

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
August 5, 2010 - 10:00 A.M. to 5:00 P.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg #230
Tallahassee, FL 32301

1. Call to Order and Roll Call

Mr. Jody Brandenburg, The Chair, called the meeting to order at 10:00 am and declared a moment of silence for Ms. Corinne Olvey, good friend and colleague.

Mr. Doug Shropshire requested to make the usual 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 5, 2010; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery, and Consumer Services. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. The meeting is occurring in person at the Alexander Building in Tallahassee, FL. My Assistant, Ms LaTonya Bryant-Parker, will be taking minutes of the meeting and recording it in addition to that.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission.

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

PRESENT:

Jean Anderson
Joseph "Jody" Brandenburg, Chairman
Lewis "Lew" Hall
Powell Helm
Nancy Hubbell
Col. Don Stiegman
Gail Thomas-DeWitt, Vice-Chairman

ABSENT:

Tracy Huggins
Ken Jones
Virginia "Ginny" Taylor

ALSO PRESENT:

Doug Shropshire, Executive Director
Anthony Miller, Assistant Director
Allison Dudley, Board Counsel
Tad David, Department Counsel
Jasmin Richardson, Department Staff
LaTonya Bryant-Parker, Department Staff
Karen Duehring, Department Staff

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

2. **Action on the Minutes**
A. *July 15, 2010 – Teleconference*

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on July 15, 2010.

MOTION: Mr. Powell Helm moved to adopt the minutes of the meeting. Col. Don Stiegman seconded the motion, which passed unanimously.

3. **Old Business**
A. *Application(s) for Preneed License Renewals*
(1) *Recommended for Approval with conditions*
(a) *Boynton Memorial Funeral Chapel, LTD (F019300) Boynton Beach*

The licensee does not meet the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. based on the following:

From data supplied for 7-1-2010 renewal:

Total Preneed Contracts outstanding:	\$2,099,608
Preneed trust fund, principal	\$1,531,639
Preneed trust, acc'ed interest	\$233,893
Required Net Worth:	\$100,000
Reported Net Worth:	\$(1,399,456)
Current ratio: 1.27 (Current assets \$187,151, current liabilities \$147,664)	

Net worth trend is adverse. Reported net worth, prior renewals:

- July 1, 2009 renewal: \$(1,126,690)
- July 1, 2008 renewal: \$(1,336,931)

The Licensee submitted a letter with the current renewal application, acknowledging inadequate net worth, and asking that a property appraisal be accepted in lieu of meeting net worth. The appraisal, by Callaway & Price, was dated July 29, 2009 (approximately 11 months old), and is the same appraisal submitted for the 2009 renewal. The appraisal stated a July 29, 2009 market value of the 800 Boynton Beach Blvd property of \$3,325,000. The balance sheet submitted for the current renewal shows real estate as an asset at gross value of \$1,941,094. The difference between appraised value and balance sheet gross value is \$ 1,383,906. Applying that against the current negative net worth still leaves a negative net worth of (\$15,550), against a required net worth of \$100,000. In addition, the Division was concerned that the appraisal is almost a year old.

The licensee provided a personal guarantee of Stormet C. Norem, owner. However, no personal financial statements were provided, so the weight that can be assigned the personal guarantee was uncertain. The Board voted at the June 24th meeting to defer the application pending submission of a personal financial statement from Mr. Norem. On July 16th, the Division received the personal financial statement.

The Division recommends that the Board issue an order approving renewal subject to the following conditions:

- a) Concerning all preneed sales by licensee under the renewed license, the licensee shall either trust 100% of the preneed contract proceeds in a trust under s. 497.458, Fla. Statutes; or licensee shall assure that the preneed contract price is funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.
- b) The Board accepts the personal guarantee of licensee preneed obligations submitted by Stormet C. Norem, and binds the submitter to that personal guarantee.

Col. Stiegman questioned whether Ms. Nancy Hubbell was satisfied with the financials.

Ms. Hubbell stated that she understands the financials and knows there is a shortage of cash available on the personal guarantee. Ms. Hubbell questioned whether Col. Stiegman had a specific question as the financials are sort of hard to read.

Col. Stiegman questioned whether Ms. Hubbell found any glitches in the financials that would disqualify the Applicant.

Mr. Lew Hall questioned whether anyone knew what Item 18 is as it is hard to make out.

Ms. Hubbell stated it appears to be what the Applicant places as the value of the business.

The Chair stated BMC appears to be Boynton Memorial Chapel.

Ms. Hubbell stated that there is security that is not readily marketable, which appears to be the Palm Beach Community Stock that he paid, according to the financials, \$1 million.

The Chair questioned whether there was anyone present representing Boynton Memorial Chapel. There was a negative response from the audience.

Mr. Shropshire stated if there was a particular question that might be determinative in the Board's mind, Staff could try and get Mr. Norem on the phone, if we pass this item, and get an answer.

Col. Stiegman stated it seems unusual that this is the second time around that there has been questions and no one present to discuss them.

MOTION: Ms. Hubbell moved to approve the application subject to the conditions proposed by the Division. Mr. Helm seconded the motion, which passed with 3 dissenting votes.

*(b) Stephen R. Baldauff Funeral Home, Inc., d/b/a Baldauff Family Funeral Home & Crematory (F019297)
(Orange City)*

This licensee is on a fiscal year ending each Sept. 30th. The licensee's renewal application showed the following:

- Total Preneed Contracts: \$ 2,270,113
- Required Net Worth: \$ 100,000
- Reported Net Worth as of September 30, 2009: \$(344,223) (reported Net Worth for July 1, 2009 preneed renewal was \$(323,694))

The licensee was recommended for denial at the June 24, 2010 Board meeting for not meeting the net worth financial requirements set forth in Rule 69K-5.0016 F.A.C. In addition, the Division noted that the licensee's financial statements reflected a current ratio of .46.

Licensee's accountant, Mr. Kevin Hazlip, CPA, explained that due to a mailing address misunderstanding, the licensee did not realize the Division recommended denial. Mr. Hazlip requested deferral in order for the licensee to respond to the Board with updated financial materials. At the June 24, 2010 Board meeting the Board deferred the matter to the August Board meeting.

Subsequent to the June 24, 2010 Board meeting the licensee has submitted, through his accountant Hazlip, material showing the following improvements to licensee's financial situation:

- On July 19th, the Division received new financial statement, for the 8 months ending as of May 31, 2010. This interim financial statement reflects a net worth of \$(277,578), which, although still negative, reflects an improvement from the September 30, 2009 net worth of (\$344,223).
- The interim financial statement shows a current ratio of 2.34.
- A real estate appraisal report as of July 15, 2010 was submitted which reflects market value of licensee's Funeral Home, on an "as is" basis, \$1,600,000. Accountant Hazlip advises that the current real estate loan balance is \$1,235,257, indicating an unrealized equity in the real estate in the amount of \$364,743. When the interim net worth of (\$277,578) is offset against that apparent \$364,743 equity, the result is an apparent net worth of positive \$87,165. The required net worth is \$100,000, leaving licensee approximately \$13,000 short of the required net worth. The Division believes that the \$13,000 shortfall is small enough that the licensee can be safely allowed to operate if limited to 100% trusted, or life insurance funded preneed sales.

The Division recommends approve renewal subject to conditions as follows:

Concerning all preneed sales by licensee under the renewed license, the licensee shall either trust 100% of the preneed contract proceeds in a trust under s. 497.458, Fla. Statutes; or licensee shall assure that the preneed contract price is funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

Col. Stiegman questioned the significance of the current ratio.

Mr. Kevin Hazlip stated the current ratio is the balance between current assets and current liabilities. As it was brought up at the last Board, the funeral establishment was in a situation where they were in a decreasing current ratio move and this particular Applicant is a September year-end. The Applicant made the realization that he was having an issue and decided to refinance his major debt, but that actually took place after his year-end so the impact of his current liabilities have not been significantly reduced because this major loan finance is now in place. So the current financials, as of May or June, were eight months into his current year. The financials now reflect that his May obligation has significantly been reduced. He basically took a large debt with a much larger interested rate and extended his horizon and lowered his interest rate which allowed his payment to go down significantly. This has really brought back up his financial condition substantially.

Col. Stiegman questioned whether there is a number that states this is good or this is bad.

Mr. Shropshire stated that the bigger the number the better. It means more cash you have on hand to meet your current liabilities. The Applicant has improved his cash position substantially from 4.6:2.46, so that is a very significant improvement. There is no absolute number.

Mr. Bill Williams stated that current ratio is a ratio of current assets to current liabilities. 1:1 or better means you have enough current assets to pay your bills. Anything over 1:1 is better so 2.34:1 means you have twice as many current assets as you do current liabilities. The bottom line is more than likely you are paying your bills which means you are a good viable on point concern.

Ms. Hubbell stated the letter indicates that the current real estate loan balance is \$1,235,257 and the value is \$1.6 million. Ms. Hubbell questioned where the \$1.235 million is reflected.

Mr. Hazlip stated that this all started back when Mr. Johnson purchased the business. It was a treasury stock transaction. There was a combination loan where the former owner held a note and then Mr. Johnson owned the land outside the corporation. Mr. Johnson refinanced the main debt, which was eliminating the stockholder debt internally and the former owner owned the debt outside as well.

Ms. Hubbell questioned whether that was the second mortgage.

Mr. Hazlip answered yes. Essentially, the amount of the loan internally previously was due to the former owner, but now it is due to the bank. The entire transaction was refinanced. The real property for this establishment is held outside of the business by the current owner. The real estate shown on the financials is a different piece of real property, an additional location slightly north of where they are.

The Chair stated that the location of the funeral home is not listed on the statement.

Mr. Hazlip concurred. The real estate appraisal was done on the real property held outside of the corporation and the substantial debt that is on it is also held outside of the corporation.

Ms. Hubbell questioned whether it is proper to base the \$13,000 deficit on the current equity in the property that is not owned by the corporation.

The Chair stated it appears to be proper.

Mr. Hazlip stated that this has been a standard practice by other licensees.

Ms. Hubbell questioned whether it would be more so a personal guarantee.

