

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
VIDEOCONFERENCE MEETING
AUGUST 3, 2023 - 10:00 A.M.

A. Call to Order, Preliminary Remarks, and Roll Call

Ms. Jill Peeples – Good morning, this is Chair Jill Peeples. It is 10:00 A.M. It's Thursday, August 3, 2023. This is a videoconference meeting, and I would like to turn it over to Ms. Simon for preliminary remarks and roll call.

Ms. Ellen Simon – Thank you, Madam Chair. Good morning. My name is Ellen Simon. I am the Assistant Director for the Division of Funeral, Cemetery, and Consumer Services. This is a public meeting of the Board of Funeral, Cemetery, and Consumer Services. This meeting is being held by videoconference. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to interested persons. Both the link and call-in number are on the agenda, which has been made available to the public. The link and call-in number and other information relating to this Board meeting has also been published on the Division's website. Ms. LaTonya Bryant is recording the meeting and minutes will be prepared.

As this is a videoconference of the Board, there are some items I need to draw your attention to. For one, as a general rule, please do not utilize your video camera for the meeting unless you are a Board member, Board counsel, or an authorized Division employee. If you have a matter listed on the agenda and intend to appear before the Board to represent yourself, or if you are an attorney that is representing a client, only turn your video camera option on when we have reached the agenda item that you want to be heard on or when you hear your name called. Then turn your video camera option off again as soon as your matter has been addressed by the Board.

As always, we need everyone that is on the call to place their phone or audio feed on mute, if you are not speaking. The ambient noise coming from someone's phone or audio, which is not muted, causes severe disruption to the meeting. If you are not muted, you may be muted by Division staff. As a result, you may need to call back into the meeting because that may be the only way to unmute your phone. Also, if you are using your computer or smartphone for your audio feed, please remember to speak directly into the microphone on your device. To do so otherwise negatively impacts the recording of this meeting. Just as in a live meeting, persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board's Chair, Ms. Peeples, runs the meeting. Persons desiring to speak should initially ask the Chair for permission.

As a reminder to Board members, you are to refrain from commenting on facts not included within your Board packages, and instead base your decision solely on the information in your Board packages, as well as testimony provided at this meeting. Additionally, ongoing investigations are private and confidential and are not to be discussed, even for the purposes of confirming there is an investigation. Just a few words about Item W on your agenda, which is Public Comment. Public Comment is reserved for general comments by the public and not for re litigation of any matter before the Board. Please be aware that if Public Comment is used as an attempt to re litigate a matter that has been heard on this agenda, the Board will be instructed that the comment is not appropriate for Public Comment, and it should not be considered for further discussion.

As a final reminder, Board meetings are public meetings under Florida Law, and anything said via chat is subject to a public records request. This feature should only be used for technological issues you may be experiencing, and all inquiries in chat should be directed to Mary Schwantes, Executive Director. She is monitoring the chat feature and, as necessary, will forward your inquiry to someone who can assist in resolution of the problem. At this point I will take the roll:

Jill Peeples, Chair
Andrew Clark, Vice Chair
Joseph "Jody" Brandenburg
Sanjena Clay **{EXCUSED}**
Vincent "Todd" Ferreira
Christian "Chris" Jensen
Kenneth "Ken" Jones
Janis Liotta

Jay Lyons
Darrin Williams

Also noted as present:

Mary Schwantes, Executive Director
Rachelle Munson, Board Legal Advisor
Marshawn Griffin, Department Legal Counsel
Kimberly Marshall, Department Legal Counsel
LaTonya Bryant, Department Staff
Crystal Grant, Department Staff

Ms. Simon – Madam Chair, we have a quorum for the business of the Board.

Chair Peebles – Thank you, Ms. Simon.

B. Old Business

(1) Application(s) for Preneed Main License Renewals

(a) Recommended for Approval with Conditions

1. JMC Family Enterprise Inc. (F568941) (Port St Lucie)

Ms. Simon – Is this entity or a representative of this entity on the call today? Hearing no response. This application for renewal of a preneed license was presented at the June 29, 2023, Board meeting on an Addendum. As of June 30, 2023, the licensee provided to the Division a completed renewal packet along with the required renewal fee. Licensee has demonstrated that it meets the net worth requirement for renewal. As a result, there are additional late fees in the amount of \$1000. The Division recommends that this renewal be granted, subject to payment of a \$1,000 late renewal filing fee. The Division further recommends that the renewed license be suspended, but the imposition of the suspension be stayed for sixty (60) days from the renewal date. If the late fee is paid by said 60th day, the suspension imposed shall not take effect. If the suspension imposed takes effect, it shall continue in force until the licensee pays the late fee. Madam Chair?

Chair Peebles – Thank you, Ms. Simon. Board members?

Mr. Jay Lyons – Madam Chair?

Chair Peebles – Yes, Rabbi Lyons?

Rabbi Lyons – Is there any distinction between doing that, and simply saying that it's approved on the condition that they pay the fee within sixty (60) days?

Ms. Simon – Madam Chair, may I respond?

Chair Peebles – Yes, ma'am.

Ms. Simon – In this instance, if the payment of the late fee is a condition for renewal of licensure that means that the entity will not be able to sell preneed during that period of time. What this does is it gives the licensee sixty (60) days to pay the fee. If they do not pay the fee during that time, then the suspension will take effect. Does that answer your question?

Rabbi Lyons – But if we would approve it on the condition that they pay, they wouldn't be able to sell preneed until they pay?

Ms. Simon – Correct, sir.

Rabbi Lyons – But if we do it this way, then they can sell immediately?

Ms. Simon – Yes, sir.

Rabbi Lyons – Ok.

MOTION: Mr. Ken Jones moved to approve the application subject to the conditions recommended by the Division. Mr. Todd Ferreira seconded the motion, which passed unanimously.

(b) Recommended for Approval without Conditions

1. Sanchez Rehoboth Mortuary LLC (F349637) (St Petersburg)

Ms. Simon – Is there a representative on the call today? Hearing no response. This application for renewal of a preneed license was presented at the June 29, 2023, Board meeting on Addendum K – Non-Renewing Preneed Licensees as of June 30, 2023. However, as of June 30, 2023, the licensee provided to the Division a completed renewal packet along with the required renewal fee plus late fees in the amount of \$1,000. Licensee has demonstrated that it meets the net worth requirement for renewal. The Division finds that the Licensee has met all requirements for renewal. Therefore, the Division recommends approval without conditions.

MOTION: Rabbi Lyons moved to approve the application. Mr. Ferreira seconded the motion, which passed unanimously.

C. Disciplinary Proceedings

(1) Settlement Stipulation (No Probable Cause Panel Member Recusal Needed)

(a) Shorter, Michael Derrall Jr.: DFS Case No. 292655-22-FC; Division No. ATN-37872 (F063226)

Ms. Simon – Is Mr. Shorter or a representative on the call today?

Ms. Wendy Wiener – This is Wendy Wiener representing Mr. Shorter.

Ms. Simon – Thank you, Ms. Wiener. Presenting for the Department is Ms. Marshall.

Ms. Kimberly Marshall – Thank You, Ms. Simon. And good morning, Board members. This is Kimberly Marshall from the OGC. I just wanted to apologize, first of all, for the lack of video this morning. I'm having some connectivity issues. But I wanted to make sure, first of all, if everybody can hear me?

Chair Peeples – Yes, ma'am.

Ms. Marshall – Perfect. Thank you. So, this particular case, and before I begin my presentation, I wanted to give the Board a little bit of context for it. This case was previously heard at the June Board meeting. A counteroffer was made to the Respondent based on the settlement that he was not given an opportunity to accept on the record. So, this stipulation that's being presented today reflects the terms of the counteroffer that the Board had previously offered to the Respondent in June. So, Michael Derrall Shorter, Jr. ("Respondent") is a funeral director and embalmer licensed under Chapter 497 and holding license number F063226. At all times material to this case, Respondent was the Funeral Director in Charge of Foundation Partners of Florida LLC, d/b/a A Life Tribute Funeral Care ("A Life Tribute"), a funeral establishment holding license number F201713 and doing business in Largo, Florida. The Department conducted an investigation of A Life Tribute and found that the establishment issued preneed contracts to consumers which were not sequentially numbered. As the Funeral Director in Charge of A Life Tribute, Respondent is subject to discipline for this violation. The disciplinary guidelines for this violation call for a reprimand, a fine of \$250 to \$2500 plus costs, probation six (6) months to one (1) year, suspension up to two (2) years, permanent revocation and/or restitution. Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides that Respondent shall pay a fine of \$500 within thirty (30) days of the entry of a Consent Order in this case. Again, this does reflect the counteroffer that the Board previously made. The Department requests that the Board accept this Settlement Stipulation in resolution of this matter, and I'm available to answer any questions. Thank you.

Mr. Andrew Clark – Madam Chair?

Chair Peeples – Yes, Mr. Clark?

Mr. Clark – I just would like to state for the record my affiliation with Foundation Partners Group of Florida. That affiliation will not prevent me from rendering a fair and impartial decision on this matter, or any matter, coming before the Board today. Thank you.

Chair Peeples – Thank you, Mr. Clark. Ms. Wiener, would you like to address the Board?

Ms. Wiener – No, ma'am. I'm just here to answer questions. This was simply the formalization of what happened in June.

Chair Peeples – Thank you, ma'am. Mr. Brandenburg?

MOTION: Mr. Jody Brandenburg moved to accept this Settlement Stipulation, which provides that the Respondent shall pay a fine of \$500 within thirty (30) days of the entry of a Consent Order in this case. Mr. Darrin Williams seconded the motion, which passed unanimously.

(2) Settlement Stipulation (Probable Cause Panel A)
(a) Schiro, Carly; DFS Case No. 306005-23-FC; Division No. ATN-40386 (F057653)

Ms. Simon – Is Ms. Schiro or a representative on the call today? Hearing no response. Mr. Griffin?

Mr. Ken Jones – Madam Chair?

Chair Peeples – Yes, Mr. Jones?

Mr. Jones – I'd just like to state that I served on Probable Cause Panel A and will recuse myself from any Probable Cause Panel A topics presented today.

Chair Peeples – Thank you, Mr. Jones. Mr. Griffin?

Mr. Marshawn Griffin – Marshawn Griffin for the Department. Carly Schiro (“Respondent”) is currently licensed as a funeral director and embalmer. Respondent is the former Funeral Director in Charge (“FDIC”) of SCI Funeral Services of Florida, LLC, d/b/a Southeastern Crematory (“Southeastern Crematory”) a cinerator facility, licensed under Chapter 497, Florida Statutes, license number F040267. The Department conducted an investigation of Southeastern Crematory and found that an employee of Southeastern Crematory engaged in sexual conduct with human remains in Southeastern Crematory’s care and custody. Respondent, as FDIC of Southeastern Crematory, is subject to discipline based on Southeastern Crematory’s violation of Chapter 497, Florida Statutes.

This matter was previously before the Board at the June 29, 2023, Board meeting for consideration of a proposed stipulation. The initial stipulation provided that Respondent would pay a fine of \$5,000 and would be prohibited from serving as an FDIC or Direct Disposer in Charge (“DDIC”) for any entity regulated pursuant to Chapter 497, Florida Statutes, for a period of two (2) years. The Board rejected the stipulation and countered with the following terms: Respondent would pay a fine of \$5,000 and have her license placed on probation for two (2) years. A special condition of the probation was that Respondent would be prohibited from acting as an FDIC or DDIC of any entity regulated under Chapter 497, Florida Statutes. Respondent has accepted the Board counteroffer. The Department requests that the Board accept this Settlement Stipulation.

Chair Peeples – Thank you, Mr. Griffin. Board members?

MOTION: Mr. Ferreira moved to accept this Settlement Stipulation, which provides that the Respondent shall pay a fine of \$5,000 and have her license placed on probation for a period of two (2) years, with a special condition of the probation that Respondent would be prohibited as and FDIC or DDIC of any entity regulated under Chapter 497, Florida Statutes. Ms. Janis Liotta seconded the motion.

Chair Peeples – Is there any discussion on the motion? Mr. Williams?

Mr. Williams – Yes. Thank you, Madam Chair. So, Mr. Griffin, two (2) things. Was there in a conversation, in reference to the entity, in terms of any fines or suspension or probation?

Mr. Griffin – At the June 29, 2023, Board meeting, we presented both, the case against the establishment Southeastern Crematory, and the case against Carly Schiro. In the Southeastern Crematory case, this Board accepted the Settlement Stipulation of a \$10,000 fine, and that their license would be placed on probation for a period of five (5) years. Southeastern Crematory, even though it's not related to the case, they have paid the fines.

Mr. Williams – And Madam Chair, may have a second question?

Chair Peebles – Yes, sir?

Mr. Williams – My second question is, in reference to this individual, I know they will not be able to be able to be and FDIC or DDIC, but would they still be able to be a funeral director without any type of suspensions or probation?

Mr. Griffin – They're on a period of probation for two (2) years.

Mr. Williams – Ok.

Chair Peebles – Does that complete your questions, Mr. Williams?

Mr. Williams – Yes, ma'am.

Chair Peebles – Thank you. Is there any other discussion on the motion? Hearing none. All in favor of the motion, say yes.

Board members – Yes.

Chair Peebles – All opposed, say no.

Mr. Williams – No.

Chair Peebles – Motion carries.

(3) Settlement Stipulation (Probable Cause Panel B)
(a) Foundation Partners of Florida LLC d/b/a E. James Reese Funeral Home & Crematory: DFS Case No. 293317-22-FC; Division No. ATN-37464 (F201716)

Ms. Simon – Is there a representative of this entity on the call today?

Ms. Wiener – Yes, Wendy Wiener. I represent Foundation Partners of Florida.

Mr. Williams – Madam Chair?

Chair Peebles – Yes, Mr. Williams?

Mr. Williams – I need to recuse myself as I served on Probable Cause Panel B for cases (3)(a), (3)(b), (5)(a) and (6)(a).

Chair Peebles – Thank you, Mr. Williams. Ms. Simon?

Ms. Simon – Ms. Marshall?

