



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes
April 14, 2021, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on April 14, 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; Brett Lisenbee, Compliance Officer; and Catherine Lee, General Counsel.

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

Mr. Brown called the meeting to order at 9:03 a.m. and asked Mr. Blake to lead members and guests in the Pledge of Allegiance. Mr. Herndon then offered the invocation. Mr. Brown read the Statement of Ethics and asked if any members would be recusing themselves. Mr. Herndon announced that he and Dr. Lyons would recuse themselves from voting on Case C21-0011. Mr. Brown 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 March 10, 2021, Board meeting.

Approval of Minutes

Upon a motion by Dr. Lyons and a second by Mr. Saunders, the Board adopted the March 10, 2021, minutes as presented by unanimous vote.

Finance and Personnel Committee Report

Mr. Blake presented the report from the Finance and Personnel Committee and reported that the Committee convened by teleconference at 9:00 a.m. on Monday, April 12, 2021. In attendance were Mr. Mark Blake, Chair; Mr. Don Brown; and Mr. Chris Watson along with staff members Stephen Davis, Executive Director, and Amy Acord, Assistant Director. Mr. Blake noted that the agenda items were the following:

- Presentation of the 2020 Audit of Financial Statements

- Review of Financial Reports for the period ending February 2021
- Executive Summary: Investment Strategy
- Announcement of Staff Resignation

Mr. Blake said that Ms. Tricia Glidewell from Bernard, Robinson & Company presented the 2020 Audit Findings by reviewing the Governance Letter, Management Comments Letter and Financial Statements with committee members. He asked Mr. Davis to offer the Board details regarding the presentation of the 2020 audit of the Board's financial statements. Mr. Davis said that the auditor's opinion of the Board's financial statements was a Clean Opinion which is the highest level for audit findings. He conveyed that the audit indicated the Board's net position is strong with an increase over 2019 in reserve operating capital. Mr. Davis offered detailed information on the Board's assets, liabilities and Preneed Recovery Trust fund balances as well as 2020 revenues and expenditures. He noted that the audit resulted in two recommendations. The first recommendation was that the Board President resume monthly approval of the Executive Director's reimbursements and credit card expenditures with agreement by committee members. Mr. Blake said that the Executive Director should submit credit card expenses and reimbursements for 2020 for his review as Board President during that fiscal year. The second recommendation was that the Board's accounting firm, TJT, Inc. deposit the five-dollar portion of preneed contract filing fees to the Preneed Recovery Trust Fund on a monthly basis during the fiscal year. Brief discussion ensued. Mr. Blake offered a motion for the Board's action on the 2020 Audit.

On a motion by Mr. Blake and a second by Mr. Herndon, the Board voted unanimously to recommend acceptance of the 2020 Audit of Financial Statements as presented.

Mr. Blake then invited Mr. Davis to review the monthly financial statements for the period ending February 2021. Mr. Davis asked members to review the current assets listed on the Statement of Net Position and highlighted the balances for the Enterprise Fund and the Preneed Recovery Trust Fund. Mr. Davis stated that the Enterprise Fund showed an increase over the 2020 balance at \$1,564,534.58 compared to \$1,446,441. He reported that the Preneed Recovery Trust Fund Balance at \$361,321.59 was an increase over the 2020 balance of \$330,348. Board members discussed the Fund balance and noted a difference between the balance reported by Thomas, Judy and Tucker compared to that noted by Bernard, Robinson & Company in the 2020 audit report. Mr. Blake asked that staff discuss the difference with Thomas, Judy and Tucker to pinpoint the Fund balance and noted how critical it is for the Board to know an exact amount for the balance. Brief discussion ensued.

Mr. Davis continued his report by highlighting the revenues and expenditures on the Statement of Revenues and Expenses. He noted that the total revenue collected since January 1, 2021, as a percentage of total budget was 48.3% compared to 43.5% for the same period in 2020. He reported that at the end of February, the total expenditures as a percentage of total budget would be expected at 16% and said that the actual expenses for the end of February were slightly higher at 17.5% compared to 17.1% for the same period in 2020. Members briefly discussed the monthly financial reports, and Mr. Blake offered a motion.

