



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes September 9, 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 September 9, 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. Mr. McCormick joined the meeting at 11:15 a.m.

Staff and Counsel: Stephen Davis, Executive Director; Amy Acord, Assistant Director; Catherine Lee, General Counsel; Brett Lisenbee, Compliance Officer; Paul Richardson, Preneed Program Manager.

Guests and Visitors: Debbie Gwynn, Compliance Inspector; Delton Atkinson, Interim Director, NC Center for Public Health Statistics; Catherine Ryan, State Registrar and Director, Vital Records Section, DHHS; Floriece Davis-Jones, Field Services Supervisor, Vital Records Section, DHHS; Crystal Matthews-Marrow, licensee; Thomas T. Hildebrand, licensee; Carlos Callands, licensee; A. S. Powell, Sr., licensee; J. Vernon Peterson, licensee; Joe B. Cutchins, Jr., licensee.

Mr. Blake called the meeting to order at 9:04 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 announced the death of Mr. Gregg Hampton, Vice-President of Hampton Funeral Service in Boone, NC, and asked members and guests to observe a moment of silence in his memory.

Mr. Blake then read the Statement of Ethics and asked if any members would be recusing themselves. None recused.

He asked if there were guests present, and Mr. Davis introduced Debbie Gwynn who was recently appointed to fill the vacant Compliance Inspector position in the western region of the state. He also introduced Mr. Delton Atkinson, Ms. Catherine Ryan, and Ms. Floriece Davis-Jones from the NC Department of Health and Human Services who were on the agenda to brief the Board on the proposed NC Electronic Death Registration System [EDR].

Mr. Blake then asked Mr. Watson to present the minutes from the August 12, 2020, Board meeting.

Approval of Minutes

Upon a motion by Mr. Watson and a second by Dr. Lyons, the Board voted by roll call and adopted the minutes as presented by majority 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 on Thursday, September 3, 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; and Mr. Steve Herndon; and Mr. Don Brown. Staff in attendance were Mr. Stephen Davis, Executive Director and Ms. Amy Acord, Assistant Director.

Mr. Blake asked Mr. Davis to summarize the financial reports for the period ending July 2020. Mr. Davis reported that the Board's net position continues to be strong based on the unrestricted fund balance which represents nearly 8 months of reserve operating capital. He drew members' attention to the restricted fund balances and noted that these funds are subject to Board approval before they can be allocated for a particular purpose. He stated that the Board's licensing management system [iGov] would continue to require enhancements to assure the on-going transition to digital, automated systems rather than a continued reliance on manual, paper-based processing. He said that staff may present a proposal to the Committee in the future for an allocation from the IT Enhancement Fund for that purpose. Discussion ensued.

Mr. Davis continued his report by summarizing the Statement of Revenue and Expenses. He noted that at the end of July, the Board had received approximately 71% of the projected income for FY2020. He stated that the revenue collections were comparable to the same time period for FY2019 which showed a 73% rate of revenue collection. Davis reported that there were no unusual or atypical expenses that would cause concern about the budget's performance at the end of July. He reminded the Committee that there is potential for expenses to exceed revenues as a result of the pandemic and acknowledged the difficulty in projecting revenue collections through the remainder of FY2020. He noted that staff would continue its conservative approach to management and administration of the budget as demonstrated in prior years. Brief discussion ensued. Mr. Blake invited questions or comments regarding the financial reports for the period ending July 2020. Brief discussion ensued. Mr. Watson asked that staff include the prior month financial reports for comparative purposes in the future.

Upon a motion by Mr. Lockhart 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 July 2020 financial reports as presented.

Mr. Blake continued and asked Mr. Brown to present the Continuing Education Committee Report.

Continuing Education Committee Report

Mr. Brown reported that the Continuing Education committee met on Monday, September 7, 2020, to consider two agenda items that staff had proposed:

- A proposal to certify attendance of licensees for Board meetings that are streamed through YouTube to assure consistency and verification for awarding CE credit.

- A proposal to waive 21 NCAC 34B .0408, Continuing Education Program, under the Board's general waiver authority.

Mr. Brown asked Mr. Davis to provide further details on each proposal. Mr. Davis commented that the Board's decision to offer livestreaming of its meetings to expand access particularly among licensees seeking continuing education credit required some means for verifying attendance. He explained the procedures for licensees to login to Board meetings and then to logout as an initial means for identifying those attending and as a basis for awarding credit. Mr. Watson asked if there was a reliable way to identify with certainty that those logging in actually were in attendance for the duration of the meeting.

