



North Carolina Board of Funeral Service newsletter

North Carolina Funeral Board Service

Volume 5, Issue 2 Winter 2011/2012

Executive Director Paul Harris has tendered his resignation effective the end of March. The board appreciates Mr. Harris's dedicated and professional service for the past 8 years. The search process for a new Executive Director will begin as soon as possible.

Try Wiseman, President

Legislative Matters

- Effective October 1, 2011 physician's assistants and nurse practitioners under supervision of a physician may sign death certificates.
- Effective January 1, 2012, for purposes of making anatomical gifts, the authorization of any autopsy, and the disposition of remains, a health care power of attorney is effective after death, even if the principal did not become incompetent before death. Funeral homes and crematories will no longer have to confirm a doctor's written findings of the principal's incompetence in order to follow the directions of a health agent for disposition decisions after the principal's death. For preneed purposes, the principal's incompetence will still need confirmation in order to follow health agent's directives.

Electronic Death Registration

Board staff continues to participate in discussions with representatives from other agencies and interested parties to further efforts for an electronic death registration system (EDRS). Please take a few minutes to complete the survey at <http://www.ncsurveymax.com/TakeSurvey.aspx?SurveyID=n2MH48m>. The state is required to implement a system by January 2014. This will also require use of a revised death certificate form. There will be opportunities for users, including funeral homes, to test the system prior to full implementation. In a related matter, work is beginning on statute changes for death registration to alleviate problems with filing delays.

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North Carolina Board of Funeral Service

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Board members

Tryphina Wiseman.....Fayetteville
 President

J.T. Willoughby, III.....Tarboro
 Vice-President

Harris B. High.....Indian Trail
 Secretary

Stephen Aldridge, III.....Albemarle
 Kelly Byrd.....Monroe
 Broadus Combs.....Aberdeen
 Lawrence Jackson, III.....Laurinburg
 John D. Shields.....Gibsonville
 Kenneth D. Stainback.....Graham

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 Tom McElreath.....Burial Association
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 Angela Rubbo.....Paralegal

The North Carolina Board of Funeral Service
 Newsletter is published bi-annually.

Any questions or comments
 should be directed to the office at
 919-733-9380 or 1-800-862-0636

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Board Member Changes

Mr. Lawrence Jackson, III of Laurinburg. Mr. Jackson began his term of office on September 9, 2011. He was appointed by Governor Perdue to replace Mr. Frank McCree, Sr. Mr. McCree's service on the Board began in 2007 and we offer appreciation for his service and wish him well.

The terms of members Jack D. Briggs, Rudy N. Lea, George Parrott and Elizabeth Webber ended December 31, 2011. Mr. Briggs's service on the Board began in 2002, Mr. Lea's in 2003, Mr. Parrot's in 2002 and Ms. Webber's in 2009. We also wish them well and offer appreciation for their service.

Ms. Tryphina Wiseman has been re-appointed by Governor Perdue on the recommendation of FD& MA of NC, Inc. Ms. Wiseman's initial term expired December 31, 2011 and her new three year term began January 1, 2012.

Mr. William Stephen Aldridge, III of Albemarle and Mr. Marvin Kelly Byrd of Monroe have been recommended by NCFDA to the Governor for appointment for three year terms that began January 1, 2012.

Mr. James Broadus Combs of Aberdeen has been appointed as a public member by Representative Thom Tillis, Speaker of the NC House and Rev. John Shields of Gibsonville has been appointed as a public member by Senator Phil Berger, President Pro Tempore of the NC Senate. Mr. Combs's and Rev. Shields three year terms began January 1, 2012.



Aldridge



Byrd



Combs



Jackson



Shields



Seated left to right: J. T. Willoughby, III, Vice President; Tryphina Wiseman, President; Harris High, Secretary
 Standing LR: Kelly Byrd, Lawrence Jackson, III, Broadus Combs, Ken Stainback, Steven Aldridge, III, John Shields.

