

*Minutes of Meeting*  
**BOARD OF FUNERAL AND CEMETERY SERVICES**  
**December 1, 2005 - 9:00 A.M. to 5:00 P.M.**  
**The Capitol, Room 309**  
**Tallahassee, Florida**

**I. Call to Order and Roll Call**

Mr. Greg Brudnicki, Chairman, called the meeting to order at 9:00 am. Ms. Diana Evans, Executive Director, called the roll:

**PRESENT:**

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

**ABSENT:**

Tracy Huggins

**ALSO PRESENT:**

Diana Evans, Executive Director  
Rick Mahler, Deputy Chief of Staff  
Doug Shropshire, Department Assistant General Counsel  
Elizabeth Teegen, Department Chief Counsel  
Tom Barnhart, Board Counsel  
Lesley Mendelson, Department Counsel  
Casia Sinco, Department Counsel  
LaTonya Bryant, Department Staff  
James Gellepis, Department Staff  
Tina Cummings, Department Staff  
Joyce Wendel, Department Staff  
Timothy Wheaton, Department Staff  
LaShonda Morris, Department Staff  
James Deason Jr, Department Staff  
Jasmin Richardson, Department Staff

Ms. Diana Evans declared a quorum.

Mr. Chairman announced that there would be opening remarks by the Department of Financial Services.

Mr. Rick Mahler, Deputy Chief of Staff, stated that Treasurer Gallagher would have loved to attend the meeting and greet the members. Unfortunately, Mr. Gallagher had a prior commitment. On behalf of the Department, Mr. Mahler expressed the desire to serve the Board and provide all the needed tools to successful serve the citizens of Florida. The Legislature's desire was to have a one-stop shop for consumers to look to one Board to deal with the death-care industry. The consolidation transpired about a year ago.

Mr. Mahler thanked and congratulated the members of the Board and advised them not to hesitate to contact the Department if there is a need for improvement of our service.

Mr. Chairman stated that next there would be a brief introduction of the Board members.

Mr. Powell Helm has been in the cemetery, vault and monument industry for the last 30 -40 years.

Ms. Catherine Zippay of Ft Lauderdale, one of the Consumer members, previously served on the Board of Funeral Directors and Embalmers. Ms. Zippay is an attorney with clients that deal with cemetery and funeral needs.

Mr. Tom Barnhart, Board Counsel, with about 5 years experience in the private sector and 20 years experience with State government, has been with the Attorney General's office for about 1.5 years.

Mr. Jody Brandenburg of Jacksonville has been in the funeral industry since 1963. Mr. Brandenburg grew up in Homestead.

Mr. Greg Brudnicki has been in the cemetery/funeral industry for 29 years. Mr. Brudnicki was originally an accountant.

Col. Pete Ballas, Consumer member, served on the Board of Funeral and Cemetery Services for the past 8 years and the Board of Funeral Directors and Embalmers for 8 years prior. Col. Ballas is a retired Air Force Colonel with a master's degree in Public Administration. Col. Ballas was also a Staff Director in the Legislature prior to retiring from State government.

Mr. Ken Jones, Department of Health/ Office of Vital Statistics, is serving on the Board as an appointment of the Secretary of the Department of Health. Mr. Jones has been with Vital Statistics for 22 years. He is also the Deputy State Registrar responsible for day-to-day operations statewide.

Ms. Gail Thomas-DeWitt is a 27 year veteran and independently owned funeral director.

Ms. Nancy Hubbell, CPA Board member, is licensed as an attorney in Sun City Center.

Mr. Justin Baxley of Ocala was born into the funeral industry. Mr. Baxley is currently the Vice President of Operations for Hiers-Baxley Funeral Services.

Mr. Doug Shropshire stated that the Statute requires that there be a training program developed and implemented for new Board members. This is an overview. There are exceptions in qualifications.

The topics to be discussed are: Ethics Laws Applicable to Board Members, Sunshine Laws Applicable to Board Operations, The Public Records Laws Applicable to Board Operations, Civil Immunity for Board Members, Attorney General Counsel's Role to the Board and the Administrative Procedures Act.

Ethics – Florida Ethics Laws are lengthy and in some instances very complicated. Many of the Board may be inclined to just let their conscience be their guide, which will usually get you through 90% of the situations. There are some points in the Ethics statutes that are technical, not intuitive, and therefore just letting your conscience be your guide could expose you to inadvertently running a foul with some of the Ethics Laws.

No Offense Intended - The members serve on the Board out of a sense of public service. There is no question that Board members will do the right thing. The Department is mandated by statute to cover this stuff at least once during your 4 year tenure on the Board.

For purposes of the Ethics Laws, Board members need to realize you are State officers and public officers as defined by the Ethics Laws of this State. The sources of the Ethics requirements that Board members are required to follow: The Florida Constitution, the core document, Article I Section 8; Chapter 112 Part 3; Advisory Opinions of the Florida Ethics Commission; Attorney General Opinions; Court Decisions. Penalties for Ethics Laws violations are contained in Section 112.317 and are grouped to the Civil Remedies, Civil Penalties and Criminal Penalties. The Civil Penalties are impeachment, removal from office, suspension from office, public reprimand, forfeiture of salary, civil fine not to exceed \$10,000 and disgorgement of any improper gain. If there is any fine, the Attorney General is authorized to bring civil suit to recover the fines. The Ethics statutes do not have any criminal penalties. Any Ethics violation would be prosecuted under general criminal laws, such as bribery, theft by public officer, given of unlawful compensation, etc.

***Financial Conflict of Interest Effecting Participation and Voting by Board Members***– The source of these requirements is Section 112.3143, F.S. and the Advisory Opinions of the Ethics Commission. This topic affects more areas than you might think: License applications, license renewals, rulemaking and disciplinary action.

First, we need to divide the concept of financial conflict of interest from personal bias. The rules are very different. Personal bias is a hostility against the person appearing before the Board based on some personal situation. It is different from financial conflict of interest. Some times the two will both be present in a situation, but often times it would just be a question of a personal bias pro or con as compared to a financial conflict of interest.

The next preliminary matter is to differentiate between participation and voting. Participation is the discussion and debate that goes on during the Board meeting before the vote and then there is voting. There should not be any discussion on any Board topic except during the Board meeting, on the record.

The third preliminary matter is the terminology abstain vs. recuse. The Ethics statutes do not use the word recuse, because they purposely want to differentiate the grounds for a Board member not being able to vote or having to file disclosure. Board members are differentiated from judges because the rules for judges vs. Board members are very different, so the Legislature chose to use the terminology abstain. Basically the impact is the same, rather you abstain or recuse. The end result is that you do not participate or vote or both. If you have a financial conflict of interest, you are never required to abstain or recuse yourself. But, if you vote or participate while having a financial conflict of interest, you have to make disclosure of the conflict of interest. The disclosure therefore is the key. There are different disclosure procedures that Board members are required to follow depending upon the situation at hand:

- a. Participate only – engage in Board discussion or debate on the topic, but will not vote.
- b. Vote only – not going to participate in discussion or debate, but will vote.
- c. Participate and vote
- d. Do not realize you have a financial conflict of interest until the Board meeting begins or the issue has begun to be discussed or debated then you realize you have a financial conflict of interest.

To participate only, the applicable statute is Section 112.3143 (4), F.S. Prior to the Board meeting, you must obtain and complete Ethics Commission Form 8A (available on the Ethics Commission website) and submit to Diana Evans, Executive Director. Ms. Evans then incorporates that form into the minutes of the meeting and provides a copy of the form to all other Board members in advance of the meeting. This form is then read aloud at the commencement of the meeting and is made public record.

To vote only, you do not have to disclose prior to the meeting or before voting. Within fifteen days after voting, Form 8A must be filed with Ms. Evans. You do not have to disclose it, but you are urged to consider filing the form prior to the meeting to avoid the possible appearance of problems that may arrive.

To participate and vote with a financial conflict of interest, the "participate only" rule applies.

The procedure where you do not realize you have a financial conflict of interest until the issue is up before the Board, per Statute, immediately orally disclose on the record that you have a financial conflict of interest and then you are allowed to proceed with participation and voting. Within fifteen days after voting, Form 8A must be filed with Ms. Evans.

If you have a financial conflict of interest and you decide you do want to vote or participate, you are not required to make any disclosure beyond advising Ms. Evans and Mr. Chairman that you will not be voting due to your financial conflict of interest.

The statute requires that the Governor review Form 8A prior to a decision of reappointment to the Board.

Financial conflicts of interest are not just yours, but they are certain imputed parties. There are 3 elements of a financial conflict of interest:

a. Special private gain or loss – you have a financial conflict of interest when you have a special private gain or loss that accrues to you or a related party. For the industry members of the Board, the statute requires you be industry members. Therefore, in regards to some of the ethical provisions, the statute recognizes that you are in the industry and necessarily involved in regulating yourself. Unfortunately, this particular conflict of interest statute does not have any type of relief like that. The statutory language itself is that you are prohibited from participating or voting concerning “any measure which would inure to the special private gain or loss of yourself or related parties as defined by statute.” Just because the Board measure may result in a gain or loss to you does not mean that you have a financial conflict of interest. The general guidelines are as follows. If you are just one of a large group of persons who will have a gain or loss as a result of this measure that the Board is addressing and you will have a gain or loss, but there is no reason to believe that you will be effected significantly more or less or differently than any of the other persons, then you do not have a special private gain or loss.

Ethics Advisory Opinion 90-7 – The determination of whether a measure used to the special gain of an official turns in part on the size of the class of persons who stand to benefit from the measure, where a class is large a special gain will result only if there are circumstances unique to the official which would enable him to gain more than the other members of the class. However, where the class of persons benefiting is extremely small, the possibility of special gain is much greater.

b. The gain or loss must be accruing to you or a related party. Related parties would include principles, certain relatives related to you by blood or marriage and business associates. Principles would include your employer, clients, parent companies and subsidiaries of the corporation. Relative is defined in the statute to include father, mother, child, spouse, sibling, father-in-law, mother-in-law, son-in-law or daughter-in-law. Business associates would include partners, joint ventures and co-owners. If any business associates are corporations and their stock is not listed on a national or regional stock exchange, then all of the stockholders of that corporation are your business associates.

c. The likelihood of the special gain or loss occurring – The statute reads that there has to actually be a gain or loss, definitive and certain. The Ethics Commission takes the position that unless you can say that the chances of that gain or loss occurring are remote or speculative, you are required to assume that it will occur.

Six miscellaneous points:

1. You are allowed to voluntarily recuse yourself to abstain from participation and/or voting because of the mere appearance of financial conflict of interest.
2. Voting against your financial interest does not resolve or eliminate the financial conflict of interest. The disclosure must be made.
3. The validity of the Board’s action if there is a member who participates or votes and does not make the required disclosure – The statute does not say anything about whether that would invalidate the Board’s action. You could be invalidating the entire Board action by not making the necessary disclosures.
4. There is no conflict of interest based on prior relationships.
5. In the statute, in the paragraph following the Law that is applicable to Board members, is a paragraph applicable to local officials. Local officials are prohibited from participation and voting and are required to file Form 8A.

6. The statute requires the appointing official to review the Form 8As before they appoint or reappoint a Board member.

***Personal Bias or Hostility Effecting Participation and Voting by Board Members***– If you have a personal bias for or against the party or entity before the Board, but you do not have a financial conflict of interest you are required to vote. You cannot abstain from voting.

The Ethics Commission and the Attorney General have issued opinions specifically addressing that you are neglecting your duties if you leave the room to avoid voting.

***Prohibited Positions in Industry Associations*** – The Ethics Laws Prohibit a Board member from being a Board member and an officer, director or administrator of any state, county or regional professional or occupational association related to this industry. Being a member of an association, serving on an association committee or serving as Chairman of an association committee is allowable. The Ethics Advisory Opinions indicate that Board members can be an officer, director or administrator of a national or multi-state professional or occupational association.

