



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes March 13, 2019 Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on March 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; Hubert Saunders; and Chris Watson.

Staff and Counsel: Stephen Davis, Executive Director; Catherine E. Lee, General Counsel; Assistant Director Amy Mauldin; and Robert Berry, staff member.

Guests and Visitors: Dorman H. Caudle, Carolina Donor Services.

Mr. Herndon called the meeting to order at 9:07 am and led the Pledge of Allegiance. He then asked Mr. Brown to offer the invocation. Following the invocation, Mr. Herndon read the Statement of Ethics and asked if any members would be required to recuse themselves from the meeting. None recused.

Mr. Herndon then asked if guest would introduce themselves and invited any public comment. None was offered.

Mr. Herndon then recognized Amy Mauldin, Assistant Director, who administered the Oath of Office to Mr. Hubert Saunders who was recently appointed to the Board by Governor Cooper.

Following the Oath, Mr. Herndon recognized Mr. Don Brown, Secretary, for presenting the minutes. Mr. Brown asked members if there were any questions or amendments to the minutes as presented. Hearing none, Mr. Brown invited a motion to approve the minutes.

Upon a motion by Mr. Olive and a second by Mr. Blake, the Board unanimously adopted the minutes as presented.

Mr. Herndon informed the Board of a change in the Agenda so that Mr. Jack Nichols, Senior Partner in the firm of Nichols, Choi and Lee, the Board's outside counsel, could offer the Attorney's Report on pending litigation before leaving for a court appearance on the Board's behalf. Mr. Herndon recognized Mr. Nichols who updated the Board on the matter of NC Board of Funeral Service v. Riddle v. Melton Funeral Home. Mr. Nichols reported to the Board that he would be filing a Consent Order in Superior Court and a Mediated Settlement Agreement in hopes of bringing closure to the matter. Mr. Stone asked if the Court would

award attorney's fees. Mr. Nichols responded that payment of attorney's fees was not part of the mediated settlement but that he planned to argue for an award in Superior Court at the appropriate time. Board members discussed the matter in terms of the impact, if any, on the Board's governing statutes regarding preneed sales and/or licensure. Mr. Nichols indicated that the proposed settlement amount is \$330,000 and would be held in escrow in Wake County. He also indicated plans to seek a Declaratory Judgment regarding the receipt of funds from preneed insurance claims.

After additional discussion of the matter among Board members, Mr. Nichols briefed the Board on the matter pending in Superior Court regarding Rosadale Funeral Parlor, Inc. and Brandon Frederick, Plaintiffs. Mr. Nichols informed the Board that he was filing a Motion to Strike and a Motion to Dismiss in Superior Court as well as other filings in response to Rosadale's lack of response to the Board's request for the name of a location manager by March 11, 2019. Mr. Nichols indicated that the attorney for Rosadale Funeral Parlor stated that Brandon Frederick had been named location manager, but Mr. Frederick has declined involvement in the matter. Mr. Nichols also disclosed that Rosadale had also made an effort to appoint Ms. Keisha Caldwell as location manager but that she had declined. Mr. Nichols conveyed to the Board that Rosadale's attempts to identify a location manager had proven unsuccessful in spite of information to the contrary from them. Mr. Nichols informed the Board that he had filed in Superior Court a Certified Record of Judicial Review on March 7, 2019. Mr. Lockhart posed a question regarding any requirement that Mr. Brandon Frederick appear before the Board. Mr. Nichols responded that he was not required to appear before the Board since he is only on probation. Members discussed the matter and thanked Mr. Nichols for his representation and asked that he continue to keep the Board informed on the matter as it progressed through hearings in Superior Court.

Before leaving, Mr. Nichols briefly mentioned two other cases pending and conveyed that he would bring more information to the Board's attention at an appropriate time in the future.

Finance and Personnel Committee Report

Mr. Herndon echoed the Board's thanks for Mr. Nichols' work on litigation. He then recognized Mr. Mark Blake for presentation of the Finance and Personnel Committee Report.

