund. SCI disputed the deficit finding.

(m) 1. The Division inquiry indicates that the \$1,812,035 was withdrawn from the preneed trust by a prior owner of the cemetery and preneed business, Alderwoods. As you know, Alderwoods was the result of the bankruptcy reorganization of Loewen, and Alderwoods had obtained the cemetery and preneed business from its predecessor, Loewen. Loewen in turn had acquired the cemetery and preneed business out of the receivership proceedings of a former owner.

2. Division records document that in the late 2004 timeframe Alderwoods representatives met with the FCCS Director, to explain a problem that Alderwoods had encountered and to seek Division approval of a proposed course of action. The problem, as stated by Alderwoods, was that *"Upon acquisition of the cemeteries, there were no records to determine the correct historic principal and earning split in the trust accounts. A high level review strongly suggests that previous trustees did not correctly categorize principal, capital gains/losses, and income given the overall percentage of principal in the trust assets accounts today [2004]."* Alderwoods indicated that it was their belief that the preneed trust contained a substantial amount of appreciation related to fulfilled preneed contracts that was properly subject to withdrawal.

3. The Division thereafter in 2004 advised Alderwoods *"If the apparent surplus exists because capital gains were not previously withdrawn with the principal amount on fulfilled contracts, you can now make the allocation and respective withdrawal. However, there must be an audit trail and any withdrawal must be allocated to a preneed sale."*

4. Alderwoods thereafter withdrew the \$1,812,035 from the preneed trust, presumably as earnings associated with fulfilled contracts. The methodology Alderwoods used to derive the \$1,812,035 figure is not clear, and it is not clear how Alderwoods allocated the withdrawal among contracts then in trust. In 2006 Alderwoods was acquired by SCI.

(m. By letter dated March 16, 2009 (attached), Seller's representative Lee Longino indicated to the Division that the preneed trust records showed the total trust liability for the 1,858 preneed contracts as being \$1,467,310, and that the total amount (principal and earnings) in preneed trust for those preneed contracts was \$1,903,681, as of 1-31-09.

(n. Charlotte Memorial Gardens has had a turbulent history since it was formed in 1972 (see ownership timeline, infra). One of its prior owners was charged with fraud and deceit. Two of its prior owners went into bankruptcy/receivership proceedings and took Charlotte Memorial Gardens with them into those proceedings. Furthermore, as the 1-31-09 Preneed Contract List shows, the date of sale of some of the preneed contracts to be transferred to Buyer goes back as far as 1977.

(o. Consequently, and notwithstanding the Division's examination and exam report referenced above, the Division cannot provide assurance that the total amount currently in trust for the 1,858 preneed contracts to be transferred to Buyer, is the appropriate amount. Buyer knows the specific number (1,858) and identity of the preneed contracts it will become responsible for under the application before the Board, and how much is in trust for those contracts (\$1,903,681 as of 1-31-09). The Division recommends that approval of the present application be subject to the condition and understanding that as regards Buyer's obligation under ch. 497 to honor the 1,858 preneed contracts transferred to Buyer, it will not be a defense to Buyer's obligation that the amount in trust is less than should have been in trust; and furthermore, that no claims against the Consumer Protection Trust Fund for any deficiency in the amount trusted, will be approved. The preceding sentence is not in any way intended to address or affect a cause of action, if any, which Buyer might have against Seller, in relation to any deficiency in the amount in the preneed trust.

(p. The Division's most recent inspection of Charlotte Memorial Gardens disclosed that graves in Section 1-A (the oldest section in the cemetery) have a serious vault encroachment issue. The Division had the cemetery Superintendent probe the edges of the vaults to verify if the markers were off or if the vaults were interred outside of the legal property description. It was determined to be the vaults, based upon the newly surveyed lot pins. Some vaults were off by two feet or more, measured from the lot pin. This section is from the wall (by the street) on the south side of the cemetery to the lawn crypts located approximately 1/3 of the length of the cemetery from the street. The cemetery managers have indicated that there are no new burials occurring in this section, only second interments.

(q. The Division's exam disclosed that there is a \$2,067 deficiency in the Charlotte Memorial Gardens care and maintenance trust fund.

Division Recommendation: The Division recommends approval of the present application, subject to the following conditions:

1. Within 30 days after Board approval, the Applicant shall provide an executed (by both Buyer and Seller) copy of the Asset Sales Agreement between the parties that is substantially identical to the draft Agreement provided to the Division, dated January 20, 2009, which is attached hereto.
2. The sale of assets transaction, between Buyer and Seller, shall close within 90 days of 4-8-09, and evidence of such closing shall be provided by Applicant to the Division.
3. Seller shall prior to closing deposit an additional amount of \$2,067 into the Charlotte Memorial Gardens care and maintenance trust fund.
4. Applicant shall assume full responsibility for all 1,858 preneed contracts identified in the 1-31-09 Preneed Contract; as between the Board and the Applicant in regards to Applicant's obligation to honor the 1,858 preneed contracts transferred to Applicant, it will not be a defense to Applicant's obligation that the amount in trust is less than should have been in trust; and furthermore, no claims against the Consumer Protection Trust Fund in regard to such contracts will be approved while Applicant remains solvent and the preneed contracts remain the obligation of the Applicant. (All references here to 1,858 preneed contracts is understood to be subject to adjustment to reflect preneed contracts fulfilled or cancelled between 1-31-09 and date of closing of sale from Seller to Buyer.)
5. Seller FSAG shall preserve and transfer at closing the preneed trust account balance of \$1,903,681, to Buyer's preneed trustee, at or within 10 days of closing of the sale from Seller to Buyer. (All references here to \$1,903,681 preneed trust fund balance is understood to be subject to adjustment to reflect preneed contracts fulfilled or cancelled between 1-31-09 and date of closing of sale from Seller to Buyer.)
6. The Seller and SCI shall remain responsible for any and all "preneed funeral and/or cemetery merchandise and/or service agreements generated in the operation of the Business" (Asset Sale Agreement, at 1.1(f)), not already fulfilled or cancelled, that are not specifically listed in the 1-31-09 Preneed Contract List.
7. Based on an additional finding in the examiner's report, there shall be no new burials (first interments) in Section 1-A of the cemetery, which was found to have marker placement/vault encroachment problems, until such time as the Applicant obtains approval from the FCCS

Division, which approval shall be issued upon the FCCS Division determining that the problems having been corrected.

Timeline of the ownership of Charlotte Memorial Gardens Cemetery:

- Incorporated in December 1972. Raymond H. Woodrow, owner and sole officer.
- Throughout Mr. Woodrow's ownership in the 1980's, there were numerous complaints and Department actions taken against Mr. Woodrow. In 1993 he was charged and disciplined for a number of violations related to fraud and deceitful sales practices.
- In February 1994, Mr. Woodrow commenced sale of Charlotte Memorial Gardens to Memorial Services International, Inc. (MSI) via a stock purchase. The Board approved the sale in July 1994.
- In December 1995, the Department requested Charlotte Memorial Gardens be placed into receivership. Douglas I. Kinzer was named Receiver.
- In June 1996, the court approved an asset purchase agreement between Douglas Kinzer, Loewen Group International, Inc. and MSI (Memorial Services International) to sell the cemetery to the Loewen Group. Charlotte Memorial Gardens became licensed in Florida under Funeral Services Acquisition Group, Inc., a Loewen entity.
- In June 1999 the Loewen Group filed for Chapter 11 bankruptcy. A reorganization plan provided for a reorganization of the corporate structure of Loewen and its subsidiaries. The new operating company became Alderwoods Group Service Inc.
- In November 2006, Alderwoods was acquired by Service Corporation International (SCI) and its entire corporate structure became a Division of SCI. Alderwoods continued to own the stock of its Florida subsidiary companies, which continued to own and operate their respective businesses.

Mr. Shropshire added that the \$2,067 deficiency in the care and maintenance trust fund has been made good.

MOTION: Mr. Brandenburg moved to approve the application subject to the 7 conditions. Ms. Nancy Hubbell seconded the motion, which passed unanimously.

V. Application(s) for Preneed Sales Agent

A. Informational Item - Addendum A

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

B. Recommended for Approval (Criminal History)

1. Brown, Linda Hackney (Appointing Entity: Daytona Memorial Park)

Mr. Shropshire stated that Applicant Brown has a criminal record. In 2000 she pled guilty in Florida Circuit Court, in Seminole County, to three misdemeanor counts of sale or attempted sale of unregistered securities. The court sentenced her to 90 days suspension of her state insurance license (per settlement with the Florida Dept of Insurance); she was placed on probation; and she was required to pay to injured

consumers the approximately \$50,000 in commissions she had received on the sales. She was not given any jail time. She has repaid all the commissions and been released from probation.

The background of the criminal record is as follows. Brown advises that in 1995 she was approached by an acquaintance to assist in raising funds for a company, by the sale of the company's promissory notes to investors. The company was Legends Sports, Inc. The investments were represented to be guaranteed by a surety insurer, but this turned out not to be true. Investors lost substantial amounts of money. Brown advises that prior to joining in the sales operation, she made contact with several knowledgeable people who advised her that the proposed sales were not required to be registered as securities. She therefore joined in the operation and assisted in finding investors and having them buy the notes.

Brown was at all times relevant hereto, licensed as an insurance agent under Florida law. In 2000 the Florida Dept of Insurance entered into a settlement with her, concerning the criminal record described above. Pursuant to the settlement, her Florida insurance agent licensure was suspended for three months. She served the suspension, and her Florida insurance agent licensure is now in good standing.

The Department's assessment is that if issued a preneed sales agent license, Ms. Brown would not pose an unreasonable risk to members of the public who might deal with her in preneed transactions.

Mr. Shropshire stated that the Division recommends approval of the application subject to the terms and condition in the settlement.

Mr. Baxley stated that the coversheet indicates the Applicant pled guilty to 3 misdemeanor counts and on the criminal history summary it indicates she pled no contest to felony.

Mr. Shropshire stated the Applicant was allowed to plead to the lesser included offense, which was a misdemeanor. The materials did indicate felony but the Court allowed her to plead to the lesser included offense, which was a misdemeanor.

Ms. Allison Dudley recommended if the Board does approve with conditions, state the reasons why the Applicant would be placed on conditions. If it is because of the criminal history, that would be fine.

Mr. Shropshire corrected himself and stated in this case there are no conditions.

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

2. Haas, Gary E. (Appointing Entity: Neptune Management Corp)

In 1994 Applicant Haas plead guilty to bankruptcy fraud in federal court, and was sentenced to 5 years probation and ordered to pay restitution in the amount of \$25,727. Haas has paid the restitution and been released from probation. The underlying facts are as follows.

In 1991 Haas owned and operated a paint store in SW Florida. The store developed financial problems and Haas consulted attorney Al Johnson. According to Haas, attorney Johnson advised initiating bankruptcy proceedings. Haas further asserts that attorney Johnson advised Haas to take certain steps to keep some assets from creditors, and that Haas complied, relying upon Johnson as attorney, and assuming the actions were legal. As it turned out, the actions taken were illegal and resulted in the criminal conviction of Haas.

In support of his assertion that he relied on attorney Johnson and did not know the actions were illegal, Haas has provided letters dated in the 1996-97 timeframe, from three other attorneys (Jung; Neel; and Smith) that represented him in matters related to the criminal action or related actions. All three attorneys advise in the letters to the effect that attorney Johnson gave Haas bad advice, and that attorney Johnson was primarily or entirely to blame.

The FCCS Division has determined that in 1996 attorney Johnson was charged in federal court with criminal conduct. The Clerk of the Court has advised the Division that the case was ultimately dismissed due to attorney Johnson's failing health and his being declared mentally incompetent to stand trial. A printout of the court docket in the matter reveals multiple psychiatric reports filed in the case, concerning attorney Johnson. Numerous filings in the case are sealed by order of the court, so that much of the detail concerning attorney Johnson's criminal proceeding is not available.

The FCCS Division has also determined that attorney Johnson "retired" from the Florida Bar in 1994. The above factors lead the Division to believe that Haas is truthful when he states that attorney Johnson advised him to do what Haas did. This would not have been a legal defense to the criminal charges against Haas, but probably was a factor in the court not sentencing him to any jail time.

On Haas' preneed sales agent application, Haas answered "No" as to whether he had a criminal history. Upon the review of the Applicant fingerprint results the department discovered the Applicant had a criminal history. Mr. Haas was asked to provide an explanation for the inaccuracy on his application. Haas asserted that 1) he understood he had a "pardon" from the state government, and 2) a Mr. Hersh, who worked for the preneed licensee Haas was seeking to work for, advised him that it was not necessary for Haas to report the criminal record on the preneed agent application.

1) The FCCS Division has reviewed the papers provided by Haas with his explanation. He has a legitimate and official paper from the Florida Office of Executive Clemency, restoring his civil rights, which could be mistaken for a pardon by someone not experienced in legal matters. Haas does not have a pardon.

2) The Department contacted Mr. Hersh to confirm Mr. Haas' statement that Hersh advised Haas to answer "no" to the criminal history question. Mr. Hersh advised he could not confirm or deny Mr. Haas' statement due to the length of time that has past since his employment with Neptune.

At the time of the criminal conviction Haas held a Florida real estate agent's license. In relation to the criminal conviction, the Florida real estate licensing commission suspended Haas' real estate agent's license. However, in 1998 the commission lifted the suspension. Haas is currently licensed in good standing as a Florida real estate agent.

Haas has provided several letters of recommendation.

On Feb. 23, 2009, the FCCS Division took a sworn statement from Haas, copy of which is attached. It is the Division's belief that if issued a preneed sales agent license, Mr. Haas would not pose an unreasonable risk to members of the public who might deal with him in preneed transactions.

The Division recommends approval with probation for 2 years.

MOTION: Mr. Helm moved to approve the application with probation for 2 years based on the conditions that the Division recommended. Ms. Zippay seconded the motion, which passed unanimously.

3. *Suarez, Alvaro L. (Appointing Entity: JGR Funeral Services Inc.)*

Applicant Suarez has disclosed in his application that in 1994 he was disciplined by the Florida Dept of Insurance, regarding an insurance agent license he held.

Mr. Suarez was at the time an insurance agent selling for MetLife. Certain employees of MetLife (not Suarez) devised a scheme to sell life insurance by misrepresenting it as a "retirement savings plan" to nurses and other health care professionals. Suarez subsequently participated in the scheme.

