



# NORTH CAROLINA BOARD OF FUNERAL SERVICE

## Minutes May 13, 2020 Board Meeting

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*The North Carolina Board of Funeral Service met for a duly scheduled Board meeting by videoconference at 9:00 a.m. on May 13, 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; Craig Olive; Mr. Hubert Saunders; and Dr. Steven Lyons.

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

Guests and Visitors: There were no guests or visitors in attendance.

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Mr. Blake called the meeting to order at 9:03 a.m. and announced the deaths of several individuals who had past or current associations with the Board. These included Albert Summerville, Summerville-Boykin Mortuary of Garland, NC; Kenneth Purcell, Purcell Funeral Homes and Cremations; Susan Pennington, widow of O. C. Pennington, former Vice-President of Brown-Wynne Funeral Homes, Raleigh, NC; Martha Groves Harris, mother of Paul Harris, former Executive Director and Board President; and Frances Roberson, grandmother of Amy Mauldin, Assistant Director.

Mr. Blake noted that the Board's meeting by videoconference would require procedures outlined in Session Law 2020-3, legislation which addressed North Carolina's response to the coronavirus crisis. Among its provisions, Mr. Blake noted that all votes taken by the Board during the meeting would be by roll call. Mr. Blake then read the Statement of Ethics and noted that there were no guests or visitors joining the meeting.

### **Approval of Minutes**

Mr. Blake asked Mr. Watson to present the minutes from the March 11, 2020, meeting. Mr. Watson 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. Watson and a second by Mr. Olive, the Board voted by roll call and unanimously adopted the minutes as presented.*

Mr. Blake then asked Mr. Watson to present the minutes from the March 30, 2020, emergency Board meeting. Mr. Watson asked if any members had corrections or revisions to the minutes. Hearing none, Mr. Blake invited a motion for approval.

*Upon a motion by Mr. Watson and a second by Mr. Brown, the Board voted by roll call and 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 Monday, April 20, 2020, at the Board office located at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605. He noted that all committee members were present and that Mr. Davis, Ms. Mauldin, and Ms. Lee joined the meeting to hear a presentation by Bernard Robinson & Company on the 2019 audit of financial statements. He also reported that the Committee reviewed the Financial Reports for the period ending February 2020.

Mr. Blake introduced Patricia Glidewell, CPA Manager from Bernard Robinson & Company who led the 2019 audit of the Board's financial statements. Ms. Glidewell first conveyed to the Committee that the audit had progressed in an organized and timely manner with sound documentation of financial reports and transactions from Board staff and from Thomas, Judy and Tucker, the Board's accounting firm. She then explained each step in the audit process and summarized key components and findings from the 2019 audit. She explained the Governance Letter that accompanies the annual audit and then explained the findings by reviewing the 2019 financial statements along with comparative information from 2018. She noted that there were four (4) very minor adjusting journal entries compared to 14 such adjustments that were necessary in the 2018 audit.

Ms. Glidewell said that the Independent Auditor's Report indicated the highest level of an audit opinion and noted the absence of any material weaknesses or significant deficiencies that could indicate concerns with the Board's internal controls. She discussed the Board's net position which was exceptionally strong with approximately nine (9) months of operating capital in reserve. Mr. Blake asked if this level of reserve was typical of other organizations particularly occupational licensing boards, and Ms. Glidewell said that many organizations typically have 3-6 months of reserve but that nine (9) months was a strong indicator of an organization's net position.

Ms. Glidewell continued her presentation by commending Board staff for their management of the Board's fiscal resources and noted that the 2019 budget was under expended. She closed her report to the Committee by reiterating how pleased Bernard Robinson and Company was with the conduct of the audit and the findings she presented which indicate a very strong net position and system of internal controls for the Board.

