

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
August 2, 2012 - 10:00 A.M.
Doubletree by Hilton Tampa Airport-Westshore
4500 W Cypress Street
Tampa FL 33607

1. Call to Order, Preliminary Remarks and Roll Call

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

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

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is August 2, 2012; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Weekly. An agenda for this meeting has been made available to interested persons. The meeting is occurring at the Doubletree by Hilton Tampa Airport-Westshore in Tampa, FL. My Assistant, Ms LaTonya Bryant, is recording the meeting and will be preparing minutes of the meeting.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. Participants are requested to keep in mind the necessary protocol that only one person may speak at a time.

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

PRESENT (via phone):

Joseph "Jody" Brandenburg, Chairman
Gail Thomas-DeWitt, Vice-Chairman
Jean Anderson
Andrew Clark
Lewis "Lew" Hall
Powell Helm
Nancy Hubbell
Ken Jones
Richard "Dick" Mueller
Col. Don Stiegman

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

Also noted as present:

Clark Jennings, Board Legal Advisor
Anthony Miller, Assistant Director
LaTonya Bryant-Parker, Department Staff
Linje Rivers, Department Counsel
Mary K Surles, Department Counsel
Jasmin Richardson, Department Staff

Mr. Shropshire stated that some Division Staff were present from the Orlando and Tampa Offices. Mr. Shropshire recognized Mr. Thurman Lowe, Director of Field Staff Statewide, and requested that he introduce his Staff.

Mr. Thurman Lowe stated that he has the privilege of serving with an amazing, dedicated group of professionals. Many of you have had an opportunity to meet them before, but just in case you have not, I appreciate the opportunity to introduce them: Mr. Kurt Schuller operates out of our Tampa office; Ms. Jessica "Suzie" Helms who also operates out of our Tampa office; Mr. Chris McMurray operates out of the Tampa office as well, but was unable to attend as he was ill; Ms. Tina Williams is out of the Orlando office and has been with the Division for quite a while covering the Central Florida Region; and the newest member of our field staff team, Ms. Miriam Del Valle, who is joining the Orlando office. We have high expectations and great confidence that Ms. Del Valle will be a positive contribution to our team. Thank you for the opportunity.

The Chair thanked Staff for the outstanding work being done.

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

2. Action on the Minutes

A. June 28, 2012

B. July 12, 2012

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on June 28, 2012 and July 12, 2012.

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

3. Old Business

A. Application for Renewal of Preneed Main License

(1) Recommended for Approval without Conditions

(a) Craig Flagler LLC (Flagler Beach) (F019176)

Applicant's preneed license renewal application was presented at the June 28, 2012 Board meeting and was recommended for denial due to Applicant demonstrating a lack of net worth in the amount of \$ (48,071), thereby failing to meet the minimum required net worth for renewal of \$40,000, pursuant to s. 497.453(2)(b) and (5), F.S. and 69K-5.0016, F.A.C.

The Licensee has requested a hearing of this matter for reconsideration of its application for renewal of its preneed license at this Board meeting.

The Licensee has further provided an explanation regarding its failure to demonstrate that it meets the net worth requirement due to errors on the original financial statements that were provided to the Division on April 4, 2012 (please see attached letter dated July 20, 2012).

The Licensee has provided revised financial statements for the December 31, 2011 calendar year end, and reports a net worth of \$92,846, thereby demonstrating that it currently exceeds the net worth requirement of \$40,000.

The Division is recommending approval of the application for renewal without conditions based upon the Licensee demonstrating that it has met the net worth requirement for renewal of its preneed license.

The Chair questioned whether Ms. Nancy Hubbell was able to review the revised financial statements and whether she was comfortable with them.

Ms. Hubbell responded affirmatively.

Col. Don Stiegman questioned whether Ms. Hubbell had a chance to see the new financials, whether she compared them to the old ones and whether the corrections make sense.

Ms. Hubbell answered, "Yes."

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

(2) Recommended for Approval with Conditions
(a) Boynton Memorial Chapel Ltd (Boynton Beach) (F019300)

Applicant's preneed license renewal application was tabled at the June 28, 2012 Board meeting due to Applicant demonstrating a net worth of negative \$(1,325,425), thereby failing to meet the minimum required net worth for renewal of \$100,000, pursuant to s. 497.453(2)(b) and (5), F.S. and 69K-5.0016, F.A.C.

The Board moved to defer the application to the August meeting contingent upon the following:

- 1) That Licensee provides a personal guarantee of Licensee's preneed obligations, fully executed by the Licensee's principals.
- 2) That Licensee provide a statement of personal assets and liabilities, compiled and reviewed by a CPA, prepared and presented in conformity with GAAP (Generally Accepted Accounting Principles).

Licensee has provided the requested materials. The Division is recommending approval of the license subject to the condition that the Board accept the executed personal guarantee of Licensee's preneed obligations and that Licensee agrees to trust 100% or to sell insurance-funded preneed contracts.

Mr. Helm questioned whether those were the only two items requested by the Board.

Mr. Shropshire responded yes.

Mr. John Rudolph, representing Boynton Memorial Chapel, stated that the two elements were the personal guarantee and the financial statements. There was a question raised by Ms. Hubbell concerning what did not appear to be 100% trusting. I have confirmed with the Licensee and with their accountant that it was. They show the total liability of the preneed contract and then the asset was the amounts received today, 100% of the funds paid.

Mr. Lew Hall questioned whether the financials appear to have been prepared by a CPA or something done by the establishment.

Mr. Rudolph stated in years past personal financial statements have been in the same format as this and I ask why personal financials have to be compiled and prepared by a CPA. The Licensee is stating what his net worth is which is well over \$1 million and this is something that the Board has accepted every year.

Mr. Hall questioned whether Mr. Rudolph addressed that concern when it requested as a stipulation.

Mr. Rudolph stated that he contacted Mr. Shropshire and was advised that it was the same thing that was prepared before. I do not know whether his CPA reviewed it but I can talk to the Licensee to see whether the CPA reviewed it and agreed to it.

Mr. Shropshire stated that the reality is if all we ask for is compiled statements, the CPA provides no significant additional protection because they expressly state that they do not take any responsibility for the numbers. They put them in a nicer format but they take no responsibility for the numbers. So, compiling is of little practical significance.

MOTION: Mr. Helm moved to approve the application subject to the condition that the Board accepts the executed personal guarantee of Licensee's preneed obligations and that Licensee agrees to trust 100% or to sell insurance-funded preneed contracts. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. Second Motion for Reconsideration of Denial of License
(1) Recommended for Approval with Conditions
(a) Application(s) for Preneed Main License
1. Gendron Funeral & Cremation Services, Inc (Ft Myers)

This matter comes before the Board upon the request of the Applicant herein, through its Attorney Wendy Wiener, for reconsideration of the Board's denial of Applicant's application for a preneed main license. As the Division understands the request, Mr. Gendron seeks to address the Board in person and because the Board meeting will be in Tampa, he will be able to attend the meeting. He has not previously addressed the Board in person regarding this application.

The Division's understanding is that the Applicant desires to request the Board to accept the proposed Stipulation for Licensure that the Board rejected at the April 2012 Board meeting. This matter has been before the Board twice: the October 6, 2011 and the April 5, 2012 Board meetings. The Division attaches hereto all the materials presented to the Board at those Board meetings. With the concurrence of Applicant's attorney, Ms. Wiener, no Order of Denial has yet been issued concerning the Board's prior denials of the application.

Subsequent to the October 6, 2011 Board meeting, the Division and the Applicant negotiated the attached proposed Stipulation for Licensure, dated March 19, 2012, which, among other things, requires Applicant, once licensed, to have conducted, at Applicant's expense, annual CPA audits of the preneed operation, for the first two (2) years of Applicant's existence as a preneed Licensee, with the audit reports to be submitted to the Division. In addition, the Stipulation for Licensure would require Applicant to use 100% trusting or insurance funding for all preneed sales, for at least five (5) years, after which period Applicant may petition the Board to lift the restriction.

