

Burgos, Alexander N

From: Deborah R. Nowell <dnowell@hedrickgardner.com>
Sent: Monday, December 12, 2022 9:47 AM
To: Peaslee, William W; Burgos, Alexander N
Cc: Stephen E. Davis; Catherine E. Lee
Subject: [External] Bd of Funeral Service Request for Changes
Attachments: 12.2022 Request for Changes 21 NCAC 34D .0202 34B .0408.docx; 21 NCAC 34B .0408.docx; 21 NCAC 34D .0202.docx

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Hi Bill,

I am sending back the above on behalf of Steve Davis and Catherine Lee.

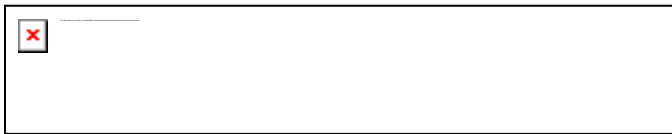
Attached is the Request with notes made about the requested changes as well as the rules.

Please let us know if you have any further questions.

Thank you,

BILL, PLEASE CONFIRM YOU RECEIVED THIS EMAIL.

Deborah R. Nowell | Accounting Coordinator
Hedrick Gardner Kincheloe & Garofalo LLP
4131 Parklake Ave., Suite 300 | Raleigh, NC 27612
Phone: 919-341-2722 | Fax: 919-832-9425
dnowell@hedrickgardner.com | www.hedrickgardner.com



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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Funeral Service

RULE CITATION: 21 NCAC 34B .0408

DEADLINE FOR RECEIPT: December 9, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 6-8, (a)(1): Please cite the Board's authority to issue letters of caution, etc.

NC Gen. Stat. 150B-41(c) provides that "Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties."

To resolve a contested case, the Board sometimes will offer to dismiss the proceeding with the issuance of a non-disciplinary letter of caution, contingent upon the licensee voluntarily taking a continuing education course sponsored by the Board. Clarifying language has been added to this section, and a citation included in the history note for GS 150B-41(c).

Line 15, (a)(2): Replace "may" with "shall".

Done

Line 17, (b): Define "newly".

Lines 17-19, (b): This sentence is confusing. Consider, if it fits the Board's intentions: "A person who has received his or her license within the past ___ months and who currently holds an active license shall receive credit CE credit for any CE hours earned after that licensee's mortuary science college graduation provided that the CE hours were earned within the preceding twelve months."

Done

William W. Peaslee
Commission Counsel

Date submitted to agency: November 23, 2022

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: November 23, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Funeral Service

RULE CITATION: 21 NCAC 34D .0202

DEADLINE FOR RECEIPT: December 9, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 10-13, (b): Whereas G.S. 90-210.67 states, "No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board," explain the Board's authority to allow resident trainees to engage in preneed sales and marketing.

NC Gen Stat 90-210.25(a)(4) provides that a trainee must substantially assist in directing at least 25 funerals during the resident traineeship.

NC Gen Stat 90-210.20(f) defines "funeral directing" as "engaging in the practice of funeral service except embalming."

NC Gen Stat 90-210.20(k) defines "the practice of funeral service" to include "engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies."

However, we have revised these lines to clarify that trainees only engage in preneed funeral planning under the supervision of a preneed sales licensee.

Page 1, Line 11: Should "and" be "or"? If not, add "are" after "and".

Changed to "or"

Page 1, Line 14-20: The Board uses "and" frequently. Would a comma provide more clarity to the Board's intention? For example, in (1) would a non-

William W. Peaslee
Commission Counsel

Date submitted to agency: November 23, 2022

licensee/trainee be permitted to “show” but not “explain” written materials? What if the materials shown and explained were descriptive of funeral “services” but not “merchandise”?

Revised accordingly

Page 1, Line 31-35, (c): Please explain the necessity and authority for the Board to determine whether the sale of a prearrangement insurance policy requires a preneed license. Do the definitions of G.S. 90-210.60 not already settle this?

