



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Minutes

May 11, 2022, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on May 11, 2022, at the NC Board of Funeral Service office suite at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605.

Present: Chris Watson, President; Steven Lyons, Vice-President; Thomas Hilderbrand, Secretary; Don Brown; Mark Blake; Steve Herndon; LeShekia Coleman; Darrell McCormick; and Robert Jansen.

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 Director, NC Funeral Directors Association; Ms. Carrie Duhon, Summer Law Clerk, Nichols Choi & Lee.

Mr. Watson called the meeting to order at 9:04 a.m. and led members and staff in a recitation of the Pledge of Allegiance followed by the invocation which Dr. Lyons offered. He proceeded by reading the Statement of Ethics and asked if any members would be recusing themselves. None recused. Mr. Watson then asked if any guests were present and if they wished to offer any public comment. Mr. Chase Noble introduced himself as Executive Director of the NC Funeral Directors Association. Mr. Watson recognized Ms. Lee for an introduction of Ms. Carrie Duhon, a summer law clerk from Nichols, Choi & Lee.

Mr. Watson continued and asked Mr. Hilderbrand to present the minutes from the April 13, 2022, Board meeting.

Approval of Minutes

Mr. Hilderbrand 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, he offered a motion.

Upon a motion by Mr. Hilderbrand and a second by Mr. Blake, the Board voted to adopt the April 13, 2022, minutes as presented.

Mr. Watson 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 May 6, 2022, to review the financial reports for the period ending March 2022. He reported that all committee members attended and were joined by Mr. Davis and Ms. Acord. He then recognized Mr. Davis for a summary of the reports.

Mr. Davis commented on the Statement of Net Position and reported that there were no outliers or other concerns in the balances shown for Assets and Liabilities that would create any concerns. He noted that the

Board's net position as reflected in the Unrestricted Fund Balance of \$1,187,243.43 represents nearly 9 months of operating reserve for the Board. As confirmed by the recent audit by Bernard Robinson & Company, this reserve affirms that Board's very strong net position. Mr. Davis said that the only concern he had about the Statement of Net Position when the Committee met was the balance shown for the Preneed Recovery Trust Fund which was at \$444,934.43 for the period ending March 31, 2022. That balance compared to \$466,885.18 shown for the period ending February 2022. He said that claims paid since the last report through March 31, 2022, did not total the difference in these balances, and he indicated that he subsequently spoke to Thomas, Judy and Tucker for more details about the balance shown for the period ending March 2022. He said that the balance is variable from month to month and will always represent a net balance after any claims paid have been deducted as well as funds owed to the State Treasurer from the Board. He explained that the funds received from each preneed contract registration fee is posted as a liability on the Statement of Net Position since that represents money owed to the Fund. Once paid, then those funds are shown as an Asset and will be included in calculating the Fund balance for a particular reporting period. He also noted that this Fund balance includes any accrued interest from the funds deposited into the Board's Trust Fund account with the State Treasurer. In closing his summary of the Statement of Net Position, Mr. Davis said that the Board's net position reflected the Board's attention to its fiduciary responsibilities and sound management of Board finances and fiscal resources.

Mr. Blake invited questions and comments. Mr. Davis proceeded with a summary of the Statement of Revenues and Expenses. He reported that revenue collections as of March 2022 were at 53.1% of the total revenue projected for FY2022 compared to 52.7% for the same reporting period in 2021. He also noted that the revenues collected for Cremation Fees and Preneed Contract Fees exceeded the revenue collected for the same period in 2021 which tended to support a trend in these two areas for increased revenue. He reported that the total revenue collected as of March 2022 was \$802,959.73 compared to \$796,908 for the same period in 2021 which was an encouraging and positive sign that the Board's finances are in good shape. He concluded his summary by reporting that at the end of the first quarter in 2022, the YTD % of Budget Used was at 24.6% which is slightly under 25% which represents a standard percentage for the First Quarter expenditures. He noted that first quarter expenses for the same period in 2021 represented 26.3% of the total budget, slightly higher than the standard but not significant statistically. Mr. Davis invited any questions or comments.

