



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes June 10, 2020 Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting by Webex videoconference at 9:00 a.m. on June 10, 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; Dr. Steven Lyons; and Mr. Darrell McCormick. Mr. Olive was not in attendance.

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

Guests and Visitors: Mr. Grant Simpkins - Nichols, Choi and Lee Associate

Mr. Blake called the meeting to order at 9:05 a.m. and conveyed the Board's regrets to Mr. Lockhart upon learning that his grandfather, Mr. Eddie Lee Shackelford, Sr., died June 7, 2020. Mr. Blake then introduced Mr. Grant Simpkins who joined the meeting by videoconference as a new associate from Nichols, Choi and Lee to observe the meeting. He also noted Mr. Olive's absence due to illness.

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 asked Mr. Watson to present the minutes from the May 13, 2020, Board meeting.

Approval of Minutes

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 met on June 4, 2020, at the Board office by videoconference at 9:00 a.m. Mr. Blake stated that the primary agenda item was a presentation and discussion of the financial reports for the period ending April 30, 2020.

He invited staff to summarize the reports for the period ending April 2020. Mr. Davis referred Board members to the Statement of Revenue and Expenses which indicate that Total Revenue collected at the end of the period was 54.6% of the total budgeted revenue amount of \$1,513,038.00. For the same period in 2019, the Total Revenue collection was 57% of the total budgeted revenue amount of \$1,440,989.00. Davis pointed out that the Year to Date revenue collections in 2020 were \$825,989.19 compared to \$820,856.30 for the same period in 2019. Davis commented that the revenue collections are comparable to 2019 and slightly ahead in license renewal fees, cremation fees and late fees.

Mr. Davis continued his report by referring to the Operating Expenses and noted that expenses were at 32.5% as a percentage of the total budget. He said that at the end of April 2020, the expected percentage would be 33.3%, so he expressed confidence that expenses were on track for the first four [4] months of the fiscal year. He reported that the percentage of expenses compared to total budget in 2019 for the same reporting period was 31.1%.

Mr. Davis then referred members to the Statement of Net position and reported that the Preneed Recovery Trust Fund showed a balance of \$359,027.25 compared to \$226,430.26 for the same period in 2019. He summarized the fund balances under Net Position and said that the Unrestricted Fund Balance was at \$1,165,274.56 which showed a significant increase over the amount reported in 2019 for the same period. The Unrestricted Fund Balance in 2019 for the same reporting period was \$1,035,451.46. Davis said that the unrestricted fund balance affirms that the Board has an 8 to 9-month reserve of operating capital which indicates an exceptionally strong net position. Mr. Lockhart asked for clarity on the definition of Prepaid Expenses, and Mr. Davis stated that generally these are fixed costs such as insurance, surety bonds, and other costs that the Board pays in response to an annual invoice. Members briefly discussed the financial reports and had no further questions.

Mr. Blake invited a motion to accept the Committee Report.

Upon a motion by Mr. Lockhart and a second by Dr. Lyons, the Board voted by roll call and unanimously adopted the report from the Finance and Personnel Committee.

Mr. Davis then conveyed that the Committee convened in closed session to hear a report regarding the imposition of discipline on a staff member for unprofessional conduct. He noted that the employee was disciplined in accordance with the Board's Employee Handbook and disciplinary policy which allowed the imposition of a 2-week suspension without pay.

Mr. Blake continued the meeting with a presentation from the Preneed Committee.

Preneed Committee Report

Mr. Blake noted that the Preneed Committee met on June 5, 2020, to review a pending preneed recovery fund application in case #P20-0001 in the amount of \$4,812.00. He noted that the Committee's review and discussion of this particular case resulted in a recommendation to hold the matter in abeyance until a related disciplinary case [C20-0021] could be resolved. Mr. Blake noted that the companion disciplinary matter was pending review by the Board.

Upon a motion by Mr. Lockhart and a second by Mr. Watson, the Board voted by roll call and unanimously adopted the recommendation from the Preneed Committee.

Mr. Blake then invited Mr. Herndon to present the report from the Laws, Rules and Legislation Committee.

Laws, Rules and Legislation Committee Report

Mr. Herndon reported that the Committee met by videoconference at 9:00 a.m. on June 4, 2020, to consider options available to the Board under the provisions of Senate Bill 704 which was enacted by the NC General Assembly in April 2020. The bill was in response to the coronavirus pandemic and its impact on the state. He noted that the focus of the Committee's discussion centered on the provisions related to the continuity of state government and the authorization for state agencies to exercise regulatory flexibility during the pandemic.

Mr. Herndon reported that General Counsel explained the bill's provisions in detail and offered information that the Board might wish to consider in the exercise of its regulatory flexibility. She noted three [3] specific areas: Continuing Education, Fees and Payments, and Renewal Dates. Mr. Herndon reported that the Committee was proposing a waiver of the statutory limitation for online instruction credit hours to allow up to 5 hours of CE credit through December 31, 2020. He also conveyed that the Committee was proposing a 30-day extension to licensees requesting additional time to pay compromise penalties imposed by the Board through disciplinary action.

