



# NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes  
August 11, 2021, Board Meeting

*The North Carolina Board of Funeral Service met for a duly scheduled Board meeting at 9:00 a.m. on August 11, 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; 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; Tamora Darden, student.

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Mr. Brown called the meeting to order at 9:01 a.m. and asked Mr. Hilderbrand 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. Blake stated that he would recuse himself from voting in the matter of M21-0046. 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 June 9, 2021, and July 21, 2021, Board meetings.

### **Approval of Minutes**

Dr. Lyons reported that Board staff had sent the minutes to each member for their review prior to the meeting. He asked if there were any questions or changes to the minutes. Hearing none, Dr. Lyons offered a motion.

*Upon a motion by Dr. Lyons and a second by Mr. McCormick, the Board adopted the June 9, 2021, minutes as presented by unanimous vote.*

*Upon a motion by Dr. Lyons and a second by Mr. Jansen, the Board adopted the July 21, 2021, minutes as presented by unanimous 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 met on August 5, 2021, to review the financial reports for the period ending June 30, 2021, and to consider a proposed engagement letter through 2022 with Thomas, Judy & Tucker, the Board's outsourced accounting firm. Mr. Blake asked Mr. Davis to offer comments on the Committee's review of the financial reports.

Mr. Davis summarized the Statement of Net Position by reporting that the Preneed Recovery Trust Fund showed a balance of \$418,316.91 for the period ending June 30, 2021. He noted that the balance for the same period in 2020 was \$359,566.05 indicating significant growth in the Fund but also stating that there would likely be pending claims based on recommendations coming from the Preneed Committee on current and future claims. He continued his summary by highlighting Prepaid Expenses which typically include annual payments for insurance, association dues and similar organizational fees. He said that Prepaid Expenses are shown on the balance sheet for the time period the expense is incurred rather than the specific period when it is paid. As a result, the balance will fluctuate from one reporting period to another. He noted that the balance as of June 30, 2021, is consistent with the monthly balances shown for the prior 12-month reporting period. He continued and briefly discussed the Current Liabilities with particular attention on the Accounts Payable/Recovery Fund by explaining that the auditors adjust this amount each year based on projected claims presented against the Fund. In continuing his report, he affirmed that the Board continues to enjoy a strong net position based on the balance in the Unrestricted Fund Balance. Mr. Davis offered to answer any questions from members.

Mr. Davis then summarized the Statement of Revenues and Expenditures. He reported that revenues received as of June 30, 2021, were 71.4% of the total projected revenue for Fiscal Year 2021 compared to 66.5% for the same reporting period in 2020. He said that the total revenue collected as of June 30, 2021, was \$95,103.50 compared to \$83,695.93 which indicates that revenues for the fiscal year would hopefully meet or exceed the budgeted amount.

He continued by highlighting various line items and explaining that some balances are well above a 50% rate but would not show any further disbursements for the remainder of the year. He noted that he and Ms. Acord carefully and frequently monitor expenses and continuously analyze the rate of expenditures to identify opportunities to generate salary reserve and other savings. He explained that expenses for Accounting and Legal Services reflect a broader range of services based on the Board's needs for legal representation, promulgation of administrative rules, and expanded services in finance and accounting. He concluded his report by stating that the budget as of June 30, 2021, is at 53.6% which is slightly higher than what would typically be expected at the end of the second quarter. Members briefly discussed the Board's expenditures and acknowledged that it might be necessary for the Board to consider fee increases where feasible and appropriate. Mr. Blake said that Board staff were working on a proposal showing comparative fee data with other state boards and would plan to present recommendations in the 4<sup>th</sup> quarter.

*Mr. Blake offered a motion for approval of the financial reports for the period ending June 30, 2021. Mr. McCormick seconded the motion. By unanimous vote, the Board approved the financial reports for the period ending June 30, 2021.*

Mr. Blake continued his report to the Board and said that the Finance and Personnel Committee heard a presentation from Board staff recommending approval of a proposed engagement letter from Thomas, Judy & Tucker, the firm responsible for the Board's financial reporting and accounting management systems. He noted that the Board engaged this firm in early 2019 following significant concerns and challenges associated with the Board's in-house management and administration of finance and accounting systems prior to engaging Thomas, Judy & Tucker. He also apprised the Board of the efforts by Board staff in 2019 to identify a suitable firm and noted that a Request for Proposal was sent to ten (10) local and national accounting firms. He reported that several of these firms either did not respond to the RFP or did not accept outsourced accounts. He said that Thomas, Judy & Tucker was a local firm with a superior reputation and included an internal division dedicated exclusively to outsourced accounts. Mr. Blake disclosed that his wife is an employee of Thomas, Judy & Tucker but does not work or have any association with the Outsource Accounting Division which manages the Board's financial and accounting systems. He noted that her role within the firm is administrative support and has no authority or influence in the work of the Outsourced Accounting Division.

