

Minutes
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
August 5, 2009 - 10:00 A.M. to 5:00 P.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg #230
Tallahassee, FL 32301

THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order and Roll Call

Mr. Greg Brudnicki, The Chair, called the meeting to order at 10:02 am.

Mr. Doug Shropshire, Executive Director, introduced the Chief Financial Officer of the State, Alex Sink and questioned whether she would care to make any remarks.

CFO Alex Sink stated that she was excited to be here this morning and would be present for about an hour. CFO Sink stated she has heard so much about the work of the Board and has met with many individuals in attendance over the past two and a half years. Curiosity finally killed the cat...maybe that is not a good thing to say here. CFO Sink added how proud she was of the work that Mr. Shropshire and Mr. Miller have done over the past two years. The Department is all about being fair-minded, good, professional regulators; is interested in getting answers out as quickly as possible; and being responsive to the needs of the Industry who serves our citizens. The Department's first responsibility is to always protect our citizens. That interest is also shared with the Board. CFO Sink thanked The Chair for his leadership and Members of the Board for their service as volunteers.

The Board thanked CFO Sink.

Mr. Shropshire requested to make the usual prefatory comments for the record and then take the roll.

As a preliminary matter, let me state for the record that my name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. This is a 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. Today is August 5, 2009, approximately 10:00AM. Members of the Board are present in person and the public is also present. My Assistant, Ms LaTonya Bryant-Parker, will be taking minutes of the meeting and the meeting is being tape recorded.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brudnicki, 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:

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

Catherine Zippay

ALSO PRESENT:

CFO Alex Sink
Doug Shropshire, Executive Director
Anthony Miller, Assistant Director
Allison Dudley, Board Counsel
Mary K Surles, Department Counsel
James Gellepis, Department Staff
Karen Duehring, Department Staff
Jim Deason, Department Staff
LaTonya Bryant-Parker, Department Staff
Lashonda Morris, Department Staff
Christine Lynn, Department Staff
Jasmin Richardson, Department Staff
Harriet Sespico, Assistant to Deputy CFO Tammy Teston

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

2. Action on the Minutes

A. June 24, 2009

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on June 24th.

Ms. Nancy Hubbell stated that Page 37 indicated she had made a motion, but she was not present at the June 24th meeting.

Mr. Shropshire stated that the Division would examine the tape recording and make that correction.

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

B. July 15, 2009 – Teleconference

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

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

3. Informal Hearing(s)

A. Preneed License, denial of renewal

(1) Legacy Funeral Home & Cremation Services, LLC (Kissimmee), NOIR-2009-75

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Anthony Miller, Assistant Division Director, stated that the Licensee has not submitted any materials to the Division that were not already presented to the Board at the June 24, 2009 meeting. Licensee has a net worth of (\$99,742), versus the required net worth of \$10,000. In addition, the licensee has not paid the \$1,000 penalty for late filing of financial statement and renewal papers.

The Chair questioned whether there was anyone present representing Legacy Funeral Home & Cremation Services, LLC.

There was a negative response from the audience.

Mr. Shropshire stated that the packet before the Board includes a notice letter to Legacy concerning the date, time and place of this meeting.

The Division recommends that the Board affirm the initial decision to deny renewal.

MOTION: Mr. Jody Brandenburg moved to affirm the initial decision to deny renewal. Mr. Powell Helm seconded the motion, which passed unanimously.

(2) Florida Funeral Home & Crematory, Inc. (Miami), NOIR-2009-71

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Miller stated that the Licensee has a net worth of \$68,859, versus the required net worth of \$80,000. In addition, licensee has not paid the \$500 penalty for late filing of financial statement.

Mr. Bill Williams stated that the licensee could not make it and has asked him to respond to the Board. The net worth has not been met. The licensee requests that the Board allows them to continue with their preneed license and they would be more than happy to submit to 100% trusting or using insurance exclusively for the preneed product.

The Chair questioned the late filing penalty.

Mr. Williams requested that the Board make the approval contingent upon payment of the penalty and he would ensure that it is paid.

Mr. Shropshire stated that the Division recommends that the Board affirm the initial decision to deny renewal.

MOTION: Ms. Tracy Huggins moved to affirm the initial decision to deny renewal. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(3) Hawkins Funeral Home, P.A. (Sarasota), NOIR-2009-72

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Helm recused himself.

Mr. Miller stated that the Licensee was denied renewal on June 24, 2009 based on net worth of \$18,619, versus required net worth of \$40,000. No material has subsequently been received from the Licensee indicating a change to that situation.

Mr. Williams stated that the funeral home submitted new financials this morning. The licensee has had a struggle with the death of their CPA. The net worth has been met now. The licensee has put another \$12,000 into the business, which they now exceed net worth requirements by \$10,000.

Mr. Williams requested that the Board approve the license contingent upon the Division's review of the financials submitted this morning.

The Chair questioned whether there have been any preneed auditing problems with this firm.

Mr. Jim Gellepis stated that he was not aware of any such problems.

Mr. Shropshire questioned whether Mr. Robert Wayne Hawkins would provide factual testimony.

Mr. Hawkins stated he did not know what he could provide.

Mr. Shropshire stated he would swear Mr. Hawkins in and requested that he raise his right hand. "Do you swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you?"

Mr. Hawkins answered "I do."

Ms. Huggins questioned what has changed on the financials submitted today to make up the difference besides the \$12,000.

Mr. Hawkins stated that is the total, but was informed that they could use the property as collateral since it is free and clear. Mr. stated that the bookkeeper of 16 years died and his boss has been advised of the deadline but failed to meet it.

Since this is new information that is being submitted to the Division, Mr. Miller suggested deferring this matter so that the Division has time to review the information and make the appropriate recommendation to the Board at the next in person meeting.

Mr. Brandenburg stated even with the additional \$12,000 it only brings the net worth to \$30,000.

The Chair stated there appears to be some confusion.

Mr. Williams stated there is another set of financials that are more properly stated which were submitted this morning. The financials reflect that the net worth requirements were about \$2,000 shy plus they added the \$12,000 back into the company. So with the new financials and the \$12,000 they have added, these financials have been reproduced. Now they exceed the net worth by \$10,000.

MOTION: Mr. Jones moved to defer to the October meeting. Ms. Huggins seconded the motion, which passed unanimously.

Mr. Shropshire advised Mr. Hawkins that he would need to be present at the next meeting, which would be held in Orlando and Mr. Gellepis would provide details as such.

(4) *Mohn, Lewis W & Martha P (Seminole), NOIR-2009-76*

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Miller stated at the time of the Board's June 24, 2009 meeting, the licensee's financial statement showed a net worth of (\$35,307). Subsequently the licensee provided the attached listing apparently showing payment of approximately \$33,000 in accounts payable (A/P). However, no revised financial statement has been provided, so it is not possible to know whether other A/P have increased or new A/P have been added that in effect negate the implied improvement in financial position. Moreover, even if total current A/P have decreased by \$33,000 based on the most recent financial statement provided that only improves net worth from negative \$35,000 to negative \$2,000, whereas the statute/rules requires a net worth of a positive \$80,000.

Mr. William Miller stated that he is the funeral director in charge at the Lewis Mohn Funeral Home and questioned whether he needed to be sworn in.

Mr. Shropshire answered "yes" and requested that he raise his right hand. "Do you swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. W Miller answered "yes sir, I do." Mrs. Mohn is 84 and could not be here as she fractured a bone in her back of some sort. The funeral home sells 100% insurance. There is no trust at all. Mr. W Miller stated that he was on vacation when all of this occurred and was not present to help Mrs. Mohn. It is unclear whether Mrs. Mohn understood and provided all the information needed. Mr. W Miller requested consideration and time to further work on this and still be able to work with the insurance until he is able to provide more information since the funeral home is 100% insurance and has no way of touching the funds. Mr. W Miller stated that the funeral home leases the building and there is a silent partner in the business. The funeral home has been serving families in Seminole for almost 50 years and there has never been a complaint against the

funeral home. By denying this, the funeral home is put in a very bad position that may force them to go out of business as a family owned funeral home.

