



## NORTH CAROLINA BOARD OF FUNERAL SERVICE

### Minutes August 14, 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 August 14, 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; Chris Watson; and Charles Graves. Mr. Hubert Saunders joined the meeting by conference call.

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

Guests and Visitors: Dorman H. Caudle, Carolina Donor Services; Sean Bannon, Strickland Funeral Home; Otelia B. Royster, FS trainee; William Dwyer Norton, FS licensee.

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Mr. Herndon called the meeting to order at 9:05 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 found it necessary to recuse themselves from the meeting. None recused.

Mr. Herndon then asked guests to introduce themselves and invited any public comment. None was offered.

#### **Approval of Minutes**

Mr. Herndon recognized Mr. Don Brown, Secretary, for presentation of the minutes from the June 12, 2019, meeting. 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 recognized Mr. Brown for presentation of the minutes from the June 24, 2019, emergency board meeting. 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. Lockhart and a second by Mr. Olive, the Board unanimously adopted the minutes as presented.***

Mr. Herndon recognized Mr. Brown for presentation of the minutes from the July 12, 2019, emergency board meeting. 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. Graves, the Board unanimously adopted the minutes as presented.*

Mr. Herndon continued the meeting and called upon Mr. Valdus Lockhart for the Disciplinary Committee report.

#### **Disciplinary Committee Report**

Mr. Lockhart noted that the Disciplinary Committee met on August 12, 2019, to hear a presentation from Ms. Amy Mauldin on eleven [11] complaints as follows: C19-0016, C19-0017, C19-0018, C19-0019, C19-0021, C19,0023, C19-0026, C19-0028, C19-0029, C19-0024, C19-0027. Mr. Lockhart noted the recommendation from staff on each case and conveyed to the full Board that the Committee was in concurrence with the recommendations as presented. The Board discussed the cases and focused on C19-0024 and C19-0027 which were recommended for Letters of Caution.

*Mr. Lockhart moved for approval of the Committee's recommendations as presented. Mr. Brown offered a second to the motion, and the full Board voted unanimously to adopt the Committee's recommendations on the cases presented.*

Mr. Herndon continued the meeting and asked for Mr. Blake to present the Finance and Personnel Committee report.

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

Mr. Blake stated that the Finance and Personnel Committee met on August 12, 2019, to hear a staff presentation on the monthly financial reports for the period ending June 30, 2019. Mr. Blake noted that the Board's net position based on staff's presentation of the balance sheet continued to be quite strong and said that the Preneed Recovery Trust Fund had reach a balance of approximately \$236,000. Mr. Stone asked if that amount was sufficient or greater than would be necessary to pay anticipated claims. Members briefly discussed the issue of an appropriate funding level for the Preneed Recovery Trust Fund. Mr. Blake continued his report by indicating that total operating expenditures for the 2<sup>nd</sup> quarter were at 46.6% of the total budget which is consistent and slightly below expectations.

*Upon a motion by Mr. Olive and a second by Mr. Lockhart, the Board voted unanimously to accept the Committee's recommendation to approve the Report of Monthly Expenditures.*

*Upon a motion by Mr. Blake and a second by Mr. Olive, the Board voted unanimously to accept the Committee's recommendation to approve the Balance Sheet.*

Mr. Herndon continued the meeting and asked Mr. Blake to present the Preneed Committee Report.

## Preneed Committee Report

Mr. Blake stated that the Preneed Committee met on August 7, 2019, to hear a staff presentation on a request for reimbursement from the Preneed Recovery Trust Fund in the amount of \$11,685.75. Mr. Blake noted that the Committee discussed this request in detail and agreed with Ms. Mauldin's observation that there is insufficient documentation to enable approval of the claim. He noted that the consumer is the son of the deceased and possessed a copy of the front side of the check written by the deceased prior to death for goods and services. He further noted that the claimant could not produce the back of the check to verify that it had been cashed or deposited. He also stated that the contract for at need goods and services was improperly executed.

