

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. C21-0010, M21-0026

Phillips Funeral Service, Inc. and)
Arnold Phillips,)
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 Respondent Funeral Home stipulate and agree to entry of the following Consent Order:

1. Arnold Phillips (hereinafter "Respondent Individual") is licensed as Funeral Service License No. 1227 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, Respondent Individual served as the licensed manager and President of Phillips Funeral Service, Inc. ("Respondent Establishment"), which holds At-Need Establishment Permit No. 0757. Respondent Establishment 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. For all times relevant to this proceeding, Respondent Establishment did not hold a Preneed Establishment Permit and Respondent Individual did not hold a Preneed Sales License.
4. On or about January 31, 2021, Board staff received a complaint from [REDACTED] (hereinafter "Complainant"). Evidence obtained in this matter tends to show the following:
 - a. On or about January 13, 2021, Complainant and his wife met with Respondents to make preneed funeral arrangements on behalf of [REDACTED] over whom Complainant was guardian.
 - b. During the preneed arrangements conference, Complainant discussed goods and services for [REDACTED] funeral service and gave Respondents a check in the amount of approximately \$10,000.00 made payable to Columbian Life, at the directions of the Respondents. Respondents provided

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Complainant with a Statement of Goods and Services Selected containing [REDACTED] name, and a notation of the \$10,000 payment.

- c. Thereafter, Respondents gave Complainant's check to Mr. Steve Miller, who is an insurance agent with Columbian Life and not a licensee of the Board. In exchange for the payment, Mr. Miller sold Complainant an insurance policy, listing Respondent Establishment as the beneficiary.
 - d. [REDACTED] died on or about January 22, 2021. Upon his death, a representative of Respondent Establishment completed and signed the claim form for the insurance policy designated to fund [REDACTED] funeral services.
 - e. Upon [REDACTED] death, Respondents did not immediately conduct [REDACTED] funeral services pursuant to the preneed arrangements made with Complainant, as a question arose after [REDACTED] death as to whether another individual held priority disposition rights for [REDACTED]. Although Respondents ultimately honored the preneed arrangements made with Complainant, the delay forced Complainant to postpone plans made with vendors and guests for the funeral services, to the detriment of [REDACTED] family.
5. A Board inspector investigated Complainant's complaint. During the investigation, evidence obtained tends to show that there currently exist approximately 65 active insurance policies sold by Mr. Miller on behalf of Respondents, that list Respondent Establishment as the beneficiary, which were sold between 2013 and 2021. According to Mr. Miller, he was unaware that Respondent Establishment was not licensed as a preneed establishment when he sold the policies.
 6. On or about March 10, 2021, Respondent Establishment applied for a Preneed Establishment Permit. Said application currently is pending.

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.

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4. The acts and omissions of Respondents described in Paragraphs 1-4 constitute fraud or misrepresentation in the operation of a licensee's business, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)b.
5. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a failure to retain the complete physical files for preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b), (c).
6. The acts and omissions of Respondents described in Paragraphs 1-4 constitute the practice of preneed funeral service without holding a preneed establishment permit, in violation of N.C. Gen. Stat. § 90-210.67(a).
7. The acts and omissions of Respondents described in Paragraphs 1-4 constitute offering to engage or engaging in activities for which a preneed license is required but without having obtained such a license, in violation of N.C. Gen. Stat. § 90-210.69(c)(1).
8. The acts and omissions of Respondents described in Paragraphs 1-4 constitute aiding and abetting an unlicensed person, firm, partnership, association, corporation or other entity to engage in preneed funeral service, in violation of N.C. Gen. Stat. § 90-210.69(c)(2).
9. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a violation or cooperation with others to violate provisions of Article 13D of Chapter 90 of the NC General Statutes, and rules of the Board, in violation of N.C. Gen. Stat. § 90-210.69(c)(6).
10. The acts and omissions of Respondents described in Paragraphs 1-4 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, as amended from time to time.
11. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a failure to timely file multiple preneed contracts with the Board, in violation of N.C. Gen. Stat. § 90-210.67(d), and 21 NCAC 34D .0105.
12. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a failure to retain the physical files for multiple preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a), and, 21 NCAC 34D .0301(b), (c)(4).
13. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a failure to either execute or retain multiple applications for insurance, insurance policies, beneficiary designation documents, or instruments of assignment for insurance funded preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(5).

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14. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a failure to retain an at-need SGSS and completed certificate of performance for matured or cancelled preneed contract files, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (e).
15. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a failure to retain the physical files for multiple preneed contracts performed, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b), (c)(4), (c)(5), and (e).
16. The acts and omissions of Respondents described in Paragraphs 1-4 constitute a failure to accurately complete their 2017 and 2018 preneed annual reports, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0302.
17. One or more of the violations described above were committed by any officer, director, manager, partner, operator, or member of Respondent Establishment 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.
18. Respondent Individual 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 service license of Respondent Individual. However, this Board finds that Respondent Individual remains fit to practice. Therefore, pursuant to N.C. Gen. Stat. § 90-210.25(e)(2), the Board has the authority to place Respondent Individual on probation, to require satisfactory completion of remedial or education training, 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;

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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 the Board shall issue a preneed establishment permit to Respondent Establishment upon the effective date of this Consent Order, on the following conditions:

1. The at-need establishment permit, preneed establishment permit and all ancillary preneed sales licenses of Respondent Establishment is hereby suspended for at least three (3) years from the effective date of this Consent Order, except that said suspension is stayed upon the following terms and conditions:
 - a. The at-need establishment permit, the preneed establishment permit and the ancillary preneed sales licenses of Respondent Establishment shall remain on a probationary period for at least three (3) years from the effective date of this Consent Order, and until such time as Respondent Establishment submits to and passes without substantial deficiency a preneed examination and an at-need inspection conducted by a Board Staff Inspector, which should be conducted on or before February 2024;
 - b. Within fifteen (15) days from the date this Consent Order takes effect, Respondent Establishment shall notify all consumers holding insurance policies for which Respondent Establishment is the beneficiary that preneed contracts must be executed;
 - c. Within sixty (60) days from the date this Consent Order takes effect, Respondent Funeral Home shall execute preneed contracts with all consumers holding insurance policies for which Respondent Funeral Home is the beneficiary. Respondent Funeral Home shall provide proof to the Board that it has exercised its best efforts to comply with this provision. Respondent Funeral Home shall file all such executed preneed contracts with the Board, along with the \$20 filing fee and \$25 late fee for each such contract. If Respondent Funeral Home fails to comply with this provision, the stay of revocation on the preneed establishment permit of Respondent Funeral Home shall be immediately lifted;
 - d. Within thirty (30) days from the date this Consent Order takes effect, Respondent Establishment shall pay a compromise penalty of Five

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Thousand Dollars (\$5,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes. If Respondent Establishment fails to pay said compromise penalty 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;

- e. Respondent Establishment 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 Establishment 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 Establishment 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 Establishment shall be immediately lifted; and
 - f. During the period of probation, Respondent Establishment shall comply with all statutory and regulatory provisions governing the practice of funeral service.
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 any 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 the Board and Respondents 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.

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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.

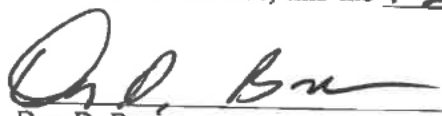
CONSENTED TO:

Phillips Funeral Service, Inc.

By:  Date: 4-28-21
Arnold Phillips
Manager

 Date: 4-28-21
Arnold Phillips

By Order of the North Carolina Board of Funeral Service, this the 12 day of April, 2021.

By: 
Don D. Brown
Board President