

North Carolina
Board of Mortuary Science
NEWSLETTER

VOLUME 2

Fall 2000

NUMBER 2

Greetings From Our President.....

At our first meeting in January the board defined specific goals that we wanted to accomplish in 2000.

We recognized the critical importance of improving communications with the licensees in our state. To enhance this effort, we developed and implemented a web site. Our site contains a wealth of information for licensees and consumers alike. Most of our forms, minutes of meetings, rules and statutes and other valuable information can be found here. We invite you to visit us at www.ncbms.org. Watch for future enhancements of this important tool. Your phone calls to the office will be answered courteously, and your questions answered accurately. If it is necessary for your call to be answered electronically, because all staff members are busy, your call will be returned promptly. When a written inquiry is made, you will receive your answer in writing as soon as practical. Our board meetings are open to anyone, and we invite you to attend whenever possible. If you would like to bring a matter before the board, you are welcome to do so. We only ask that you phone ahead, so that we may appropriate time for you on our agenda.

We felt that it was important to review our statutes and rules. To that end, a retreat was held in Wilmington, hosted by the board, and attended by representatives of NCFDA, NCFD & MA, CANC, and the NC Crematory Authority. We met over two days, and examined every rule and statute that effects funeral service. We welcomed valuable input from our guests. The result of this meeting is the beginning of the possible development of a legislative package for the long session of the General Assembly in 2001. We will meet again to refine our effort. As we move forward with this comprehensive project, we welcome the input and suggestions of all licensees. This is a very important and exhaustive effort. Our result must be to seek appropriate changes and corrections, and to strengthen our statutes and rules for the benefit of the consumer.

We feel that continuing education should be a true learning experience. With this thought in mind, the c.e. committee, chaired by Darryl Hart is taking a close look at the various aspects of c.e., and is making recommendations to make certain that it serves the purpose for which it was intended.

I would remind everyone of the upcoming board and crematory authority elections. Please let your voice be heard, and exercise your right to vote.

I thank you for the privilege of serving on the board. I thank the board for the privilege of serving as president. I take both responsibilities very seriously. I am certain that all licensees know that we exist primarily for the benefit of the consumer. But I want to state emphatically that the board recognizes that it also has a critical responsibility to the licensees and firms in North Carolina. Do not hesitate to call us with any matter of concern that is within the parameters of our responsibility.

**NORTH CAROLINA
BOARD OF MORTUARY SCIENCE**

2321 Crabtree Blvd.
P.O. Box 27368
Raleigh, North Carolina 27611
1-919-733-9380
1-800-862-0636
fax 919-733-8271

BOARD MEMBERS

Michael M. McGhee Greensboro
President
Nancy G. Rorie Monroe
Vice President
William Paul Harris Durham
Secretary

Darryl Hart Asheville
Elliott R. Futrell Goldsboro
William Paul Harris Durham
Jimmy Swaringen Asheboro
Harvey H. Leavitt, III Wadesboro
Stuart Cozort Newton
Julia Jordan Burlington

ADMINISTRATIVE

Andrew L. Ritter Executive Director
Michael Weisel Attorney for Board
Corrine J. Culbreth Field Supervisor
Elizabeth R. Stegall Administrative Services
Supervisor
Lyn Cochrane Executive Assistant
Ruth Britt Senior Program Assistant
Valencia B. Brown Program Assistant
Laura Rogers Program Assistant
Lloyd H. Davis Preneed & Burial Assoc.
Examiner
Virginia W. Harris Burial Assoc.
Henry Smith Rowan Field Representative
(East)
Carolyn Jones-Connor Field Representative
(West)



The North Carolina Board of Mortuary
Science NewsLetter is published
bi-annually. Any questions or comments
should be directed to the office at
919-733-9380 or 1-800-862-0636.

3,000 copies of this document were printed
at a cost of \$.1913 per copy

From the Executive Director..Disciplinary Procedures

I have spent quite a bit of time in the last two years traveling across the State, appearing at district meetings, seminars and annual conventions. I take this opportunity to find out what is on the mind of the licensees. There is one topic that comes up repeatedly and it has for the entire time I have been working with licensing Boards. That topic is disciplinary procedures and how the Board handles them. Some people like the way the Board is handling disciplinary procedures and some do not. Some people think we are too harsh and some people think we are not harsh enough. Some people think we are too slow, too fast, want too much evidence, investigate on too little evidence, should not accept anonymous complaints and on and on.

