

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M22-0017

In the matter of:

James F. Johnson & Sons, Inc. d/b/a
Johnson & Sons Funeral Home and Barbara
Lindsey Johnson,
Respondents.

)
)
) **CONSENT ORDER**
)
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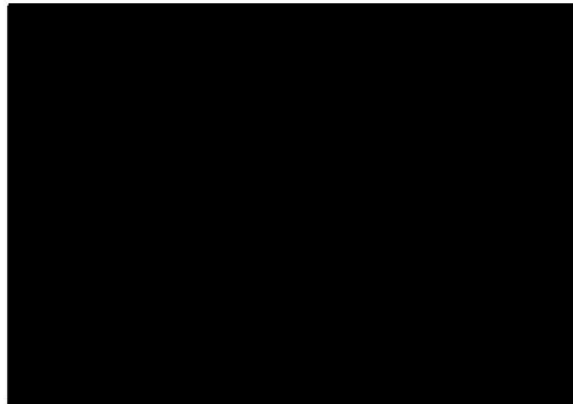
THIS CAUSE, coming before the North Carolina Board of Funeral Service (hereinafter the "Board") at its offices at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina 27605, with a quorum present, the Board and Respondent stipulate and agree to entry of the following Consent Order:

1. James F. Johnson & Sons, Inc. d/b/a Johnson & Sons Funeral Home ("Respondent Establishment") is licensed as Funeral Establishment No. 0897 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. Barbara Lindsey Johnson ("Respondent Individual") is licensed as Funeral Director No. 2588 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. For all times relevant to this proceeding, Respondent Individual has served as the licensed manager of Respondent Establishment.
4. For all times relevant to this proceeding, Respondent Individual has been a shareholder and an officer of Respondent Establishment.
5. On its 2022 renewal application, Respondent Establishment only listed Respondent Individual and James Frederick Johnson as licensees of the Board employed by Respondent Establishment. James Frederick Johnson currently is licensed as Funeral Service License No. 343 by the Board.
6. For all times relevant to this complaint, Garcia Fenwick Johnson has been employed by, and has been a shareholder and officer of, Respondent Establishment. Garcia Fenwick Johnson previously was licensed by the Board as Funeral Service License No. 1075; however, said license was voluntarily surrendered to the Board to resolve Board Case No. M16-0050 in May 2017. Garcia Fenwick Johnson has not been licensed by the Board since May 2017.

7. Thomas Tyrone Hilderbrand currently is licensed by the Board as Funeral Service License No. 3194.
8. On or about March 30, 2022, Inspector Brett Lisenbee conducted an establishment inspection at Respondent Establishment (the "2022 Inspection").
9. During the 2022 Inspection, Inspector Lisenbee reviewed approximately 15 at-need files for decedents to whom Respondents provided funeral services in 2021 and approximately 20 at-need files for decedents to whom Respondents provided funeral services in 2022.
10. During the 2022 Inspection, Inspector Lisenbee found evidence that, if proven at hearing, would tend to show the following:
 - a. The unembalmed human remains for the following decedents were found in the custody of Respondent Establishment and had been so retained by Respondent Establishment for more than 24 hours without being kept in a refrigeration unit:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]
 - b. Respondents do not have in place a written agreement with another funeral establishment, crematory, or hydrolysis licensee, or other entity to grant access to refrigeration, in accordance with 21 NCAC 34B .0707(d).
 - c. Various embalming instruments were found on the open countertop behind the decedent [REDACTED] in violation of 21 NCAC 34B .0704.
 - d. No records related to the decedents for which Respondent Establishment was providing or had provided funeral services were made available to Inspector Lisenbee during the 2022 Inspection:
 - i. [REDACTED]
 - ii. [REDACTED]
 - e. No Statement of Goods and Services Selected was found in the files for the following decedents for whom Respondent Establishment was providing or had provided funeral services:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]