***Prohibited Employment and Contractual Relationships Between Board Members and the Board*** – Board members are not to be employed or to have a contractual relationship with any entity regulated by the Board. If the statute requires you to be an industry member, you are allowed to engage in your normal industry activities. One area that the Ethics Commission specifically addresses that would apply is that Board members are prohibited from serving as Continuing Education Providers or Instructors, as this would put you into a contractual relationship with an entity that is regulated by the Board.

Mr. Bill Swain questioned whether the statute also applies to possible gain or loss by citizens so that a consumer representative of the Board would actually have a conflict of interest if they recognized that a provision by the Board would result in a financial benefit to the citizens of the City.

Mr. Shropshire stated that the same analysis would apply.

**\*\*\*BREAK 9:55AM – 10:10AM\*\*\***

***Gifts, Descriptions and Reporting of*** –

1. The general rule is Board members are prohibited from soliciting or accepting anything of value if you knew or should have known with the exercise of reasonable care that it was given or offered with the understanding that it would influence your official action.
2. The statute has very detailed rules regarding lobbyist, lobbyist principles, political action committees and committees of continuing existence. You cannot solicit a gift of any amount from any lobbyist, lobbyist principles, political action committees or committees of continuing existence. You cannot accept a gift over \$100 from any person who lobbies you or the Board, any member of the lobbyist's firm, the person or entity that hires the lobbyist, political action committee or committee of continuing existence. If the gift is \$25 - \$100, the lobbyist will have to file a written report with

the Ethics Commission. A lobbyist can give you anything they want if you in turn immediately deed it over to charity.

3. Board members are required to report on Ethics Commission Form 9 any gift over \$100 that is not from a relative. The statute defines relative as anyone related by blood or marriage.

A gift is defined as anything of value. Anything for which full value is paid is not a gift. Honoraria and expenses of attending an honoraria event are not gifts. Awards, plaques, certificates and similar personalized items are not gifts. Anything from your principal employment of business is not a gift. If you do have to report a gift, the general rule is to report the actual cost to the donor. If the gift applies to a service, it is the reasonable and customary charge for the service. Gifts are valued per occurrence and not cumulatively.

***Honoraria and Related Attendance Expenses*** – Honoraria is defined as a payment of money or anything of value directly or indirectly that is consideration for providing an oral presentation, whether live or recorded, or providing a written paper which is intended to be provided to a group of people. That is distinguished from Honoraria Events Attendance Expenses. You can not solicit honoraria if the topic relates to your official Board duties. You cannot accept honoraria from a lobbyist, lobbyist principles, political action committees or committees of continuing existence. You do not have to report honoraria. You have to report honoraria event attendance expenses annually with your annual financial disclosure every July 1<sup>st</sup>.

***Financial Disclosure by Board Members*** – Board members have to file an initial financial disclosure with the Ethics Commission. The annual financial disclosure is due by July 1<sup>st</sup>. After leaving the Board, members are required to file a disclosure for the part of the year which you were still on the Board subsequent to July 1<sup>st</sup>. If disclosure is not filed by July 1<sup>st</sup>, you are placed on a list and will receive a registered mail letter warning you to file by September 1<sup>st</sup>. If you do not file by September 1<sup>st</sup>, you start accruing \$25/day fine, up to \$1500. If the Ethics Commission files and enforcement action against you, you could be fined up to \$10,000.

***Misuse of Confidential Information Learned as Board Members*** – Section 112.313(8), F.S. states that no public officer shall disclose or use information not available to members of the general public and gained by reason of his or her official position. Board members are most likely to encounter this when they serve on Probable Cause Panel and sometimes possibly proprietary trade secret information is exposed to Board members to help them decide a case. Probable Cause Panel will typically see information in investigative files 2 or 3 weeks before the information becomes public. Panel members have to be careful not to directly or indirectly use that information.

***Misuse of Board Position for Corrupt Special Benefit*** – Section 112.313(6), F.S.

***Misuse of Board Position for Political Purposes*** – Election Code Section 104.31, Political Activities of State, County and Municipal Officers and Employees states that Board members are prohibited from using their position on the Board to influence or coerce any persons vote or to influence any person to make a contribution to any candidate, party or other political organization.

***Prohibited Business Relationships Between Board Members and the Board*** – No Board member shall rent, lease or sell any real estate goods or services to the Board.

***Restrictions on Board Members after Leaving the Board*** – No Board member shall personally represent another person or entity for compensation before the Board for 2 years after leaving the Board.

***Attorney and CPA Members of the Board/ Special Reporting Requirements*** – Section 112.3145(4) provides that Board members that are attorneys and CPAs need to file a quarterly report naming any client represented before any state agency.

***Special Disclosure for Board Members who are Cemetery Company Principals*** – Required on the annual financial disclosure to include a statement “I am a principle of a cemetery company that is privileged to operate in Florida. The name of the cemetery company is XYZ.”

***The Applicability of the Ethics Laws to Advisory Committee Members and Committee Members of the Board in general*** – Virtually all of the Ethics Laws apply to Advisory Committee members of the Board except financial disclosure and the Gifts and Honoraria Rules. Advisory Committee refers to a member of a committee created by the Board, but the member is not a Board member. There is a provision in the statute that says the Board can waive a conflict of interest by the Advisory Committee member. Ethics Commission Form A must be completed and given to Ms. Evans. The Board reviews the form at the meeting and on the record votes to waive the conflict of interest.

***The Ethics Commission’s Role and its Advisory Opinions*** – Board members are eligible to request advisory ethic opinions from the Ethics Commission. The request must be done in writing and addressed to their Executive Director. There are 9 members on the Commission; 5 appointed by the Governor, 2 by the Speaker and 2 by the Senate President. Their office is here in Tallahassee with a staff of 20.

***The Applicability of the Sunshine Law*** – As past Board members know, there will be people looking over your shoulder to ensure that the Sunshine Law is complied with. The source of the Sunshine Law is the Constitution, Article 1 Section 24. Section 286.011 is the Sunshine Law. A Board decision that is made out of the Sunshine is not valid or enforceable.

Penalties for violating the Sunshine Law - Unintentional violation - \$500 fine. Known violations are misdemeanors. The attorney fees of a person affected by a violation who then files litigation to enforce the Sunshine Law against the Board may be assessed against the individual Board member who violated the Sunshine Law.

Four primary areas that the Sunshine Law addresses are:

1. Discussion, debate and decision making by the Board - All of your discussion and debate has to be done at a Board meeting and on the record. That includes discussion and debate on any item currently before the Board or which may be foreseeable in the future come before the Board. Any time 2 Board members talk about official Board business, wherever they do it, it is a meeting. The statute says that meetings have to be publicly noticed. If you are informally discussing Board business you are having a meeting and if it was not officially noticed, you are violating the Sunshine Law. If the Board delegates its authority to a single Board member or to



the Executive Director to go and meet with someone to make a decision, that is a public meeting and should be noticed under the Sunshine Law. Any one-on-one communication between a Board member and the Executive Director or Department staff is okay.

2. Notice of Meetings – The Sunshine Law requires advance notice of meetings be given. The Sunshine Law itself does not specify how much notice has to be given and how. There are detailed Rules in Section 120.525, F.S. Notice of a Board meeting has to publish in the Florida Administrative Weekly at least 7 days prior to the meeting. Generally, the earliest you could possibly get notice of a meeting published is 17 days. The reason is Florida Administrative Weekly is only published once a week, on Friday. The staff of the Florida Administrative Weekly requires you to get your notice to them Wednesday, by noon, 10 days before the Friday you want it published. The statute provides for emergency meetings of the Board. In this case, the statute states you give as much notice by whatever means is possible.

3. Public Participation – Board member locations must be reasonably acceptable to the public, Section 286.011(6), F.S. The public has to be given reasonable opportunity to address the Board on any matter of concern to that member of the public. The Chair of the Board has the authority to impose reasonable and nondiscriminatory procedures to attendees, but must be given a reasonable opportunity to address the Board.

4. Minutes of Meetings – Minutes will be taken by the Administrative Assistant who prepares them and forward them to the Executive Director. The minutes are then circulated. One of the first items of business on each Board meeting agenda will be to review and approve the minutes from the past Board meeting.

Exceptions to the Sunshine Law include test development meetings, probable cause panel meetings and certain meeting with any counsel regarding litigation only for the purpose of discussing settlement negotiation or litigation expense strategies.

Board committees are comprised of Board members are fully subject to Sunshine Laws. Advisory committees are comprised of some non-Board members are fully subject to Sunshine Laws. Fact-finding committees are not subject to Sunshine Laws if the information they provide to the Board is not filtered. If any discretion is exercised in filtering out information, they are subject to Sunshine Laws.

***Board Meeting Agenda Requirements*** – These are not a part of the Sunshine Law, but they are closely related. Specific agenda requirements can be found in Section 120.525, F.S. Agendas are required to be made available to the public at least 7 days in advance of a Board meeting. Agendas do not have to be published, but they must be available upon request. The agenda must list all matters involving an exercise at Board discretion. They must be listed in order of presentation. The Board is supposed to deviate from its agenda, including the order, only through good cause stated on the record during the Board meeting.

***Public Records Law*** – The source of Public Records Law applicable to the Board is the Constitution, Article 1 Section 24. Primarily Section 119.07 states that any record of or relating to the Board or any record of the Department relating to the Board is assumed to be public record and must be disclosed upon request of any public record of any member of the public unless there is a specific statute that states otherwise. Members of the public do not have to identify why they want the information or who they are. There are items of information that can be withheld. The statute states that such information must be redacted and the rest released. Social security numbers are privileged and cannot be released.

The first specific exemptions from public records are complaints, investigations and probable cause panel records, which are all confidential and exempt from disclosure until the earlier of 10 days after the Probable Cause Panel votes or the investigation goes inactive. Ultimately, every complaint will become public record. This is different from what the law was under Chapter 470.

***Exceptions to the Eventual Disclosure of Complaints, Investigations and Probable Cause Panel Records*** – The Department can continue to hold a complaint, investigation or probable cause panel record if another agency is investigating a related matter or disclosure would compromise another Board or Department investigation or to the intent that disclosure would reveal a confidential source or an investigative technique. The Statute gives the Department authority to make disclosure of certain types of complaints and investigative results before probable cause. In the instance of a semi-public emergency situation, the Department can release information about a pending complaint or investigation.

***Financial Examinations and Facility Inspections*** – These files are exempt while the examination or inspection is in process. If the examination or inspection reveals an apparent violation, it is likely that examination or inspection would be converted to an investigation and then it continues to be confidential until the matter gets to the Probable Cause Panel and 10 days thereafter.

***Trade Secrets*** – The Board Staff purposely tries not to take trade secret material into our records, but sometimes it is unavoidable. If it is a trade secret, it is exempt from disclosure. Typically, the Department takes a position that if it is trade secret; the burden is on the person providing the information to inform the Department that it is trade secret. The Department does not ask. If the Department receives a public record request for the information, the Department would contact the license advising them of the request for the information. If the licensee does not want the information disclose, they would have to file a court action in circuit court seeking an order barring the Department from disclosing the information.

Licensing tests and answer keys, confidential informants, investigative techniques, social security numbers, bank account numbers, credit/debit card numbers and any software that is proprietary in license to the Department is exempt from disclosure.

Penalties for violation of a public records law: Unintentional violation = \$500 fine; Knowing violation = misdemeanor. The most serious penalty is if someone sues to enforce the public record law and prevails the Court is entitled to award attorney's fees against the Board or Department or resisting.

***Civil Immunity for Board Members*** – During your tenure as a Board member, it is likely that to make one or more people upset because you voted in a way that was not in accord with their interest. Some of the people may take it personally and you could be named as a defendant in a civil lawsuit. Section 497.101(5) reads that a current or former Board member is exempt from any civil liability for any act or omission when acting in good faith in her or his official capacity, and the Department of Legal Affairs and the Division of Risk Management shall defend such Board member in any civil action against such person arising from any such act or omission.

