

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. C19-0034, C19-0041, C20-
0033, C20-0038, C20-0040, C20-0084,
C20-0090, C21-0011, C21-0056, M20-0111

In the matter of:)
)
Thos. Shepherd & Son, Inc.,)
Shepherd Memorial Park, Inc.,)
Thomas Redmond Shepherd, and)
Melody Holmes Shepherd.)
Respondents.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL AGENCY DECISION

In accordance with N.C. Gen. Stat. § 150B-40(d), the North Carolina Board of Funeral Service (hereinafter the “Board”) issues the following Findings of Fact, Conclusions of Law, and Final Agency Decision in this matter.

The record reflects that a quorum of the Board was present at the hearing held on November 10, 2021, and at the time the Board made this decision on November 10, 2021. The record further reflects that Board member Chris Watson did not participate in the hearing or deliberations of this case because they served on the Board’s Disciplinary Committee at the time this particular matter was reviewed. At the hearing, Catherine E. Lee, General Counsel, appeared for Board staff; Jeffrey Gray appeared as administrative law counsel for the Board. Respondents appeared *pro se*.

Before the hearing, the following inquiry was read aloud in accordance with state ethics laws: “[d]oes any board member have any known conflict of interest with respect to this matter coming before the Board today? If so, please identify the conflict or appearance of conflict and refrain from any undue or inappropriate participation in the particular matter involved.” No Board members, other than Mr. Watson, stated that they had a conflict of interest or the appearance of a conflict of interest.

PETITIONER’S LIST OF EXHIBITS

- 1. iGov Profile for Thos. Shepherd & Son, Inc.
- 2. iGov Profile for Shepherd Memorial Park
- 3. iGov Profile for Thomas Redmond Shepherd
- 4. iGov Profile for Melody Holmes Shepherd
- 5. M20-0111 Order for Summary Suspension (Nov. 4, 2020)
- 6. Order Upholding Summary Suspension (Dec. 11, 2020)
- 7. Amended Notice of Hearing to Show Cause (Sept. 14, 2021)

8. Proof of Service of Amended Notice of Hearing on Shepherd Memorial Park (Sept. 17, 2021)
9. Proof of Service of Amended Notice of Hearing on Shepherd Memorial Park (Sept. 27, 2021)
10. Correspondence to Respondents re Noticing Hearing and Change of Manager/Licensed Officer (Aug. 6, 2021)
11. Correspondence to Respondents re Noticing Hearing and Change of Manager/Licensed Officer (Oct. 19, 2021)
12. Minutes of Meeting of Shareholders of Thos. Shepherd & Son, Inc. (July 15, 2021)
13. Minutes of Meeting of Shareholders of Shepherd Memorial Park, Inc. (July 15, 2021)
14. Notice of Resignation by Mr. Ben Johnson from Respondent Thos. Shepherd & Son, Inc. (July 27, 2021)
15. Notice of Separation by Ms. Jennifer Duran from Respondents (July 27, 2021)
16. Consent Order (C18-0001, In re Thos. Shepherd & Son, Inc., Shepherd Memorial Park, Inc., and Thomas R. Shepherd) (Nov. 14, 2018)
17. C19-0034 Consumer Complaint (Aug. 8, 2019)
18. C19-0034 Notes, Investigative Report, and Summary of Findings (July 7, 2020)
19. C19-0041 Consumer Complaint (Aug. 22, 2019)
20. C19-0041 Notes, Investigative Report, and Summary of Findings (July 8, 2020)
21. C19-0041 Investigative Materials
22. C20-0033 Consumer Complaint (May 11, 2020)
23. C20-0033 Notes, Investigative Report, and Summary of Findings
24. Transcript of Summary Suspension Hearing (Nov. 18, 2020)
25. C20-0038 Consumer Complaint (June 9, 2020)
26. C20-0038 Response (June 22, 2020)
27. C20-0038 Rebuttal (June 28, 2020)
28. C20-0038 Notes, Investigative Report, and Summary of Findings (July 9, 2020)
29. C20-0038 Investigative Materials
30. C20-0040 Affidavit of Susan Simpson (Nov. 1, 2021)
31. C20-0040 Response (July 3, 2020)
32. C20-0040 Notes, Investigative Report, and Summary of Findings (July 9, 2020)
33. C20-0040 Investigative Materials
34. C20-0084 Consumer Complaint (Nov. 12, 2020)
35. C20-0084 Response (Dec. 11, 2020)
36. C20-0090 Consumer Complaint (Nov. 17, 2020)
37. C20-0090 Response (Dec. 11, 2020)
38. C20-0090 Rebuttal (Jan. 20, 2021; Feb. 8, 2021)
39. C21-0011 Affidavit of Christina Webb (Feb. 5, 2021)
40. C21-0011 Response (Feb. 16, 2021)
41. C21-0011 Compliance Opinion (March 31, 2021)

42. C21-0056 Consumer Complaint (May 10, 2021)
43. C21-0056 Response (July 16, 2021)
44. C21-0056 Notes, Review, and Summary of Findings (July 8, 2021)
45. Funeral Establishment Inspection Report (June 23, 2020)
46. Preneed Establishment Examination Report (June 24, 2020)
47. Crematory Inspection Report (June 23, 2020)
48. Crematory Inspection Addendum (July 2, 2020)
49. Verified Complaint and Motions for Preliminary Injunction and Appointment of a Receiver (NC Cemetery Commission v Shepherd Memorial Park, Inc.) (21 CVS 1627, Henderson County)