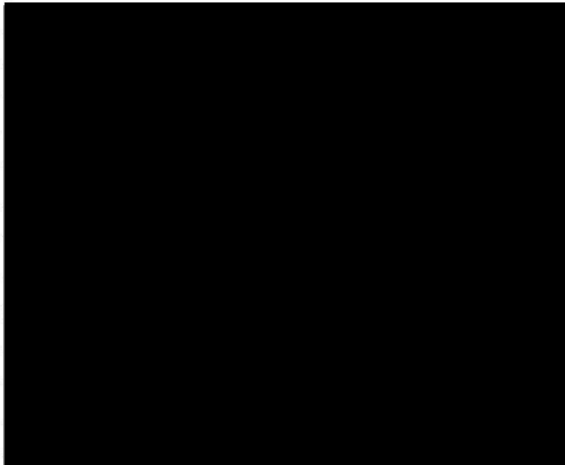
- f. The Statements of Goods and Services Selected in the files for the following decedents bear Respondent Individual's signature as the licensee who made arrangements with the decedent's next of kin for decedent's funeral services on behalf of Respondent Establishment. However, the signatures on the Statements of Goods and Services Selected do not match Respondent Individual's known signature and are forged:

- i.
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x.
- xi.



- g. The Statements of Goods and Services Selected found in the files for the following decedents were not signed by a licensee of the Board but identify in typed print Respondent Individual as the licensee who made arrangements for the decedent's funeral services with the decedent's next of kin on behalf of Respondent Establishment:

- i.
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x.
- xi.
- xii.
- xiii.



- h. The Statements of Goods and Services Selected found in the files for the following decedents were incomplete and did not bear the name or signature of a licensee of

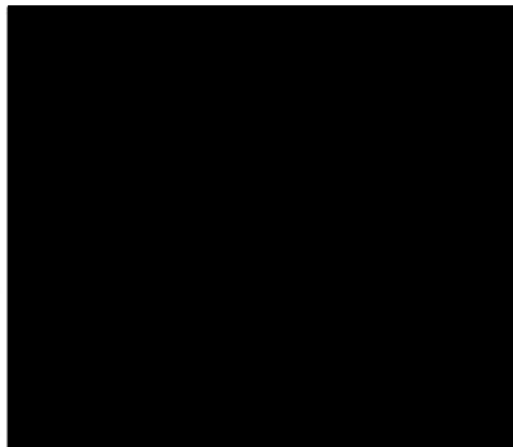
the Board who allegedly met with the decedent's next of kin on behalf of Respondent Establishment:

- i.
- ii.



- i. The death certificates found in the files for the following decedents bear Respondent Individual's signature as the licensee who performed funeral services for the decedents on behalf of Respondent Establishment. However, the signatures on the death certificates do not match Respondent Individual's known signature and are forged:

- i.
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x.
- xi.
- xii.



- j. The death certificates found in the files for the following decedents bear Thomas Hilderbrand's signature as the licensee who performed funeral services on behalf of Respondent Establishment for the decedents. However, Thomas Hilderbrand did not sign the death certificates for the following decedents and his signatures were forged:

- i.
- ii.
- iii.



- k. The death certificates found in the files for the following decedents list Thomas Hilderbrand as the licensee who embalmed the following decedents on behalf of Respondent Establishment. However, Thomas Hilderbrand did not embalm the following decedents and did not authorize the entry of his name on the death certificates for the following decedents:

- i.
- ii.



- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x.
- xi.
- xii.
- xiii.
- xiv.
- xv.
- xvi.
- xvii.
- xviii.
- xix.
- xx.

1. The Statements of Goods and Services Selected found in the files for the following decedents were not signed by a licensee of the Board but identify Thomas Hilderbrand as the licensee who made arrangements with the decedent's next of kin for the decedent's funeral services on behalf of Respondent Establishment. However, Thomas Hilderbrand did not make arrangements with the decedent's next of kin for the following decedents:

- i.
- ii.
- iii.

- m. The Statement of Goods and Services Selected in the files for the following decedent bears Thomas Hilderbrand's signature as the licensee who made arrangements with the decedent's next of kin for the decedent's funeral services on behalf of Respondent Establishment. However, Thomas Hilderbrand did not sign the death certificate for the following decedent and his signature was forged:

- i.