New Licenses, Permits and Establishment *changes*

New Funeral Service Licensees:

Kyle D. Aler – Bellefontaine, OH
Chantesh Seville Allen – Roxboro
Brian James Bonar – Wheeling, WV
Anthony F. Brown (Conv. to FS) – Charlotte
Nicole Carpenter Clary – Lawrenceville, VA
Ross Randol Cody – Mason City, Iowa
Heidi Miriam Dodson – Hurdle Mills
Michael Conly George – Sophia
Inez Marvaletta Green (Conv. To FS) – Durham
Christopher Sloan Hargett – Wilmington
David Lee Harris, Taylorsville
Gerald Antonio Harris – Reidsville
Kelly Garner Harvey – Seagrove
Chase D. Hendrick – Winston-Salem
Amanda Kaluzny – Lewisberry, PA
Stephanie Lynne Kuykendall – Cary
Raymond Lee Laws – Lexington
Nathan Edward Lea – Raleigh
Michael Lerate – Floral Park, NY
John Lane LeVan – Hiddenite
Nicole Elaine Lund, Fayetteville
Michael Thomas Mutton – Indian Trail
David Andrew Oberley – Franklin
Robert James Parr – Portsmouth, VA
Robert A. Prindiville, Jr. – Cheektowaga, MD
Jenah Maurine Schott – Stella
Wesley Paul Sluder (Conv. to FS) – Granite Falls
Yolanda Smith – Goldsboro
Jimmie Haywood Smith – Richlands
Timothy L. Stinnett – Johnson City, TN
Christopher Stoessner (Conv. to FS) – Kill Devil Hills
Roger Dale Sullivan – Salisbury
Javoke S. Terrell – Westminster, MD

New Funeral Director Licensees:

Brian Jennings Ballard – Fletcher
Benjamin Alexander Bellante – Charlotte
Arlene Priscilla Brokaw – Matthews
Ryan Sherrill Bumgarner – Thomasville
Roger Carrol Capps – Asheville
Duane Allen Cutlip – Wendell
Lee Thomas Dixon – Charlotte
Sean Andrew Dougherty – Wilmington
Kyle Norman Emerich – Burlington
Karen Cranford Green – Thomasville
Makeba Denise Gregg – Thomasville
Edward Lewis Gregory, Jr. – Winston-Salem
Jeremy Nathan Groce – Graham
Daniel Mark Harrell – Dudley

Louis Ray Long – Roxboro
Kevin Dale Matthews – Greensboro
Avala Luetta Nealy – Chadbourn
Antenor Debois Nixon – Smithfield
Dean Duane Vinson – Leland

Ownership Changes:

Garrett-Jones Funeral Home – Ahoskie
Walson Funeral Home – Elizabeth City
Wilmington Funeral & Cremation – Leland
(Formerly Village Road Memorial Chapel of Leland)

New Establishments

Boone-Carroll Funeral Home, Cleveland
Brooks & Davis Funerals & Cremations – Charlotte
Dennis J. Stallings Memorial Funeral Home –
Gatesville
Four Seasons Funeral Service, Inc. – Hendersonville
Gales – Asheboro
Haskins Funeral Home – Goldsboro
Jamaat Ibad Ar – Rahman Funeral Home, LLC –
Durham
Lori Chappell Funeral Home – Henderson
Smith Funeral & Cremation Services – Greenville

Location Changes:

Mercedes Funeral Mansion & Cremation Services, Inc.
– Williamston
Barnes Funeral Home – Wilson

Establishment Closed:

Wesley Heights Funeral & Cremations Services –
Charlotte
Crown Funeral Service – Charlotte
David B. Lawson Mortuary – Burlington
Moody Funeral Service – Sylva
Kelsey Funeral Home – Concord
Swindell Funeral & Cremation Service – Hertford
Randolph Funeral Home – Washington
Beasley's Funeral & Cremation Service
of Winston-Salem
Twiford Funeral Home, (N. Road Street location),
Elizabeth City

New Chapels:

Toney's – Spring Hope

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New Licenses, Permits and Establishment changes cont. from page 3

New Crematories:

*Optima Cremations, LLC – Greensboro
Wilkerson Funeral Home Crematory – Reidsville
Coastal Cremations, Inc. – Wilmington
(ownership change, formerly Coastal Cremation Service)*

Closed Crematory:

Moody Funeral Service Crematory

Unaffiliated Licensees:

Norman Whitted, Funeral Director

Disciplinary matters

CASE FILE NUMBER: V08-037.