Ms. Marshall – Thank you, Ms. Simon. Kimberly Marshall on behalf of the Department. Foundation Partners of Florida LLC, d/b/a E. James Reese Funeral Home & Crematory. (“Respondent”) is a funeral establishment and apprentice/intern training agency holding license number F201716. The Department conducted an investigation of Respondent and found that

Respondent failed to provide the purchaser of funeral goods with a detailed, written agreement for all items purchased. Respondent further failed to maintain completed copies of Bodies Handled Reports for the months of February 2021 through July 2021. The disciplinary guidelines for these violations provide as follows:

- Count I: *Failing to provide a detailed, written agreement*: a reprimand, fine of \$500 to \$1000 plus costs, probation six (6) months to one (1) year with conditions
- Count II: *Incomplete bodies handled reports*: a reprimand, a fine of \$250 to \$2500 plus costs, probation six (6) months to one (1) year, suspension up to two (2) years, permanent revocation and/or restitution

Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides that Respondent shall pay a fine of \$1,000, and Respondent's license shall be placed on probation for one (1) year. The Department requests that the Board accept this Settlement Stipulation in resolution of this matter, and I'm building answer any question. Thank you.

Chair Peebles – Thank you, Ms. Marshall. Ms. Wiener would you like to address the Board?

Ms. Wiener – I'm simply here to answer questions. Thank you.

Chair Peebles – Thank you. Board members?

MOTION: Mr. Jones moved to accept this Settlement Stipulation, which provides that the Respondent shall pay a fine of \$1,000 and Respondent's license shall be placed on probation for one (1) year. Mr. Ferreira seconded the motion, which passed unanimously.

Chair Peebles – Thank you, Ms. Wiener.

Ms. Wiener – Thank you.

(b) Shorter, Michael Derrall Jr.: DFS Case No. 293324-22-FC; Division No. ATN-37464 (F063226)

Ms. Simon – Is Mr. Shorter or a representative of Mr. Shorter on the call today?

Ms. Wiener – Yes. Wendy Wiener representing Michael Shorter.

Ms. Simon – Thank you. Ms. Marshall, for the Department.

Ms. Marshall – Thank you, Ms. Simon. Kimberly Marshall on behalf of the Department again. Michael Derrall Shorter, Jr. ("Respondent") is a funeral director and embalmer licensed under Chapter 497 and holding license number F063226. At all times material to this case, Respondent was the Funeral Director in Charge of Foundation Partners of Florida LLC, d/b/a E. James Reese Funeral Home & Crematory ("E. James Reese"), a funeral establishment and apprentice/intern training agency holding license number F201716. The Department conducted an investigation of E. James Reese and found as follows: The establishment failed to provide the purchaser of funeral goods with a detailed, written agreement for all items purchased. The establishment further failed to maintain completed copies of Bodies Handled Reports for the months of February 2021 through July 2021. As the Funeral Director in Charge of E. James Reese, Respondent is subject to discipline for these violations. The disciplinary guidelines for these violations provide as follows:

- Count I: *Failing to provide the purchaser of funeral goods and services with a detailed, written agreement*: a reprimand, fine of \$500 to \$1000 plus costs, probation six (6) months to one (1) year with conditions
- Count II: *Incomplete bodies handled reports*: a reprimand, a fine of \$250 to \$2500 plus costs, probation 6 months to one (1) year, suspension up to two (2) years, permanent revocation and/or restitution.

Respondent has entered into a proposed Settlement Stipulation. The proposed stipulation provides that Respondent shall pay a fine of \$1,000, and Respondent's license shall be placed on probation for one (1) year. The Department requests that the Board accept this Settlement Stipulation in resolution of this matter.

Chair Peebles – Thank you, Ms. Marshall. Ms. Wiener, you're just here for questions?

Ms. Wiener – Yes, ma'am. Thank you.

Chair Peeples – Thank you. Board members?

MOTION: Mr. Ferreira moved to accept this Settlement Stipulation, which provides that the Respondent shall pay a fine of \$1,000, and Respondent's license shall be placed on probation for one (1) year. Ms. Janis Liotta seconded the motion, which passed unanimously.

Chair Peeples – Thank you.

Ms. Wiener – Thank you.

(4) Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact (Probable Cause Panel A)

(a) Brown, Sandra: DFS Case No. 307399-23-FC; Division No. ATN-40535 (F389851)

Ms. Simon – This matter was removed from the agenda and will be placed on a future agenda.

(b) Related Cases – Division No. ATN-38690

1. Florida Finest Family Cremations, LLC d/b/a Florida Family Cremation: DFS Case No. 296783-22-FC; Division No. ATN-38690 (F414705)

Ms. Simon – Is there a representative of this entity on the call today?

Ms. Wiener – Yes, ma'am. Wendy Wiener representing this licensee and the next licensee.

Ms. Simon – Thank you. Mr. Griffin?

Mr. Griffin – Marshawn Griffin for the Department. The above-referenced matter is presented to the Board for consideration of the Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact (Motion) in the matter of Florida Finest Family Cremations, LLC, d/b/a Florida Family Cremation (Respondent). The Division alleges Respondent engaged in the following:

- Florida Finest entered into a contract which misrepresented the true nature of the contract
- Florida Finest failed to trust preneed monies
- Florida Finest entered into a preneed contract without the benefit of licensure

The Motion demonstrates Respondent has alleged that there are no material facts in dispute and for this matter to proceed as an informal hearing before the Board and requests the Board adopt the factual allegations in the Administrative Complaint and issue an appropriate penalty. This matter was originally presented to the Board during the June 29, 2023, Board meeting. Counsel for Respondent alleged that the conduct forming the basis for discipline in the instant case ATN-38690/296783-22-FC, was resolved via a Consent Order that was issued on or about November 16, 2022, in ATN-35668 & ATN-36306/278834-21-FC & 280021-21-FC. The Department has included the Board Packet from ATN-35668 & ATN-36306/276840-21-FC & 280022-21-FC. The Consent Order issued from those cases can be found beginning at Page 67 of this pdf. The sole issue before the Board today is whether or not, as Counsel for Respondent has alleged, that the violations for this case were somehow included in the settlement stip for a different case.

Chair Peeples – Thank you, Mr. Griffin. Ms. Wiener, or Ms. Simon, you're next?

Mr. Griffin – If I may, we had proceeded through the hearing up until the final portion of the hearing. So, basically, the only thing left for the Board to decide is, as a matter of law, did the Consent Order from Case Nos. 276840-21-FC & 280022-21-FC, whether or not that Consent Order also would resolve this case. If the Board finds that somehow that that Consent Order also covers this case, then there would be no discipline to impose. If the Board determines that they did not, then we would need to discuss the matter of discipline to be imposed.

Chair Peeples – Thank you, Mr. Griffin. Ms. Simon, did you have a comment you'd like to make?

Ms. Simon – No, ma'am.

Chair Peeples – Thank you. Mr. Griffin, would it be appropriate to have a little bit of discussion with our Board members? Or should we let Ms. Wiener?

Mr. Griffin – I mean, I think the documents speak for themselves. I mean, it's very clear. I included not only the Consent Order, but the entire Board packet of the prior case.

Chair Peeples – Thank you, Mr. Griffin. Ms. Wiener?

Ms. Wiener – Thank you, Chair Peeples. Board members, good morning. As Mr. Griffin did state, this is a case about what happened in November of 2021. I'm going to be pointing you to some Pages in your Board packet today. So, if you'll be prepared to follow along with me, I will appreciate that. Please, pardon, my voice. I'm just getting over COVID, which is back, believe it or not. So, I apologize for that. So, at that Board meeting, in November of 2021, the Board approved a stipulation, which reads at paragraph three (3), which you can find on Page 67 of the Board packet. Respondent and the Department intend to resolve all issues pertaining to investigation numbers ATN-35668 and ATN-36306. That paragraph goes on to describe the investigation's findings. Now, as Mr. Griffin noted at the June Board meeting, I argued that the matter before you then, and again today, has been resolved by prior Board action, and the Division argued that the language of the stipulation limited its reach only to those particular contracts identified within those investigations. But I submit to you that if that was the intention of the parties then those words certainly could have been used within the stipulation at Page 71 of your packet. Instead, the stipulation clearly reads the parties intended to resolve all issues pertaining those investigations. So, what's key here is for you to consider what did those investigations pertain to? Those investigation files are included in your Board packet. They began at Page 112. You will see within those 148 pages that follow, that the investigation was actually into any and all contracts entered into which related to Guardian Traci, Samuel. And while ATN-36303 specifically refers to a single contract for Robert Moore, to the contrary, ATN-35668 is far broader in scope. The investigators report, in fact, indicates at Page 162 that the licensee did not have all of the records related to the interactions with Traci Samuel. Mr. Menneke described within your Board packet in that investigation generally, the way that he had worked with the guardian. Ultimately, the investigation contained several findings, which themselves did not specifically identify certain contracts or descendants but found that the licensee violated the provisions of the chapter related to interactions with The Guardian generally. All of that was admitted. All of that this licensee and the one that follows have been penalized for. And you can rest assured that when Mr. Menneke, on behalf of this license and himself, agreed to resolve the matter pursuant to the stipulation presented in November 2021, he quite certainly believed that he was resolving all matters related to his interactions with the Guardianship Program, because that's what those investigations were about. And he had good reason to believe that that was the case, because paragraph three (3) of the stipulations says so.

So, "related to," of course, has a specific meaning within the legal context, and it is to "concern or to regard" a particular thing. And here in this context, when Mr. Menneke agreed to resolve all issues related to those investigations, he would have had no way of imagining that another guardian contract would result in more discipline. He told the investigator he did not have everything related to his interactions with Traci Samuel. That is in your Board packet. Words mean things. And if the Department intended to limit the stipulation to the contracts specifically identified within the investigation, it certainly could have said so. But it did not. The Department's counsel drafted the stipulation and included the phrase "all issues related to the investigations," rather than "all contracts identified in the investigations." And I suspect that is, because no one was sure at the time of these investigations that that was all of the contracts. Now I am certain that the Department counsel is going to point to paragraph twelve (12) of that stipulation, the one from November 2021, but that paragraph has to be read together with paragraph three (3). And the investigation's findings, as you can see on Page 162, do not relate to any {inaudible} findings. The licensee could be penalized for things that are not, what that paragraph actually means, paragraph twelve (12). is that the {inaudible}. As I was saying, the investigation's findings on Page 162 don't identify the contracts. They don't identify all of the contracts. Those findings are all broad and generic, and they relate to his interactions with guardian Traci Samuel. And so, what paragraph twelve (12) means is that the licensee could be penalized for other things that are not enumerated within those findings. There is no dispute about that, but the stipulation did not {inaudible} a specific number or identity of contracts. So, we're not asking that the Board stretch its previously approved stipulation to cover this matter, because that stipulation already {inaudible}. By the language a paragraph twelve (12) of the stipulation, the Department could bring an

action for something not found {inaudible}. Those findings are on Pages 113 and 162. {Inaudible} list of contracts other than that contract identified on Page 113, which relates to the one ATN about the one contract. The stipulations resolved all of the findings set forth on those Pages, and the findings on Page 162, which are relevant to this matter, as I said, do not identify any {inaudible}. Additional discipline for these licensees is unsupported by the documentation before you. The funeral establishment and its owner, the FDIC, has been penalized. They were penalized fairly, severely. They paid significant administrative fines because of this matter and this case should be dismissed. Thank you and I'm available to answer any questions you may have.

Chair Peebles – Thank you, Ms. Wiener. Mr. Griffin?

Mr. Griffin – So, let's start off with the point that counsel made, "words have meaning." So, if you go back to paragraph twelve (12) of the settlement stip, "Respondent fully understands that this stipulation and resulting Consent Order will in no way preclude additional proceedings by the Department against Respondent for acts," acts meaning additional contracts entered into, "or omissions not specifically found in this investigation. And nowhere in her recitation of the discussion of these prior cases, she can't point to the fact that the contract that's at issue in this instant case ATN-38690 is a part of that investigation. It's not found in there. She can point to a single page that shows the contract that they were prosecuted on in this case was included in that. It was not included in the investigation. Therefore, that Settlement Stipulation didn't cover it. What I'll also point to is what counsel for a respondent is basically asking is to reward a licensee for shoddy recordkeeping. That basically, because he didn't have his records that he was obligated to keep and keep track of, that somehow should basically mean that he should suffer less penalty because he entered into agreements he really shouldn't have been entered into and then just conveniently forgot to retain the records. If I can give you an analogy to criminal law. If I rob twelve (12) banks and I enter a plea agreement as to ten (10) of them, that doesn't preclude me being prosecuted for the two (2) other crimes that I committed that weren't included in this plea agreement. So, the Department would argue that it's very clear that that Settlement Stipulation was related to the two (2) ATNs {inaudible} of that Settlement Stipulation. This case is on a completely different set of facts that is a completely different ATN. So what counsel is trying to do is say that, well, every crime committed involving this person should be included, but at the same time, I don't have to disclose every contract I entered into or have records for. So, we're basically just rewarding licensees to hide stuff and just destroy records and then say, well, you know, if you find more violation, sorry Department, you don't get to proceed on it. It is very clear that the Settlement Stipulation that we entered into in those two (2) prior cases covered just the contracts at issue in those two (2) prior cases, just the contracts that were alleged in that prior Administrative Complaint. So, Department would argue that this Board should give no weight to counsel's argument, and we should proceed to discipline on this matter.

Chair Peebles – Thank you, Mr. Griffin. Board members, is there any discussion or questions for Mr. Griffin or Ms. Wiener? Mr. Jensen?

Mr. Jensen – Thank you. Chair Peebles. I do have a question for Ms. Wiener on this. Mr. Griffin makes a good point, Ms. Wiener. The ATN is not mentioned here. This is a whole different ATN, and I would like to hear your response to that.

