



North Carolina Board of Funeral Service Newsletter

Volume 14, Issue 11

November 2018

Board Encourages Licensees to Renew On-Line

Time to Renew!

Licensees and establishments are reminded that the deadline for renewal is fast approaching. All individual licenses and business permits must be renewed by December 31, 2018, and absolutely no later than February 1, 2019, to avoid forfeiture of your license. Board staff encourage licensees to take advantage of the new on-line renewal portal at:

<https://ncbfs.igovsolution.com/renewal/renewal/renewallogin.aspx>

- Step 1:** Indicate whether your renewal is personal or for an establishment
- Step 2:** Choose permit type from drop-down menu and log into your profile
- Step 3:** Answer the questions and follow the prompts for renewal and payment

On-line renewal is a convenient and easy way to renew your license, and it offers a secure option for payment by credit card. As of the end of November, more than five hundred licensees have already taken advantage of this quick, easy option for license renewal, and Board staff continue to receive renewals daily from licensees using the portal.

If you want to print your renewal form and receipt showing payment through the on-line portal, please log out and then log-in again to prompt the system to provide this information.

Printed renewal applications were mailed December 3rd to all licensees who have not yet renewed their license. Licensees may elect to complete the printed application form and return it to the Board office along with payment by check by December 31, 2018, or renew on-line.

Licensees will notice a new question on the 2019 renewal form pertaining to whether or not they have ever been subjected to an investigation as a “misclassified employee.” This new information, which affects all Occupational Licensing Boards, will help the NC Industrial Commission better track complaints of suspected misclassification.

Important Dates

December 12th

NCBFS Board Meeting
1033 Wade Ave, Suite 108
Raleigh, NC – 9:00 am

December 24th, 25th, and 26th

NCBFS observes Christmas
Holidays – Offices Closed

December 31st

Deadline for license renewal

Congratulations to New NCBFS Officers!

At its November meeting, the NC Board of Funeral Service elected officers for 2019. The new slate of leaders includes:

President	Mr. J. Stephen Herndon	The Padgett & King Mortuary and Crematory, Forest City, NC
Vice-President	Mr. P. Mark Blake	Brown-Wynne Funeral Home, Raleigh, NC
Secretary	Mr. Don Brown	Don Brown's Funeral Home, Ayden, NC

The Board extended thanks and appreciation to the 2018 officers Matt P. Staton, President; Charles Graves, Vice-President; and Steve Herndon, Secretary.

Transport Permits Subject To New Liability Insurance Requirements

As explained in prior newsletters, individuals approved for a Transport permit are now required to maintain a professional liability insurance policy with liability limits of at least \$500,000.

Permit holders must submit certificates of this liability insurance within 30 days of initial licensure and then submit annually to the Board as a condition of renewal.

Licensee must notify the Board in writing within 30 days of any change in the insurer or any cancellation/suspension of the policy.

Individuals working for a transport company must secure an individual transport permit and must present evidence of a personal certificate for the required insurance. Or, the individual permit holder may request documentation from the employer that they are covered under the transport company's liability coverage.

This new insurance requirement is a direct result of the ratification of HB529 which amended the NC Funeral Practice Act and took effect October 1, 2018.

Preneed to At-Need Contract Calculator Also Included

Board Approves Changes to Certificates of Performance [COP]

In October, the NC Board of Funeral Service approved a revised **Certificate of Performance** and **Inflation-Proof Preneed to At-Need Contract Calculator**. The new certificate is intended to clarify a number of compliance questions that licensees have directed to Board staff regarding requirements for filing a Certificate of Performance.

The revised calculator was formatted to allow for those situations where an inflation-proof preneed contract may have been transferred to a new

preneed establishment prior to the beneficiary's death.

There are often times when the new contract price is significantly less than the amount of funds available in the insurance policy or policies and/or trust account(s).

If the contract was irrevocable, the purchaser would not have been able to receive a refund for the excess funds at the time the new preneed contract was purchased.

The revised calculator will allow licensees to provide for proper credits or refunds to the family or the estate under such circumstances.

Another significant change licensees will notice is that the Board's calculator spreadsheet is now incorporated into and referenced within the Certificate of Performance.

Its use will be required when an inflation-proof contract is performed by the funeral establishment considered to be the "contracting" firm at the time of the contract beneficiary's death.

Both the revised Certificate of Performance and the new Preneed Calculator were approved in October for immediate use and are available on the NCBFS website at www.ncbfs.org. You will find these revised forms under the Licensee tab and then by clicking on "Applications & Forms."

Use of the revised forms will be mandatory effective January 1, 2019. If you have any questions concerning either form, please contact the Compliance Inspector for your region.

