

NORTH CAROLINA
BOARD OF FUNERAL SERVICE



Minutes
May 10, 2023, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on May 10, 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; Dr. Kimberly Kelsey; and Richard Hinchler.

Staff and Counsel: Stephen Davis, Executive Director; Amy Acord, Assistant Director; Brett Lisenbee, Compliance Officer; 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 Mr. Watson offered. He proceeded by asking if any guests were present and if they wished to offer any public comment. Mr. Chase Noble, NC Funeral Directors Association introduced himself as the Executive Director of the NC Funeral Directors Association.

Dr. Lyons continued and stated that the Board would hear from Ms. Sara Williams, President of the Funeral Consumers Alliance of North Carolina (FCANC) regarding the mission and work of her organization. He stated that the Board and the FCANC share a common goal in outreach to consumers and the protection of their interests in funeral planning and preparation. Ms. Williams conveyed appreciation to the Board for the opportunity to speak about the FCANC. Ms. Williams' presentation to the Board included a description of the FCANC in terms of its mission and role; ways in which she believed the Board and the FCANC can work collaboratively in support of consumers; and comments on emerging trends or issues in professional funeral service. Following her presentation, Dr. Lyons asked Ms. Williams for her organization's views on the national trend toward deregulation of occupational licensing boards. Ms. Williams said that she was unaware of this particular trend, and Mr. Davis offered information on deregulation and the potential impact on funeral boards as well as consumers. Dr. Lyons then asked about the FCANC's prospective goals and objectives going forward. Ms. Williams noted that the FCANC had sponsored a Death Expo at Elon University recently and anticipated hosting another Expo in the near future.

Dr. Lyons invited questions from Board members. Mr. Watson asked Ms. Williams about the interaction her organization has directly with consumers regarding the death and subsequent arrangements for a loved one. Ms. Williams said that her organization's members may encourage consumers to consider pricing among funeral homes in their communities to determine which establishment to call. She noted that FCANC members will often encourage consumers to visit funeral homes in making their determination. Mr. Hilderbrand acknowledged the FCANC's survey of funeral homes in soliciting price information and conveyed concerns that some licensees of the Board had shared with him regarding these efforts. He suggested that FCANC's communications with licensees soliciting pricing information include more specific details and explanation so that licensees have a clear understanding of the solicitation. He cautioned that accuracy in communicating the requirements of the federal Funeral Rule regarding disclosure of pricing would be advisable. He also inquired about whether FCANC adhered to any standard procedures in reaching out to licensees for pricing information, and he asked if the organization had access to legal counsel. Ms. Williams conveyed that there are no specific procedures that the organization's members must follow when reaching out to licensees, and she noted that FCANC relies upon Tanya Marsh for legal counsel.

Ms. Lee acknowledged the difficulty that families may encounter in trying to fund funeral services for loved ones, and she asked Ms. Williams if FCANC had considered the NC Commission of Anatomy as a possibility for the consumers that contact her. Ms. Williams said that they had not but would research that suggestion further.

Dr. Lyons expressed thanks to Ms. Williams for her comments to the Board and for the opportunity to learn more about the work of the FCANC. He then recognized Mr. McCormick for presenting the minutes from the April 12, 2023, Board meeting. Mr. McCormick asked for any amendments or revisions to the minutes. Hearing none, he offered a motion for approval. Dr. Lyons paused the proceedings in response to an inquiry from Mr. Watson regarding the Statement of Ethics. Dr. Lyons read the Statement and asked if any members had a conflict of interest or appearance of conflict that would require their recusal from any matter before the Board. Mr. Herndon said that he would recuse himself from considering and voting on Board Case Number M23-0032. Dr. Lyons then continued with the pending motion for approval of the minutes and invited a second.

Upon Mr. McCormick's motion, Ms. Coleman offered a second. The Board voted unanimously to approve the minutes from the April 12, 2023, Board meeting.

