



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes July 15, 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 July 15, 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; Mr. Craig Olive; Dr. Steven Lyons; and Mr. Darrell McCormick.

Staff and Counsel: Stephen Davis, Executive Director; Amy Mauldin, Assistant Director; Catherine Lee, General Counsel; and Brett Lisenbee, Compliance Officer. Mr. Chris Stoessner, Compliance Inspector, joined the meeting later for a presentation under New Business.

Guests and Visitors: Mr. Chase Noble, Executive Administrator, NC Funeral Directors Association.

Mr. Blake called the meeting to order at 9:07 a.m. and 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 June 10, 2020, Board meeting. Technical difficulties with the audio portion of the Webex videoconference prevented Mr. Watson from presenting the minutes. Mr. Blake presented the minutes on his behalf for the Board's discussion and comment.

Approval of Minutes

Upon a motion by Mr. Lockhart and a second by Mr. McCormick, the Board voted by roll call and adopted the minutes as presented by majority vote. As a result of technical difficulties with the Webex videoconference, Mr. Watson did not vote.

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 8:30 a.m. on Thursday, July 9, 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. Steve Herndon; and Mr. Don Brown. Staff in attendance were Mr. Stephen Davis, Executive Director and Ms. Amy Mauldin, Assistant Director.

Mr. Blake asked Mr. Davis to summarize the financial reports for the period ending May 31, 2020. Mr. Davis referred members to the Statement of Net position and reported that the Preneed Recovery Trust Fund showed a balance of \$352,495.66 which was slightly less than the previous report for the 1st Quarter at \$359,027.25. He summarized the fund balances under Net Position and said that the Unrestricted Fund Balance was at \$1,165,274.56 which was unchanged from the prior report to the Committee for the 1st Quarter. 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. Davis then referred committee members to the Statement of Revenue and Expenses which indicated that Total Revenue collected at the end of May was \$907,378.27 which represented 60% of the total budgeted revenue amount of \$1,513,038.00. Mr. Davis noted that the preneed contract application fees were \$25,818 for the period ending May 2019 compared to \$21,075 for the same period in 2020 which would explain much of the difference between 2019 and 2020. Mr. Davis said that the total number of preneed contracts for March dropped slightly compared to the prior fiscal year but that the numbers were consistent with 2019 fees for April and May.

Mr. Davis continued his report by referring to the Operating Expenses and noted that expenses were at 40.9% as a percentage of the total budget. He said that at the end of the first five months in the fiscal year, the expected percentage would be 41.6%. He stated that there were no atypical expenses that would create concern and expressed confidence that the budget was on track based on information received to date.

Mr. Blake invited questions or comments regarding the financial reports for the period ending May 2020. Brief discussion ensued.

Upon a motion by Mr. McCormick and a second by Mr. Brown, the Board voted by roll call and approved by majority vote the Finance and Personnel Committee recommendation to approve the May 2020 financial reports as presented. As a result of technical difficulties with the Webex videoconference, Mr. Watson did not vote.

Mr. Blake continued his report with a request for an update on the recruitment for a new Compliance Inspector position. Mr. Davis indicated that a vacancy announcement would be posted on the Board's website the week of July 20, 2020, with a closing date of August 4, 2020. Mr. Blake reported that he had received calls from licensees regarding the regional assignments for the Compliance Inspectors and suggested that a new regional assignment map be prepared so that licensees would understand which inspector they should call.

Mr. Lisenbee noted that the regions for compliance inspectors had not changed but that it was necessary to reassign some of the counties in the regions between Ms. Davis-Brunson and Ms. Robinson-McLean in response to Mr. Davis-Brunson's recent relocation to New Hanover County. He noted that the addition of the new Compliance Inspector position would prompt further adjustments and result in a new map showing regional assignments. He reminded members that the Board website included the current regional assignments and a map showing the county assignments for each Inspector.

Mr. Blake continued and reported that the Committee had discussed upcoming Board member vacancies and the letter to Governor Cooper concerning the disclosure of death to funeral service providers. He noted that these issues would be included in the Executive Director's report.

Mr. Blake continued the meeting and presented the Traineeship Committee report.

Traineeship Committee Report

Mr. Blake reported that he, Mr. Watson and Mr. Lockhart convened via conference call on July 13, 2020, at 8:35 a.m. to discuss two requests from trainees for reinstatement of their traineeships. He asked Ms. Mauldin to provide specific details on each request to members. Ms. Mauldin reported that she had received a request from a trainee whose traineeship was terminated as a result of failure to submit monthly work reports for several months beginning in February 2020.

Members discussed the issue at length with a focus on the Board's disciplinary policies regarding late submissions of work reports. Ms. Mauldin explained in detail the tiered discipline for trainees submitting late work reports or other violations of traineeship policies.

Mr. Blake noted that the Traineeship Committee was recommending that the trainee be allowed to certify the funeral directing portion of his funeral service traineeship with the understanding that it would be necessary to begin a new funeral service traineeship or embalming traineeship to receive credit for embalming cases.

Upon a motion by Mr. McCormick and a second by Mr. Herndon, the Board voted unanimously by roll call to accept the recommendation from the Traineeship Committee.