The Chair stated that the balance sheet indicates "As of December 31, 2008" and the income statement indicates "For the year ended December 31, 2007." Here is an income statement that does not coincide with the financial statement, a business that is 100% insurance, a little less than \$600,000 worth of revenue and almost 50% salaries. This makes it hard for the Board to entrust this company to do preneed with that kind of ratios.

Mr. W Miller stated it is unfortunate that he was on vacation when Mrs. Mohn received the information, which was about the time she injured herself. Mr. W Miller is requesting more time to obtain the proper information through the accountant and the bookkeeper.

Ms. Huggins questioned whether the item could be deferred.

Mr. A Miller stated that the Division recommends that the Board affirm the initial denial. However, if the Board would like the Division to reassess the situation to determine whether there is more information needed, the Division would do so.

The Chair stated that this was supposed to be addressed in June but it was not. The Board needs a definitive time as to when valid financial statements will be received so that a decision is made.

Mr. A Miller suggested that financials be received by the next in person meeting, which would be October.

The Chair stated that the information should be received by the Division within a month of today's date.

Mr. W Miller stated he would be happy to comply with this. Once he returns to the funeral home, he plans to start on this immediately. Also, the funeral home is working to get a surety bond for \$115,000, if that would help in any way. Within 30 days, the Division will have the correct information.

Mr. Shropshire questioned whether Mr. W Miller is assuming he could sell preneed under a surety bond.

Mr. W Miller questioned whether it would be acceptable to the Board to have that bond available for the funeral home.

Mr. Shropshire responded there are detailed provisions in ch. 497 about selling under a surety bond. Generally, that is not available anymore. Mr. Shropshire added that the licensee may want to consult counsel as there are several experts that are very good in that area.

Mr. W Miller stated he would do so.

Mr. Shropshire stated that the Board is indicating that the licensee would need to provide the Division office with all of the revised materials by September 5, 2009 and appear at the October meeting in Orlando.

Mr. Brandenburg questioned whether the licensee should suspend selling in the meantime.

The Chair questioned whether the Board would like to suspend the licensee from selling until the financials have been received.

Mr. Brandenburg stated that they are not licensed.

Mr. Shropshire stated that technically they are licensed during the pendency of the informal hearing proceeding. There should be a commitment that they only sell insurance funded contracts.

Mr. W Miller stated that the funeral home sells 100% insurance funded contracts only.

Ms. Nancy Hubbell questioned the risk to the consumer when everything is insurance funded.

The Chair stated the risk would be whether they would still be in business at the time of need.

MOTION: Mr. Baxley moved to defer to the October meeting contingent upon continued sale of Insurance funded contracts only; receipt of financials within 30 days (September 5, 2009); and the applicant or representative must appear in person at the October meeting. Mr. Jones seconded the motion, which passed unanimously.

(5) Alphonso West Mortuary, Inc. (Jacksonville), NOIR-2009-64

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Miller stated that the licensee did not provide the Division with the required financial statement until June 22, 2009 (it was due on or before February 1, 2009). The financial statement was not received in time to be included for the Board's meeting on June 24, 2009 and accordingly the Board denied renewal. The financial statement is now before the Board and it shows a net worth of \$127,919 versus a required net worth of \$100,000.

The Division recommends that the Board reverse the initial decision and approve renewal of license subject to the condition that the licensee pays the \$1,000 penalty for late filing of required financial statement.

MOTION: Mr. Brandenburg moved to reverse the initial decision and approve renewal of license subject to payment by licensee of a \$1,000 penalty for late filing of required financial statement. Mr. Baxley seconded the motion, which passed unanimously.

Mr. Shropshire questioned whether there was anyone present representing Alphonso West Mortuary, Inc.

There was a negative response from the audience.

(6) Carthage Chapel Funeral Home, Inc. (Jacksonville), NOIR-2009-65

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Miller stated when the Board denied this renewal application on June 24, 2009, the information before the Board was that the \$1,000 penalty for late filing of financial statement had not been paid. The licensee paid the penalty on June 22, 2009. In addition, the licensee has a net worth of \$75,443 versus a required net worth of \$80,000.

On August 3, 2009, the licensee sent a letter to the Division agreeing that all preneed sales from August 5, 2009 to June 30, 2010 would be insurance policy funded only. The Division now recommends that the Board reverse the initial decision to deny renewal.

Mr. Shropshire requested that Mr. Kenneth Peele raise his right hand. "Do you swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Peele answered "yes, I do." Mr. Peele requested that the Board consider approving the preneed license contingent upon 100% insurance funding.

The Chair questioned whether Mr. Peele agrees to comply with the Division's recommendation.

Ms. Huggins questioned whether the licensee meets the financial net worth.

Mr. Peele answered no.

Mr. Miller requested since the licensee does not meet the net worth, the Board could approve the license with the condition that the licensee would only sell insurance funded contracts for the period August 5, 2009 to June 30, 2010.

The Chair requested that a caveat be added to state the Board would review the financials at that time to reflect the net worth is above the \$80,000 at that time to prove the licensee could return to selling the way that he was. If not, he would have to continue selling insurance funded contracts only.

Mr. Shropshire stated that the condition would be that the Board would not, at the next cycle, approve this unless the licensee meets the net worth requirement.

The Chair added "or the licensee would have to continue 100% insurance funded."

Mr. Keenan Knopke questioned the difference between this renewal and the one for Lewis Mohn. Mohn did not meet the financial requirements and the licensee stated they would do 100% insurance as well.

The Chair stated that the Board does not have financials for Mohn.

Mr. Knopke questioned whether the Board will approve Mohn once the financial are submitted and they still fall short.

Mr. Shropshire stated that Mohn, even with the improvements, they had a negative net worth of \$2000 versus the \$80,000 requirement, so they were in the whole \$82,000, whereas Carthage is only \$5,000 short of the required net worth. In view of the fact that they are only \$5,000 short, there was adequate protection to the public if they only sold insurance funded contracts.

Mr. B Williams stated the previous one before that was denied and they missed the net worth by \$11,000 and there is a \$229,000 profit margin.

Mr. Shropshire questioned whether Mr. Williams is referring to Legacy.

Mr. B Williams stated it was Florida Funeral Home & Crematory, Inc.

Mr. Shropshire questioned whether there was a representative present.

Mr. B Williams stated he responded on behalf of the licensee.

Ms. Zippay stated there was also a \$500 penalty that had not been paid.

Mr. Shropshire stated that it makes a difference to the Division whether the respondent shows up in person.

Mr. B Williams states he can respond on behalf of the respondent.

The Chair stated that the fine is also an issue.

Mr. B Williams stated that can be handled. Here is a company with a \$229,000 profit margin and this company is probably not quite there.

The Chair stated with the \$229,000 profit, the licensee had the ability to pay the \$500 penalty but did not do so.

MOTION: Mr. Brandenburg moved to reverse the initial denial and approve the renewal subject to the condition that all preneed sales from August 5, 2009 to June 30, 2010 be either insurance policy funded. Ms. Thomas-Dewitt seconded the motion, which passed with one dissenting vote.

(7) *Rubin Memorial Chapel, LLC (Boynton Beach), NOIR-2009-78*

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Miller stated at the time of the Board's June 24, 2009 decision, the Licensee's financial statement did not show the required net worth. The licensee subsequently submitted a more current financial statement that shows a net worth of \$200,414 versus a required net worth of \$100,000.

The Division recommends that the Board reverse the initial decision and approve renewal of the license with no conditions.

Mr. Helm questioned whether the financials were filed on time.

Ms. Wendy Wiener answered yes.

Mr. Miller stated this was just a matter of submitting current financials.

MOTION: Mr. Brandenburg moved to reverse the initial decision and approve renewal of the license with no conditions. Mr. Helm seconded the motion, which passed unanimously.

(8) StoneMor Florida Subsidiary, LLC (Lake Placid), NOIR-2009-79

Mr. Shropshire stated that the licensee has requested this informal hearing and have admitted the facts and legal basis for the Board's initial denial of their renewal of their preneed main license.