Mr. Davis acknowledged that actual verification was difficult but that staff's proposal for an affidavit that licensees would have to complete before receiving CE credit would be a reasonable way to track and affirm attendance. Members discussed this issue and agreed that the livestream through YouTube was a good starting point for encouraging licensees to observe Board meetings and to acquire CE credit. Members acknowledged that verification of attendance would be a challenge.

Mr. Davis noted that staff would monitor and assess the YouTube technology to determine if that was the most reliable and effective way for livestreaming the Board meetings. He noted that there may be other technologies that would have attendance verification tools but said that the YouTube livestreaming was the most cost-effective technology at present.

He said that the Board's IT vendor, Digital Information Systems, Inc. had determined that YouTube presented the best option for livestreaming considering the Board's current IT capacity for streaming Board meetings to the public.

Mr. Blake asked for other questions and then invited a motion.

Mr. Brown moved that the Board authorize staff to develop and implement an affidavit by licensees for verification of remote attendance at Board meetings. Mr. Lockhart offered a second. By unanimous roll-call vote, the Board approved the motion.

Mr. Blake then asked Mr. Brown to continue his report. Mr. Brown reported that the Committee had considered a staff proposal to waive a Continuing Education administrative rule under the Board's general waiver authority. He asked Mr. Davis to provide additional information and details. Mr. Davis reminded the Board that in an earlier meeting, they had waived a portion of an administrative rule pertaining to online instruction credits.

He noted that the Board's waiver allowed licensees to acquire up to 5 hours of CE credit through online instruction that could be applied to the 2021 renewal cycle and an additional 5 hours of CE credit through online instruction that could be used for rollover to the 2022 renewal cycle. Mr. Davis identified the rule as a subsection of 21 NCAC 34B .0408 and said that staff was proposing a waiver of the rule in its entirety.

By waiving this rule, the Board would allow licensees to acquire CE credit preneed instruction exceeding the current limit of 2 hours and would eliminate the provision that did not allow licensees to receive CE credit for the same course within a 2-year period. He noted that these provisions created unnecessary barriers for licensees in attaining the required CE credit for annual license renewal.

Members discussed the proposed waiver and asked Ms. Lee to comment. Ms. Lee reminded the Board that the waiver would be consistent with the Board's current temporary rule allowing a waiver of an administrative rule not otherwise required by statute and that the Board would need to specify a date certain for the expiration of the waiver. Further discussion ensued.

Mr. Blake invited a motion pertaining to the proposed rule waiver.

Mr. Brown moved that the Board approve a waiver of 21 NCAC 34B .0408 for a twelve-month period expiring September 1, 2021, so long as there is a declared state of emergency due to the pandemic. Mr. Watson offered a second. By unanimous roll-call vote, the Board approved the motion.

Mr. Blake continued the meeting and asked Mr. Lockhart to present the Disciplinary Committee report.

Disciplinary Committee Report

Mr. Lockhart stated that the Disciplinary Committee met on Friday, September 4, 2020, to consider and discuss cases and recommendations from General Counsel Catherine Lee for the following:

Dismissals

C20-0035 C20-0045 C20-0046 C20-0048 C20-0050 C20-0052 C20-0054

Letters of Caution

C20-0051 M20-0109 M20-0112 M20-0113 M20-0114

Notices of Hearing

C20-0047

Other

M20-0121

Mr. Lockhart invited questions from Board members regarding the recommendations from the Disciplinary Committee.

Mr. Blake asked about any statutory basis pertaining to the misidentification of decedents relative to C20-0051, and Ms. Lee summarized the case in terms of possible violations of statutes or rules and affirmed that no violations of Board statutes had occurred. Mr. Blake commented that he continued to have concerns regarding the understanding and application of disposition rights by licensees particularly in regard to cremation authorizations. He noted the importance of the Board's licensee education programs as an effective means for assuring a clear understanding of these matters particularly in regard to a family's identification of decedents. Discussion ensued.

Mr. Blake further expressed concerns regarding preneed recordkeeping and noted what appeared to be a recurring issue for the Disciplinary Committee in reviewing recommendations for disciplinary action. Mr. Richardson acknowledged the concern and said that he would be accompanying compliance inspectors on field visits to licensed establishments to acquire first-hand knowledge of recordkeeping issues. He also noted that he was completing the Preneed chapter of the Board's Compliance Guide which will represent an important resource for licensees in compliance with preneed recordkeeping requirements.