The Division has not received any consumer complaints against Gendron Funeral & Cremation Services, Inc. since the entity was licensed under current ownership. The Division recommended at the April 2012 Board meeting that the Board approve the Motion for Reconsideration; however, the Board denied the Motion to Reconsider. Minutes of the April 2012 and the October 2011 Board meeting are attached.

The Division recommends that the Board grant the request to reconsider its prior denial and approve the application subject to the conditions as set forth in the attached Stipulation for Licensure dated March 19, 2012. However, if the Board remains of the opinion that the license applied for should not be granted, the Division recommends that the Board clarify the basis for its denial of the application. The Division understands the basis for the denial of the application herein to be as follows:

BASIS FOR DENIAL: The basis for this Board's denial of the application herein is the involvement of Michael Gendron as a principal in the Applicant, and the revocation of Michael Gendron's professional licensure in Vermont by Order of the Vermont Board of Funeral Services, said Order being dated December 5, 2000. Pursuant to s. 497.453(2)(f), F.S., it is a condition of granting the license that the Board find that "The Applicant and the Applicant's principals are of good character and have no demonstrated history of lack of trustworthiness or integrity in business or professional matters." The said revocation of Michael Gendron's professional licensure in Vermont leads the Board to find that said criteria is not met so that the license applied for cannot be granted.

Ms. Wendy Wiener, representing Mr. Gendron and Gendron Funeral & Cremation, stated that it has been her position throughout that there is not a valid legal basis to deny Mr. Gendron's preneed license. As Board counsel would agree, the Stipulation entered into in a prior application proceeding cannot be the basis for the denial in this case. In addition, Mr. Gendron has a 15 year history of regulatory compliance in the State of Florida, not only as a funeral director & embalmer but was also approved by this Board not once but twice in the last several years being found as trustworthy to own and operate funeral establishments where there are already preneed books of business. There is not a valid basis to continue to uphold the denial and we would request that the Board considers reconsidering the denial that was issued sometime back and instead impose on Mr. Gendron and his business the Stipulation which Mr. Shropshire and I negotiated and we all agree that it is sufficient for any protections for the preneed buying public of which we would allege that Mr. Gendron and his business pose no threat particularly given that his license has not been disciplined, there have been no consumer complaints against it and it remains in good standing today having been found trustworthy. Mr. Gendron is present to answer any questions the Board might have.

The Chair requested that Mr. Gendron be sworn in prior to responding to any questions.

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

Mr. Michael Paul Gendron responded, "Yes."

Mr. Hall stated that the contention has always been that there have not been any problems while Mr. Gendron has been in Florida but while working for other companies these issues did not come up. When it was under Mr. Gendron's watch, whether it was Mr. Gendron's license involved or his father's license, these issues came up. Mr. Hall questioned why Mr. Gendron is requesting that the Board change the Stipulation which included a date of 2014.

Ms. Wiener stated that the Stipulation language that has been used during the Board meeting is a little bit misleading. The Stipulation was only with regard to preneed activities at that funeral establishment, which is why it cannot even be considered by the Division at this point in time with regard to the other application. It is simply not a valid basis to consider in terms of the license denial. The issue before the Board as Mr. Shropshire points out in the Board packet is the trustworthiness of the Applicant and this Applicant has been found trustworthy to operate funeral establishments in the State of Florida twice in the last two (2) or three (3) years.

Mr. Shropshire stated that the Division's understanding of the reason the Board denied the application for preneed main license was that Mr. Gendron was revoked in Vermont by Vermont authorities and that he is a principal of the Applicant and that the Applicant cannot therefore be found trustworthy. That is the Division's reason of why the Board denied the application and the matter is a side matter and is not the basis. Mr. Shropshire urged the Board to focus on, if it is inclined to not reconsider this matter, is to clarify the basis of the denial. Mr. Shropshire added that he believes that the basis is, as stated by the Board previously, that Mr. Gendron's funeral directors license was revoked by Vermont authorities.

Mr. Gendron stated that he has already paid for that and is not sure whether everyone under stands what Double Jeopardy is.

Mr. Shropshire stated that Mr. Gendron should ask the Chair for permission to speak. Mr. Shropshire questioned whether this would be a two-part process or at least the initial matter before the Board is whether it wants to reconsider the previous denial.

Mr. Clark Jennings concurred.

The Chair stated he would entertain a motion to reconsider if that is the wishes of the Board.

Mr. Shropshire questioned whether there would need to be a motion to allow Mr. Gendron to respond to Mr. Hall's comments or could that be allowed without a motion on the floor.

Mr. Jennings stated there should be a motion on the floor before any further discussion was engaged in, so the Board understands, a simple motion to reconsider. You may disagree with that motion, but once there is a motion on the table, then discussion may be had. The first issue is whether someone is willing to make a motion to reconsider. If that motion is made and seconded then there can be discussion to whether or not you even want to vote on reconsideration. If the Board decides to reconsider, then the next issue is going to be how you resolve this issue; grant the license or deny it again, but you need the reconsideration motion addressed initially.

MOTION: Mr. Hall moved to grant the request to reconsider its prior denial. Col. Stiegman seconded the motion, which passed unanimously.

Ms. Wiener questioned whether Mr. Hall wanted Mr. Gendron to discuss the circumstances of the revocation in Vermont.

Mr. Hall stated that the Board keeps addressing the fact that the Division does not show any issues here. When Mr. Gendron was with other companies and supervised by someone else there were no issues, but when it came down to Mr. Gendron's company where he was making the calls along with his father, that is when these issues came up. Mr. Hall questioned what would happen differently to ensure that the public is not at risk.

Mr. Gendron stated the difference being is that he never owned the former company where the problem happened in Vermont as that was solely my father. Furthermore, I have talked about my father numerous times and this application has absolutely nothing to do with him, quite honestly, so why we are coming back to my father I still have no idea why we are discussing this in regards to him. When the issue in Vermont occurred, I was running around a football field. I was actually in high school and was not working permanently at the firm when it all happened. The reason for the revocation is that the license

was revoked by default because I did not show up at a Board meeting in Vermont for that matter back in 2000, which I have supplied to the Board and Division numerous times over the last three (3) years. I did not put any consumer at risk nor did I hurt anyone. I have never had a consumer complaint. In excess of 10,000 families have actually considered me trustworthy to handle their loved ones over my funeral directing tenure. Furthermore, last year, the Board approved the movement of about a quarter of a million dollars in preneed trust funds into my care and now today the Board may not grant me a license to sell preneed. I am finding this whole thing very hard to believe.

Mr. Hall questioned whether Vermont has FDICs or what the format is there.

Mr. Gendron responded it is not like Florida.

Mr. Hall stated that the material presented indicates Mr. Gendron was supervising his father who had signed application ahead of time for preneed. There were issues where Mr. Gendron's father was representing himself as funeral director under Mr. Gendron's supervision. Mr. Hall stated that he needs some assurance that those type things will not happen here in Florida because Mr. Gendron is the FDIC.

Mr. Gendron stated that the Board has given him that privilege and honor to be the man of two locations serving 400 families a year.

Ms. Wiener stated that the terms of the Stipulation are relatively astringent: it extends over a period of five (5); there is very limited capacity for the preneed sales; it is either 100% trusting or all insurance funded. Mr. Shropshire proposed to Mr. Gendron that he have twice a year reviews by a CPA to ensure that every penny that comes in on preneed is going exactly where it is supposed to go. Mr. Gendron has said publicly and to me and I have conveyed to some of you that he is willing to live by whatever conditions the Board cares to put on him because he has no intention of breaking the law, is not breaking the law in Florida and has not broken the law with regards to the preneed contracts over which he has trust funds and fulfills on a regular basis. The Stipulation gives the Board fairly wide latitude to make sure that there is no harm to the preneed buying public. Mr. Gendron's point is that he and his business have been found to be trustworthy not only with regard to the operation of the funeral establishment but also there was a book of preneed that came with the acquisition of that business for which Mr. Gendron is responsible.