The Department of Insurance took administrative action against Suarez and numerous other MetLife insurance agents. As a result of the violation Mr. Suarez was not eligible for licensure and appointment as an insurance agent in the state and order to surrender his license to the Department of Insurance. Mr. Suarez agreed not reapply for insurance agent licensure for a period of five (5) years from the date of entry of the Consent Order. After surrendering, Mr. Suarez could not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Insurance Code.

Mr. Suarez later applied for a Preneed Sales Agent and Mortgage Broker license with the former Department of Banking and Finance, and both applications for licensure were approved. Mr. Suarez thereafter voluntarily canceled his Preneed Sales Agent license. However, Mr. Suarez Mortgage Broker license is in good standings with the Florida Office of Financial Regulation.

The FCCS Division's assessment is that if issued a preneed sales agent license, Mr. Suarez would not pose an unreasonable risk to members of the public who might deal with him in preneed transactions. See Florida Statutes, section 497.466(5)(c).

The Division recommends approval of the application.

Mr. Helm questioned why the Applicant voluntarily cancelled his preneed license.

Mr. Shropshire stated the Applicant was not using the license. The Division does not note any implication in the file that he canceled because he thought there was trouble.

Mr. Brandenburg questioned in what year was the license surrendered or whether it was before the 5 year period.

Mr. Shropshire stated it was between when he got his registered agents license from the Department of Banking and Finance and today, but it was during the 5 year period because the settlement stipulation with the Division of Insurance Agents would not have prevented him from applying for that preneed agent license.

Mr. Baxley stated that the Division's remarks specify that Mr. Suarez was not involved in devising the scheme, but he subsequently participated in the scheme. Mr. Baxley questioned whether Mr. Suarez unknowingly participated or knowingly participated.

Mr. Shropshire stated that the scheme had become prevalent in the insurance industry in those years. Within MetLife, there was one particular sales manager who brought the scheme to his particular region and required all his sales agents to use it. Mr. Suarez worked for that particular manager. There is no doubt that over time Mr. Suarez began to understand that the nurses he was selling to did not fully understand that this was just life insurance. Initially, Mr. Suarez probably thought this was okay as his sales manager stated it was and other companies were doing.

MOTION: Mr. Brandenburg moved to deny the application based upon history of untrustworthiness. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

DISCUSSION: Mr. Shropshire stated that Mr. Suarez is in the audience and the Board overlooked asking whether he was present and wanted to address the Board. Mr. Shropshire recommended that the Board allow him to come up and address the Board to see whether the Board would like to reconsider its action.

Ms. Dudley concurred.

Mr. Baxley questioned whether Mr. Suarez knowingly participated in the scheme in terms of misleading the people he was selling to.

Mr. Alvaro Suarez stated that he did not willingly at any point in time. This was a very prevalent practice at the time, within the industry. This was a part of the job. There was no deceit involved. At that point in time, when the Administrative Complaint was issued, legal counsel advised that the best course of action was to surrender the license voluntarily for five years and then do something else. Mr. Suarez applied and was granted a real estate license and a preneed license back in 1996. Right now, Mr. Suarez holds an active Mortgage Broker license. With the mortgage market being the way it is, a friend at the funeral home asked Mr. Suarez to come back and work with him.

Mr. Suarez advised that the denial is shocking. Mr. Suarez stated he is quite capable and his moral character is unquestioned. The Mortgage Department and everyone has checked me out. There is nothing in my record that would suggest that I would not be trustworthy to the public.

Mr. Brandenburg questioned whether Mr. Suarez was a licensed insurance agent.

Mr. Suarez responded yes.

Mr. Brandenburg questioned whether Mr. Suarez knew the difference between life insurance and representing it as a retirement savings plan.

Mr. Suarez responded that he understands that. The thing is, in the presentations, Mr. Suarez did not represent it as a retirement savings plan. Normally, what was said at the time is life insurance is used as the vehicle to accumulate cash earnings. Life insurance was used as the funding vehicle to this particular program and it could be used as retirement savings, which in essence you could do. Also, you have the life insurance benefit that anything happens to you before you retire you have the life insurance benefit. Mr. Suarez swears that he has never represented this as a retirement savings program. This is something to help supplement your retirement program. Mr. Suarez added that he even had some differences with his supervisor over the wording they wanted him to use.

Ms. Thomas-Dewitt questioned how long Mr. Suarez continued to work after questioning the methodology.

Mr. Suarez stated that it was approximately a year, a year and a half, but he felt comfortable knowing he did not deceive anyone.

The Chair stated that Mr. Suarez surrendered his license in 1994 then after a period of time the applicant was relicensed. The Chair questioned when Mr. Suarez was relicensed as a mortgage broker and relicensed to sell insurance.

Mr. Suarez stated that the he has only been licensed once as a mortgage broker. The license was received in May 2005.

The Chair questioned whether Mr. Suarez received another license to sell life insurance after surrendering the one in 1994.

Mr. Suarez responded no.

The Chair questioned whether Mr. Suarez had tried.

Mr. Suarez responded that he had not but is considering reapplying.

Mr. Shropshire stated that he was the one who prosecuted MetLife and Mr. Suarez's boss so there is a particular familiarity with this case. The reason the Division recommended approval is because we found quite conclusively that all of these agents were being told by their immediate supervisor and the Vice President of MetLife Sales that this was okay. They should have known, but they were being told by the manager and the VP of Sales that the sales method was okay.

2nd MOTION: Mr. Baxley moved to reconsider the application. Ms. Hubbell seconded the motion, which passed with 4 dissenting votes.

An unidentified person from the audience encouraged the Board to question the relationship of the owner of JGR Funeral Home and MetLife scheme was.

Mr. Suarez stated that they used to work together at MetLife. Mr. Julio Gonzalez Roel is in the funeral industry and is the owner of JGR Funeral Home. Mr. Suarez added that they have been friends for over 25 years.

The Chair questioned whether Mr. Gonzalez Roel was Mr. Suarez's boss.

Mr. Suarez responded no.

Mr. Shropshire requested a moment with the legal advisor.

Ms. Dudley recommended that the Board not consider the last statement as that relationship could not be a rationale for denial of this license, as that issue is not before the Board.

Mr. Brandenburg stated that the Board is charged with protecting the public against practices that may be misleading and expressed his concerns over Mr. Suarez and what his practices might be in preneed. The Board has an obligation to protect the consumer.

3rd MOTION: Ms. Hubbell moved to approve the application with 2 years probation and quarterly random monitoring. Ms. Thomas-Dewitt seconded the motion, which passed with 4 dissenting votes.

C. Recommended for Denial (Criminal History)

1. *Burch, Ronald J. (Appointing Entity: Neptune Management Corp)*
2. *Caballero, Cristina (Appointing Entity: SCI Funeral Services of Florida Inc.)*
3. *Diaz-Damas, Roberto (Appointing Entity: SCI Funeral Services of Florida Inc.)*
4. *Kazor, Shelia A. (Appointing Entity: SCI Funeral Services of Florida Inc.)*

MR. SHROPSHIRE ADVISED THAT THE 4 ITEMS RECOMMENDED FOR DENIAL HAVE BEEN WITHDRAWN FROM THE AGENDA BY THE APPLICANTS OR THEIR SPONSORS.

VI. Application(s) for Preneed Main License

A. *American Funeral Partners of Florida, Inc. d/b/a Charlotte Memorial Funeral Home and Memorial Gardens (Punta Gorda)*

This application should be considered in conjunction with the application by this same Applicant, to acquire control of Charlotte Memorial Gardens Cemetery. There is not necessarily any legal linkage between this application and the cemetery application, but the history of the overall transactions involved are laid out in the Division's remarks re that other application.

The Department received this application on October 13, 2008 and all deficiencies were resolved by October 16, 2008. Applicant is filing for application of licensure as a Preneed Main due to a change in ownership of the existing funeral establishment from SCI Funeral Services of Florida, Inc. (formerly Funeral Services Acquisition Group, Inc.) to American Funeral Partners of Florida, Inc. A new funeral establishment license was issued on November 5, 2008 and a completed background check of all officers revealed no criminal history. Applicant will use the pre-approved Comerica Preneed Funeral and Burial Master Trust agreement and previously approved pre-arranged funeral agreement.

The Applicant's financial statements as of December 31, 2008 reflect the following:

Preneed Contracts	= \$ 1,467,310
Required Net Worth	= \$ 100,000
Reported Net Worth	= \$ 130,000

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

B. *Boyd Panciera Family Funeral Care, Inc. d/b/a Panciera Memorial Home Chapel (Hollywood)*

The Department received the application on February 10, 2009. Deficiencies were noted on the application. A deficiency letter was sent to the Applicant on February 27, 2009 and all deficiencies were resolved by March 18, 2009. A completed background check of all officers revealed no criminal history. Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (SouthTrust Estate & Trust Co.) and pre-arranged funeral agreement. Mark Panciera is listed as the Vice-President on the license application. It should be noted that the Applicant is also applying for a new funeral establishment license at this time.

The Applicant's financial statements as of February 10, 2009 reflect the following:

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

Prior the submission of the application, on February 6, 2009, the Division received a written complaint from Valerie Panciera-Reith, the sister of Mark Panciera, identified on the application as Vice President. The complaint alleged improper advertising. The Division assigned the complaint to an examiner to conduct an investigation. The investigation found that Panciera Memorial Home, Inc. placed a sign at a bus stop in front of 4200 Hollywood Boulevard that was misleading to the public. The sign read, "Panciera Memorial Home Quality Funeral Care for Three Generations. We've Moved. Now at 4 neighborhood locations in Hollywood and Pembroke Pines. 954-989-9900." The advertisement was misleading to the public, which would assume the funeral establishment owned four locations. In fact, the funeral establishment owned only two locations and merely had current use of two other locations.

In response to the complaint, counsel for Mark Panciera and Panciera Memorial Home, Inc. ("Respondents"), stated that Respondents had made arrangements with Boyd Funeral Home to utilize the establishment's facilities for visitations, refrigeration and embalming services. Counsel also advised the Division that Respondents had made all efforts to ensure all advertising and promotional materials contained current and correct information and that the bus stop sign had been changed to read, "Panciera Memorial Home Quality Funeral Care for Three Generations. We've Moved. For Information Call 954-989-9900."

The Division entered into a settlement stipulation in which the Respondents admit to placing the improper advertising at the bus stop and agree to pay an administrative fine of \$1000. Respondents also signed a waiver of finding of probable cause and waiver of confidentiality, making the investigation report public information. A copy of the proposed settlement stipulation, waiver and the investigation report was provided to the Board

The Division's remarks and proposed settlement apply similarly to four establishment applications that will appear before the Board at this meeting: (1) Boyd-Panciera Family Funeral Care, Inc. d/b/a Boyd Family Funeral Home Chapel; (2) Boyd-Panciera Family Funeral Care, Inc. d/b/a Funeraria Panciera Chapel; (3) Boyd-Panciera Family Funeral Care, Inc. d/b/a Panciera Memorial Home Chapel; and (4) Boyd-Panciera Family Funeral Care, Inc. d/b/a Panciera's Alternative Funeral & Cremation Care and The Memorial Store.

If the Board approves the proposed settlement stipulation, the Division recommends approval of this application. However, if the board denies the proposed settlement stipulation, the Division recommends that the Board table this application pending resolution of the disciplinary matter.

MOTION: Mr. Baxley moved to approve the application pending approval of the funeral establishment license. Ms. Huggins seconded the motion, which passed unanimously.

C. Tracy Morton Memorial Chapel, LLC (Pensacola)

The Department received the application on December 12, 2008 and no deficiencies were noted on the application. A completed background check of all officers revealed no criminal history. Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (SouthTrust Estate & Trust Co.) and pre-arranged funeral agreement. It should be noted that the Applicant is also applying for a new funeral establishment license at this time.

The Applicant's financial statements as of November 30, 2008 reflect the following:

Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	329,009

The Division recommends approval with conditions as stated.

Ms. Dudley stated that the condition is contingent upon approval of the Applicant's establishment license. Ms. Dudley questioned whether the Board would like to review that application first.

Mr. Shropshire questioned whether the Board could condition this approval subject to approval of the establishment.

MOTION: Mr. Brandenburg moved to approve the application pending approval of the funeral establishment license. Mr. Jones seconded the motion, which passed unanimously.

VII. Application(s) for Preneed License Branch
A. Recommended for Approval - Addendum B

The Division recommends approval of the application(s).

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

VIII. Application(s) for Florida Laws and Rules Examination
A. Recommended for Approval - Addendum C

1. *Funeral Director and Embalmer - by Internship*
 - a. *Bench, Adrienne D*
 - b. *Duncan, Jeanette R*
 - c. *Haisley, Beatrice Q*
 - d. *Jannasch, Elissa A*
 - e. *Ohmart, Michelle A*
 - f. *Roberts, Troy A*
 - g. *Wantuck, Gary M*
 - h. *Williams, Omar C*
2. *Funeral Director and Embalmer- by Endorsement*
 - a. *Aubin, Jr., Timothy D*
 - b. *Dooley, Vincent P*
 - c. *Duran, Jennifer*
3. *Embalmer-by Endorsement*
 - a. *Geiser, William B*
 - b. *Romano, John M*

The Division recommends approval of the application(s).

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

B. Recommended for Approval (Criminal History)

1. Direct Disposer

a. Nicholson, Enoch

Applicant meets all requirements for licensure, subject to consideration of his criminal record. Applicant has a criminal record summarized as follows:

- (1) Applicant was at a new year's eve party in 2000, when the police arrived and asked all attendees for ID, due to suspicion of underage drinking. Applicant produced an altered driver's license he obtained from his older brother and had used to buy beer. The police recognized it as an altered driver's license and he was arrested. He later pled guilty of possession of an altered ID.
- (2) In 2001, when he was age 17, Applicant slashed the tires and vandalized the car of some persons who had beaten up his brother. He pled guilty to criminal mischief.
- (3) In 2002 Applicant purchased a car from a local car dealer in the Tampa area, and one of the checks he gave for payment bounced. He pled guilty to obtaining property on a worthless check.
- (4) In 2006, after attending Tampa Devil Rays baseball game, Applicant went to a near by sports bar, and after consuming some alcoholic drinks, became involved in a disorderly interaction with a Tampa police officer. He pled guilty to disorderly intoxication.

