



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes
February 10, 2021, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:04 a.m. on February 10, 2021, at the NC Board of Funeral Service office suite at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605. The meeting was livestreamed through YouTube to allow public access and CE credit for licensees.

Present: Don Brown, President; Chris Watson, Vice-President; Steven Lyons, Secretary; Mark Blake; Steve Herndon; Hubert Saunders; Robb Jansen; Darrell McCormick; and Thomas Hilderbrand.

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

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

Mr. Brown called the meeting to order at 9:04.m. and asked Dr. Steven Lyons to offer a prayer. Following the prayer, Mr. Brown read the Statement of Ethics and asked if any members would be recusing themselves. Mr. Herndon said that he would recuse himself on C20-0102 and that Dr. Lyons would present the recommendations in that case to the Board. He then recognized guests in attendance and asked for any public comment. No public comment was offered.

Mr. Brown continued and asked Dr. Lyons to present the minutes from the January 13, 2020, Board meeting.

Approval of Minutes

Upon a motion by Dr. Lyons and a second by Mr. McCormick, the Board adopted the minutes as presented by unanimous roll-call vote.

Mr. Brown continued the meeting by asking Mr. Blake to present the Finance and Personnel Committee report.

Finance and Personnel Committee Report

Mr. Blake reported that the Finance and Personnel Committee met on February 4, 2021, by conference call to review and discuss the December 2020 financial reports. Mr. Blake noted that the reports indicate

that the Board's net position continues to be strong with a robust reserve of operating capital. He noted that the Preneed Recovery Trust Fund balance declined slightly from the last reporting period due to claims paid in late 2020. He then asked Mr. Davis to offer additional highlights from the Reports. Mr. Davis echoed comments from Mr. Blake concerning the Preneed Recovery Trust Fund and offered a recap of total claims paid since initial recordkeeping began in 1995. He stated that more than \$1.4 million had been paid out since that time and noted that the Committee had discussed the feasibility of setting a threshold for the Recovery Fund as a way to assure sound future funding.

Mr. Davis continued his summary of the Statement of Net Position and noted that amounts shown under Deferred Income reflected renewal payments from the 2021 license/permit renewal cycle and would be shown as revenue for the January 2021 Statement of Revenues and Operating Expenses. After brief discussion, Mr. Blake asked Mr. Davis to present the Statement of Revenues and Expenses.

Mr. Davis reported that total revenue collections were at 99.8% for the reporting period and noted that the Statement of Revenues and Expenses was preliminary pending final close-out of all 2020 accounts by the Board's accounting firm, TJT, Inc. He indicated that there was a possibility that the total revenues would exceed the amount shown on the Statement. He then asked members to note that the Year-to-Date percent of budget used was 101.1% which reflects approximately \$20,000 in expenses over the amount projected at the beginning of the Fiscal Year. He noted that unanticipated changes in the Board's legal representation arrangements and additional hours by TJT for the development and implementation of a new payroll system were factors in the total expenses reported as of December 2020. Brief discussion ensued.

Upon a motion by Mr. Blake and second by Mr. Watson, the Board voted unanimously by roll call vote to accept the Financial Reports for the period ending December 2020.

Laws, Rules and Regulations Committee

Mr. Brown continued the meeting and said that he was presenting the report from the Laws, Rules and Regulations Committee. Mr. Brown noted that the Committee met on February 2, 2021, with Board staff including Mr. Davis, Ms. Acord, Ms. Lee and Mr. Lisenbee to discuss a proposal for the adoption of rules regarding the temporary storage of human remains. Mr. Brown noted that Ms. Lee and Mr. Lisenbee had revised the initial proposal for such rules based on the Committee's direction regarding temporary refrigeration. Mr. Brown asked Ms. Lee to summarize the Committee's discussion and decisions regarding the proposed rules, and she reported that the Committee spent time in a detailed, thorough discussion of issues pertaining to the temporary, off-site storage of human remains particularly during the current pandemic. Ms. Lee explained current statutory requirements and then summarized the proposed rules which would not require a licensed establishment to purchase a refrigerated storage unit. The rules would set forth specific recordkeeping requirements to assure a chain of custody for decedents particularly in cases when one establishment contracts with another for temporary storage. Ms. Lee noted that if the Board desired, she would initiate temporary rulemaking for the proposed rules on refrigeration through the Office of Administrative Hearings/Rules Review Commission. She noted that the Board would address two separate rules: 21 NCAC 34B .0707 which would be adopted if the Board decided to initiate rulemaking with a primary focus on licensed funeral establishments. She said that a companion rule, 21 NCAC 34C .0202, would be amended to ensure proper protocols for a decedent's identification, care and chain of custody for crematories using temporary refrigeration units.

