



# NORTH CAROLINA BOARD OF FUNERAL SERVICE

## Minutes April 10, 2019 Board Meeting

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*The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on April 10, 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; Chris Watson; and Charles Graves.

Staff and Counsel: Stephen Davis, Executive Director; Catherine E. Lee, General Counsel; Jack Nichols, Senior Partner, Nichols Choi & Lee; Assistant Director Amy Mauldin; and Robert Berry, staff member.

Guests and Visitors: Dorman H. Caudle, Carolina Donor Services, Bill Forsberg, Deena Bare and Shannon Berry, Thomas Judy & Tucker Certified Public Accountants.

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Mr. Herndon called the meeting to order at 9:02 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.

### Approval of Minutes

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. Graves and a second by Mr. Lockhart, the Board unanimously adopted the minutes 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 seven (7) cases involving dismissals for consideration. Mr. Lockhart presented the details of each case as follows:

C19-0008, C19-0011, C19-0012, C19-0013, C19-0015, M19-0007, M19-0008,

After discussion, he stated that the Committee recommended dismissal in cases C19-0008, C19-0011, C19-0012, C19-0013 and C19-0015 based upon insufficient evidence to show that a licensee committed an actionable violation of a law or rule enforced that the Board has authority to enforce.

***Upon a motion by Mr. Lockhart and a second by Mr. Graves, the Board voted unanimously to accept the Committee's recommendations.***

Mr. Lockhart then presented cases M19-0007 and M19-0008 pertaining to applications for licensure. He noted that the applicant in M19-0007 applied for licensure by reciprocity and indicated that she had no convictions of a felony or misdemeanor crime. However, the applicant was previously convicted of a misdemeanor assault. Mr. Blake asked about the time frame associated with the conviction. Ms. Lee explained that the issue of concern was the applicant's answer to the question on the application concerning past convictions. In case M19-008, Mr. Lockhart conveyed that the applicant applied for a removal and transportation permit. He noted that the applicant disclosed several convictions. In both cases, Mr. Lockhart stated that the Disciplinary Committee recommended denial of the applications for licensure.

***Upon a motion by Mr. Lockhart and a second by Mr. Graves, the Board unanimously adopted the Committee's recommendation to deny licensure.***

#### **Preneed Committee Report**

Mr. Blake stated that the Committee met by conference call on April 1, 2019, to discuss a pending claim against the Preneed Recovery Fund in the amount of \$2,939.79. He asked General Counsel Catherine Lee if he understood correctly that the claimant's family had submitted additional documentation in support of the claim which had impact on the Committee's initial recommendation to deny the claim for insufficient documentation. Ms. Lee responded that in the days preceding the Board meeting, family members had provided her sufficient documentation enabling a change in the recommendation from denial to acceptance.

***Upon a motion by Mr. Blake and a second by Mr. Graves, the Board unanimously accepted the Preneed Committee recommendation to accept the claim as presented.***

Mr. Graves then asked how the Board would recover the funds from the contracting funeral home to reimburse the Preneed Recovery Trust Fund. Mr. Graves noted that the funeral home was now closed based upon Ms. Lee's presentation of the case to the Board prior to the vote to accept the claim. Ms. Lee indicated that Board staff does not know the former owner's location but stated that the Board could authorize outside counsel to pursue a subrogation claim against the former establishment owner.

***Upon a motion by Mr. Olive and a second by Mr. Graves, the Board voted unanimously to direct outside counsel to pursue a subrogation claim.***

Mr. Blake asked staff to report on the responses received regarding the proposed preneed contract changes. Mr. Davis indicated that approximately 20 responses have been received and Mr. Richardson, Preneed Program Manager, acknowledged each one. Davis noted that the majority of responses do not support the proposed changes. Mr. Blake asked staff to forward the responses to the Preneed committee.

#### **Finance and Personnel Committee Report**

Mr. Herndon recognized Mr. Blake for presentation of the Finance and Personnel Committee Report. Mr. Blake turned the discussion over to Mr. Davis who then spoke about the two meetings within the month.

