



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes February 13, 2019 Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on February 13, 2019, at the Board's office located at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina.

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

Staff and Counsel: Stephen Davis, Executive Director; Catherine E. Lee, General Counsel; Assistant Director Amy Mauldin, Alice Knowles; Paul Richardson; Jeff Gray, Bailey & Dixon.

Guests and Visitors: Dorman H. Caudle, Carolina Donor Services; Danny Funchess, licensee; F. R. Jordan, III, Miracles In Sight; James Landis, The Thompson Agency; Eric Legrand, licensee; Hubert Pope, licensee.

Mr. Herndon called the meeting to order at 9:01 am and led the Pledge of Allegiance.

Mr. Brown offered the invocation.

Mr. Herndon read the Ethics Statement. No Board members recused themselves.

Mr. Herndon reminded attendees to mute their cell phones. He then invited guests to introduce themselves.

APPROVAL OF MINUTES

Mr. Herndon asked Mr. Brown, Secretary, to present the minutes from the January 9, 2018, meeting. It was noted that Board members had received the minutes prior to the meeting for their review. Mr. Brown asked if members wished to offer any changes or amendments to the minutes. There were no changes to the minutes as presented.

Upon a motion by Mr. Olive and a second by Mr. Graves, the Board voted to accept the Committee's recommendation.

PUBLIC COMMENT:

Mr. Herndon invited public comment from guests in attendance. None offered any comment to the Board.

FINANCE AND PERSONNEL COMMITTEE:

Mr. Herndon recognized Mr. Blake, Chair of the Finance and Personnel Committee, for presentation of the Committee's report to the Board. Mr. Blake noted that he, Mr. Herndon, Mr. Lockhart and Mr. Stone met by conference call on February 8, 2019, to consider agenda items before the Committee.

Mr. Blake presented the Profit and Loss Statement and the Balance Sheet for the period ending January 31, 2019, and asked if members had any questions or comments regarding the information presented. He also asked Mr. Davis if he had any additional information or comments to share with the Board.

Mr. Davis noted that the percentage of expenditures shown on the Profit and Loss Statement for the reporting period in relation to revenue was at 8.2% which is entirely consistent with expectations for the end of the first month in the first quarter. He then reviewed the Balance Sheet and noted that none of the information indicates any concerns with the Board's fiscal position which continues to be robust and strong. He pointed out that the Preneed Recovery Trust Fund is currently at \$224,000 which is a positive position in anticipating future claims.

Upon a motion by Mr. Blake and a second by Mr. Brown, the Board voted to accept the Profit and Loss Statement and the Balance Sheet for the period ending January 31, 2019.

Mr. Blake then asked Mr. Davis to present the other items on the Finance and Personnel Committee Report. Mr. Davis reminded the Board that staff had been working on a recommendation from the Finance and Personnel Committee to outsource the accounts payable and accounts receivable functions. He noted that staff had sent solicitation letters to five [5] local CPA firms inviting a quote on a list of tasks and expectations included with the letter. Of those solicited, one firm, Thomas Judy & Tucker, responded with a proposed Letter of Engagement. Mr. Blake noted that he would recuse from any vote on the proposed letter since his wife was employed by the firm in a non-related area and in a position fully separated from the firm's Outsourcing Division. Mr. Davis stated that Mr. Stone had recommended in the Committee meeting to survey additional firms particularly those with a national presence representing the top accounting firms in the country. Mr. Davis conveyed that he made calls to five [5] additional firms and was awaiting responses from two [2]. Mr. Lockhart expressed concern about sufficient time to engage an outsourcing firm and the beginning of the 2019 audit schedule for mid-March.

Mr. Davis commended Lyn Cochrane and Amy Mauldin for their continuous efforts in working with the temporary employee hired to work with the accounts payable and accounts receivables functions as well as reconciliations in preparation for the annual audit of the Board's financial statements scheduled for March 18, 2019.

