

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NO. M21-0107

In the matter of:

Gilliam Memorial Mortuary, Inc. and  
Janice Ray Owens,

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 Gilliam Memorial Mortuary, Inc. (hereinafter "Respondent Funeral Home"), is licensed by the Board as a Funeral Establishment Permit No. 0853 and Preneed Establishment Permit No. 0550 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. Janice Ray Owens (hereinafter "Respondent Individual" or collectively with Respondent Funeral Home as "Respondents") is licensed by the Board as Funeral Service License No. 2226 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. For all times relevant to this Notice of Hearing, Respondent Individual has served as the President and licensed manager of Respondent Funeral Home.

January 2019 Consent Order to Resolve Board Case No. M18-0049

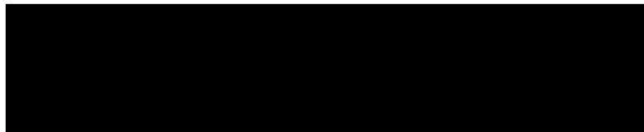
4. On or about December 13, 2018, Board staff issued a Notice of Hearing for Board Case No. M18-0049, alleging that:
  - a. Respondents failed to file, on or before March 31, 2018, its 2017 annual report of all preneed contract sales and performance of preneed contracts;
  - b. Respondents failed to maintain a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected, as required by N.C. Gen. Stat. § 90-210.68(a) and 21 NC Admin. Code 34D .0301(c)(2);
  - c. Respondents failed to maintain copies of bank statements and deposit slips from financial institutions in which trust funds are deposited, certificate of deposit

records, and trust accountings for the following closed trust-funded preneed contracts, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NC Admin. Code 34D .0301(c)(4); and

- d. Respondents failed to maintain copies of payment verification or documentation for one closed insurance-funded preneed contract.
5. On January 7, 2019, the Board and Respondents entered into a Consent Order ("2019 Consent Order") to resolve Board Case No. M18-0049.
6. In the 2019 Consent Order, Respondent Funeral Home and Respondents admitted the violations set forth in Paragraph 4 above.
7. In the 2019 Consent Order, 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 Respondents shall comply with all statutory and regulatory provisions governing the practice of funeral service during the probationary period.

October 2021 Preneed-Examination Inspection

8. On or about October 19, 2021, Board Inspector Christopher Stoessner ("Inspector Stoessner") 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).
9. During the 2021 Examination, Inspector Stoessner 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 copies of beneficiary designation documents and/or instruments of assignment in the preneed contract file for the following preneed contract files, in violation of N.C. Gen. Stat. § 90-210.68(a) and NCAC 34D .0301(c)(5):



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- b. Respondent Funeral Home has filed multiple deficient preneed contracts with the Board, in violation of 21 NCAC 34D .0101. For instance:

- i. Respondents submitted to the Board a preneed contract for [REDACTED] made on February 25, 2019 that failed to list the pre-existing funding insurance policy; that used a standard Statement of Funeral Goods and Services Selected for an inflation-proof contract; and that failed to list the name the contract beneficiary;
  - ii. Respondents submitted to the Board a preneed contract for [REDACTED] made on or about May 9, 2019 that indicated the purchaser had paid Respondent Funeral Home \$9,100 when, in fact, the contract was funded by two pre-existing policies; and that listed Respondent Funeral Home as the beneficiary of the contract;
  - iii. Respondents submitted to the Board a preneed contract for [REDACTED] made in July 2019 that indicated the purchaser had paid Respondent Funeral Home \$6,000 when, in fact, the contract was funded by two pre-existing policies; and that listed Respondent Funeral Home as the beneficiary of the contract;
  - iv. Respondent submitted to the Board a preneed contract for [REDACTED] in August 2021 that indicated the purchaser had paid Respondent Funeral Home \$6,750 but actually only \$50 was received; that was not dated; that used a standard Statement of Funeral Goods and Services Selected for an inflation-proof contract; and overcharged purchaser for services in excess of that listed on its General Price List;
  - v. Respondent submitted to the Board a preneed contract for [REDACTED] made on April 21, 2021 that failed to list the contract beneficiary; listed Respondent Funeral Home as the beneficiary on the corresponding Statement of Funeral Goods and Services Selected; and was not completed in clear, understandable and easy-to-read type print.
- c. Respondents failed to timely submit certificates of performance to the Board within ten (10) days of payment for the following closed preneed contracts:
- i. [REDACTED]
  - ii. [REDACTED]
  - iii. [REDACTED]
  - iv. [REDACTED]
  - v. [REDACTED]
  - vi. [REDACTED]

