

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NO. C20-0024

In the matter of: )  
)  
Purcell Funeral Home & Cremation )  
Service, LLC, )  
Respondent. )

**CONSENT ORDER**

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 Respondent stipulate and agree to entry of the following Consent Order:

1. Purcell Funeral Home & Cremation Service, LLC (hereinafter "Respondent" or "Respondent Funeral Home") is licensed as At-Need Establishment Permit No. 0745 and Preneed Establishment Permit No. 0928 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).
2. For all times relevant to this proceeding, Mr. Kenneth Marvin Purcell, who held Funeral Service License No. 1570, served as the licensed manager of Respondent Funeral Home. Mr. Purcell died on or about May 9, 2020.
3. On or about March 20, 2020, Board staff received a complaint from Lavern D. Mackall (hereinafter "Complainant"). Board staff provided Respondent with an opportunity to respond to the Complainant's allegations, and Respondent did so on or about April 13, 2020. Evidence obtained in this matter tends to show the following:
  - a. On or about October 9, 2019, Complainant's husband died. Complainant contracted with Mr. Purcell and Respondent Funeral Home to forward the decedent's remains to another funeral home.
  - b. According the Respondent Funeral Home's General Price List, the services for which Complainant contracted included the basic services of a funeral director and staff; a proportionate share of overhead costs; removal of remains; embalming or other preparation of remains, if relevant; and local transportation.
  - c. According to the Statement of Funeral Goods and Services Selected signed by Complainant and Mr. Purcell, on or about October 18, 2019, the remains of the decedent were to be embalmed for public safety. According to the

Complainant, the remains of the decedent were to be dressed in a military uniform provided by the decedent's family.

4. Mr. Purcell and Respondent Funeral Home did not provide all services for which Complainant contracted. Specifically, Mr. Purcell and Respondent Funeral Home did not embalm the decedent or dress the decedent in his military uniform. Respondent Funeral Home alleges that the decedent was unable to perform these services because the decedent was in an advanced state of decomposition and, as a result, Mr. Purcell and Respondent Funeral Home did not fully open the decedent's body bag. However, Mr. Purcell and Respondent Funeral Home did not disclose to Complainant that it was unable to perform the services for which it was paid.
5. Because Mr. Purcell and Respondent Funeral Home failed to fully open the decedent's body bag, Respondent Funeral Home failed to return to the Complainant the decedent's personal effects that were enclosed with the body bag in which the decedent was transported from OCME to Respondent Funeral Home.

#### **CONCLUSIONS OF LAW**

1. Respondent is subject to jurisdiction before the Board.
2. The acts and omissions of Respondent Funeral Home and Mr. Purcell described in Paragraphs 1-5, violate N.C. Gen. Stat. § 90-210.25(d)(4), which prohibits violating any provision of Article 13A 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 and Mr. Purcell described in Paragraphs 1-5, violate N.C. Gen. Stat. § 90-210.25(e)(1)(b), which prohibits fraud or misrepresentation in the operation of a licensee's business.
4. The acts and omissions of Respondent Funeral Home and Mr. Purcell described in Paragraphs 1-5, violate N.C. Gen. Stat. § 90-210.25(e)(1)(j), which prohibits violating any provision of Article 13A 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.
5. The acts and omissions of Respondent Funeral Home and Mr. Purcell described in Paragraphs 1-5, violate N.C. Gen. Stat. § 90-210.25(e)(1)(p), which prohibits the failure to provide, within a reasonable time, either the goods and services contracted for or a refund for the price of goods and services paid for but not fulfilled.
6. One or more of the violations described above were committed by any officer, director, manager, partner, operator, or member of Respondent Funeral Home or

by any person, employee, or agent with the consent of any person, firm, or corporation operating it. Pursuant to N.C. Gen. Stat. § 90-210.25(d)(4), the Board has the authority to revoke, suspend, or refuse to issue or renew the funeral establishment permits of Respondent Funeral Home, to place Respondent Funeral Home on probation, and/or to assess a civil penalty not to exceed \$5,000.00.

BASED upon the foregoing Findings of Fact and Conclusions of Law, and in lieu of further proceedings, Respondent wishes 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 Respondent acknowledges that it has read this entire document and understands it;

Whereas Respondent acknowledges that it enters into this Consent Order freely and voluntarily;

Whereas Respondent acknowledges that it has had full and adequate opportunity to confer with legal counsel in connection with this matter;

Whereas Respondent understand that this Consent Order must be presented to the Board for approval and that Respondent hereby waives 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 Respondent, it is ORDERED that:

1. The At-Need Establishment Permit of Respondent Funeral Home is suspended for twelve (12) months, 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;
  - f. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall submit to the Board proof that it has reimbursed Complainant One Thousand One Hundred Ninety-Five (\$1,195.00) Dollars; and
  - g. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of One Thousand (\$1,000.00) 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 Respondent has 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 Respondent 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 Respondent 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. Respondent 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 Respondent, 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.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

CONSENTED TO:

Purcell Funeral Home & Cremation Service, LLC

By: Kervin L. Hawkins Date: 12-29-2020  
Kervin Lee Hawkins  
Manager

By Order of the North Carolina Board of Funeral Service, this the 13th day of  
January, 2021.

By: Don D. Brown  
Don D. Brown  
Board President