

NORTH CAROLINA
BOARD OF FUNERAL SERVICE



December 6, 2023, Board Meeting

The North Carolina Board of Funeral Service met for a duly scheduled Board meeting on December 6, 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; Steve Herndon; Dr. Kimberly Kelsey; Richard Hinchler. Ms. Coleman joined the meeting remotely.

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 9:06 a.m. and led members and staff in a recitation of the Pledge of Allegiance followed by the invocation which Mr. Hinchler offered. He then read the Statement of Ethics and asked if any Board members had any conflict or appearance of conflict of interest. Mr. Hilderbrand announced that he would be recused from M22-0017 in the matter of James F. Johnson & Sons, Inc. Dr. Lyons proceeded by asking if any guests were present and if they wished to offer any public comment. No guests were present.

Dr. Lyons continued and recognized Mr. McCormick for the presentation of the minutes from the November 8, 2023, meeting. Mr. McCormick 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 November 8, 2023, minutes.

Upon a motion by Mr. Hinchler and a second by Dr. Kelsey, the Board voted in the majority by roll call to approve the November 8, 2023, minutes as presented. Mr. Watson was not present for the vote.

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

Disciplinary Committee

Mr. Herndon said that the Disciplinary Committee met on Friday, December 1, 2023, to consider the following disciplinary cases along with recommendations and rationale for each case number

SUMMARY DISMISSAL

C23-0101 C23-0108 C23-0109 C23-0110

DISMISSALS

C23-0089 C23-0097 C23-0099 C23-0103

LETTERS OF CAUTION

C23-0091 C23-0093 C23-0106

NOTICE OF HEARING

M23-0050 M23-0058

Mr. Herndon invited any questions or comments concerning the cases he presented in the Disciplinary Committee report. Mr. Herndon then offered a motion for approval of the Disciplinary Committee Report.

Upon Mr. Herndon's motion, Dr. Kelsey offered a second. The Board voted in the majority by roll call to accept the recommendations presented by the Disciplinary Committee. Mr. Watson was not present for the vote.

Dr. Lyons continued and recognized Mr. Davis for a summary of the Finance and Personnel Committee report. Mr. Watson entered the meeting at 9:36 a.m.

Finance and Personnel Committee

Mr. Davis reported that the Preneed Recovery Trust Fund balance was \$708,282.14 which represented a significant increase over the prior six-year period. He expressed his view that the Fund should continue to grow and perhaps reach \$1 million by 2026 depending on the amounts of claims approved for reimbursement during that period. He continued and said that the Statement of Net Position continues to indicate that the Board's net position and financial footing is strong and robust. He noted that Current Liabilities showed modest balances for Deferred Income, and he explained that these balances represent online payments that are held in the Board's bank account pending reconciliation with iGov. After reconciliation, these amounts will be shown as Revenue on the Statement of Revenues & Expenses. He concluded his remarks by stating that there are no indicators of problems or negative variances that would have impact on the Board's net position. In response to a question from Mr. Watson, he noted that Board staff were continuing to assess the feasibility of other investment strategies for the Board's Certificates of Deposit which currently are valued at \$150,404. He invited questions or comments.

Mr. Davis continued his report and summarized the revenue collections for the period ending October 2023. He reported that the Board had received 92.4% of the projected revenues for FY2023 and expressed confidence that this percentage would likely meet or exceed projections by the end of the fiscal year. He reported that cremation fees were tracking lower than for the same period in 2022 but that preneed contract fees were higher. He also summarized Late Fees and Other Income noting that revenues for both exceeded the initial projections for FY2023. Brief discussion ensued.

Mr. Davis said that the Total Operating Expenses for the period ending October 2023 were 82.4% of the projected budget which is slightly lower than the benchmark percentage at 83.3% for the first month in the 3rd Quarter of the fiscal year. He reported that most line items in the Chart of Accounts were at or less than projected amounts, and he highlighted the balances shown for Board Travel, Board Per Diem and Board Meeting – Other. He said that expenses in these line items exceeded projected amounts and recognized variables that influence these expenditures such as the rate of reimbursement for Board travel and the increased costs associated with Board meetings including the costs for Board meals and increased mileage rates set by the Internal Revenue Service during the fiscal year. Brief discussion ensued.

