



## NORTH CAROLINA BOARD OF FUNERAL SERVICE

### Minutes February 12, 2020 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 February 12, 2020, at the Board's office located at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina.*

Present: Mark Blake, President; Don Brown, Vice-President; Valdus Lockhart; Steve Herndon; Craig Olive; Mr. Hubert Saunders; and Dr. Steven Lyons. Mr. Watson was absent.

Staff and Counsel: Stephen Davis, Executive Director; Amy Mauldin, Assistant Director; Catherine Lee, General Counsel; and Brett Lisenbee, Compliance Officer.

Guests and Visitors: Fred Jordan, licensee, Miracles in Sight; Dorman Caudle, licensee, Carolina Donor Services.

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Mr. Blake called the meeting to order at 9:08 am and led the Pledge of Allegiance. Following the invocation, Mr. Blake read the Statement of Ethics and asked if any members found it necessary to recuse themselves from the meeting. None recused. Mr. Blake then asked guests to introduce themselves and invited any public comment. No visitor or guest offered public comment.

#### **Approval of Minutes**

Mr. Blake noted that Mr. Watson was unable to attend the meeting, and he presented the minutes from the January 15, 2020, meeting on Mr. Watson's behalf. Mr. Blake asked members if there were any questions or amendments to the minutes as presented. Hearing none, Mr. Blake invited a motion to approve the minutes.

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

Mr. Blake continued the meeting by presenting the Finance and Personnel Committee report.

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

Mr. Blake reported that the Finance and Personnel Committee met by conference call on Thursday, February 6, 2020, at the Board office with attendance by Mr. Herndon and Mr. Lockhart. Mr. Blake reported that the Committee considered and discussed the Report of Revenues and Expenditures

and the Statement of Net Position for the period ending December 2019 which was prepared by the Board's outsourced accountants, Thomas, Judy & Tucker, CPA. Mr. Blake asked Mr. Davis if he wished to elaborate on the Committee's discussion of the financial reports. Mr. Davis noted that the financial reports from Thomas, Judy and Tucker were preliminary pending the close out of year-end transactions and reconciliations. Mr. Davis reviewed the Statement of Net Position and drew members' attention to the current balance in the Preneed Recovery Trust Fund which exceeds \$300,000. Members briefly discussed whether or not it was advisable to set a threshold for the Fund balance and noted that they would continue to study the issue. Mr. Blake asked staff to prepare a multi-year trend of Recovery Fund balances so that the Finance and Personnel Committee could continue their analysis in determining whether or not a threshold was indicated.

Mr. Davis then presented the Report on Revenues and Expenditures. He noted that revenue collections were at 99.4% of the total projected for Fiscal Year 2019 and that he expected collections to exceed 100% after the financial reports were closed out for the fiscal year. He also noted that the expenditures were at 95.1% at the end of December which means that expenses were 5% below the total budget. Mr. Blake then invited a motion for the Committee's recommendation to the full Board for approval of the financial statements for the period ending December 2019.

*Upon a motion by Mr. Olive and a second by Dr. Lyons, the Board voted unanimously to adopt the Financial Report for the period ending December 2019.*

Mr. Blake continued the report by noting that the Committee reviewed a recommendation from Mr. Lisenbee to amend the Standard Operating Procedure for the Compliance & Inspections Program. He invited additional comment from Mr. Lisenbee who reported that he had in early 2019 begun revisions to the SOP to assure that it included changes resulting from the implementation of iGov which enabled the inspections field staff to assume responsibility for all business licensure. He indicated that the SOP had been revised to reflect procedures and expectations for inspections staff to follow in all aspects of business licensure as well as other compliance matters. Members discussed the SOP and questioned Mr. Lisenbee on its application and impact on compliance by licensees. Members agreed that staff could implement necessary technical changes to the Standard Operating Procedure without requiring a vote by the full Board contingent upon reporting such changes to the Finance and Personnel Committee.

Mr. Blake noted that in past Board meetings, individual inspectors had been invited to attend Board meetings so that members would have an opportunity to engage in dialogue regarding field inspections. Members agreed to reinstitute the practice of having individual field inspectors attend future Board meetings to reinforce and strengthen the communications between the Board and the inspections team. He then invited a motion for the full Board to adopt the proposed amendments to the Inspections Standard Operating Procedure.

*Upon a motion by Mr. Herndon and a second by Mr. Brown, the Board voted unanimously to approve the Standard Operating Procedure as recommended and presented.*

Mr. Blake then presented the Preneed Committee report.