The total sentencing on all the above incidents was 6 months in jail, probation, payment of prosecution costs, and restitution. He has completed the probation successfully, and paid all required costs and restitution. He is currently gainfully employed by a Tampa area funeral establishment, in a miscellaneous, non-professional capacity.

Applicant has submitted letters of recommendation from several individuals, including his current employer. Mr. Nicholson submitted to a sworn interview by the FCCS Division, concerning his criminal record (transcript attached).

Staff is recommending approval of this application, subject to conditions set forth in the attached stipulation for licensure. The conditions are summarized as:

- (1) Two years of probation.
- (2) While on probation Applicant will not serve as direct disposer in charge anywhere.
- (3) While on probation, Applicant will not perform any work under his direct disposer license except as an employee of a firm licensed under ch. 497, Florida Statutes, in which firm he has no ownership interest, and no direct or indirect control.
- (4) Every 60 days throughout his probation period, he will prepare and provide the Division with a written report of his activities in the deathcare industry in the 60 days preceding the report.
- (5) The periodic reports Applicant must file must also document his continued active participation on AA meetings, to address drinking issues.

Mr. Shropshire questioned whether Mr. Nicholson is willing to comply with the stipulation for licensure that he signed.

Mr. Enoch Nicholson responded yes.

Ms. Thomas-Dewitt questioned whether AA was also included.

Mr. Shropshire stated that there is a provision that states Mr. Nicholson would provide periodic reports Applicant must file must also document his continued active participation on AA meetings.

Mr. Nicholson concurred.

MOTION: Ms. Huggins moved to approve the application subject to conditions set forth. Mr. Jones seconded the motion, which passed unanimously.

2. Funeral Director and Embalmer- by Endorsement
a. Hutchison, Byron

The application was submitted on February 23, 2009. The application was complete and a deficiency letter was not sent. Mr. Hutchison answered yes to the criminal history question. Mr. Hutchison was convicted of two charges (Driving under the Influence and Operating a Vehicle while impaired). Mr. Hutchison has paid all court costs and completed all sanctions from the courts. Staff is recommending approval of this application with 2 years probation and other terms as specified in the stipulation for licensure.

Mr. Helm questioned whether Mr. Hutchison understands and is willing to comply with the stipulation for licensure that he signed.

Mr. Byron Hutchison answered yes.

Mr. Shropshire stated that the stipulation terms would be summarized as 24 month probation; Applicant will not serve as a licensee in charge of any establishment during the probation; Applicant will not work under his license except as an employee under a firm in which he has no ownership interest or ability to control or manage the firm.

Mr. Baxley questioned what treatment has the Applicant sought.

Mr. Hutchison stated that he already completed a 3 day class and he attended something that was about 10 days long, for rehabilitation purposes.

MOTION: Ms. Hubbell moved to approve the application with 2 years probation and other terms as specified in the stipulation for licensure. Mr. Baxley seconded the motion, which passed unanimously.

C. Recommended for Denial (Criminal History)
1. Funeral Director and Embalmer - by Internship
a. Seegert, Scott S

Applicant qualifies for licensure subject to consideration of his criminal record.

The application was submitted on September 11, 2008. The application was incomplete and a subsequent deficiency letter was sent. All deficient items were returned on January 27, 2009. Mr. Seegert was initially licensed as a Funeral Director and Embalmer (F045451) from September 12, 1995 to August 31, 2005, when his license expired. He did not renew his license within the time period allowed and subsequently, his license became null and void.

In 2007 Applicant pled no contest to a felony, burglary of a dwelling, in Florida Circuit Court. He was sentenced to pay restitution, certain court costs, and was placed on probation. Applicant still has approximately 3 years left on the probation.

Applicant explains that he left the deathcare industry and tried to start a home repair business. He became addicted to drugs (Oxycotin). He burglarized the home of a customer.

The Division finds that Applicant's criminal record and drug addiction indicate that Applicant is not of good character and demonstrate a lack of trustworthiness or integrity in business matters, so that denial is required under s. 497.373(1)(c), Florida Statutes.

Ms. Wiener asked that the Board consider licensing Mr. Seegert under the same type of conditions that the prior two Applicants were licensed. It is particularly noteworthy that the crime committed by Mr. Seegert had nothing whatsoever to do with the funeral industry. Mr. Seegert was previously a licensed funeral director, but he got out of the industry at some period of time. While going through a tumultuous period in his life, Mr. Seegert became addicted to prescription pain medication and in order to support his habit, committed a theft. Since that time, however, Mr. Seegert has not only entered into a yearlong treatment program and rehabilitation situation, but now that he has completed that, he continues to work with that same rehabilitation group to help others who have gone through similar circumstances. The Board staff was provided with a copy from Fresh Start Ministries of Central Florida, which was the rehabilitation unit with which he was involved. Mr. Seegert would agree to whatever conditions the Agency feels is appropriate for him to be licensed; a stipulation such as that executed by the other Applicants. Mr. Seegert already participates in voluntary, random drug and alcohol testing with Fresh Start Ministries and would certainly consider that. Mr. Seegert's employer has also agreed to be completely responsible for him, so we would ask for your favorable consideration of licensure with conditions similar to those of the other two Applicants.

Mr. Brandenburg questioned which state was Mr. Seegert previously licensed.

Mr. Scott Seegert answered "Florida."

Mr. Brandenburg questioned what happened to that license.

Ms. Wiener stated that Mr. Seegert got out of the industry and simply allowed the license to lapse. In fact, if he had kept up that license we probably would not be before the Board today.

Mr. Brandenburg questioned the year the original license was issued.

Mr. Seegert stated 1993.

The Chair questioned when the license lapsed.

Mr. Seegert stated 2004.

Ms. Wiener stated that Mr. Seegert was licensed as a funeral director from September 12, 1995 to August 2005 and there was no discipline taken against the license during that time period.

Mr. Brandenburg questioned whether Mr. Seegert worked fulltime as a licensed funeral director and embalmer during that time.

Mr. Seegert responded yes. Right up to when it lapse, Mr. Seegert stated he was not in the funeral industry at that time.

Ms. Thomas-Dewitt questioned Mr. Seegert's reasoning for allowing the license to lapse.

Mr. Seegert stated at that time he had resigned from SCI of Central Florida to pursue another career in construction. That job did not go as well as planned and led to poor choices on Mr. Seegert's part and an addiction. During that period of time the license lapsed.

Ms. Wiener stated it was not as a result of discipline or any consumer complaint or action taken against his license.

Mr. Shropshire stated that the Division continues in its recommendation to deny, but if it is the Board's pleasure to possibly license him, the Division would recommend that if the Applicant would waive the deemer that the Board continue the matter to allow the Division to attempt to work out some type of stipulation for licensure in writing with the Applicant to be presented at a subsequent Board meeting.

MOTION: Ms. Thomas-Dewitt moved to approve the application. The motion failed for lack of a second.

Ms. Wiener stated that the Applicant would waive the deemer to address the appropriate stipulation so that the Division Director would be comfortable recommending approval. Mr. Seegert is willing to pretty much agree to any circumstances or conditions on his license at this point.

2nd MOTION: Ms. Huggins moved to approve the application subject to 24 month probation, Applicant will not serve as a licensee in charge of any establishment during the probation and Applicant will not work under his license except as an employee under a firm in which he has no ownership interest or ability to control or manage the firm. Ms. Hubbell seconded the motion.

Ms. Wiener stated that Mr. Seegert is participating in random drug testing and could have the results sent directly to the Division.

Mr. Helm stated that the Department needs the will to work out the conditions.

Mr. Shropshire stated that counsel has waived the deemer on the record.

Ms. Wiener concurred.

Mr. Shropshire stated that the appropriate course of action would be for the Board to table the matter to allow the Department to work with the Applicant. Mr. Shropshire stated that he did not whether anything would get the Division comfortable to the point to recommend approval, but would work with the Applicant to get in place some terms and conditions to best protect the public.

3rd MOTION: Mr. Jones moved to defer the application to allow the Department time to work out the conditions with the Applicant. Ms. Huggins seconded the motion, which passed with 2 dissenting votes.

IX. Application(s) for Internship

A. Recommended for Approval – Addendum D

1. Funeral Director and Embalmer

a. Barber, Craig R

- b. *Dorsey, Joshua*
- c. *McHayle, Bonnie M*
- d. *Sheppard, Tommy G*
- e. *Williams, Jr, Matthew J*

The Division recommends approval of the application(s).

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

- X Application(s) for Embalmer Apprentice**
 - A. *Recommended for Approval – Addendum E*
 - 1. *Borders, Willard M*
 - 2. *Chambers, Elizabeth S*
 - 3. *Collins, Jeanine D*
 - 4. *Vachier, Marcie M*

The Division recommends approval of the application(s).

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

- XI. Application(s) for Continuing Education Course Approval**
 - A. *Recommended for Approval – Addendum F*
 - 1. *Academy of Graduate Embalmers of Georgia #69*
 - 2. *Creative Business Financing, Inc. #70*
 - 3. *Florida Funeral Directors Association, Inc. #75*
 - 4. *Florida Morticians Association #133*
 - 5. *Florida Wilbert #6801*
 - 6. *FuneralReview.com #122*
 - 7. *Independent Funeral Directors of Florida #135*
 - 8. *Matthews #6802*
 - 9. *MKJ Marketing #85*
 - 10. *National Funeral Directors and Morticians Association #120*
 - 11. *National Funeral Directors Association #136*
 - 12. *Pinellas County #58*
 - 13. *Practicum Strategies #65*
 - 14. *SCI Management - Dignity University #99*

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

Mr. Helm disclosed his affiliation with Florida Wilbert.

Ms. Dudley questioned whether this would affect Mr. Helm’s ability to remain fair and impartial.

Mr. Helm responded “no.”

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

XII. Application(s) for Registered Training Facility

A. Recommended for Approval – Addendum G

1. Funeral Directing and Embalming

- a. Gutterman’s Inc d/b/a Gutterman Warheit Memorial Chapel (F039865)*
- b. Manasota Memorial Park & Funeral Home (F041926)*

The Division recommends approval of the application(s).

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

XIII. Consumer Protection Trust Fund Claims

A. Recommended for Approval - Addendum H

The Division recommends approval of the claim(s).

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

XIV. Application(s) for Monument Establishment Sales Agent

A. Informational Item – Addendum I

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

XV. Monument Retail Sales Agreement(s)

A. Faith Memorials, Inc. d/b/a Comerford Vault-Memorial Service (Sneads)

Staff recommends approval of the agreement.

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

B. Pierce Developments, Inc. d/b/a Southside Granite Company (Dothan, AL)

Staff recommends approval of the agreement.

MOTION: Mr. Helm moved to approve the agreement. Mr. Baxley seconded the motion, which passed unanimously.

XVI. Application(s) for Funeral Establishment

A. Recommended for Approval

1. Becker Funeral Home Inc (Minneola)

The application for a Funeral Establishment was submitted on January 30, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on February 24, 2009. The Funeral Director in Charge of the establishment will be Rolland

Becker (F044419). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 18, 2009.

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

2. *Boyd-Pancieria Family Funeral Care, Inc. d/b/a Boyd Family Funeral Home Chapel (Pembroke Pines)*
3. *Boyd-Pancieria Family Funeral Care, Inc. d/b/a Funeraria Pancieria Chapel (Pembroke Pines)*
4. *Boyd-Pancieria Family Funeral Care, Inc. d/b/a Pancieria Memorial Home Chapel (Hollywood)*
5. *Boyd-Pancieria Family Funeral Care, Inc. d/b/a Pancieria's Alternative Funeral & Cremation Care and The Memorial Store (Hollywood)*

The application(s) for a Funeral Establishment were submitted on February 10, 2009. The application(s) were complete when submitted. The Funeral Director(s) in Charge will be: Laurence Boyd F043447 (Boyd Family Funeral Home Chapel); G. David Lowery F043803 (Funeraria Pancieria Chapel); Patrick Boyd F043624 (Pancieria Memorial Home Chapel); and Mark Pancieria F043449 (Pancieria's Alternative Funeral & Cremation Care and The Memorial Store). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment(s) passed inspection on March 5, 2009

Prior the submission of the application, on February 6, 2009, the Division received a written complaint from Valerie Pancieria-Reith, the sister of Mark Pancieria, identified on the application as Vice President. The complaint alleged improper advertising. The Division assigned the complaint to an examiner to conduct an investigation. The investigation found that Pancieria Memorial Home, Inc. placed a sign at a bus stop in front of 4200 Hollywood Boulevard that was misleading to the public. The sign read, "Pancieria Memorial Home Quality Funeral Care for Three Generations. We've Moved. Now at 4 neighborhood locations in Hollywood and Pembroke Pines. 954-989-9900." The advertisement was misleading to the public, which would assume the funeral establishment owned four locations. In fact, the funeral establishment owned only two locations and merely had current use of two other locations.

In response to the complaint, counsel for Mark Pancieria and Pancieria Memorial Home, Inc. ("Respondents"), stated that Respondents had made arrangements with Boyd Funeral Home to utilize the establishment's facilities for visitations, refrigeration and embalming services. Counsel also advised the Division that Respondents had made all efforts to ensure all advertising and promotional materials contained current and correct information and that the bus stop sign had been changed to read, "Pancieria Memorial Home Quality Funeral Care for Three Generations. We've Moved. For Information Call 954-989-9900."

The Division entered into a settlement stipulation in which the Respondents admit to placing the improper advertising at the bus stop and agree to pay an administrative fine of \$1000. Respondents also signed a waiver of finding of probable cause and waiver of confidentiality, making the investigation report public information. A copy of the proposed settlement stipulation, waiver and the investigation report is attached.

If the Board approves the proposed settlement stipulation, the Division recommends approval of this application. However, if the board denies the proposed settlement stipulation, the Division recommends that the Board table this application pending resolution of the disciplinary matter.

The Division's remarks and proposed settlement apply similarly to four establishment applications that will appear before the Board at the April 8, 2009 meeting: (1) Boyd-Pancieria Family Funeral Care, Inc.

d/b/a Boyd Family Funeral Home Chapel; (2) Boyd-Panciera Family Funeral Care, Inc. d/b/a Funeraria Panciera Chapel; (3) Boyd-Panciera Family Funeral Care, Inc. d/b/a Panciera Memorial Home Chapel; and (4) Boyd-Panciera Family Funeral Care, Inc. d/b/a Panciera's Alternative Funeral & Cremation Care and The Memorial Store.