MOTION: The Chair moved to approve the application subject to the conditions as set forth in the Stipulation for Licensure dated March 19, 2012. Col. Stiegman seconded the motion, which passed unanimously.

C. Request(s) for Waiver of Late Fee
(1) Recommended for Denial
(a) Serenity Gardens Cemetery, Inc. of Santa Rosa (Milton) (F039549)

This matter is before the Board on the Licensee's request for waiver of late fees. Licensee's cemetery renewal fees were due at the FCCS Division office not later than December 31, 2011, but was in fact was received on March 28, 2012. Pursuant to section 497.265(2), late fees are assessable in the aggregate amount of \$600.

Licensee submits a written explanation of the cause of the late filing, as attached. In summary, there was a shift of duties from the former secretary treasurer of the cemetery, Ms. Katie Lou Culpepper, to Mr. Dana J. Stone, who manages the cemetery, and has currently assumed the duties formerly performed by Ms. Culpepper. Mr. Stone further indicates that the cemetery renewal was never received due to experiencing previous problems of receiving correspondence at the cemetery's P.O. Box, and is currently making a transition to move all cemetery mail from the former P.O. Box 248, Milton, FL address to the physical cemetery address at 6208 Stewart St, Milton, FL. Therefore, the renewal fees were not filed by the deadline. Licensee has notified the Division of this change of address and the change has been made to the Division's records.

It should be noted that Licensee's cemetery renewal fees were filed timely in the previous years, 2010 and 2011, and there have been no other noted problems.

Deny Licensee's request for waiver of a late penalty in the amount of \$600 for the 2012 cemetery license renewal.

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

MOTION: Mr. Dick Mueller moved to deny the request. Mr. Clark seconded the motion, which passed with one (1) dissenting vote.

4. Disciplinary Proceeding(s)

A. Proposed Global Settlement Stipulation

- (1) *Edgley, John S: Case No. 119604-11-FC, Division #1-694824407 (F042261) (Probable Cause Panel A)*
- (2) *Edgley Crematory Inc. d/b/a Edgley Cremation Services: Case No. 119606-11-FC, Division #1-694824407 (F052579) (Probable Cause Panel A)*
- (3) *Edgley, John S: Case No. 117342-11-FC, Division #1-680620547 (F042261) (Probable Cause Panel B)*
- (4) *Palm Beach Removals, Inc: Case No. 117345-11-FC, Division #1-680620547 (F052580) (Probable Cause Panel B)*

Mr. Linje Rivers stated this is a global Settlement in reference to four (4) individual administrative complaints that were filed against John Edgley, Palm Beach Removals and Edgley Cremation Services.

The Respondents are currently licensed as a funeral director and embalmer, director disposer establishment and a centralized embalming facility, respectively. The Division alleges that the Licensees conducted business and advertised to conduct business outside the scope of their licensure. The Division also alleges that Respondents purchased numerous domain names representing funeral industry competitors within the same locale and area and activated those website domain names in order to divert potential consumers to its website (www.edgleycremationservices.com).

The Department as well as the Respondents has agreed to a Settlement Stipulation where the Respondents have agreed to pay a \$4,000 fine to settle all the outstanding administrative complaints. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the Settlement and issue the Consent Order to conclude this matter.

Mr. Rudolph, representing Mr. Edgley, stated that he and the Respondent were present should the Board have any questions.

The Chair questioned whether the Board had any questions.

Ms. Thomas-Dewitt stated she had questions for Mr. Edgley.

Mr. Rudolph questioned whether Ms. Thomas-Dewitt would like to ask the questions through him.

Ms. Thomas-Dewitt responded that she would rather Mr. Edgley answer the questions.

Mr. Jennings stated if Mr. Edgley does not wish to speak he does not have to but requested that Mr. Shropshire swear him in.

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

Mr. John Edgley responded, "Yes."

Mr. Jennings stated that Mr. Edgley is represented by counsel so he has every right to have all questions answered through his attorney. Mr. Edgley does not need to answer them directly if he does not wish to do so.

Ms. Thomas-Dewitt stated she is concerned with Mr. Edgley's lack of understanding of Chapter 497, which is implied in his response that he did nothing wrong. Mr. Edgley did not think it was fraudulent to redirect the websites.

Mr. Rudolph stated it was filed against Edgley Cremation Services and we denied it because it was John Edgley who bought the domain names. It was an available website name. In speaking with Mr. Rivers, the issue was where in ch. 497 are domain names referenced. There is a reference to deceptive advertising. The deceptive advertising claim fails because if you Google that name, Taylor & Modeen, and clicked on it, it would not say Taylor & Modeen Funeral Home, it would say Edgley

Cremation Services. Edgley was only selling cremations. Mr. Edgley did not understand that there may be some rights in the name owned by the funeral home. With rights in the name, you can stop people from using that name and they can come in with a civil matter and claim that you are taking away their business. Mr. Rudolph questioned the statute that explains what Mr. Edgley did was wrong. We are settling this case. We could take this to hearing. This is the first time Mr. Edgley has been disciplined by this Board or any other Board. Mr. Edgley's hands have been slapped, he has stopped doing this. Mr. Edgley had a misunderstanding about what he could do on removals for out of state removals. Mr. Edgley was making arrangements with the consumer here when it should have been directly with the funeral director in the foreign state, which the statute states arrangements must be made through a licensed funeral director. That is not limited to the State of Florida so Mr. Edgley stopped that. The intent all along was to facilitate these removals out of State.

Mr. Hall questioned what was the purpose of buying the domain names if the intent was not to deceive or defraud.

Mr. Edgley responded that the purpose was to get more traffic to his website. Mr. Edgley stated that he never advertised in anyone else's website address.

Mr. Hall stated that he could understand Mr. Edgley wanting to generate more email traffic to his site, but not by using someone else's domain name.

Mr. Rudolph stated that the domain names that were used were available for purchase. Mr. Edgley did not steal someone's domain name; he purchased them online and that is what Mr. Edgley was using. Mr. Edgley owned those domain names.

Mr. Shropshire stated that the Division believes that the administrative charges were legally merited but we do recommend the Settlement because we believe we are in an area where the law is not as clear as we would like it.

Mr. Shropshire questioned whether the prior holders of the domain names let them expire and they became available for purchase.

Ms. Wiener and Mr. Rudolph responded, "No."

Mr. Shropshire questioned how the domain names became available.

Mr. Rivers stated that the domain names had never been issued prior to Mr. Edgley purchasing them.

Mr. Shropshire stated if the hit from these domain names went to Mr. Edgley's website and he posed as whoever's name he was using that would clearly be fraud, but we are in this grey area where we have to question whether this is fraud or aggressive hard marketing because when the traffic reached his site, Mr. Edgley did not pose as anybody other than who he was. The Division is recommending the Settlement because we believe the charges are merited ultimately but it is not crystal clear who would prevail.

Mr. Rudolph stated that the \$4000 Settlement of the four (4) cases should send a message to everybody out there not to do this, period, but you need to go back to your Rules and the Legislature to clarify more clearly about using domain names.

Ms. Thomas-Dewitt questioned Mr. Edgley's intent when he initially purchased the domain names.

Mr. Rudolph responded that the intent was to aggressively market Mr. Edgley's name, not to take away business from a funeral home. Mr. Edgley does cremation services and there is no proof that there was any business taken away from them.

Ms. Thomas-Dewitt stated there is a very thin line. Ms. Thomas stated she would be inclined to accept the Settlement with the amendment that Mr. Edgley be required to take a class in Ethics. Mr. Edgley really needs to review ch. 497 Law again.