Ms. Wiener – Certainly. Thank you, Mr. Jensen, actually, for that opportunity because that was really just what I was trying to get to in rebuttal of Mr. Griffin's argument. You see, you have to read, you can't read one (1) paragraph alone, without reading it with the entire stipulation. So, what that paragraph says is, paragraph three (3) says, we're resolving all issues pertaining to the investigations and it lists two (2) investigation numbers. When you look at the investigations, they were not into specific contracts. They were into this situation involving a guardian that refused to sign preneed contracts. Now, mind you, this was not a case, I'm not sure if Mr. Griffin made reference to this being a case where there was not a preneed license. There was a preneed license held by this licensee.

Mr. Griffin – Not for the funeral home. Menneke had a license, but not the establishment.

Ms. Wiener – I'm sorry?

Mr. Griffin – Menneke had a license, but not the establishment.

Ms. Wiener – Menneke had a -- the establishment was not authorized to sell preneed?

Mr. Griffin – Right. That's the whole point. I mean, you've alleged there's no disputed issue of material fact here. So, that was one (1) of the allegations, if I recall correctly. Just a second.

Ms. Wiener – Be that as it may the point here is that the prior stipulation was to resolve all issues related to the contracts entered into with Traci Samuel. That's exactly what the investigation was into. It wasn't into something else. It was into the contracts entered into with this particular guardian. Now, Mr. Menneke, as he noted, in his investigation, in his sworn statement taken by, I believe it was, Investigator Schuller, or Mr. Brimmer, I'm not sure which one (1), states that he doesn't have all of the records related to the interactions with Traci Samuel. We're not asking the Board to reward him for poor record keeping. This was a very unusual circumstance. If you go back to the November 2021 Board meeting and the discussion of it, this was a guardian, who believed that she could not get a contract approved by the court system if it was written by a preneed contract. So, she had Mr. Menneke and the funeral establishment write the contract on an at-need contract form. And then she took that to the court system and got those approved. Now, it turns out that this entire investigation is predicated upon the fraud of Ms. Samuel. She was ultimately discharged as guardian, and she was prosecuted. But the point for this Board is, the stipulation from November of 2021, put to bed this Department was on notice because of the language in those investigation files. This Board was on notice, that, because of the language and those investigative files, this put to bed matters relating to Traci Samuel. This contract relates directly to, is from the same time period, and relates to those interactions. This matter was previously resolved. This feels very much like another bite at an apple. When this matter was resolved, this licensee paid the penalty. Those penalties have been paid. The license he is currently on probation. There's no other discipline associated with this licensee while on probation. And to penalize this licensee further for the same things that were contemplated in that prior investigation, even though it's a different ATN number, as I said, you have to read paragraph three (3) together with those numbers. Because if the Division and the Department and the Board had intended for the stipulation to apply only to the contracts enumerated in that investigation, I posit to you that that certainly could have been what was written there, but instead, "all issues pertaining to". That's a very broad use of language. It was used, and this Board agreed to it, and that's why this case should be dismissed.

Chair Peebles – Mr. Griffin?

Mr. Griffin – Once again, go back to acts or emissions not found in the investigation. The contracts at issue in this case were not found in that investigation, and much of counsel's talk goes to the conduct of a guardian that committed fraud. We don't regulate guardians, we regulate 497 licensees and her client, regardless of what his intentions were, decided to cooperate with that fraud. And so therefore, he should be subject to discipline.

Ms. Wiener – And was.

Mr. Griffin – For the contracts that we found as part of that investigation.

Ms. Wiener – That's not what the stipulation says.

Chair Peebles – Thank you, Mr. Griffin. Thank you, Ms. Wiener. Mr. Jensen?

Mr. Jensen – Yes, just a follow up for Ms. Wiener, please. I'm having a hard time finding it. Where does it say that this absolves all the contracts related to Traci Samuel? That's what I'm trying to find.

Ms. Wiener – Well, and that's exactly right, Mr. Jensen. It doesn't say that. If the stipulation had said this stipulation is to resolve all of the contracts found, then I would not have an argument. We would not be before you today. It doesn't say that. It could have said that. It could have listed out individually all of the contracts. Instead, it says it intends to resolve all issues pertaining to. I invite you to go to Page 162 of your Board packet, where you will find the findings of the investigation. Finding (1), "FFC entered into contracts which were submitted to the court for payment, which misrepresented the true nature of the contract." It doesn't identify them. It says contracts. FFC provided unapproved at-need contracts. Not identified. Entered into contracts not signed by the customer. Failed to remit preneed contract payments. Failed to submit payment to the Consumer Protection Trust Fund for every preneed contract written. Failed to maintain documentation which supports fulfillment subcontracts. There's one reference to an individual, but it doesn't have anything to do with entering into a contract. There's a reference to failing to obtain a signed cremation authorization for Joanne Janse. Seven (7) findings. The findings are about contracts entered into which misrepresented the true nature of the contract. This case before you right now

is about a contract entered into which misrepresented the true nature of the contract. It's the same set of facts. And so, the fact that there is nothing in the stipulation that ties to any specific listing of contracts means that when Mr. Menneke entered into this stipulation agreement with the Board that it intended to resolve all of these issues. The findings from this ATN, the findings that it entered into contracts submitted to the court, the finding is that it provided an appropriate contracts' findings (1) through (7). It intended to resolve all of those findings, and it did, which is why coming back around for something that was covered in this ATN, it's unfair. It's unconscionable really. If the findings included a list of contracts, again, I would not have any argument before you. But that's not what the word said. The word said, "pertaining to the investigation," and the Investigation's findings are all pertaining to generalities and not a specific identified list of contracts.

Chair Peeples – Thank you, Ms. Wiener. Mr. Brandenburg has his hand up, then Mr. Williams.

Mr. Brandenburg – Thank you very much. I think it's a bit unsettling to think that the Division can charge multiple times for the same issue and investigation. I think it's a dangerous precedent that's being set.

MOTION: Mr. Brandenburg moved to dismiss this matter. Mr. Clark seconded the motion.

Chair Peeples – Discussion on the motion? Mr. Williams, you had your hand up.

Mr. Williams – Yes, ma'am. Thank you so much, Madam Chair. I was just going to ask if Mr. Griffin or you could bring the question of the proposed motion back to the table. I just really lost where we were going with the dialog.

Chair Peeples – Mr. Williams, Mr. Brandenburg made a motion to dismiss this case and Mr. Clark seconded that motion. So that's where we're having discussion on that motion right now. So, I noticed you had your hand up right after Mr. Brandenburg, so I didn't know if you had a question for Ms. Wiener or for Mr. Griffin.

Mr. Williams – No, it was just more so of what was the initial request of Mr. Griffin in reference to what started this whole dialog. That was only for the motion. That was all.

Chair Peeples – Ok. Mr. Griffin, would you like to respond, please?

Mr. Griffin – I believe that Board member Brandenburg's motion effectively gets us to the same point. It's a binary choice. If you go on with Mr. Brandenburg's motion, you've essentially found that legally there's no violation. If this vote fails, then you're effectively finding that there is a legal violation, and we proceed to discipline.

Chair Peeples – Thank you, Mr. Griffin. Does that answer your question, Mr. Williams?

Mr. Williams – Yes.

Chair Peeples – Thanks. Rabbi Lyons, you had a question?

Rabbi Lyons – Yes. Thank you, Madam Chair. A question for Mr. Griffin. Just trying to understand why this wasn't a part of the original Settlement Stipulation? Why are we dealing with this now?

Mr. Griffin – The person that would answer that question would be best equipped would be the investigators on the case. But I think it kind of also goes to, Mr. Menneke can't even tell you all the contracts entered into. So, his poor record keeping is the reason why we're {inaudible}. I guess, depending on how this vote goes, we'll be done with it, or we'll continue to deal with it. But apparently, if you don't keep records and violate the law, then you get the benefit of {inaudible} the full record of the full universe of the contracts. I think counsel for Respondent has put out a very good reason why we weren't necessarily able to find those is because of poor record keeping on both ends. We can't regulate the guardian. We can only regulate Mr. Menneke. We can only regulate Florida Funeral.

Rabbi Lyons – So, if I'm understanding correctly, what you're saying is that, at the time of the original Settlement Stipulation, you didn't realize that this contract even existed?

Mr. Griffin – Exactly. And that's exactly the point I keep going back to is, if this contract, this whole ATN, if these facts were included in those two (2) prior cases, then I wouldn't have an argument, right now. I would say we missed our chance to get that bite at the apple. If you give me one more second. Because I think also what we're having we run into is it looks like in December... We entered into the Settlement Stipulation for the two (2) prior cases in November of 2021. Effectively what happened is, is it looks like the Inspector General of Palm Beach County basically discovered another contract after we had settled the first case. So, that's part of the reason. That's the nexus of how we got involved is by this Inspector General in Palm Beach County investigating the Guardian. So, we didn't know about the contract in the initial investigation because the Inspector General from Palm Beach County didn't know about it until after we had settled that first batch of cases.

Chair Peeples – Rabbi Lyons?

Rabbi Lyons – Ok, question for Ms. Wiener. In our Board packet on Page 162 under Findings, it says, “FFC entered into contracts which were submitted to the court for payment, which misrepresented the true nature of the contract.” Unapproved at-need contracts, preneed, etc. So, let's say if we would find this funeral home was doing this. Not just with this known guardian who got in trouble already but say there was a different one that all of a sudden, we find out about. Or let's say there was no guardian, and they were just using at-need contracts for preneed contract. So, couldn't we say, well, it's already been settled, because the finding just says that they used at-need contracts for preneed?

Ms. Wiener – Well, thank you, Rabbi Lyons No, actually, you couldn't, because those are the findings that are identified specifically in this investigation. But you have to look at what the investigation was about. I believe if you look at the first Page of the investigation report, you'll see a very generic synopsis. The investigation is predicated upon an inquiry by James Nassiri. I'm reading from Page 160, with the Division of Inspector General, Pinellas County Clerk of Circuit Court and Comptroller's Office. Nassiri is investigating the activities of a court appointed Guardian Traci Hudson, and preneed contracts entered into with Florida Family Cremations. So, if you find, which you haven't, because this all happened years ago, and this licensee has not been back before you and does have a preneed license. If you were to find that, there were other irregularities relating to the preneed program or something else with this funeral establishment that were not related to the activities of a court appointed guardian, Traci Hudson, and the preneed contracts entered into Florida Family Cremations, then, indeed, you would be able to discipline this licensee. But the fact is, this was a broad investigation. You did not know when you investigated back then what contracts you would find. And Mr. Menneke makes it clear that he does not know what contracts might be out there with her, because he did not have certain records relating to those activities with her. Now he has a preneed license. His preneed recordkeeping has been with FSI. There's never been an allegation that he doesn't keep proper records, but with regard to this particular matter, he was not aware of all of the contracts, and I gather for that reason the findings in the investigation don't list the contracts. It comes back to this. When the Department drafts a settlement agreement and presents it to the Board, if the Department wants to limit it in any way, it can do so with words, and those words can be negotiated. Here, there was no limiting language. It says, “all issues pertaining to the investigation,” and that investigation was into contracts entered into with Traci Samuel.

Chair Peeples – Thank you, Ms. Wiener. Rabbi Lyons?

Rabbi Lyons – Thank you. So, Ms. Wiener, couldn't we say that that investigation only has to do with contracts entered into by Traci Hudson in Pinellas County that James Nassiri was aware of?

Ms. Wiener – You could have said that. That could have been the language of the stipulation, that's not the language of the stipulation.

Rabbi Lyons – {Inaudible} about the report, the investigation, and you're drawing our attention to the synopsis of the investigation. The synopsis of the investigation is that we're investigating what Traci Hudson did in Pinellas County, that Mr. Nassiri made us aware of.

Ms. Wiener – Correct. That was the investigation, and that is still what this contract is about. It was from the very next month. It was all from the same time period associated with all of that. All from that same time period.

Rabbi Lyons – Was it in Pinellas County?

Ms. Wiener – I assume, sir. Yes, I believe so. Yes. Well, I mean, it would have been because it was related to Traci.

Rabbi Lyons – The facility is the one we're talking about today, is what's the initials? TW, I believe.

Ms. Wiener – It was another contract that involved Traci Hudson. It so happens that this investigator was an investigator for Pinellas County. I don't know that there's any allegation specifically about what county these particular wards of the court resided in.

Chair Peeples – Rabbi. Does that can complete your question to Ms. Wiener?

Rabbi Lyons – Yes, ma'am. Thank you.

Chair Peeples – Thank you. Mr. Griffin?

Mr. Griffin – Go back to the fact that there's no way that the contracts that are issued in this Administrative Complaint could have been contemplated because we didn't know about them, because we didn't get a reporting of them until after we had settled the first set of cases., Ms. Wiener's last comment is basically proving our case, which is those contracts, those are omissions not found in the investigation because we hadn't gotten the report of them.

Chair Peeples – Thank you, Mr. Griffin. Ms. Munson, you had had your hand up?

Ms. Rachelle Munson – This is an Office of General Counsel case. I was just trying to clarify something for the Board members. I believe Mr. Griffin was making a statement that I was going to make to clarify as to what was contemplated with regard to the Consent Order that was issue. I didn't know if the Board understood the difference in the legalities, and I was just standing as representative of the Board. So, Mr. Griffin may have already stated it. Thank you, Ms. Peeples.

Chair Peeples – Thank you. Mr. Brandenburg?

Mr. Brandenburg – Chair, can we call the question?

Chair Peeples – Yes, sir. Mr. Brandenburg, I just want to make sure that everybody gets their discussion in, and questions answered. Ms. Wiener?

Ms. Wiener – Very briefly. Mr. Menneke told the investigator he didn't know whether that was all the contracts. Mr. Menneke and the Department entered into a settlement that says, this resolves all of the issues pertaining to this investigation. When the Department entered into the stipulation, and the Board agreed to the stipulation, it knew there might be other contracts. And that's why the language is so broad and was acceptable to Mr. Menneke, because it is a matter of pertaining to Traci Hudson. Thank you.

Chair Peeples – Thank you, Ms. Wiener. Ms. Simon let's do a roll call vote please. Board members, the motion on the table is to dismiss this case. So, when Ms. Simon calls the roll, if you agree with the motion to dismiss this case, say yes. If you disagree, say no. Ms. Simon?

Ms. Simon – Thank you, ma'am. Mr. Clark?