Mr. Blake said that the Finance and Personnel Committee met on February 22, 2019 and then again on March 11, 2019. The first meeting was to consider responses to the letter the Executive Director sent to additional accounting firms soliciting bids for outsourcing the Board's budget and fiscal administration functions. Mr. Blake noted that he asked the Executive Director to summarize staff efforts to date for identifying candidate CPA firms interested in engaging the Board for outsourcing its budget and fiscal administration functions. Mr. Blake asked Mr. Davis to provide additional information. Davis offered a detailed report to the Committee including the analysis of the solicitation including the number of responses, number of declines, number of non-responses, and number of offers. Davis reported that a single firm, Thomas Judy & Tucker, had responded with a proposed Letter of Engagement and said that committee members subsequently discussed the advantages of outsourcing the fiscal administration functions. Mr. Blake reminded members that he would recuse himself from voting since he had a family member who worked in a different division of the firm. Members also discussed the need for proceeding as quickly as feasible and possible since the Board's annual audit of financial statements was scheduled for March 18, 2019. Mr. Blake noted that the Committee directed Board staff to proceed with an engagement contract with Thomas, Judy & Tucker.

Mr. Blake continued his report by stating that the Committee met on March 11, 2019, to review the Profit and Loss Statement and Balance Sheet for the period ending February 1, 2019. He asked members for any questions or comments regarding the referenced documents. He asked Mr. Davis to offer any additional information he thought would be appropriate. Davis indicated that operational costs were at 17% of the total budget and that this percentage is what would be expected for the end of the first two [2] months of the 1st Quarter in the fiscal year.

Mr. Blake then noted that the Committee's report included an update from Mr. Davis on an initial planning meeting with the CPA firm engaged to administer the Board's fiscal and budget functions. He noted that he and Ms. Mauldin met staff who are assigned to the engagement and that they were analyzing the Board's Quickbooks system and developing recommendations for amending the Chart of Accounts and current internal controls. He conveyed to the Committee that the firm had been in contact with Bernard Robinson, the audit firm engaged by the Board to conduct the annual financial audit, and had negotiated a new starting date for the audit which would be March 25, 2019.

Mr. Blake asked if members had questions regarding Mr. Davis' report. Hearing none, he then asked Mr. Davis for comment on the pending EEOC complaint from Ms. Sharon Devine, a former employee who was dismissed on September 7, 2019. Mr. Davis said that he had discussed with Ms. Lee and Mr. Nichols the need to secure outside counsel to assist in the Board's defense of the allegations and that he had been in touch with Bailey and Dixon for further guidance. Mr. Herndon stated that the response due dates in the EEOC notice had expired prior to the date the Board received the complaint and that Nichols, Choi & Lee would seek an extension for responding. Davis stated that he spoke with Ms. Lee regarding the extension and understood that a decision on whether or not the Board wished to pursue mediation in the matter was necessary before the EEOC would consider an extension. He informed the Board that he had agreed to participate in mediation and noted that such action would not in any way imply an admission to the allegations brought by Ms. Devine should the matter be settled. Mr. Stone commented that the Board's actions were justified and appropriate given the circumstances concerning the employee's conduct. Members discussed the Board's position on the matter and agreed that outside counsel would be appropriate in advising on next steps.

Mr. Blake concluded his report and invited questions or comments.

Upon a motion by Mr. Blake and a second by Mr. Lockhart, the Board voted to accept the Profit and Loss Statement and the Balance Sheet for the period ending February, 2019 as presented.

Disciplinary Committee Report

Mr. Herndon recognized Mr. Lockhart for presentation of the Disciplinary Committee report. Mr. Lockhart noted that Ms. Lee had presented the Committee nine (9) cases involving dismissals for consideration. After discussion of each of the following cases, he stated that the Committee recommended dismissal in each one:

C18-0087, C19-0001, C19-0002, C19-0003, C19-0004, C19-0005, C19-0006, C19-0007, and C19-0009

Upon a motion by Mr. Lockhart and a second by Mr. Brown, 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.

Executive Director's Report

Following is the content of the written report given by Executive Director Stephen Davis to the Board:

Preneed Annual Reports

As you are aware, we have shifted the compilation, entry and submission of data to a digital format this year based upon an enhancement to the Board's licensing management system, iGov. The construction of the new Annual Report Portal required more time than initially thought, so the portal was not ready for access by licensees until February 8th which was two weeks later than last year. The initial response to the portal has been mixed but clearly controversial for a number of reasons. Among those reasons are the following:

- It was necessary to resolve some technical issues associated with the portal which frustrated those completing the reports online because their access to entered data was initially limited
- Some users expressed their reluctance at using the online portal because they lacked the necessary computer skills
- In some cases, users had to adjust their browsers to enable complete access to the online report
- Some users expressed resistance to changing the way that the Board has traditionally collected the preneed data

In response, staff made immediate, real-time changes whenever possible including technical adjustments by the iGov team to overcome access and data review issues. We also set up a help desk staffed primarily by Rebecca Williams and Lyn Cochrane who proved extremely effective at reassuring users who said they were uncomfortable with a digital format. They also walked users through the process step-by-step by logging on to the user's report simultaneously with the user.