On a motion by Mr. Blake and a second by Dr. Lyons, the Board voted unanimously to recommend approval of the financial reports for the period ending February 2021 as presented.

Mr. Blake then asked Mr. Davis to present the next agenda item concerning a staff proposal for the investment of Board funds. Mr. Davis said that the Board currently has approximately \$150,000 invested in 10 Certificates of Deposit with First Horizon Bank at .03% interest. He said that recent discussions with the bank's investment manager offered other options for the Board's consideration in other investment strategies with high yields on interest. Mr. Davis highlighted the contents of an Executive Summary he prepared which offered either a Fixed Annuity or a Fixed Income Model as alternatives to Certificates of Deposit. He explained the degree of risk, FDIC coverage for risk mitigation, and the financial instruments that would be the basis for investment. Mr. Davis stated that the Fixed Annuity option would enable investments for different terms at different interest rates and noted that the investment manager

recommended “laddering” as a strategy for maximizing the yield on invested funds. Mr. Davis explained that laddering for the Fixed Annuity meant investing funds in 3-year, 5-year and 7-year terms with progressively higher interest rates. Brief discussion ensued. Mr. Blake expressed concern with any investments not subject to FDIC protection. Mr. Brown and Mr. Watson said that the Board should continue to explore other options for maximizing the return on the Board’s investment of funds.

On a motion by Mr. Blake and a second by Mr. Saunders, the Board voted unanimously to request that staff continue to explore options for investments and to determine other viable recommendations for future consideration.

Mr. Blake then said that Mr. Davis would be reporting on a human resources issue. Mr. Davis informed the Board that he had accepted the resignation of a full-time staff member after three consecutive days of unauthorized and unapproved leave. He explained that the Board’s policy governing these kinds of voluntary resignation occur when an incumbent employee fails to contact the employer for three consecutive days of absence from work. He noted that this policy is in effect for General Government agencies in North Carolina.

Mr. Blake thanked Mr. Davis for the information and asked members if there were other questions regarding the Committee’s report to the Board. None were offered, and Mr. Brown recognized Mr. Watson for the Preneed Committee Report.

Preneed Committee Report

Mr. Watson reported that the Committee convened via conference call on March 31, 2021, to consider the following agenda items:

- P21-0003
- P21-0006
- P21-0007
- Requests from two different funeral establishments for waivers of a pre-need bond

Mr. Watson presented pertinent information regarding each case to the Board along with the Committee’s recommendations for each one with further explanation as needed from Catherine Lee, General Counsel. Mr. Watson said that the Committee recommended approval in P21-0003 and P21-0007 because the requests were compliant with the Board’s statutes and rules governing reimbursement from the Preneed Recovery Trust Fund. Regarding P21-0006, Mr. Watson said that the Committee was not recommending approval of the claim because the preneed contract in question remains active and funded. The complainant is therefore not entitled to any refund of the initial purchase price for the contract since it continues in effect. Mr. Blake questioned whether or not insurance companies require that policies issued for Medicaid spend down must be standard rather than inflation-proof. Mr. Lisenbee said that statutes do not impose such a requirement. Brief discussion ensued.

Mr. Watson continued his report and said that the Committee had discuss two requests for preneed bond waivers and that the funeral establishments in question had provided current balance sheets showing solvency. He reported that the Committee recommended that the Board approve the two waiver requests. Mr. Watson said that he was bringing the Committee’s recommendations to the Board in the form of a motion.

Upon a motion by Mr. Watson and a second by Mr. Hilderbrand, the Board voted unanimously to accept the Preneed Committee’s recommendations as presented.

Public Hearing: Administrative Rules

Mr. Brown announced at 9:56 a.m. that the Board would conduct a Public Hearing to receive any public comment for two proposed administrative rules:

- 21 NCAC 34D .0302, To remove the notary requirement on the submission of the Preneed Annual Report.
- 21 NCAC 34A .0119, To set forth the process by which the Board shall deliberate and render rulings on disciplinary proceedings.

Without public comment offered, Mr. Brown adjourned the Public Hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 150B, Article 2A of the North Carolina General Statutes. Mr. Brown continued the meeting and recognized Mr. Herndon for 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 and Dr. Lyons were recusing themselves from C21-0011.