The definition of “prearrangement insurance policy” as set forth in NC Gen Stat 210-60(4) is silent as to whether such policy can be considered to fund a preneed funeral contract when the preneed establishment has not been listed as the beneficiary or assignee of the policy. Paragraph (c) of this rule, in accordance with NC Gen Stat 90-210.69(a), will inform its regulated public of its interpretation of the statutory definition above, so that the regulated party has clarity on when a preneed funeral contract is formed.

Page 2, Lines 1-3, (d)(1): Are there any time frames within which the application must be filed?

No time frame is required; applications can be submitted at any time prior to the individual licensee engaging in preneed sales activities.

Page 2, Line 13, (d)(1)(F): What “proof” will satisfy the Board?

Revised to require the date on which the CE course was taken

Page 2, Line 15, (d)(1)(G): Consider “...signature and attestation that...”

Revised accordingly

Page 2, Line 20-22, (d)(2): If a sales licensee is employed by multiple preneed licensee establishments pursuant to Subparagraph (e), it appears that one establishment can cause the sales licensee’s license to be surrendered. Or does a sales licensee have one license for each establishment with which he or she is associated? This is unclear.

The preneed sales licensee holds a separate license for each establishment with which he or she is associated.

Page 2, Lines 20-22, and 31-32, (e): Explain the Board's authority to restrain a sales licensee's employment (in the context of preneed sales) to one preneed establishment without the consent of the sales licensee's employer?

NC Gen. Stat. 90-210.67(a) provides, in pertinent part, that "a preneed sales licensee may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, the preneed sales licensee may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity."

Paragraph (e) of this Rule interprets the information that must be set forth in the "contract" required by NC Gen Stat 90-210.67(a), in the absence of common ownership.

Page 3, Lines 6-7, (f): Does the licensee need to present the card to a prospective purchaser or to a purchaser at the time of contract under Subparagraph (g)? Does the licensee need to surrender the card to the Board or the preneed establishment at any time?

No, to both questions.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: November 23, 2022

21 NCAC 34B .0408 is amended with changes as published in 37:04 NCR 340-342 as follows:

21 NCAC 34B .0408 CONTINUING EDUCATION PROGRAM

(a) For licensees required to complete ~~CE~~ continuing education (“CE”) as a prerequisite to annual license renewal, the five hours of approved CE shall meet the following requirements:

- (1) ~~Up to two hours may be in courses required by the Board.~~ CE courses taken at the direction of the Board as memorialized in a [letter of caution, consent [order, or] order, final agency [decision] decision, or taken voluntarily by the licensee to resolve a pending disciplinary matter, shall not be credited toward CE hours needed for annual licensure renewal. If the Board requires licensees to take a particular required course or courses, the Board shall notify licensees no later than October 1 of the year preceding the calendar year in which the course(s) will be required.
- (2) ~~Licensees may take up to two hours of continuing education each year by computer based CE approved by the Board as set forth in 21 NCAC 34B .0414.~~
- (3) ~~Licensees may not receive more than two hours of credit for continuing education courses in preneed each year.~~
- (4)(2) Licensees ~~may~~ shall not receive credit toward completed CE hours for taking the same CE course within two years.

(b) ~~A newly admitted active licensee may include as credit hours, [submit to the Board for credit toward completed CE hours needed for annual licensure renewal] which may be carried over to the next succeeding [calendar] year, any approved continuing education [CE] hours earned after that licensee's graduation from mortuary science college. A person who has received his or her license within the past twelve months and who currently holds an active license shall receive CE credit toward annual licensure renewal for any CE hours earned after that licensee's mortuary science college graduation provided that the CE hours were earned within the preceding twelve months.~~

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); 150B-41(c)
Eff. July 1, 2005;
Amended Eff. January 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017. 2017;
Amended Eff. January 1, 2023.*

1 21 NCAC 34D .0202 is amended with changes as published in 37:04 NCR 340-342 as follows:

2
3 **21 NCAC 34D .0202 PRENEED SALES LICENSE**

4 (a) ~~Subject to G.S. 90-210.69(e), holding a~~ Individuals who hold either an active funeral director's license, issued by
5 ~~the Board, or a license or an active funeral service license, issued by the Board, is the qualification to be~~ license issued
6 by the Board and who have taken three or more hours of continuing education on preneed statutes and rules taught by
7 ~~Board staff within the preceding three calendar years are eligible for initial licensure as a preneed sales license.~~ license
8 upon application by a funeral establishment holding an active preneed establishment permit, as set forth in Paragraph
9 (d) of this Rule.