The purpose of this article is to try and explain a little how the procedure works. The procedures have been established by the NC Administrative Code and the majority of the North Carolina licensing Boards have to follow them. The Board requires that complaints come to this office in writing. We provide the form and it is Board policy to accept anonymous complaints. If the person is anonymous we advise them the ultimate disposition of the case can be affected if they choose to remain anonymous. We also require evidence of the wrongdoing be submitted with the case. We cannot and will not investigate if evidence is not submitted to substantiate the complaint.

After the complaint is received, the licensee is notified and asked to respond in writing. They are provided a copy of the complaint and the evidence submitted against them. This is a very important step for the licensee. Their letter of response is used in the evidence that goes to the disciplinary committee. The field investigators then ask follow-up questions of those involved and compile a report for the disciplinary committee where it goes next. This is where the bureaucracy can slow the process down. The disciplinary committee reviews the evidence and they will either make a decision, or send the case back for more work, or bring in witnesses to clarify issues. The committee only meets once a month and if more work needs to be done it will be another month before a case can be heard again.

When a decision is finally reached by the committee, the case is sent before the full Board for the final decision. The Board members are not given the names of those involved so if the case does go to a hearing they will not be tainted. If the recommendation is to drop a case for no wrongdoing, the Board never knows the names of those involved. If there is a wrongdoing the penalties are consistent with what the Board has done in the past for like violations. That can involve monetary penalties (which the Board does not keep, it goes to the County school system of the licensee), suspension or revocation. The Board does not have jurisdiction over non-licensees and in those cases the Board will file an action in civil court. After the Board reaches a decision, the licensee is notified and they have two choices. They can accept the decision or they do not accept it and instead come in for a formal Board hearing, either in front of the Board or in front of a Judge at the North Carolina Office of Administrative Hearings. If the licensee loses at this level the case may be appealed to the North Carolina Superior Court.

As you can see, this a lengthy process. The Board knows that the decision they make can affect the lives of the complainants and the careers of the licensees. It is one of the most difficult jobs a Board member takes on during his tenure but they also know it must be done. The Board's goal through this process is to be fair and make the right decision. But the Board would rather go slow and get it right than go fast and make the wrong decision.

Bartlett Funeral Home, Gibsonville-The N. C. Board of Mortuary Science having filed a complaint against the defendant, Colene Pope Bartlett of Bartlett Funeral Home and the parties have agreed to the entry of a Consent Order, the parties agreed to the following: that the Board staff received complaint alleging unauthorized practice, that Colene Bartlett is the owner of Bartlett Funeral Home and she wished to settle this matter without further litigation. Wherefore the court made the following conclusions of law:

1. The Board has the authority to seek injunctive relief to restrain violations of its statutes and regulations.
 2. There is sufficient probable cause that the conduct of the Defendant is, has been and continues to be in disregard of the statutes and regulations administered by the Board.
 3. The Board is entitled to have the Court restrain and permanently enjoin Defendant from any further conduct in violation of the law.
 4. Defendant Bartlett denies any such violation, but is willing to enter into a Consent Order.
1. The Court immediately issued a permanent restraining order:
 - a. requiring Defendant to immediately cease the use of any words, letters, abbreviation, symbols or other means of identification of any signage, stationery, reports, business cards, checks, invoices, advertising materials and any other documents, paper or publications of a similar nature that may indicate or imply that the Defendant is qualified or permitted to practice as a funeral director.
 - b. prohibiting the Defendant from in any manner holding herself out to the public as a funeral director or holding herself out to any individuals or entities, private or public, including governmental agencies.
 2. Such permanent injunction shall remain in full force and effect until such time, if at all, the Board shall file notification with the Court that the Defendant Bartlett has obtained a license authorizing her to practice as a funeral director.
 3. That the Court shall enter a preliminary injunction to remain in full force and effect requiring Defendant to:
 - (a) comply with the directives contained in this Consent Order.
 - (b) destroy or erase any signs, papers, documents, audio or video tapes and any and all other tangible items by which she would identify herself as a funeral director;
 - (c) within sixty (60) days of the execution of the Consent Order, Defendant Bartlett shall employ a full time manager of Bartlett Funeral Home, who shall be licensed by the Board as both a funeral director and embalmer.
 - (d) Defendant Bartlett shall run an advertisement in a newspaper having general circulation in Gibsonville, North Carolina. The ad shall state that Willis E. Bartlett, Jr. is deceased; the new funeral directors are Timothy N. Wise and Connie Greeson; that the manager is Timothy N. Wise (unless a new manager has been hired at the time); and that the present owner, Colene P. Bartlett is not a licensed funeral director. Such advertisement and newspaper ad shall be subject to prior review and approval by the Executive Director of the Board.