Mr. Blake continued the Traineeship Committee report and noted that the Committee had considered an additional request from a trainee for reinstatement of her traineeship or to appear before the Board. Mr. Blake asked Ms. Mauldin to provide additional details. Ms. Mauldin stated that the trainee in question did not submit work reports from December 2019 until May 2020. Subsequently, her funeral service traineeship was terminated in accordance with the Board's tiered disciplinary policies governing traineeships.

Ms. Mauldin reported that the trainee sent a statement to Board staff indicating that due to the COVID-19 pandemic, she had not been working and that she and her supervisor were unaware of the requirement to continue sending in monthly work reports. In her written statement, the trainee requested that her traineeship be reinstated or that she be allowed to have a hearing before the full Board.

Discussion among Board members ensued. Mr. Blake asked Catherine Lee about the impact on Traineeship Committee members in terms of voting should these matters eventually come before the Board through the Disciplinary Committee. Ms. Lee noted that Bailey & Dixon through Jeff Gray had advised in the past that Traineeship Committee members would need to recuse themselves from voting in such cases. Discussion followed regarding whether or not trainee disciplinary matters should be referred initially to the Disciplinary Committee for a recommendation to the full Board rather than consideration by the Traineeship Committee. In other discussion, Mr. McCormick suggested that the trainees' preceptors be required to attend any hearings before the Board resulting from the discipline imposed as noted in Ms. Mauldin's presentations. Ms. Lee noted that if it was the Board's direction

and preference, she would issue a subpoena to the preceptors should hearings be scheduled on these matters. Ms. Mauldin continued her presentation and said that the Traineeship Committee recommended denial of the trainee's request for reinstatement of her traineeship and to move forward with scheduling a hearing on the matter before the Board.

Upon a motion by Mr. McCormick and a second by Mr. Brown, the Board voted unanimously by roll call to accept the recommendation from the Traineeship Committee.

Mr. Blake asked Mr. Lockhart to present 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:

Summary Dismissals

C20-0042

Rationale: Insufficient evidence exists to suggest that a licensee of the Board may have committed violations of statutes and rules governing the practice of funeral service.

Dismissals

M20-0094 Concurrent Cases: None

C20-0036 Concurrent Cases: None

C20-0039 Concurrent Cases: None

Rationale: Insufficient evidence exists in each case to suggest that Respondent may have committed violations of statutes and rules governing the practice of funeral service.

Notices of Hearing

C20-0030 Concurrent Cases: C20-0034

Rationale: Sufficient evidence exists to suggest that Respondent may have committed violations of statutes and rules governing the practice of funeral service.

C20-0032 Concurrent Cases: None

Rationale: Sufficient evidence exists to suggest that Respondent may have committed violations of statutes and rules governing the practice of funeral service.

Other

M20-0088 Concurrent Cases: None

Rationale: Sufficient evidence exists to suggest that Respondent may have committed violations of statutes and rules governing the practice of funeral service.

Mr. Lockhart read the recommendations for each file presented and asked if members had questions or concerns.

Upon a motion by Mr. Brown and a second by Mr. Herndon, the full Board voted by roll call to unanimously accept the Disciplinary Committee's recommendations for the referenced cases.

Mr. Blake asked Ms. Lee, General Counsel, to present the Legal Report.

Legal Report

Ms. Lee reported the following activity to the Board:

Current Active Cases: 42

Pending Investigation: 12
Pending Review by Disciplinary Committee: 0
Pending Dispositive Action: 7
Pending Hearing: 18
Post-Hearing: 0
Other: 5

New files opened since last Board meeting: 6

Notices of Hearing sent since last Board meeting: 6

Consent Orders received since last Board meeting: 0

Cases reviewed by Disciplinary Committee since last Board meeting: 11

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 1

Pending Investigation: 0
Pending Dispositive Action: 1

Preneed Recovery Fund Claims received since last Board meeting: 0

Preneed Recovery Fund Claims re-opened since last Board meeting: 0

Preneed Recovery Fund Claims reviewed by Preneed Committee since last Board meeting: 0

- Ms. Lee noted that she was hopeful that some of the scheduled hearings would be settled by Consent Order. In addition to the activity report from the Legal Department, Ms. Lee briefed the Board on the impact from Session Law 2020-87 pertaining to additional requirements for Occupational Licensing Boards [OLB] regarding applications from military personnel and military spouses seeking licensure in North Carolina. She also noted that the annual 93B Report on

licensing activities by OLB's will have additional reporting requirements pertaining to veterans along with a mandatory report to the United States Department of Veterans Affairs.

