



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes
May 12, 2021, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on May 12, 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; and Catherine Lee, General Counsel.

Guests and Visitors: Mr. Chase Noble, Executive Administrator, NC Funeral Directors Association; Joshua Bugajski, Funeral Service Licensee; Sara Tessnair, Funeral Service Licensee.

Mr. Brown called the meeting to order at 9:01 a.m. and asked Mr. Blake to lead the Pledge of Allegiance. He then asked Mr. Herndon to offer the invocation. He proceeded by reading the Statement of Ethics and asked if any members would be recusing themselves. Mr. Hilderbrand said that he would recuse himself from disciplinary matters M21-0026 and C21-0010. 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 April 14, 2021, Board meeting.

Approval of Minutes

Upon a motion by Dr. Lyons and a second by Mr. Saunders, the Board adopted the April 14, 2021, minutes as presented by unanimous roll-call vote.

Mr. Brown recognized Mr. Blake for 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 9:00 a.m. on Monday, May 10, 2021 which included himself, Don Brown; and Chris Watson. Staff in attendance were Stephen Davis, Executive Director, and Amy Acord, Assistant Director.

Mr. Blake then asked staff to present the financial reports for March 2021. In reviewing the Statement of Net Position, Mr. Davis noted that the Trust Fund Balance demonstrated significant growth from the prior reporting period and exceeded the balance reported from the same period in 2020 as well. He reported that the Trust Fund balance for the same period in 2020 was \$338,536 compared to \$382,686 for 2021. Mr.

Davis continued his summary of the Statement of Net Position and reported that the Board's net position continued to show strength as had been determined by the recent audit with \$1,063,000 in the Unrestricted Fund Balance. Brief discussion ensued. Mr. Davis noted that the accountants had made an adjustment in revenues from cremation fees paid in January for cremations done in December. He said that the \$57,810.00 shown as Cremation Fees Receivable in the Prior Period column had been posted in 2021 rather than 2020, and the amount shown made a one-time adjustment to show that these funds were for 2020 cremations.

Mr. Blake then asked Mr. Davis to proceed with a summary of the Statement of Expenditures and Revenues. Davis said that the revenue collections at the end of the First Quarter 2021 were at 52.7% of the total projected compared to 49.6% for the same period in 2020. He also pointed out that the Month to Date Actual collections shown for Cremation Fees was a negative balance which is likely attributed to closing out the online collections for fees through the new Cremations Portal on the Board's website. He concluded his summary by pointing out that at the end of the First Quarter 2021, the expenditures represented 26.3% of the projected budget which is slightly higher than the 25% benchmark for this reporting period. He said that keeping a vacant staff position open would generate lapsed salaries which would help minimize the possibility of a budget shortfall at the end of the fiscal year. Brief discussion ensued.

Mr. Blake asked if staff had received any further information from the accountants concerning the difference in the Trust Fund balance reported by the auditors during the recent annual audit of the Board's financial statements. The 2020 audit indicated a substantially higher balance in the Preneed Recovery Trust Fund than the balance shown on the Statement of Net position from the Board's accountants. Mr. Blake asked Ms. Lee if she had encountered a similar situation during her service as interim Executive Director. Ms. Lee stated that she had not but noted that the Board's financial system was different at that time than the current system.

Mr. Blake asked Mr. Davis to convey to the Board information discussed in committee regarding a staff vacancy. Mr. Davis reported that in March, a Funeral Program Specialist position became vacant when the incumbent failed to report to work without any notice for more than three [3] consecutive days. In such situations, the Board's human resources policy deems that absences of 3 consecutive days without proper notice is considered a voluntary resignation. Davis said that he did not plan to recruit for the position at this time so that the salary and benefits funds would lapse, thus creating reserve in the budget as a proactive measure in avoiding an overage in the 2021 budget at the end of the fiscal year.

Mr. Blake then said that he was recommending that the full board approve the Committee's recommendation for approval of the March financial reports.