Mr. Hazlip answered yes and stated that the Applicant would be more than happy to as Mr. Johnson has done so for the last 9 years.

Mr. Shropshire stated if the Board desired to add as a condition of the renewal, approval subject to the execution of a personal guarantee, the Division would obtain that.

Mr. Hazlip stated that the Division currently has a personal guarantee on file for the previous year, but the Applicant would be willing to sign a new one.

MOTION: Ms. Hubbell moved to approve the application subject to the conditions proposed by the Division as well as a personal guarantee. Ms. Gail Thomas-Dewitt seconded the motion, which passed unanimously.

(2) Recommended for Denial

(a) Cemetery Professionals, LLC (F019496) Jacksonville

This license renewal application was listed for consideration by the Board on the agenda for Board's June 24, 2010 Board meeting. Materials were provided to the Board by the Division, recommending denial of the renewal for reasons as follows:

Failure to provide financial statements in accordance with generally accepted accounting principles as required by Rule 69K-5.0026 (3), F.A.C. as follows:

1. Failure to respond to Department's notice of deficiency that questioned financial statement trust assets and liabilities
2. Failure to respond to Department's notice of deficiency pertaining to inclusion of Perpetual Care Trust assets and liabilities on balance sheet

A deficiency notice was sent on April 27, 2010 notifying the Licensee that balance sheet trust asset and liability amounts were inconsistent with amounts shown on the R-3 Renewal Statement. In addition, the notice identified Perpetual Care Trust assets and liabilities on the balance sheet as unallowable. As of June 11, 2010, the Licensee had not responded.

A copy of the Division's cover sheet to the Board, as it appeared in the materials provided to the Board for the June 24, 2010 meeting, is enclosed. At all times pertinent to this renewal matter, this licensee had the following two addresses of record in the Division's records:

- Business address: 4958 Wild Herron Way, Jacksonville FL 32225
- Preferred address: 1500 Main Street, Atlantic Beach, FL 32233

The original "Renewal Notification" package, dated January 15, 2010, was mailed to the licensee by the Division, to the licensee's business address, not licensee's preferred address. However, licensee nevertheless received same as shown by the fact that licensee responded by providing the Division with a response which was received by the Division on or about March 31, 2010. Copies of the renewal notification package response are enclosed.

By letter dated April 27, 2010 the Division wrote licensee and advised licensee of certain deficiencies in the materials submitted by licensee in support of renewal. A copy of the April 27, 2010 notice of deficiency is enclosed. That April 27, 2010 letter was addressed to the licensee's business address, not the licensee's preferred address.

By letter dated June 15, 2010 the Division advised licensee that the Division would be recommending denial of renewal at the June 24, 2010 Board meeting. The June 15, 2010 letter was sent to the following address: "1500 Main Street, Jacksonville, FL 32204." This address was in error, because the correct address is in Atlantic Beach, not Jacksonville.

On or about June 21, 2010 the Division received contact from Ms. Amanda Kuzniar, a principal of the licensee, indicating that the licensee had not been aware of the deficiency notice. On June 21, 2010 the Division faxed Ms. Amanda Kuzniar, a principal of the licensee, with a copy of the April 27, 2010 notice of deficiency.

On June 23, 2010 the Division received an email message from Ms. Amanda Kuzniar, a principal of the licensee (copy attached), wherein Ms. Kuzniar indicated to the effect that the Division's June 15, 2010 letter had been sent to the wrong address (Jacksonville, rather than Atlantic beach). Ms. Kuzniar asked for a deferral of the renewal application from the June 24, 2010 Board meeting. The matter was pulled by the Division from the June 24, 2010 Board meeting agenda, due to the issues related to addresses used by the Division in communicating with the licensee.

By letter dated June 29, 2010 the Division wrote the licensee, (copy attached), at the correct 1500 Main Street, Atlantic Beach, FL 32233 address, advising that the renewal matter had been deferred to the Board's August 5, 2010 Board meeting. The June 29, 2010 letter indicated that the Division was awaiting receipt of revised financial statements in accordance with GAAP, and referred to the April 27, 2010 notice of deficiency. As of July 27, 2010 (the date this cover sheet is prepared), the Division has no record of receiving any response from the licensee relative to the Division's June 29, 2010 letter to the licensee, and the Division's records do not indicate any response from the licensee to the deficiencies asserted by the Division in the April 27, 2010 notice of deficiency.

Ms. Amanda Kuzniar questioned why the application was recommended for denial.

Mr. Shropshire stated that the Division recommends denial of this application for renewal based upon the following three items, each of which standing alone requires denial:

The licensee reports total outstanding preneed contracts of \$4,762,329 (Summary page of renewal submission). Based upon that figure, the required net worth for renewal, per rule 69K-5.0016, FAC, is \$100,000. In the balance sheet submitted by licensee for renewal, the licensee reports a total net worth of \$108,302. Rule 69K-5.0016, FAC, requires that financial statements provided by the licensee must be prepared in accordance with generally accepted accounting principals (GAAP).

Item 1 - Licensee's balance sheet submitted for renewal shows as an asset "Perpetual Care Trust" in the amount of \$369,516, and shows as a liability "Perpetual Care Trust" in the amount of \$273,921. The inclusion of the perpetual care trust as an asset is not appropriate under GAAP, since the corpus is not available to the licensee. When we strike the Perpetual Care Trust asset and liability from the balance sheet, the licensee falls below the required net worth, because the reported Perpetual Care Trust asset as shown on the balance sheet exceeds the reported liability by \$95,595. The reported net worth of \$108,302 is reduced by \$95,595 to \$12,707, which is below the required \$100,000.

Item 2 - Licensee's balance sheet submitted for renewal shows as an asset "Preneed Trust" in the amount of \$951,613. However, on the "Summary" page of the materials submitted by licensee for renewal, licensee reports "Balance in Trust Fund" as \$860,030. The difference between those figures is \$91,583. When we reduce the "Preneed Trust" asset as shown on the balance sheet to \$860,030, to match the summary page, net worth falls from \$108,302 to \$16,719, which is below the required \$100,000.

Item 3 - The balance sheet submitted by licensee for renewal shows as a liability "Preneed Trust" in the amount of \$1,585,729. However, on the "Summary" page of the materials submitted by licensee for renewal, licensee reports "Contracts Outstanding as of End of Calendar Year" as being \$4,762,329. The difference between these figures is \$3,176,600. When we increase the balance sheet liability to \$4,762,329, to match the liability as shown on the Summary, the licensee's net worth falls to (\$3,068,298), which is below the \$100,000 required net worth.

Ms. Kuzniar questioned whether she has an option to trust 100%.

Mr. Shropshire stated that the Board could consider 100% or insurance funding. Largely based on the Licensee's failure to have the net worth combined with it's failure to interact with the Division indicates a serious cause of concern as to the Licensee's business practices combined with the fact of showing up today apparently uninformed about the grounds for the denial.

Ms. Kuzniar stated she received the packet but did not understand it.

Mr. Shropshire stated that the Board, in its judgment could grant it, but that is totally up to the Board.

Mr. Helm questioned how the Licensee did not understand "failure to respond to the Department's notification."

Ms. Kuzniar stated that she did respond and has copies of the response. Ms. Kuzniar stated that her attorney and accountant have been dealing with this.

Mr. Helm stated that as of June 11th, the Department indicated they have not heard anything.

Ms. Kuzniar stated prior to that, the Department had the address wrong: 1500 Main Street, Jacksonville, FL instead of Atlantic Beach. Ms. Kuzniar added that she never received the first correspondence.

The Chair stated that the failure to respond does not change any of the 3 items that are grounds for denial.

Ms. Kuzniar stated that she understood and was just inquiring as to whether they could trust 100%. Although they do not do a whole lot of preneed, there are some families that want to pay in full.

Ms. Hubbell stated that although Ms. Kuzniar indicates her CPA was working with them, there was a letter requesting revised financial statements, but that was not done either.

Ms. Kuzniar stated that they did. There have been 2 financial statements submitted.

Ms. Hubbell stated that she did not see it in the packet.

Mr. Shropshire stated that Ms. Kuzniar is correct that there originally were errors in our mailing address that Mr. Gellepis used to contact her, but those have been worked out and she did respond. Ms. Kuzniar has not responded to our June 29 2010 letter to her, copied to Mr. Winter., as today is the first time the Division has heard from Ms. Kuzniar since the letter was sent. The financials included in the packet are in fact the most recent financials referred to by Ms. Kuzniar.

Col. Stiegman questioned whether Ms. Kuzniar believes that another set of financials were submitted.

Ms. Kuzniar stated that she was told by her accountant that they were submitted last week by FSI. Ms. Kuzniar added that losing the preneed license as far as trusting is okay with her as they do not do a whole lot of preneed.

Mr. Shropshire stated that the Division has no record of receiving any revised financial statements last week.

Ms. Kuzniar stated that she would check into that.

Mr. Shropshire questioned whether Ms. Kuzniar indicated that a representative of FSI hand-delivered the financials to the Division.

Ms. Kuzniar stated that is what she was told. Ms. Kuzniar stated she might be wrong and the financials may have been sent directly to the Department.

MOTION: The Chair moved to deny the application based on the reasons stated in the memo. Mr. Lew Hall seconded the motion, which passed unanimously.

Ms. Kuzniar questioned whether this means as of today that there will no longer be preneed or does it end when the license expires.

Mr. Shropshire responded that it would be as of today.

Ms. Wiener stated, on behalf of her client, that FSI did not submit any financials for Cemetery Professionals to the Division.

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

A. Disciplinary Proceeding

(1) Motion for Determination of Waiver and for Order by Board (Probable Cause Panel B)

(a) Torres, Jose d/b/a Metropolitan Memorial Monuments (F057035), Case No: 108518-10-FC

Mr. David stated that this matter went before Probable Cause Panel B, which included Al Hall and Tracy Huggins. Mr. David stated since Ms. Huggins is absent, there is no need for a recusal.

The Administrative Complaint in this case alleges the violation of the following ss.:

497.152(1)(a) Violating any provision of this chapter or any lawful order of the Board or Department or of the statutory predecessors to the Board or Department.