Mr. Blake then asked Mr. Davis to present the February financial reports. Mr. Davis briefly summarized the Report of Expenditures and noted that operating expenses were on target for the second month of the first quarter. Mr. Watson asked why the Cremation Fees under Other Revenue was the same for Month to Date and for Year To Date. Mr. Davis stated that he did not know why the figures were identical but would review with the Board's accounting firm and report back to the Board. He then reviewed the Statement of Assets and Liabilities and emphasized the operating capital reserve which indicates the Board's very strong net position.

Mr. Blake asked if any Board member had questions for Mr. Davis concerning the Finance and Personnel Committee report. There were no questions or comments from Board members. Mr. Blake then invited a motion for adoption of the Committee Report.

*Upon a motion by Mr. Watson and a second by Mr. Olive, the Board voted by roll call and unanimously adopted the report from the Finance and Personnel Committee.*

Mr. Blake then presented the Preneed Committee report.

### **Preneed Committee Report**

Mr. Blake reported that he, Mr. Watson and Mr. Herndon convened by conference call on May 7, 2020 to discuss and consider a consumer request to revoke and irrevocable trust-funded preneed contract. Mr. Blake noted that the consumer had moved to Michigan and subsequently submitted a written copy of a new preneed funeral contracted executed in Michigan. He asked Ms. Lee for any comments she wished to offer on the request, and she affirmed that the request was in compliance with the Board's statutes and rules which govern revocation in such cases. Mr. Blake asked member for any questions concerning the matter. Brief discussion ensued.

Mr. Blake invited a motion to vote on the Committee's recommendation.

*Upon a motion by Dr. Lyons and a second by Mr. Saunders, the full Board voted by roll call and unanimously approved the proposed Orders of Revocation as presented.*

Mr. Blake then recognized Ms. Lee who addressed a proposal from staff with the Committee's consent to delegate authority to Board staff for the review and approval of Orders of Revocation when consumers move out of state and subsequently execute a new preneed funeral contract. Ms. Lee noted that ample precedent exists for guidance on the approval of these Orders and that Board staff would strictly comply with the Board's governing statutes and rules on these matters.

Mr. Lockhart acknowledged that delegation of authority to Board staff would be a quicker and more efficient way to respond to these consumer requests. Mr. Watson expressed agreement and said that he understood the need but clarified that staff would report all such approvals to the Board. Mr. Blake if any other members had questions or comments. Ms. Lee stated that if the Board approved the proposed Delegation of Authority, she would draft a resolution to memorialize the Board's consent and that the resolution would be kept separate from the minutes. Mr. Blake then invited a motion.

*Upon a motion by Mr. Watson and a second by Mr. Lockhart, the full Board voted by roll call and unanimously approved the proposal to delegate authority for staff to approve Orders of Revocation in the future with a requirement that all such actions are reported to the Board.*

Mr. Blake then presented the Traineeship Committee Report.

### **Traineeship Committee Report**

Mr. Blake reported that he, Mr. Lockhart and Mr. Watson met on May 7, 2020, by conference call to consider a request from Mr. Matt Staton, a licensee at Powles Staton Funeral Home, to allow a trainee, Kyler Eagle, to amend his monthly trainee work reports. Board staff member Stephen Davis, Amy Mauldin and Catherine Lee also joined the meeting.

Mr. Blake stated that Mr. Staton submitted a written request to the Committee and included documentation showing monthly time sheets and pay records in support of his request for amending the reports. Mr. Eagle had consistently underreported his hours from the time he began his traineeship in June 2019 through March 30, 2020.

Mr. Blake said that the Committee discussed Mr. Staton's request in detail and reviewed prior committee meeting minutes from 2018 dealing with other requests from trainees who failed to properly record either cases or hours on their monthly work reports. In their discussion, members acknowledged the need for consistency in developing recommendations but also expressed concern about setting a precedent in anticipation of future requests.