Upon a motion by Mr. Blake and a second by Dr. Lyons, the Board voted unanimously to accept the March financial reports as presented.

Mr. Brown then asked Mr. Watson to present the Preneed Committee report.

Preneed Committee Report

Mr. Watson reported that the Preneed Committee met on May 5, 2021 by conference call to discuss and consider the following claims against the Preneed Recovery Trust Fund:

P21-0004	\$720.00
P21-0005	\$720.00
P21-0008	\$2840.00
P21-0009	\$1995.00

Mr. Watson asked Ms. Lee to summarize the pertinent details in each case along with the recommendations from the Committee. Ms. Lee explained the basis for each recommendation and summarized the bases for the claims. She noted that in P21-0004 and P21-0005, the claimant had been fully reimbursed for any funds that had not been properly appropriated. She noted that the Committee was therefore recommending denial of these two claims. Ms. Lee summarized the remaining cases for the Board and noted that the Committee was recommending approval for each since the claimants had provided sufficient documentation to support their claims. Mr. Watson affirmed the Committee's recommendations and invited any questions from the Board. Mr. Blake asked if these claims were related to disciplinary issues concerning licensees or licensed establishments, and Ms. Lee indicated that the P21-0004 and P21-0005 were related to disciplinary matters. She noted that P21-0008 and P21-0009 resulted from the misappropriation of preneed funds. Brief discussion ensued.

On proper motion by Mr. Watson and a second by Mr. Blake, the Board voted unanimously to approve the Committee's recommendations pertaining to P21-0004, P21-0005, P21-0008 and P21-0009.

Mr. Watson concluded the Committee report by updating the Board on the 2020 Preneed Annual Report submissions. He said that 505 out of 633 active preneed establishments submitted their annual preneed reports using the online portal through the Board website. Brief discussion ensued.

Mr. Brown 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 staff for the following cases.

Dismissals

C21-0019 C21-0025 C21-0028 C21-0030 C21-0032 C21-0033 C21-0034
C21-0035 C21-0037

Letters of Caution

C21-0016 C21-0031 C21-0036 C21-0020 M21-0021 M21-0022 M21-0023
M21-0027 M21-0028 M21-0029

Other:

M20-0121 M21-0030 M21-0031 M21-0032 M21-0033

Mr. Herndon invited any questions or comments from Board members. Mr. Blake asked for more details regarding C21-0016, and Ms. Lee conveyed to the Board the details associated with the complaint which came from an investigator with a local county Medical Examiner's Office. Discussion ensued.

Upon proper motion by Mr. Herndon and a second by Mr. Hilderbrand, the Board voted unanimously to accept the recommendations from the Disciplinary Committee as presented.

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

Executive Director's Report

Mr. Davis reported to the Board on the following items.

The Board has completed and submitted to the proper agencies the mandatory annual 93B report on licensure and regulatory activities in 2020. Mr. Davis said that he would send each Board member a copy of the report.

Mr. Davis reported that he had noticed an increase in calls from licensees and funeral establishments requesting a supply of burial transmit permits. He expressed concern that the NC Department of Health and Human Services is directing callers to the Board for these forms. Members briefly discussed the procedures and requirements for burial transit permits and suggested that staff post information about the permits on the Board website or in the newsletter.

Mr. Davis said that Rep. Kelly Alexander has introduced HB773 which would require professional liability insurance by any licensee not employed full-time by a licensed establishment. He stated that he did not know the basis or rationale for this legislation but would explore further. Mr. Davis said that Ms. Lee would comment further in the Legal Report.

Mr. Davis noted that an editorial in the morning edition of the Raleigh News and Observer cited the funeral service profession as an example for corporate interests in America to follow for excellence in consumer service.

Mr. Davis reminded members that the inspections and licensure reports had been included in their meeting materials and that he would be glad to answer any questions about the information.