The above order was signed by Superior Court Judge Brantley on April 11, 2000.

Crown Memorial Park, Charlotte-A complaint was filed in the Superior Court of Mecklenburg County on May 11, 2000, asking the Court to issue a Preliminary & Permanent Injunction:

A. Requiring Defendant to immediately cease the use of any words, letters, abbreviations, symbols or other means of identification on any signage, stationery, report, business cards checks, invoices, advertising materials and other documents, paper or publications of a similar nature that may indicate or imply that the Defendant is qualified or permitted to practice as a funeral establishment:

B. Prohibiting the Defendant and its employees from in any manner holding themselves out to the public as a funeral director or so holding themselves out to any individuals or entities, private or public, including governmental agencies; (cont. on page 4)

C. Prohibiting the Defendant and its employees from offering or selling preneed funeral contracts or any funded funeral prearrangements without first securing a license form this Board.

That such preliminary and permanent injunction, remain in full force and effect until such time, if at all, the Board shall file notification with the Court that the Defendant has obtained the current, valid and appropriate licenses from the Board.

F. W. Newton and F. W. Newton & Sons Mortuary, Elizabethtown-In lieu of an Administrative Hearing, the Board entered into a Consent Order with respondent Newton for improperly withdrawing preneed funds as the performing funeral home rather than the originating funeral home. Both the funeral home and the funeral service license of F. W. Newton were placed on probation for 2 years. F. W. Newton paid a compromise penalty of \$1,000.00 to the Education Fund.

William Rockne Horton, Horton Funeral Home, Sanford-In lieu of an Administrative Hearing, a Consent Order was entered into by the Board and the Respondent on April 12, 2000, as a result of preneed funds being obtained from the bank without proper documentation. Horton Funeral Home shall be on probation for a period of 3 years; the funeral director's license of William Rockne Horton shall be on probation for 3 years; Horton Funeral Home and Rockne Horton each pay a compromise penalty of \$500.00 to be paid to the Education Fund. Rockne Horton cannot hold a preneed license and the 10% retained from the preneed must be refunded to the estate.

(In both of the above cases, the banks paid the moneys without the licensees following proper procedures; but it is the duty of the licensee to follow the law!)

John Kennedy, Kennedy Funeral Home, Elkin- An Administrative Hearing was held on November 17, 1999, with Administrative Law Judge, Sammie Chess presiding for failure to deposit preneed monies into a preneed account. The respondent failed to show and the judge rendered the following recommended decision which the Board accepted on February 17, 2000: The preneed license of Kennedy Funeral Home be suspended for one year; no one at Kennedy Funeral Home will write preneed contracts for one year from the effective date of the suspension and all unperformed preneed funeral contracts and any amounts retained shall be transferred to another funeral establishment that has a current preneed license.

Charles J. Steven, E. F. Drum Funeral Home, Lincolnton-The Board and Respondent agreed to enter into the following Consent Order on March 15, 2000, in lieu of an Administrative Hearing for respondent retaining overage of insurance proceeds to apply to a previous family funeral bill: respondent will refund the balance of the insurance proceeds to the rightful family member and respondent be issued a letter of caution.

Stanly Funeral Home, Charles Gilbert Frye and William Stephen Aldridge III, Albemarle-In lieu of an Administrative Hearing, the Respondent and Board entered into a Consent Order on June 13, 2000, for the following alleged violations: one or persons employed by the respondent funeral home exhibited the remains to a family member in an indecent manner; one or more persons employed by the funeral home failed to provide a general price list to the family; one of more persons employed by the funeral home failed to seek or follow the directions of the mother as the next of kin as to the embalming and disposal of the remains. Respondents wish to resolve this matter by consent, but do not admit the allegations of the Board. The Board and respondents agreed to the following: the funeral establishment and individual licensees shall be placed on probation for a period of 3 years, each respondent shall pay to the Education Fund a compromise penalty of \$500.00 each for a total of \$1,500.00. A letter of reprimand was issued to warn that in the future that the funeral home personnel should not indicate to a client that at decedent's remains cannot be embalmed, when in fact they may be.

James E. Pugh, Sr. and Pugh Funeral Home, Southern Pines-A Consent Order was entered into by the Board and the Respondents on March 15, 2000, for failure of the contracting funeral home to immediately pay all funds received to the successor funeral establishment designated. The Respondent was placed on probation for 3 years and a compromise penalty of \$1,000.00 was paid to the Education Fund.

