

North Carolina Board of Funeral Service Newsletter

Volume 15, Issue 2

February 2019

Governor Cooper Appoints Hubert W. Saunders to North Carolina Board of Funeral Service

The Board is pleased to announce the appointment of Mr. Hubert W. Saunders for a three-year term expiring on December 31, 2021. Governor Roy Cooper tapped Mr. Saunders for a seat on the Board in January, and he is replacing Matt P. Staton of Powles Staton Funeral Home in Rockwell, NC.

Mr. Saunders seat on the Board is by gubernatorial appointment and is recognized as unaffiliated with either of the two funeral service associations in North Carolina.

Mr. Saunders and his wife, Willie, opened Saunders Funeral Home in March 1990 in Jacksonville, North Carolina.

The Saunders have offered professional funeral services to families in the Jacksonville community since that time. Their motto, "Meeting Needs, Exceeding Expectations," exemplifies their personal philosophy of "serving families of all economic levels and faiths, regardless of race, creed or color."

Mr. Saunders graduated from the American Academy McAllister Institute, the 5th oldest funeral service program in the United States, and the only school of mortuary science located in New York City. He and Mrs. Saunders, a graduate

of Fayetteville Technical Community College, are deeply committed to the steadfast belief that funeral service is "a calling."

Their commitment to the practice of professional funeral service and to the families they serve is reflected in their statement on the Saunders Funeral Home website - "Our commitment to our community and indeed to your family is to treat you as we ourselves want to be treated – fairly and compassionately. We are grateful for the confidence that the public has placed in us and pledge that we will continue to work diligently to maintain that trust."

Board President J. Stephen Herndon extended the Board's collective welcome and support to Mr. Saunders. Herndon said that "the Board is certainly privileged to have Mr. Saunders join us in assuring that North Carolina is recognized as a national model of best practices in professional funeral service. His long-term commitment to the core principles of professionalism in funeral service and his dedicated service to North Carolina families speak volumes of his qualification for this important appointment. We look forward to working with him as he joins the Board."

Mark Your Calendars

NC Funeral Directors Association [NCFDA]
2019 Educational Conference & Exposition
The Carolina Hotel – Pinehurst, NC
May 20 – 21, 2019

Important Dates to Remember

March 13 9:00 am	<u>NCBFS Board Meeting</u> 1033 Wade Avenue Suite 108, Raleigh, NC
March 31	Preneed Annual Reports Due

Preneed Annual Report Goes Digital; Encounters Bumpy Rollout

As required by general statute, the Board sends out the Preneed Annual Report to more than 600 preneed establishments each year. In past years, the Board has mailed hard copies of the Report in mid- to late January; in other years, the Board has offered an online option which was available in late January.

In 2019, preneed establishments received a digital Report through the Board's new automated licensing system [iGov] on February 8, 2019, with a new format and procedures for entering preneed beneficiary and contract information.

The new online report for 2019 enables a "point and click" method for entering and editing information, but the report's redesign and instructions have created challenges for some establishments who found the report confusing and difficult to navigate. Board staff have fielded many calls and e-mails regarding the report and the way that information must be entered.

In spite of the initial difficulties some establishments encountered, the new online report is intended to be a timely and reliable way to provide contract information, to document changes in contract status, and to enter balances for trust funds and insurance-funded contracts.

Another important feature for the 2019 report is the secure access to an establishment's online report which requires creation of a user ID and unique password.

As licensees have reported problems with entering or reviewing data on the report, Board staff have worked tirelessly to debug the preneed report portal and to work on a real-time basis with the iGov vendors to implement fixes where needed and when recommended by licensees.

Board staff offered a HelpDesk resource by directing incoming calls to preneed specialists Lyn Cochrane and Rebecca Williams.

Williams noted that she has talked with many licensee users who needed assistance in sorting and entering information but who completed their reports without further difficulty once they were accustomed to the procedures for entering and editing information. According to Williams, "it's completely understandable that the new online report created some initial confusion – everything about it is new. But most licensees I've talked to just need some basic assistance in navigating the report. Once they know how to complete the edits and the entry of fund balances, they don't have much problem in getting the report done."

Williams also expressed appreciation for the recommendations from licensees for ways to make immediate improvements to the portal and to clarify the instructions.

Board staff continue to assist users in navigating the portal and learning the procedures for populating the report with fund balance information, editing contract or beneficiary information, and in uploading Certificates of Performance if necessary.

