

# NEVADA FUNERAL AND CEMETERY SERVICES BOARD

## MINUTES

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***Tuesday, June 5, 2018, at 9:00 a.m.***

Video Conference Locations

Legislative Building  
401 South Carson Street, Room 3138  
Carson City, Nevada  
and  
Grant Sawyer Building  
555 E. Washington Avenue, Room 4401  
Las Vegas, Nevada

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**Please Note:** The Board may 1) address agenda items out of sequence to accommodate persons appearing before the Board or to aid the efficiency or effectiveness of the meeting; 2) combine items for consideration by the public body; and 3) pull or remove items from the agenda at any time. The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of a person. (NRS 241.030)

Public comment is welcomed by the Board, but at the discretion of the chair, may be limited to three minutes per person. A public comment time will be available before any action items are heard by the public body and then once again prior to adjournment of the meeting. The Chair may allow additional time to be given a speaker as time allows and in his/her sole discretion. Once all items on the agenda are completed the meeting will adjourn. Prior to the commencement and conclusions of a contested case or a quasi judicial proceeding that may affect the due process rights of an individual the board may refuse to consider public comment.

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***Action by the Board on an item may be to approve, deny, amend, or table.***

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**1. Call to order, roll call, establish quorum. Meeting called to order at 9:00 a.m.**

**Board Members Present**

Dr. Randy Sharp, Chairman  
Lorretta Guazzini, Treasurer  
Bart Burton  
Adam Garcia  
Brian Rebman  
Christopher Naylor

**Board Staff Present**

Jennifer Kandt, Executive Director  
Marie Paakkari, Administrative Assistant

**Board Counsel Present**

Henna Rasul  
Senior Deputy Attorney General

**Board Member Absent**

Tammy Dermody, Secretary

**2. Public comment**

<p><b>Note:</b> No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)</p>
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John Lawrence of Autumn Funeral Home said he is very disappointed in the decisions that were made by the Board regarding the La Paloma case. Mr. Lawrence stated that it is the job of a funeral home to care for the deceased and he said he believes that La Paloma breached the ultimate care and they should not be in business.

**3. Discussion, recommendation, and possible action regarding review and approval of minutes of meetings (For possible action)**

a. February 20, 2018

**MOTION:** *Bart Burton moved to approve the February 20, 2018 minutes. Adam Garcia seconded the motion with Lorretta Guazzini abstaining since she was not present at the last meeting.*

**4. REGULATION WORKSHOP** – Workshop to solicit public comment on LCB File Number R086-18 and additional changes to Chapters 451, 452 and 642 of Nevada Administrative Code. The regulation sets forth requirements of locations in regard to refrigeration language, human remains placed directly on the floor, continuing education requirements for renewal, clarification of Sec. 25 of R067-15 regarding notice of violations, order of priority for family members authorizing disinterment, rights of decedents who order their own burial or cremation, correct error in section 24 of LCB File number R067-15 regarding recusals and providing other matters thereto.

Jennifer Kandt stated that the workshop notice and small business impact statement was enclosed in the Board packet. She stated that a survey was sent out to all funeral homes and one response was received. The entire text of the one response was included in the small business impact statement and related to Item 1 regarding refrigeration and Item 4 regarding notice of violation.

Ms. Kandt stated that item 1 on the requested regulation changes was to change the refrigeration language to lower the temperature, specify that it must be mechanical and language stated that the refrigeration unit must be Board approved and inspected. She stated that La Paloma Funeral Home requested that the Board change the language of “Board approved” and replace it with “industry approved.”

Adam Garcia stated that mechanical could mean different things to different people and given some of the issues that this Board has faced over the last year and a half, this may be the time to ensure that this definition is iron-clad.

Warren Hardy representing La Paloma Funeral Services stated that he was the one that submitted the comments and he thought it would be helpful to provide the thought process behind it. Mr. Hardy stated that they think that the proposed changes are good, clarifying, and very helpful. They specifically think the clarification regarding mechanical refrigeration unit is important. However, he stated that he does not believe that the Board should need to approve the unit. Mr. Hardy stated that through his years of experience, when things are included like “board approved” it has a tendency to encourage favoritism for a particular manufacturer or a particular brand of product. Certainly, it is appropriate for it to be inspected to make sure that it meets the standards that the Board anticipates, but to specify, the wording “board approved” could lead to favoritism in selecting a brand.

Bart Burton stated that he thought that if the Board defines what mechanical is, that part of the Board inspection process will be to see if it will meet the guidelines. Mr. Burton stated that as industry standard, there are enough manufacturers out there. This is not a new concept. Mr. Burton believes that it is important that the Board defines what exactly a refrigeration unit is and as trivial as this may sound, Mr. Burton stated that he believes that everyone that has been on the Board for a year and half, knows there is nothing trivial. Mr. Burton stated that he is in favor of defining mechanical and spell out what refrigeration is and use that as a guideline.

Dr. Randy Sharp asked if the Board went with industry standard as opposed to board approved, would industry standard cover the definition and cover the Board's concerns as far as being mechanical and self-contained refrigeration unit.

Bart Burton stated that what the Board needs to keep in mind is industry standard, on these refrigeration units, they are no different than any refrigeration unit that is used in various types of industries such as the food service. Mr. Burton stated that he thought that industry standard would be self-enclosed, temperature controlled, and contained within its own facility. Mr. Burton stated that he thought that the Board didn't have to address anything regarding manufacturers. He stated that main issue is to make sure that human remains are in refrigeration for the protection of the public and who makes the unit doesn't make any difference. Mr. Burton stated that he did not feel that "Board approved" would be necessary, however, industry standard would probably be good in his opinion.