Mr. Davis said that the Finance and Personnel Committee met on March 20, 2019 and then again on April 5, 2019. In the first meeting, members discussed transitional issues in the Board's legal representation resulting from the March 14, 2019, resignation of General Counsel Catherine Lee. Mr. Herndon shared with the committee that in a recent discussion with the firm, agreement was reached that Nichols, Choi and Lee would remain as the Board's outside counsel until a replacement firm or other arrangement has been decided. Mr. Nichols of the firm will notify the appropriate courts of the change in representation if other outside counsel is hired. Members also discussed the recruitment for a General Counsel and agreed that the appointment the General Counsel should not also be employed by the same firm as the outside counsel. After discussion, committee members directed Mr. Davis to proceed with recruitment for a General Counsel by contacting the NC Bar Association, Lawyer's Weekly, and county bar associations to announce the vacancy. Members also asked Mr. Davis to invite Mr. Nichols and Ms. Lee to a future committee meeting to discuss options for continuing to represent the Board in an appropriate capacity.

On April 5, 2019, the Finance and Personnel Committee met to continue the discussion from March 20, 2019, regarding the appointment of a firm to represent the Board as outside counsel. Mr. Blake asked Mr. Davis to brief the committee on a written proposal he had received from Ms. Lee regarding Nichols, Choi and Lee continuing to represent the Board as outside counsel on retainer. Davis noted that the proposal also included a provision for Ms. Lee to continue working with Board staff on a retainer basis as well. Members discussed the firm's proposal at length and agreed that the issue should come before the full Board in closed session on April 10, 2019.

Other agenda items included updates by Mr. Davis on the status and progress of the audit of the Board's 2018 financial statements by Bernard Robinson. He also provided committee members an update on the work done by Thomas, Judy & Tucker, the firm engaged to administer the Board's accounting functions. Davis noted that the CPA assigned to the Board's account had transferred all Quickbooks data to the firm's software and accounting system and that procedures were in place to assure a timely method for forwarding receipts and issuing checks for accounts payables. Davis said that the transfer of data and the firm's work in transition to an accrual rather than cash basis for managing the budget would delay the Profit and Loss Statement and Balance Sheet by one month.

Mr. Blake concluded his report and invited questions or comments. No members offered questions or comments.

#### Invitation for Public Comment on Proposed Temporary Rules

Mr. Herndon announced that the Board would convene a Public Hearing at 9:30 a.m. as noticed in the NC Register to allow public comment on temporary rules that the Board had published and discussed in March 2019. Mr. Herndon read each rule by title citation and briefly described the procedure for offering public comment. No public comment was received during the public hearing.

Mr. Herndon resumed the business session of the meeting and invited Mr. Blake to offer the Preeed Committee Report.

Executive Director's Report *[Following is the content of the written report given by Executive Director Stephen Davis to the Board]*

## 2019 Submission of Preneed Annual Reports

The deadline for submission of the 2018 Preneed Annual Reports was March 31<sup>st</sup>, and I wanted to provide you a numerical breakdown of the submissions:

Online Submissions	451
Hard Copy Submissions by USPS	130
Not Received by March 31 <sup>st</sup>	<u>61</u>
	642

Mr. Brown asked if late submissions would be charged a late fee. Mr. Davis indicated that they would in accordance with the statute. Mr. Brown noted that the report was distributed later than in prior years, and Davis agreed but noted that licensees still had adequate time to prepare and submit their reports. Mr. Stone stated that the Board does not have latitude to waive late fees since statute requires them for late submissions. Mr. Watson noted that he understood some licensees found the on-line report difficult to complete. Davis agreed and stated that virtually all concerns were resolved soon after the report was made available on-line on February 8, 2019, and that the subsequent response to the on-line report was extremely positive which accounted for a record 451 on-line submissions.

## Pending Legislation

- HB 544

This legislation provides for the six (6) technical amendments you approved in January primarily to cure the problem resulting from a misplaced word in HB 529 which became law last year. This misplaced word prevents the Board from issuing licenses to Funeral Director candidates. The bill also clarifies the documentation required for human remains coming into the state from other states, provinces or countries; inserts language in appropriate sections of the Funeral Practice Act to recognize alkaline hydrolysis; includes language to grandfather trainees who completed their resident traineeship on or before October 1, 2018 to give them 5 years of recognition; allows examinations taken and passed on or before October 1, 2018 to be considered valid for 5 years following the date passed; and accords the Board authority to enforce the Funeral Rule among crematories. The bill was submitted on April 2<sup>nd</sup> and has been referred to the House Committee on Regulatory Reform. It has passed a 1<sup>st</sup> reading in the House.