LICENSEES: Sharon Memorial Park Crematory, Charlotte (CR #25).

SUMMARY: The Board received a complaint that the crematory was performing cremations with part of the lid removed to decrease burning time.

BOARD ACTION: The Board adopted a consent order placing the crematory on one (1) year probation, making restitution to the consumers for the cremation containers, and paying a \$1,500.00 civil penalty.

EFFECTIVE DATE: May 11, 2011.

CASE FILE NUMBER: V10-048.

LICENSEES: Purcell Funeral Home, Southern Pines (FE #428; PNE #736); Kenneth Purcell (FSL #1570).

SUMMARY: The Board received a complaint alleging that the firm failed to deposit two preneed premiums in a timely manner. Preneed Establishment deposited the funds promptly upon receipt of the complaint.

BOARD ACTION: The Board adopted a consent order placing the preneed establishment and sales licenses on probation for three (3) years. The Board also placed the funeral establishment permit and funeral service license of Kenneth Purcell on probation for one (1) year. The parties paid a civil penalty of \$1,000.00 and were ordered to take continuing education in preneed.

EFFECTIVE DATE: July 13, 2011.

CASE FILE NUMBER: V11-011.

LICENSEES: Blake Phillips Funeral Service, Greenville (FE #328); Vernon Phillips (FDL #3780).

SUMMARY: Funeral Establishment executed a consent order agreeing to reimburse two consumers for excess funds received under an insurance assignment but not imposing disciplinary action if timely payment was made. Funeral Establishment has refunded the consumers with interest but did not make the payments on time. Before the consent order was executed, Funeral Establishment received a third complaint of a similar

nature and has refunded the money owed.

BOARD ACTION: The Board adopted a consent order placing the funeral establishment permit and Mr. Phillips on probation for one (1) year. The funeral establishment has made restitution and is prohibited from accepting insurance overages in the future.

EFFECTIVE DATE: July 13, 2011.

CASE FILE NUMBER: V10-078.

LICENSEES: Mitchell's Funeral Home, Greenville (FE #725; PNE #861); Vivian Cummings (FDL #3140).

SUMMARY: The Board received a consumer complaint alleging that the unlicensed owners engaged in an unlicensed preneed sale. Several payments were made on the contract, but more than one deposit was not timely made. The contract was also not filed on time. A follow-up audit showed other preneed recordkeeping violations, some of which were committed by the previous owner.

BOARD ACTION: The Board adopted a consent order placing the preneed establishment license and funeral establishment permit on probation for three (3) years. The firm will also pay a civil penalty of \$1,500.00, complete preneed continuing education, retain a new manager and implement written personnel management procedures. The funeral director and preneed sales licenses of Ms. Cummings were placed on probation for three (3). The firm's preneed sales were suspended until it complies with several conditions and, once reinstated, would be on probation throughout the remainder of the preneed establishment probation.

EFFECTIVE DATE: August 10, 2011.

CASE FILE NUMBER: V07-042.

LICENSEES: Ashelawn Memorial Chapel, Jefferson (FE #13); Badger Funeral Home, West Jefferson (FE #16); Joshua Roten (FSL #2561).

SUMMARY: Complainant, a competitor of Funeral Establishment, alleges Funeral Establishment has

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Disciplinary matters cont. from page 4

engaged in misleading advertising holding out a "local owner" when the firm is majority owned by a corporation headquartered outside North Carolina. Funeral Establishment was given a previous staff letter concerning similar language.