MOTION: Ms. Thomas-Dewitt moved to reject the Settlement Stipulation as recommended by the Department and counter offer of \$4000 plus class in Ethics.

Mr. Jennings questioned whether this is a total fine of \$4000.

Ms. Thomas-Dewitt stated it would be \$4000 for each of the four (4) cases, which will be addressed separately.

Mr. Rudolph disagreed. This is a global fine.

Mr. Jennings stated that the original proposal, not what the motion is right now, is \$4000 total to settle all four (4) of the cases.

Mr. Rivers concurred.

Mr. Jennings questioned whether the four (4) cases all revolve around domain names.

Mr. Rivers stated that two (2) of the cases, Edgley Cremation Services and one of the John Edgley files, deal with the domain names. The other cases deal with shipping and ship outs that were advertised in a trade magazine that were beyond the scope of his licensure.

Ms. Thomas-Dewitt stated since the cases were grouped together, Mr. Edgley would need to revisit the Law.

Mr. Jones stated it is not against the law to buy domain names. It is how you use them because I can buy any domain name that is open for any funeral establishment and I can sell it back to that funeral establishment at any cost I choose to. Buying the domain name is not the issue but the intent or use of it is.

Mr. Jennings concurred.

Mr. Mueller stated that the domain name was redirected to Mr. Edgley's website, and there was no indication that Mr. Edgley was trying to sell the domain name. It appears that the intent was to confuse and defraud customers by taking them from a site they thought they were visiting to a different place on the web.

Mr. Rudolph questioned whether there is proof in the record that this occurred.

Mr. Mueller responded that it appeared that Mr. Edgley stated that is what happened.

Mr. Rudolph disagreed. Mr. Rudolph questioned where in ch. 497 is what Mr. Mueller stated found, regarding the use of a website; acquiring a website legally and then when you use that website, activate that website all you do is put your information on the site.

Mr. Mueller stated that it appears clear that the intent was to gain business by using someone else's name. Regarding ch. 497, by holding a license Mr. Edgley is supposed to act in an ethical manner. A reasonable person would not think it was ethical to do what Mr. Edgley did.

Col. Stiegman questioned whether the other participants at the podium had another side to the story.

Ms. Anderson questioned whether Ms. Wiener's issue had anything to do with the issue at hand and requested more information.

Ms. Weiner stated that she represents two (2) businesses and also present was Chris Harris who represents Taylor & Modeen. Ms. Weiner, representing North Star Memorial Group and All County Cremations, both of whom had business names of theirs registered as domain names by Mr. Edgley, which when you clicked on those names were redirected to Mr. Edgley's website. Mr. Harris and I, on behalf of our clients, object strenuously to a \$1000 fine per Licensee, where this Licensee acquired in excess of ten (10) domain names. Mr. Harris' client had six (6) iterations of its name acquired by Mr. Edgley and the traffic on that was redirected. The disciplinary guidelines set a minimum fine of \$1000 to \$2500 per offense for the laws that were violated in this case, which have to do with fraud, deceit and misleading statements. It is clear that in this case there were certainly misleading statements made by Mr. Edgley. We believe that a \$1000 fine per Administrative Complaint is willfully inadequate and would urge that the Board reject the Stipulation. Ms. Wiener deferred to Mr. Harris who would like to address the Board as his client was the original complainant regarding the domain names.

The Chair questioned whether Ms. Wiener's statement answered Ms. Anderson's question.

Ms. Anderson responded, "Yes."

Mr. Christopher Harris, representing Taylor & Modeen, stated that the original complainant originally filed back in November 2010 after discovering the practices engaged by Mr. Edgley and Edgley Cremation Services. Actually, there were seven (7) domain names registered to Mr. Edgley in different variations of my client's trade name. My client came to my law firm and was very upset by this. We conducted a "Who Is" search through a company called Domain Tools. This shows the history of every single website that is on the internet, including every owner, every transaction in an archive. We went back and discovered that in all seven (7) cases Mr. Edgley was the initial registrant of all seven (7) of the Taylor & Modeen websites. Then we also discovered Mr. Edgley was not just doing this with our client but also with other local competitors. Mr. Edgley purchased a PalmBeachMemorialPark.com and AllCountyFuneralHome.com. After filing the complaint, we received information from a Mr. Ernest Gagnon who is the funeral director and owner of Northwood Funeral Home. Mr. Gagnon, in a sworn affidavit filed in support of our complaint, stated that Mr. Edgley had done the exact same thing with NorthwoodFuneralHome.com. This has occurred now with four (4) different funeral homes at least. There are many different variations of websites that Mr. Edgley has purchased and there may be other infringing websites through the discovery of the purchase history of Mr. Edgley. This issue is not just an isolated incident and as you saw in Mr. Edgley's response to Mr. Ditolla where he tried to accuse my client of making this a personal matter, but this is clearly not a personal matter because this is seemingly a common practice of intending to deceive and misappropriate basically the trade names of various local competitors.

Col. Stiegman questioned whether any of these transactions resulted in Mr. Edgley getting any business or taking any money away from the other businesses.

Mr. Harris stated he does not know that for a fact but it was the intent that is there to deceive the public in general. In today's day and age, this would almost be the equivalent of a local businessman owning a billboard or having a billboard on a very highly trafficked interstate highway. At night, a local competitor comes up to the billboard and paints over the number and puts his own number. In both cases, the perspective client is clearly attempting to contact the person on the billboard or if they are typing the actual name of my client's trade name.

Mr. Rudolph objected to the speculation being promoted on something that is not related to ch. 497.

Col. Stiegman stated so there is no evidence that money taking from someone else's pocket and put into Mr. Edgley's pocket because he was using the domain name.

The Chair stated there has been no evidence to indicate that.

Mr. Jones questioned whether Mr. Edgley still owns the domain names.

Mr. Rudolph stated that Mr. Edgley does not own the domain names.

Mr. Jones questioned what Mr. Edgley did with the domain names.

Mr. Rudolph stated that the names were released.

Mr. Jones questioned whether the names are now available for the companies to purchase if they wish as Mr. Edgley has relinquished ownership of them.

Mr. Rudolph concurred.

Mr. Rivers stated the domain names expired and another company purchased them all.

Mr. Jones questioned whether Mr. Harris' client now owns their domain name.

Mr. Harris responded that they do not.

Ms. Wiener stated that the trick was it was iteration of the trade names.

Mr. Hall stated there is no determination of call volume that may have gone to other firms but the clients did incur costs in defending.

Mr. Harris concurred.

Ms. Wiener stated that they were forced in a couple of cases to actually file lawsuits in federal court.

Mr. Clark stated that the motion on the table was for the \$4000 fine, but there was some confusion that the fine was for all of the cases or individually and two (2) of the cases have nothing to do with domain names. Mr. Clark questioned whether the motion encompasses all of cases.

The Chair stated that is what the Settlement Stipulation indicates.

Ms. Thomas-Dewitt questioned whether the four (4) individual cases are grouped into one Settlement Stipulation.

The Chair stated that is the way the Stipulation reads.

MOTION (Amended): Ms. Thomas-Dewitt moved to reject the Settlement Stipulation as recommended by the Department and counter offer of \$12,000 plus an Ethics course and Law & Rules exam. Col. Stiegman seconded the motion, which passed with three (3) dissenting votes.

Mr. Mueller stated he would like to withdraw and apologize for his comments accusing Mr. Edgley of intending to defraud. Mr. Mueller added that he stands by his comment that there was intent to deceive.

Mr. Rudolph stated they would consider the offer and give the response to the Division.

The Chair requested if Mr. Rudolph reaches a decision prior to the end of the meeting that he bring it back before the Board.

Mr. Rudolph concurred.

5. Application(s) for Preneed Main License

A. Recommended for Approval *without* Conditions

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

The Faupel Group, LLC d/b/a Morgan Funeral Home and Cremation Services through its principal, Theodore Kaduk, applies herein for a preneed main license.