Dismissals

- C21-0008 C21-0014 C21-0015 C21-0018 C21-0022 C21-0023 C21-0026

Letters of Caution

- C21-0017 C21-0020 C21-0021 C21-0027

Notices of Hearing

- C21-0010/M21-0026 C21-0011 C21-0024

Mr. Herndon invited any questions or comments from Board members. Brief discussion ensued.

Upon a motion by Mr. Herndon and a second by Mr. Saunders, the Board voted in the majority to adopt the recommendations from the Disciplinary Committee as presented with the exception of C21-0011.

Upon a motion by Mr. Watson and a second by Mr. McCormick, the Board voted in the majority to adopt the recommendations from the Disciplinary Committee on C21-0011. Mr. Herndon and Dr. Lyons recused.

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

Executive Director’s Report

Mr. Davis reported on the following topics:

- Preneed Annual Report

Mr. Davis reported that staff are reviewing preneed annual reports from licensed preneed establishments and working to resolve concerns, omissions, or questions concerning balances reported.

- Mandatory Reports

Mr. Davis provided the Board an overview of mandatory reports that staff are required to complete for various agencies and organizations. He noted that it was important for the Board to know the range, depth, and scope of information reported to external agencies.

Child Support Services Report	NC DHHS
Unemployment Insurance Audit	The Hartford Insurance Co.
Occupational Employment Survey	NC Dept of Commerce
NC Bold OLB Data Base Update – The Red Book	NC Dept of Commerce
Collections Cost Worksheet – GS 115C-457	OSBM
Annual Fee Report - GS 143C	OSBM
Annual Accounts Receivable Report	Office of the State Controller
Civil Penalties and Fines Report	OSBM
Annual Census and Year End Report	Principal/401K
Licensing Software Survey	NC Dept of Public Safety
Employment and Payroll Survey	NC Dept of Commerce
Internal Controls Assessment	Office of the State Controller
Annual Report of Income and Expenses	OSBM
93B Report	General Assembly; State Auditor; Attorney General
Comprehensive Report on Licensure and Regulations	The Conference

- Reported that he had completed the State of NC Master Employee Dishonesty and Crime Coverage Policy application for The NC Association of Insurance Agents
- Reported that he had an inquiry from the NC Alcohol and Law Enforcement agency regarding destruction of controlled substances in crematories
- Reported that he had an inquiry from a licensee regarding the disinterment of remains from a green burial
- Reminded Board members that Statements of Economic Interest due April 15, 2021. Mr. Davis provided SEI forms for members to complete and agreed that he would mail those to the NC State Ethics Commission.

Mr. Blake asked Mr. Davis if he had information regarding the recent announcement from the U.S. Federal Emergency Management Agency [FEMA] regarding funeral assistance for families during the COVID pandemic. Mr. Davis said that he was aware of the program but had not seen any recent announcements about it. Mr. Blake asked Mr. Davis to post the information on the Board website to assure communication to licensees and others logging onto the website.

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: 66

Pending Investigation: 27

Pending Review by Disciplinary Committee: 2

Pending Dispositive Action: 16

Pending Hearing: 18

Post-Hearing: 0

Other: 3

New files opened since last Board meeting: 25

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: 16

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 10

Pending Investigation: 5

Pending Dispositive Action: 5

Preneed Recovery Fund Claims received since last Board meeting: 5

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

Preneed Recovery Fund Claims reviewed by Committee since last Board meeting: 3

Ms. Lee invited any questions regarding the legal report. Brief discussion ensued.

Ms. Lee continued her report by reporting that Nichols, Choi and Lee continue to monitor legislative activity in the NC General Assembly for any bills introduced with prospective impact on occupational licensing boards. She reported that one such bill amends G.S. 93B with regard to reciprocity of licensure and that this legislation is pending in the Senate Rules Committee. She also reported that Senate Bill 513 amends certain provisions of G.S. 150B to update the process for legislative review of administrative rules. Ms. Lee continued and apprised the Board that the NCBFS had submitted a report to the General Assembly regarding provisions adopted for regulatory flexibility as required by Session Law 2020-97. She concluded her legislative update by reporting that House Bill 29 would require Occupational Licensing Boards to use the federal SAVE system to check the immigration status of applicants for licensure. She noted that this bill was assigned to the House Judiciary Committee. Brief discussion ensued.