MOTION: Mr. Brandenburg moved to accept the settlement stipulation to dispose of the disciplinary matter and approve all 4 applications. Mr. Jones seconded the motion, which passed unanimously.

DISCUSSION: Approval of these applications removes the conditional item on the preneed main license.

6. *Hayes Brothers Funeral Home (Fern Park)*

The application for a Funeral Establishment was submitted on January 26, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the Applicant. All deficient items were returned on February 23, 2009. The Funeral Director in Charge will be William Smith, Jr. (F043301). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 12, 2009.

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

7. *Joseph A. Scarano Funeral Home Inc d/b/a Joseph A Scarano Chapel at Grand Palms (Pembroke Pines)*

The application for a Funeral Establishment was submitted on February 2, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on February 19, 2009. The Funeral Director in Charge of the establishment will be Joseph Scarano (F043636). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 2, 2009.

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

8. *Pax-Villa USA Inc (Homestead)*

The application for a Funeral Establishment was submitted on January 14, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on February 11, 2009. The Funeral Director in Charge of the establishment will be Sandra St. Amand (F043179). In Section 2 of the "Business Entity-List of Principals", Fred Saint Amand, Sr. is listed as one of the principals. The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 9, 2009.

Pax-Villa Florida, Inc. (Pax-Villa Florida) has an adverse license history stemming from an administrative proceeding before the Board in 1998 in Case No. 4536-F-3/96, concluded under the authority of the Department of Banking and Finance. The case was based upon the Pax-Villa Florida's sale of nine preneed funeral contracts without holding a certificate of authority, its failure to deposit proceeds of the sale of preneed contracts into an approved trust account within 30 days of the end of the calendar month

in which the payments were received, its failure to use Board approved preneed contract forms, and its failure to use an alternate preneed contract which complied with Chapter 497.

On December 27, 1997, Fred Saint Armand, Sr. signed on behalf of Pax-Villa Florida, a Stipulation and Consent Agreement to Issuance of a Final Order. On March 20, 1998, the Board issued a Final Order ("1998 Order"), adopting as a final order the terms and conditions of the Stipulation and Consent Agreement. According to the terms and conditions of the Final Order, Pax-Villa Florida agreed to the following: (1) to pay a \$5000 fine; (2) to cease and desist from the sale or offering to sell any prearranged or preneed funeral contracts; (3) to allow each person with whom it had a contract for preneed funeral services or merchandise still in force to choose either to rescind the existing contract and receive a refund of all monies, including interest, or with the purchaser's approval, choose to allow the assignment of such contracts to a licensed certificate of authority holder; (4) to make full accounting of all contracts for preneed funeral services which they had entered into and to certify that the accounting was complete and correct; and (5) to never seek licensure from or hold an ownership interest in any enterprise which is licensed by the Department or the Board for any activity regulated under Chapter 497.

On June 30, 2005, the Board initially denied the application of Pax-Villa USA, Inc. d/b/a Pax Villa USA Funeral Home to sell insurance-funded preneed contracts. Fred Saint Armand, Sr. was listed as a principal on the application. The application was denied on the grounds that Fred Saint Armand, Sr. had agreed in the 1998 Order to never seek licensure from or hold an ownership interest in any enterprise licensed by the Department or the Board. Pax-Villa USA, Inc. requested a hearing after the Board's denial. However, at the August 25, 2005 meeting, the Board approved a Consent Order, granting Pax Villa USA, Inc. a certificate of authority based on the following rationale as detailed in the Board Minutes:

During the preparation of the hearing Ms. Mendelson discovered that originally the Department tried to settle with St Armand and Pax Villa. As a condition of the settlement, their attorney submitted correspondence stating that Mr. St Armand would not be disciplined. They also stated that Pax Villa Florida would be disbanded. The Department accepted the conditions and removed Mr. St Armand from the settlement agreement. He is not a part of it and did not sign and agree for himself. At that time, the Department was well aware of it and agreed to it and understood, as the correspondence states that Mr. St Armand would be dissolving this corporation and starting another one. That stipulation can not be used as a reason to deny this new corporation of which Mr. St Armand is a principal. Therefore, the Department has entered into a consent order for the Board's approval. The order states that Pax Villa USA, Inc. will be awarded a COA and that both sides will pay their own attorney's fees

The Consent Order, issued August 25, 2005, is included in this packet. Based on the foregoing information, staff is recommending approval.

Mr. Helm stated that his packet did not receive a letter on refrigeration or embalming.

Mr. Keenan Knopke stated that on the previous 497 regulatory Board this form came before the Board on a regular and routine basis and misled the Department in many ways as far as providing information, being available to answer questions or anything else. It is a surprise to see the same parties back again trying to get a license somewhere else in Dade County. I don't doubt that the Department has conducted a good investigation. Maybe the gentleman has changed his ways, but back then it was not a well-run operation or one that was very cooperative in following the requirements of the Statutes.

Ms. Huggins questioned the excerpt from Minutes of a previous meeting regarding Pax-Villa disbanding and Mr. St. Amand dissolving his corporation.

Mr. Shropshire stated that the reference Mr. Knopke made to the prior record of this entity is well taken and is correct. The Division looked into the matter and notes that at the Board's August 25, 2005 meeting this Board approved a consent order granting Pax Villa USA, Inc. a COA (now called a preneed main license) based on the rationale detailed in the minutes. The Division's reasoning is that the Board determined in 2005 that they would license the entity and we not having any further or subsequent disciplinary issues with the Applicant, there did not appear to be any adequate grounds to justify a denial.

The Chair questioned whether everything has been fine with the entity for the last 4 years.

Mr. Shropshire stated they do not have a criminal disciplinary record.

The Chair questioned whether they have been licensed since 2005.

Mr. Shropshire answered yes.

Mr. Helm stated that Mr. Shropshire mentioned this Board but questioned whether he was referring to the previous Board.

Mr. Shropshire stated that August 2005 would have been the previous Board but was the Board that regulated preneed. It was not the 470 Board.

Mr. Helm stated he has concerns since Mr. St. Amand signed something stating he would never seek licensure from or hold an ownership interest in any enterprise which is licensed by the Department or the Board for any activity regulated under Chapter 497. Mr. Helm questioned whether the next page indicates this information could not be used.

Mr. Shropshire stated legally he could not respond. It is a matter of fact that the Board did not feel restraint by that and did issue them a license in August 2005.

Ms. Zippay questioned whether it changed entities.

Mr. Shropshire stated that he does not believe substantively it did. The same people were involved substantively.

Mr. Brandenburg requested direction from Board Counsel on " (5) to never seek licensure from or hold an ownership interest in any enterprise which is licensed by the Department or the Board for any activity regulated under Chapter 497."

Ms. Dudley stated that ultimately it would be how the Board decides to interpret that sentence. It looks like when he signed the agreement it was only discipline against the corporation. Mr. St. Amand was not named personally. Apparently in 2005 they made that argument that it was not his intention that he could never reapply in 2005 the Board at that time apparently agreed with that argument that was made by Mr. St. Amand and decided he could be licensed. The Consent Order is signed by Mr. St. Amand and the Board Minutes from 2005 indicate that it was not signed by him when in fact it was. So the Board could say that he agreed to never reapply but that would contradict what the Board did in 2005.

The Chair questioned whether the Applicant has been operating as a funeral home in another location since 2005.

Ms. Thomas-Dewitt responded yes. They actually operate in Orlando, FL.

The Chair questioned whether the Division has had any disciplinary problems with the Applicant in the last 4 years.

Mr. Shropshire stated that Ms. Tina Williams and Mr. Aldon Asher are on staff in the Orlando office. Mr. Shropshire questioned whether the Examiners are familiar with Pax Villa, the funeral home establishment.

Ms. Williams and Mr. Asher responded yes.

Mr. Shropshire questioned what information the Examiners could provide the Board regarding the Applicant and whether there have been any problems with them.

Mr. Asher stated that on 3 different there has been a finding that the establishment was operating under a name that they were not licensed under. The license is under Pax Villa Orlando LLC, but their sign, the marquee, all of their contracts and the general price list they use Pax Villa Funeral Homes Inc and various combinations of that. Basically, it appears they use the name that they are licensed under in South Florida.

Mr. Shropshire stated that it is always the Board's prerogative to table this if you want the Applicant to come before you to stand for questions.

The Chair questioned whether the Applicant was present.

There was a negative response from the audience.

Mr. Shropshire stated that the deemer date is June 17, 2009.

MOTION: Mr. Jones moved to defer the application to the next meeting. Mr. Baxley seconded the motion, which passed unanimously.

9. Shane Obert Funeral Home Inc (Chipley)

The application for a Funeral Establishment was submitted on February 13, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on February 26, 2009. The Funeral Director in Charge of the establishment will be Shannon Obert (F045180). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 20, 2009.

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

10. Tony Tanner Funeral Services Inc (Ocala)

The application for a Funeral Establishment was submitted on February 13, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the Applicant. All deficient items were returned on February 24, 2009. The Funeral Director in Charge will be Mark Brady (F042744). The

fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 18, 2009.

Mr. Helm questioned whether Nature Coast is a part of Brown Funeral Home. The agreement for refrigeration is with Nature Coast Crematory, but it is on Brown Funeral Home and Crematory letterhead.

Mr. Thurman Lowe stated that Nature Coast and Brown are owned by the same individual. They are separately licensed as a funeral home and crematory.

Mr. Helm questioned whether the same man owns both.

Mr. Lowe responded yes.

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

11. Tracy Morton Memorial Chapel LLC (Pensacola)

The application for a Funeral Establishment was submitted on July 25, 2007. The application was complete when submitted and a deficiency letter was not sent to the Applicant; however the Applicant submitted the application before the funeral establishment was built. The application was placed on hold until the building was completed and ready for inspection. The establishment passed its inspection on March 16, 2009.

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

DISCUSSION: Mr. Shropshire stated that approval of this application removes the conditional item on the preneed main license.

12. Unity Memorial Funeral Home Inc (Wildwood)

The application for a Funeral Establishment was submitted on February 2, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on March 12, 2009. The Funeral Director in Charge of the establishment will be Daryl Schofield (F046547). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 16, 2009.

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

B. Recommended for Denial

1. Gendron Funeral Home-Cremation Service Inc (Fort Myers)

The application for a Funeral Establishment was submitted on January 14, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on February 6, 2009. The Funeral Director in Charge of the establishment will be Michael Gendron (F042014). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 9, 2009.

The president of the Applicant and the proposed FDIC, Michael Gendron, was previously a licensed funeral director in Vermont. In 2000 Vermont regulatory authorities revoked Michael Gendron's funeral director license (copies of the Vermont orders are attached). The cause for the revocation is here summarized as follows: Michael Gendron's father, Paul Gendron, also then a licensed Vermont funeral director, had his funeral director's license suspended for three years by Vermont authorities. Michael Gendron thereafter pre-signed certain documents related to preneed sales, and allowed his father to use same to engage in activities related to preneed sales, in violation of the suspension of the father's license.

The Applicant has demonstrated a history of lack of trustworthiness and integrity in business or professional matters, and is not in compliance with applicable requirements of ch. 497, so that pursuant to s. 497.380(4), Florida Statutes, the application should not be approved.

Was also at the time a Florida licensed funeral director. In 2001 Florida regulatory authorities filed administrative charges against Michael Gendron based on the revocation of his Vermont license. In 2002 Florida authorities under former ch. 470, Florida Statutes, adopted a settlement stipulation under which Florida authorities fined Michael Gendron \$1,000, imposed \$557 in costs, and placed him on probation for 2 years.

Staff is recommending denial of application for the following reason. The Applicant's president and proposed FDIC has a demonstrated a history of lack of trustworthiness and integrity in business or professional matters, so that pursuant to s. 497.380(4), Florida Statutes, the application should not be approved.

Ms. Wendy Wiener stated that she called Mr. Shropshire on this situation. Based upon the materials that the Board was presented, a denial would seem to be a likely recommendation. However, the Board does not have the whole story. Mr. Gendron submitted his application back in January and having been previously disciplined by the 470 Board was led to believe by Division staff that there would not be any problem and that his license would be recommended for approval. Mr. Gendron was not notified until Wednesday that he was recommended for denial, so the Applicant would like to give the Board more information to use to go on in considering this application.

The circumstances that led to the revocation in Vermont are these. Mr. Gendron was licensed and operating as an FDIC in Vermont. Mr. Gendron was counseled by and Examiner there for failing to sign some of his preneed contract. He told the Examiner would it be okay if he pre-signed some contracts and kept them on hand to ensure that they are signed. The Examiner told him that would be alright so he did so. That existed in that circumstance for a period of about 2 years. Mr. Gendron went into the hospital on January 11, 2000 with his wife who was concluding a complicated pregnancy with a cesarean section. While he was in the hospital, his father, who was not permitted to write preneed, used 2 of the contracts that he had on hand, wrote them, took the money and put it on Mr. Gendron's desk. Mr. Gendron returned to the office, after a week or so, having been out with his wife, and deposited the money properly into the trust as required by Vermont law. After discovering that the contracts were not properly written, Mr. Gendron contacted the families and ultimately corrected the contracts. There were 2 small dollar contracts, both for \$695. The error was that they actually had given the funeral home \$700 rather than \$695. Mr. Gendron ultimately played no part in the wrongdoing that ultimately led to his revocation other than the fact that he was FDIC at the location when this occurred. When the matter came before the Vermont Board, Mr. Gendron hired an attorney to go to the hearing. The Vermont Board considered the attorney representation to be insufficient and wanted to hear from him directly, and so the revocation is actually the result of a default, not the result of any fact-finding by the Vermont Board. It is noteworthy that in fact Mr. Gendron's father involved in all of this ultimately appealed the decision made

against him in Vermont and his licensure was reinstated. He was cleared. Unfortunately Mr. Gendron did not have an opportunity to present this information to Mr. Shropshire. What we are really dealing with here is a situation where because Mr. Gendron was FDIC, he was responsible and he has accepted that responsibility in the following way. In 2002, the 470 Board took this matter up as it is able to do as are you when a licensee is disciplined in another state and Mr. Gendron was fined \$1000, ordered to pay costs in the amount of \$557 and served 2 years probation, which he concluded successfully. Mr. Gendron would have provided you with about 25 letters of recommendation from people really all over the area that he serves from police officials, fire officials. (Ms. Wiener provided the Board with a few copies.)

