



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes
October 14, 2020 Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on October 14, 2020, at the Sheraton Raleigh Hotel, 124 S. Salisbury Street, Raleigh, NC in the Governors I and II meeting rooms.

Present: Mark Blake, President; Don Brown, Vice-President; Chris Watson, Secretary; Valdus Lockhart; Steve Herndon; Hubert Saunders; Craig Olive; Steven Lyons; and Darrell McCormick.

Staff and Counsel: Stephen Davis, Executive Director and Amy Acord, Assistant Director. Catherine Lee, General Counsel and Brett Lisenbee, Compliance Officer joined the meeting via Webex conferencing.

Guests and Visitors: Thomas T. Hildebrand, licensee; Chase Noble, Executive Administrator, NC Funeral Directors Association.

Mr. Blake called the meeting to order at 9:03 a.m. and read the Statement of Ethics and asked if any members would be recusing themselves. None recused.

He then recognized guests in attendance. Mr. Lockhart introduced Mr. Hildebrand and reported that he was the nominee from the Funeral Directors and Morticians Association of NC for prospective appointment to the Board as an FDMANC representative.

Mr. Blake then asked for any public comment. In the absence of any public comment, Mr. Blake continued and asked Mr. Watson to present the minutes from the September 9, 2020, Board meeting.

Approval of Minutes

Upon a motion by Mr. Watson and a second by Mr. Olive, the Board 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 asked Mr. Davis to summarize the financial reports for the period ending August 2020. Mr. Davis presented the Statement of Net Position and noted that the Board's net position continues to show strength with an 8-month operating capital reserve as shown in the Unrestricted Fund balance. He stated that the Statement of Net Position did not show any balances or indicators that would create concern

regarding the Board's net position. He then reported that the Preneed Recovery Trust Fund balance was slightly lower than for the last reported balance for the period ending July 2020 as a result of a claim payment of approximately \$9,000. He noted that the Trust Fund balance would likely show an increase for the next reporting period when funds derived from preneed contract application fees are deposited to the Fund.

Mr. Davis then summarized the Statement of Revenues and Expenses. He explained that revenues are currently at 78% of the total projected at the beginning of the fiscal year and expressed optimism that revenue collections would meet the projected amount. He reported that operating expenses were at 65% of the Year-To-Date Budget Used which is consistent with a target percentage of 66.7% for the first eight months of the fiscal year. He affirmed that operating expenses for the reporting period are consistent with trends for the past two fiscal year periods. Brief discussion ensued. Mr. Blake invited a motion for approval of the financial reports.

Mr. Olive moved that the Board approve the financial reports for the period ending August 2020 as reported. Mr. McCormick offered a second, and the Board voted unanimously to approve the motion.

Mr. Blake asked Mr. Davis if there were other agenda items to report. Mr. Davis reported that the Committee's discussed a proposed increase in the per diem rate for Board committees meeting for more than one [1] hour to review and consider matters brought before them. He reminded members that the Board in August had authorized an increase in the per diem amount from \$50.00 to \$100.00 when committee meetings require more than one [1] hour for considering agenda items. Mr. Davis said that the Committee discussed the issue and agreed to recommend to the full Board a clarification on when such payments should occur. He noted that the Committee proposed that the per diem for the Disciplinary Committee should always qualify for the increased amount given the volume of work presented to it and the time required to consider and discuss disciplinary matters. It was further noted that any other Board committees that are required to meet for more than one [1] hour should also qualify for the increased per diem rate of \$100.00.

Mr. Blake asked about the time typically required for the Disciplinary Committee to review documents and consider disciplinary matters brought before it. Mr. Lockhart and Mr. Watson agreed that the review of the Disciplinary Report entailed a concurrent review of supporting documents that required significant time to read prior to the Committee meeting. Mr. Blake invited a motion to approve the Committee's recommendation.

Upon a motion by Mr. Herndon and a second by Dr. Lyons, the Board voted in the majority to increase the per diem rate for the Disciplinary Committee from \$50 to \$100 and to increase the per diem similarly for any other Board Committee preparing and meeting for more than one [1] hour. Mr. Watson abstained from voting.

Mr. Blake then continued by presenting the Preneed Committee report.