### **Preneed Committee Report**

Mr. Blake informed the Board that the Preneed Committee met on February 7, 2020, to discuss and consider recommendations on three Orders of Revocation that General Counsel Catherine Lee presented to them. Mr. Blake noted that each of the requests were in compliance with the Board's statutes and rules governing the revocation of an irrevocable preneed contract when the consumer holding the contract moves out-of-state and subsequently executes a new contract. Ms. Lee indicated that in each case, the consumers were in compliance with the statutory requirements for revocation.

Mr. Lockhart asked whether or not the Board could develop and publish guidelines governing the statutory requirements for the revocation of an irrevocable contract. He noted that consumers and licensees alike face a number of challenges regarding the procedure particularly when a court order is required for revocation. He and members noted and agreed that the process is uncommon and one often not fully understood by the courts. Mr. Brown asked whether or not the statutory provisions as written are sufficiently clear. Ms. Lee responded that the statute primarily addresses situations when consumers move out of state in terms of a specific procedure. She added that she has in the past reached out to Legal Aid of NC regarding *pro bono* services for consumers in cases of simple pleadings before the court.

Members continued their discussion of the matter with Mr. Blake noting the need for consumers to spend down assets to qualify for Medicaid which would indicate a preference for an irrevocable preneed contract in such cases. Dr. Lyons also noted may want to simply switch to a revocable contract in the future after signing an irrevocable contract and agreed that the procedures should reinforce that right to the extent possible under current statutes and rules.

Mr. Blake returned to the Committee report and stated that committee members were unanimous in recommending to the full Board that the three [3] Requests for Orders of Revocation be approved based upon their compliance with applicable statutes.

*Upon a motion by Mr. Lockhart and a second by Mr. Olive, the full Board voted unanimously to approve the proposed Orders of Revocation as presented.*

Mr. Blake then recognized Mr. Lockhart for presentation of the Disciplinary Committee report.

### **Disciplinary Committee Report**

Mr. Lockhart stated that the Disciplinary Committee met to consider cases and recommendation from General Counsel Catherine Lee for Dismissal [C19-0035, C19-0037, C19-0044, C19-0045; and C19-0066]. He provided a summary of each case and noted that General Counsel was recommending dismissal because the Board lacks jurisdiction to impose disciplinary action, or, there was insufficient evidence to show that a licensee had committed an actionable violation of a law or rule that the Board has the authority to enforce. Mr. Lockhart continued his report by presenting a recommendation for a Letter of Caution [C19-0036] and recommendations in response to Miscellaneous Case Files [M20-0001, M19-0018, and M19-0020]. Members discussed the proposed

recommendations, and General Counsel responded and offered additional information as necessary to answer members' questions.

*Upon a motion by Mr. Lockhart and a second by Dr. Lyons, the full Board voted unanimously to adopt the recommendations as presented by the Disciplinary Committee for the Dismissals, the Letter of Caution and the Miscellaneous Case Files.*

Before asking General Counsel Catherine Lee to present the Legal Report, Mr. Blake asked Ms. Mauldin about the consequences of trainees who are not timely in filing their monthly work reports. Ms. Mauldin summarized the disciplinary procedures for late work reports and noted that the numbers for those filing late are diminishing. She noted that in situations where reports are not timely filed, disciplinary action is taken in accordance with the Board's policy.

Mr. Blake then invited Ms. Lee to give the Legal Report.

### **Legal Report**

General Counsel Catherine Lee reported that there are 76 current active cases under consideration including 62 that are pending investigation; 7 pending a hearing; and 1 requiring post-hearing action. She noted that she had sent out 2 Notices of Hearing since the last Board meeting and that the Disciplinary Committee had conducted 6 case reviews since the last Board meeting. Following her update to the Board on the status of disciplinary matters, Ms. Lee also reported that there is currently 1 active claim against the Preneed Recovery Trust Fund.

Following her Legal Case Report on disciplinary matters and preneed recovery fund claims, Ms. Lee then presented to the Board a summary of legislation enacted in late 2019 which introduced new requirements for occupational licensing boards in their determination of whether or not to issue a license in response to concerns about a criminal history background check for candidates for licensure. She summarized the provisions of the legislation and explained that the law provides candidates for licensure an opportunity to request a predetermination by the Board whether the individual's criminal history will likely disqualify that individual from obtaining licensure.