RESPONDENTS' LIST OF EXHIBITS

None

FINDINGS OF FACT

1. Thos. Shepherd & Son, Inc. ("Respondent Establishment") is licensed as Funeral Establishment No. 546 and Preneed Funeral Establishment No. 108 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. Shepherd Memorial Park, Inc. d/b/a Shepherd Memorial Park Crematory ("Respondent Crematory") is licensed as Crematory No. 0017 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).
3. Thomas R. Shepherd ("Respondent T. Shepherd") is licensed as the Funeral Director No. 2171 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).
4. Melody Holmes Shepherd ("Respondent M. Shepherd" or, collectively with Respondent Establishment, Respondent Crematory and Respondent T. Shepherd, "Respondents") is licensed as Crematory Manager No. CM0015 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.
5. For all times relevant to this proceeding, Respondent T. Shepherd has served as the licensed manager of Respondent Establishment.

6. For all times relevant to this proceeding, Respondent M. Shepherd has served as the licensed crematory manager of Respondent Crematory. For all times relevant to this proceeding, Respondent M. Shepherd also has served as the President of Respondent Establishment.
7. On November 19, 2018, the Board entered into a Consent Order with Respondents T. Shepherd, Respondent Establishment, and Respondent Crematory (the “2018 Consent Order”) to resolve complaint C18-0001.
8. The 2018 Consent Order ordered, in part, that: (i) the Funeral Establishment Permit and the Preneed Funeral Establishment Permit of Respondent Establishment; and (ii) the Funeral Director License of Respondent T. Shepherd be placed on a stayed suspension for one (1) year, contingent upon their compliance with the statutes and rules regulated by the Board during the period of stayed suspension.
9. Respondent Establishment and Respondent T. Shepherd have failed to comply with the terms of the Consent Order.
10. On October 27, 2020, the Board staff issued a Notice of Hearing to Show Cause to the Respondents.
11. On October 29, 2020, counsel for the Respondents indicated that Respondent T. Shepherd underwent a medical procedure in mid-October and Respondents requested a continuance of this proceeding until mid-January 2021.
12. On November 3, 2020, Respondents provided documentation to the Board from Respondent T. Shepherd’s healthcare provider, indicating that Respondent T. Shepherd is not currently competent to address violations set forth in the Notice of Hearing to Show Cause.
13. On November 4, 2020, the Board issued an Order for Summary Suspension, finding that emergency action was warranted by the Board to protect public health, safety, and welfare.
14. On November 5, 2020, Respondent Crematory and Respondent Funeral Establishment were served with the Order for Summary Suspension;
15. On November 18, 2020, the Board conducted a hearing in which Board staff and Respondents were provided with an opportunity to present testimony, evidence, and arguments with regard to whether the summary suspension should remain in place until a hearing can be held on the allegations set forth in the Notice of Hearing to Show Cause issued on October 27, 2020.
16. On December 1, 2020, the Board issued an Order Upholding the Summary Suspension, ordering that the summary suspension would remain in effect until a hearing can be held on the allegations set forth in the Amended Notice of Hearing to Show Cause.

17. On September 14, 2021, the Board staff issued an Amended Notice of Hearing to Show Cause, scheduling the hearing for November 10, 2021.
18. On November 10, 2021, Respondents appeared for the hearing via WebEx.

C19-0034

19. On or about August 8, 2019, Board staff received a complaint against Respondent Establishment from Leta Faye Pressley. In the complaint, Ms. Pressley alleged that:
 - a. Respondent Establishment failed to timely cremate the decedent Cody Deso (“Decedent Deso”), who died on August 2, 2019;
 - b. Respondent Establishment failed to timely release Decedent Deso’s body to another funeral establishment selected by the decedent’s family, upon request;
 - c. Respondent Establishment failed to timely apply for a death certificate on behalf of Decedent Deso; and
 - d. Respondent Establishment failed to provide an itemized list of costs charged for services rendered for Decedent Deso’s services.
20. On or about June 24 and June 25, 2020, Board Inspector Christopher Stoessner (“Inspector Stoessner”) investigated the allegations made in Ms. Pressley’s complaint at Respondent Establishment’s facility. However, Respondent Establishment failed to provide any documents related to services rendered on behalf of Decedent Deso, despite multiple requests from the Board inspector.
21. At hearing, Inspector Stoessner testified credibly that Respondent Establishment could not produce to him any records related to Respondent Establishment’s handling of Decedent Deso’s at-need services.
22. At hearing, Inspector Stoessner testified credibly that Respondent Establishment’s failure to maintain and make available to a Board inspector the disclosure statement for Decedent Deso’s services was a violation of law, in that such documents must be kept and made available to the Board for a period of two years.

C19-0041

23. On or about August 22, 2019, Board staff received a complaint against Respondent Establishment from Michael L. Hudgins of Natchez Trace Funeral Home in Madison, Mississippi.