BOARD ACTION: The Board accepted a consent order levying a civil penalty of \$2,000.00.

EFFECTIVE DATE: September 14, 2011.

CASE FILE NUMBER: M11-009.

LICENSEES: Randolph Funeral Home (PNE #508, FE #487); Betty Randolph (FDL #3067).

SUMMARY: During an inspection, Randolph Funeral Home did not produce compliant documents from the Federal Trade Commission and failed to correct the violations cited.

BOARD ACTION: The Board issued a Final Agency Decision in this case. The Board suspended Ms. Randolph's funeral director license for six (6) months and ordered her to complete continuing education during that time frame. The funeral establishment permit also was revoked because Ms. Randolph failed to file corrections after the hearing.

EFFECTIVE DATE: August 10, 2011.

CASE FILE NUMBER: M09-011.

LICENSEES: Loflin Funeral Home (PNE #215); Tyson Nixon (FSL #2691).

SUMMARY: During a preneed examination of Preneed Establishment, the Board inspector found several violations concerning the contract register, individual journals, and other recordkeeping violations. Preneed Establishment also did not respond within a reasonable time to recordkeeping errors in its 2008 and 2009 preneed annual reports.

BOARD ACTION: The Board adopted a consent order assessing a \$1,000.00 civil penalty and conditioning 2012 renewal upon completing preneed continuing education and other conditions.

EFFECTIVE DATE: November 9, 2011.

CASE FILE NUMBER: V10-026.

LICENSEES: Penland Funeral Home (FE #458; PNE #559); Ruth Penland (FDL #2183).

SUMMARY: Prior to revocation, the funeral director took funds for a preneed contract without providing a written contract Complainant. The check was deposited into an account that was not a trust account. The consumer called Preneed Establishment in 2010 to inquire about the contract. After discovering the misconduct of the funeral director

regarding the preneed contract and preneed funds, Licensee, the current manager, filed the contract with the Board and deposited the funds into a trust account. Licensee admits initialing the contract revocable but not to making the signature. The contract was then sent to the consumer, and the consumer filed a complaint alleging the forgery. Handwriting analysis confirmed the forgery.

BOARD ACTION: The Board adopted a consent order revoking all preneed licenses. The funeral establishment permit was also placed on probation for one (1) year.

EFFECTIVE DATE: November 9, 2011.

CASE FILE NUMBER: M11-021.

LICENSEES: Barnes Funeral Home (PNE #907).

SUMMARY: During a preneed examination, a Board inspector found Preneed Establishment failed to keep accurate preneed records.

BOARD ACTION: The Board adopted a consent order assessing a \$500.00 civil penalty and ordering continuing education.

EFFECTIVE DATE: November 9, 2011.

CASE FILE NUMBER: M11-022.

LICENSEES: Renaissance Funeral Home of North Raleigh (PNE #877).

SUMMARY: During a recent inspection, a Board inspector found that Preneed Establishment was not keeping records in compliance with the Board's laws and rules.

BOARD ACTION: The Board approved a consent order assessing a \$500.00 penalty and requiring preneed continuing education.

EFFECTIVE DATE: January 11, 2012.

CASE FILE NUMBER: M11-033.

LICENSEES: Carter Funeral Home (FE #86); Phillip Smoak (FSL #1907).

SUMMARY: An investigation by the Board determined that an owner of the funeral establishment was practicing without a license and did not comply with the price list requirements of the Funeral Rule.

BOARD ACTION: The Board approved a consent order placing both the funeral establishment and manager on probation for three (3) years and assessing a civil penalty of \$1,500.00. The manager and unlicensed person would also execute a management plan.

EFFECTIVE DATE: January 11, 2012.

Our Sympathies are extended to the families of:

Phyllis Ann Garvin, of Lafayette Funeral Home, Fayetteville, who died Friday June 3.

Timothy B. Hudson of Walker Funeral Home Chapel Hill who died Friday June 3.