Ultimately this would have been explained to the Board except that as mentioned the Applicant was led to believe that this would be recommended for approval because Mr. Gendron had already been disciplined by the 470 Board, which he disclosed, and that discipline has been carried out. The only restriction placed upon him was that he could not be FDIC for 2 years. He was not. Mr. Gendron has since been FDIC at 3 different locations and has served roughly 5000 families and has had no complaint against his license ever either here or in Vermont. The Applicant is requesting the Board's favorable consideration of this application. This information would have been available earlier, but the Applicant did not it would be recommended for denial until Thursday.

Mr. Baxley questioned whether there were any issues on the establishment licenses where Mr. Gendron was FDIC.

Mr. Michael Gendron responded that there were none he was aware of.

Mr. Gendron stated that letters of recommendation were from funeral directors, the police department, the fire department, families that have been served and clergy.

Ms. Thomas-Dewitt questioned Mr. Gendron's reasoning for not attending the meeting in Vermont prior to his license being revoked.

Mr. Gendron stated he sent an attorney. Mr. Gendron added that he attended a meeting in May 2000 prior to this for the same allegations. It was clear that there was no concern for public welfare at that hearing. Mr. Gendron thought that the attorney could have handled it and he did not realize he had to go before the Board to represent with the attorney. Looking back on that, it was a large mistake that will never be done again.

Ms. Thomas-Dewitt stated that it is not a justifiable or ethical practice to pre-sign preneed contracts.

Mr. Gendron stated that was simply for his use.

Ms. Wiener stated Mr. Gendron discussed that with the Vermont examiner at the time and that had been the practice for a period of well into 2 years when this wrongdoing actually occurred.

Ms. Thomas-Dewitt questioned whether this actually existed for 2 years.

Ms. Wiener responded yes. Mr. Gendron had asked the examiner if that was okay for him to do. He told the examiner, "this is what I intend to do, do you have any concern about this?" and the examiner said no.

Ms. Thomas-Dewitt stated even if the examiner provided that information, Mr. Gendron knew better than to commit an act like that. This is not acceptable.

Ms. Wiener submitted if you ask an examiner if this is acceptable and the examiner states this is an examiner practice, typically the licensees rely upon that. I am quite certain that Mr. Gendron wishes he did not have those on hand at that time because obviously none of this would have occurred now, but hindsight being what hindsight is, at the time he was relying upon the interactions he was having.

Mr. Brandenburg questioned whether there is any evidence from the examiner that permission was given to pre-sign preneed contracts.

Ms. Wiener responded that the Applicant would have provided a lot more information had they known the application was up for denial. We learned on Thursday that this was not going to be recommended for approval as Mr. Gendron had previously been led to believe, so there was no time to gather any evidence per say. Mr. Shropshire was contacted to determine how the Applicant should proceed. Our option was to come before the Board and explain the story.

The Chair questioned what years Mr. Gendron worked at the funeral home in Vermont.

Mr. Gendron answered 1994 – 2000.

The Chair stated that according to the report between 1990 and 1996 there were interest bearing preneed contracts that were done for funeral services and the monies were not placed in trust. The monies were withdrawn and used. The report indicates “PG” who was obviously Mr. Gendron’s father, but Mr. Gendron was working at that funeral home during that time and there were preneed monies that were supposed to be put into regular preneed accounts, but they never were. If Mr. Gendron worked there, he was probably there when some of that occurred. The Chair requested an explanation.

Mr. Gendron stated he was not in charge of the financial obligation at that point and did not become in charge of the operation until 1999 until the business was sold to Keystone Group. Mr. Gendron added that he had nothing to do with preneed transfers, withdrawals or anything else. That was completely his father at that time.

The Chair stated if an at-need call came in and Mr. Gendron dealt with the families, he would have to check to see whether they had paid on their account. It would be evident that the monies had not been placed in a viable trust. Mr. Gendron would have to know this was going on if he worked there.

Mr. Gendron stated that the money was lumped together in Vermont. There were no individual accounts set up at the time. Mr. Gendron’s father and the accountant had whatever it was worked out with them. Whatever was on the preneed account was simply credited to the at-need contract and that is how it was taken care of.

MOTION: Mr. Brandenburg moved to deny the application based upon the Department’s recommendation and the demonstrated lack of trustworthiness and integrity in a funeral and preneed business and profession. Ms. Thomas-Dewitt seconded the motion, which failed with 4 dissenting votes.

DISCUSSION: Ms. Wiener stated that the situation is unfair as Mr. Gendron was led to believe until Thursday of last week that his application was going to be recommended for approval by Division staff. Mr. Gendron has not had an opportunity to properly provide the documentation to the Board to support his trustworthiness and integrity in business. The allegations that the Chairman has raised are related to Mr. Gendron’s father and not to him. There was no action taken against him by the regulators in Vermont. Ms. Wiener requested that the Board table the Applicant so that the Applicant could provide

the requisite information, as every other Applicant is permitted to do, to document his trustworthiness and integrity.

Mr. Shropshire questioned whether Counsel, on behalf the Applicant, would waive the deemer.

Ms. Wiener responded yes.

The Chair stated that one Board member was not present when the Board voted so the motion does not carry.

Ms. Huggins questioned whether a new motion could be made.

Ms. Dudley stated in order for Mr. Jones to vote, it would have to be on a new motion as the other was made while he stepped out.

Mr. Shropshire stated that the Division has not had an opportunity to confirm the representation by the Applicant here today that he was told by some examiner in Vermont that what he was doing was okay. So if it pleases the Board, it may be advisable to table the matter so that the Division could look into that specific recommendation and get a name from Mr. Gendron as to who told him this and try and contact that person in Vermont to see if they will corroborate his statement.

Mr. Brandenburg questioned whether he could make another motion to deny.

Ms. Dudley responded yes.

2nd MOTION: Mr. Brandenburg moved to deny the application based upon the Department's recommendation and the demonstrated history of lack of trustworthiness and integrity in a funeral and preneed business or profession. Ms. Thomas-Dewitt seconded the motion, which passed with 4 dissenting votes.

DISCUSSION: Ms. Wiener questioned whether Mr. Jones was present during the discussion.

Mr. Jones stated that he was present during the discussion. As far as the last five minutes, he stepped out to keep from coughing.

Ms. Wiener stated that Mr. Jones probably missed when she said until Thursday of last week; Mr. Gendron was told that this Applicant would be recommended for approval.

Mr. Jones stated that he did hear that.

Ms. Wiener added that Mr. Gendron was not able to provide the information to demonstrate. It seems like a real failure of due process. If your license application is going to be denied, you should know about that so that you can provide information to show compliance with the statutory standard. Clearly, no one is prejudiced by tabling this matter so that Mr. Shropshire can be provided with the information that is necessary. If the Board does not approve this application today, he is certainly not going into business today, until he gets approval from this Board. To vote to deny based upon an inability to know that there is a problem that you can address seems to be inherently unfair.

Mr. Shropshire questioned whether Mr. Jones voted in support of the motion to deny most recently made.

Mr. Jones stated that he had based his decision upon the fact that the Applicant was pre-signing the contracts for 2 years. This decision was made prior to Mr. Jones stepping out of the room.

Mr. Shropshire stated that just previously he said there appeared to be four without seeing Mr. Jones' hand, so there appear to be 5 in support of the motion.

2. Nacional Memorial Funeral Chapel LLC (Hollywood)

The application for a Funeral Establishment was submitted on October 16, 2008. The application listed the following address for the establishment: 4529 Hollywood Blvd, Hollywood, Florida 33021. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. Terrence O'Dea was listed as the FDIC. All deficient items were returned to the Division on January 16, 2009. On February 2, 2009, the Division by letter advised the Applicant that its application was removed from the February Board agenda due to an open investigation. The investigation has been completed and copy of same is attached.

Summary of Investigation: On November 3, 2008, a Division examiner initiated an investigation regarding possible unlicensed activity at 4529 Hollywood Blvd, Hollywood, Florida 33021 ("location"), the address listed on the application. On November 3, 2008, during her routine business travel, the examiner noticed advertising at the location. She observed a banner on the building with the following advertising: "Owned/Operated by Nacional Memorial Funeral Chapel, LLC Home 4529 Hollywood Blvd, Hollywood, Florida 33021"; "Open 7 Days Per Week Night Phone 1-800-FUNERAL"; "Funeral Director in Charge Terrence O'Dea Funeral Director"; and "1-800-CREMATION". She also observed a neon sign that was lit and read "Open".

On December 17, 2008, a Division staff member visited the location and observed that signs at the location were lit, indicating "Cremations", "Urns", and "Caskets". The staff member was greeted by Hilbert Mohabir (also sometimes known and referred to as Sheik Rafaiy Alkhalifa). Mr. Mohabir indicated that the location was waiting on issuance of a funeral establishment license, but he provided the staff member with a general price list and asked how he could be of service.

During the course of the investigation, the Division determined that the Applicant moved into the location on October 1, 2008. The Division obtained a copy of the lease agreement for the premises where the Applicant does and will, if licensed, operate the funeral establishment. The lease agreement for the location shows the tenant as "Hilbert Mohabir Shores Enterprises, LLC." Hilbert Mohabir signed the lease for the tenant, on or about September 8, 2008, as President of the tenant. In addition, Hilbert Mohabir executed a personal guarantee of the tenant's obligations under the lease (page 26 of lease agreement). A search of the Division of Corporation's website shows that Hilbert Mohabir is listed as one of the managers of Mohabir Enterprises, LLC.

By plea agreement filed January 3, 2005, Hilbert Mohabir, pled no contest to Grand Theft, in case # F03473A, Florida Circuit Court, 11th Circuit. The plea agreement required Hilbert Mohabir, among other things, to make restitution of \$125,000 to Funeral Services, Inc. and \$25,000 to the Florida Dept. of Revenue.

On February 9, 2009, the Division received a tip about a website link in Anywho.com with an advertisement for the Applicant. The website included a video clip, in which the Applicant offered full services with no mention that the facility had not been licensed. Hilbert Mohabir and Niurka Fleites were identified as the individuals on the clip. A copy of the clip was downloaded to a disc and is included as part of the attached investigation file. If for whatever reason Board members are not able to open the item on the CD to view same, Division staff will have a laptop available at the Board meeting to view the clip.

The Division recommends that the application be denied for the reasons set forth below. The Division finds that any one of the several reasons listed below would by itself justify denial of the application.

(A. Applicant has conducted a funeral establishment business at the location applied for, prior to issuance of a license for such business, in violation of s. 497.380(3), Florida Statutes, and has thereby demonstrated a history of lack of trustworthiness and integrity in business or professional matters, and is not in compliance with applicable requirements of ch. 497, so that pursuant to s. 497.380(4), Florida Statutes, the application should not be approved.

(B. The Applicant misled the public by advertising that it was opened for business prior to the issuance of a funeral establishment license, in violation of Sections 497.152(1)(a), 497.152(9)(e) and (f), Florida Statutes and Rule 69K-21.001(4), Florida Administrative Code, and has thereby demonstrated a history of lack of trustworthiness and integrity in business or professional matters, so that pursuant to s. 497.380(4), Florida Statutes, the application should not be approved.

(C. The Applicant failed to identify Hilbert Mohabir, in the application, in the attachment entitled "Business Entity – List of Principals," as a person who can exercise control over the Applicant, and Applicant has thereby demonstrated a history of lack of trustworthiness and integrity in business or professional matters, so that pursuant to s. 497.380(4), Florida Statutes, the application should not be approved. See also ss. 497.141(12)(d), 497.152(4)(e) and (g), and 497.380(13), Florida Statutes;

(D. The Applicant failed to disclose in the application the criminal history of Hilbert Mohabir, in violation of Sections 497.142(10)(a), (10)(c), (10)(e)3, (10)(e)5, and (10)(f); 497.152(4)(e) and (g), Florida Statutes and Rule 69K-5.0031(3)(b), Florida Administrative Code. and has thereby demonstrated a history of lack of trustworthiness and integrity in business or professional matters, so that pursuant to s. 497.380(4), Florida Statutes, the application should not be approved.

Mr. Jerry Foster stated that Ms. Niurka Fleites is the owner of the corporation and her husband Jose is here. Mr. Foster questioned whether he heard that the Applicant has a prior criminal history. Ms. Fleites is the owner of the Corporation that owns the funeral home and is going to run the funeral home and will be in charge of it. Ms. Fleites has arranged for leasing of the space. In November, the Applicant thought she was ready to be inspected and had prepared for inspection. Ms. Fleites present boss at another funeral home helped prepare the funeral home for inspection. Apparently you have to have an FDIC, signs up and it has to appear to be open for business. Apparently the investigator from the Agency was in the area, drove by and sees what she thinks is a funeral home. The investigator says to herself, "I have never heard of this." So she walks into the funeral home to be and she met Mr. Alkhalifa who is Ms. Fleites boss at another funeral home, but was assisting her in getting ready for inspection. The investigator met Mr. Alkhalifa on the premises of the funeral home and they had an interchange in which he told her they were not open for business. He gave her the price list, which he never should have done, but that was not the fault of Ms. Fleites, who will tell you that he was not authorized to do that. Mr. Foster requested that the Board question the Applicant so that she can answer the questions directly.

The most important issue is if the Department wants to deny the Applicant on the grounds that they were in business prematurely, the question to her would be "where is the business" and she will say to you, she will testify, if you want her under oath we will put her under oath, she will testify that she has not received one penny for any services or any representation or contracts that she has made. There has been no business. For that reason, we would like for the Board to ask her questions and listen to her, but be confirmed that this is her funeral home and she is the one that is in charge and in control. Ms. Fleites has not had any prior criminal record or history and no manager of that funeral home is. The Applicant has spent a considerable amount of money and time getting ready to have this funeral home go into business. Mr. Foster requested that Ms. Fleites address that Board and start with telling them whether she has ever had any criminal history.

Ms. Fleites responded no.

Mr. Foster requested that Ms. Fleites tell the Board about her funeral home.

Ms. Fleites stated that she owns the funeral home and has tried to open since October 2008. All her money has been spent and she has been paying the rent every month for six months without a license.

Mr. Foster questioned who is in charge of the funeral home.

Ms. Fleites answered "me."

Mr. Foster questioned who owns the funeral home.

Ms. Fleites answered "me."