She noted that such requests for predetermination are voluntary and must be submitted in writing. She further explained that other occupational licensing boards have addressed the issue by promulgating an administrative rule to set forth the conditions and procedures for predetermination, and she provided proposed text for a Petition for Predetermination to initiate the rulemaking process for this particular rule. Ms. Lee further reported that the Board can delegate to staff the responsibility for responding to, investigating and completing predetermination requests based on the development of a Board form to reflect the requirements for predetermination requests. She also noted that the fee for a Request for Predetermination is \$45.00.

Members discussed this issue and agreed that Ms. Lee's recommendations would bring the Board into compliance with the legislation governing the consideration of criminal history background

checks for determining whether or not to issue licenses in response. Mr. Lockhart asked Ms. Lee to provide a copy of her presentation on Requests for Predetermination.

*Upon a motion by Mr. Olive and a second by Mr. Lockhart, the Board voted unanimously to authorize Ms. Lee to initiate rulemaking for a Petition for Predetermination consistent with the requirements of enacted legislation regarding this issue.*

Ms. Lee then continued her report by offering information and explanation to the Board on its prior approval of proposed administrative rules for implementing the statutory requirements for provisional licensure as a funeral director. Ms. Lee noted that the Board could consider options in how to proceed: 1) vote to initiate rulemaking by filing a Notice of Text with the NC Rules Review Commission, 2) defer action to the March Board meeting on whether or not to file a Notice of Text, or 3) request that the Rules Review Commission conduct a pre-review of the proposed rules. Members discussed these options and questioned the procedural requirements for rulemaking. Mr. Blake asked if rules were necessary for defining the degree of supervision required over provisional licensure candidates. Mr. Lockhart asked about input from stakeholders and the public. Dr. Lyons offered a motion that the Board ask General Counsel to seek a pre-review of the proposed rules from the NC Rules Review Commission. Members discussed the issue further. Mr. Blake asked to amend the motion by adding language that the Board would file the Notice of Text if the Rules Review Commission could not complete or respond to the request for pre-review prior to the March Board meeting. Dr. Lyons accepted the amendment.

*Upon a motion by Dr. Lyons as amended and a second by Mr. Herndon, the Board voted unanimously to seek a pre-review of the proposed provisional licensure rules by the NC Rules Review Commission with the understanding that the Board would proceed with rulemaking in the absence of a response by the next Board meeting.*

Mr. Blake then recognized Mr. Davis who offered information and explanation of the Board's policy and procedure governing reciprocal licensure. He noted that Rep. Kelly Alexander had conveyed to him that it was his belief that the Board could not issue a reciprocal funeral director license since no other state requires the Pathology Examination and would thus not meet the current statutory standard of "requirements that are equal to or greater than" those in North Carolina. Mr. Davis noted that the recent enactment of the provisional license for funeral directors does not include the pathology examination as a component of State Board Examinations which enables reciprocal licensure for candidates from states not requiring a pathology examination. That the Board now offers a funeral director license through two distinct pathways with different requirements for State Board Examination addresses the concerns expressed by Rep. Alexander. Mr. Davis noted the need for the promulgation of an administrative rule to set forth specific details concerning reciprocal licensure for funeral directors given the disparate State Board Examination requirements. Members discussed the matter at length and questioned Mr. Davis and Ms. Lee on the steps the Board could take to address the issue. Ms. Lee noted that the options outlined for the Petition for Predetermination would also apply to rulemaking for reciprocal licensure as Mr. Davis explained.

*Upon a motion by Mr. Lockhart and a second by Dr. Lyons, seven [7] members of the Board voted affirmatively to seek a pre-review of the proposed rule from the NC Rules Review*

*Commission with the understanding that the Board would proceed with rulemaking in the absence of a response by the next Board meeting. Mr. Olive did not vote on the motion.*

Mr. Blake announced a brief recess in the business session at 10:26 a.m. Mr. Blake reconvened the meeting at 10:39 a.m. Mr. Blake then asked Mr. Davis to present the Executive Director's report.

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

Mr. Davis reported the following items:

#### **REPORTS COMPLETED**

- PCI Compliance Report

This report is required annually to affirm compliance with the Payment Card Industry Standards for data security and for the development of standards and supporting services by organizations that offer online payments by credit card.

Completion of this report prompted development of an Information Security Policy for the Board.

- Principal 401-K Annual Census Report

We are required annually to report on the number of employees and other organizational information to Principal with regard to the Board's 401-k programs.

- Fee Collections Report

The NC Office of State Budget and Management requires this annual report to document the total fees the Board collects for each license category. It is a detailed report showing amounts of each fee collected during the calendar year.

