

NORTH CAROLINA
BOARD OF FUNERAL SERVICE



November 8, 2023, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on November 8, 2023, at the Board offices at 1033 Wade Avenue, Suite 108, in Raleigh, North Carolina.

Present: Dr. Steven Lyons, President; Thomas Hilderbrand, Vice-President; Chris Watson; Dr. Kimberly Kelsey; LeShekia Coleman; Richard Hincer; and Roger Barnes. Mr. Herndon joined the meeting by remote connection.

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 Dr. Kelsey offered. He then read the Statement of Ethics and asked if any Board members had any conflict or appearance of conflict of interest. None recused. Dr. Lyons proceeded by asking if any guests were present and if they wished to offer any public comment. Mr. Joshua Bugajski, Funeral Service licensee; and Mr. Rodney Duncan, Funeral Director licensee, introduced themselves.

Dr. Lyons continued and recognized Mr. Hincer for the presentation of the minutes from the October 11, 2023, meeting and the Emergency Board Meeting on October 23, 2023. Mr. Hincer stated that staff had provided the minutes prior to the meeting for review and invited any changes or amendments. None were offered. Dr. Lyons invited a motion for approval of the October 11, 2023, minutes.

Upon a motion by Ms. Coleman and a second by Dr. Kelsey, the Board voted unanimously by roll call to approve the October 11, 2023, minutes as presented.

Dr. Lyons then invited a motion for approval of the October 23, 2023, minutes from the Emergency Board Meeting..

Upon a motion by Dr. Kelsey and second by Mr. Watson, the Board voted unanimously by roll call to approve minutes from the October 23, 2023, Emergency Board meeting as presented.

Dr. Lyons continued and recognized Mr. Herndon for the Disciplinary Committee report.

Disciplinary Committee

Mr. Herndon said that the Disciplinary Committee met on Friday, October 6, 2023, to consider the following disciplinary cases along with recommendations and rationale for each case number

SUMMARY DISMISSAL

C23-0100

DISMISSALS

C23-0031	C23-0075	C23-0079	C23-0083	C23-0090	C23-0092
C23-0094	C23-0096				

LETTERS OF CAUTION

C23-0088 C23-0051 M23-0052 M23-0053 M23-0054 M23-0055

NOTICE OF HEARING

C23-0095

Mr. Herndon invited any questions or comments concerning the cases he presented in the Disciplinary Committee report. Dr. Lyons asked how the Board's decision to delegate authority to the Disciplinary Committee for a preliminary interview in matters with a low threshold on criminal histories was working. Ms. Lee noted that the delegated authority was clearly beneficial and made the disciplinary procedures more efficient than in the past. Mr. Herndon then offered a motion for approval of the Disciplinary Committee Report.

Upon Mr. Herndon's motion, Ms. Coleman offered a second. The Board voted unanimously by roll call to accept the recommendations presented by the Disciplinary Committee

Dr. Lyons continued and recognized Mr. Davis for a summary of the Finance and Personnel Committee report.

Finance and Personnel Committee

Mr. Davis highlighted the financial reports for the period ending September 2023. He said that there were two primary agenda items that the Committee considered: a review of the financial reports for the period ending September 2023, and consideration of the responses to the Request for Proposal for an independent auditor to conduct the annual audit of the Board's financial statements for the period 2023 – 2025.

Mr. Davis summarized the Statement of Net Position and noted that the Board's net position continues to be robust. He said that there are no indicators on the Statement of Net Position that would indicate concerns about the Board's net position, and he noted that the Board's assets and liabilities are within expectations and are indicative of the Board's effective fiduciary oversight of its fiscal resources. Mr. Davis offered to answer any questions or receive comments regarding the Statement of Net Position. Hearing none, he proceeded to summarize the Statement of Revenues and Expenses.

Mr. Davis noted that Total Revenue collections were consistent with the same reporting period in FY2022 at 86.6%. He noted that for FY2022, the total revenue collections were at 90.8%, but he recognized that the Board's total revenue projections were 2% higher than for 2022, so comparisons are difficult to make. He reported, however, that the revenue collections for the end of the 3rd Quarter are encouraging in terms of meeting and hopefully exceeded revenue projections for FY2023. He continued and highlighted various line items in the Chart of Accounts with explanations for balances in excess of 75% which is the benchmark percentage for the end of the 3rd quarter.