Without more substantive and definitive proof that the deceased woman's funds had been misappropriated, Mr. Blake noted that the Committee could not recommend approval of the claim. He conveyed to the full Board that the case would remain open pending additional documentation from the claimant to assure a full, fair opportunity for proving the claim.

*Upon a motion by Mr. Blake and a second by Mr. Olive, the Board voted unanimously to deny the claim but to allow time for additional documentation from the claimant.*

Mr. Herndon then asked Mr. Blake to continue by presenting the Traineeship Committee report.

## Traineeship Committee Report

Mr. Blake reported that the Traineeship Committee met by conference call on August 7, 2019. He noted that Mr. Lockhart could not successfully access the meeting with the passcode, so he was unable to participate which meant that he and Mr. Watson were in attendance.

Mr. Blake continued and said that staff had received a request from a former trainee who wanted his traineeship credit reinstated so that he would qualify for his examinations and licensure. Mr. Blake noted that Amy Mauldin, Assistant Director and Manager of the Traineeship Program, presented the request and referred to a letter from the former trainee who was appealing staff's decision to require him to start a new traineeship. Mr. Blake said that Ms. Mauldin highlighted the contents of the letter and conveyed to members her conversations and other communications with the appellant. Her summary of the trainee's request included a history of late work reports and inconsistent communications with the Board including significant lapses in responding to Board requests for information. Mr. Blake also reported that the appellant's supervisor had made no attempt to communicate with the Board after the appellant's traineeship expired in early 2018.

Members discussed the circumstances of the request and asked Ms. Mauldin for additional information concerning the communications and the correspondence sent to the trainee. Members agreed that the Board should defer action until the trainee had an opportunity to appear before the Traineeship Committee to justify and defend his request for reinstatement.

*Upon a motion by Mr. Stone and a second by Mr. Olive, the Board agreed to table the matter pending an appearance by the trainee before the Traineeship Committee with final consideration of his request for reinstatement at the September 11, 2019, Board meeting.*

Mr. Herndon then recognized Mr. Graves for the Laws, Rules and Regulations Committee Report.

#### **Laws, Rules and Regulations Committee Report**

Mr. Graves conveyed that the Committee convened by conference call at 10:00 a.m. on Friday, August 9, 2019 at the Board office located at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605. In attendance were Mr. Charles Graves, Chair; Mr. Don Brown; and Mr. Hubert Saunders. Staff in attendance were Mr. Stephen Davis, Executive Director, and Ms. Amy Mauldin, Assistant Director.

Mr. Graves said that the purpose of the Committee's meeting was to hear a presentation from Mr. Davis on the provisions of House Bill 770 which was enacted into Session Law in July 2019. He noted that the new law becomes effective October 1, 2019, and asked Mr. Davis to summarize the meeting. Mr. Davis said that the new law resulted from legislation pertaining to criminal record background checks as well as new requirements for occupational licensing boards and agencies with apprenticeship programs. He said that his presentation to the Committee focused on the criminal record background check since that was the primary focus of the new law. He explained the laws provisions and noted that the Board would in the future be required to document in writing its reasons for any denial of a license based on an applicant's criminal history. He continued by saying that the new law accorded applicants for licensure certain rights that had not been previously recognized including requests for a predetermination of the Board's decision on whether or not to award a license. Members discussed the law's provisions and acknowledged the importance of compliance. Mr. Davis said that he would seek more detailed guidance and offer additional details as necessary to the Board in future meetings upon appointment of a General Counsel.

Mr. Graves thanked Mr. Davis for his presentation and comments and invited a motion for approval of the Committee's report.

Upon a motion by Mr. Watson and a second by Mr. Lockhart, the Board unanimously voted to adopt the report from the Laws, Rules and Regulations Committee.

Mr. Herndon then recognized Mr. Don Brown for the Continuing Education Committee report.