PRENEED COMMITTEE:

Mr. Herndon recognized Mr. Blake, Chair of the Preneed Committee, for presenting the Committee's report to the Board. Mr. Blake stated that he, Mr. Watson and Mr. Herndon convened via conference call on

February 7, 2019, at 8:30 AM. The Committee considered two pending claims against the Preneed Recovery Fund and voted to recommend the following:

Review of Pending Preneed Recovery Fund Application P19-0001

Preneed Recovery Fund Claim # P19-0001 in the amount of \$5,564.60 does not appear to meet the statutory requirements for reimbursement.

The Committee recommends that the Board deny Preneed Recovery Fund Claim # P19-0001 in the amount of \$5,564.60.

Upon a motion by Mr. Blake and a second by Mr. Lockhart, the Board voted to accept the Committee's recommendation to deny Preneed Recovery Fund Claim # P19-0001 in the amount of \$5,564.60.

Review of Pending Preneed Recovery Fund Application P19-0002

Preneed Recovery Fund Claim # P19-0002 in the amount of \$7,534.60 appears to meet the statutory requirements for reimbursement.

The Committee recommends that the Board approve Preneed Recovery Fund Claim # P19-0002 in the amount of \$7,534.60.

Upon a motion by Mr. Blake and a second by Mr. Lockhart, the Board voted to accept the Committee's recommendation to approve Preneed Recovery Fund Claim # P19-0002 in the amount of \$7,534.60.

Mr. Blake then asked Mr. Davis and Mr. Lisenbee, Compliance Officer, to brief the Board on the proposed changes to preneed contract forms. The goal of efforts to combine the contract forms is to offer consumers a Standard Contract or an Inflation-Proof Contract each one of which would be funded either by insurance policies or by a trust fund account with a financial institution. Mr. Davis explained that the recommendation for consolidating the contracts initially was proposed in June 2018 but was deferred pending an opportunity to determine the impact of House Bill 529 on the preneed program. Discussion ensued. Mr. Lisenbee offered a detailed explanation of how the two proposed contract forms were constructed. He emphasized the need to meet statutory requirements for the contract forms as well as assure as much clarity as possible for consumers to understand their obligations when signing a preneed contract. Mr. Blake conveyed to the Board that the Preneed Committee voted affirmatively on a recommendation that staff solicit feedback from preneed licensees and other stakeholders with a 90-day comment period. Mr. Davis stated that staff would prepare a summary of the proposal and send to stakeholders along with information to be posted on the Board website regarding the recommendation to combine the preneed contract forms.

TRAINEESHIP COMMITTEE:

Mr. Herndon recognized Mr. Blake, Chair of the Traineeship Committee, for presenting the Committee's report to the Board. Mr. Blake state that he and Mr. Lockhart met by conference call on January 24, 2019.

Mr. Blake conveyed to the Board that the Committee discussed a number of issues regarding resident traineeships and noted that the Committee will be developing goals and objectives that would be combined with those from other Board committees as part of the Board's strategic planning process. He continued and noted that Mr. Davis had suggested an educational brochure or similar outreach to assure trainees understand their responsibilities for completing work reports. He said that the Committee shared the concerns about trainees' understanding of their responsibilities and discussed the need for a continuing education course that focused on requirements for preceptors to follow to assure that they are properly supervising trainees under their mentorship.

Mr. Blake continued and said that Ms. Mauldin presented a proposal to the Committee that trainees receive the same pocket card as for licensees. She noted that using the same format for both cards will facilitate the process for generating pocket cards for trainees since the iGov system would produce them. Mr. Blake noted the Committee's support for the proposal but asked Ms. Mauldin to report back to the Committee whether or not the supervisor's signature could be included on the card in response to a suggestion from Mr. Lockhart.

In closing, Mr. Blake said that the Committee with support from Board staff would evaluate the trainee program by identifying relevant and measurable quantitative and qualitative indicators. He also noted that the Committee would have an active role in assessing administrative rules that govern the traineeship program during the upcoming administrative rules review process that will occur this year.

CONTINUING EDUCATION COMMITTEE:

Mr. Herndon recognized Mr. Brown, Chair of the Continuing Education Committee, for presenting the Committee's report to the Board. Mr. Brown noted that he, Mr. Graves, Mr. Olive and Mr. Stone convened by conference call on January 29, 2019, to discuss the Committee's goals and objectives for 2019 and to receive an update on the Continuing Education Initiative that was launched in 2018.