He reported that Mr. Watson had asked about the balance shown for Bank Fees, and Mr. Davis explained that these are fees the Board must pay for all online bankcard transactions which are typically 3% per transaction. He said that the Committee discussed the matching contributions for the Board's retirement programs in response to a question from Dr. Lyons. Mr. Davis said that he offered details to the Committee about the SafeHarbor plan which the Board funds for each employee at 3% of their base pay. He continued and said that the Board matches up to 3% of an employee's contribution to the traditional 401-k Plan. He concluded his report by noting that at the end of the 3rd quarter, the Board's expenses were 74.6% of the

total projected revenue for FY2023. He noted that this percentage meant that the Board was slightly under budget for the period ending September 2023.

Dr. Lyons thanked Mr. Davis for his summary of the financial reports for the period ending September 2023 and asked if there were questions or comments. Hearing none, he invited a motion for approval.

Upon a motion by Mr. Watson and a second by Dr. Kelsey, the Board voted unanimously by roll call to approve the Financial Reports for the period ending September 2023.

Mr. Davis continued the summary of the Committee report and said he presented members a comparative analysis of the responses from respondents to the RFP for an independent audit firm to conduct the Board's annual audit of its financial statements beginning with the 2023 audit. Mr. Davis said that he sent the RFP to 10 CPA firms and received 2 responses. He said the Committee reviewed a summary comparing the technical elements of the proposals received from each respondent. He identified the two responding firms as Bernard Robinson & Company and Williams Overman Pierce, LLP. He noted that both provided detailed responses on each technical element of the RFP and affirmed that both were AICPA compliant with no regulatory actions filed against them. Mr. Davis provided Board members with a copy of the comparative summary, and he then explained the proposals for each firm in terms of their experience with either non-profits or occupational licensing boards, and he noted the projected staffing each had presented for each year of the 3-year engagement period. Discussion ensued. Mr. Davis said that Bernard Robinson had filled the Independent Auditor role at least since 2013 based on his research. He noted that both respondent firms provided references which Mr. Davis shared with the Board. After full consideration of each proposal and a detailed evaluation and analysis of the technical elements for the audit engagement period, Mr. Davis presented the projected costs from each firm for the three-year engagement period. Discussion ensued. Board members agreed with the Committee's assessment that either firm would merit the Board's approval but recognized that the tenured experience with one of the firms was a compelling factor in deciding the award of the engagement. Dr. Lyons then invited a motion for recommending an Independent Auditor for a 3-year engagement period beginning in calendar year 2024 and concluding in 2026.

Upon a motion by Mr. Hilderbrand and a second by Mr. Watson, the Board voted unanimously by roll call to award the three-year engagement for an independent audit firm to Bernard Robinson & Company of Raleigh, NC.

Mr. Davis concluded his report to the Board by briefing members on a pending human resources matter that he had conveyed in an earlier meeting. He noted that a Board staff member had been disciplined for unacceptable job performance and that the staff member had been absent from work for several days without authorization. He reported that he would continue to monitor the situation and would take appropriate measures in response to any prolonged unauthorized absence in accordance with the Board's Human Resources Policy.

Dr. Lyons thanked Mr. Davis for keeping the Board apprised of the human resources matter. He then recognized Mr. Hilderbrand for presenting the Exam Committee Report.

Exam Committee

Mr. Hilderbrand said that the Exam Committee met on November 1, 2023 to discuss a request from the Board to consider the promulgation of an administrative rule pertaining to the NC Pathology examination which had been unlawfully disclosed on the Internet in October. He said that Board staff briefed the Committee on conversations with staff at The Conference regarding the security breach, and he noted that staff had notified all candidates either scheduled to sit for the Pathology exam or who were eligible to sit for it. He said that this advisory had also been posted on the Board's website. Mr. Davis provided additional details on communications with Pathology examination candidates and licensees.

