

# North Carolina Board of Mortuary Science NEWSLETTER

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## Preneed Sales of Caskets

*Crown Memorial is a cemetery that is located in Charlotte, North Carolina. Several years ago, the North Carolina Board of Mortuary Science (the "Board") learned that Crown Memorial was practicing funeral service and selling preneed caskets without a license. After some discussion with Crown Memorial, the Board believed it had no choice but to file a law suit against Crown Memorial to get it to stop these activities.*

*The judge in the Crown Memorial case found that Crown Memorial was illegally practicing funeral service and ordered them to stop. The judge also determined that Crown Memorial's selling of caskets was a preneed sale despite Crown Memorial's arguments that its inner liners were not caskets and the sales did not meet the legal definition of preneed. Unfortunately, the judge then found that the North Carolina preneed statutes, which only allow funeral establishments to obtain a preneed license, to be unconstitutional. He found the preneed law to be an unconstitutional restraint of trade. The judge also determined that Crown Memorial did not need a preneed license from this Board because they were subject to regulation by the Cemetery Commission. The Board has appealed these last two aspects of the judge's decision.*

*The judge's decision in the Crown Memorial case only applies to Crown Memorial. It is still illegal to sell preneed funeral goods and services in North Carolina without a preneed establishment license issued by this Board. This Board (and/or the Cemetery Commission) can seek to enforce the law against any other cemetery (or any other business entity) that should start selling preneed funeral merchandise.*

### **EXAM DATES for 2002/03**

#### **Laws & Rules Exam**

November 5, 2002

December 10, 2002

January 28, 2003 (**State Exam**)

February 4, 2003

March 4, 2003

April 8, 2003

May 6, 2003

June 10, 2003 (**State Exam**)

July 8, 2003

August 5, 2003

September 9, 2003 (**State Exam**)

October 7, 2003

November 4, 2003

December 9, 2003

### **ELECTION 2002**

Licensees should have already received their ballots. Please exercise your right to vote by completing your ballot and ensuring that it is sent so that it will arrive at the Board's office no later than **5 p.m. on September 30, 2002.**

**NORTH CAROLINA  
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**From the Executive Director:**

*This Board and the funeral profession are at a crossroad in North Carolina. The judge's trial decision in the Crown Memorial case brings to the forefront the direction and scope of preneed casket sales in this State. There are two paths from which to choose. Since the Board has already appealed the Crown Memorial decision, the Board can simply wait for the appellate court's decision. The Board's other option is to pursue legislative change. There are advantages and disadvantages to each approach.*

*The Board's mission is to protect consumers. I believe that consumers are best protected by the current scheme that limits preneed casket sales to funeral establishments. I say this because funeral establishments tend to be long-standing businesses in their communities. Nonetheless, I believe that the Board could protect consumers, if necessary, should other business entities be allowed to sell preneed caskets, but only if these entities are licensed by this Board.*

*This leads to what is most troubling to me about the judge's decision in the Crown Memorial case. The Cemetery Commission does not regulate the preneed sale of caskets. Further, preneed casket sales are not the type of sales that lend themselves to consumer protection by the Cemetery Statutes. Those statutes anticipate a retail installment type contract wherein the merchandise is delivered to the consumer upon full payment. That is not how preneed casket sales are handled. Caskets are not delivered until the consumer dies.*

*It should be clear that either path the Board chooses could potentially be the "wrong" path. Unfortunately, only a Monday-morning quarterback will be able to say it was the "wrong" path. If the Board does nothing, it could win the appeal and that would be the "right" path. On the other hand, if the Board loses the appeal, it will be the "wrong" path. Preneed casket sales by cemeteries (and potentially other business entities) will for all practical purposes be unregulated. While legislation could then be introduced to change the result, it may be like trying to close Pandora's Box.*

*On the other hand, if the Board seeks to introduce legislation to allow other business entities to sell preneed caskets, it could ensure that consumer protection devices are in place and that the preneed sale of caskets is subject to licensing by this Board. For example, the Board could seek to require other business entities to meet certain educational, moral and other standards that will help to ensure consumer protection. Nonetheless, this could be the "wrong" path because the Board would be opening up the preneed sales of caskets by other business entities before such opening up is necessary, since the Board has not yet lost its appeal.*

*Please take time to think through this very difficult issue and let the Board and/or your representatives in the NCFDA and FD & MA of NC, Inc. know where you stand. As I have indicated, there is no known "right" answer. Only time will tell what the "right" choice was. Will we have made it? Even if we do not, we must ensure that we at least thoughtfully consider this matter and try to make the best decision based on the information available. I would consider that to be the "right" choice.*

**DISCIPLINARY ACTIONS**

**RECENT DISCIPLINARY ACTIONS TAKEN BY THE BOARD**

**LICENSEES**

CASE FILE NUMBER: M01-024

LICENSEES: Hargett Funeral Services (Greensboro), Hargett Funeral Services of High Point, Inc.

VIOLATION: Respondents failed to file their 2000 preneed annual report required under 21 N.C. Administrative Code 34D .0302, requiring each preneed funeral establishment licensee to file an annual report with the Board not later than March 31 each year for the preceding year ending December 31. Said failure violates N.C. Gen. Stat. § 90-210.69(c)(6).

BOARD ACTION: The Board revoked the Respondents' preneed licenses and ordered the Respondents to surrender all preneed funeral agreements in their possession to the Board's authorized agent immediately upon receiving the Order.

EFFECTIVE DATE: May 14, 2002.

