

NORTH CAROLINA
BOARD OF FUNERAL SERVICE



Minutes

October 12, 2022, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on October 12, 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; 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: Kimberly Kelsey, Funeral Service Licensee; Chrystal Redding, Legislative Liaison, Funeral Directors and Morticians Association of NC.

Mr. Watson called the meeting to order at 9:01 a.m. and led members and staff in a recitation of the Pledge of Allegiance followed by the invocation which Mr. Herndon 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. Guests offered self-introductions.

Mr. Watson continued and asked Mr. Hilderbrand to present the minutes from the September 14, 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. Herndon, the Board voted to adopt the September 14, 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 October 6, 2022, to review the financial reports for the period ending August 2022. Mr. Blake recognized Mr. Davis for comments.

Mr. Davis opened his summary by reporting to the Board that the Board's net position as reflected in the Statement of Net Position is strong and continues to show strength based on the Unrestricted Fund balance which represents approximately eight (8) months of reserve operating capital. Mr. Davis then reported that the Preneed Recovery Trust fund balance is \$525,367.54 as of August 2022, which is a significant increase over the balance shown for the same period in 2021. The 2021 balance was \$415,838. Mr. Davis noted that the Total

Liabilities as of August 2022 were lower than the balance reported in 2021, and he reported that the Unrestricted Fund Balance is \$1,187,243.43 which is higher than the balance for the same period in 2021 which was \$1,063,146. He closed his summary by stating that there are no entries shown on the Statement of Net Position that would indicate any concerns with the Board's overall net position. He invited any questions or comments from the Board. No questions or comments were offered. Mr. Blake asked Mr. Davis to continue with a summary of the Statement of Revenues and Expenses.

Mr. Davis reported that the Total Operating Expenses for the Month To Date Actual were at \$111,199.68 which is significantly less than for the same period in 2021. The Total Operating Expenses in 2021 were \$129,420. He continued and reported that the YTD % Budget Used was at 67% which is exactly the expectation for the end of August. He noted that the percentage of budget used for the same period in 2021 was 71.1% which indicated an overage of 4.1% for that time period. He said that revenue collections were tracking at nearly the same rate as for 2021 with the trend for increases in cremation fees and preneed contract registration fees continuing for the current fiscal year. He noted that these balances are important indicators that the Board's total operating expenses are in alignment with the projected amounts for FY2022 and that revenues are exceeding projected amounts. He then invited questions or comments. Mr. Blake asked if there would be changes forthcoming in the way that legal expenses were reported by Thomas, Judy & Tucker, the Board's accounting firm. Mr. Davis said that he and Ms. Acord planned to revise and amend the Chart of Accounts for FY2023 which would include improvements in reporting legal expenses to show a more precise listing of these expenses. Mr. Watson asked what options the Board has when contract counsel from Bailey & Dixon appear for a hearing but the hearing does not take place, or occasions when a court reporter might be present for a scheduled hearing which might not occur. Brief discussion ensued. Ms. Lee noted that some occupational boards have provisions allowing them to seek reimbursement for these incurred costs but that the Board of Funeral Service does not have similar provisions in place allowing recovery of incurred costs under the circumstances described. Members discussed further and then proceeded to a vote on the financial reports for the period ending August 2022.

Upon a motion by Mr. Blake and a second by Mr. Brown, the Board voted unanimously to approve the financial reports for the period ending August 2022 as presented.

Mr. Blake then asked Mr. Davis to comment on the staff resignation he had reported to the Committee. Mr. Davis said that Darrell Cagle, a long-term Compliance Inspector, had resigned from this position and would be leaving October 14, 2022. Mr. Davis recognized Mr. Cagle for his contributions to the Board and for his service. He said that staff had inserted a vacancy announcement in the newsletter that was sent to licensees and interested parties on October 7, 2022, and that five (5) individuals had responded thus far with resumes. He conveyed that he planned to send the announcement again prior to the closing date for the vacancy announcement as an advisory to licensees.

Mr. Blake then concluded his report by stating that the Board's existing alarm system was obsolete and needed replacing. Mr. Davis said that the hardware and software that was installed several years ago no longer support the alarm system because it is obsolete. He said that staff cannot manually lock the front doors to the office suite if it becomes necessary to close the office on days other than a scheduled holiday. He said that staff would seek bids from area security companies and would secure at least 3 bids for the Finance and Personnel Committee to review. Mr. Blake said that there were no other items from the Finance and Personnel Committee.