24. In the complaint, Mr. Hudgins alleged that he contacted Respondent Establishment to conduct a trade call, seeking removal of the decedent Winfield Saxton (“Decedent Saxton”) from Hendersonville, NC to Natchez Trace Memorial Park in Mississippi for funeral services. Mr. Hudgins further alleged that Respondent Establishment thereafter filed a claim against Decedent Saxton’s preneed insurance policy, after being instructed that Natchez Trace Funeral Home would pay Respondent Establishment directly for their services.
25. On or about June 24, 2020, Board Inspector Christopher Stoessner investigated the allegations made in Mr. Hudgins’ complaint at Respondent Establishment’s facility.
26. At hearing, Inspector Stoessner testified credibly that, during the course of his investigation, he found correspondence in the file for Decedent Saxton by and between only Respondent M. Shepherd and Decedent Saxton’s next of kin, making arrangement for funeral services, including but not limited to purchasing a memorial book, transferring an insurance policy to Respondent Establishment, and picking up cremated remains from Respondent Establishment.
27. At hearing, Inspector Stoessner testified credibly that, based on his review of the file for Decedent Saxton, it is his opinion that the family of Decedent Saxton had made arrangements directly with Respondent M. Shepherd for Decedent Saxton’s funeral services, without the involvement of any licensed funeral service licensee or licensed funeral director.
28. At hearing, Mr. Hudgins testified credibly that, during the course of his dealings with Respondent Establishment, he called Respondent Establishment multiple times and never was able to speak with a licensed funeral director or funeral service licensee about Decedent Saxton’s funeral services.

C20-0033

29. On or about May 11, 2020, Board staff received a complaint against Respondent Establishment from Martha Walker.
30. On or about June 23, 2020, Board Inspector Christopher Stoessner investigated the allegations made in Ms. Walker’s complaint at Respondent Establishment’s and Respondent Crematory’s facilities.
31. At hearing, the Board considered testimony and exhibits related to Ms. Walker’s complaint. In considering the evidence, the Board finds:
 - a. On or about April 9, 2020, Ms. Walker’s mother, Mary S. Beck (“Decedent Beck”), died. Ms. Walker arranged for Respondent Establishment to take possession of Decedent Beck in order to provide her funeral services.

- b. On April 9, 2020, Ms. Walker met with an unlicensed individual employed by Respondent Establishment, Tiffany Blackwell, to make the at-need arrangements for Decedent Beck's funeral services. During the arrangements conference, Ms. Walker and Ms. Blackwell discussed pricing of services and merchandise, as well as the completion of cremation authorization forms;
 - c. On April 9, 2020, Ephraim Johnston Irvin, II ("Mr. Irvin" or "John Irvin") briefly joined the arrangements conference with Ms. Walker and Ms. Blackwell to answer some questions for Ms. Blackwell about pricing for funeral goods and services. On April 9, 2020, Mr. Irvin did not hold an active funeral director or funeral service license.
 - d. Ms. Blackwell reviewed the cremation authorization form and obtained signature on the form from Ms. Walker, outside of the presence of a licensed funeral director or funeral service licensee;
 - e. No Statement of Funeral Goods and Services Selected signed by a licensee of the Board was provided to Ms. Walker at the arrangements conference for Decedent Beck's funeral services;
 - f. Respondent Establishment did not file Decedent Beck's Notice of Death with the Buncombe Health Department until April 13, 2020;
 - g. Respondent Establishment did not file Decedent Beck's Notice of Death with the Social Security Administration until on or about April 24, 2021;
 - h. On April 24, 2021, Ms. Walker arranged for another funeral home to take possession of Decedent Beck, because Respondents had not yet performed Decedent Beck's cremation; and
 - i. At no time did Respondent Establishment file a death certificate for Decedent Beck.
32. At hearing, the Board considered testimony provided by Ms. Walker in the Summary Suspension Hearing held before the Board on November 18, 2020. The Board finds that Ms. Walker testified credibly with regard to her interactions with Tiffany Blackwell and John Irvin at the arrangements conference on April 9, 2020.
33. At hearing, Inspector Stoessner testified credibly regarding his opinion that Respondent Establishment's untimely filing of Decedent Beck's death certificate was a violation of law regulated by the Board.
34. At hearing, Tiffany Blackwell testified credibly that she was employed with Respondent Establishment from approximately January 2020 until June 2020.

35. At hearing Tiffany Blackwell testified credibly that, during her employment at Respondent Establishment, she only observed Respondent T. Shepherd at Respondent Establishment's facility on one brief occasion.
36. At hearing, Tiffany Blackwell testified credibly that, during her employment with Respondent Establishment, Respondent M. Shepherd directed her to meet with Ms. Walker on April 9 to make arrangements for Decedent Beck's funeral services.
37. At hearing, Tiffany Blackwell testified credibly that, during her employment at Respondent Establishment, Respondent M. Shepherd maintained a stack of death certificates that were pre-signed by Respondent T. Shepherd. Ms. Blackwell testified that when employees of Respondent Establishment needed a death certificate, they would take one of the pre-signed certificates out of the cabinet for their use.
38. At hearing, Tiffany Blackwell testified credibly that, during her employment at Respondent Establishment, she observed Respondent M. Shepherd sign Respondent T. Shepherd's name to a death certificate on one occasion.
39. At hearing, Tiffany Blackwell testified credibly that, after the family of Decedent Beck decided to transfer Decedent Beck to a funeral home other than Respondent Establishment, Respondent M. Shepherd ripped up the signed death certificate for Decedent Beck so that the successor funeral home would be required to obtain a new death certificate.
40. At hearing, Tiffany Blackwell testified credibly that, during her employment at Respondent Establishment, she observed Respondent M. Shepherd often meet with families to provide pricing information for services and obtain biographical information about decedents outside of the presence of a licensed funeral director or funeral service licensee.
41. At hearing, Tiffany Blackwell testified credibly that, during her employment at Respondent Establishment, she observed John Irvin embalm dead human bodies. During Ms. Blackwell's employment with Respondent Establishment, Mr. Irvin did not hold an active funeral service license or embalmer license.
42. At hearing, Tiffany Blackwell testified credibly that, in May 2020, she took approximately 10 days' leave of absence from employment with Respondent Establishment. When Ms. Blackwell returned to work, she observed unembalmed decedents who had been stored at Respondent Establishment without refrigeration during the full time period that she was on leave.
43. At hearing, Inspector Stoessner testified credibly regarding his conclusions, based upon his investigations into Ms. Walker's complaint, that Respondent T. Shepherd had failed to actively manage and oversee in the daily operations of Respondent Establishment, as its licensed manager and licensed officer.

