

NORTH CAROLINA
BOARD OF FUNERAL SERVICE



Minutes
April 12, 2023, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on April 12, 2023, at the NC Board of Funeral Service office suite at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605.

Present: Dr. Steven Lyons, President; Thomas Hilderbrand, Vice-President; Darrell McCormick, Secretary; Steve Herndon; Chris Watson; LeShekia Coleman; Robert Jansen; Dr. Kimberly Kelsey; and Richard Hinchler.

Staff and Counsel: Stephen Davis, Executive Director; Amy Acord, Assistant Director; and Catherine Lee, General Counsel.

Dr. Lyons called the meeting to order at 9:03 a.m. and led members and staff in a recitation of the Pledge of Allegiance followed by the invocation which Ms. Coleman offered. He proceeded by reading the Statement of Ethics and asked if any members would be recusing themselves. Dr. Lyons then asked if any guests were present and if they wished to offer any public comment. Mr. Chase Noble, NC Funeral Directors Association; and Mr. Bill Noble, licensee, introduced themselves.

Dr. Lyons continued and asked Mr. McCormick to present the minutes from the March 8, 2022, Board meeting.

Approval of Minutes

Mr. McCormick said that the minutes had been sent to each member prior to the meeting for review. He invited any amendments or comments regarding the minutes. Hearing none, Dr. Lyons asked for a motion.

Upon a motion by Mr. Hinchler and a second by Mr. Watson, the Board voted to adopt the March 8, 2023, minutes as presented.

Dr. Lyons then presented the Finance and Personnel Committee report and reported that the Committee convened by WebEx on Thursday, April 6, 2023, with all members in attendance. He asked the Executive Director to offer highlights from the report.

Finance and Personnel Committee Report

Mr. Davis said that he would offer comment on the financial reports for the period ending February 2023. He said that the Statement of Net indicated that all measures for assessing and analyzing the Statement are positive and continue to show that the Board's net position is strong and fiscally sound. Mr. Davis highlighted the Preneed Recovery Trust Fund balance and noted that the amount in the Fund was \$599,335.77. He reported that the Fund balance is growing at a rate of approximately \$100,000 annually. He reiterated that there were no indicators on the Statement of Net Position that would create concern regarding the Board's fiscal health and net position. He invited questions and comments.

He then summarized the Statement of Revenues and Expenditures. Mr. Davis explained that the key measure for monitoring the rate of expenditure in relation to the Board's income was the percentage Year To Date of budget used. He said that he calculates a benchmark percentage for each month of the fiscal

year to gauge how much above or below this percentage operating expenses are for a particular reporting period. He said that at the end of the reporting period, the benchmark percentage is 16.6%, and the Statement of Revenues and Expenses shows that the Board's expenses are at 16.5% which is comparable to the same reporting period in 2022. He then reviewed revenues and said that the Board has collected 90.7% of license fees projected at the time the budget was approved for FY2023. He reminded members that the Board had voted to reduce the projection for License Fee Revenue upon staff's recommendation and that the reduction for FY2023 meant a higher percentage of revenue for the reporting period. He then noted that the fees for cremations and preneed contracts are tracking at similar levels as in the same reporting period for 2022. He invited questions and comments. Dr. Lyons then invited a motion for approval of the financial reports for the period ending February 2023.

Upon a motion by Mr. McCormick and a second by Dr. Kelsey, the Board voted unanimously by roll call and approved the financial reports for the period ending February 2023.

Mr. Davis continued and updated the Board on the proposals for a new alarm and security system. He said that he had invited four (4) Triangle-based security firms to provide a quote on the installation and maintenance of a new system. He noted that only one (1) responded with a quote of approximately \$4,000 for a new access control and fire security system. He noted that the Finance and Personnel Committee was in agreement that the Board should proceed with the project based on the quote.

Mr. Davis then reported that two of the Board's insurance policies were up for renewal in the month ahead and that he was securing quotes to compare premium rates and scope of coverage for cyber and worker's compensation insurance. He invited questions or comments from the Board.

Mr. Herndon asked if there were any personnel issues that the Board should address. Mr. Davis said that there are currently no issues regarding staff performance or conduct. He noted that he and Ms. Acord had conducted a lengthy staff meeting following the March Board meeting that included all staff. He briefly summarized the meeting agenda and said that Ms. Acord had stressed to staff the critical importance of timely updates to the time and attendance system to assure that all leave balances were current and accurate.