It is important to note that there is a difference between sovereign immunity and civil immunity. Board members have civil immunity not sovereign immunity. With sovereign immunity you cannot be sued. A lawsuit may be filed against you, but your attorney would go before the judge and advise who you are, then the judge dismisses the lawsuit. With civil immunity, you may be sued, subjected to discovery and deposed. If it is proven that you were not acting in good faith, you would be exposed to judgment.

***The Attorney General's Counsel to the Board*** – The Department of Legal Affairs shall provide legal services to the Board within the Department of Financial Services. The primary responsibility of the Department of Legal Affairs shall be to represent the interest of the citizens of the State by vigorously counseling the Board with respect to its obligations under the Law. Mr. Tom Barnhart is the Board's assigned attorney. There is a contract between the Department of Financial Services and the Attorney General for Mr. Barnhart's services. The Board is fortunate to have Mr. Barnhart's services, as he does a very good job.

### ***Administrative Procedures Act*** – Chapter 120

Deemer Issues – The Legislature has long been concerned with State agencies taking too long or just sitting on applications for licensure. In effort to force agencies to act quickly within a reasonable period of time, the Legislature enacted deemer statutes. A deemer statute simply states that unless the agency affirmatively denies the application, it is deemed approved within a specified time. The statutes currently in effect do not use the word deemed anymore. There are multiple deemer statutes throughout state government.

The deemer statute that applies to the Board's staff has 2 separate deemers; a completeness deemer and an approval deemer. The completeness deemer states that unless Staff affirmatively notifies the applicant within 30 days of receipt of the application that the application is incomplete, it is deemed complete. If it is deemed complete, the Board cannot deny the application for being incomplete. The second deemer deadline is the approval. It states that unless the application is affirmatively approved or denied within 90 days of being complete it is deemed approved.

***Tolling the deemer*** – Once Staff informs the applicant that the application is incomplete; the running of the approval deemer is tolled. It remains tolled until the application is made complete and then it starts running again.

***Waiving the Deemer*** – The applicant can waive the approval deemer. The Board has to be careful not to coerce the applicant into waiving the deemer.

***Deemers and Late Additions to Agendas*** – Board members will develop a serious aversion to being given materials right before the meeting then being expected to review them and be in a position to make an intelligent decision at the Board meeting. Deemers are constantly driving Staff, pressuring them to press that period and provide late additions to the agenda that do not allow sufficient time for review. To address this, there is a new provision in the statute. Section 497.167(9) states that an application must be completed at least 25 days before the next regularly scheduled Board meeting in order to be presented to that meeting or the deemer is tolled until the following meeting. This was put into the statute to address this issue. The Board may ultimately

decide basically to waive the benefit of this statute. The Board would have to apply this decision constantly one way or the other.

**Rules and Rulemaking** – This will be a huge issue for the next year or two. Rulemaking is a real challenge. The rulemaking statutes are very detail and extensive. Legal staff would handle the legal side of it. Rulemaking is complex and frequently annoying. Preliminarily, the Rules of the prior 470 and 497 Boards are currently in effect and will remain in effect until the Board affirmatively amend or affirm them. There is a fair number of inconsistencies between the two sets of Rules. They address the same subject in many instances in different ways. They need to be in a coherent single unified basis. All of the new forms that are on the website have to be adopted by rule.

Any statutory interpretation, policy or procedure that the Board uses that substantively affects any regulated person or applicant is a rule, whether it is published or promulgated or not. Anything that is a rule is supposed to be promulgated and published in the Florida Administrative Code as a rule. Unpromulgated rules, the interpretations, policies and procedures that the Board consistently uses that are not in official rule form, are the rules that will be challenged because they should be promulgated but are not. A rule that has not officially been adopted is unpromulgated. These rules are generally unenforceable.

Typical rulemaking steps:

1. Publish notice of rule development
2. Hold a rule development workshop, if requested
3. Prepare analysis of small business impact
4. Publish notice of intent to adopt the rule
5. File proposed rule with JAPC (Joint Administrative Procedures Committee)
6. Respond to JAPC's comments or objections
7. Hold a public hearing, if requested
8. File for adoption
9. Litigate if the proposed rule is challenged

Challenges to Rules:

1. Agency has materially failed to file applicable rulemaking procedures
2. Agency has exceeded its rulemaking authority
3. The rule enlarges, modifies or contravenes the specific provisions of law implemented
4. The rule is vague,
5. The rule is arbitrary capricious
6. The rule imposes regulatory cost on regulated persons, counties or cities which could be reduced by the adoption of less costly alternatives that substantially accomplish the same objective
7. The rule does not protect the public from any significant and discernable harm or damage
8. The rule unreasonably restricts competition or the availability of professional services in the State or a significant part of the State
9. The rule unnecessarily increases the cost of professional services with adequate corresponding or equivalent public benefit

***Hearing Rights Regarding Decisions Affecting Substantial Interests*** - Any person whose substantial interests are affected by a Board's decision or rule has a right to a hearing. As a practical matter hearing rights will always be relevant to denial of an application for licensure, denial of renewal of a license, denial of an application for change of control or location and disciplinary action. Any decision affecting the substantial rights of any person will give rise to hearing rights under Chapter 120. The party requesting the hearing is usually called the respondent.

There are 3 types of hearings, and only 2 of them are before the Board:

1. Formal hearings are held before an administrative law judge of the Division of Administrative Hearings, in the Respondent's city. This is an independent law judge from an independent agency. The facts must be disputed to receive a formal hearing. After the hearing, the administrative law judge would give the Board a recommended order that would include a recitation of the procedural status, history of the case, findings of fact and conclusions of law. The Board will then review the information and issue a Final Order of the Board. The Board can change the findings of law if you can find that your interpretation is at least as reasonable as the administrative law judge's interpretation. The penalties can also be changed. However, the facts cannot be changed.
2. Informal hearings are held before an attorney of the Department of Financial Services, assigned by the Director of the Division of Legal Services. The facts do not have to be disputed for this hearing. The attorney would have no prior involvement in the case and will act as Informal Hearing Officer. The prosecutor for the Board, the respondent and the respondent's attorney would appear before the Informal Hearing Officer. Typically the hearings are held by telephone conference. The respondent could also come to Tallahassee and have the hearing in person. After the hearing, the Board would receive a recommended Order from the Informal Hearing Officer.
3. No contest hearings – The respondent either does not respond to a set of disciplinary charges or responds and states that the facts are not being disputed. This goes directly to the Board.

***Appeals*** – After the Final Order has been issued, the Respondent has 30 days to file an appeal in the District Court of Appeal. If an appeal is filed, the Appellate Court will review it. If the Court upholds the Board's Order, then the Order is final. If the Order is modified, the case would be remanded to the Board and another Final Order that is consistent with the District Court of Appeal's Order would have to be issued.

**\*\*\*LUNCH 11:15AM – 12:30PM\*\*\***

## **V. Action on the Minutes**

### ***A. August 25, 2005 – Board of Funeral and Cemetery Services***

Mr. Chairman confirmed that all Board members had read the draft of the minutes of the previous meeting of the Board of Funeral and Cemetery Services on August 25th.

**MOTION:** Col. Pete Ballas moved to adopt the minutes of the meeting. Mr. Chairman seconded the motion, which passed unanimously.

***B. September 13, 2005 – Board of Funeral Directors and Embalmers***

Mr. Chairman confirmed that all Board members had read the draft of the minutes of the previous meeting of the Board of Funeral Directors and Embalmers on September 13th.

**MOTION:** Ms. Catherine Zippay moved to adopt the minutes of the meeting. Mr. Jody Brandenburg seconded the motion, which passed unanimously.

**VI. Old Business**

***A. Certificate of Authority Renewal Applications***

***1. Bernardo Garcia Funeral Home (Hialeah) Inc. (Miami)***

Ms. Evans stated that the above Certificateholder was recommended for Board consideration at the June 30, 2005 meeting based on the following:

Financial Requirements set forth in Rule 69K-5.0016 F.A.C.

Financial Statements for the period through December 31, 2004 reflected the following:

Total Preneed Contracts:	\$ 1,307,447
Required Net Worth:	\$ 100,000
Reported Net Worth:	\$ 650,325

The December 31, 2004 Renewal Statement identified all of the outstanding contracts as trust funded - trust principal \$884,639 and interest \$130,332.

On March 31, 2005 the Department issued a deficiency notice regarding the trust asset and liability amounts not appearing on the balance sheet. On April 11th, the Department received a response from Mr. Peter Martin, Funeral Director, explaining that the funeral home is held in common ownership with Bernardo Garcia Funeral Home (Westchester), Inc. and the companies co-mingled trust assets in one trust under Westchester. Therefore, the Hialeah financials did not reflect the trust asset and liability position. Those were reflected on the Westchester financials. Both are commonly-owned separate corporations each holding a COA.

The Department issued a second deficiency notice on May 12, 2005 again noticing the trust asset and liability issue and requesting explanation of the Intercompany Accounts entry which was entered as a contra long-term liability of \$357,000. Mr. Martin explained by e mail on May 20<sup>th</sup> that the intercompany accounts represented transfers/loans made between companies that share common ownership.

At the June 30, 2005 Board meeting, the Board deferred the renewal pending the receipt of financial statements reflecting separate trust fund allocations for each COA and the method for treatment of preneed revenues. On August 18<sup>th</sup>, the Department received a letter from Mr. Martin requesting deferment to the October Board meeting. In August, the Board voted to defer

the application to the October meeting.

On October 14<sup>th</sup>, the Department received revised financial statements and a letter from Mr. Martin explaining the revisions to current and prior year periods. The revised statements as of December 31, 2004 reflect the following:

Total Premeed Contracts:	\$ 1,307,447
Required Net Worth:	\$ 100,000
Reported Net Worth:	\$ 372,254

The statements have been revised to reflect preneed trust assets and deferred revenue liabilities for all unfulfilled contracts on the balance sheet. The previous method of recording the non-trusted portion of revenues as income has been revised to reflect balance sheet deferred income. As contracts are fulfilled, deferred income will be reduced and the respected earned income will be recorded on the income statement. The affects of the revision resulted in a total decrease in retained earnings, current earnings and lowered net worth by \$278,072. This consists of a \$127,452 reduction in current earnings (reflected as a long-term liability - intercompany payable) and a \$150,620 adjustment to retained earnings reflecting proper reporting for preneed sales, trust and sales costs.

The former \$357,000 long-term liability reduction for intercompany accounts on the original statement has been reclassified to Other Assets. In a follow-up letter to the Department dated October 20, 2005, Mr. Martin provides detail regarding intercompany receivables and identifies the particular entities involved. The statements appear recorded on an accrual basis in accordance with GAAP.

Staff recommends approval of the Certificate of Authority Renewal.

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

## ***2. Bernardo Garcia Funeral Home (Westchester) Inc. (Miami)***

Ms. Evans stated that above Certificateholder was recommended for Board consideration at the June 30, 2005 meeting based on the following:

Financial Requirements set forth in Rule 69K-5.0016 F.A.C.

Financial Statements for the period through December 31, 2004 reflected the following:

Total Premeed Contracts:	\$ 14,522,701
Required Net Worth:	\$ 100,000
Reported Net Worth:	\$ 1,560,172

The December 31, 2004 Renewal Statement identified all of the outstanding contracts as trust funded - trust principal \$7,345,920 and interest \$687,356.

On March 31, 2005 the Department issued a deficiency notice regarding the trust asset and liability amounts on the balance sheet not appearing compatible with the Renewal Statement. On April 11th, the Department received a response from Mr. Peter Martin, Funeral Director, explaining that the funeral home is held in common ownership with Bernardo Garcia Funeral Home (Hialeah), Inc. Both are commonly-owned separate corporations each holding a COA, and the companies co-mingle trust assets in one trust under Westchester.

