



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes
October 13, 2021, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on October 13, 2021, at the NC Board of Funeral Service office suite at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605.

Present: Don Brown, President; Chris Watson, Vice-President; Steven Lyons, Secretary; Mark Blake; Steve Herndon; Hubert Saunders; Robb Jansen; and Thomas Hilderbrand. Mr. McCormick 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: No guests or visitors were in attendance.

Mr. Brown called the meeting to order at 9:04 a.m. and lead members and staff in a recitation of 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 asked if any guests were present and if they wished to offer any public comment. No guests or visitors were in attendance.

Mr. Brown continued and asked Dr. Lyons to present the minutes from the September 8, 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. Saunders, the Board voted to adopt the September 8, 2021, minutes as presented.

Mr. Brown recognized Mr. Blake for the Finance and Personnel Committee report.

Finance and Personnel Committee Report

Mr. Blake opened his report by announcing the recent death of Mr. James Edgar "Eddie" Pugh, Vice President and Secretary of Pugh Funeral Home in Asheboro, NC. Mr. Pugh is a former President of the NC

Funeral Directors Association and a former Board member of the National Funeral Directors Association. Mr. Blake noted Mr. Pugh's contributions and commitment to professional funeral service in North Carolina. Mr. Blake continued and reported that the Finance and Personnel Committee convened by conference call on Tuesday, October 12, 2021, and reviewed the financial reports for the reporting period ending August 31, 2021. He asked Mr. Davis to summarize the reports for the Board's information and consideration.

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-to-8-month reserve in operating capital. He explained in detail how the Board's decisions could impact the Unrestricted Fund Balance and noted that expenditures from this Fund could affect the Board's net position. He then discussed the Preneed Recovery Trust Fund balance which declined slightly compared to the prior reporting period at \$415,838.99 compared to \$417,981.91. 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 \$339,381.34.

He concluded his summary of the Statement of Net Position 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. Mr. Jansen asked if there had been further study and analysis of the Board's current investments in Certificates of Deposit. He said that the Department of the State Treasurer administers and manages an Ancillary Governmental Participant Investment Program for various state agencies, boards and commissions. He indicated that this particular program might offer the Board an appropriate, feasible alternative to CD's in terms of maximizing interest and the yield on its investment. Mr. Davis noted his recommendation and said that he would follow-up with a call to discuss details and determine if the Board is an eligible organization.

Mr. Davis continued by summarizing the Statement of Expenditures and Revenues. He spoke at length on the revenues collected thus far in the fiscal year and drew the Board's attention to the balances shown for Total Revenues Year To Date [Budget Used] which were at 84.8% compared to 78% for the same reporting period in 2020. He expressed optimism that revenue collections for FY2021 would continue to pace ahead of the prior fiscal year and noted increased balances for Preneed Contracts and Cremation Fees.

He said that the operating expenses for the reporting period are elevated compared to the same period in 2020 in response to increases in legal fees resulting from litigation, administrative rulemaking and hearings; increased insurance premiums; 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 August 31, 2021 was at 71% compared to 65.1% 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.

Brief discussion ensued. Mr. Blake offered a motion to recommend approval of the August financial reports.

Upon Mr. Blake's motion and a second by Mr. Herndon, the Board voted to approve the financial reports for the period ending August 31, 2021.

Mr. Blake concluded his report by informing the Board that the Finance and Personnel Committee had received a report from the Executive Director regarding a pending human resource matter. He stated that he wanted the Board to be aware of the issue and would keep the Board apprised of further developments. Mr. Davis briefly reviewed the Board's policy concerning human resource matters

pertaining to job performance or conduct issues concerning staff and offered assurance that his long-term experience as a former State Personnel Director and State Personnel Commissioner prepared him well for the proper and professional management of such issues. He also recognized that Ms. Acord holds certification by the national Society for Human Resource Management as an HR Professional.

Mr. Brown thanked Mr. Blake and Mr. Davis for their comments and continued the meeting by asking Mr. Watson to present the Preneed Committee report.

Preneed Committee Report

Mr. Watson reported that the Preneed Committee convened by conference call on September 3, 2021, to discuss the following cases:

P21-0010, P21-0011, P21-0014, and P21-0016.