The Department received the application on June 25, 2012 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on June 28, 2012 and all deficiencies were resolved as of July 18, 2012. A completed background check of all officers revealed no criminal history.

This application is being filed as a result of a change of ownership of the qualifying funeral establishment for Morgan Funeral Home and Cremation Services (License# F055785), which was approved at the September 2011 Board meeting, subject to receipt of the proof of closing documents. Applicant provided the closing documents to the Division as of November 15, 2011. Applicant also provided a notarized statement to honor all pre-existing preneed contracts previously written under the former preneed Licensee, The Faupel Group, LLC d/b/a Morgan Funeral Home and Cremation Services (License# F055785). Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement. The qualifying funeral establishment license was issued on November 16, 2011. If approved, Applicant will continue to operate under the same name.

The Applicant's financial statements as of December 31, 2011 reflect the following:

Acquired Preneed Contracts	= \$	891,466
Required Net Worth	= \$	100,000
Reported Net Worth	= \$	143,785

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

6. Application(s) for Preneed Sales Agent
A. Informational Item (Licenses Issued without Conditions) – Addendum A

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

7. Application(s) for Continuing Education Course Approval
A. Recommended for Approval without Conditions – Addendum B
(1) International Order of the Golden Rule (Provider #2201)
(2) ISMPI, Inc. (Provider #16808)

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

MOTION: Mr. Jones moved to approve the application(s). Mr. Clark seconded the motion, which passed with one (1) dissenting vote.

8. Application(s) for Florida Law and Rules Examination
A. Recommended for Approval without Conditions – Addendum C
(1) Funeral Director and Embalmer – by Endorsement
(a) Cuddy, Richard J
(b) Garcia, Scottie
(c) Parrish, Mark L
(2) Funeral Director and Embalmer – by Internship and Exam
(a) Hinds, Michelle A
(b) Johnson, Andrew J

The Division recommends approval of the application(s).

Mr. Clark disclosed his affiliation with Mr. Mark L Parrish and stated it would not affect his ability to remain fair and impartial on the matter.

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

9. Application(s) for Internship
A. Recommended for Approval without Conditions – Addendum D
(1) Funeral Director and Embalmer
(a) St Gerard, Claude

The Division recommends approval of the application(s).

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

B. Recommended for Approval without Conditions (Criminal History)
(1) Funeral Director and Embalmer
(a) Wade, Gordon E

The Applicant submitted an application to become a Concurrent Intern on June 6, 2012. The application was incomplete when submitted. All deficient items were returned on June 18, 2012. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- In 2007 Applicant pled guilty in Alabama state court, to a charge of carrying a weapon without a permit. He was pulled over for a traffic infraction and had a pistol in the glove box of the car. He was fined \$150.

Mr. Wade was approved for an Embalmer Apprentice License at the February 9, 2012 Board meeting. The Division is recommending approval without conditions.

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

- 10. Application(s) for Embalmer Apprenticeship**
A. Recommended for Approval without Conditions – Addendum E
(1) Blanks, Suzanne M

The Division recommends approval of the application(s).

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

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

- 11. Application(s) for Registration as a Training Agency**
A. Recommended for Approval without Conditions – Addendum F
(1) Funeral Directing
(a) Garden Sanctuary Funeral Home (Seminole) (F041127)
(2) Funeral Directing and Embalming
(a) Heath Funeral Chapel Inc (Lakeland) (F070575)

The Division recommends approval of the application(s).

Mr. Helm requested an explanation of the footnote listed on the Addendum.

Mr. Shropshire stated that Heath Funeral Chapel submitted a Petition for Waiver of rule requirement regarding number of cases done before an establishment may be approved as a training facility. They sought to have the number of cases handled by the previous owners before they acquired the business count against the number of requirements that they must have and it was approved.

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

- B. Recommended for Approval without Conditions (Adverse Licensing History)**
(1) Funeral Directing and Embalming
(a) Lawson Funeral Home & Cremation Services Inc (St. Petersburg) (F061572)

An application to become a Training Facility was submitted n June 21, 2012. The application was complete when submitted. There is no criminal history however one of the supervising Licensees, Benjamin Lawson, does have Adverse Licensing History.

Mr. Lawson was the FDIC for McRae Funeral Home (F040631) and in the stipulation signed by Mr. Lawson they failed to ensure that funeral arrangements, made on behalf of the funeral establishment, were done through an individual properly licensed. The Respondents did, however, make efforts to correct and stop the violations. Mr. Lawson's license was placed on

probation for one year and assessed an administrative fine of \$500. The Division is recommending approval without conditions.

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

12. Application(s) for Monument Establishment Sales Agent
A. Informational Item (Licenses Issued without Conditions) - Addendum G

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

13. Consumer Protection Trust Fund Claim(s)
A. Recommended for Approval without Conditions – Addendum H

The Division recommends approval of the claim(s).

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

14. Application(s) for Cinerator Facility
A. Recommended for Approval with Conditions
(1) Zahn-Stow Funeral Home Inc d/b/a Tillman Funeral Home (West Palm Beach)

An application for a Cinerator Facility was received on May 14, 2012. The application was incomplete when submitted. All deficient items were returned on June 12, 2012. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Bradford Zahn (F042492).

Tillman Funeral Home (F019330) was issued a citation on September 9, 2010 for failure to make timely and sufficient remittances to the Pre-Need Funeral contract Consumer Protection Fund and was fined \$400. The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff and that the fictitious name they are intending to use be registered with the Department of State.

MOTION: Mr. Jones moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division staff and that the fictitious name they are intending to use be registered with the Department of State. Col. Stiegman seconded the motion, which passed unanimously.

15. Application(s) for Funeral Establishment
A. Recommended for Approval without Conditions
(1) Ross Family Mortuary LLC (Green Cove Springs)

An application for a Funeral Establishment was received on May 7, 2012. The application was incomplete when submitted. All deficient items were returned on June 20, 2012. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Doctor Choice (F046148). The establishment passed its inspection on July 13, 2012. The Division is recommending approval without conditions.

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

B. Recommended for Approval with Conditions (Criminal History)
(1) Benoit – Williams Funeral Service LLC (North Miami)

An application for a Funeral Establishment was received on May 30, 2012. The application was incomplete when submitted. All deficient items were returned on July 6, 2012. The fingerprint cards for all principals were returned with one, Michael Williams, having criminal history. The Funeral Director in Charge will be Michael Williams (F045425).

One of the principals, Michael Williams was convicted of felony driving with a revoked license on August 15, 2008. He was sentenced to twenty (20) days confinement, one (1) year probation and ordered to pay \$5 in costs. The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

16. Application(s) for Removal Service
A. Recommended for Approval with Conditions
(1) Prestige Removals Inc (Boynton Beach)

An application for a Removal Facility was received on July 2, 2012. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

(2) Sky Light Removal Services LLC (Miami)

An application for a Removal Facility was received on June 20, 2012. The application was incomplete when submitted. All deficient items were returned on July 13, 2012. The fingerprint cards for all principals were returned with no criminal history. The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

MOTION: Col. Stiegman moved to approve the application subject to the condition that the establishment passes an on-site inspection by a member of Division staff. Ms. Anderson seconded the motion, which passed unanimously.

(3) Verrol H Burrell d/b/a Burrells Eternal Transport Services (Lauderhill)

An application for a Removal Facility was received on June 22, 2012. The application was incomplete when submitted. All deficient items were returned on July 7, 2012. The fingerprint cards for all principals were returned with no criminal history. The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of Division staff.

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

17. Executive Director's Report
A. Scope of Allowable Activities of Direct Disposal Establishments

The FCCS Division provides the Board this issue analysis, and statement of Division preliminary position, for comment by the Board. The Division understands that Ms. Faye Ray, and Ms. Tiki Bates, and possibly other persons, desire to address the Board on this issue, from the perspective of direct disposal establishments.