- Annual Report on Rules With Economic Impact

The NC Office of State Budget and Management requires state agencies and occupational licensing boards to report on administrative rules submitted to the Rules Review Commission in 2019 with substantive economic impact as well as rule planned for 2020 with similar impact.

- Annual Blue Cross/Blue Shield Group Affidavit

This report provides organizational and staffing/payroll information for BC/BS as a condition for renewal of our group health insurance plans.

#### **MEETINGS**

- Ms. Mauldin and I met recently with a representative from iGov, our licensing management system provider, to discuss utilization of the system; to offer feedback on service delivery; and to convey projected plans for enhancements.

- Ms. Mauldin and I arranged for our Principal representative to meet with employees regarding 401-k programs and services; retirement and financial planning; and related services for long-term financial planning.

## **LICENSURE RENEWAL UPDATE FOR 2020**

Nearly 70% of licensees completed their annual renewal on-line. Approximately 200 licensees did not renew by February 1, 2020, for various reasons.

## **ANNUAL AUDIT**

The annual audit will begin March 9 by Bernard Robinson Company. Engagement letter signed and returned. A Request for Proposal [RFP] will be necessary this year to open the Board's annual audit for competitive bidding.

## **STATEMENTS OF ECONOMIC INTEREST**

Your 2020 Statement of Economic Interest required by the NC Ethics Commission is due April 15, 2020, and the necessary forms for you to complete and submit to the Commission have been provided.

Mr. Davis presented the At Need Report for February:

CHAPELS	None
CREMATORIALICENSEES	WFH Crematory – Concord Yates Wilbert Vault – Charlotte
HYDROLYSIS LICENSEES	None
TRANSPORTERS	Candie J. Wright Christopher A. Parriman Gregory A. Reardon Kathline L. Radkins Laurent V. Radkins Richard J. Edinger Thomas G. Long
EMBALMING FACILITIES	None
UNAFFILIATED LICENSEES	None
FUNERAL ESTABLISHMENTS	Carolina Simple Services – Caroleen
PRE-NEED ESTABLISHMENTS	None
FUNERAL SERVICE LICENSEES	Edgar L. Juergens Jeremy W. Ward Levi J. Elliott

	Marcus D. Miller Rebecca E. Bennett
FUNERAL DIRECTORS	Aaron L. Causby Amanda B. Ward Teresa R. Jefferies

Members briefly discussed the at need report and asked that staff include the locations for individuals and establishments that the Board licenses in the future.

Mr. Davis then presented the Inspections Report for February:

	2020	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
ESTABLISHMENT	15	0	0	0	0	0	0	0	0	0	0	0	0	15
PRENEED	12	0	0	0	0	0	0	0	0	0	0	0	0	12
CREMATORY	5	0	0	0	0	0	0	0	0	0	0	0	0	5
HYDROLYSIS LICENSEE	0	0	0	0	0	0	0	0	0	0	0	0	0	0
UNAFFILIATED	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CHAPEL	2	0	0	0	0	0	0	0	0	0	0	0	0	2
MBA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EMBALMING FACILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SERVICE OF COMPLAINT	0	0	0	0	0	0	0	0	0	0	0	0	0	0
INVESTIGATION	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SERVICE OF NOTICE OF HEARING	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SERVICE OF FINAL AGENCY DECISION	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TEACH CONTINUING EDUCATION	2	0	0	0	0	0	0	0	0	0	0	0	0	2
COMPLIANCE OPINION EMAIL	0	0	0	0	0	0	0	0	0	0	0	0	0	0

### Old Business

Mr. Blake recognized Mr. Lisenbee who updated members on the Compliance and Inspections program in terms of inspections conducted and compliance issues addressed either by telephone or email. Mr. Lisenbee reported that there had been questions regarding the role of an unlicensed owner of a licensed funeral establishment. Mr. Brown expressed concerns that non-licensed owners of establishments should have precise information and training available to them to facilitate their understanding of licensed versus non-licensed activities. Mr. Lisenbee noted that the on-line compliance manual provides examples of licensed and unlicensed activities. Mr. Brown noted that there is some risk of confusion when a non-licensed owner is supervising or managing a

licensee if they are not clear about the limits on their role as a non-licensed owner. Mr. Blake also noted concerns about apprentices who may engage in both licensed and unlicensed practice. Mr. Lisenbee clarified that any activity considered licensed practice must be performed in concert and under the supervision of a licensee. Mr. Blake asked if an apprentice is on call, can that individual give out pricing information? Mr. Lisenbee said that apprentices can state a price from a General Price List but could not go further in creating a package of goods and services, nor could they offer specific explanations about costs.