Revised in October 2018

Board-Approved Forms Now Available For Licensees

In addition to the certification of performance and calculator, licensees are also reminded of the other Board form revisions stemming from Session Law 2018-78 ("HB-529"). Beginning January 1, 2019, each of the revised forms listed below is mandated for use by licensees. These forms are currently available on the Board's website and may be used prior to the mandatory effective date.

- | | |
|-----------------|--|
| ❖ Form BFS 55A | Waiver of Waiting Period for Cremation |
| ❖ Form BFS 56A1 | Receipt of Human Remains By Crematory Licensee |
| ❖ Form BFS 56B1 | Record of Cremation by Crematory Licensee |
| ❖ Form BFS 56C1 | Delivery of Cremated Remains from Crematory Licensee |
| ❖ Form BFS 56G1 | Consolidated BFS 56A1, BFS 56B1, BFS 56C1 |
| ❖ Form BFS 56D1 | Delivery of Cremated Remains from Funeral Provider |
| ❖ Form BFS 56E1 | Authorization for Cremation of Amputated Body Parts |
| ❖ Form BFS 56F1 | Confirmation of Fetal Death for Cremation |

The Board also approved a revised Form BFS 59, or Standard Cremation Authorization Form, at its August meeting. While this model form is not required for use, any cremation authorization form used or accepted by a crematory licensee must meet the requirements of G.S. § 90-210.125. If you have any questions regarding the authorization form used by your firm, please contact your inspector. He or she will assist you with reviewing for compliance.

NCBFS Website – Timely Information for Licensees & Consumers –
www.ncbfs.org

COMPLIANCE OPINIONS

The Board's Compliance Officer periodically issues Compliance Opinions in response to questions and issues that licensees raise regarding the Board's administrative rules and/or statutes.

Board staff does not provide legal advice to licensees. Should you have questions concerning your legal rights particularly pertaining to potential liability to any third party or otherwise, you should speak to an attorney of your choice. The purpose of the Compliance Opinion is to provide you with staff's opinion regarding whether or not your proposed conduct as a licensee and crematory manager, respectively, would be in compliance with the Board's governing statutes and rules based solely upon the facts provided to staff.

The following Compliance Opinion responds to an inquiry from a consumer regarding a requirement for a funeral establishment to accept a casket ordered from a third party. The consumer's name and address have been omitted.

STAFF COMPLIANCE OPINION No.: CO18-046

DATE ISSUED: October 15, 2018

Our office is in receipt of your September 17, 2018 correspondence addressed to the Consumer Protection Division of the N.C. Department of Justice. In it, you specifically requested a copy of this State's statute(s) that would require a funeral establishment to accept delivery of a casket ordered from a third party by the individual(s) responsible for arranging a decedent's final disposition.

N.C. Gen. Stat. § 90-210.23(f) grants the N.C. Board of Funeral Service (the "Board") the authority to "enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. [§] 453 (1984), as amended from time to time."

16 C.F.R. § 453.4(b)(1) addresses your particular question and reads, as follows:

Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

*(i) **Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part; (emphasis added)***

*(ii) **Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2). (emphasis added)***

Further, N.C. Gen. Stat. § 90-210.25(e)(1)(j) grants the Board authority to “suspend or revoke the license or refuse to issue the license” of any “applicant for a license or a person to whom a license has been issued by the Board” for “violating or cooperating with others to violate[,] [among other things], or the standards set forth in Funeral Industry Practices, 16 C.F.R. [§] 453 (1984), as amended from time to time.”

That said, it is Board Staff opinion that any funeral establishment doing business in this State must comply with the provisions of 16 C.F.R. 453.4(b)(1)(i) & (ii) and, therefore, would also be required to accept delivery of a casket ordered from a third party by the individual(s) responsible for arranging a decedent’s final disposition.

Please be advised that any opinions heretofore expressed are those of Staff charged with enforcement of the Board’s governing statutes and rules. They have not been reviewed, approved, or otherwise adopted by the Board, nor are they binding upon the Board. If you disagree with Staff’s position on this matter, you may have the right to request a declaratory ruling from, or hearing before, the Board pursuant to [the North Carolina Administrative Procedure Act](#).ⁱ

Prepared By: Brett Lisenbee, Compliance Officer

The NCBFS Compliance Staff

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Terri Robinson-McLean	South Eastern Region	919.410.4608

For a listing of counties in each region and the On-Call schedule for inspectors, please visit www.ncbfs.org

Complete copies of the Disciplinary Actions taken by the Board are available on the Board's website here: <https://ncbfs.org/disciplinary-actions.php>

Board Case Number: C18-0001

Respondent: Thos. Shepherd & Son, Inc., Shepherd Memorial Park, Inc., and Thomas R. Shepherd

Summary: Complainants alleged that, over the course of a month, they repeatedly asked Respondent Funeral Establishment to complete a certificate of performance and provide it to the financial institution at which preneed funds were held for a decedent whose next-of-kin had chosen another funeral home for services at the time of death. Respondents failed to do so. Respondent Funeral Establishment previously had been issued a letter of caution regarding the failure to timely transfer a preneed contract, upon request. Respondents also failed to timely submit their 2017 Preneed Annual Report.