Preneed Committee Report

Mr. Blake reported that the Committee heard a summary of Case P20-0003 from Ms. Lee, General Counsel, pertaining to a claim against the Preneed Recovery Trust Fund in the amount of \$11,176.31. Ms. Lee said that the claim was consistent with the Board's past practice based upon the facts associated with the claim. She noted in the Committee Report that "On or about February 10, 2010, the Applicant's sister (through her guardian) entered into an inflation-proof insurance preneed contract (the "Contract") for which she was both beneficiary and purchaser with a preneed funeral establishment that is now closed,

for a purchase price of \$11,176.31. The Contract provided that payment of \$11,176.31 was to be made at the time the Contract was created. In support of the Application, the Applicant provided, among other things, a copy of the Contract (which did not list any policy number); a copy of the negotiated check from the beneficiary's ward made payable to the closed preneed establishment in the amount of \$11,176.31 with the notation "preneed contract;" and a receipt from the closed preneed establishment in the amount of \$11,176.31 with the notation "for the funeral expenses of the [beneficiary]" dated February 16, 2010. The closed preneed establishment filed the Contract with the Board, but a Board investigator concluded that no underlying insurance policy ever was purchased with the preneed funds paid by the purchaser." Ms. Lee continued by reporting that the Committee agreed that the claim should be paid based on the documentation submitted by the claimant and the consistency of the facts with prior Board decisions concerning claims paid from the Preneed Recovery Trust Fund. Discussion concerning the Board's policies governing payment of preneed claims ensued. Mr. Blake questioned the Board's past practice of waiting for the beneficiary's death before claims were paid. Members discussed this issue at length. Mr. Blake then invited a motion regarding the recommendation from the Preneed Committee.

Upon a motion by Mr. Lockhart and a second by Mr. Watson, the Board voted unanimously to approve the claim expressed in P20-0003 from the Preneed Recovery Trust Fund in the amount of \$11,176.31.

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, October 9, 2020, to consider and discuss cases and recommendations from General Counsel Catherine Lee for the following:

Summary Dismissal

C20-0063

Dismissals

C20-0044 C20-0053 C20-0055 C20-0059 C20-0060 C20-0061/C20-0062

Letters of Caution

M20-0116 M20-0118 M20-0119 M20-0120 M20-0123 M20-0124
M20-0125

Notices of Hearing

C20-0034 C20-0058 M20-0117

Other

M20-0081 M20-0115

Mr. Blake asked why the Committee was proposing to rescind a Letter of Caution in the matter of M20-0081. Mr. Lockhart noted that further discussion on the matter should be conducted in closed session since there were questions concerning a human resources issue pertaining to employee performance and/or conduct not subject to public disclosure.

Upon a motion by Mr. Lockhart for the approval of the Disciplinary Committee's recommendations except for the matter of M20-0081 and second by Mr. McCormick, the Board voted unanimously in favor of the motion.

Mr. Blake then recognized Mr. Davis for the Executive Director's Report.

Executive Director's Report

Mr. Davis reported on the following topics:

- Update on responses to the Board's Request for Proposal to engage an independent audit firm to conduct the Board's annual audit. Mr. Davis said that he had received three [3] proposals from the following: Bernard Robinson; Williams, Overman & Pierce; and Koonce, Wooten & Haywood. He said that staff would review and summarize the proposal before bringing them to the next meeting of the Finance and Personnel Committee.
- Reported that the International Conference was offering a Board Training Seminar as follows:
 - Conference Board Training: Regulatory Essentials
 - October 28 and 29, 2020
 - 12:00 – 2:00 pm
 - Presented by Dale Atkinson, Legal Counsel for The Conference
- Reported that The International Conference had recently polled member states about whether or not they would attend an in-person Annual Meeting planned for Houston, Texas in early 2021. Mr. Davis said that he would keep members posted on the results of the survey and any decision by The Conference regarding the annual meeting.
- Reported that Mr. Lisenbee and Ms. Acord were planning to conduct a seminar for the Funeral Law class at FTTC on October 20th.
- Reported that he had received a formal Letter of Invitation from NC DHHS/Vital Records concerning the launch of the Electronic Death Registration System and information on the pilot phase as follows: Pilot Phase Begins October 19, 2020; 8 Counties will be included in the pilot: Buncombe, Forsyth, Guilford, Mecklenburg, Wake, Orange, Durham, and Johnston.
- Announced that a Board Holiday Luncheon has been planned at the Angus Barn on December 9, 2020, from 12:00 pm to 2:00 pm.
- Announced that some members must complete the mandatory Ethics Education Training pursuant to statutes under the jurisdiction of the NC State Ethics Commission. Davis said that he would contact those who must complete the training in the following week.

- Presented the Inspections and At-Need Reports. Mr. Blake commented that there appeared to be a disproportionate share of disciplinary matters relative to cremation reports and records during compliance inspections. He asked if the number of monthly inspections should be increased anticipating an increase in the number of cremations performed in North Carolina. Mr. Lisenbee noted that compliance inspections are currently scheduled on a 3-year cycle pursuant to the Board’s Standard Operating Procedures for inspections. Brief discussion ensued.

Mr. Blake thanked Mr. Davis for his report to the Board and then recognized General Counsel Catherine Lee for the Legal Report.