Mr. Miller stated at the time of the Board's decision on June 24, 2009, this licensee had not filed the required financial statement. The licensee has subsequently filed the required financial statement and it shows the required net worth.

The Division recommends that the Board reverse the initial decision and approve renewal of license subject to the condition that the Licensee pays the \$1000 penalty for late filing of financial statement.

Ms. Karen Walker stated that a check in the amount of \$1000 has been submitted to Division staff.

MOTION: Ms. Thomas-Dewitt moved to reverse the initial decision and approve renewal of license subject to payment of a \$1000 penalty for late filing of financial statement. Ms. Huggins seconded the motion, which passed unanimously.

B. Concurrent Internship

(1) Beggs, Judson T

Mr. Miller stated that internships must be completed within a 12 month period (Rules 69K-18.002(5), 18.001(5)). If an intern fails to complete intern training because of illness or personal injury, the intern may reregister for internship training and receive credit for previous training, Rules 69K-18.002, 18.001. Mr. Beggs failed to complete the internship within 12 months. When asked by FCCS staff why, he declined to provide the reason, so that there is no evidence it was due to illness or injury.

Ms. Wiener stated at the time that Mr. Beggs began his original internship he was already suffering from some minor depression as a result of a fairly ugly divorce and child custody situation. That internship went well completing 40 hours a week for about six months when Mr. Beggs depression was severely exacerbated by child custody issues and other things related to the divorce. Mr. Beggs states he can document evidence of his depression from a medical provider and is requesting that the Board allow him to reregister for his internship either with or without credit for the six months that were previously completed. There is documented evidence of depression, but it is not available to the Board today. Ms. Wiener requested that the Board favorably consider Mr. Beggs to reregister upon its receipt of evidence that he was indeed suffering from a documented illness.

The Chair questioned the number of months Mr. Beggs actually interned.

Ms. Wiener stated that Mr. Beggs actually interned for the full 12 months but did not properly document it. After the first six months it may or may not have been 40 hours a week. Mr. Beggs is willing to reregister and complete the entire internship over again for a 12 month period. Or, if it would be the Board's pleasure, he would provide documentation concerning the initial six months where he was completing a 40 hour week.

MOTION: Ms. Huggins moved to grant Mr. Beggs the authority to register and complete the entire 12 month period contingent upon receipt of the documentation evidencing depression from a medical provider, which shall be reviewed by the Executive Director to determine whether in compliance, but not before the licensee receives a letter from Division advising that the finding has been made that it was a medical reason. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

4. Old and Related Business

A. Motion to Withdraw Application, Gendron Funeral Home-Cremation Service, Inc (Fort Myers)

At its April 2009 meeting, the Board denied an application for Funeral Establishment license submitted by "Gendron Funeral Home-Cremation Service Inc" (hereinafter "Applicant #1).

Applicant #1 has now filed, for Board consideration, a Motion to Withdraw Application.

A new applicant, Gendron Funeral & Cremation Services Inc. (Applicant #2), has submitted an application for a funeral establishment at the same location. The application appears as the next agenda item for this meeting.

The Division recommends approval of the Motion to Withdraw Application, for reasons set forth below in "Explanation of Division Recommendations."

A. If the Board approves the Motion to Withdraw Application, the Division recommends approval of the new application by Applicant #2, for reasons set forth below in "Explanation of Division Recommendations."

B. If the Board denies the Motion to Withdraw Application, the Division anticipates that Applicant #2 will withdraw the new application. But if for any reasons Applicant #2 does not in that event withdraw the new application, the Division will recommend that the new application be denied on the basis that there is still pending the initial application for funeral establishment at the same location, and under ch. 497 only one funeral establishment may be licensed at any one location.

Explanation of Division Recommendations

At the April 2009 Board meeting the Division recommended denial of the funeral establishment application because the owner of Applicant #1, and the proposed FDIC of the new funeral establishment, was one Michael Gendron, whose funeral director license had previously been revoked by Vermont regulatory authorities in 2000.

The cause for the Vermont revocation is summarized as follows. Michael Gendron's father, Paul Gendron, also a licensed Vermont funeral director at the time, had had his license suspended by Vermont authorities. Paul Gendron was largely prohibited under the suspension from being involved in preneed sales. Nevertheless Michael Gendron, pre-signed preneed contracts and allowed his father to use them and make preneed sales with them. Vermont authorities learned of this and filed charges against Michael Gendron. Michael Gendron failed to appear at the Vermont hearing, and the Vermont Board revoked his license.

Michael Gendron is currently licensed in Florida in good standing as a Funeral Director & Embalmer. He obtained the Florida Funeral Director & Embalmer license prior to the Vermont revocation. The Vermont revocation was reported to the Ch. 470 Board, which in response in Oct. 2002 fined Michael Gendron \$1,000 and put him on probation for 2 years. He successfully completed the probation.

The FCCS Division has no record of complaints against Michael Gendron since his licensure in Florida. Nevertheless, in considering the matter for the April 2009 Board meeting, the FCCS Division believed that not enough time had passed since the Vermont revocation, to grant Michael Gendron the very significant additional responsibility of owning and operating a funeral establishment in Florida.

What has changed since April 2009 that has changed the Division's position?

1. In a nutshell, Michael Gendron has removed himself as both a principal and as proposed FDIC. More specifically:
 - A. Applicant #2 is a different legal entity than the applicant in the April 2009 denial.

- B. Applicant #2, through its President, William Savino, has provided a sworn stipulation, on behalf of Applicant #2, in which he affirms under oath:
- Michael Gendron has no direct ownership interest in the Applicant #2, as stockholder or otherwise.
 - Michael Gendron has no indirect ownership interest in Applicant #2, to the best of the knowledge and belief of the officers and directors of the Applicant #2.
 - Michael Gendron has no direct ability to control or direct the activities of the Applicant #2.
 - Michael Gendron has no indirect ability to direct or control the activities of the Applicant #2, to the best of the knowledge and belief of the officers and directors of the Applicant #2.
 - Michael Gendron is not a creditor of the Applicant #2.
 - Michael Gendron is not an officer or director of Applicant #2.
 - There are not, to the best of the knowledge and belief of the officers and directors of the Applicant #2, any written or oral agreements or understandings that ownership or control of Applicant #2 or any of Applicant #2's assets, including the funeral establishment, will be directly or indirectly transferred to Michael Gendron or any other person or entity, after the license is issued.
 - Applicant #2 currently does, or intends to, employ Michael Gendron as an employee, working as a funeral director and embalmer for Applicant #2; but Applicant #2 agrees it will not, for a period of 2 years from the date the funeral establishment is initially licensed, make or seek to make Michael Gendron the FDIC at the funeral establishment.
 - Applicant #2 agrees that for 5 years from the date the funeral establishment is licensed, Applicant #2 will not allow Michael Gendron to be directly or indirectly involved in making, supervising, or managing, in any way, directly or indirectly, any preneed sales or sales activities, as defined by sections 497.005(54) and 497.452, Florida Statutes, at the funeral establishment, and will prevent Michael Gendron from having any access to blank preneed contract forms of the Applicant #2. Applicant #2 understands that Applicant #2 cannot engage in preneed sales itself, unless and until it receives a preneed license from the Board.
 - Applicant #2 will be on probation for 24 months if its funeral establishment license application is approved.
2. Michael Gendron has provided an affidavit, affirming essentially the same averments as are made in the affidavit of William Savino.

Mr. Helm questioned whether both items would be addressed at the same time.

Mr. Shropshire stated that the second item can not be addressed unless the Motion to Withdraw is approved. Otherwise there would be an application pending for a funeral establishment at the same location.

Mr. Helm questioned whether there is an appeal on the first issue.

Mr. Garvin Bowden stated that no Notice of Intent to Deny has been issued regarding this pending application. If the Board sees fit to grant the Motion to Withdraw, this would eliminate any administrative or appellate remedies for this applicant.

MOTION: Mr. Jones moved to approve the Motion to Withdraw Application. Ms. Zippay seconded the motion, which passed unanimously.