According to Mr. Blake, the Committee agreed that trainees have ample information from the Board regarding proper completion of their monthly work reports, and Ms. Mauldin reminded the Committee that both Mr. Eagle and Mr. Staton had certified their understanding of how to complete the reports and had certified the monthly reports as accurate. Mr. Blake said that the Committee acknowledged that the documentation Mr. Staton provided indicated that Mr. Eagle had worked more hours than he reported. Mr. Blake continued his report and said that after extensive discussion regarding Mr. Staton's request as well as a close review of prior requests from other trainees, members recommended the following actions:

- Allow Mr. Eagle to amend his monthly work reports for the period June 2019 through March 2020 on the basis of documentation submitted verifying hours worked.
- Direct Ms. Lee to write Letters of Caution to both Mr. Staton and Mr. Eagle reminding them of their respective responsibilities as a supervisor and a resident trainee.
- Direct Ms. Lee to draft an amendment to existing administrative rules affirming that monthly work reports shall not be amended.

Mr. Blake invited Ms. Mauldin and Ms. Lee to offer any comments or suggestions. He also asked if Board members had questions or concerns regarding Mr. Staton's request. Discussion ensued. Mr. Blake noted that the Traineeship Committee wanted to assure a clear understanding that the error on Mr. Eagle's monthly work reports were not a result of staff administrative error or

problems with the work report form. Mr. Blake then invited a motion to vote on the Committee's recommendation.

*Upon a motion by Dr. Lyons and a second by Mr. Herndon, the full Board voted by roll call and unanimously adopted the recommendations from the Traineeship Committee.*

Mr. Blake then recognized Ms. Lee who summarized the administrative rule for Reports on Work pertaining to requirements for resident trainees in their submission of monthly work reports to the Board. She said that the rule was found at 21 NCAC 34B .0110 and that she was proposing amendments to the rule in accordance with the recommendations from the Traineeship Committee. Ms. Lee said that this particular rule has not been amended since 1979 and that Mr. Staton's request to allow Mr. Eagle to amend his monthly work report as expressed in the Traineeship Committee report presented an opportunity to strengthen the rule by reducing to the extent possible any ambiguity in its language and to assure that the rule reflected current statutory requirements imposed since 1979. She reminded the full Board that their vote on whether or not to propose an amended rule was to initiate the rulemaking process.

Mr. Blake then noted that it would be necessary for the Board to suspend further discussion on the proposed amendments to the rule to enable a Public Hearing on proposed existing rules that the Board had previously voted on to initiate rulemaking.

*Upon a motion by Mr. Olive and a second by Dr. Lyons, the full Board voted by roll call to recess to enable Mr. Blake to conduct the Public Hearing which had been properly noticed pursuant to requirements of the NC Administrative Procedure Act.*

Mr. Blake then convened the public hearing at 10:00 a.m. in accordance with the Administrative Procedure Act, Chapter 150B, Article 2A of the North Carolina General Statutes to receive information and comments regarding the proposed adoption or amendment of the following permanent rules:

- |                     |                       |           |
|---------------------|-----------------------|-----------|
| ▪ 21 NCAC 34A .0201 | Predetermination      | Adoption  |
| ▪ 21 NCAC 34B .0313 | Provisional Licensure | Adoption  |
| ▪ 21 NCAC 34B /0502 | Reciprocal Licensure  | Amendment |

Mr. Blake noted that no member of the public was present and that no one offered any public comment. He subsequently adjourned the public hearing at 10:27 a.m.

Mr. Blake then reconvened the Board meeting following the recess. He asked Board members for their questions and comments regarding the proposed amendments to the rule regarding resident trainee work reports. Mr. Blake questioned the imposition of a fee for late submission of monthly work reports, and Ms. Lee said that the Board had statutory authority to assess fees up to \$50. He also asked what the Board's action would be in the future should a resident trainee submit an inaccurate work report. Ms. Lee said that the proposed amendments would require the Board to deny a request to amend a work report. Mr. Lockhart questioned current disciplinary measures in effect for resident trainees for late or inaccurate submissions. Ms. Mauldin explained the current disciplinary tiers in effect for trainees who improperly complete a monthly work report or who are late in submitting the report to the Board. Members continued

their discussion. Mr. Herndon asked if a \$25.00 fee for a late or inaccurate submission would be more appropriate than a \$50.00 fee given the current fees imposed for late submissions of other mandatory Board reports. Mr. Blake and Mr. Lockhart agreed. Ms. Lee reminded the Board that the Board must state the fee in the rule but that it could be amended in the future if necessary. Mr. Blake asked members for any other questions or comments. Brief discussion ensued. Mr. Blake then invited a motion.