Mr. Davis said that he would answer any questions or receive comments about the Committee report. Dr. Lyons conveyed thanks to Mr. Davis for his comments on the Finance and Personnel Committee meeting. He then recognized Mr. Herndon for the Disciplinary Committee report.

Disciplinary Committee Report

Mr. Herndon said that the Disciplinary Committee met on Monday, April 10, 2023, to consider the following disciplinary cases along with recommendations and rationale for each case number.

SUMMARY DISMISSALS

C23-0017

DISMISSALS

C23-0005 C23-0007 C23-0015 C23-0018

LETTER OF CAUTION

C23-0010 C23-0014

NOTICE OF HEARING

C22-0106 C23-0012 C23-0019

OTHER

M23-0016 M23-0017 M23-0019 M23-0021

Mr. Herndon invited any questions or comments concerning the cases included in the Disciplinary Committee report. Hearing none, he said that he was offering the Committee report in the form of a motion.

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

Dr. Lyons then recognized Mr. Jansen for presentation of the Exam Committee Report.

Exam Committee Report

Mr. Jansen reported that the Exam Committee convened by WebEx at 9:00 a.m. on Tuesday, April 4, 2023. In attendance were Dr. Steven Lyons, Chair; Mr. Thomas Hilderbrand; and Mr. Robb Jansen. Staff in attendance were Mr. Stephen Davis, Executive Director, and Ms. Amy Acord, Assistant Director.

He said that Mr. Davis initially provided a summary to the Committee of a recent presentation on Board examination development and administration at the annual meeting of The Conference in Phoenix, AZ. He explained that jurisdictions across the country had expressed concerns regarding the national board examinations in terms of their difficulty, pass/fail rates, and relevance to academic instruction. Mr. Jansen noted that the exam development process is rigorous and subject to strict controls to assure consistency and compliance with curriculum standards set through the American Board of Funeral Service Education. He said that the exam content is solely developed by licensees, and he reminded the Board that Mr. Hilderbrand is currently serving a one-year term on the National Exam Committee which is tasked with content development and assessment.

Mr. Jansen continued and presented the examination results for Pathology, SBE-Arts and SBE-Sciences from calendar year 2022. He provided details on pass/fail rates, the number of retakes for each exam and the number of individuals taking the SBE-Arts and SBE-Sciences for the first time.

Mr. Jansen continued his report and said that Committee members had a spirited discussion about the Pathology examination as a requirement for funeral directing licensing through the traditional pathway. He briefly summarized concerns that the Committee and the Board have expressed in prior meetings, and he reminded members that the current disparity in examination requirements for licensure in funeral directing prompted staff to raise the issue earlier in the year. Mr. Jansen referenced the requirements for the provisional license when the General Assembly ratified legislation in 2019 to create this new license category and noted that the General Assembly had subsequently redefined the meaning of an entry-level examination for funeral directors in 2022 as a way to increase opportunity for licensure.

Mr. Jansen reported that Ms. Acord presented the results of a survey of active funeral director licensees pertaining to the Pathology Examination to Committee members. He reported that approximately 43% of FD licensees responded to the survey and were nearly unanimous in a preference to retain the Pathology examination as a requirement for licensure. Members briefly discussed various concerns and issues associated with either the elimination or retention of the Pathology examination and noted that the information from course instruction is important and relevant to licensure. Dr. Lyons cited prior discussion with Mr. James Bullard at Fayetteville Technical Community College (FTCC) regarding the requirement for funeral director diploma candidates to pass a pathology examination as a requirement for graduation. Mr.

Jansen observed that it would be important to keep in mind the public's best interests and the protection of public health by assuring that licensees are fully competent in pathology.

Mr. Jansen reminded members that Ms. Lee had conveyed an option for the promulgation of an administrative rule that would enable the Board to accept a passing score on the FTCC pathology course in lieu of a separate Pathology examination requirement for licensure in funeral directing. Dr. Lyons noted the difficulty and challenge associated with the study and consideration of this issue and noted that the Committee would continue dialogue on the issue before the development of a formal recommendation for the Board's consideration. He thanked Mr. Jansen for presenting the Committee's report. He then introduced the report from the Laws, Rules and Legislation Committee and asked Mr. Davis to summarize key points.

