



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes
September 8, 2021, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on September 8, 2021, at the NC Board of Funeral Service office suite at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605.

Present: Don Brown, President; Steven Lyons, Secretary; Mark Blake; Steve Herndon; Hubert Saunders; Darrell McCormick; and Thomas Hilderbrand. Mr. Jansen was absent.

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; and Mr. Jerrold V. Wheeler, Funeral Service licensee.

Mr. Brown called the meeting to order at 9:09 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. 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 August 11, 2021, Board meeting.

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. Watson, the Board adopted the August 11, 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 September 2, 2021, to review the financial reports for the period ending July 30, 2021. He then asked staff to summarize the financial

reports. Mr. Davis reported that the Statement of Net Position continues to affirm the Board's strength in net position with \$1,063,146.84 in the Unrestricted Fund Balance which represents a 7-8 month reserve in operating capital. He also noted that the Preneed Recovery Trust Fund balance declined slightly compared to the prior reporting period at \$417,981.91 compared to \$418,316.91. He said that the difference in these balances resulted from payment of approved preneed claims. He also noted that the Fund balance for the same period in 2020 was \$349,410.46. Continuing his summary, Mr. Davis explained the variations in the Prepaid Expenses balances and stated that the variation from the prior reporting period to the current period was not significant. He concluded his summary by reporting that all other fund balances as well as assets and liabilities showed little change from the prior reporting period. He offered to answer questions or provide further information.

Without questions from the Board, Mr. Davis continued by summarizing the Statement of Revenues and Expenditures. He discussed the revenue received to date from licensure fees as well as fees from other sources. He reported that the revenue collection rate for the reporting period ending July 2021 showed 78.5% compared to 71.9% for the same period in 2020. He reminded members that the Board's annual revenues have likely reached a ceiling but increases in preneed contract filing fees could indicate that collections would exceed the budgeted amount of \$1,513,038. He continued by summarizing the operating expenses and noting that costs shown year-to-date are slightly elevated in response to increases in legal fees resulting from litigation and hearings; increased postal rates; and increased costs for employee health insurance. He noted that the costs as a percentage of the total budget expended as of July 2021 was at 62.5% compared to 57.1% for the same period in 2020. Mr. Davis reported that he and Ms. Acord continue to closely monitor monthly expenses to identify opportunities for cost savings but alerted the Committee that expenditures could exceed revenue without additional funds received from license fees and other revenue sources for fiscal year 2021.

Mr. Blake invited any questions from Board members regarding the financial reports. Mr. Brown invited a motion for approval of the financial reports for the period ending July 2021.

Mr. Blake offered a motion for approval of the financial reports for the period ending July 31, 2021. Mr. McCormick seconded the motion. By unanimous vote, the Board approved the financial reports for the period ending July 31, 2021.

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 September 3, 2021, to consider and discuss cases and recommendations from General Counsel Catherine Lee for the following cases

Dismissals

C21-0066 C21-0070 C21-0071 C21-0074 C21-0080

Letters of Caution

C21-0061 C21-0068 C21-0072 C21-0075 M21-0080 M21-0082

M21-0083

Notices of Hearing

C21-0067/M21-0089

M21-0081

M21-0084

M21-0085

M21-0086

In his presentation, Mr. Herndon noted that the matter C21-0070 which was recommended for dismissal would be removed from consideration. He noted that the complainant said that he did not receive communication inviting his rebuttal to the respondent funeral home's response to the complaint. Mr. Herndon asked if there were questions regarding the decision regarding C21-0070 or any other cases referenced in his report. Hearing none, he proceeded.

There was a brief discussion regarding the specific allegations regarding C21-0061, and General Counsel noted that the respondent crematory was currently on probation for another issue. Brief discussion ensued.

Mr. Herndon continued and asked if there were other questions. Brief discussion ensued regarding C21-0075. It was noted that the complainant in this matter may pursue civil action as an appropriate remedy in resolving concerns regarding proper procedure in contracting preneed arrangements on behalf of beneficiaries under a guardianship.

Discussion on the cases presented in the Disciplinary Report continued. Members briefly discussed the matter M21-0086 concerning applicant for registration as a resident trainee. Mr. Herndon noted that General Counsel was deferring a recommendation on this matter to the Disciplinary Committee given the circumstances associated with the applicant's criminal history. Mr. Herndon and Dr. Lyons were in agreement to recommend approval of the application given the time that has elapsed since the commission of any crimes and the applicant's documentation showing rehabilitation and evidence of good moral character. The Committee and General Counsel agreed that the risk for public harm by approving the application for registration as a trainee was low.

Mr. Herndon asked if there were further questions regarding the Disciplinary Committee report to the Board. He noted that Mr. Watson would be presenting a Supplemental Report for the Board's consideration since he and Dr. Lyons had recused themselves on the matter under consideration. Mr. Brown invited a motion on Mr. Herndon's report to the Board.

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

Mr. Watson then presented a Supplemental Disciplinary Report in the matter of C21-0056 and noted the following concurrent cases: C19-0034, C19-0041, C20-0033, C20-0038, C20-0040, M20-0111, C20-0084, C20-0090, and C21-0011. Mr. Watson presented a summary of the case and stated that the recommendation was for General Counsel to issue a Notice of Hearing since there was sufficient evidence to suggest that the Respondent may have committed violations of statutes and rules governing the practice of funeral service.

Mr. Watson asked if there were questions. Hearing none, Mr. Brown invited a motion on the recommendation.

