



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes March 11, 2020 Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on March 11, 2020, at the Board's office located at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina.

Present: Mark Blake, President; Don Brown, Vice-President; Chris Watson, Secretary; Valdus Lockhart; Steve Herndon; Mr. Hubert Saunders; and Dr. Steven Lyons. Mr. Olive 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: Darrell Cagle, Compliance Inspector/Licensee; Tabitha R. Cline-Mills, FS licensee; Aubrey Incorvaia; Joshua D. Hicks, FS licensee; Paul Richards, NCBFS Preneed Program Manager.

Mr. Blake called the meeting to order at 9:01 am and led the Pledge of Allegiance. Following the invocation by Dr. Lyons, Mr. Blake read the Statement of Ethics and asked if any members found it necessary to recuse themselves from the meeting. Mr. Lockhart stated that he would recuse himself from voting on the disciplinary matter titled C19-0056. Mr. Watson stated that he would recuse himself from voting on the disciplinary matter C19-0063. 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 asked Mr. Watson to present the minutes from the February 12, 2020, meeting. Mr. Blake asked members if there were any questions or amendments to the minutes as presented. Mr. Watson stated that there was a typographical error in the date indicated for the Board meeting in the February minutes. Mr. Davis acknowledged the error and indicated that he would assure the date was corrected in the certified minutes. Mr. Blake then invited a motion to approve the minutes.

Upon a motion by Mr. Watson and a second by Mr. Lockhart, 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 convened by conference call at 9:00 a.m. on Thursday, March 5, 2020, at the Board office located at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605. In attendance were Mr. Mark Blake, Chair; Mr. Valdus Lockhart; Mr. Don Brown; and Mr. Steve Herndon. Staff in attendance were Mr. Stephen Davis, Executive Director, and Ms. Amy Mauldin, Assistant Director. Mr. Blake noted that the Committee considered the following agenda items:

- Review of December 2019 Financial Reports
- Review of January 2020 Financial Reports
- Update on Annual Audit of Board's Financial Statements

Mr. Blake asked Mr. Davis to summarize the presentation of the December 2019 and January 2020 financial reports.

Mr. Davis summarized the financial report for FY2019 and said that the Board's revenue for license fees and other fees exceeded the budget projection of \$1,440,989 by 2.8% which generated a total of \$1,481,138.84 for the fiscal year. Mr. Davis noted that cremation fees was the primary source of the additional revenue. He then provided members an overview of the operating expenses for the year and noted that the budget was at 93.7% of the total projected for the fiscal year for expenses. Davis added that staff managed the Board's finances conservatively and strategically by analyzing income and expenditures on a constant basis. He concluded his summary of the 2019 fiscal year report by acknowledging the need in FY2020 to adjust certain line items that were under- or over-budgeted and said that staff would reallocate funds within the 2020 budget as necessary. He also summarized the Board's Statement of Net Income which indicated a healthy balance for the Preneed Recovery Trust Fund which was at \$332,575.82 at the close of the fiscal year.

Mr. Blake invited questions and comments. He thanked staff for their effective and efficient management of the Board's fiscal resources and assets and noted that the Board's financial position was exceptionally strong and well-managed. He then noted that he would entertain a motion to accept staff's report on the financial reports for the period ending December 2019.

Upon a motion by Mr. Lockhart and a second by Mr. Watson, the Board voted unanimously to approve the financial statements for the period ending December 2019 as presented.

Mr. Davis continued his report of the financial statements by highlighting the financial reports for the period ending January 2020. He noted that the Preneed Recovery Trust Fund was at \$331,730.29, an amount slightly less than the year-end amount for FY2019 due to claims paid. He also said that the Unrestricted Fund had grown by nearly \$165,000 due to the additional revenue received in 2019 and the savings represented by underspending the 2019 budget. Mr. Davis then reported on revenues received for the period ending January 2020 which showed that 32.9% of license fees had been collected as a result of the deferred income from renewal fees received in 2019. He then stated that the percentage of expenses in relation to the budget was at 9.0% which was in line with expectations for 1/12 of the fiscal year. Committee members briefly discussed the reports and thanked Mr. Davis and staff for their diligent management of the Board's finances.

Mr. Blake invited a motion for approval of the report.

Upon a motion by Mr. Herndon and a second by Mr. Lockhart, the Board voted unanimously to approve the financial reports for the period ending January 2020 as presented.