Warren Hardy stated that he would like to recommend some language as he was even rethinking his recommendation that industry standard is not specific enough. Self-contained has a very specific meaning which means it is a unit that operates independent of its environment. Mr. Hardy suggested language to include "self-contained refrigeration unit designed specifically for the storage of human remains". Mr. Hardy stated that he believed that the Board is going to get what the Board wants without creating the confusion that might have members of the industry trying to guess what the Board was thinking. Mr. Hardy stated that you would want a unit that is specifically designed by the manufacturer for the storage of human remains. Mr. Hardy stated that would work for their purposes.

Lorretta Guazzini stated that she didn't believe that a refrigeration unit has to be specific for human remains, but she is okay with that. However, Ms. Guazzini stated that she believes with temperature controlled should be added to the language.

Mr. Garcia stated that he still felt language that specifies that it has been inspected by the Board and approved by the Board is warranted.

Dr. Randy Sharp stated if the Board inspects it, they are essentially going to approve it. Dr. Sharp asked if the Board would necessarily need redundant language.

Adam Garcia stated that given the Board's experience, he believes that the Board needs to be specific. In that if the Board inspects it, does that insinuate approval. Mr. Garcia believes that there is an insinuation there, but again, given the experience of the last year and a half, the Board needs to close the loopholes.

Mr. Rebman stated that he would suggest that the Board just stick with industry standard. When the inspection takes place, when someone has a new building that they are trying to get approved to open for business, they will be inspected by the Board. When the funeral homes have the inspections, if someone has put in a new refrigeration unit, it is inspected and approved. Mr. Rebman stated that he believed that being a little more general is better. Mr. Rebman stated that during the Board inspection, if it is a window unit inside a cardboard box, it will not be approved.

Dr. Randy Sharp stated that on the inspection check-list, that is where the Board could put the specifics regarding refrigeration unit, whether it is industry standard, etc. Where as in the regulation just keep it "board inspected." Dr. Randy Sharp stated that he believed that Jennifer Kandt's comments to put in "self-contained, mechanically controlled, temperature regulated refrigeration unit was good.

Brian Rebman stated that he disagreed with the “self-contained” because someone might have an actual building that is specifically built for that and he believes that may be too restrictive. Mr. Rebman stated that he believes that “industry standard, inspected and approved by the Board.”

Lorretta Guazzini asked Mr. Rebman who he believed it was restricting, the people who have the funeral home or the Board.

Brian Rebman stated that he believes that it would restrict both because the definition is too specific.

Lorretta Guazzini stated that she believes that the Board needs to be more restrictive after what the Board has gone through.

Bart Burton stated that he is unclear whether it is restrictive or not being restrictive, he believes that the refrigeration unit should be self-contained. It should be used for one purpose and one purpose only. Mr. Burton does not think that it would limit anyone, and he would be in favor of using “self-contained” definition language in the regulation.

Dr. Randy Sharp stated that he believes everyone has good points, but for his clarification, he was thinking along the lines of Brian, that if the Board had something not extremely specific in the regulations, but yet specific enough on the inspection forms, it could be very specific when the establishment is inspected.

Warren Hardy stated that having dealt with this type of language and verbiage, he just wanted to associate himself with the comments with the Board Chairman because he believes that he is on the right track. Mr. Hardy stated that everyone keeps talking about the last year and a half, and nobody wants this defined clearly and understood more than La Paloma Funeral Services. Mr. Hardy believes that if it is inspected by the Board, that assumes approval. Mr. Hardy stated that the Board would need to be careful because if it is inspected by the Board and the Board says this is fine, that is really all that is needed because that is approved by the Board or by the Board’s agent. Mr. Hardy stated that by putting “and approved” sets a different standard, not only in the Board’s NAC but across NAC for all boards. Mr. Hardy stated that he believes that we need to be able to all operate on the assumption that, once it has been inspected by the Board staff, that would equate Board approval. Mr. Hardy stated that he would caution the Board against adding “board approval” and stick with “inspected mechanical refrigeration unit.”

Adam Garcia stated that he would seek legal counsel on whether or not “inspected and approved” would have any impact on any other NRS or boards in this State.

Henna Rasul stated that the “board approved” language is common and is typically used by many boards and is specific to the regulatory statute that it applies to and is not an uncommon term.

Adam Garcia stated that he would still argue that “inspected and approved” language is appropriate for this item.

Dr. Randy Sharp asked Jennifer Kandt if there are industry standards for human refrigeration units as there are for commercial food production like National Sanitation Foundation, NSF approved refrigerators, etc. Dr. Sharp asked if there was something like that for the funeral industry.

Jennifer Kandt stated that she is unaware about specific funeral industry standard such as NSF. She said that obviously the funeral industry has specific units that are sold specifically for storage of human remains, but that there are also locations that use units that are specifically

designed for refrigeration of food. She said that they essentially serve the same purpose and are designed very similarly, so she doesn't know that there would be an issue with using that type of unit. She stated that it appeared the Board favored adding language that does state "industry standard, temperature controlled, mechanical, self-contained." She said she believes they are all things that the Board could definitely add to further clarify what the Board is trying to accomplish.

Dr. Randy Sharp stated that it sounds like it comes down to adopting the appropriate language and whether the Board would want board approved and inspected or board inspected and approved since that seems to be common language with boards overseeing different industries.

Dr. Randy Sharp stated that would come back to being more general in the regulations and more specific on the inspection check-list making sure that it is self-controlled, temperature regulated, etc.

Brian Rebman stated that when the inspector goes out to see it, he knows the industry standard and if it is appropriate for use for human remains then he approves it and if it is not, then it is not approved. Then if it comes before the Board, the Board knows what is industry standard.

Warren Hardy stated that is not so much problematic for them, but having the Board approve requires that the Board come back every time that there is an advancement in technology and every time that there is something new that is happening. If you just leave the language that it is inspected by the Board staff, that indicates approval and then we don't have to come back and have a regulatory hearing or have the Board rule on whether something is approved. It is self-contained, temperature control and it is all the things that are required during inspection. If the language is "board approved," then they have to wait for a Board meeting, and then come back and review it, Mr. Hardy stated that he believes that is just micromanagement that will put the businesses at a disadvantage. Mr. Hardy stated that he is just trying to avoid any confusion because we do all know what happened in the last year and half, there was some confusion, so the clarification is important. Mr. Hardy stated that he just doesn't want it to become more burdensome and complicated, and he believes "board approved" is unnecessary. It is going to be inspected by the Board staff and if it passes that inspection it works.