Dr. Lyons then continued and said that the Finance and Personnel Committee met on April 27, 2023, to hear a presentation on the 2022 audit findings and again on May 4, 2023 to review the March financial reports. He recognized Mr. Davis for a summary of both meetings.

Finance and Personnel Committee

Mr. Davis reported that Ms. Tricia Glidewell, Audit Manager from Bernard Robinson & Company, the firm conducting the Board's audit of its 2022 financial statements, briefed the Committee on her team's audit findings. She reported that the 2022 audit was streamlined, efficient and went smoothly with input and support from Thomas, Judy & Tucker, the Board's outsourced accounting firm, and from Board staff who provided documents and information regarding the Board's financial reporting systems and internal controls. Ms. Glidewell presented the Committee with a Governance Letter to the Board which indicates Significant Audit Findings and explains that accounting estimates are critical to the evaluation and assessment of the Board's financial statements. She said that these particular findings were consistent with the audit findings reported in 2021 which is an indication of financial stability.

Mr. Davis said that Ms. Glidewell noted the absence of a Management Letter for the 2022 audit because the audit team did not identify any material weaknesses or significant deficiencies in evaluating the Board's 2022 financial statements. She noted that in the opinion of Bernard Robinson & Company, *the financial statements referred to in the audit presented fairly, and in all material respects, the financial position of the NC Board of Funeral Services as of December 31, 2022 and 2021.* She said that this statement is the *"cleanest and highest-level opinion that Bernard Robinson can issue."* Mr. Davis said that the Committee briefly discussed the audit and acknowledged staff's efforts to assure sound internal controls that have a significant impact on the annual audit findings. He invited questions or comments. Hearing none, Dr. Lyons invited a motion.

Upon a motion by Mr. Watson and a second by Ms. Coleman, the Board voted unanimously to accept the findings from the 2022 Audit of Financial Statements conducted by Bernard Robinson & Company.

Dr. Lyons then asked Mr. Davis to continue with the Committee's review of the March financial reports. Mr. Davis said that the reports covered the First Quarter of FY2023 which would represent 25% of the total projected budget for the year. He noted that the total operating expenses for the first quarter were at 24.5% which is consistent with the percentage reported for the same period in 2022. He briefly summarized the Statement of Net Position and reported that the Board's Unrestricted Fund balance at \$1,395,981.33 represented 11 months of operating capital in reserve which indicates an exceptionally strong financial position. He reminded the Board that this observation was affirmed in the recent presentation by the firm conducting the audit of the Board's financial statements for 2022. Mr. Davis briefly highlighted the balance shown for the Preneed Recovery Trust Fund and noted that the actual balance is approximately \$620,000 which represents preneed trust funds that have not yet been deposited. He said that the Trust Fund is growing at approximately

\$125,000 per year, and he expressed confidence that it would be approaching \$1M in the next 3-4 year period. Mr. Davis offered to answer any questions regarding the Statement of Net Position.

Mr. Watson asked for information regarding bank fees associated with online credit card payments and questioned the impact of these fees on the Board's financial reports knowing that the proposed preneed program portal could lead to a high volume of online transactions. Mr. Davis affirmed that the Board currently pays a 3% fee for each online transaction, and these payments are expensed under Bank Fees on the Chart of Accounts. Discussion ensued as members questioned whether these fees could be absorbed by the payor. Ms. Lee said that she could offer legal advice on the matter but that closed session would be a more appropriate forum than open session.

Mr. Davis continued and highlighted the Statement of Revenues and Operating Expenses. He noted that nearly all line items in the Chart of Accounts are at 25% or lower of encumbered expenses which is consistent with the expectations for the end of the first quarter of the fiscal year. He highlighted a single exception regarding fees received for background checks which is shown as SBI Fingerprinting on the Chart of Accounts. He said that the Board budgeted \$100 for this line item but anticipated that there ideally should be zero expenses. He said that there are some applicants who fail to pay the \$38 fee for their background check, and he explained that staff sets alerts on the licensing management system to prevent any approval of a license, permit, or traineeship until the fee has been paid. He said he was offering this information to explain the 152% encumbrance shown for SBI Fingerprinting. He concluded by stating that there were no outliers or other indicators of problems or concerns associated with the Statement of Revenue and Operating Expenses.