Mr. Davis continued his report said that representatives from Bernard Robinson and Company and Thomas, Judy and Tucker, CPA, would be at the Board office on March 9 for an initial introductory meeting prior to the beginning of the annual audit of the Board's financial statements. He conveyed confidence that the audit process would be much smoother by comparison to the 2018 audit which started in March 2019 primarily as a result of outsourcing the Board's fiscal programs to Thomas, Judy and Tucker.

Mr. Blake then presented the Preneed Committee report.

Preneed Committee Report

Mr. Blake informed the Board that the Preneed Committee met via conference call on March 3, 2020, to discuss and consider a recommendation from General Counsel on Preneed Recovery Trust Fund claim #P19-0005 in the amount of \$7,790.00. Mr. Blake asked Ms. Lee to summarize the primary issues associated with the claim. Ms. Lee explained the specific details prompting the consumer to file the claim which involved funds for an Irrevocable Trust-funded Preneed Contract for a purchase price of \$6,558.02. Ms. Lee indicated that the claimant provided documentation establishing proof of payment to the respondent funeral home; however, the funds were deposited into an account with a fraudulent account number. Ms. Lee noted that the Preneed Committee was recommending approval of the claim in the amount of \$3,390 because the claimant had provided sufficient evidence to establish that the alleged beneficiary suffered financial loss as a result of the malfeasance, default, failure or insolvency of a preneed establishment licensee.

Mr. Blake thanked Ms. Lee for providing details for Board members and invited any questions concerning the claim and the recommendation. Members briefly discussed the matter.

Upon a motion by Mr. Brown and a second by Mr. Saunders, the Board voted unanimously to approve Preneed Recovery Trust Fund Claim #19-0005 in the amount of \$3,390.00.

Mr. Blake then recognized Mr. Davis who was asked to present a trend analysis of the Preneed Recovery Trust Fund balances for the period 12/2017 through 12/2019. Mr. Davis explained that this information was in response to a request from Mr. Blake at the February meeting so that the Board would have an idea of any fluctuations in the Trust Fund balance as well as an assessment of average balances. Mr. Davis noted that the analysis for each month in the 2-year period indicated stability in the Fund balances and did not show any unanticipated or irregularity in the balances for each month of the reporting period. Mr. Davis also presented the analysis in graph form so that members would have a visual depiction of the balances for the two-year reporting period. Members discussed the trend statement and noted the importance of continuous monitoring to identify any sudden or unanticipated changes. Members also discussed briefly whether or not there should be a threshold on the Trust Fund Balance. Mr. Blake noted that the State of Ohio presented information at the recent meeting of The International Conference of Funeral Examining Boards and had adopted for creating a fund threshold. Members agreed to continue to study the issue.

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

Disciplinary Committee Report

Mr. Lockhart stated that the Disciplinary Committee met on Wednesday, March 4, 2020, to consider cases and recommendations from General Counsel Catherine Lee for Dismissal [C19-0047, C19-0049, C19-0051, C19-0056; C19-0059; C19-0063; C19-0067; and C19-0068]. Mr. Watson asked for procedural clarification on those who were recusing themselves on certain cases. Mr. Lockhart indicated that the Board would vote on the all recommendations excluding C19-0056 and C19-0063 since he and Mr. Watson had recused themselves respectively on these two cases. Mr. Lockhart continued his report and provided a summary of each case and noted that the Disciplinary Committee 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 as the authority to enforce. Mr. Lockhart continued his report by presenting the Disciplinary Committee's recommendation for a Letter of Caution [C19-0057, C19-0061, C19-0064] and Notices of Hearing [C19-0062; and C19-0065].

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 Board voted unanimously to approve the recommendations for Dismissals, Letters of Caution and Notices of Hearing as presented except for C19-0056 and C19-0063.

Mr. Watson then presented a summary of C19-0056 and noted that Mr. Lockhart had recused. Following a brief discussion of the circumstances associated with this case, members voted.

Upon a motion by Mr. Herndon and a second by Mr. Brown, the Board excluding Mr. Lockhart voted to approve the recommendation for Dismissal.

Mr. Lockhart then presented a summary of C19-0063 and noted that Mr. Watson had recused. Following a brief discussion of the circumstances associated with this case, members voted.

Upon a motion by Mr. Lockhart and a second by Mr. Brown, the Board excluding Mr. Watson voted to approve the recommendation for Dismissal.