Mr. Blake then said he was offering a motion that the Board approve the March financial reports as presented.

Upon Mr. Blake's motion, Mr. McCormick offered a second. By roll call vote, the Board voted unanimously to approve the financial reports for the period ending March 2022.

Mr. Watson then recognized Mr. Hilderbrand for the Preneed Committee report.

Preneed Committee Report

Mr. Hilderbrand reported that the Preneed Committee convened by WebEx teleconferencing on Wednesday, May 4, 2022 and that all members were present. Staff in attendance were Mr. Stephen Davis, Executive Director; Ms. Amy Acord, Assistant Director; Ms. Catherine Lee, General Counsel; and Paul Richardson, Preneed Program Manager. He said that the Committee continued its discussion of proposed revisions to existing rules regarding the Preneed program as the Board directed when it met in April 2022. Additionally, he said that the Committee reviewed and considered a recommendation from staff regarding a request for revocation of an irrevocable contract.

Mr. Hilderbrand reported that staff recommended the revocation of an irrevocable contract based on facts that indicated compliance with statutory requirements for revocation when a purchaser moves out of state and executes a new contract in the new location. He said that all conditions had been met for revocation of the referenced contract. He offered to answer any questions from Board members

regarding the recommendation for revocation and noted that the recommendation was consistent with similar prior requests. He stated that Ms. Lee would then continue the Committee report to the Board and that members would vote on the Committee's recommendations after Ms. Lee's presentation.

Ms. Lee reported that the Committee discussed whether or not to adjust 21 NCAC 34B .0408 to disallow credit for Board-mandated training toward the annual license renewal requirements. Brief discussion ensued. Ms. Lee stated that under existing rule, licensees only may receive credit for CE hours as a prerequisite for license renewal for up to 2 hours that are taken in courses required by the Board. **Ms. Lee reported that the Committee was unanimous in its recommendation to disallow CE credit for course required by the Board.**

Ms. Lee then reported that the Committee considered amendments to the current rule that limits the number of CE hours that licensees may accrue through online instruction. Under existing rule, licensees may take up to two hours of continuing education by computer. She said that Committee members discussed whether to increase the cap on the number of CE hours that may be taken by computer, or to remove the limitation altogether. She reported that at the Committee's request, staff asked The International Conference of Funeral Service Examining Boards to survey member states for Continuing Education information, and she indicated that staff had sent the Board a map showing the number of CE hours other states require for license renewal along with the renewal term.

Mr. Davis said that he had summarized the survey results from the 13 states responding as of May 10, 2022 and provided members in attendance with that information. Discussion ensued regarding the advantages and disadvantages of requiring licensees to acquire a portion of the annual 5-hour CE hours in person. Members discussed whether or not to lift the current cap on the number of hours licensees can accrue through online instruction, or whether to retain it. Members and staff discussed the trends toward more online instruction likely as a result of the pandemic which caused a significant decrease in the number of classroom-based courses available to licensees.

Mr. Davis noted that requiring in person hours for CE could create barriers for those licensees who lack easy access to locations offering in person courses. Mr. McCormick reiterated his concern that not requiring some hours of CE credit by in person instruction diminishes the effectiveness of the instruction since the opportunity for interaction with an instructor and other attendees is limited. Members also discussed the feasibility of creating a certification program for CE instructors.

Following this discussion, Ms. Lee stated that the Committee considered whether or not to recommend removal of the current limit on the number of hours a licensee may receive for attending preneed instruction. Under existing rule, licensees may take up to 2 hours of CE in the subject area of preneed each year. She said that Committee members discussed whether to increase the cap on the number of preneed CE hours that may be taken or whether to remove the limitation altogether. **She reported that after discussing this issue, the Committee recommended removal of the current cap on the number of CE hours in preneed.**

