

AGENDA
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
October 6, 2011 - 10:00 A.M.
Aloft Jacksonville Tapestry Park
4812 Deer Lake Drive West
Jacksonville FL 32246

THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order, Preliminary Remarks and Roll Call

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

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

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is October 6, 2011; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the FAW. An agenda for this meeting has been made available to interested persons. The meeting is occurring in Jacksonville, FL. My Assistant, Ms LaTonya Bryant-Parker, will be taking minutes of the meeting and recording it in addition to that.

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

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

PRESENT:

Joseph "Jody" Brandenburg, Chairman
Jean Anderson
Lewis "Lew" Hall
Powell Helm
Tracy Huggins
Ken Jones
Col. Don Stiegman
Gail Thomas-DeWitt, Vice-Chairman

ABSENT:

Nancy Hubbell

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

Also noted as present:

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

Mr. Shropshire introduced from the Attorney General's Department, the Board's legal advisor for the meeting, Mr. Clark Jennings. Mr. Shropshire advised that Ms. Allison Dudley, the Board's usual Legal Advisor, had a beautiful baby boy and both are doing well. Mr. Shropshire also introduced Ms. Dianna Patterson, one of the Field Examiners for the Division. Ms. Patterson has worked in the South Florida for years but has been moved to the Jacksonville/St Augustine area and will be serving the Licensees in the Northeast corner of the State. Ms. Patterson does excellent work, is a good teaching examiner, knows the Law and works with her Licensees to get the Law enforced in a way that minimizes unnecessary impacts on them. Mr. Shropshire thanked Ms. Patterson for all her good work.

Lastly, Mr. Shropshire announced that the Governor's Office has appointed Mr. Dick Mueller to Ms. Ginny Taylor's seat, the cemeterian seat. This was announced yesterday afternoon and Mr. Mueller's appointment will be effective October 7, 2011.

The Chair stated he would like to recognize a person that is here that for many years, since 1977 has been his friend and mentor, Ronald Giddens. Mr. Giddens was appointed to the Funeral Directors and Embalmers Board in the 70s, served for 17 years, was appointed by 3 different Governors (Kirk, Askew, Graham). Mr. Giddens served for 15 years as the Chairman. Back then it was called the President. That was before ch. 497, before DBPR and the first couple years up under DBPR.

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

2. Action on the Minutes

A. August 4, 2011

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on August 4, 2011.

MOTION: Mr. Ken Jones moved to adopt the minutes of the meeting. Mr. Lew Hall seconded the motion, which passed unanimously.

B. September 1, 2011 – Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on September 1, 2011.

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

3. Old Business

A. Application(s) for Preneed License Renewal

(1) Recommended for Approval without Conditions

(a) *Hickson Eugene Sr d/b/a Hickson Funeral Home (F019243) (Arcadia)*

The above identified licensee seeks renewal of their preneed license pursuant to s. 497.453, FS, effective July 1, 2011.

CURRENT RENEWAL (7-1-2011): Licensee reports a net worth of \$ 225,607 against a required minimum net worth of \$10,000. Licensee appears to meet all requirements for renewal of license.

- The Division received an application for renewal from licensee on or about April 1, 2011. Licensee did not originally include the required financial statements with the application. In addition, the licensee failed to state or to demonstrate that it meets the required net worth of \$10,000.
- On April 28, 2011 the FCCS Division sent a Deficiency Notice to the licensee, advising the licensee of the absence of the required financial statements and requested that the licensee submit this information, but the licensee failed to respond.
- On June 23, 2011, this matter came before the Board and the application for preneed license renewal was deferred based upon the licensee to provide financial statements to the Division.
- On August 4, 2011, this matter came before the Board and the application for preneed license renewal was recommended for denial due to non-receipt of a response from the licensee.

- The licensee was notified of the Board's denial on August 8, 2011, and responded by providing a letter of explanation along with the requested materials as of August 12, 2011. Due to complications with mailing, the materials were not timely received by the Division to be presented at the August 4 Board meeting.
- Licensee's preneed renewal application was filed timely in 2010 and was approved without conditions.

Licensee has demonstrated that it meets the net worth requirements pursuant to 497.453(2) (b), and (5), F.S. and 69K-5.0016, F.A.C. Therefore, in lieu of the above circumstances and the Licensee meeting the net worth requirements, the Division is recommending approval without conditions of the preneed license renewal application.

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

*(2) Recommended for Denial
(b) Stephen R Baldauff Funeral Home Inc (F019297) (Orange City)*

This matter relates to Applicant's application to renew preneed main licensee effective July 1, 2011.

Applicant's preneed license renewal application was recommended for denial at the June 23, 2011 Board meeting due to Applicant demonstrating a negative net worth of \$(266,342), thereby failing to meet the minimum required net worth for renewal of \$100,000, pursuant to s. 497.453(2)(b) and (5), F.S. and 69K-5.0016, F.A.C. The Board tabled the matter.

On July 1, 2011 a written communication was sent to Applicant by the Division, which raised three issues, as follows:

- 1) The Division notes that on July 22, 2009 Mr. Dennis P. Johnson executed a Personal Guaranty of the preneed obligations of this preneed licensee. It is the Division's understanding that the preneed licensee requests that the Board continue to rely on that personal guaranty in lieu of the net worth of the licensee otherwise required for renewal effective July 1, 2011. For the purpose of evaluating the significance of a personal guaranty of preneed obligations by Mr. Johnson, this Division requests that Mr. Johnson prepare and provide this Division, for forwarding to the Board, a Personal Statement of Assets and Liabilities. The Division attaches to this correspondence a suggested form for use as a Personal Statement of Assets and Liabilities. Use of the attached form is not mandatory, but the form indicates the level of detail which the Division believes is appropriate in the context of asking that a personal guaranty be accepted in lieu of licensee net worth.
- 2) The Division notes that on June 22, 2009 A Pledge of Equity in Property (copy attached) was executed by Mr. Dennis Johnson, on behalf of "Stephen Baldauff Funeral Home Inc. DBA Baldauff Family Funeral Home" (the "Corporation"). The Pledge document states at its paragraph 5 that the Corporation owns certain property at 1233 Saxon Blvd, Orange City, Florida, county property appraiser's parcel number 23-18-30-01-13-0150, and it is the Corporation's interest in that property that is pledged. Please provide a response to the following two issues:
 - a) Based this Division's review of the Volusia County property appraiser's records and records of the Volusia County Clerk of Court, it appears that currently and since September 12, 2000, that property has been owned by "Armadillo LLC." Thus it appears that the Corporation had and has no legal interest in the property it pledged.
 - b) Furthermore, the pledge document refers only to a single outstanding mortgage and/or security interest in the property, held by Regions bank, in the amount of \$1,274,535. However, we note a purchase money mortgage on the property dated September 12, 2000, Stephen and Mildred Baldauff, in the amount of \$775,000, which by its terms was to be paid off by monthly payments concluding on September 12, 2015.
- 3) Reference has been made to a "treasury stock" issue. Please provide a detailed explanation of that issue.

The following describes the response received by the Division to its July 1, 2011 communication to Applicant. Applicant has provided a personal financial statement of Mr. Dennis Johnson. The personal financial statement asserts a net worth in Mr. Johnson of \$518,000. The two major assets as given as "Real Estate – See Schedule C" in the amount of \$1,152,000 (but no schedule of real estate was attached); and "Other Personal Property" in the amount of \$400,000 (no schedule of property provided). The Division cannot determine that the stated personal net worth is a realistic and reliable figure representing funds that would be available to honor preneed contracts.

Concerning the issue of the Pledge of Equity in Property, no response has been received by the Division as to its concerns about the viability and enforceability of the pledge.

Concerning the Division's request for a detailed explanation of the "treasury stock" issue, no detailed explanation has been received. Presumably the corporation paid someone cash and bought back some of its stock. The corporation thus exchanged cash for a highly illiquid asset of treasury stock. Cash can be used to honor preneed contracts; treasury stock cannot, generally speaking. The Division does not see a reason why a preneed licensee should in effect be given credit against required net worth for highly illiquid treasury stock.

Applicant has demonstrated a negative net worth of \$(266,342). The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$100,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that:

The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or licensee on its retail sales agreements.

The Division believes that the alternative evidence or arrangements in lieu of the required net worth, that have been offered, would substantially increase the risk to existing or future customers of nonperformance by the licensee on its retail sales agreements.

The Division is recommending denial of the renewal, based on failure to demonstrate the required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code; and failure to offer alternative evidence or arrangements in lieu of the required net worth, pursuant to s. 497.453(2)(b)2, that would not substantially increase the risk to existing or future customers of nonperformance by the licensee on its retail sales agreements.

Ms. Kathi F Goodhart indicated she desired to speak to the Board on behalf of the Applicant. Mr. Shropshire requested that Ms. Goodhart raise her right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Goodhart answered, "Yes."

The Chair questioned whether Ms. Goodhart would like to address the Board.

Ms. Goodhart indicated she was employed by the Applicant. She stated she would like to address the treasury stock issue. The treasury stock and the net worth issue go hand in hand because when a company buys its own stock back, it becomes a negative net worth because it is recorded as negative on the treasury stock. If the company were to use that same money to purchase stock in another corporation that they have no control over, it would be recorded as an asset. It is just GAAP accounting that requires that when a company purchases its own stock that it is recorded as treasury stock rather than an asset of the stock purchase. If you take away the treasury stock, the net worth is well above what is necessary. The Applicant has a higher retained earning year after year and has been profitable. The owner of the business is willing to make a personal guarantee. They have had this problem since he purchased the business in 2000 and each year has explained why the treasury stock affects the net worth. The Applicant is willing to trust 100%, which he has done year after year or 100% insurance.

Col. Stiegman questioned the amount of the treasury stock.

The Chair questioned how the treasury stock protects the customer in the event of default on the preneed contracts.

Ms. Goodhart questioned how there would be a default on the preneed contracts when they are trusted 100%. The consumer is protected. The company is not taking any preneed money.

Col. Stiegman stated that they still have to fulfill the preneed contract.

Ms. Goodhart stated that the Applicant has every year. Any preneed contract has been fulfilled and there have been no complaints. The Applicant has had no negative entries on audits.

The Chair questioned whether Ms. Goodhart is able to answer Col. Stiegman's question regarding the value of the treasury stock.

Ms. Wiener stated that the information is contained in the Board packet.

Mr. Bill Williams stated that the amount is \$750k.

Col. Stiegman questioned whether that amount offsets the (\$266k).

Mr. Shropshire stated that the Division's concern of course is that the treasury stock is not a liquid asset; it's worth is only as good as that business is. If the business fails, the treasury stock is worthless. It is the eventuality or possibility that if the business fails, who is going to fulfill the contracts. That is the reason why there is a net worth requirement. That is the Division's sticking point on why they should not get any credit for treasury stock. The cash that was in the firm that was paid out was a good, hard asset. It is gone now as it was paid out in the treasury stock.

Ms. Goodhart stated that the way the stock market is a stock asset may not be worth what it is on the books.

Mr. Shropshire concurred but added that most stocks bought on an exchange could be sold to get all or most of your cash back to perform those contracts; but treasury stock, when the company fails, is worthless.

Ms. Goodhart stated that year after year, the negative net worth has gotten smaller and smaller. The net worth is less than (\$300k), but it started out much higher. Each year the Applicant has made a profit which increases the net worth. This is an ongoing business and it would be a catastrophe that would stop them from doing business.

Mr. Shropshire questioned whether the principal not take some of that personal net worth and put it into the company just enough to meet the net worth requirement of the statute and eliminate this discussion every year.

Ms. Goodhart stated that the personal net worth is in property and he is pledging that property.

Mr. Shropshire stated that somewhat answers his question as it is relatively illiquid and if the company went out of business, the Division has serious questions about whether it could ultimately be able to convert that into anything useful in honoring preneed contracts.

Ms. Goodhart stated that the Board has had this question for 10 years and they have continued in business and prospered.

Mr. Shropshire stated that the Division has to do its job, and the Division understands that net worth is the standard according to the Legislature. These other things are exceptions and were not intended to be permanent substitutes for net worth. Mr. Shropshire questioned whether the Licensee could make some commitment to reduce the deficit by a specified amount.

Ms. Goodhart stated that personally the principal does not own any highly, liquid assets but the property is worth \$2 million. It was appraised last year. It may not be highly liquid, but it is in a location that is desirable, so there should not be a problem, if necessary, with selling the property.

Mr. Shropshire stated that the Division's problem is that there was no schedule of real estate attached. The year before, as was indicated to the Licensee, the principal had pledged their equity in the property. The real estate records for that the county did not appear to reflect that the person making the pledge owned the property being pledged.

Ms. Goodhart stated that the owner of the company is Armadillo, LLC.

The principal of Applicant, Mr. Dennis Johnson, requested to address the Board.

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

Mr. Dennis Paul Johnson answered, "Yes sir, I do." Mr. Johnson stated that he bought the business on September 12, 2000 and has been in business in 11 years. There has been some misconception as far as the mortgage. Back in August of 2008, there was a mortgage held by Steve and Mildred Baldauff. That has been paid off and it appears the Board is confused about that. The Applicant has a mortgage with Regions, but all that was cleared up and Mr. Johnson brought proof that all of it has been paid. The Baldauff family has no interest as far as the mortgage goes. There is just one mortgage being held by Regions Bank. The letter from the State indicates they reviewed the records and determined there was still a mortgage by the Baldauff family, but that has been satisfied.