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

Legal Report

General Counsel Catherine Lee reported that there are 104 current active cases under consideration including 80 that are pending investigation; 8 pending a hearing; and 13 pending review by the Disciplinary Committee. She noted that she had opened 40 new files since the last Board meeting and that 2 Notices of Hearing had sent since the last Board meeting. She reported that the Disciplinary Committee had reviewed 13 cases 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.

Mr. Blake asked what prompted the 104 active cases, and Ms. Lee stated that most originate from reviews of compliance inspections report from 2019 that she and Mr. Lisenbee conduct. Members then had questions concerning license renewals for 2020 and asked about the procedures that govern reinstatement of licenses if not renewed by December 31, 2019, as required by statute. Ms. Lee explained in detail the Board's procedures and policy governing reinstatement of licenses once licenses were forfeited if not renewed timely. Mr. Blake noted that he had received a number of calls from licensees who seemed unaware that their license had been forfeited for non-renewal. He continued by noting that each licensee is responsible for renewal pursuant to the statutory requirements and stated that he was prepared to suggest to the Board that all renewals in the future be mandatory for online renewal. He asked staff if the Board's licensing management system [iGov] could generate a confirmation and receipt of online payment and noted that the confirmation option should be improved and as easy as possible for licensees when they renew online. Additional discussion ensued.

Ms. Lee then requested the Board's approval of 17 Consent Orders for reinstatement of forfeited licenses for individuals and establishments.

Mr. Herndon offered a motion for approval, and Mr. Brown offered a second. Prior to a vote, members asked about prospective Consent Orders for future Board meetings. Ms. Lee indicated that past practice from the Board has been to delegate authority for approval to staff subject to review and a recommendation from General Counsel. Mr. Blake then offered an amendment to the motion for approval to include delegation of authority to staff for approval of prospective Consent Orders for reinstatement of forfeited licenses. Mr. Herndon accepted the amended, and the Board voted unanimously to approve the 17 Consent Orders and to delegate authority to staff for prospective approvals.

Ms. Lee continued her report by summarizing recent legislative committee meetings pertaining to special provisions in the law for military-trained applicants and spouses for licensure. She noted that the Program Evaluation Division in the General Assembly would be drafting legislation to strengthen and fast-track the application process for military applicants including military spouses. She then reported that the Administrative Procedures Oversight Committee in the General Assembly planned to adopt changes in the rulemaking process to streamline procedures for occupation licensing boards to promulgate rules. Ms. Lee continued by updating the Board on progress in a pre-review by the Rules Review Commission for rules that the Board proposed at its February meeting. She noted that the Rules Review Commission staff could not complete a prereview of the proposed rules prior to the Board meeting and that the Board would need to formally initiate rulemaking in accordance with the vote taken at the February meeting. She reminded members that the proposed rules concerned adoption of rules for provisional licensure and clarified reciprocal licensure approval procedures. Members discussed the proposed rules and the need to proceed with a formal request to the Rules Review Commission.

Upon a motion by Mr. Lockhart and a second by Mr. Watson, the Board voted unanimously to formally initiate rulemaking for proposed rules 21NCAC 34B .0313 and .0502.

After the vote, Mr. Blake asked Mr. Lisenbee about a proposed rule that had come to his attention regarding the registration and removal of graves. Mr. Lisenbee acknowledged that such a rule had been proposed but did not have impact on the Board's regulatory responsibilities.

Mr. Blake announced a brief recess in the business session at 10:13 a.m. Mr. Blake reconvened the meeting at 10:27 a.m. Mr. Blake recognized Ms. Lee who reported to the Board that during the break in proceedings, she received a request from the High Point Mutual Burial Association for an Order of Dissolution. She noted that the request was voluntary and asked for the Board's consent. Brief discussion ensued.

Upon a request by Mr. Herndon and a second by Mr. Lockhart, the Board voted unanimously to instruct General Counsel to enter an Order of Dissolution for the High Point MBA as requested with an effective date of dissolution on March 31, 2020.

Mr. Blake then asked Mr. Lisenbee to present the Inspections Report.

Inspections Report

Mr. Lisenbee summarized the monthly inspections report which provides metric information on the numbers of inspections and other compliance activities among the Compliance Inspections Team. Members asked questions concerning the procedures and notification times for on-site inspections of licensed establishments; the focus of inspections; recordkeeping requirements; and the nature of interaction with funeral home staff. Mr. Blake then invited Mr. Cagle to join the discussion and to provide his perspective on his role as a Compliance Inspector. Members asked Mr. Cagle questions concerning issues and concerns regarding establishment inspections in general.