Mr. Blake further questioned Mr. Lisenbee about the central storage of closed out preneed files particularly in situations where an establishment with several locations employs a Central Administrator to oversee the management and administration of funeral-related records. Mr. Lisenbee said that the administrative rule at 21 NCAC .0301 provided for licensees sharing common ownership to maintain those records required by the rule to be housed at one facility.

Mr. Blake then asked for a compliance opinion on licensees who function entirely in an administrative capacity at a licensed establishment and who is not engaged in actual practice of funeral service such as meeting with families in arrangement conferences. Mr. Lisenbee said that a location manager could request the removal of the names of administrator licensees from the establishment's list of licensees on file with the Board if they are not engaged in the practice of funeral service.

Mr. Blake thanked Mr. Lisenbee for his responses and discussion. He then asked if members had any New Business items for the Board's consideration.

### **New Business**

Mr. Blake announced that he had discussed with the staff his proposal that the Board sponsor a statewide continuing education symposium for professional development and education in the fall. He noted that staff would be planning the event in coming weeks.

Following the New Business item, Mr. Blake then recognized Mr. David Reese, a funeral director licensee, who presented a proposal to establish an academic program that would prepare individuals for licensure in funeral practice.

### **Presentation: Education Program Proposal by David Reese, Funeral Director licensee.**

Mr. Reese provided members a detailed report on his proposal to establish an academic program for the education and preparation of individuals for licensure in funeral practice. He summarized his discussions with the American Board of Funeral Service Education [ABFSE] which is the accrediting agency for mortuary science academic programs, and he emphasized that the focus of his program would be on classroom-based instruction. Mr. Reese stated that the ABFSE requested him to present his proposal to the NC Funeral Directors Association and the Funeral Directors & Morticians Association of NC in addition to his presentation to the Board. He also provided information regarding projections for the start-up of his proposed program in terms of location, number of students to be enrolled initially, and instructors. He described the program as a non-profit educational institution.

Mr. Blake asked if Mr. Reece was under any requirement for the Board to respond on the record for either supporting or not supporting the program. Mr. Reece stated that there was no such

requirement other than the ABFSE's request that he make a formal presentation to the Board. Mr. Herndon expressed support for the concept and recognized the benefit of an additional academic program in mortuary science in North Carolina by expanding the choices available to those seeking mortuary science education. Members discussed Mr. Reece's proposal and noted continuing concerns about the focus at Fayetteville Technical Community College on online instruction rather than classroom-based instruction and the subsequent impact on Board examination scores. Members asked about funding for the program and venue locations for the proposed program. Mr. Reece concluded his presentation by emphasizing that he was attempting to create a non-profit and affordable mortuary science program as a way to expand educational choice in North Carolina for those seeking licensure in funeral practice.

Mr. Blake thanked Mr. Reece for his presentation and then asked if members had any other items to bring before the Board.

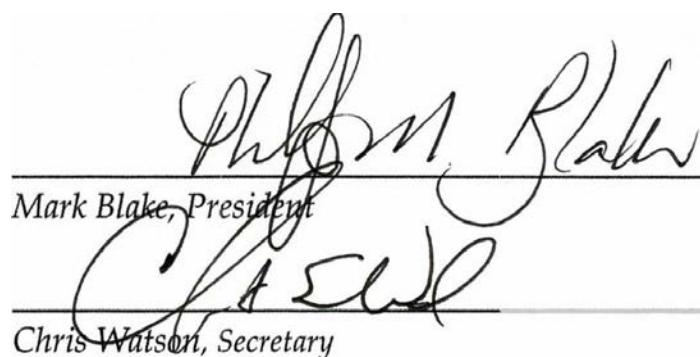
Mr. Blake noted that the roster of Board members should not include cell phone numbers. Mr. Davis noted that staff developed the current roster for internal use primarily but acknowledged and agreed that personal cell phone numbers should not be disclosed.

Mr. Blake then cautioned members about accepting telephone calls or other communications from licensees seeking their intervention in licensure or disciplinary matters. He noted the risks associated with such communications which could result in a requirement for recusal on disciplinary matters.

Without further business before the Board, the President adjourned the meeting.

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Affirmation:



Mark Blake, President

Chris Watson, Secretary

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Date