He then asked Mr. Davis to summarize the contents of the proposed engagement letter which would be effective through December 31, 2022. Mr. Davis summarized the Board's relationship with Thomas, Judy and Tucker, Inc. and overviewed the evolution of services that the firm provides in assuring that the Board's financial and accounting systems are fully compliant with GAAP standards and professional expectations for internal controls as defined by the NC Office of the State Controller and the Board's auditors, Bernard Robinson & Company. He noted that prior to engaging Thomas, Judy and Tucker, the Board had significant difficulty in assuring proper internal controls for the management and administration of its financial and accounting systems.

He reported that audits prior to 2018 included citations for significant weaknesses and/or material deficiencies. Since the engagement, the Board has had "clean" audits indicating that its financial and accounting systems are compliant with GAAP standards as well as expected internal controls. Mr. Davis reported that the fees for Thomas Judy and Tucker have increased since the first year of the engagement because of their greater involvement in preparing monthly reconciliation reports to document fees posted in the Board's automated licensing system with deposits to the Board's Enterprise Fund. He also noted that the Board approved a transition of its payroll systems to Thomas Judy and Tucker beginning in 2021 which also had impact on the fees charged.

Mr. Davis said that recreating a Financial Officer role on Board staff would require the recruitment and appointment of an Accountant II which is the mid-level accounting classification in the state's human resources system. By comparison, he noted that the Accountant I is a journey-level position and does not include managerial responsibility. Considering that an appropriate competitive salary would be the midpoint of the salary range for an Accountant II at \$63,552, Mr. Davis said that benefits would add an additional 45% to this annual rate of pay. Total compensation would then reach \$92,150 to assure the Board's ability to hire a competent, experienced accountant to oversee and manage the financial reporting and accounting systems for the Board. He noted that the budgeted amount for Thomas, Judy and Tucker is currently at \$50,000 annually.

Following a brief discussion regarding the proposed letter, Mr. Brown invited a motion.

*Upon a motion by Mr. Blake and a second by Mr. Herndon, the Board voted unanimously to approve the proposed engagement letter with Thomas, Judy & Tucker through December 31, 2022.*

Mr. Brown continued the meeting and asked Mr. Herndon to present the Disciplinary Committee Report.

**Disciplinary Committee Report**

Mr. Herndon stated that the Disciplinary Committee met on August 6, 2021, to consider and discuss cases and recommendations from General Counsel Catherine Lee for the following cases. He asked Ms. Lee for guidance on consideration of C21-0056 which Mr. Watson was to present but could not due to his absence. Ms. Lee said that the Board could consider holding that particular matter in abeyance until the September Board meeting. The Board agreed to wait until the September Board meeting to consider C21-0056.

**Summary Dismissals**

C21-0069

**Dismissals**

C21-0054      C21-0057      C21-0059      C21-0060      C21-0063      C21-0064

C21-0065

**Letters of Caution**

C21-0055      C21-0058      C21-0062      M21-0041      M21-0049      M21-0072

M21-0073      M21-0074      M21-0075

**Notices of Hearing**

C21-0038      C21-0050      C21-0056      M21-0071      M21-0078      M21-0079

**Other**

M21-0076      M21-0077

Mr. Herndon invited any questions or comments from Board members. Brief discussion ensued. Mr. Blake asked about the circumstances of C21-0050 and whether the current violations were similar to any prior violations by the establishment. Ms. Lee noted that this case will go to a hearing if the Board approves the Disciplinary Committee's recommendations and, as such, the Board cannot discuss the substance of the case outside of a Board hearing. Mr. Blake conveyed concern that prospective consent orders that might be negotiated would not acknowledge any prior violations of the Board's statutes or rules. Ms. Lee said that if a consent order is contemplated in the hearing, the Board would have an opportunity to question the respondents. Mr. Herndon asked if there were further questions. None were forthcoming.

*Upon a motion by Mr. Herndon and a second by Mr. McCormick, the Board voted in the majority to adopt the recommendations from the Disciplinary Committee as presented with the exception of C21-0056 which was held in abeyance until September and M21-0076 which will be discussed in closed session.*

Mr. Brown continued and recognized Mr. Blake for the Traineeship Committee Report.