- HB 484

This bill has been proposed but I cannot confirm that it has actually been introduced. It will require all licensing boards to verify the immigration status of applicants for a public benefit as defined by federal code. That definition includes occupational licenses. If passed, the Board must use the federal Systematic Alien Verification for Entitlements system which requires a Memorandum of Agreement with the Department of Homeland Security to obtain the verification.

- SB 305

This legislation has been proposed but I cannot confirm whether or not it has been introduced. The legislation clarifies information that must be provided on the annual report required of all occupational licensing boards and state agency licensing authorities.

It also states that:

*A board shall not automatically deny licensure on the basis of an applicant's criminal history and notwithstanding any other provisions of law, no board may deny an applicant a license based solely on conviction for a crime of moral turpitude.*

The bill outlines specific factors boards must consider before denying licensure on the basis of a criminal conviction. If a board denies licensure, then that board must make written findings specifying which of the listed factors were deemed relevant in the decision to deny licensure. Applicants denied licensure will be entitled to a rehearing on the issue before the board.

### Annual Audit of Board Financial Statements

Auditors from Bernard Robinson have been on-site since March 25 to review documents, records, systems and other data necessary for the review, analysis, testing and conclusions regarding the board's financial statements. Auditors from the firm have noted some deficiencies as a result of the vacancy in the staff administrator responsible for accounts payables, accounts receivables, payroll and related accounting functions. I do not have any indication that these deficiencies are catastrophic. The auditors have worked closely with Deena Bare, who manages the Outsource Accounting Division, and Shannon Berry from Thomas Judy and Tucker in the production and review of relevant accounting documents and information.

The auditors will be concluding the audit by April 30<sup>th</sup> which is important since the submission of our annual report to the legislature, the Office of State Budget and Management, the State Auditor and the State Controller requires completion of the audit prior to submitting the report.

### 93B Report

Staff is currently working on pulling together necessary information and data in response to a number of questions contained in the annual report we are required by statute to submit. This report is a snapshot of the Board's activities and focuses primarily on quantitative measures including numbers of licensees, establishments, crematories, disciplinary actions, examinations and other activities under the Board's jurisdiction.

### FBI Audit

Our records and procedures for conducting criminal records background checks was audited the last week of March as part of the FBI's focus on North Carolina agencies and organizations approved to conduct such checks. Our audit indicated full compliance with the FBI's requirements.

### Recruitment for General Counsel

We are currently advertising on the Career Center for the NC Bar Association as well as Lawyer's Weekly, a publication widely distributed through print and online media. We also are sending out letters to county bar associations to announce the vacancy. To date, we have had 2 applicants for the position.

### Curtis Winslow Johnson, Sr.

I received news yesterday that one of our licensees, Curtis Winslow Johnson, who was employed at J. B. Rhodes Funeral Home and Cremations in Goldsboro passed away recently.

**At-Need Licensure Report**

CHAPELS	None
CREMATORY LICENSEES	Wake County Crematory – Raleigh Gordon Funeral Home and Crematory – Mount Pleasant
HYDROLYSIS LICENSEES	None
TRANSPORTERS	None
EMBALMING FACILITIES	None
UNAFFILIATED LICENSEES	None
FUNERAL ESTABLISHMENTS	Wake Cremation Services - Cary Washington Funeral and Cremation – Washington (ownership change)
PRE-NEED ESTABLISHMENTS	Washington Funeral and cremation – Washington (ownership change)
FUNERAL SERVICE LICENSEES	Jennifer L. Thomas – Charlotte, NC
FUNERAL DIRECTORS	None
TRAINEES Beginning April 1, 201	Jesse E. McMahan – McMahan’s Funeral Home & Cremation Services Rodney D. Sellers – Greene Funeral Service Bradlee P. O’Neal – Lancaster Funeral and Cremation Services Jac’Kel S. Brown – Forest Lawn West Funeral & Cremation Services Jennifer R. Davis – Garret Funeral Home Teshia R. Toney – Baskerville Funeral Home Keith W. Gillespie – Greer McElveen Funeral Home and Crematory Devin G. Severt – Mackie Funeral Home Gabrielle A. Headen – Holloway Memorial Funeral Home

**Compliance and Inspections Report:**

Funeral Establishments inspected	19
Preneed Establishments inspected	19
Crematories inspected	10
Hydrolysis Licensee inspected	0
Unaffiliated Licensees inspected	0
Chapels inspected	0
Mutual Burial Associations were inspected	1
Embalming Facility	0
Complaints served	1
Investigations completed	1
Notices of Hearing served	0
Final Agency Decisions served	1
Continuing Education classes taught	0
Compliance emails issued	4