Mr. Blake then invited a motion on the Committee's recommendations.

Mr. Lockhart said that he was placing the Committee recommendations in the form of a motion. Mr. Olive offered a second to the motion. The full Board voted by roll call to unanimously accept the Disciplinary Committee's recommendations for the referenced cases.

Mr. Blake announced that the Board would next hear a presentation on the proposed Electronic Death Registration System from Mr. Delton Atkinson of the NC Department of Health and Human Services. As Interim Director of the NC Center for Public Health Statistics, Mr. Atkinson has a pivotal role in the implementation of the proposed system. Mr. Blake noted that he was shifting Mr. Atkinson's presentation from New Business and would follow the committee reports.

Electronic Death Registration System Presentation by the NC DHHS

Mr. Atkinson reported to the Board that the NC Department of Health and Human Services planned to implement the new EDR system in October after a multi-year planning and development effort. He summarized the department's planning activities since initial discussion of an EDR system for North Carolina and gave an overview of the timeline from that point to the present. Mr. Atkinson explained in detail how the system would enable funeral service workers to complete and submit death certificates online to the local Register of Deeds office; described the new system in terms of its technology and software; and commented on the expected outcomes for the system in terms of an effective, timely and cost-effective way to generate and certify death certificates.

Before closing his presentation, Mr. Atkinson conveyed to the Board that implementation would begin with a pilot phase including 8 counties across the state representing those with the highest volume of filed death certificates. He said that this testing phase would enable DHHS staff to assess the system and address any concerns with the software, technology and other necessary applications to assure its access to all licensees in North Carolina. He noted that statewide training would follow the pilot phase.

Board members questioned Mr. Atkinson and other NC DHHS representatives about the system and how it would operate within NC to allow online submission of death certificates. Discussion ensued. Mr. Blake thanked the NC DHHS representatives for their time in presenting information about the EDR to the Board.

Mr. Blake announced a 15-minute recess in the Business Session at 10:45 a.m. The meeting resumed at 10:58 a.m. Mr. Blake recognized Mr. Davis for the Executive Director's report.

Executive Director's Report

Mr. Davis updated the Board on recent outcomes from concerns regarding the disclosure of death to funeral service workers upon the removal and transportation of decedents from hospitals and the Office of the Chief Medical Examiner. Mr. Davis reminded members about the Board's letter to Governor Cooper earlier in the year expressing concern about this issue and the Petition for Rulemaking that the Board sent to the NC Commission for Public Health.

He noted that the Vice President for Patient Care Services at UNC Rex Healthcare had written to the Board and affirmed it would disclose the cause of death to funeral service workers as part of its efforts to strengthen its decedent care program. Mr. Davis also reported that the NC Commission for Public Health had accepted the Board's recommendations for changes to its administrative rules by including COVID-19 among the listing of communicable and infectious diseases requiring a physician to provide written notice of proper precautions to take in handling decedents. He noted that the Commission's rules expanded the notice requirement to include Physician Assistants and Nurse Practitioners in addition to physicians and

that the notice could be either in writing or by electronic means. He said that the NC Rules Review Commission would be considering the proposed amendments to the Health Commission's rule. Mr. Davis concluded his report with a reference to the monthly inspections and licensure reports. Mr. Blake invited questions from the Board. Brief discussion ensued. Mr. Blake then recognized Ms. Lee for the Legal Report.

Legal Report

Ms. Lee reported the following activity to the Board:

Current Active Cases: 57 total cases broken down as follows:

Pending Investigation:	21
Pending Review by Disciplinary Committee:	0
Pending Dispositive Action:	14
Pending Hearing:	19
Post-Hearing:	1
Other:	2

New files opened since last Board meeting: 13

Notices of Hearing sent since last Board meeting: 2

Consent Orders received since last Board meeting: 0

Cases reviewed by Disciplinary Committee since last Board meeting: 14

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 2

Pending Investigation:	1
Pending Dispositive Action:	1

Preneed Recovery Fund Claims received since last Board meeting: 1

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 offered to answer any questions or respond to any comments from Board members. Ms. Lee continued her report with the following information:

- **Update on Administrative Rulemaking**

Ms. Lee reported that the temporary rule for general waiver that the Board had approved earlier would expire in January 2021, and she asked the Board's direction for proceeding with permanent rule making for 21 NCAC 34A .0128. She reminded the Board that this temporary rule began as an emergency rule in response to the coronavirus pandemic and that it would enable the Board to waive an administrative rule not otherwise required by statute. In response to members' questions, Ms. Lee noted that the rule was

intended to allow the Board regulatory flexibility in addressing the impact of the pandemic on the state's funeral licensees. Mr. Blake invited a motion after a brief discussion by members.