He noted that General Counsel Catherine Lee had prepared a summary for each case outlining specific details along with a staff recommendation for each. He recognized Ms. Lee for summarizing each of the cases that had been presented to the Committee and an explanation of each staff recommendation as shown in the Committee's report. Ms. Lee proceeded by highlighting the pertinent details for each of the referenced cases and then stating the staff recommendation.

As noted in her case summaries to the Board, Ms. Lee said that the Committee voted to accept each recommendation as follows:

P21-0010: Recommend that the claim in the amount of \$6,772.34 be denied.
P21-0011: Recommended that the claim in the amount of \$7,000 be denied.
P21-0014: Recommended that the claim in the amount of \$7,100 be denied.
P21-0016: Recommended that the claim in the amount of \$3,500 be denied.

Mr. Watson invited questions from Board members. Brief discussion ensued. Mr. Watson then offered a motion that the Board accept the Committee's recommendations for each of the cases presented to it for consideration.

Upon Mr. Watson's motion and a second by Dr. Lyons, the Board voted to adopt the Preneed Committee's recommendations in Cases P21-0010, P21-0011, P21-0014, and P21-0016.

Mr. Brown continued and said that the Laws, Rules and Legislation Committee met by WebEx teleconferencing on October 11, 2021, to discuss two proposals from staff regarding reciprocal licensure and supervision of resident trainees. He asked Mr. Davis to introduce and summarize the Committee's discussion on these items.

Laws, Rules & Legislation Committee Report

Mr. Davis stated that staff wanted to apprise the committee of issues pertaining to the Board's statute governing reciprocal licensure and an administrative rule regarding authorized practice supervision for resident trainees.

He noted that the current statute on reciprocity resulted from changes to the Funeral Practice Act in 2018 which revised the standard for determining eligibility for reciprocal licensure from "substantial equivalency" to one requiring "equal to or greater than" requirements. The current comparison must

be based upon the time the applicant's license was issued. He observed that this more stringent standard created significant challenges for staff in evaluating applications for reciprocal licensure. Among these are situations where individuals may have been licensed and actively practicing in a jurisdiction for many years but whose license was based on requirements that are now less than those in North Carolina. More recent licensed individuals from the same jurisdiction could meet North Carolina's requirements and receive a reciprocal license while the long-term license holder could be declined. These situations create disparity in awarding reciprocal licenses from otherwise qualified individuals in a particular jurisdiction.

Mr. Davis noted that North Carolina is among the fastest growing states in the nation which means that the number of licensees from across the country seeking a reciprocal license allowing them to practice in the state would likely exceed those applying in other states. Under the current stringent statutory provisions, qualified licensees from other jurisdictions could likely be declined which creates barriers to the prospective employment of qualified licensees in a statewide labor market where the pool of qualified candidates available for employment is diminishing. Mr. Davis suggested a "length of service" standard would be a more logical, equitable standard for determining eligibility for reciprocal licensure so long as the statutory requirement continued to require equivalent State and National Board examinations.

Mr. Davis asked Ms. Lee for any additional information that might define the issue and concerns further. She noted that her research of states adjoining North Carolina indicated standards less restrictive than those in North Carolina with particular attention on South Carolina which has adopted a dual standard of "length of service" and "substantial equivalency."

Board members discussed the current requirements for reciprocal licensure and the impact on funeral establishments' capacity for recruitment of licensees as well as the need to amend the current standards to avoid the creation of barriers to licensure by reciprocity. Members agreed that staff should develop alternative statutory language that would include a "length of service" requirement but would also include an option for approving those candidates for reciprocal licensure whose licensure requirements were substantially equivalent to those of North Carolina.

Mr. Davis continued and explained to the Board that staff was recommending an amendment to 21 NCAC 34B .0103, Authorized Practice: Supervision. Davis said that when the Funeral Practice Act was amended in October 2018 upon ratification of HB529, the revisions deleted the provision enabling licensees without sufficient licensed experience to take a trainee supervisor certification course in lieu of experience to qualify as a traineeship supervisor. Mr. Davis said that the administrative rule that references the certification course should be amended so that it aligns with the revised statutory language.