Bart Burton stated that he agreed with what Mr. Hardy stated about being on the check-list, if it is checked, its approved and if it is not, then it will go to the Board. Mr. Burton stated that what he is apprehensive about is that making sure that the Board defines "self-contained." Mr. Burton stated that he just looked up the definition of "self-contained" and it states: "a self-contained refrigeration system means that an entire system from condenser to evaporator is built into a cabinet." Mr. Burton stated that he appreciates the generalities, but he does not believe that generalities will work, he believes that the Board needs to specify the definition because of the last year and a half. Mr. Burton believes that there is nothing written stating that there is a funeral industry standard and he believes that the Board needs to be clear as to what refrigeration is, and what the temperature should be. Mr. Burton stated that when the inspection takes place to check off the box that it meets all requirements and move on. He believes that the Board needs to be specific. Everyone knows what the Board went through, and the Board was challenged that their perspective was an industry standard. As trivial as it may sound, he doesn't want to be down that road again, he wants to make sure that the Board states what it is, if the Board would have had language like this in place, it would have been cut and dry, done. Mr. Burton stated that 99 percent in the industry would say it is. Mr. Burton stated that he believes that as trivial as it may be, that part of it needs to be stated. Mr. Burton stated that as for the inspection approval part, he agrees. If the inspector goes out and checks it off on the inspection check-list, that means it is approved and it is no different than anything else on the check-list.

Warren Hardy presented the language “self-contained, temperature controlled with the ability to maintain 42 degrees Fahrenheit specific.” So that it doesn’t fluctuate, it specifically has the mechanical ability to maintain the 42 degrees.

Dr. Randy Sharp stated that would be a good thought, however, in speaking with some people in the industry, 42 degrees is pretty warm for a refrigerated unit. The Board was trying to give a little laxity in case the temperature went up to 42 degrees, but it is his understanding is most of the industry keep the temperature around 34-38 degrees. Just to maintain at 42 degrees he believes is too warm.

Mr. Hardy suggested “capable of maintaining a set temperature”. Mr. Hardy said he believes that what we are trying to get away from is other artificial ways of cooling that are not controllable. Mr. Hardy stated that he referenced 42 degrees because that is what was suggested in the language. He stated that he knows that is the maximum, but that is context of the regulation and Dr. Sharp’s point is well taken. Mr. Hardy stated that he believes that “self-contained, temperature controlled capable of maintaining a specific or designated temperature” is probably good language.

Adam Garcia asked if Jennifer Kandt could explain the regulation process from this point, this is an open meeting to which the Board is taking public comment on this proposed change.

Jennifer Kandt stated that the Board can request changes be made by LCB and then there will still need to be an adoption hearing and approved by the legislative commission.

Dr. Randy Sharp stated that he believed the Board should make additional changes to send to LCB. Dr. Randy Sharp stated that he would suggest that the Board put in the words “self-contained, temperature controlled, mechanical refrigeration unit and not to allow the temperature to exceed more than 42 degrees Fahrenheit within twenty-four hours after the operator receives the human remains” and also, he would still like to include “board inspected and approved mechanical refrigeration.” Dr. Sharp asked if the Board would like to include “industry standard” since that seems to be vague. Dr. sharp stated that he is looking at it as the law is based on reasonableness and would a reasonable person think that what we are trying to get at is a refrigeration unit.

Jennifer Kandt stated that prior to this meeting, she asked The Conference what different states had defined in regulation. She said most states had temperature requirements but they didn’t really define it any further than that in terms of mechanical or self-contained.

Adam Garcia asked about the specific process for Board approved.

Jennifer Kandt stated that if Board staff were going to inspect a unit as part of the inspection process, if violations are found, the Board has two courses of action after the inspection depending on what the violations are. The first would be to issue a notice of violation and give them thirty days to correct whatever violation that is. The second would be to proceed with disciplinary action. In terms of the refrigeration unit, Jennifer asked if “board approved,” would mean that the Board would want that company to come before the Board, be on an agenda to look at the unit prior to purchase or is the inspector or staff making the approval.

Adam Garcia stated that from his perspective, anything that staff, or the investigator and any conduct investigation that they perform is done on behalf of the Board and from his perspective, any action that is taken is done on behalf of the Board, so the Board approves it. Mr. Garcia stated that was his understanding.

Warren Hardy stated that if the Board includes “board approved” after inspected he will, given their experience in the last year and a half, advise them to go to the Board for everything. Mr.

Hardy stated that he will want Board approval for everything. Mr. Hardy stated that he is not going to accept the inspection of the staff. Mr. Hardy stated that he doesn't know why staff is needed if it is going to require Board approval. Mr. Hardy stated that if it is going to be inspected, he knows with his experience within the last year and a half, he is not going to proceed with anything. Mr. Hardy stated that if they put in a new refrigeration unit into one of their locations he is going to come, regardless of what staff tells him, and ask the Board to approve that because he doesn't know, and it is unclear to him. Mr. Hardy stated that is the burden that will be placed on the industry. Mr. Hardy believes that the Board is way overthinking this. Mr. Hardy stated that he knows that there is a general reluctance to take any suggestions from him or his client, but "self-contained, temperature controlled capable of maintaining a constant temperature and inspected by the Board is sufficient. Mr. Hardy stated that if "board approved" is added, he disagrees with the Board counsel that "board approved" is used throughout statute and used throughout NAC, and in conjunction with inspected. He believes that it diminishes the effectiveness and what they could count on as an inspected product if it says inspected and board approved. Mr. Hardy stated that he will come with everything to this Board out of an abundance of caution to make sure that the Board has approved it, knows its and understands it. Mr. Hardy stated that is just how he is going to react to that and that creates a burden on his client, creates a burden on the Board staff and it creates a burden on the Board.