Mr. Blake then asked Mr. Davis to present the Executive Director's report.

Executive Director's Report

Mr. Davis reported the following items:

- Update and summary of the recent Annual Meeting of The International Conference of Licensing Examining Boards in Hammock Beach, Florida.
- Reminded members of the need to complete mandatory Board training on their responsibilities and roles as members of an occupational licensing board.
- Update on the proposed Electronic Death Registration [EDR] project by the NC Department of Health and Human Services.
- Update on 2020 license renewals and recommendation for online renewals only in the future.
- Information on the regulatory review of The Funeral Rule by the Federal Trade Commission and an invitation for public comment.
- Update on meetings with the auditors from Bernard, Robinson and Company.

Old Business

There were no Old Business items raised or discussed.

New Business

- Mr. Brown commended Paul Richardson and the preneed staff for their guidance and service in supporting and assisting licensees and establishments in completion of the 2020 Preneed Annual Report.

Mr. Blake then announced that the Board would meet in closed session to protect attorney-client privilege in discussing a matter scheduled for a hearing before the Board.

Upon a motion by Mr. Watson and a second by Mr. Brown, the Board voted unanimously to convene in closed session.

Upon a motion by Mr. Watson and a second by Mr. Lockhart, the Board voted unanimously to reconvene in open session.

Mr. Blake invited a motion to address any pending issues.


Upon a Motion by Dr. Lyons and a second by Mr. Lockhart, the Board voted unanimously to instruct the Compliance Officer to amend the Board Compliance Manual to assure that it incorporated any relevant statutory provisions from Session Law 2019-207.

The Board then commenced a disciplinary hearing for Board Case No. M19-0021. Following the conclusion of the hearing, Mr. Lockhart made a motion to go into closed session to deliberate on the proceedings. Mr. Olive seconded, and the motion carried. Upon proper motion, the Board concluded the closed session and resumed its open session. Dr. Lyons made a motion that the traineeship of Respondent not be reinstated and that the traineeship not be certified, for failure to timely submit the statutorily-required affidavits. Mr. Saunders seconded and the motion carried.


The Board then commenced a disciplinary hearing for Board Case No. M19-0009. Following the conclusion of the hearing, Mr. Lockhart made a motion to go into closed session to deliberate on the proceedings. Dr. Lyons seconded, and the motion carried. Upon proper motion, the Board concluded the closed session and resumed its open session. Mr. Watson made a motion that Respondent's application for a Removal and Transportation Permit be approved.

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

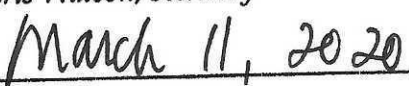
Affirmation:



Mark Blake, President



Chris Watson, Secretary



Date

Mr. Brown commended Bill Richardson and the general staff for their guidance and support in approving and carrying forward the establishment in completion of the 2012 Annual Report.

Mr. Blake then announced that the Board would meet in three sessions in the following month in discussing a matter scheduled for a hearing before the Board.

Upon a motion by Mr. Watson and a second by Mr. Brown, the Board voted unanimously to convene in closed session.

Upon a motion by Mr. Watson and a second by Mr. Lockhart, the Board voted unanimously to convene in open session.

Mr. Blake invited a motion to address any pending items.

Upon a motion by Dr. Lyons and a second by Mr. Lockhart, the Board voted unanimously to instruct the Compliance Officer to amend the Board Constitution. Second to instruct that it incorporate any relevant statutory provisions from Section 1014-20.

The Board then commenced a preliminary hearing for Board Case No. M19-0021. Following the conclusion of the hearing, Mr. Lockhart made a motion to go into closed session to discuss the proceedings. Mr. Lyons seconded, and the motion carried. Upon proper motion, the Board concluded the closed session and resumed its open session. Dr. Lyons made a motion that the verbatim of the closed session not be recorded and that the transcript not be made available to the verbatim of the statutorily required hearing. Mr. Lyons seconded and the motion carried.

The Board then commenced a preliminary hearing for Board Case No. M19-0022. Following the conclusion of the hearing, Mr. Lockhart made a motion to go into closed session to discuss the proceedings. Dr. Lyons seconded, and the motion carried. Upon proper motion, the Board concluded the closed session and resumed its open session. Mr. Watson made a motion that Respondent's application for removal and investigation Panel be approved.

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

Attestation:

[Signature]
Mr. Blake, President

[Signature]
Dr. Watson, Secretary

March 11, 2020
Date