### **Traineeship Committee Report**

Mr. Blake reported that the Traineeship Committee met by conference call on August 3, 2021, to discuss several topics concerning traineeship monthly reporting, report forms, the tiered discipline program, and the need for any changes to either statutes or administrative rules that govern the program. Mr. Blake said that an ongoing concern in the traineeship program is a chronic problem with trainees following prescribed instructions when completing their monthly reports. Mr. Blake asked Ms. Acord, who manages the traineeship program, for her feedback on key issues pertaining to trainees. She said that the primary issues for trainees based upon calls that she receives related to procedures for the state and national Board Examinations; the status of their application for a traineeship or individual licensure; and questions regarding traineeship renewal. Mr. Blake asked about trainees' submission of monthly work reports, and Ms. Acord said that all but ten [10] trainees are currently using the online submission option which is an effective and timely way to send their reports to the Board. She noted that some trainees make errors in their calculations of cases and hours.

Mr. Blake reported that a significant concern is the role of the Trainee Supervisor and the extent to which Trainee Supervisors are engaging with their trainees through continuous communication and oversight of their work. Ms. Lee affirmed that in some disciplinary hearings involving trainees, the Trainee Supervisor does not accompany the trainee. Members agreed that Ms. Lee should request that Trainee Supervisors attend such hearings along with the trainee under their supervision. Mr. Blake also suggested that information to trainees and their supervisors needs to emphasize the requirement for the approved Traineeship Supervisor to sign off on monthly reports that record trainee hours worked and cases completed. He said that he knew of cases when a licensee approved hours and cases although that individual was not the approved Traineeship Supervisor of record.

Discussion among members continued. Mr. Blake reported that the tiered discipline measures that the Board approved several years ago has proven highly effective in assuring timely and accurate submission of work reports. He asked Mr. Lisenbee about the responsibility of compliance inspectors for the review of trainee records during an onsite inspection. Mr. Lisenbee said that the compliance inspectors will review monthly and daily work reports. He explained that the compliance inspectors are an important resource for trainees when they have questions regarding compliance with statutes and rules.

In continuing his report, Mr. Blake said that the Committee asked staff to reformat the monthly work report forms and daily checklists to facilitate their accurate completion. Ms. Acord said that shifting secondary duties from the monthly report to the daily work report would enable trainees to focus on their primary duties in meeting the Board's requirements for cases and hours. Mr. Blake noted that the Committee discussed a proposal for amending 21 NCAC 34B .0103 to enable a registered supervisory to have more than one trainee under their supervision at a time. Mr. Saunders suggested that the traineeship terms for multiple trainees under a single supervisor be staggered to avoid undue burden on the registered supervisor.

Mr. Blake concluded his report by stating that the traineeship program is among the most important requirements for licensure, and he expressed confidence that North Carolina's program is among the strongest when compared to other states. He said that staff would be working on improvements and enhancements to the program to strengthen communication with trainees and their supervisors. Doing so will improve trainees' knowledge and understanding of their responsibilities and requirements as

trainees. He thanked Ms. Acord for her role in the administration of the program and again stated that the Committee's report to the Board was for information.

Mr. Brown thanked Mr. Blake for his report and then recognized Mr. Hilderbrand for the Preneed Committee Report.

### **Preneed Committee Report**

Mr. Hilderbrand reported that the Preneed Committee met on August 4, 2021, to review recommendations from General Counsel on P21-0012 and P21-0013. He summarized the primary circumstances in both cases and invited questions or comments. He said that the Committee was recommending that the Board approve the requests from claimants in both cases since they provided sufficient documentation to establish their eligibility for reimbursement from the Preneed Recovery Trust Fund. Brief discussion ensued. Mr. Brown invited a motion on the Committee's recommendations.

*Upon a motion by Mr. Hilderbrand and a second by Mr. Blake, the Board voted unanimously to approve the claims in P21-0012 in the amount of \$2,800 and in P21-0013 in the amount of \$2,886.81 as recommended.*

Mr. Hilderbrand continued his report by informing the Board of the revocation of two irrevocable preneed contracts. He noted that General Counsel had reviewed all relevant documentation in both cases and found that both were in compliance with NCGS 90-210.65( e)(1) regarding the revocation of irrevocable contracts when the beneficiaries relocate to another state and purchase another preneed contract. Mr. Hilderbrand said that Mr. Davis had approved the two requests based on staff recommendations and in accordance with the delegated authority previously given to the Executive Director by the Board. Mr. Hilderbrand said that this information to the Board concluded his report.

Mr. Brown recessed the meeting at 10:17 a.m. and reconvened at 10:31 a.m. He recognized Mr. Davis and asked him to present the Executive Director's Report.