10. Evidence found during the 2021 Examination indicates that Respondents violated on multiple occasions during their period of probation from January 7, 2019 through January 7, 2020 statutes and rules governing the practice of preneed funeral service.

#### CONCLUSIONS OF LAW

11. Respondents are subject to jurisdiction before the Board.
12. The acts and omission of Respondents described in Paragraphs 1-10 constitute a violation of the 2019 Consent Order.
13. The acts and omissions of Respondents described in Paragraphs 1-10 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).
14. The acts and omissions of Respondents described in Paragraphs 1-10 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).
15. The acts and omissions of Respondents described in Paragraph 1-10 constitute a failure to use and maintain preneed funeral contracts in compliance with 21 NCAC 34D .0101.
16. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to maintain an accurate 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).
17. The acts and omissions of Respondents described in Paragraphs 1-10 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).
18. The acts and omissions of Respondents described in Paragraphs 1-10 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.
19. The Board concludes that one or more of the violations described in Paragraphs 11-19 were committed by any owner, officer, operator, manager, member, or partner of Respondent Funeral Home or by any agent or employee of Respondent Funeral Home with the consent of any person, firm, or corporation operating it. Pursuant to N.C. Gen. Stat. § 90-

210.25(d)(4), the Board has the authority to revoke, suspend, or refuse to issue or renew the funeral establishment permit of Respondent Funeral Home, to place Respondent Funeral Homes on probation, and to assess a civil penalty not to exceed \$5,000.00.

20. The Board concludes that Respondent Funeral Home committed one or more of the violations described in Paragraphs 11-19. 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.
21. 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.
22. Respondent Individual committed one or more of the violations described in Paragraphs 11-19. 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 wishes 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.

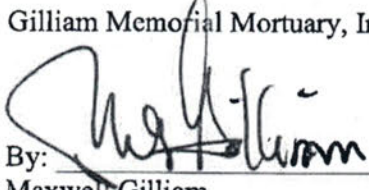
THEREFORE, with the consent of Respondent Funeral Home, it is ORDERED that:

1. The preneed establishment permit and ancillary preneed sales licenses 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. The ancillary preneed sales license previously given to Respondent Individual is hereby revoked;
  - b. Respondent Individual shall not serve as the licensed manager or a preneed sales licensee of Respondent Funeral Home at any point in the future;
  - c. Within thirty (30) days following the Effective Date of this Consent Order, Respondent Funeral Home shall identify in writing a new licensed manager to the Board staff;
  - d. The preneed establishment permit and all ancillary preneed sales licensees of Respondent Funeral Home shall be actively suspended until such time that Respondent Funeral Home submits to, and passes without substantial deficiency, a preneed examination to be conducted by a Board staff inspector on or before December 31, 2022, to be scheduled at the mutual convenience of Board staff and Respondent Funeral Home;
  - e. The new licensed manager identified to the Board staff, as set forth in Paragraph 1(c) above, shall take a Board-sponsored continuing education course on preneed statutes and rules on or before December 31, 2022;
  - f. Respondents shall timely respond to any and all Board and/or Board staff correspondence;
  - g. Respondents shall comply with all terms of this Consent Order;
  - h. Respondent Funeral Home admits that it committed the violations set forth herein;
  - i. and
  - j. Respondents shall not violate any laws or rules enforced by the Board during the period of probation.
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 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.
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.
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:

Gilliam Memorial Mortuary, Inc.

By:   
Maxwell Gilliam  
Shareholder

Date: 8/31/2022

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

By: 

Christian E. Watson  
Board President