Mr. Clark –Yes.

Ms. Simon – Mr. Brandenburg?

Mr. Brandenburg – Yes.

Ms. Simon – Mr. Ferreira?

Mr. Ferreira – Yes.

Ms. Simon – Mr. Jensen?

Mr. Jensen – Yes.

Ms. Simon – Mr. Jones?

Chair Peeples – Mr. Jones is recused.

Ms. Simon – Thank you. Ms. Liotta?

Ms. Liotta – Yes.

Ms. Simon – Rabbi Lyons?

Rabbi Lyons – No.

Ms. Simon – Mr. Williams?

Mr. Williams – No.

Ms. Simon – Madam Chair?

Chair Peeples – No.

Ms. Simon – That motion passes.

Chair Peeples – The motion passes, case is dismissed Thank you, Ms. Wiener. Mr. Griffin?

2. Menneke, David: DFS Case No. 296786-22-FC; Division No. ATN-38690 (F089837)

Mr. Griffin – The Department will dismiss this case.

Ms. Simon – Mr. Griffin has dismissed this matter.

Ms. Munson – Except I do have a comment about that. As far as procedural matters go, if we are dismissing the first one by vote of the Board, and an Order will be reflected dismissing it. I don't know if the technical action of the Office of General Counsel is to request that it be, I don't know. I think there's a vote for the dismissal of that one, as well, Mr. Griffin.

Mr. Griffin – I think OGC on its own Motion can just choose not to proceed with the prosecution, so we're going to withdraw it.

Ms. Munson – So, it's withdrawn?

Mr. Griffin – Yes.

Ms. Munson – Ok. So, there is no Order on it. There's an Order on the first for the dismissal. Thank you for that clarity.

Chair Peeples – Thank you, Mr. Griffin. Thank you, Ms. Munson.

(5) Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact (Probable Cause Panel B)

(a) Signature Memorial Funeral & Cremation Services LLC: DFS Case Nos. 296072-22-FC, 296079-22-FC and 296082-22-FC; Division Nos. ATN-37723, ATN-38380, and ATN-38473 (F090323)

Ms. Simon – Is a representative of this entity on the call today?

Ms. Wiener – Yes, ma’am. Wendy Wiener representing Signature Memorial.

Ms. Simon – And representing for the Department, Ms. Marshall.

Ms. Marshall – Yes. I believe we had Ms. Weiner’s Motion that we needed to address.

Chair Peeples – Ms. Wiener?

Ms. Wiener – Thank you. Thank you, Board. I appreciate your patience on this one. This is a complicated matter, but one that is of the utmost importance because it involves constitutional rights of due process for the manager of Signature Memorial. So, this proceeding is before you this morning, as you know, for an informal administrative hearing. And that means that by default, by failing to respond timely to the Administrative Complaint, Signature Memorial cannot contest the factual allegations within the Administrative Complaint. That does not mean that Signature Memorial admits that those factual allegations support a conclusion that it aided and abetted unlicensed funeral directing. But before you undertake that informal hearing, it’s appropriate for you to consider whether to stay the administrative proceeding that’s pending before you. This administrative matter overlaps directly with an ongoing criminal prosecution against the manager of Signature Memorial, Mr. Tony Tanner. As set forth within the Motion to Stay, the Board’s Final Order will be most likely used as evidence within Mr. Tanner’s criminal prosecution, which will unconstitutionally reduce his capacity to defend himself, which violates his rights to due process. Now, due process rights require that a criminal defendant be able to rebut factual allegations against them. Proceeding forward with this hearing at this time, given Signature Memorial’s default status, will impact those constitutional rights very, very likely. Now the Department responded to the Motion to Stay citing the case of Schwartz versus Florida Board of Pharmacy. That case differs, however, in the most fundamental way, which is that in that case, the pharmacist at issue had an opportunity to present evidence and to rebut factual allegations. In this case, Signature Memorial does not have that chance because of its failure to respond to the Administrative Complaint. Now, do we hold that against Signature Memorial? Yes, we do, you will, but that constitutionally limit Mr. Tanner’s capacity to defend himself in the criminal court system. If the matter proceeds against Signature Memorial, and it doesn’t have an opportunity to present evidence that there was not unlicensed funeral directing, then that can be used in Mr. Tanner’s, criminal prosecution, as evidenced, and that will take away, or limit his due process rights. These cases, the case cited by the Department and this, are fundamentally different.

The Motion to Stay seeks only to delay the administrative proceeding against Signature Memorial. It does not seek to dismiss it, but to delay it until after the criminal court can determine, based upon actual evidence and {inaudible} whether Mr. Tanner was engaged in funeral directing without a license. The Board must be concerned with the fundamental fairness of its proceedings. This Board’s purpose is to protect the public. To proceed against Signature Memorial in a way that will surely be considered by the criminal court, in the directly related case of Mr. Tanner is fair and will create perhaps an insurmountable, unconstitutional inability for Mr. Tanner to exercise his right to due process and for what? This case is about three (3) allegations of unlicensed funeral directing. The most recent of which occurred eighteen (18) months ago. Since that time, the Division has followed up regularly with Mr. Tanner, with Signature Memorial. It has dropped in on services. It has dropped into the funeral home. There have not been additional allegations brought forward. There was a case before you regarding Signature Memorial back in early 2022. That case was heard. It was then that the Board voted, actually, based upon some ministerial charges to revoke the license of Signature Memorial. The case came back to you upon the filing of the Notice of Appeal. This is early 2022, so fifteen (15) plus months ago. It came back in early 2022, so that it could proceed immediately to DOAH because this was a funeral establishment that was conducting itself inappropriately and unlawfully. But yet, nothing has happened with regard to that case. It has been eighteen (18) months since the last allegation of unlicensed practice, and it has been fifteen (15) months since this Board {inaudible} Signature Memorial. {Inaudible} if we put this case in a stayed posture, so that after the criminal court system completes its work, this matter can come back before this Board for consideration of what should or should not happen with Signature Memorial. But to proceed forward at this time will surely limit the ability of Mr. Tanner, the manager to defend himself in the criminal court proceeding. And I would posit to you that because there is nothing going on with regard to Signature Memorial, nothing new has been found, no new violations, new allegations. All of these allegations date back at least (18) months. The ones that regard the case that was before you in early 2002, date back to ‘16 and ‘17 and ‘18. But because there is nothing new happening that there would be no harm in preserving the status quo and staying this case until such time as the criminal prosecution has concluded. The Board has to weigh the due process and constitutional guarantees against the danger to the public, and that weighing surely tips in favor of granting this

Motion to Stay, {inaudible} has been concluded.

Chair Peeples – Thank you, Ms. Wiener. Board members? Mr. Jensen?

Mr. Jensen – Quick question. It seems like a very reasonable request. Why is the Department wanting to push this forward? Why can't we just wait until {inaudible} taken care of?

Chair Peeples – Ms. Marshall?

Ms. Marshall – Thank you, Madam Chair. So, in response, I would offer this. The case before the Board today is its own independent matter. It concerns some similar allegations as the criminal case, but it stands on its own, as a matter that needs to move forward. It needs to be resolved. The Board, and I will address the case law that I cited in my response in a minute, but the case stands for the proposition that the Board has its own independent duty to move its own cases along as expediently as possible, and this matter is before you today. The Department is ready to proceed as an informal hearing in these three (3) cases. There is absolutely nowhere that is written that a criminal case takes precedence over {inaudible}. I'd also like to note that they have received a few continuances in the criminal case. There is no guarantee of when the criminal matter will go to trial, or otherwise be resolved. And don't think it's appropriate for the Board to just sit on this case. It would be neglecting its duty to the public if it failed to move forward in a disciplinary case that was otherwise ready to go.

Chair Peeples – Mr. Jensen, did that complete your question?

Mr. Jensen – Yes, ma'am. Thank you.

Chair Peeples – Thank you. Board members, is there any other items? Ms. Wiener?

Ms. Wiener – Just very briefly. These cases are quite stale already. If this was an ongoing matter, if the Division had dropped in and it found more and more instances of violations, I'm sure that that would have been brought before this Board. This last allegation is from eighteen (18) months ago. The ones that are from roughly two (2) years ago. There is no harm in allowing this licensee to continue its business until such time as the criminal court system can resolve this issue. And the cases do overlap directly. One (1) of the parties identified in the Administrative Complaint is one (1) of the parties identified in the criminal court system. Balancing the fairness is, I'm not telling you what the outcome might be at the end of either of the cases, but balancing the fairness is there is nothing that would prohibit this Board from staying this case, holding it where it is until the criminal case has been resolved. And by the way, that case is moving forward now with alacrity. There are depositions scheduled for this month and then I would expect the case to move forward pretty quickly after that. I am in touch with a criminal lawyer for Mr. Tanner.

Chair Peeples – Thank you, Ms. Wiener. Ms. Simon?

Ms. Simon – Thank you, Madam Chair. I need to hearken back to what I said in my opening statement. If there were any ongoing investigations, they would be exempt and confidential, and would not be able to be spoken of in this Board meeting. I just want to remind the Board members of that.

Chair Peeples – Thank you, Ms. Simon. Board members, you've heard the request. Rabbi Lyons?

Rabbi Lyons – I'm sorry, I guess there's one thing I don't understand. The fact of the matter is that they didn't respond in a timely manner. Therefore, they don't have a chance to respond right now. And if the Board would therefore find the allegations to be factual, how could that possibly impact him in a criminal trial? Wouldn't the defense just say that they didn't respond on time, therefore, they lost their chance to respond and that's it. But there's no admission of guilt here. It's not like we're finding an admission of guilt.

Chair Peeples – Thank you, Rabbi. Ms. Marshall, would you like to reply to Rabbi Lyons?

Ms. Marshall – Certainly. So, where we are with this case at this point is that because he failed to timely respond and did not afford himself of the opportunity to dispute the allegations here, they are deemed admitted. So, everything that's alleged in

the Administrative Complaint, it cannot be disputed at this point. So, the Board would be working with those set of facts as they are laid out.

Rabbi Lyons – Yes, I understand that. What I'm saying is that isn't the fact that the funeral home didn't respond in time, isn't that exculpatory to the defendant in a criminal case? He's not getting any guilt. He's just doesn't right now, at this meeting have the opportunity to argue otherwise, because that deadline was up. The nature of my question is, I'm just trying to understand if what we're being asked over here by Ms. Wiener, the potential negative impact of this. I'm trying to understand the potential negative impact of it, I just don't see how this would adversely affect them in a criminal court.

Ms. Marshall – So the facts in this matter, we would say, are deemed admitted. Nowhere {inaudible} that he affirmatively admitted to anything. Ms. Wiener may be able to elaborate better on exactly what the concern is with the criminal case.

Chair Peeples – Thank you, Ms. Marshall. Ms. Wiener?

Ms. Wiener – Thank you, Chair Peeples and Rabbi Lyons. The concern is exactly that. Because this licensee cannot dispute the facts, they are deemed to admit it. So, in the criminal court case, because Mr. Tanner is the manager and would have played a role in responding to this administrative case, when he would be put on the stand to testify, did you commit unlicensed funeral directing? And he will say, no, because of this, and this, and this, and this. And they'll say, but didn't you admit in this case here, the company that you run, didn't it admit that you engaged in all of this behavior and activity? Those allegations will become, because they are deemed admitted because of the default will become findings of fact in your Final Order, and the impact that they could have on his due process rights in the criminal court system, we're not talking about the administrative context, and we're not talking about a licensee that is before you and before you with problems and problems leading up to this case. What we are before you are asking now, is that because of the potential that that admission can be used against Mr. Tanner, without limiting his capacity, unconstitutionally limiting his capacity to rebut, that will put him in a compromised position with regard to his criminal case.

Chair Peeples – Thank you, Ms. Wiener. Mr. Jones?

Mr. Jones – Ms. Wiener, is Tony Tanner still involved in the day-to-day operations of this funeral establishment?

Ms. Wiener – I believe so, yes.

Mr. Jones – Thank you.

Chair Peeples – Board members, do you have any further discussion? Rabbi Lyons?

Rabbi Lyons – Sorry, one (1) more question. Didn't have the opportunity to respond and by not responding that's by default an admission, and that was due process? Meaning he may be guilty, he may be innocent, but I don't see where the due process is being denied. He was afforded the opportunity to respond. He didn't respond. By default, that's an admission, but he admitted it.

Ms. Wiener – It's not the due process in this case that we're concerned about. And he did respond. He responded in an untimely fashion. He misunderstood that his response had to be posted by the deadline, not received by the deadline, by 5PM on the deadline, which is the law. And so, he did respond. You will see a response in your file, and he actually asked for additional time to respond. So it wasn't that he didn't respond at all, and he does, factually and will in the criminal context, dispute the allegations that he was practicing funeral directing without a license. And with regard to Mr. Jones' question of his continued operation in the business, as I mentioned, the Division has regularly visited services and the location. And to my knowledge, there have been no additional citations or suggestions that he's been engaged in funeral directing with a license.

Chair Peeples – Rabbi Lyons?

Rabbi Lyons – So, just to that last point. But if there would be an investigation, like Ms. Simon said, we wouldn't necessarily know about it and respectfully, I mean, that's basically my point. Ms. Wiener, if we were to do something like, table it, but in

the meantime, we'll suspend the license, would that be something that the entity would want?

Ms. Wiener – I'm sure, not. The point is this is not a licensee that is causing trouble to the death care public, at this time. It's been, as I said, eighteen (18) months since the last allegation in this case, two (2) years in the allegations before that. This is not a licensee that is before you for something that happened a week ago or six (6) weeks ago. This case has taken a long time to make it through the process. And all we are asking, is that in the interest of an individual's constitutional rights to due process that you allow these stale cases to remain just stale, continue on for a bit longer until the criminal prosecution has been concluded, and then this Board will have its bite at the apple. And, unfortunately, Signature Memorial will still be in the situation of having had these factual allegations deemed admitted, but it will not result in an Order today that can be used by the prosecutor in a criminal case robbing Mr. Tanner of his constitutional right to defend himself. And so, all we're asking for is that this case be stayed until such time as that matter is resolved.