He noted that he and Ms. Acord routinely check financial reports for the preceding 2-year period to identify any anomalies or trends that would indicate concerns about the Board's income or expenditures. He reported that none were observed. He then invited any questions or comments. Hearing none, Dr. Lyons invited a motion for approval of the Committee's recommendation.

Upon a motion by Mr. McCormick and a second by Dr. Kelsey, the Board voted unanimously to approve the financial reports for the period ending March 2023.

Mr. Davis continued his summary of the Committee's May 4, 2023, meeting. Mr. Davis said that he had approved the premium payment for the Board's Cyber Liability insurance policy even though the premium amount has doubled since 2019. He noted that he had secured another quote which was lower than the current policy, but he was concerned that the coverage would more limited by comparison. He said that the coverage offered by the current policy protected the Board for a wider range of risks than the lower-cost quote for a different and more limited policy. He also reported that Diversified Systems, Inc. had begun work on the installation of a new, updated security and fire safety system for the Raleigh office suite.

He continued and said that he had secured a lower quote on the Board's Worker's Compensation insurance with a 50% reduction in premium cost. He concluded by alerting the Board that he and Ms. Acord were investigating and researching options for more cost-effective health care coverage for employees. He said that the current health care options include high deductibles and co-pays, and he wanted to see if the market could offer options for coverage with lower out-of-pocket expenses for staff. Mr. Davis said that he had concluded his summary of the Committee's meeting and would be glad to answer questions.

Dr. Lyons thanked Mr. Davis for his summary of the Finance and Personnel Committee reports. He then recognized Mr. Herndon for the Disciplinary Committee report.

Disciplinary Committee Report

Mr. Herndon said that the Disciplinary Committee met on Friday, May 5, 2023, to consider the following disciplinary cases along with recommendations and rationale for each case number. Mr. Herndon said that he would not be presenting information on Case Number M23-0032 since he was recused. He said that Mr. Watson would present that particular case to the Board.

SUMMARY DISMISSALS

C23-0022

DISMISSALS

C23-0011 C23-0020 C23-0025 C23-0027

LETTER OF CAUTION

C23-0016 M23-0022 M23-0023 M23-0024

NOTICE OF HEARING

M23-0030 M23-0031

OTHER

M23-0020

Mr. Herndon invited any questions or comments concerning the cases he presented 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. Hilderbrand offered a second. The Board voted unanimously to approve the Disciplinary Committee report as presented.

Dr. Lyons then recognized Mr. Watson for presentation of Case Number M23-0032. Mr. Watson reported that the Disciplinary Committee had reviewed this case at its May 5, 2023, meeting and recommended that the Board issue a Notice of Hearing. He offered to answer any questions regarding this case. Hearing none, Mr. Watson offered a motion for approval.

Upon Mr. Watson's motion for approval, Dr. Kelsey offered a second. The Board voted unanimously to approve the Disciplinary Committee's recommendation for Notice of Hearing in Case Number M23-0032.

Dr. Lyons thanked the Disciplinary Committee for their work in reviewing cases and developing recommendations for the Board's consideration. 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:

- I have renewed the Board's Cyber Liability insurance policy and its Workers Compensation policy.
- The BCBS Health Insurance policy renewal date is June 30, 2023. The premium rates for the Health Savings Account will increase 6.7%, and the rate for the Blue Options Gold plan will increase by 9.3%. We are exploring other, more cost-effective plans with our insurance agency.
- The Office of the Chief State Fire Marshal has notified us that the rates for the State Property Fire Insurance Fund policy will be increasing by 10% for the 2023-24 renewal. They are also assessing a 5% valuation for the Board's office condominium. Property insurance for buildings, structures and business personal property owned by the State of North Carolina is provided through the State Property Fire

Insurance Fund (The Fund). All property is required to have coverage for losses caused by Fire and Lightning. However, an agency or university may choose to insure property under its control for other types of property losses.