*Mr. Lockhart moved that the Board authorize a proposal to amend 21 NCAC 34B .0110 to include the tiered discipline for late and/or inaccurate monthly work reports from resident trainees; to impose a \$25.00 fee for late submissions of said monthly work reports; and to affirm that incomplete monthly work reports would be deemed late. Dr. Lyons seconded the motion. The full Board voted by roll call and unanimously approved the proposal for General Counsel to initiate rulemaking for amending 21 NCAC 34B .0110.*

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 recommendations from General Counsel Catherine Lee for the following cases:

**C-Files: Summary Dismissal**

C19-0074

**C-Files: Dismissals**

C19-0038	C19-0072	C19-0075/C20-0002
C19-0076	C20-0004/C20-0010	C20-0012
C20-0013	C20-0015	C20-0016
C20-0019	C20-0020	C20-0022
C20-0023		

**C-Files: Letters of Caution**

C19-0010	C19-0070	C20-0003/C20-0008
C20-0007	C20-0011	

**C-Files: Notices of Hearing**

C19-0073	C20-0001	C20-0005
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Mr. Lockhart read the recommendations for each C-File and asked if members had questions or concerns. Hearing none, Mr. Lockhart moved to accept the recommendations from the Disciplinary Committee for the referenced C-Files.

*Upon a motion by Mr. Lockhart and a second by Mr. Watson, the full Board voted by roll call to unanimously accept the Committee's recommendations for the C-Files.*

Mr. Lockhart continued his report by reading the recommendations for the following M-Files:

**M-Files: Letters of Caution**

M20-0002	M20-0003	M20-0004/M20-0005
M20-0006/M20-0007	M20-0008	M20-0009
M20-0010	M20-0012	M20-0013
M20-0014/M20-0015	M20-0016/M20-0017	M20-0018
M20-0019	M20-0022	M20-0023
M20-0024	M20-0027	M20-0028
M20-0029/M20-0030	M20-0031	M20-0032
M20-0034	M20-0035	M20-0036
M20-0037	M20-0038	M20-0039
M20-0040	M20-0042	M20-0043
M20-0044	M20-0045	M20-0046
M20-0047	M20-0048	M20-0049

**M-Files: Notices of Hearing**

M20-0011	M20-0020	M20-0021
M20-0025	M20-0041	

Mr. Lockhart reminded Board members that the M-Files are those which are staff-generated based upon compliance inspection reports. It was noted that licensees receiving a Letter of Caution stemming from a routine establishment inspection or preneed examination typically are conditioned upon the licensee's manager attending a Board-sponsored continuing education course. He invited any questions or comments from Board members. Mr. Watson noted that many of the cases seemed to center on issues pertaining to preneed services, and he questioned whether or not there should be additional licensure requirements for preneed sales other than payment of a fee.

Mr. Lisenbee reported that there has been a history of problems associated with licensees keeping accurate and complete records, and Mr. Lockhart emphasized the critical importance of maintaining preneed documentation and records. Mr. Blake questioned whether or not there should be some requirement for preneed licensees to have completed specific continuing education prior to receiving a preneed license.

*Following a brief discussion, Mr. Lockhart moved to accept the recommendations from the Disciplinary Committee for the referenced M-Files, and Mr. Olive offered a second. The full Board voted unanimously by roll call to approve the recommendations from the Disciplinary Committee for the M-Files.*

Mr. Blake thanked the Disciplinary Committee as well as Ms. Lee and Mr. Lisenbee for their diligence and efforts in responding and developing recommendations for such a high volume of cases. Mr. Blake then invited Ms. Lee to give the Legal Report.