As the response did not address the trust liability amount, on May 12<sup>th</sup> the Department issued a second deficiency notice requesting explanation of Intercompany Accounts and stating that the Balance Sheet appeared to reflect 100% trusting. On May 20<sup>th</sup>, Mr. Martin explained by e mail the intercompany accounts, and attached a letter submitted from the previous renewal which stated that trusting is not 100% - trusted dollars were debited to the trust asset and credited to the trust liability. The non-trusted portion was debited to Cash in Bank – Non Trust Unrestricted, and credited to pre-Need Revenues.

Mr. Martin explained that the total contract amount had not been recorded as a receivable (or liability) since contracts were revocable by the customer at any time for any reason and without liquidated damages. Liabilities also reflect two contra long term liabilities for Annuity Fund (\$27,984) and Intercompany Accounts (\$795,000) - for a total of (\$1,322,984).

At the June 30, 2005 Board meeting, the Board deferred the renewal pending the receipt of financial statements reflecting separate trust fund allocations for each COA and the method for treatment of preneed revenues. The Department issued a notice of the Board's decision on July 12, 2005. On August 18<sup>th</sup> the Department received a letter from Mr. Martin requesting a deferment to the October meeting. In August, the Board voted to defer the application to the October meeting.

On October 14<sup>th</sup>, the Department received revised financial statements and a letter from Mr. Martin explaining the revisions to current and prior year periods. The revised statements as of December 31, 2004 reflect the following:

Total Pneed Contracts:	\$ 14,522,701
Required Net Worth:	\$ 100,000
Reported Net Worth:	\$ 232,498

The statements have been revised to reflect preneed trust assets and deferred revenue liabilities for all unfulfilled contracts on the balance sheet. The previous method of recording the non-trusted portion of revenues as income has been revised to reflect balance sheet deferred income. As contracts are fulfilled, deferred income will be reduced and the respected earned income will be recorded on the income statement. The affects of the revisions in reporting of preneed sales, trust earnings and sales costs resulted in a \$1,685,191 decrease in retained earnings and a reduction of \$401,785 in total operating expenses from the prior statement.

The former long-term liability reductions for Annuity Fund and Intercompany Accounts on the original statement have been reclassified to Other Assets. The Annuity Fund remains at \$527,984 while the intercompany receivable asset increased to \$1,373,356. In a follow-up letter to the Department dated October 20, 2005, Mr. Martin provides detail regarding intercompany receivables and identifies the particular entities involved. The statements appear recorded on an



accrual basis in accordance with GAAP.

Staff recommends approval of the Certificate of Authority Renewal.

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

**3. *National Funeral Services, Inc. d/b/a James A McKee Funeral Home (North Port)***

Ms. Evans stated that the Certificateholder submitted the Renewal Application form (R-1), renewal fee and Renewal Statement (R-3) on March 30, 2005. The financial statement form (R-2) was omitted. The Certificateholder's fiscal year-end date was December 31, 2004. Per Chapter 497.407, Florida Statutes, the financial statements were due within 3 months of the after the end of the fiscal period, or by April 1, 2005.

On June 6, 2005 the Department received by fax a letter from Mr. Anthony L. Tartaglia, FDIC, advising the Department that a new accounting firm had been hired was unlikely to complete the financials in time for the June 30, 2005 meeting. A request for extension of time to submit the financials was approved by the Board at the June meeting. A request for waiver of the \$1,000 late penalty was not made.

On September 6, 2005 the Department issued a letter to National Funeral Service, Inc. regarding the Board's decision stipulating that the submission of the statements and \$1,000 delinquent penalty should be made within 30 days of that date.

On October 25, 2005 the Department issued a letter stating that the required financial statements had not been received and denial of National Funeral Service, Inc.'s certificate of authority renewal would be recommended at the next Board meeting scheduled for December if the statements are not received by November 12, 2005.

As of November 18, 2005 the Department had not received required financial statements.

The Department recommends denial of the Certificate of Authority Renewal.

**MOTION:** Col. Ballas moved to deny the application. Mr. Justin Baxley seconded the motion.

**4. *Resthaven Gardens Cemetery, Inc. (Pensacola)***

Ms. Evans stated that the above Certificateholder was recommended for Board consideration at the June 30, 2005 meeting based on the following:

Did not meet the Financial Requirements set forth in Rule 69K-5.0016 F.A.C.

Total Preneed Contracts:	\$ 16,690
Required Net Worth:	\$ 60,000
Reported Net Worth:	\$ 16,409

Because of a fiscal year-end of April 30<sup>th</sup>, the most recent renewal financial statements were not due until July 31, 2005. Thus, the above statements were as of April 30, 2004. Although the \$10,000 minimum net worth requirement for non-cemetery companies was met, as a cemetery company, the Certificateholder, in addition, needed to maintain a continuous minimum net worth of \$50,000 required by section 497.201(2) (a), Florida Statutes.

On June 17<sup>th</sup>, the Department received a letter from Ms. Iris Holt, owner, detailing problems the cemetery experienced during the past year related to management and damage from Hurricane Ivan. The letter requested deferral of any Board action until August 25, 2005 Board meeting. The Board voted to approve the application pending Department receipt of sufficient financial statements, otherwise defer the application to the August meeting.

On August 5, 2005 the Department received a letter and new financial statements as of April 30, 2005. As the Department did not receive it in time for inclusion in the August agenda, the application is submitted for board consideration at this meeting. The April 30, 2005 financials reflect the following:

Total Pread Contracts:	\$ 57,207
Required Net Worth:	\$ 60,000
Reported Net Worth:	\$ 12,479

In the accompanying letter, Ms. Holt indicates a transfer and reclassification of assets was made which would have met the net worth requirement. However, extraordinary expenses due to hurricane Ivan decreased the amount to below the required \$60,000. Ms. Holt claims sales and collections have greatly improved. Staff and family are working to rectify problems and manage the cemetery back to normal operations. Ms. requests the Board's consideration in allowing the cemetery to operate until the Board's requirements are met.

Mr. Baxley asked if there was a significant reason why the Applicant did not want to secure the \$44,000 to meet the requirement.

Mr. Larry Eiland stated that Hurricane Ivan's damage was \$63,500, was listed as an Extraordinary Item Expense during that period. Ms. Iris Holt did put in \$30,000 and reclassified a little over \$10,000. In essence, she put in \$40,000 but it was largely the Hurricane damage that kept the Applicant from meeting the net worth requirement. The difference between the financial statements in '04 and '05 was about a \$40k difference, showing a \$19 – 20k profit prior to the Hurricane Extraordinary Item.

Mr. Chairman stated that the income statement indicated that the Maintenance Fund Income was \$17,045, but the administrative fees were \$23k.

Mr. Eiland stated that there is about \$70-80k in the Maintenance Trust.

Mr. Chairman questioned whether that is the only trust fund.

Ms. Holt answered No, there is also a Merchandise Trust. The previous employee did not provide adequate information to keep up the accounts. In regards to the trusts, Ms. Holt went

back to '97 or '98 and brought the accounts up to date. There is a little over \$100k in the Care and Maintenance Trust Fund.

Mr. Chairman suggested that Ms. Holt contact her bank to determine why they would charge \$23,000 to manage \$100,000.

Ms. Holt stated that her main concern was to bring the accounts up to date. Numerous markers had to be ordered.

Mr. Chairman questioned that Department's feeling on the trust.

Ms. Evans stated that she has not received the most recent audit, but it appears that the real problem in the deficiency is the required net worth of the cemetery not so much the COA. The applicant meets the minimum for a COA.

Mr. Chairman asked what would be the alternative.

Ms. Evans stated that if the Board denies the application, the applicant would be an inactive Certificateholder and could not sell preneed. 100% of payments collected would go into trust.

Mr. Chairman questioned whether the Applicant could make up the deficit in order to maintain the certificate to continue to sell preneed. The Board would need some type of assurance that the equity would be put back into the business.

Ms. Holt stated that would be difficult as she is still paying on the tree expense from Ivan. Ms. Holt is waiting for an estimate on a road that was destroyed. APAX will be providing some assistance.

Mr. Chairman stated that the financials would be due in March.

Mr. Eiland responded that Ms. Holt is on the 4-30 year end, so the next financials would be due 2.5 – 3 months after April 30<sup>th</sup>.

Mr. Chairman stated that this year has passed. If the Applicant cannot meet the requirements, the Board would be forced to deny.

Mr. Barnhart questioned whether Ms. Holt has a pending insurance claim for the damages done to the cemetery.

Ms. Holt answered yes.

Mr. Barnhart questioned whether Ms. Holt made a claim that was denied.

Ms. Holt stated that the problem is not being able to contact the insurance company and the local agent has not been beneficial. The company was to reopen the claim, but there is a lot of things they are advising that are not covered.

Mr. Chairman stated that the alternative would be to trust 100% until net worth is brought up in order to continue to sell preneed.

**MOTION:** Mr. Baxley moved to approve the application subject to 100% trusting. Ms. Zippay seconded the motion, which passed unanimously.

## **VII. Disciplinary Proceedings**

\*\*\*TAKEN OUT OF ORDER\*\*\*

### ***F. Woodlawn Memory Gardens, Inc. DFS 81280-05-FC***

Ms. Casia Sinco stated the Administrative Complaint was filed on August 11, 2005. The Department charged Woodlawn with failing to inter a customer in the grave space he purchased and failing to maintain accurate burial records. Settlement negotiations were entered into and the Department is asking the Board to approve the Consent Order. As a condition of the Consent Order, Woodlawn would pay a \$5000 administrative fine.

Mr. Ballas abstained from voting as he served on the Probable Cause Panel for this case.

**MOTION:** Mr. Brandenburg moved to approve the order. Ms. Zippay seconded the motion, which passed unanimously.

### ***B. Harmon Funeral Home, Inc. and John W Harmon DFS Case Nos. 83441-05-FC and 83444-05-FC***

### ***C. Harmon Funeral Home, Inc. and John W Harmon DBPR Case Nos. 2004-040544 and 2004-040547***

Ms. Lesley Mendelson stated that this case was inherited from the Department of Business and Professional. The stipulations had already been agreed upon. The issue with these cases was failure to submit in a timely fashion report of bodies handled and bodies embalmed. There was almost a 6 month delay. The Settlement Stipulation for both calls for \$812.36 in costs and \$1000 fine. There were no priors. There was a 6 month probation condition. On both of the licenses, John Harmon is required to take and pass the Florida Laws and Rules Examination and a 3 hour Continuing Education course. At the end of the 6 months, Mr. Harmon is required to appear before the Board to satisfy that Board that the conditions of the Stipulation and probation have been satisfied.

**MOTION:** Col. Balls moved to approve the order. Ms. Zippay seconded the motion, which passed unanimously

**DISCUSSION:** Mr. Brandenburg stated that the Stipulation requires that the Board designates the Continuing Education hours under the subject matter.

Mr. Mendelson agreed. The Board could handle that it this meeting or the next.

**MOTION:** Mr. Brandenburg suggested that the 3 hours be designated as Ethics. Ms. Zippay seconded the motion, which passed unanimously.

Mr. Chairman stated that this would be added to the Final Order.

***D. Morning Glory Funeral Home  
DFS Case No. 83433-05-FC***

***E. Morning Glory Funeral Home  
DBPR Case No. 2004-033942***

Ms. Mendelson stated that this case was inherited from the Department of Business and Professional. The stipulations had already been agreed upon. The costs in this case were \$59.24, which has already been paid. The fine was \$1000 and has been paid as well. There is also a reprimand on this, but no probation. All of the delinquent reports have been submitted. There were no priors.

Ms. Gail Thomas-DeWitt questioned who the Funeral Director in Charge was during this time.

Ms. Mendelson stated that was a very good question that was discussed yesterday. The case was settled prior to the Department receiving it. Ms. Mendelson added that she did not know who the Funeral Director in Charge was at that time.