Ms. Goodhart stated that based on what is being presented the Division does not feel Baldauff Funeral Home owns that property.

Mr. Shropshire concurred.

Ms. Goodhart stated that the property is owned by Armadillo, LLC. It is a holding company, a single member LLC. The single member is Dennis Johnson. In reality, Mr. Johnson is the owner of that property and the sole stockholder of Baldauff Funeral Home and as such is pledging the property as he owns as the sole member of Armadillo, LLC.

Mr. Shropshire stated that he is not questioning Ms. Goodhart's integrity one bit, but the Division requested this information weeks ago.

Ms. Goodhart stated that she has a copy of Mr. Johnson's tax return that shows Armadillo on Schedule E.

The Chair questioned whether the Applicant could reapply if the Board denies this application.

Mr. Clark Jennings answered, yes.

Mr. Lew Hall stated that he is concerned with the issues addressed by the Division regarding the personal property as there is no breakdown on that. Even if the Board were to go with the information provided as far as the mortgage on the real estate and value of the property, the Applicant is escalating it to \$2 million but it was substantially less than that on the personal financial. The tax records reflect its worth at \$850k. With the mortgage in place there is probably no equity there. There is a requirement of net worth and there is no fairness in having other Licensees abide by this if the Board does not enforce it for this Licensee. There is an out that gives that to the Board via a personal financial but it does not appear to be the case in this instance.

Mr. Johnson stated that he has always met it in the past and has always trusted 100%. Mr. Johnson added that he has never taken a dime out of the principle in 11 years and has either done insurance or trusting. Mr. Johnson questioned whether he should request a continuance so that Kevin Hazlip can explain it to the Board.

Col. Stiegman stated that this is a continuance.

Mr. Johnson submitted 5 letters of recommendation from 5 different banks as part of the record.

The Chair questioned whether these letters were submitted prior to today.

Mr. Johnson responded that they were not.

Mr. Helm stated that there is no way the Division can review this information right now.

MOTION: Col. Stiegman moved to deny the application based on failure to demonstrate the required net worth for renewal. Mr. Helm seconded the motion, which passed unanimously.

4. Disciplinary and Other Proceedings(s): Entry of a Final Order after a Section 120.57(1) Hearing

A. Disciplinary Proceeding

(1) DFS, Board v. Tebbie Singleton, Case No. 109800-10-FC; DOAH Case No. 11-1879PL

Mr. Jennings requested to make some opening statements:

This hearing is being conducted pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rule Chapter 28-5, Florida Administrative Code. The purpose of this proceeding is to consider the Recommended Order issued by the administrative law judge in this cause. No new evidence will be admitted because this is not a *de novo* review. Deliberations must be confined to the Recommended Order and the record.

The Board may adopt the recommended order as its Final Order, or the Board may reject any specific finding of fact or conclusion of law. However, the Board may not reject or modify any finding of fact unless it determines from a review of the complete record that the factual finding was not based on competent substantial evidence or that the proceedings upon which the findings of fact were made did not comply with essential requirements of law.

The Board may reject or modify the conclusions of law and interpretation of administrative rules over which it has substantive jurisdiction, specifically Chapter 497 and Rule 69K. When rejecting or modifying such Conclusions of Law or interpretation of administrative rules, the Board must state with particularity the reasons for rejecting or modifying the conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rules is as reasonable or more reasonable than that which was rejected or modified. Rejection or modification of Conclusions of Law or interpretation of administrative rules may not form the basis for rejection or modification of Findings of Fact.

The Board may not alter the recommended penalty without a complete review of the record in justifying the action and stating with particularity for its reasons in doing so in the order and citing to the record in justifying its actions.

In this particular case, we have exceptions. These exceptions were filed by the Department and they are only as to penalty. The Board would need to address those specific exceptions individually.

Mr. Jennings added for the record, there in another case coming up after this one which is also a Recommended Order, so these statements would apply to that case again. There may be further statements made in regards to that case.

At this time Mr. Jennings asked the Board members whether they all have the entire record of this proceeding with them, and whether they all have had the opportunity to review it. If any member does not have the entire record or has not had the opportunity to review it, please indicate such at this time. For the record, every member is standing quietly which implies that they have all seen the record and have it in front of them.

Mr. Shropshire questioned who the Probable Cause Panel members were.

Mr. Tad David stated that Probable Cause Panel A consisted of Mr. Knopke, Ms. Hubbell and Mr. Baxley.

Mr. David stated that on September 27, 2010, the Department filed a Three-Count Administrative Complaint against the Licensee, Mr. Singleton and his license #F043742, alleging specific violations of Florida Statute based on the fact that Mr. Singleton had failed to pay a fine levied by the Board in a previous Final Order. Upon the filing of the Administrative Complaint Mr. Singleton filed a response, disputing material facts alleged in the Administrative Complaint. On April 15, 2011, the Department referred the matter to the Division of Administrative Hearings (DOAH), pursuant to Mr. Singleton's request for a hearing. The hearing was held June 15, 2011 at DOAH. On or about July 11, 2011, Mr. Singleton filed his post hearing submission and the Department filed its proposed Recommended Order (included in the record). On July 19, 2011, the Administrative Law Judge (ALJ) filed her Recommended Order. After the Recommended Order, the Department filed its Exceptions to the Recommended Order on August 3, 2011. On that same day, Mr. Singleton filed a response to the Recommended Order but in his response, as the record shows, Mr. Singleton did not dispute any of the facts or really take exception with any of the ALJ's Findings of Fact or Conclusions of Law. One point of law that Mr. David would like to stress, as addressed by Mr. Jennings, is that the Board as the Agency can accept the recommended penalty in the Recommended

Order, but they also can reduce or increase it if, after a review of the complete record, they state with particularity those reasons for deviating from the recommended penalty, pursuant to s. 120.57(1)(l), F.S.

As summarized in the Department's Exceptions to the Recommended Order, the ALJ made the finding that Mr. Singleton had made "no effort to make even minimal payments on the fine that had been levied earlier as of the date of the Recommended Order (paragraph 7 of the Recommended Order)." This was referencing the Final Order that had previously been issued in Department Case No. 95046-08-FC, Tebbie Singleton, License No. F043742. In this Final Order it required Mr. Singleton to pay an administrative fine of \$5000 within 90 days. The ALJ's Findings of Fact show that Mr. Singleton failed to pay any portion or even attempt to pay the fine for the period of over 3 years after the Final Order was filed, in violation of the Board's Final Order. The aforementioned Finding of Fact along with the entire record and the other Findings of Fact constitute a particular and justified reason to modify the ALJ's penalty recommendation. Further, the record shows that Mr. Singleton violated the same statute in the previous case, Department Case No. 95046-08-FC as in the current case, which makes it a subsequent violation and not an initial violation, so it addressed in a separate column in the penalty guidelines. As a subsequent offense of the same statute, Rule 69K-30.001, F.A.C. provides the following penalties for the violation: Reprimand, fine of \$2500-5000, revocation or denial + costs 2 yr probation with usual conditions, to suspension until compliant. So revocation, which in the Department's exceptions is suggested as the appropriate discipline, is within the Disciplinary Penalty Guidelines. The findings in paragraphs 2, 7 and 13 of the Recommended Order, as they stand, provide the particular and justified reason to deviate from the penalty suggested by the ALJ. The Department requests that the Board make these findings with the particularity on the record in order to impose the revocation of Mr. Singleton's license. Mr. Singleton is present to present his portion of the case

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

Mr. Tebbie Singleton answered, "Yes sir." Mr. Singleton stated that he tried to make the \$5000 payment. Someone loaned him the money but the check bounced. When Mr. Singleton went to the hearing on June 19th another relative gave him a check, but the funds were not available so Mr. Singleton did not remit the payment to the Department. The reason for Mr. Singleton's license being suspended was the company that vowed to pay the fine did not do so, so Mr. Singleton has been out of work. Mr. Singleton stated that he was not aware he could make payment options and was only advised of this a couple of months ago by Mr. David. Mr. Singleton stated that he has tried to borrow the money but has been unsuccessful. Since then Mr. Singleton was involved in an accident in April of last year. The lawsuit has just come in and there is a 10 day hold on the check but the money should be available on time. Mr. Singleton stated that he was recently married and really needs his license to support his family. Mr. Singleton does not feel revocation is a just penalty for him since his license was suspended because another licensed funeral director, who had been licensed 25 years, did not get an embalming authorization. Mr. Singleton admits he was the licensed funeral director in charge of the establishment, but the other Licensee saw every family and signed every contract. Mr. Jackson and Mr. Derr agreed to each pay \$2500 but they did not. Subsequently, Mr. Derr became the funeral director in charge of Jackson Funeral Home. Since that, they are not friends anymore. Mr. Singleton is requesting that the Board allow him to keep his license, whether on probation or with an additional fine, to earn a fair living. Right now, Mr. Singleton is out of work. The little jobs that he does get, running death certificates or picking up a body, only earns him \$50, which is not enough to support a family. Mr. Singleton's cell phone has been disconnected and car has been repossessed as a result of the suspension. Mr. Singleton is requesting time to pay the fine as the money is in the account and adds had he known he could make payment arrangements, he would have done so. It is not like he did not make an attempt to pay the fine as he needs his license; he went to school to get his license, worked hard to get his license. Mr. Singleton stated that he mother could not send him to school, so he went to Miami and worked hard for his license and it would be horrible to have his license taken away because another licensed funeral director was negligent. Mr. Singleton stated he understands Mr. David's obligation to represent the State. Although he made a mistake in not monitoring Mr. Derr, it does not warrant having his license taken away.

The Chair stated that the transcript of June 15th reflects Mr. Singleton's request to pay the fine within 60 days.

Mr. Singleton concurred.

The Chair questioned whether Mr. Singleton has paid the fine.

Mr. Singleton stated he had not as the check he was given was not good. People said they would help but they did not. Mr. Singleton had already received a check from a family member that was submitted to the Department, but it was returned for insufficient funds.

The Chair stated besides the 60 days requested, it has been 100 days and years since the fine and an opportunity to pay the fine.

Mr. Singleton stated that the economy has kept a lot of people down and he could not work. Mr. Singleton added that he has tried to obtain employment outside of the funeral profession but has been unsuccessful. Mr. Singleton stated that right now, he has some friends that allow him to run death certificates or go on a removal here and there, but that is as far as it can go as he is registered as an attendant to go on removals. Mr. Singleton stated that he has been promised help from all over but when it comes down to it he has yet to receive any assistance.

Mr. David stated that most of Mr. Singleton's testimony this morning is in the record, but that portion that is not in the record is really inadmissible and has no bearing on the Board's decision today, which is based on the Recommended Order which was based on the Findings of Fact and Conclusions of Law made by the ALJ at the hearing on June 15, 2011. Although the Department is making the recommendation for revocation, pursuant to s. 497.103(5), F.S., the Board, if they chose to revoke the license, needs to also impose a period of revocation as far as from the time of revocation until Mr. Singleton can reapply for possible relicensure if the Board so chooses to or chooses not to make it a permanent revocation. That is also a decision that is within the Board's jurisdiction and discretion.

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

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

Mr. Hall questioned whether Mr. Singleton would have to pay his fines prior to reapplying for licensure, should his license be revoked.

Mr. David concurred. The fine has already been imposed. It is a Final Order from before. It is on Mr. Singleton's record and has to be cleared up before he reapplies. Really, Mr. Singleton's violation is not paying the fine and violating the Order along with the other violation that was in the Administrative Complaint, but the one that Mr. Singleton concentrated on and it seems to be the more egregious one is the fact that he did not pay the fine.

Mr. Hall questioned whether bad checks received by the Department are required by the State Attorney's Office to be forwarded to the Sheriff's office for possible charges.

Mr. David stated that the testimony from the Departmental representative of the Division of Revenue Processing showed their procedures as to that. The Legal Division does not have a bearing on that. My understanding is that they did not refer it for felony prosecution, but simply sent the notice that it had been returned with a following letter.

Mr. Hall stated that if the Department decides in the future to follow up on those, then the felony charge would be there, which is a part of the licensing process for the Board.

Mr. David stated that is supposition at this point because it would be according to departmental policy and procedure.

Ms. Huggins questioned if the Board moved forward to deny today without a time period on the reapplication period whether Mr. Singleton could reapply tomorrow, pay those fees and have to pay the fine.

Mr. David suggested that the Board be specific if it chooses to revoke the license because that is certainly a possibility from the language of the statute granting the discretion for that length of revocation to the Board.

Mr. Helm questioned whether Mr. Singleton would still owe the \$5000 if his license is revoked permanently.

Mr. David stated Mr. Singleton would still owe the \$5000.

Mr. Helm questioned whether there would be anything done to collect the \$5000.

Mr. David stated that he is unsure of Department or Division procedure regarding that.

Col. Stiegman questioned whether Mr. Singleton would be able to obtain employment should the Board decide not to revoke the license.

Mr. Singleton answered, "Yes sir." Mr. Singleton stated he was a permanent embalmer at a firm that is willing to hire him back.

Mr. Hall questioned how Mr. Singleton was embalming without a license.