Upon a motion by Mr. Watson and a second by Mr. Hilderbrand, the Board voted unanimously to adopt the Supplemental Disciplinary Report recommendation that General Counsel issue a Notice of Hearing.

Mr. Brown continued the meeting and recognized Mr. Davis for the Executive Director's report.

Executive Director’s Report

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

- He and Ms. Acord attended the recent Annual Conference & Exhibition by the NC Funeral Directors Association in Durham, NC, on August 23 and 24. He reported that the Board had prepared a tabletop exhibit of the history of funeral homes depicting a number of buildings and vehicles from past years in the evolution of funeral service in North Carolina. He also reported that Board President Don Brown delivered a Report from the NC Board of Funeral Service which was well-received.
- Mr. Davis said that he had attended a meeting convened by Rep. Jamie Boles regarding the Electronic Death Registration System [EDRS] in response to concerns regarding the implementation deadline set for January 1, 2022. He was joined by the Board President Don Brown and the immediate past presidents from 2019 and 2020 to represent the Board. He noted that the primary purpose of the meeting was a discussion with the NC Medical Board and the NC Department of Health and Human Services regarding the proposed implementation deadline.
- Mr. Davis reported that he had received a request from Rep. Jamie Boles for metrics and other comparative data regarding reciprocal licensure. He said that he provided Rep. Boles with resource information regarding reciprocal licensure from The International Conference of Funeral Service Examining Boards which produces a comprehensive Regulations in Funeral Service & Licensing and which outlines member states’ regulations regarding reciprocal licensure.

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: 55

Pending Investigation:	20
Pending Review by Disciplinary Committee:	2
Pending Dispositive Action:	18
Pending Hearing:	11
Post-Hearing:	0
Other:	4

New files opened since last Board meeting:	13
Notices of Hearing sent since last Board meeting:	3
Consent Orders received since last Board meeting:	1
Cases reviewed by Disciplinary Committee since last Board meeting:	18

Preneed Recovery Fund Claims

Current Active Preneed Recovery Fund Claims	6
Pending Investigation	5
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: 0

Ms. Lee invited any questions from Board members. Hearing none, Mr. Brown thanked Ms. Lee for her report to the Board. He then asked for any Old Business items.

Old Business

No Old Business items were reported.

Mr. Brown asked for any New Business items.

New Business

Mr. Davis presented to the Board a staff recommendation to extend the current waiver on certain continuing education rules regarding online course instruction and credit. He noted that the Board in 2020 had approved a resolution to waive the limitation of no more than 2 hours credit for online instruction in response to regulatory flexibility legislation resulting from the Coronavirus pandemic. He said that the waiver expired March 31, 2021, and that licensees' feedback on the Board's action had been extremely positive. He noted that the waiver helped licensees acquire the CE credits necessary for license renewal and proposed that the Board approve a similar waiver under its General Waiver administrative rule. Discussion ensued.

Upon a motion by Mr. Herndon and a second by Mr. Hilderbrand, the Board voted unanimously to approve a General Waiver on the limitations for online CE credit for the period April 1, 2021 through March 31, 2022.

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 11:27 and said that the Board would need to meet in closed session at 1:00 p.m. to consider matters requiring attorney-client confidentiality pursuant to NCGS 143-318.11.

The Board reconvened at 12:57 p.m. Mr. Brown invited a motion for closed session to consider matters subject to attorney-client privilege.

Upon a motion by Dr. Lyons and a second by Mr. Watson, the Board voted unanimously to meet in closed session to consider the matters M20-0057 and M21-0034 as well as prospective 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. Watson and a second by Mr. McCormick, the Board voted unanimously to approve a Consent Order in settlement of M21-0057.

Upon a motion by Mr. McCormick and a second by Mr. Saunders, the Board voted unanimously to direct General Counsel to pursue injunctive relief in the General Courts regarding an unlicensed individual engaged in the unlawful transport of decedents.

Upon a motion by Mr. Blake and a second by Mr. Watson, the Board voted unanimously to grant an extension of time to the Respondent funeral home in the matter of M21-0034 to implement the terms of a Consent Order.

Mr. Brown thanked the Board for their deliberations and stated that the Board meeting would continue with a disciplinary hearing in the matter of M21-0042. 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 M21-0042.

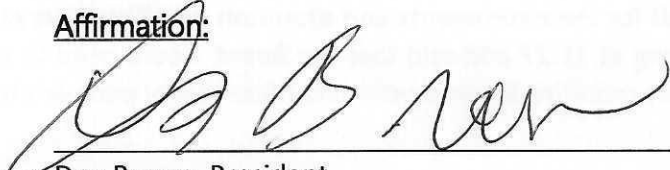
Mr. McCormick moved that the Board approve Respondent's application for resident traineeship in the matter of M21-0042 effective October 1, 2021. Dr. Lyons offered a second to the motion.

Prior to the vote, Mr. Herndon asked why the effective date was October 1, 2021, rather than September 1, 2021. Brief discussion ensued. Mr. McCormick accepted an amendment to his motion to revise the effective date from October 1, 2021, to September 1, 2021.

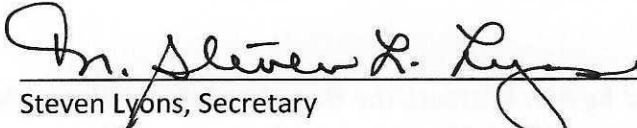
Upon a motion by Mr. McCormick and a second by Dr. Lyons, the Board voted unanimously to approve Respondent's application for resident traineeship in the matter of M21-0042 effective September 1, 2021.

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


Affirmation:



Don Brown, President



Steven Lyons, Secretary



Date