Dr. Lyons invited any questions or comments. Hearing none, he proceeded with a motion for approval of the financial reports for the period ending October 2023.

Upon a motion by Mr. McCormick and a second by Mr. Hincer, the Board voted unanimously by roll call to approve the Financial Reports for the period ending November 2023.

Dr. then asked Mr. Davis to continue with the next agenda item. Mr. Davis said that he and Ms. Acord had completed their analysis of budget trends for the prior six years and were proposing a 2% increase in the Board's operating expenses for FY2024. He then summarized each line item in terms of an increase or decrease compared to projections for FY2023. He said that he was proposing a 3% Cost of Living Increase for Board staff which was consistent with the COLA for employees in general state government. He noted that this increase, if approved, would increase Gross Wages from \$684,530 to \$705,065. He then summarized the proposed amounts for Staff Travel, Board Travel, Audit, and Condo Fees by explaining that he was proposing a decrease of \$5,000 in Staff Travel based on expenditures through October 2023.

He then described a proposed \$10,000 increase in the Board Travel line item and explained that this amount would allow all Board members to attend the 120th Annual Meeting of The Conference scheduled for February 2024 in South Carolina. He said that the proximity of the meeting in South Carolina would enable more Board members to attend since reimbursement for air fare would likely be unnecessary. Mr. Davis noted that if North Carolina had the highest number of attendees, then The Conference would award a second Delegate Grant to North Carolina which would pay travel, lodging and per diem costs for a Board member

Mr. Davis said that the amounts proposed for Audit and for Condo Fees reflected known increases for these line items in 2024. He said that Bernard Robinson & Company had projected \$19,000 for the audit of the 2023 Financial Statements and that the Wade Avenue Office Condominium Board had approved a 6% increase in Association dues for 2024. Mr. Davis said that he proposed a reduction in the Renovation & Repair line item to offset increases for Audit, Condo Fees and Board Travel.

He then referred to an additional proposal regarding Board staff compensation and said that he was proposing a one-time retention adjustment in staff compensation equivalent to the adjustment paid in FY2022. He referred the Board to this item which indicated a proposed \$1,000 adjustment for Board staff and a \$1,500 for Board management. He concluded by reporting that the proposals he had summarized in the Chart of Accounts would result in a 2.0% increase in the Board's Operating Expenses for FY2024.

Mr. Davis continued and offered comments on the proposal for Revenues. He noted that he and Ms. Acord were not recommending changes in revenue projections for FY2024 other than a slight elevation in the License Fee Revenue. He said that trend lines from 2019 through 2022 showed declining license fee revenue which prompted a reduction in projected license revenue for FY2023. He said that license fee revenue thus far in FY2023 indicated a need to realign the projection to a more realistic amount which would result in a 1% increase in projected revenues for FY2024. The net increase from FY2023 to FY2024 would be \$16,010.00.

Dr. Lyons thanked Mr. Davis for his summary and his presentation of the proposed budget for fiscal year 2024. He asked members for any questions or comments. Brief discussion ensued. Dr. Lyons then proceeded to a motion.

Upon a motion by Mr. Herndon and a second by Mr. McCormick, the Board voted unanimously to adopt the proposed budget for Fiscal Year 2024 as presented.

Mr. Davis concluded his remarks by reporting to the Board that he and Ms. Acord had discussed with the Committee concerns regarding issues with the Board's host for the license renewal platform through iGov. He noted that iGov had installed security patches in October which had impact on staff's ability to process pending license and permit renewals. He said that Ms. Acord and Mr. Lisenbee had been in continuous contact with the host for the license and permit renewal platform to resolve these issues. He characterized these problems as less than ideal customer service but noted that improvements had been made as a result of intervention by Ms. Acord and Mr. Lisenbee. He concluded his report by asking Ms. Acord to update the Board on the progress and status of the proposed transition to a Preneed Services Platform on the Board website in response to a question from Mr. Herndon. Brief discussion ensued.

Dr. Lyons then recognized Mr. Hilderbrand for the Preneed Committee report.