Mr. Singleton stated that he was the permanent embalmer prior to his license being suspended. Mr. Singleton was the FDIC at Jackson Funeral Home, but was working for another firm as an embalmer. Jackson Funeral Home also had a funeral director working there who was seeing the families which resulted in Mr. Singleton's license being suspended. Of the 11 families the funeral director saw, he did not receive an embalming authorization for 9 of them.

Mr. David stated if the Board chooses not to revoke and still must stay within the disciplinary guidelines, but a part of the disciplinary guidelines are probation with usual conditions. Some of the usual conditions are continuing education. Mr. Singleton's license has been suspended for almost 3 years. Presuming that he has not been embalming or operating as a funeral director/embalmer, that seems like a long time not to practice your profession and still not need some sort of continuing education or reeducation. The Department is still recommending revocation but would like to ensure that point is brought to the Board's attention.

The Chair stated that some of that is noted on pages 119 and 120 in the Board packet.

Mr. Jennings reminded the Board that should it chose to adopt a penalty other than that recommended by the ALJ, even if it is not revocation but is something other than what was recommended, the Board still needs to point to the record and explain why that alternative resolution is being made.

Mr. Shropshire questioned whether Mr. David had specified the reasons the Department felt the aggravating circumstances justified departure from the penalty guidelines.

Mr. David concurred. Paragraphs 2, 7 and 13 in particular from the Recommended Order justify departure. The Findings of Fact and the Conclusions of Law themselves provide plenty of support but for the particularity, these paragraphs are the ones that demonstrate grounds to deviate from the recommended penalty.

MOTION: Ms. Huggins moved for revocation per the Order for a period of 6 months with normal conditions, pays application fees, pays administrative fine and completes CEUs based on the grounds set forth the Department's counsel in their exceptions. Mr. Hall seconded the motion, which passed unanimously.

B. *Other Proceeding*

(1) *Rafaiy Alkhalifa v. DFS and Zabida Hasin and Funeraria La Cubana, Inc., Case No. 111564-10-FC; DOAH Case No. 10-9189*

Mr. Jennings asked the Board members whether they all have the entire record of this proceeding with them, and whether they all have had the opportunity to review it. If any member does not have the entire record or has not had the opportunity to review it, please indicate such at this time. For the record, every member is standing quietly which implies that they have all seen the record and have it in front of them.

In this particular case there were Exceptions filed to the Recommended Order, both exceptions as to Findings of Fact and Conclusions of Law. The Board would need to follow Mr. Jennings earlier instructions when dealing with each of those and understanding the terms. If the Board has any questions, they should feel free to ask for options.

Mr. David stated that procedural, this was a license denial case. On or about June 7, 2010, Mr. Alkhalifa, who was actually the Petitioner in this case, filed an initial Notice with the Division of his intent to claim licensure through the deemer provision of s. 120.60(1), F.S. On or about July 1, 2010, after filing this deemer notice, the Petitioner then filed a Petition to Change Name and Location of the Funeral Establishment to which License No. F040780 applies. Then on or about August 17, 2010, the Division issued a letter as a written Notice of Denial with the intended Notice of Rights. In the response to the Notice of Denial, the Petitioner requested a hearing, pursuant to s. 120.57(1), F.S. and the Department referred this matter to the Division of Administrative Hearing (DOAH). A formal hearing was held in this case on January 5, 2011 in Tallahassee before an Administrative Law Judge (ALJ). After transfer from one ALJ to another, a Recommended Order was issued on August 17, 2011. On September 1, 2011, the Petitioner filed exceptions to the Recommended Order taken exception to 2 particular Findings of Fact and 3 Conclusions of Law. In response to this, on September 9, 2011, the Department filed its Reply to Petitioner's Exceptions. The Recommended Order, Petitioner's Exceptions and Department's Reply to the Petitioner's Exceptions are all in the record. In taking final action on the Recommended Order, the Board, as Mr. Jennings instructed, must make a determination regarding each one of the Petitioner's Exceptions. In doing so, for the reasons stated in the Department's Reply to the Petitioner's Exceptions, the Department requests that the Board rejects all of the Petitioner's Exceptions and adopt the Recommended Order, as issued by the ALJ.

Mr. Wilson Jerry Foster, attorney for the Respondent, stated that he filed the exceptions and requested that the Board consider them at this time.

Mr. David stated that the Department's response addresses each exception on a 1 to 1 basis.

Exception to Finding of Fact No. 26

MOTION: Ms. Thomas-Dewitt moved to reject the Exception to Finding of Fact No. 26 based on the reason(s) cited by the Department's Reply to the Petitioner's Exceptions. Mr. Jones seconded the motion, which passed unanimously.

Exception to Finding of Fact No. 28

MOTION: Ms. Huggins moved to reject the Exception to Finding of Fact No. 28 based on the reason(s) cited by the Department's Reply to the Petitioner's Exceptions. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Exception to Conclusion of Law No. 41

MOTION: Ms. Huggins moved to reject the Exception to Conclusion of Law No. 41 based on the reason(s) cited by the Department's Reply to the Petitioner's Exceptions. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Exception to Conclusion of Law No. 43

MOTION: Ms. Anderson moved to reject the Exception to Conclusion of Law No. 43 based on the reason(s) cited by the Department's Reply to the Petitioner's Exceptions. Mr. Helm seconded the motion, which passed unanimously.

Exception to Conclusion of Law No. 44

MOTION: Ms. Huggins moved to reject the Exception to Conclusion of Law No. 44 based on the reason(s) cited by the Department's Reply to the Petitioner's Exceptions. Mr. Jones seconded the motion, which passed unanimously.

MOTION: Ms. Thomas-Dewitt moved to accept the DOAH Findings of Fact, Conclusions of Law and the recommended disposition. Ms. Anderson seconded the motion, which passed unanimously.

5. Disciplinary Proceeding(s): Material Facts Not Disputed (Section 120.57(2))

A. Motion for Determination of Waiver and for Final Order by Board; Hearing Not Involving Disputed Issues of Material Facts

(1) Washington Funeral Chapel: Case No. 114632-11-FC (SR1-671687131) (Probable Cause Panel B)

Mr. Shropshire questioned who the Probable Cause Panel members were.

Ms. Mary K Surles stated that Probable Cause Panel B members that heard this case were Mr. Al Hall and Ms. Tracy Huggins.

Ms. Huggins recused herself as she served on Probable Cause Panel B.

Ms. Surles stated that the Administrative Complaint in this case alleges that the Respondent operated without a valid funeral establishment license after expiration on November 30, 2010 and operated without a valid licensed funeral director in charge of Respondent. Respondent also failed to do the following: failed to display the least expensive casket, provide proof that written agreements with price items were furnished to all customers, failed to ensure that all written agreements were signed by a funeral director, failed to retain copies of all final bills and written agreements, failed to retain all cremation arrangement records for at least 2 years from the decedents final disposition, failed to maintain a complaint log, failed to ensure that operational personnel had received the required health and safety training and failed to correct all prior violations noted in the Department's inspection report.

The Department filed the Administrative Complaint on April 5, 2011, which was served on Respondent by certified mail on April 9, 2011. The Department did not receive the Respondent's Election of Proceedings form until May 9, 2011, which is 7 days after the date the response was due. Based on this information, the Department filed a Motion for Determination of Waiver and for a Final Order by Hearing Not Involving Disputed Issues of Material Facts. At this time it would be appropriate for the Board to determine whether the Respondent has waived its right to request a proceeding on the matters alleged in the Administrative Complaint.

MOTION: Ms. Thomas-Dewitt moved that the Respondent has waived his right to elect a hearing in this administrative procedure. Mr. Jones seconded the motion, which passed unanimously.

Now that the Board has determined that the Respondent has waived its right to request a proceeding in this matter, the Department believes that it is appropriate at this time for The Chair to entertain a motion adopting the allegations of the facts as set forth in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the Findings of Fact. Mr. Helm seconded the motion, which passed unanimously.

Mr. Shropshire questioned whether the Respondent is represented here today.

Ms. Surles answered, "Yes sir, he is by Attorney Dwyer." Ms. Surles added that she would get to that.

Mr. Shropshire questioned whether the Respondent's attorney should have been allowed the opportunity to respond prior to acting on the last motion.

Mr. John Dwyer stated that the Respondent is not disputed the allegations being raised by Ms. Surles.

Ms. Surles stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Chapter 497 Florida Statutes and Chapter 69K Florida Administrative Code as charged in the Administrative Complaint. The Department believes that it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as set forth in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the Conclusions of Law. Mr. Helm seconded the motion, which passed unanimously.

Ms. Surles stated that the Department recommends revocation of the Respondent's funeral establishment license.

Mr. Dwyer stated that the Respondent, Mr. Washington, has another procedure on the Agenda (12.C.(1)(a)) and many of the things discussed would probably pertain to that item as well. Mr. Washington admits he has made some mistakes, but he has been in the funeral business for 34 year, has served the Plant City community well and has represented his profession well over that period of 34 years. Part of Mr. Washington's problems and mistakes were brought on due to some illness he had. The Respondent has suffered from cancer on 2 separate occasions; colon cancer and kidney cancer, which resulted in the loss of his kidney. Due to the sickness, Mr. Washington failed to take his CLE course, which started a snowball effect for a lot of these allegations that he admitted made. Mr. Dwyer requested that the Board consider Mr. Washington's service to the community of Plant City as he has been an outstanding citizen and member of that community for 34 years. Mr. Washington has had a long and distinguished career and has represented his profession well. The fact that he operated his business from November 2010 to current time without a license was his most egregious conduct. Mr. Washington made a lot of clerical mistakes and a lot of the mistakes made did not necessarily hurt the community nor did it hurt any of his customers. If Mr.

Washington is not allowed to serve the Plant City community, it will not only be a loss for this profession but it will be a bigger loss for the Plant City community because he has been there for so long and served that community well.

As far as it pertains to Mr. Washington's individual license and applying to get reinstated for that, Mr. Dwyer stated that he has entered into an agreement with the Department about the violations in Mr. Washington's individual capacity. In his individual capacity, Mr. Washington was fined \$1000, paid his fine, and there was also recommendation that if his license was reinstated or if he was allowed to apply for a new license, he would be on probation for a period of up to 2 years. The Divisions recommendation is to deny Mr. Washington's license because of past history, but he has never been before this Board in the past nor has he ever done anything to jeopardize his license in the past. Again, all of this has occurred within the past 2 years. Mr. Dwyer requested that the Board go by the recommendation of the Order, the consent agreement with the Department, and allow Mr. Washington to apply for his license and if he passes the test and is reinstated that he be placed on probation for a period not to exceed 2 years.

As it pertains to the facility, Mr. Washington has 2 licensed directors in place now assisting him so that the funeral establishment could stay open under the directorship of those 2 directors until Mr. Washington's license is reinstated.

Ms. Surles requested that the Chair entertain a motion finding that the Respondent is in violation of the Florida Statutes identified in the Administrative Complaint.

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

Mr. Anthony R Washington, Jr answered, "Yes." Mr. Washington stated that this matter involves his only livelihood in a very stressed and downward economy. Mr. Washington stated that he has tried to be true to his profession through his family, church and community and does believe that his record of 34 years of service will speak for itself. However, I am standing before this Board not because of callous harm to my clients or any of those I serve but because I went through a period of serious illness, colon cancer, with initial surgery of resection and a year of chemo therapy once a week. Before I could come out of that it was discovered that I had kidney cancer, in which I had my right kidney removed. Some of the things, during the time of applying for my license renewal, which I did and during this time the continuing education kind of fell off the table, but when I did apply it was a little late but I did get the renewal. This kind of started the avalanche of me not having my license renewal because of the continuing education, so my license was suspended. That started the snowball of the other things that happened. Mr. Washington requested the Board's leniency in this situation by allowing him to continue to keep his license as all of these problems have been resolved.

Mr. Shropshire questioned whether this is action presently before the Board against a funeral establishment license.

Ms. Surles concurred. This is against Washington Funeral Chapel, the entities license. Mr. Dwyer did also speak upon, as he referenced, later on the Agenda is Mr. Washington's individual license. Ms. Surles questioned whether the Board would like to take that up after this one is addressed.

The Chair stated that is the Board's intent.

Mr. Helm questioned why some of the materials indicated Rick Swanson was the funeral director, but Mr. Swanson was never affiliated with the establishment.

Mr. Washington stated that Mr. Swanson's name was crossed up with his establishment but the only person at that time was Willie Lucas. Mr. Washington added that he does not know Rick Swanson.

Mr. Helm questioned whether the Division knows how Rick Swanson's name became involved.

Ms. Surles stated based on the investigative file received by Legal, it was indicated that this name was provided to the Division through a phone call, either one time changing or stating that Mr. Swanson would be the funeral director in charge. Based on the investigation also, Mr. Swanson was contacted and indicated that he has never worked for Washington Funeral Chapel.

Ms. Thomas-Dewitt questioned who was with registered with the Division as the FDIC.

Mr. Washington stated that he was the only one registered at that time. Then, because of the suspension, the only other person was James "Tom" Stewart.

The Chair questioned whether Mr. Stewart is registered as FDIC today.

Mr. Washington concurred.

Mr. Hall questioned the timeframe of Mr. Washington's illness.

Mr. Washington stated it was back in 2010, right about the time of his license when it was first discovered he had cancer.

Mr. Hall stated that the Board packet indicates that the license was suspended in 2007.