Dr. Randy Sharp stated that it appears that focus may have been lost, but it appears that the area that is not quite in agreement is having the verbiage "board approved and inspected." Dr. Sharp stated that the Board has an inspector as part of the staff, the Board has the executive director, they are acting as agents of the Board, as Adam stated, and if they are inspecting this refrigeration unit and they say that it passes all of the specific items within the inspection check-list, then by default, it appears to him that the Board is approving that refrigeration unit.

Lorretta Guazzini stated that she believes, after listening to Mr. Hardy, it doesn't necessarily have to state that it is approved by the Board. During an inspection, that inspector is working for the Board and she could see where Mr. Hardy is saying we are kind of doing double duty here.

Dr. Randy Sharp stated that Mr. Hardy brought up a good point that if someone received a new refrigeration unit, they would have to come before the Board for approval and that unit is going to be inspected anyway each time they change a refrigeration unit.

Bart Burton stated that he agreed with Lorretta, he believes that if the Board needs to make sure that it is on the inspection check-list and that the inspector goes out to make sure the Board has, in detail, what the refrigeration unit is, and it is going to be spelled out what it is going to be. If it meets that criteria, as Lorretta stated, it is either going to be yes or no.

Dr. Randy Sharp stated that we are back to the generalities in the language and then specifics on the inspection check-list.

Warren Hardy stated just so he is not misunderstood, he believes that it is exceptionally important that the Board include the language "self-contained, temperature controlled and capable of maintaining" so that we know, because that is where the confusion came in before, the regulation only spoke of the temperature and there was a disagreement over whether that temperature was met.

Jennifer Kandt stated that she did not feel there was a problem with the Board taking out "board approved" language, because when the inspection is performed, if there is an issue, there will be two different routes the Board can take, and the business will have their opportunity either way to go before the Board if they want to challenge the results of that inspection. Ms. Kandt stated that taking out the "board approved" language will not affect the intent.

Dr. Randy Sharp stated in summary, as stated in the Board packet in blue writing, "in a Board approved and inspected mechanical refrigeration unit," we should change that a little to state "is embalmed or refrigerated in Board inspected a self-contained, temperature controlled, mechanical refrigeration unit capable of maintaining temperatures of not more than 42 degrees Fahrenheit within twenty-four hours after the operator receives the human remains." Then the transitory fluctuations, he believes the Board is good with that because the Board had discussed that at length previously, especially the areas in the hotter climates, opening and closing the door.

Bart Burton stated that he agrees with Dr. Sharp's statement.

Jennifer Kandt stated that based on the discussions, it sounded as though there was general consensus regarding Dr. Sharp's statements. Ms. Kandt stated that she will speak with LCB about making those changes.

Item 2 is to specify that human remains placed on the floor will still be considered directly on the floor even if they are in a minimal contain, casket or body bag, that includes for the purposes of storage and transportation as well.

Jennifer Kandt stated that there were no comments from any public regarding this item in terms of the small business impact statement. Ms. Kandt asked if there was any public comment regarding this item.

There was no public or Board comments regarding this item.

Item 3 is to allow for a reduced number of continuing education credits for individuals licensed less than twelve months prior to renewal.

Jennifer Kandt stated that she was advised by the LCB that this section cannot actually be specified in regulation. LCB came back and stated that it would require a statutory change. Ms. Kandt stated that she believes that they are still going to allow the Board to clarify that they cannot carry over continuing education from previous years, however, the Board cannot reduce the number of continuing education units.

There were no public or Board comments regarding this item.

Item 4 to further clarify Section 25 to state that the Board may issue a notice of violation or proceed with disciplinary action.

Jennifer Kandt stated that when the Board initially instituted this regulation several years ago, the idea was that if the Board were to witness act or anything egregious, the Board would proceed with disciplinary proceedings. Ms. Kandt stated that the Board is certainly not going to give someone thirty-days to move bodies off of the floor in a dirty warehouse. Ms. Kandt stated that she believes that it would be better if the Board stated that the Board "may" issue the notice of violation and not that the Board will as that forces the Board to write two separate letters. Ms. Kandt would also like to clarify that on number 3, where it states that the Board may initiate disciplinary proceedings without issuing a notice of violation, there was a comment from Mr. Hardy that this would be violating their due process. Ms. Kandt stated that it is not that they don't get a notice and an opportunity to response, it is just that the Board is doing so in accordance with the notice under 233B and the Board is going in accordance with the disciplinary action section, as opposed to giving the thirty-days to correct the act. She stated the thirty-day notices are going to be for paperwork or minor missing items, but not for any acts that the are witnessed and Ms. Kandt just wanted to make that clear.

Warren Hardy representing La Paloma Funeral Services stated that they are very concerned about the language as it relates directly to the commencement of disciplinary action. Mr. Hardy stated that he understands the intent and what the Board is trying to get to. Certainly, if there is an immediate need that there is a need to issue a cease and desist, there is an issue to immediately stop the action, we certainly do not have a problem with that, that is something that should be permitted, allowed and enforceable. However, they believe that a notice of violation is a pretty important step in the due process. Mr. Hardy believes that if there were a more artful way to get, or if a clearer way to get to what the Board is trying to accomplish, they actually think that there should be more verbiage, more included than what is in the notice of violation, more specifics and actually pursuing some independent legislation to look into that. That is their concern that seems to be moving in the wrong direction as far as transparency setting up an opportunity for abuse, but the scenario that Executive Director Kandt just articulated certainly needs to be addressed. Mr. Hardy stated that you can't issue a thirty-day corrective action for health safety violation. Mr. Hardy stated that he believes that there are other regulatory schemes that allow for that, but not removal of the requirement to issue a notice of violation. Certainly, a notice of violation could be issued a corrective action presumably or a cease and desist, you have to stop, and you have to fix that now and then you serve them with a notice of violation. That is their concern, that it might be interpreted in a way that it violates due process.

