

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M23-0031

In the matter of:

L. E. Floyd Funeral Home Inc. d/b/a
L. E. Floyd Funeral Home and Cremations
and Clinton Evans Simpson,
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, Respondent Funeral Home, and Respondent Individual, stipulate and agree to entry of the following Consent Order:

1. L. E. Floyd Funeral Home Inc. d/b/a L. E. Floyd Funeral Home and Cremations (hereinafter "Respondent Funeral Home") is licensed by the Board as Funeral Establishment Permit No. 0327 and Preneed Establishment Permit No. 0599 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. Clinton Evans Simpson (hereinafter "Respondent Individual" or collectively with Respondent Funeral Home as "Respondents") is licensed by the Board as Funeral Director No. 2760 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. 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.
4. Respondents failed to deliver a completed preneed annual report to the Board by the close of business on March 31, 2023.
5. Pursuant to 21 NCAC 34A .0201(c), any preneed annual report not timely filed is subject to a \$150.00 late filing fee.

CONCLUSIONS OF LAW

6. Respondents are subject to the jurisdiction of the Board.
7. The acts and omissions of Respondents described in Paragraphs 1-5 violated N.C. Gen. Stat. § 90-210.68(a1) and 21 NCAC 34D .0302, for failing to timely file a preneed annual report.

8. The acts and omissions of Respondents described in Paragraphs 1-5 violated N.C. Gen. Stat. § 90-210.67(d1) and 21 NCAC 34A .0201(c) by failing to timely pay a preneed annual report late fee.
9. Respondent Individual committed one or more of the violations described in Paragraphs 1-5 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.
10. Respondent Individual committed one or more of the violations described in Paragraphs 1-5. 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.
11. Respondent Funeral Home committed one or more of the violations described in Paragraphs 1-5. 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.

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 license of Respondent Individual and the preneed establishment permit and ancillary preneed sales licenses of Respondent Funeral Home are hereby placed on a one (1) year probation on the following conditions:
 - a. Respondents shall submit the 2022 Preneed Annual Report within fifteen (15) days following the Effective Date of this Consent Order, along with the \$150.00 late filing fee;
 - b. The licensed manager of the Respondent Funeral Home shall take a Board-sponsored course on preneed statutes and rules on or before December 31, 2023;
 - c. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service; and
 - d. Within thirty (30) days following the entry of this Consent Order, Respondents shall remit a compromise penalty of Five Hundred Dollars (\$500.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
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 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.
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.

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CONSENTED TO:

L. E. Floyd Funeral Home Inc. d/b/a L. E. Floyd Funeral Home and Cremations

By Clinton Evans Simpson Date: JUNE 05 2023
Clinton Evans Simpson
Manager

Clinton Evans Simpson

Clinton Evans Simpson Date: JUNE 05 2023

By Order of the North Carolina Board of Funeral Service, this the 14th day of June, 2023.

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