Ms. Thomas-DeWitt stated that the Board needs to give some consideration to the Funeral Director in Charge. The actual Respondent is only the owner. The Funeral Director in Charge has the ultimate responsibility and that person should be held accountable.

Ms. Mendelson stated that she would check the records to see whether that has been done. If it has not, the Department will take the matter to Probable Cause for consideration.

**MOTION:** Mr. Brandenburg moved to approve the order. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

***A. Grossberg and Son Memorial Chapel and Arthur Grossberg  
DFS Case No. 81281-05-FC***

Ms. Lesley Mendelson stated that the Department would like to withdraw this case until the next meeting.

**VIII. Applications for Preneed Sales Agent**

***A. Recommended for Approval - See Addendum A***

Mr. Chairman stated that he is affiliated with CFS.

Ms. Evans stated that subsequent to publishing the Agenda, it came to the Department's attention that there were several terminations, so a new Addendum A was prepared.

Mr. Brandenburg advised the Chair that prior to the commencement of the meeting, he submitted a memo disclosing his affiliation SCI Funeral Services of Florida.

Mr. Baxley disclosed his affiliation to Highland Memorial Park.

**MOTION:** Mr. Brandenburg moved to approve the amended addendum. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

***B. Recommended for Denial for 45-day cause - See Addendum B***

Ms. Evans presented for denial the list of applicants on Addendum B.

**MOTION:** Col. Ballas moved to deny the applications. Mr. Brandenburg seconded the motion, which passed unanimously.

**IX. Certificate of Authority Initial Applications**

***A. Funeral Depot, Inc. (Davie)***

Ms. Evans stated that the Department received the application on September 22, 2005. A deficiency notice was issued by the Department on September 28<sup>th</sup> and the deficiency answered on October 3<sup>rd</sup>. The Applicant received an establishment qualifying license on June 10, 2005.

The Applicant's financial statements are for the five month period ending August 31, 2005. They reflect the following:

Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	132,826

The Applicant's Historical Sketches reflect a total value of holdings in the business of \$7,000,000. However, Total Assets are listed as \$398,943.

The balance sheet reflects \$173,940 classified as an Other Asset and identified as Loan Advances – Officers. As this amount is greater than the Applicant's stockholder's equity, the Department requested more detail. On October 13<sup>th</sup> the Department received, by fax, a statement from Joseph D. Magliocca, 75% owner and president, that he will begin repayment of the outstanding loan beginning January 1, 2006.

The Applicant will use the pre-approved Funeral Services, Inc. (FSI) 1993 Trust Agreement (SouthTrust Asset Management Co.) and pre-arranged funeral agreement.

Ms. Evans stated that appears to be a large long term liability of \$220k for Legal Fee Payable. Ms. Evans questioned why there is such a large legal fee. There possibly could have been a lawsuit or some other litigation that may affect this application.

Mr. Harvey Levinson, the Applicant's attorney, stated that the legal fees were incurred over the past couple years with regard to some litigation from one of the major casket companies.

Mr. Joseph Magliocca stated that they were sued by Batesville Casket Company for copyright infringement for representing Batesville's images on their website. The suit has been settled. However the attorney's fees are in excess of \$200k, which there is an approved payment plan in place for \$200 a month.

Ms. Evans questioned what type of business the Applicant was running. The establishment license was granted in June '05. Ms. Evans asked whether the caskets were being sold retail.

Mr. Magliocca answered yes. The company is the largest provider of caskets online nationwide. About 175 caskets are sold monthly across the country. The entity has since become a licensed funeral home and decided to diversify.

Ms. Evans stated that the assets of the company are greatly smaller than it's proclaimed worth.

Mr. Levinson stated that with the respect to the \$7 million, it was the interpretation of the owners that the selling price on a going concern basis is roughly 2 ½ times what the gross sales are. The financial statements are prepared in accordance with GAAP. The \$7 million does not appear anywhere in the financial statements.

Mr. Magliocca stated that the application asks what you value the company at. Basically, if the company was sold it would be a 2 ½ times revenue. The company is about \$3 million a year in revenue. So the company would be sold for \$7 million.

Mr. Levinson stated that this does not impinge upon the financial statements.

**MOTION:** Col. Ballas moved to approve the application. Mr. Ken Jones seconded the motion, which passed unanimously.

***B. H & P Memorials, Inc. d/b/a Anderson Funeral Home (Ft Myers)***

Ms. Evans stated that the Applicant purchased Anderson Funeral Homes and received an establishment qualifying license on September 22, 2005. The Department received the application on September 13, 2005. A deficiency notice was issued by the Department on September 27<sup>th</sup> and the deficiency answered on October 24<sup>th</sup>.

The Department's deficiency notice addressed the Applicant's omission of required financial statements. The Applicant's response included financial statements as of September 30, 2005 on an income tax basis. In order to place the application on the December agenda, the Department notified the Applicant by telephone that the statements were required on an accrual basis in accordance with GAAP. The Applicant's CPA responded on November 22<sup>nd</sup>, but because of problems with the fax transmission, the statements were not received in time to include with the Board packets which were being mailed that same day.

The Applicant's financial statements are for the five month period ending September 30, 2005. They reflect the following:

Preneed Contracts	= \$ 468,571
Required Net Worth	= \$ 60,000

Reported Net Worth = \$ 774,558

The Department questioned whether the \$525,827 Property and Equipment asset entry was paid in full as no corresponding long-term liability was reflected. The Applicant indicated that the property is held by a wholly-owned related company, with H & P Memorials, Inc. providing lease payments to that company. The Other Assets category reflects \$250,000 in Goodwill, which the CPA stated was for the intangibles related to the purchase.

Pending approval of this application, the Applicant has an application for a branch license on this agenda for Anderson Funeral Home of Lehigh Acres.

The Applicant will be using the pre-approved trust and contract forms of the Independent Funeral Directors of Florida (IFDF) Master Trust Fund.

Ms. Evans questioned whether the Department received the updated financials in accordance with GAAP.

Mr. Jim Gellepis answered yes.

Ms. Evans questioned whether the property, which is labeled at \$525k, under a separate company.

Mr. Daryn Patterson stated that it is the same company. The property was purchased and put into H&P Properties. It is the same entity.

Ms. Evans stated that it is not in the name of H&P Memorials, Inc.

Mr. Patterson stated that H&P Memorials is the funeral home.

Ms. Evans asked if this is the corporation.

Mr. Patterson answered yes.

Ms. Evans stated that the assets are accessible to the corporation, but are not in the corporation. The net worth may be a little askew if it is not really in the corporation.

Mr. Chairman stated that the assets and liabilities should reflect on the right set of books.

**MOTION:** Col. Ballas moved to approve the application subject to receipt of financials in accordance with GAAP. Mr. Brandenburg seconded the motion, which passed unanimously.

## **X. Certificate of Authority Branch Applications**

### ***A. Recommended for Approval - See Addendum C***

Ms. Evans presented for approval the list of applicants on Addendum C.

Mr. Chairman disclosed his affiliation with CFS.



**MOTION:** Mr. Baxley moved to approve the applications. Col. Ballas seconded the motion, which passed unanimously.

**XI. Application to Acquire Control of an Existing Cemetery Company**

**A. Florida Keys Funeral Services, LLC d/b/a Memorial Gardens of the Keys (Big Pine Key)**

Ms. Evans stated that the application was received on August 19, 2005 from Florida Keys Funeral Services, LLC, d/b/a: Memorial Gardens of the Keys, for authority to acquire control via external asset purchase of Pinewood Memorial Cemetery. A notice of deficiency was issued by the Department on September 6<sup>th</sup>. The Applicant's response was received by the Department on November 16th.

In March, 2002, Mr. Jeffery Dean, 100% owner of Florida Keys Funeral Services, LLC entered into a business lease with Pinewood Memorial Cemetery, Inc. The lease period ended September 1, 2004, with an option to purchase. The incorporation of Florida Keys Funeral Services, LLC occurred July 15, 2004. At the August 25, 2005 Board meeting, the Department presented a consent order which in part found the lease agreement in violation of the statute and required an application for change of control. This application, from the father of the former lessee, is the result of that order.

The applicant has not waived the final examination of trust funds by the Department.

As of November 18, 2005, licensure is contingent upon Department receipt of the following:

1. Department background investigation that reflects the Applicant has sufficient character and reputation for fair dealings in business matters.
2. Department final trust fund examination report.
3. Original Existing Cemetery License returned for cancellation.

Mr. Chairman asked whether the item would have to come back before the Board if the Applicant is not satisfied with the audit and it delays the closing.

Ms. Evans stated that if closing does not occur before a certain period of time, the Board could agenda the item and have the approval rescinded.

**MOTION:** Col. Ballas moved to approve the application contingent upon receipt of the requested items. Ms. Zippay seconded the motion, which passed unanimously.

**XII. Contracts or Other Related Forms**

- A. Prearranged Funeral Contract – Form F-976FL**
- 1. Fortis Benefits Insurance Company (Rapid City, SD)**

Ms. Evans stated that the contract was initially approved at the April 3, 2001 Board meeting and is submitted for approval prior to Fortis Benefits Insurance Company implementing change of its name to Union Security Insurance Company. The new name and company logo will be placed on the new contracts.

Staff recommends approval pending Department receipt within 60 days of two print-ready copies which reflect the following:

1. Revisions of the new company name, logo or branding marks.
2. Revision of Board name to reflect “Board of Funeral, Cemetery and Consumer Services”.
3. Revision from “Bureau of Funeral and Cemetery Services” to “Division of Funeral, Cemetery and Consumer Services”.

**MOTION:** Mr. Brandenburg moved to approve the contract subject to revisions being made within 60 days. Mr. Powell Helm seconded the motion, which passed unanimously.

***B. Addendum to Pre-Arrangement Agreement***

***1. Funeraria Porta Coeli (Kissimmee)***

Ms. Evans stated that Staff recommends approval of this addendum.

**MOTION:** Mr. Baxley moved to approve the addendum. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

***C. Sales Contract or Retail Installment Contract and Preneed Funeral Agreement***

***1. Keatley Investments, LLC (Eustis)***

Ms. Evans stated that the cemetery contract and funeral agreement are being revised in the allocation of payment sections and to reflect new chapter 497 references.

The Sales Contract or Retail Installment Contract: page 1, Application of Payments is amended to reflect allocation of payments first to unpaid amounts for interment rights, then merchandise, and lastly to services.

Preneed Funeral Agreement: page 2, section C. is amended to reflect allocation of payments first to unpaid merchandise, then services and lastly to cash advances.

Staff recommends approval with the word principal stricken and pending Department receipt within 60 days of two print-ready copies of each agreement.

**MOTION:** Mr. Jones moved to approve the contract pending Department receipt within 60 days of two print-ready copies of each agreement. Col. Ballas seconded the motion, which passed unanimously.

***D. Merchandise Addendum***

***1. Ormond Funeral Home (Ormond Beach)***

Ms. Evans stated that the addendum is to be used in accordance with rule 69K-8.006 to provide a purchaser or any other person with sufficient information for the description of merchandise purchased.

Staff recommends approval of this addendum.

**MOTION:** Col. Ballas moved to approve the addendum. Mr. Jones seconded the motion, which passed unanimously.

***E. Preneed Agreement***

***1. SCI Funeral Services of Florida, Inc., d/b/a National Cremation Society (Jacksonville)***

Ms. Evans stated that Staff recommends approval pending Department receipt within 60 days of two print-ready copies.

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

**MOTION:** Mr. Baxley moved to approve the contract pending receipt of two print-ready copies within 60 days. Mr. Jones seconded the motion, which passed unanimously.

**XIII. Consumer Protection Trust Fund Claims**

***A. Recommended for Approval - See Addendum D***

Ms. Evans presented the claims to be approved totaling \$6,744.60.