- We are in the process of transitioning to a new system for access control and security. The company that you approved for the installation of a new system has acquired the necessary software and other equipment necessary to upgrade our access control and security systems. The company has completed all necessary work to assure that we are prepared for a scheduled fire safety inspection by the Wake County Fire Marshal in June.
- The NC Funeral Directors Association's Annual Educational Conference and Exposition is scheduled for May 21 through May 23 at the Benton Convention Center South in Winston-Salem. NCFDA Board representatives are Dr. Lyons, Mr. Herndon, Mr. Watson and Mr. Hincer.
- The Funeral Directors & Morticians Association of NC will convene June 19th through June 22nd for its 96th Annual Convention at the Hilton Convention Center in Greenville, NC. The host for the convention is the Mighty Eastern District. Mr. Hilderbrand and Dr. Kelsey are the Board's representatives from the FDMANC. Mr. Hilderbrand is the Association's Sergeant-at-Arms.
- Mr. Lisenbee recently shared an article from the NC Medical Board regarding medical certifiers' obligation to sign death certificates through the NC DAVE system. The article includes a case study for one of their Board licensees to complete a death certificate pursuant to statutory requirements. The case study centers on a primary care physician who refused to sign the death certificate because he had not seen the patient in 2 years. The patient died unattended at home. Repeated attempts by the funeral licensee to contact the physician were initially unsuccessful. The funeral director finally reached the physician with help from the decedent's family and alerts him that he is not in compliance with the law. The funeral director further states that he will file a complaint if the physician does not sign the death certificate as required by statute. The Medical Board states that "licensees should complete death certificates if asked as a final service to a former patient, their family members and to society at large." Their position is outlined in a Position Statement entitled "Clinician Obligation to Complete a Certificate of Death."

Mr. Watson asked if the Board's transition to digital platforms and its increasing reliance on this technology was a cause for the increased premium for the Cyber Liability insurance policy. Mr. Davis said that he did not believe so. He said that the increase in premium results from elevated trends in hacking public and private computer systems, and he reported that insurance companies have reacted by increasing premiums for insurance coverage since there is a significantly increased risk of systems failures which then prompt claims for reimbursement. He noted that the hacking of the Colonial Pipeline several years ago illustrated the problem. Brief discussion ensued.

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:	19
Pending Review by Disciplinary Committee:	0
Pending Dispositive Action:	12
Pending Hearing:	9
Post-Hearing:	0

Other: 4

New files opened since last Board meeting: 9

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: 12

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 continued her report with an update to the Board on a recent action by the Federal Trade Commission (FTC) on a matter involving the Funeral & Cremation Group of North America, LLC, and Legacy Cremation Services, LLC, which are organizations headed by Anthony Joseph Damiano. Ms. Lee reported that the FTC issued a press release which she would share with the Board announcing a stipulated order which addressed certain disclosure requirements for Mr. Damiano's organizations and their web-based business activities.

Ms. Lee continued and said that since the last Board meeting which included a disciplinary hearing involving Mr. Robert Morgan, Jr., one of the respondents in the matter, who was requesting a payment plan to satisfy the civil penalty that the Board imposed as part of its decision in the case. Ms. Lee provided members a copy of Mr. Morgan's request and said that staff had no objection to Mr. Morgan's request. She noted that Mr. Morgan has complied with the Board's requirement that he reimburse consumers as set forth in the Final Agency Decision and that Mr. Morgan has been cooperative in his compliance with the Board's decision regarding his responsibilities. Mr. McCormick asked if this was a matter that should be considered in closed session. Ms. Lee said that if the Board wished to deliberate on the merits of Mr. Morgan's request, closed session would be the appropriate forum for that. Or, the Board could decide the matter based on Mr. Morgan's written request without further deliberation.