497.152(4)(f) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery, false or forged evidence, or misrepresentation or through an error of the Department or Board known to the Applicant.

497.152(4)(g) Making or filing a report or statement to or with any government entity that the licensee knows or has reason to know to be false; or intentionally or negligently failing to file a report or record required to be filed with any government entity, or willfully impeding or obstructing another person to do so, or inducing another person to impede or obstruct such filing.

At the June 24, 2009 Board meeting, the Board took under consideration Mr. Torres' Application for a Monument Establishment Retailer License, submitted by Mr. Torres on behalf of Metropolitan Memorial Monuments. The application was recommended for denial based on Mr. Torres' personal and business relationship with Orlando Cuevas, a former licensee who after surrendering his license had an Application for a Monument Establishment Retailer License denied by the Board. The specific factual representations made during the meeting by Mr. Torres to the Board were false and/or misleading. These false misrepresentations are the reason that Mr. Torres' application for licensure was granted and not denied as recommended.

The service of the Administrative Complaint was obtained by personal service on June 29, 2010. As of this date, the Respondent has not filed an Election Proceeding form or filed any other documentation in this case to dispute the allegations contained in the Administrative Complaint. The Department would ask that the Board grant the Department's pending motion for Determination of Waiver filed on July 23, 2010 finding that the Department properly served the Respondent with the Administrative Complaint and that no timely response was received by the Department, and that Respondent has waived his rights to elect a method of resolution of this matter.

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

Mr. David stated that the Department previously filed Exhibits for consideration by the Board. These Exhibits support a prima facie case for the violations alleged in the Administrative Complaint. Having found that the Administrative Complaint was properly served and no response received, the Department feels that it is appropriate at this time for the Chair to entertain a motion adopting the facts alleged in the Administrative Complaint and supported by the Exhibits provided as the Findings of Fact in this case.

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

Mr. David stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Florida Statutes as charged in the Administrative Complaint. At this time, it is appropriate for the Respondent or anyone representing the Respondent to address the Board concerning legal argument or mitigating evidence.

The Chair questioned whether there was anyone present representing Metropolitan Memorial Monuments or Mr. Torres. There was a negative response.

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

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

Mr. David stated having found the violations, it is appropriate to move to the penalty phase. The penalties for these violations are found in Rule 69K-11.001(2), F.A.C. The penalties from these guidelines is a commensurate with the violations before considering any aggravating or mitigating factors are as follows:

- 497.152(1)(a) Maximum penalty is revocation
- 497.152(4)(f) Maximum penalty is revocation
- 497.152(4)(g) Maximum penalty is revocation

Mr. David added that this maximum penalty is before consideration of any aggravating or mitigating factors. As to aggravating or mitigating factors, which are addressed under Rule 69K-11.001(3)(b), F.A.C., they list 5 possible aggravating or mitigating factors:

1. **The severity of the violation.** Because this violation involves a direct and calculated misrepresentation to the Board for personal gain by Mr. Torres, it is sufficiently to severe to warrant aggravation of the penalty from the guidelines.
2. **The degree of harm to the consumer or public.** While there was no evidence of actual past harm to the public regarding this issue, there is enormous potential harm to the public because allowing Mr. Torres to keep this license effectively allows a person with a revoked license or a surrendered license (Mr. Cuevas) to continue business with the public in the State of Florida.
3. **The number of times the violations previously have been committed by the Licensee.** None, because he is a new Licensee.
4. **The disciplinary history of the Licensee.** None, because he is a new Licensee.
5. **The status of the licensee at the time the violation was committed.** The Licensee was an Applicant at the time and violations actually lead to the granting of the license.

For all these factors and in accordance with the penalty guidelines, The Department recommends revocation at this time and would request that the Board also impose an appropriate waiting period before Mr. Torres could reapply for any license under Chapter 497.

The Chair questioned whether never would be an appropriate waiting period.

Ms. Dudley stated that the Board could not put a waiting period on a reapplication as the Applicant could reapply tomorrow and the Board could deny for the same reasons cited here. There is no time frame that the Board could say this revocation is for unless the Respondent agrees to it.

Mr. Helm stated that the Board put a 5 year waiting period on a reapplication at the last meeting.

Ms. Dudley stated that was because the Respondent agreed to it. This Respondent is not present and has not agreed to it.

The Chair questioned whether revocation and fines are possible in this matter.

Ms. Dudley answered yes.

Mr. David stated that s. 497.153(5)(a)8 states that the Board may specify by final order on a case-by-case basis the period of time that must elapse before a revoked licensee may apply or reapply for any licensure under this Chapter.

Ms. Dudley stated that she was unaware of that provision and agreed that the Board could impose a waiting period.

Mr. David added that the s. 497.153(5)(a)8 also states that the Board may by order on a case-by-case basis specify that a revocation is permanent and that no future application for licensure under this chapter by the revoked person or entity shall be accepted, processed, or approved.

MOTION: Mr. Helm moved for permanent revocation with a fine of \$5000. Mr. Hall seconded the motion, which passed unanimously.

(b) Torres, Jose E (F057036), Case No: 109102-10-FC

Mr. David stated that this matter went before Probable Cause Panel B, which included Al Hall and Tracy Huggins. Mr. David stated since Ms. Huggins is absent, there is no need for a recusal.

The Administrative Complaint in this case alleges the violation of the following ss.:

497.152(1)(a) Violating any provision of this chapter or any lawful order of the Board or Department or of the statutory predecessors to the Board or Department.

497.152(4)(f) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery, false or forged evidence, or misrepresentation or through an error of the Department or Board known to the Applicant.

497.152(4)(g) Making or filing a report or statement to or with any government entity that the licensee knows or has reason to know to be false; or intentionally or negligently failing to file a report or record required to be filed with any government entity, or willfully impeding or obstructing another person to do so, or inducing another person to impede or obstruct such filing.

The circumstances of this case are related to the prior case because after obtaining the prior establishment license, Mr. Torres then applied for his Monuments Establishment Sales Agent license to be appointed by the establishment that he had just previously gotten licensed. Based on the misrepresentations at the June 24, 2009 Board meeting that granted the establishment license, he then appeared on the September 2, 2009 Board agenda for approval of his Monuments Establishment Sales Agent license and but for the misrepresentations and the license that was granted through the June 24th meeting, he would not have had the license granted at the September 2, 2009 Board meeting.

The service of the Administrative Complaint was obtained by personal service on June 29, 2010 on Mr. Torres. As of this date, the Respondent has not filed an Election Proceeding form or filed any other documentation in this case to dispute the allegations contained in the Administrative Complaint. The Department would ask that the Board grant the Department's pending motion for Determination of Waiver filed on July 23, 2010 finding that the Department properly served the Respondent with the Administrative Complaint and that no timely response was received by the Department, and that Respondent has waived his rights to elect a method of resolution of this matter.

MOTION: Ms. Thomas-Dewitt moved that the Respondent did not respond to the Administrative Complaint and therefore waived their right to elect a method of resolution in this matter. Col. Stiegman seconded the motion, which passed unanimously.

Mr. David stated that the Department previously filed Exhibits for consideration by the Board. These Exhibits support a prima facie case for the violations alleged in the Administrative Complaint. Having found that the Administrative Complaint was properly served and no response received, the Department feels that it is appropriate at this time for the Chair to entertain a motion adopting the facts alleged in the Administrative Complaint and supported by the Exhibits provided as the Findings of Fact in this case.

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

Mr. David stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Florida Statutes as charged in the Administrative Complaint. At this time, it is appropriate for the Respondent or anyone representing the Respondent to address the Board concerning legal argument or mitigating evidence.

The Chair questioned whether there was anyone present representing Metropolitan Memorial Monuments or Mr. Torres. There was a negative response.

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

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

Mr. David stated having found the violations, it is appropriate to move to the penalty phase. The penalties for these violations are found in Rule 69K-11.001(2), F.A.C. The penalties from these guidelines is a commensurate with the violations before considering any aggravating or mitigating factors are as follows:

- 497.152(1)(a) Maximum penalty is revocation
- 497.152(4)(f) Maximum penalty is revocation
- 497.152(4)(g) Maximum penalty is revocation

Mr. David added that this maximum penalty is before consideration of any aggravating or mitigating factors. As to aggravating or mitigating factors, which are addressed under Rule 69K-11.001(3)(b), F.A.C., they list 5 possible aggravating or mitigating factors:

1. **The severity of the violation.** Because this violation involves a direct and calculated misrepresentation to the Board for personal gain by Mr. Torres, it is sufficiently to severe to warrant aggravation of the penalty from the guidelines.
2. **The degree of harm to the consumer or public.** While there was no evidence of actual past harm to the public regarding this issue, there is enormous potential harm to the public because allowing Mr. Torres to keep this license effectively allows a person with a revoked license or a surrendered license (Mr. Cuevas) to continue business with the public in the State of Florida.
3. **The number of times the violations previously have been committed by the Licensee.** None, because he is a new Licensee.
4. **The disciplinary history of the Licensee.** None, because he is a new Licensee.
5. **The status of the licensee at the time the violation was committed.** The Licensee was an Applicant at the time and violations actually lead to the granting of the license.

For all these factors and in accordance with the penalty guidelines, The Department recommends permanent revocation at this time.

Mr. Shropshire questioned whether the permanent revocation in this case and the previous prohibits the Respondent from applying for any type licensure.

Mr. David concurred.

MOTION: Ms. Thomas-Dewitt moved for permanent revocation. Mr. Hall seconded the motion, which passed unanimously.

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

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action. Barbara Ann Bivens is indicated as being appointed by SCI. That is an error. Ms. Bivens is in fact being appointed by Aable Development Inc. d/b/a Aaron and Burney Bivens Funeral Home.

The Chair declared his affiliation with SCI Funeral Services of Florida Inc and stated it would not affect his judgment in this or any other issues going forward.

B. **Recommended for Approval with Conditions (Criminal History)**
(1) **Weber, Douglas**

On May 3, 2010, the Department received an application from Mr. Weber. Mr. Weber answered “Yes” to Applicant Background Questions. During the review of his fingerprint results provided by FDLE it was confirmed that Mr. Weber did have one criminal infraction which required disclosing.