The Issues

1. May a direct disposer and a direct disposal establishment (DDE) properly advertise and provide scattering at sea services to its customers?
2. May a direct disposer and a direct disposal establishment arrange for transport of cremains to a national veterans cemetery or other cemetery for interment or entombment?

Pertinent Statutes

Section 497.005 provides in pertinent part as follows:

- (25) "Direct disposal establishment" means a facility licensed under this chapter where a direct disposer practices direct disposition.
- (26) "Direct disposer" means any person licensed under this chapter to practice direct disposition in this state.
- (32) "Final disposition" means the final disposal of a dead human body by earth interment, aboveground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal. "Final disposition" does not include the disposal or distribution of cremated remains and residue of cremated remains.
- (66) "Scattering garden" means a location set aside, within a cemetery, that is used for the spreading or broadcasting of cremated remains that have been removed from their container and can be mixed with or placed on top of the soil or ground cover or buried in an underground receptacle on a commingled basis and that are nonrecoverable. It may or may not include memorialization.

Section 497.601 provides as follows:

- (1) Those individuals licensed as direct disposers may perform only those functions set forth below:
 - (a) Remove human remains from the place of death and store human remains in registered direct disposal establishments.
 - (b) Secure pertinent information from the decedent's next of kin in order to complete the death certificate and to file for the necessary permits for direct disposition.
 - (c) Obtain the necessary permits for direct disposition and arrange for obituaries and death notices to be placed in newspapers; provided, however, that the name of the direct disposal establishment may not appear in any death notice or obituary if any funeral service, memorial service, or graveside service is to take place and such service is mentioned in the death notice or obituary.
 - (d) Refrigerate human remains prior to direct disposition and transport human remains to a direct disposal establishment for direct disposition.
 - (e) Contract with a removal service or refrigeration facility to provide such services or facilities to a direct disposal establishment.
- (2) Direct disposers or funeral directors functioning as direct disposers may not, in their capacity as direct disposers, sell, conduct, or arrange for burials, funeral services, memorial services, visitations, or viewings; hold themselves out to the public as funeral directors; or use any name, title, or advertisement that may tend to connote that they are funeral directors. These prohibitions shall apply regardless of the fact that such individuals may be licensed as funeral directors.
- (3) Provided that direct disposers limit their activities to those functions set forth in subsection (1), those activities shall not be deemed to constitute funeral directing or embalming or the functions performed by a funeral director or embalmer as otherwise set forth in this chapter.

Section 497.605 provides as follows:

The duties, functions, and services performed by a direct disposer Licensee, as provided by this chapter, shall not be deemed to constitute funeral directing or embalming or the duties, functions, or services performed by a funeral director or embalmer as otherwise defined and provided by this chapter.

Section 497.604 provides in pertinent part as follows:

- (1) LICENSE REQUIRED — A direct disposer shall practice at a direct disposal establishment which has been licensed under this section and which may be a cinerator facility licensed under s. 497.606. No person may open or maintain an establishment at which to engage in or hold herself or himself out as engaging in the practice of direct disposition unless such establishment is licensed pursuant to this section.

Section 497.372 provides in pertinent part as follows:

- (1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director:
 - (a) Selling or offering to sell funeral services, embalming, cremation, or other services relating to the final disposition of human remains, including the removal of such remains from the state, on an at-need basis.
 - (b) Planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains, including the removal of such remains from the state, with the family or friends of the decedent or any other person responsible for such services; setting the time of

- the services; establishing the type of services to be rendered; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits.
- (c) Making, negotiating, or completing the financial arrangements for funeral services, embalming, cremation, or other services relating to the final disposition of human remains, including the removal of such remains from the state, on an at-need basis, except that nonlicensed personnel may assist the funeral director in performing such tasks.
 - (d) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, a visitation or viewing. Such functions shall not require that a licensed funeral director be physically present throughout the visitation or viewing, provided that the funeral director is readily available by telephone for consultation.
 - (e) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any funeral service held in a funeral establishment, cemetery, or elsewhere.
 - (f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service held prior to or within 72 hours of the burial or cremation, if such memorial service is sold or arranged by a Licensee.
 - (g) Using in connection with one's name or employment the words or terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which used would imply that such person is engaged in the practice of funeral directing or that such person is holding herself or himself out to the public as being engaged in the practice of funeral directing; provided, however, that nothing in this paragraph shall prevent using the name of any owner, officer, or corporate director of a funeral establishment, who is not a Licensee, in connection with the name of the funeral establishment with which such individual is affiliated, so long as such individual's affiliation is properly specified.
 - (h) Managing or supervising the operation of a funeral establishment, except for administrative matters such as budgeting, accounting and personnel, maintenance of buildings, equipment and grounds, and routine clerical and recordkeeping functions.
- (2) A funeral director may not engage in the practice of funeral directing except through affiliation with a funeral establishment licensed under this chapter. The Board shall adopt by rule criteria for determining whether such an affiliation exists through the funeral director's ownership of, employment by, or contractual relationship with, a funeral establishment. This subsection does not prohibit a funeral director from being designated the licensed funeral director in charge of a cinerator facility.
 - (3) The practice of funeral directing shall not be construed to consist of the following functions:
 - (a) The phoning-in, faxing, or electronic transmission of obituary notices; ordering of flowers or merchandise; delivery of death certificates to attending physicians; or clerical preparation and processing of death certificates, insurance forms, and any clerical tasks that record the information compiled by the funeral director or that are incidental to any of the functions specified above.
 - (b) Furnishing standard printed price lists and other disclosure information to the public by telephone or by providing such lists to persons making inquiry.
 - (c) Removing or transporting human remains from the place of death, or removing or transporting human remains from or to a funeral establishment, centralized embalming facility, refrigeration facility, cemetery, crematory, medical examiner's office, common carrier, or other locations as authorized and provided by law.
 - (d) Arranging, coordinating, or employing licensed removal services, licensed refrigeration facilities, or licensed centralized embalming facilities.
 - (e) Any aspect of making preneed funeral arrangements or entering into preneed contracts.
 - (f) Any functions normally performed by cemetery or crematory personnel.

Issue 1, Discussion

May a direct disposal establishment (DDE) properly advertise and provide scattering at sea services to its customers?

As used herein the term "*cremains*" refers to the ashes and pulverized human bone remains that are the result of cremation. *Cremation* is a method of final disposition; see 497.005(32).

Scattering is understood to refer to spreading or broadcasting of cremated remains that have been removed from their container; see by analogy, 497.005(66). *Scattering at sea* is not a defined term in Chapter 497, but is properly understood to refer to the practice of spreading or broadcasting cremated human remains into the sea at a location approved by maritime regulatory authorities. *Scattering* of cremains is not a method of final disposition. Scattering of cremains follows after final

disposition (cremation). See s. 497.005(32): “Final disposition” does not include the disposal or distribution of cremated remains and residue of cremated remains.

Burial at sea is expressly mentioned as a form of final disposition, see 497.005(32). *Burial at sea* is not a defined term in Chapter 497. In the context of Chapter 497, *burial at sea* is not properly understood to be the same as *scattering-at-sea*; instead, burial at sea contemplates the un-cremated whole body, typically enclosed in a specially weighted casket or weighted shroud, which is slid off a vessel at sea so that the whole body will sink to the bottom of the sea. The Environmental Protection Agency regulations for full body burials at sea in the United States require that the site of interment be three (3) nautical miles from land and at a depth of at least 600 feet (180 m). **Burial at sea is rarely practiced for U.S. residents other than by U.S. Navy Authorities.**

The statement in s. 497.601(1), that a direct disposer may perform only those functions set forth in that statute, is properly understood as referring to functions that otherwise could only be engaged in by a licensed funeral director or other type of Licensee under Chapter 497. Said provision is not intended to prevent a direct disposer or direct disposal establishment from performing functions for which no license under Chapter 497 is required. Any broader reading is not tenable and leads to absurd results (the direct disposer return the cremains to the family; cannot rent business space and sign a lease; cannot order phone service; cannot put up a sign outside the business -- because these activities are not expressly allowed under s. 497.601(1)).