(cont. on page 5)

BOARD LAUNCHES WEBSITE

The Board has launched its web site and the address is www.ncbms.org. The site has an abundance of useful information for the licensee and the public in general. The site contains the following information:

- A database of licensed funeral homes, licensees, and crematories searchable by name, city or county
- Downloadable forms for license registration, preneed contracts and complaints
- Current continuing education offerings
- Links to North Carolina General Statutes
- Recent Minutes of Board meetings
- General Board information
- Mutual Burial Association certificate acceptance list

The Board will continually update and improve this site. If you have ideas on how to improve this site to better serve you, please let us know.

SEMINAR

The North Carolina Crematory Authority will sponsor an educational seminar on October 4, 2000 at the Sheraton Hotel and Convention Center in Durham.

PRENEED UPDATE

The preneed committee wants to remind all preneed licensees that the funeral home manager is the person responsible for all activities that take place involving the funeral home. This includes preneed activity and sales. The preneed committee would especially like to remind licensees that no preneed sales should occur with only non-licensed personnel. According to North Carolina Statute a preneed licensed salesman must be present the preneed sale.

Beginning immediately the Board will only accept the Certificate of Performance (PN-5) or similar claim form as specified in Section 34D.0303 of the North Carolina Administrative Code. This rule has been in effect since May 1, 1993.

EXAM DATES

The North Carolina Laws and Rules exam is given in conjunction with every Board meeting (usually the second Tuesday of every month). You are reminded that you must submit your entire application 30 days prior to the exam for which you would like to be seated.

The next National Exam is tentatively scheduled for January, 2001.

Disciplinary Action (cont. from page 5)

The following funeral homes entered into Consent Orders for the late renewal of their establishment licenses; paid a \$500.00 compromise penalty to the Education Fund plus the renewal fee of \$150.00 and a late fee of \$100.00:

Clark S. Brown & Sons Funeral Home, Winston-Salem, NC
Congleton Funeral Home, Greenville, NC
Hargett Funeral Service, Greensboro, NC
Hargett-Gilmore Funeral Service, LLC, High Point, NC
Hunter's Funeral Home, Ahoskie, NC
Hunter's Funeral Home, Murfreesboro, NC
Kelsey Funeral Home, Concord, NC
McIver's Funeral Home, Jacksonville, NC
Trice Funeral Home, Fuquay-Varina, NC

There are currently 3 scheduled Administrative Hearings with the Office of Administrative Hearing before an Administrative Law Judge; an Administrative Hearing was held by the Board on August 9, 2000, another Administrative Hearing is scheduled before the Board and 3 more cases are being referred to the OAH.

UPCOMING ELECTIONS

BOARD MEMBERS

The Ballots are in and the elections are set for 2001. The Board has two seats up for re-election this year. In Category I, W. Paul Harris of Durham is unopposed and will serve his second term.

Congratulations to Mr. Harris!

In Category II, three licensees have filed for the one seat. They are:

Brenda Holden of Zebulon
William Joyner of Raleigh
Alex Lee of Garner

The ballots for the Board elections will be mailed no later than September 22nd and will be due back in the Board office October 20th. The ballots will be counted at 1:00PM on November 1st at the Board office. If you do not receive a ballot please contact the Board office.

NORTH CAROLINA

CREMATORY AUTHORITY ELECTIONS

The deadline for submitting a petition for the Crematory Authority was set by the Board and it is September 1st. There are two seats up for election this year and as of this printing, three people have filed. They are:

Louis Bennett of Fayetteville
J. Trent Lloyd of Pembroke
James Weatherspoon of Southern Pines

The ballots for the Crematory Authority elections will be mailed to licensed crematory operators no later than September 22nd and will be due back in the Board office October 20th. The ballots will be counted at 1:00PM on November 1st at the Board office. If you do not receive a ballot please contact the Board office.

MUTUAL BURIAL ASSOCIATION UPDATE

As of this printing approximately ten MBA's are in the process of or have dissolved their MBA's. You are reminded that if your Funeral Home would like to accept the MBA certificate of credits and have not filled out the certificate of credit acceptance form, you may obtain one from the Board office.

NORTH CAROLINA
BOARD OF MORTUARY SCIENCE
P.O. BOX 27368
RALEIGH, NORTH CAROLINA 27611-7368

FIRST CLASS MAIL
US POSTAGE
PAID
RALEIGH, NC
PERMIT # 373