Mr. Joseph Lindsay Joyce, of Tri-County Funeral Service - Joyce-Brady Chapel, in Bennett, who died July 25.

Mr. Bobby Gene Benton, of Wright Funeral Home in Franklin and Boykins and formerly with Johnson Funeral Home in Rocky Mount, who died August 28.

Charles Ray Burke, president of Burke Mortuaries, Maiden, who died September 23.

Frank Graham Butler, formerly of Sisk Butler Funeral Home in Bessemer City, Mr. Butler also worked with Carothers Funeral Home, McLean Funeral Directors and a Simple Service. He died October 14.

William Paisley "Bill" Roberts, 89, of Hillsborough, passed away Sunday, November 6, 2011, after a brief battle with cancer.

Mark Stephen Lanier, 67, of Cumby Family Funeral Service of High Point, died unexpectedly Sunday at his home.

Mr. Kenneth Nelson Honeycutt, 73, of 110 Forest Drive, died in NC Memorial Hospital Chapel Hill, Saturday, November 19, 2011.

Todd M. Sullivan, Sullivan's Highland Funeral Service, Fayetteville who died November 21, 2011.

Mary Ellen McKinney, co-founder of the former McKinney Funeral Home, now McKinney-Landreth & Carroll Funeral Home, Cliffside, who died December 5, 2011.

James Patrick Greeley former co-owner of Wells Funeral Homes, Inc., Canton and Waynesville, who died December 24.

Carrie Mae Hester, owner of Carrie Hester Funeral Home, Maxton who died January 10.

Daniel "Dan" Joseph Wheeler, co-owner of Wheeler and Woodlief Funeral Home, Rocky Mount who died January 11, 2012

Nelson T. Daniel, owner of G.T. Eakes Funeral Homes in Oxford and Creedmoor, who died January 14.

George P. King, of Moore Funeral Home and Cremation Service, who died January 14.

Charles B. Reese, owner and operator of Cremation Services, Inc., Winston-Salem who died January 28.

(If a reader is aware of the death of a licensee that has not been acknowledged in this section, please inform the Board staff.)

A d v i s o r y *o p i n i o n s*

A North Carolina funeral director who owns funeral homes and a crematory in North Carolina, requested the Board to issue an opinion to clarify jurisdictional issues for cremating the body of a person who died outside of North Carolina.

The Board staff receives occasional telephone inquiries from other licensees for similar issues with Virginia, South Carolina, and Tennessee, and other North Carolina licensees are receiving communication from representatives of the jurisdictions attempting to enforce the cremation laws and regulations of the jurisdictions on the North Carolina licensees.

These neighboring jurisdictions require separate and specific authorization from a government agent or agency to cremate a body. In Virginia a medical examiner must authorize the cremation of a body, in South Carolina the

coroner for the county where death occurred must authorize cremation and in Tennessee a medical examiner must be informed of every cremation and a vital records registrar must issue a cremation permit. In contrast, North Carolina does not require a medical examiner's authorization for every cremation but requires authorization in specific circumstances.

All of these neighboring jurisdictions specifically define final disposition to include removal from the state. This clearly shows each jurisdiction considers removal from the state as a final disposition method, thereby ending its authority in the matter. As long as the legal requirements for removing a body from another jurisdiction are met and that jurisdiction has given its permission for a body to be removed in the form of a burial-transit permit or similar document, that jurisdiction cannot enforce its cremation requirements.

Advisory opinions cont. from page 6

When a North Carolina licensee performs a cremation in North Carolina for a death occurring in another state, all North Carolina laws and regulations must be followed. Of particular importance is obtaining and keeping permanent file copies of the burial-transit permit from the other jurisdiction. N.C. Gen. Stat. § 130A-113(d).