User feedback has been both positive and negative which is to be expected with a change as significant as this one. Even those users who were initial critics have become supporters in many cases after the technical support that Rebecca and Lyn provided.

To date, we have received nearly 100 reports online. We have received nearly 20 reports in hard copy form. We expect the remainder to be submitted by the end of March.

Annual Meeting of the International Conference of Funeral Service Examining Boards

Mr. Herndon, Mr. Blake and Mr. Brown attended the annual meeting of The Conference the last week of February along with Ms. Mauldin and myself. The 2-day agenda included specialized training for board members, which Mr. Blake attended, and a meeting of the Association of Executives of Funeral Service Boards which Mr. Herndon and I attended. Topics in these meetings ranged from Ethics Training for Licensees to body brokerage and third-party providers of funeral service. Other sessions presented at the annual meeting included an update and discussion of the Funeral Rule by a Senior Attorney at the

Federal Trade Commission, and a presentation by the Legal Counsel for The Conference on top regulatory cases having impact on funeral service professionals. We also had an opportunity to attend a meeting of our District colleagues to share and discuss topics of concern. Ms. Mauldin attended a session that focused on board examinations. Additionally, we are returning with information on a Model Practice Act for Funeral Service; a Model Application for Licensure; a comparative chart showing an analysis of preneed laws and regulations in 50 states; a comparison among member states of Funeral Service Regulations, Licensure Requirements, Continuing Education standards, and Preneed Services.

Cremation and Hydrolysis of Deceased Who Have Been Treated With Nuclear Medicine

You may recall recent media coverage about cremation operators who were exposed to higher than normal levels of radiation after the cremation of bodies with implanted nuclear medical devices. This same issue was a topic of discussion at the recent annual meeting of The Conference. After that meeting, the Executive Director of CANA [Cremation Association of North America] sent members information that may prove useful in developing guidelines and rules concerning this issue. CANA has made available several technical papers on Strontium-90, Radiation Decedent Guidelines, and Radiation Safety Information regarding bodies containing radioactive metastron.

Paul Harris of Regulatory Support Services encourages all funeral home, crematory, and cemetery owners to ask the pertinent questions of their families. Cause of death is the first indicator that a case is at risk for radiation therapy, but all families should be asked in the case of death unrelated to their ailment. In many cases, families may be unaware or not understand the procedures the decedent has undergone. In these cases, you may need to ask for a Health Insurance Portability and Accountability Act (HIPAA) release form to contact the medical provider yourself. Asking the radiologist for information on the treatment and about the specific isotope and its half-life is the best way to determine when (or if) it is safe to cremate or embalm the body. Depending on the isotope and when the treatment was administered, this could take weeks or even months.

Additional information is available in the Journal of the American Medical Association which sheds light on the potential exposure for staff who handle anyone treated with nuclear medicine.

Technical Amendments to the Funeral Practice Act

You will recall your earlier discussion regarding the need for technical amendments to the licensing statutes which currently prohibit the Board from issuing a license to those completing the academic requirements for a funeral director. When House Bill 529 was ratified last year, there was an inadvertent change to the provisions for licensing funeral directors. Most funeral director programs are not accredited by the American Board of Funeral Service Education because those graduates would not have possessed the necessary academic requirements to sit for the national board exams. Our statute prior to October 1, 2018, enabled the Board to grant a funeral director license to those graduates from an accredited funeral director program or a program that the Board approved. The statute after October 1, 2018, requires that such programs be accredited and Board-approved. You therefore cannot issue funeral director licenses to those graduating from Fayetteville Technical Community College and other programs that are not accredited by the ABFSE.

We have been working closely with Rep. Boles on a series of technical amendments to General Statute 90-210 to cure this and other problems that we discovered after HB 529 was ratified. I have a meeting this afternoon with Rep. Boles to discuss the status of the legislation and to talk about proposals from Rep. Kelly Alexander to require transporters and unaffiliated licensees to purchase Workers Compensation insurance. He also wants to include language that defines "good moral character" to

include convicted felons who have completed their sentence including probation and restitution if required and who have had no misdemeanor or felony convictions for the five years.

Statements of Economic Interest

Please remember that you must file your Statement of Economic Interest with the NC State Commission on Ethics by April 15, 2019. I have placed in the front of your notebooks a link to the Commission’s website and to the electronic versions of the long- or short-form for your statement.