Chair Peeples – Thank you, Ms. Wiener. Rabbi Lyons?

Rabbi Lyons – Question for Ms. Munson, please? If we were to, is there some type of language like we're going to table this until the criminal matter is finished, are we going to have the opportunity to actually deal with this? I know there's some issues when the Board has inaction for a certain amount of time. Is there any issue like that?

Ms. Munson – Again, this is a matter for the Office of General Counsel. I mean, I normally would have to handle any issues that would deal with the licensure cases, but if the Board is considering tabling it for a pendency of a criminal case, I don't know if there's any particular precedent of the Board doing so previously. I don't know, and this is the question maybe more properly posed for the Department. I don't know if there's any type of time considerations for administrative reasons. If you choose to table it, you will just need, I believe, to support the record to establish a compelling reason for you to do so, regarding the case as presented at hand, the instant case, not necessarily other cases. That would be, I believe the basis for that type of decision. The Department may have a response to that. Of course, Ms. Wiener may have a response to that as well as the Office of General Counsel led by Ms. Marshall.

Chair Peeples – Thank you, Ms. Munson. Ms. Simon, did I see your hand?

Ms. Simon – Thank you, Madam Chair. Just as a point of fact, I think that if you look through the Administrative Complaint in this matter, you will see that there were, I believe, three (3) charges and two (2) of them have nothing to do with the allegations that Ms. Wiener referenced. I think that Mr. Griffin could speak to that a little more.

Chair Peeples – Thank you, Ms. Simon. Mr. Griffin?

Mr. Griffin – I think Marshall can handle it.

Ms. Simon – I'm sorry. Excuse me, Ms. Marshall.

Ms. Marshall – Ok, so, what Ms. Simon was explaining is correct that I believe Count Three of the Administrative Complaint concerns the same set of facts as the criminal case. Counts One and Two to the best of my knowledge, those facts are not at all, have nothing to do with the current pending criminal matter against Mr. Tanner. Concerning the issue of indefinitely holding this case until whenever the criminal case resolved, and again, we have no guarantee of when that will happen. This Board previously, although there is no legal significance to the amount of time that a case has been open ended and that the Board is fully allowed to move forward on a case. You know, if it were to sit for awhile even, you know, a year or two (2) if it were to come to that. This Board has previously taken an issue with cases where it believed that the fact simply got too old and has given lighter disciplinary than outright dismiss cases on that basis. So, certainly the Department has a concern that if we allow this matter to sit and become stale, you know. Ms. Wiener has said the allegations are already about eighteen (18) months old, so we don't want that to happen. We are mindful of the timeline in these cases, and we want to keep things moving along in a timely fashion.

Chair Peeples – Mr. Jensen?

Mr. Jensen – Quick question for Ms. Marshall. Would you agree that by us going ahead with this case that it would affect this gentleman's rights to due process and constitutional rights, as Ms. Wiener has stated? That's probably my biggest concern, because I don't want to handicap the gentleman in a way that he can't defend himself.

Ms. Marshall – So, the issue with that is we can't predict what, I mean, we can certainly predict what I guess the prosecutor in the criminal case would do if the Board proceeded today and take adverse action against the Respondent here. However, this is an independent matter that stands alone, apart from the criminal case. I'm aware of no case law, no statute, no rule that states that a criminal matter takes precedence. Certainly, the Department as a party here also has its own due process concerns. We want to make sure that these cases move along and that, you know, the public is adequately protected, given the seriousness of the allegations involved.

Chair Peeples – Mr. Jensen, did that answer your question?

Mr. Jensen – Not really. I just wanted to know if she agrees that it may. Is this a constitutional issue? I don't see any problem holding it off for a little while, but I understand what Ms. Marshall is saying about it becoming way too stale, but I don't want to get into a constitutional issue of due process. That's probably my biggest thought about it. I want to know if Ms. Marshall agrees or disagrees with that statement.

Chair Peeples – Ms. Marshall?

Ms. Marshall – To be completely honest, I am not sure. I have done some legal research. I was not able to find an answer to that question one way or another. I was not able to find any case law or statute on point that would answer that question.

Chair Peeples – Thank you, Ms. Marshall. Ms. Wiener?

Ms. Wiener – Thank you. And I think that Ms. Marshall's inability to answer that question does actually answer the question. The problem is it can be considered by the criminal court, and so weighing those things, one against the other, is the thing that drives in fairness that you stay this case until this criminal prosecution has concluded. Because it's impossible to know, but I would assure you that a Final Order from this Board, which contains findings of fact that Mr. Tanner engaged in unlicensed funeral directing, will go into the hands of that prosecutor, who will certainly utilize that to the best of her ability in prosecuting Mr. Tanner, robbing him, in essence, because of the admitted nature of those facts of his constitutional right to rebut the facts against him. The facts tied directly to activities of Mr. Tanner. And, again, as I've noted, this is not a new case. We're not asking that the case be dismissed. We're not asking that it be stayed indefinitely. We're asking for it to be stayed for the time that the criminal case is able to proceed. And, as I noted, depositions are scheduled and will be underway this very month of August. After that, the case is expected to pick up steam and get moving. The criminal court system moves slowly. This judicial, quasi-judicial system moves slowly. They all move slowly. But in this case, this licensee doesn't have any new allegations before you. And the youngest allegation, the most recent allegation, is from eighteen (18) months ago. There is no harm in preserving the status quo. That's what a stay does. It preserves the status quo until such time as Mr. Tanner can constitutionally defend himself with his complete due process rights intact before the criminal court system.

Chair Peeples – Thank you, Ms. Wiener. Mr. Jones?

MOTION: Mr. Jones moved stay this matter for six (6) months to be re-evaluated as long as there are no other complaints to come forward.

Mr. Jensen – I would second that motion based upon the possible constitutional rights violations, if Mr. Jones would agree. I know Ms. Munson said we had to have an exact reason.

Mr. Jones – I agree. Thank you.

Chair Peeples – We have a motion by Mr. Jones to stay the case for six (6) months and re-evaluate to prevent constitutional rights issues that Ms. Wiener mentioned. Mr. Jensen, you have seconded that, correct?

Mr. Jensen – Yes, ma'am.

Chair Peeples – Ok, is there any other discussion on the motion before we take a vote? Hearing none, Ms. Simon, let's do a roll call vote, please.

Ms. Simon – Thank you, ma'am. All in favor of the motion, please say yes. Those that are opposed say no. Mr. Clark?

Mr. Clark – No.

Ms. Simon – Mr. Brandenburg?

Mr. Brandenburg – Yes.

Ms. Simon – Mr. Ferreira?

Mr. Ferreira – Yes.

Ms. Simon – Mr. Jensen?

Mr. Jensen – Yes.

Ms. Simon – Mr. Jones?

Mr. Jones – Yes.

Ms. Simon – Ms. Liotta?

Ms. Liotta – Yes.

Ms. Simon – Rabbi Lyons?

Rabbi Lyons – Yes.

Ms. Simon – Mr. Williams?

Ms. Marshall – He is recused.

Ms. Simon – Madam Chair?

Chair Peeples – No.

Ms. Simon – That motion passes.

Chair Peeples – Thank you, Ms. Wiener.

Ms. Wiener – We'll be back.

Chair Peeples – Ms. Simon?

Ms. Simon – Yes, ma'am. Would you like me to continue with the agenda right now?

Chair Peeples – Yes, ma'am.

(6) Motion for an Order Dismissing Petition Without Prejudice (Probable Cause Panel B)

Ms. Simon – Presenting for the Department is Ms. Marshall.

Ms. Marshall – Thank you, Ms. Simon. Kimberly Marshall on behalf of the Department. The above-referenced matter is presented to the Board for consideration of the Department’s Motion for an Order Dismissing Petition Without Prejudice (“Motion”). On or about April 13, 2023, the Department filed an Administrative Complaint against Robert Paul Lamothe (“Respondent”) alleging violations of Chapter 497, Florida Statutes. On or about April 28, 2023, Respondent timely submitted a petition requesting a formal hearing pursuant to section 120.57(1); however, the petition failed to identify any dispute issues of material fact. As such Respondent’s petition failed to meet the requirements for a formal hearing as outlined in Rule 28-106.2015, *Florida Administrative Code*. Accordingly, this Motion requests that the Board dismiss Respondent’s petition without prejudice and enter an Order providing Respondent with an additional twenty-one (21) days in which to file a facially sufficient petition for formal hearing or to request an informal hearing. Furthermore, the Department requests that the Order provide that if Respondent fails to provide a timely response that Respondent will have waived its right to a hearing in this matter. I’m available to answer any questions.

Chair Peeples – Thank you, Ms. Marshall. Board members? Rabbi Lyons?

Rabbi Lyons – Is someone from this entity on the call?

Chair Peeples – Is Mr. Robert Paul Lamothe on the call today or his representative? Hearing no response.

MOTION: Rabbi Lyons moved to dismiss Respondent’s petition without prejudice and enter an order providing Respondent with an additional twenty-one (21) days in which to file a facially sufficient petition for formal hearing or to request an informal hearing. Furthermore, the Department requests that the order provide that if Respondent fails to provide a timely response that Respondent will have waived its right to a hearing in this matter. Mr. Clark seconded the motion, which passed unanimously.

Chair Peeples – Ms. Marshall, do we have another motion on this matter?

Ms. Marshall – No, ma’am. That was it for this case.

Chair Peeples – Thank you, ma’am. It is 11:34. Let’s come back at 11:45. Let’s take a quick break, so we can come back and complete the rest of the agenda. Thank you.

*****BREAK*****

Chair Peeples – It is 11:46 and we are returning to the meeting. I’ll turn the agenda over to Ms. Simon and we’re on a letter D (1).

Ms. Simon – Thank you, Madam Chair.

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

Ms. Simon – Thank you, ma’am. This is an informational item. Pursuant to Section 497.466, Florida Statutes, the applicants on addendum A have been issued their licenses and appointments as preneed sales agents.

Mr. Brandenburg – I’d like to declare my affiliation with SCI Funeral Services of Florida LLC. This affiliation will not affect my ability to render a fair and impartial decision on any items before the Board today.

Chair Peeples – Thank you, Mr. Brandenburg. Ms. Simon?

Ms. Simon – Thank you, Madam Chair.

E. Application(s) for Continuing Education

- (1) *Course Approval - Recommended for Approval without Conditions – Addendum B*
 - (a) *Colibri Healthcare (113)*
 - (b) *Independent Education Institute (135)*
 - (c) *National Funeral Directors Association (49609)*
 - (d) *SCI Management - Dignity University (99)*
 - (e) *Wilbert Funeral Services (39408)*

Ms. Simon – Pursuant to s. 497.147, F.S., and Board Rule 69K-17.0041, F.A.C., the courses presented on Addendum B have been reviewed by the CE Committee and the Committee, as well as the Division, recommends approval of the applications for the number of hours indicated.

Chair Peeples – Board members?

MOTION: Mr. Jensen moved to approve the applications. Ms. Liotta seconded the motion, which passed unanimously.

F. Consumer Protection Trust Fund Claims

- (1) *Recommended for Approval without Conditions – Addendum C*

Ms. Simon – The CPTF claims presented on Addendum C have been reviewed by the Division and the Division recommends approval for the monetary amounts indicated.

MOTION: Mr. Jones moved to approve all the claim(s), for the monetary amounts indicated. Mr. Ferreira seconded the motion, which passed unanimously.

G. Application(s) for Embalmer Apprentice

- (1) *Informational Item (Licenses Issued without Conditions) – Addendum D*
 - Keller, Gabe H F686627*
 - Warren, Joseph R F686372*

Ms. Simon – This is an informational item. Pursuant to Rule 69K-1.005, F. A. C., the Division has previously approved the applications listed on Addendum D.

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

- (1) *Informational Item (Licenses Issued without Conditions) – Addendum E*
 - (a) *Funeral Director (Endorsement)*
 - 1. *Lewis, Kelvin F*
 - (b) *Funeral Director (Internship and Examination)*
 - 1. *Fountain, Gregory J*
 - (c) *Funeral Director and Embalmer (Endorsement)*
 - 1. *Frazier, Brittany M*
 - (d) *Funeral Director and Embalmer (Internship and Examination)*
 - 1. *Norton, Anna C*

Ms. Simon – This is an informational item. Pursuant to Rule 69K-1.005, F. A. C., the Division has previously approved the applications listed on Addendum E.

I. Application(s) for Internship

- (1) *Informational Item (Licenses Issued without Conditions) – Addendum F*
 - (a) *Funeral Director*
 - 1. *Jenkins Jr, Henry L F686360*
 - (b) *Funeral Director & Embalmer*

1. *Brant, Callie I F689098*
2. *Trigoura, Amy J F689099*

Ms. Simon – This is an informational item. Pursuant to Rule 69K–1.005, F. A. C., the Division has previously approved the applications listed on Addendum F.

- J. Application(s) for Monument Establishment Sales Agents**
(1) Informational Item (Licenses Issued without Conditions) – Addendum G
(a) Mathews, George L (F689500)

Ms. Simon – Pursuant to s. 497.554, Florida Statutes, the Division has previously approved the applicant listed on Addendum G.

- K. Application(s) for Preneed Branch**
(1) Informational Item (Licenses Issued without Conditions) – Addendum H
(a) SCI Funeral Services of Florida LLC d/b/a Fairway Memorial Gardens (Deerfield Bch)

Ms. Simon – Pursuant to s. 497.453(7), Florida Statutes, SCI, Funeral Services of Florida, LLC dba Fairway Memorial Gardens has applied for preneed branch licensure.

Chair Peebles – Ms. Simon? Rabbi Lyons?

Rabbi Lyons – I'm sorry. Just a procedural question or request, maybe, I know why the Department has these in order, but this item is granting the preneed license to a branch, and then two (2) items later is the actual acquisition of that branch. So, it just seems to me, is that the more logical order for this would be to have the item M first, to establish or approve the acquisition, then we can talk about doing a preneed license branch.

Ms. Simon – Madam Chair, would that be acceptable to you?

Chair Peebles – Yes, ma'am.