B. Application for Funeral Establishment License, Gendron Funeral & Cremation Services, Inc (Fort Myers)

The application for a Funeral Establishment was submitted on July 21, 2009. The application was complete when submitted. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in charge will be William Savino (F036730). The establishment passed its inspection on March 9, 2009.

The Division recommends approval of this application, subject to the applicant's enclosed stipulation for licensure. Among the conditions agreed to in the Stipulation for License are:

- Applicant will be on probation for 24 months if its funeral establishment license application is approved.
- Applicant currently does, or intends to, employ Michael Gendron as an employee, working as a funeral director and embalmer for Applicant; but Applicant agrees it will not, for a period of 2 years from the date the funeral establishment is initially licensed, make or seek to make Michael Gendron the FDIC at the funeral establishment.
- Applicant agrees that for 5 years from the date the funeral establishment is licensed, Applicant will not allow Michael Gendron to be directly or indirectly involved in making, supervising, or managing, in any way, directly or indirectly,

any preneed sales or sales activities, as defined by sections 497.005(54) and 497.452, Florida Statutes, at the funeral establishment, and will prevent Michael Gendron from having any access to blank preneed contract forms of the Applicant. Applicant understands that Applicant cannot engage in preneed sales itself, unless and until it receives a preneed license from the Board.

Mr. Helm questioned whether Mr. Savino owns the funeral home.

Mr. William Savino answered yes.

Mr. Helm questioned who the funeral home was purchased from.

Mr. Bowden stated that there is an agreement between Mr. Gendron and Mr. Savino to transfer ownership. The agreement essentially is an assumption of debts and liabilities in exchange for control of the facility. The facility is presently under a land lease and that will be transferred and assigned to this new entity immediately upon approval of this application. Mr. Savino is the only principle, the only officer, the only director, the only shareholder of this entity. There a stipulation for licensure that has been signed by Mr. Savino that specifically addresses all of the ownership issues, the transfer of control and Mr. Gendron's anticipated and limited role.

Mr. Helm questioned whether the stipulation was included in the Board package.

Mr. Shropshire answered yes.

The Chair questioned the number of employees Mr. Savino will start out with at this location.

Mr. Savino stated there would be two other employees in addition to him.

The Chair stated that the Division is recommending that for 5 years Mr. Gendron cannot be involved in making, supervising, or managing, in any way, directly or indirectly, any preneed sales or sales activities. The Chair questioned whether Mr. Savino is will to admit to the Board that he will ensure this happens.

Mr. Savino answered, "Absolutely."

Mr. Brandenburg questioned whether Mr. Savino's license was ever disciplined in the State of New York.

Mr. Savino answered that his license was never disciplined in the State of New York or the State of Florida.

Mr. Brandenburg questioned whether Mr. Savino was ever licensed in any other state.

Mr. Savino answered no.

Mr. Brandenburg questioned where Mr. Savino is currently employed.

Mr. Savino stated that he currently is not employed in the funeral industry.

MOTION: Ms. Huggins moved to approve the application subject to the applicant's stipulation for licensure. Mr. Jones seconded the motion, which passed unanimously.

Mr. Bowden stated that in the stipulation for licensure referred to, there is a reference for a 12 month probationary period. The understanding of the parties was that it was a 24 month probationary period. That was a condition of the Division's recommendation for approval. Mr. Brandenburg is asking that the Stipulation for Licensure be incorporated into this motion for approval. The licensee consents to an amendment to the Stipulation of Licensure to change the 12 month to 24 month.

Mr. Shropshire questioned whether the Respondent is agreeable that the probation would be 24 months.

Mr. Bowden answered yes.

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

A. Recommended for Approval

(1) Patricia A. West d/b/a Ponte Vedra Valley to Ponte Vedra Valley Inc. (Ponte Vedra Beach)

The Department received the application on June 30, 2009 from Ponte Vedra Valley Inc. for authority to acquire control via asset purchase of Patricia A. West d/b/a Ponte Vedra Valley. The applicant, Ponte Vedra Valley Inc., was formed in Florida on May 7, 2009 for the purpose of transferring one hundred percent (100%) of the capital stock of Patricia A. West d/b/a Ponte Vedra Valley, the current owner, to Ponte Vedra Valley, Inc., the successor owner. Due to this transfer, there is no sales agreement (please see attached statement regarding sales agreement). In addition, no changes will be made to the Board approved contract, bylaws, and trust documents; the name is the only change that is being made because of the transfer. A completed background check of all officers revealed no criminal history. The Applicant principal is, and remains: Patricia A. West.

The Applicant's financial statement is in the name of Ponte Vedra Valley, Inc., is current as of December 31, 2008 reflecting the following:

Required Net Worth	= \$	50,000
Reported Net Worth	= \$	2,753,666

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

B. Recommended for Approval with conditions

(1) First Peoples Bank d/b/a Rolling Oaks Cemetery, Inc. (Port St. Lucie)

The Department received the application on June 15, 2009 from First Peoples Bank for authority to acquire control via stock purchase of Rolling Oaks Cemetery, Inc. The applicant, First Peoples Bank, was formed in Florida on December 24, 1998 and is acquiring Rolling Oaks Cemetery from the current owners, Robert Antonucci, Gary Richetelli, and Michael Romano by reason of default under the Promissory Note, Security Agreement, Loan Agreement, Guarantees and Stock Pledge Agreement dated July 25, 2005 (please see attached statement from First Peoples Bank). Closing of the sale was completed on April 23, 2009. A completed background check of all officers revealed no criminal history. The Applicant principals are: Stephen J. Krumfolz and David W. Skiles.

The Applicant's financial statement is in the name of First Peoples Bank, current as of December 31, 2008 reflect the following:

Required Net Worth	= \$	50,000
Reported Net Worth	= \$	24,896,000

The Division issued a citation against Rolling Oaks Cemetery, Inc under the former ownership of Robert Antonucci, Gary Richetelli and Michael Romano, in the amount of \$500 on July 2, 2009. The Application for Authority to Acquire Control of an Existing Cemetery submitted by First Peoples Bank was received by the Division subsequent to this citation being issued and the fine is currently outstanding. Therefore, the Division recommends approval of the application subject to the condition of payment of the outstanding fine due in the amount of \$500.

MOTION: Mr. Brandenburg moved to approve the application subject to payment of the outstanding fine due in the amount of \$500. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. Knopke questioned how a bank owns a cemetery.

Mr. Shropshire stated that the cemetery defaulted on the note so the bank took it over.

Mr. Knopke questioned whether the bank has management skills to manage the cemetery.

Mr. Shropshire answered yes.

- 6. **Request to undedicate cemetery property, and move funeral establishment to that property**
 - A. *The Kuzniar Group LLC, d/b/a First Coast Funeral Home*
 - B. *Cemetery Professionals, LLC, d/b/a Beaches Memorial Gardens*

These items have been withdrawn from the agenda with the consent of the applicants

- 7. **Application(s) for Preneed Sales Agent**
 - A. *Informational Item - Addendum A*

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

- B. **Recommended for Approval (Criminal History)**
 - (1) *Figueroa, Diego (Appointing Entity: Palm Royale Cemetery & Mausoleum, Inc.)*

On May 8, 2009, the Department received an application from Mr. Figueroa. Mr. Figueroa answered "Yes" to Applicant Background Questions.

The criminal history includes one (1) offense relating to one incident of misdemeanor DUI in 2007, which occurred in Collier County, Florida. Mr. Figueroa disclosed all required information

The Department assessment is that if issued a preneed sales agent license, Mr. Figueroa would not pose an unreasonable risk to members of the public who might deal with him in preneed transactions.