Mr. Watson then recognized Mr. Blake for the Traineeship Committee Report.

Traineeship Committee

Mr. Blake reported that the Traineeship Committee convened by Webex on Thursday, October 6, 2022, for a general review of the traineeship program and to hear a presentation from Ms. Acord on the procedures that applicants for a resident traineeship must follow. He noted that the meeting was very productive and instructive in terms of hearing the step-by-step procedures that applicants must follow in securing approval for a resident traineeship with the Board. He then asked Ms. Acord to offer comments.

Ms. Acord provided detailed information regarding the traineeship application and the requirements for completing an application including the submission of the application fee, high school transcripts and fingerprints necessary for the SBI to conduct a criminal history background check. Ms. Acord described the extensive, detailed communications that the Board sends to trainees once they have been approved. She also noted that the Board website includes significant information for those applying as well as for those who have been approved as a resident trainee. She noted that the information available to both the trainee and their supervisor is detailed and offers step-by-step guidance in their responsibilities for reporting their daily and monthly work activities. She noted that there are plans to update the information to assure that it is complete and current.

Mr. Blake asked for more details regarding the monthly reports and the consequences for late or deficient reports. Ms. Acord explained the Board's disciplinary procedures when trainees submit late or deficient reports. She noted that the disciplinary procedures are structured or "tiered" to allow progressive discipline beginning with a warning and leading to termination of a traineeship for continued, sustained violations of the program's requirements for monthly reporting.

Ms. Acord noted that the disciplinary measures for deficient monthly reports are limited for those trainees who continue to submit deficient work reports, and she suggested that the Board consider appropriate sanctions in such cases. She said that the program is designed to send a warning to trainees for initial deficient work reports but that continued deficiencies require more stringent discipline. Board members discussed the policy and procedures that govern the resident traineeship program at length. They addressed issues regarding trainee responsibility and accountability for proper, timely and accurate completion of weekly and monthly work reports; work responsibilities and limitations on specific tasks; the requirements for proper supervision in completing assigned work; and consequences for failing to follow the Board's procedural requirements in completing their traineeship prior to licensure.

Members also discussed the timing of licensure upon certification of a traineeship, and Mr. Blake emphasized the importance of completing required examinations prior to certification to assure a seamless transition to licensee status. Ms. Coleman spoke at length of her experience as a trainee and the importance of following prescribed procedures and assuming responsibility for proper, timely completion of work reports. She agreed that trainees must be accountable for any lapses or deficiencies but that education and communication on the Board's requirements and procedures was equally important. Ms. Acord expressed agreement and described the continuous communications she and her staff have with trainees in responding to their questions and providing information that they need.

Mr. Watson suggested that a mandatory training or CE course similar to that proposed for preneed sales licensees would be worthwhile to consider. Ms. Acord said that she could develop and deliver a web-based video or other instructional format to educate trainees.

Public Hearing: Administrative Rules 21 NCAC 34B, .0408 and 34D .0202

Mr. Watson suspended the Traineeship Committee report and announced at 9:58 a.m. that the Board would convene a public hearing at 10:00 a.m. to receive comments regarding two administrative rules that had been proposed and subsequently published in the NC Register. He invited any public comment pertaining to 21 NCAC 34B .0408 and 21 NCAC 34D .0202. No one present offered any comment, and Mr. Watson stated

that the public hearing would continue until 10:20 a.m. He then resumed the Business Session and the discussion on the Traineeship Committee report.

Traineeship Committee Report [cont'd]

Mr. Blake said that the Committee discussed trainees' responsibility for proper and timely completion of monthly work reports at length and were proposing appropriate sanctions if a trainee submitted for the third time a deficient work report. Ms. Acord briefly described the current tiered discipline for trainees and agreed that there should be consequences for trainees who continue to submit deficient work reports on a continuous basis. Board members discussed various options for such sanctions including a period of suspension upon submission of a third deficient work report. Members also discussed whether or not there should be a specific period of time for trainees to reapply when their traineeship is terminated for work reports submitted late or with missing information. Discussion continued. Mr. Hilderbrand raised the issue of how trainees are informed about deficiencies identified on their monthly work reports so that they understand the nature of the problem in hopes that it would not reoccur. Mr. Blake then summarized options for sanctions that had been discussed prior to a vote.