10 (b) ~~The preneed sales licensee may engage, under the preneed sales license, Only individuals who hold an active~~
11 ~~preneed sales license issued by the Board~~ [and] or resident trainees in funeral service or funeral directing registered
12 with the Board ~~[pursuant to]~~ as allowed by 21 NCAC 34B ~~[.0103(b)]~~ .0103 are permitted to engage in the following
13 preneed funeral planning ~~activities:~~ activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-
14 210.60(8):

- 15 (1) ~~show and explain~~ discuss with consumers written materials, including price lists and photographs,
16 descriptive of the funeral ~~services and merchandise and~~ services, funeral merchandise, the preneed
17 funeral ~~plan plan,~~ or funeral contract being offered;
- 18 (2) explain the various types of funeral ceremonies and services and the qualities and characteristics of
19 various kinds of funeral merchandise;
- 20 (3) sell, on a preneed basis, funeral services and merchandise;
- 21 (4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a
22 preneed basis;
- 23 (5) make funeral arrangements on a preneed basis; and
- 24 (6) sign preneed contracts; provided, however, that the resident trainee and his or her licensed
25 supervisor comply with 21 NCAC 34B .0103(e) when doing so. ~~contracts. No preneed funeral~~
26 ~~planning activities shall be engaged in by anyone other than a preneed sales licensee or a registered~~
27 ~~resident trainee in funeral service or funeral directing pursuant to 21 NCAC 34B .0103(b); provided,~~
28 ~~however, no preneed sales license is required solely for the sale of an insurance policy, and in~~
29 ~~connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral~~
30 ~~planning if, for the sole purpose of permitting a prospective purchaser to make an informed decision~~
31 ~~as to the amount of insurance desired, the salesperson shows only price lists of funeral services and~~
32 ~~merchandise.~~

33 (c) No preneed sales license is required for the sale of an insurance policy for which no funeral establishment or its
34 representative is listed as the beneficiary or assignee of said policy. In connection with such a sale, the salesperson
35 shall not be deemed to have engaged in preneed funeral planning if the salesperson shows only price lists of funeral
36 services and merchandise to permit a prospective purchaser to make an informed decision as to the amount of
37 insurance desired.

1 (d) An applicant shall apply for, renew, or surrender a preneed sales license in accordance with the following
2 provisions:

3 (1) A funeral establishment holding an active preneed establishment permit shall apply for, or renew, a
4 preneed sales license by submitting the following to the Board on behalf of the applicant for a
5 preneed sales license:

6 (A) the applicant's name, address, email address, and telephone number;

7 (B) the applicant's funeral director's or funeral service license number;

8 (C) the name, address, and preneed establishment permit number of the preneed funeral
9 establishment licensee or licensees on whose behalf the applicant will sell preneed funeral
10 contracts;

11 (D) the applicant's employment or agency relationship with the preneed establishment licensee
12 or licensees;

13 (E) the initial or renewal application fee required by 21 NCAC 34A .0201(c) for each preneed
14 sales licensee;

15 (F) proof that the date on which the applicant has taken the continuing education course
16 required by Paragraph (a) of this Rule; and

17 (G) the applicant's signature [to attest] and attestation that he or she has read and will comply
18 with the statutes and rules governing the practice of preneed funeral service.

19 (2) Either the preneed sales licensee or the preneed funeral establishment on whose behalf the preneed
20 sales licensee is engaged in preneed funeral planning activities may surrender a preneed sales license
21 by submitting notification of such surrender in writing to the Board.