Media Coverage

As a follow-up to my earlier notification to you about WRAL-TV’s coverage of home burglaries while families are attending funerals, burials, visitations and other events, I wanted to let you know that my interview with them aired this past Friday afternoon. In giving thought to this issue and recalling Mr. Blake’s concerns about these burglaries, I plan to post a consumer guide on our website so that licensees can let families know some steps they can take to protect themselves. It will be a public service piece from the Board.

Activity Measures & Metrics:

Licensure Report

CHAPELS	None
CREMATORY LICENSEES	None
HYDROLYSIS LICENSEES	Human Aquamation by Clay-Barnette-Shelby
TRANSPORTERS	None
EMBALMING FACILITIES	None
UNAFFILIATED LICENSEES	None
FUNERAL ESTABLISHMENTS	Gilmore Mortuary Services-Charlotte Winterville Cremation and Funeral Services-Winterville
PRE-NEED ESTABLISHMENTS	None
FUNERAL SERVICE LICENSEES	Helena S.Norris-Jackson-Spartanburg,SC
FUNERAL DIRECTORS	None
TRAINEES Beginning Jan. 1, 201	Cameron J. Mabry – Hartsell Funeral Home, Inc. Jeremy S. Wheless – Richard Harris Funeral Home & Cremation Service Jesslyn S. Pope – H. D. Pope Funeral Homes, Inc. Timothy W. Turner – Heritage Funeral Home William A. Figueroa – Joyner’s Funeral Home, Inc. Amie Maria Sexton – Renaissance Funeral Homes, Inc. Samantha G. Love – Gregory Funeral Service Inc.

Compliance and Inspections Report:

Funeral Establishments inspected	15
Preneed Establishments inspected	12
Crematories inspected	3
Hydrolysis Licensee inspected	1
Unaffiliated Licensees inspected	0
Chapels inspected	1
Mutual Burial Associations were inspected	1
Embalming Facility	0
Complaints served	0
Investigations completed	0
Notices of Hearing served	2
Final Agency Decisions served	0
Continuing Education classes taught	0
Compliance emails issued	3

Attorney's Report

Ms. Lee, General Counsel, offered the following information:

<i>Current Active Cases</i>	24
Pending Investigation	7
Pending Review by Disciplinary Committee:	0
Pending Dispositive Action	9
Pending Hearing	6
Post-Hearing	2
Other	0
New files opened since last Board meeting	7
Notices of Hearing sent since last Board meeting	3
Consent Orders received since last Board meeting	0
Cases reviewed by Disciplinary Committee since last Board meeting	9

<i>Current Active Preneed Recovery Fund Claims</i>	1
Pending Investigation	1
Pending Dispositive Action	0
Preneed Recovery Fund Claims received since last Board meeting	1
Preneed Recovery Fund Claims reviewed by Preneed Committee since September	0

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

Ms. Lee then proceeded to explain that licensees failing to renew by February 1, 2019, could request reinstatement of their license by meeting certain conditions. She presented to the Board the following Consent Orders for those licensees seeking reinstatement and who satisfactorily met all conditions:

- R19-0010
- R19-0014
- R19-0015
- R19-0017
- R19-0024
- R19-0026
- R19-0028
- R19-0030
- R19-0032
- R19-0037

Mr. Blake asked the amount of a compromise penalty assessed and affirmed that the Consent Orders pertained to both individuals and establishments. Mr. Stone asked for confirmation that late renewals must pay a compromise penalty.

Upon a motion by Mr. Lockhart and a second by Mr. Brown, the Board approved the request to approve the Consent Orders presented by Counsel for reinstatement of licenses not renewed by February 2019.

Ms. Lee continued her report by noting that the owner/manager, who was also the sole proprietor of Whitfield and Whitley Funeral Home in Washington, NC, passed away earlier this year and that it was necessary as prescribed by statute for the establishment to surrender its license. Ms. Lee noted that she had issued the appropriate notification to the establishment in accordance with the statutory requirements. She also noted that a Mutual Burial Association was associated with this particular establishment and that staff was recommending the dissolution of the Association and possible liquidation of its assets. She further noted that the accounts associated with the MBA would be frozen pending further action.

Ms. Lee continued by informing the Board that she had received three (3) requests for revocation of an irrevocable preneed contract in the days preceding the Board's meeting. She noted that these requests came to her attention after the Preneed Committee meeting for March, and, with the Board's consent, would present these requests to the full Board for consideration. Mr. Herndon indicated the Board's consent. Ms. Lee noted that each request was based on appropriate and complete documentation showing that the purchaser/beneficiary has moved out-of-state and executed new contracts as required by statute as a condition of revocation.

