

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M23-0003/M23-0004

In the matter of:

Cunningham Mortuary and Cremations, Inc.,
Metropolitan Crematorium, Inc., and Deborah P.
Cunningham,

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 Respondents stipulate and agree to entry of the following Consent Order:

1. Respondent Cunningham Mortuary and Cremations, Inc. (hereinafter "Respondent Funeral Home"), is licensed by the Board as Funeral Establishment Permit No. 0655 and Preneed Establishment Permit No. 0583 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. Respondent Metropolitan Crematorium, Inc. (hereinafter "Respondent Crematory"), is licensed by the Board as Crematory Permit No. 0333 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
3. Respondent Funeral Home and Respondent Crematory are housed within the same facility in Fayetteville, North Carolina, and share common ownership.
4. Respondent Deborah P. Cunningham (hereinafter "Respondent Individual" or collectively with Respondent Funeral Home and Respondent Crematory as "Respondents") is licensed by the Board as Funeral Director No. 3753 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
5. For all times relevant to this matter, Respondent Individual has been the president and licensed manager of both Respondent Funeral Home and Respondent Crematory.
6. In January 2023, Board Inspector Debbie Hamm conducted a funeral establishment inspection (hereinafter the "2023 FH Inspection") of Respondent Funeral Home.
7. During the 2023 FH Inspection, Inspector Hamm obtained evidence that tends to show Respondents violated statutes and rules governing the practice of funeral service, in that Respondent Funeral Home had failed to obtain and/or maintain a completed

Medical Examiner Authorization (Form DHHS-1181) before seeking cremation of decedent Jassodra Ramsingh, who died on or about December 8, 2022, as required by N.C. Gen. Stat. §§ 90-210.129 and 130A-388.

8. In January 2023, Board Inspector Debbie Hamm conducted a crematory inspection (hereinafter the "2023 CR Inspection") of Respondent Crematory.
9. During the 2023 CR Inspection, Inspector Hamm obtained evidence that tends to show Respondents violated statutes and rules governing the practice of funeral service, in that Respondent Crematory had failed to obtain and/or maintain a completed Medical Examiner Authorization to cremate decedent Janice Ledbetter, who died on or about December 8, 2022, as required by N.C. Gen. Stat. §§ 90-210.129 and 130A-388.
10. Respondent Crematory and Respondent Individual previously received a letter of caution dated October 15, 2021 (the "LOC"), to resolve a consumer complaint initiated by the Office of the Chief Medical Examiner (Case No. C21-0078). Said consumer complaint alleged that Respondent Crematory had cremated decedent Chiquita Danielle Harris, without a medical examiner first signing DHHS Form 1181, as required by N.C. Gen. Stat. §§ 90-210.129 and 130A-388.
11. In the LOC, Respondents were reminded of their obligation to comply with N.C. Gen. Stat. §§ 130A-388 and 90-210.129(c) and the Board directed Respondents to take a Board-sponsored continuing education course on cremation laws on or before June 30, 2022. Respondents did not comply with the LOC, instead not taking the required continuing education course until October 19, 2022.

CONCLUSIONS OF LAW

12. Respondents are subject to the jurisdiction of the Board.
13. The acts and omissions of Respondents described in Paragraphs 1-11 violate N.C. Gen. Stat. § 90-210.123(f), which provides that no person or entity shall cremate any human remains, except in a crematory licensed for this express purpose and operated by a crematory licensee subject to the restrictions and limitations of this Article or unless otherwise permitted by statute.
14. The acts and omissions of Respondents described in Paragraphs 1-11 violate N.C. Gen. Stat. §§ 90-210.25(e)(1)(j) and 90-210.123(g)(10), which prohibits violations of any of the provisions of Articles 13A and 13F of Chapter 90 of the North Carolina General Statutes, or any of the rules of the Board.
15. The acts and omissions of Respondents described in Paragraphs 1-11 violate N.C. Gen. Stat. §§ 90-210.25(e)(1)(k) and 90-210.123(g)(11), which prohibits violations of any State law affecting the handling, custody, care, or transportation of dead human bodies.

16. The acts and omissions of Respondents described in Paragraphs 1-11 violate N.C. Gen. Stat. § 90-210.129(b) and (c) and 10A NCAC 44 .0501, which provides that a crematory must receive a cremation authorization form signed by a medical examiner prior to cremation, when required by N.C. Gen. Stat. § 130A-388 or in death coming under full investigation by the Office of the Chief Medical Examiner.
17. The acts and omissions of Respondents described in Paragraphs 1-11 violate N.C. Gen. Stat. § 130A-388(a), which provides that no person knowing or having reason to know that a death may be under the jurisdiction of the medical examiner pursuant to G.S. §§ 130A-383 or 130A-384, shall embalm, bury, or cremate the body without the permission of the medical examiner.
18. One or more of the violations described in Paragraphs 12-17 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.
19. Respondent Individual committed one or more of the violations described in Paragraphs 12-17 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.
20. An owner, partner, crematory manager, member, officer, crematory technician, or otherwise authorized agent of Respondent Crematory committed one or more of the violations described in Paragraphs 12-17 but Respondent Crematory remains fit to practice. Pursuant to N.C. Gen. Stat. § 90-210.123(h), the Board has the authority to place Respondent Crematory 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 funeral director of Respondent Individual is hereby placed on probation for a period of three (3) years. During the period of probation, Respondent Individual shall comply with all statutory and regulatory provisions governing the practice of funeral service.
2. The at-need establishment permit of Respondent Funeral Home is hereby suspended for a period of three (3) years, except that said suspension is stayed upon the following terms and conditions:
 - a. Within sixty (60) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of One Thousand Dollars (\$1,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes;
 - b. All licensees employed by Respondent Funeral Home shall take a Board-sponsored continuing education course of cremation laws on or before June 30, 2024; and
 - c. During the period of stayed suspension, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service.
3. The crematory permit of Respondent Crematory is hereby suspended for a period of three (3) years, except that said suspension is stayed upon the following terms and conditions:
 - a. Within sixty (60) days from the date this Consent Order takes effect, Respondent Crematory shall pay a compromise penalty of One Thousand Dollars (\$1,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes;

- b. All crematory technicians employed by Respondent Crematory shall take a Board-sponsored continuing education course of cremation laws on or before June 30, 2024; and
 - c. During the period of stayed suspension, Respondent Crematory shall comply with all statutory and regulatory provisions 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 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.

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:

Cunningham Mortuary and Cremations, Inc.

By: Deborah P. Cunningham Date: 9/11/2023
Deborah P. Cunningham, President

Cunningham Metropolitan Crematorium, Inc.

By: Deborah P. Cunningham Date: 9/11/2023
Deborah P. Cunningham, President

Deborah P. Cunningham 9/11/2023
Deborah P. Cunningham

By Order of the North Carolina Board of Funeral Service, this the 11th day of September, 2023.

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