Executive Director Stephen Davis said that he hoped licensees will find the shift from hard-copy to digital processing beneficial particularly in the future with more enhancements to the system. He noted that transitions from paper to online applications are often challenging because procedures differ significantly, and he commended both staff and licensees for their patience and diligence in implementing the online report.

There is a sacredness in tears. They are not the mark of weakness, but of power. They speak more eloquently than ten thousand tongues. They are the messengers of overwhelming grief, of deep contrition, and of unspeakable love. *Washington Irving*

NCBFS Executive Committee, Staff Attend Annual Meeting

The 115th Annual Meeting of The Conference convened in San Diego, California, as an important and effective forum for discussion of emerging trends in professional funeral service, compliance with and updates on the FTC Funeral Rule, presentation of model programs for funeral practice and resident traineeships, and an overview of judicial rulings and court cases impacting the funeral profession.

Board members Stephen Herndon, Mark Blake and Don Brown joined Executive Director Stephen Davis and Assistant Director Amy Mauldin for the 2-day event which offered back-to-back discussion groups and break-out sessions to focus on hot-button issues in funeral service as well as regional issues affecting licensees and establishments in specific areas of the United States and Canada.

Key topics under discussion at the event include the increasing incidence of third-party providers advertising funeral services but using existing licensees in a state to perform those services; body brokerage and body harvesting through anatomical donation programs; waiver of licensure requirements upon relocation of licensed spouses of military personnel; and the development, validation, and administration of national board examinations.

Special sessions were offered for Board Administrators as well as Board Members from the United States and Canada for discussion and consideration of regional and national topics affecting funeral homes, licensees, and compliance with statutes and rules.

Discussions also centered on legislative changes under consideration for 2019 or passed by state legislative bodies during 2018 and the national trends toward deregulation and sunseting of occupational licensing boards.

The Conference administers national board examinations for North Carolina residents seeking licensure as well as most other states in the United States and offers an array of consultative services in funeral service regulation and compliance to member Boards.

Other organizations in attendance included the American Board of Funeral Service Education [ABFSE] which accredits mortuary science academic programs; the Cremation Association of North America [CANA]; the International Cemetery, Cremation and Funeral Association [ICCFA], and the National Funeral Directors Association [NCFDA].

Lisenbee Launches Compliance Guide; Now Available Online

Thanks to the diligent and determined efforts of NCBFS Compliance Officer Brett Lisenbee, licensees and consumers now have access to a comprehensive, detailed set of guidelines and links regarding virtually all aspects of funeral service subject to regulation and compliance with applicable statutes and rules in North Carolina. The Board approved the compliance guide concept and the proposed contents in 2018. Lisenbee has authored seven [7] chapters of the Guide thus far and will soon complete the remaining four [4] chapters which deal with at-need licensure, preneed funeral contracts, resident traineeships and transporter permits. To access the NCBFS Compliance Guide, please visit the Board's website at www.ncbfs.org and click on the Compliance Guide box on the homepage.

COMPLIANCE OPINIONS

The Board's Compliance Officer periodically issues Compliance Opinions in response to questions and issues that licensees raise regarding the Board's administrative rules and/or statutes.

Board staff does not provide legal advice to licensees. Should you have questions concerning your legal rights particularly pertaining to potential liability to any third party or otherwise, you should speak to an attorney of your choice. The purpose of the Compliance Opinion is to provide you with staff's opinion regarding whether or not your proposed conduct as a licensee and crematory manager, respectively, would be in compliance with the Board's governing statutes and rules based solely upon the facts provided to staff.

STAFF COMPLIANCE OPINION No. CO19-002

DATE ISSUED: February 15, 2019

Final Disposition of Cremated Remains When There Is A Known Dispute Among Individuals Signing The Cremation Authorization Form as Authorizing Agents

In the event a decedent left no written authorization for the cremation and/or final disposition of his or her own body, N.C. Gen. Stat. §§ 130A-420(b) and 90-210.124(a)(2) each list by order of priority those individuals who, when at least 18 years of age and competent, may authorize the type, method, place, cremation and final disposition of the decedent's body. Each statute provides for the decedent's surviving spouse followed then by a majority of the decedent's surviving children, as taking precedent over any other degrees of kinship to the decedent.

While N.C. Gen. Stat. § 90-210.130(a) requires the authorizing agent(s) to "provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known," N.C. Gen. Stat. § 90-210.125(a)(11) stipulates that this statement must be made on the cremation authorization form.

Furthermore, N.C. Gen. Stat. § 90-210.131(e) states, in part, that "if a crematory licensee is aware of any dispute concerning the release or disposition of the cremated remains, the crematory licensee may refuse to release the cremated remains until the dispute has been resolved or the crematory licensee has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory licensee shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection."