Mr. Davis continued and said that staff at The Conference had information that they believed would identify the individual who uploaded the Pathology examination on the Internet. He said that he would prepare a letter to this individual in collaboration with Ms. Lee to seek additional information concerning the breach. He said that the Committee requested Board staff to investigate the security breach associated with the NC Pathology examination and to report back to the Committee and then to the full Board on its findings. Mr. Hilderbrand pointed out that staff at The Conference had conveyed that their information tended to show that there had not been any similar breach for the Laws and Rules examination. He noted that there had been some initial concerns among Committee members that both examinations might have been breached, but he emphasized that there is no information indicating a breach of the Laws and Rules examination.

Mr. Hilderbrand continued and said that the Committee discussed the feasibility of seeking an administrative rule to address the possibility of an equivalent pathology examination to offer greater flexibility for candidates seeking licensure in funeral directing. He asked Ms. Lee to offer additional details about a rule that would enable the Board to identify an equivalent pathology examination. Ms. Lee said that she was proposing amendments for the Board's consideration to 21 NCAC 34B .0208 which deals with passing scores on examinations. She said that amending this rule also provided an opportunity to clarify that the Board does not administer examinations, and she proposed amending the rule to state that The International Conference of Funeral Service Examining Boards fills that role. She then briefed the Board on language that would enable the Board to accept a passing score of 75 on a final pathology examination through a program of mortuary science accredited by the American Board of Funeral Service Education. Mr. Davis emphasized that the adoption of the proposed amended rule would create two examination pathways: a final pathology examination from a mortuary science program with ABFSE accreditation, or the NC Pathology Examination.

Mr. Watson noted that Ms. Lee was not included on the Exam Committee report as an attendee at that meeting, but she confirmed her participation. Mr. Davis said that he would assure that Ms. Lee was included among the attendees at the Exam Committee meeting for the record. Dr. Lyons then asked Ms. Lee for her assessment of the pros and cons of amending the rule. Ms. Lee indicated that while she does not advocate for a particular position one way or the other, she offered thoughts on specific advantages by amending the rule as discussed. She said that an amended rule would likely be cost effective as well as offer more options for those seeking licensure in funeral directing. She noted that the Board might not have as much control over examination content and administration compared to the NC Pathology Examination which could be perceived as a disadvantage. She noted that these are factors that the Board would want to consider in deciding how to proceed. Mr. Hilderbrand reminded Board members that the rulemaking process would require a public comment period to allow feedback and input from others.

Mr. Hilderbrand and Dr. Lyons asked for any further discussion, comments or questions from Board members. Hearing none, he invited a motion.

Upon a motion by Ms. Coleman and a second by Mr. Watson, the Board voted unanimously by roll call to request General Counsel to proceed with rulemaking to amend 21 NCAC 34B .0208 to clarify the role of The International Conference of Funeral Service Examining Boards in examination administration and to enable recognition of a final pathology examination at an ABFSE-accredited college of mortuary science as an equivalent to the NC Pathology examination.

Dr. Lyons continued the meeting and recognized Ms. Coleman for the Traineeship Committee meeting.

Traineeship Committee

Ms. Coleman reported that the Traineeship Committee discussed an issue raised in an earlier Board meeting regarding the incidence of consecutive traineeships by individuals who may not intend to become licensed. Ms. Coleman said that the Committee's concern centered on any individual attempting to circumvent licensure by registering for multiple, consecutive traineeships which could elevate the risk of unlicensed practice. Ms. Coleman said that the Committee was aware of only one individual who has renewed or re-started a traineeship multiple times because the individual had difficulty passing the examinations required for licensure. Ms. Coleman invited Ms. Acord to offer additional detail. Ms. Acord noted that there are virtually no incidents of multiple, consecutive traineeships without subsequent licensure other than the one example that Ms. Coleman presented. Ms. Acord said that some trainees do renew or restart their traineeships multiple times but that there were mitigating factors for doing so. She said that some trainees are pursuing licensure on a part-time basis or must balance work/family issues as they pursue licensure. She noted that these individuals are committed to completing their licensure requirements but often encounter challenges in a timely completion of their requirements because of these work and family issues that have impact on them.