44. At hearing, Inspector Stoessner testified credibly that, during his investigation into Ms. Walker's complaint, he did not observe a current active wall certificate on display for Mr. Irvin within Respondent Establishment's facility. Inspector Stoessner testified credibly regarding his opinion that Respondent T. Shepherd, as the manager of Respondent Establishment, was responsible for ensuring that licensees working for Respondent Establishment hold active funeral director or funeral service licenses.

C20-0038

45. On or about June 9, 2020, Board staff received a complaint against Respondents from Kay Alison Thomas.

46. On or about June 23 2020, Board Inspector Christopher Stoessner investigated the allegations made in Ms. Thomas' complaint.

47. At hearing, the Board considered testimony and exhibits related to Ms. Thomas's complaint. In considering the evidence, the Board finds:

- a. Ms. Thomas' husband, Lawrence George Thomas ("Decedent Thomas"), passed away on May 16, 2020.
- b. Respondent Establishment failed to obtain a death certificate signed by a physician for Decedent Thomas until May 26, 2020;
- c. Respondents failed to cremate Decedent Thomas until on or about May 28, 2020;
- d. Respondent Establishment failed to submit a Notice of Death for Decedent Thomas to the Social Security Administration until May 28, 2020;
- e. An unlicensed representative of Respondent Crematory who is not qualified as a Crematory Technician performed the cremation of Decedent Thomas, processed his cremated remains, and placed his cremated remains into the final container; and
- f. Respondent Crematory used the incorrect form in releasing Decedent Thomas' cremated remains to Respondent Establishment, and Respondent Establishment failed to maintain proper documentation of the cremation in its file for Decedent Thomas.

48. At hearing, Ms. Thomas testified credibly that she met with John Irvin on behalf of Respondent Establishment to make arrangements for Decedent Thomas. At the time that Mr. Irvin met with Ms. Thomas, he did not hold an active funeral director or funeral service license.

49. At hearing, Inspector Stoessner testified credibly that, in the course of his investigation into Ms. Thomas' complaint, he reviewed documents indicating that Decedent Thomas was placed

into the cremation chamber by an individual, Vanessa McCrary, who was not licensed by the Board as a funeral director or funeral service licensee, and who was not credentialed as a crematory operator.

C20-0040

50. On or about June 15, 2020, Board staff received a complaint against Respondents from Susan Simpson.
51. On or about June 23, 2020, Board Inspector Christopher Stoessner investigated the allegations made in Ms. Simpson's complaint.
52. At hearing, the Board considered testimony and exhibits related to Ms. Simpson's complaint. In considering the evidence, the Board finds:
 - a. Ms. Simpson's husband, Thomas Claude Simpson ("Decedent Simpson"), passed away on May 15, 2020;
 - b. Respondent Establishment failed to obtain a death certificate signed by a physician for Decedent Simpson until May 27, 2020;
 - c. Respondents failed to cremate Decedent Simpson until on or about June 4, 2020;
 - d. Without the knowledge of Decedent Simpson's family, and contrary to the cremation authorization form executed by Decedent Simpson's next of kin, Respondents arranged for Decedent Simpson's cremation to take place at a crematory other than Respondent Crematory; and
 - e. Respondents filed a death certificate on behalf of Decedent Simpson that incorrectly listed Respondent Crematory as the performing crematory.
 - f. The initial death certificate for Decedent Simpson prepared by Respondent Establishment bears the signature of Ephraim Johnston Irvin, II as the licensed funeral director of Respondent Establishment handling Decedent Simpson's services.
 - g. At the time Mr. Irvin signed the death certificate holding himself out as a licensed funeral director of Respondent Establishment, he was not in fact actively licensed by the Board.
 - h. The initial death certificate completed by Respondent Establishment on behalf of Decedent Simpson listed Respondent Crematory as the performing crematory, when in fact it was not.

- i. Respondent Establishment failed to file the initial death certificate for Decedent Simpson until June 15, 2020, which was approximately one month following Decedent Simpson's death.

C20-0084

53. On or about November 12, 2020, Board staff received a complaint against Respondent Establishment from Amy J. Jacobs.

54. At hearing, the Board considered testimony and exhibits related to Ms. Huneycutt's complaint.

- a. Ms. Jacobs' father, Donnie Jackson ("Decedent Jackson"), passed away on October 4, 2020;
- b. Ms. Jacobs made arrangements with Respondent Establishment for Decedent Jackson's services, including the procurement of his death certificate;
- c. Respondent Establishment failed to file a death certificate on behalf of Decedent Jackson within five days following after his death; and
- d. Five weeks after the arrangements conference, Respondent Establishment still had not provided Decedent Jackson's death certificate to Ms. Jacobs, despite repeated requests by Ms. Jacobs for them to do so.