Preneed Committee

Mr. Hilderbrand reported that the Preneed Committee convened on Wednesday, November 29, 2023, to consider the following pending Preneed Recovery Trust Fund applications:

P23-0008 Summary: The Preneed Committee recommends that Preneed Recovery Fund Claim #P23-0008 in the amount of \$6,058.20 be denied.

Preneed Recovery Fund Applicant submits a Preneed Recovery Fund Claim on behalf of her deceased mother (the "Purchaser"), who purchased an inflation-proof insurance funded preneed contract in 2002 for herself. On the face of the contract, one pre-existing insurance policy is listed as the funding source.

The Purchaser died in 2022. Prior to her death, the contracting funeral home closed, and a successor preneed establishment became the successor trustee. At need, the Purchaser's family chose a funeral home other than the successor preneed establishment to perform the Purchaser's funeral services. The performing funeral home submitted a Certificate of Performance to the Board, alleging that the Purchaser's next-of-kin refused to assign the funding preneed policy to the performing funeral home, instead making a cash payment for the funeral services.

A Board inspector investigated and found evidence tending to show that the death benefit from the funding preneed policy identified on the preneed contract was made to the Applicant in January 2022. The Applicant alleges that a second insurance policy was obtained to fund the contract; however, no such second insurance policy is documented on the contract and the Applicant has not provided any other documentation tending to show that such a second insurance policy was purchased. In reviewing prior correspondence sent by the Applicant in a complaint to the Department of Insurance, Applicant appears to have mistakenly interpreted the Board's internal client identification number written at the top of the Purchaser's contract as a secondary insurance policy, when no such secondary insurance policy appears to exist.

Recommendation: Recommend that Preneed Recovery Fund Claim # P23-0008 in the amount of \$6,058.20 be denied.

P23-0009 Summary: The Preneed Committee recommends that Preneed Recovery Fund Claim #P23-0009 in the amount of \$3,000.00 be approved.

Preneed Recovery Fund Applicant submits a Preneed Recovery Fund Claim for himself, related to his purchase of a preneed contract in October 2008.

The Applicant alleges that he paid \$3,000.00 toward pre-paid funeral services to a formerly licensed preneed establishment. In support of his application, the Applicant submits an undated Statement of Funeral Goods and Services ("SFGSS"), with a notation "paid in full" in the amount of \$3,000.00 for his own funeral services; a bank receipt for a check paid payable to the formerly licensed preneed establishment dated Oct. 10, 2008 in the amount of \$3,000.00 with the notation "pre-paid funeral expense"; and a letter dated 2017 from Applicant's bank, indicating that the formerly licensed preneed establishment negotiated Applicant's check on December 31, 2008. The Board licensee who signed the submitted the SFGSS is deceased. There is no record of a preneed contract being filed with the Board on behalf of the Applicant.

Recommendation: Recommend that Preneed Recovery Fund Claim # P23-0009 in the amount of \$3,000.00 be approved.

P23-0010 Summary: The Preneed Committee recommends that Preneed Recovery Fund Claim #P23-0010 for an unclaimed amount be denied.

Preneed Recovery Fund Applicant submits a Preneed Recovery Fund Claim on behalf of her deceased father (the "Purchaser"), who purchased an insurance-funded preneed contract for himself with a formerly licensed preneed establishment. The Applicant's father died in 2015.

In the application, the Applicant claims that the Purchaser made "a down payment and monthly payments thereafter." The Applicant does not attach a contract, any insurance paperwork, or receipts. The Applicant does not disclose any known dollar amount of alleged loss in the application. No contract for the Purchaser was filed with the Board. A Board inspector investigated and determined that the Applicant received the death benefits for the Purchaser's funding insurance policy in 2019.

Recommendation: Recommend that Preneed Recovery Fund Claim # P23-0010 for an unclaimed amount be denied.

P23-0011 Summary: The Preneed Committee recommends that Preneed Recovery Fund Claim #P23-0011 in the amount of \$829.75 be denied.