Mr. Davis concluded his report by proposing that the Board consider cancellation of the July meeting. He noted that Ms. Acord, Ms. Lee and staff from Digital Information Systems, Inc., would be traveling in the first two weeks of July and that the Board's past practice of cancelling the July meeting might be applicable in 2021 given these circumstances. Brief discussion ensued.

Upon a motion by Dr. Lyons and a second by Mr. McCormick, the Board voted in the majority to cancel the July Board meeting. Mr. Blake voted against the motion.

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: 73

Pending Investigation: 24

Pending Review by Disciplinary Committee: 2

Pending Dispositive Action: 24

Pending Hearing: 18

Post-Hearing: 2

Other: 3

New files opened since last Board meeting: 18

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: 24

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 7

Pending Investigation: 3

Pending Dispositive Action: 4

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 Committee since last Board meeting: 4

Ms. Lee continued her report and referenced HB773 that Mr. Davis discussed in the Executive Director's report. Ms. Lee said that she was not aware of the bill's intended purpose. Members discussed the issue in terms of prospective impact on licensees and asked Ms. Lee if the Board should issue a formal statement regarding its position on the proposed legislation. Ms. Lee indicated that it would be appropriate for the Board's legislative liaison to inquire about the impetus for the legislation, and the Board agreed that Mr. Davis should contact Rep. Alexander for additional information.

Ms. Lee continued her report by reminding the Board that a public hearing has been scheduled for June 16, 2021, at 10:00 a.m. at the Board office suite on the rules regarding refrigeration and temporary storage of decedents. She noted that the Board earlier implemented emergency rules regarding this issue along with a simultaneous request for temporary rules. The referenced hearing is for the Board to receive public comment on the adoption of 21 NCAC 34B .0707 and the amendment of 21 NCAC 34C .0202.

Mr. McCormick then asked Ms. Lee about the statutory requirements governing preneed contracts and for depositing preneed funds. He said that Rep. Boles had asked him to convey concerns to the Board regarding this issue. Members briefly discussed the issue, and Ms. Lee noted that Darrell Cagle, a staff Compliance Inspector, could offer details on the procedures for auditing preneed records when conducting an on-site inspection of a licensed establishment. She said that he would be arriving later for a hearing scheduled after the business session and could answer questions at that time.

In closing her report, Ms. Lee said that she would bring to the Board recommendations for the voluntary dissolution of two mutual burial associations but would do so later in the meeting.

Mr. Brown then announced at 10:38 that the Board work recess briefly and reconvene at 10:50.

Old Business

Mr. Brown asked if any members wished to offer Old Business items for the Board's consideration. Mr. Hilderbrand noted that the information regarding the reimbursement of funeral services for COVID victims through FEMA which was posted on the Board website was helpful and informative.

New Business

Mr. Brown invited any New Business items for the Board's consideration. Mr. Blake stated that the NC DAVE system for electronic death registration was working efficiently for the most part and noted the importance for information to be entered initially with as much accuracy as possible. He continued by reporting that amendments can be time-consuming and that once a licensee had affirmed the information on a death certificate, amending the information could prove difficult. He also noted a continuing concern regarding the physician's certification of death certificates and cited **Doctors Making Housecalls**, a statewide and multi-state medical group located in Durham, NC, which has only a single physician in North Carolina who can certify a death certificate. Mr. Blake said that this group's approach to certification of a death certificate creates delays and is challenging for licensees requiring timely turnaround to enable filing a death certificate within five (5) days from the date of death.

Mr. Blake also asked about any information from the Federal Trade Commission initiative on the review of its rules pertaining to funeral service. Neither staff nor other Board members were aware of any information from the FTC or others regarding this effort. Mr. Davis said that he would follow-up with The Conference to determine the status of the Funeral Rule review.

