

BOARD MEETING

MINUTES

AUGUST 9, 2017

The North Carolina Board of Funeral Service met for a duly scheduled Board Meeting at 9:00 a.m. on August 9, 2017, at the Board's office, located at 1033 Wade Avenue, Raleigh, North Carolina.

Present: Charles Graves, President; Matt Staton, Vice-President; Craig Olive, Secretary; Valdus Lockhart; Mark Blake; Don Brown; Mike Stone. Absent: Kelly Byrd and Steve Herndon.

Also Present: Catherine Lee, Executive Director; Christina Cress McLaurin, General Counsel; Staff member Amy Mauldin; Dorman Caudle with Carolina Donor Services; Fred Jordan with Miracles in Sight; Bill Forsberg, Executive Director of the North Carolina Funeral Directors Association.

Also Present, entering the meeting after guest introductions occurred: Jose Coker, attorney with The Charleston Group; Quentin Byrd, attorney with The Charleston Group; Henry M. Colvin, Jr.; Benn Brewington, attorney with Brewington Law Group; Cody T. McCain; Jack Nichols, attorney with Nichols, Choi, and Lee, PLLC.

Mr. Graves called the meeting to order at 9:00 a.m., led the Pledge of Allegiance and had the invocation.

Mr. Graves read the Ethics Statement.

Mr. Graves reminded everyone to turn off their cell phone ringers and guests introduced themselves.

Mr. Olive stated the July minutes had been previously provided to all Board members and then made a motion to approve the minutes. Mr. Brown seconded and the motion carried.

Public Comment: There was none.

Preneed Committee: Mr. Blake stated the Preneed Committee met via teleconference on August 4, 2017 with all committee members in attendance. Mr. Blake stated that the Preneed Committee makes the following recommendations:

The Committee reviewed a request from a preneed establishment to waive its surety bond requirement, and recommended approval of the request for a waiver of the surety bond requirement, pursuant to 21 NCAC 34D.0203.

Mr. Lockhart asked about methods used to determine the eligibility of a surety bond waiver. Ms. McLaurin explained the process. Discussion ensued. Mr. Stone asked that an announcement be included in the Board's month e-newsletter informing licensees of the option to ask for a waiver

of the surety bond requirement. Mr. Lockhart made a motion to approve the recommendation. Mr. Staton seconded and the motion carried.

The Committee reviewed Preneed Recovery Fund Claim P17-030, and recommended approval of the claim in the partial amount of \$3,681.42.

The Committee reviewed Preneed Recovery Fund Claim P17-034, and recommended denial of the claim.

Mr. Blake made a motion to accept the recommendations of the committee for all matters. Mr. Staton seconded and the motion carried.

Finance and Personnel Committee: All members of the Finance & Personnel Committee met via teleconference on Monday, August 7, 2017 at 9:00 AM. Mr. Lockhart stated that the Committee discussed the following items:

- Current use of Board's Voluntary Shared Leave policy
- Status of Board's at-need account housed within the NC State Treasury
- Safeguarding Board funds in excess of the FDIC-insured limit of \$250,000.00
- Review of current staffing needs
- Compensation of personnel exempt from overtime provisions of the FLSA
- Status of recruitment efforts to hire a fifth inspector
- Status of review for existing vendors
- Review of current Balance and P/L statement

Mr. Lockhart stated that the Committee makes the following recommendations to the Board:

Recommendation No. 1: Transition at-need account housed within the NC State Treasury and the funds set forth in the budget line item "5160 – miscellaneous" to an interest-bearing account at an FDIC-insured financial institution other than that used currently by the Board.

Ms. Lee and Ms. McLaurin explained this recommendation and discussion ensued. Mr. Lockhart made a motion to accept Recommendation No. 1. Mr. Olive seconded and the motion carried.

Recommendation No. 2: Pay out the amount of accrued but unused compensatory time for the Board's General Counsel and IT Manager, and re-classify said employees as exempt from the Board's compensatory leave policy going forward.

Mr. Stone asked for an explanation and Ms. Lee explained the compensatory leave times of the Board. Discussion ensued.

Recommendation No. 3: Require all employees who are eligible to accrue compensatory leave to obtain approval from the Board's Executive Director before working in excess of 40 hours per work week.

Mr. Lockhart made a Motion to accept Recommendation No. 2 and No. 3. Mr. Olive seconded. Mr. Stone opposed. The motion carried.