Mr. Herndon offered a motion that the Board impose a 90-day suspension for the third submission of a deficient monthly work report and a 90-day waiting period for reapplication when a traineeship has been terminated due to the third submission of a late work report. Dr. Lyons offered a second. By roll call vote, the Board voted unanimously to approve the motion.

Following the vote, Mr. Blake stated that he would reconvene the Traineeship Committee to discuss further the Board's suggestion for a web-based video or other appropriate educational outreach opportunity for trainees to learn about the procedures, requirements and expectations for the traineeship program.

Mr. Watson then recognized Mr. Herndon for the Disciplinary Committee report.

Disciplinary Committee Report

Mr. Herndon said that he and Dr. Lyons met on September 9, 2022, to consider preliminary disciplinary recommendations from staff as follows:

Summary Dismissals

C22-0072 C22-0074 C22-0076 C22-0079

Dismissals

C22-0064 C22-0070 C22-0073

Letters of Caution

C22-0060/C22-0062 C22-0061 C22-0069 M22-0032/M22-0045

Notice of Hearing

M22-0047

Mr. Herndon offered a motion for approval of the Disciplinary Committee's recommendations as presented.

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

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

- Mr. Davis reported that he had recent discussions with the OCME General Counsel regarding their contractual arrangements with mortuary transport companies engaged in the removal and transportation of decedents for a fee. He noted that the Board does not license mortuary transport companies but issues Removal and Transportation permits to qualified individuals to transport human remains. He said that OCME is revising its internal procedures for their contractual agreements and

wanted to learn more about the Board's statutory requirements for removal and transportation of human remains. Mr. Blake noted that there are continuing concerns with OCME and the services provided to funeral licensees. Mr. Davis acknowledged his concerns and said that he would raise those issues in future discussions with the OCME General Counsel. Mr. Davis further noted that the Board may wish to consider amendments to the current statutes governing the removal and transportation of decedents as well as the promulgation of administrative rules to assure clarity in the licensure of individuals. He also suggested that the Board consider amending current statutes to include licensure of mortuary transport companies.

- Mr. Davis announced that Paul Richardson's stepfather recently passed away and that he wanted to assure that Board members were aware.
- Mr. Davis summarized the results of the recent outreach to crematory licensees for nominations to fill three (3) vacancies on the NC Crematory Authority. He noted that the nomination period was from August 8 until September 8, 2022 but that no nominations were received. Mr. Blake asked about the cremation and purpose of the Authority, and Mr. Davis explained that statutory provisions dating to the late 1980's / early 1990's created the Authority and defined its core mission. Members discussed the Authority's role and relationship with the Board and acknowledged that creating a new Board sub-committee that focuses on cremations issues might be a constructive and effective mechanism for addressing these issues. Members agreed to continue their consideration of the most effective way to address cremation-related issues. Mr. Davis noted that the Board had the authority to appoint qualified individuals to the vacant seats. Ms. Lee summarized the statutory provisions regarding the Board's procedures for appointments to vacant seats on the Authority in the absence of nominations. The Board directed Mr. Davis to develop a communication for crematory licensees to invite interest in the three [3] vacant seats on the Authority.

Mr. Davis reported that Ms. Acord's relocation prompted her resignation as one of the Board's Legislative Liaisons, and he recommended that Brett Lisenbee be appointed to follow her. Mr. Davis briefly explained the procedures for an appointment which require registration with the NC Secretary of State. He asked for the Board's consent by motion and vote to appoint Mr. Lisenbee.

Upon a motion by Mr. Herndon and a second by Mr. Hilderbrand, the Board voted unanimously to appoint Mr. Lisenbee as a Legislative Liaison with the NC General Assembly.

Mr. Davis continued and reported that Inspector Cagle's recent resignation created a vacancy for the Board's representative on the Commission of Anatomy. Members briefly discussed the Commission's role and activities to gain a deeper understanding of their responsibilities. There were questions as to the which state agency had oversight for the Commission, and Ms. Lee said that she would research statutes and rules and report on her findings. Members noted that Mr. Lisenbee had knowledge of the Commission's work and asked if he would agree to represent the Board on the Commission. Mr. Lisenbee expressed concern that his role as Compliance Officer and as a Legislative Liaison could create potential for conflict of interest if he were to serve on the Commission as the Board's representative. Members discussed the issue further and accepted Mr. Lisenbee's concern. Subsequently, members agreed to consider a Board member for appointment to the Commission of Anatomy.