Mr. Blake invited a motion for the Board to consider adoption of the proposed waivers.

Upon a motion by Mr. Herndon and a second by Mr. Watson, the Board voted by roll call and unanimously adopted the proposed waivers in the areas of Continuing Education and Fees and Payments.

In continuing his report, Mr. Herndon noted that Mr. Blake raised an issue concerning the disclosure of cause of death to funeral service workers by UNC Health Care systems. Mr. Blake explained his firm's experience in the removal and transport of decedents from Rex Health Care and said that the hospital would not disclose a cause of death upon arrival to remove the decedent. Ms. Lee noted that the NC Department of Health and Human Services has jurisdiction over this information through an administrative rule at 10A NCAC 41A .0212, Handling and Transportation of Bodies. Mr. Davis said that a letter from the Rex Health Care Emergency Services Director stated that HIPAA regulations barred the disclosure of cause of death to funeral workers without also explaining that the HIPAA Privacy Rule includes an exemption for such disclosure to funeral directors and embalmers. Mr. Blake reported that Rep. Jamie Boles had interest in this issue and recently convened a meeting with the NC Department of Health and Human Services officials to discuss its implications. He said that he, the Executive Director, and the Assistant Director attended the meeting, and he reported to the Board the outcomes of that meeting.

Discussion ensued. Members asked Ms. Lee for additional information on a Petition for Rulemaking that could be sent to the NC Department of Health and Human Services proposing amendments to the referenced administrative rule to include COVID-19 in the listing of infectious diseases that would

require an attending physician to disclose in writing precautions necessary for handling decedents. Mr. McCormick offered suggestions on the content and text of the rule and said that he believed the Petition should come from the Board if not otherwise excluded by NCGS 150B. Ms. Lee responded that NCGS 150B does not exclude the Board from submission of a Petition for Rulemaking. Ms. Lee indicated that she would follow the Board's directions and issue the Petition from the Board rather than from individual licensees on the Board if that should be the Board's pleasure.

Mr. Blake invited a motion on the matter.

Upon a motion by Mr. McCormick and a second by Dr. Lyons, the Board voted by roll call and directed General Counsel to submit a Petition for Rulemaking to the NC Department of Health and Human Services seeking an amendment in the language of 10A NCAC 41A .0212.

Mr. Blake continued the meeting and asked Mr. Lockhart for 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: Dismissals

C19-0071/C19-0069	C20-0009	C20-0014
C20-0026	C20-0027	C20-0029

C-Files and M-Files: Letters of Caution

C19-0069/C19-0071	C20-0006	C20-00017
C20-0018	C20-0025	
M20-0026/C20-0025	M20-0033	M20-0051
M20-0052	M20-0054	M20-0055
M20-0061 through M20-0078	M20-0080	M20-0081
M20-0083	M20-0084	M20-0085
M20-0086/M20-0066	M20-0087	

C-Files and M-Files: Notices of Hearing

C20-0021/P20-0001	C20-0024	C20-0028
M20-0057	M20-0058/C19-0073	M20-0059

Other: M-Files

M20-0089	M20-0091	M20-0092
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Mr. Lockhart read the recommendations for each file presented and asked if members had questions or concerns. Mr. Blake asked Ms. Lee about the M-Files categorized as "Other" and noted that these seemed primarily related to criminal history issues. Mr. Blake also asked about the volume of cases

and asked if these were backlogged from 2019 or earlier in 2020. Ms. Lee indicated that approximately 50 of these cases were from a backlog, and that there are now approximately 25 pending cases.

Mr. Lockhart moved to accept the recommendations from the Disciplinary Committee for the referenced C-Files and M-Files but noted that Mr. Watson was recused from voting on M20-0081 and M20-0083. His motion stated that these two cases would be voted on separately.

Upon a motion by Mr. Lockhart and a second by Dr. Lyons, the full Board voted by roll call to unanimously accept the Committee's recommendations for the C-Files and M-Files except for M20-0081 and M20-0083.

Upon a motion by Mr. Lockhart and a second by Mr. Brown, the Board voted by roll call to accept the Committee's recommendations by majority vote for M20-0081 and M20-0083. Mr. Watson did not vote.

Mr. Blake recessed the meeting at 10:32 a.m. and reconvened at 10:45 a.m. He then asked Ms. Lee, General Counsel, to present the Legal Report.

Legal Report

General Counsel Catherine Lee reported that there are 78 current active cases under consideration including 9 that are pending investigation; 52 pending review by the Disciplinary Committee; and 13 pending a hearing. She noted that she had opened 40 new files since the last Board meeting; sent out 3 Notices of Hearing since the last Board meeting and that the Disciplinary Committee had conducted 52 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 pending dispositive action.

