

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M22-0031/M22-0052

In the matter of:)
) **CONSENT ORDER**
Blakely’s Funeral & Cremation)
Service, LLC and)
Henry Lee Chandler)
Respondents.)

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:

FINDINGS OF FACT

1. Blakely’s Funeral & Cremation Service, LLC (hereinafter “Respondent Establishment”) is licensed by the Board as Funeral Establishment Permit No. 0909 and Preneed Establishment Permit No. 1031 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. Henry Lee Chandler (hereinafter “Respondent Individual” or collectively with Respondent Funeral Home as “Respondents”) is licensed by the Board as Funeral Director No. 4316 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code. For all times relevant to this matter, Respondent Individual served as the licensed manager of Respondent Funeral Home.
3. For all times relevant to this proceeding, Respondent Individual has served as the licensed manager of Respondent Establishment.

May 2021 Consent Order to Resolve Board Case No. M21-0034

1. On or about April 23, 2021, Board staff issued an Order for Summary Suspension for Board Case No. M21-0034, alleging that Respondent Establishment had engaged in the unlicensed practice of preneed funeral service.
2. On May 13, 2021, the Board and Respondent Establishment entered into a Consent Order (“2021 Consent Order”) to resolve Board Case No. M21-0034.
3. In the 2021 Consent Order, Respondent Establishment stipulated that it previously had accepted preneed funds from consumers while unlicensed to do so.

4. In the 2021 Consent Order, Respondent Establishment and the Board stipulated, in pertinent part, that:

The at-need establishment permit of Respondent Establishment is hereby revoked, except that said revocation is stayed upon the following terms and conditions:

a. The at-need establishment permit shall remain on a probationary period for three (3) years from the effective date of this Consent Order;

c. Within thirty (30) days from the date this Consent Order takes effect, Respondent Establishment shall submit a complete and accurate application to the Board for a preneed establishment permit;

e. Within ninety (90) days from the date this Consent Order takes effect, Respondent Establishment shall provide evidence to the Board that it has notified all consumers holding insurance policies for which Respondent Establishment is either the beneficiary or owner that the consumers must execute preneed contracts;

f. Within ninety (90) days from the date this Consent Order takes effect, Respondent Establishment shall provide evidence to the Board that it has notified all preneed contract purchasers for which the beneficiaries still are living that the purchasers must execute preneed contracts on behalf of the beneficiaries;

g. Within one hundred twenty (120) days from the date this Consent Order takes effect, Respondent Establishment shall execute preneed contracts with all consumers holding insurance policies for which Respondent Establishment is the beneficiary or owner. Respondent Establishment shall provide proof to the Board that it has exercised its best efforts to comply with this provision. Respondent Establishment shall file all such executed preneed contracts with the Board, along with the \$20 filing fee and \$25 late fee for each such contract;

h. Within one hundred twenty (120) days from the date this Consent Order takes effect, Respondent Establishment shall execute preneed contracts on behalf of all living beneficiaries for whom it has received preneed payments since 2017. Respondent Establishment shall provide evidence to the Board that all preneed

payments received since 2017 on behalf of living beneficiaries either have been deposited into trust or have been used to purchase a funding insurance policy for which Respondent Establishment is the beneficiary, in accordance with the purchaser's preference. Respondent Establishment shall provide proof to the Board that it has exercised its best efforts to comply with this provision. Respondent Establishment shall file all such executed preneed contracts with the Board, along with the \$20 filing fee and \$25 late fee for each such contract;

m. Respondent Establishment shall submit to and pass without substantial deficiency an at-need inspection and preneed examination conducted by a Board Staff Inspector, which should be conducted on or before May 31, 2026; and

n. During the period of probation, Respondent Establishment shall comply with all statutory and regulatory provisions governing the practice of funeral service.

5. On November 16, 2021, the Board granted Respondent Establishment's request for an extension of time through February 7, 2022 to comply with the terms set forth in Paragraph 4(h) above.

June 2022 Establishment Inspection and Preneed Examination

6. On or about June 29, 2022, Board Inspector Debbie Hamm ("Inspector Hamm") conducted an inspection of Respondent Establishment, pursuant to N.C. Gen. Stat. §§ 90-210.23(e) and 90-210.24(b)(1).
7. During the 2022 Inspection, Board Inspector Hamm found evidence tending to show violations of statutes and rules governing the practice of funeral service had occurred, as follows:
 - a. Respondent Establishment failed to have an individual licensed by the Board who is a member and actively engaged in the operation of the business, in violation of N.C. Gen. Stat. § 90-210.27A(e); and
 - b. Respondent Establishment did not maintain non-corrosive identification tags on its premises, in violation of N.C. Gen. Stat. § 90-210.29A and 21 NAC 34B .0616.
8. On or about June 30, 2022, Inspector Hamm conducted an examination of trust and insurance-funded preneed contracts and records ("2022 Examination") of Respondent Funeral Home, pursuant to N.C. Gen. Stat. § 90-210.68(a).