### **Legal Report**

General Counsel Catherine Lee reported that there are 108 current active cases under consideration including 29 that are pending investigation; 8 pending a hearing; and 71 pending dispositive action. She noted that she had sent out 3 Notices of Hearing since the last Board meeting and that the Disciplinary Committee had conducted 71 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 Preeed 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 recently enacted pertaining to the state's response to the coronavirus pandemic. In summarizing the content of SB704, Ms. Lee focused on requirements for occupational licensing boards and reminded members that the new legislation granted them authority to waive a statute or administrative rule through August 1, 2020, that would support the state's response to the COVID-19 crisis. Mr. Blake asked about whether or not the Board needs to continue to pursue rulemaking that the Board initiated earlier regarding the waiver of rules not otherwise statutorily required. Ms. Lee affirmed that the emergency rule currently in place for such waivers and a proposed temporary rule would extend beyond August 1, 2020, and would enable the Board's continued response to the pandemic if necessary. Members continued their discussion with Legal Counsel on continuing education, virtual meetings, and changes in the way that forms can be signed and notarized remotely. Mr. Blake suggested that the Laws, Rules and Legislation Committee review the legislation and develop recommendations for the Board's consideration at the June meeting. Members also agreed that the Board website would benefit licensees by explaining the remote signature/notary options relative to the current legislation on the state's COVID response.

Ms. Lee then reported that Morris Funeral Home, Inc. recently had ceased its operations and no longer held an active permit. As such, Ms. Lee requested that the assets of the associated Mutual Burial Association, Grace Mutual Burial Association, Inc., be unfrozen, liquidated and transferred to a successor burial association. Upon proper motion, the vote carried.

Mr. Blake then recognized Mr. Davis for his report to the Board.

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

- Mr. Davis reported that he had received confirmation from the Speaker's Office regarding the appointment to fill the vacant seat formerly held by Mr. Stone. He said that Mr. Darrell McCormick, former legislator, had been appointed to fill the seat.
- Mr. Davis reported that staff have issued provisional licenses to two (2) candidates who have subsequently been licensed as Funeral Directors upon completion of all provisional licensure requirements.



- Mr. Davis briefed the Board on a recent call from a staff member in the Vital Records Section of the Division of Public Health regarding the Electronic Death Registration System and progress toward implementation.
- Mr. Davis reported to the Board that Representative Jamie Boles had contacted Mr. Blake and himself regarding the availability of Personal Protective Equipment [PPE] for licensees. Mr. Davis noted that Rep. Boles suggestion that licensees contact local emergency management operations in their respective counties had been included in one of the Coronavirus Advisories to Licensees on the Board’s website.
- Mr. Davis reported that he had received calls from various individuals claiming to represent Carolina Central Crematory in their efforts to cremate bodies of individuals whose death resulted from COVID-19 infection and who were residents of states other than North Carolina.

COMPLIANCE REPORTS

Mr. Davis presented the At Need and Inspections Reports Showing Licensure Activity and Establishment Inspections Since the Last Board Meeting:

CHAPELS	
CREMATORY LICENSEES	Donaldson Funeral Home – Pittsboro
HYDROLYSIS LICENSEES	None
TRANSPORTERS	Bryan T. Corey – Winterville Kristina D. Ruffin - Creedmoor
EMBALMING FACILITIES	None
UNAFFILIATED LICENSEES	Lowell Wilkes Funeral Service Licensee – Lincolnton
FUNERAL ESTABLISHMENTS	Adkins Memorial Funeral Home – Elizabeth City Coble Funeral & Cremation Service at Greenlawn Memorial Park – Wilmington
PRE-NEED ESTABLISHMENTS	Coble Funeral & Cremation Service at Greenlawn Memorial Park – Wilmington
FUNERAL SERVICE LICENSEES	Richard W. Taylor – Taylorsville David L. Green – Dover
FUNERAL DIRECTORS	Donny A. Jernigan – Whiteville Rhett J. Miller – Taylorsville William N. Kivett – Ramseur Laura R. Osborne – Clayton
PROVISIONAL LICENSEES	Rhett J. Miller – Taylorsville Laura R. Osborne - Clayton