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

- 8. **Request for Transfer of a Preneed Main License**
 - A. **Recommended for Approval**
 - (1) *Patricia A. West d/b/a Ponte Vedra Valley (Ponte Vedra Beach)*

The Department received the application for request of Transfer of a Preneed Main License on June 30, 2009 from Ponte Vedra Valley Inc. The applicant, Ponte Vedra Valley Inc., was formed in Florida on May 7, 2009 for the purpose of transferring one hundred percent (100%) of the capital stock of Patricia A. West d/b/a Ponte Vedra Valley, the current owner, to Ponte Vedra Valley, Inc., the successor owner. Due to this transfer, there is no sales agreement (please see the attached statement from owner regarding transfer of preneed license). In addition, no changes will be made to the Board approved contract and trust documents, other than the licensee name will be changed because of the transfer. A completed background check of all officers revealed no criminal history. The Applicant's principal was, and will remain, Patricia A. West. No deficiencies were noted on the application. A funeral establishment license was issued on January 15, 2004 and a completed background check of all officers revealed no criminal history. Applicant will continue to use the pre-approved Forethought Federal Savings and Trust Agreement and pre-arranged funeral agreement.

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

Preneed Contracts	= \$	964,536
Required Net Worth	= \$	100,000
Reported Net Worth	= \$	2,702,167

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

- 9. **Continuing Education Course Approval(s)**
 - A. **Recommended for Approval - Addendum B**
 - (1) *International Order of the Golden Rule #2201*

- (2) *Jewish Funeral Directors of America, Inc. #66*
- (3) *National Funeral Directors Association #136*
- (4) *Selected Independent Funeral Homes #137*
- (5) *The Dodge Institute for Advanced Mortuary Stu #81*

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

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

10. Application(s) for Florida Laws and Rules Examination

- A. *Recommended for Approval - Addendum C*
 - (1) *Funeral Director and Embalmer by Internship*
 - (a) *Abner, Adrian D*
 - (b) *Armstrong, Latarsha G*
 - (c) *Petrasek, Rachel E*
 - (2) *Funeral Director and Embalmer by Endorsement*
 - (a) *Ezell, Rocky L*
 - (b) *Sandoval, Melissa Y*
 - (c) *Wills II, Dwane A*
 - (3) *Funeral Director by Endorsement*
 - (a) *Budhai-Solomon, Andrea*
 - (4) *Direct Disposer*
 - (a) *Falowski, Jason J*

The Division recommends approval of the application(s).

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

11. Application(s) for Internship

- A. *Recommended for Approval – Addendum D*
 - (1) *Funeral Director and Embalmer*
 - (a) *Lyle, Megan A*
 - (b) *McDonald, Kaitlynn M*
 - (c) *Young, Jacqueline H*

The application for Kaitlynn McDonald was withdrawn from the agenda as the Division did not receive her transcript.

The Division recommends approval of the remaining two application(s).

MOTION: Mr. Helm moved to approve the 2 remaining application(s). Ms. Zippay seconded the motion, which passed unanimously.

12. Application(s) for Embalmer Apprentice

- A. *Recommended for Denial (Criminal History)*
 - (1) *Dampier, Christopher*

Mr. Dampier submitted an application to become an Embalmer Apprentice on January 28, 2009. The application was deficient when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on May 26, 2009. The Division is recommending Denial of the application based on the criminal history disclosed.

Ms. Dudley requested if the Board does deny that it indicates the basis as lack of moral character. Mr. Helm questioned whether Mr. Dampier was 17 years old at the time of occurrence.

Mr. Christopher Dampier stated that this incident occurred when he was 12 years old, but it was filed when he was 17 years old.

The Chair questioned the age of the victim.

Mr. Dampier stated that he was not sure as this was a long time ago. The records indicate the victim was at least 10 years old.

Mr. Shropshire stated that the Division's information is that Mr. Dampier was 17 years old when the offense was committed.

The Chair questioned whether there was any reason to believe the information was incorrect.

Mr. Shropshire answered no. It would be very unlikely that a 12 year old would be prosecuted for a felony.

Mr. Dampier insisted that the incident occurred when he was 12 years old, but was not prosecuted until he was 17 years old. Everything was withheld until he was 17 years old and then he was prosecuted.

The Chair stated that the background check does not support Mr. Dampier's claim.

Mr. Jones questioned whether Mr. Dampier has any information to that effect.

Mr. Dampier stated that he submitted all the information.

Ms. Dudley stated that the documentation indicates a plea and the charges but it does not provide the entire facts. Ms. Dudley questioned whether Mr. Dampier could obtain the actual police report for the Board's review.

Mr. Dampier stated he was unsure.

Mr. Shropshire stated that the last page of the packet indicates lewd/lascivious behavior, molestation-victim less than 12 years of age, offender 18 years of age or older, level-felony. Mr. Shropshire stated if it is the Board's pleasure to defer the application, the Division would certainly look into the matter and report back at the next meeting.

Mr. Brandenburg questioned whether Mr. Dampier has any type documentation with him.

Mr. Dampier stated he only has recommendations from work and church, all the paperwork that was completed, high school diploma.

Mr. Brandenburg questioned whether Mr. Dampier has any type documentation related to the offense with him.

Mr. Dampier answered no.

Mr. Jones questioned whether there is any obtainable documentation indicating that Mr. Dampier was 12 years old at the time other than the documents presented to the Board.

Mr. Dampier answered no. This happened but did not get reported until he was 17 years old.

The Chair questioned Mr. Dampier's current age.

Mr. Dampier stated he is 21 years old.

Mr. Baxley stated that Mr. Dampier could withdraw his application, seek counsel and then submit another application. Mr. Dampier is applying to be an embalmer apprentice, so obviously he is seeking a career in this industry, but would run into this road block every step along the way.

Mr. Dampier questioned what Mr. Baxley meant by counseling.

Mr. Baxley stated he was referring to an attorney.

Mr. Dampier stated he was not aware he needed to bring his attorney.

Mr. Helm stated that the attorney could find out whether this happened when Mr. Dampier was 12 years old as the Board needs that proof.

Ms. Dudley stated if Mr. Dampier went to the Courthouse he could probably look in his file for a police report that would lay out what the allegations were in more details.

Ms. Thomas-Dewitt expressed concern as the documentation presented to the Board is from the Clerk of the Court and the information is different than what the applicant is alleging. At some point in time this matter should have been cleared up prior to the Board receiving this information.

Ms. Dudley stated it is possible that allegations were made years later. The documentation stated the applicant was less than 18 but older than 12 and the victim was less than 12.

Mr. Brandenburg questioned the deemer date.

Ms. Dudley stated if the item is deferred, the Board should ask Mr. Dampier if he would like to waive his 90 day right.

Ms. Dudley advised Mr. Dampier of his right to have his application acted on within 90 days. The Board is required to do that. However, the Board has some questions about this application and could certainly act on it today, but it may not be favorable for the Applicant. Ms. Dudley questioned whether Mr. Dampier would be willing to waive his 90 days to have his application reviewed if the Board were to continue this to the next meeting.

Mr. Dampier answered yes.

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

13. Consumer Protection Trust Fund Claims
A. Recommended for Approval - Addendum E

The Division recommends approval of the application(s).

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

*****BREAK*****

B. For Individual consideration, claim of Leonard Obermiller

Mr. Leonard Obermiller, now deceased, purchased a preneed contract from American Family Cremation Society. This firm became insolvent and its claims were passed to another entity, which in turn passed them to ICS Cremation Society. Mr. Obermiller's claim is in the amount of \$616. The Division recommends approval of the claim.

The main issue before the Board in which the Division requests guidance on is the effect of Board Rule 69K-10.002(6), which is cited in the material before the Board. The Division questions whether the rule prevents payment of the claim.

Mr. Helm stated that #17 in the Department's breakdown states if they ask for their money back it should be paid in full to them. Then, #35 states the consumer cannot obtain a refund. It appears it is not the Division's responsibility because the company agreed to pay the refund.

Mr. Shropshire stated the initial seller sold on a contract that provided that the purchaser could get 100% refund before or after death. So the issue is the Rule states that if a preneed licensee or provider has been assigned a breached contract by the purchaser, owner or beneficiary and is willing to completely fulfill a breached contract, an application for disbursement of funds to the purchaser, owner or beneficiary of a breached contract will not be considered by the Board. In this case, ICS was and is willing to fulfill the contract, but the contract had this provision in it that stated they had a right to a 100% refund.