Attorney's Report

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

<b>Current Active Cases</b>	17
Pending Investigation	3
Pending Review by Disciplinary Committee:	0
Pending Dispositive Action	7
Pending Hearing	4
Post-Hearing	3
Other	0
New files opened since last Board meeting	0
Notices of Hearing sent since last Board meeting	2
Consent Orders received since last Board meeting	0
Cases reviewed by Disciplinary Committee since last Board meeting	7

<b>Current Active Preneed Recovery Fund Claims</b>	1
Pending Investigation	0
Pending Dispositive Action	1
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. Ms. Lee then explained 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:

- R19-004 and R19-0036

Mr. Lockhart asked if staff could ascertain with certainty that the individuals seeking reinstatement of their licenses had not engaged in the practice of funeral service since their licenses lapsed due to non-renewal. Ms. Lee stated that there is no practical way to assure that these licensees have not practiced after their licenses lapsed, but that a \$250.00 civil penalty is the sanction for non-licensed practice during that period.

*Upon a motion by Mr. Graves 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 April 2019.*

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. 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. Lockhart and a second by Mr. Graves, the Board voted to accept the Revocation of Preneed Contracts as presented.*

Upon the conclusion of her Attorney Report, Ms. Lee informed Mr. Herndon that Jack Nichols, Senior Partner at Nichols, Choi and Lee was in attendance and would update the Board on pending litigation matters if that was the Board's desire. Mr. Herndon recognized Mr. Nichols who then provided Board members a summary of cases pending in the courts. He noted two cases in particular: the matter involving Mr. Tito Truesdale and the matter involving Rosadale Funeral Parlor in Mecklenburg County. Mr. Nichols responded to comments and questions from Board members and concluded his report by letting members know that his firm would continue to work on these cases until their conclusion in the general court system if the Board desired. He acknowledged that the Board was considering the engagement of a firm other than Nichols, Choi and Lee to represent the Board on matters of outside litigation.

Ms. Lee then reminded the Board that since her resignation as General Counsel would be effective April 12, 2019, she was withdrawing as the Board's rulemaking coordinator. She stated that the Board must vote on a replacement. Mr. Herndon asked for comments and thoughts about Ms. Lee's replacement and agreed that the Executive Director should function in this capacity.

***Upon a motion by Mr. Graves and a second by Mr. Watson, the Board voted unanimously to appoint Mr. Davis as the Board's Rulemaking Coordinator.***

#### Old Business

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

#### New Business

Mr. Herndon asked members for any new business items. In response, Mr. Blake expressed concern with a reliance on digital records retention without keeping hard copies of records as a back-up. He noted that digital formats shift with advances in technology and was concerned that access in the future to digital records could be limited. He also noted that there is no guarantee that digital records could be lost or destroyed and that hard copies of digital records should be retained to prevent loss of records. Members discussed this issue and agreed to keep it under consideration.

Mr. Herndon asked for any other new business items. Mr. Blake said that he learned of a recent situation that he wanted to share with the Board. He understood that a North Carolina firm recently attempted to hire a licensee from South Carolina only to learn that the current statute requires at least three [3] years of active experience in the practice of funeral service as one of the conditions for a reciprocal license. Mr. Lockhart and Mr. Stone commented on the 3-year requirement in terms of other states' practices and also noting that the NC General Assembly adopted this requirement as a condition for issuing a reciprocal license.

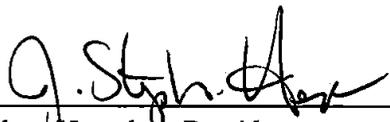
Without further agenda items for the business session, Mr. Herndon noted that the Board would need to meet in closed session to discuss confidential personnel matters which are not subject to public disclosure.

***Upon a motion by Mr. Graves and a second by Mr. Watson, the business session was adjourned.***

***Upon a motion by Mr. Graves and a second by Mr. Lockhart, the Board voted unanimously to reconvene in closed session.***

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

**Affirmation:**

  
\_\_\_\_\_  
J. Stephen Herndon, President

  
\_\_\_\_\_  
Don Brown, Secretary

5-8-19  
\_\_\_\_\_  
Date