Board Action: The Board adopted a Consent Order, whereby the Respondents agreed to the following discipline:

1. The At-Need Establishment Permit and the Preneed Establishment Permit are placed on a one (1) year stayed suspension, provided that:
 - a. Respondent Establishment shall submit their 2017 Preneed Annual Report within fifteen (15) days from the date that this Consent Order takes effect. Failure to timely submit Respondent Establishment's 2018 Preneed Annual Report on or before March 31, 2019 shall result in the stay of the suspension for Respondent Establishment's Preneed Permit being automatically lifted for the pendency of the suspension;
 - b. Respondent Establishment admits to the violations;
 - c. Respondent Establishment shall be placed on probation during the period of stayed suspension;
 - d. Respondent Establishment shall not violate any law or rule of the Board during the period of suspension; and
 - e. Within thirty (30) days from the date this Consent Order takes effect, Respondent Establishment shall pay a compromise penalty of One Thousand Five Hundred (\$1,500.00) Dollars to the Civil Penalty and Forfeiture Fund.

2. The Funeral Director's License of the Licensed Manager of the Respondent Funeral Home is placed on a one (1) year stayed suspension, provided that:

- a. Respondent Individual admits to the violations;
- b. Respondent Individual shall be placed on probation during the period of stayed suspension;
- c. Respondent Individual shall not violate any law or rule of the Board during the period of suspension; and
- d. Within thirty (30) days from the date this Consent Order takes effect, Respondent Individual shall pay a compromise penalty of Five Hundred (\$500.00) Dollars to the Civil Penalty and Forfeiture Fund.

Effective Date: November 14, 2018

Board Case Number: M17-045, C17-057, C17-063, M18-032, C18-026, C18-040, C18-041, C18-044, C18-045

Respondent: Howell Funeral Services of Pilot Mountain, Inc. d/b/a Howell-Nelson Funeral Service & Crematory and Ralph D. Howell, Sr

Summary: Respondents violated the terms of a Consent Order entered into with the Board in March 2018 by: (i) failing to timely submit cremation reports for five [5] months; (ii) failing to timely submit their 2017 Preneed Annual Report; and (iii) failing to pass a Board examination of Preneed files without substantial deficiencies. Moreover, the Board received four (4) consumer complaints regarding Respondents' failed to timely file and provide death certificates for which consumers paid and one (1) consumer complaint regarding a failure to timely file a preneed contract. Respondents' preneed and crematory permits have been suspended since June 13, 2018. Respondent Funeral Home has taken remedial action to address the consumer complaints and other deficiencies since June 2018.

Board Action: The Board adopted a Consent Order, whereby the Respondents agreed to the following discipline:

1. The At-Need Establishment Permit and the Preneed Establishment Permit, and Crematory Permit are placed on a three (3) year stayed suspension, provided that:
 - a. Respondent Establishment shall hire a new licensed manager within 180 days from the date that the Consent Order takes effect and shall retain the services of a professional consultant to assist with the operational oversight of the establishment until such time that a new licensed manager is hired;
 - b. Respondent Establishment admits to the violations;
 - c. Respondent Establishment shall be placed on probation during the period of stayed suspension;
 - d. Respondent Establishment shall not violate any law or rule of the Board during the period of suspension; and

- e. Within thirty (30) days from the date this Consent Order takes effect, Respondent Establishment shall pay a compromise penalty of Two Thousand Five Hundred (\$2,500.00) Dollars to the Civil Penalty and Forfeiture Fund.
2. The Funeral Director's License of the Licensed Manager of the Respondent Funeral Home is placed on a three (3) year stayed suspension, provided that:
 - a. Respondent Individual admits to the violations;
 - b. Respondent Individual shall be placed on probation during the period of stayed suspension; and
 - c. Respondent Individual shall not violate any law or rule of the Board during the period of suspension.

Effective Date: November 14, 2018

Board Case Number: M18-059

Respondent: Kenneth Scott Hopman

Summary: Applicant for a removal and transportation permit indicated on his application for licensure that he never had been convicted of any felony or misdemeanor crime, other than a traffic infraction. However, applicant was convicted of a misdemeanor in 2002 and in 2003.