Mr. Helm stated he would recommend denying the claim since ICS took on the contract and should provide the refund.

Ms. Wiener, representing ICS, stated that she is not here in an effort to persuade the Board not to give the requesting party the refund. It appears right results are being reached in an incorrect way. Mr. Helm appears to be struggling with the fact that the rules and the law for the Consumer Protection Trust Fund Claims state a couple of different things, they really are not clear; they are old, out of date and need to be updated. The circumstances between the particular parties are governed by an agreement entered into with the Division many years ago. The agreement states for American Family contracts, ICS will fulfill those contracts, will be entitled to collect from trust any money that is in trust and then it can make a claim to the Consumer Protection Trust Fund for remaining costs associated with fulfilling the contract. As an alternative the consumer, under the Consumer Protection Trust Fund law can make a request to the Division for a refund, after they have collected from ICS whatever money is in trust for a refund. Even though the law would seem to say if you have been assigned a contract, you are on the hook for that contract and you are on the hook for a refund, there is a legal document between the parties that says something different.

In this particular circumstance, the family did not approach ICS, the owner of the preneed contract, the entity that was required to fulfill the preneed contract. Instead, they decided to go in another direction. Preneed contracts in the State of Florida are not transferable. To approve this claim in the way that it is couched here really set up a precedent that allows preneed contracts to be transferred from one funeral establishment or preneed seller to another, when in fact what is supposed to occur in that circumstance is that the purchaser of the preneed contract cancels the contract with the seller that they no longer desire the goods and services from and then they are free to enter into another contract. There is nothing in our law that contemplates the transfer of a preneed contract. The Obermiller's appropriate request to the Division was for a refund on their American Family contract, which gives them the exact same dollars that they are asking for approval today. Ms. Wiener added that she did not want to see a circumstance where the Board says, notwithstanding that ICS is in this contractual relationship pursuant to consent order and its purchase of the contract from Safe Harbor, that anyone could fulfill a American Family without coming to ICS and then that entity could go to the Consumer Protection Trust Fund for a claim. What that says is that preneed contracts are transferable and they are simply not. The Board cannot approve any other funeral establishment's request for monies from the Consumer Protection Trust Fund. Instead, they can approve, for American Family contracts, two things. Either a request from ICS to the Consumer Protection Trust Fund for any shortfall or a request by a consumer for a refund on an American Family contract, but it cannot approve a request to the Consumer Protection Trust Fund from some other entity to whom the American Family contract was transferred because there is no such thing as transfer of preneed contract in this state.

Ms. Wiener recommended that the Board approve the request for the refund to the Obermiller's for \$616, but that be the approval of their refund as opposed to the approval of some portion of money that is due to another funeral establishment.

Mr. Brandenburg questioned whether a refund is considered a fulfillment of contract under the old AFCS contracts.

Mr. Shropshire stated the effect would be the same but technically, it is not a fulfillment as fulfillment means performance.

Ms. Wiener agreed with Mr. Shropshire. The way those contracts are written, someone could fulfill them by providing the cremation services or you could get a refund of complete monies paid either before or after death. Those contracts were written actually much more beneficially to the consumers even than the law required.

Mr. Shropshire stated that in this particular case the claim is signed by the widow. The reality is that the vast majority, probably 95% of CPTF claims are by other establishments and it is legally in the capacity that they take assignment of the claim, assignment of the rights of the purchaser.

Ms. Wiener stated, as indicated in her email of last week to Mr. Shropshire, that she has no beef with licensees making claims on Consumer Protection Trust Fund claims generally. With regards to American Family contracts, however, those contracts are the responsibility of ICS. In a lot of circumstances what happens is a firm goes out of business and those contracts themselves do not get assigned off to one preneed seller or another. So a funeral establishment may fulfill on that contract and make a claim to the Consumer Protection Trust Fund. That is perfectly appropriate in most circumstances. With regard to the American Family contracts, however, the only entity that should be fulfilling and making a request to the Consumer Protection Trust Fund is ICS because of the contractual relationship between the parties. It is not the fact that other funeral establishments sometimes submit, it is that in the American Family context either ICS can fulfill, take whatever money that is trust if there is any and then make a claim to the CPTF or if the consumer does not want to use ICS for whatever reason, they can make a request refund to the CPTF under the American Family contract.

Mr. Shropshire stated there is a difference without distinction because the particular contract in this case gave the consumer a right to 100% refund without reason, before or after death. It is really no concern of ICS where the service was performed.

Ms. Wiener stated that she agrees but does not want a precedent established that the American Family contracts are transferable to another funeral establishment because they are not. A consumer can request a refund if they do not want to use ICS or they can use ICS. They cannot take the American Family contract to ABC Funeral Home; ABC Funeral Home fulfills the contract and then makes a claim to the CPTF. That does not work legally in this particular context under the consent order.

Mr. Shropshire stated that the claim by the funeral home would essentially a claim for refund that the consumer could have filled.

Mr. Brandenburg stated that is certainly not the case here.

Ms. Wiener disagreed.

Ms. Dudley stated this is different than transferring a contract. The consumer is transferring their rights under that contract, assigning their rights to collect monies that are owed to the funeral home.

Ms. Wiener stated the request from other funeral homes is not to cancel the contract and obtain a refund. The request is "I fulfilled a contract that was transferred or assigned to me and now I am making a claim." It is a legal distinction without a difference in result to the parties, but it does make a difference to ICS because otherwise that really takes away from them a particular book of contracts that they believe they are entitled to fulfill and be paid for.

The Chair questioned a resolution that would prevent the consumer from being hurt.

Ms. Wiener stated in this case the Board should approve a request by the consumer for a refund, just as Mr. Shropshire set out in his recommendation. My argument is not with the result that the Division is recommending.

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

C. For Individual consideration, claims of Donald & Patricia Tuttle

The difference here is that the Tuttle's are living in Pennsylvania and are seeking a refund. The Tuttle's have received the little money available in the trust, as the proper amount was not trusted.

The Division recommends that the claim of Donald Tuttle be approved in the amount of \$458.80, and that the claim of Patricia Tuttle be approved in the amount of \$458.80.

The Division questioned the meaning of Rule 69K-10.002(6), which states "...a purchaser, owner or beneficiary of a breached contract that would otherwise form the basis of a claim for restitution who cancels the contract and receives funds from a trustee will not be considered for restitution from the Preneed Funeral Contract Consumer Protection Trust Fund. Mr.

Shropshire questioned whether this Rule bars payment in this instance. The Division does not believe it should be interpreted that way but it seems to literally apply that way.

Mr. B Williams stated that the same Rule states that the intent of the Consumer Protection Trust Fund is to give a refund to the consumer should the funeral home they purchased the preneed contract from not be able to fulfill it's obligations or fulfill its obligations when there is a cancellation. That section of the Rule almost conflicts with itself and the Statutes. The reality of it is when the consumer goes to cancel a preneed contract they have no clue that they had to come straight to the Consumer Protection Trust Fund first to make a claim. They went and made a cancellation request to the contract owner or seller. When the cancellation request was made, ICS refunded the amount of money that was in trust, which is exactly what it was required to do. Since the consumer got the monies out of trust, it barred them, according to rule, from making a claim for the difference to the Consumer Protection Trust Fund. The consumer has no clue that all of this has taken place.

Ms. Wiener stated in this particular circumstance, it's another situation where you cannot necessarily read the rule and the law without also reading the associated consent order. There is a little bit of a different circumstance with these American Family contracts. The appropriate thing was for the consumer to seek their refund from ICS, which they did. ICS refunded all monies in trust. The remainder of the refund should come from the CPTF.

MOTION: Mr. Brandenburg moved to approve the request for both refunds. Ms. Huggins seconded the motion, which passed unanimously.

Mr. B Williams suggested that the rule be taken back to the Rules Committee.