Mr. Washington stated that he started chemo in 2010, but had surgery right around 2007. The kidney was removed in 2010.

Mr. Shropshire stated that the procedural status is that his funeral director and embalmer license expired August 31, 2007 as Mr. Washington did not renew it but instead let it remain in that lapsed condition for 2 years. So by operation of law, it became null and void. Therefore, in this packet the Board will see where Mr. Washington has applied as if for a new license because he does not have one.

Mr. Washington stated that he remitted the fee, but it was never returned. During that time he was dealing with the illness and treatment so he failed to follow up on a lot of things.

Mr. Jones stated that Count 6 indicates that the Respondent did not submit any of the reports to Department, keep accurate records or provide agreements to the customers. Mr. Jones questioned the time period for this.

Mr. Washington stated that when the Inspector came out, she requested to see some of the files that were 2 years back. At the time she requested this information the files were not available.

Mr. Jones questioned whether Mr. Washington was still submitting his reports to the Department during all this time.

Mr. Washington stated that some of them had been and some had not.

Ms. Surles stated that the record reflects that the Respondent failed to timely file with the Department the Cases Embalmed or Bodies Handled Reports since November 2009. Mr. Surles added that Mr. Swanson was put into the system by error. This still does not change the fact that Mr. Washington was an unlicensed individual that was in charge of the funeral establishment, operating and in charge of handling the establishment which license expired as well.

Mr. Helm questioned whether Washington Funeral Chapel has a license.

Ms. Surles stated that the establishment has a license but Mr. Washington's personal license is expired.

Mr. Shropshire stated at this point, Mr. Washington does not have a funeral director and embalmer license, it is not expired.

Mr. Hall questioned Mr. Washington's statement that during his illness he was not able to care for the needs of the funeral home at that time.

Mr. Washington stated that he was trying to but a lot of things came up.

Mr. Hall questioned Mr. Washington's statement that during that time he was not really able to afford any excess help to come in to help with those things that Mr. Washington could no longer do.

Mr. Washington added when you are only doing about 15 to 20 cases a year.

Mr. Hall questioned how Mr. Washington is able to support 2 funeral directors now.

Mr. Washington stated that under the agreement they have he is not making anything and the 2 funeral directors are paid on a per case basis.

Mr. Hall stated that he senses even after Mr. Washington's illnesses he still wants to serve and care for the families. Mr. Hall questioned whether it would be better served by working it through another establishment rather than keeping this business open and keeping that financial burden for 12-15 calls.

Mr. Washington stated it would be better for him to try and do it rather than having 2 people there. As it is now, Mr. Washington feels he is basically taking care of 2 other people.

Mr. Hall stated with 12-15 calls it would be hard to substantiate keeping the doors open and maintaining the overhead of a facility. Mr. Hall questioned whether it would be better served by working it through another establishment rather than keeping this business open and keeping that financial burden for 12-15 calls.

Mr. Washington stated that he has spoken with the guy that he is working with and if he is able to keep his establishment license then there is a possibility that they could work out an agreement to maybe go into some type of partnership. This would give Mr. Washington the opportunity to go out, as far as doing PR work as that has been part of Mr. Washington's problem of being a one man operation.

Ms. Thomas-Dewitt questioned when Mr. Washington's illness first began.

Mr. Washington stated that when he first went in for his colonoscopy in 2005, the doctor discovered a tumor. They saw something that they did not like and wanted to perform surgery. After the surgery, they discovered it was cancerous. They did the surgery, the resection and then chemo. Mr. Washington took the pills but had to have shots as well, for a year.

Ms. Thomas-Dewitt stated that was in 2005 but Mr. Washington's downward spiral started in 2009.

Mr. Washington stated that the downward spiral started after all of that because he remained on chemo. Eventually he had to be taken off as his blood count decreased significantly, but was later put back on it because of his age.

Ms. Thomas-Dewitt questioned whether during this time Mr. Washington was the only funeral director trying to run the business.

Mr. Washington concurred. At the time, Mr. Washington was working a second job as well since the business was not able to carry itself. It has gotten to the point now that Mr. Washington is able to carry himself without having to work a second job.

MOTION: The Chair moved for revocation of the establishment license of Washington Funeral Chapel based on the Department's recommendation. Mr. Hall seconded the motion, which passed unanimously.

Mr. Washington questioned whether he has the opportunity to reapply for the establishment license.

Mr. Shropshire stated that Mr. Washington could reapply for an establishment license.

Mr. Washington questioned whether there is a time limit in which he could reapply.

Mr. Shropshire stated that the Board did not put any time limit on how soon Mr. Washington could reapply.

Mr. Washington questioned whether he could reapply at any time.

Mr. Shropshire concurred but added that Mr. Washington would have to find an FDIC.

Mr. Washington stated that he has an FDIC.

Mr. Shropshire stated that the Board would have to rule on it. An approval would not be automatic.

*****BREAK*****

6. Disciplinary Proceeding(s): Proposed Settlements and Petition for Early Termination of Suspension

A. Settlement Stipulation for Consent Order and Proposed Consent Order

(1) Guerry Funeral Home: Case No. 119612-11-FC (Waiver of Probable Cause)

Ms. Surles stated that on March 15, 2011, the Department received a complaint from Funeral Director Henry Forbes, alleging that Mr. Guerry with Guerry Funeral Home would not release decedent's body to Mr. Forbes until the decedent's family paid Mr. Guerry for the services he had rendered to decedent's family which totaled \$660.00.

Decedent's family initially entered into a funeral contract for Guerry Funeral Home to handle the final disposition of decedent, and after decedent's family sought prices from the competitors of Guerry Funeral Home they decided to use the services of Forbes Funeral Home.

The Respondent entered into a Settlement Stipulation with the Department on September 7, 2011 and has waived a finding of probable cause and confidentiality after considering the facts in this case, and to reduce the amount of costs incurred with the prosecution of this administrative matter.

If the Board accepts this Settlement Stipulation the Respondent will pay an administrative fine in the amount of \$2500 and pay Department costs in the amount of \$500.

It would now be appropriate for the Board to hear from the Respondent, who is present, if there are any questions or comments.

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

Mr. William L Guerry answered, "Yes."

The Chair questioned whether Mr. Guerry was present to address the Board or to answer questions.

Mr. Guerry responded, "Both." Mr. Guerry stated that he filed a complaint against Mr. Henry Forbes for his actions in this. That complaint was based on solicitation from Mr. Forbes on a contract that was written in Mr. Guerry's office by Mr. Guerry with a family. Mr. Guerry requested clarification from the Board about the validity of his complaint based upon his interpretation of the statute regarding at-need solicitation by a licensed funeral director on an existing contract since Mr. Forbes was not the initially called funeral director to handle this. This family, somehow, got to Mr. Forbes office. Mr. Forbes knew the circumstances and should have been aware, unless he is totally incompetent, that under this scenario he ends up even talking to or extending the courtesy to talk to the family would result in him breaking the law. Mr. Guerry stated that he has not heard anything from the Department regarding his complaint. Therefore his assumption is that the Department has made the decision that the complaint is moot and has allowed Mr. Forbes to run and hide behind the statute in saying that Mr. Guerry withheld possession of a body because of money. Mr. Guerry added that he has agreed to that but it was specifically done to get to the bottom of a situation that has been in the community with Mr. Forbes on other problems. Mr. Guerry requested that the Board review his complaint, look at s. 497.381(5), F.S. that says at-need solicitation of funeral merchandise or services is prohibited. No funeral director, direct disposer or anybody else may contact the family to sell services or merchandise unless the funeral director or direct disposer or his or her agent or representative has been initially contacted by the family. Mr. Guerry stated that he was the initial funeral director on this case. Mr. Forbes was not and for him to have the family come to his office is breaking the law.

Ms. Surles stated that this is a Settlement Stipulation that Guerry Funeral Home entered into for the terms stated.

The Chair stated that the Board received a statement from Patricia Davis, family friend of the Bryant's who states that "my son ask me if I could give them some advice as to what the family should do. I work in an office next door to Forbes Funeral Home and was aware that Mr. Forbes seemed to handle Funeral Service very reasonable and they may want to check with him or even Todds Funeral Home for pricing. Mr. Forbes never discussed with me about referring business to him." The Chair added that Mr. Guerry's complaint will be taken up at a later time. The Board is here to discuss the Settlement Stipulation.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Col. Stiegman seconded the motion, which passed unanimously.

(2) Guerry, William: Case No. 119611-11-FC (Waiver of Probable Cause)

Ms. Surles stated that on March 15, 2011, the Department received a complaint from Funeral Director Henry Forbes, alleging that Mr. Guerry with Guerry Funeral Home would not release decedent's body to Mr. Forbes until the decedent's family paid Mr. Guerry for the services he had rendered to decedent's family which totaled \$660.00.

Decedent's family initially entered into a funeral contract for Guerry Funeral Home to handle the final disposition of decedent, and after decedent's family sought prices from the competitors of Guerry Funeral Home they decided to use the services of Forbes Funeral Home.

The Respondent entered into a Settlement Stipulation with the Department on September 7, 2011 and has waived a finding of probable cause and confidentiality after considering the facts in this case, and to reduce the amount of costs incurred with the prosecution of this administrative matter.

If the Board accepts this Settlement Stipulation the Respondent will pay an administrative fine in the amount of \$2000.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(3) Riverview Memorial, Inc d/b/a Riverview Memorial Gardens: Case No. 101938-09-FC (SR1-362403838, SR1-362403845) (Probable Cause Panel A)

Mr. Shropshire questioned who the Probable Cause Panel members were.

Ms. Mary K Surles stated that Probable Cause Panel B members that heard this case were Keenan Knopke, Judy Ralph and Nancy Hubbell.

The Department conducted an examination of Riverview for the period of January 1, 2004 through November 30, 2007 (hereinafter "examination period") and made findings that Riverview had failed: to keep a record of every burial in its cemetery; to make full disclosure of all fees required for interment, entombment, or inurnment of human remains; to account for all sequentially pre-numbered contracts issued during the examination period; to timely renew the cemetery and preneed licenses of Riverview; to maintain account receivable records; to timely remit funds to trust accounts, and to make deposits into the Care & Maintenance and Preneed Trust accounts to sufficiently offset the liabilities as required by Chapter 497, Florida Statutes and the rules promulgated thereto.

The Department entered into a Settlement Stipulation with the Department on September 23, 2011, which is before the Board today for consideration and approval. If the Board accepts this Settlement Stipulation the Respondent will pay an administrative fine in the amount of \$2,500, and will repay the trust fund in the amount of \$110,143.85 within thirty days of the entry of the Consent Order in this matter. It would now be appropriate for the Board to entertain a motion to accept and adopt the settlement terms.

MOTION: Ms. Thomas-Dewitt moved to accept the Settlement Stipulation. Mr. Helm seconded the motion, which passed unanimously.

(4) Summers Funeral Home: Case No. 110895-10-FC (SR1-640190760) (Probable Cause Panel A) and 114637-11-FC SR1-672861803 (Probable Cause Panel B)

Ms. Surles stated that the 2 cases are being taken up at the same time since the Settlement Stipulation takes into consideration that they were addressed by 2 Probable Cause Panels: Probable Cause Panel A members for Case No. 110895-10-FC were Nancy Hubbell and Justin Baxley and Panel B members for Case No. 114637-11-FC were Al Hall and Tracy Huggins.

Ms. Huggins recused herself as she served on Probable Cause Panel B.

On December 12, 2009, a Department Examiner conducted an inspection of Summers Funeral Home and observed that casket prices were not conspicuously displayed on each casket and that neither a photograph of the funeral director and the funeral director and embalmer license of Jessica Hadley-McGlon were displayed in a conspicuous manner.

On July 8, 2010, a Department Examiner conducted an inspection of Summers Funeral Home and observed that a current funeral directors license was not displayed again for Jessica Hadley and Felix Smith, casket prices were not conspicuously displayed in a manner visible to the public, biomedical waste was not picked up every 30 days and the Respondent did not disclose to the consumer the charges for a fee to obtain the Medical Examiner's authorization for cremation certificate and the Respondent did not pay the cremation authorization fees owed to the Medical Examiner's Office.

The Department entered into a Settlement Stipulation with the Department on November 29, 2011, which is before the Board today for consideration and approval. If the Board accepts this Settlement Stipulation the Respondent will pay an administrative fine in the amount of \$1250 and pay Department costs in the amount of \$500 to settle both of these pending cases. It would now be appropriate for the Board to entertain a motion to accept and adopt the settlement agreement including the terms provided therein.

Ms. Thomas-Dewitt questioned whether the establishment is currently on probation and whether the establishment was previously before the Board.

Mr. John Rudolph stated that was Mr. Summers' individual license.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Col. Stiegman seconded the motion, which passed unanimously

(5) Trinity Memorial Cemetery, Inc.: Case No. 114209-11-FC (SR1-596704501) (Probable Cause Panel B)

Mr. Shropshire questioned who the Probable Cause Panel members were.

Mr. Linje Rivers stated that Probable Cause Panel B members that heard this case were Mr. Al Hall and Ms. Tracy Huggins.

Ms. Huggins recused herself as she served on Probable Cause Panel B.