Mr. Lockhart then presented the profit and loss statement and balance sheet for discussion. Mr. Stone asked for an explanation of the revenue generated by crematory fees, and whether it is presently under budget. Mr. Lockhart explained. Mr. Lockhart made a motion to accept the profit and loss statement and balance sheet. Mr. Stone seconded and the motion carried.

Mr. Lockhart pointed out the letter that was sent to applicants for the Board's Executive Director position, notifying the applicants that the position had been filled.

Traineeship Committee: Mr. Blake provided the following report from the Traineeship Committee, as follows:

- There are currently 189 active Trainees
- All active Trainees have been audited for compliance with the timely submission of work reports
- 7 Trainees were certified in July
- 9 new Trainees started their traineeships on August 1
- 19 Trainee applications currently are pending
- 5 Trainees submitted late work reports for the month of June
- 2 Trainees failed to submit work reports for the month of June
- 10 Trainees submitted deficient work reports for the month of June
- 2 Trainees failed to timely renew their Traineeship

A majority of the Traineeship Committee met on Monday, July 24, 2017 at 8:00 AM. The Committee reviewed current rules regarding the Traineeship Program and discussed ideas for permanent rule-making going forward. The Committee also reviewed proposed revisions to existing forms used in the Traineeship program.

The Committee makes the following recommendations:

Recommendation No. 1: Direct Board staff to amend 21 NCAC 34B .0102, thereby allowing a trainee to waive the 2,000-hours requirement when completing a traineeship in embalming only; provided that the trainee already certified a traineeship for funeral directing in North Carolina or in another jurisdiction with substantially similar licensure requirements.

Recommendation No. 2: Direct Board staff to amend 21 NCAC 34B .0103, thereby: (a) requiring a registered supervisor to have practiced continuously for a minimum of five (5) years preceding the date of the trainee's application for a traineeship; (b) prohibiting a licensee from serving as a registered supervisor if his or her license has been suspended or revoked within the ten (10) years

preceding the date of the trainee's application for a traineeship; and (c) providing that a traineeship shall be terminated if the registered supervisor fails to supervise the trainee for a continuous period of more than four weeks without pre-approval from the Board; provided that the trainee shall be provided an opportunity to be placed on inactive status or change supervisors prior to such termination.

Recommendation No. 3: Direct Board staff to amend 21 NCAC 34B .0105, clarifying that a photocopy of the applicant's high school records, rather than a certified or original copy, is acceptable.

Recommendation No. 4: Approve the proposed revisions to Board Forms 27-FD, 27-FS, 27-EM (Resident Trainee Work Reports)

Recommendation No. 5: Approve the proposed revisions to Resident Trainee Daily Checklists (FD and EM)

Recommendation No. 6: Approve the draft Affidavits of Trainee Competency for each type of traineeship, to be provided to the Board in order to certify a traineeship.

Recommendation No. 7: Direct Board staff to create a method for submitting work reports electronically through the Board's website.

Recommendation No. 8: Recommend that the Board no longer require applicants for traineeships or licensure to submit affidavits of good moral character, unless specifically directed by Board staff to do so.

Discussion ensued regarding the recommendation requiring a registered supervisor to have practiced continuously for a minimum of five (5) years preceding the date of the trainee's application for a traineeship.

Mr. Olive made a motion to accept all recommendations. Mr. Brown seconded. Mr. Staton opposed. The motion carried.

Mr. Blake commended Board staff for their hard work on updating traineeship forms and the program.

Disciplinary Committee: Mr. Lockhart presented the report from the Disciplinary Committee, as follows:

General Recommendation No. 1 – Consumer Complaint Form – Approve the revised consumer complaint form previously e-mailed to the Board members.

General Recommendation No. 2 – Mutual Burial Associations Late Assessments – all mutual burial associations which did not timely submit assessments to the Board in 2017, a letter be issued notifying said MBAs that: 1) they have violated the Board's laws and rules; and 2) if they fail to timely submit assessments owed in 2018, Board staff will automatically issue Notices of Hearing

against the mutual burial association and its Secretary-Treasurer, and the sponsoring funeral establishment and its licensed manager.

Mr. Blake asked for an explanation of the differences between the new and old complaint forms. Ms. McLaurin and Ms. Lee explained the changes. Mr. Lockhart made a motion to accept both general recommendations. Mr. Olive second and the motion carried.