Ms. Acord and Ms. Lee also explained to the Board the need to clarify current language in the rule regarding on-premises supervision of trainees and cases where a trainee supervisor might need to directly observe and oversee work. Members discussed this issue and raised a number of questions concerning supervisory requirements particularly when approving trainees' monthly reports. Mr. Blake asked for clarification regarding a trainee's ability to provide pricing information regarding goods and services. Mr. Lisenbee explained the requirements expressed in The Funeral Rule. In response to other questions, Mr. Lisenbee offered a brief summary of information in the Board's Compliance Manual describing licensed and unlicensed practice as well as requirements for supervising trainees when consumers have paid a licensed establishment to plan and execute a funeral or memorial service in a church. Ms. Lee noted that she would draft language to amend the rule based on the Board's discussion and direction for clarifying the conditions for supervision of trainees. Brief discussion ensued. Mr. Brown noted that staff would bring drafts of an amended statute regarding reciprocal licensure as well as an amended rule regarding traineeship supervision to the Board in November for further discussion and consideration.

Mr. Brown then asked Mr. Herndon to present the Disciplinary Committee report.

Disciplinary Committee Report

Mr. Herndon stated that the Disciplinary Committee met on Friday, October 8, 2021, to consider and discuss cases and recommendations from General Counsel Catherine Lee for the following cases:

Summary Dismissals

C21-0084 C21-0085 C21-0093 C21-0094 C21-0096 C21-0098 C21-0099

Dismissals

C21-0048 C21-0073 C21-0081 C21-0087 C21-0088 C21-0092

Letters of Caution

C21-0078 C21-0086

Notice of Hearing

C21-0083

Mr. Herndon invited questions regarding the presentation of cases in the Disciplinary Committee report. He noted that Ms. Lee would also respond to questions or comments. Brief discussion ensued. Mr. Herndon then offered a motion for approval of the recommendations from the Disciplinary Committee.

Upon Mr. Herndon’s motion, Mr. Watson offered a second. The Board then voted to adopt the recommendations from the Disciplinary Committee as presented.

Mr. Brown recessed the meeting at 10:21 a.m. He reconvened the meeting at 10:36 a.m. 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:

- Technology for Board Room

Mr. Davis reported that a ceiling-mounted microphone had been installed in the Board room which has high sensitivity and range to improve the audio connectivity for livestreaming and virtual meetings. He said additional technical equipment would be installed over a period of time to allow for capitalization of costs and consistent with feedback from the Technology Committee.

- The Conference Annual Meeting – Delegate Grant

Mr. Davis reminded the Board that the Annual Meeting of The Conference was scheduled for Houston, Texas, in February 2022. He noted that the Board typically sends the Executive

Committee, the Executive Director and the Assistant Director to these meetings as the delegation from North Carolina. He announced that he had received the application for a Delegate Grant which would pay for travel and lodging for one delegate to attend the meeting. He said that he would provide the information regarding the grant to all members for informational purposes.

- NC Crematory Authority Election

Mr. Davis announced that elections for the NC Crematory Authority would occur at the November Board meeting. In response to a question, he said that the Authority would likely meet in December following the election.

- Board Election – New Officers

Mr. Davis announced that the Board would elect officers for 2022 at the November meeting.

- EDR Meeting with Joseph Watkins from the NC Department of Health & Human Services

Mr. Davis reported that he and Ms. Acord met with Mr. Joseph Watkins, the EDRS Administrator, and the interim Field Services Manager, Quiana Tilghman, following the recent meeting with Rep. Boles, representatives from the NC Medical Board, and officials from the NC Department of Health and Human Services. He conveyed that the purpose of the meeting was to establish a working relationship, to learn procedural information regarding the EDRS, and to discuss the implantation of the new system. Brief discussion ensued.

Mr. Blake reported to the Board that he was concerned about the lack of forensic pathologists available to conduct private autopsies for families seeking this service. He noted that the Duke University Medical School was no longer accepting requests for private autopsies and that he has relied on the Office of the Chief Medical Examiner for a list of pathologists available for this service. Mr. Blake said that he has noted an increase in requests by families for private autopsies and wanted to make the Board aware of the issue. Mr. Davis said that he would contact the OCME to see if he could obtain a listing that could then be shared through the Board newsletter or an advisory to licensees.

Mr. Brown thanked Mr. Davis for his report and Mr. Blake for his information on pathologists. He then recognized Ms. Lee for the Legal Report.