The criminal history includes three counts of felony charges (1) Forgery, (2) Uttering, (3) Felony Theft in 1993, which occurred in Talbot County, Maryland. Mr. Weber disclosed all required information. Mr. Weber at the time of this infraction owned and operated a construction company on the Eastern Shore of Maryland.

Mr. Weber started his company in 1990, he was the sole proprietor. Within three years Mr. Weber had obtained two partners. The company was in financial trouble. According to Mr. Weber he met with the partners and disclosed the financial troubles prior to leaving town over the weekend for a family matter. Mr. Weber return to work the following Monday and discovered that one of the partners had liquidated most of the assets. But the company still had a new home to complete and sub

contracts to pay. Thus, Mr. Weber approached his sub contractor about signing off on a lien release so the company could get the money from the bank and pay them. Due to various events, the lien release did not work out as planned. Subsequently, Mr. Weber was convicted of fraud for tendering the document to the bank. Mr. Weber, who is 53 yrs old, acknowledges his wrongdoing. Mr. Weber was very candid and cooperative with the Division's staff.

The Division recommends approval based upon the following:

- 1) The criminal matter occurred approximately 17 years ago, and there is no record of Applicant getting in trouble since then;
- 2) The representation of Applicant's Counsel, Wendy Weiner, that in 2003 Applicant applied to and was issued a real estate associate license in Florida, by DBPR, with knowledge of the criminal history, and that Applicant relinquished the license in 2007 while in good standing, because he was leaving the real estate business.

The Division recommends that the license applied be issued subject to all the terms and conditions of the attached Stipulation for Licensure. The Stipulation for Licensure calls for a probation of 24 after issuance of license.

Mr. Helm questioned whether this Applicant previously appeared before the Board.

Ms. Wendy Wiener answered, "No, not to my knowledge." Mr. Weber was on the Agenda a month or so ago, but the application was withdrawn from the Agenda.

The Chair questioned the reason for the withdrawal.

Ms. Wiener stated Mr. Weber believed that he was going to be recommended for approval. When he was recommended for denial, Mr. Weber contacted Ms. Wiener who in turn contacted the Division Director and went over and met with him. In the course of that, the Agenda was already published but we were already talking with Mr. Shropshire about the circumstances, providing additional information to the Division and negotiating the Stipulation.

MOTION: Col. Stiegman moved to approve the application with the condition of 24 month probation. Ms. Jean Anderson seconded the motion, which passed with one dissenting vote.

6. Application(s) for Preneed Main License

- A. *Recommended for Approval without Conditions*
 - (1) *Guiding Light Cremations LLC (West Park)*

The Department received the application on June 1, 2010 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant on June 8, 2010 and all deficiencies were resolved as of July 2, 2010. A completed background check revealed no criminal history. Applicant will sell preneed through Funeral Services Inc (FSI) and will use the pre-approved First Florida Trust Agreement (BB&T) and pre-arranged funeral agreement. The Applicant is currently licensed as a direct disposal establishment, which was previously approved by the Board as of February 4, 2010 and expires August 30, 2011. The Applicant's financial statements as of December 31, 2009 reflect the following:

Acquired Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	300,000

The Division recommends approval of the application.

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

7. Application(s) for Preneed Branch License

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

The Division recommends approval of the application.

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

8. **Continuing Education Course Approval(s)**
 - A. *Recommended for Approval without Conditions – Addendum C*
 - (1) *American Academy McAllister Institute of Funeral Service #9808*
 - (2) *Aurora Casket Company #129*
 - (3) *International Cemetery & Funeral Association #74*
 - (4) *M.K. Jones & Associates, Inc #9605*
 - (5) *National Funeral Directors Association #136*

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

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

9. **Application(s) for Florida Laws and Rules Examination**
 - A. *Recommended for Approval without Conditions – Addendum D*
 - (1) *Direct Disposer*
 - (a) *Teresi, Anthony*
 - (2) *Funeral Director – by Internship*
 - (a) *Fischman, Robert J*
 - (3) *Funeral Director and Embalmer - by Endorsement*
 - (a) *Albrecht Peterson, Melanie L*
 - (b) *Brown, Phillip A*
 - (c) *Ladner, Christopher C*

The Division recommends approval of the application(s).

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

10. **Application(s) for Internship**
 - A. *Recommended for Approval without Conditions – Addendum E*
 - (1) *Funeral Director and Embalmer*
 - (a) *Akin, Kimberly A*
 - (b) *Johnson, Eric J*
 - (c) *McGan, Sean W*
 - (d) *Powers, Richard A*

The Division recommends approval of the application(s).

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

11. **Application(s) for Embalmer Apprentice**
 - A. *Recommended for Approval without Conditions – Addendum F*
 - (1) *Cusack III, Charles A*
 - (2) *Spalding, Lucas W*

The Division recommends approval of the application(s).

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

B. Recommended for Approval with Conditions
(1) Moore, Jamarie P

An application for an Embalmer Apprentice license was submitted on June 14, 2010. In reference to this application a letter dated June 17, 2010 (copy attached), from one Kayla Alexander, a licensed funeral director, F043924, was submitted setting out several concerns regarding this Applicant. Ms. Alexander works at the funeral establishment where Applicant has been, and will be, employed.

Mr. Moore was given an opportunity to respond and has submitted character reference letters.

Mr. Henry Postell, also a licensed funeral director and the owner of the funeral establishment where Applicant and Ms. Alexander both work, has also responded to Ms. Alexander's concerns. Mr. Postell supports the application.

The Division feels that on balance the matter is appropriately resolved by approval of the application subject to one year probation.

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

Ms. Kayla K Alexander answered, "yes sir."

Mr. Shropshire questioned whether Ms. Alexander is the person who wrote the letter.

Ms. Alexander answered yes and made remarks to the Board.

The Chair questioned whether Ms. Alexander contends that the letter was not written by Mr. Postell.

Ms. Alexander stated that if Mr. Postell did write it he blatantly lied because everything was brought to his attention.

Col. Stiegman stated this appears to be a clear case of he said she said. The Board received letters that indicates the Applicant is a reasonable good fellow. With the material presented, the Board can clearly go forward with the Division's recommendation.

MOTION: Col. Stiegman moved to approve the application subject to one year probation. The motion failed due to lack of a second.

Ms. Alexander added that Mr. Postell does not do embalmings and has not in the past 6 years.

The Chair stated that the training for an apprentice embalmer does not just require one person to do the training. The apprentice can certainly be trained by multiple people.

Ms. Jasmin Richardson stated that it does not have to be one supervisor, but the Division must be informed of each supervisor. At this time, there is only one supervisor listed, and that is Mr. Postell. If there is another supervisor, then they would need to submit notification to the Division.

Ms. Thomas-Dewitt added that it is public knowledge that Henry Postell does not embalm.

Mr. Hall questioned whether the Division could issue some type letter of direction regarding the embalming and funeral directing, as Ms. Alexander eluded to the fact that Mr. Moore has presented himself as a funeral director and helping with funerals. Since he is not licensed, Mr. Postell being the FDIC, needs to address that issue.

Col. Stiegman stated that is not what is before the Board today.

Mr. Shropshire stated that the Division could certainly submit a letter to the Applicant cautioning him and also Ms. Alexander if she sees him at any time in the prep room embalming and Mr. Postell is not on the premises, because he is required to provide direct supervision, should report it to the Division immediately as it is a violation.

Ms. Anderson questioned whether the Application could be tabled until Mr. Postell could be present.

Mr. Shropshire stated that s. 497.371, F.S. does not give any grounds for denial of the application. It almost appears to be a perfunctory administrative matter. There is rulemaking authority given and the Board has adopted a Rule. The Rule also does not provide any grounds for denying the license. If the license is denied, the grounds must be specified, but it is unclear what the grounds would be given the statutory language we work under, which is part of the problem.

Ms. Dudley stated that the only option available, per s. 497.153, which includes a list of violations that could warrant denial. The only one that might apply here is unlicensed activity. It does not appear there is evidence to support it as this is a he say she say type situation. If the Board denies the application based on that and have to go before the Division of Administrative Hearings to defend this, the evidence would be needed.

Mr. Shropshire noted that the deemer date is October 13th and the next meeting is October 7th, in order, which would be closer to Mr. Postell.

MOTION: Ms. Anderson moved to defer the application subject to the October meeting. Ms. Thomas-Dewitt seconded the motion, which passed with one dissenting vote.

12. Registration(s) as a Training Agency

A. Recommended for Approval without Conditions – Addendum G

(1) Funeral Directing and Embalming

(a) Ponger-Kays-Grady Funeral Home & Cremation Services (F039948)

The Division recommends approval of the application.

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

13. Consumer Protection Trust Fund Claims

A. Recommended for Approval without Conditions – Addendum H

The Division recommends approval of the claim(s).

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

Mr. Helm questioned whether Pafford and Bittman are requesting their money back.

Mr. Shropshire stated that one or both of these is a refund recommendation. Unfortunately, Christine Lynn is on leave today, but they appear to be refund recommendations.

14. Application(s) for Monument Establishment Sales Agent

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

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

15. Application(s) for Funeral Establishment

A. Recommended for Approval without Conditions

(1) Willie G Mayberry d/b/a Agape Funeral Home and Cremation Service

An application for a Funeral Establishment was received on May 10, 2010. The application was incomplete when submitted. All deficient items were returned on June 18, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Harold Felder (F046693). The establishment passed its inspection on July 15, 2010. The Division is recommending approval without conditions.

Mr. Helm questioned since the letter for refrigeration states "for remains that are to be cremated" whether they are providing refrigeration for others also.

Mr. Shropshire stated that the application indicates the Applicant will have a prep room. If so, he does not have to refrigeration if the bodies are embalmed within 48 hours.

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

B. Recommended for Approval with Conditions

(1) Allen Funeral Directors LLC d/b/a Beyer Funeral Home (Key Largo)

An application for a Funeral Establishment was received on July 15, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Jacqueline Allen (F042541). The Division is recommending approval subject to the conditions as follows:

- (1) That the establishment passes an on-site inspection by a member of the Division staff.
- (2) That the closing occur within 60 days of the date of this Board meeting.
- (3) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.
- (4) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.