There currently exists a group of businesses that offer scattering at sea services for cremated remains. These businesses are typically boat rental firms, and fishing guides, who offer scattering at sea as a sideline to the main business (renting boats and guided fishing trips). As understood by the FCCS Division, a family that has received cremated remains (cremated through a properly licensed funeral establishment or direct disposal establishment), thereafter contacts one of these businesses and makes arrangements to have the business, for a fee, scatter the cremains at sea. Such businesses operate only on an at-need business, and cannot sell preneed services for scattering at sea. These businesses are not regulated under Chapter 497. There is no specific category of licensure under Chapter 497 that refers to persons or firms performing this type of service. The most pertinent statute in Chapter 497 is 497.372(1). However, s. 497.372 contains no express reference to scattering at sea, and s. 497.372's restrictions relate in general to making arrangements for and conducting final disposition and services *related* to arranging and conducting final disposition. As noted above, scattering at sea is not a method of final disposition, and instead follows after final disposition. Therefore, s. 497.372 cannot properly be read as prohibiting or regulating such businesses.

Issue 1, Conclusion

In Florida and its waters, aside from military authorities, a burial at sea may only be advertised, arranged and conducted by a licensed funeral director. Burial at sea is a form of final disposition, and pursuant to s. 497.372(1), aside from military authorities, only a licensed funeral director may offer or arrange or conduct a burial at sea in Florida or Florida waters. No exception from this limitation is provided to direct disposers or direct disposal establishments, in s. 497.601.

A direct disposal establishment may offer and provide scattering at sea service to its customers. The practice of scattering cremated remains at sea is not regulated under Chapter 497.

Issue 2, Discussion

May a direct disposer and a direct disposal establishment arrange for shipment of cremains to a national veterans cemetery or other cemetery for interment or entombment in the cemetery?

Some direct disposers and DDEs offer or desire to offer a service consisting of shipment of cremains to a National Veterans Cemetery for interment or entombment in the cemetery. The direct disposal establishment coordinates with the cemetery, concerning the date of interment or entombment of the cremated remains, in order to ensure shipping in a timely manner and acceptance at the cemetery. The DDE then packages and ships the cremains. The DDE does not have a representative in attendance when the cremains are interred, entombed or scattered at the cemetery.

Initially it appears that the activities contemplated under Issue 2 involve two forms of final disposition. While cremation is a form of final disposition, above and below ground interment is also a form of final disposition; see 497.005(32). The remains will have been cremated, but are being shipped to the cemetery for interment.

However, section 497.005(32) provides in pertinent part: "Final disposition" does not include the disposal or distribution of cremated remains and residue of cremated remains. The interment of the cremains is, literally, a "disposal or distribution of cremated remains," and consequently, in arranging and shipping the cremated remains to the cemetery, the direct disposer and DDE cannot be said to be making arrangements or providing services in regard to a final disposition.

The arrangement for and shipment of the cremains in this context is prohibited only if it is work that only a funeral director may do, pursuant to s. 497.372. However, since the interment of the cremains in the cemetery is not a final disposition within the meaning of 497.005(32), the arrangement for and shipment of the cremains to the cemetery for interment is not a service related to a final disposition. Accordingly, it does not appear to the Division that such arrangement for and shipment of the cremains to the cemetery for interment requires a funeral director's involvement.

It does not appear to the Division that the arrangement for and shipment of cremains to a cemetery is regulated under Chapter 497. There is no license category in Chapter 497 that expressly makes shipment of cremains a subject of regulation. The Division believes that provisions of Chapter 497 require direct disposers and funeral directors to treat cremains in their possession with dignity and respect, and to take reasonable steps to safeguard the cremains so long as the Licensee is responsible for their custody. Section 497.607(2) provides instructions for disposal of unclaimed cremains. But aside from such provisions, it is the Division's understanding of Chapter 497 and the legislative intent, that there is no jurisdiction under Chapter 497 over the post-cremation handling and disposal of cremains.

Issue 2, Conclusion

A direct disposer and DDE may offer and provide arrangements for shipment of cremains to a cemetery for interment.

*****BREAK*****

The Chair stated that Mr. Shropshire made a presentation on the Scope of Allowable Activities of Direct Disposal Establishments and questioned whether the Board members had any questions or comments.

Mr. Clark stated that "Issue 2, Conclusion" states that the Licensee can provide arrangements for shipment of cremains to a cemetery for interment. In most cases, you have to notify the cemetery ahead of time. In the event of a national cemetery, a lot of time the family would like honors. Mr. Clark questioned the amount of the communication the direct disposer can have with the cemetery regarding approval, burial rights and the actual interments. The Conclusion strictly talks about shipping the cremated remains but there is some communication with the cemetery.

Mr. Shropshire stated that on the last page of the memorandum to the Board from the Division, we do state that it is our understanding of the facts that the DDE coordinates with the cemetery concerning the date of interment or entombment of the cremated remains in order to ensure shipping in a timely manner and acceptance at the cemetery. The DDE then packages and ships the cremains. The DDE does not have a representative in attendance when the cremains are interred, entombed or scattered but they do contact the cemetery, as we understand the facts, to coordinate with the cemetery the shipment of the cremains to the cemetery.

The Chair stated that he does not believe Mr. Clark's issue is addressed in the materials presented.

Mr. Clark stated that he understands that the direct disposer would not be present, but in some cases, when you coordinate with the National Cemetery, the cemetery will provide to the family some type of committal, some type of time with the cremated remains present at the cemetery. Mr. Clark stated that his question has to do with what communication is the direct disposer allowed to have with the cemetery regarding that service.

Mr. Shropshire stated that he is not sure he understands the question or the concern.

Mr. Clark stated if they service a family and the loved one is a veteran and eligible for the National Cemetery, the family would request a few moments at niche side or at the committal side with an Honor Guard or just to have time with the urn at the cemetery. Mr. Clark questioned whether the direct disposer is allowed to coordinate that request. The direct disposer may not be involved in the actual placement of the cremated remains at the cemetery.

Mr. Shropshire stated that they would not be allowed at the cemetery coordinating, supervising or overseeing that ceremony. The Division's answer is based on them not being there and not overseeing or running that ceremony. That would be beyond the scope of their license. I am contemplating that the DDE calls the National Cemetery advising of the cremains that may be eligible for interment and advises that the family wants them shipped there. The Division believes that is allowable.

Mr. Clark stated that he understands that a funeral director is not even required at a committal. The question is "coordinating the service at the cemetery." The National Cemetery we use provides folding of the flag ceremony at no charge to the family provided by the cemetery, but that has to be coordinated.

Mr. Shropshire questioned whether this service has to be requested.

Mr. Clark concurred. Someone has to request that Honors be at the committal at the cemetery.

The Chair questioned whether the funeral establishment, direct disposer or client family themselves have to request that.

Mr. Shropshire stated he would assume that the DDE would advise the cemetery that the family desires to have all the available ceremonies take place.

Mr. Hall stated that is usually scheduled with an Honor Guard separate from the cemetery. You can schedule a time with the cemetery but then you schedule another time with an Honor Guard in the County they are from. This is not supplied by the National Cemetery, but a local Honor Guard there.

Mr. Clark stated he feels like the Division's Conclusion specifically addresses shipping cremains but there are other things that come into play. Once the cremated remains are received by the cemetery, there may be events or services that are being held. My question is who is coordinating those services and whether the direct disposer is allowed to coordinate those services.