Jennifer Kandt stated just to clarify, they are given a notice, it is just a notice under a different section because they have to be given a notice under the requirements of 233B of any alleged violation and given an opportunity to respond. Ms. Kandt stated that she has no problem with discussing with LCB on how the Board could make this clearer and address Mr. Hardy's concern. Ms. Kandt would like to state on the record that she does not think that there is a due process issue because they are given due process, just in a different section of the regulatory scheme.

Henna Rasul stated that she agrees with Jennifer Kandt, basically there are two options in respect to alleged violations, and those are issuing a notice of violation which would address the due process issue or pursuing disciplinary proceedings which is in accordance with 233B which is just another form of pursuing due process. Either way, the Board is covered by due process.

Jennifer Kandt stated that she would like to take the opportunity to discuss this with LCB and come back with something that is a little clearer.

Dr. Randy Sharp stated for his clarification, it would be more clarification on what perhaps violations would warrant that as opposed to paper violations and that sort of thing.

Jennifer Kandt stated that she does not want there to be any thought that there is not due process because there is, it is just how we word that more to make sure that everyone is aware that there is a notice that goes out, there is an opportunity for the person to respond to the disciplinary proceedings, but that the Board is not giving them thirty-days to address egregious things that they may be doing.

Henna Rasul stated that in this portion, where it states that the "Board may initiate disciplinary proceedings," perhaps after that, state, "in accordance with 233B" and that would cover that and shows that the Board is actually addressing due process and going forth with the due process notification then having the language "without issuing a notice of violation." Because the 233B letter is taking the place of the notice of violation.

Jennifer Kandt stated correct and she is in complete agreement with Ms. Rasul's statement, however, she would just like clarification from LCB on their standpoint regarding that matter.

Adam Garcia asked Jennifer in the event that a violation is observed, they would still be given some sort of notice at the time of the observation.

Jennifer Kandt stated how it works, after the inspection, Ms. Kandt receives the inspection report, a letter is drafted, anything that is simple paperwork issues, they are given the thirty-days to respond to those violations and they sign off that they have corrected their paperwork/violations and get that back to the Board. If an act was witnessed, then Ms. Kandt as the Executive Director of the Board, will file an informal complaint and it will then go through the disciplinary process. They are still given a letter which states what the alleged violations are, but it then goes through the Attorney General's office as a complaint.

Adam Garcia asked if staff or an investigator were to observe, let's say bodies on the floor or outside of a refrigeration unit that needed to be handled and discussed immediately at that time, how would that work.

Jennifer Kandt stated that the Board does have a provision that allows the Board a five-day notice of a hearing, so it would be possible that the Board could proceed under that. Otherwise they are given the letter in accordance with 233B, which allows them fifteen days to respond. She said there is also a statute that does allow for a cease and desist and then you can do the five-day notice of a hearing to suspend the license.

Adam Garcia stated so there is nothing that staff can do at that moment to rectify that situation.

Jennifer Kandt stated that the only thing that can be done is a cease and desist letter, otherwise it is going to be at least a five-day process for us to do a notice of a hearing to suspend a license.

Lorretta Guazzini asked that what is being said is, you couldn't go into an establishment that had bodies on the floor, and in the situation that we have been through, and do a cease and desist right then.

Jennifer Kandt stated that the Board could do a cease and desist letter, but in order to actually stop the facility from operating, that would require a hearing with at least five-days' notice.

John Lawrence representing Autumn Funerals and Cremations asked for clarification if, using the example of bodies on the floor, if when the inspector gets there, the facility immediately takes the person off the floor, is that still going to be a notice of violation because it has been rectified, or is that something that because it was fixed, it is not mentioned.

Jennifer Kandt stated that this specific case that we had, the situation was rectified within several days, but obviously the Board still proceed with disciplinary action because the act had occurred and was egregious.

John Lawrence representing Autumn Funerals and Cremations thanked the Board and stated that is what he wanted clarified.

Adam Garcia asked if there an obligation on the part of the funeral home or whoever the Board is dealing with, to immediately rectify that issue. For instance, a body stored outside of a refrigerated unit.

Jennifer Kandt stated the Board could do a cease and desist letter, but in order to actually stop the business from continuing to operate, for instance if they don't cease and desist what they are doing, the Board would have to have a five-day notice for a hearing. The other option was considered whether the Health Department could get involved in some these potential problems because there is the ability for the Health Department to intervene in situations where public health and safety is a concern, but otherwise, no, the Board has to have a five-day notice to do a suspension of a license.

Adam Garcia asked if that was codified in NRS or in regulation, where does that lack of authority and power come from.

Jennifer Kandt stated that it was in NRS 642.

Adam Garcia stated so we have to go back to the legislature if we want to see changes.

Jennifer Kandt stated correct.

Warren Hardy representing La Paloma Funeral Services stated some of the dialog of the Board is a little concerning to him because it sounds like the Board wants to be able to act against somebody's license without due process, without even a five-day notice of hearing or due process. That is what we are talking about here, he does not want to in any way impinge, in fact we may need to strengthen the ability of the Funeral Board to issue a cease and desist or an immediate corrective action and then once the action is corrected to then pursue disciplinary action. Mr. Hardy stated that he believes that is the standard. You stop the act that is harmful to the public safety immediately and then you start a process whereby the Board acts against the licensee. That is appropriate, that is due process. The Board staff has to have some ability to immediately stop the action that is in violation of the law or NAC. That is appropriate, but to say, we are going to allow an inspector to immediately suspend the license of a licensee is extremely problematic and that is what he has heard some advocate for. Mr. Hardy stated that he wanted to make it clear that he is not advocating for a scenario where the Board cannot immediately stop an action, he would advocate for strengthening their ability to do that if necessary. Either regulatory or statutorily. The action against the licensee, the action against a full disciplinary proceeding should proceed in those cases, but the due process has to be there, that is all he is arguing. He does not disagree with what Ms. Kandt and the Board legal counsel have said, it just needs clarification. Mr. Hardy stated that he is not an attorney and any reasonable person could read that to say we are going straight to disciplinary action without the due process associated with it. Mr. Hardy stated that he thinks that the clarification that Ms. Kandt has suggested we go back to LCB for is all they are asking for to make sure that the Board has the ability to immediately stop an action that is inappropriate, but yet the individual licensee still has the ability to defend themselves and explain the scenario and given the due process before their license is in jeopardy.