22 (e) If a preneed sales licensee proposes to engage in preneed funeral planning activities on behalf of multiple preneed
23 funeral establishment licensees that are not wholly owned by or affiliated with common ownership, the preneed sales
24 licensee shall submit the following to the Board:

25 (1) the date on which the preneed sales licensee will begin engaging in preneed funeral planning
26 activities for multiple preneed funeral establishment licensees;

27 (2) the date on which the preneed sales licensee will stop engaging in preneed funeral planning activities
28 for multiple preneed funeral establishment licensees, if known;

29 (3) the name, license number, and signature of the preneed sales licensee;

30 (4) the name and signature of the licensed manager of each preneed funeral establishment licensee for
31 whom the preneed sales licensee will engage in preneed funeral planning activities.

32 (5) an attestation from each of the individuals identified in SubParagraphs (3)-(6) of this Paragraph that:

33 (A) he or she consents to the preneed sales licensee engaging in preneed funeral planning
34 activities on behalf of the identified preneed funeral establishment licensees; and

35 (B) the preneed sales licensee and the preneed funeral establishment licensee on whose behalf
36 the preneed funeral planning activities are to be conducted shall comply with the statutes
37 and rules governing preneed funeral planning activities.

1 ~~(e)~~ A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to
2 the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name
3 and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed
4 funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant
5 proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose
6 information to satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related
7 by ownership or contract.

8 ~~(f)~~ The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license.
9 The preneed sales licensee shall carry the card while engaging in preneed funeral planning. ~~Upon making application~~
10 ~~for a license the applicant shall indicate the names of the preneed funeral establishment licensees on whose behalf the~~
11 ~~preneed sales licensee is authorized to sell preneed funeral contracts. The applicant shall pay an application fee and~~
12 ~~an annual renewal fee determined, respectively, by multiplying the application fee and renewal fee in 21 NCAC 34A~~
13 ~~.0201(c) times the number of preneed funeral establishment licensees on whose behalf the preneed sales licensee is~~
14 ~~authorized to sell. When there is any change in the list of establishments on whose behalf the preneed sales licensee~~
15 ~~is authorized to sell, the preneed sales licensee shall, within 10 days, file an amended list with the Board and shall pay~~
16 ~~the application fee for each new funeral establishment licensee named on the list, regardless of whether one or more~~
17 ~~names have been deleted. The total preneed sales license application fee and total renewal fee paid pursuant to this~~
18 ~~Paragraph shall not exceed the maximums, respectively, set by statute.~~

19 ~~(g)~~ The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral
20 contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

21
22 *History Note: Authority G.S. 90-210.25(a)(4); ~~90-210.60(8)~~; 90-210.67(a),(c); ~~90-210.69(a)~~; 90-210.69(a), (c);*
23 *Eff. July 1, 1993;*
24 *Amended Eff. January 1, 1996; June 1, 1994;*
25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,*
26 *~~2017~~ 2017;*
27 *Amended Eff. January 1, 2023.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, December 12, 2022 9:01 AM
To: Stephen E. Davis
Cc: Burgos, Alexander N
Subject: RE: [External] RE: Bd of Funeral Service Request for Changes

Good morning,

I have not received a response to the Request for Changes and you are past the deadline.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Stephen E. Davis <sdavis@ncbfs.org>
Sent: Wednesday, November 23, 2022 2:10 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: Bd of Funeral Service Request for Changes

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Hello, Mr. Peaslee,

I'm writing to acknowledge receipt of your email suggesting changes to the rules we recently submitted for permanent adoption. We will respond with revisions to the rules by your deadline.

Thank you for your email – and hope your Thanksgiving is memorable!

Sincerely,

Stephen Davis
Executive Director

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, November 23, 2022 1:55 PM
To: Stephen E. Davis <sdavis@ncbfs.org>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Bd of Funeral Service Request for Changes

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the North Carolina Board of Funeral Service for the December 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, December 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on December 9, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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