Although compliance with other states' cremation laws for cremations performed in North Carolina is voluntary, there may be practical reasons for North Carolina licensees to obtain permission from the jurisdiction where death occurs. It may be in the best interest of the NC licensee to obtain permission from the other jurisdiction in order to avoid delays in cremation. When a death occurs out of state under circumstances not subject to an exception granted under the provisions of Chapter 130A of the North Carolina General Statutes and Title 10 of the Administrative Code for medical examiner jurisdiction, the North Carolina licensee must obtain M.E. authorization for cremation through completion of form DHHS 1181 "Authorization for Cremation". One of the exceptions applies to cases when a person dies in another state and that state gives written authorization for cremation. Obtaining that permission may prevent delays in performing the cremation in North Carolina.

Adopted by the Board on September 14, 2011.

NCFDA requested the Board's opinion on when a consumer has an irrevocable preneed contract for a traditional service, but upon death the family wishes direct cremation and a refund of the balance on deposit.

The determining factor is whether the preneed contract can be used as a disposition document under N.C. Gen. Stat. § 130A-420(a)(1). A preneed contract will be considered the highest priority of written documents other than final disposition documents used by the military.

When the preneed contract was purchased and signed by the preneed contract beneficiary, the type of disposition generally must be honored unless the survivors obtain a court order. A law change in 2007 allowed the purchaser to restrict future changes to the contract by family members after death. N.C. Gen. Stat. §90-210.63A(b) allows a preneed contract purchaser to specify in writing particular people who can make changes to the goods and services selected. A person may specify that the arrangements selected cannot be changed without an order from the Clerk of Superior Court finding that the change is in the best interest of the estate of the deceased. For example, a clerk of superior court could find it in the best interest of the estate to allow cremation rather than burial if the preneed contract was not fully funded and the estate would have to pay the balance. A

fully funded preneed contract for burial may be harder to change.

The intent to use a preneed contract as a disposition document can usually be determined by the last Preneed Statement of Goods and Services Selected (SGSS) executed by the preneed contract beneficiary. A SGSS that has an immediate burial or a traditional service is sufficient to establish the purchaser's intent to be buried. A SGSS that has a direct cremation or cremation charges with a funeral or memorial service is sufficient to establish the purchaser's intent to be cremated. If the intent of the purchaser is ambiguous, the preneed contract cannot be used as a disposition document. For example, a SGSS that shows purchase of a casket or alternative container without other services would be invalid, but a SGSS that shows purchase of an outer burial container would show intent to be buried. Each determination would be made on the facts of each case, and licensees presented with ambiguous cases should either have the family obtain a court order or obtain additional authorization permission from the next-of-kin.

A second scenario involves an individual who purchases a preneed contract for another individual. If the person purchasing the preneed contract does so under a written designation specified by N.C. Gen. Stat. § 130A-420, such as a health care power of attorney, that individual can make preneed arrangements binding unless the preneed contract beneficiary revokes the authority and the corresponding arrangements.

A third scenario is an individual who purchases a preneed contract for another individual but without legal authority to direct disposition of the other individual's body. In the absence of other written documents meeting the requirements of N.C. Gen. Stat. § 130A-420(a), then the arrangements selected are not binding and the individual(s) in the priority order listed under paragraph (b) of can choose final disposition just as if the preneed contract had never been executed.

For all trust contracts and insurance contracts that have the estate as the contingent beneficiary, refunds are handled in accordance with GS 90-210.64(d), which states "when the balance of a preneed funeral fund is one hundred dollars (\$100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars (\$100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary." For insurance contracts with a contingent beneficiary, the overage is paid according to the terms of the policy.

Licensee & Trainee Address Update

If your mailing address needs to be updated, please use this simple form to update the Board's information. Once you have completed the address correction form, please place it in a stamped envelope and mail it to:

North Carolina Board of Funeral Service
1033 Wade Ave., Suite 108
Raleigh, NC 27605

LICENSEE/TRAINEE NAME _____ LIC. NUMBER _____

CORRECT MAILING ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

SIGNATURE _____

Address Update Form can be found on the last page of this issue!

Return Service Requested

North Carolina Board
of Funeral Service
1033 Wade Ave., Suite 108
Raleigh, NC 27605