Mr. Foster questioned whether anyone else owns the funeral home. Mr. Foster answered no. Mr. Foster questioned whether anyone else owns the funeral home.

Ms. Fleites stated this is her funeral home.

Mr. Foster questioned who would run the funeral home if the Board grants the license.

Ms. Fleites answered "me."

The Chair questioned who Hilbert is.

Ms. Fleites stated that Hilbert Mohabir is her boss.

Mr. Foster stated that he is her boss at the other place where she works not with respect to this license.

The Chair stated the information provided indicates he is a principle.

Mr. Foster questioned a principal of what.

The Chair quoted "The Applicant failed to identify Hilbert Mohabir, in the application, in the attachment entitled "Business Entity – List of Principals," as a person who can exercise control over the Applicant, and Applicant has thereby demonstrated a history of lack of trustworthiness and integrity in business or professional matters."

Mr. Foster requested that the Board ask Ms. Fleites under oath whether Mr. Mohabir has any responsibility or authority over that funeral home. Mr. Foster questioned whether that concern of the Board a truth, in other words, does Mr. Mohabir have any control over Ms. Fleites or over the funeral home.

Ms. Fleites stated that Mr. Mohabir does not have any control over her.

Mr. Foster stated that he was going to put himself in the point of view of the Board. "Well, what was he doing at the funeral home when the investigator walked in to look at it? What was he doing there? Why was he there?"

Ms. Fleites stated he was there because she does not know much about preparing for an inspection. Mr. Mohabir was there to find out what paperwork was needed to be prepared for the inspection.

The Chair questioned whether Mr. Mohabir is the same person as Sheik Rafaiy Alkhalifa.

Ms. Fleites responded yes.

Ms. Thomas-Dewitt questioned why Mr. Mohabir signed the lease.

Ms. Fleites stated that in the beginning it was supposed to be a merchandise place under his name and another partner that he had, but the partner left for Venezuela. So Mr. Mohabir decided he did not want the place. Ms. Fleites in turn asked Mr. Mohabir if she could apply for a license under her name since it was a funeral home before. Ms. Fleites did not foresee a problem and expected to be licensed in October.

Mr. Helm questioned whether Mr. Mohabir still holds the lease to the building.

Ms. Fleites responded yes.

Mr. Helm questioned how Mr. Mohabir does not have control if he still holds the lease.

Ms. Fleites stating that the lease is being transferred to her name.

Ms. Thomas-Dewitt questioned whether Ms. Fleites and Mr. Mohabir are related.

Ms. Fleites responded no.

Ms. Zippay questioned whether the lease is currently in Mr. Mohabir's name.

Mr. Foster stated that Mr. Mohabir's lease is an obligation to the landlord, notwithstanding this funeral home. In a sense, Mr. Mohabir has assigned the lease over to Ms. Fleites so that she can run a business.

Ms. Zippay questioned whether there is a written assignment of lease.

Mr. Foster stated that he understands there is, but he has not seen it. It has been represented to Mr. Foster that it has been signed and Ms. Fleites has individually obligated herself under the lease. In the investigation materials, the lease is there. If you look at the lease, you will see there is a lease to Alkhalifa who has been made a personal guarantor. The people who own the lease are not going to let Sheik Rafaiy Alkhalifa out of it because they want him "on the hook" for five years. As far as this Applicant is

concerned, her corporation has signed that lease but Mr. Mohabir is not running the funeral home. Mr. Mohabir has just assigned the lease to her.

Ms. Thomas-Dewitt questioned whether Mr. Mohabir is employed by Ms. Fleites.

Ms. Fleites answered no.

Mr. Foster questioned whether Ms. Fleites has an FDIC.

Ms. Fleites answered yes.

Ms. Thomas-Dewitt questioned why the Division of Corporation's lists Mr. Mohabir as the manager.

Mr. Foster stated this is a surprise as he was not aware of this.

The Chair questioned whether Ms. Fleites was aware that Mr. Mohabir pled no contest and had to pay \$125k to Funeral Services Inc and \$25k to the Department of Revenue in 2005.

Ms. Fleites answered yes.

Mr. Helm stated that he did not recall reading where the investigator went in and Mr. Mohabir stated they were not open.

Mr. Shropshire stated that he did say that but it was in the same transaction where he said "how may I be of service" and gave her a general price list.

Mr. Helm questioned the license number of the FDIC.

The Chair asked who the FDIC is.

Mr. Helm answered "Terrence O'Dea."

Mr. Shropshire stated that Mr. O'Dea is a licensed funeral director.

Ms. Dudley stated that she was unable to locate the information that listed Mr. Mohabir as the manager.

Ms. Thomas-Dewitt stated she read that in the narrative.

Mr. Foster questioned whether that is someone's summary or the actual document that establishes it.

Ms. Dudley stated it is the summary.

Mr. Shropshire stated Page 1 of the coversheet, which are the Division's remarks to the Board, states "A search of the Division of Corporation's website shows that Hilbert Mohabir is listed as one of the managers of Mohabir Enterprises, LLC."

Mr. Foster stated that the question Ms. Thomas-Dewitt asked was whether Mr. Mohabir was the manager of Ms. Fleites' corporation. That is a fair question. Mr. Mohabir is the manager of his own corporation,

which is a totally different matter. Mr. Mohabir is not the manager of Ms. Fleites' corporation and what the Board was presented does not state that.

Mr. Shropshire added that it is stated in the context of indicating that Mr. Mohabir is the manager of the LLC that is on the lease, which is the primary basis for the Division's position that he has control, within the meaning of the statute, over the Applicant because he is the landlord to the Applicant.

Mr. Foster questioned whether being a landlord for licensing purposes means that he has control. Mr. Foster stated he leases his law office from a real estate agent, so under that theory, he has some control over the law office.

The Chair questioned why Mr. Mohabir would give out a price list if he had nothing to do with the business.

Mr. Foster stated that was a very good question and requested that Ms. Fleites answer the question.

Ms. Fleites stated that she was not there at that time and only realized that he had given out a price list once she saw it in the paper. Mr. Mohabir was supposed to find papers for the inspection, not to sell anything. Nothing was ever sold.

Mr. Foster questioned why Mr. Mohabir was there.

Ms. Fleites stated he was there to fill out papers for the inspection.

Ms. Huggins questioned whether Ms. Fleites trusts Mr. Mohabir to fill out the papers for the inspection over herself.

Ms. Fleites answered yes. When the inspector came everything was ready. Ms. Fleites added she met with Marc Adel and passed the inspection.

Mr. Foster stated the inspection was passed with no exceptions.

Mr. Baxley stated Mr. Mohabir appeared with Ms. Fleites in a commercial on anywho.com. Mr. Baxley questioned whether Ms. Fleites is indicating that despite this fact, he has no relationship to the company.

Ms. Fleites answered no.

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

XVII. Funeral Establishment - Conditional Considerations

A. Motion to Withdraw Application

1. Presidential Circle Funeral Home, prior application (Valeria Panciera) (Hollywood)

This application for a funeral establishment license, for a funeral home to be located at 4200 Hollywood Blvd, Hollywood, Florida, was presented to the Board at its December 2008 meeting. The Applicant initially applied as Valerie Panciera Funeral Home Inc., but subsequently amended the application to show Applicant as Presidential Circle Funeral Home Inc. The application was tabled at the December 2008 meeting, to allow investigation of allegations primarily to the effect that the Applicant was operating

prior to licensure. The principal behind the Applicant was Valerie Panciera-Reith and certain other persons. This application is hereinafter referred to as the "Valerie Panciera application."

The Valerie Panciera application was resubmitted to the Board at its February 2009 meeting. The Board denied the application.

As allowed under ch. 120, Florida Statutes, the denied Applicant has requested a formal hearing to contest the denial.

On March 9, 2009 a Motion To Withdraw Prior Application was filed in regard to the Valerie Panciera application.

The Applicant has asked that the request for formal hearing regarding the denial be held in abeyance while the Board considers the instant Motion To Withdraw Prior Application. If the Board grants the Motion, the request for formal hearing will be moot.

As noted in a subsequent item on the agenda for the Board's April 8, 2009 meeting, a new application has been filed for a funeral establishment license at the same location, and is being presented at this meeting. The principal in that new application is one Jonathon Shaw. The Board's disposition of the instant Motion to Withdraw, will affect the Board's options concerning the Shaw application (see the Division's remarks in the Shaw application materials).

Mr. John Rudolph, the attorney for the applicant, was not present as there was a death in his family.

The Division recommends approval of the motion to withdraw.

Ms. Thomas-Dewitt questioned the relationship of Jonathan Shaw and Valerie Panciera-Reith.

Ms. Wiener stated that was an excellent question albeit a bit premature.

Mr. Shropshire requested that Ms. Wiener indicate who she represents.

Ms. Wiener stated she represents Panciera Memorial Home. Our interest in the matter of the withdrawal of the application is such that we feel very strongly that there is no statutory, rule or case law authority that allows an applicant to simply withdraw an application after this Board has already considered it in depth and voted to deny it. To do so really creates a legal nullity in the denial and the action taken by the Board. The Administrative Procedures Act, the statute which governs the Board and the Applicant, is very clear in the options given to an Applicant when an application is voted upon for denial by this Board and that Notice of Rights is attached to the Notice of Intent and it gives an Applicant 2 choices: take no action and the denial becomes permanent or take action by challenging and requesting a hearing. There is no option for withdrawal. The position that we take is no that the Board cannot consider the new application by the new Applicant. However, the motion to withdraw absolutely cannot pass because it is not supported in any way by the law, case law or rule. It would be my assertion that the Motion to Withdraw must fail, which left the Applicant with 2 options. Either to do nothing and the denial became permanent or to challenge the denial and request a hearing. The Applicant did neither. Valerie Panciera-Reith individually filed a petition for hearing, but there is sufficient case law authority that Valerie Panciera-Reith does not have the appropriate standing to request a hearing. It would be my assertion that the Motion to Withdraw must fail, the denial is there and the Applicant did not deny so the

denial is permanent and then this Board is free to act upon the next item on the Agenda, which is the application of the new owner of the stock of Presidential Circle Funeral Home.

The Chair questioned whether there was anyone present representing Valerie Panciera-Reith.

Mr. Stephen Turner with the firm of Broad and Cassel stated that he is appearing on behalf of Valerie Panciera-Reith in so far as it effects the application of Mr. Shaw. Since John Rudolph is not present, it is appropriate that someone speaks to this item.

Mr. Helm stated that the Board is not considering Mr. Shaw's application at this time.

Mr. Turner agreed. Broad and Cassel represents Mr. Shaw, but to the intent that Mr. Shaw's application is implicated by the withdrawal, we are appearing on behalf of Ms. Panciera-Reith to clear the way for Mr. Shaw's application.

Ms. Dudley stated she did not agree with Ms. Wiener's position that the Board could not entertain the motion to withdraw. The Board has discretion in an essence to make a reconsideration of the previous denial. In speaking with Mr. Rudolph, he had wanted to withdraw the application, but was advised that would be up to the Board as it had been voted on. Ms. Dudley stated that Board has the authority to review the Motion to Withdraw and to make a decision as a Board.

Mr. Shropshire stated that there is definitely a linkage between this Motion to Withdraw and the following application for funeral establishment because the following application is at the same location and it would be the Division's suggestion to the Board that by law the application could not be approved without granting the Motion to Withdraw as there can only be one establishment at any one location. There will be an application pending, although in litigation because of the denial.

Mr. Helm questioned the difference.

Ms. Dudley stated that a Notice of Intent to Deny was issued and they have preserved their hearing rights with the intentions of going to the Division of Administrative Hearing on that denial if this Motion to Withdraw is not granted.

Mr. Turner stated that the withdrawal would be the correct procedure. With all due respect to the Board, it is not a matter of discretion. It is an absolute right under the law for an Applicant to withdraw an application at any time prior to the fact findings being made. The Board's findings are preliminary in nature. They are not subject to cross-examination. They are not subject to a Hearing Officer's review. They are preliminary findings not made under sworn testimony or anything of that sort. When that happens, then it is too late to withdraw. But an application can be withdrawn. The Supreme Court of Florida has spoken to it in 1994. It is very similar to a plaintiff withdrawing a case in front of a jury, which you can do at any time before the jury returns. Ms. Panciera-Reith has the right to withdraw, clear the pathway. It is the Board's prerogative if it wants to discipline Ms. Panciera-Reith, if the Board feels she has violated some provision of law that is applicable.

Mr. Turner stated it will be explained later that there is no relationship here. This is a very entrepreneurial businessman coming to run a business. Mr. Shaw has other businesses along Hollywood Boulevard. There is an Applicant who does not want to run this home anymore. She has had problems and wants to withdraw the application. Mr. Shaw is able to put the money into this business and is willing to do so and run this business as a businessman with the proper funeral director in charge. The

position of the Board should be to withdraw the application. If the Board wants to bring disciplinary action against the former Applicant, that is certainly its prerogative. Let's not get caught up into legal proceedings here that impair the business of the Board and impair competition. The right that Ms. Wiener's client does not want competition there is not a basis for this Board to deny anything. It would be improper to do so.

Mr. Helm questioned the difference between withdrawn and denied. Just because the Board denied the application, the decision is not final. The application is still pending, so it is not denied.

Mr. Shropshire stated the denial is not final.

Mr. Turner stated that the denial is not final because there was an appeal taken.

Ms. Wiener questioned who the appeal was taken by.

Mr. Turner stated that the appeal was taken by Valerie Panciera-Reith who is the applicant.

Ms. Wiener stated the appeal was not taken by the Applicant whose substantial interests were affected. The Board did not deny Ms. Reith an application for her individual licensure. The Applicant was denied a license and the Applicant took no action. Under the Notice of Rights, that denial then became final 21 days later.

Mr. Turner stated that the applicant was Valerie Reith using the corporation that she had, but it was her application that was denied, so she is the one that appealed the decision. There is no problem or major issue with the withdrawal. This is a simple, standard procedure that any applicant that has been denied, but is on appeal in effect for review can withdraw.

Mr. Brandenburg questioned whether the movement to withdraw the appeal has taken place.

Mr. Shropshire stated they moved to withdraw the application not the appeal.

Ms. Wiener stated that would take away the denial in its entirety and thus moots the appeal. Ms. Dudley has not cited any statutory or rule authority for this dismissal. Mr. Turner passed out a legal brief that cites a Supreme Court case from 1994. There is subsequent case law authority from 1999, the Holmes case, which seems to really cast doubt upon whether there is an absolute right of an Applicant. This never happens. The Administrative Procedures Act is meant to imbue certainty and this makes the Board's vote deny as though it never happens.