#### **Continuing Education Committee Report**

Mr. Brown reported that the Continuing Education Committee convened by conference call at 1:20 p.m. on Friday, August 9, 2019. In attendance were Mr. Don Brown, Chair; Mr. Mike Stone; Mr. Charles Graves; and Mr. Craig Olive. Staff in attendance were Mr. Stephen Davis, Executive Director, and Ms. Amy Mauldin, Assistant Director.

Mr. Brown stated that the Committee met to consider a request from Rep. Kelly Alexander to present information sessions on the provisions of House Bill 554 which was pending a concurrence vote in the NC House of Representatives and House Bill 770 which was enacted into Session Law earlier in July. Mr. Brown conveyed and summarized the comments, questions and observations from Committee members concerning the request. He stated that the Committee agreed that any presentation on House Bill 554 before a vote on concurrence would not be appropriate for continuing education credit. He further noted that the course objectives were informational in nature rather than a focus on professional

development as required by the standards expressed in the NC Administrative Code. He said that members agreed that the information might certainly prove useful and helpful to licensees, it would be consistent with the standards for approval of a continuing education course for awarding CE credit. Board members discussed Mr. Brown's presentation and thought that the request was more informational than instructional. Members asked Mr. Lisenbee for his thoughts on whether or not the request would satisfy current requirements for awarding CE credit. He replied that the provisions of House Bill 770 which had become law are not related to the practice of funeral service as defined by NCGS 90-210. Mr. Stone acknowledged that there could be benefit to individuals interested in the provisions of HB770 but did not believe information sessions on legislation should receive continuing education credit.

*Upon a motion by Mr. Stone and a second by Mr. Graves, the Board voted unanimously to deny the request for a continuing education course for CE credit on the basis of presenting information on HB 554 and HB 770. The Board asked Mr. Davis to send a letter to Representative Alexander expressing thanks for his request but explaining why it did not meet the criteria for approval.*

#### **Executive Director's Report**

Mr. Davis reported to the Board that House Bill 554 remained in the Committee on Rules, Calendar and Operations of the House without action. He noted that staff monitor the committee's agenda constantly to determine when and if the bill will be scheduled for debate. He noted that many of the prospective candidates for licensure in funeral directing are trying to organize themselves as a unified group with strategic plans for outreach to members of the General Assembly in support of voting on the bill. Davis noted their frustration in not receiving their funeral director license even though they have completed the necessary requirements for licensure.

Members discussed this issue in detail and recognized the licensure candidates' frustration. Mr. Herndon noted that he had pursued discussions with counsel at Bailey and Dixon to investigate whether or not the Board might have any available legal options for issuing the funeral director license. Mr. Blake offered that the Board should request an Attorney General opinion on the matter with a copy to the Governor's Office and the leadership in the House and Senate. Members continued their discussion of the licensure issue and agreed that a request for an opinion from the Attorney General would be in order.

*Upon a motion by Mr. Blake and a second by Mr. Olive, the Board voted unanimously that Mr. Davis write a letter on the Board's behalf requesting a formal opinion from the Attorney General on whether or not the Board could issue the Funeral Director license.*

Mr. Davis continued his report and announced that Mr. George Durham and Ms. Tryphina Wiseman representing the Funeral Directors and Morticians Association of NC had been elected to national offices for the FDMA. Mr. Durham has been elected First Vice-President and Ms. Wiseman was elected

Corporate Clerk of the House. Mr. Davis also recognized Mr. Lockhart for his role as the FDMANC Convention Coordinator in planning and organizing the Association's annual convention in Durham, NC, in June.

Mr. Davis continue by asking the Board to consider a proposal for an Internal Controls Protocol for the receipt, deposit and security of checks coming into the Board office. Mr. Davis explained the need and purpose for a written procedure to assure a common understanding among staff of the need for timely deposits. He noted that during the Committee meeting, Mr. Stone and Mr. Blake asked staff about the receipt of cash. Ms. Mauldin explained that the Board's policy is not to accept cash. Any cash received by mail is promptly returned.