19. At hearing, Ms. Jacobs testified credibly that she called Respondent Establishment five (5) different times over the course of approximately six (6) weeks in an effort to obtain Decedent Jackson's death certificate from Respondent Establishment. Ms. Jacobs testified that her family ultimately obtained Decedent Jackson's death certificate directly from the local register of deeds.

C20-0090

55. On or about November 17, 2020, Board staff received a complaint against Respondent Establishment from Julie Huneycutt.

56. At hearing, the Board considered testimony and exhibits related to Ms. Huneycutt's complaint. In considering the evidence, the Board finds:

- a. Ms. Huneycutt's mother, Betty Jo Harwell ("Decedent Harwell"), passed away on November 25, 2018;

- b. At the time she made arrangements for Decedent Harwell's funeral services with Respondent Establishment, Ms. Huneycutt provided Respondent Establishment with a funeral annuity funding an existing preneed contract to cover the costs of Decedent Harwell's funeral services, including the provision of death certificates; and
 - c. Ms. Huneycutt did not receive the five death certificates for which she paid \$50.00 from Respondent Establishment and had to retrieve them from the courthouse herself.
57. At hearing, Ms. Huneycutt testified credibly that she met with Respondent M. Shepherd to make arrangements for Decedent Harwell's funeral services on or about November 25, 2018. Ms. Huneycutt testified credibly that Respondent M. Shepherd specifically discussed pricing for Decedent Harwell's funeral merchandise and services.
58. At hearing, Ms. Huneycutt testified credibly that, at the conclusion of the arrangements conference, she was provided a Statement of Funeral Goods and Services that bore the signature of Respondent T. Shepherd. Ms. Huneycutt testified credibly that she never met with Respondent T. Shepherd in connection with arranging Decedent Harwell's funeral services.
59. At hearing, Inspector Stoessner testified credibly that it is a violation of the Board's Practice Act for licensees to engage in fraud or misrepresentation in the practice of funeral service or operation of a licensee's business.
60. At hearing, Inspector Stoessner testified credibly that, in his opinion as a Board Inspector, a non-licensed individual engages in fraud or misrepresentation when he or she signs the name of a licensee to a document related to the practice of funeral service.
61. At hearing, Inspector Stoessner testified credibly that, in his opinion as Board Inspector, a licensee engages in fraud or misrepresentation when he or she signs a Statement of Funeral Goods and Services following an arrangements conference when the licensee did not actually meet with the consumer for the arrangements conference to review pricing for funeral goods and services.

C21-0011

62. On or about February 5, 2021, Board staff received a complaint against Respondent Establishment from Christina Webb.
63. At hearing, the Board considered testimony and exhibits related to Ms. Webb's complaint. In considering the evidence, the Board finds:
- a. Ms. Webb's mother, Ruth Good ("Decedent Good"), entered into an inflation-proof preneed contract with Respondent Establishment on August 15, 2014.

- b. Ms. Webb accompanied Decedent Good to her meeting with Respondent Establishment on August 15, 2014. At the time the contract was made, Ms. Webb observed Respondent M. Shepherd sign the name of Respondent T. Shepherd to the inflation-proof contract. Only Respondent M. Shepherd met with Ms. Webb and Decedent Good to draw up the preneed contract, and no licensed funeral director or funeral service licensee was present for that meeting;
 - c. Decedent Good passed away on April 12, 2020;
 - d. Only Respondent M. Shepherd met with Ms. Webb to make at-need arrangements for Decedent Good's funeral services, and no licensed funeral director or funeral service licensee was present for that meeting;
 - e. Respondent M. Shepherd did not provide Ms. Webb with an at-need Statement of Funeral Goods and Services that was signed by a funeral director;
 - f. Respondent Establishment failed to retain a copy of the at-need contract signed by a funeral director or funeral service licensee;
 - g. Respondent Establishment overcharged Ms. Webb by approximately \$786.49 for services selected at need; and
 - h. Respondent Establishment filed an incorrect certificate of performance on behalf of Decedent Good with the Board, indicating an amount due to Respondent Establishment that was not accurate and did not match Respondent Establishment's final ledger.
64. At hearing, Inspector Stoessner testified credibly that, between approximately March 25 through March 31, 2021, he investigated the allegations set forth in Ms. Webb's complaint.
65. At hearing, Inspector Stoessner testified credibly that, at the conclusion of his investigation into Ms. Webb's complaint, he concluded that Respondent Establishment had overcharged Ms. Webb by approximately \$786.49 for services selected at need, when it failed to properly calculate the inflation-proof formula in accordance with the requirements for a modified preneed contract.
- C21-0056**
66. On or about May 24, 2021, Board staff received a complaint against Respondent Establishment from Claxton Bailey.
67. At hearing, the Board considered testimony and exhibits related to Mr. Bailey's complaint. In considering the evidence, the Board finds:

- a. On or about April 29, 2020, Mr. Bailey met with an unlicensed representative of Respondent Establishment and paid \$3,584.08 in cash toward preneed funeral services on behalf of his mother, Phyllis Styles Bailey (“Decedent Bailey”);
 - b. When Mr. Bailey made preneed payments toward Decedent Bailey’s preneed contract, he was provided a Statement of Funeral Goods and Services Selected that bore the signature of John Irvin as the licensed funeral director or funeral service licensee on behalf of Respondent Establishment. Mr. Irvin did not hold an active funeral director or funeral service license at the time Mr. Bailey received the signed Statement of Funeral Goods and Services Selected;
 - c. Respondent Establishment did not complete a preneed contract on a form prescribed by the Board for Decedent Bailey;
 - d. Respondent Establishment did not file a preneed contract on behalf of Decedent Bailey with the Board;
 - e. Respondent Establishment did not deposit Mr. Bailey’s preneed payments into a trust account or a prearrangement insurance policy within five business days of receipt;
 - f. On April 23, 2021, Decedent Bailey passed away. A funeral establishment other than Respondent Establishment performed Decedent Bailey’s funeral services. Mr. Bailey paid the other funeral establishment directly for Decedent Bailey’s funeral services; and
 - g. On or about July 16, 2021, Respondent Crematory issued a refund check for the Estate of Decedent Bailey to the local county clerk of court in the amount of \$3,584.08.
68. At hearing, Board Inspector Debbie Hamm (“Inspector Hamm”) testified credibly that she conducted an investigation into Mr. Bailey’s complaint between approximately July 2 through July 7, 2021.
69. At hearing, Inspector Hamm testified credibly that, upon her request, Respondent Establishment was unable to produce any records, files, or documents related to preneed arrangements made on behalf of Decedent Bailey.

M20-0111

70. On or about June 23-25, 2020, Inspector Stoessner conducted a routine establishment inspection of Respondent Establishment (the “2020 Establishment Inspection”).

71. At hearing, the Board considered testimony and exhibits related to Inspector Stoessner's findings during his 2020 Establishment Inspection. In considering the evidence, the Board finds:
- a. Mr. Irvin, who holds an expired funeral service license, was engaged in the practice of funeral service on behalf of Respondents at Respondent Establishment and Respondent Crematory;
 - b. No wall certificate was displayed for Mr. Irvin and no current funeral establishment permit was properly displayed; and
 - c. Respondent Establishment did not use and/or retain a current copy of BFS-56D "Receipt of Cremains" for all decedents for which it arranged cremation services.
72. On or about June 23-25, 2020, Inspector Stoessner conducted a routine preneed establishment examination of Respondent Establishment (the "2020 Examination").
73. At hearing, the Board considered testimony and exhibits related to Inspector Stoessner's findings during his 2020 Examination. In considering the evidence, the Board finds:
- a. No current preneed establishment permit was properly displayed;
 - b. Respondent Establishment failed to timely refund within thirty (30) days to the family of [REDACTED] excess preneed insurance funds received for funeral services; and
 - c. Respondent Establishment failed to timely credit to the family of [REDACTED] Six Hundred Dollars (\$600.00) toward funeral services, which equals Ten Percent (10%) of the preneed contract value retained at the time the initial trust-funded preneed contract was made.
74. On or about June 23-25, 2020, Inspector Stoessner conducted a routine preneed establishment examination of Respondent Crematory (the "2020 Crematory Inspection").
75. At hearing, the Board considered testimony and exhibits related to Inspector Stoessner's findings during his 2020 Crematory Inspection. In considering the evidence, the Board finds:
- a. Respondent Crematory failed to maintain a refrigeration unit equipped with easily cleaned interior surfaces, in that the shelving was made of wood/particle board materials and in a state of disrepair/corrosion;
 - b. Respondent Crematory was not maintained in good repair or sanitary condition, in that cremated remains and bone fragments were visible on the edge of the retort and in ash collection during the Crematory Inspection;

- c. Respondent Crematory could not produce any paperwork for the decedent who allegedly was cremated on the day before the Crematory Inspection, for whom Inspector Stoessner observed cremated remains and bone fragments in the retort;
 - d. Respondent Crematory failed to use and/or retain cremation authorization forms that contain:
 - i. A representation that the human remains do not contain a pacemaker that is not approved for cremation by the pacemaker's manufacturer or proper regulating agency or any other material or implant that may be potentially hazardous to the person performing the cremation;
 - ii. The manner in which final disposition of the cremated remains is to take place, if known, or that cremated remains will be held by the crematory licensee for 30 days before they are disposed of, unless they are received from the crematory licensee prior to that time, in person, by the authorizing agent or his designee; and
 - iii. The signatures of two (2) witnesses to the authorizing agent's signature on cremation forms executed on a preneed basis.
 - e. Respondent Crematory failed to properly use/retain BFS Forms 56 Series;
 - f. In 2020, Respondent Crematory allowed non-licensed representatives named Vanessa McCrary and Johnathan Barker, who are not qualified as Crematory Technicians, to perform the following tasks with regard to at least seven (7) decedents:
 - i. Place the decedents into the cremation chamber;
 - ii. Process the cremation;
 - iii. Retrieve the decedents from the cremation chamber; and
 - iv. Place the decedents into the final container.
76. During Inspector Stoessner's visit at Respondent Establishment and Respondent Crematory between June 23 and June 25, 2020, Inspector Stoessner did not observe Respondent T. Shepherd on site and did not have any interactions with Respondent T. Shepherd.
77. At hearing, the Board considered testimony and exhibits related to the status of Respondent Establishment's employment of a licensed manager and retention of a licensed officer. In considering the evidence, the Board finds that, since approximately July 27, 2021, Respondent Establishment has not employed a licensed manager or maintained a licensed officer who is actively involved with its daily operations.