Laws, Rules & Legislation Committee Report

Mr. Davis said that the Laws, Rules and Legislation Committee met on Wednesday, April 5, 2023, via Webex teleconferencing. Members in attendance were Dr. Steven Lyons, Chair, Mr. Stephen Herndon; and Mr. Chris Watson. Staff attending were Stephen Davis, Executive Director; Amy Acord, Assistant Director; Brett Lisenbee, Compliance Officer; and Catherine Lee, General Counsel.

Mr. Davis noted that the primary agenda item for the Committee's was a review of administrative rules that Ms. Lee had drafted in response to earlier discussions on issues pertaining to the Removal and Transportation permit. He reported that staff had discussed and refined administrative rules that Ms. Lee had drafted regarding the removal and transportation of decedents and said that Ms. Lee summarized the proposed rules for Committee members when they met. Ms. Lee explained the provisions at 21 NCAC 34B .0800, Definitions; .0802, Initial Permit Application Form; .0803 Permit Renewal Application Form; .0804, Standards for Removal and Transportation of Dead Human Bodies; .0805 Requirements for Removal Vehicles; and .0806, Chain of Custody and Control.

Mr. Davis said that the Committee had discussed whether a removal and transportation permit is required for all employees in a mortuary transport company who are directly engaged in the removal and transportation of decedents. Ms. Lee said that staff had issued compliance opinions in the past regarding this issue which enabled a transport company employee to assist a permit holder without a requirement that they also hold the permit. She said that individuals who operate a vehicle in the transport of decedents would be required to hold a permit since background checks would likely report violations associated with the operation of a motor vehicle which would be an important factor in determining eligibility for a permit. Brief discussion ensued. Members discussed whether or not all employees of a transport company should be required to possess a removal and transportation permit. Upon further discussion, the Committee agreed that there are circumstances that could allow assistance to a permit-holder by a non-permitted individual but that it was understood all removals must have at least one permit-holder on a removal call.

Ms. Lee then asked if there were questions concerning the proposed rules particularly the chain of custody and control issues since these would be new provisions. She said that these particular rules would apply to licensees of the Board as well as individuals possessing a removal and transportation permit. She noted that these provisions mirrored requirements imposed on transporters by the NC Office of the Chief Medical Examiner. Ms. Lee said that Committee members discussed a number of situations where decedents would have been sealed in a mortuary body bag prior to the arrival of a licensee or transporter which would prevent them from creating an inventory of personal belongings found on the decedent.

Ms. Lee reminded the Board that the pertinent general statutes require consultation with the NC Office of the Chief Medical Examiner in the promulgation of rules regarding the removal and transportation of decedents. She said that this would be the next step before the Board's decision on whether or not to initiate rulemaking with the NC Rules Review Commission. She said that staff would convene a meeting with OCME to discuss the rules prior to the May Board meeting and would report on the meeting at that time. She affirmed that the Board could then decide how they wished to proceed at the May Board meeting.

Dr. Lyons thanked staff for highlighting the report from the Laws, Rules and Legislation Committee. He then recognized Mr. Davis for the Executive Director's Report.

Executive Director's Report

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

- The Board maintains 5 different insurance policies for various purposes ranging from Workers Compensation to Cyber Liability. These two policies are soon eligible for renewal, and I have asked for quotes from our insurance providers to shop for lower premiums without sacrificing coverage. In 2018, our Cyber Liability was approximately \$6,000 – it is currently at \$12,280 and likely to continue increasing.
- The audit by Bernard Robinson & Company is nearing completion, and the Audit Manager is preparing draft reports of the audit. She will present the audit findings to the Finance and Personnel Committee which will then develop their recommendation to the full Board for the 2022 audit.
- As part of the audit, I am required each year to write a portion of the audit report entitled Management Discussion & Analysis. That portion of the audit is an opportunity for the Board to summarize significant events occurring in 2022. My analysis is based upon Board actions in 2022 including amendments to administrative rules concerning continuing education and preneed. You will recall that applicants for preneed sales licensure are required to have completed Board-sponsored training on preneed statutes and rules as a requirement for licensure.