Mr. Brown noted that Board staff have implemented a number of changes designed to increase the efficiency for registering licensees for CE courses and awarding credit to them. He said that many of the procedures associated with Continuing Education were shifting to a digital format in an effort to avoid a dependence of hard copies that have to be mailed back and forth between the Board office and the accredited sponsors or others presenting CE courses.

Mr. Brown asked Mr. Davis for additional comments regarding the Committee's meeting. Mr. Davis affirmed that improvements had been made to the program but that more work was needed to assure a more effective approach for registration, evaluation and awarding CE credit. Mr. Lockhart said that he had encountered confusion at a national conference concerning the award of credit to attending licensees from North Carolina. Mr. Davis asked Ms. Knowles to respond.

Members discussed the registration issue. Mr. Davis acknowledged that there are remaining issues concerning registration that require resolution and that Board staff would continue to evaluate these procedures. Mr. Stone suggested that staff study the feasibility of offering more on-line courses and questioned if the current limit on 2-hours of on-line credit was realistic. Mr. Brown concluded the report

by stating that the Continuing Education has improved in terms of evaluating courses to be offered and assuring that instructors are qualified to teach approved courses.

TECHNOLOGY COMMITTEE:

Mr. Herndon recognized Mr. Olive, Committee Chair, for presenting the Committee report.

Mr. Olive, Mr. Herndon, Mr. Watson, and Mr. Brown convened by conference call on February 1, 2019. Mr. Blake requested that the Technology Committee minutes from February 1, 2019, be corrected to indicate that he was not in attendance at the meeting of the Technology Committee since he is not a member of that group.

Mr. Olive opened the meeting by reviewing the agenda and emphasizing the advantages derived from a transition from hard copy paper files to digital files and documents. He asked the Executive Director to summarize a proposal for preparing Board documents and materials for monthly board meetings in a digital format rather than a continued reliance on hard copies. Davis stated that the objective would be for Board members to rely upon computer tablets to view digital documents. Mr. Watson questioned whether it or not it would be necessary to install wall-mounted monitors if members had tablets to access documents. Mr. Olive asked how much staff time and resources are currently necessary for the preparation of hard-copy documents for the monthly Board meetings. Members discussed the proposal and then voted on a motion for staff to study the issue.

On a motion by Mr. Watson and a second by Mr. Herndon, the Committee directed staff to explore the feasibility of converting existing hard-copy documents and materials for monthly Board meetings to digital format and to conduct a cost study to determine funding requirements.

Mr. Olive recognized Mr. Davis for presentation of other agenda items. Mr. Davis updated the Committee on staff plans to scan preneed contracts, Certificates of Performance and related documents as well as to store archived documents, records and files at an off-site, climate-controlled location. The Committee authorized staff to proceed with the transfer of archived and inactive documents to an off-site storage unit. The Committee noted that the off-site storage must be cost-effective and not limit or prevent access to the records stored. Mr. Davis then explained the remaining agenda item concerning enhancements to the Board's licensing management system known as iGov. Davis stated that the iGov vendors had constructed a new portal in late 2018 to enable the on-line renewal of licenses and permits. He noted that the new portal combined payment and renewal, and licensees found the on-line renewal an easy, quick way to renew licenses and as well as establishment permits. He said that utilization of the on-line site was high and that he hoped it would expand to include more on-line renewals in 2019. Davis continued by telling the Committee that staff had worked with iGov throughout the month of January to construct another new on-line portal for licensees which would enable completion and submission of the annual preneed report in digital format.

Committee members discussed the innovations to the iGov system and agreed that the direction toward digital-based work processes is both relevant in contemporary business settings as well as appropriate in

terms of facilitating work. Mr. Olive concluded the meeting by noting that the discussion of agenda topics would be considered Committee goals and objectives for 2019 and that staff would continue to apprise the Committee of new developments in shifting to digital-based and on-line applications for Board work.

DISCIPLINARY COMMITTEE:

Mr. Lockhart stated that he and Mr. Herndon met via conference call on January 4, 2019.