Preneed Recovery Fund Applicant submits a Preneed Recovery Fund Claim on behalf of himself, following his pre-payment for funeral goods and services in the amount of \$829.75 to a funeral home that was not licensed as a preneed establishment. Per GS § 90-210.66, reimbursement from the Preneed Recovery Fund only is available to reimburse purchasers of preneed funeral contracts

who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of a preneed licensee.

Recommendation: Recommend that Preneed Recovery Fund Claim # P23-0011 in the amount of \$829.75 be denied.

P23-0013 Summary: The Preneed Committee recommends that Preneed Recovery Fund Claim #P23-0013 in the amount of \$1,332.00 be denied.

Preneed Recovery Fund Applicant submits a Preneed Recovery Fund Claim on behalf of his deceased mother, who died in 1987. The Applicant alleges that his deceased mother entered into a contract with a now-closed funeral establishment in 1986, whereby the decedent purchased three caskets for which she intended her sons to be buried upon their death. Pursuant to the contract, the three caskets were to be purchased upon payment and kept in storage by the funeral establishment until their use was needed. The Applicant also submits a receipt showing the purchase of three caskets in the amount of \$2,000.00. The Applicant alleges that one casket was provided in 1999 but seeks reimbursement for the remaining two caskets.

Per GS § 90-210.66, reimbursement from the Preneed Recovery Fund only is available to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of a preneed licensee. The now-closed funeral establishment did not hold a preneed license in 1986. Moreover, the contract at issue was not a contract funded by trust deposits or prearrangement insurance policies and therefore did not meet the definition of "preneed funeral contract," as defined by GS § 90-210.60(5).

Recommendation: Recommend that Preneed Recovery Fund Claim # P23-0013 in the amount of \$1,332.00 be denied.

Mr. Hilderbrand said that he or Ms. Lee would be glad to offer any additional information or answer any questions. None were offered. Dr. Lyons then proceeded to a motion.

Upon a motion by Mr. McCormick and a second by Dr. Kelsey, the Board voted in the majority to approve the recommendations from the Preneed Committee as presented. Ms. Coleman was recused from voting on P23-0008.

Dr. Lyons then recognized Mr. Davis for the Executive Director's Report.

Executive Director's Report

Mr. Davis presented the following items:

- I spoke with James Bullard, Director of the Funeral Service Education Program at FTCC following the site visit from the American Board of Funeral Service Education as part of their accreditation review. He indicated that the visit was well-received and that the Accreditation Team expressed positive comments about the program at FTCC. He does not anticipate any barriers to their accreditation.

- Ms. Acord and I met remotely with Dalene Paull and Dustin Wardlaw from The Conference regarding the transition of our Laws and Rules examination to their organization for exam administration. We also spoke about the NC Pathology Examination. We are moving rapidly on both projects with an emphasis on the Laws and Rules exam since that one is currently administered through Scantron under a contract that expires at the end of 2023.
- I am presenting a proposal from Board staff for the 2024 meeting schedule.

Dr. Lyons asked for any questions or comments and thanked Mr. Davis for his report. He then proceeded to a motion on the proposed 2024 Meeting Schedule.

Upon a motion by Dr. Kelsey and a second by Mr. Herndon, the Board voted unanimously by roll call to adopt the proposed 2024 Meeting Schedule as presented.

Dr. Lyons then asked Ms. Lee to present the Legal Report.

Legal Report

Ms. Lee offered the following metrics to the Board regarding disciplinary matters and preneed recovery fund claims:

DISCIPLINARY MATTERS

Current Active Cases: 30

Pending Investigation: 10

Pending Review by Disciplinary Committee: 0

Pending Dispositive Action: 13

Pending Hearing: 7

Post-Hearing: 0

Other: 0

New files opened since last Board meeting: 8

Notices of Hearing sent since last Board meeting: 4

Consent Order 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: 7

Pending Investigation: 2

Pending Dispositive Action: 5

Preneed Recovery Fund Claims received since last Board meeting: 2

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

Preneed Recovery Fund Claims reviewed by Committee since last Board meeting: 5

Ms. Lee invited questions or comments regarding her report. She then reminded the Board that she had filed proper documents with the NC Rules Review Commission for the proposal to amend 21 NCAC 34B .0208 and the proposed repeal of 21 NCAC 34B .0211. She noted that the public comment period is active and that the Board will convene a public hearing at the January 10, 2024, meeting to assure compliance with the requirements for rulemaking.