Dr. Randy Sharp stated that the Board is just getting clarification and the Board was not asking to try to change things. The Board was just asking for clarification but circling back, as Jennifer Kandt stated, the Board does need clarification on that issue. To make sure everyone does understand that there is due process that will occur in accordance with existing statutes.

Jennifer Kandt asked if there were any further comments. There were no further comments. Ms. Kandt stated that it sounds like there is general consensus that the Board get some clarification to address Mr. Hardy's concerns and make it clear that there absolutely is still due process in what the Board is proposing.

Item 5 A cemetery authority shall follow the order of priority for family members authorizing a disinterment. Jennifer Kandt stated that this language was the suggested language sent to LCB. The idea here would be that they would follow the order 1(a) through 1(g) but you couldn't go beyond that for a disinterment unless you had a court order. Also, that the cemetery authority has the ability to require for a court order if they think that there is some sort of a dispute. The Board didn't really discuss this section in detail prior to this meeting. Ms. Kandt asked if the Board Members would like to offer any further input regarding this matter.

Dr. Randy Sharp asked if any Board Members had any thoughts regarding this matter.

Christopher Naylor stated that he liked the verbiage that is presented. Mr. Naylor stated that he has seen where cemeteries have had family members sharing the same level of priority disagree and had to take it to the court system and stated that he likes that wording in there. What they have seen on the VA's side is that usually the one that initiated the burial or cremation is also in agreement, unless they have passed on, with the disinterment along with all immediate family members who are required to all be in agreement. Mr. Naylor stated that he thought it looked good.

Item 6 To preserve rights for decedents who order their own burial or cremation through a pre-need arrangement. Jennifer Kandt stated that she received word from LCB that they do not think that the Board could do this through a regulatory change. There would have to be changes to several sections within NRS because currently those pre-needs are allowed to be fully refunded and without changing that, LCB does not think that the Board has the regulatory authority to change this and would require a statutory change.

Dr. Randy Sharp asked if there were any Board member comments.

Brian Rebman stated there is really no way, other than legislation to protect the rights of the person who made the pre-need. Mr. Rebman asked if there was an irrevocable assignment on the pre-need, would that provide any protection.

Jennifer Kandt stated that she was not sure and would probably have to do research. Ms. Kandt stated that it is her understanding that any of the pre-needs are allowed to be fully refunded by what is in the statute currently. Ms. Kandt clarified, they are allowed to keep twenty-five percent in commission, other than that, the rest must be refunded to the family or their estate.

Brian Rebman stated that he believed that there were two different products. The trust has disclaimer that they keep twenty-five percent. However, with an insurance product, there can be an irrevocable assignment and that is not refundable with an insurance assignment. Bottom line is, unless the Board goes through legislation, there is no way to change that.

Jennifer Kandt stated that is what LCB has advised at this point.

Philip Smith, representing Davis Funeral Home stated that it seems like this verbiage would drastically change the rights of disposition. Whereas, how they understand it, the individual cannot authorize their own cremation or burial, all they can do is authorize a designated agent to do so.

Jennifer Kandt stated to clarify, an individual can absolutely order their own cremation, that is within statute. They have to sign a particular disclosure that is required to be witnessed by two people, but absolutely, they can order their own and if you are selling a cremation pre-need, you should be insuring that they have signed their own cremation authorization. The second part of the question, what the Board is trying to address, for instance, an individual pays for their burial and they spend \$15,000 planning their funeral and pre-pay for it; then the children come in and they decide to do a cremation and get the money back. That is the purpose and intent of the possible change, and Ms. Kandt stated that California does have language to limit those types of changes. However, at this point, Ms. Kandt was informed that the Board is limited. LCB has stated that they will not allow the Board to make this change regulatory, it must be through statute.

John Lawrence, representing Autumn Funerals stated to clarify, most of the time, there is only a problem if people can make a change as long as they are not receiving any type of state assistance at the time. Mr. Lawrence stated that if they are not on Medicare or receiving any type of Medicaid, they can change arrangements. Mr. Lawrence stated that as he understands

it, if you are going to use the pre-need as an asset, it prevents people from being able to put a bunch of money into a pre-need account for their family and then it not being counted as an asset at the time that they receive Medicare or Medicaid. But if they are not receiving any type of Medicaid, Mr. Lawrence does not think that it is a factor of changing arrangements. He believes that it is only a factor if they were receiving some type of state aid and the money that they put into the account was not being counted as an asset.

Warren Hardy, representing La Paloma Funeral Services stated that he would like to thank the Chairman of the Board as well as the Board for taking the time. Mr. Hardy stated that it seems like we have spent an awful lot of time dotting i's and crossing t's, but this is important work and he appreciates the Board's indulgence while we work through that. Mr. Hardy stated that he would particularly like to thank the Board for teleconferencing to Las Vegas as well as it saves them some travel.

Dr. Randy Sharp thanked Mr. Hardy for his comments.