Legal Report

Ms. Lee reported the following activity to the Board:

Current Active Cases: 49 total cases broken down as follows:

Pending Investigation:	12
Pending Review by Disciplinary Committee:	0
Pending Dispositive Action:	19
Pending Hearing:	14
Post-Hearing:	2
Other:	2

New files opened since last Board meeting: 12

Notices of Hearing sent since last Board meeting: 5

Consent Orders received since last Board meeting: 1

Cases reviewed by Disciplinary Committee since last Board meeting: 19

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 3

Pending Investigation:	0
Pending Dispositive Action:	3

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: 1

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 Paul Richardson, Preneed Program Manager, was representing the Board at 10:00 a.m. today in convening a public hearing as required by statute regarding the Board's proposed amendments to rules pertaining to cremations and alkaline hydrolysis. She noted that the Board could adopt these rules if it desired at the November 17, 2020, Board meeting.

Ms. Lee continued by reminding the Board that it had voted at a prior meeting for amending the administrative rule pertaining to the notice to licensees for annual license renewal. She reported that a companion rule pertained to the license renewal form and that if the Board so desired, it could approve amendments to that rule which would codify the form's existing content.

Upon a motion by Mr. Brown and a second by Mr. Olive, the Board voted unanimously to initiate rulemaking on 34 NCAC 34B .0309, Renewal Form.

Mr. Blake thanked Ms. Lee for her report and extended thanks along with Mr. McCormick for staff's work on a number of issues including the arrangements for the Board's first in-person meeting since March and for their support and efforts regarding the disclosure of death issue that the board addressed with a letter to Governor Cooper in July. Mr. Blake noted the Board's success in reversing decisions by UNC Rex Healthcare and the Office of the Chief Medical Examiner to withhold cause of death for decedents whose death resulted from COVID infection. He noted that the NC Commission for Public Health had amended its administrative rules pertaining to disclosure of information to funeral workers by including COVID-19 among the diseases requiring notification by a physician.

Mr. Blake asked if there were any Old Business or New Business items.

Old Business

There were no Old Business items for consideration.

New Business

The Board considered a letter from Mr. J. Andrew Thompson from Heritage Funeral Service & Crematory requesting a waiver of late fees for a cremation report that was not timely submitted to the Board. He indicated that circumstances beyond his control prevented him from a timely submission since he was twice quarantined for suspected COVID-19 infection. Members discussed the request in terms of the Board's current and past practice in similar matters but recognized that the pandemic had created unusual conditions through the quarantine requirement which prevented Mr. Thompson's timely submission. Members noted that Mr. Thompson might have considered options which would have prevented a late submission but agreed that the waiver request was justified.

Upon a motion by Mr. McCormick and a second by Mr. Brown, the Board voted in the majority to approve the request to waive late fees of \$920 for the late submission of a monthly cremation report by Heritage Funeral Service & Cremations and to issue a Letter of Caution to said entity. Mr. Herndon abstained from voting.

Mr. Blake stated that the Board would meet in closed session to consider matters protected by attorney-client privilege pursuant to NCGS 143-318.11.

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

Upon a motion by Mr. Brown and a second by Mr. Watson, the Board voted unanimously 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 Mr. Brown, the Board voted unanimously to rescind the Letter of Caution previously approved in the matter of M20-0081.

Upon a motion by Mr. Herndon and a second by Mr. Lockhart, the Board voted unanimously to approve the proposed Consent Order in the matter of M20-0103.

The Board recessed on October 14, 2020, and reconvened on October 15, 2020, at 9:00 a.m. for deliberations on Case No. C19-0022 and M20-0041. Upon proper motion, the Board voted to render the following disciplinary actions:

Board Case Number: C19-0022

Respondents: R.H. Greene Funeral Home and Nathaniel G. Yarborough

Summary: Respondents contracted with a consumer to remove a decedent from Virginia to North Carolina. Respondents did not file a death certificate for the decedent in Virginia and did not obtain a burial-transmit permit prior to removal. Respondents did not timely file a death certificate for the decedent and made misrepresentations to the consumer with regard to their ability to file said death certificate in Virginia. Respondents forged the consumer's signature to a death certificate for the decedent in an effort to conceal their misrepresentations. Respondents failed to fully reimburse the consumer for moneys paid following Respondents' failure to file the death certificate.

Board Action: The Board issued a Final Agency Decision whereby the at-need establishment permit (AN Permit No. 206) of Respondent Funeral Home is placed on a one-year suspension, provided that said suspension is stayed on the following terms and conditions:

- Within thirty (30) days following the effective date of this Final Agency Decision, Respondent R.H. Greene Funeral Home shall pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) to the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
- Within thirty (30) days following the effective of this Final Agency Decision, R.H. Greene Funeral Home shall provide proof to the Board that it has issued a refund of Twenty-Four Dollars (\$24.00) to the consumer, representing the balance due for reimbursement of the cost paid toward the decedent's death certificates.
- During the period of stayed suspension, the licensure of Respondent R.H. Greene Funeral Home shall be on probationary status and it must comply with all statutes and rules governing the practice of funeral service.