Summary Dismissal – C17-052; Dismissals – C17-044, C17-046, C17-047, C17-048, C17-049; Letters of Caution – M17-017, M17-020; Consent Order – M16-057; Other Matters – M17-019.

Mr. Blake stated he would not vote on the matters in the disciplinary report because he had not been given a copy of the report in advance. Ms. McLaurin explained the Disciplinary Committee did not meet prior to the Board meeting documents being sent to all Board members. Ms. McLaurin stated that future committee meetings will occur far enough in advance of a scheduled Board meeting, so that future reports can be disseminated to the full Board in advance of the Board meeting. Discussion ensued. Mr. Stone made a motion to table all disciplinary cases until the September Board meeting except for M16-057. Mr. Brown seconded and the motion carried. Discussion ensued regarding the proposed Consent Order signed by Respondents in Case No. M16-057. Mr. Blake asked whether the crematory performing cremations for Respondents in Case No. M16-057 was inspected as a result of the infractions found during Respondents' inspection. Ms. McLaurin stated that she would direct the regional inspector to conduct the crematory inspection accordingly. Mr. Staton made a motion to approve the consent order in M16-057. Mr. Lockhart seconded. Mr. Blake opposed. The motion carried.

Executive Director's Report: Ms. Lee offered the following information:

Ms. Lee stated that since the launch of the Board's new website, great feedback has been received from licensees on its layout and content. Any further thoughts or comments from Board members are welcome regarding further improvement.

Ms. Lee stated that this past month, for the first time, Board staff pro-actively emailed the Board's monthly e-newsletter to all individual licensees who have provided email addresses through the annual renewal forms. Previously, the e-newsletter was sent only to those licensees who had asked to receive it. As a result, the listserv membership went from approximately 550 individuals to 2500 individuals. Positive feedback has been received from individuals on this proactive approach. This process also is allowing board staff to verify the accuracy of the emails on file for licensees, so that an on-online renewal option can be promoted via email this fall.

Ms. Lee stated that the Board staff are accepting nominations for one position to the Crematory Authority that will become available on January 1, 2018. Emails soliciting nominations were sent to all actively licensed crematories soliciting nominations through September 1, 2017. A nomination must be signed by crematory operators from three separate business entities. The nomination form is available on the homepage of the Board's website.

Ms. Lee stated that she and Ms. McLaurin attended the NC Cemetery Commission meeting on July 19, 2017. Ms. Lee introduced herself to the Commission and conveyed that the Board has begun implementing the terms of the proposed Memorandum of Understanding, with the hope that

both agencies will continue to work together effectively. The Commission voted to table discussions regarding the proposed Memorandum of Understanding until its next meeting, which will take place on October 18, 2017.

Ms. Lee stated that at Representative Boles' request during his last meeting with the Laws and Rules Committee in May, Board staff has undertaken efforts to determine the number of cemeteries affiliated with a license or permit issued by the Board. Board staff attempted to compile a list of such cemeteries, based on available information. This list was shared with a representative of the NC Cemetery Commission, but have not received any feedback concerning the accuracy or completeness of the list. It is Board staff's best guess that, out of the 175 cemeteries regulated by the NC Cemetery Commission, there are approximately 58 cemeteries in North Carolina that are located on the property of, or share common ownership with, a Board-regulated establishment. This information has been provided to Rep. Boles and Board staff will continue to update the information as it becomes available.

Ms. Lee announced that Board staff is pleased to welcome Ms. Terri Robinson-McLean as the Board's newest inspector. Ms. Robinson-McLean is located in Maxton, North Carolina and primarily will be working in the Southeastern North Carolina. She will begin her training on August 21 with Mr. Cagle, and Board staff is delighted to have her join the team.

Mr. Blake expressed concerns about the Crematory Authority meetings only taking place twice a year. Discussion ensued. Ms. McLaurin and Ms. Lee indicated their intent to engage the Crematory Authority committee of the Board more regularly over the next year.

Compliance Liaison / Lead Inspector's Report: Ms. Lee presented statistics regarding preneed contracts, monthly inspection data, and a list of the following newly licensed individuals and establishments from June 1, 2017 through August 8, 2017:

CHAPEL:

Biggs Chapel Robersonville, NC – changed ownership – passed inspection 08/02/2017

CREMATORY - 0

TRANSPORTER:

Frederick Ray Davis, Jr.