Ms. Lee continued her presentation and summarized the Committee's discussion regarding a proposal to require Board-mandated CE instruction on preneed statutes and rules as a requirement for licensure in preneed sales. She said that Committee members discussed creating a requirement

that 3 hours of Board-mandated CE on preneed statutes and rules be taken within the preceding 3 years before first obtaining licensure in preneed sales. She reported that the Committee discussed the practical ability of Board staff to provide such training, and whether it would be feasible to require Board-mandated CE on preneed statutes and rules on individuals who currently hold preneed sales licenses. **She said that the Committee reached consensus on the issue after discussion and recommended that the rules be amended to require 3 hours of Board-mandated CE training on preneed statutes and rules for initial licensure.** She noted that this requirement would not apply to those currently licensed. Board members discussed the merits of this proposal in terms of assuring that those seeking licensure in preneed sales would acquire knowledge of preneed laws and rules through course instruction as a condition of licensure. Members agreed that such a requirement would hopefully reduce the number of disciplinary cases coming before the Board involving infractions of preneed statutes and rules. Members expressed agreement with the Committee's recommendation.

Ms. Lee continued and reported that the Committee briefly discussed ways to strengthen the completion and submission of Schedule A which identifies preneed sales licensees in each location they hold a sales license. She said that the Committee thought that additional information for the form to include a licensee's email address and space for his/her signature would be important revisions. She also noted that the Committee discussed requiring proof that a preneed sales licensee has completed Board-mandated preneed training and education. Discussion ensued. Board members questioned the current requirement for both an establishment owner and a location manager to sign the form and agreed that it was unnecessary to include the owner's signature based upon feedback from Mr. Paul Richardson, Preneed Program Manager. **Board members agreed with the Committee's recommendation to amend existing rules to enable the codification of the contents of the template form for Schedule A to assure clarity and consistency in its preparation and submission to the Board.** Brief discussion ensued.

Mr. Hilderbrand invited further questions or comments regarding the Preneed Committee's recommendations. He indicated to Mr. Watson that the matter regarding the proposed revocation of an irrevocable preneed contract based on the purchaser's relocation to another state was ready for a vote, and Mr. Watson invited a motion.

Upon a motion by Mr. Blake and a second by Dr. Lyons, the Board voted unanimously by roll call vote to adopt the Committee's recommendation for revocation of an irrevocable preneed contract pursuant to NCGS 90-210.65(e)(1).

Mr. Hilderbrand then indicated to Mr. Watson that the Board could consider whether or not to address the proposals from the Preneed Committee to amend existing administrative rules as discussed. Ms. Lee suggested that a vote on the proposal to remove the current cap for the number of CE hours attained through online instruction would be helpful if that was the Board's decision. Mr. Watson indicated agreement and invited a motion on this particular recommendation.

Upon a motion by Mr. Blake and a second by Mr. Herndon, the Board voted in the majority by roll call to remove the current 2-hour limitation on the number of CE hours a licensee may accrue by online instruction toward annual license renewal. Mr. McCormick voted nay.

Mr. Watson then questioned the Board's preference for addressing the remaining recommendations from the Preneed Committee pertaining to 21 NCAC 34B .0408 and 21 NCAC 34D .0202. Mr. Hilderbrand reminded the Board that the Preneed Committee voted unanimously to present all the recommendations contained in the Preneed Committee Report to the full Board for amending rules as necessary. Mr. Watson asked Ms. Lee for direction on how to proceed from an administrative rulemaking procedure. Ms. Lee said that once the Board has a draft of the amended rules to reflect its approval for revised text, the Board could vote to initiate rulemaking which would trigger mandatory filings with the NC Rules Review Commission, notices of public hearing, and then a vote by the Commission for final action. Mr. Watson queried the Board as to its preference for moving forward as Ms. Lee explained, and he determined that there was consensus among all members for proceeding. Ms. Lee said that she would bring proposed draft rules to the June Board meeting for the Board's determination on whether to initiate rulemaking to amend the referenced administrative rules under consideration by the Board.

Mr. Watson conveyed his thanks and appreciation to Mr. Hilderbrand and the Preneed Committee for their work in considering a number of important issues associated with the Board's preneed program. He then recognized Mr. Herndon for the Disciplinary Committee Report.