**5. Discussion, recommendation, and possible action regarding Consent Decree for case number FB17-19 (For possible action):**

- a. Truckee Meadows Cremation & Burial Services, Establishment Permit EST108 and Crematory License CRE102

***MOTION: Adam Garcia moved to accept the consent decree for case number FB17-19 regarding Truckee Meadows Cremation & Burial Services, EST108 as written. Christopher Naylor seconded the motion and the motion was carried unanimously.***

- b. Carroll Higgins, Funeral Director License FD20

Adam Garcia asked how the Board arrived at the monetary amount and for the public reprimand, does the Board do anything beyond what is taking place at the Board meeting.

Henna Rasul stated that the monetary amount for the investigative or legal fees are the actual fees accrued by Ms. Rasul and the Attorney General's office and anything that Ms. Kandt may have accrued combined. Ms. Rasul stated that she did not believe that there were any investigative fees that the Board staff had accrued.

Jennifer Kandt stated that those fees were just directly related from the costs that came from the Attorney General's office. The one for the establishment ended up being more because they wanted to negotiate some different terms. Usually, the fees are split directly between the location and the individual if the case deals with both.

Henna Rasul stated with respect to the question regarding public reprimand, basically what that entails would be having the consent decree provided to the Board at a public meeting and discussed.

Jennifer Kandt stated that all of the consent decrees are placed on the Board's public website and they are also reported to the disciplinary reporting system that is maintained by the Legislative Counsel Bureau. There is a location where individuals can go and LCB maintains the website and you can look up any licensing board and any discipline that is handed out by those boards. All boards are required to report to that system.

***MOTION: Adam Garcia moved to accept the consent decree for case number FB17-19 regarding Carroll Higgins, FD20 as written. Lorretta Guazzini seconded the motion and the motion was carried unanimously.***

**6. Discussion, recommendation, and possible action regarding Consent Decree for case number FB18-08 (For possible action):**

- a. Edward Rodriguez, Funeral Director License FD892

Jennifer Kandt clarified that the Board did not enter into a consent decree with the location as the Board would not have known about this incident had the location not advised the funeral director to report the incident to the Board. The location asked the funeral director to call the Board and self-report the incident and the location was actually doing their due diligence in this instance.

Lorretta Guazzini stated that when a funeral home has a fetal demise, the hospitals take care of the death certificate. Ms. Guazzini stated that she has had problems with the hospitals in Fallon not providing her with the right kind of a burial permit. Ms. Guazzini asked if anyone else has had any problems with the State. Ms. Guazzini stated that the funeral homes are not the ones that start that death certificate, the hospitals do and on this consent decree it states that the funeral director is responsible for obtaining and filing the certificate of death. Ms. Guazzini stated that they have taken that away from the funeral homes as far as she knows.

Jennifer Kandt stated that it is her understanding that a fetal death certificate can be started by the hospital, but the funeral director is still responsible for insuring that the permit is in place and the death certificate is in place prior to performing the actual cremation. Ms. Kandt stated that she believes that may have been part of the confusion in what transpired in this particular instance.

**MOTION:** *Dr. Randy Sharp moved to accept the consent decree for case number FB18-08 as written. Lorretta Guazzini seconded the motion and the motion was carried unanimously.*

7. **Discussion, recommendation, and possible action regarding the following Reciprocal Embalmer Licenses (For possible action):**
  - a. Christina Lynn Noelle

Jennifer Kandt stated that all items were in place for this application.

**MOTION:** *Lorretta Guazzini moved to approve the reciprocal embalmer license for Christina Lynn Noelle. Dr. Randy Sharp seconded the motion and the motion was carried unanimously.*

8. **Discussion, recommendation, and possible action regarding the Funeral Director and Reciprocal Embalmer Licenses for applicant Kevin Gary Pavsek (For possible action)**

Jennifer Kandt stated that a background check revealed several convictions that were not disclosed on the applications. Failure to disclose criminal history is grounds for denial. The Board has historically denied these applications for failure to disclose and then allowed the applicants to reapply with true and correct information. Additionally, based upon when these convictions occurred, it is possible that based on the time frame the applicant may not be eligible for licensure; however, the Board would have to obtain the actual case details to make certain on that matter.

Dr. Randy Sharp asked if Mr. Pavsek was present. Mr. Pavsek was not present at the Board meeting.

**MOTION:** *Adam Garcia moved to deny the reciprocal embalmer and funeral director licenses for Kevin Gary Pavsek based on non-disclosure of criminal history. Lorretta Guazzini seconded the motion and the motion was carried unanimously.*

Dr. Randy Sharp stated that the Board would advise Mr. Pavsek to have full disclosure and reapply.

9. Discussion, recommendation, and possible action regarding request for approval of new managing funeral director for the following locations (For possible action):

- a. Marielle J. Landry FD886 – Affordable Cremation and Burial EST55

**MOTION:** *Brian Rebman moved to approve the managing funeral director request for Marielle J. Landry. Adam Garcia seconded the motion with Bart Burton recusing as Ms. Landry is employed by the same company and the motion was carried unanimously.*

- b. Philip Smith FD922 – Las Vegas Cremations EST103

**MOTION:** *Adam Garcia moved to approve the managing funeral director request for Philip Smith. Dr. Randy Sharp seconded the motion and the motion was carried unanimously.*

- c. Jaye MacPherson FD202 – Davis Funeral Home – Rainbow EST28

**MOTION:** *Adam Garcia moved to approve the managing funeral director request for Jaye MacPherson. Lorretta Guazzini seconded the motion and the motion was carried unanimously.*

- d. Kristen Anderson FD860 – Desert Memorial EST46

**MOTION:** *Adam Garcia moved to approve the managing funeral director request for Kristen Anderson. Dr. Randy Sharp seconded the motion and the motion was carried unanimously.*

- e. Shannon Nordyke FD888 – Palm Northwest Mortuary EST80

**MOTION:** *Lorretta Guazzini moved to approve the managing funeral director request for Shannon Nordyke. Dr. Randy Sharp seconded the motion with Bart Burton recusing as Ms. Nordyke is employed by the same company and the motion was carried unanimously.*

10. Discussion, recommendation, and possible action regarding annual review of Executive Director performance and salary (For possible action)

Dr. Randy Sharp stated that he received four written reviews for Ms. Kandt and of those reviews, everyone marked Ms. Kandt's performance as a four out of four, which includes her job knowledge, productivity, work quality, attitude, initiative, dependability, punctuality, communication, and overall performance. Four is excellent. Dr. Sharp stated that there were several comments including that Ms. Kandt is an absolute joy to work with; Ms. Kandt demonstrates competent performance; Ms. Kandt always displays professional poise and authority; Ms. Kandt's communication reflects her professional expertise; and Ms. Kandt presents a high level of integrity which serves the Board and the citizens of Nevada very well; Ms. Kandt also continues to display excellent performance in all aspects of her job; and Ms. Kandt is a definite asset as the Board executive director.