Mr. McCormick offered a motion that the Board accept Mr. Morgan's request for a payment plan.

Upon Mr. McCormick's motion and a second by Mr. Hilderbrand, the Board voted in the majority to accept the request from Mr. Robert Morgan, Jr. for a payment plan to satisfy the civil penalty imposed in the Board's Final Agency Decision in case numbers C22-0081, C22-0091 and C22-0093. Mr. Watson and Mr. Herndon were recused.

Dr. Lyons thanked Ms. Lee for her report and acknowledged the work by Board staff on the matters she presented. He then recognized Mr. Watson who offered additional comments to Ms. Sara Williams representing the Funeral Consumers Alliance of NC. Mr. Watson noted that the Board often considers matters involving discipline of licensees which indicates that there are some engaged in business practices that are not compliant with the Board's statutes and administrative rules. He said that many of these matters involve consumers and that the Board takes its role in consumer protection very seriously. He expressed concern that advocacy groups

like the FCANC are not necessarily aware of these non-compliant practices, and he stressed that pricing, while important, is not a sole indicator of whether or not a consumer's interests in the purchase of funeral goods and services will be protected. Ms. Williams responded that the FCANC website does include a disclaimer that consumers should consider a number of factors in addition to pricing when selecting a funeral home to include reputation and past practices in service to a particular community. Mr. Watson thanked her for her response.

Dr. Lyons continued the meeting and asked for any Old Business items.

Old Business

Ms. Lee reminded the Board of its prior discussion and consideration of proposed administrative rules governing the Removal and Transportation permit, and she reported that Board staff had met with appropriate staff from the Office of the Chief Medical Examiner in drafting the proposed rules. She noted that meetings with OCME staff had been productive and that she would bring the final draft to the Board at a future Board meeting for determining whether to initiate rulemaking.

No other Old Business items were offered. Dr. Lyons asked if there were any New Business items.

New Business

Ms. Coleman raised an issue pertaining to the transfer of preneed contracts and associated records to a successor funeral home in cases where a particular preneed establishment's license has been suspended or revoked. She acknowledged the successor funeral home's role as the new custodian of such records but said that some successor funeral homes do not receive a complete list of the transferred contracts. She asked if the Board could provide such lists in situations necessitating the transfer of preneed contracts to a successor funeral home. Mr. Lisenbee responded and described the Board's current procedures in those situations which include an audit of the preneed contracts formerly held by the contracting funeral home as well as a complete listing of preneed contracts transferred to a successor funeral home. He said that this listing is known as an "Active Client Listing" that Board staff produces through its licensing management system. He indicated that contracts not registered with the Board would not be included in this listing when the Board itself is the transferring party.

Ms. Coleman observed that when preneed contracts are transferred to a successor funeral home, there is often considerable work that must be done in accepting those contracts. She noted that successor funeral homes do not receive any compensation or benefits for their administrative work in accepting preneed contracts from a contracting funeral home, and she asked if the Board should not include some remuneration to a successor funeral home in recognition of the administrative work that would be required. Mr. Lisenbee confirmed that there are no such payments and noted that a successor funeral home would likely need to factor in its costs associated with accepting preneed contracts before agreeing to do so. Mr. McCormick said that successor funeral homes would need to make an informed business decision as part of their consideration in whether to accept preneed contracts.

Mr. Lisenbee clarified that there are two statutes that govern the transfer of preneed contracts from a contracting funeral home to a successor funeral home. Such transfers may be through mutual consent between the two funeral homes when the contracting funeral home is voluntarily closing or selling its business, or the transfer may be imposed as a result of disciplinary action by the Board. Discussion ensued. Mr. Lisenbee said that he would be glad to speak further with Ms. Coleman about her concerns if she was referring to a particular funeral home that had or was planning to accept preneed contracts from a contracting funeral home. He noted that there likely would be other circumstances that would need to be considered in addressing her concerns.