CONCLUSIONS OF LAW

1. Respondents are 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. Respondents are subject to jurisdiction before the Board.
3. The Board is authorized under Article 3A, Chapter 150B of the North Carolina General Statutes to hear this matter.
4. The acts and omissions of Respondents, described in the above Findings of Fact, violate the terms of the 2018 Consent Order.
5. The acts and omissions of Respondents, described in the above Findings of Fact, violate N.C. Gen. Stat. §§ 90-210.25(e)(1)b, 90-210.69(c)(4), and 90-210.123(g)(2), for engaging in fraud or misrepresentation in the practice of funeral service or operation of a licensee's business.
6. The acts and omissions of Respondents, described in the above Findings of Fact, violate N.C. Gen. Stat. §§ 90-210.25(e)(1)h, 90-210.69(c)(1-2), and 90-210.123(g)(8), for aiding and abetting an unlicensed person to perform services under Article 13A, Article 13D, and Article 13F.
7. The acts and omissions of Respondents, described in the above Findings of Fact, violate N.C. Gen. Stat. §§ 90-210.25(e)(1)j and 90-210.123(g)(10), which prohibits violating any provision of Articles 13A, 13D, 13E, and/or 13F of Chapter 90 of the North Carolina General Statutes and all rules and regulations of the Board. Specifically:
 - a. Respondent Establishment and Respondent T. Shepherd failed to employ in charge a licensed manager who oversees the daily operations of the funeral establishment, in violation of N.C. Gen. Stat. § 90-210.25(d);
 - b. Respondent Establishment and Respondent T. Shepherd failed to maintain a licensed officer who is actively engaged in the operation of the funeral establishment, in violation of N.C. Gen. Stat. § 90-210.27A(e);
 - c. Respondent Establishment and Respondent T. Shepherd failed to display the establishment and preneed establishment permits, in accordance with N.C. Gen. Stat. §§ 90-210.25(d)(1), 90-210.69(a), and 21 NCAC 34D .0201(f);
 - d. Respondent Establishment and Respondent T. Shepherd retained unembalmed and unrefrigerated human remains in the custody of Respondent Establishment for more than 24 hours, in violation of N.C. Gen. Stat. § 90-210.27A(l);

- e. Respondent Crematory and Respondent M. Shepherd failed to use and/or retain cremation authorization forms that are compliant with N.C. Gen. Stat. §§ 90-210.125 and 90-210.126;
 - f. Respondent Crematory and Respondent M. Shepherd failed to retain and make available for inspection records related to all cremations performed, in violation of N.C. Gen. Stat. § 90-210.127;
 - g. Respondent Crematory and Respondent M. Shepherd failed to maintain a refrigeration unit within Respondent Crematory with stainless steel aluminum or other non-corrosive and easily cleaned materials shelving, in violation of 21 NCAC 34C .0202;
 - h. Respondent Crematory and Respondent M. Shepherd failed to maintain a crematory and holding facility in good repair and in a sanitary condition, in violation of 21 NCAC 34C .0206;
 - i. Respondent Crematory and Respondent M. Shepherd failed to maintain receipts upon the delivery and release of cremated remains, in accordance with N.C. Gen. Stat. §§ 90-210.127(a) and (b), 90-210.129(o), and 21 NCAC 34C .0303.
8. If established by a preponderance of the evidence, the acts and omissions of Respondent Establishment, Respondent T. Shepherd, and Respondent M. Shepherd, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.25(e)(1)m, for knowingly making a false statement on a certificate of death.
9. The acts and omissions of Respondent Establishment and Respondent T. Shepherd, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.25(e)(1)m, which prohibits violations of provisions of Article 4 or 16 of Chapter 130A of the General Statutes or any rules or regulations promulgated under those Articles. Specifically:
- a. Respondent Establishment and Respondent T. Shepherd failed to submit a notification of death to the local registrar in the county where death occurred within 24 hours of taking custody of the body, in violation of N.C. Gen. Stat. § 130A-112; and
 - b. Respondent Establishment and Respondent T. Shepherd failed to file death certificates for deaths occurring in North Carolina with the local registrar of the county in which the death occurred within five (5) days after death, in violation of N.C. Gen. Stat. § 130A-115.

10. The acts and omissions of Respondents, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.25(e)(1)o, for failing to refund any insurance proceeds received as consideration in excess of the funeral contract purchase price within 30 days of receipt.
11. The acts and omissions of Respondents, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.25(e)(1)p, for failing 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.
12. The acts and omissions of Respondent Establishment, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.25(e)(2), which requires Respondent Establishment to give or cause to be given to a person making funeral arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements.
13. The acts and omissions of Respondent Establishment, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.63A(c), by failing to properly modify an inflation-proof preneed contract at need.
14. The acts and omissions of Respondent Establishment, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301, by failing to retain an at-need contract signed by a funeral director or funeral service licensee.
15. The acts and omissions of Respondent M. Shepherd, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.123(g)(14), for practicing funeral directing, or funeral service without a license.
16. The acts and omissions of Respondent Crematory and Respondent M. Shepherd, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.123(g)(15), for allowing anyone other than a licensee of the Board or a crematory technician to perform a cremation.
17. The acts and omissions of Respondent Establishment, described in the above Findings of Fact, violate N.C. Gen. Stat. § 90-210.69(c), which prohibits violations of Article 13D or any rules or regulations promulgated under that Article. Specifically:
 - a. Respondent Establishment failed to deposit preneed funds paid toward a preneed contract into a trust account with a financial institution or into a prearrangement insurance policy within five (5) business days from the date of receipt, in violation of N.C. Gen. Stat. § 90-210.61(a);