**MOTION:** Col. Ballas moved to approve the claims. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

***B. Recommended for Consideration***

***1. Sun Country Cremation Service, Inc. (Beneficiary: Gossett, Genevieve)***

Ms. Evans stated that the following Consumer Protection Trust Fund Proof of Claim and Disbursement Request is being presented to the Board for consideration.

Purchaser:	Genevieve Gossett
Beneficiary:	Genevieve Gossett
Claimant:	Carol Warner
Contract Amount:	\$495.00
Amount Paid on Contract:	\$495.00
Amount Trusted:	\$ 0.00
Restitution Payments made by Joseph Schmidt, owner:	\$361.98
Amount Requested:	\$133.22
Amount Recommended by Staff:	\$133.22

Genevieve Gossett purchased a preneed contract from Sun Country Cremation Service and the contract was paid in full. The company has since gone out of business. On February 21, 2005, Mrs. Gossett passed away and Carol Warner, daughter, made at need arrangements with Hecker Funeral Home. It should be noted that Mrs. Warner was not able to provide the following items as it would pose a hardship for her:

- Copy of Mrs. Gossett's original Sun Country Cremation contract was not available
- Proof of payment on Mrs. Gossett contract would pose hardship

Staff contacted the Dept. of Corrections and verified the total amount paid on Mrs. Gossett's contract, \$495.00 and the amount of restitution paid to Mrs. Gossett. Mrs. Warner is now seeking restitution from the Consumer Protection Trust Fund for the amount due on her mother's contract, \$133.22.

Sun Country was not licensed as a COA and pre-need contracts were not trusted. Joseph Schmidt, owner, was licensed as a Funeral Director and Embalmer under Chapter 470, F.S., from February 20, 1985 through June 4, 1997.

Staff is recommending approval of this claim in the amount of \$133.22.

Mr. Schmidt is still making restitution payments. By the Board honoring this claim and paying Ms. Warner that does not mean that Mr. Schmidt no longer has to make restitution. Ms. Warner's rights would be subrogated to the Department. An approval of the claim means that Ms. Warner would get her money a little sooner.

**MOTION:** Mr. Baxley moved to approve the claim. Col. Ballas seconded the motion, which passed unanimously.

***C. Recommended for Denial***

***1. SCI Funeral Services of FL d/b/a Eastern Gate Memorial Funeral Home  
(Beneficiary: Lucille V. Boyer)***

Ms. Evans stated that the following Consumer Protection Trust Fund Proof of Claim and Disbursement Request is being presented to the Board for denial.

Purchaser:	Lucille V. Boyer
Beneficiary:	Lucille V. Boyer
Claimant:	Cheryl B. Sotherland
Contract Amount:	\$795.00
Amount Paid on Contract:	\$795.00
Amount Trusted:	\$ 0.00
Amount Requested by Claimant:	\$795.00
Amount Recommended by Staff:	\$ 0.00

On May 23, 1996, Lucille V. Boyer purchased a pre-need contract with Eastern Gate Memorial Funeral Home and the contract was paid in full. Mrs. Boyer had since re-located outside of the state for health care reasons and then passed away. Her daughter and caretaker, Cheryl Sotherland, did not contact SCI at the time of her mother's death since it occurred outside of Florida; therefore, she paid another provider for services in Ohio. Mrs. Sotherland is now

seeking restitution from the Preneed Funeral Contract Consumer Protection Trust Fund for the amount of her mother's SCI contract.

Staff contacted SCI and was able to verify that Mrs. Boyer did have a valid contract and since SCI was not able to fulfill the contract, they would issue a refund to Mrs. Sotherland upon her providing them with a letter of cancellation and a copy of the death certificate. Staff also contacted Mrs. Sotherland and informed her that a refund may be obtained from SCI for the amount of her mother's contract. Therefore, staff recommends denial of this claim.

**MOTION:** Col. Ballas moved to deny the claim. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

## *2. IMSI/Tishman Funeral Home (Beneficiary: George H Shepard)*

Mr. Powell Helm abstained from voting.

Ms. Evans stated that the following Consumer Protection Trust Fund Proof of Claim and Disbursement Request is being presented to the Board for denial.

Purchaser:	George H. Shepard
Beneficiary:	George H. Shepard
Claimant:	Beatrice S. Shepard
Contract Amount:	\$ 711.30
Amount Paid on Contract:	\$ 711.30
Amount Trusted:	\$ 0.00
Amount Requested:	\$ 35.00
Amount Recommended by Staff:	\$ 0.00

George Shepard purchased a contract from IMSI on May 5, 1992 and the contract was paid in full. The company has since gone out of business. It should be noted that this contract was canceled and a refund was issued to Mr. Shepard from George Famiglio, the receiver. Additionally, a new preneed contract was written under Covell Funeral Home and the refund was applied to the new contract, less the balance paid for death certificates, under cash advances. On January 19, 2005, Mr. Shepard passed away and Covell Funeral Home fulfilled the services, however, Mrs. Shepard alleges that she paid for a plastic cremation container, but only received a cardboard one for her husband's cremated remains. She therefore believes that she is entitled to a refund for the plastic container. Staff contacted Covell and they have agreed to provide the plastic container upon Mrs. Shepard's request.

Staff is therefore recommending denial of this claim.

Mr. Helm abstained from voting.

**MOTION:** Col. Ballas moved to deny the claim. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

**XIV. Performance Bond**

**A. 6348580 SCI Funeral Services of Florida, Inc., d/b/a Forest Lawn Memorial Gardens, Sanctuary Mausoleum, Phase 3 (Pompano Beach)**

Ms. Evans stated that Project: Sanctuary Mausoleum Phase, 3 has 1,296 casket spaces (336 single, 480 tandem).

Cost: \$1,399,680

Bond Amount: \$1,539,650

Bond Number: 634580

Surety Company: Safeco Insurance Company of America

Staff recommends approval of the above Performance Bond.

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

**MOTION:** Col. Ballas moved to approve the bond. Mr. Jones seconded the motion, which passed unanimously.

**XV. Trust Transfer Requests**

**A. Sea Pines Memorial Gardens, Inc. (Edgewater)**

**1. Care & Maintenance – SunTrust Bank to Forethought Federal Savings Bank**

Ms. Evans stated that Sea Pines Memorial Gardens, Inc. requests approval for the transfer of the Care & Maintenance Trust Fund of Sea Pines Memorial Gardens from SunTrust Bank to Forethought Federal Savings Bank, Perpetual Care Master Trust Agreement.

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

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

**MOTION:** Mr. Baxley moved to approve the request with Staff’s recommendation. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

**B. Work & Son, Inc. d/b/a: Rhodes Funeral Home (Ocala), Royal Palm Funeral Home (St Petersburg)**

**1. Preneed Trust Transfer – Forethought Federal Savings Bank to BB&T (Branch Banking & Trust Co.)**

Ms. Evans stated that the Applicant requests approval for the transfer of the Preneed Trust Funds of Rhodes Funeral Home and Royal Palm Funeral Home from Forethought Federal Savings Bank to BB&T (Branch Banking & Trust Co.)/Funeral Services, Inc.- F.S.I. 1993 Trust Agreement.

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

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

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

- C. *Work & Son, Inc. d/b/a: Royal Palm Cemetery North (St Petersburg), Royal Palm Cemetery South (St Petersburg), Sarasota Memorial Park Cemetery (Sarasota)***
  - 1. *Care & Maintenance Trust Transfer- Forethought Federal Savings Bank to BB&T (Branch Banking & Trust Co.)***

Ms. Evans stated that the Applicant requests approval for the transfer of the Care & Maintenance Trust Fund of Royal Palm Cemetery, Royal Palm Cemetery North and Sarasota Memorial Park Cemetery from Forethought Federal Savings Bank to BB&T (Branch Banking & Trust Co.)/Funeral Services, Inc. Master Care and Maintenance Trust Agreement

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

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

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

## **XVI. Request for Inactive Status**

- A. *Lincoln Evergreen Memorial Park, Inc. d/b/a Lincoln Memorial Park (Miami)*  
*3001 NW 46<sup>th</sup> Street*  
*Miami, FL 33142***

Ms. Evans stated that Ms Elyn Johnson, President of Lincoln Evergreen Memorial Park, Inc. d/b/a Lincoln Memorial Park has requested to surrender the cemetery license and place the cemetery in an inactive status. In her letter to the Department, she states the cemetery has been inactive since the year 2003. Although some presold spaces are still available for burial, there are no more spaces to be sold for at-need burials.

Ms Johnson stated she believed she was already in an inactive status because she told the state examiner of her intention during the annual inspection in 2003. The cemetery's failure to pay the annual license fee for the years 2004 and 2005 support this statement. The records of the Department reflect Ms. Johnson.

As you can see from the most recent report of gross sales, the cemetery's revenues are minimal. The following figures represent gross sales. This figure was gleaned from the annual renewal reports.

FYE	6/30/02	\$14,400
	6/30/01	\$17,465
	6/30/00	\$26,000
	6/30/99	\$19,800

As an inactive cemetery, the cemetery shall cease all preneed sales to the public and within 30 days, all at need sales. The care and maintenance trust fund must be held intact and in trust. Interest from the fund shall be disbursed to the cemetery for maintenance.

The Department recommends granting the request and waiving the renewal fees and delinquent penalties for the years 2004 and 2005.

**MOTION:** Ms. Zippay moved to approve the request. Col. Ballas seconded the motion, which passed unanimously.

#### **XVII. Request to Withdraw Funds**

**A. *Lincoln Evergreen Memorial Park, Inc. d/b/a Lincoln Memorial Park (Miami)*  
*3001 NW 46<sup>th</sup> Street*  
*Miami, FL 33142***

Ms. Evans stated that due to damage sustained from Hurricane Wilma, Ms Elyn Johnson, President and manager, requests to withdraw \$15,000 from the corpus of the care and maintenance trust fund to replace cracked vaults, have trees removed from the cemetery and make necessary repairs to the cemetery office. Ms Gladys Hennen, Financial Examiner/Analyst I, confirmed 5 above ground vaults were cracked due to the storm and one vault lid had a hole in it from a fallen tree limb. The examiner confirmed the cemetery suffered serious tree damage due to the hurricane. The cemetery is closed to visitation until the debris can be cleaned up. It is feared at least one vault poses a health and safety issue to the public.

A review of the cemetery's licensing history reflects the cemetery has had limited income because there no longer are at need burial right sales. The balance in the trust fund as of June 30, 2005 is \$102,406.42. All income generated from the trust fund is used to pay trustee fees.

Due to the threat to the health, safety and welfare of the public, the Chairman has authorized the Department to act on this request prior to the Board's review. Accordingly, the Department has authorized the release of \$7,500 to replace the damaged vaults and remove the fallen tree limb. The licensee is instructed to provide receipts for the work that is completed. Estimates from licensed, reputable firms for the remaining work must be submitted to the Department and Board prior to any further release of funds.

Mr. Chairman stated this is the result of an emergency phone call made to him a couple of weeks. The request was granted in effort to take care of this to keep it out of the news.



Ms. Evans stated that she would like the Board's concurrence for \$7,500. The Department has not received any receipts from Ms. Johnson, but Ms. Evans will get them.

**MOTION:** Mr. Brandenburg moved to approve the request contingent upon receipt of copies of receipts for amounts expended. Mr. Helm seconded the motion, which passed unanimously.

### **XVIII. Request to Transfer Cemetery to the City of Tampa**

#### ***A. John R Robinson d/b/a Memorial Park Cemetery (Tampa)***

Ms. Evans stated that pursuant to Section 497.270 (4), Florida Statutes, Mr. Robinson requests permission to convey the cemetery to the City of Tampa. The conveyance includes all real and personal property as well as moneys deposited in trust funds. A copy of the trust fund's annual statement from SunTrust is attached. As of June 30, 2005 the balance in the trust fund was \$208,054.73. Ms. Margene Fales, of the City of Tampa confirmed the city's desire to accept the transfer and responsibility for the maintenance of the cemetery. Ms. Fales was unable to provide documentation from the City Clerk's office prior to the meeting.