Upon a motion by Mr. Olive and a second by Mr. Brown, the Board voted to accept the recommendations regarding Whitfield and Whitley Funeral Home as well as the Requests for Revocation of Preneed Contracts as presented.

Old Business

There were no old business items for the Board's consideration.

New Business

Mr. Herndon recognized Ms. Lee who explained that the NC Rules Review Commission requires a periodic review of administrative rules for all state agencies. She briefly described the statutory requirements for the readoption of administrative rules and noted the rules she was presenting were those with substantive public interest. She reminded the Board that these amendments to the rules had been presented to the Board in December 2017 and approved at that time. She then presented six (6) rules for the Board's consideration and vote to proceed with publication in the NC Register and subsequent public hearings.

Following are the rules presented to the Board:

21 NCAC Chapter 34A:

- .0201 Fees and Other Payments
- .0310 Practice of Funeral Service or Funeral Directing Not as an Owner, Employee or Agent
- .0305 Monthly Reports
- .0105 Preneed Funeral Contract Copies to be Filed
- .0203 Surety Bonds
- .0303 Certificate of Performance

Members discussed each rule in detail and with questions pertaining to the scope, content and impact of each rule presented.

Upon a motion by Mr. Olive and a second by Mr. Watson, the Board voted to adopt the proposed amendments to the referenced administrative rules.

Mr. Herndon then asked Ms. Lee if there were further Old Business items, and she recognized Brett Lisenbee, Compliance Officer, who introduced a temporary rule at 21 NCAC Chapter 34C .0207 to recognize technical changes in applicable rules as a result of alkaline hydrolysis which represents a new licensure category upon the ratification of HB529 effective October 1, 2018. Members asked questions pertaining to the implications and wording of the proposed temporary rule and discussed issues concerning the impact of the proposed rule on licensees and other stakeholders. Mr. Lisenbee and Ms. Lee responded to questions.

Upon a motion by Mr. Olive and a second by Mr. Watson, the Board voted affirmatively for the adoption of the referenced temporary rule and the adoption of revised rules for alkaline hydrolysis.

Mr. Herndon asked if there were other issues before the Board. Mr. Davis noted that the Board traditionally cancels the July meeting and asked the Board to consider cancellation of the July 2019 meeting to enable staff adequate time for preparing and delivering Board-sponsored CE training.

Upon a motion by Mr. Olive and a second by Mr. Lockhart, the Board voted affirmatively to cancel the July 2019 meeting.

Without further business before the Board, Mr. Herndon invited a motion for adjournment.

Upon a motion by Mr. Lockhart and a second by Mr. Brown, the business session of the meeting was adjourned.

Following the business session, the Board conducted a disciplinary hearing beginning at 11:54 am in the matter of M18-0009 [Matthews Funeral Service, Inc.]. Mr. Lockhart and Mr. Herndon did not participate in the hearing, and Mr. Blake presided. Mr. Blake declared the presence of a quorum and the hearing proceeded. Mr. Blake noted that the respondents were not present, and he invited Ms. Lee to proceed with an opening statement.

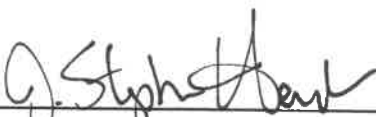
At the request of members present, the presiding officer recessed the hearing for five [5] minutes at 12:45 pm. At 12:51, the hearing resumed with a closing statement by plaintiff's counsel, Ms. Lee. Following the conclusion of the hearing, and upon a motion by Mr. Brown and a second by Mr. Olive, the Board entered into closed session to deliberate on the proceedings. Upon proper motion by Mr. Watson and a second by Mr. Blake, the Board resumed its open session.

Upon a motion by Mr. Blake and a second by Mr. Brown, the Board accepted Counsel's recommendation to dissolve and liquidate the Mutual Burial Association associated with respondent funeral home and to suspend respondent funeral home's preneed and at-need establishment permits. Further, the Board will invoke emergency action to continue the summary suspension of respondent funeral home's establishment license.


Upon a motion by Mr. Olive and a second by Mr. Brown, the Board voted to reconvene in closed session to consider a confidential human resources issue. Mr. Lockhart and Mr. Graves were not present for the closed session.

Upon a motion by Mr. Blake and a second by Mr. Brown, the Board returned to open session and subsequently adjourned.

Affirmation:



J. Stephen Herndon, President



Don Brown, Secretary

April 10, 2019

Date