Jennifer Kandt thanked the Board.

Dr. Randy Sharp stated that as far as suggested increases, there were a few dollar amounts which Dr. Sharp converted into percentages.

Brian Rebman Stated that he did not submit a written review, but certainly he agrees with what has been stated with a four/excellent and grateful that the Board has Jennifer as an executive director and he thinks that she is doing an outstanding job.

Dr. Randy Sharp stated that even for those who did not submit a written review, we all feel the same way about Ms. Kandt.

Lorretta Guazzini stated that if there was a ten on the review, she would have been there too.

Adam Garcia stated we as a Board have been through a lot and certainly has been difficult for a layman like himself as a Board member and he has looked to Jennifer and her staff for guidance and expertise to lead him down the right road and the comments that he made on his evaluation were heartfelt. Mr. Garcia stated that he did believe that if there is a picture of a professional person in the dictionary, that would be Jennifer. Mr. Garcia stated that a four is a number on a piece of paper and he believes that the Board should do all that they can to retain the expertise and professionalism that they have in Jennifer as an executive director. Mr. Garcia stated that quite frankly, given what he has come to know about this Board about what we do for the citizens of Nevada, what Jennifer has done and her staff, Mr. Garcia believes that the higher end of the salary range, in his opinion is still too low and he would advocate the increase to the top range of the salary.

Christopher Naylor stated that he was doing some quick math and the percentages that were presented to the Board if you take them and add them together and divide them into four, it comes out to 4.775, right near the 5%.

Bart Burton stated that a lot of people might not know, but he knows that Jennifer came into this job blind, he tried to talk her out of it, but she did not take his advice. Mr. Burton stated that he believes that she has done a fantastic job from where the Board started. Mr. Burton stated that what is even more encouraging is to see how she has reached out on a National level and has been very active with other executive directors in her same field, and she is now the President of the national association this year. Mr. Burton stated that he believes that Ms. Kandt is always learning, and she is very professional, and he agrees with Christopher Naylor and Adam Garcia that we should do what we need to do to retain her. Mr. Burton stated that he is not sure if she is a flight risk or not but believes that she needs to be rewarded for what she has done, because he believes that she has done a fantastic job.

Lorretta Guazzini stated that the only thing she would have to say different would be that she has never heard Mr. Burton try to talk Ms. Kandt out of the job. Ms. Guazzini stated that the Board was going to hire her right on the spot that day. Ms. Guazzini stated that she agrees with everything Mr. Burton has stated. Ms. Kandt has gone beyond and above, and it always amazes her when she hears her speak, Ms. Kandt is like a sponge and absorbed everything that she has come across. Not only in this field, but in other areas as well, especially with her work with the Veterans. Mrs. Guazzini stated that Ms. Kandt might not get one next year, but Ms. Guazzini believes that Jennifer deserves a big raise this year.

***MOTION: Lorretta Guazzini moved to give Jennifer Kandt a 7.5% salary increase to put her at the top of the salary range. Adam Garcia seconded the motion and the motion was carried unanimously.***

Dr. Randy Sharp thanked Jennifer Kandt from all of the Board for her diligence and her hard work and what she brings to this Board.

Jennifer Kandt thanked the Board and stated that she appreciated all of the kind comments and thanked Bart Burton for recognizing her work at the national level, because it definitely has added to the amount of work that she has put in.

Dr. Randy Sharp asked if the Board needed to set an effective date for the increase.

Jennifer Kandt stated that typically it would be effective the date that the increase was approved, or if the Board wanted it to coincide with the fiscal year, it would be July 1, 2018. It is just the matter of advising the person who does the Board's payroll what the new rate will be moving forward.

Dr. Randy Sharp stated for Jennifer to do what she deems best in that situation.

**11. Discussion, recommendation and possible action regarding approval of FY2019 budget (For possible action)**

Jennifer Kandt overviewed the proposed FY2019 budget and stated not much was different from the FY2018 budget with the exception of the health insurance.

***MOTION: Dr. Randy Sharp moved to approve the FY2019 budget as written. Christopher Naylor seconded the motion and the motion was carried unanimously.***

**12. Financial Reports**

- a. Regulatory Fee Collection
- b. Financial Reports

Jennifer Kandt overviewed the regulatory fee collection report and financial reports. She stated that the Governor's Finance Office has been conducting an audit of all boards and has recommendations for all boards that she will share with the Board once the audit report is public.

**13. Overview of current complaint status**

Jennifer Kandt presented an overview of the current complaint status.

**14. Report from Executive Director, Jennifer Kandt**

Jennifer Kandt presented a written report to the Board on her activities.

**15. Board member comments**

There were no Board member comments.

**16. Discussion regarding future agenda items and future meeting dates**

September 18, 2018

November 13, 2018

There was discussion that 10:00 a.m. worked better for Mr. Garcia due to teaching.

Dr. Randy Sharp stated for September 2018 and November 2018 meetings, the Board meetings will start at 10:00 am.

**17. Public comment**

**Note:** No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

There was no public comment.

**18. Adjournment**

The meeting was adjourned at 11:25 am