MOTION: Mr. Helm moved to approve the application with the conditions proposed by the Division. Col. Stiegman seconded the motion, which passed unanimously.

(2) Bayside Memorial Inc (Tampa)

An application for a Funeral Establishment was received on June 25, 2010. The application was incomplete and deficiency letter was sent to the Applicant. All deficient items were returned on July 16, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Eric Drews (F042169), an officer of the corporation. Mr. Drews entered into a settlement stipulation in October 2000.

In Feb. 2000, an Administrative Complaint was filed by the Department of Business and Professional Regulation (DBPR) was filed against Mr. Drews. The violations were:

- a) Eric Drews, Funeral Director in Charge of Florida Mortuary Funeral and Cremation Services was disciplined by the Department of Health (DOH) for not filing death certificates within the allotted time for multiple individuals.
- b) Eric Drews was ordered to pay \$5,229 in fines, which were paid.
- c) As a result of the disciplinary action from DOH, an administrative complaint was filed by DBPR.
- d) A settlement stipulation was approved by the Board and Eric Drews was given the following conditions
 - (1) Two years Probation
 - (2) Licensee may not serve as the Funeral Director in Charge during probationary term.
 - (3) Licensee must complete 3 hours of continuing education on subjects set forth in 61G8-17.0037(3)(f).
 - (4) Licensee must appear before the Board on the anniversary of each year of probation to attest that the conditions have been met.

All requirements were fulfilled and the licensee has not had any adverse license history since this stipulation was ordered. The Division does not believe that Applicant would pose an unreasonable risk to the public if licensed and is therefore recommending approval subject to the condition that the establishment passes an on-site inspection by a member of the Division staff.

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

Mr. Eric Drews stated that the establishment passed its inspection on July 27th.

(3) *Brandon Cremation and Funeral Services Inc (Brandon)*

An application for a Funeral Establishment was received on July 7, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Michael Patrias (F044633). The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of the Division staff.

Mr. Hall questioned why, after being approved for an establishment license in April, it was cancelled in June.

Ms. Richardson stated that the application was actually Brandon Funeral and Cremation, which was a partnership between the principal and another individual. The corporation was split and a letter was submitted to close the license that was approved, then a new application was submitted under the new corporation.

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

(4) *Ocoee Family Funeral and Cremation Chapel Inc (Ocoee)*

An application for a Funeral Establishment was received on July 15, 2010. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Salvatore Cascio (F060850). The Division is recommending approval subject to the condition(s) as follows:

- (1) That the establishment passes an on-site inspection by a member of the Division staff.
- (2) That the closing occur within 60 days of the date of this Board meeting.
- (3) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.
- (4) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.

MOTION: Ms. Thomas-Dewitt moved to approve the application with the condition as set forth by the Division. Ms. Anderson seconded the motion, which passed unanimously.

(5) *Rocker-Cusack Mortuary (Leesburg)*

An application for a Funeral Establishment was received on June 21, 2010. The application was incomplete when submitted. All deficient items were returned on July 19, 2010. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Rodney Rocker, Sr. (F043119). The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of the Division staff.

The Chair questioned whether there was anyone present representing Rocker-Cusack Mortuary. There was a negative response from the audience.

Mr. Helm stated that the cooler and storage facility is located in Daytona Beach and questioned whether that was more than 75 miles from Leesburg.

Ms. Thomas-Dewitt stated that it is cutting it close.

Ms. Dudley stated that the distance from Daytona Beach to Leesburg is 67 miles.

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

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

A. Recommended for Denial

(1) Forethought Life Insurance Company (Batesville, IN)

(a) Price Estimate Only Funeral Planning Agreement (Form A3078-01-FL)

(b) Statement of Funeral Goods and Services Selected (Form A3079-01-FL)

The attached forms were submitted by letter dated April 29, 2009. The Division had concerns regarding the forms and had discussion with the Applicant. As a result, the application was put in abeyance.

The Applicant has recently requested that notwithstanding the Division's concerns, the forms be presented to the Board for decision. Applicant is represented by attorney Wendy Weiner.

The Division's concern is that the forms are preneed contracts in which the price is not guaranteed at the time of sale. The Division will refer to such contracts herein as "non-guaranteed preneed contracts." The Division does not believe that non-guaranteed preneed contracts are allowable in Florida, due to the requirement of s. 497.468(5)(b), F.S.

Section 497.4568 provides in pertinent part as follows:

497.468 Disclosure of information to the public.--

A preneed licensee offering to provide burial rights, merchandise, or services to the public shall:

- (5) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract the form of which has been approved by the licensing authority pursuant to procedures specified by rule. The written contract shall:
 - (a) Be completed as to all essential provisions prior to the signing of the contract by the customer.
 - (b) Provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.
 - (c) Provide a description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

It appears to FCCS Division that a non-guaranteed preneed contract does not, and cannot by its nature, comply with s. 497.468 (5)(b), because:

- Under a non-guaranteed preneed contract, the amounts ultimately to be charged the customer for the goods and services selected, will not be finally known until the preneed seller is called on to fulfill the contracts.
- Whereas, s. 497.468(5)(b) requires that the amount charged for each item of goods and services be itemized in the preneed contract at time of purchase. S. 497.468 (5)(b) states without qualification that "the amounts charged" shall be stated. The statute does not, for example, state that "an estimate of amounts to be charged" shall be stated.

Attorney Wendy Weiner, counsel for the Applicant, has provided a 4 page letter, setting forth argument in support of approval of the forms in issue.

The Division is recommending denial of the application on the grounds that the proposed forms do not comply with the requirement of s. 497.468 (5)(b), F.S.

Ms. Wiener stated that her argument would also apply to the contract related to Homesteaders. The concept of non-guaranteed preneed contracts is not prohibited in Florida law. The rules of statutory construction are clear that things that are not prohibited are permitted. The Division's recommendation for denial is that the "amounts charged are not guaranteed on the contracts at issue. The 2 contracts at issue are insurance funded preneed contracts but the argument applies not only to insurance funded preneed contracts but also to trust funded preneed contracts because there is no distinction drawn in the law whatsoever. The Law and the Administrative Rule that is relevant in this matter could not be clearer that no insurance funded contract has to be guaranteed. When an insurance funded preneed contract is purchased by the consumer, amounts are listed on the preneed contract but when that contract turns at-need, when the beneficiary passes, it is the current retail prices that are charged to the family. That is specifically because that requirement is directed by Administrative Rule (Ms.

Wiener provided the Board members with a copy of the relevant Administrative Rule, 69O-148.001, Funding of Preneed Contracts with Life Insurance or Annuity). It is the only Administrative Rule directly on point to this question. Ms. Wiener called the Board's attention to subsections (1), (4) and (5)b.

First, under (1), Background and Purpose - "The statute provides that if a funeral establishment contracts with a life insurance agent to sell a preneed contract pursuant to Chapter 497, Florida Statutes, the benefits payable under the insurance contract are limited to the approximate retail price of the funeral service and merchandise."

Read that in conjunction with (4), Defining "Face Amount" - "For purposes of Section 626.785, Florida Statutes, and this rule, the term face amount shall, provided that any subsequent increase in the benefit payable under the life insurance policy or annuity does not exceed the reasonably expected increase in the retail price of the services and merchandise specified in the preneed funeral contract."

The reason for that is born out in (5)b, which states when the contract turns at-need and the policy is payable, the payment to the preneed licensee "shall not exceed the retail price of the services and merchandise which are provided at time of need."

This Rule is quite clear that no insurance funded preneed contract in the State of Florida, no matter what it says today, is a guaranteed price preneed contract. It is simply not the way that it works; its not the way that it ever has worked. So, it does not appear that the Division has the authority to disapprove the contracts presented today. It would be directly in contravention of this Rule. The Rule that is relevant also but does not speak directly to this topic is the Board's Rule on insurance funded preneed contracts.

The argument about the failure of a requirement to guarantee the price of items on a preneed contract is supported by the fact that many if not all approved preneed contracts in this State already contemplate non-guaranteed prices. Cash advances are never guaranteed. Cash advance items specifically are included on almost every preneed contract in this State under a section that says "Non-Guaranteed Cash Advance Items." Our law does not draw a distinction between guaranteeing services, guaranteeing merchandise, but not guaranteeing cash advances. If guaranteed prices are required then every preneed seller in this state is in violation using its already approved contract which contemplates non-guaranteed cash advance items. The Law does not distinguish between the types of items on the preneed contract, so the position of the Division that all amounts charged have to be specified in a guaranteed fashion simply is not supported by either the law, the relevant Administrative Rule or the pattern and practice of the Division. There is simply no lawful requirement that the amounts charged must be guaranteed on a preneed contract.

The key consideration for the Board and for the Division is protection of consumers. The requirement is to appropriately disclose to consumers what they are getting. That is why on approved preneed contracts, under the cash advance section, we require that it say "non-guaranteed" so that consumers know that the prices for those items are not guaranteed. The contracts before the Board today are quite clear to the consumer that the prices are not guaranteed. The Board should not and has no authority to disapprove either of the contracts. There is no statutory basis for doing so. The relevant Administrative Rule clearly directs, it does not allow, it directs that the retail price charged on an insurance funded preneed contract, which are the 2 kinds of contract presented today, are the prices at the time the contract turns at need, not the price at the time the preneed contract was entered into. The Board has no lawful option but to approve the preneed contracts presented today.

Mr. Helm questioned whether it is customary to collect money on the cash advance items referred to or do they leave the zero once it's done.

Ms. Wiener stated that they collect money.

Mr. Helm questioned whether that is guaranteed.

Ms. Wiener answered, "Never." There is no requirement in statute and nor do they guarantee it.

Ms. Anderson stated as a consumer, she thought when you purchase a preneed plan that the prices are frozen. That appears to be the only advantage to purchasing one.