Background

Based solely on the information received for the development of this Opinion, it is understood that the unnamed decedent's spouse served as one (1) of at least two (2) authorizing agents on the cremation authorization form. It is also understood that the decedent's son signed as a second authorizing agent; the decedent's spouse had prior knowledge of the son's interest in and/or, intent to, co-sign the form and; she neither instructed the licensee otherwise nor requested that the decedent's son not be allowed to do so.

The co-authorizing agents failed to indicate the intended final disposition of the decedent's cremated remains, other than to direct the crematory licensee to return the cremated remains to the funeral establishment following cremation. The co-authorizing agents are now alleged to be in disagreement as to what the final disposition of the decedent's cremated remains should be in accordance with N.C. Gen. Stat. § 90-210.130.

Additionally, it is understood that the decedent's son contractually arranged for the decedent's cremation by executing a Statement of Goods and Services selected with the funeral establishment. The decedent's son at that time either inserted or requested that the licensee insert language directing the funeral establishment to return the decedent's cremated remains to him as a term of his contract with the funeral establishment and the Statement of Goods and Services selected. However, the provisions set forth in N.C. Gen. Stat. § 90-210.125(a)(11) require such directive to be made by and through a cremation authorization form.

Opinion

It is Board staff's opinion that neither the licensee nor the funeral establishment would be in compliance with the Board's governing statutes if they released the decedent's cremated remains in accordance with the son's directive, as prescribed on the decedent's Statement of Goods and Services selected.

Furthermore, while N.C. Gen. Stat. § 90-210.131(e) specifically states that until any dispute concerning the release of a decedent's cremated remains is resolved or a court order authorizing the release has been received, the "crematory licensee shall not be held liable for refusing to release" them. It is Board staff's opinion that the statute, in principle, would equally apply to funeral establishments.

As such, it is Board staff's opinion that both the licensee and the funeral establishment would be in compliance with the Board's governing statutes and rules to retain custody of the unnamed decedent's cremated remains until which time the funeral establishment receives either written confirmation that the co-authorizing agents have amicably settled their dispute concerning the final disposition; or a court order authorizing the funeral establishment to release them or otherwise arrange for the final disposition thereof.

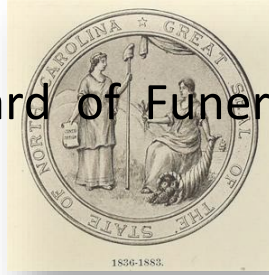
Please be advised that any opinions heretofore expressed are those of staff charged with enforcement of the Board's governing statutes and rules. They have not been reviewed, approved, or otherwise adopted by the Board, nor are they binding upon the Board. If you disagree with staff's position on this matter, you may have the right to request a declaratory ruling from, or hearing before, the Board pursuant to the North Carolina Administrative Procedure Act.

NCBFS Compliance Staff

Brett Lisenbee, Compliance Officer & Inspector - Western Region		919.218.8083
Darrell Cagle	West Central Region	919.604.4828
Karen Davis-Brunson	Central Region	919.219.8701
Chris Stoessner	North Eastern Region	919.215.8851
Terri Robinson-McLean	South Eastern Region	919.410.4608

For a listing of counties in each region, please visit www.ncbfs.org/inspectors.php

NC Board of Funeral Service



MISSION & CORE VALUES

*Ensuring Funeral Service Professionals in North Carolina
Are Fully Qualified & Licensed*

**Commitment to delivering success for the licensees, consumers,
partners & communities we serve**

**Communication with our colleagues and stakeholders that's
supportive, respectful, and open**

**Work in a smart, strategic way that reflects our commitment to
integrity and ethical conduct**

**Create opportunities to exchange knowledge and ideas with
colleagues and those we serve**

**Create a meaningful and inclusive work environment that
encourages and respects diversity**

Preneed Issues

Board Considering Changes to Preneed Contract Forms

At its February meeting, the NC Board of Funeral Service heard a proposal from Board staff to consider the consolidation of the existing four [4] preneed contract forms to two [2]. Currently, the Preneed Program recognizes the following contract forms:

- Standard Trust Contract
- Inflation-Proof Trust Contract
- Standard Insurance Contract
- Inflation-Proof Insurance Contract

Discussion began in early 2018 about the feasibility of recognizing two basic types of contract: Standard and Inflation-Proof.

Either type could be funded by a Trust or by the purchase of an Insurance product. The reason for this initial suggestion was to seek ways to streamline the contract process and to make it easier for consumers to understand.