- n. The files for the following decedents for whom Respondent Establishment provided funeral services did not contain a complete and accurate Form 56D1 ("Delivery of Cremated Remains from Funeral Provider"):

- i.

- ii.
- iii.
- iv.
- v.



- o. Respondent Establishment failed to make available upon request a General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(i)(A) and 16 C.F.R. § 453.6.
- p. Respondent Establishment failed to make available upon request a Casket Price List, in violation of 16 C.F.R. §§ 453.2(b)(2)(i) and 453.6.
- q. Respondent Establishment failed to make available upon request an Outer Burial Container Price List, in violation of 16 C.F.R. §§ 453.2(b)(2)(i) and 453.6.
- r. Respondent Establishment failed to make available upon request a Statement of Goods and Services Selected, in violation of N.C. Gen. Stat. § 90-21025(e)(2) and 16 C.F.R. §§ 453.2(b)(5)(i) and 453.6.
- s. Respondent Establishment failed to provide a General Price List that contains accurate price information, in violation of 16 C.F.R. § 453.2(a). Specifically, once Inspector Lisenbee found a copy of the General Price List on a conference room table, he found evidence tending to show that Respondent Establishment:
 - i. routinely discounts its charges for most families served, tending to show that prices are artificially inflated in order to offer mass discounts and thereby rendering pricing on the General Price list to be inaccurate;
 - ii. failed to include current disclosures pertaining to embalming that are mandated by 16 C.F.R. § 453.3(a)(2)(ii);
 - iii. failed to provide an accurate range of prices for charges for direct cremation, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(C);
 - iv. failed to provide an accurate range of prices for charges for immediate burial, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(D); and
 - v. failed to provide an accurate range of prices for charges for caskets offered for sale, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(A).
- t. Respondent Establishment failed to provide a Casket Price List that contains accurate price information, in violation of 16 C.F.R. § 453.2(b)(2). Specifically, once Inspector Lisenbee found a copy of a Casket Price List on the front wall of the arrangement room, he found evidence tending to show that Respondent Establishment:

- i. failed to include on its Casket Price List the price of each casket offered for sale that does not require special ordering, in violation of 16 C.F.R. § 453.2(b)(2)(i); and
 - ii. failed to include on its Casket Price List the price of any alternative container offered for sale, in violation of 16 C.F.R. § 453.2(b)(2)(i).
- u. Respondent Establishment failed to provide an Outer Burial Container Price List that contains accurate price information, in violation of 16 C.F.R. §§ 453.2(b)(3) and 453.6. Specifically, Inspector Lisenbee found a pamphlet inside Respondent Establishment that contained images of various outer burial containers offered for sale but did not contain unit pricing, certain identifying information, and the required FTC disclosure.
- v. Respondent Establishment used pricing on Statements of Goods and Service Selected in excess of the pricing set forth on its published price lists for the following consumers, thereby potentially overcharging said consumers:

- i.
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x.
- xi.
- xii.
- xiii.
- xiv.
- xv.
- xvi.
- xvii.
- xviii.
- xix.



- 11. On April 4, 2022, the Board issued an Order summarily suspending Funeral Establishment Permit No. 0897 of James F. Johnson & Sons, Inc. d/b/a Johnson & Sons Funeral Home and Funeral Director License No. 2588 of Barbara Lindsey Johnson.
- 12. Respondents admit that Garcia Fenwick Johnson has engaged in the unlicensed practice of funeral service on behalf of Respondent Funeral Home since May 2017. Respondents

admit that Mr. Garcia Fenwick Johnson forged the signatures of Barbara Lindsey Johnson and Thomas Tyrone Hilderbrand on documents related to the practice of funeral service.