Members discussed the issue at length including the need for rules that clearly outline licensees' responsibility for custody of decedents but which are sufficiently flexible to encourage reasonable and practical options for establishments without on-site storage facilities. Members continued their discussion and focused on issues regarding compliance with the proposed rules as well as any necessary

restrictions that address contractual agreements between licensed establishments for the temporary storage of decedents. Mr. McCormick noted that the proposed regulations should be intended to enable small establishments to develop business relationships with other licensed establishments which can provide temporary storage arrangements. Mr. Blake asked if establishments would be required to include fees for temporary storage on a General Price List [GPL], and Mr. Lisenbee explained circumstances where such fees should be included on the GPL. Discussion ensued.

Mr. Brown invited motions pertaining to the Board's decision on rulemaking for temporary refrigeration.

Upon a motion by Mr. Herndon and a second by Mr. McCormick, the Board voted unanimously by roll call vote to direct General Counsel to initiate rulemaking for 21 NCAC 34B .0707 to include an abbreviated public comment period.

Upon a motion by Mr. McCormick and a second by Mr. Saunders, the Board voted unanimously by roll call vote to direct General Counsel to initiate rulemaking for amending 21 NCAC 34C .0202 pertaining to the temporary storage and refrigeration of decedents in crematories.

Ms. Lee continued her overview of the Laws, Rules and Regulations Committee meeting by summarizing 21 NCAC 34A .0119 which would establish procedures for the Board's deliberation and ruling at the conclusion of a disciplinary hearing. Ms. Lee reminded members that a current interpretation of the statute allows the Board to query a respondent if they want the Board to rule immediately or at a future time once an official record has been received. Members discussed the issue in terms of past practice and the implications, if any, of adopting the rule as proposed. Ms. Lee also explained that the proposed rule would enable the Board to recover the costs associated with show cause hearings. Brief discussion ensued, and Mr. Brown invited a motion on the matter.

Upon a motion by Mr. McCormick and a second by Dr. Lyons, the Board voted unanimously by roll call vote to direct General Counsel to initiate rulemaking for 21 NCAC 34A .0119.

Ms. Lee continued and summarized the Committee's discussion regarding a staff proposal for amending 21 NCAC 34D .0302 pertaining to whether or not a notarized certification by an authorized licensee would be required as a condition for submission of the Preneed Annual Report. Ms. Lee said that Mr. Davis could provide additional detail. Mr. Davis noted that the rule currently requires submission of a notarized certification by the signatory on the Annual Report which creates delays and a barrier for the timely submission of Annual Reports. Mr. Davis noted that the Board's efforts to streamline the submission of mandatory reports to the Board included the implementation of a Preneed Annual Report Portal on the Board website, and it was staff's opinion that the online completion of the Certification attesting to the accuracy of the Report could be included at the time of submission without having to submit it separately after securing a notarized affirmation of the signature. Mr. Davis said that the signed Certification is sufficient affirmation that the one signing is affirming the Annual Report accuracy. He said that staff can verify the authenticity of the signatory through the licensee profile information on the Board's automated licensing management system. With the implementation of iGov, a notarized certification is no longer necessary.

Brief discussion ensued. Mr Brown invited a motion.

Upon a motion by Mr. McCormick and a second by Mr. Watson, the Board voted unanimously by roll call vote to direct General Counsel to initiate rulemaking to amend 21 NCAC 34D .0302.