Another reason was prompted by ratification of legislation which amended the Funeral Practice Act including certain provisions of the statutes governing preneed. In response and as a starting point for discussion, Board staff developed prototypes for a Standard Contract and an Inflation-Proof Contract.

While collapsing four contracts into two proved challenging, the resulting prototypes offer

consumers two basic choices rather than contending with four options.

Even though the new contract formats are lengthy, the content is precisely constructed to assure that consumers clearly understand their options before committing funds either by a trust account or by purchasing an insurance product. Board staff are continuing to study ways to redesign the contract forms and to shorten them where possible.

The Board's Preneed Committee reviewed the proposal in February and were at first concerned with the increase in the number of pages as well as an initial impression that licensees and consumers might consider the new contracts complicated.

In response to these concerns, the Committee asked Board staff to solicit feedback from preneed licensees and other stakeholders. Staff subsequently sent out copies of the new contracts to licensees; the FDMANC; the NCFDA; insurance representatives and financial institutions; and corporate owners of licensed establishments.

Feedback is encouraged and will be gathered through May 30, 2019. Board staff will then present comments and suggestions from stakeholders to the Preneed Committee in April 2019.

Want To Share Your Thoughts About The Proposed Preneed Contracts?

You'll find the proposed preneed contracts on the Board website at:

<https://ncbfs.org>

Click on Proposed Preneed Contracts in the blue box on the homepage.

Revocable or Irrevocable?

NC General Statute 90-210.62(a) states that *“Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed funeral contract purchaser.”*

An **irrevocable contract** is an agreement that cannot be cancelled except under certain limited circumstances. **Irrevocable trust-funded** contracts can only be revoked by a court order unless the beneficiary has relocated to another state and executed a new preneed contract with a funeral home in the new location. Under that circumstance, the irrevocable trust-funded contract may be revoked; however, the NC Board of Funeral Service must issue an order approving the revocation. **Irrevocable insurance-funded** contracts may be revoked in accordance with the terms of the insurance policy, but the cash value surrendered may be less than the amount

actually paid by the purchaser. It is also noted that revocation of an irrevocable insurance-funded preneed contract could have consequences for purchasers planning to exempt the value of the contract when spending down assets in anticipation of Medicaid qualification. Assets represented by an irrevocable preneed contract for burial space items or for burial funds are typically excluded from Medicaid calculations.

Revocable contracts allow the purchaser to cancel the agreement and expect a return of money spent to fund the agreement. These preneed contracts usually allow the purchaser to cancel a contract and withdraw the trust principal and any accrued interest at any time or to transfer an insurance-funded revocable contract to another funeral home.

The decision on whether or not to make a preneed contract irrevocable rests solely with the purchaser. At no time should the licensee lead or direct the purchaser to execute an irrevocable contract.



Complete copies of the Disciplinary Actions taken by the Board are available on the Board's website here: <https://ncbfs.org/disciplinary-actions.php>

Board Case Number: M18-0013

Respondent: Whitfield and Whitley Funeral Home and Essie Mae McCarter

Summary: A Board staff inspector conducted a routine establishment inspection and preneed examination of Respondent. The Board staff inspector found violations of laws and rules governing the practice of preneed funeral planning, including: a failure to timely file multiple preneed contracts with the Board; a failure to retain most current financial statements for all insurance policies; a failure to make available to the Board inspector all active preneed contract files upon request; a failure to make available to the Board inspector all closed preneed contract files upon request; and a failure to file the 2017 Preneed Annual Report with the Board.

Board Action: The Board issued a Final Agency Decision, whereby:

1. The Funeral Service License of Essie Mae McCarter, FD 2227, shall be placed on probation for one (1) year, during which time she shall not violate any law, regulation, or rule regulated by the Board.
2. The Preneed Funeral Establishment Permit of Whitfield & Whitley Funeral Home, Preneed Funeral Establishment No. 417, and its ancillary preneed sales licenses are suspended for a period of one (1) year, beginning on the dates on which this Final Agency Decision takes effect, on the following terms and conditions:
 - a. During the period of suspension, Respondent McCarter shall take a Board-sponsored continuing education course on preneed funeral service;
 - b. Respondent Funeral Home may request a re-inspection of its preneed records prior to the expiration of the period of suspension, upon payment of a \$100.00 re-inspection fee. If the Board inspector concludes that Respondent Funeral Home has brought its preneed records into substantial compliance with the Board's governing statutes and rules before the expiration of the period of suspension, Board staff shall have the discretion to lift the suspension of the Preneed Funeral Establishment Permit of Whitfield & Whitley Funeral Home, and its ancillary preneed sales licenses, following the re-inspection and upon payment of the civil penalty assessed in Paragraph 3;
 - c. Board staff shall conduct a preneed examination of Respondent Funeral Home no later than February 28, 2020. If the Board inspector concludes that Respondent Funeral Home has not brought its preneed records into substantial compliance with the Board's governing statutes and rules, the Preneed Funeral Establishment Permit of Whitfield & Whitley Funeral Home,

and its ancillary preneed sales licenses, shall be automatically revoked without any further hearing before the Board.