Mr. Blake suggested a secure location for storing checks when retained past the Board's regular business hours and that such a location should be limited in access. Mr. Stone recommended that staff make copies of checks pending deposit to enable the timely deposit while allowing entry into iGov at a later time. Mr. Davis said that that staff had discussed the Committee's recommendations and had identified a locked, secure storage option for the retention of checks after business hours. He also noted that entering the checks on a date different than when received would create problems in the reconciliation of daily fund balances but that he and Ms. Mauldin would discuss Mr. Stone's recommendation with the Board's accountants and auditors.

*Upon a motion by Mr. Lockhart and a second by Mr. Brown, the Board voted unanimously to adopt the proposed Internal Controls Protocol for the receipt, deposit and security of Board checks and directed Mr. Davis to assure each staff member receives a copy.*

Mr. Davis continued his report by alerting the Board of the results of national and state Board examinations for the 2<sup>nd</sup> Quarter as reported by the Conference. He presented the following data:

#### The Arts

9 Took the exam for the first time

2 failed with scores of 66 and 68

7 passed with a high score of 81 – other scores were 75, 76, 77, 78

11 Retakes

9 failed

2 passed

#### Pathology

12 exams administered

5 failed with average score of 58

7 passed with average score of 80

Mr. Davis concluded his report by announcing that Ms. Mauldin was a candidate for appointment to a nation Model Application Evaluation Committee through the International Conference of Funeral Licensing Examination Boards. He said that he would keep the Board posted on her the status of her nomination.

## At-Need Licensure Report

CHAPELS	None
CREMATORIALICENSEES	Eastern Carolina Cremations, Inc. – Farmville East Carolina Crematory – Kinston
HYDROLYSIS LICENSEES	None
TRANSPORTERS	None
EMBALMING FACILITIES	None
UNAFFILIATED LICENSEES	Melissa Rachels Funeral Director Licensee – Fuquay Varina Brantley Gurley Funeral Service Licensee – Goldsboro Carlos T. Callands, Funeral Practitioner – Greensboro
FUNERAL ESTABLISHMENTS	King Funeral Home – Concord Fulton-Walton Funeral Home – Yanceyville (ownership change)
PRE-NEED ESTABLISHMENTS	Fulton-Walton Funeral Home – Yanceyville (ownership change)
FUNERAL SERVICE LICENSEES	None
FUNERAL DIRECTORS	None

## Compliance and Inspections Report:

	2019	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
ESTABLISHMENT	20	15	19	24	27	24	26	0	0	0	0	0	0	155
PRENEED	17	12	19	21	26	23	21	0	0	0	0	0	0	139
CREMATORIALICENSEE	0	3	10	4	3	5	7	0	0	0	0	0	0	32
HYDROLYSIS LICENSEE	0	1	0	0	0	0	0	0	0	0	0	0	0	0
UNAFFILIATED	0	0	0	0	2	0	5	0	0	0	0	0	0	7
CHAPEL	1	1	0	3	1	0	0	0	0	0	0	0	0	6
MBA	6	1	1	2	1	3	3	0	0	0	0	0	0	17
EMBALMING FACILITY	0	0	0	0	1	0	0	0	0	0	0	0	0	1
SERVICE OF COMPLAINT	0	0	1	0	0	0	0	0	0	0	0	0	0	1
INVESTIGATION	2	0	1	0	0	0	0	0	0	0	0	0	0	3
SERVICE OF NOTICE OF HEARING	1	2	0	0	0	0	0	0	0	0	0	0	0	3
SERVICE OF FINAL AGENCY DECISION	0	0	1	0	0	0	0	0	0	0	0	0	0	1
TEACH CONTINUING EDUCATION	1	0	0	1	0	1	1	0	0	0	0	0	0	4
COMPLIANCE OPINION EMAIL	0	3	4	0	0	0	0	0	0	0	0	0	0	7

To allow a brief break in the proceedings, Mr. Herndon recessed the Board meeting at 10:45 a.m. and reconvened at 11:08 a.m.