Mr. Davis presented the following items to the Board for information and discussion:

- The International Conference of Funeral Service Examining Boards has announced their 118<sup>th</sup> Annual Meeting for February 23 and 24 in Houston, Texas. North Carolina has been awarded a delegate grant to pay travel costs for one Board Member or Staff Member to attend.
- The NC Funeral Directors Association will convene on Sunday, August 22<sup>nd</sup> through Tuesday, August 24<sup>th</sup> for their annual Conference & Exposition. Their CE offerings will include a presentation by the NC Vital Records Section on the EDR.
- The Board is currently conducting an election as prescribed by statute to fill two seats on the NC Crematory Authority. Terms for Mr. Robert Dodson and Mr. Michael Fulwood are expiring December 31, 2021.

- As required by General Statute, I have submitted the Board’s Annual Report to the NC Department of the Secretary of State on appointments to the Board from June 2020 to June 2021. I reported 4 appointees and identified them by Appointment Type and Gender as required.
- Staff submitted a self-assessment of the Board’s internal controls in administration, finance, and human resources to the NC Office of the State Controller

Mr. Davis concluded his report with a brief presentation of an issue that Rep. Jamie Boles raised in a letter [June 11, 2021] to him regarding the imposition of late fees for preneed contracts received past the 10-day submission deadline. Mr. Davis said that he had provided data on late fees for 2018-2021 [May] showing increases each year in these amounts. Mr. Davis noted that one of the expected outcomes from the implementation of the Board’s automated licensing management system in mid-2018 was improvement in the efficiency of tracking license fees and identifying late fees. Rep. Boles asked why the Board did not address the late fee issue using the regulatory flexibility allowed by legislation passed in 2020 in response to the COVID-19 pandemic.

Mr. Davis noted that the Board did waive certain requirements for the Continuing Education program and the payment of civil penalties pursuant to this legislation. The Board also promulgated an administrative rule allowing a general waiver of an administrative rule not otherwise required by statute in further response to the pandemic’s impact on licensees and consumers.

Mr. Davis shared with the Board the total number of preneed contracts received from 2019 through May 2021 and the percentage of late fees imposed as additional information on this issue. Following is the information he presented:

	2019	2020	2021	TOTALS
Total Contracts Received	22,084	20,836	10,599	53,519
Total Late Fees Imposed	\$8,650	\$11,325	\$5,775	25,750
Total Number of Late Fees	346	453	231	1,030
Late Fees as a Percent of Total Contracts	1%	2%	2%	2%

**Reasons for Late Fees: [Submitted Beyond the 10-day Statutory Limit]**

- Issues with U.S. Postal Service and erratic mail delivery
- Families Signing Contracts Beyond Contract Date
- Licensees Sending Preneed Contracts to the Board through a Third Party [Trust-Funded]

**Board Response:**

Advised in a communication to all licensees in April 2021 that they:

- Decline to send preneed contracts through a third party such as a financial institution
- Date the contract at the time the beneficiary signs
- Assure that contracts mailed to the Board are post-marked no later than the 10<sup>th</sup> day

Mr. Davis said that he appreciated Rep. Boles’ letters and the concerns he expressed. Members discussed these issues at length and agreed that situations created by a state of emergency whether by natural disaster, pandemic, or similar condition would trigger a review of deadlines and fees set by

statute or rule to determine an appropriate response through waiver or other regulatory flexibility allowed by law.

Mr. Brown then recognized Ms. Lee for the Legal Report.

### **Legal Report**

Ms. Lee reported the following activity to the Board:

#### **Disciplinary Matters**

Current Active Cases: 70

Pending Investigation:	26
Pending Review by Disciplinary Committee:	2
Pending Dispositive Action:	23
Pending Hearing:	10
Post-Hearing:	0
Other:	9

New files opened since last Board meeting: 37

Notices of Hearing sent since last Board meeting: 21

Consent Orders received since last Board meeting: 5

Cases reviewed by Disciplinary Committee since last Board meeting: 23

#### **Preneed Recovery Fund Claims**

Current Active Preneed Recovery Fund Claims	4
Pending Investigation	2
Pending Dispositive Action	2

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 Committee since last Board meeting: 2

Ms. Lee invited any questions from Board members. Hearing none, she then reported that she has been monitoring legislation introduced in the current session to determine any prospective impact on the Board. She said they there is no pending legislation with Board impact.

Mr. Brown thanked Ms. Lee for her report to the Board. He then asked for any Old Business items.

### **Old Business**

Ms. Lee said that the Board could consider whether to amend or adopt administrative rules that were subject to public hearings earlier in the year and had been approved by the Office of Administrative Hearings/Rules Review Commission as temporary rules. She indicated that she would proceed with permanent rulemaking if that was the Board's direction on the following:



**21 NCAC 34D .0302**, Preneed Annual Report. Amends this rule to enable licensees to complete the report certification without a requirement for notarization.