Ms. Simon – Ok, then let's move on.

- L. Application(s) for Registration as a Training Agency**
(1) Informational Item (Licenses Issued without Conditions) – Addendum I
(a) Serenity Funeral & Cremation LLC (F071434) (North Lauderdale)

Ms. Simon – This is an informational item. The Division has reviewed the application listed on Addendum I and found it to be complete in that the applicant met the requirements to be a training agency. Pursuant to Rules 69K-1.005, Florida Administrative Code, the Division has previously approved this application.

- M. Application(s) to Acquire Control of an Existing Cemetery Company**
(1) Recommended for Approval with Conditions
(a) Osiris Holding of Florida Inc d/b/a Fairway Memorial Gardens (Deerfield Bch)

Ms. Simon – Osiris Holding of Florida, Inc (Osiris), subsidiary of SCI Funeral Services of Florida LLC (SCI), herein applies for change of control of an existing cemetery company for the aforementioned cemetery property and acquisition as a preneed branch location under SCI's preneed main license (F019227) The cemetery location being acquired is licensed as named on your coversheet. The application was received by the Division on June 16, 2023, and no deficiencies were noted on the application. A completed background check of all officers revealed no criminal history. The change of control will be accomplished via an asset purchase, wherein the new owner, Osiris, will acquire all the assets and liabilities of the current location and continue to operate under the existing name. If this application for a change of control is approved, Osiris will continue to operate the following cemetery location as referenced on your coversheet. Is a representative of this applicant on

the call today?

Ms. Wiener – Wendy Wiener for the applicant.

Ms. Simon – Thank you. The Division's recommendation in this matter is that the pre-need branch, the application for preneed branch licensure be approved and that the application to acquire control of Fairway Memorial Capital, LLC dba Fairway Memorial Gardens be granted subject to the conditions as follows:

- 1) The Board approval of change of control does not include approval of any development plans. If after approval of the change in control the new controlling person intends to develop the cemetery, the new controlling person shall cause development plans to be submitted to the Board for approval prior to implementing same.
- 2) That closing occurs within sixty (60) days of the date of this Board meeting, and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
- 3) Receipt by the Division within seventy-five (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 and without material change in the terms and conditions of the transaction as described to the Board in this cover sheet and the materials provided to the Board herewith.
- 4) Receipt by the Division within seventy-five (75) days of this Board meeting, of a copy of the Asset Purchase Agreement, executed by all parties, and all amendments thereto, also fully executed.
- 5) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to ninety (90) days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.

Chair Peeples – Thank you, Ms. Simon. Board members? Rabbi Lyons?

Rabbi Lyons – Thank you. Ms. Wiener, who does SCI use as the trustee for the preneed contracts?

Ms. Wiener – SCI has various trustees that it utilizes. Currently all of the monies that are trusted are accounted for at FSI. Typically, when SCI acquires a location, it does transfer the trust funds out. Sometimes to Argent Trust Company, other times to Clearpoint, and other times to Regions. But it uses one of the approved trust companies.

Rabbi Lyons – And so for this, whatever assets they're acquiring through this purchase, any future preneed contracts coming out of the cemetery, they're going to use the FSI?

Ms. Wiener – No, no, that's unlikely. As I said usually upon an acquisition, SCI does its own recordkeeping, so it usually transfers its trust funds away from the FSI Master Trust, which is where the monies currently are, But SCI does its own recordkeeping and utilizes one (1) of the approved trustees in the State of Florida.

Chair Peeples – Does that answer your question, Rabbi?

Rabbi Lyons – I think so.

Ms. Simon – Madam Chair?

Chair Peeples – Yes?

Ms. Simon – I apologize for interrupting, but if we could take this in a two-step process. The first would be the motion to acquire control of an existing cemetery company. I think that would be best for our procedures.

Chair Peeples – Thank you.

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

Ms. Simon – At this point it will be appropriate for a motion to be made to approve the application for preneed branch licensure.

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

Chair Peeples – Thank you, Ms. Wiener.

Ms. Wiener – Thank you, Board members.

N. Application(s) for Direct Disposal Establishment

(1) Recommended for Approval with Conditions

(a) Professional Funeral Services of Northwest Florida, LLC d/b/a Northwest Florida Cremation Service (Crestview)

Ms. Simon – Is there a representative of this entity on the call today?

{Inaudible} – This is (inaudible), representatives.

Ms. Simon – Thank you, sir. An application for direct disposal establishment licensure was received on June 21, 2023. The application was incomplete when submitted. A completed application was received on July 19, 2023. The Funeral Director in Charge will be Jonathan Pitts (F043772). A background check of the principals revealed no criminal history. The Division recommends approval subject to the condition that the establishment pass an onsite inspection by a member of Division Staff.

Chair Peeples – Board members?

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

O. Application(s) for Funeral Establishment

(1) Recommended for Approval with Conditions

(a) D A Jackson Funeral Home Inc (Hollywood)

Ms. Simon – Is there a representative of this entity on the call today?

Mr. Andrue Jackson – Yes, it is. Andrew Jackson. I'm the representative.

Ms. Simon – Thank you, Mr. Jackson. An application for funeral establishment licensure was received on July 12, 2023. The application was incomplete when submitted. A completed application was received on July 18, 2023. The Funeral Director in Charge will be Nicole Zimnowski (F042041). A background check of the principals revealed no criminal history. The Division recommends approval subject to the condition that the establishment pass an onsite inspection by a member of Division Staff.

Chair Peeples – Mr. Jensen?

Mr. Jensen – Just a clarification for Ms. Simon here. I'm seeing a person as a Nicole Jackson. Is that the same person as the FDIC?

Ms. Simon – The FDIC of this establishment will be Nicole Zimnowski. I think that's what I referenced. I'm not sure if she is on the call.

Mr. Jensen – Yes, that's what you referenced, but on here on Page 2 of 8 of our packages I has Andrue Nicoles Jackson. So, I'm just wondering if that's one in the same. I was just wondering if we had that correct. Thank you.

Chair Peeples – Is there any other discussion?

MOTION: Rabbi Lyons moved to approve the application subject to condition that the establishment passes an inspection by a member of Division Staff. Ms. Liotta seconded the motion, which passed unanimously.

(b) Foundation Partners of Florida, LLC d/b/a Baldwin Brothers (Tarpon Springs)

Ms. Simon – Is there a representative of this entity on the call today? Hearing a response. An application for funeral establishment licensure was received on July 13, 2023. The application was complete when submitted. The Funeral Director in Charge will be Evans Baldwin (F059692). A background check of the principals revealed no criminal history. The Division recommends approval subject to the condition that the establishment pass an onsite inspection by a member of Division Staff.

Chair Peeples – Board members?

MOTION: Mr. Ferreira moved to approve the application subject to condition that the establishment passes an inspection by a member of Division Staff. Mr. Brandenburg seconded the motion, which passed unanimously.

P. Application(s) for Preneed Main

(1) Recommended for Approval without Conditions

(a) Bell's Funeral Services LLC d/b/a Bell's Funeral Home & Cremation Services (F587905) (Pembroke Pines)

Ms. Simon – Is there a representative of this entity on the call today? Hearing no response. The Department received an application for preneed main licensure on June 1, 2022, which was incomplete at the time of submission. The application was deemed complete on June 20, 2023. A completed background check of all principals was returned without criminal history. Applicant's qualifying funeral establishment license is located at the address listed on your coversheet. If approved, this entity will offer insurance funded preneed through Great Western Insurance Company. The Division recommends approval without conditions.

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

(b) Northwood Funeral Home & Crematory LLC (West Palm Bch)

Ms. Simon – Is there a representative of this entity on the call today?

Mr. Luke Grabowski – Luke Grabowski on behalf of the Northwood Funeral Home.

Chair Peeples – Thank you, Mr. Grabowski.

Ms. Simon – The Department received the application on July 7, 2023, and no deficiencies were noted on the application. The members of the LLC are Gene P. Nelson and Nicole B. Nelson. A completed background check of all principals was returned to the Division without criminal history. It should be noted that Question (6)(a) under Adverse License History was answered "Yes" on the application. Gene P. Nelson, principal, provided information regarding a disciplinary action that occurred in 2006 in Sacramento, CA by the Cemetery and Funeral Bureau. As a result, Mr. Nelson was required to pay a fine in the amount of \$1,500. All conditions of this action have been satisfied and completed. Additionally, Mr. Nelson disclosed a Chapter 7 personal bankruptcy was filed against him in 2005. The bankruptcy was discharged by the United States Bankruptcy Court Eastern District of California, Sacramento Division in 2005. It should also be noted that an application for a change of ownership of the qualifying funeral establishment (License # F620128) located at the address listed on your coversheet was approved subject to conditions at the August 4, 2022, Board meeting. If this application for preneed licensure is approved, Applicant will sell trust and insurance-funded preneed through Independent Funeral Directors of Florida and Homesteaders Insurance Company and utilize their approved pre-arranged funeral agreement forms. The Division recommends approval without conditions.

Mr. Clark – Madam Chair?

Chair Peeples – Yes, Mr. Clark?

Mr. Clark – Just need to state for the record that I have a prior affiliation with Mr. Paul Nelson and Nicole Nelson, but that affiliation will not prevent me from rendering a fair and impartial decision.

Chair Peeples – Thank you, Mr. Clark. Board members?

MOTION: Mr. Jensen moved to approve the application. Mr. Williams seconded the motion, which passed unanimously.

- Q. Application(s) for Removal Service**
(1) Recommended for Approval with Conditions
(a) Fasttraq Transport LLC (Tampa)

Ms. Simon – Is there a representative of this entity on the call today?

Mr. Dowdell – {Inaudible}

Ms. Simon – Thank you, Mr. Dowdell. An application for a removal service was received on June 20, 2023. The application was deficient when submitted. A completed application was received on July 6, 2023. A background check of the principals revealed no criminal history. The Division recommends approval subject to the condition that the removal service pass an onsite inspection by a member of Division Staff. Is there a representative of this entity on the call today? Hearing a response.

MOTION: Rabbi Lyons moved to approve the application subject to condition that the removal service passes an inspection by a member of Division Staff. Ms. Liotta seconded the motion, which passed unanimously.

- R. Related Items**
(1) Application for Monument Establishment Builder and Monument Sales Agreement
(a) Recommended for Approval with Conditions
1. Live Legendary Creative Consulting LLC d/b/a Everglades Tributes (Belle Glade)

Ms. Simon – Is there a representative of this entity on the call today?

Mr. Edward H. Tucker – Hi, good afternoon. I'm Edward Tucker, the representative for Everglades Tributes.

Ms. Simon – Thank you, Mr. Tucker. An application for monument establishment builder licensure was submitted on June 1, 2023. The application was incomplete when submitted. A completed application was received on June 16, 2023. A completed background check revealed no criminal history for its listed principal. If approved, Applicant will operate as a monument establishment builder at the address listed on your coversheet. The Division would like to take this as two (2) distinct motions. The first is for the monument establishment builder licensure. Madam Chair?

Chair Peeples – Thank you, Ms. Simon. Board members?

Ms. Simon – If I may? The Division recommends approval with the condition that the establishment passed an on-site inspection by a member of Division staff.

Chair Peeples – Thank you, Ms. Simon. Board members?

MOTION: Mr. Jones moved to approve the application subject to condition that the establishment passes an inspection by a member of Division Staff. Ms. Liotta seconded the motion, which passed unanimously.

Ms. Simon – As to the monument retail sales agreement, the Division recommends approval subject to the condition that two (2) full-sized copies of the monument retail sales agreement be received by the Division within sixty (60) days of this Board meeting.

MOTION: Rabbi Lyons moved to approve the agreement subject to the condition that two (2) full sized print-ready copies of the monument retail sales agreement are received by the Department within sixty (60) days of this Board meeting. Ms. Liotta seconded the motion, which passed unanimously.

2. Southern Monument Studio Inc (Leesburg)

Ms. Simon – Southern Monument Studio Inc has submitted the following: (1) an application for a monument establishment builder license and (2) a monument sales retail agreement. The application was submitted on June 28, 2023, and all items were resolved as of July 5, 2023. Applicant also passed its initial inspection conducted as of July 11, 2023, by the Division. If approved, Applicant will operate as a monument establishment builder at the address listed on your coversheet and utilize the monument retail sales agreement also in front of you. Is there a representative of this entity on the call today?

Ms. Wiener – Yes, ma'am. Wendy Wiener. Thank you.

Ms. Simon – The Division recommends you take this as two (2) distinct motions. The first would be for the application for monument establishment builder licensure without conditions.

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

Ms. Simon – At this point, it would be appropriate for the Board to make a motion regarding the monument retail sales agreement. The Division recommends approval subject to the condition that two (2) full sized print-ready copies of the monument retail sales agreement are received by the Department within sixty (60) days of this Board meeting.

MOTION: Rabbi Lyons moved to approve the application; approve the agreement subject to the condition that two (2) full sized print-ready copies of the monument retail sales agreement are received by the Department within sixty (60) days of this Board meeting. Ms. Liotta seconded the motion, which passed unanimously.

S. Request(s) for Renewal

(1) Funeral Director and Embalmer

(a) Recommended for Denial (Criminal History)

1. Richardson, Derryck T (F045502)

Ms. Simon – Is Mr. Richardson or a representative of Mr. Richardson on the call today?

Ms. Wiener – We are both here. Thank you. Wendy Wiener representing Derryck Richardson.

Ms. Simon – Mr. Richardson submitted a request for renewal on July 11, 2023, and answered yes to the criminal history question. On May 11, 2022, Mr. Richardson entered a plea of nolo contendere to Grand Theft, was placed on six (6) months of probation and ordered to pay restitution. Probation was terminated on May 19, 2022. In DFS Case No. 221194-18, this Board disciplined the Applicant for conduct that gave rise to the aforementioned charge of criminal theft. The Consent Order for which is included in this Board package. The Division recommends denial.

Chair Peeples – Thank you, Ms. Simon. Ms. Wiener, would you like to address the Board?