9. During the 2022 Examination, Inspector Hamm found evidence tending to suggest violations of statute and rules governing the practice of preneed funeral service had occurred, as follows:

- a. Respondents failed to deliver a completed preneed annual report to the Board by the close of business on March 31, 2022, in violation of N.C. Gen. Stat. § 90-210.68(a1) and 21 NCAC 34D .0302;
- b. Respondent Establishment failed to pay a late fee of \$150.00 for its failure to timely file its 2021 preneed annual report, in violation of 21 NCAC 34A .0201(c);
- c. Respondent Establishment failed to timely file two preneed contracts made with [REDACTED] and [REDACTED] within ten (10) days of sale, in violation of N.C. Gen. Stat. § 90-210.67(d) and 21 NAC 34D .0105;
- d. Respondent Establishment failed to comply with Paragraph 4(f), 4(g) and/or 4(h) above with regard to the following consumers, and as such has retained approximately \$50,187.96 of preneed funds without depositing said funds into a trust account or insurance policy on behalf of said consumers:

i. [REDACTED]

10. To date, Respondents have not filed with the Board any preneed contracts on behalf of the beneficiaries identified in Paragraph 9 above.

11. To date, Respondents have not executed preneed contracts on behalf of the beneficiaries identified in Paragraph 9(d) above.
12. To date, Respondents have not submitted to the Board the \$20 filing fee and \$25 late fee for any preneed contracts on behalf of the beneficiaries identified in Paragraph 9(d) above.
13. To date, Respondents have not deposited into an insured account in a financial institution, in trust, the preneed payments they received on behalf of the beneficiaries identified in Paragraph 9(d) above.
14. Pursuant to N.C. Gen. Stat. § 90-210.68(a1) and 21 NCAC 34D .0302, Respondents had a duty to file its 2022 annual report of all preneed contract sales and performance of such contracts, if any, on or before March 31, 2023.
15. Respondents failed to deliver a completed preneed annual report to the Board by the close of business on March 31, 2023.

CONCLUSIONS OF LAW

16. Respondents are subject to the jurisdiction of the Board.
17. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a violation of the 2021 Consent Order.
18. The acts and omissions of Respondents described in Paragraphs 1-15 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).
19. The acts and omissions of Respondents described in Paragraphs 1-15 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.
20. The acts and omissions of Respondents described in Paragraphs 1-15 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.
21. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a failure to accurately complete preneed annual reports, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0302.

22. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a failure to pay a late fee of \$150.00 for its failure to timely file its 2021 preneed annual report, in violation of 21 NCAC 34A .0201(c).
23. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a failure to have an individual licensed by the Board who is a member and actively engaged in the operation of the business, in violation of N.C. Gen. Stat. § 90-210.27A(e).
24. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a failure to maintain non-corrosive identification tags on its premises, in violation of N.C. Gen. Stat. § 90-210.29A and 21 NAC 34B .0616.
25. One or more of the violations described in Paragraphs 16-24 were committed by an 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 a 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.
26. Respondent Funeral Home committed one or more of the violations described in Paragraphs 16-24. 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.
27. Respondent Individual committed one or more of the violations described in Paragraphs 16-24 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.
28. Respondent Individual committed one or more of the violations described in Paragraphs 16-24. 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 Consent Order entered by the Board on May 13, 2021, in Board Case No. M21-0034 is hereby re-affirmed and incorporated by reference. Respondents shall continue to abide by the terms and conditions therein.
2. Within thirty (30) days from the date that this Consent Order takes effect, Respondent Funeral Home shall remit to the Board's Preneed Recovery Fund the amount of \$50,187.96, which shall be earmarked for any future claims made on behalf of the beneficiaries identified in Paragraph 9(d) above; provided, however, that Respondent shall not be required to reimburse the Board's Preneed Recovery Fund for any amounts already reimbursed to said beneficiaries by Respondent's provision of in-kind funeral goods or services. Respondent shall provide to the Board written proof of its provision of in-kind funeral goods or services to said beneficiaries within fifteen (15) days following the effective date of this Consent Order. Said written proof shall consist of an at-need Statement of Funeral Goods and Services Selected signed by a licensee and the consumer, as well as the death certificate of the beneficiary.
3. The preneed establishment permit and all ancillary preneed sales licenses of Respondent Funeral Home are hereby suspended for a period of three (3) years, except that said suspension is stayed upon the following terms and conditions:
 - a. All employees of Respondent Funeral Home shall take a Board-sponsored course on preneed statutes and rules on or before December 31, 2023.

- b. Within fifteen (15) days from the date that this Consent Order takes effect, Respondent shall remit to the Board a late fee of \$150.00 for its failure to timely file its 2021 preneed annual report.
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 reflect 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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CONSENTED TO:

Blakely's Funeral & Cremation Service, LLC

By: Marvin Chambers Date: 8/8/2023
Marvin Chambers
Member-Manager

Henry Lee Chandler

H. Lee Chandler Date: 8/8/2023

By Order of the North Carolina Board of Funeral Service, this the 8th day of Aug.,
2023.

By: Dr. Steven L. Lyons
Dr. Steven L. Lyons
Board President