UNAFFILIATED:

Jeffrey S. Painter Funeral Director Licensee – Mt. Holly, NC – passed inspection 07/20/2017

Thomas C. Murray Funeral Service Licensee – Morganton, NC – passed inspection 07/31/2017

COURTESY CARD – 0

FUNERAL ESTABLISHMENTS:

Cabarrus Funeral & Cremations, LLC – Concord, NC – passed inspection 07/07/17

Hartsell Funeral Home – Harrisburg, NC – passed inspection 07/18/2017

Charles Edwards Funeral Home and Cremations – Greenville, NC – passed inspection 07/13/2017

The New Christian Brothers Funeral Home – Kinston, NC- passed inspection 07/13/2017
Payton Funeral Home – Dunn, NC – reopened – passed inspection 07/26/2017
Biggs Funeral Home, LLC – Williamston, NC – changed ownership – passed inspection
08/02/17

FUNERAL DIRECTOR LICENSEES:

George S. Gilmore – Hope Mills, NC – 07/13/2017
Davonta Omar Pearsall – Williamston, NC – 07/20/2017
Christopher Scott Halsey – Lake Wylie, SC – 08/02/2017

FUNERAL SERVICE LICENSEES:

Jean Britt Wallace – St. Pauls, NC -07/18/2017
Dorinda A. Cobb – Blue Ridge, GA – 07/18/2017
Toby Jack Sutton – Rocky Mount, NC- 07/27/2017
Carolyn Anderson Elmore – Alexis, NC – 08/01/2017
Dwain Martin Bell – St. Pauls, NC – 08/03/2017

TRAINEES:

Kelsey Nicole Ahlgrim – Heritage Funeral Home (8/1/2017)
Jason Lee Grider – Parrish Funeral Home (8/1/2017)
Elisabeth Elaine Hamilton-Ferrand – Penland Family Funeral Home, LLC (8/1/2017)
Jordan Clark Locklear – Carter Funeral Home (8/1/2017)
Kasi Lee Mitchell – Troutman Funeral Home (8/1/2017)
Megan H. Reese – Eternacare Services, LLC (8/1/2017)
Chimere LaQuis Riggins – Long & Son Mortuary Service, Inc. (8/1/2017)
Richard Brandon Robinson – Trice Funeral Home (8/1/2017)
Tiffany Marie Warren – Pines Funeral Homes (8/1/2017)

Discussion ensued regarding how compliance calls are handled.

Attorney's Report: Ms. McLaurin offered the following attorney's report:

DISCIPLINARY MATTERS:

Current Active Cases: 21

Projected Active Cases: 11

Pending Investigation: 3

Pending Review by Disciplinary Committee: 3

Pending Dispositive Action: 1

Pending Hearing: 2

Post-Hearing: 0

Other: 2 (one matter stayed per Board Order; one case being litigated at the Office of
Admin. Hearings)

New files opened since last Board meeting: 8

Notices of Hearing sent since last Board meeting: 4

Consent Orders received since last Board meeting: 2

Cases reviewed by Disciplinary Committee since last Board meeting: 10

PRENEED RECOVERY FUND CLAIMS:

Projected Active Preneed Recovery Fund Claims: 7

Preneed Recovery Fund Claims reviewed by Preneed Committee since last Board meeting: 2

Preneed Recovery Fund Claims received since last Board meeting: 3

Preneed Recovery Fund Claims re-opened since last Board meeting: 4

Discussion ensued regarding the 4 Preneed Recovery Fund claims that were re-opened. Ms. McLaurin explained that these claims were initially received by Board staff between 2009 and 2012, but they did not appear to have been fully processed.

Ms. McLaurin stated that two cases were noticed for hearing, one of which was removed from the hearing docket due to receipt of a signed Consent Order, and the other which was continued primarily because both parties agreed that more time was necessary to determine if an information resolution was possible.

Ms. McLaurin updated the Board on the periodic review report previously approved by the Rules Review Commission. Ms. McLaurin stated that the time period allotted for the NCGA Administrative Procedure Oversight Committee to review the Board's periodic review report expires next week. If the NCGA APO does not meet prior to the end of next week, the Rules Review Commission's approval of the Board's periodic review report will become final.