Ms. Wiener – Thank you, Chair Peeples and good afternoon, again, Board. For those of you, most of you were not on the Board back in 2019 when this was before you, so let me reorient you to those facts. Derryck Richardson was the owner of two (2) funeral establishments. The funeral establishments during the early 2017, and before sold preneed without a valid license. The contracts that were sold were either fulfilled or were refunded. There were several proceedings initiated as a result of that matter. There were three (3) administrative cases: two (2) cases against the funeral establishment licenses, and one (1) against Mr. Richardson's funeral director and embalmer's license. The parties, and this Board, approved a Settlement Stipulation, which worked out that Mr. Richardson would voluntarily relinquish the two (2) funeral establishment licenses, which were treated as permanently revoked, but he would be permitted to retain his funeral director's license. He would pay a fine. He would be placed on a three (3) year probation. During that time period, he would not be permitted to act as FDIC or to be an owner of any funeral establishment. So, there was a three year what you sometimes refer to as a lockout period, if you will,

but Mr. Richardson was permitted to continue to practice funeral directing and embalming. He has practiced funeral directing and embalming continuously since that time in perfect standing. The Board, at the time, was on notice that that matter would result in a criminal case against Mr. Richardson. Mr. Richardson was completely cooperative in the criminal case, and in this administrative case. He cooperated fully. It did take two (2) years, though, for that criminal case to make its way through the criminal court system, and he was ultimately sentenced on May 11, 2022. Now, in that criminal court case adjudication was withheld. That still gives him a criminal history before you, but I would submit to you that it is a criminal history that should not be held against him in this context, because this Board knew when it permitted him to keep his funeral director's license, that he would have this criminal conviction or criminal case on his record. He admitted to the facts and cooperated fully. In fact, he was placed on a six (6) months' probation, with conditions of early termination, once all conditions of the probation, restitution and court costs had been fulfilled. He remained on probation for eight (8) days. That's not an error in your Board packet. His probation was terminated after eight (8) days. And, when this, Florida, in 2019, permitted Mr. Richardson to continue practicing funeral directing, put him on probation, and assigned additional terms to that probation, it did so with the knowledge that he would be criminally prosecuted, and that he would plead, no contest to those charges. As I said, he was cooperative, he was sentenced, his probation was terminated early, and he has practiced without incident since 2017, in fact. So, during the entirety of the administrative case, and since that administrative case, all three (3) years of his probation, he has not had a single issue. In fact, at the conclusion of that three (3) year probation. He. Became Funeral Director in charge of the facility that he works at. To deny his continued funeral directing licensure feels really, really wrong. Just when he becomes eligible by the terms of the 2019 Consent Order, to be an FDIC and an owner, and based upon the circumstances and facts that were well known to this Board when they allowed him to continue to be a funeral director and to prove himself to the Board, and to the public. This Board knew he would have this criminal history, but granted him that capacity to continue to practice, which he has done. Denial of his renewal now seems like it feels like a bait and switch, because this Board was well aware at the time it entered into that Consent Order, which was very severe, relinquishing both of his funeral establishment licenses but keeping his capacity to serve the public as a funeral director and embalmer, it new that this criminal case was coming down the pike. He learned his lesson. Clearly, he has been rehabilitated. He has served his probation in the criminal court system, brief, though it was. He served all three (3) years of his administrative probation without incident. He is here. He is available to testify to you that there has not been a single complaint, or a single incident associated with his funeral director and embalmers license during the pendency of his probation. He's paid his penalties, and he has shown this Board that he is not a threat to the public. Mr. Richardson's funeral director and embalmers license should be renewed. And I'm here for questions and so is Mr. Richardson.

Chair Peeples – Thank you, Ms. Wiener, Mr. Williams?

Mr. Williams – Thank you, so much, Madam Chair. Just a statement Ms. Wiener made in reference to this Board and the previous Board actions. I just want to state that, you know, each Board has its own interpretation of various things that come about. So, with respect to my colleagues, you know, we cannot be held accountable for previous Board actions. So, in your statement of saying, this Board, if they make a decision to deny, that's almost an insult. We take this case, and we take all cases serious in references to previous actions, or this action. So, I just want to make that statement to ensure that my colleagues are aware that previous actions by previous Board members may have seen other things. Thank you, Madam Chair.

Chair Peeples – Thank you, Mr. Williams. Ms. Wiener?

Ms. Wiener – I would respectfully disagree with Board member Williams. In fact, this is a regulatory body. It acts in continuity, even though different members come off and on. This Board continues in its existence. And so, when I make reference to "this Board knew", I'm not referring specifically to the individual Board members. That's why I tried to orient these Board members, to what had happened in the past, I'm referring to the continuity of the Board, which is the regulator. And, so, put more broadly, the regulator was well aware in 2019 that Mr. Richardson would cooperate in the criminal case and would therefore have criminal history to bring before you. But it, wisely with much consideration for a case that went on for a very long time, agreed to allow him to continue to practice his profession, and he has done so without incident.

Chair Peeples – Thank you, Mr. Wiener. Mr. Jensen?

Mr. Jensen – I can certainly understand Ms. Wiener that it was agreed upon to let him continue, but I am curious what {inaudible}. Were they funeral-related?

Ms. Wiener – It was the actual administrative case, Board member Jensen. When someone violates certain provisions of Chapter 497, the Division itself actually refers that to be a criminal case. It was not in any way unrelated. It was the exact case for which he was disciplined, also went over, and became a criminal prosecution. That was the only thing that he was prosecuted for there. The charge was called grand theft because they don't charge people with violations - - like, it had to do with the selling of the preneed without being licensed back in 2016. But it was all part of the same exact thing. It's just the administrative charges become part of a criminal case. And they did, and he cooperated.

Chair Peeples – Mr. Jensen?

Mr. Jensen – Follow up, please? I appreciate that Ms. Wiener, but what I'm trying to get at here is, were there actually monies missing involved that were related to the preneeds, or was it just operating without a license?

Ms. Wiener – So, the case, as you can see, gets resolved by way of restitution. There were some funds that were made, but most of the cases, by the time the case actually made it to the Board in 2019, most of the contracts that had been entered into had actually already been fulfilled. So, I believe there were a couple of instances where refunds were made, and they were made. And then that proof was, of course, submitted to the Board and submitted to the criminal court system, which is why he stayed on criminal probation for such a short period. During the pendency of that case, and I believe it's in the minutes from the 2019 hearing. Mr. Richardson actually offered to place any monies related to those contracts into trust at FSI, but ultimately, that was not part of what the Division required in the settlement agreement, and so that did not happen. But those contracts were either fulfilled or refunds were made. There were no continued monies that had been kept.

Ms. Munson – I don't know if that answered the question, though, but I think the answer was Yes. Mr. Jensen, but you can follow up with another.

Mr. Jensen – Yes, well, I'm looking at a Page 4 here, Item I, it says there was \$22,971.27 payable to the Office of Public Guardian. Is that right? And the cost of investigation to the DFS for \$3516.70. Is that what you're referring to, Ms. Wiener?

Ms. Wiener – Yes.

Mr. Jensen – Ok, so only \$3500 was paid there, so the restitution payable to the Office of Public Guardian. So that's what you're referring to. So basically, the investigation found there was no monies there to cover the preneed that wasn't put it in trust. The gentleman may have in an error, either forgot, or absconded with the money. Is that what I'm understanding?

Ms. Wiener – The underlying case was another case, unfortunately involving a public guardianship scenario. Mr. Richardson's funeral establishments had entered into preneed contracts, and those contracts had not been trusted. When we settled this matter in 2019, we offered to put aside any monies for contracts that had not been yet fulfilled. That was not required by the Board. It was not part of the stipulation. Instead, when this case proceeded forward restitution in the amount indicated in the criminal court system and court costs were required to have been paid. By the time that that that Order went into effect, however, most of the funerals had actually been provided. And so, any restitution that was remaining was paid, and the court costs were paid. And they were all paid within, basically, a week of the entry of the Order in the criminal court system.

Mr. Jensen – Ok.

Ms. Munson – If I may? I will always remind this Board that if you have the party here, if the attorney does not object, you can question that individual directly, if you have questions for the particular applicant.

Chair Peeples – Thank you, Ms. Munson. Mr. Jensen, I will give you the floor, and then we will offer to Mr. Richardson to be sworn in, if he would like to address the Board.

Mr. Jensen – Just one follow up. I'm curious if the Department knew. I know that it's been referred to that back when the gentleman was allowed to proceed with his licensing that there may be something coming forward, but was the Department aware when they did the disposition of that case, of the exact nature of the alleged crimes, or I guess, proven crimes at this point?

Ms. Simon – Madam Chair, may I respond?

Chair Peeples – Yes, Ms. Simon?

Ms. Simon – Ok. Mr. Jensen, I'm not sure if this will answer your question, but I'm going to try to. The criminal case, the Division was aware of it, because, as Ms. Wiener stated, the criminal case is based on the set of circumstances that gave rise to the administrative action back in 2019, So, we were aware of the facts that occurred in the criminal case.

Mr. Jensen – So, I'm sorry, Madam Chair. This is a lot like the other case. Are we coming around to take another bite of the apple or is this like, you know, is it your opinion, Ms. Simon, that this was all solved in 2019? I mean, what is the basis for the Department saying that this gentleman should not proceed? I can't really understand that.

Ms. Simon – The basis for the Division recommending denial is the criminal conviction.

Mr. Jensen – So, what you're alleging, or what you're saying, is that before it was just an allegation and now that there's been a conviction, you're saying, we got a whole different ballgame here. Correct?

Ms. Simon – What I'm saying is, based on the criminal conviction, that is why we are recommending denial. Yes, sir.

Mr. Jensen – Ok, Thank you, Madam Chair.

Chair Peeples – Ms. Wiener?

Ms. Wiener – Thank you. I'd like to call your attention on Page 10 of your Board packet. In that the restitution amount of \$22,971.27 that was payable to the Public Guardian, showed a credit of \$19,371.27. that had previously been paid to the Public Guardian, or through in-kind services, by honoring the contracts that were entered into. So, there was a small remaining balance owed for refunds and there were also the court costs. So, at the conclusion of the criminal cases, it was not \$20,000 plus outstanding. It was a small amount. The criminal case became a criminal case because the Division referred the matter to the criminal court system. So, it's not like the criminal court system just came to know that there was this crime. So, of course, all of this was known to the Department and to the Division when the settlement stipulations were put forward. This is just like coming back around for another bite at the apple. In 2019, this Board told Mr. Richardson he could continue to have his funeral director and embalmers license, and by doing so, he has made a point to conduct himself in total compliance with Chapter 497. And therefore, when this regulator, when the regulatory body knew that this was going to be a criminal case, they knew that this would result in criminal history. There's not a new underlying, outstanding criminal history that's associated with Mr. Richardson. He doesn't have any other criminal history. His only criminal history is based on what this Board, this regulator, was already on notice regarding. It feels inherently unfair to enter into an agreement with him, allow him to keep his funeral director's license in 2019, put him on probation. He completes all of the terms. He has no problem. And then, because of the conviction that they knew was coming, and by the way, it's not a criminal conviction, it's treated as criminal history here, but it was an adjudication withheld in the criminal court system. Because of his criminal history, now to say, well, we know we told you keep on going with your funeral directing license, and we knew you'd cooperate in the criminal case, and we knew you were going to end up with a criminal history against you, but now we're going to say that based on that, {inaudible}, but based on that very case that now you can no longer be a funeral director.

Chair Peeples – Ms. Munson, then Rabbi Lyons.

Ms. Munson – I just wanted to just clarify just one (1) of Ms. Weiner's comments, that the Board's action, and I think I might have mentioned this in a case on a previous meeting, but the Board cannot know what the court is going to do. The Department referred the case to a criminal review, and they could not know exactly the outcome of that. I don't want to give the impression that the Board is acting in some type of tandem with what was going on with the particular court proceedings. It may have sounded like that a little bit, The Board handles its adjudicative matter, its administrative matter, and then they handed it to the criminal court system and the criminal court independently did and ruled as it did. So, any type of predisposition, or pre-knowledge, or anything, that statement may be a little bit inaccurate, and I didn't want to leave the Board with the impression that that's kind of how the legal system will necessarily work. The criminal court could have decided to do a number of things as these administrative proceedings independently have the authority to do a number of

things, including dismiss cases.

Chair Peeples – Thank you, Ms. Munson. Rabbi Lyons?

Rabbi Lyons – Thank you. Ms. Wiener, the previous Board agreed to put the license on probation, but all parties must have known that the license would eventually be up for renewal, and that the criminal history is a reason for the denial of renewal. So, that's the context that the previous Board approved it. It's not that to deny it right now would somehow be going against the actions of the previous Board. That was well known to all parties at the time, and that's simply where we are right now. The Department is recommending denial because of the criminal history.

Ms. Wiener – I'm not suggesting Rabbi Lyons that is that this Board was acting inappropriately. Of course, Mr. Richardson knew that he would have to come back to this Board for renewal, but when that criminal history that he comes back to the Board with is related directly to the referral from of the Division, the Board members knew Mr. Richardson was going to cooperate in the criminal case, because he had already admitted to the allegations in the administrative case. He had cooperated fully in the administrative case. He had already resolved so much of the issue that was the issue related to this single entity that he had entered into these contracts with. If I ever hear Office of Public Guardian again, it will be a day too soon because, honestly, it has been a trouble for some of my clients. But my point is, if Mr. Richardson presented to you today for an independent, unknown criminal history, then you can take that into account, and you might approve his continued license or you might deny it. Because a criminal history alone does not necessarily support a denial of a renewal. A criminal history puts it in front of this Board to consider if Mr. Richardson is a danger to the public. Is this going to be a continued danger to the public? That's why Mr. Richardson went on three (3) years of probation. His license was actually renewed once before, during that time because of every other timeframe, but the criminal adjudication withheld case had not yet come to fruition. This was the first time that he had to report that on his renewal, and he did so. Mr. Richardson is the same funeral director today that he was when you placed on probation giving him the capacity to continue to act as a funeral director and embalmer. He is the same funeral director then, as he is today. A funeral director who successfully went through his probation, without any administrative cases, without any complaints against his license, without any problems whatsoever. He has served his community with pride since that time. And the point that I'm making to you here is that if to base a denial of his renewal application on facts and circumstances of which the regulator had notice feels inherently unfair, when Mr. Richardson has fulfilled his obligation to the industry to take good care of the funeral buying public, and it's this Board's role to protect the public this. Mr. Richardson is not a threat to the funeral buying public, as he has shown for the last many, many years that he has been licensed. Save for this issue resolved in 2019.