Ms. Lee continued her report to the Board by summarizing and explaining the impact on the Board in the matter of *Dale Thomas Winkler and DJ's Heating Service v. North Carolina State Board of Plumbing, Heating & Fire Sprinkler Contractors*. The NC Supreme Court had issued a ruling in the matter, and Ms. Lee provided an overview of the Court's Opinion and potential impact on occupational licensing boards.

Ms. Lee continued by asking if the Board wished to adopt the temporary rule regarding a waiver of administrative rules not otherwise required by statute. She noted that the Board had approved an emergency rule earlier in the year pertaining to waivers in response to the coronavirus pandemic and its impact on the Board's regulatory role. She noted that if the Board wished to adopt the rule, a vote would be required to file the necessary forms with the NC Rules Review Commission. She noted that the Board had received two public comments in response to a public hearing on the proposed adoption of this rule. Members briefly discussed the matter.

Upon a motion by Mr. Watson and a second by Mr. Brown, the Board voted unanimously by roll call to direct General Counsel to file the necessary forms with the NC Rules Review Commission to adopt 21 NCAC 34A .0128, Waiver.

Ms. Lee continued her report and informed the Board that three [3] rules the Board had proposed earlier in the year were now ready for proposed adoption if that was the Board's pleasure. She noted that these proposed rules pertained to the following areas: provisional licensure, reciprocal licensure, and predetermination of a Board decision for applicants with a criminal history. Members briefly discussed the rules.

Upon a motion by Mr. Herndon and a second by Mr. Watson, the Board voted unanimously by roll call to propose the permanent adoption of the following rules:

21 NCAC 34B .0502, Reciprocal Licensure

21 NCAC 34B .313, Provisional Licensure

21 NCAC 34A .0204, Predetermination

Mr. Blake then announced that Terri Robinson-McLean, one of the Board's five [5] Compliance Inspectors had joined the meeting at the Board's invitation to offer information regarding her role in conducting compliance inspections of licensed establishments. Ms. Robinson-McLean briefly described her role and conveyed her appreciation for the Board's support of the compliance program.

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

Executive Director's Report

Mr. Davis noted the following in his comments to the Board:

He recently received email from two licensees commending the work of Terri Robinson-McLean and Karen Davis-Brunson, Compliance Inspectors, for their excellence in service and professionalism when conducting on-site field inspections for licensed establishments.

He reported that the NC Senate had file Senate Bill 773 pertaining to universal recognition for licensure which could potentially have impact on approvals of applications for reciprocal licensure. He noted that he would track this proposed legislation and report to the Board on further developments.

He reported that staff were in the process of completing an annual Self-Assessment of Internal Controls that is required by the NC Office of the State Controller. He indicated that this self-assessment is an important tool in preparing the annual audit of the Board's financial statements.

He presented the monthly At Need and Inspections Reports showing licensure and compliance activities for the month of May.

Mr. Davis offered to answer any questions from Board members regarding his report. He then asked the Board's preference for the July meeting with regard to the ongoing coronavirus pandemic and noted that an in-person meeting would require proper social distancing which could not be achieved in the Board's meeting room at 1033 Wade Avenue. He also noted that Ms. Lee had noticed hearings for the July meeting which would require an in-person meeting unless respondents agreed to a hearing by videoconferencing. Discussion ensued.

Upon a motion by Mr. Watson and a second by Mr. Lockhart, the Board voted by roll call with five voting nay and 3 voting aye to conduct the July Board meeting in-person and including the business session as well as hearings.

Members continued their discussion regarding the July Board meeting with emphasis on offering respondents options for both in-person and remote hearings.

Mr. McCormick moved that the Board meeting be held on Wednesday, July 15, 2020, for both the business session and in-person hearings but including Wednesday, July 22, 2020, as an additional date for hearings through videoconferencing with consent of the respondent[s]. Dr. Lyons offered a second to the motion. The Board voted unanimously by roll call in favor of the motion.

Mr. Blake thanked members for their diligence in determining an effective way for the Board to convene in July. He then asked members for any New Business or Old Business agenda items. None were offered. He then noted that the Board would need to meet in closed session to consider disciplinary matters protected by attorney-client privilege pursuant to NCGS 143-318.11.

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

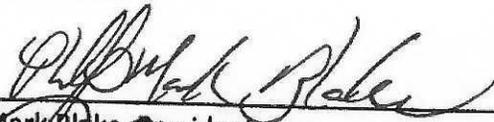
Upon a motion by Mr. Lockhart and a second by Mr. Watson, the Board voted unanimously by roll call to reconvene in open session.

Mr. Blake invited any motions necessary to address matters discussed in closed session.

Upon a motion by Mr. Herndon and a second by Dr. Lyons, the Board voted unanimously by roll call to approved Consent Orders for C-19-0062 and C19-0065.

Without further business before the Board, Mr. Blake adjourned the meeting at 12:42 p.m.

Affirmation:



Mark Blake, President



Chris Watson, Secretary

7/15/2020

Date