I also conveyed the Board's affirmative vote on pursuing amendments to the Funeral Practice Act for reciprocal licensure, the number of resident trainees under a single supervisor, and selected fee increases. This management discussion also calls for Key Objectives for 2023, and I have conveyed the Board's authorization to move forward on the development and implementation of a Preneed Program Portal to facilitate the submission of preneed contracts and fees using a digital platform. I have also summarized the Board's discussions centering on licensure examinations for funeral directors and the promulgation of administrative rules for those engaged in the removal and transportation of decedents.

Dr. Lyons thanked Mr. Davis for his comments and then asked Ms. Lee for the Legal Case Report.

Legal Case Report

Ms. Lee reported the following information concerning legal cases to the Board:

DISCIPLINARY MATTERS

Current Active Cases: 44

Pending Investigation: 18
Pending Review by Disciplinary Committee: 14
Pending Dispositive Action: 0
Pending Hearing: 8
Post-Hearing: 0
Other: 4

New files opened since last Board meeting: 18

Notices of Hearing sent since last Board meeting: 1

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: 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 that restitution payments have been received on a recurring basis from those individual licensees required to reimburse the Preneed Recovery Trust Fund in association with disciplinary matters involving the misappropriation of consumer funds.

Ms. Lee also reported that the courts have ruled in favor of the Board in the matter involving John Peoples who was allegedly engaging in the removal and transportation of decedents without a permit. Ms. Lee said that a District Court judge had granted a preliminary injunction ordering Mr. Peoples to cease and desist from unlicensed practice.

Ms. Lee offered to answer questions regarding the legal case report. None were offered and Dr. Lyons then asked for any New Business or Old Business items.

New Business

No New Business items were offered.

Old Business

No Old Business items were offered.

Dr. Lyons announced at 10:07 a.m. that the Business Session was concluded and that the Board would reconvene at 11:00 a.m. for a scheduled administrative hearing.

The Board reconvened at 10:55 a.m. and conducted an administrative hearing in the matter of Mills Funeral Home, Inc., Craig Randolph Mills, Haskins Memorial Services, Inc. and Leander Robert Morgan, Jr., Board Case Numbers C22-0081, C22-0091, and C22-0093. Respondent Mills moved for a continuance of the hearing until a future Board meeting to allow time for his counsel to prepare.

Dr. Lyons invited a motion for closed session for deliberation on Mr. Mills' motion for continuance.

Upon a motion by Mr. McCormick and a second by Mr. Hilderbrand, the Board voted unanimously by roll call to convene in closed session to deliberate on Mr. Mills' motion for continuance.

Upon proper motion and vote, the Board reconvened in open session. Dr. Lyons invited a motion on the matter discussed in closed session.

Upon a motion by Mr. McCormick and a second by Mr. Hincer, the Board voted unanimously by roll call to deny the motion for continuance.

Following its vote on the motion for continuance, the Board continued the administrative hearing in the matter of Case Numbers C22-0081, C22-0091, C22-0093, and M23-0019. Upon conclusion of the hearing, Dr. Lyons announced a recess from 1:10 p.m. until 1:45 p.m. for lunch.

After the recess, Dr. Lyons informed the parties that the Board would deliberate on the matter and render a decision. None of the parties in the referenced matter objected.

Upon a motion by Mr. McCormick and a second by Ms. Coleman, the Board voted unanimously by roll call to convene in closed session to deliberate on the matter under consideration.

Upon proper motion and vote, the Board voted to reconvene in open session. Dr. Lyons invited any motions pertaining to the matter discussed in closed session.

Upon a motion by Mr. Hilderbrand and a second by Dr. Kelsey, the Board voted unanimously by roll call that:

1. The Funeral Service License of Respondent Morgan shall be placed on probation for a period of three (3) years, beginning on the Effective Date of the Final Agency Decision. During the period of probation, Respondent Morgan must comply with all statutes and rules governing the practice of funeral service. Respondent Morgan is ordered to pay to the Board a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) within thirty (30) days of this Final Agency Decision, which the Board shall remit the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
2. The Funeral Service License of Respondent Mills shall be actively suspended for a period of thirty (30) days following the Effective Date of the Final Agency Decision.
3. The At-Need Establishment Permit of Respondent Haskins Memorial Services, Inc. shall be placed on probation for a period of three (3) years, beginning on the Effective Date of the Final Agency Decision.
 - a. Within thirty (30) days following the Effective Date of this Final Agency Decision, Respondent Haskins Memorial Services, Inc. shall pay to the Board a civil penalty of Five Thousand Dollars (\$5,000.00), which the Board shall remit the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.