Mr. Herndon resumed the business session by reiterating his pursuit of legal options for the Board through his discussion with Counsel to determine if the Board could issue Funeral Director licenses without waiting for passage of HB554. Members discussed the issue in detail. Mr. Brown noted that the matter had brought together the two Associations in unity in their support for the technical corrections portion of the legislation and their opposition to the provisional license amendment. He expressed hope that the Board and the Association leadership consider meeting quarterly to discuss issues of mutual concern. Mr. Stone echoed members' comments that it was important to stay focused on the original intent of the legislation which was to correct a textual error in NCGS 90-210 which disallowed the Board to issue the funeral director license. He reminded members that those waiting for licensure are the real focus of the legislation.

### **Legal Update**

Mr. Herndon then noted that Jack Nichols, Senior Partner at Nichols, Choi and Lee had information on pending litigation to share with the Board.

Mr. Nichols offered a detailed summary of litigation pending in the Rosadale matter pertaining to a request from Respondent's Counsel for a Stay on implementing a ruling by Judge Bridgers. Mr. Nichols explained the ramifications of the Stay if granted and asked for direction from the Board as to whether or not to challenge the motion in court. Members discussed the matter at length and agreed that Mr. Nichols should oppose the motion for a Stay but clarify that the Board would agree to a Stay if certain conditions were met including completion only of pending funerals; not accepting any new agreements for funeral services; and that Rosadale wind down its business in a reasonable time period.

Mr. Nichols noted that he had other updates but that the information pertained to pending litigation and would be disclosed in closed session to protect attorney-client privilege.

### **Old Business and New Business**

Mr. Herndon thanked Mr. Nichols for his appearance and time in updating the Board on the Rosadale case. Mr. Herndon then asked if there were any Old Business items. Hearing none, he then asked for items of New Business. He recognized Mr. Blake who had questions concerning the statutory or administrative rule requirements for including metal discs or other identification in cremated remains. Mr. Lisenbee conveyed his understanding and opinion of the content of both the relevant statutes and rules pertaining to the identification of cremated remains. Members discussed their own experiences with this issue and agreed that consistency in the application of statute or rule was critical. Mr. Lisenbee noted that the Board would need to pursue a Declaratory Ruling if it desired to issue a Board policy regarding the identification of cremated remains. He noted that the Board would first request a Compliance Opinion and then could pursue a Declaratory Ruling if dissatisfied with the Opinion.

Mr. Herndon thanked members for the discussion of an important issue. He then recognized Mr. Davis who reminded the Board that it was necessary to adopt the Administrative Rules subject to Periodic Review that had been under a Public Comment period in June 2019. Mr. Lockhart questioned the statute and

subsequent rules for the time period for passing scores on examinations to be valid. Ms. Mauldin provided information on the time periods for validity of examination scores as well as traineeships.

*Without further questions for Mr. Davis or Ms. Mauldin, the Board voted unanimously to adopt the proposed administrative rules subject to periodic review on a motion by Mr. Lockhart and a second by Mr. Stone.*

Mr. Herndon then announced that the Board would meet in closed session to discuss pending litigation to preserve attorney-client privilege and to discuss a personnel matter not subject to public disclosure.

*On a motion by Mr. Olive and a second by Mr. Lockhart, the Board voted unanimously to convene in closed session.*

*On a motion by Mr. Lockhart and a second by Mr. Stone, the Board voted unanimously to reconvene in open session.*

Without further business before the Board, Mr. Herndon adjourned the meeting.

**Affirmation:**

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*J. Stephen Herndon, President*

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*Don Brown, Secretary*

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*Date*