Mr. Robinson indicated, this cemetery was a family business and with the recent death of his mother, he wants to ensure the cemetery is taken care of as he is the sole survivor and no longer wishes to manage the day to day operations.

The Department recommends approval of the conveyance upon receipt of a letter from the City of Tampa accepting responsibility for management and maintenance of the cemetery.

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

### **XIX. Ratification List**

#### ***A. Application to Become a Training Facility***

##### ***1. Brewer and Sons Funeral Home (Clermont)***

Ms. Evans reported that the Applicant does not have any outstanding complaints. The licensed Funeral Director in Charge is Sandra Bonilla. Over the past year, there have been 91 embalmings and 82 cases for funeral directing. It appears there is enough information to approve the request.

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

##### ***2. Funerals by TS Warden (Jacksonville)***

Ms. Evans reported that the licensed Funeral Director in Charge is Tyrone S Warden. There are no records of complaints. The Applicant reported 125 embalmings 63 cases for funeral directing.

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

**3. *Rose Lawn Funeral Home (Gulf Breeze)***

Ms. Evans reported that the licensed Funeral Director in Charge is Gerald S Mitchell. There are no complaints on file. The Applicant reported 162 cases for funeral directing, but only 15 for embalming. The Department recommends that the embalming training agency be denied.

Mr. Brandenburg questioned whether the application was for funeral directing and embalming or funeral directing only.

Ms. Evans responded that it was for funeral directing and embalming.

**MOTION:** Mr. Baxley moved to deny the application. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

**A. *Application for Florida Laws and Rules Exam***

**1. *Endorsements***

- a. *Fredricks, Sara L***
- b. *Ingram, Christian A***
- c. *Swindell, Travis A***

**2. *Internship***

- a. *Adair, Jenny C***
- b. *Compton, Jessica L***
- c. *Davis, Lori A***
- d. *Mayer, Jacqueline T***
- e. *Smith, Kevin D***

Ms. Evans presented the applicants for the Florida Laws and Rules Exam.

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

**C. *Continuing Education Course Approvals***

**1. *Florida Funeral Directors Association #0001395***

- a. *Grief in the Workplace-A Companionship Philosophy of Caregiving – 3 Hrs.***
- b. *Understanding Your Grief: Touchstones for Hope and Healing – 2 Hrs.***

Ms. Evans presented the Continuing Education Course approvals.

**MOTION:** Mr. Brandenburg moved to accept the approval. Mr. Jones seconded the motion, which passed unanimously.

**2. *Funeral Services, Inc. #0001413***

- a. *Internet Based Technology – 2 Hrs.***

Ms. Evans presented the Continuing Education Course approval.

**MOTION:** Col. Ballas moved to accept the approval. Mr. Jones seconded the motion, which passed unanimously.

**3. *Independent Funeral Directors of Florida #0001399***  
**a. *New Law Review – 2 Hrs.***

Ms. Evans presented the Continuing Education Course approval.

**MOTION:** Mr. Baxley moved to accept the approval. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

**XX. Applications with Criminal History**

**A. *Embalmer Apprenticeship***

**1. *Oppel, Vanessa M***

Ms. Evans reported that the Applicant answered “Yes” to Question # 1 in Background Information - “Have you been convicted or found guilty, in any jurisdiction, regardless of adjudication, of a felony or misdemeanor?”

The applicant has submitted documentation in response to Question #1 as follows:  
Ms. Oppel was a juvenile when the incidents occurred; adjudication was withheld in these matters.

She has no outstanding or pending cases against her at this time.

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

**2. *Pons, Benjamin F***

Ms. Evans stated that the Applicant answered “Yes” to Question # 1 in Background Information - “Have you been convicted or found guilty, in any jurisdiction, regardless of adjudication, of a felony or misdemeanor?”

The applicant has submitted documentation in response to Question #1 as follows:  
Mr. Pons was a juvenile during the times in question, with the exception of three charges in 2001 and 2003 on which the charges were dropped or adjudication was withheld.

He has no outstanding or pending cases against him at this time.

Mr. Baxley questioned whether Mr. Pons was adjudicated guilty of carrying a concealed weapon and discharging a firearm in public.

Ms. Evans responded that it appears Mr. Pons was adjudicated guilty of domestic battery and driving with suspended license. Adjudication was held or the charges were dropped on the others.

Mr. Chairman questioned whether any of the 2001 and 2003 cases were listed.

Ms. Tina Cummings stated that Mr. Pons was held accountable for burglary of a residence, lewd and lascivious battery and feeding an American alligator.

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

**DISCUSSION:** Mr. Barnhart requested clarification on the grounds for denial. Section 470.006(1) (c) states that the conviction had to be for a crime that directly relates to the ability to practice embalming or the practice of embalming. Mr. Barnhart questioned whether this is the provision that the Board is basing the denial on.

Mr. Brandenburg recalled that the 470 was plagued with the same issue. On the internships and apprenticeships, the Board could not deny, but when they came up for licensure they were denied.

Mr. Chairman stated that this has to be straightened out because the Board does not want someone to complete an apprenticeship and in turn get denied for the actual licensure.

Mr. Barnhart states that the grounds for denial would be Section 497.368(1)(c).

## **XXI. Initial Funeral Establishment Application**

### ***A. Phoenix Cremation Society Inc. d/b/a Tri County Cremation Service (Longwood)***

Ms. Evans stated that there have been no complaints against this establishment. The KB license will be turned in and closed if application is approved. This establishment Tri-County Cremation Service meets all requirements for licensing, pending Board approval and initial inspection.

Ms. Thomas-Dewitt stated that the Applicant has embalming facilities in Orlando and cremation facilities in Daytona. Ms. Thomas-DeWitt questioned the functions in Deltona.

Ms. Cummings stated that the facility would be a chapel used for viewing only.

Mr. Brudnicki questioned whether all the requirements are met.

Ms. Cummings answered yes.

Mr. Brandenburg questioned whether there is a Funeral Director in Charge.

Ms. Cummings answered yes.

Mr. Brandenburg asked whether that person would be in charge of that location only or other locations.

Ms. Cummings responded that he would only be in charge of that location.

**MOTION:** Col. Ballas moved to approve the application. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

## **XXII. Request for Refund**

### ***A. Bozeman, Roy***

Ms. Evans stated that on 2/14/04 the applicant submitted an application for Funeral Director and Embalmer by Endorsement.

On 5/17/04 Mr. Bozeman was approved to take the exam.

On 10/31/05 Mr. Bozeman withdrew his application and requested a refund of any applicable fees.

Total fees paid to department \$550.50.

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

### ***B. Fatz, John L***

Ms. Evans stated that on 7/19/05 Mr. Fatz submitted renewal and request for reactivation of license.

On 9/30/05 Letter was sent to Mr. Fatz explaining he needs 10 hours of continuing education credits needed for reactivation of his license.

On 10/24/05 Mr. Fatz state that he does not wish to complete the additional continuing education credits, therefore he requested by phone that the Department either issue his license or refund the fees paid.

Total fees paid to the Department \$355.00

**MOTION:** Ms. Thomas-DeWitt moved to deny the application. Mr. Baxley seconded the motion, which passed unanimously.

### ***C. Nie, Douglas R***

Ms. Evans stated that on 5/16/05 submitted application for a Funeral Director internship.

On 5/16/05 Letter was sent to Mr. Nie explaining the documentation needed for completing his application.

On or about 8/2/2005 Mr. Nie submitted an application with a check for \$290.50 which was not properly made out to the Department.

On 8/2/05 Check # 4535 for 290.50 not made payable to DBPR was returned along with the application.

On 8-22-05 Mr. Nie submitted a check to the department and an updated application.

On 10/24/05 requested was received to cancel his application and asked for a refund of fees.

Total fees paid \$395.50

**MOTION:** Mr. Baxley moved to deny the application. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

**XXIII. Request for Rule Waiver**

***A. Taylor, Sarah Marie***

Ms. Evans stated that the Rules being requested to be waived are 61G8-16.001 and 61G8-16.002, for the requirement of a passing grade of 75% on the National Board Exam.

Mr. Roger Michels, trained supervisor at Michels and Lundquist Funeral Home is requesting the waiver on behalf of Sarah Taylor.

On March 9, 2005, the Applicant submitted an application for funeral director and embalmer by exam. Between March and September of 2005 the Department sent 3 letters clearly stating that Ms. Taylor needed to pass the Arts portion of the National Board by 75%, per Rule of the Board. Those letters were dated March 18<sup>th</sup>, May 6<sup>th</sup> and September 6<sup>th</sup>. Ms. Taylor scored a 74 on the Arts portion of the exam and a 78 on the Science portion. Ms. Taylor has since passed the Florida Laws and Rules exam. The only thing preventing her from being licensed is her score of 74 on the Arts portion of the National exam.

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

**XXIV. Request for Reinstatement**

***A. Due to Military Service***

***1. Dean, Ronald L***

Ms. Evans stated that on 9/30/05 Mr. Dean's license became null and void. Mr. Dean has been stationed in Okinawa for the last six and one half years (61/2). When he returned stateside he discovered his license was no longer valid.

On 10/20/05 Mr. Dean submitted a request for military status and waiver from the Board and to put his license in an active status.

**MOTION:** Col. Ballas moved to approve the request. Mr. Brandenburg seconded the motion, which passed with one dissenting vote.

***B. Due to Extenuating Medical Circumstance***

***1. Stewart, James T***

Ms. Evans stated that the on 10/3/05 Department received payment of \$560.00 to renew license.

On 10/31/05 Mr. Stewart was advised that on 9/30/05 his license had become null and void and that he would have to reapply and retake the exam to be licensed again.

On 10/31/05 Mr. Stewart requested by e-mail that he wanted request a reprieve for unusual medical reasons.

Total fees paid \$560.00.

Ms. Zippay questioned whether Mr. Stewart's license would have remained active had he submitted payment 3 days earlier.

Ms. Evans stated that the deadline to renew was October 31, 2005. There is a 30-day period before the license becomes null and void.

Ms. Cummings stated that the renewal deadline was September 30, 2005. Mr. Stewart's license was null and void effective October 1, 2005.

Mr. James Stewart stated that he spoke with Ms. Cummings and was advised to fax documentation from his doctor stating that he was allowed to return to work in September. Mr. Stewart did not meet Ms. Cummings deadline as his fax machine was not working.

Mr. Stewart was diagnosed with in stage Reno failure disease and was on dialysis for 14 months awaiting a transplant. On October 1, 2004, Mr. Stewart received the transplant.

Mr. Stewart was still employed at a funeral home but resigned as soon as he learned that his license was null and void.

**MOTION:** Mr. Brandenburg moved to approve the request. Col. Ballas seconded the motion, which passed unanimously.

**DISCUSSION:** Ms. Thomas-DeWitt asked how the statute applies to licenses being inactive. Ms. Thomas-DeWitt questioned whether the Board has the right to change the statute in reference to an inactive license.

Mr. Barnhart stated that the Board has to look at the statute and any rules that may have been implemented pursuant to the statute.

Ms. Thomas-DeWitt pointed out that a license can remain inactive for a maximum of 2 years, and Mr. Dean's license extended that timeframe.

Mr. Chairman questioned whether Mr. Dean was embalming during that period.

Ms. Cummings answered no. Mr. Dean was in the Naval Academy on a boat.

**\*\*\*BREAK 2:05 – 2:20\*\*\***

**XXV. Administrative Report**

The Administrative Report was submitted to the Board on the Agenda. The Preneed Consumer Protection Trust Fund has a balance in excess of \$6.4 million and the Department has paid claims this fiscal year in the amount of \$17, 752.

