

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NO. C17-082

In the matter of: )  
)  
Carriage Funeral Holdings, Inc. d/b/a ) **CONSENT ORDER**  
Cumby Family Funeral Service, )  
Respondents. )

THIS CAUSE, coming before the North Carolina Board of Funeral Service (hereinafter the "Board") at its offices at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina 27605, with a quorum present, the Board and Respondents stipulate and agree to entry of the following Consent Order:

1. Carriage Funeral Holdings, Inc. d/b/a Cumby Family Funeral Service (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 129 by the Board and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984). Andrew W. Cumby is the licensed manager of Respondent Funeral Home.

CONSUMER COMPLAINT NO. C17-082

2. On or about November 27, 2017, Board staff received a complaint from [REDACTED] (hereinafter "Complainant [REDACTED]").
3. On or about June 18, 2017. Complainant [REDACTED] son, [REDACTED] passed away. Complainant [REDACTED] is divorced from her deceased son's father. Respondent Funeral Home provided funeral services for Complainant [REDACTED]'s deceased son.
4. On or about June 20, 2017, Complainant [REDACTED] and her ex-husband went to Respondent Funeral Home for the arrangement's conference for their deceased son. During that arrangement's conference, Complainant [REDACTED] and her ex-husband verbally agreed to divide the cremains of their deceased son into a large urn and four (4) mini urns. Complainant [REDACTED] verbally agreed to receive one (1) mini urn.
5. During the arrangement's conference, both Complainant [REDACTED] and her ex-husband signed the cremation authorization indicating that the cremains would be released to both parents.
6. On or about June 23, 2017, Complainant [REDACTED]'s son was cremated.

7. On or about June 25, 2017, Complainant [REDACTED]'s ex-husband collected the decedent's personal items and the four (4) mini-urns from Respondent Funeral Home without Complainant [REDACTED]'s knowledge or permission.
8. In September 2017, Complainant [REDACTED] contacted Respondent Funeral Home and her ex-husband in an effort to arrange a time for her to pick up one (1) mini-urn of the decedent's cremains from Respondent Funeral Home. According to Complainant [REDACTED], her ex-husband would not return her calls, but Respondent Funeral Home told her that she should come to the establishment.
9. When Complainant [REDACTED] went to Respondent Funeral Home to pick up the mini urn containing her portion of the cremains, she was informed that the four (4) mini urns already had been released to her ex-husband in June. Respondent Funeral Home presented Complainant [REDACTED] with a release form to sign whereby she would relinquish her rights to her son's cremains. Complainant [REDACTED] refused to sign the release form, as it was contrary to her wishes.
10. Respondent Funeral Home thereafter contacted Complainant [REDACTED]'s ex-husband and asked him to return one of the mini-urns to the establishment, so that it could be given to Complainant [REDACTED]. Complainant [REDACTED]'s ex-husband did so, but Complainant [REDACTED] refused to receive the mini urn because she could not be certain that the contents of the mini-urn were the cremains of her son.
11. In response to Complainant [REDACTED]'s complaint, Respondent Funeral Home provided Board staff with a copy of the cremation authorization signed by Complainant [REDACTED] and her ex-husband; a copy of the release that Respondent Funeral Home asked Complainant [REDACTED] to sign; and a copy of the Statement of Goods and Services signed by decedent's father. However, they did not provide Board Form 56D showing that they released the four (4) mini urns to the decedent's father in June 2017. Respondent Funeral Home further allege that the large urn containing the cremains of the decedent has remained in its possession for all times relevant to this Complaint.

### CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.
2. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-11, violate N.C. Gen. Stat. § 90-210.25(e)(1)j., which prohibits violating any provision of Articles 13A, 13D, 13E, and/or 13F of Chapter 90 of the North Carolina General Statutes, all rules and regulations of the Board, and the standards set forth in 16 C.F.R. § 453 (1984), as amended from time to time.
3. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-11, violate N.C. Gen. Stat. § 90-210.130, by failing to properly release cremains to

an authorizing agent and in accordance with a duly-executed cremation authorization form.

4. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-11, violate N.C. Gen. Stat. § 90-210.127 and 21 NCAC 34C .0303(c) by failing to retain Board Form 56D.

BASED upon the foregoing Findings of Fact and Conclusions of Law, and in lieu of further proceedings, Respondents wish to resolve this matter by consent and agree that Board staff and counsel may discuss this Consent Order with the Board *ex parte* whether or not the Board accepts this Consent Order as written.

Whereas Respondents acknowledge that they have read this entire document and understand it;

Whereas Respondents acknowledge that they enter into this Consent Order freely and voluntarily;

Whereas Respondents acknowledge that they have had full and adequate opportunity to confer with legal counsel in connection with this matter;

Whereas Respondents understand that this Consent Order must be presented to the Board for approval and that Respondents hereby waive any argument that any Board members considering this Consent Order are disqualified from participating in a hearing of this matter; and

Whereas the Board has determined that the public interest is served by resolving this matter as set forth below.

THEREFORE, with the consent of Respondents, it is ORDERED that:

1. The Funeral Establishment Permit of Respondent Funeral Home is suspended for one (1) year, but said suspension is stayed on the following conditions:
  - a. Respondent Funeral Home admits to the violations herein;
  - b. Respondent Funeral Home shall be placed on probation during the period of stayed suspension;
  - c. Respondent Funeral Home shall not violate any law or rule of the Board during the period of suspension;
  - d. Respondent Funeral Home shall timely respond to any and all Board and/or Board staff correspondence;

- e. Respondent Funeral Home shall comply with all terms of this Consent Order; and
  - f. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of One Thousand Five Hundred (\$1,500.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
2. The Board shall retain jurisdiction under Article 3A, Chapter 150B for all administrative hearings held in connection with or pursuant to this Consent Order. If the Board receives evidence that Respondents, collectively or individually, have violated any term of this Consent Order or any other law or rule enforced by the Board, the Board shall schedule a show cause hearing for a determination of the violations. If the Board determines that a violation has occurred, the Board may impose such disciplinary action as it determines is appropriate and is authorized by law.
  3. This Consent Order shall take effect immediately upon its execution by all parties and reflects the entire agreement between Respondents and the Board, there being no agreement of any kind, verbal or otherwise, which varies, alters, or modifies this Consent Order.
  4. No modification or waiver of any provision of this Consent Order shall be effective unless it is in writing, adopted and approved by the Board, and signed by the parties affected.
  5. Both the Board and Respondents participated in the drafting of this Consent Order. Any ambiguities herein shall not be construed against either party in any future civil or administrative proceeding.
  6. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
  7. Upon its execution by the Board and Respondents, this Consent Order shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof.

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CONSENTED TO:

Carriage Funeral Holdings, Inc. d/b/a  
Cumby Family Funeral Service

By: Andrew W. Cumby Date: 8-1-18  
Andrew W. Cumby  
Licensed Manager

By Order of the North Carolina Board of Funeral Service, this the 15 day of  
August, 2018.

By: Matt Staton  
Matt Staton  
Board President