Mr. Brown then recognized Compliance Inspector Darrell Cagle so he could address the Board's questions concerning the inspections and audits of preneed records at licensed funeral establishment. Mr. Cagle summarized the inspections procedures for reviewing preneed records on-site at a funeral establishment and explained that the Preneed Annual Report enables cross-checking and verification of establishment preneed records if necessary. Mr. Saunders asked about preneed contracts lacking confirmation of changes in assignments or beneficiaries and whether such contracts would be considered pre-arrangements rather than an actual contract. Mr. Cagle indicated that the lack of confirmation in such cases is not a violation of the Board's statutes or rules and that he advises licensees to closely monitor their contracts and to follow-up with insurance companies to assure confirmation of beneficiary changes. Discussion ensued. Mr. Davis said that staff are aware of licensees' concerns regarding the preneed program particularly with respect to the timely deposit of trust funds and submission of trust-funded preneed contracts to the Board. He also noted the need to shift to a digital platform for processing preneed contracts and certificates of performance.

Mr. Brown thanked Mr. Cagle for his input and information about the inspection procedures for preneed records. Mr. Brown then invited a motion for closed session so that the Board could deliberate on pending disciplinary matters subject to attorney-client privilege pursuant to the requirements of NCGS 143-318.11.

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

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. McCormick and a second by Mr. Watson, the Board voted in the majority to accept a Consent Order in the matter of M21-0026/C21-0010, Phillips Funeral Service, Inc./Arnold Phillips. Mr. Hilderbrand recused from voting.

Upon a motion by Mr. Herndon and a second by Mr. McCormick, the Board voted in the majority to accept a Consent Order in the matter of R21-0025/M21-0014/C20-0064, Carolina Cremation Services. Mr. Hilderbrand and Mr. Blake voted nay.

Upon a motion by Dr. Lyons and a second by Mr. Jansen, the Board voted unanimously to accept an Order for Dissolution and Liquidation in the matters of M21-0045, Cox-Needham Mutual Burial Association and M21-0033, West Mutual Burial Association, Inc.

Upon proper motion and vote, the Board unanimously accepted a Consent Order in the matter of M21-0034, Blakely's Funeral and Cremation Service, LLC.

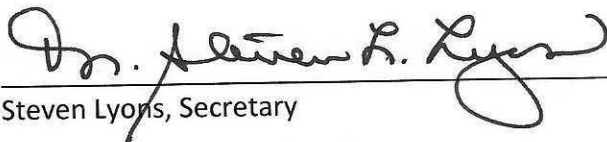
The Board recessed until 3:30 PM, at which time a hearing in the matter of Case No. M21-0018 was scheduled to begin. The Respondent failed to appear, and, upon proper motion, the Board voted to dismiss his appeal of his licensure denial. The Board further considered a recommendation from staff regarding disposition of Board Case No. C20-0032. Upon proper motion, the Board voted to dismiss Board Case No. C20-0032.

Without further business before the Board and upon proper motion and vote, the Board voted unanimously to adjourn.

Affirmation:



Don Brown, President



Steven Lyons, Secretary

6-9-2021

Date

Upon a motion by Mr. [Name] and a second by Mr. [Name], the Board voted to accept a Consent Order in the matter of [Case No. 03-0018] and to refer the matter to the Board's Committee on [Topic].

Upon a motion by Mr. [Name] and a second by Mr. [Name], the Board voted to accept an Order for Disposition and Resolution in the matter of [Case No. 03-0018] and to refer the matter to the Board's Committee on [Topic].

Upon proper motion and vote, the Board unanimously accepted a Consent Order in the matter of [Case No. 03-0018], [Name]'s Council and Extension Service, LLC.

The Board received until 1:30 PM, at which time a hearing in the matter of [Case No. 03-0018] was adjourned to begin. The respondent failed to appear and, upon proper motion and vote, the Board ordered the respondent to show cause why his appeal of the Board's decision should be reversed. The Board's decision regarding disposition of Board Case No. [Case No. 03-0018] is hereby affirmed. The Board's decision is hereby affirmed.

Without further business before the Board and upon proper motion and vote, the Board voted unanimously to adjourn.

Attest:



Dan Brown, President



Steven [Name], Secretary

10-10-2001

Date