Ms. Lee then reported on the status of administrative rulemaking and reminded the Board that it could consider whether or not it wished to adopt the temporary rules discussed in earlier Board meetings regarding refrigeration and temporary off-site storage of decedents. She acknowledged that the Board had received a comment from Service Corporation International [SCI-corp] regarding these rules. She explained that the comments suggested deletion of references to a "state of emergency" as the condition for invoking the rules. She noted that the language in the temporary rules regarding a "state of emergency" was appropriate justification for the adoption of emergency rules regarding refrigeration and temporary off-site storage of decedents and should be retained in support of adopting temporary rules. She noted, however, that should the Board wish to initiate permanent rulemaking on these rules, then such references to "states of emergency" could be removed. Mr. Herndon indicated support for initiating permanent rulemaking, and Ms. Lee acknowledged that further action would be at the Board's discretion. Members discussed the process for temporary and permanent rulemaking on the rules pertaining to

refrigeration and temporary off-site storage of decedents. Mr. Blake agreed with the support for initiating permanent rulemaking but wanted to assure that the references to "state of emergency" were removed. Members continued their discussion. Ms. Lee noted that the two issues for the Board's consideration were to determine if it wished to make any changes to the proposed temporary rules and then to determine whether or not to initiate permanent rulemaking. She noted that the "state of emergency" language should remain in the temporary rule but could be removed if the Board elected to initiate permanent rulemaking. Additional discussion ensued.

Upon a motion by Mr. McCormick and a second by Dr. Lyons, the Board voted in the majority to direct General Counsel to proceed with temporary rule making for 21 NCAC 34B .0707 and 21 NCAC 34C .0202 including language requiring a "state of emergency" when invoked. Mr. Blake voted nay.

Members continued their discussion of the administrative rulemaking process and further action concerning the two rules regarding refrigeration and temporary off-site storage of decedents. Mr. Herndon asked if a funeral establishment could seek temporary storage of decedents in the absence of a declared state of emergency. Ms. Lee indicated that such temporary storage arrangements would depend on the particular circumstances and would have to be decided on a case-by-case basis. Mr. Brown and Mr. Herndon questioned how this information would be communicated to funeral establishments, and Ms. Lee explained that the Board's decision to adopt or amend rules are subject to proper posting requirements and communication on the Board's website.

Mr. Brown continued the meeting and asked for any Old Business items. None were offered. He then asked for any New Business items, and Mr. Herndon offered a motion that the Board initiate permanent rulemaking for 21 NCAC 34B .0707 and 21 NCAC 34C .0202 regarding refrigeration and temporary storage of decedents.

Upon a motion by Mr. Herndon and a second by Dr. Lyons, the Board voted unanimously to initiate permanent rulemaking for 21 NCAC 34B .0707 and 21 NCAC 34C .0202 to include the removal of references to a "state of emergency" in the rule text.

Mr. Brown declared a recess at 10:50 and noted that the Board would meet in closed session when it reconvened to discuss a matter protected by attorney-client privilege.

Mr. Brown reconvened the Board meeting at 11:01 a.m. and invited a motion for closed session.

Upon a motion by Mr. Watson and a second by Mr. McCormick, the Board voted unanimously to convene in closed session to discuss a matter protected by attorney-client privilege pursuant to the requirements of NCGS 143-318.11.

Upon proper motion and vote, the Board returned to open session. Mr. Brown invited motions for the Board's consideration and action.

Upon a motion by Mr. Herndon and a second by Mr. McCormick, the Board voted unanimously to accept Consent Orders in the matter of M21-0001 and in the matter of M21-0025.

Mr. Brown asked if there were additional motions.

Upon a motion by Mr. Herndon and a second by Mr. Hilderbrand, the Board voted unanimously to authorize General Counsel to file a Motion for Contempt Proceedings in the general courts regarding Betty Barr Randolph.

Mr. Brown asked if there were other matters to come before the Board. Hearing none, he recessed the meeting and noted that the Board would reconvene at 1:00 p.m. for a scheduled disciplinary hearing.

Affirmation:



Don Brown, President



Steven Lyons, Secretary



Date