Ms. Wiener stated that appears to be what a lot of people think. That is often the case. In many, many circumstances and in many states prices for services and merchandise are guaranteed. There is no requirement that they be guaranteed but sometimes they are. Cash advance items are never guaranteed. People enter into preneed contracts for different reasons. Some people enter into them primarily for the purpose of guaranteeing the price or locking in a price at a time certain but there is entire other segment of the Industry that enters into a preneed contract, not because of the financial considerations but because they want to have the control over the choices that are made. In many states, where non-guaranteed preneed contracts are not prohibited, they are utilized by a smaller segment of the population but still something that companies have available to use when that is an appropriate circumstance for people. In this case, remember the key consideration is the disclosure to the consumer because there is simply not a requirement in our law that preneed contracts be guaranteed and if so then the Rule regarding insurance funded preneed contracts presented is rendered meaningless and we do not consider our Laws to render our Administrative Rules meaningless and cash advance items would be unlawful in every circumstance.

Col. Stiegman questioned although there is no requirement but could the person selling the contract disclose that it is guaranteed.

Ms. Wiener answered, "Absolutely, and many do."

Col. Stiegman questioned whether it would be guaranteed in that case.

Ms. Wiener answered yes.

Col. Stiegman stated that the general concept is it can be administered that way.

The Chair stated it would be included in the language of that contract.

Ms. Wiener concurred. Services and merchandise can be guaranteed. Cash advance items cannot and would not be guaranteed under any set of circumstances, but that is disclosed to the consumer. Or you could refrain from guaranteeing any of the prices such that the Rule presented is given appropriate meaning. That is exactly how it works today. No matter what, your preneed contract that is insurance funded, however the insurance funded contract is written, insurance funded contracts are not guaranteed.

Ms. Dudley clarified that the Rule presented by Ms. Wiener is not a Division's Rule, so the Board is not bound by this Rule in making a decision here today. If you look at this Rule, the specific authority and the law implemented are completely different Chapters. They are not Chapter 497. If there is a conflict between a Rule and a Statute, the Statute controls. This Statute states that they shall provide the amount. As Mr. Shropshire included in his memo, it does not say estimated amount. Basically, Ms. Dudley disagrees with Ms. Wiener that the Board is bound to follow this Rule because it is not the Board's Rule and it conflicts with the Statute. So if it conflicts with the Statute, the Statute controls.

Ms. Wiener disagreed that there is a conflict in the Statute. The Law says you have to specify the amount charged. There is a specification of an amount charged. It is not a guaranteed amount charged and the Law does not require that you guarantee the amount charged or else how are cash advance items on every approved preneed contract in this State. Secondly, Ms. Wiener disagreed that the Board can simply look away from a relevant Rule. The only authority for funeral directors and preneed sales agents to sell the insurance policies that fund these particular preneed contracts is in the Law which is the authority for the Rule provided to the Board. That is the Law that controls how the insurance policy is sold and how the benefits are payable to the preneed licensee when the Chapter 497 preneed contract turns at-need.

Mr. Hall stated he agrees with Ms. Wiener. Upon looking at the Statue this morning it seems grey. It says an amount but it does not say guaranteed. There is grey area and Ms. Wiener's argument is that the insurance companies, in the way we handle it and the cash advances, is absolutely correct. The insurance companies have got to know where they used to send the money back to the funeral home and then the funeral home was required to send the balance over and above today's cost to the family. Evidently that was not happening because now the companies want a contract from the funeral home and they will forward that balance to the family direct instead it going back to the funeral homes. Mr. Hall's only concern in it is that it appears there would be a guaranteed contract offered and a non-guaranteed, so the consumer could select either way.

Ms. Wiener agreed.

Mr. Hall questioned whether there would be any difference in pricing between those 2 options.

Ms. Wiener stated that she did not know. The contracts that are at issue today are the contracts submitted by Forethought and by Homesteaders, so that would be a matter for the actual preneed licensee. Ms. Wiener added that she is not able to speak to that issue right now.

Mr. Hall stated that in the past a consumer could have that right to pick. As long as it is spelled out in bold print like this where the consumer understands that they are signing up for a guaranteed or non-guaranteed product, then that is going to create a competitive climate in the market between the companies.

Mr. John Rudolph stated that s. 497.451 F.S. clearly addresses the issue of insurance. If you look at 497.458, which talks about the trusting, it refers "(1)(a) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented;" Now what Ms. Wiener has here is a preneed contract that is exclusively funded by insurance and cannot be funded in any other way. Ms. Wiener is arguing that the insurance provisions, insurance rules provide that does not have to be guaranteed. That is something that deals with insurance, but the one thing I want to make sure of is that if you are selling a preneed contract or approving a preneed that is going to be trusted, the trusting statute clearly says 100% of the purchase price collected for all cash advance items sold will be put into trust. Mr. Rudolph disagrees that any inference that any preneed contract that is trusted is not guaranteed. It must be guaranteed for the purpose of trusting.

Ms. Wiener requested to respond to "100% of the purchase price collected for cash advance items must go into trust." Those cash advance items are never guaranteed, so if you sell a cash advance item for \$50, \$50 must be put into trust but when the contract turns at-need the family may have to provide another \$25 or they may get \$25 back if the price is less.

Mr. Rudolph concurred but stated that Ms. Wiener is ignoring the earlier part where merchandise and services is sold, its purchase price for merchandise and services. That is a set forth purchase price and is the amount collected for it and certain percentages of it are deposited. So if there is no price on the contract, why would you even put a price on the contract unless to tell the person how much it costs. It is a very slippery slope when you approve a contract. When people sign contracts they think it is for the price that is on there and that is what they have to pay and then they would get it. The disclosures are fine, but this has gone on for so long in preneed contracts. To say that you can have a non-guaranteed purchase price on a preneed contract funded by insurance is a very dangerous position for this Board today.

Ms. Wiener stated it is absolutely the position that the Board has taken every since it has approved insurance funded preneed contracts because as those of you who sell insurance funded preneed contracts know the price is never guaranteed. The Statute to which Mr. Rudolph refers does not draw any distinction between services, merchandise and cash advances except with regard to the percentage that is deposited into trust. It says you have to deposit x percent of the amount collected. It does not make reference to guaranteeing the price. It uses the same language. Since we do not guarantee any cash advance item and there is not any significant concern by members of the public when the preneed contract says non-guaranteed cash advance items, the family is told this amount is not guaranteed. Just like that, in the contracts before the Board today, as in any trust funded non-guaranteed preneed contract to come before the Board in the future, the Board would mandate that those disclosures be very clear for the consumer that there is not any consumer confusion. That is the Board's role. There is simply no distinction in the Law between cash advance items, services or merchandise. There is no requirement that any price be guaranteed as specifically with regard to the contracts before the Board today, the relevant insurance Law and Administrative Rule require that those prices not be guaranteed.

Mr. Bill Swain, Consumer Advocate, stated that he does not have any objection whatsoever to non-guaranteed prices for prepaid contracts so long as it is absolutely clear to the buyer. Furthermore, it may actually help in getting people to think twice about prepaying because there would not be any particular motive for doing so unless the price is guaranteed. The seller has the option to guarantee the price and the responsibility to make absolutely clear to the buyer that the price is or is not guaranteed. Mr. Swain added that he can see a big advantage to the seller to market aggressively non-guaranteed contracts because that would allow the seller, if he/she chose to do so, to undersell the market and to get people to prepay. It

is like a poker game. It may end up that the lower price will be what is paid especially if you prepay close to the end of life, which a lot of families as we know do. They arrange for prepaid direct cremation when their loved one is in Hospice care. So, if I am a seller and I want to grab that market share, I will offer a prepaid contract that the price is not guaranteed. There is one seller in Leon County that is already doing that and Mr. Swain has no objection whatsoever.

Mr. Williams stated maybe it would help to go back in time and talk about the history of preneed for just a split second. The reality of it is these statutes were originally written to protect the consumer, to protect those dollars that funeral directors and cemeterians were collecting on preneed basis. There were some unscrupulous people in the Industry that did abscond some monies and these statutes came in to protect the consumers. The original intent has always been to protect the consumer's dollars. It was never to protect or guarantee prices in the future. That was not the intent of the Statute and today it is still the same way. We are here trying to protect the consumer's dollars, not to guarantee pricing. If it were, it would be very clear in the Statute. Somewhere it would state prices must be guaranteed, but it does not and it never has as that is not the intent. The problem is over a period of time it became a marketing deal to guarantee prices to sell the product out there. That is fine. Let it be market driven. If you got 2 funeral homes, side by side, same prices, one guaranteeing one non-guaranteeing, let the consumer make that decision, but there is nothing in our statute that says we are required to guarantee pricing, anywhere. That which Mr. Rudolph is referring to is nothing more than this is how much you must trust when you sell a preneed contract. That is all that is.

Ms. Hubbell stated, not knowing the Industry and not being in the Industry, there appears to be a distinct difference between the trusting where it has been purchased versus the life insurance because in my mind, the monies are trusted, it is more like a hedge fund and there is an opportunity to make more there but the life insurance policy is a set amount that is never going to change. There appears to be a big difference. For life insurance funded preneed this fits when you are saying trusting versus life insurance is the same. As far as the Statute goes, Ms. Hubbell stated she does see a difference.

Mr. Williams stated there are differences. As far as the issue being discussed now, Mr. Williams stated that he does not see a difference but there are many differences in the funding mechanisms, for instance, cancellation provisions. Consumers could possibly get money back on a trust contract or they may or may not get money back on an insurance contract. Technically an insurance funded preneed contract is an unfunded contract. If you are buying a life insurance policy over here and you cancel that contract, the contract goes away but the life insurance policy is still there.

Ms. Wiener stated that the Board is constrained by the law. There is no distinction in our law. At the end of the day, the consumer is expending funds for a preneed contract and those prices do not have to be guaranteed. So whether that money is paid to an insurance company for a policy to go into place or whether money is collected by a licensee and that money deposited into trust pursuant to this law, which of course even under a non-guaranteed contract scenario, this law would have to be followed to the letter for whatever amount is collected because remember, this is all focus on amount collected as to what goes into trust. At the end of the day, it is really the same type of scenario in terms of price guaranteed versus monies being collected. There are distinctions, but those distinctions are less relevant to the concept of a price guarantee and more relevant to simply the way that the consumer want to go with their preneed. If the consumer is maybe going to move out of the area, they might go insurance funded because they would be able to transport that policy with them. If the consumer knows they are staying in an area they would go trust funded. There is no dispute. The law does not contemplate a distinction between these types of policies.