Ms. Acord noted the Committee's discussion in setting a cap on the number of allowed traineeships, but she reminded members that doing so could have an adverse impact on those pursuing licensure but who would need multiple traineeships to do so. Mr. Herndon added that the issue had arisen in a conversation he had with a licensee who expressed concern about the possibility of multiple traineeships for some who do not plan to seek licensure. Mr. Coleman said that if such situations arise, the Board would certainly want to review them and consider appropriate action, but she noted at the present time there did not seem to be a problem with multiple, consecutive traineeships without subsequent licensure. Ms. Coleman invited questions or comments. None were offered.

Dr. Lyons then invited a motion on a recommendation from the Traineeship Committee to initiate rulemaking with regard to 21 NCAC 34B .0211 and .0213. He asked Ms. Lee for her comments on the recommendation. Ms. Lee said that the rationale for the Committee's recommendation for .0211 as she understood it was to align the rules' timeframes for a valid examination score with statutory requirements that were ratified without a concurrent rule change at the time. Ms. Lee explained the specific timeframes for a valid examination score and noted that the proposed rule amendments would assure that the timeframes are the same in the administrative rule as expressed in the statute. In referencing the content of the two rules under discussion, Ms. Lee noted that Board members may not have the versions showing the revised text. She suggested that Dr. Lyons continue the meeting to allow time for staff to print and distribute copies of the revised rules so members could refer to them.

Dr. Lyons agreed and said that he would return to the discussion following staff reports and a brief recess. Dr. Lyons then asked Mr. Davis to present the Executive Director's report.

Executive Director's Report

Mr. Davis presented the following items to the Board:

- I have been in touch with our access control/security vendor about strengthening the Board's overall security and will be seeking a quote to install a walk-through metal detector and a security camera at the entrance to the Board office suite.
- The Office Condominium Association Board recently authorized Google fiber to install cables and wiring for Google Fiber Optic access. The Board also authorized an expenditure to replace the building roof which will mean a 6% increase in our annual Association dues.

- I will be joining the FTCC Advisory Board for an update on the accreditation of the funeral service education program on November 13th. The next step in their accreditation process is an on-site visit by an accreditation team from the American Board of Funeral Service Education.
- I have posted a reminder on the CE portion of the Board website to remind licensees how to calculate their 25 years of service in determining their exemption from the CE requirement for license renewal.
- We have launched the 2024 Online License and Permit renewal portal. It is currently active and live, and the initial response has been positive.
- Update on the investigation of the security breach of the NC Pathology exam: Ms. Lee and I will collaborate on a letter that we plan to send to the individual who uploaded the exam to the Quizlet website. The intent of the letter is to gather information regarding the source of information that was uploaded and other facts that we hope will help us understand exactly what happened.
- The Conference will be hosting its 120th Annual Meeting in Myrtle Beach, SC on February 28-29 in 2024. For the past 2 years, The Conference has awarded a Delegate Grant to us which pays for the meeting registration fee, board training program fee, airfare, lodging and mileage. This year, the Board sending the highest number of delegates will be eligible for a second Delegate Grant. I propose that our entire Board attend.

Mr. Davis reminded Board members that the Inspections and New Licensure Reports were included in their materials. Dr. Lyons asked how the Wade Avenue Office Condominium Association derived the allocation to building tenants for their share of the increase in dues for 2024. Mr. Davis said that the allocations for each tenant are based on square footage for their office suite. He noted that the NC Board of Funeral Service has the second highest square footage of the building tenants.

Dr. Lyons continued the meeting and recognized Ms. Lee who distributed copies of the proposed changes to 21 NCAC 34B .0211 and .0213 which had been tabled from an earlier discussion. Ms. Lee offered a brief overview of the rationale for changes to each rule. She indicated that the Traineeship Committee had recommended these changes. For .0211, Ms. Lee indicated that the proposed clarification would align the timeframes for a valid examination score expressed in the statute with .0211. When the statute changing the timeframes for determining the validity of examination scores was ratified in 2018, the rule at .0211 was not amended and continued to indicate that examination scores are valid for a five-year period rather than a three-year period. Ms. Lee also noted that the Board could consider an additional amendment to the rule to clarify that the Board could accept a National Board Certificate for the National Board Examination – Sciences as well as the National Board Examination – Arts. She noted that these are two distinct examinations and that the proposed change to the rule would indicate such.