b. During the period of probation as set forth above, the licensure of Respondent Haskins Memorial Services, Inc. shall be on probationary status and it must comply with all statutes and rules governing the practice of funeral service.

c. Haskins Memorial Services, Inc. and Craig Mills have joint and several responsibility to submit written proof to the Board within thirty (30) days following the Effective Date of the Final Agency Decision that a refund has been issued to the Escalante family for the amounts that they paid to Craig Mills on behalf of Haskins Memorial Services, Inc. for funeral services that they did not receive, in an amount to be determined by a Board Inspector.

d. Haskins Memorial Services, Inc. and Craig Mills have joint and several responsibility to submit written proof to the Board within thirty (30) days following the Effective Date of the Final Agency Decision that a refund of \$40 has been paid to Ramenda Jones.

e. Haskins Memorial Services, Inc. and Craig Mills have joint and several responsibility to submit written proof to the Board within twenty-four (24) hours following the Effective Date of the Final Agency Decision that they have provided to Ramenda Jones a certified copy of the death certificate for Claudette Dunn.

4. The At-Need Establishment Permit of Respondent Mills Funeral Home, Inc. shall be suspended for a period of three (3) years, beginning on the Effective Date of the Final Agency Decision, provided that said suspension shall be stayed. However, the stay of the suspension shall be automatically lifted upon its failure to comply with the following terms and conditions:

a. Within thirty (30) days following the effective date of the Final Agency Decision, Respondent Mills Funeral Home, Inc. shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) to the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.

b. During the period of stayed suspension as set forth above, the licensure of Respondent Mills Funeral Home, Inc. shall be on probationary status and it must comply with all statutes and rules governing the practice of funeral service.

c. Respondent Mills shall not serve as the manager of Respondent Mills Funeral Home, Inc. during the period of stayed suspension. Mills Funeral Home, Inc. must submit in writing to the Board within 30 days the name of its new licensed manager, who cannot be Gary Nobles.

d. Within thirty (30) days following the effective date of the Final Agency Decision, Respondent Mills Funeral Home, Inc. shall provide to the Board written proof that the headstone purchased by Ms. Moore for the gravesite of Esther Williams has been ordered.

5. The Pre-Need Establishment Permit of Respondent Mills Funeral Home, Inc. shall be actively suspended for thirty (30) days following the Effective Date of the Consent Order. Board staff shall stay the suspension upon receipt of written proof that a preneed establishment bond that is compliant with N.C. Gen. Stat. § 90-210.67(b) has been issued to Respondent Mills Funeral Home, Inc.

6. The Board shall retain jurisdiction under Article 3A, Chapter 150B for all administrative hearings held in connection with, or pursuant to, this Final Agency Decision. If the Board receives evidence of any violations of the Board's statutes and rules identified during the period of stayed suspension, or any violation of the terms and conditions of the Final Agency Decision, the Board shall schedule a show cause hearing for a

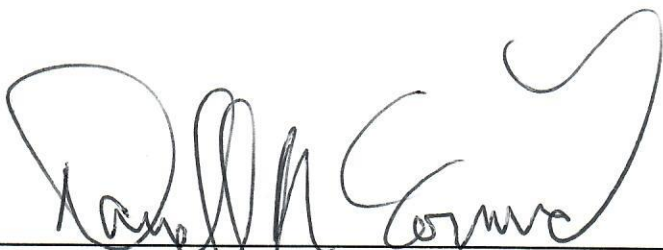
determination of the violations. If the Board determines that a violation has occurred, the Board may impose such disciplinary action as it determines is appropriate and is authorized by law.

At the conclusion of the administrative hearing and without further business before the Board, Dr. Lyons invited a motion for adjournment. Upon a motion by Mr. McCormick and a second by Mr. Hincer, the Board voted unanimously to adjourn the meeting.

Affirmation:



Dr. Steven L. Lyons, President



Mr. Darrell McCormick, Secretary

10 May 2023

Date