Mr. Helm guaranteed that looking at this from a consumer's point of view, if asked what a preneed contract is, 97% of people that do not know anything about the funeral industry would say it is a guaranteed price.

Mr. Williams stated that when he was in the funeral home business, they would have little old ladies come in who wanted to prepay their funerals. They would take them down to the local bank and open up an in trust for account, basically a past book savings account. There was no guarantee there, but there was no law regulating us doing that or not doing that. Now there is a law to protect those funds in that deal. That is the intent. There is nothing in Chapter 497 that states pricing must be guaranteed. That is used as a marketing tool to sell the product.

Mr. Helm stated that he does not necessary agree with Mr. Williams because it does state charges must be itemized.

Mr. Williams stated that is a stretch.

Mr. Helm stated it depends on how you read it, from a consumer's point of view, if you go to asking about a preneed contract. Mr. Helm stated that older people have come in and he encourages them to go and make their arrangements. Mr. added that he is not directing them to go and get something that is not guaranteed but something that is guaranteed but if they are not told that it is a guarantee or non-guarantee, they are not going to know that.

Ms. Wiener stated that the consumer has to be told.

Mr. Helm stated that is just saying that.

Mr. Williams stated that is true with any contract. The bottom line is the buyer has to be aware and has to take responsibility for their actions, no question about it. But if the seller is not going to guarantee, it must be stated in that contract. Just like now the contracts, not because it is required by statute, specifically state that these prices are or are not guaranteed. In fact, generally, the prices on current contracts with the exception to the one that the Board has already approved for non-guaranteed contract, an insurance funded contract that FSI submitted a couple of years ago. There is already one out there by the way that has already been approved by the Board without question because the Board/Division at that time recognized that there is no requirement.

Mr. Shropshire questioned whether he has an agreement with Ms. Wiener that if the Board disapproves these 2 contracts, FSI is going to relinquish that approval of that contract because that was an ancillary issue at the time that the contract was approved, and the issue of guaranteed and non-guaranteed was not discussed at all on the record.

Ms. Wiener answered yes. The discussion today resolves the issue about the 2 contracts that are before the Board and also about the 1 that was submitted by FSI. Ms. Wiener reminded the Board that the 2 contracts before them are insurance funded preneed contracts as was the one previously submitted by FSI. To speak to Mr. Helm's point, there are no guaranteed insurance funded contracts in the State of Florida today. Insurance policies that fund those contracts and the way that those contracts are paid are just like Mr. Hall described the current retail prices. All these contracts do is make it quite clear to the consumer that this is exactly what is happening. They are clear. The first line in one of the contracts, in the terms and conditions states that the prices in this contract are not guaranteed. So there is no authority to disapprove an insurance funded preneed contract because it is non-guaranteed.

Mr. Jim Atwood, Infinity Management Advisors, former Board member from years ago, stated that he has been in the trust industry with SunTrust Bank for 20 years and has worked with specifically with SunTrust Bank trusting funds in this Industry and heading that group. The Statute in Florida does not address guaranteed and non-guaranteed. SunTrust operated in 20 states. State statutes in most states where they recognize guaranteed and non-guaranteed have specific statutory guidelines for that. The idea is to protect the consumer, which is important. The part that is being overlooked here is not with insurance, but on the trust side as Ms. Hubbell brought up. When those monies go in, who's bearing the risk of the investment? If it is a guaranteed contract the contract holder is not because the firm is going to fulfill it on a guaranteed contract. If the investments do well, they do well. If it is a non-guaranteed contract, the consumer is bearing the risk of those investments. Ideally to address the issue, there must be statutory guidelines that specifically address the issue. You really do not want a consumer having their funds invested in the same way that a funeral home is who's guaranteeing those products. That is how you protect the consumer. Whether it is guaranteed or not-guaranteed is not the issue. Florida Statutes does not address that issue.

Mr. Hall addressed Mr. Helm's earlier concern on the non-guarantees. There is nothing to prevent that if the consumer comes to him and the price has increased they are going to Ms. Thomas-Dewitt's establishment. They can take that policy and let Ms. Thomas-Dewitt handle it if Mr. Hall increases his prices too much. That is why at our firm we like insurance because these families think they are going to be here forever but something happens then they have to move away, but they can go to any firm. We explain that the firm is not going to guarantee this pricing, but it is just like a check voucher and is good for that amount and the consumer can go in and purchase their services.

Mr. Rudolph questioned whether the insurance increases in value in an insurance funded contract, such as at the time of death.

Ms. Wiener stated it does sometimes.

Mr. Rudolph questioned the number of times, under an insurance funded contract, that the family of the deceased has to come up with more money for the services that were in the preneed contract.

Ms. Wiener stated whenever the preneed contract specifies that the policy will only cover a portion. That is specifically in the Board's Rule on insurance funded preneed contracts that does not speak specifically to the issue we are looking at here but it does say that there must be a disclosure that when the insurance will constitute only a portion of the full payment for the purchase price at purchaser's death, the contract shall clearly disclose that the purchaser has an obligation to pay the difference.

Mr. Rudolph stated it only covers a portion of the purchase price. So there is a purchase price that is the specific purchase price for the merchandise and services contained.

Ms. Wiener questioned whether Mr. Rudolph is arguing that the 2 Rules do not go together.

Mr. Rudolph stated that Rule applies to insurance, as Ms. Dudley explained in her argument. That only goes to a portion of the purchase price. So if you have a \$10,000 purchase price for merchandise, services and everything else and a \$5,000 insurance policy, it must be disclosed that it does not cover the whole purchase price. That is what that Rule states. Right now, the argument by Mr. Atwood is it does not state non-guaranteed in 497. Everything that is in 497, in Mr. Rudolph's opinion is for a guaranteed price. In order to have non-guaranteed preneed contracts, they would have to go back to the Legislature and get language that specifies non-guaranteed.

Ms. Wiener questioned what Mr. Rudolph would do about cash advance items that are non-guaranteed and what would be done about every insurance funded preneed contract that is handled in a mandated way pursuant to that administrative rule that states that the retail price at the time of need is the price that is charged no matter what it says on the preneed contract.

Mr. Rudolph stated that we have been handling insurance funded contracts for a long time. Mr. Rudolph questioned whether these have been insurance funded contracts for guaranteed amounts.

Ms. Wiener answered, "No, never. It is not allowed." Just as Mr. Hall described that is not how it works. No insurance funded contract today is guaranteed. There is no such thing. The benefits are payable based on the current retail price charged when the contract turns at-need. There is no such thing as a guaranteed price preneed insurance contract.

Mr. Shropshire stated that most consumers do understand it to be guaranteed. The Division receives lots of phone calls from consumers that think they are guaranteed.

Mr. Rudolph stated if it was a preneed contract that was approved by this Board, it was a guaranteed price. All they are saying in the insurance is that it is not.

Ms. Wiener disagreed with Mr. Rudolph. The contracts in front of the Board today could not be clearer in their disclosure. So if there is any concern at all that Licensees operating pursuant to the Administrative Rule, which requires them to charge today's prices, if there is any concern that is not being done, then the approval of these contracts would help take care of that problem because they are very clear in their disclosure that the prices are not guaranteed.

Mr. Hall stated that it is rare to have a life insurance contract that did not take care of the cost of the funeral. Mr. Hall added that 25% of the time, the family gets a check back. From the other perspective, we are concerned about the safety, we want full disclosure and want the family to know what they are purchasing. For security, we have been requiring that preneed sellers to trust 100% or do insurance. Mr. Hall added that the only ones he is taking a hit on are the ones that he inherited from companies that did the 70/30 contracts.

Mr. Rudolph questioned how to establish the percentage of the purchase price for determining the amount to be trusted on a non-guaranteed contract that is trusted.

Mr. Williams stated it is simply what it is sold for.

Ms. Wiener disagreed with Mr. Williams. The law states you trust what is collected. "Any person who is paid shall deposit an amount at least equal to this percent of the purchase price collected for those services." You deposit what is collected because you do not know whether the consumer is going to pay \$100 this week or the entire purchase price this week or whatever this week. You deposit based on what is collected and you will do so under a non-guaranteed price.

Mr. Rudolph stated that the purchase price by definition is what you are going to pay for what is listed and that is the service and the merchandise. Ms. Wiener is stating that the purchase price does not mean amounts you are going to have to pay for, it may be the amount you would have to pay in the future for it.

Ms. Lisa Lyons Coney stated that after 17 years in this Industry, her understanding of preneed has always been and will always be an advance of need, not a guarantee, but before death has occurred. That is the definition of preneed. Ms. Lyons Coney stated that she agrees with Ms. Wiener. The definitions are a great way to find out what to look for in the statute. The definition of a preneed contract means "any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future." It does not state for what price or that it is guaranteed. It says that a contract is being entered into and making an agreement to furnish something in the future. Mr. Helm made a point that 97% of the people thinking this is the case. Ms. Lyons Coney stated that 97% of her customers come in today and think mommy and daddy arranged for everything. They do not know that they did not handle cash advances. They do not care that they did not finish this portion of their burial services. They do not know that they bought a direct cremation but they want now to go to a cremation with full services. Ms. Lyons Coney added that she get customers every single day that say "I thought everything was taken care of...Mom told me that everything was take care of." Just because you have entered a contract does not mean that the contract covers every single thing you are going to need at the time of death. The point that has been amply clear today is that we all want to clearly communicate with and protect our consumers. The fact that Bill Swain is standing before us as the Consumer Representative in the State of Florida saying that he has no problem with this should sway you more than any attorney or any company in the room. There is not a problem with this. The Board has to vote in favor of these because there is no other legal option available to you. The Division has to take away from this a need to go back to the Rules Committee and put Rules in place that would define the way that we put this forward to the consumers in Florida and may even define a form above and beyond the font size on a contract that says this is estimate only. Develop a form that a customer understands that they are entering into an agreement that is not guaranteed so that the Division later has the ability to say this is what your mother signed.