Mr. Rivers stated that Trinity Memorial is a licensed cemetery located in New Port Richey, Florida. Trinity Memorial also holds a pre-need main license. The Division alleges, in August 2008, Trinity Memorial contracted for pre-need funeral services with Doreen Blair, to provide for services for her dying mother. In an effort to persuade Ms. Blair to purchase a grave marker through them, Trinity Memorial provided Ms. Blair with a notice for her to sign and return. The notice contains false and misleading statements as to the responsibility of the cemetery to maintain and repair markers based on whether they were purchased from Trinity Memorial or an outside vendor. When Ms. Blair failed to sign and return the notice and inquired as to the placement of a marker, Trinity Memorial again sent a copy of the notice for her signature. Ms. Blair's understanding was that a marker purchased from an outside vendor would not be placed unless she signed the notice. These allegations have been disputed by Trinity Memorial. It is the position of the Licensee that the marker Ms. Blair purchased from the outside vendor was in fact placed prior to Ms. Blair signing and returning the notice to Trinity Memorial. However, in the interest of trying to resolve this matter, the Licensee has agreed to enter into this Settlement Stipulation. Trinity Memorial has agreed to pay a fine of \$4000 and be placed on one year probation.

The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

MOTION: Mr. Helm moved to accept the Settlement Stipulation. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(6) Willie Lucas: Case No. 114639-11-FC (SR1-657242016) (Probable Cause Panel B)

Mr. Shropshire questioned who the Probable Cause Panel members were.

Mr. Rivers stated that Probable Cause Panel B members that heard this case were Mr. Al Hall and Ms. Tracy Huggins.

Ms. Huggins recused herself as she served on Probable Cause Panel B.

Mr. Rivers stated that an inspection was conducted at Golden's Funeral Home, Inc., where Willie Lucas was acting as the funeral director in charge. Based on the inspection report, the Division alleges that the Licensee failed to have licenses or copies of all licensed persons available upon request, failed to display licenses of funeral directors and embalmers, failed to remove biomedical waste within 30 days of its generation and failed to affix identifications to the wrist or ankle of the deceased.

Willie Lucas has agreed to pay a fine of \$1000 and be placed on one year probation. The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

MOTION: Col. Stiegman moved to accept the Settlement Stipulation. Ms. Anderson seconded the motion, which passed unanimously.

B. Related Cases

Mr. Shropshire stated that the following 3 cases before the Board at this meeting are related:

- Petition of Clifford Marchbank to terminate suspension early
- Proposed Disciplinary Settlement, Omega Funeral Services
- Proposed Disciplinary Settlement, Alan Trueba

All 3 cases relate to an incident in which a body was cremated under authority of a falsified medical examiner's cremation authorization.

Clifford Marchbank came before the Board, with representative counsel, at the Board's meeting on April 7, 2011, for a hearing at which the facts were not contested. The Board fined Mr. Marchbank \$5000 and suspended his funeral director & embalmer license for one year. The Department of Financial Services was represented before the Board by Department attorney Mary K Surles.

The Department's attorney, Mary K Surles, at this meeting submits to the Board proposed settlements in the Omega and Trueba Cases. The proposed settlements call for a lesser penalty than was recommended and imposed regarding Mr. Marchbank. The Department's attorney, Ms. Surles, will address the Board regarding the basis for the proposed settlements in the Omega and Trueba cases.

The FCCS Division recommends that if the settlements in the Omega and Trueba cases are accepted, the Board should grant the Marchbank petition to reduce penalty. Therefore as a practical matter, the Division recommends that the Board addresses the Omega and Trueba matters first because they would probably affect the Board's thinking and action on the Marchbank case.

Mr. Rudolph, representing Omega and Trueba consented to that relief to Mr. Marchbank if the settlement stipulations are accepted.

The Chair questioned whether the \$5000 fine has been paid by Mr. Marchbank.

Ms. Wendy Wiener stated that the fine has been paid.

(1) Marchbank, Clifford: Case No. 111345-10-FC (SR1-597146973) (Probable Cause Panel B)

Mr. Shropshire questioned who the Probable Cause Panel members were.

Ms. Surles stated that Probable Cause Panel B members that heard this case were Mr. Al Hall and Ms. Tracy Huggins.

Ms. Huggins recused herself as she served on Probable Cause Panel B.

Mr. Shropshire stated that the modification of Mr. Marchbank's penalty would be that the suspension previously imposed be reduced and considered in effect completed as of close of business today. The Division recommends, in view of what the Board has done in the Omega and Trueba cases, that this petition be granted.

MOTION: Mr. Jones moved to grant the Petition. Mr. Hall seconded the motion, which passed with 1 dissenting vote.

(2) Omega Funeral Services LLC d/b/a American Family Funerals & Cremations: Case No. 111335-10-FC (SR1-597146973) (Probable Cause Panel B)

Mr. Shropshire questioned who the Probable Cause Panel members were.

Ms. Surles stated that Probable Cause Panel B members that heard this case were Mr. Al Hall and Ms. Tracy Huggins.

Ms. Huggins recused herself as she served on Probable Cause Panel B.

Ms. Surles stated that the Department filed a 2nd Administrative Complaint on June 3, 2011, which alleges Respondent, Omega Funeral Services d/b/a American Family Funerals & Cremations, violated sections of Chapter 497, F. S. and Rule 69K, F.A.C. by failing to receive authorization for cremation from the District Medical Examiner before requesting All Florida Crematory to cremate the decedent's body and further represented to an employee of All Florida Crematory that the Respondent had received authorization for cremation from the District Medical Examiner when in fact Respondent had not received such authorization.

During the discovery process, the Department has become aware of potential litigation issues that may not provide a favorable result for the Department. The Respondent entered into a Settlement Stipulation with the Department on August 17, 2011, which is before the Board today for consideration and approval.

If the Board accepts this Settlement Stipulation, the Respondent will: pay an administrative fine in the amount of \$2,000.00; pay Department costs in the amount of \$250.00, and Respondent's license will be placed on probation for three (3) years with the special condition that Respondent will not request or seek cremation of a body until Respondent has actually and physically received, in writing, authorization for cremation from the District Medical Examiner, and if the Department has reasonable cause to believe that the Respondent has requested or sought to have a body cremated without receiving such authorization for cremation from the District Medical Examiner then the Department will immediately, and without hearing, suspend Respondent's licenses for up to sixty (60) days. It would now be appropriate for the Board to entertain a motion to accept and adopt the settlement agreement including the terms provided therein.

Ms. Thomas-Dewitt questioned whether it is a fact that Omega did cremate without proper authorization.

Mr. Rudolph stated that Omega did not do the cremation. It was All Florida Crematory.

Ms. Surles answered yes and stated that had been handled at a prior Board meeting.

Mr. Rudolph stated that issue was handled at a prior Board meeting. The body was cremated without having written authorization from the Medical Examiner. The Respondent has contested that we instructed them to do it and had no control over them cremating that body without the authorization as we knew we could not cremate a body without written authorization. The Respondent has entered into this stipulation and as Ms. Surles has indicated there are some issues in this case that would not provide a favorable result for the Department.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Mr. Hall seconded the motion, which passed unanimously.

(3) Trueba, Alan: Case No. 113850-10-FC (SR1-597146973) (Probable Cause Panel A)

Mr. Shropshire questioned who the Probable Cause Panel members were.

Ms. Surles stated that Probable Cause Panel A members that heard this case were Keenan Knopke, Nancy Hubbell and Justin Baxley.

Ms. Huggins recused herself as she received the same packet of information while serving on Probable Cause Panel B.

Ms. Surles stated that the Department filed a 2nd Administrative Complaint on June 3, 2011, which alleges Respondent, Omega Funeral Services d/b/a American Family Funerals & Cremations, violated sections of Chapter 497, F. S. and Rule 69K, F.A.C. by failing to receive authorization for cremation from the District Medical Examiner before requesting All Florida Crematory to cremate the decedent's body and further represented to an employee of All Florida Crematory that the Respondent had received authorization for cremation from the District Medical Examiner when in fact Respondent had not received such authorization.

During the discovery process, the Department has become aware of potential litigation issues that may not provide a favorable result for the Department. The Respondent entered into a Settlement Stipulation with the Department on August 17, 2011, which is before the Board today for consideration and approval.

If the Board accepts this Settlement Stipulation, the Respondent will: pay an administrative fine in the amount of \$2,000.00; pay Department costs in the amount of \$250.00, and Respondent's license will be placed on probation for three (3) years with the special condition that Respondent will not request or seek cremation of a body until Respondent has actually and physically received, in writing, authorization for cremation from the District Medical Examiner, and if the Department has reasonable cause to believe that the Respondent has requested or sought to have a body cremated without receiving such authorization for cremation from the District Medical Examiner then the Department will immediately, and without hearing, suspend Respondent's licenses for up to sixty (60) days.

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

Mr. Alan Trueba answered, "Yes I do."

Mr. Helm questioned whether Mr. Trueba represented to All Florida Crematory that he did have the authorization.

Mr. Trueba answered, "No sir." Mr. Trueba stated when he spoke to the Crematory staff, he had asked if he had an authorization pending when he could expect to have a cremation done. That is when that took place but Mr. Trueba stated that he never represented that he had the authorization when he asked for that.

Ms. Thomas-Dewitt questioned whether Mr. Trueba was present at the previous meeting when this issue was addressed.

Mr. Trueba responded that he was not present.

Mr. Helm questioned whether he is reading the information presented incorrectly as it states that Mr. Trueba did represent he had the authorization.

Mr. Rudolph stated that was in Ms. Surles report, her cover letter, and he had asked her to change it.

Ms. Surles stated that it is her understanding that the representation was made, that Mr. Trueba represented that he thought he had the cremation authorization from the ME. Mr. Trueba was making a phone call responding to an employee with the crematory and he mistakenly thought it was another case.

Mr. Trueba stated that he is unsure what the employee was thinking. Mr. Trueba stated that he had several cases pending but has never had a cremation without putting an authorization # on a permit and sending it to crematory. Mr. Trueba added that has always been his protocol since 1993 and he certainly would not be doing it any differently 2 or 3 years ago.

Ms. Thomas-Dewitt expressed concern that Mr. Trueba did not defend himself prior to previous Board meeting.

Mr. Rudolph stated that was a different Licensee. Mr. Trueba's case was not presented then. If they had all been presented at the same time, Mr. Trueba could have come and argued about it, but it was improper to stand up on someone else's issue.

Col. Stiegman questioned why Mr. Trueba is accepting this agreement if he did not do it.

Mr. Shropshire stated that it is often these kinds of matter in these kinds of cases a difference between what we believe and what we feel we can prove in a formal hearing. If the stipulation is rejected, the Department will litigate the matter.

Mr. Helm stated Mr. Trueba is saying he did not do it but the Consent Order he agrees to says he did do it.

The Chair stated that it is a Settlement Stipulation.

Ms. Surles added that the Settlement Stipulation neither admits nor denies.

Mr. Rudolph stated it was entered into for the purpose of settling the case.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Ms. Anderson seconded the motion, which passed with 1 dissenting vote.

Mr. Helm requested that in the future, all related cases be presented at the same time.

Mr. Shropshire stated that would normally be the Division's preference and we would certainly try to get it done that way. Sometimes though when one of a group wants to settle and others want to litigate then the one that wants to settle will have its matter held out for possibly 18 months while the other cases get litigated. So, sometimes it's difficult, but the Division certainly agrees with the thrust of Mr. Helm's remarks and will certainly try to get them grouped that way, when possible.

7. Application(s) for Authority to Acquire Control of an Existing Cemetery

A. Recommended for Approval *without* Conditions

(1) Rolling Oaks Cemetery, Incorporated (Port St Lucie)

Rolling Oaks Cemetery, Incorporated, herein submits an Application for Change of Control of an existing cemetery company. The cemetery company being acquired is Rolling Oaks Cemetery Inc., located at 2200 SW Del Rio Blvd, Port St. Lucie, currently licensed under number F039732.

Prior to approximately July 2011, Rolling Oaks Cemetery, Incorporated (F039732), and its preneed licensee by the same name, were owned by First Peoples Bank, N.A. (FPB).

On July 15, 2011, FPB of Port St. Lucie was closed by the Office of Financial Regulation and the Federal Deposit Insurance Corporation (FDIC) was named as receiver. As receiver of FPB, the FDIC sold various assets of FPB to Florida Community Bank, N.A. (FCB), also formerly known as the Premier American Bank, N.A. As a result, the FCB is now the owner of Rolling Oaks Cemetery, Incorporated (see attached Purchase and Assumption Agreement).

The application was received by the Division on September 19, 2011 and no deficiencies were noted on the application. A completed background check of all FCB officers revealed no criminal history. If this Application for a Change of Control is approved, the Applicant will continue to operate as Rolling Oaks Cemetery, Incorporated.

The Applicant's financial statement as of December 31, 2010 reflects the following:

Required Net Worth	= \$ 50,000
Reported Net Worth	= \$976,475

S. 497.264, Florida Statutes, provides that "(2) Any person or entity that seeks to purchase or otherwise acquire control of any cemetery licensed under this chapter shall first apply to the licensing authority and obtain approval of such purchase or change in control."

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

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

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

The Chair disclosed his affiliation SCI Funeral Services of Florida, Inc and stated it would not affect his ability to remain fair and impartial.

9. Application(s) for Preneed Main License
A. Recommended for Approval with Conditions
(1) ICS Cremation & Funeral Home, Inc.(Lake City)

ICS Cremation & Funeral Home, Inc., through its principals Sherry A. Williams and Craig W. Williams, applies herein for a preneed main license.

