

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M18-004

In the matter of:

W H Whitley & Sons Inc. d/b/a
Whitley's Funeral Home and,
David E. Whitley,

Respondents.

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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:

FINDINGS OF FACT

1. Respondent W H Whitley & Sons Inc. d/b/a Whitley's Funeral Home, (hereinafter "Respondent Funeral Home"), is licensed by the Board as Funeral Establishment No. 155 and Preneed Establishment No. 623 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
2. Respondent David E. Whitley (hereinafter "Respondent Whitley" or collectively with Respondent Funeral Home as "Respondents") is licensed by the Board as Funeral Director No. 3469 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code. Respondent Whitley also holds an ancillary preneed sales license on behalf of Respondent Funeral Home.
3. Respondent Whitley is the licensed manager of Respondent Funeral Home.

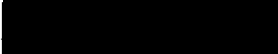
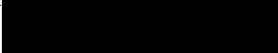
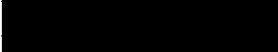

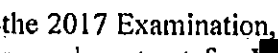
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4. On or about December 13 and 14, 2017, Board Inspector Darrell R. Cagle (hereinafter "Inspector Cagle") conducted a funeral establishment inspection (hereinafter the "2017 Inspection") and a preneed examination and audit (hereinafter the "2017 Examination") of Respondent Funeral Home.
5. During the 2017 Inspection and 2017 Examination, Inspector Cagle reviewed random preneed contract files held by Respondent Funeral Home to determine compliance with Board statutes and rules.

6. During the 2017 Inspection, Inspector Cagle found that Respondent Funeral Home had not been using Board Form 56D, as required by 21 NCAC 34D.0303(c). Respondent contends that they were not previously informed of the need to use Board Form 56D.
7. During the 2017 Examination, Inspector Cagle found that Respondent Funeral Home failed to have available its previous Board examination report.
8. During the 2017 Examination, Inspector Cagle found that Respondent Funeral Home failed to maintain required beneficiary assignment forms for the insurance-funded preneed contract file of [REDACTED]
9. During the 2017 Examination, Inspector Cagle found that Certificates of Performance had not been filed timely with the Board office for the following individuals:
 - a. [REDACTED] (whose date of death was February 10, 2010)
10. During the 2017 Examination, Inspector Cagle found that a record of disposition of funds was not found for the following individuals:
 - a. [REDACTED]
 - b. [REDACTED]
 - c. [REDACTED]
 - d. [REDACTED]
 - e. [REDACTED]
 - f. [REDACTED]
 - g. [REDACTED]
 - h. [REDACTED]
 - i. [REDACTED]
 - j. [REDACTED]
 - k. [REDACTED]
11. During the 2017 Examination, Inspector Cagle found that a record of payment of refund was not found for the following individuals:
 - a. [REDACTED] (whose estate was owed a refund of \$210.43);
 - b. [REDACTED] (whose estate was owed a refund of \$178.79); and
 - c. [REDACTED] (whose estate was owed a refund of \$9,009.47)

Since the issuance of a Notice of Hearing in this matter, Respondents have provided documentation that refunds were issued to the families for the decedents listed in Paragraph 11. However, the refunds regarding [REDACTED] were not issued to the estate of the decedents, as required by N.C. Gen. Stat. § 90-210.64(d).

12. During the 2017 Examination, Inspector Cagle found that an at-need Statement of Funeral Goods and Services Selected was not found for the following individuals:

- a. 
- b. 
- c. 
- d.  d
- e. 

13. During the 2017 Examination, Inspector Cagle found that an irrevocable inflation proof preneed contract for  had been revoked and the policy funding was cash surrendered, with proceeds from the policy paid to the contract beneficiary prior to death.

CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.
2. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-13 constitute failure to properly maintain accurate and complete preneed records, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(a), (b), (c)(4), and (c)(5).
3. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-13 constitute failure to timely file with the Board certificates of performance for performed preneed contracts, in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 N.C. Admin. Code 34D .0303(b).
4. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-13 constitute failure to refund excess prepaid funeral service funds to the estate of the decedent, in violation of N.C. Gen. Stat. § 90-210.64(d).
5. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-13 constitute failure to properly document the release of human remains from a funeral establishment to the person who receives the cremated remains, in violation of 21 N.C. Admin. Code 34C .0303(c).
6. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-13 violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating or cooperating with others to violate the laws, rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended from time to time.
7. The acts and omissions of Respondent Whitley described in Paragraphs 1-13 violate N.C. Gen. Stat. § 90-210.25(e)(1)j., which prohibits violating or cooperating with

others to violate the laws, rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended from time to time.

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 Board hereby suspends the preneed establishment permit and any and all ancillary preneed sales licenses of Respondent Funeral Home for three (3) years, but stays the suspension on the following conditions:
 - a. Respondents admit to the violations;
 - b. Respondent Funeral Home shall be placed on probation for the period of said suspension period. Respondent Funeral Home must submit to, and pass, an inspection and audit conducted by a Board staff inspector before any probation period shall be lifted;
 - 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 Two Thousand (\$2,000.00) 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 hereby suspends the Funeral Director license of Respondent Whitley for three (3) year, but the Board stays the suspension on the following conditions:
 - a. Respondent Whitley admits to the violations;
 - b. Respondent Whitley shall be placed on probation for three (3) year, beginning from the date this Consent Order takes effect;
 - c. Respondent Whitley shall not violate any law or rule of the Board during the period of probation;
 - d. Respondent Whitley shall timely respond to any and all Board and/or Board staff correspondence; and
 - e. Respondent Whitley shall comply with all terms of this Consent Order.
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, 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.
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.

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CONSENTED TO:

W. H. Whitley and Sons Inc. d/b/a Whitley's Funeral Home

By: David E. Whitley Date: 6-7-18
David E. Whitley
Licensed Manager

David E. Whitley

David E. Whitley Date: 6-7-18

By Order of the North Carolina Board of Funeral Service, this the 13th day of June, 2018.

By: Charles D. Staton
Matt Staton
Board President

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Order was served upon the following person by email and by depositing a copy with the U.S. Postal Service, via First Class Mail and postage prepaid, addressed to the party to be served as follows:

David E. Whitley, Manager
W H Whitley & Sons Inc. d/b/a Whitley's Funeral Home
1748 Dale Earnhardt Blvd.
Kannapolis, NC 28083



David E. Whitley
601 Willow Street
Kannapolis, NC 28083

This, the 13 day of June 2018.

A handwritten signature in black ink, appearing to be 'Catherine E. Lee', written over a horizontal line.

Catherine E. Lee
General Counsel