- Ms. Lee reported that the General Assembly has extended the provisions for remote notarizations and signatures in response to the pandemic as expressed in Session Law 2020-3, An Act to Provide Aid to North Carolinians in Response to the Coronavirus Disease 2019 (covid-19) Crisis.
- Ms. Lee reported to the Board on a preneed revocation request that was compliant with applicable statutes and which had been approved by Board staff pursuant to the Board's recent Delegation of Authority on revocation requests from consumers.
- Ms. Lee then provided updates on the administrative rules which the Board approved for either temporary or permanent adoption. These rules are .0128 [Waiver]; .0313 [Provisional Licensure]; .0502 [Reciprocal Licensure]; and .0204 [Petition for Predetermination].
- Ms. Lee continued her report and updated the Board on the Petition for Rulemaking that she had sent to the NC Commission for Public Health pertaining to the inclusion of COVID-19 among the listing of infectious and communicable diseases requiring a physician to provide written guidance to funeral service workers on the appropriate precautions for the safe removal and transportation of decedents.
- Ms. Lee noted that a rule which includes alkaline hydrolysis as a disposition method that the Board previously approved for temporary adoption would be resubmitted along with other temporary rules that expired in January 2020. She indicated that if it was the Board's preference, she would proceed with filing the referenced rules with the NC Rules Review Commission.

Upon a motion by Mr. Herndon and a second by Mr. Brown, the Board voted unanimously by roll call to begin rulemaking for the administrative rules that expired in January 2020.

Mr. Blake announced a recess at 10:15 a.m. and reconvened the meeting at 10:25 a.m.

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

Executive Director's Report

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

- Mr. Olive recently shared an announcement from the NC Department of Health and Human Services/Vital Records Section of progress in the implementation of the Electronic Death Registration system for North Carolina.
- Senate Bill 866 was recently enacted which appoints Mr. Robb D. Jansen of Wake County to the NC Board of Funeral Service effective January 1, 2021.

- Board Office Operations: The Board Office continues to be closed to visitors and the public. Staff were also asked to telework for a brief time because a staff member had been exposed to the coronavirus and was awaiting test results.
- Mr. Davis said that he had drafted a letter on the Board's behalf to Governor Cooper regarding concerns that the NC Office of the Chief Medical Examiner and UNC Rex Healthcare would not disclose the cause of death for decedents whose death resulted from COVID-19 infection.
- Mr. Davis then referenced the monthly At Need Report and recognized Mr. Lisenbee for the monthly Inspections Report.

Mr. Blake asked for clarification on the Board's recent decision to waive the administrative rule limiting on-line CE instruction to no more than two [2] hours in a calendar year. He noted that several licensees had called him with questions concerning roll-over credit. Mr. Davis summarized the waiver that the Board earlier approved and referenced the communication to licensees on this issue through an email advisory to all licensees. Members discussed the issue further and agreed that the waiver was intended to allow licensees to acquire all 5 hours of CE credit through online instruction through the end of 2020 for the 2021 renewals. Members further agreed that the intent was to allow licensees an opportunity to roll-over 5 hours of CE credit to 2021 for the 2022 renewal cycle whether by online instruction or a combination of online, classroom or webinar instruction.

Mr. Blake asked Mr. Lisenbee about the responsibilities of licensees who leave the employment of a licensed establishment and work on an unaffiliated basis or who may work in a trade embalming capacity. He asked if such employees who work for an establishment as a trade embalmer or on an unaffiliated basis were required to display a wall certificate of their license. Mr. Lisenbee noted that if their work at a particular establishment exceeded 50% time, then a wall certificate must be displayed.

Mr. Blake recognized the challenges associated with conducting Board meetings during a pandemic and with the need for remote meetings to assure the safety and health of all participants. He announced a preference for future Board meetings to stream live so that licensees could access the meetings remotely for CE credit. He asked Mr. Davis to study this issue and discuss with the Continuing Education Committee and the Technology Committee. He thanked Board members and staff for their diligence in continuing the Board's meetings and operations during a difficult and challenging time.

New Business

Mr. Blake asked Mr. Lisenbee to introduce Mr. Chris Stoessner, Compliance Inspector, who joined the meeting to share his role with the Board and to answer any questions members had concerning his responsibility as a Compliance Inspector. Discussion ensued.

Old Business

Mr. Herndon stated that the NC Funeral Directors Association would soon initiate a process under the Direction of the NCFDA Executive Administrator for soliciting nominations for NCFDA Board seats becoming vacant on December 31, 2020. There were no other Old Business items presented to the Board.

Mr. Blake stated that the Board would 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. Olive, the Board voted unanimously by roll call to convene in closed session.

Upon a motion by Mr. McCormick and a second by Dr. Lyons, 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. Lockhart and a second by Dr. Lyons, the Board voted unanimously by roll call to approve the proposed Consent Order for Case File M19-0020.

Mr. Lockhart then asked to be recognized to thank the Board and Staff for their thoughts and condolences in honor of his grandfather who recently passed away. He thanked the Board for the floral spray in memory of his grandfather.

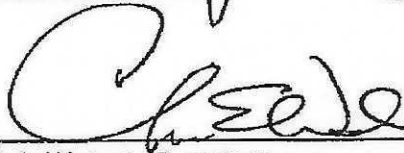
Without further business before the Board, Mr. Blake adjourned the meeting.

Following the Business Session, Ms. Lee presented training on the Board's statutes and rules pursuant to NCGS 150B for newly appointed Board members as well as those members who were due to attend the training.

Affirmation:



Mark Blake, President



Chris Watson, Secretary

August 12, 2020

Date