Old Business

No Old Business items were presented.

New Business

Mr. Herndon commented that his service on the Disciplinary Committee had been rewarding as well as a unique opportunity to hear a wide range of issues brought forth by consumers or Board staff in assuring compliance with Board statutes and rules. Mr. Watson then expressed concerns about respondents and/or their attorneys waiting until just prior to a noticed hearing that they have interest in settlement or in continuing a hearing. Ms. Lee acknowledged his concerns and said that other occupational licensing boards encounter similar issues regarding administrative hearings.

Dr. Lyons then recognized Mr. Lisenbee for any comments he wished to offer regarding the inspections and compliance program. Mr. Lisenbee noted that the Compliance Inspectors are highly productive and are ahead of the inspections rate of establishments in prior years. He also reported that Chris Stoessner was highly effective in his role in auditing MBA finances as well as auditing preneed records that are being transferred to a successor funeral home.

Mr. Davis echoed Mr. Lisenbee's assessment of the compliance inspections team and added that all Board staff work in a collaborative manner and are extremely productive in their daily work activities. He highlighted a recent achievement by Rebecca Williams, a member of the Preneed Services team, who recently cleared the entire backlog of more than 1,000 pending Certificates of Performance that must be processed by the end of the year. He joined Mr. Lisenbee in praising all Board staff who are working diligently on a daily basis to assure that the Board is meeting its regulatory responsibilities for licensees and consumers.

Dr. Lyons then announced a brief recess prior to the first administrative hearing. The Board then heard the matter noticed for hearing at 11:00 a.m., James F. Johnson & Sons, Inc., d/b/a Johnson & Sons Funeral Home, Barbara Lindsey Johnson, and Willie Sylvester Meadows.

Following the hearing and upon proper motion and vote, the Board convened in closed session to consider the matter in Board Case Number M22-0017/C23-0035, James F. Johnson & Sons, Inc., d/b/a Johnson & Sons Funeral Home, Barbara Lindsey Johnson, and Willie Sylvester Meadows.

Upon proper motion and vote, the Board reconvened in open session. Dr. Lyons then invited a motion pertaining to the matter under consideration in closed session.

Upon proper motion and vote, the Board voted in the majority by roll call to render the following decision:

To lift the stay of suspension previously imposed on the Funeral Establishment Permit of Johnson & Sons Funeral Home in the Consent Order entered by the Board on June 8, 2022; to actively suspend for a period of five (5) years the funeral establishment permit of Johnson & Sons Funeral Home; and to move the Rockingham County Superior Court for a motion to show cause as to why Garcia Fenwick Johnson should not be held in civil or criminal contempt of court, in violation of the Consent Judgment entered in NC Board of Funeral Service v. Garcia Fenwick Johnson, 22 CVS 1288.

Dr. Lyons then announced that the Board would meet in closed session to consider a settlement proposal in a matter that had been scheduled for hearing on December 7, 2024, at 9:30 a.m.

Upon proper motion and vote, the Board convened in closed session to consider a proposed settlement in Board Case number C23-0082, Harvesting Hope, Inc. d/b/a Hope Valley Hawkins Funeral Service and Cremations and Paul Thomas Ayers Hawkins.

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

Upon proper motion and vote, the Board voted in the majority by roll call to approve a proposed Consent Order in settlement of Board Case Number C23-0082, Harvesting Hope, Inc. d/b/a Hope Valley Hawkins Funeral Service and Cremations and Paul Thomas Ayers Hawkins.

Dr. Lyons then announced that the Board would convene in closed session.

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 reconvened in open session. Dr. Lyons asked if there were other matters to come before the Board. Hearing none and upon proper motion, the Board voted unanimously by roll call to adjourn the meeting.

Affirmation:

Thomas T. Hilderbrand

Mr. Thomas T. Hilderbrand, President

Le'Shekia Coleman

Ms. Le'Shekia Coleman, Secretary

January 10, 2024

Date