Mr. Brown continued the meeting and asked Dr. Lyons to present the Exam Committee report.

Exam Committee

Dr. Lyons reported that the Exam Committee met on February 4, 2021, to hear an overview of the Board’s exam program and relationship with The International Conference of Funeral Service Examining Boards. He noted that the Committee report was primarily for information, and he asked Mr. Davis to brief the Board on his presentation to the Committee. Mr. Davis explained the role and relationship of The Conference and alluded to resources that they provide for member states. He specifically mentioned the NC State Board Exam Desk Reference and the State Board Examination Candidate Handbook. He also noted that the Board contracts with The Conference and other test administrators for the National and State Board examinations including the Laws and Rules and Pathology examinations. Mr. Davis offered information about measuring the exam program by referring to annual statistical reporting by the American Board of Funeral Service Education to show examination results from the mortuary science program at Fayetteville Technical Community College.

Mr. Davis said that The Conference would be revising the Laws and Rules exam to reflect statutory and administrative rule changes implemented since 2018 to assure that the exam is current. He also reported that staff would bring a proposal to the Board at a later time for consideration of introducing virtual examinations for prospective licensees as a way to open additional access to exams during the pandemic. Dr. Lyons thanked Mr. Davis for his comments and concluded the Committee’s report to the Board.

Mr. Brown recessed the Board meeting at 10:19 a.m. The Board reconvened at 10:27 a.m. Mr. Brown then asked Mr. Herndon to present the Disciplinary Committee Report.

Disciplinary Committee Report

Mr. Herndon stated that the Disciplinary Committee met to consider and discuss cases and recommendations from General Counsel Catherine Lee for the following cases. He noted that he was recusing himself from C20-0102:

Dismissals

C20-0095 C20-0096 C20-0097 C20-0099 C20-0100 C20-0101 C20-0102

Letters of Caution

C21-0001

Other

M20-0129 P21-0002

Mr. Herndon invited any questions or comments from Board members.

Upon a motion by Mr. Herndon and a second by Mr. McCormick, the Board voted unanimously by roll call vote to adopt the recommendations from the Disciplinary Committee as presented with the exception of C20-0102.

Upon a motion by Mr. McCormick and a second by Mr. Saunders, the Board voted by roll call vote in the majority to adopt the recommendations from the Disciplinary Committee on C20-0102. Mr. Herndon recused.

Mr. Herndon then recognized Mr. Watson to present a Supplemental Disciplinary Report on pending matters considered by the previous Disciplinary Committee. Mr. Watson presented the following recommendations:

Dismissals

C20-0085 C20-0091 C20-0092

Letters of Caution

C20-0082 C20-0083 C20-0089

Notices of Hearing

C20-0084 C20-0090

Upon a motion by Mr. Watson and a second by Mr. McCormick, the Board voted unanimously by roll call vote to accept the recommendations presented in the Supplemental Disciplinary Report.

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

Executive Director's Report

Mr. Davis reported on the following topics:

- Summarized the 2021 renewals to date. Noted that license renewal outpaced 2020 at 90+%. Noted that approximately 418 individuals and establishments had failed to renew for the 2021 cycle.
- Reported that staff would be sending out establishment permit certificates in March using certificate paper.
- Reported that staff had implemented the Preneed Annual Report Portal and a new Cremations Report Portal.
- Reported on a new trend in the disposition of human remains using a mycelium-infused container which hastens decomposition of a dead body and reduces it to a compost-like material.
- Reported that Brett Lisenbee, Compliance Officer, recently received a question pertaining to any regulations governing a mobile cremation facility that could be deployed where needed to assist in cremating high volume of decedents as a result of the pandemic.
- Announced that Bernard Robinson would begin the annual audit of the Board's Financial Statements on March 15th.

Mr. Davis then conveyed the monthly Inspections Report and Licensure Report.

Mr. Brown continued the meeting and asked Ms. Lee to present the Legal Report.