The Department received the application on August 23, 2011 and deficiencies were noted on the application. A deficiency letter was sent to the Applicant as of August 26, 2011 and the Applicant responded as of September 9, 2011. A completed background check of all officers revealed no criminal history.

The qualifying licensee will be a funeral establishment located at 357 NW Wilks Lane, Ste B, Lake City. This funeral establishment is controlled by Sherry A. Williams and Craig W. Williams, pursuant to a change in ownership approved by this Board at its June 23, 2011 meeting (but subject to conditions not yet fully satisfied; conditions stated in attached June 23, 2011 Board cover sheet).

Prior to the funeral establishment's change in ownership, preneed was sold at that funeral establishment under the preneed license of ICS Cremation Society, Inc. (F019474). If this present application for preneed main license is approved, ICS Cremation Society, Inc. (F019474) will transfer to Applicant, and Applicant will assume responsibility to perform, certain preneed contracts previously sold at the location (specifically, trust-funded contracts listed in the materials in this Board package).

Applicant will utilize the pre-approved Independent Funeral Directors of Florida (IFDF) Master Trust and preneed contracts forms.

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

Acquired Preneed Contracts	\$ 179,499
Required Net Worth	\$ 20,000
Reported Net Worth	\$ 61,402

The Division is recommending approval subject to the conditions imposed at the June 23, 2011 Board meeting, regarding the change of ownership of the qualifying funeral establishment, be satisfied.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to the conditions imposed at the June 23, 2011 Board meeting, regarding the change of ownership of the qualifying funeral establishment, be satisfied. Ms. Anderson seconded the motion, which passed unanimously.

(2) *Rolling Oaks Cemetery, Incorporated (Port St. Lucie)*

Rolling Oaks Cemetery, Incorporated, applies herein for a preneed license. The qualifying licensee will be Rolling Oaks Cemetery Inc., located at 2200 SW Del Rio Blvd, Port St. Lucie, currently licensed under number F039732. Prior to approximately July 2011, Rolling Oaks Cemetery, Incorporated (F039732), and its preneed licensee by the same name, were owned by First Peoples Bank, N.A. (FPB).

On July 15, 2011, FPB was closed by the Office of Financial Regulation, and the Federal Deposit Insurance Corporation (FDIC) was named as receiver. As receiver of FPB, the FDIC sold various assets of FPB to Florida Community Bank, N.A. (FCB), also formerly known as the Premier American Bank, N.A. As a result, the FCB is now the owner of Rolling Oaks Cemetery, Incorporated and its preneed licensee. A related application for approval of the change of control of the cemetery is also being presented at this meeting.

The Department received the present preneed main license application on September 19, 2011 and no deficiencies were noted on the application. A completed background check of FCB officers revealed no criminal history. Applicant will utilize the pre-approved Funeral Services Inc. (FSI) First Florida Trust (Sabal Trust Company) and preneed contract forms. If this present application for preneed main license is approved, the existing preneed contracts formerly written under preneed main license F039732, Rolling Oaks Cemetery, Inc., will be transferred to Applicant, and Applicant will assume responsibility to perform all preneed contracts previously sold at this location (specifically, trust-funded contracts listed in the materials in this Board package).

The Applicant's financial statement as of December 31, 2010 reflects the following:

Acquired Preneed Contracts	\$ 40,575
Required Net Worth	\$ 10,000
Reported Net Worth	\$ 976,475

The Division is recommending approval with the condition that the Board approves the Application for Change of Control of the qualifying cemetery license, also being presented at this meeting. Since the application was approved the Division is recommending approval without conditions.

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

B. *Recommended for Denial*

(1) *Gendron Funeral & Cremation Services, Inc (Ft Myers)*

Gendron Funeral & Cremation Services Inc. applies herein for a preneed main license, wherein the qualifying entity will be a funeral establishment located at 4224 Cleveland Avenue, Ft. Myers, operating under license number F057222. The application paperwork identifies Michael P. Gendron as President of the Applicant. Michael P. Gendron has previously had his funeral director's license in Vermont revoked by Vermont authorities, and his Florida funeral director's license was subsequently fined by Florida Authorities.

The Prior Disciplinary Action: In or about the year 2000 Vermont regulatory authorities revoked Michael Gendron's funeral director license. The cause for the revocation is summarized as follows: Michael Gendron's father, Paul Gendron, also then a licensed Vermont funeral director, had his funeral director's license suspended for three years by Vermont authorities. Michael Gendron thereafter pre-signed certain documents related to preneed sales, and allowed his father to use same to engage in activities related to preneed sales, in violation of the suspension of the father's license. Michael P. Gendron was also at the time a Florida licensed funeral director.

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

The 2009 Denied Application. Proceedings: In 2009 Gendron Funeral Home - Cremation Service Inc. applied to this Board for a funeral establishment license for a funeral establishment to be located at 4224 Cleveland Avenue, Ft. Myers. The application came before the Board at its April 2009 meeting. The Board, being advised of Michael P. Gendron's disciplinary history, denied the application.

The matter came back before the Board at its August 2009 meeting. The Board allowed the April 2009 funeral establishment application to be withdrawn, thus mooting the denial.

The 2009 Approved Application: At the August 2009 meeting of this Board, another application for a funeral establishment at the same 4224 Cleveland Avenue location was presented to the Board, by Applicant Gendron Funeral & Cremation Services Inc. The application identified one William Savino as president of Gendron Funeral & Cremation Services Inc.

The August 2009 Savino funeral establishment application was accompanied by a Stipulation for Licensure executed by Applicant's President, Mr. Savino. The Stipulation for Licensure indicated that Michael P. Gendron would be employed at the funeral establishment, but would have no ownership or controlling interest. The Stipulation for Licensure further stated as follows, in pertinent part:

12) There are not, to the best of the knowledge and belief of the officers and directors of the Applicant, any written or oral agreements or understandings that ownership or control of Applicant or any of Applicant's assets, including the funeral establishment, will be directly or indirectly transferred to Michael Gendron or any other person or entity, after the license is issued.

14) Applicant agrees that for 5 years from the date the funeral establishment is licensed, Applicant will not allow Michael Gendron to be directly or indirectly involved in making, supervising, or managing, in any way, directly or indirectly, any preneed sales or sales activities, as defined at sections 497.005(54) and 497.452, Fla. Stat., at the funeral establishment, and will prevent Michael Gendron from having any access to blank preneed contract forms of the Applicant.

The August 2009 Savino funeral establishment application was also accompanied by an affidavit by Michael P. Gendron, in which Mr. Gendron stated to the Board as follows:

14) I agree that for 5 years from the date the funeral establishment is licensed, I will not seek or accept any role in which in which I directly or indirectly am involved in making, supervising, or managing, in any way, directly or indirectly, any preneed sales or preneed sales activities, as defined at sections 497.005(54) and 497.452, Fla. Stat., at the funeral establishment, and I will not have any access to blank preneed contract forms of the New Applicant.

At its August 2009 meeting this Board approved the Savino application for a funeral establishment at 4224 Cleveland Avenue, Ft. Myers, and the establishment was issued license number F057222. The 5-year period referred to above would expire in August 2014.

The August 2011 Change in Ownership of Establishments: At this Board's August 2011 meeting there was presented to the Board applications for approval of a change of control of two funeral establishments and one cinerator facility, from the Savino group, to Michael P. Gendron. One of the funeral establishments was the one located at 4224 Cleveland Avenue, Ft. Myers, under license number F057222. The Board approved the change of ownership of the two funeral establishments and the cinerator facility.

The Present Application: The Department received the preneed main license application presently before the Board on July 22, 2011. As stated above, the qualifying entity will be the funeral establishment located at 4224 Cleveland Avenue, Ft. Myers, operating under license number F057222. The application paperwork identifies Michael P. Gendron as President of the Applicant.

In the period April 2, 2010-June 30, 2011, preneed sales were made at the 4224 Cleveland Avenue, Ft. Myers, funeral establishment, as a preneed branch under the preneed license of Savino Funeral Home, Inc. d/b/a Gendron Funeral & Cremation Services, Inc. (F059376). (There is no allegation being made that Michael P. Gendron was improperly involved in those sales.)

If this preneed license application is approved, Applicant will acquire and assume responsibility to perform certain existing preneed contracts (insurance funded contracts totaling \$50,206, and trust funded contracts totaling \$245,692; aggregate total contracts of \$295,898) identified in the attached materials, sold under the preneed license of Savino Funeral Home, Inc. d/b/a Gendron Funeral & Cremation Services, Inc. (F059376)

Applicant proposes to sell both trust and insurance-funded preneed contracts, using the approved forms of Funeral Services, Inc. (FSI) and National Guardian Life Insurance Company (NGLIC).

The Applicant's financial statements as of December 31, 2010 reflect the following:

Acquired Preneed Contracts	= \$ 295,898
Required Net Worth	= \$ 40,000
Reported Net Worth	= \$ 166,177

Section 497.453(2)(f) provides as follows concerning issuance of a preneed main license:

(2) ACTION CONCERNING APPLICATIONS.--A duly completed application for licensure under this section, accompanied by the required fees, shall be approved and a license issued, if the licensing authority determines that the following conditions are met:

(f) The Applicant and the Applicant's principals are of good character and have no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

The Division recommended to the Board that the application be denied, based on s. 497.453(2)(f) and the disciplinary history of Applicant's principal, Michael P. Gendron.

Applicant was represented by attorney Wendy Wiener, who addressed the Board, and whose remarks are summarized as follows: The primary consideration for the Board in a case like this is whether the preneed-buying public is in jeopardy by the issuance of a preneed license. Mr. Gendron's funeral directors license was revoked in a default revocation in Vermont. Mr. Gendron did not attend the hearing as he no longer lived in Vermont, he did not intend to continue to practice in Vermont, and he did not realize frankly what impact that revocation would have on his future capacity in the industry. It did however have an impact upon him in 2000, 2001 and 2002 when, following the revocation, a full 11 years ago, the Board of Funeral Directors and Embalmers disciplined Mr. Gendron. Mr. Gendron has already been disciplined for the revocation in Vermont. He was placed on probation and he paid an administrative fine. Mr. Gendron's funeral directors license remained in force. Since that time, Mr. Gendron has worked selling preneed in the State of Florida from 2002 – 2008, when he decided, as an entrepreneur, to try and obtain his own business; and instead of working for others, sought to become licensed as a funeral home owner. At the time, the Applicant's funeral establishment license and accompanying preneed license were denied. That was the first time, however, that Mr. Gendron was not allowed to sell preneed in Florida. During all the time that he sold preneed, both as a manager for Alderwoods and as a individual working for Fuller Funeral Home in Naples, there was not a single consumer complaint against his license or the preneed license relating to anything to do with Michael Gendron and he had no problems whatsoever with preneed.

Ms. Wiener's made further remarks summarized as follows: In an effort for this Board to be consistent in what it does, the Board does not punish applicants forever and ever. The incident which occurred, occurred more than 12 years ago today and Mr. Gendron is still being penalized for that even though he has already been formally penalized by the Board's predecessor regulatory Board. To continue to prohibit Mr. Gendron from having anything to do with preneed and from having a preneed main license is not only arbitrary, but it goes against what this Board has done, even today, in its rulings. Licenses are not simply not granted forever and ever and ever. This is a circumstance where Mr. Gendron committed an error 12 years ago. Since then he has sold preneed for more than 6 years in the State of Florida without any incident and this Board should be consistent in its decision making and not hold against an applicant its past transgressions forever and ever; and therefore be consistent with your prior opinions.

Ms. Wiener's made further remarks summarized as follows: The statement that Mr. Shropshire referred to was with specific regard to that Applicant. If the Board reads carefully, the language of that statement had to do with that particular Applicant. This is a completely different business and that 5 year period, for all intents and purposes, in this capacity, is not relevant.

The Chair stated that in the affidavit of the 2009 agreement, Mr. Gendron himself agreed that *"for 5 years from the date the funeral establishment is licensed, I will not seek or accept any role in which I directly or indirectly am involved in making, supervising, or managing, in any way, directly or indirectly, any preneed sales or preneed sales activities."*

Ms. Wiener stated that technically, that had to do with that application so the Board should look at this application afresh, with an eye towards whether Mr. Gendron and Mr. Gendron's business pose a harm to the preneed buying public in the State of Florida. Ms. Wiener stated that the Board does not have evidence to show that Mr. Gendron is a harm to the consumer-buying public, particularly when for 6 years after the incident, which gave rise to his default revocation in the year 2000 in Vermont, he sold preneed here in the State of Florida without a single problem. Under the law and under the Board's standards for what should be considered, there is not sufficient evidence to find that he is not appropriately trustworthy to have a preneed license in the State of Florida.

The Chair stated that the Board cannot totally disregard an affidavit that the Applicant willingly signed and entered into agreement with in 2009 as that 5 year agreement extends through 2014.

Ms. Thomas-Dewitt stated that was a part of the stipulation for that application to be approved and in an effort to keep Mr. Gendron an honorable man, the Board needs to abide by the agreement and would therefore recommend denial.