**XXVI. Funeral Administrative Report**

The Funeral Administrative Report was submitted to the Board on the Agenda. On October 1<sup>st</sup>, the Department received 399 pending files from Department of Business and Professional Regulation. Of the 399, 363 are pending and 36 have been completed. There are 523 new applications that have come in, of which 425 are pending and 98 have been completed. Staff has completed a few inspections. Of the quarterly reports, 2 are pending and 43 have been entered. We received 1148 bodies handled affidavits, of which 848 have been entered and 300 are pending.

**XXVII. Disciplinary Report**

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

	<b>Issued Since Last Meeting (August 25, 2005)</b>	<b>Issued Since January 1, 2005</b>
<b>Notice of Non-Compliance</b>	0	0
<b>Letters of Guidance</b>	1	2
<b>Citations</b>	7	10

**Probable Cause Panel –September 27, 2005**

Cases Reviewed	Cases Withdrawn	Probable Cause Findings	No Probable Cause Findings	Additional Info Requested	Dismissed
4	0	4	0	0	0

**XXVIII. Chairman's Report**

***A. Committee Assignments***

Mr. Chairman stated that he has listed names of individuals he would like to see serve on the committees. If you find that you cannot serve, please contact Ms. Evans. This is not to say that these will be the only committees. If something new comes up, others would be called on to fill the positions. The committees are as follows:

**Probable Cause Panel A**

- Funeral Director      Judy Ralph
- Cemetery                Keenan Knopke
- Consumer                Pete Ballas



**Probable Cause Panel B**

Funeral Director	Al Hall
Cemetery	Tracey Huggins
Consumer	Don Stiegman

**Finance Committee**

Chairman	Les Klein
	Nancy Hubbell
	John Williams
	Ogier Mathewes

**Continuing Education Committee**

Jill Peeples
Justin Baxley

**Rules Committee**

Chairman	Jody Brandenburg
Vice Chairman	Mark Revitz

***Rules Subcommittee(s) Special Projects:***

**Preneed License Financial Requirements**

Chairman	Les Klein
	John Williams
	Bill Williams
	Jon Thomas

Mr. Chairman stated that there would be a disaster recovery team to design what needs to be done when a disaster strikes. It was discovered this year more so than previous years as a result of all the Hurricanes that the Medical Examiner's office would turn cases away because of a lack of space. Florida is already dealing with these issues. There could be some drastic changes that occur. The members of this committee are:

**Disaster Response Plan**

Chairman	Keenan Knopke
	Doug Kinzer
	Tom Ralph, Jr.
	Tim Claiborne

**Review of Disciplinary Rules**

Chairman	Corinne Olvey
	Michelle Arguin
	John Rudolph
	Keenan Knopke

Mr. Chairman stated that the committee is going to try and put the 2 sets of Rules together and then the Industry will address the new issues.

## **XXIX. Attorney Report**

### ***A. Metro Professional Services***

Mr. Barnhart presented for consideration a Recommended Order entered into by the Division of Administrative Hearings, in the case of the Department of Business and Professional Regulation, Board of Funeral Directors and Embalmers vs. Metro Professional Services, Case #04-3696.

In summary, Count One alleges that the Respondent committed fraud and deceit, in violation of Section 497.036(1)(g), F.S., by abusing the Department's internet system by attempting to effectuate a change of ownership without following the proper legal procedure for doing so. The administrative law judge concluded that the Department presented no evidence to prove that allegation.

Count Two alleges that the Respondent violated Section 470.036(1)(h), F.S., in violation of Rule 61G8-24.010(2), F.A.C. by changing its ownership to Metro Mortuary Transport, Inc. without notifying the Department within ten days of doing so. The administrative law judge concluded that the Department presented no evidence to prove that allegation.

Mr. Barnhart recommended that the Board adopt the findings of fact, the conclusions of law and the recommendation of the administrative law judge in the form of a Final Order.

**MOTION:** Mr. Jones moved to approve the order. Col. Ballas seconded the motion, which passed unanimously.

### ***B. Status Report (Oral)***

Ms. Mendelson stated that she prepared a written report that was not submitted in time for distribution to the Board. Had the Board received the report around the first of October, there would have been another 25 cases on it, but the Department has been plowing through all of the cases inherited from DBPR. There is a total of 93 cases, which include the cases before the merger together with the cases from DBPR. The Department has set up a process to review all of the cases so that everyone in the Department is comfortable with the outcome. Ms. Mendelson intends to submit a report at every meeting so that the Board is apprised of the progress being made.

Mr. Baxley questioned whether there is a total number in what the Department inherited as far as outstanding fine collections.

Ms. Mendelson advises that she has a box of 12 cases. Those cases are in the collections litigation status. It appears that there is another category some place in between on an administrative level. That information should be available at the next meeting.

**\*\*\*ITEM NOT ON THE AGENDA\*\*\***

### **C. Remarks from Elizabeth Teegen - Division of Funeral, Cemetery and Consumer Services' Chief Counsel**

Ms. Elizabeth Teegen is Chief Counsel for the new Division of Funeral, Cemetery and Consumer Services. Ms. Teegen has been with the Department for 3 ½ years. Ms. Evans asked that Ms. Teegen provide the Board with an update on the status of the administrative rules. There will be a lot of work. All of the rules from the 470 Board, the Department of Business and Professional Regulations, the 497 Board and the Department of Financial Services are currently in effect and will remain in effect until they are repealed or amended. There is a new statutory authority that would require the Board and the Department to promulgate new rules. There has been some statutory authority that has been repealed which would require the Board and the Department to repeal old rules. Then there is the harmonization between the old 470 Rules and the 497 Rules to the extent that there are overlaps or inconsistencies. There is a group within the Department that has been reviewing the Rule project for the past couple of months to determine what the workload would be.

First, all of the rules were put together in the Florida Administrative Code under on Chapter 69K. This was just a technical transfer, which will be filed with the Secretary of State on December 2, 2005 and in effect. It will take a while for the Secretary of State's office to publish the Rules with their new numbers. Until then, the Department will make the numeric changes and publish them on the website.

The next step would be for the Board, the Rules Committee and the Department to collaborate on the prioritization of the job at hand; whether it is the harmonization of the disciplinary rules, creating new rules, repealing old rules or all of the above.

### **XXX. Report on Lakeview Receivership**

#### ***A. Lakeview Cemetery Association d/b/a Cedar Hill Memory Gardens***

Mr. Jim Stephens stated that although all the companies have been sold for a year now, the last year has been spent fighting the IRS and mediating with the Timmers for final settlement. The last court date of the year is scheduled for December 19<sup>th</sup> and we are hoping to come up with distribution and so forth with the final closing whenever the judge calls for it. The receivership is completed, but not officially yet. The 13 companies that have been sold in Daytona, Clearwater, Tallahassee and Marianna have been well cared for. Tallahassee and Daytona are show places. Marianna shows great improvement and Clearwater has been cleaned up and is very presentable. After December 19<sup>th</sup>, there may be a new judge. Hopefully the present judge will carry the matter over to his court for one final meeting to get this resolved.

### **XXXI. Executive Director's Report (Oral)**

#### ***A. Introduction of Staff Members***

Ms. Evans introduced the Division's Staff:

*LaShonda Morris, Financial Examiner/Analyst II* – Ms. Morris has been processing all of the Consumer Protection Trust Fund Claims, remittances and balancing the accounts. She has also done an incredible amount of work on the preneed sales agent applications. Ms. Morris is also one of the FAQ people on the 470 funeral law.

*Jim Deason, Financial Examiner/Analyst II* – Mr. Deason is a licensed funeral director and embalmer in inactive status. He has been conducting inspections and complaint investigations.

*LaTonya Bryant, Administrative Assistant III* – Ms. Bryant was recently promoted to Administrative Assistant III and does the work of 2 people. She picked up the additional work for the Board and is responsible for keeping up with the Division's day to day responsibilities.

*Jim Gellepis, Financial Specialist* – Ms. Gellepis is still handling the Certificates of Authority and Renewals. He has done most of the work in the packet.

*Tina Cummings, Financial Examiner/Analyst I* – Ms. Cummings was previously an Inspector with DBPR for many years. As a result of her knowledge of the LicenseEase computer program that we have been using, instead of doing inspections, Ms. Cummings is processing applications in the office. Most of the progress shown on the 399 files that were received has been Ms. Cummings' work.

*Tim Wheaton, Financial Control Analyst* – Mr. Wheaton has been handling FAQs.

*Joyce Wendel, Financial Examiner/Analyst Supervisor* – Ms. Wendel is responsible for supervising all of the field examiners. As soon as we get some new staffing, she will have fewer people to supervise.

*Jasmin Richardson, Financial Examiner/Analyst I* – Today is Ms. Richardson's first day. Ms. Richardson was hired from DBPR and is very experienced in processing these applications.

Mr. Chairman stated that the Board appreciates Staff for doing a wonderful job. The meetings would not go as quickly or as smoothly as they do if we did not have the information generated by Staff.

Col. Ballas added that the Board is fortunate to have Mr. Brudnicki as Chairman.

### ***B. Report from Richard Baldwin – Examiner for Menorah Gardens***

The Board members received copies of the report from Richard Baldwin for the month of July. Mr. Baldwin continues to assist consumers.

### ***C. Update on Transition***

Ms. Evans reported that the Legislature approved the 17 requested positions. The Division has not been able to hire any of the positions. Ms. Richardson was hired as the result of transferring a vacant position from Jacksonville. During a meeting with the Governor's Office, it was agreed that 7 of the 17 positions would be released. There is enough recurring revenue to support 7 positions.

At the end of next week, the Division will be moved from the Larson Building to the Alexander Building, which is on Capital Circle SE. An announcement will be made once the move is complete.

Over the past month, there was a new licensing system implemented for preneed sales agent appointments. It is an online system called ALIS. There are still a few kinks in the system, so anyone who has a problem should send Ms. Evans a detailed email of the problem.

Staff is working very hard to process the backlog of files in an effort to service everyone. We are also answering hundreds of calls. The frustration is understandable, but calling just for the sake of calling will not get the application processed any sooner.

One problem that arose from the transition is that some of the interns are limited to a 12 month internship and some will expire very soon. Some applications to take the test were received in September and early October, but because of the staffing and influx of calls, the applications were not placed on the agenda for approval. Ms. Evans requested that the Board extend these internships so that the interns could continue working.

**MOTION:** Mr. Brandenburg moved that registered funeral director interns, embalmer interns and concurrent interns whose internships expire in December '05 or January '06 be granted a one time 60 day extension to their individual intern expiration date to continue serving internships under an approved intern training agency and supervisor. The extension would be granted without penalty or any additional registration fee or reporting. Mr. Ballas seconded the motion which passed unanimously.

Ms. Evans added that the processing of the preneed sales agent applications received prior to November 1<sup>st</sup> were done by the Office of Financial Regulation, who was previously handling them. As of November 1<sup>st</sup>, our Staff has taken on that additional responsibility as we are the only ones with access to the new computer system.

Ms. Evans made contact with the National Conference of Examining Board in Arkansas just to introduce herself and advised of the new Board and the disaster plan. The Executive Director is very interested in this. Ms. Evans has been invited to the Conference to report on what Florida is doing. As the Committee makes progress, minutes of the meetings would be forwarded to the National Board.

#### ***D. Establish Meeting Schedule for 2006***

The proposed meeting schedule was presented to the Board. Ms. Evans reported that it is anticipated that there will be 6 face to face meetings over the next year. A conference call would be scheduled for the off months to assist the interns for approval to take the exam. The only definite meeting location is the April meeting that is scheduled for Tallahassee due to session. The other cities are flexible to ensure the best deals off season at the hotels.

#### **XXXII. Upcoming Meeting(s)**

##### ***A. TBD***

#### **XXXIII. Adjournment**

**MOTION:** At 3:00 p.m., Col. Ballas moved to adjourn. Mr. Jones seconded the motion, which passed unanimously.