Legal Report

Ms. Lee reported the following metrics:

Current Active Cases: 49

 Pending Investigation: 14

 Pending Review by Disciplinary Committee: 0

 Pending Dispositive Action: 17

 Pending Hearing: 17

 Post-Hearing: 0

 Other: 1

New files opened since last Board meeting: 13

Notices of Hearing sent since last Board meeting: 2

Consent Orders received since last Board meeting: 1

Cases reviewed by Disciplinary Committee since last Board meeting: 17

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 4

 Pending Investigation: 3

 Pending Dispositive Action: 1

Preneed Recovery Fund Claims received since last Board meeting: 3

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

Preneed Recovery Fund Claims reviewed by Committee since last Board meeting: 1

Ms. Lee continued her report by offering information on legislation with potential impact on the Board. She stated that a House bill is currently before the House Judiciary Committee which seeks verification of citizenship as a condition of licensure by an occupational licensing board. Boards would be required to use the federal SAVE database for verifying immigration status and citizenship.

Ms. Lee also reported that she was preparing to send notices of late renewals to licensees and establishments failing to renew by February 1, 2021. She explained that those continuing to practice after December 31, 2020, would be required to sign a Consent Order which the Board must approve unless it chooses to delegate that authority to the Executive Director.

Upon a motion by Mr. Watson and a second by Mr. Blake, the Board voted in the majority by roll call vote to delegate signature authority to the Executive Director for Consent Orders executed pursuant to the reinstatement of licenses forfeited due to late renewal. Mr. Saunders did not vote.

Ms. Lee concluded her report by reminding the Board that the public comment period on the amendment of 21 NCAC 34B .0309, License Renewal Form, did not produce any comments and that the Board could decide whether or not to petition the Rules Review Commission to codify the rule in the NC Administrative Code.

Upon a motion by Mr. McCormick and a second by Mr. Herndon, the Board voted unanimously by roll call vote to direct General Counsel to submit 21 NCAC 34B .0309, License Renewal Form, to the Rules Review Commission for permanent adoption.

Mr. Brown continued and asked for any Old Business items. Mr. Blake expressed concerns that the training on the NC DAVE system for licensees to learn the requirements for the electronic submission of death certificates may have created confusion among some licensees. He suggested that the Board consider an invitation for appropriate staff from the NC Department of Health and Human Services/Vital Records to update the Board on progress toward implementing the Electronic Death Registration system at the next Board meeting. Mr. Davis said that if the Board so desired, he would be glad to reach out and ask EDR administrators to provide a status update on the EDR initiative.

Mr. Brown invited any New Business items. Hearing none, Mr. Brown stated that the Board would meet in closed session to deliberate on C20-0067 pursuant to the requirements of NCGS 143-318.11.

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

Dr. Lyons offered a motion to return to open session, and Mr. McCormick offered a second to the motion. Prior to a vote, members raised additional questions regarding the matter in C20-0067. To allow further discussion, Mr. McCormick withdrew his second to Dr. Lyons' motion. The Board continued its deliberation.

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

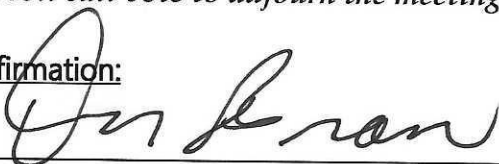
Mr. Brown invited any motions pertaining to the disciplinary matters discussed in closed session.

Upon a motion by Mr. Hilderbrand and a second by Mr. McCormick, the Board voted in the majority by roll call vote to approve a proposed Consent Order in the matter of C20-0067. Mr. Blake voted nay.

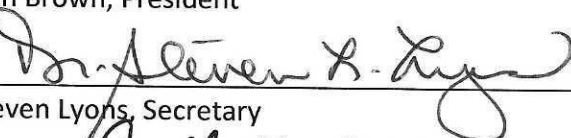
Mr. Brown asked if there was any other business before the Board. Hearing none, he invited a motion for adjournment.

Upon a motion by Mr. McCormick and a second by Mr. Saunders, the Board voted unanimously by roll call vote to adjourn the meeting.

Affirmation:



Don Brown, President



Steven Lyons, Secretary

April 14, 2021

Date