The following recommendations were made to the Board:

- Dismissals - C18-0084, C18-0088/C18-0089

With respect to C18-0084, members discussed the matter and decided to issue a Letter of Caution rather than the recommended dismissal of the matter.

- Letters of Caution - C18-0085

After Mr. Lockhart’s presentation and Ms. Lee’s comments regarding this case, members asked a number of questions regarding the investigation leading to the recommendation for a Letter of Caution. Members discussed the issue of non-licensees working in the practice of funeral service and questioned whether such cases are subject to civil or criminal penalties.

- Other - M19-0001, M19-0002, M19-0003, and M19-0004

Upon a motion by Mr. Lockhart and a second by Mr. Olive, the Board voted to accept the Committee’s recommendations. The Committee voted separately on C18-0084 since Mr. Herndon recused himself from voting on this particular matter.

- Consent Orders – R19-0001, R19-0002, R19-0008, R19-0009, R19-0012, R19-0013, R19-0020

Upon a motion by Mr. Graves and a second by Mr. Brown, the Board voted to accept the recommendations for the referenced Consent Orders and authorized the appropriate signature for each Order.

The Board then voted to convene in closed session to preserve attorney-client privilege and confidentiality.

Upon a motion by Mr. Olive and a second by Mr. Graves, the Board voted to convene in closed session.

EXECUTIVE DIRECTOR’S REPORT:

2019 RENEWALS

- Individuals 2868 218 not renewed as of February 1st

PRENEED ANNUAL REPORT

We have completed the construction of the online portal for the Preneed Annual Report and have activated a link to the portal. We will create a special tab on the Board website so that licensees can access the online report easily along with instructions for completion. Licensees will have an opportunity to complete and submit the report online or print a hard copy for completion and submission.

RECENT LEGISLATIVE INITIATIVES IN OTHER STATES

I received information from one of our sister OLB's regarding anti-regulatory bills filed in various states thus far in 2019. I am providing this information as a continuation of the information I shared with you in January regarding trends in funeral service across the country.

12 states have filed legislation aimed at less restrictive regulation of professions or in some cases eliminating occupational licensing oversight.

We are watching these developments closely and will continue to track the progress of legislation pending in these states, and I will be reporting to you any activity through the Joint Legislative Committee on Administrative Oversight which is considering measures in North Carolina that could have impact on this and other Occupational Licensing Boards.

TECHNICAL AMENDMENTS TO THE FUNERAL PRACTICE ACT

Ms. Lee and I met with Representative Boles and Representative Hunter to present and discuss the technical amendments you approved at the January meeting. These amendments are intended to revise statutory language affecting licensure of funeral directors, grandfathering of trainees completing their traineeships on or before October 1, 2019, crematories' compliance with the FTC Funeral Rule, documentation for deaths occurring out-of-state, and the transfer of preneed contracts from one licensed establishment to another.

Representative Boles and Representative Hunter both agreed with the proposed amendments and will submit a technical amendments bill for this session.

In the course of that discussion, we also alerted Representative Boles of the Board's concerns regarding completion of death certificates, timeliness at the OCME in determining a cause of death, and the refusal in some cases of physicians to sign a death certificate. Rep. Boles indicated his interest in sponsoring legislation that would allocate additional resources to the OCME to help with the timeliness issue. He has reached out to licensees with a survey that he sent to the NCFDA soliciting feedback from their membership on experience with the OCME on waiting for a completed death certificate. He asked if the Board would circulate this survey as well, and we have done so at his request.

PASS/FAIL RATES FOR BOARD EXAMINATIONS

At the meeting in January, you asked for an assessment of pass/fail rates on Board examinations. Amy Mauldin has completed an initial review of these rates and has developed a general summary including comparative data with neighboring states. I should note that some of this information was generated by the American Board of Funeral Service Education.

Members discussed these rates and the academic preparation that prospective licensees receive prior to taking national and/or state boards. Mr. Lockhart noted that the program at Fayetteville Technical Community College has evolved over time and may not have the same level of instruction in some disciplines as in the past due to retirements of former instructional staff. Mr. Brown echoed Mr. Lockhart’s comments and questioned the current instructional methods as well as the impact of former instructors who have left the FTCC program.