14. Application(s) for Monument Establishment Retailer

A. Recommended for Approval

(1) John R. Allen d/b/a AKC Monument Sales (Jacksonville)

The application was received on June 17, 2009 and deficiencies were noted. A deficiency letter was sent on June 23, 2009 and the applicant resolved all deficiencies by July 2, 2009. The Department completed a background check of all officers which revealed no criminal history.

The Division recommends approval of the application.

Mr. Helm questioned whether the applicant is a monument establishment retailer or dealer.

Mr. Shropshire answered retailer.

Mr. Gellepis stated apparently the applicant used an old form as the form has changed.

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

15. Application(s) for Funeral Establishment

A. Recommended for Approval

(1) Aable Development Inc d/b/a Aaron and Burney Bivens Funeral Home (Orange Park)

The application for a Funeral Establishment was submitted on May 28, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on June 26, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Burney Bivens (F039230). The establishment passed its inspection on July 23, 2009.

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

(2) *Isaac L. Brown d/b/a Brown's Funeral Home (Lantana)*

The application for a Funeral Establishment was submitted on June 19, 2009. The application was complete when submitted and a deficiency letter was not sent to the applicant. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in Charge will be Lewis Andrews (F043390). The establishment passed its inspection on July 16, 2009.

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

16. Application(s) for Cinerator Facility

A. Recommended for Approval

(1) *Akin-Davis Funeral Homes Inc d/b/a Caloosa Crematory (Labelle)*

The application for a Cinerator Facility was submitted on May 15, 2009. The application was incomplete when submitted and a deficiency letter was sent to the applicant. All deficient items were returned on July 13, 2009. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Director in charge will be Daniel Akins (F033958). The establishment passed its inspection on July 13, 2009.

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

17. Application(s) for Removal Service

A. Recommended for Approval

(1) *Stacey A. Burrows d/b/a/ Burrows Removal & Transport Service (Havana)*

The application for a Removal Service was submitted on June 18, 2009. The application was complete when submitted and a deficiency letter was not sent to the applicant. The fingerprint cards for all principals were submitted and returned without criminal history. The establishment passed its inspection on July 14, 2009.

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

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

A. Recommended for Approval

(1) *John R. Allen d/b/a AKC Monument Sales (Jacksonville)*

(a) *Monument Establishment Retail Sales Agreement*

Staff recommends approval of the agreement.

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

19. Chairman's Report (Oral)

None

20. Executive Director's Report

A. *Request for rulemaking re preneed licensees charging Regulatory Trust Fund remittances (\$6 per contract) as separate line item on preneed contracts (Corrine Olvey, SCI) (materials enclosed)*

The FCCS Division recommends that this matter be referred to the Board's Rules Committee.

MOTION: Ms. Huggins moved to refer the item to the rules Committee. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. *Division practice on sending Funeral establishment "change of location" requests to the Board (memo enclosed)*

Traditionally these requests have been sent to the Board but the statute indicates that the only condition is passing the inspection. Accordingly, unless the Board objects, the Division intends to implement the following practices:

- Assess the usual \$225 inspection.
- Upon receipt of the inspection fee, conduct the inspection.
- If the inspection is passed, advise the licensee that the change in location is approved.
- If the inspection is not passed, so advise the licensee, and further advise that the change in location is not approved. Subsequent re-inspection upon correction of deficiencies will be provided.

Mr. Brandenburg requested that the Board receive notification on the next agenda as done for preneed sales agents.

Mr. Shropshire answered yes.

Mr. Helm questioned whether disciplinary action taken against the establishment would matter.

Mr. Shropshire stated it does not appear to make a difference as there is no statutory basis for that.

Ms. Olvey stated that the application form for change of location is the same application for change of ownership, which requires business entity, fingerprints, the whole nine yards which seems over burdensome when all you are doing is moving the existing entity from one address to another. Ms. Olvey requested that the form be reviewed by the Department of the Rules Committee as this one requires things that are not applicable.

Mr. Shropshire agreed and stated that the Division would work on amending the form and would share it with the Rule's Committee prior to implementing it.

C. Alkaline Hydrolysis Cremation ("Bio-Cremation"). See materials in Board package, relating to status of the matter in the Division offices; materials provided by Matthews International re the process.

The Division has met with representatives of Matthews International and has received a lot of information from them. The Division will continue to work with them concerning their Alkaline Hydrolysis Cremation process and technology, also referred to as Bio-Cremation.

The Division is working on a proposed inspection form for this process which is expected to be submitted to the Board at the September or October meeting, which the Board could then refer to one of its Committees. Primarily, the Division believes that the Bio-Cremation does fall within the definition of cremation, and this would be the Board's opportunity to disagree if it does.

21. Remarks to the Board by Matthew International representative, regarding "Bio-Cremation"

Mr. Paul Rahill thanked the Board for the opportunity to share the next generation of green cremation technology. Mr. Rahill also thanked Mr. Shropshire, Mr. Miller and the Team for the time given in the various meetings to discuss this new product, new technology with them. Mr. Rahill provided some handouts for the Board to follow along. Mr. Rahill introduced others that were also present: Mr. Bill McQueen; licensed funeral director in the state of Florida, owner of Anderson-McQueen Funeral Homes (5 locations in St Petersburg), operates a licensed cinerator facility in the State of Florida in good standing, the incoming president of the Cremation Association of North America (the largest cremation association in the world) and his location would be the location of the world's first commercial bio-cremation system. Mr. Les Dyer; licensed funeral director in the State of Florida; past president of National Cremation Society, past president of the Cremation Association of North America, nationally and legally recognized as an expert throughout the country in all things cremations and is currently the technical advisor to the Cremation Association of North America Board of Directors. Mr. Brian Walters is general counsel for Mathews International, Inc.

Mr. Rahill made the following presentation to the Board:

Mathews established in 1850, has been a leader in the development of cremation systems and environmental technology through IEE, ALL and/or GEM since 1946. This dedication and commitment to research and development has resulted in

newer, energy-efficient and environmentally responsible technology. Our dedication is stronger today than ever and bio-cremation is yet another "game-changing" advancement for the entire cremation industry; "Game changing" from "destruction" to "capture" to "prevention."

The purpose of our presentation today is to update the Board on what the legislature passed, explain the bio-cremation process and to advise board of our plans to install and operate the world's first commercial bio-cremation unit.

Matthews Cremation Division (MCD) supported language in the 2009 legislative session to authorize Bio-cremation. Our amendment was placed on CS/CS/CS/SB 926 and the bill was signed by the Governor (Chapter 2009-219, LOF). Our amendment only did one thing. It expanded the definition of cremation container to include "or consumable" because there is no combustion inside the bio-cremation chamber.

Alkali hydrolysis is a water-based (versus flame based) cremation process. It uses water and potassium hydroxide to breakdown (hydrolyze) the human tissue. The Process utilizes a technically advanced stainless steel cremation chamber, water-based alkali solution and human remains, heated to approximately 370°F. As with flame-based cremation, the body is reduced to its basic elements: Bone fragments and "ash." The Process generates a sterile liquid suitable for release to drain (as with previous 2 installs) or may require some minor post treatment (if required locally). The Bio-cremation process accelerates natural decomposition - just like direct flame cremation.

Some key features of the Bio-Cremation unit are compact, professional and modern in appearance (shown with side panels off). It measures 5 ft. wide, 10 ft. long and 7 ft. tall and can be placed along-side a direct flame cremator. It has the same starting point (body) and finishing point (bone/ash) as direct flame cremation or calcination (body to bones). The end product is also the same, bone/ash, processed and packaged as typical with other forms of cremation.

Matthews believes that Bio-Cremation is Cremation. Section 497.005 (20) defines... "Cremation means any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments. Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, re-cremated, or otherwise further reduced in size or quantity."

Alkaline Hydrolysis satisfies the definition of Cremation mechanically as it is specially designed pressure vessel is connected to recirculation pump. The computerized load scales automatically weigh body and container, then add water and alkali solution (potassium hydroxide). Thermally, the Cremation chamber and contents are heated to approx: 370F using steam from the steam generator. Body tissue is broken down (hydrolyzed) leaving a "bio solution," or sterile liquid, suitable for release to drain or with minor post treatment. Mechanically and thermally it produces typical bone fragments and ash, ready for processing.