Legal Report

Ms. Lee reported the following activity to the Board:

Disciplinary Matters

Current Active Cases: 56

Pending Investigation:	23
Pending Review by Disciplinary Committee:	2
Pending Dispositive Action:	16
Pending Hearing:	10
Post-Hearing:	0
Other:	6

New files opened since last Board meeting: 17
Notices of Hearing sent since last Board meeting: 3
Consent Orders received since last Board meeting: 2
Cases reviewed by Disciplinary Committee since last Board meeting: 16

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: 3
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 reported that active disciplinary cases were significantly reduced compared to the prior year and said that disciplinary matters would be essentially current without any significant backlog of cases by the beginning of 2022. She explained that her report also listed each case identified by a case number should members wish additional detail. She invited 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: No New Business items were reported.

Mr. Brown thanked Board members and staff for their comments and attention on all matters raised in the business session. He announced that the Board would meet in closed session to consider matters subject to attorney-client confidentiality pursuant to NCGS 143-318.11.

Upon a motion by Mr. Herndon and a second by Dr. Lyons, the Board voted to meet in closed session to consider the matters M21-0078, M21-0079, and 16 CVS 1739.

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 Mr. Saunders, the Board voted to approve Consent Orders in settlement of Board Case Numbers M21-0078 and M21-0079.

Upon a motion by Dr. Lyons and a second by Mr. Blake, the Board voted to proceed with approving a Consent Judgment to be presented to Rowan County Superior Court in the matter of Marcus J. Barber and Genesis and Crowe Funeral Home of Salisbury, Inc.

Upon a motion by Mr. Watson and a second by Mr. Blake, the Board voted to direct General Counsel to pursue injunctive relief against Convenient Cremations in the general courts.

Mr. Brown announced a recess at 11:47 a.m. for lunch and that the Board would reconvene promptly at 1:00 p.m. to hear additional disciplinary matters at that time. The Board reconvened at 12:58 p.m. Mr. Brown announced that the Board would meet in closed session to consider matters subject to attorney-client confidentiality pursuant to NCGS 143-318.11.

Upon a motion by Mr. Hilderbrand and a second by Mr. Watson, the Board voted to convene in closed session to consider the matter in Board Case Numbers 00-0067, M21-0058, and C21-0050, In re Mills Funeral Home, Inc., and Craig Randolph Mills.

Upon a motion by Mr. Herndon and a second by Mr. Watson, the Board voted to reconvene 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 Mr. Blake, the Board voted to accept a Consent Order in settlement of Board Case Numbers 00-0067, M212-0058, and C21-0050.

Following the vote in the matter of Mills Funeral Home, Mr. Blake questioned whether there should be conditions imposed on approval of the Consent Order pertaining to refrigerated storage of human remains at the Respondent Funeral Home. Mr. Brown noted Mr. Blake's question and stated that further consideration of the Consent Order would require the Board to convene in closed session.

Upon a motion by Mr. Hilderbrand and a second by Mr. Watson, the Board convened in closed session to consider the matter of Mills Funeral Home and to protect attorney-client privilege pursuant to NCGS 143-318.11.

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

Upon proper motion and vote, the Board voted to add a condition to the Consent Order approved earlier in the matter of Mills Funeral Home to include a requirement for the Respondent Funeral Home to timely furnish the Board a written agreement in accordance with 21 NCAC 34B .0707 for use of off-premises refrigeration.

Mr. Brown continued the meeting and announced that the Board would next hear oral arguments from counsel representing the Board and from counsel representing respondent Craig Franklin Smith in consideration of an Amended Proposal for Decision from the NC Office of Administrative Hearings.

At the conclusion of oral arguments from respective counsel, Mr. Brown polled members for agreement on deliberating immediately following the oral arguments. Members were in agreement. Mr. Brown stated that the Board would deliberate in closed session to consider the Amended Proposal for Decision from the NC Office of Administrative Hearings.

Upon a motion by Mr. Hilderbrand and a second by Mr. Saunders, the Board voted to convene in closed session to deliberate on the Amended Proposal for Decision in the matter of N.C. Board of Funeral Service v. Craig Franklin Smith.

Upon proper motion and vote, the Board voted to reconvene in open session. Mr. Brown invited any motions pertaining to the deliberations conducted in closed session in the matter of Craig Franklin Smith.


Upon proper motion and vote, the Board voted to accept the Amended Proposal for Decision in its entirety from the NC Office of Administrative Hearings in the matter of N.C. Board of Funeral Service v. Craig Franklin Smith.

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

Affirmation:



Don Brown, President



Steven Lyons, Secretary

November 10, 2021

Date