Board Action: The Board adopted a Consent Order, whereby the Board conditionally granted Respondent's Application for a Removal and Transportation Permit upon the following terms: (1) He commit no infractions of criminal laws over the twelve (12) month period immediately following the effective date of the Consent Order; and (2) He commit no infractions of the statutes and rules of this Board during the twelve (12) month period immediately following the effective date of the Consent Order.

Effective Date: November 14, 2018

Board Case Number: M18-036

Respondent: Williford Funeral Home and Alvis Thomas Williford, Jr.

Summary: Respondent Funeral Home completed a certificate of performance for two individuals and withdrew the entrusted preneed funds from their respective preneed accounts. According to the certificate of performance, Respondents allege that they filed a death certificate for the decedents but did not do so. No such death certificate was filed for the decedents. Moreover, Respondents did not submit the certificates of performance to the Board. Respondent Funeral Home already has surrendered its at-

need establishment. The Preneed Establishment Permit and the Funeral Director License of the former Licensed Manager have been on a stayed suspension since the October Board meeting.

Board Action: The Board adopted a Consent Order, whereby the Respondents agreed to the following discipline:

1. The Preneed Establishment License and all ancillary preneed sales licenses are revoked;
2. The Funeral Director's License of the former Licensed Manager of the Respondent Funeral Home is surrendered;
3. The successor establishment to Respondent Funeral Home agrees to terminate all employment with the former Licensed Manager and agrees not to offer or transfer any management and/or employment interests to the former Licensed Manager in the future without prior written approval from the Board;
4. The active preneed contracts currently associated with the Respondent Funeral Home shall be transferred by the Board to a substitute preneed licensee in good standing and close geographical proximity, other than the successor establishment; and
5. The former Licensed Manager agrees to repay to the Board's Preneed Recovery Fund the amount of Fifteen Thousand Three Hundred Forty-Five Dollars and 24/100 (\$15,345.24) in eight (8) equal installments to be paid over the next twenty-four (24) months following the effective date of this Consent Order.

Effective Date: November 14, 2018

Congratulations, New Licensees & Trainees!

Funeral Establishments

Life and Legacy Funerals and Cremations, LLC
L. Harold Poole Funeral Service & Crematory
Wells Funeral Homes & Cremation Services

Indian Trail, NC
Knightdale, NC [Ownership Change]
Waynesville and Canton, NC [Ownership Change]

Funeral Service Licensees

Gary D. Pendry Bassett, VA
Scott Willison Manteo, NC

Funeral Director Licensees

Camille-Macie Rumph Winston-Salem, NC

Transporters

Harry L. Smith, Jr. Clayton, NC
Yvette M. Whitley Raleigh, NC

Trainees

Julian A. Buckmire	Brown-Wynne Funeral Home
Ryan J. Clark	Apex Funeral Home
Levi J. Elliott	Willis-Reynolds Funeral Home
Jefferson R. Green	J.C. Green & Son Funeral Home
Gustavo E. Gomez	Boles Funeral Home
Richard P. Howard	Townson Rose Funeral Home
Hunter E. Hildreth	Gordon Funeral Service & Crematory
Clarence B. Hunt, II	Serenity Funeral Home & Cremations
Nathaniel Johnson	Macon Funeral Home
Ryan B. Knight	Hartsell Funeral Home
Tara Beth Korhonen	Jones Funeral Home
Amanda L. Negrón	Boston's Mortuary



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Chris Stoessner	Region 4
Terri Robinson-McLean	Region 5
*Inspector for Region 1	

HAPPY HOLIDAYS

At this season,
We take time to reflect
On the good things we have . . .
Like our partnership with you.
We appreciate working with you
And hope that the holidays
And the coming year
Will bring every happiness
And success.

Looking Back Overby Funeral Home

Started by Joseph R. Overby in Four Oaks, NC, in the 1930's, Overby Funeral Home had locations in Raleigh, Clayton, Angier, Coats, and Smithfield for many years.

NCBFS connections include Alex Lee, former NCBFS Board President and President of Bryan-Lee Funeral Homes, who started his career at Overby's; Elton and the late Geraldine Parrish, founders of Parrish Funeral Home in Selma, NC, who lived in the funeral home in the 1940's; and Executive Director Stephen Davis who lived in the funeral home from 1949 to 1951 when his father was a funeral director and embalmer at Overby's.

The rocks used in the funeral home's construction came from local cemeteries as graves were dug. The funeral home was destroyed by fire in the 1980's.

The photograph below is a post card announcing the funeral home's Grand Opening Celebration in 1942.