- The stay of the suspension shall be automatically lifted upon failure to comply with these conditions.

Furthermore, the Funeral Service License of Respondent Nathaniel G. Yarborough shall be suspended for a period of one year, beginning on the date that this Final Agency Decision takes effect, provided that said suspension shall be stayed on the following terms and conditions:

- Within thirty (30) days following the effective date of this Final Agency Decision, Respondent Nathaniel G. Yarborough shall pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) to the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
- During the period of stayed suspension, the licensure of Respondent Nathaniel G. Yarborough shall be on probationary status and he must comply with all statutes and rules governing the practice of funeral service.
- The stay of the suspension shall be automatically lifted upon failure to comply with these conditions.

Effective Date: October 27, 2020

Board Case Number: M20-0041

Respondents: A.E. Grier & Sons Funeral & Cremation, LLC, Arthur E. Grier, III, and Arthur Eugene Grier, Jr.

Summary: In May 2019, a Board staff inspector conducted a routine establishment inspection and preneed examination of A.E. Grier & Sons Funeral & Cremation, LLC ("Respondent Funeral Establishment") and found violations of the statutes and rules governing the practice of funeral service, in that Respondent Funeral Establishment failed to properly use BFS Form 56 for returning/delivering cremated remains; failed to properly maintain a cash receipt journal; failed to timely deposit preneed funds received; failed to retain financial statements for all preneed contracts; failed to timely file two (2) preneed contracts with the Board; failed to retain preneed contract files for many preneed clients; failed to maintain all documents required for preneed contract files for many preneed clients; improperly closed a preneed contract; failed to file multiple certificates of performance with the Board within ten (10) days following payment; failed to properly complete preneed contracts; and failed to accurately complete multiple preneed annual reports.

In February 2020, a Board staff inspector conducted a re-examination of the Respondent Funeral Establishment and found continuing violations of the statutes and rules governing the practice of funeral service, some of which had not been corrected from the 2019 examination. Specifically, the Board staff inspector found that Respondent Funeral Establishment had failed to correct most previously-cited deficiencies and found additional violations, including a failure to display the license certificate for one licensee; failure to retain a copy of its preneed establishment renewal application; continued deficiencies of Form PN-6; failure to make financial statements available; and continued failure to timely deposit preneed payments received since the 2019 examination into trust.

Board Action: The Board issued a Final Agency Decision whereby the preneed establishment permit (PN 901) was revoked and the at-need establishment permit (AN Permit No. 878) of Respondent Funeral Home is placed on a two-year suspension, provided that said suspension is stayed on the following terms and conditions:

- Within thirty (30) days following the effective date of this Final Agency Decision, Respondent A.E. Grier & Sons Funeral & Cremation, LLC shall pay a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) to the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
- During the period of stayed suspension, the licensure of Respondent A.E. Grier & Sons Funeral & Cremation, LLC shall be on probationary status and it must comply with all statutes and rules governing the practice of funeral service.
- The stay of the suspension shall be automatically lifted upon failure to comply with these conditions.

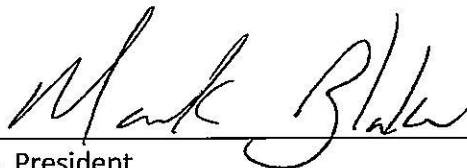
Furthermore, the Funeral Service License of Respondent A.E. Grier, III shall be suspended for a period of two years, beginning on the date that this Final Agency Decision takes effect, provided that said suspension shall be stayed on the following terms and conditions:

- Within thirty (30) days following the effective date of this Final Agency Decision, Respondent A.E. Grier III shall pay a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) to the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
- During the period of stayed suspension, the licensure of Respondent A.E. Grier III shall be on probationary status and he must comply with all statutes and rules governing the practice of funeral service.
- The stay of the suspension shall be automatically lifted upon failure to comply with these conditions.

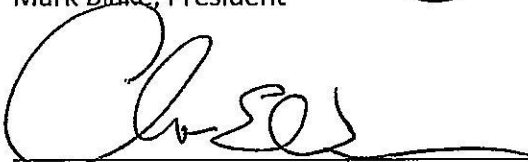
Effective Date: October 27, 2020

Without further business before the Board and upon proper motion, Mr. Blake adjourned the meeting.

Affirmation:



Mark Blake, President



Chris Watson, Secretary

November 17, 2020

Date