CONCLUSIONS OF LAW

13. The acts and omissions of Respondents described in Paragraphs 1-12 constitute fraud or misrepresentation in the practice of funeral service and the operation of the Respondents' business, in violation of N.C. Gen. Stat. §§ 90-210.25(d)(4) and 90-210.25(e)(1)(b).
14. The acts and omissions of Respondents described in Paragraphs 1-12 constitute aiding and abetting the unlicensed practice of funeral service, in violation of N.C. Gen. Stat. §§ 90-210.25(d)(4) and 90-210.25(e)(1)(h).
15. The acts and omissions of Respondents described in Paragraphs 1-12 constitute knowingly making false statements on certificates of death, in violation of N.C. Gen. Stat. §§ 90-210.25(d)(4) and 90-210.25(e)(1)(m).
16. The acts and omissions of Respondents described in Paragraphs 1-12 constitute a failure to store embalming instruments within an enclosed cabinet or drawer, in violation of 21 NCAC 34B .0704.
17. The acts and omissions of Respondents described in Paragraphs 1-12 constitute a failure to have in place a written agreement with another funeral establishment, crematory, or hydrolysis licensee, or other entity to grant access to refrigeration, in accordance with 21 NCAC 34B .0707(d).
18. The acts and omissions of Respondents described in Paragraphs 1-12 constitutes a failure to make available upon request a General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(i)(A) and 16 C.F.R. § 453.6.
19. The acts and omissions of Respondents described in Paragraphs 1-12 constitutes a failure to make available upon request a Casket Price List, in violation of 16 C.F.R. §§ 453.2(b)(2)(i) and 453.6.
20. The acts and omissions of Respondents described in Paragraphs 1-12 constitutes a failure to make available upon request an Outer Burial Container Price List, in violation of 16 C.F.R. §§ 453.2(b)(2)(i) and 453.6.
21. The acts and omissions of Respondents described in Paragraphs 1-12 constitutes a failure to make available upon request a Statement of Goods and Services Selected, in violation of N.C. Gen. Stat. § 90-21025(e)(2) and 16 C.F.R. §§ 453.2(b)(5)(i) and 453.6.

22. The acts and omissions of Respondents described in Paragraphs 1-12 constitute a failure to provide a General Price List that contains accurate price information, in violation of 16 C.F.R. § 453.2(a). Specifically, Respondent Establishment:
- a. routinely discounted charges for most families served, tending to show that prices are artificially inflated in order to offer mass discounts and thereby rendering pricing on the General Price list to be inaccurate;
 - b. failed to include current disclosures pertaining to embalming that are mandated by 16 C.F.R. § 453.3(a)(2)(ii);
 - c. failed to provide an accurate range of prices for charges for direct cremation, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(C);
 - d. failed to provide an accurate range of prices for charges for immediate burial, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(D); and
 - e. failed to provide an accurate range of prices for charges for caskets offered for sale, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(A).
23. The acts and omissions of Respondents described in Paragraphs 1-12 constitute a failure to provide a Casket Price List that contains accurate price information, in violation of 16 C.F.R. § 453.2(b)(2). Specifically, Respondent Establishment:
- f. failed to include on its Casket Price List the price of each casket offered for sale that does not require special ordering, in violation of 16 C.F.R. § 453.2(b)(2)(i); and
 - g. failed to include on its Casket Price List the price of any alternative container offered for sale, in violation of 16 C.F.R. § 453.2(b)(2)(i).
24. The acts and omissions of Respondents described in Paragraphs 1-12 constitute a failure to provide an Outer Burial Container Price List that contains accurate price information, in violation of 16 C.F.R. §§ 453.2(b)(3) and 453.6.
25. The above violations present significant risk to consumer health, safety, and welfare, if Respondents continue the practice of funeral service without certain terms and conditions placed on their licensure, as set forth in this Order.