Ms. Swain stated he has no problem with the notion of a non-price guaranteed prepaid contract. Mr. Swain stated that he is not good enough at this to know whether the law currently allows it or not but does not see a problem with it. Regarding insurance funded contracts, there is a problem that I run into all the time. That is an insurance funded preneed contract where the beneficiary of the insurance policy is not the buyer and the buyer never knows that the funeral home is going to collect whatever appreciation there may be in the contract. At some point, if we are really going to try to revisit this in terms of laws and regulations, I would like to see us establish regulation for insurance funded contracts that say the buyer is the beneficiary of the insurance policy.

Ms. Thomas-Dewitt stated that she is totally confused based on the little knowledge she has about preneed and what has been presented here today because what she is hearing is not what is being practiced. Even when the inspections are done, the way the books are handled is not in compliance to what is being presented. Ms. Thomas-Dewitt questioned whether this item could be deferred. Our pricing, they have an at-need and a preneed contract and they are looked at upon basically to make sure that if we wrote a contract in 1922, those prices are correct according to that price sheet. The only items that we can charge differently for are cash advance items.

Mr. Williams stated that is not true.

Ms. Thomas-Dewitt stated when the books are inspected, that is why it is confusing.

The Chair stated that those are on price guaranteed contracts.

Ms. Thomas-Dewitt stated she understands but we are not practicing what we are preaching so until we can get some clarity on it, she would like to see the item deferred.

The Chair questioned whether Ms. Thomas-Dewitt has any non-price guarantee contracts that she has sold over the years.

Ms. Thomas-Dewitt answered no.

The Chair questioned whether all of Ms. Thomas-Dewitt contracts are guarantee price contracts.

Ms. Thomas-Dewitt stated except for the cash advances which are marked on the agreement.

The Chair stated that those have to match up.

Mr. Williams stated that the reality of it is from the answer Ms. Thomas-Dewitt just gave The Chair, she does not have any non-guarantee contracts therefore they are guaranteed. The point is, however you write the current at-need contract is nobody's business but yours as long as it meets the 497 guidelines and the FTC guidelines. If you want to write it at the current prices and discount it down to that original preneed contract it is perfectly fine to that and there is nothing wrong with that. If you want to write today's contract when death occurs at the original preneed prices, you can do that too as that is your own individual business so there are no problems there.

The Chair stated that way it nets out because you guaranteed it. If it were a non-guaranteed contract it would not be an issue.

Ms. Wiener asked that the Board take this matter up at this point. The contracts before the Board have been pending, since February and March of 2009, a great deal of time while we worked through this with the Division. There is no authority to disapprove these contracts. These contracts will make clear to consumers that non-guarantee prices on insurance funded contracts are what they are getting.

Ms. Dudley stated that the Board can interpret 497. If the Board interprets 497 as not requiring a guarantee, then they can grant these. If the Board interprets 497 as requiring a guarantee, which is Ms. Dudley's and Mr. Shropshire's opinion, then the contracts should be denied. To say that the Board does not have the authority to deny these contracts is wrong.

Ms. Lyons Coney questioned if the Board denies these contracts whether this would make all contracts that currently have cash advance non guarantee items a problem with the Board and whether they would have to redo everything that is done today and has been done for decades. This is creating a huge problem.

MOTION: Ms. Hubbell moved to approve the forms. Col. Stiegman seconded the motion, which passed with 3 dissenting votes.

(2) Homesteaders Life Insurance Company (W Des Moines, IA)
(a) Nonguaranteed Preened Funeral Agreement and Assignment (Form X-NGT-FL)

The attached form was submitted by letter dated March 25, 2009. The Division had concerns regarding the forms and had discussion with the Applicant. As a result, the application was put in abeyance.

The Applicant has recently requested that notwithstanding the Division's concerns, the forms be presented to the Board for decision. Applicant is represented by attorney Wendy Weiner.

The Division's concern is that the forms are preneed contracts in which the price is not guaranteed at the time of sale. The Division will refer to such contracts herein as "non-guaranteed preneed contracts." The Division does not believe that non-guaranteed preneed contracts are allowable in Florida, due to the requirement of s. 497.468(5)(b), F.S.

Section 497.4568 provides in pertinent part as follows:

497.468 Disclosure of information to the public.--

A preneed licensee offering to provide burial rights, merchandise, or services to the public shall:

- (5) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract the form of which has been approved by the licensing authority pursuant to procedures specified by rule. The written contract shall:

- (a) Be completed as to all essential provisions prior to the signing of the contract by the customer.
- (b) Provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.
- (c) Provide a description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

It appears to FCCS Division that a non-guaranteed preneed contract does not, and cannot by its nature, comply with s. 497.468 (5)(b), because:

- Under a non-guaranteed preneed contract, the amounts ultimately to be charged the customer for the goods and services selected, will not be finally known until the preneed seller is called on to fulfill the contracts.
- Whereas, s. 497.468(5)(b) requires that the amount charged for each item of goods and services be itemized in the preneed contract at time of purchase. S. 497.468 (5)(b) states without qualification that “the amounts charged” shall be stated. The statute does not, for example, state that “an estimate of amounts to be charged” shall be stated.

Attorney Wendy Weiner, counsel for the Applicant, has provided a 4 page letter, setting forth argument in support of approval of the forms in issue.

The Division is recommending denial of the application on the grounds that the proposed forms do not comply with the requirement of s. 497.468 (5)(b), F.S.

MOTION: Col. Stiegman moved to approve the form. Mr. Hall seconded the motion, which passed with 2 dissenting votes.

17. Preconstruction Performance Bond(s)

A. Recommended for Approval with Conditions

(1) Carriage Services of Florida, Inc., d/b/a Forest Lawn Memorial Cemetery (F039729) (Panama City)

Carriage Services intends to construct a new mausoleum at its Forest Lawn Memorial Cemetery (F039729), in Panama City. Pursuant to s. 497.272, Fla. Statutes, typically, a pre-construction trust must be put in place if sales are going to occur prior to completion. However, s. 497.272(8) provides that in lieu of the pre-construction trust fund, the cemetery company may provide a performance bond in an amount and by a surety company acceptable to the regulator.

The licensee has submitted for approval a performance bond, in lieu of a pre-construction trust. The mausoleum project, and the bond, is summarized as follows:

Project: 204 Crypt Mausoleum – 36 single crypts, 84 tandem crypts, 104 niches
 Cost: \$201,215
 Bond Amount: \$225,000
 Bond Number: CMS 234123
 Surety Company: RLI Insurance Company

The Division is recommending approval of the proffered performance bond subject to the condition that the Division receives an original signed and sealed bond document, matching the enclosed copy of bond, within 30 days of this Board meeting.

MOTION: Col. Stiegman moved to approve the request with the condition that the Division receives an original signed and sealed bond document, matching the enclosed copy of bond, within 30 days of this Board meeting. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

18. Trust Transfer Request(s)

A. Recommended for Approval with Conditions

(1) Highland Memorial Park Association, Inc., d/b/a Highland Memorial Park (F039463) Ocala

Highland Memorial Park Association, Inc., d/b/a: Highland Memorial Park, requests transfer of cemetery care & maintenance funds held under the SunTrust Bank Care & Maintenance Trust Agreement to the Regions Bank Master Florida Cemetery Care & Maintenance Trust Agreement

The Division is recommending approval subject to the condition that certification of the transfers is received by the Department within 60 days of this Board meeting date.

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

19. Chairman's Report (Oral)

The Chair requested that the Division prepare a presentation for the Board to be presented at the October meeting re the steps involved and a better understanding of licensure in the State. This should provide the Board a better understanding of what the Division and the Applicants go through during the licensing process.

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

None

21. Administrative Report

A.	New Cemetery Applications Received Since Last Meeting	0
	Recommended for Approval	0
	Pending	0
B.	Cemetery Acquisition Applications Received Since Last Meeting	0
	Recommended for Approval	0
	Pending	0
C.	Preneed License Applications Received Since Last Meeting	1
	Active Preneed Licenses	332
	Presented to the Board at this Meeting	1
	Pending	1
D.	Preneed License Branch Applications Received Since Last Meeting	1
	Active Preneed License Branches	344
	Recommended for Approval	1
	Pending	0
E.	Preneed Sales Agent Applications Received Since Last Meeting	81
	Active Sales Agents as of July 21, 2010	3824
	Recommended for Approval	25
	Temporary Licenses Issued; Pending Permanent	149
F.	Monument Establishment Applications Received Since Last Meeting	1
	Active Monument Establishments	98
	Pending	1
G.	Broker of Burial Rights Applications Received Since Last Meeting	0
	Active Brokers of Burial Rights	13
	Pending	0
H.	Exempt Cemetery Reports Received Since Last Meeting	0
	Active Exempt Cemeteries	71
	Pending	0

I.	Preneed Funeral Contract Consumer Protection Trust Fund Balance as of July 21, 2010	\$7,869,105.08
	# Claims Presented at This Board Meeting	4
	\$ Claims Presented at This Board Meeting	\$2,658.21
	Claims Paid as of July 21, 2010 (for fiscal year 2010-2011)	\$0
J.	New Establishment Applications Received Since Last Meeting	15
	Pending	11
	Completed	4
K.	New Individual Applications Received Since Last Meeting	22
	Pending	11
	Completed	11
L.	Request for Training Facility Applications Received Since Last Meeting	2
	Pending	1
	Completed	1
M.	Request for CE Providers and Courses Received Since Last Meeting	40
	Pending	0
	Completed	40
N.	Initial Inspections Received Since Last Meeting	13
	Pending	0
	Completed	13
O.	Inspections Received Since Last Meeting	123
	Pending	0
	Completed	123
P.	Initial Licenses Issued Since Last Meeting	32
	Renewal Licenses Issued Since Last Meeting	5
	Duplicate Licenses Issued Since Last Meeting	6

22. Disciplinary Report

	Issued Since Last Meeting (June 24, 2010)	Issued Since January 1, 2010
Notice of Non-Compliance	1	32
Citations	6	17

23. Adjournment

The meeting was adjourned at 12:16 p.m.