- b. Respondent Establishment failed to properly maintain accurate and complete preneed records and forms, 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);
 - c. Respondent Establishment failed to timely file a preneed contract with the Board, in violation of N.C. Gen. Stat. § 90-210.67(d), and 21 NCAC 34D .0105; and
 - d. Respondent Establishment failed to transact a preneed contract on a form prescribed by the Board, in violation of N.C. Gen. Stat. § 90-210.62 and 21 NCAC 34D .0101.
4. One or more of the violations described above were committed by an 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 permit of Respondent Funeral Home.
5. An agent or employee of Respondent Establishment committed one or more of the violations described above. Pursuant to N.C. Gen. Stat. § 90-210.69(c) and (f), 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 Establishment.
6. One or more of the violations described above were committed by an owner, partner, crematory manager, member, officer, or any crematory technician of a crematory licensee, or an authorized employee, agent, or representative of Respondent Crematory. Pursuant to N.C. Gen. Stat. § 90-210.123(g), the Board has the authority to revoke, suspend, or refuse to issue or renew the crematory license of Respondent Crematory.
7. Respondent T. Shepherd committed one or more of the violations described above. Pursuant to N.C. Gen. Stat. § 210.25(e)(1), the Board has the authority to suspend, revoke, or refuse to issue or renew the funeral director license of Respondent T. Shepherd. This Board finds that Respondent T. Shepherd no longer is fit to practice.
8. Respondent M. Shepherd committed one or more of the violations described above. Pursuant to N.C. Gen. Stat. § 90-210.123(g), the Board has the authority to suspend, revoke, or refuse to issue or renew the crematory manager permit of Respondent M. Shepherd.

FINAL AGENCY DECISION

The North Carolina Board of Funeral Service hereby issues the following decision:

1. The Preneed Establishment Permit and all ancillary Preneed Sales Licenses of Respondent Thos. Shepherd & Son, Inc. are revoked. Respondent Thos. Shepherd & Son, Inc. is not

- eligible to re-apply for a Preneed Establishment Permit and any ancillary Preneed Sales License for a period of five (5) years following the Effective Date of this Final Agency Decision. All active preneed contracts currently held by Respondent Thos. Shepherd & Son, Inc. shall be immediately transferred to a successor preneed establishment by Board staff.
2. The At-Need Establishment Permit of Respondent Thos. Shepherd & Son, Inc. is revoked. Respondent Thos. Shepherd & Son, Inc. is not eligible to re-apply for an Establishment Permit for a period of five (5) years following the Effective Date of this Final Agency Decision.
 3. The Funeral Director License of Respondent Thomas Redmond Shepherd is revoked. Respondent Thomas Redmond Shepherd is not eligible to re-apply for licensure from the Board for a period of five (5) years following the Effective Date of this Final Agency Decision.
 4. The Crematory Manager Permit of Respondent Melody Holmes Shepherd is revoked. Respondent Melody Holmes Shepherd is not eligible to re-apply for licensure from the Board for a period of five (5) years following the Effective Date of this Final Agency Decision.
 5. Board staff shall refer the findings set forth in this Final Agency Decision to law enforcement authorities for consideration as to whether criminal charges are warranted, based on the findings of fact and conclusions of law set forth herein.
 6. The Board shall retain jurisdiction under Article 3A, Chapter 150B for all administrative hearings held in connection with, or pursuant to, this Final Agency Decision. If the Board receives evidence of any violations of the Board's statutes and rules identified during the period of stayed suspension, or any violation of the terms and conditions of this Final Agency Decision, 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.
 7. Pursuant to N.C. Gen. Stat. § 150B-45(a)(2), Respondents have thirty (30) days from the date that this Final Agency Decision is served pursuant to N.C. Gen. Stat. § 1A-1, Rule 5(b) to file a Petition for Judicial Review. The Petition for Judicial Review must be filed in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. Since this is an administrative appeal, no additional evidence will be taken. If a Petition is filed, a Superior Court Judge will review the Final Agency Decision to determine whether there were any legal errors in the Final Agency Decision.
 8. This Final Agency Decision shall take effect upon service of Respondents, in a manner consistent with N.C. Gen. Stat. § 150B-42(a).

*In the Matter of Thos. Shepherd & Son, Inc., Shepherd Memorial Park, Inc.,
Thomas Redmond Shepherd, and Melody Holmes Shepherd*

NC Board of Funeral Service Case Nos. C19-0034, C19-0041, C20-0033, C20-0038, C20-0040, C20-0084, C20-0090, C21-0011, C21-0056, M20-0111

Findings of Fact, Conclusions of Law, and Final Agency Decision

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By order of the North Carolina Board of Funeral Service, this the 8 day of
December, 2021.

By: 

Don D. Brown
N.C. Board of Funeral Service