	<u>2020</u>	<u>Jan.</u>	<u>Feb.</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Total</u>
ESTABLISHMENT	15	14	15	0	0	0	0	0	0	0	0	0	0	44
PRENEED	12	13	9	0	0	0	0	0	0	0	0	0	0	34
CREMATORY	5	4	3	1	0	0	0	0	0	0	0	0	0	13
HYDROLYSIS LICENSEE	0	0	0	0	0	0	0	0	0	0	0	0	0	0
UNAFFILIATED	0	0	1	0	0	0	0	0	0	0	0	0	0	1
CHAPEL	2	0	0	0	0	0	0	0	0	0	0	0	0	2
MBA	0	3	0	0	0	0	0	0	0	0	0	0	0	3
EMBALMING FACILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SERVICE OF COMPLAINT	0	2	4	2	0	0	0	0	0	0	0	0	0	8
INVESTIGATION	0	3	1	4	0	0	0	0	0	0	0	0	0	8
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**

There were no Old Business items for the Board’s consideration.

**New Business**

Mr. Blake reported that he had concerns regarding current practices and procedures in the Wake County Register of Deeds Office regarding the processing of death certificates. He noted that he had heard from licensees attempting to secure certified death certificates on behalf of families but who encounter delays because the Register of Deeds office is accessible to funeral directors for a limited time during the workday. Mr. Blake asked members if they encountered similar delays in their local jurisdictions, and he asked Mr. Olive for any guidance or comments based on his role as the Johnston County Register of Deeds. Brief discussion ensued.

Mr. Blake then conveyed that a Canadian-based company known as Everhere was operating in North Carolina and warned members that this firm extracts obituary information without permission from a family and then uses that information to solicit sales of memorial merchandise. He said that Board members and licensees should be alert to this apparent scheme which solicits sales of merchandise for decedents without a family’s consent.

Mr. Blake then invited a motion for the Board to convene in closed session.

*Upon a motion by Mr. Lockhart and a second by Mr. Brown, the full Board voted unanimously by roll call to convene in close session in order to preserve attorney-client privilege, pursuant to NCGS 143-318.11.*

Mr. Blake invited a motion to reconvene in open session.

*Upon a motion by Mr. Lockhart and a second by Mr. Watson, the Board voted by roll call to reconvene in open session. Voting affirmatively were Mr. Blake, Mr. Brown, Mr. Watson, Mr. Lockhart, Mr. Saunders, Dr. Lyons, and Mr. Herndon. Mr. Olive did not vote.*

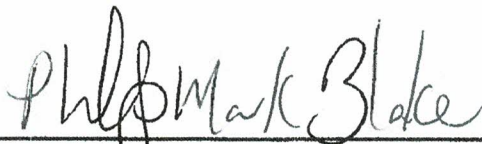
Mr. Blake asked if there were any motions before the Board.

*Upon a motion by Mr. Watson and a second by Mr. Brown, the Board voted by roll call to direct General Counsel to file a Petition for Contested Case Hearing and Request for Designation of Administrative Law Judge in the Office of Administrative Hearings in the matter of NC Board of Funeral Service v. Craig Franklin Smith. Voting affirmatively were Mr. Blake, Mr. Brown, Mr. Watson, Mr. Lockhart, Mr. Saunders, Dr. Lyons, and Mr. Herndon. Mr. Olive did not vote.*

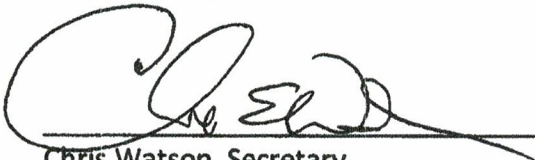
Without further business before the Board, the President adjourned the meeting.

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**Affirmation:**



Mark Blake, President



Chris Watson, Secretary

June 10, 2020

Date