Mr. Turner stated the case Ms. Wiener is referring to has to do with after the Hearing Officer's findings are made.

Ms. Wiener stated that the Board can take up. I disagree with Mr. Shropshire's suggestion that there is a live challenge to a live denial. There was a denial by this Board of a corporate application. The corporation did not file a petition for hearing. There is nothing live before you except for Mr. Turner's client's application. Establishing a precedence that an application can simply be withdrawn because they do not like the denial received from the Board really flies in the face of the Administrative Procedures Act and the Notice of Rights that is attached to every single Notice of Intent to Deny. The Board can consider the new application but does not have the authority to allow for withdrawal.

The Chair questioned what happens if the Board does not accept the Motion to Withdraw.

Ms. Dudley stated if the Board denies the Motion to Withdraw, the Notice of Intent to Deny would make its way through DOAH and would be caught up in litigation. If this is done, the Board could not approve the subsequent application, because if the Judge overturns the Intent to Deny and rules that the Board should have approved Ms. Panciera-Reith's application, there would be 2 entities at the same location if the Board approves the subsequent application.

Ms. Wiener stated there was no challenge by the Applicant.

Mr. Shropshire stated that the Division clearly understands that the Election of Rights filed was on behalf of both Valerie Panciera-Reith and the entity, so that puts that argument to rest. There would be no standing to raise that in litigation and the Division's position would be it understood that the Applicant filed an Election of Rights timely.

Mr. Baxley questioned why Ms. Panciera-Reith has not withdrawn the request for hearing if she wants to get out of it altogether.

Mr. Turner stated that would leave the denial standing. The proper way to do it is to withdraw the application as she does not want to own the establishment.

Ms. Wiener stated if Ms. Panciera-Reith withdraws her application, the hearing goes away.

Mr. Turner stated that Ms. Panciera-Reith disagrees with the findings of the Board, which is the prerogative of the Applicant.

Ms. Thomas-Dewitt stated if Ms. Panciera-Reith goes the administrative route, it would prolong Mr. Shaw's ability to open the establishment. Ms. Thomas-Dewitt again questions the relationship of Ms. Panciera-Reith and Mr. Shaw.

Mr. Turner stated that Mr. Shaw is no relation to Ms. Panciera-Reith. Mr. Shaw is present and will answer any questions the Board has.

The Chair questioned whether this item could be tabled until the next item is heard.

Ms. Dudley stated that the item could be tabled if the Board would like to hear about the relationship between Ms. Panciera-Reith and Mr. Shaw.

BREAK

B. Application for Funeral Establishment License

1. Presidential Circle Funeral Home (different owner, Jonathan Shaw) (Hollywood)

This application for a Funeral Establishment was submitted on March 10, 2009. The application was incomplete and a deficiency letter was sent. All deficient items were corrected as of March 20, 2009. The funeral director in charge will be Jeffrey Brady (F042732). The establishment passed its inspection on March 20, 2009. The principal behind this application is one Jonathan Shaw.

This application should be considered in conjunction with the "Motion to Withdraw Application" filed by attorney John Rudolph, and presented to the Board at this same April 8, 2009 meeting, in regard to a previous application filed for a funeral establishment license at the same location, but wherein the proposed owner was Valerie-Panciera-Reith and certain other persons. At its February 2009 meeting, the Board denied that application, but the Applicant has, subject to the Motion to Withdraw, requested a formal hearing on the Board's denial of that application. Therefore there is, at this time, a prior application still pending (the Valerie-Panciera-Reith application) for a funeral establishment license for the same location. Under ch. 497, there can only be one licensed funeral establishment at any one location.

The Division recommends as follows:

- If the Board approves the said Motion to Withdraw, the Division recommends that this present application (owner Shaw) be approved.
- If the Board denies the Motion to Withdraw, the Division recommends that the Board deny this application because there already is pending a prior application for funeral establishment license at the same location. **Provided**, if the Applicant (owner Shaw) agrees that the running of the deemer under s. 120.60, Florida Statutes, is tolled until final resolution and disposition of the prior application by Valerie-Panciera-Reith, then the Division recommends that the Board TABLE this application pending such final resolution and disposition.

Ms. Maureen Daughton also with the firm of Broad and Cassel stated that Mr. Jonathan Shaw has been a resident of Hollywood for 37 years and is a businessperson. If he were able to get the license, this would be his 4th business enterprise on Hollywood Boulevard that he would currently have. All of them are successful. Mr. Shaw has been licensed since 1975 as hearing aide specialist, has had his office in Miami in that business for 25 years and has served on the Board of Hearing Aide Specialists for 15 years. Although Mr. Shaw is not currently on that Board, he was the District Director for that Board for Dade and Monroe Counties when he served.

Mr. Shaw has no relationship with Valerie Panciera-Reith. Mr. Shaw sees this as a business opportunity in a location that he is very familiar with. In his mind, it is a proven location. Mr. Shaw has a daughter who he plans to bring into the business as she has expressed an interest in the business. Mr. Brady would be serving as FDIC. Mr. Shaw hopes that the Board responds favorably to his application and would be happy to answer any questions.

Ms. Thomas-Dewitt questioned what role if any would Ms. Panciera-Reith play in the Presidential Circle Funeral Home.

Ms. Daughton answered that Ms. Panciera-Reith would not play a role as Mr. Shaw is not intending to employ her.

Mr. Shaw added Ms. Panciera-Reith would have nothing to do with the funeral home.

Mr. Helm questioned whether Mr. Shaw is purchasing the corporation name as well.

Mr. Shaw responded yes. Mr. Shaw added that he is the President of the corporation.

Mr. Helm questioned whether Mr. Jeffrey Brady works for or has worked for Ms. Panciera-Reith.

Mr. Shaw answered no. Mr. Shaw added that he is choosing all of his employees and no one is being chosen from the inside.

Mr. Brandenburg questioned whether there is any type of agreement or understanding with Mr. Irving Panciera or Ms. Valerie Panciera-Reith on the business and how it will be operated or may change ownership in the future.

Mr. Shaw responded no. Mr. Shaw stated that he owns it and does not play games. Partners are not allowed on anything. All of the other businesses are solely owned by Mr. Shaw.

Mr. Helm questioned whether Mr. Panciera is the landlord.

Mr. Shaw responded yes as Mr. Panciera owns the building. Every other building that Mr. Shaw purchased in Hollywood was leased first. Once the businesses were put in and got going, then Mr. Shaw purchased the building. There is a good chance that Mr. Shaw will purchase this building, but at this time Irving Panciera is the landlord. Mr. Panciera has no other effect in the business nor does Valerie. The FDIC will be picking the people that will be working at the funeral home.

The Chair stated that it is kind of odd that Mr. Shaw is coming in and purchasing this corporation at this time that just happens to be in the location of the funeral home.

Mr. Shaw stated that he has lived for 20 years within 2 blocks of that funeral and has gone to 50 wakes over the years there. The place is a great location. After a couple of months of seeing the funeral home without signs, Mr. Shaw began investigating opening the funeral home himself. Mr. Shaw stated that he has invested about \$25,000 so far and will not invest the other \$70,000 needed until he receives the license. The inspection was passed but there seems to be this hinge between Mr. Shaw and Ms. Panciera-Reith, but she has nothing to do with this business.

Ms. Wiener stated that the Applicant, Presidential Circle Funeral Home, had listed as its FDIC Valerie's husband, Kevin Reith who may be an employee of the location. Obviously, the Applicant was denied for lack of trustworthiness and integrity, so that should be a question of the Board as well.

Mr. Shaw stated that he may hire Kevin but am not hiring Valerie. Kevin has done nothing wrong and he knows the place inside and out. If the FDIC approves Kevin, he may work there.

Mr. Turner stated that Kevin is a licensed funeral director.

Ms. Wiener stated that Kevin was listed as the FDIC on the prior application.

Mr. Shaw stated that Kevin is not the FDIC, Jeffrey Brady is.

The Chair stated that the Board has to go back and address the Motion to Withdraw.

A. Motion to Withdraw Application

1. Presidential Circle Funeral Home, prior application (Valeria Panciera) (Hollywood)

MOTION: Ms. Huggins moved to deny the Motion to Withdraw. Ms. Thomas-Dewitt seconded the motion, which passed with 3 dissenting votes.

B. Application for Funeral Establishment License

1. Presidential Circle Funeral Home (different owner, Jonathan Shaw) (Hollywood)

DISCUSSION: Mr. Shropshire stated that the application by Mr. Shaw has to be considered or there is no reason why the deemer would not be running on this. The Division's recommendation is to deny the application because there is already a pending application at that location or allow this Applicant to waive the deemer and ask that it be tabled or to withdraw the application.

Mr. Turner stated that there is no desire on Valerie's part to continue to drag this out as she is willing to withdraw her application and let this lease be entered between Mr. Shaw and her father so that the premises do not sit idle and un-leased. That is the whole point here and to drag this out because of a legal proceeding does not really make any sense.

Mr. Shropshire questioned the Applicant would waive the deemer and agree to table this or withdraw the application. The advise to the Board would be if the Applicant does not go either of those routes would be do deny the application.

Mr. Turner requested that the Board allow him to make a couple of calls to see what other alternatives there may be.

Ms. Huggins stated it is not for Mr. Turner to decide but for Mr. Shaw to.

Mr. Turner stated that he would like to talk with Mr. Shaw to discuss other options.

Ms. Huggins questioned how Mr. Turner is related to Mr. Shaw.

Mr. Turner stated that he and Ms. Daughton are a part of the same firm and are representing Mr. Shaw.

The Chair granted Mr. Turner 10 minutes to explore other options.

XVIII. Application(s) for Removal Facility

A. Recommended for Approval (Criminal History)

1. D Removal Services LLC (Miami)

The application for a Removal Service was submitted on January 12, 2009. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on February 23, 2009. The establishment passed its inspection on February 13, 2009.

Applicant is eligible for licensure subject to consideration of the criminal record of Alvaro Tolosa Jr, one of Applicant's principals. In 1990, while living in Los Angeles, Tolosa was convicted in federal court for "misprision of felony," and sentenced to 24 months in jail. "Misprision of felony" means that he tried to help another person cover up a crime the other person committed, but that he was not himself involved in the commission of that crime. Tolosa explains that he loaned his brother his car; his brother was stopped by police, and illegal drugs were found in the car. Although the record is not entirely clear, it appears likely that Tolosa gave investigators inaccurate information in an effort to protect his brother.

The Division finds that the nature of the crime, and the length of time since it was committed, indicate that Tolosa's involvement in the business, if licensed, would not pose a significant danger to the public.

The Division recommends approval subject to 1 year probation.

MOTION: Ms. Huggins moved to approve the application with 1 year probation. Ms. Zippay seconded the motion, which passed unanimously.

XIX. Application(s) for Direct Disposal Establishment

A. Recommended for Approval

1. International Cremation Society Inc d/b/a ICS Cremation Society (Harbour Heights)

The application for a Direct Disposal Establishment was submitted on February 9, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the Applicant. All deficient items were returned on March 18, 2009. The Direct Disposer in Charge will be Ronald Nichols (F020599). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 18, 2009.

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

2. Johnson-Herring Cremation Services (Jacksonville)

The application for a Direct Disposal Establishment was submitted on December 9, 2008. The application was incomplete when submitted and a deficiency letter was sent to the Applicant. All deficient items were returned on March 9, 2009. The Direct Disposer in Charge of the establishment will be William Johnson (F049497). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on March 9, 2009.

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

3. Neptune Management Corp d/b/a Neptune Society (Palm Harbor)

The application for a Direct Disposal Establishment was submitted on January 14, 2009. The application was incomplete when submitted and a deficiency letter was sent out to the Applicant. All deficient items were returned on February 27, 2009. The Funeral Director in Charge will be Janet Bowsher (F047132). The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on February 25, 2009.

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

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

A. Neptune Management Corporation (Fort Lauderdale)

1. Financial Accommodation Addendum (NEP-FL-999-Addendum 03/18/09)

The print-ready agreement and addendum will appear on legal sized paper. Staff recommends approval Subject to the following conditions:

Department receipt within 60 days of two print-ready copies

MOTION: Mr. Helm moved to approve the addendum subject to Department receipt within 60 days of two print-ready copies. Mr. Brandenburg seconded the motion, which passed unanimously.

DISCUSSION: Mr. Knopke stated that the contract for Neptune listed the wrong address in North Palm Harbor. The application was approved to change the location to 2560 Tampa Road, but the contract lists 34042 North US 19. It may be a clerical error but should be corrected.

Ms. Wiener stated that it was a clerical error. That application was actually filed and was approved at the Teleconference meeting and then the approval was withdrawn because the Board had not received a copy of the form. The forms that will be submitted to the Division for approval will have the correct address.

B. State Park Cemetery Company, Inc d/b/a Washington Park Cemetery (Orlando)
1. Purchase Contract

Staff recommends approval Subject to the following conditions:

3. Department receipt within 60 days of two print-ready copies.

MOTION: Ms. Thomas-Dewitt moved to approve the agreement subject to Department receipt within 60 days of two print-ready copies. Ms. Zippay seconded the motion, which passed unanimously.

DISCUSSION: Ms. Lisa Lyons Coney stated the only thing to check to identify the purchase or the space indicates "space and vault." The customer cannot be required to buy a vault from a single provider. Ms. Lyons-Coney requested that the Board ensures customers are not being forced by this document to purchase space and vault from the same provider.

The Chair stated there should be a separate box.

Ms. Dudley stated that the Board could move to approve with an additional condition that they change that.

2nd MOTION: Mr. Brandenburg moved to approve with the additional condition that a separate box be added to the contract as indicated. Mr. Jones seconded the motion, which passed unanimously.

XXI. Trust Transfer Request(s)

- A. Seawinds Funeral Home I, LLC d/b/a Cox-Gifford-Seawinds Funeral Home & Crematory (Vero Beach)***
 - 1. Forethought Federal Savings Bank Florida Preneed Master Trust to Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BB&T)***

Seawinds Funeral Home I, LLC, d/b/a Cox-Gifford-Seawinds Funeral Home & Crematory, requests transfer of preneed funds held by the Forethought Federal Savings Bank Florida Preneed Master Trust to the Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BB&T).