Ms. McLaurin updated the Board on the rulemaking efforts currently being undertaken by Board staff. Ms. McLaurin stated that the Board's adopted permanent rules 21 NCAC 34B .0617 and 21 NCAC 34B .0618 are on the Rules Review Commission's agenda for its August 17 meeting, and that Ms. McLaurin will be attending on behalf of the Board. If the Rules Review Commission approves the permanent rules, these new rules will become effective on September 1, 2017.

Ms. McLaurin presented the trends of the Preneed Recovery Fund payments per year for the last five years. Discussion ensued.

Ms. McLaurin updated the Board on the following pieces of state legislation:

- SB 407 (ratified and presented to the Governor for signature on August 4) will require applicants for licensure to disclose to the Board information about previous investigations to which they have been subjected regarding employee misclassification issues.
- HB 57 (ratified and signed into law by the Governor on June 8) will allow temporary practice permits for military-trained applicants or military spouses duly licensed with no pending complaints in other jurisdictions, while they are satisfying requirements for licensure in North Carolina. The bill also waives the initial application fees for such applicants.
- SB 628 (ratified and presented to the Governor for signature on August 4) will exempt from retail sales and use tax funeral-related services, including services for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.

Ms. McLaurin updated the Board on a piece of federal legislation, H.R. 3446.

The Board took a 5 minute recess at this time.

Upon proper motion, the meeting was brought back to order.

At this time, the matter of *17 BMS 02004* was brought before the Board by Ms. McLaurin; Jose Coker and Quintin Byrd, appeared as attorneys for Respondents Colvin Funeral Home & Crematory and Henry M. Colvin, Jr. Benn Brewington appeared as attorney for Respondent Cody T. McCain. Lengthy discussion ensued regarding proposed settlement terms to informally resolve the case, which is currently pending in the Office of Administrative Hearings.

Mr. Olive made a motion to go into executive session. Mr. Staton seconded and the motion carried.

At 12:31 p.m., Mr. Olive made a motion to go back into open session. Mr. Brown seconded and the motion carried.

Mr. Blake made a motion for the Board to offer settlement terms to Respondents in the matter of *17 BMS 02004*. Mr. Brown seconded. Mr. Stone opposed. The motion carried.

Old Business: Ms. McLaurin explained the modifications to the proposed cremation authorization forms. Discussion ensued. Mr. Blake recommended that the long form be used as a model and posted on the website. Mr. Stone recommended to offer both the long form and the short form on the website and to have the inspectors track which form is used the most for 6 months. Mr. Stone asked that Board staff send an email to all licensed crematories to survey which cremation authorization form they prefer to use. Mr. Staton made a motion to accept the modifications to both the long and short cremation authorization forms. Mr. Blake seconded and the motion carried.

New Business: Ms. Lee stated that a request had been made to establish standing committee meeting dates. Discussion ensued. The Board decided not to pursue standing dates at this time.

Ms. Lee and Ms. McLaurin made the suggestion to cancel the October Board meeting, due to Ms. McLaurin appearing on a Cumberland County trial county for case number 17 BMS 02004 that same week; staff operational needs; and the cost associated with a Board meeting. Discussion ensued. Mr. Lockhart made a motion to cancel the October board meeting. Mr. Staton seconded. Mr. Blake opposed. The motion carried.

Board staff proposed that board officer elections be held earlier in the year to allow more time for printing of permits for 2018 renewals. Discussion ensued. The matter was tabled until the November board meeting.

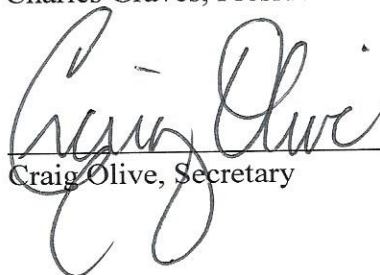
Mr. Lockhart made a motion to go into closed session to discuss matters of attorney client privilege. Mr. Stone seconded and the motion carried.

Mr. Olive made a motion to return to open session. Mr. Brown seconded, and the motion carried. Mr. Lockhart made a motion to approve the new retainer agreement with Nichols, Choi & Lee, PLLC. Mr. Staton seconded and the motion carried. Mr. Olive made a motion to authorize outside counsel to pursue legal action as necessary against Cloud 33 and Ronnie Underwood. Mr. Lockhart seconded and the motion carried.

Mr. Staton made a motion to adjourn the meeting, which Mr. Olive seconded. The motion carried.



Charles Graves, President



Craig Olive, Secretary