Dr. Lyons conveyed thanks for the opportunity to discuss the transfer of preneed contracts between funeral homes. Dr. Lyons suggested that the Board recess so that it could proceed with scheduled administrative hearings. Mr. Watson asked if the Board could meet briefly in closed session to hear legal advice pertaining to the bank fee issue discussed earlier in the meeting.

Upon a motion by Mr. McCormick and a second by Ms. Coleman, the Board voted to convene in closed session to consider legal matters subject to attorney-client confidentiality pursuant to NCGS 143-318.11.

Upon a motion by Dr. Kelsey and a second by Ms. Coleman, the Board voted to reconvene in open session.

Dr. Lyons announced that the meeting would be recessed and that the Board would conduct a disciplinary hearing in Board Case Numbers C23-0012 and C23-0019 in the matter of Mills Funeral Home, Inc. and Craig Randolph Mills.

Following the disciplinary hearing, Dr. Lyons invited a motion for the Board to convene in closed session to deliberate on the matter in Case Number C23-0012 and C23-0019.

Upon a motion by Mr. Hilderbrand and a second by Mr. McCormick, the Board voted to convene in closed session to hear the referenced matter. Mr. Herndon and Mr. Watson were recused.

Upon a motion by Mr. Hilderbrand and a second by Mr. McCormick, the Board voted to reconvene in open session.

Dr. Lyons invited any motions pertaining to the Board's deliberation in closed session.

Dr. Kelsey offered the following motion:

- *In the matter of Mills Funeral Home, Inc. and Craig Randolph Mills, the Board has decided to revoke the individual licenses of Craig Randolph Mills to include his funeral service and preneed sales licenses; to revoke all licenses of respondent Mills Funeral Home, Inc. to include At Need and Preneed establishment permits.*
- *The Board further directs Board staff to promptly remove and perform a full audit of the preneed contract files in the custody of Mills Funeral Home, Inc. and to transfer said files to a successor funeral home pursuant to the Board's standard policy and procedure.*
- *The Board directs Board staff to pursue the collection of civil penalties previously imposed against Craig Randolph Mills or Mills Funeral Home, Inc. which have not been paid.*
- *The Board finds that both respondent Craig Randolph Mills and respondent Mills Funeral Home, Inc. have violated the Board's prior Consent Orders and that the suspensions stayed upon a condition that respondents comply with the Board's statutes and rules are no longer stayed. These suspensions are now considered active suspensions.*

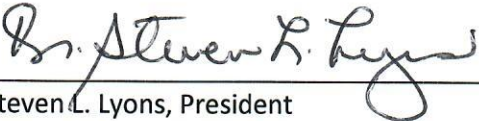
Mr. Hincer offered a second to the motion. The Board voted unanimously to approve the motion as presented.

Dr. Lyons recognized Mr. McCormick for a motion. Mr. McCormick offered a motion that lunch provided for Board members shall also include Board staff during monthly Board meetings. Mr. Hincer offered a second. The Board voted unanimously to approve lunch for Board staff at monthly Board meetings.


Dr. Lyons asked if there was further business to come before the Board. Hearing none, he invited a motion for adjournment.

Upon a motion by Mr. McCormick and a second by Dr. Kelsey, the Board voted unanimously to adjourn the meeting.

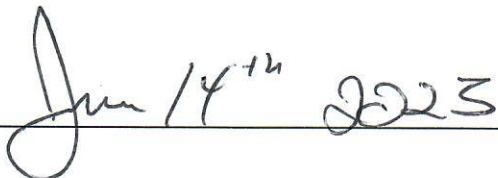
Affirmation:



Dr. Steven L. Lyons, President



Mr. Darrell McCormick, Secretary



Date

