

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NOS. C21-0132/M22-0004

In the matter of:

Congleton Funeral Home and Cremations, Inc.  
and James Samuel Congleton, Jr.  
Respondents.

)  
)  
)  
)  
)  
)  
)

**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 Respondents stipulate and agree to entry of the following Consent Order:

1. Respondent Congleton Funeral Home and Cremations, Inc. (hereinafter "Respondent Funeral Home") is licensed by the Board as Funeral Establishment No. 0395 and Preneed Funeral Establishment No. 0381 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. Respondent James Samuel Congleton, Jr. (hereinafter "Respondent Individual") is licensed by the Board as Funeral Service Licensee No. 1576 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). Respondent Individual holds a preneed sales license on behalf of Respondent Funeral Home.
3. For all times relevant to this Notice of Hearing, Respondent Individual has served as the licensed manager of Respondent Funeral Home.

**C21-0132**

4. On or about November 8, 2017, [REDACTED] ("Complainant") and her husband, [REDACTED], entered into respective preneed contracts with Respondents, on behalf of themselves.
5. Complainant paid Respondents \$9,384.38 via debit or credit card at the time the contract was made.
6. Mr. [REDACTED] paid Respondents \$8,873.38 via debit or credit card at the time the contract was made.

7. Respondents mistakenly deposited the money paid by Complainant and Mr. [REDACTED] toward their preneed contracts into its operating account.
8. On or about December 15, 2021, Board staff received a complaint (the "Complaint") against Respondents from Complainant, alleging misappropriation of prepaid funeral funds given to Respondents.
9. At no point prior to the filing of the Complaint did Respondents place the preneed funds paid by Complainant and Mr. [REDACTED] into a trust account.
10. Prior to the filing of the Complaint, Respondents did not file the preneed contract for Complainant or Mr. [REDACTED] with the Board.
11. Upon being made aware of the Complainant's complaint, Respondents reimbursed Complainant and Mr. [REDACTED] for all funds paid toward their respective preneed contracts in 2017, plus interest.

**M22-0004**

12. On or about December 20, 2021, a Board inspector conducted a preneed examination at Respondent Funeral Home and found violations of statutes and rules governing the practice of preneed funeral service, as follows:
  - a. Respondent Funeral Home commingled preneed payments in its general operating account for the following preneed consumers:
    - i. [REDACTED]
    - ii. [REDACTED]
  - b. Respondent Funeral Home failed to deposit into a financial account in trust within five (5) days of receipt the preneed funds for the following preneed consumers:
    - i. [REDACTED]
    - ii. [REDACTED]
  - c. Respondent Funeral Home failed to file with the Board within ten (10) days the preneed contracts for the following preneed consumers:
    - i. [REDACTED]
    - ii. [REDACTED]
    - iii. [REDACTED]
    - iv. [REDACTED]

- d. Respondent Funeral Home failed to timely file with the Board a certificate of performance within ten (10) days of payment for the closed preneed contract of [REDACTED]
13. Following the examination, Respondents provided evidence to the Board inspector that they since have filed the preneed contracts for [REDACTED]  
[REDACTED]

### CONCLUSIONS OF LAW

1. Respondent is subject to jurisdiction before the Board.
2. The acts and omissions of Respondents described above constitute violations of Article 13D of Chapter 90 of the North Carolina General Statutes, in violation of N.C. Gen. Stat. §§ 90-210.25(e)(1)j. and 90-210.69(c)(6), as follows:
  - a. Respondents did not deposit all preneed funds in an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five (5) business days, in violation of N.C. Gen. Stat. § 90-210.61(a)(1);
  - b. Respondents deposited preneed funds into its own operating account, in violation of N.C. Gen. Stat. § 90-210.61(e);
  - c. Respondents did not remit to the Board, within ten (10) days of the sale, a copy of the preneed contracts for the following individuals, in violation of N.C. Gen. Stat. § 90-210.67(d):  
[REDACTED]
  - d. Respondents failed to file a certificate of performance for [REDACTED]  
[REDACTED] with the Board within ten (10) days of payment, in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 N.C. Admin. Code 34D .0303(a) and (b).
3. One or more of the violations described herein were committed by any owner, officer, operator, manager, member, or partner of Respondent Funeral Home or by any agent or employee of Respondent Funeral Home 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 permit of Respondent Funeral Home, to place Respondent Funeral Homes on probation, and to assess a civil penalty not to exceed \$5,000.00.