Mr. Stone recommended that staff investigate the feasibility of seeking additional associate degree programs in mortuary science at other NC community colleges. Mr. Blake noted the importance of well-prepared graduates and the subsequent impact on recruitment and competency of licensees.

REMINDER: Statements of Economic Interest

Your 2019 Statement of Economic Interest must be completed by April 15, 2019, using either the long form or the no-change form. Both of these forms are available on the Board of Ethics website. I’ll be sending you a reminder and instructions for filing by e-mail.

WALL PERMITS

We are currently printing the certificates for wall permits, and these will be mailed Thursday and Friday to all permitted establishments. You will recall that the permits have been redesigned to capture more information including the Doing Business As name.

Activity Measures & Metrics:

Mr. Davis offered the following information and invited questions.

Licensure Report

CHAPELS	Hunter’s Gates Chapel – Gates
CREMATORY LICENSEES	Strickland Funeral Home – Wendell
HYDROLYSIS LICENSEES	None
TRANSPORTERS	None
EMBALMING FACILITIES	None
UNAFFILIATED LICENSEES	None
FUNERAL ESTABLISHMENTS	Sossamon Funeral Home, Inc. – Henderson Saunders Funeral Home – Jacksonville (ownership change)
PRE-NEED ESTABLISHMENTS	Sossamon Funeral Home, Inc – Henderson
FUNERAL SERVICE LICENSEES	None
FUNERAL DIRECTORS	None
TRAINEES Beginning Jan. 1, 201	Anna M. Berry – Kirksey Funeral Home Justin C. Burden – Garrett-Sykes Funeral Services Tawana N. Burns – Stevens Funeral Home Tomeika S. Everett – L. E. Floyd Funeral Home & Cremations

	Nathaniel E. Hargett, III – Hargett Funeral Service
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Compliance and Inspections Report:

Funeral Establishments inspected	11
Preneed Establishments inspected	9
Crematories inspected	2
Hydrolysis Licensee inspected	0
Unaffiliated Licensees inspected	0
Chapels inspected	0
Mutual Burial Associations were inspected	0
Embalming Facility	0
Complaints served	1
Investigations completed	3
Notices of Hearing served	0
Final Agency Decisions served	0
Continuing Education classes taught	3
Compliance emails issued	0

ATTORNEY’S REPORT:

Ms. Lee offered the following information:

<i>Current Active Cases</i>	23
Pending Investigation	8
Pending Review by Disciplinary Committee:	0
Pending Dispositive Action	6
Pending Hearing	9
Post-Hearing	0
Other	0
New files opened since last Board meeting	6
Notices of Hearing sent since last Board meeting	5
Consent Orders received since last Board meeting	0
Cases reviewed by Disciplinary Committee since last Board meeting	6

<i>Current Active Preneed Recovery Fund Claims</i>	0
Pending Investigation	0

Pending Dispositive Action	0
Preneed Recovery Fund Claims received since last Board meeting	0
Preneed Recovery Fund Claims reviewed by Preneed Committee since September	0

Ms. Lee invited questions from Board members. There were none.

Old Business:

Mr. Herndon asked if there was any old business and recognized Mr. Brett Lisenbee, the Board’s Compliance Officer, who presented a proposal to the Board for adopting an additional chapter for the NCBFS Compliance Manual. Mr. Lisenbee reminded the Board that he had authored and completed Chapters 1-6 which the Board approved at the November 2018 Board meeting. He then explained that he has completed Chapter 7 and is ready for the Board’s vote to adopt so that he can incorporate it into the Manual.

Upon a vote by Mr. Graves and a second by Mr. Brown, the Board voted to adopt Chapter 7 of the NCBFS Compliance Manual.