Ms. Wiener questioned whether the denial would be based upon revocation of Mr. Gendron's funeral directors license from 12 years ago, notwithstanding a history of non problematic preneed activity in the State of Florida and upon an affidavit related to a different application than the application presently before the Board. Ms. Wiener stated that she feels strongly that this one will go forward and would like to make sure she understands the grounds for denial.

The Chair stated that Ms. Thomas-Dewitt is recommending denial based on the disciplinary history of Applicant's principal.

Col. Stiegman questioned whether this would exclude the 5 year affidavit.

The Chair responded that it does not exclude that affidavit.

Ms. Thomas-Dewitt stated that is not the basis for her recommendation.

Col. Stiegman stated that the motion would not definitively include the affidavit.

Ms. Thomas-Dewitt stated it is all included in the package.

Mr. Helm stated that he thought the affidavit was included in the recommendation.

Ms. Thomas-Dewitt stated it was a statement to make the Board aware of the agreement but not the total basis of the recommendation.

MOTION: Ms. Thomas-Dewitt moved to deny the application based on the Vermont disciplinary history of Applicant's principal, Michael P. Gendron. Mr. Hall seconded the motion. The vote on the motion was 4 in support, and 4 in opposition. The motion did not carry.

Mr. Shropshire, referring to the tie vote, stated that he has never encountered this before as the Board is missing 1 member resulting in a draw.

Ms. Wiener questioned whether there is something Mr. Gendron could do to make the Board comfortable issuing a preneed license. It is really out of this Board's character to base a denial of a license on something that occurred 12 years ago and has already been disciplined for. Double jeopardy does not apply in a context such as this, but it is very like double jeopardy.

The Chair questioned how the Board could feel comfortable when there is a 2009 agreement of 5 years. Nothing has changed in that affidavit, which the Applicant signed.

Ms. Wiener stated that she was not representing the Applicant at that time and does not know where the 5 year period came from. Mr. Shropshire would agree that was just a number that the parties agreed upon.

Mr. Shropshire stated that the underlying disciplinary action is still very germane. If you remember the facts of the Vermont revocation, it was because Mr. Gendron's father had been suspended from preneed sales and Mr. Gendron pre-signed blank forms and gave them to his father. That was the allegation upon which the Applicant was revoked.

The Chair stated that was directly related to preneed, in another state.

Ms. Wiener stated unfortunately an allegation Mr. Gendron did not technically defend. The Applicant testified when he came before the Board in 2009 that he had left for a medical situation and that he had left some signed preneed contracts at the office. That was absolutely incorrect. Ms. Wiener questioned whether the Board would revoke a preneed license for that in the State of Florida today. Ms. Wiener stated that the Board would discipline that licensee but that the license would not be revoked unless a consumer was harmed. The Board is keeping this Applicant from getting a preneed license for something that happened 12 years ago where there is not a showing of any harm to the public. There was not even consumer harm in that situation.

Mr. Hall questioned whether the affidavit is what induced the Board to go forward.

Ms. Wiener stated the affidavit was not with regard to Mr. Gendron's business. It was with regard to another business with which he was affiliated.

Mr. Helm questioned which business was that.

Ms. Wiener stated it was Savino Funeral Home.

Mr. Helm questioned whether this is the same funeral home Mr. Gendron now owns.

Ms. Wiener stated it is a completely separate business.

Mr. Helm expressed concern that less than 2 years ago Mr. Gendron agreed to this regardless of what it says.

Ms. Huggins stated that the way the motion was worded was the reason for her dissenting vote.

Mr. Jones concurred.

Mr. Shropshire stated that at this point the Division would recommend approval subject to 2 years probation.

Col. Stiegman stated that the 5 year affidavit only applies to Savino Funeral Home. It does not apply in general. This is another organization, another company so the affidavit has nothing to do with it.

Mr. Hall stated that it is the same company. Mr. Gendron is just buying it back from Mr. Savino.

Col. Stiegman stated that it does not matter. It is a different owner, a different establishment. This is not the same place.

Mr. Hall questioned whether it is the same establishment that Mr. Gendron is buying back from Mr. Savino.

Ms. Wiener stated that it is a different license application entirely.

The Chair stated that the affidavit states *"5 years from the date the funeral establishment is licensed."* It does not state if it changes licenses or anything else.

Ms. Wiener stated that the Division takes the position that every time a license changes ownership that the date of licensure of a funeral establishment does not continue to carryover.

The Chair stated it does not matter as this is not what the affidavit says. It says, "I agree that for 5 years from the date the funeral establishment is licensed." That funeral establishment could have closed down; it could have gone to Vermont but "5 years from the date the funeral establishment is licensed." It does not say anything about change of ownership.

Ms. Huggins questioned whether there is a new license from Savino to Gendron and whether it is a totally different license.

Ms. Wiener answered, "Yes." It was issued 2 months ago.

The Chair stated that really does not matter because Mr. Gendron stated "I agree that for 5 years from the date the funeral establishment is licensed." It does not matter how it changed hands or anything else. That was a date that was agreed upon, not based upon change of ownership or anything else other than the date that it was licensed.

Ms. Wiener questioned whether there is something about that 5 years that is material to The Chair.

The Chair stated that is an agreement that was made with this Board to get something done that was based upon the affidavit that Mr. Gendron willingly entered into. To not abide by this would be unlike the Board to disregard an affidavit that he willingly entered into.

2nd MOTION: Ms. Huggins moved to deny the application based on the affidavit and the Vermont disciplinary history of Applicant's principal, Michael P. Gendron. Mr. Hall seconded the motion, which passed with 2 dissenting votes.

10. Application(s) for Continuing Education Courses

A. Recommended for Approval without Conditions – Addendum B

- (1) *The Dodge Institute for Advanced Mortuary Stu #81*
- (2) *FUNERALDIRECTORCEUS.COM #14008*
- (3) *M.K. Jones & Associates, Inc. #9605*
- (4) *National Funeral Directors Association #136*
- (5) *Selected Independent Funeral Homes #137*

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

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

11. Application(s) for Approval as a Continuing Education Provider

A. Recommended for Approval without Conditions – Addendum C

- (1) *Crystal Pinkston #14408*
- (2) *Hospice Foundation of America #14410*

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

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

12. Application(s) for Florida Law and Rules Examination

A. Recommended for Approval without Conditions – Addendum D

- (1) *Funeral Director – by Endorsement*
 - (a) *McClure, Jontae R*
- (2) *Funeral Director and Embalmer – by Endorsement*
 - (a) *Bass, James R*
 - (b) *Goodson, Kermit J*
 - (c) *Nanartowicz, Christine*
 - (d) *Prouty, Christopher S*
- (3) *Funeral Director and Embalmer – by Internship and Exam*

- (a) Barber, Cheryl J
- (b) Gonzalez, Samantha A
- (c) Hurd, Matthew E
- (d) Socarras, Jennifer

The Division recommends approval of the application(s).

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

- B. *Recommended for Approval with Conditions (Criminal History)*
 - (1) *Direct Disposer*
 - (a) *Goodman, Michael S*

The Applicant submitted a Direct Disposer application on March 26, 2010. The application was incomplete when submitted. All deficient items were returned on August 26, 2011. The Applicant submitted a fingerprint card and was returned with criminal history.

Mr. Goodman pled no contest to Criminal Mischief (3rd degree felony) on August 26, 1999. The matter related to an altercation between Applicant and another man who was a friend of Applicant's former girlfriend; Applicant was apparently charged with driving his car into the other man's car. He was sentenced to two years probation and to pay \$5893 in restitution.

The Division is recommending approval subject to the terms & conditions of the attached stipulation for licensure.

MOTION: Mr. Helm moved to approve the application subject to the terms & conditions of the attached stipulation for licensure. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

- (2) *Funeral Director and Embalmer – by Endorsement*
 - (a) *Gulley, Timothy J*

The Applicant submitted a Funeral Director and Embalmer application on July 1, 2010. The application was incomplete when submitted. All deficient items were returned on August 8, 2011. The Applicant submitted a fingerprint card and was returned with criminal history.

Mr. Gulley pled guilty to Assault in the 4th degree (misdemeanor) on August 13, 2009, in regards to a fight with his brother-in-law. The arresting officer's report states that Subject was cooperative when police arrived at the scene. He was sentenced to 2 days jail time and probation for two years.

The Division is recommending approval subject to the terms & conditions of the attached stipulation for licensure.

MOTION: Ms. Huggins moved to approve the application subject to the terms & conditions of the attached stipulation for licensure. Mr. Jones seconded the motion, which passed unanimously.

- C. *Recommended for Denial (Adverse Licensing History)*
 - (1) *Funeral Director and Embalmer*
 - (a) *Washington, Anthony*

The Applicant submitted an application to become a Funeral Director and Embalmer by Internship on April 8, 2011. The application was incomplete when submitted. All deficient items were returned on June 28, 2011. The Applicant submitted a fingerprint card and was returned with criminal history.

Mr. Washington previously had a Funeral Director and Embalmer license (F043405). His license expired on August 31, 2007. Mr. Washington's license was placed on a null and void status on September 1, 2009 for failure to renew his license. A consent order was issued by the Department on August 2, 2011 in reference to Mr. Washington practicing without a license. Mr.

Washington was ordered to pay a fine in the amount of \$1000 within 30 days of the entry of the Consent Order. The fine had not been received as of the due date of September 2, 2011. However, the fine was paid on October 3, 2011.

The Division is recommending approval subject to 2 years probation.

Ms. Huggins recused herself as she served on Probable Cause Panel B.

Mr. Hall questioned why the original application was applied for as an internship.

Mr. Washington stated he will be taking the Law and Rules exam again.

Mr. Shropshire stated that Mr. Washington would have to complete an internship as he is applying as if he has never been licensed before.

Mr. Washington stated that he was advised he would have to take the Law and Rules exam again because he was previously licensed.

Mr. Shropshire stated that the Division has and does give Mr. Washington credit for having done a 1-year internship.

Mr. Washington questioned whether he would just have to pass the Laws and Rules exam if the Board votes in his favor.

Mr. Shropshire concurred.

MOTION: Mr. Hall moved to approve the application subject to 2 years probation during which time Mr. Washington cannot serve as FDIC. Mr. Jones seconded the motion, which passed unanimously.

13. Application(s) for Internship

A. Recommended for Approval without Conditions – Addendum E

(1) Funeral Director and Embalmer

- (a) Caban, Nicole L
- (b) Craynock, Cody J
- (c) Gray II, Russell D
- (d) Grubb, Magon A
- (e) Lutz, Amy E

The Division recommends approval of the application(s).

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

14. Application(s) for Training Agency

A. Recommended for Approval without Conditions – Addendum F

(1) Funeral Directing

- (a) Aycock Funeral Home (F040988) (Port St. Lucie)
- (b) Howard-Price Funeral Home (F040309) (North Palm Beach)
- (c) Kraeer Funeral Home and Cremation Center (F039784) (Coral Springs)
- (d) Menorah Gardens and Funeral Chapels (F040423) (Ft Lauderdale)
- (e) Moss-Feaster Funeral Homes & Cremation Services (F040919) (Clearwater)
- (f) Palms-Robarts Funeral Home & Memorial Park (F041267) (Sarasota)
- (g) Riverside Gordon Memorial Chapels (F041551) (Aventura)
- (h) Riverside Gordon Memorial Chapels at Mount Nebo Kendall (F040111) (Miami)
- (i) SCI Funeral Services of Florida Inc d/b/a Groover Funeral Home at Mansion Memorial Park (F040897) (Manatee)
- (j) SCI Funeral Services of Florida Inc d/b/a National Cremation Society (F058288) (Jacksonville)
- (k) Wylie-Baxley Funeral Home (F040860) (Merritt Island)

- (2) *Funeral Directing & Embalming*
 - (a) *Central Florida Casket Store & Funeral Chapel (F041545) (Lakeland)*
 - (b) *Gendron Funeral & Cremation Services Inc (F065944) (Ft Myers)*
 - (c) *Purcell Funeral Home (F047499) (Bushnell)*

The Division recommends approval of the application(s).

Col. Stiegman questioned the application for Gendron Funeral & Cremation Services as the Board denied their application earlier in the meeting.

The Chair stated that the preneed license was denied and it has no bearing on this application.

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

- 15. **Consumer Protection Trust Fund Claim(s)**
 - A. *Recommended for Approval without Conditions – Addendum G*

The Division recommends approval of the claim(s).

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

- 16. **Application(s) for Monument Establishment Sales Agent**
 - A. *Informational Item (Licenses Issued without Conditions) - Addendum H*

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

- 17. **Application(s) for Cinerator Facility**
 - A. *Recommended for Approval with Conditions*
 - (1) *Kaduk Funeral Services Inc d/b/a West Florida Crematory (New Port Richey)*

The application was received by the Division on August 24, 2011. The application was incomplete when submitted. All deficient items were received on September 12, 2011. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be Theodore Kaduk (F043419). The Division is recommending approval subject to the condition(s) as follows:

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

MOTION: Mr. Jones moved to approve the applications with the conditions recommended by the Division. Mr. Hall seconded the motion, which passed unanimously.

- 18. **Application(s) for Direct Disposal Establishment**
 - A. *Recommended for Approval with Conditions*
 - (1) *Compass Pointe Cremation Service LLC (Orlando)*

An application for a Direct Disposal Establishment was received on August 23, 2011. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Heather Norton (F049905). The Division is recommending approval subject to the condition(s) that the establishment passes an on-site inspection by a member of the Division staff.