Mr. Mueller stated as a cemetery operator he would not give a second thought to a direct disposer calling and advising that he was sending cremated remains and there would be some service, as long as the direct disposer was not going to be present.

Mr. Clark questioned whether the family would be coordinating the service at the cemetery.

Mr. Mueller answered, "Yes." I would accept the time from the direct disposer and would not give any thought to what other arrangements had been made.

The Chair stated that Mr. Mueller's response is regarding the scope of the cemetery.

Mr. Mueller stated that he is aware of the limitations of the direct disposer, too. If the direct disposer advised he would deliver the cremated remains or be present, I would advise that was not permitted within the Law.

The Chair stated that the issue addressed in here is different than the issue that Mr. Clark is bringing up. "2. *May a direct disposer and a direct disposal establishment arrange for transport of cremains to a national veterans cemetery or other cemetery for interment or entombment?*" Now Mr. Clark's issue is separate and may need to be addressed and may not be able to resolve it today.

The Chair requested that the participants requesting to address the issue be sworn in.

Mr. Shropshire requested that participants raise their right hands to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter is the truth, the whole truth and nothing but the truth so help you God?"

Ms. Faye Ray answered, "Yes."

Ms. Tiki Bates answered, "Yes."

Ms. Bates stated with regards to the shipping of the remains to the National Cemetery, the remains are shipped. We call the scheduling office.

The Chair questioned who "we" is.

Ms. Bates responded, "Direct Disposal Establishments."

The Chair questioned whether Ms. Bates is also a direct disposer.

Ms. Bates responded, "Yes I am." We do not coordinate services. The families usually do that. We ask the families to call the Honor Guards themselves. We just call the cemetery to advise what day they will be there and what day the family wants it.

Ms. Ray stated she was hoping the Board would approve what Staff has written down in Conclusions for Issues 1 and 2 but still open up for any questions the Board may have.

Mr. Shropshire stated subject to further research, my sense in response to the question that the issue raised is that if the DDE is sitting with the family before the cremation and asks if the DDE asks if the family wants an Honor Guard that is considered making arrangements and is prohibited. That is a limitation that should be understood as the Division's position.

Mr. Clark states that is one of the questions the scheduling office asks. If the answer is no every time, that is fine, but there may be cases where the family does want an Honor Guard.

Mr. Shropshire stated that the safe answer would be that the family would contact you directly.

Ms. Bates stated that the family schedules it.

Col. Stiegman questioned whether they were referring to a National Cemetery or a civilian cemetery.

Mr. Clark stated the example given was a National Cemetery.

Col. Stiegman stated that is incorrect. If you are going to a National Cemetery, the contact has to be made by the funeral director. The contact numbers that the Government has for those kinds of arrangements are not accepted from the family or anyone other than the funeral director. The funeral director has that number in that website, so he has to make that contact. Then it is between them who is assigned and the cemetery how they conduct their services.

Mr. Hall stated that was 100% correct on scheduling at the cemetery but the issue is the Honor Guard. That is separate. They do not have an Honor Guard. The family is allowed to call the Honor Guard but they cannot call the cemetery.

Col. Stiegman stated they cannot do that with the National Cemetery. The Law states that every veteran that is going to be buried has to have great funeral honors. Those honors can include a full Honor Guard firing ceremonial group and flag folders, but they have to have three (3) people at a minimum. One of them has to be from that guy's service. That cannot be done by anyone but the funeral director. If you know of some local VFW that you want to come in, that is a different issue but if you are talking about the Law and the National Cemetery it can only be done the other way.

Mr. Hall stated that the funeral director or direct disposer has to set that up with the scheduling for the service. Anyone can call the Honor Guard to have that set up.

Col. Stiegman stated for every service, for every place in the country there is a local Honor Guard. If the Honor Guard is not available that day, then they will get at least three people, but it has to be the funeral director.

Mr. Hall stated that is generally speaking active duty and probably 90-95% of ours are not active duty.

Col. Stiegman stated it does not just apply to active duty, it is any veteran.

Mr. Hall stated that active duty men perform the ceremony, not that the deceased had to be active duty.

The Chair requested that the participants that have approached requesting to address the issue be sworn in.

Mr. Shropshire requested that participants raise their right hands to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter is the truth, the whole truth and nothing but the truth so help you God?"

Mr. Tom Wagner answered, "Yes."

Ms. Lynn Marie Arruda answered, "I do."

Mr. Wagner stated that as a DDE, we can call the National Cemetery's scheduling office in St Louis very simply and simply ask them to verify eligibility of the veteran and that is all the phone call is for. Then we inform them that the family will call to schedule date, time and any other details that they need with the cemetery. That works quite well on a regular basis.

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

Mr. Kevin Davis answered, "I do." I think the key issue here is we take a look at s. 497.601(2), F.S., the key words there is "a direct disposer cannot sell or arrange a burial service." If you look at the definition of burial service, it states "inurnment." The key there is are they selling it or conducting it.

Mr. Shropshire stated that the sited statute was included in the memo presented to the Board. The Board just needs to be aware that in the absence of any clearly stated opposition to the Department's proposed position that the Division will be enforcing Chapter 497 in accordance with the analysis put forth in the memo before the Board. No specific action is necessary.

The Chair acknowledged the analysis.

B. Report: Payment of Disciplinary Fines and Costs (Informational)

Monthly Report of Fine and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 August 2, 2012 Board Meeting
 Report Updated as of July 24, 2012

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?
Deliria Holmes	Dec-11	105280-09-FC	\$2,500	2/2/2012	YES
Clyde Chandler	Apr-12	122375-12-FC	\$2,750	5/23/2012	YES
Chandler's Funeral Chapel	Apr-12	122376-12-FC	\$2,750	5/23/2012	YES
Alliance Monument & Marble Co.	Apr-12	122927-12-FC	\$2,750	6/22/2012	NO; See Note A
Wright & Young Funeral Home, Inc.	Apr-12	120946-11-FC	\$2,750	5/21/2012	YES
Kimberly White	Apr-12	120948-11-FC	\$2,750	5/21/2012	YES
Wilson-Wolfe, Inc. dba Sweet Dreams Memorials	Apr-12	118247-11-FC	\$500	6/17/2012	YES
David Comoletti	Jun-12	114204-11-FC	\$2,500	8/13/2012	See Note D
Barbara Ann Falowski	Jun-12	114204-12-FC	\$1,000	8/20/2012	See Note D
Barbara Falowski Funeral & Cremation	Jun-12	122487-12-FC	\$1,000	8/20/2012	See Note D
Stanley Gunter-Butler	Jun-12	117958-11-FC	\$2,750	8/20/2012	See Note D
Kimberly White	Jun-12	120943-11-FC	\$5,250	8/20/2012	See Note D
Wright & Young Funeral Home, Inc.	Jun-12	120941-11-FC	\$5,250	8/20/2012	See Note D
Wright & Young Funeral Home, Inc.	Jun-12	120944-11-FC	\$2,750	8/20/2012	See Note D
Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC fba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$10,250		See Note C
NOTES:					
A. When payment becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment.					
B. Once fines and costs are paid in full, the licensee is kept on this report 3 months, showing Paid in Full, and is then dropped of this report.					
C. The Order re this case is still in process, so no Due date is yet established.					
D. Due date has not passed, as of the date of this report.					

18. Chairman's Report (Oral)

The Chair questioned the next meeting of the Board.

Ms. LaTonya Bryant stated that the next meeting would be a Teleconference on September 6th and the October 4th meeting will be held in Deerfield Beach.

Mr. Rudolph stated that in regards to the Board's counter offer regarding the disciplinary global settlement, his client is considering the Department's offer but is not making a decision as this time. Mr. Rudolph added that he would get back with Mr. Rivers regarding their decision.

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

None

20. Administrative Report

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

21. Disciplinary Report

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

22. Adjournment

The meeting was adjourned at 11:38 a.m.