

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M21-0104

In the matter of:

Franklin O. Hanes d/b/a Hanes
Funeral Service and Franklin O. Hanes,

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:

1. Respondent Franklin O. Hanes d/b/a Hanes Funeral Service (hereinafter "Respondent Funeral Home"), is licensed by the Board as a Funeral Establishment Permit No. 0658 and Preneed Establishment Permit No. 0730 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. Franklin O. Hanes (hereinafter "Respondent Individual" or collectively with Respondent Funeral Home as "Respondents") is licensed by the Board as Funeral Director No. 3098 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 Individual holds an ancillary preneed sales license on behalf of Respondent Funeral Home.
3. Respondent Individual is the sole proprietor of Respondent Funeral Home and served as its licensed manager for all times relevant to this Notice of Hearing.

July 2021 Consent Order to Resolve Board Case No. M21-0068

4. On or about June 10, 2021, Board staff issued a Notice of Hearing for Board Case No. M21-0068, alleging that: (1) Respondents had failed to file, on or before March 31, 2021, its 2020 annual report of all preneed contract sales and performance of preneed contracts; and (2) Respondents previously had received a letter of caution for its untimely failing of its 2019 preneed annual report.
5. On July 21, 2021, the Board and Respondents entered into a Consent Order ("2021 Consent Order") to resolve Board Case No. M21-0068.
6. In the 2021 Consent Order, Respondent Funeral Home and Respondents admitted the violations set forth in Paragraph 4 above.

7. In the 2021 Consent Order, Respondent Funeral Home and Respondents stipulated that the funeral director license of Respondent Individual and the preneed establishment permit, and ancillary preneed sales licenses of Respondent Funeral Home were to be placed on a one (1) year probation, contingent upon, among other things, that Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service during the probationary period.
8. In connection with Board Case No. M21-0068, Board staff did not find evidence indicating that Respondents willfully or intentionally acted to defraud or deceive the Board or consumers.
9. Respondents allege that, in 2021, they terminated a business relationship with a licensed insurance professional who concentrated exclusively on preneed funeral contracts and Respondents' legal requirements for sales, accounting, and banking. Respondents allege that said individual's mishandling of Respondents' preneed records contributed to the acts and/or omissions set forth in Board Case No. M21-0068.

October 2021 Preneed-Examination and Establishment Inspection

10. On or about October 6, 2021, Board Inspector Darrell Cagle ("Inspector Cagle") conducted an examination of trust and insurance-funded preneed contracts and records ("2021 Examination") of Respondent Funeral Home, pursuant to N.C. Gen. Stat. § 90-210.68(a).
11. During the 2021 Examination, Inspector Cagle found evidence tending to show Respondents had violated statutes and rules governing the practice of preneed funeral services, including the following:
 - a. Respondents failed to make available its previous preneed annual reports, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(3);
 - b. Respondents failed to maintain a current and accurate cash receipts journal or book, or equivalent thereto, showing all preneed payments collected, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(2);
 - c. Respondents failed to make recent financial statements available for each financial institution at which preneed funeral trust accounts are held by Respondents, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(4);
 - d. Respondents failed to make recent policy status reports available for each preneed insurance company for which prearrangement insurance policies have been sold

on behalf of, or transferred to, Respondents, in violation of N.C. Gen. Stat. § 90-210.68(a);

- e. Respondents failed to maintain copies of beneficiary designation documents and/or instruments of assignment in the preneed contract file for [REDACTED], in violation of N.C. Gen. Stat. § 90-210.68(a) and NCAC 34D .0301(c)(5);
 - f. Respondents failed to maintain a preneed Statement of Funeral Goods and Services Selected in the preneed contract file of [REDACTED], in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b).
 - g. Respondents failed to maintain and make available the preneed contract file for [REDACTED], in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (c);
 - h. Respondents failed to retain in the closed preneed funeral files reviewed, copies of the preneed funeral contract, the certificate of performance, the preneed statement of goods and services selected, the at-need statement of goods and services selected, and/or financial closeout documentation, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (c) for the following consumers:
 - i. [REDACTED] - no certificate of performance;
 - ii. [REDACTED] - no certificate of performance;
 - iii. [REDACTED] - no financial closeout documentation, and no actual closing of the funding trust; and
 - iv. [REDACTED] - no financial closeout documentation.
 - i. Respondents failed to file a certificate of performance within ten (10) days of payment for [REDACTED], in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 NCAC 34D .0303(b).
12. On or about October 6, 2021, Inspector Cagle also conducted a funeral establishment inspection of Respondent Funeral Home (the “2021 Inspection”), pursuant to N.C. Gen. Stat. §§ 90-210.23(e) and 90-210.24(b)(1).
13. During the 2021 Examination, Board staff did not find evidence indicating that Respondents willfully or intentionally acted to defraud or deceive the Board or consumers. Following the 2021 Examination, Respondents exercised their best efforts to correct deficiencies that had been identified by Inspector Cagle.