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

(2) *Eden's Cremation Society LLC (Pompano Beach)*

An application for a Direct Disposal Establishment was received on August 23, 2011. The application was incomplete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Luke Chery. The Division is recommending approval subject to the condition(s) that the establishment passes an on-site inspection by a member of the Division staff.

The Chair questioned whether he missed the agreement for refrigeration.

MOTION: Ms. Thomas-Dewitt moved to approve the application with the conditions that the establishment passes an on-site inspection by a member of the Division staff and proof of the agreement for refrigeration. Mr. Jones seconded the motion, which passed unanimously.

(3) *Lew Hall Jr and Associates Inc d/b/a Gentry-Morrison Cremation Center (Lakeland)*

An application for a Direct Disposal Establishment was received on August 24, 2011. The application was incomplete when submitted. All deficiency items were returned on September 9, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Marvin Owen (F045174). The Division is recommending approval subject to the condition(s) that the establishment passes an on-site inspection by a member of the Division staff.

Mr. Hall disclosed his affiliation with Lew Hall Jr and Associates Inc d/b/a Gentry-Morrison Cremation Center and stated it would not affect his ability to remain fair and impartial.

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

(4) *Northeast Florida Cremation LLC d/b/a A Direct Cremations (Summerfield)*

An application for a Direct Disposal Establishment was received on August 30, 2011. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Daniel Hart (F043444). The Division is recommending approval with conditions.

The licensee, Northeast Florida Cremation LLC, does have prior adverse licensing history. In July 2011, the Division issued a Consent Order with a fine of \$2000 and probation for one year. The licensee paid the fine on July 22, 2011. The Division is recommending approval subject to the condition(s) that the establishment passes an on-site inspection by a member of the Division staff.

Mr. Helm questioned whether the Applicant should remain on probation until that previous probation is up.

Ms. Wiener stated that is not typical.

MOTION: Mr. Helm moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff and probation until July 2012. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(5) *RQKQFlowers LLC d/b/a Cremation Society of America (Hollywood)*

The application was received by the Division on September 9, 2011. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be David Brazil (F042072). The Division is recommending approval subject to the condition(s) as follows:

- (1) That the closing occur within 60 days of the date of this Board meeting.

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

MOTION: Mr. Hall moved to approve the applications with the conditions recommended by the Division. Mr. Jones seconded the motion, which passed unanimously.

19. Application(s) for Funeral Establishment

A. Recommended for Approval with Conditions

(1) David W Wolf d/b/a Haught Funeral Home (Plant City)

The application was received by the Division on September 8, 2011. The application was incomplete when submitted. All deficient items were received on September 13, 2011. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be David Wolf (F044893). The establishment passed its inspection on September 19, 2011. The Division is recommending approval subject to the condition(s) as follows:

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

MOTION: Ms. Anderson moved to approve the applications with the conditions recommended by the Division. Mr. Jones seconded the motion, which passed unanimously.

20. Application(s) for Removal Service

A. Recommended for Approval with Conditions

(1) Cornerstone Services of South Florida Inc (Miramar)

Cornerstone Services of South Florida Inc (F039820) submits this request for approval of a change in location of the removal service, as required by s. 497.385(1)(g)2, Florida Statutes.

The application for a Removal Service was submitted on June 30, 2011. The application was incomplete when submitted. All deficient items were returned on September 1, 2011. The fingerprint cards for all principals were submitted and returned without criminal history. The Division is recommending approval subject to the condition that the establishment passes an on-site inspection by a member of the Division staff.

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

B. Recommended for Denial (Criminal History)

(1) LRC Corp d/b/a LRC Transport (New Port Richey)

An application for a Removal Service was received on April 18, 2011. The application was incomplete when submitted. All deficient information was returned on August 2, 2011. The fingerprint cards for both principals were returned with criminal history.

Douglas Pattison: Pled No Contest, but was convicted (found guilty) of a misdemeanor, trespassing, failing to leave a property, on November 10, 2009. Mr. Pattison was sentenced to time served and ordered to pay \$500 for fines and court costs.

Mickey Welch: Pled Guilty to a third degree felony of sale of marijuana and a misdemeanor charge of possession of marijuana in February 2010. Mr. Welch was placed on probation for three years, ordered to pay \$138 restitution, \$136 fines and \$713 court costs. He is currently on house arrest.

The Division is recommending denial based on the above mentioned criminal history as reflecting on the character of the principals.

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

MOTION: Mr. Hall moved to deny the application based on the above mentioned criminal history. Col. Stiegman seconded the motion, which passed unanimously.

21. Request(s) for Board Appearance

A. Recommended for Approval with Conditions

(1) Request to Extend Internship License

(a) Dunne, Mary R (F063223)

Ms. Dunne was issued a Concurrent Intern license on February 3, 2011. Per the letter submitted by the licensee, her employment ended with Hiers-Baxley Funeral Services of The Villages on March 23, 2011. The Division has contacted a representative of Hiers-Baxley, who indicates that that Ms. Dunne left due to a dispute as to the terms of her employment, and she was not terminated for cause.

Ms. Dunne completed six weeks of training at Hiers-Baxley, so she needs another 48 weeks of internship.

Ms. Dunne has been actively seeking employment and has been offered an intern position with Roberts Funeral Home of Dunnellon (F040901). The Division recommends that the request for Ms. Dunne be approved with the condition that the internship be extended forty eight (48) weeks, starting on October 7, 2011, and must be completed by September 7, 2012.

MOTION: Ms. Huggins moved to approve the request with the condition that the internship is extended forty eight (48) weeks, starting on October 7, 2011, and must be completed by September 7, 2012. Mr. Jones seconded the motion, which passed unanimously.

B. Recommended for Denial

(1) Request to Waive Rule 69K-16.002, Examination for Funeral Director Applicants

(a) Jennings, Tony (F063935)

Mr. Tony Jennings has an Embalmer License (F063935) but is requesting to be able to receive a Funeral Director License. Mr. Jennings has taken the National Board exam. He passed the Science section; however he received a score of 74.4% on the Arts Section. He is asking to be approved for licensure because he is so close to a passing score. The Division referred to the following rule:

69K-16.002 Examination for Funeral Director Applicants.

(1) Any person desiring to be licensed as a funeral director shall apply to the Department and successfully pass the licensure examination prepared and administered by the Department, pursuant to Rule 69K-16.0001, F.A.C.

(2) Additionally, the successful Applicant will have attained a score of seventy-five percent (75%) on the funeral service arts section of the National Board Examination prepared by the Conference of Funeral Service Examining Boards, attained a score of seventy-five percent (75%) on the funeral service science section of the NBE prepared by the Conference of Funeral Service Examining Boards.

The Division is recommending denial of his request because he does not meet the requirements by Rule of passing the Arts section with a 75% or higher.

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

MOTION: Ms. Thomas-Dewitt moved to deny the request based on the Applicant not meeting the requirements by Rule of passing the Arts section with a 75% or higher. Col. Stiegman seconded the motion, which passed unanimously.

22. Trust Transfer Request(s)

A. Recommended for Approval with Conditions

(1) Northstar Cemetery Services of Florida, LLC (Ormond Beach)

D/B/A Beth David Memorial Gardens (F050017)

D/B/A Ft Myers Memorial Gardens (F050018)

D/B/A Graceland Memorial Park North (F050019)

D/B/A Graceland Memorial Park South (F050020)

D/B/A Hillcrest Memorial Gardens (F039416)

D/B/A Lakeside Memory Gardens (F039414)

D/B/A Lakeview Memorial Gardens (F039415)

D/B/A Palm Beach Memorial Gardens (F039417)

D/B/A Royal Palm Memorial Gardens (F039419)

D/B/A Skyway Memorial Gardens (F050016)

(a) Transfer of Cemetery Care & Maintenance Trust from Regions Bank to BOKF, N.A. d/b/a Bank of Oklahoma

Northstar Cemetery Services of Florida, LLC (Northstar), collectively doing business as the above listed, has appointed BOKF, N.A. d/b/a Bank of Oklahoma (BOKF) as successor trustee and requests transfer of the above mentioned trust accounts currently held by Regions Bank (Regions) to BOKF. The transfer includes the trust accounts for preneed sales and the perpetual care and cemetery care and maintenance trust funds for the cemeteries and preneed branches, currently owned by Northstar. BOKF will continue to operate under the existing trust agreements The Division is recommending approval subject to the conditions as follows:

- (1) That BOKF provides a certification statement that as trustee it meets the requirements of Rule 69K-7.015(1) or (2).
- (2) That the former trustee provides a certificate stating the dollar amount of trust assets being transferred.
- (3) That BOKF, as new Trustee, provides acknowledgement of receipt of the amount of trust assets being transferred as specified by the former trustee.
- (4) That the effective date of the transfer and all above certifications be provided to the Division within 60 days of the date of this Board Meeting.

MOTION: Mr. Hall moved to approve the agreement with the condition that the Department receives the approved trust agreement and construction agreement fully executed by all parties within 60 days from the date of this Board meeting. Ms. Anderson seconded the motion, which passed unanimously.

23. Chairman's Report (Oral)

The Chair stated that he, along with Mr. Shropshire and Ms. LaTonya Bryant-Parker, will be looking at the 2012 schedule for Board meetings and requested that anyone with input on the dates or places advise soon.

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

None

25. Executive Director's Report

A. Correction to June 30, 2011 Costs and Revenue Report

Mr. Shropshire had indicated that there was a slight positive cash flow for the fiscal year just ended when in fact there was a slight negative cash flow in the amount of \$78, 565 for the fiscal year ending 6.30.2011. The trust fund balance is adequate to cover that and the Division does not believe there are any immediate or urgent problems.

B. Legislative Issues (Juhan Mixon and Any Other Interested Parties)

Mr. Juhan Mixon thanked the Board for its dedication, time, efforts and energies from doing work for the public of the State of Florida. Normally at this time of year the Legislature is just getting started with their process, getting organized, but with reapportionment, the session is going to start the first of January rather than the first of March so they are moving forward rather fast. The good news is because they are moving forward very fast and the number 1 priority is reapportionment, every legislator has to run this year. There are going to be a lot of issues that may have come up that will not come up this year. So

far, we only have just a couple of issues that would be of concern to our profession. Senator Lynn's bill, Senate Bill 430, is back again. This is the tax exemption bill. It exempts funerals; however, it does not exempt anything else other than the funeral itself. That Bill has been up for at least the last 4 or 5 years and has never passed and it probably will not pass again this year, but it is there. Senator Fasano has an interesting Bill that deals with cremations; actually the cremation of dogs. Police departments are required to pay for the police dogs keep after retirement and then provide for cremation. Representative Rooney has his Protest Bill back again. Basically it provides that protesters cannot come within 500 feet of a funeral or memorial service to protest. That Bill was up last year and is back this year with some refinements. Mr. Mixon expects that this bill will receive a pretty fair hearing. This is HB 31 and it has been filed.

Col. Don Stiegman questioned whether it refers to all funerals or just military funerals.

Mr. Mixon responded that it applies to all funerals. Those basically are the big bills. There are some Worker's Comp issues, business types of bills, and other things that are going to impact the profession but not necessarily this Board.

Mr. Mixon requested that the Board consider some other issues that may or may not take legislation. It may be legislation that we take up in subsequent years. IFDF had considered getting a bill together this session. Although we are not going to move with it, we would like to bring them to the Board's attention. First of all, the funeral homes and cemeteries have this annual examination. There are some funeral homes and cemeteries, many of them in the state, who have an annual examination and have had no serious exceptions for years and yet every year we are having to use staff from the Agency to come back and do this annual examination while we have others that have been less than stellar that we know about. Those examiners are coming back to other funeral homes year after year after year, using up valuable taxpayer time and money and our money in this profession for these annual examinations. Mr. Mixon requested that the Board consider in the future that for a funeral home that has had no serious exceptions that those examinations not be annual but biannual. That is something the Board could discuss.

The case reports that are required to be sent in. Obviously the second biggest issue in the Legislature is going to be budget. One of the things that we have to do is send in our case reports to the Agency. It is time consuming but we still have to keep them. Mr. Mixon requested that the Board consider that the case reports not have to be sent to the Agency but be kept at the funeral home where the examiner can get the results of those because when they are sent to Tallahassee they are essentially filed and nothing is done with them. The third thing for the Board to consider over the course of the next few meetings is what we do with our trust fund. Every Governor that comes in now because we are in hard times wants to look at the trust fund and wants to take money of the trust fund to run government. That trust fund is for the protection of the public and we would like for this Board to consider either capping that trust fund so that when it reaches a certain level and there is enough money to protect the public it can be capped and fees can be reduced so that the money is used in other ways. Those are just some of the more mundane things. We have a problem in the State of Florida. Up till now we have had one company that has been advertising free cremations. It appears the family comes in and is promised a free cremation. These companies are for-profit companies that are taking these bodies out of state, harvesting organs, heads, bones, skin and making a profit on selling them and sending back body parts to the state for the free cremation. The Board needs to look at this. It is in its infancy. There are 2 other companies that want to do this. Mr. Mixon requested that the Board direct staff to begin look at this and make reports to the Board so that we can look at some regulation on this in the future.

26. Administrative Report

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

27. Disciplinary Report

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

28. Adjournment

The meeting was adjourned at 1:22 p.m.