4. Respondent Funeral Home committed one or more of the violations described in Paragraph 7. Pursuant to N.C. Gen. Stat. § 90-210.69(c), the Board has the authority to revoke, suspend, or refuse to issue or renew the preneed establishment permit and all ancillary preneed sales licenses of Respondent Funeral Home, or to place Respondent Funeral Home on probation, and to assess a civil penalty not to exceed \$5,000.00.
5. The Board concludes that Respondent Individual committed one or more of the aforementioned violations but remains fit to practice. Pursuant to N.C. Gen. Stat. § 90-210.25(e)(2), the Board has the authority to place Respondent Individual on probation and to assess a civil penalty not to exceed \$5,000.00.
6. Respondent Individual committed one or more of the violations described in Paragraph 7. Pursuant to N.C. Gen. Stat. § 90-210.69(c), the Board has the authority to revoke, suspend, or refuse to issue or renew the preneed sales license of Respondent Individual, or to place Respondent Individual on probation, and 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, 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 preneed establishment permit, and all ancillary preneed sales licenses of Respondent Funeral Home is hereby suspended for a period of at least three (3) years, except that said suspension is stayed upon the following terms and conditions:
  - a. The preneed establishment permit and the ancillary preneed sales licenses of Respondent Funeral Home shall remain on a probationary period for at least a period of three (3) years from the date of this Consent Order, and until such time as Respondent Funeral Home submits to and passes without substantial deficiency a preneed examination conducted by a Board Staff Inspector, which should be conducted on or before March 2025;
  - b. Respondent Funeral Home shall obtain a surety bond in an amount not less than Fifty Thousand Dollars (\$50,000.00) and shall maintain said bond for at least five (5) years following the date this Consent Order is executed. Respondent Funeral Home shall provide proof to Board staff that it has obtained said surety bond within thirty (30) days of the date this Consent Order was executed. The surety bond obtained shall in all ways comply with 21 NCAC 34D .0203, in addition to any and all other applicable laws and rules. If Respondent Funeral Home fails to provide proof that it has obtained a surety bond in an amount not less than Fifty Thousand Dollars (\$50,000.00) within thirty (30) days of this Consent Order taking effect, the stay of revocation on the preneed establishment permit of Respondent Funeral Home shall be immediately lifted;
  - c. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of Two Thousand Five Hundred Dollars (\$2,500.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes;
  - d. All preneed sales licensees of Respondent Funeral Home shall take a Board-sponsored course on preneed statutes and rules on or before December 31, 2022; and
  - e. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service.
2. The funeral service license of Respondent Individual is hereby suspended for a period of at least three (3) years, except that said suspension is stayed upon the following terms and conditions:

- a. During the period of probation, Respondent Individual shall comply with all statutory and regulatory provisions governing the practice of funeral service.
3. 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 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.
4. 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.
5. 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.
6. 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.
7. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
8. 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.

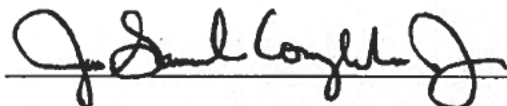
[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]



In the Matter of: Congleton Funeral Home and Cremations, Inc.  
and James Samuel Congleton, Jr.  
Board Case Nos. C21-0132/M22-0004  
Consent Order  
Page | 7

CONSENTED TO:

James Samuel Congleton, Jr.

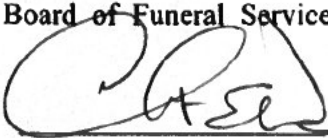
 Date: 3-23-2022

Congleton Funeral Home and Cremations, Inc.

By:  Date: 3-23-2022  
James Samuel Congleton, Jr.  
Manager

By Order of the North Carolina Board of Funeral Service, this the 19<sup>th</sup> day of April, 2022.

By:

  
Christian E. Watson  
Board President