14. Notwithstanding, Respondents admit that they lack the necessary training and skill to continue the sale of preneed funeral contracts and agree to cease and desist from preneed funeral services immediately.
15. Respondents further admit that, in light of the termination of the relationship with the licensed insurance business partner, pandemic complications, and an increase in cremations, Respondents have faced difficulties with compliant management of preneed funeral contracts.
16. During the 2021 Inspection, Inspector Cagle found evidence tending to show Respondents had violated statutes and rules governing the practice of preneed funeral services, including the following:
 - a. Respondents failed to furnish a Casket Price List upon request, in violation of 16 C.F.R. §§ 453.2(b)(2)(i) and 453.6;
 - b. Respondents failed to furnish an Outer Burial Container Price List upon request, in violation of 16 C.F.R. §§ 453.2(b)(3)(i) and 453.6; and
 - c. Respondents failed to use or maintain a receipt to document the delivery of cremated remains from a funeral provider (BFS Form 56D1), in violation of 21 NCAC 34C .0303(c).

May 2018 Preneed-Examination and Establishment Inspection

17. On or about May 22, 2018, Board Inspector Karen Davis-Brunson (“Inspector Davis-Brunson”) conducted an examination of trust and insurance-funded preneed contracts and records (“2018 Examination”) of Respondent Funeral Home, pursuant to N.C. Gen. Stat. § 90-210.68(a).
18. During the 2018 Examination, Inspector Davis-Brunson found evidence tending to show Respondents had violated statutes and rules governing the practice of preneed funeral services, including the following:
 - i. Respondents failed to file preneed contracts with the Board within ten (10) days of sale, in violation of N.C. Gen. Stat. § 90-210.67(d) and 21 NCAC 34D .0105, for the following consumers:

- i. [REDACTED]; and
- ii. [REDACTED].

- ii. Respondents failed to maintain and make available the preneed contract file for the [REDACTED], in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (c);
 - iii. Respondents failed to remit unused preneed funds in excess of \$100 to the clerk of court or the Estate of [REDACTED], in violation of N.C. Gen. Stat. § 90-210.64(d); and
 - iv. Respondents failed to remit unused preneed funds in the amount of \$5.79 to the family of decedent [REDACTED], in violation of N.C. Gen. Stat. § 90-210.64(d).
19. On or about May 22, 2018, Board Inspector Karen Davis-Brunson (“Inspector Davis-Brunson”) also conducted a funeral establishment inspection (“2018 Inspection”) of Respondent Funeral Home, pursuant to N.C. Gen. Stat. §§ 90-210.23(e) and 90-210.24(b)(1).
20. During the 2018 Inspection, Inspector Davis-Brunson found evidence tending to show Respondents had violated statutes and rules governing the practice of preneed funeral services, including the following:
- a. Respondents failed to maintain accurate price ranges for direct cremation and immediate burial on their General Price List, in violation of 16 C.F.R. §§ 453.2(a), 453.2(b)(4)(ii)(C)(1) and 453.2(b)(4)(ii)(D);
 - b. Respondents failed to disclose a casket price range on their General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(A)(1);
 - c. Respondents failed to disclose an outer burial container price range on their General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(B)(1);
 - d. Respondents failed to list the price of each casket not requiring special order on their Casket Price List, in violation of 16 C.F.R. § 453.2(b)(2)(i);
 - e. Respondents failed to maintain completed cremation authorization forms in all closed files reviewed, in violation of N.C. Gen. Stat. §§ 90-210.125 and 90-210.126;
 - f. Respondents failed to use or maintain a receipt to document the delivery of cremated remains from a funeral provider (BFS Form 56D1), in violation of 21 NCAC 34C .0303(c).

21. On August 21, 2018, the Board issued a Letter of Caution to Respondents regarding the deficiencies identified in the 2018 Examination and Inspection. Specifically, Respondent were cautioned to avoid future violations of the type set forth in the 2018 Examination and Inspection.
22. Although Respondents made some improvements in compliance with the FTC Rule since the 2018 Inspection, Respondents' operations require more organization of documents that show the funeral services performed as required by state and federal law.

CONCLUSIONS OF LAW

23. The acts and omission of Respondents described in Paragraphs 1-16 constitute a violation of the 2021 Consent Order,
24. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure 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), and (c).
25. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to maintain and make available copies of its past preneed annual report, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(3).
26. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to maintain a current and accurate cash receipts journal or book, or equivalent thereto, showing all preneed payments collected, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(2).
27. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to make recent financial statements available for each financial institution at which preneed funeral trust accounts are held by Respondents, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(4).
28. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to make recent policy status reports available for each preneed insurance company for which prearrangement insurance policies have been sold on behalf of, or transferred to, Respondents, in violation of N.C. Gen. Stat. § 90-210.68(a).
29. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to retain copies of prearrangement insurance policies (or the equivalent thereto), beneficiary designation documents, and/or instruments of assignment, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(5).

30. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to maintain a preneed Statement of Funeral Goods and Services Selected in a preneed contract file, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b).
31. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to maintain and make available a preneed contract file for which it serves as trustee, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (c).
32. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to retain in its closed preneed funeral files, copies of the preneed funeral contract, the certificate of performance, the preneed statement of goods and services selected, the at-need statement of goods and services selected, and/or financial closeout documentation, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (c).
33. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to timely complete and/or 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).
34. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to timely file preneed contracts with the Board within ten (10) days of sale, in violation of N.C. Gen. Stat. § 90-210.67(d) and 21 NCAC 34D .0105.
35. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to furnish a Casket Price List upon request, in violation of 16 C.F.R. §§ 453.2(b)(2)(i) and 453.6.
36. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to furnish an Outer Burial Container Price List upon request, in violation of 16 C.F.R. §§ 453.2(b)(3)(i) and 453.6.
37. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to use or maintain a receipt to document the delivery of cremated remains from a funeral provider (BFS Form 56D1), in violation of 21 NCAC 34C .0303(c).
38. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to maintain accurate price ranges for direct cremation and immediate burial on their General Price List, in violation of 16 C.F.R. §§ 453.2(a), 453.2(b)(4)(ii)(C)(1) and 453.2(b)(4)(ii)(D).
39. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to disclose a casket price range on their General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(A)(1).

40. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to disclose an outer burial container price range on their General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(B)(1).
41. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to list the price of each casket not requiring special order on their Casket Price List, in violation of 16 C.F.R. § 453.2(b)(2)(i).
42. The acts and omissions of Respondents described in Paragraphs 1-16 constitute a failure to maintain completed cremation authorization forms in all closed files reviewed, in violation of N.C. Gen. Stat. §§ 90-210.125 and 90-210.126.
43. The acts and omissions of Respondents described in Paragraphs 1-16 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.
44. The acts and omissions of Respondents described in Paragraphs 1-16 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.
45. The parties stipulate that Respondents' acts and omissions set forth in Paragraphs 23-44 were not willfully or intentionally done to defraud or deceive the Board or consumers.
46. One or more of the violations described in Paragraphs 17-39 were committed by any owner, officer, operator, manager, member, or partner of Respondent Funeral Home or by an 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.
47. Respondent Funeral Home committed one or more of the violations described in Paragraphs 17-39. 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.
48. 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.

49. Respondent Individual committed one or more of the violations described in Paragraphs 17-039. 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 deemed voluntarily and permanently surrendered. Respondents agree not to re-apply for a preneed establishment permit in the future.
2. The at-need establishment permit of Respondent Funeral Home shall be suspended for at least three (3) years, provided that said suspension shall be stayed on the following terms and conditions:
 - a. Respondents admit that they committed the violations set forth herein, but did not willfully or intentionally act to defraud or deceive the Board or consumers.

- b. Respondent Funeral Home shall submit to, and pass without substantial deficiency, an inspection conducted by a Board staff inspector before any probation period shall be lifted;
 - c. Respondents shall timely respond to any and all Board and/or Board staff correspondence;
 - d. Respondents shall comply with all terms of this Consent Order; and
 - e. Respondents shall not violate any laws or rules enforced by the Board during the period of probation.
3. The funeral director license of Respondent Individual is hereby placed on probation for three (3) years, on the following terms and conditions:
 - a. Within thirty (30) days, Respondent Individual shall pay a compromise penalty of One Thousand Five Hundred Dollars (\$1,500.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes; and
 - b. Respondent Individual shall timely respond to any and all Board and/or Board staff correspondence;
 - c. Respondent Individual shall comply with all terms of this Consent Order;
 - d. Respondent Individual shall take a Board-sponsored continuing education course on the FTC Rule on or before December 31, 2022; and
 - e. Respondent Individual shall comply with all statutes and rules governing the practice of funeral service.
4. 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.
5. 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.
6. 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.

7. 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.
8. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
9. 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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North Carolina Board of Funeral Service
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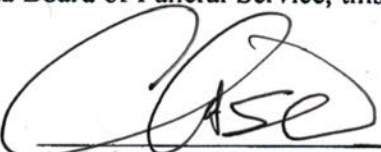
CONSENTED TO:

Franklin O. Hanes d/b/a Hanes Funeral Service

By: Franklin O. Hanes Date: 9/10/22
Hanes Funeral Service
Owner

Franklin O. Hanes Date: 9/10/22
Franklin O. Hanes

By Order of the North Carolina Board of Funeral Service, this the 14th day of September,
2022.

By: 
Christian E. Watson
Board President

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Order was served upon the following persons by mailing a copy via US Mail, First Class, Postage Prepaid, and addressed as follows:

Finesse G. Couch, Esq.
Couch & Associates, PC
3100 Tower Blvd, Suite 105
Durham, NC 27707

Attorney for Respondents

This, the 14 day of September, 2022.



Catherine E. Lee
General Counsel