With respect to .0213, Ms. Lee said that she was proposing the repeal of this rule concerning the expiration of examination scores. She noted that the rule was duplicative of the language already expressed in statute and that the rule likely is not necessary. Ms. Lee said the Board could consider the proposed repeal or could decide to amend the rule to reflect that examination scores expire after three years. Ms. Lee noted that Board staff supported the proposed repeal of .0213. Ms. Lee said that the Board could offer a motion to initiate rulemaking on both rules should that be the Board's desire.

Upon a motion by Ms. Coleman and a second by Mr. Hinchler, the Board voted unanimously by roll call to initiate rule making to amend 21 NCAC 34B .0211 and to repeal 21 NCAC 34B .0213 as discussed.

Dr. Lyons then asked Ms. Lee for the Legal Case Report.

Legal Report

Ms. Lee reported the following information for current and pending disciplinary matters and preneed claims:

Current Active Cases: 40

Pending Investigation: 15
Pending Review by Disciplinary Committee: 0
Pending Dispositive Action: 17
Pending Hearing: 7
Post-Hearing:
Other: 1

New files opened since last Board meeting: 16

Notices of Hearing sent since last Board meeting: 3

Consent Orders received since last Board meeting: 0

Cases reviewed by Disciplinary Committee since last Board meeting: 17

PRENEED RECOVERY FUND CLAIMS

Current Active Preened Recovery Fund Claims: 5

Pending Investigation: 5
Pending Dispositive Action: 0

Preened Recovery Fund Claims received since last Board meeting: 1

Preened Recovery Fund Claims re-opened since last Board meeting: 0

Preened Recovery Fund Claims reviewed by Committee since last Board meeting: 0

Ms. Lee offered to answer any questions or receive comments about the Legal Report. She said that one hearing was scheduled following the business session. Without questions or comments concerning the Legal Report, Dr. Lyons asked for any Old or New Business items.

Old Business

There were no Old Business items for the Board's consideration.

New Business

Dr. Lyons announced that elections would be held for the nomination and election of Board Officers for 2024. He invited nominations for the office of Board Secretary. Mr. Watson offered a motion to nominate Ms. Coleman as the 2024 Board Secretary; Mr. Hilderbrand offered a second to the motion. The Board voted unanimously by roll call to elect Ms. Coleman as the 2024 Board Secretary.

Dr. Lyons invited nominations for the office of Board Vice-President. Mr. Watson offered a motion to nominate Mr. Hinchler as the 2024 Board Vice-President. Ms. Coleman offered a second to the motion. The Board voted unanimously by roll call to elect Mr. Hinchler as the 2024 Board Vice-President.

Dr. Lyons invited nominations for the office of Board President. Mr. Watson offered a motion to nominate Mr. Hilderbrand as the 2024 Board President. Ms. Coleman offered a second to the motion. The Board voted unanimously by roll call to elect Mr. Hilderbrand as the 2024 Board President.

Dr. Lyons noted that there were no further New Business items to come before the Board, and he indicated that the Board would be meeting in closed session prior to the first duly scheduled administrative hearing at 11:00 a.m.

Upon proper motion, the Board voted unanimously to convene in closed session to hear matters subject to attorney-client confidentiality pursuant to NCGS 143-318.11.

Upon proper motion and vote, the Board voted unanimously to return to open session to conduct an administrative hearing in the matter of M23-0039, Teresa Mae Wilson.

Following the hearing, and upon proper motion and vote, the Board voted unanimously to convene in closed session to deliberate on the matter of M23-0039. Upon proper motion and vote, the Board voted unanimously to reconvene in open session. Dr. Lyons invited any motion pertaining to the matter discussed in closed session.


Ms. Coleman offered a motion to uphold the preliminary decision from the Disciplinary Committee to deny the application for a Removal and Transportation permit in the matter of M23-0039, Teresa Mae Wilson, pursuant to NCGS 93B 8.1(B1).

Without further business before the Board and upon proper motion and vote, Dr. Lyons adjourned the meeting.

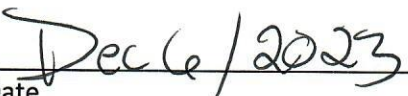
Affirmation:



Dr. Steven L. Lyons, President



Mr. Darrell McCormick, Secretary



Date