The Operating system is computer controlled.

- The operator selects the program;
- Retaining tray holds leak-resistant bio-container and remains;
- Load cells automatically weigh body;
- Water and alkali are automatically added based on weight of remains;
- Steam coil heats the cremation chamber and contents;
- Human remains and bio-cremation container are consumed;
- Bio-solution cools and is released;
- Bone/ "ash" remain in the stainless steel tray along with any non-consumables (implants, etc.);

At the end of the Bio-Cremation cycle, after rinsing, the cremated remains are dried, removed and processed into granulated particles, a fine white "ash." Drying may be accomplished inside or outside the cremation chamber. Processed remains are packaged as normal.

In conclusion, whether direct flame, calcination or the alkali hydrolysis, the end results are the same. The body is reduced to ashes and bone fragments (see section 497 005(20)), and "pulverized until they are granulated particles" (see FAC 69K-22.007(2)(d)). Cremation also includes any other mechanical or thermal process whereby human remains are pulverized, burned, re-cremated or otherwise further reduced in size or quantity" (see section 497.005(20). Florida Administrative Code

already provides a clear and unequivocal definition of cremation to include “any mechanical or thermal process.” Cremation has not been redefined and no changes have been made to the statutory and regulatory integrity of the cremation process.

Matthews feels that Bio-cremation (using Alkaline Hydrolysis) satisfies the legal definition of cremation. Adding the words “or consumable” to the definition of cremation container does not trigger rule-making. Adding the words “or consumable” does not mean that we have to revise the existing inspection form. Matthews is committed to working with the DFCCS to help train their staff when inspecting bio-cremation units.

Mr. Rahill added that Mr. Shropshire and staff have been invited to visit the plant to see the final assembly of the first unit being assembled in Orlando, which will take place at the end of September and then again to visit the actual installation in St Petersburg in October. Matthews will be happy to train Staff and review the process in detail at that time. Current law mandates that after initial licensure of a cinerator facility, the facilities must be inspected annually thereafter (see section 497.606 (9)(j)(1)), and they can install additional equipment between inspection periods and just be noted on the inspection form and report during the next inspection cycle. We believe this allows Matthews to move forward with plans to install a bio-cremation unit at an existing licensed facility (as opposed to someone making application for initial licensure - which would require inspection of the facility prior to Board approval).

Mr. Helm questioned whether the system would work with a regular septic tank system.

Mr. Rahill stated the system would not be recommended for a septic tank operation. Again, that would be up to the local water resource group. It would be Matthews’ recommendation that if a facility that is not on a sanitary sewer they would need to install an underground tank as some embalming facilities do and have the liquid removed from the tank periodically.

Mr. Knopke questioned what disposition would be listed on the death certificate.

Mr. Jones stated he did not have an answer for that right now.

The Chair questioned why it would not just be cremation.

Mr. Jones stated that it should be but he would like their Legal department to look at the Rule.

Ms. Olvey questioned the type of disclosure would be made to the family. Most cremation authorization forms have some type of description of the process for liability purposes. Ms. Olvey questioned whether this would be changed or has there been any thought on educating the public that this is not the type of cremation they have grown up knowing about.

Mr. Bill McQueen stated this would be done as the current cremation authorization discloses what is involved.

Mr. Les Dyer stated that these are things people may not want to know at all. A large number of people choosing cremation as we know it today have no concept of what it is and they do not want to know what it is. There has been no improvement in crematories in 75 years. Mr. Dyer added that the biggest problem he has faced in supervising, building and installing crematories is air pollution and mercury. It appears that this process eliminates all of those things. As far as inspections, it would not be a good thing to put too much burden on the inspectors.

Mr. Shropshire stated there is currently a potential disagreement between the Division and Matthews, which they believe there need not be any changes to the inspection form. The Division is not so sure that is the case because staff would be looking at a different technology. The Division is looking into that and this is why the inspection form would be brought back at the October meeting in Orlando. There would be a draft with a few changes and the Board would decide through its committees whether a new inspection form is needed and whether the one proposed would be the one. Any changes to be made would not hinder or interfere with this new technology being put in place. From the Division’s point of view, Mr. Shropshire foresees receiving a complaint eventually from a consumer indicating that they were never informed that the remains were going into the sewer system. Mr. Shropshire questioned whether it would be better to address what if any disclosure is required in advance.

The Chair stated it would be the same if the person was embalmed.

Ms. Zippay stated that the consumer needs to know something but they do not need to know all the graphic details.

Mr. Bill Swain stated that he has been tracking this technology for more than 10 years now, watching it develop. It is definitely in the public's interest. Mr. Swain added that he would hate to see any unnecessary obstacles. It appears the current inspection system really does not address the engineering aspects of the crematory. It does not appear to be necessary.

Ms. Michele Hood questioned whether these would be licensed as cinerator facilities.

Mr. Shropshire stated if it's a cremation process, they would be licensed as cinerator facilities.

Mr. Rahill stated that they met with DEP at the start of this process. DEP at the State level sees no reason to regulate it at their level, so they referred us to the local water resource board. Matthews has approached them and is setting up that next level of conversation.

Ms. Huggins questioned whether DEP Air Quality is involved.

Mr. Rahill answered no.

An unidentified person questioned what the operator would do if there was a community restriction on water consumption.

Mr. Rahill stated the water consumption is very low, 120 gallons. If there is no water available and there is a break in the system, the operator would just have to wait until the system is repaired and water is available. That has not been a concern. The amount of water used in this process is so miniscule compared to most processes that it has not been a concern of anyone.

Mr. Jones questioned the cost to consumers.

Mr. Rahill stated they do not get involved in pricing to the consumer but the cost of operation is lower. The cost difference here is the capital investment; the equipment is much more expensive but less expensive to operate. This would be offered as a premium service.

Mr. Helm stated the maintenance would be lower.

Mr. Rahill agreed.

Mr. Jones questioned Mr. Rahill's reference to "premium service."

Mr. Rahill stated many times there is a premium for calcination over cremation. It is anticipated that Bio-Cremation would bring a premium price.

Mr. Jones questioned whether the consumer would have the option to do either option.

Mr. Rahill stated that it would be up to the client. In this case it is being added to an existing facility.

The Chair questioned if someone purchased the new unit and did not still have their thermal and they had to compete with people in the community that had both, they probably would not be able to charge any more to consumers. The Chair stated he wanted to ensure the consumer does not have to pay an absorbent amount of money to be cremated.

Mr. Rahill stated because of the capital cost to get involved with this, everyone is not going to be running out to buy these units.

Mr. Baxley questioned whether there is any difference in the processing of the bone fragments.

Mr. Rahill stated there is no difference. This process actually contains more of the bone fragments because it is a more gentle process than flame cremation. The same processing equipment is used.

Mr. Baxley questioned the capital cost.

Mr. Rahill stated the capital cost is between \$400,000 and \$500,000.

The Chair questioned when the unit would be installed.

Mr. Rahill stated it would be installed late September.

Mr. Shropshire stated that he and Mr. Rahill agree that a cremation facility does not require inspection for new or enhanced equipment. So they could put this equipment in and run it, but by the time the next annual inspection is conducted, the Division would like to determine whether a new inspection form is required.

Mr. Rahill stated in the interim they could work with the Department to provide hands on evaluation to determine if there is any reason for it. Matthews still contends there is none as there is nothing related to the equipment on the form now.

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

None

23. Administrative Report

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

24. Disciplinary Report

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

Mr. Shropshire stated that Gladys Hennen in the Miami office is retiring after 15 years with the State at the end of August. Ms. Hennen worked as an Administrative Assistant to the Board for a number of years before leaving to work as a paralegal in the Attorney General's office. She returned to the Division in 2004 as a Financial Examiner/Analyst I in Miami.

Mr. Brandenburg questioned the name change of one of the Tallahassee staff members, Mrs. Parker.

25. Adjournment

The meeting was adjourned at 12:10 P.M.