Chair Peeples – Thank you, Ms. Wiener. Mr. Ferreira, you had your hand up?

Mr. Ferreira – Yes, I think withholding judication, for me, is a pretty powerful move within just a few days. So, can I make a motion?

Chair Peeples – You sure can.

MOTION: Mr. Ferreira moved to approve the application and place the license on probation for one (1) year. Rabbi Lyons seconded the motion.

Chair Peeples – Mr. Brandenburg, I saw your hand was up, sir.

Mr. Brandenburg – It's been covered. Thank you.

Chair Peeples – Yes, sir. Mr. Williams?

Mr. Williams – Question with Mr. Ferreira's motion. After the one (1) year probation, then what? I mean, I just need some clarity to understand the motion.

Mr. Ferreira – So, I guess, after the one (1) year of probation, if there's not been any issues, then we continue.

Mr. Williams – May I follow-up, Madam Chair?

Chair Peebles – Yes, Sir.

Mr. Williams – Ms. Simon, in reference to the Department, would this conflict with anything that is in line with the standards and rules of the Department, with this motion?

Ms. Simon – I'm not sure of your question. However, there have been many times that the Board has approved licensure subject to probation, and that's what this is. So, in that respect, it would be just like any other Order that we've had.

Mr. Williams – Ok.

Chair Peebles – Thank you, Mr. Williams. We have a motion by Mr. Ferreira, and a second by Rabbi Lyons. Is there any further discussion on the motion? Ms. Simon, if you'll do a roll call vote, please. And you're going to vote yes, if you agree with the license renewal, you're going to know if you do not agree with the license renewal.

Ms. Simon – Yes, ma'am if I could just have one moment.

Chair Peebles – Yes, ma'am.

Ms. Simon – Mr. Clark?

Mr. Clark – Yes.

Ms. Simon – Mr. Brandenburg?

Mr. Brandenburg – Yes.

Ms. Simon – Mr. Ferreira?

Mr. Ferreira – Yes.

Ms. Simon – Mr. Jensen?

Mr. Jensen – Yes.

Ms. Simon – Mr. Jones?

Mr. Jones – Yes.

Ms. Simon – Ms. Liotta?

Ms. Liotta – Yes.

Ms. Simon – Rabbi Lyons?

Rabbi Lyons – Yes.

Ms. Simon – Mr. Williams?

Mr. Williams – Yes.

Ms. Simon – Madam Chair?

Chair Peebles – Yes.

Ms. Simon – Motion passes.

Chair Peebles – Perfect.

Ms. Wiener – Thank you, Board.

Chair Peebles – Thank you. Mr. Richardson. Thank you, Ms. Wiener.

T. Executive Director’s Report
(1) Operational Report (Verbal)

Ms. Simon – At this point, I will turn the meeting over to our Executive Director, Mary Schwantes.

Ms. Schwantes – May I, Madam Chair?

Chair Peebles – Yes, ma’am.

Ms. Schwantes – Thank you very much. Good afternoon, Board members This is the third and last of the back-to-back summer Board meetings, which have taken place since June, with as little as two (2) weeks between meetings. So, we very much want to express appreciation to you for the time and attention devoted to these meetings by our Board members and counsel. Also of course much thanks to Division staff who’ve worked on the different aspects of these meetings and the licensees and public who attend the meetings. If you are a licensee, don’t forget to get credit for attending the meetings to help meet your Continuing Education requirements. Instructions for how to obtain the Continuing Education credit for the video conferences are found on our website under Recent News. Our next Board meeting will be held by videoconference on Thursday, September 7th, beginning at 10 AM. And that ends the Operational Report portion of the Executive Director’s Report.

(2) Rules Committee Summary Report (June 8, 2023) (Informational)

Ms. Schwantes – On June 8, 2023, the Rules Committee (the “Committee”) of the Board of Funeral, Cemetery, and Consumer Services (the “Board”) met in person in Tallahassee, Florida. The meeting began at 1:00 p.m. The Committee is composed of three (3) individuals: Joseph Brandenburg (Committee Chair), Ken Jones, and Bill Williams. All Committee members were present. The Summary Report of the meeting is included in your Board packet for informational purposes. A copy of the minutes from the Rules Committee meeting are attached to the report. A copy of the Summary report and the attached minutes are also available under Recent News, and also under Board Meeting Minutes, on the Division’s website. The summary provides a brief explanation of each issue that was discussed at the Committee meeting, as well as the Committee’s recommendation on that issue, if any. For two (2) of the issues, the Committee recommended further review and discussion by the full Board. The first of those issues concerns *Requirements Regarding National Board Exam in Florida*. The second issue concerns *A Licensee’s Flexibility to Acquire Certain Merchandize at the Time of Need or Fulfillment*. No Board discussion or action is required on either of these issues today. Both issues will be noticed for future Board meeting discussion and possible rulemaking at that time. And that ends the report regarding the Rules Committee at this time. So, I will turn the meeting back over to Ms. Simon for the next item. And thank you very much.

RULES COMMITTEE SUMMARY REPORT

Embalming Requirement for an Establishment to Remain a Training Agency for Internship Licenses

Rule 69K-18.004, Florida Administrative Code, concerns intern training agencies. Subsection (3) of the rule provides that “in order to be approved as an embalmer intern training agency, a funeral establishment shall have performed at least forty (40) embalming cases per year for each intern it is applying to train in order to demonstrate its ability to provide such embalmer interns with the necessary intern training and experience.” The related form used in registering as a training agency is Form DFS-N1-1749, which is titled “Registration as a Training Agency.” At its November 3, 2022, meeting the Board voted to reduce the number required to 20 embalming cases per year.

Committee Meeting Results: No additional recommendations were made by the Committee. Proposed rulemaking will be presented to the Board in the future regarding Rule 69K-18.004, Florida Administrative Code, and the related form to effectuate the November 3, 2022, Board decision.

Problems Faced by Funeral Service Program Students in Accessing Required Courses

This issue was initially discussed before the Board at its November 3, 2022, meeting. There are no relevant Chapter 497, Florida Statutes, or rule chapter 69K, Florida Administrative Code sections pertaining to college course access.

Committee Meeting Results: No recommendations on this issue; the Board does not have authority in these matters.

Requirements Regarding National Board Exam in Florida

Concerns were expressed regarding the declining passage rates by Florida students taking the National Board Exam. Discussion was held as to whether the state requirements for this exam should be changed. The primary possible solutions discussed were (1) lowering the passage rate from 75% to 70% or less and (2) completely eliminating the National Board Exam from Florida requirements for licensure. Numerous statutes and rules are potentially impacted by this issue. All relevant rule and statutory language will be presented to the Board when this issue is placed on the agenda for discussion.

Committee Meeting Results: The Committee recommended that the relevant rules, including sections 69K-16.001 and 69K-16.002, Florida Administrative Code, be reviewed to determine if the National Board Exam requirement should be eliminated from the requirements for Florida licensure. Any changes to the substantive rules will also result in the necessity for changes to the related forms. This issue will be placed on the agenda for a future Board meeting for full discussion and possible rulemaking.

LLCs and Impact on Current Application Forms

Based on discussions which occurred during the Board meeting on May 4, 2022, the Committee considered if changes needed to be made to Form DFS-N1-1718, titled "Business Entity List of Principals," to better clarify the meaning of "principal" so as to make it clearer for LLC applicants.

Committee Meeting Results: The Committee did not have recommendations to the Board on this issue. However, the Committee agreed that Form DFS-N1-1718 should be modified to better clarify the issue. Since forms are the responsibility of and fall under the authority of the Department, the Department will review and pursue any appropriate changes to the use of the word "principal" in the form.

Resolution of Any Discrepancies Between Section 69K-8.005, F.A.C., and Section 497.459, F.S., Involving Refunds on Insurance Funded Preneed Contracts

Based on discussions which occurred during the May 4, 2022, Board meeting, this issue arose as to whether there is any conflict between the referenced statute and rule as it relates to refunds on insurance-funded preneed contracts. Discussion at the Committee meeting appeared to add clarity to the refund issue.

Committee Meeting Results: Upon consideration, the Committee did not have recommendations to the Board on this issue.

Rule 69K-8.006(6), F.A.C., as it Relates to a Licensee's Flexibility to Acquire Certain Merchandise at the Time of Need or Fulfillment

Concerns were expressed regarding the difficulty licensees face in providing merchandise that was specifically defined in a preneed contract (e.g., a specific casket model) at the time of need, particularly if the defined item is no longer readily available to the licensee.

Committee Meeting Results: The Committee recommended that Rule 69K-8.006, Florida Administrative Code, be reviewed by the Board to address this issue. This issue will be placed on the agenda for a future Board meeting for full discussion and possible rulemaking.

Ms. Simon – Thank you, May, I continue, Madam Chair?

Chair Peoples – Yes, ma'am.

(3) Report on Payment of Disciplinary Fines and Costs (Informational)

Ms. Simon – This is informational only.

Monthly Report of Fines and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 Date of Board meeting: August 3, 2023
 Date report was prepared: July 24, 2023

Licensee	Board Meeting	Case No.	Total Fine	Date Due	Paid in Full?	Comments
SCI Funeral Services of Florida, LLC d/b/a Southeastern Crematory	6/29/2023	305420-23-FC	\$10,000	Paid in Full		
Foundation Partners of Florida LLC d/b/a A Life Tribute Funeral Care	6/29/2023	291156-22-FC	\$500			
Michael Shorter	6/29/2023	292655-22-FC	\$500			
Brian James Bonar	6/29/2023	293064-22-FC	\$11,000			
Jeffrey Lynch	6/29/2023	296083-22-FC	\$1,000			
Christopher Coleman	6/29/2023	302547-22-FC	\$1,000			
City Monument Company	6/29/2023	288385-21-FC	\$2,000			
Willdorfs & Associates, Inc. d/b/a Cycadia Mausoleum and Monument Company	6/29/2023	290748-22-FC and 300629-22-FC	\$1,500			
Kevin Cantrell	6/29/2023	290752-22-FC	\$1,500			
SCI Funeral Services of Florida, LLC Dade North d/b/a Caballero Rivero Dade North	4-May-23	297779-22	\$2,250	16-Jun-23	Paid in Full	
Combs Funeral Home	4-May-23	274981-21-FC and 280024-21-FC	\$5,250	16-Jun-23	Paid in Full	
Turner, Marquis R	4-May-23	274982-21-FC	\$5,000	16-Jun-23	Paid in Full	
Swilley Funeral Home & Cremation Service, Inc.	4-May-23	300747-22-FC	\$1,250	16-Jun-23	Paid in Full	
David Rickner	4-May-23	300763-22-FC	\$1,250	16-Jun-23	Paid in Full	
Melinda Mezeline Jackson	4-May-23	298708-21-FC	\$3,000	17-Jul-23		Sent to OGC
Harry Oldham III	4-May-23	282704-21-FC	\$3,000	17-Jul-23		Sent to OGC
James Edward Simmons	4-May-23	285319-21-FC	\$1,500	17-Jul-23	Paid in Full	
Kathryn Rickner	4-May-23	300760-22-FC	\$1,500		Paid in Full	
Charles Hancock	4-May-23	301849-22-FC & 304154-22-FC	\$5,000	17-Jul-23		Sent to OGC
Hancock Funeral Home, Inc.	4-May-23	301848-22-FC & 304151-22-FC	\$5,000	17-Jul-23		Sent to OGC

ES 7-24-2023

U. Chair's Report (Verbal)

Ms. Simon – Madam Chair?

Chair Peeples – Thank you, Ms. Simon. A lot of times when it comes to my portion here, I'm doing Thank You's, and I would like to kind of thank the Committee members, because since I have been in this position, I have seen how hard they worked on the different committees, and I appreciate everything that they're doing. Board members, I appreciate the attention that you give to the agenda and the supporting documents. Thank you for doing that. And just remember it's license renewal month, so we have until the end of August to get our licenses renewed. So please make sure that you check your e-mail, and you handle that accordingly. And thank you team, Ms. Munson, Ms. Marshall, Mr. Griffin, Mr. Woliver, Ms. Schwantes, Ms. Simon, and everybody in the Board office. Thank you for what you do. Ms. Simon, we will turn it back to you. Please, ma'am.

Ms. Simon – Thank you.

V. Office of Attorney General’s Report
(1) Attorney General’s Rules Report (Informational)

Ms. Simon – Ms. Munson?

Ms. Munson – This is provided for informational purposes only. Thank you.

**BOARD OF FUNERAL, CEMETERY, AND CONSUMER SERVICES RULES REPORT
AUGUST 2023**

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective

There are currently no rules in the rulemaking process.

Ms. Simon – Thank you.

W. Public Comments (Verbal)

Ms. Simon – Are there any public comments to be made at this point in the meeting? Hearing, no response, Madam Chair?

Chair Peeples – Thank you, Ms. Simon.

X. Administrative Report

The information was provided on the agenda.

Y. Disciplinary Report

The information was provided on the agenda.

Z. Upcoming Meeting(s)

- (1) September 7th (Videoconference)
- (2) October 12th (In-Person - Location: TBD)
- (3) November 2nd (Videoconference)
- (4) December 7th (Videoconference)

AA. Adjournment

Chair Peeples – It is 12 45. We will see you folks on Zoom on September 7th. Mr. Jensen, did you have one last thing to ask?

Mr. Jensen – Are there minutes coming out from last month's meeting? I haven't seen those, or did I miss them?

Ms. Simon – The minutes will be presented shortly. They were not on today's agenda.

Mr. Jensen – No problem. Thank you.

Chair Peebles – Thank you. Meeting is adjourned at 12:46. Thank you.

The meeting was adjourned at 12:46.