Upon a motion by Dr. Lyons and a second by Mr. Blake, the Board voted unanimously to appoint Mr. Hilderbrand as the Board's representative on the Commission of Anatomy.

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

Legal Case Report

Ms. Lee offered the following information regarding legal cases:

DISCIPLINARY MATTERS

Current Active Cases: 36

Pending Investigation: 10
Pending Review by Disciplinary Committee: 0
Pending Dispositive Action: 14
Pending Hearing: 9
Post-Hearing: 0
Other: 3

New files opened since last Board meeting: 8

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: 14

PRENEED RECOVERY FUND CLAIMS

Current Active Preneed Recovery Fund Claims: 1

Pending Investigation: 1
Pending Dispositive Action: 0

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: 0

Ms. Lee invited questions. Mr. Blake asked if there was any update on the case involving Mr. David Ward of Gaston County who has passed away but was to repay the Board approximately \$90,000 in settlement of an earlier disciplinary matter. Ms. Lee confirmed that there has been no reimbursement to the Board to date. Mr. Blake then asked if a Doctor of Osteopathic medicine could sign a death certificate as a medical certifier. Brief discussion ensued. Ms. Lee advised that seeking a Declaratory Ruling from the appropriate oversight agency would be an option to consider in determining whether a Doctor of Osteopathic medicine is considered a medical certifier pursuant to relevant statute. Ms. Lee said that she would research relevant statutes and administrative rules to gain further and more specific information regarding this issue. She agreed to report her findings to the Board at the November 2022 meeting.

Mr. Watson thanked Ms. Lee and then announced a brief recess at 11:20 a.m. Mr. Watson reconvened the meeting at 11:30 a.m. and announced that the Board would conduct an administrative hearing in the matter of Board Case number M22-0055, Derrick Macklin.

Following the hearing, Mr. Watson invited a motion for closed session to deliberate.

Upon a motion by Mr. Brown and a second by Mr. Blake, the Board convened in closed session to deliberate in the matter of Board Case Number M22-0055, Derrick Macklin. Upon proper motion and vote, the Board reconvened in open session. Mr. Watson invited any motions pertaining to the Board's deliberations.

Upon a motion by Mr. Blake and second by Mr. Brown, the Board voted unanimously to issue a Removal and Transportation permit to Mr. Derrick Macklin in the matter of Board Case Number M22-0055.

Mr. Watson then announced that the Board would convene in closed session to hear legal matters requiring attorney-client confidentiality pursuant to NCGS 143-318.11. Upon a motion by Mr. Hilderbrand and a second by Mr. Brown, the Board voted to convene in closed session. Upon a motion by Mr. Brown and a second by Mr. Hilderbrand, the Board voted to reconvene in open session. Mr. Watson invited any motions pertaining to matters discussed in closed session.

Upon a motion by Mr. Blake and a second by Mr. Hilderbrand, the Board voted to grant a 45-day extension for payment of a civil penalty in the matter of Board Case Number M21-0105.

Old Business and New Business

Mr. Watson then resumed the Business Session and asked for any Old Business. None was offered. He then asked if there were any items for New Business. Mr. Brown announced that the Board of Directors for the Funeral Directors and Morticians Association of NC met recently and requested that the Board provide written confirmation for Certificates of Performance [COP] submitted to the Board. He and Mr. Hilderbrand indicated that the FDMANC membership wanted confirmation of receipt in case a Board Compliance Inspector questioned whether or not a COP had been timely sent. Brief discussion ensued. The Board agreed that

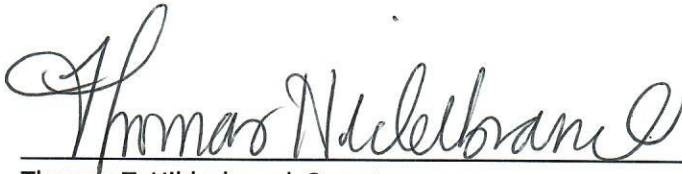
FDMANC members could print a confirmation from their Sent Mail to document their timely submission of COP's which would be an efficient, effective solution.

Mr. Watson asked if there was any other business to come before the Board. Hearing none, he adjourned the meeting.

Affirmation:



Christian E. Watson, President



Thomas T. Hilderbrand, Secretary

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Date