Disciplinary Committee Report

Mr. Herndon said that he and Dr. Lyons met on May 6, 2022, to consider preliminary disciplinary recommendations from staff as follows:

Dismissals

C22-0011 C22-0019 C22-0020 C22-0022 C22-0024 C22-0029

Letters of Caution

M22-0016 M22-0026

Notice of Hearing

M22-0019 through M22-0032

Other

M22-0018

Mr. Herndon offered a motion for approval of the Disciplinary Committee's recommendations as presented. Mr. Blake asked for the rationale and basis for the alleged violations expressed in C22-0016, Letter of Caution. Ms. Lee offered additional details and noted that many of the allegations resulted from a review of the establishment's files by a Board compliance inspector. Mr. Blake questioned the requirements for providing a General Price List [GPL] when arrangements are conducted virtually. Mr. Lisenbee explained that the FTC does not require a licensee to provide a GPL for virtual arrangements but is required to provide a Statement of Goods and Services. Discussion ensued. Mr. Blake thanked staff for the clarification and noted that the FTC ruling would be good to include in the Board newsletter.

Upon Mr. Herndon's motion, Mr. McCormick offered a second. The Board voted unanimously by roll call vote to approve the Disciplinary Committee report as presented.

Mr. Herndon announced a 10-minute recess. After the recess, Mr. Watson 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:

The Funeral Consumers Alliance North Carolina will sponsor a Death Expo on Saturday, October 15, 2022, at Elon University. The event is open to the public and will focus on "options and trends in the deathcare industry – from aquamation and death doulas to green burials and knowing your rights as a funeral consumer." Speakers are Mallory McDuff, professor at Warren Wilson College; Joshua Slocum, Executive Director of the FANC; Tanya Marsh, professor of law at Wake Forest University. There will be a panel discussion to discuss "What Will I Do With My Body When I Die?" Panelists are Eric Bester of Clay-Barnette Funeral Home; Anne Weston of the Green Burial Project; and Dianne Person, Director of the Elon University Anatomical Gift Program.

Representative Boles received a letter from the FDMANC regarding implementation of the NC DAVE system, and I responded in collaboration with Mr. Watson and the former Board Presidents who have represented the Board in two meetings on the electronic death registration system. The FDMANC conveyed their concern that the burden for filing death certificates should not fall solely on the shoulders of funeral licensees. In response, I underscored existing statutes regarding this responsibility as expressed in NCGS 130A but agreed that medical certifiers and local registrars also have legal responsibilities leading to the certification of death certificates. We suggested a comprehensive review of the state's Register of Deeds system and structure to determine if improvements might accrue with changes to streamline procedures and eliminate barriers.

Staff completed the mandatory annual report to the NC General Assembly which applies to all Occupational Licensing Boards. The 93B Report provides detailed information and metrics on the Board's licensing activities. I will provide each of you a copy of this report because it will give you important information about the Board's role in regulating funeral licensees and protecting consumer interests.

Reminders:

The NC Funeral Directors Association will hold its 2022 Annual Convention in Durham at the Washington & Duke Inn from May 22nd to May 24th.

The FDMANC will hold its 2022 Annual Convention in Concord at the Hilton Charlotte from June 13th through June 16th.

We have extended an offer to fill a key staff vacancy with primary responsibility for the entry of preneed contract information into our licensing management system which then generates confirmation letters to consumers. Ms. Corina Wyche has been responsible for this and other staff duties since she was hired in November 2021 as a temporary employee. She has proved a quick learner and demonstrated proficiency in this important data entry role.

We have mailed to each licensed at need and preneed establishment their 2022 permit certificates.

Mr. Watson thanked Mr. Davis for his report and then recognized Ms. Lee for the Legal Case Report.

Legal Case Report

DISCIPLINARY MATTERS

Current Active Cases: 53

Pending Investigation: 20
Pending Review by Disciplinary Committee: 0
Pending Dispositive Action: 23
Pending Hearing: 9
Post-Hearing: 0
Other: 1

New files opened since last Board meeting: 28

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: 23

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 0

Pending Investigation: 0
Pending Dispositive Action: 0

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: 0

Ms. Lee reported to the Board on a matter involving the misappropriation of preneed funds that had been referred to a local district attorney for criminal prosecution. She said that the respondent had agreed to a payment plan over a 20-month period to repay the stolen funds which amount to approximately \$38,000. She noted that this money would be returned to the Preneed Recovery Trust Fund.