3. If the Respondent Funeral Home maintains its license following the preneed examination in Paragraph 2 above, Respondent Funeral Home shall pay a civil penalty of One Thousand (\$1,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes prior to the period of suspension being lifted.
4. Within fifteen (15) days from the Effective Date of this Order, Respondent shall submit its 2017 Preneed Annual Report to the Board, along with the One Hundred Fifty Dollars (\$150.00) late fee.

Effective Date: February 13, 2019

Continuing Education News

NC Board of Funeral Service Sponsors CE Course

In response to a continuing demand for Board-sponsored training on Preneed issues, the Board is offering an “NCBFS Preneed Review” course for continuing education credit. It’s never too late to start building CE hours toward the 5-hour requirement for license renewal!

Date & Time: June 18, 2019 9:00 am to 12:00 pm

Location: Central United Methodist Church
133 South Piedmont Avenue
Kings Mountain, NC 28086

Cost: \$25.00 per participant [non-refundable]

CE Credit: 3 hours

- **Participants are strongly encouraged to pre-register on or before June 11, 2019.**
- To register and pay online, please visit: <https://ncbfs.org/laws/fees-and-payments/>

The Board expresses appreciation to Harris Funeral Home of Kings Mountain, NC, as hosts for this training event. The funeral home will be offering a catered lunch to attendees following the course.

For a complete listing of Continuing Education courses for credit,
please visit the NCBFS website at
<https://ncbfs.org>

NEW LICENSEES & TRAINEES

CHAPELS	Paradise Memorial Chapel - Washington
CREMATORY LICENSEES	None
HYDROLYSIS LICENSEES	None
TRANSPORTERS	None
EMBALMING FACILITIES	None
UNAFFILIATED LICENSEES	None
FUNERAL ESTABLISHMENTS	Hawes Funeral Home – Warsaw Brown Kannapolis Mortuary – Kannapolis (ownership change) Troutman Funeral Home – Troutman (ownership change) Mitchell’s Memorial Funeral Home – Winterville Rose & Graham Funeral Home – Four Oaks (ownership change) Rose & Graham Funeral Home – Benson (ownership change) Rose & Graham Funeral Home – Coats (ownership change) Nicholson Funeral Home – Statesville (ownership change)
PRE-NEED ESTABLISHMENTS	Saunders Funeral Home – Jacksonville (ownership change) Troutman Funeral Home – Troutman (ownership change) Rose & Graham Funeral Home – Four Oaks (ownership change) Rose & Graham Funeral Home – Benson (ownership change) Nicholson Funeral Home – Statesville (ownership change)
FUNERAL SERVICE LICENSEES	Tawanna M. Johnson – Wilmington, NC
FUNERAL DIRECTORS	Crystal C. Burrell-Braddy – Whiteville, NC
TRAINEES Beginning Feb. 1, 2019	Ronald J. Boyd – Benson Funeral & Cremation Service Marshall D. Adams – Boston Mortuary Francheskia R. Fenderson – Hunter-Odom Funeral Service Otelia B. Royster – H. D. Pope Funeral Home Taylor C. Barnes – Miller Funeral Service Yarely Gonzalez-Leon – Skinner and Smith Funeral Home Rachelle C. Kessinger – Gordon Funeral Services and Crematory Joshua D. Hicks – Allen and Associates Mortuary Alexia L. Fetterson – House of Rosadale Home of Funerals Angela B. Carter – Davis Funeral Home Dana S. Norman – Hanes Funeral Service Jarrett M. Cothron – Kirksey Funeral Home Za Kyra D. Moore – Holloway Memorial Funeral Home Malessa G. Wade – R. Swinson Funeral Service Harvey C. Long – Guil-Rand Funeral & Cremation



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Catherine Lee	General Counsel
Brett Lisenbee	Compliance Officer

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Paul L. Richardson	Preneed Program Mgr
Lyn Cochran	Senior Preneed Program Spec
Rebecca A. Williams	Preneed Prog Specialist
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