New Business:

Mr. Herndon asked for any new business and recognized Mr. Lisenbee, Board Compliance Officer, who presented proposed applications for Crematories and for Alkaline Hydrolysis facilities. Mr. Blake asked if the Board’s compliance inspectors are prepared and ready to inspect alkaline hydrolysis units. Mr. Lisenbee gave assurances that they will be prepared by learning manufacturers’ standards for the safe and proper operation of these units as well as his plan to have inspectors accompany him in conducting on-site examinations of alkaline hydrolysis units prior to permitting them. Members briefly discussed the new alkaline hydrolysis statutes.

Upon a motion by Mr. Graves and a second by Mr. Blake, the Board voted to adopt the two new applications for Crematories and Alkaline Hydrolysis units as present by Mr. Lisenbee.

Mr. Herndon recognized Mr. Lisenbee who presented to the Board a proposal for technical amendments to the Funeral Practice Act regarding the cremation or hydrolysis of hazardous materials including those that pose a danger of radioactivity. Lisenbee noted that implanted nuclear seeds, for example, could present a hazard to crematory and hydrolysis technicians and operators who could be exposed to excessive and unsafe levels of radiation. Mr. Lisenbee noted that these concerns prompted him to proposed technical amendments dealing specifically with the hazardous materials issue relative to cremations and hydrolysis. He further noted that it is the manufacturers of devices and/or materials deemed hazardous that must determine safe operating standards for crematories and hydrolysis units rather than the manufacturers of retorts or hydrolysis units. He also stated that the proposed technical amendments would align the requirements for crematories and hydrolysis units. Mr. Stone asked about other states’ practices and requirements regarding the cremation and/or hydrolysis of hazardous materials. Mr. Blake noted the responsibility placed upon crematory and hydrolysis operations and technicians for responding

appropriately when confronted with hazardous or radioactive materials. Members discussed the issue briefly prior to voting.

Upon a motion by Mr. Graves and a second by Mr. Brown, the Board approved the proposal to submit the additional technical amendments to the General Assembly for inclusion in proposed legislation for technical amendments to the Funeral Practice Act.

Mr. Herndon then invited a motion for the Board to conduct scheduled hearings.

Upon a motion by Mr. Olive and a second by Mr. Brown, the Board voted to recess and then return to proceed with the scheduled hearings. The motion carried.

M18-000-9: Respondents appeared before the Board and asked for a continuance. The Board voted to grant respondent's request for the continuance and agreed to hear the matter at the March 13, 2019, meeting.

Upon a motion by Mr. Stone and a second by Mr. Graves, the Board consented to respondent's request for continuance until the March 13, 2019, meeting.

M18-0067: The Board hear respondent's arguments in hearing and considered testimony from respondent's witness. Upon the conclusion of the hearing, the Board asked respondent if an immediate decision was desired or if there was a preference for a decision based upon the official transcript at a later date. Respondent asked for an immediate decision. The Board's decision was to deny respondent's application for traineeship until pending criminal charges are resolved. Respondent can then reapply for a resident traineeship.

Mr. Herndon asked if members had any other issues to come before the Board. Mr. Graves asked to be recognized. He noted that the earlier discussion regarding the outsourcing of the Board's financial functions presented during the Finance and Personnel Committee report created concern that there might not be sufficient time to vet additional CPA firms as had been suggested. He noted that the annual audit of the Board's financial statements was scheduled for March 18, 2019, and he expressed deep concern that staff would not have sufficient time for preparing for the audit including the production of financial documents and records. He noted that the firm engaged for the outsourcing would require sufficient lead time prior to the audit for basic preparation. Mr. Lockhart agreed and asked that the Board consider granting authority to the Finance and Personnel Committee to approve or disapprove a proposal for outsourcing the budget and financial functions.

Upon a motion by Mr. Graves and a second by Mr. Lockhart, the Board voted to convey authority to the Finance and Personnel Committee to approve or disapprove a recommendation to engage an accounting firm for outsourcing Board budget and fiscal functions prior to the next Board meeting scheduled for March 13, 2019.

Mr. Herndon surveyed members for additional business items. Hearing none, he invited a motion for adjournment.

Upon a motion by Mr. Olive and a second by Mr. Brown, the Board voted to adjourn the meeting.

Affirmation:

J. Stephen Herndon

J. Stephen Herndon, President

Don Brown

Don Brown, Secretary

3-13-2019

Date