Staff recommends approval of the above referenced request contingent upon certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Mr. Brandenburg moved to approve the request contingent upon certification of the transfers being received by the Department within 60 days. Ms. Huggins seconded the motion, which passed unanimously.

B. *Thomas Aikens, Inc., LLC d/b/a Suncoast Cremation Society (Tampa)*

1. *Thomas Aikens, Inc. 1999 Trust Agreement (U.S. Bank) to Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BB&T)*

Thomas Aikens, Inc., LLC, d/b/a Suncoast Cremation Society, was a prior preneed licensee whose license expired in 2001. The current licensee, Liberty Service Corporation of Florida, Inc., d/b/a Aikens Funeral Home was licensed in 2004 and requests transfer of preneed funds held in the Thomas Aikens, Inc. 1999 Trust Agreement held by U.S. Bank to the Funeral Services, Inc. (FSI) 1993 Master Trust Agreement (BB&T). The trust will be used only to fulfill the preneed contracts of Suncoast Cremation Society by Liberty Service Corporation of Florida, Inc. No new contracts will be written to the trust.

Staff recommends approval of the above referenced request contingent upon certification of the transfers being received by the Department within 60 days of the Board meeting date.

MOTION: Mr. Helm moved to approve the request contingent upon certification of the transfers being received by the Department within 60 days. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

XXII. Request to Extend Concurrent Internship

A. *Brahim, Khateeja*

Ms. Brahim was issued a Concurrent Intern License at the May 7, 2008 Board meeting. Per the attached letter from Ms. Brahim, she has never begun her internship due to unforeseen circumstances in her personal life. Staff is recommending approval of extending the internship license.

Mr. Brandenburg questioned whether Ms. Brahim will be interning.

Ms. Huggins responded "Bradwell Mortuary."

Mr. Brandenburg questioned whether Bradwell Mortuary is a licensed training agency.

Mr. Shropshire responded yes.

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

XXIII. Chairman's Report (Oral)

The Chair stated that he did not have a report.

XXIV. Executive Director's Report

Mr. Shropshire recognized the presence of Deputy CFO, Tammy Teston and also the Tampa and Orlando staff in attendance. Mr. Shropshire requested that Mr. Lowe, Ms. Williams and Mr. Asher come forward

as Mr. Lowe has some good news about some of the Division's outstanding staff who has won a Davis Productivity Award.

Mr. Lowe stated that he has the privilege of serving as the supervisor of the Central Florida Region. The longer that I serve as a supervisor, it becomes obvious and apparent to me the level of commitment, professionalism and dedication on the part of our field examiners who are working diligently to protect and serve the citizens of the state of Florida. Within the State of Florida there is a mechanism know as the Prudential Davis Productivity Awards, which recognizes those who have far exceeded the expectations of what their job requirements call for.

Mr. Shropshire added this is a statewide program that has been in affect for 10 or 15 years.

Mr. Lowe stated that the awards are presented annually to State employees who exceed the performance expectations in ways that improve the core State functions and saves money for the Florida taxpayer. The Division was fortunate to have 4 members of the team statewide to receive recognition for this award: Jim Deason (Tallahassee), Dianna Patterson (Ft Lauderdale), Aldon Asher and Tina Williams (Orlando).

Mr. Shropshire stated that Ms. Williams and Mr. Asher are 2 of the Division's very best field staff who know the industry inside out.

A. 2009 Proposed Meeting Schedule (July thru December)

Wednesday, July 15 th	Conference Call
Wednesday, August 5 th	Tallahassee
Wednesday, September 2 nd	Conference Call
Wednesday, October 7 th	Tallahassee
Wednesday, November 4 th	Conference Call
Wednesday, December 2 nd	Tallahassee

Mr. Brandenburg questioned whether all in person meetings are scheduled for Tallahassee.

Mr. Shropshire responded yes.

Mr. Brandenburg questioned whether there was any consideration for some place more central to include more industry and consumers in the meetings.

Mr. Shropshire responded "absolutely." It has previously been the Board's practice to rotate around the State. As a result of the current budgetary consideration that the Division is facing, an analysis was done and that proves it is cheaper to meet in Tallahassee because of the number of staff that has to travel. It is important to get out and meet where the public can come before the Board. Mr. Shropshire suggested setting the October 7th meeting for somewhere more central.

The Chair stated that he was concerned as well but looking at today's audience, being the most central place, there is such a sparse crowd.

B. Preneed License Renewal Late Fee Schedule

0-7 days.....	NONE
8 - 30 days.....	\$200

31 - 90 days\$500
91 or more days late.....\$1,000

MOTION: Mr. Brandenburg moved to approve the schedule. Ms. Thomas-Dewitt seconded the motion.

DISCUSSION: The Chair suggested changing the schedule to reflect 0-10....None and 11-30...\$200.

Mr. Brandenburg withdrew his motion.

Ms. Lyons-Coney stated that all licensees are aware when licenses are due for renewal so any grace period is generous.

2nd MOTION: Mr. Brandenburg moved to approve the amended schedule to reflect 0-10....None and 11-30...\$200. Mr. Baxley seconded the motion, which passed unanimously.

C. Report from Richard Baldwin, Examiner for Menorah Gardens, January '09 (see attachment)

The Board members received a copy of the report from Richard Baldwin for the month(s) of January '09. Mr. Baldwin continues to assist consumers.

D. Rule 69K-6.009 – ID Tags

(1) Caskets.

(a) Acceptable materials for an identification tag for a casket shall include only the following:

1. through 5. No change.

6. An electronic identification marker encased in plastic which uses a passive radio frequency signal to allow for communication between the marker and a hand held receiver, that will identify the deceased.

(b) No change.

(c) No change.

(2) Alternative Containers.

(a) Acceptable materials for an identification tag for an alternative container shall include only the following:

1. through 5. No change.

6. An electronic identification marker encased in plastic which uses a passive radio frequency signal to allow for communication between the marker and a hand held receiver, that will identify the deceased.

(b) No change.

(c) No change.

(3) Cremation Containers.

(a) Acceptable materials for an identification tag for a cremation container shall include only the following:

1. through 5. No change.

6. An electronic identification marker encased in plastic which uses a passive radio frequency signal to allow for communication between the marker and a hand held receiver, that will identify the deceased.

(b) No change.

(c) No change.

(4) Outer Burial Containers.

(a) Acceptable materials for a tag or permanent marker for outer burial containers shall include only the following:

1. through 3. No change.

4. An electronic identification marker encased in plastic which uses a passive radio frequency signal to allow for communication between the marker and a hand held receiver, that will identify the deceased.

(b) No change.

(5) Cremation Interment Containers.

(a) Acceptable materials for a tag or permanent marker for cremation interment containers shall include only the following:

1. through 3. No change.

4. An electronic identification marker encased in plastic which uses a passive radio frequency signal to allow for communication between the marker and a hand held receiver, that will identify the deceased.

(b) No change.

Specific Authority 497.103(1)(n), (5)(a), 497.171 FS. Law Implemented 497.103(1)(n), 497.171 FS. History – New 2-6-07, Amended _____.

Mr. Shropshire stated that the Division recommends that the Board approves final publication of this Rule for adoption as it is unchanged from the last time the Board saw and approved it.

MOTION: Mr. Jones moved to approve the Rule. Mr. Baxley seconded the motion, which passed unanimously.

E. Rule 69K-17.0035 – Communicable Disease Education Required for Operational Personnel

(1) All ~~unlicensed~~ operational personnel as defined in Rule 69K-15.005, F.A.C., ~~affiliated with a direct disposal establishment, cinerator facility, removal service, refrigeration facility, or centralized embalming facility, and unlicensed persons who will be involved in the removal or transportation of human remains for a funeral establishment, direct disposal establishment, or cinerator facility~~ shall ~~must~~ successfully complete one Board approved ~~approved by the Board~~ course on communicable diseases, within 10 days after the date they are employed by ~~become operational personnel~~ for any entity that is subject to licensed/registered ~~under Chapter 497, F.S.~~ Additionally, ~~all nonlicensed persons who will be involved in the removal or transportation of human remains for a funeral establishment must also successfully complete one Board approved course on communicable diseases.~~ The course shall be at least consist of two (2) hours and which may include the use of approved video-cassette courses, or other types of audio, video, Internet, or home study alternative nonclassroom courses to fulfill the continuing education requirements. ~~Each person shall complete and pass a post course test with a 75% correct score or higher, to be graded by the course provider.~~ All persons subject to this rule shall maintain a certificate of completion documentation ~~showing~~ as proof of meeting the communicable disease health and safety ~~education~~ requirement as a condition of employment with any establishment, facility or service regulated under Chapter 497, F.S.

(2) Courses approved for two (2) or more hours pursuant to paragraph 69K-17.0042(3)(c), F.A.C., can be used to fulfill the two (2) hour communicable disease educational requirement ~~are also approved for this purpose.~~ The name, address, telephone number and email address for information about approved continuing education providers that offer courses that will satisfy this communicable disease educational requirement can be found on the Department's website ([http://www.myfloridacfo.com/Funeral Cemetery](http://www.myfloridacfo.com/FuneralCemetery)).

Specific Authority 497.103(1)(s), (5)(a), 497.162 FS. Law Implemented 497.162 FS. History–New 4-10-94, Amended 9-10-96, 11-20-96, 6-24-01, Formerly 61G8-17.0035, Amended _____.

The staff of JAPC questioned the statutory authority to require persons taking the communicable disease course to take and pass a test. Department legal counsel could not find any authority and so have amended the proposed rule to strike the requirement to take and pass the test and have replaced that requirement with the provision that persons taking the course must obtain a certificate of completion from the course sponsor.

Mr. Shropshire stated that the Division recommends that the Board approves final publication of this Rule for adoption.

MOTION: Mr. Jones moved to approve the Rule. Mr. Baxley seconded the motion, which passed unanimously.

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

Ms. Dudley stated that he did not have a report.

XXVI. Administrative Report

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

XXVII. Disciplinary Report

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

*****ITEM PREVIOUSLY DISCUSSED*****

B. Application for Funeral Establishment License

1. Presidential Circle Funeral Home (different owner, Jonathan Shaw) (Hollywood)

Mr. Turner stated he may have a solution to propose based on a call just made to Ms. Panciera-Reith. Mr. Turner questioned whether there are any concerns regarding Mr. Shaw's application assuming the other problem could be resolved.

There was a negative response from the Board.

Mr. Turner stated that Ms. Panciera-Reith has authorized Mr. Turner to dismiss the appeal, which would then clear the way for this application, although she is not very happy with it.

Mr. Shropshire questioned whether that would be on behalf of the Applicant, Presidential Circle Funeral Home.

Mr. Turner responded yes. Mr. Shaw has applied since he has purchased the corporation.

Mr. Shropshire questioned whether Ms. Panciera-Reith has authorized Mr. Turner as counsel for her to make this representation.

Mr. Turner yes and added that he would sign a dismissal of the 120 appeal so that there is no matter before this Board.

Ms. Wiener stated that would satisfy her concern that the denial continue to have an effect. The primary concern was that the new ownership by Mr. Shaw was not a mechanism for Valerie, her husband or her father to control the business in some way.

Ms. Corinne Olvey stated if the denial was in the name of Presidential and it becomes final, Mr. Shaw's corporation would have a denial as it is the same legal entity. So the funeral home would have a denial on its record.

Mr. Turner stated the Applicant only wants to be able to the name. If the corporation needs to be renamed that could be done.

Mr. Shropshire stated the Board understands the facts and could consider and approve the pending application, but the Applicant would henceforth have to disclose previous discipline because the Applicant is the same corporation.

Mr. Helm stated that the corporate name has the denial.

Ms. Daughton stated it may be in Mr. Shaw's best interest to modify or change the name. Ms. Daughton requested consulting with Mr. Shaw for 2 minutes to determine whether he would agree to waive the deemer to resolve the procedural issues. Ms. Daughton asked that the Department not send the petition to DOAH so its basically staying there.

Mr. Shropshire questioned which petition Ms. Daughton was referring to.

Mr. Turner stated if the solution that was just proposed does not work because of the compounding of the name, Mr. Turner requested that the Board hold and wait until the next meeting to get the whole thing wrapped up.

Mr. Shropshire questioned whether Mr. Turner was referring to the petition under Valerie Reith.

Mr. Turner responded yes.

Mr. Shropshire stated Mr. Turner has committed to this on the record.

Mr. Turner stated that he would like to submit the paperwork with Ms. Panciera-Reith's signature so that it is wrapped up.

Mr. Shropshire stated there was nothing conditional about that withdrawal.

Mr. Turner stated that it was understood that it would clear the way for this application.

Mr. Shropshire stated that it has.

Mr. Helm stated if Mr. Shaw takes the corporation, he would have a denial on his record.

Mr. Turner questioned whether the Applicant should organize a new corporation with the same name without Inc.

Mr. Shropshire added that although the Board will not be waiting on any paperwork as it is of record in this proceeding that the Election of Rights in the 120 proceedings has been withdrawn, Mr. Turner is advised to provide a letter on behalf of Ms. Panciera-Reith.

Mr. Turner questioned what the Division would request he do in regards to Mr. Shaw's application.

Mr. Shropshire stated that the Division's recommendation to the Board would be to table the application to allow Mr. Shaw to form another LLC or corporation, if the deemer is waived on the record today. The application would then be amended to that name and come back to the Board at the next meeting.

Mr. Turner questioned whether the next meeting would be within the 90 day period.

Mr. Shaw stated he would be happy to change the name.

Mr. Shropshire stated that the deemer appears to be August 1, 2009.

Mr. Turner stated that the corporation would be changed and presented for the next Board meeting.

Mr. Helm questioned whether Mr. Shaw understands the decision.

Mr. Shaw responded yes.

Mr. Turner stated a new corporation would be organized. Mr. Turner questioned whether the application could be approved with the condition of the new application.

Ms. Wiener stated given the fact there is a valid denial the Board would want see the new corporate entity or the new legal entity before it granted that approval.

Ms. Dudley recommended that the Board table the item.

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

DISCUSSION: Mr. Turner questioned the date of the next meeting.

The Chair stated there is a conference call in May.

Mr. Turner questioned whether this item would be a proper Agenda item.

Mr. Shropshire stated he believes it would be.

XXVIII. Adjournment

At 12:55 p.m., the meeting was adjourned.