Upon a motion by Mr. Herndon and a second by Mr. Watson, the Board approved the motion by majority vote to proceed with permanent rulemaking for 21 NCAC 34A .0128, Waiver.

Ms. Lee then asked the Board's direction on proceeding with the adoption of 21 NCAC 34B .0110, Work Reports and Checklists. Ms. Lee summarized the Board's prior actions which amended the referenced rule outlining requirements for the submission of trainee work reports and the completion of trainee checklists. She noted that the primary impetus for the amendments was to update the existing rule which had not been revised since 2004 and to codify existing practice in trainee work reports and checklists. She noted that the amended rule clarifies procedures pertaining to the completion and submission of trainee work reports and would impose a fee for late submissions. She asked members for any questions. Brief discussion ensued. Mr. Blake invited a motion from the Board.

Mr. Lockhart moved that the Board proceed with the adoption of 21 NCAC 34B .0110, Work Reports and Checklists by filing proper notice with the NC Office of Administrative Hearings. Mr. Olive offered a second to the motion. By majority vote, the Board voted by roll-call and approved the motion.

Ms. Lee proceeded with her update on administrative rulemaking to the Board by introducing 21 NCAC 34B .0308 and .0309 for the Board's consideration and action. She said that the Board could initiate rulemaking to amend these rules regarding the notice requirements for license renewals and the license renewal form. Ms. Lee explained the current provisions of .0308 regarding the requirement for the Board to mail notice of renewal to licensees and said that the Board could consider changing the rule to state that renewal notices would be sent by electronic mail. She noted that the proposed amendments to .0309 would clarify information on the renewal form and codify the content of the existing renewal form. Ms. Lee and staff responded to members' questions and concerns regarding the proposed amendments during a discussion of the issue. Mr. Watson suggested that the Board defer a decision on .0309, Renewal Form, until the October meeting and asked Ms. Lee to send members a copy of the current form for review. Mr. Blake asked members how they wished to proceed on .0308 and invited a motion.

Mr. Watson moved that the Board initiate rulemaking to amend 21 NCAC 34B .0308, Renewals:Notices, by sending renewal notices electronically. Mr. Olive offered a second. By majority roll-call vote, the Board approved the motion. Mr. McCormick abstained.

Old Business

There were no Old Business items for consideration.

New Business

Mr. Jeff Gray, Of Counsel, Bailey & Dixon LLP, gave a presentation on practices, procedures and protocols associated with conducting administrative hearings for Occupational Licensing Boards. Mr. Gray addressed a number of concerns and issues stemming from members' questions concerning the conduct of administrative hearings before the Board.

Following Mr. Gray's presentation, 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. Watson and a second by Mr. Olive, the Board voted unanimously by roll-call vote to convene in closed session pursuant to NCGS 143-318.11.

Upon a motion by Mr. Brown and a second by Dr. Lyons, the Board voted unanimously by roll-call vote to reconvene in open session.

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

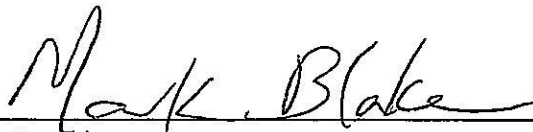
Upon proper motion, the full Board through a roll call vote approved the following:

- Consent Order in the Matter of M15-0043 and M20-0025 *In Re* Blackwell Funeral Home
- Hearing for Summary Suspension in the Matter of Claude E. Willie III and C. E. Willie Funeral & Cremation Services, Inc., Case No. M20-0122

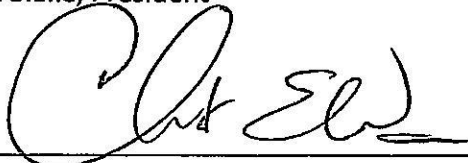
Without further business before the Board, Mr. Blake entertained a motion for adjournment.

Upon a motion by Mr. Herndon and a second by Mr. Lockhart, the Board voted by unanimous roll-call vote to adjourn the meeting.

Affirmation:



Mark Blake, President



Chris Watson, Secretary

Date