**21 NCAC 34A .0119**, Disciplinary Hearings. Proposed for re-adoption with substantive changes. Sets forth the process by which the Board shall deliberate and render rulings on disciplinary proceedings.

**21 NCAC 34B .0707**, Refrigeration. Proposed for adoption.

**21 NCAC 34C .0202**, Refrigeration. Amends existing rule pertaining to crematories to assure consistency in requirements for refrigeration as in 21 NCAC 34B .0707.

Discussion ensued. Mr. Blake asked about the requirements of NCGS 150B regarding the notification to respondents about options for a ruling as set forth in 21 NCAC 34A .0119. Ms. Lee stated that the Rules Review Commission had reviewed the proposed text for the rule and did not express objections. After brief discussion of the rules proposed for permanent rulemaking, Mr. Brown invited a motion.

*Upon a motion by Mr. McCormick and a second by Mr. Herndon, the Board voted unanimously to direct General Counsel to proceed with permanent rulemaking for the referenced rules.*

Mr. Brown asked for any New Business items.

#### **New Business**

Mr. Hilderbrand asked how much time is typically required for individual licensure. Ms. Acord summarized the licensure procedures and stated that the criminal history background check is usually a 4-week process. From the time of application to the time of licensure, this 4-week period could vary slightly but would be a typical timeframe given the need to wait for the criminal history report from the NC State Bureau of Investigation.

Mr. Blake asked if staff advises or notifies trainees on the timing for their resident traineeship certification to avoid any lapses in their ability to continue their work in professional funeral service. Ms. Acord summarized the communications and related procedures for trainees to assure their awareness of timeframes. She also referenced the traineeship information that is sent to trainees, their supervisors and which is posted to the Board website.

Mr. Brown thanked Board members and staff for their comments and attention on all matters raised in the business session. He recessed the meeting at 11:51 and said that the Board would need to meet in closed session to consider matters requiring attorney-client confidentiality pursuant to NCGS 143-318.11.

*Upon a motion by Mr. McCormick and a second by Mr. Hilderbrand, the Board voted unanimously to meet in closed session to consider the matter of M21-0076, proposed Consent Orders and to hear updates on pending litigation.*

Upon proper motion, the Board reconvened in open session. Mr. Brown invited any motions pertaining to the disciplinary matters discussed in closed session.

*Upon a motion by Mr. Herndon and a second by Dr. Lyons, the Board voted unanimously in the matter of M21-0076 to approve respondent's application for an establishment license and directed General Counsel to pursue appropriate relief from the general courts against the respondent funeral home and a non-licensee engaged in unlicensed funeral practice at respondent's former funeral home.*

*Upon a motion by Mr. Hilderbrand and a second by Mr. McCormick, the Board voted unanimously to approve Consent Orders in settlement of C20-0047, M21-0059, M21-0060, M21-0061, M20-0062, and M21-0064.*

Mr. Brown thanked the Board for their deliberations and stated that the Board meeting would continue with a disciplinary hearing in the matter of M21-0043. At the conclusion of the hearing and upon proper motion, the Board convened in closed session to deliberate. Upon proper motion, the Board returned to open session. Mr. Brown invited a motion pertaining to the matter of M21-0043.


*Upon a motion by Mr. Blake and a second by Mr. McCormick, the Board voted unanimously to approve Respondent's application for resident traineeship in the matter of M21-0043.*

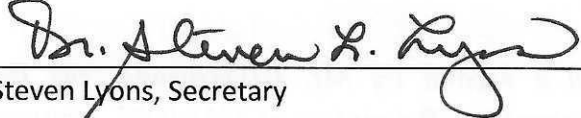
Mr. Brown continued the hearings and invited opening statements from counsel for the plaintiffs and respondents in the matter of M21-0046. At the conclusion of the hearing and upon proper motion, the Board convened in closed session to deliberate. Upon proper motion, the Board returned to open session. Mr. Brown announced that the Board would continue the hearing until the September Board meeting and would not issue a formal ruling until that time. He noted that the Respondent thus far failed to meet his burden of proof in the matter, but the Board would consider additional substantiation when the matter is heard at a later date.


Without further business before the Board, Mr. Brown invited a motion for adjournment.

*Upon a motion by Mr. Jansen and a second by Mr. McCormick, the Board adjourned the meeting.*

Affirmation:

  
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Don Brown, President

  
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Steven Lyons, Secretary

  
\_\_\_\_\_  
Date