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 agrees 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:

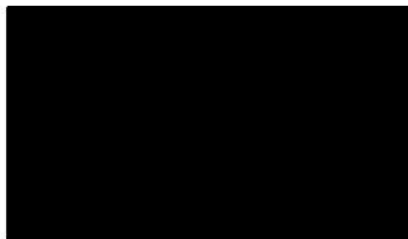
1. The at-need establishment permit of Respondent Establishment and the funeral director license of Respondent Individual are hereby suspended for at least five (5) years from the effective date of this Consent Order, except that said suspension is stayed upon the following terms and conditions:
 - a. Respondent Individual shall resign as licensed manager of Respondent Establishment and a licensed manager other than Barbara Lindsey Johnson and James F. Johnson shall be identified to Board staff. Neither Barbara Lindsey Johnson nor James F. Johnson shall be eligible to serve as licensed manager going forward. Said permits and licenses of Respondents shall remain actively suspended until this condition has been fulfilled.
 - b. Respondent Establishment shall submit to the Board documentation filed with the NC Secretary of State that identifies the officer of Respondent Establishment who is both a licensee of the Board and actively engaged in the operation of Respondent Establishment, in accordance with N.C. Gen. Stat. § 90-210.27A(e). Neither Barbara Lindsey Johnson nor James F. Johnson shall be eligible to serve as an officer of Respondent Establishment for purposes of satisfying N.C. Gen. Stat. § 90-210.27A(e).
 - c. Respondent Establishment shall disassociate the operations of its business from Garcia Fenwick Johnson in all ways, including but not limited to:
 - i. prohibiting Garcia Fenwick Johnson from interacting directly with consumers in any way;
 - ii. prohibiting Garcia Fenwick Johnson from directing the manner in which employees of Respondent Establishment perform funeral services;

- iii. prohibiting Garcia Fenwick Johnson from completing any contracts or Statements of Funeral Goods and Services Selected on behalf of Respondent Establishment;
- iv. prohibiting Garcia Fenwick Johnson from filing documents related to death care with any state or local regulatory agencies on its behalf;
- v. prohibiting Garcia Fenwick Johnson from engaging directly in financial transactions with consumers;
- vi. prohibiting Garcia Fenwick Johnson from embalming dead human bodies; and
- vii. prohibiting Garcia Fenwick Johnson from holding himself out to the public as the person responsible for the operations of Respondent Establishment.

Board staff shall lift the stay of the suspension upon obtaining evidence of a violation of this covenant without further disciplinary proceedings, until such time that a show cause hearing may be scheduled;

- d. All permits and licenses of the Respondents shall remain on a probationary period for at least five (5) years from the effective date of this Consent Order, and until such time as Respondent Establishment submits to and passes without substantial deficiency an at-need inspection conducted by a Board Staff Inspector, which should be conducted on or before June 2027. If Respondents fail to make any records related to the practice of funeral service available for inspection during business hours, the stay of the suspension shall be immediately lifted;
- e. Within thirty (30) days from the date this Consent Order takes effect, Respondent Establishment shall pay a compromise penalty of Five 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 establishment permit of Respondent Establishment shall be immediately lifted;
- f. Within thirty (30) days following the effective date of this Consent Order, Respondents shall provide proof to the Board that they have reimbursed the estates or next of kin of the following consumers in the following amounts:

- i.
- ii.
- iii.
- iv.
- v.
- vi.



- g. All licensed employees of Respondent Establishment shall complete a Board-sponsored continuing education course on the FTC Rule on or before December 31, 2022;
 - h. Respondents shall comply with all statutory and regulatory provisions governing the practice of funeral service;
 - i. Respondents shall not violate any law or rule of the Board;
 - j. Respondents shall timely respond to any and all Board and/or Board staff correspondence; and
 - k. Respondents shall comply with all terms of this Consent Order.
- 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.
- 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.

North Carolina Board of Funeral Service
In the Matter of James F. Johnson & Sons, Inc. d/b/a
Johnson & Sons Funeral Home and Barbara Lindsey Johnson
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CONSENTED TO:

Barbara L. Johnson

Barbara L. JohnsonDate: 05-12-2022

James F. Johnson & Sons, Inc. d/b/a
Johnson & Sons Funeral Home

By: Barbara L. Johnson
Barbara L. Johnson, Manager and Secretary

Date: 05-12-2022

By Order of the North Carolina Board of Funeral Service, this the 8th day of ^{June}~~May~~, 2022.

By: Christian E. Watson

Christian E. Watson
Board President