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CASE FILE NUMBER: M02-007

LICENSEE: Gaston W. Garrett

VIOLATION: The North Carolina Department of Health and Human Services, Division of Social Services, Child Support Enforcement ("NCCSE"), pursuant to North Carolina General Statute § 110-142.1, notified the Board that it is obligated by said statute to revoke or suspend its licensee's funeral service license and pre-need sales license because the licensee is delinquent in payment of court-ordered child support.

BOARD ACTION: The licensee's funeral service license and pre-need sales license were suspended indefinitely. The suspension will remain in force until such time as the Board receives notice from the NCCSE or a court of competent jurisdiction that licensee has satisfied his court-ordered child support obligation or otherwise complied with applicable laws and rules.

EFFECTIVE DATE: May 28, 2002

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CASE FILE NUMBER: M02-008

LICENSEE: David Reese, Charles Reece, and Memorial Funeral Chapel

VIOLATION: Respondents violated the terms of their probation by failing to file a preneed agreement on time, in violation of N.C. Gen. Stat. § 90-210.67(d), and failing to deposit preneed funds within five business days of the sale of the preneed contract in violation of N.C.G.S. § 90-210.61(a)(1).

BOARD ACTION: The Board offered the licensees a new Consent Order, which they accepted. Pursuant to the Consent Order, Respondent Memorial Chapel's preneed establishment license and Respondents David and Charles Reese's funeral service licenses are hereby revoked. Said revocations are stayed conditioned upon compliance with the conditions and obligations of the Consent Order. Respondents Memorial Funeral Chapel and Charles Reese, as to their funeral establishment license, Preneed funeral establishment license, funeral services licensee and preneed sales licensee, were placed on probation for a period of four years, with that period of probation starting on February 14, 2001, the date of the original Consent Order. Respondent David Reese, as a funeral services licensee and as a preneed licensee, was placed on probation for a period of four years, with that period of probation starting on June 13, 2001, the date of his original Consent Order. Each of the Respondents paid to the Board a civil money penalty of \$500.00. Respondent David Reese shall voluntarily surrender his preneed sales license and deliver his preneed sales license card with his signed originals of this Consent Order. The Board shall not consider this surrender a license revocation. Respondent Charles Reese's preneed sales license shall be suspended effective at the time this Consent Order is accepted by the Board for a period of twelve months from that date. Upon expiration of said term of twelve months, the Board shall reissue to Respondent Charles Reese his preneed sales license if, at that time, he is in compliance with all applicable terms of this Consent Order and holds an active Funeral Service License issued by the Board.

EFFECTIVE DATE: August 14, 2002

CONDOLENCES

The Board has learned of the deaths of the following licensees. The Board wishes to express its condolences to their families and friends. The Board is grateful for their service to families, communities and the funeral profession.

Mr. William Henry "Bill" Bass, Jr. general manager of Hamilton Funeral Chapel, Inc.

Clarence E. Lightner, age 80, chairman of Lightner Funeral Home (also former Mayor of Raleigh).

Mr. John Daniel "J.D." McKeithan, age 83, former owner and operator of McKeithan Funeral Home of Southern Pines.

Mr. Rodner L. Murphy, 59, retired funeral director of Shingleton Funeral Home in Wilson.

Paul Pendry, age 93, founder of Pendry's Lenoir Funeral Home.

Mr. Jerry G. Reavis, age 64, former owner of Reavis Funeral Home of Harmony.

Mr. Lewis Jerome Robinson, 58, CEO and funeral director of Robinson Funeral Home, Inc.

Mr. Hardy S. "Sam" West, 79, owner of West & Dunn Funeral Homes.

Mr. C. J. White, age 81, part owner of Brooks & White Funeral Home of Roxboro.

**Congratulations!**

The following applicants have passed the state exam and/or been licensed since March 2002.

Rex Allen Bennett	New Bern
Jason L. Benton	Shallotte
Erin Parzych Besoiu	Gastonia
Ruth Banner Boulware	Charlotte
Michael Ray Burke	Maiden
Arnold R. Butler	Fayetteville
Almeta W. Donaldson	Sanford
Tamir L. Faison	Jackson
Heather R. Forbis-Grice	Greensboro
Bonnie Denise Horne	Farmville
Amy Hardin Jones	Red Springs
Charles Edward Jones	Calhoun Falls, SC
Robert L. Knight	Scotland Neck
Erin Nicole Love	Taylorsville
David S. McCorcle	East Bend
Monea' M. McKeithan	Mt. Gilead
David B. Mercer	Spartanburg, SC
Clemonte Careu Mills	Kinston
Laura S. Mills	Elizabethtown, TN
MaryAnne A. Morse	Winston-Salem
Laura R. Neems	Fort Mill, SC
Cynthia H. Norris	New Bern
France C. Ricard Palfrey	Ontario, Canada
Alexander Phillip Parker, Jr.	Greensboro
Bonita Faustine' Patton	Raleigh
William Jay Payne	Thomasville
Kyle Peacock	Whiteville
Vernon Blake Phillips	Greenville
Shelia C. Pringle	Zebulon
Tracy Lynn Seawell	Olivia
Jennifer Leigh Sharpe	Havelock
Jeffrey L. Smith	Bellefontaine, OH
Joseph L. Sonderman, III	Winston-Salem
Gary Clyde Stone	North Wilkesboro
Tiffany Tennille Tice	Fuquay-Varina
Cheryl Williams Tudor	Reidsville
Martha Juanita Whitlock	Trinity
John Thomas Wilson	Piedmont, SC
Brenda Jo Wilson	Fayetteville



**NORTH CAROLINA  
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