Mr. Watson then asked for any Old Business and New Business items. None were offered. Mr. Watson thanked staff and Board members for their discussion and attention to issues brought before them in the Business Session. He then announced that the Board would hear a motion by the respondents in the matter M22-0017, James F. Johnson & Sons, Inc., for transfer to the Office of Administrative Hearings. Board Counsel Jeff Gray reminded the Board that Mr. Hilderbrand was recused from considering the motion. He noted that both parties in the matter were represented by counsel and that respondent's

counsel had initially requested a continuance from the April 13, 2022, Board meeting until May 11, 2022. Mr. Gray explained the legal basis and procedure for the Board's awareness in determining whether to grant respondent's motion for transferring the matter to the Office of Administrative Hearings. He noted that respondents are currently under Summary Suspension and said that they had declined a hearing on the merits of the Summary Suspension before the Board at its May meeting, which means that the Summary Suspension will continue until such time that the matter is heard by an Administrative Law Judge. He further noted that the continuation of the Summary Suspension would eliminate the risk of consumer harm so long as it remains in effect. Mr. McCormick asked if the Office of Administrative Hearings could unilaterally lift the Summary Suspension. Brief discussion ensued. Mr. Gray said that there would be no loss of jurisdiction by the Board should the matter be transferred to the Office of Administrative Hearings. Mr. Watson invited a motion on the matter.

Mr. McCormick moved that the Board grant respondent's motion for transfer of the matter M22-0017 to the Office of Administrative Hearings.

Mr. Blake questioned the timing and necessity for the hearing on respondent's motion for transfer. Mr. Gray and Ms. Lee explained the procedural requirements associated with respondents filing a motion for transfer, and Mr. Gray noted that the matter coming before the Board on May 11, 2022, resulted from a continuance of the matter from the April 13, 2022, Board meeting. Mr. Blake asked if the Office of Administrative Hearings is mandated to hear the matter once it is transferred, or could they return it to the Board for hearing. Mr. Gray said that the general statutes require the Office of Administrative Hearings to hear the matter if the Board properly transfers it to them pursuant to Article 3 of the North Carolina General Statutes. Mr. Watson reminded the Board that a motion had been made by Mr. McCormick.

Mr. Blake offered a second to the motion. The Board voted unanimously by roll call to grant respondent's motion for transfer of the matter M22-0017 to the Office of Administrative Hearings.

Mr. Watson stated that the Board would convene in closed session to consider a matter requiring attorney-client confidentiality pursuant to NCGS 143-318.11. Upon proper motion and vote, the Board voted by roll call to convene in closed session to consider the matter in Case Number C21-0038, *in re Butler Funeral Home & Chapels et al.*

Upon proper motion and vote, the Board voted by roll call to reconvene in open session. Mr. Watson invited any motions pertaining to the matter discussed in closed session.

Upon a motion by Mr. McCormick and a second by Ms. Coleman, the Board voted by roll call to accept a Consent Order in settlement of Case Number C21-0038, Butler Funeral Home & Chapels.

Upon proper motion and vote, the Board convened in closed session to discuss matters protected by attorney-client privilege pursuant to NCGS 143-0318.11.

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

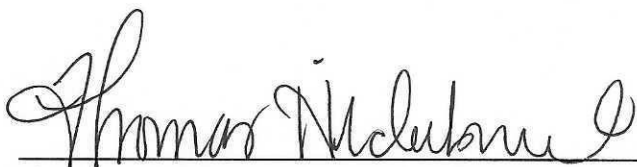
Upon a motion by Dr. Lyons and a second by Mr. McCormick, the Board voted by roll call to authorize General Counsel to pursue injunctive relief in the General Courts against Garcia Fenwick Johnson to prevent unlicensed funeral practice.

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

Affirmation:



Christian E. Watson, President



Thomas T. Hilderbrand, Secretary

Date June 8, 2022