

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
FILE NO.: 17 BMS 02004

NORTH CAROLINA BOARD OF  
FUNERAL SERVICE,

Petitioner,

CODY T. MCCAIN, HENRY COLVIN, JR., and  
COLVIN FUNERAL HOME & CREMATORY,

Respondents.

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**CONSENT ORDER**

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IN 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, upon requests of counsel for Respondents Henry Colvin, Jr., Colvin Funeral Home & Crematory, and Cody T. McCain, (collectively "Respondents") to discuss the proposed Consent Order, and the Respondents and Board, with a quorum present, stipulate and agree to entry of the following Consent Order.

In consideration of the compromise of a resolution to certain disputed claims and in order to terminate further controversy and avoid additional proceedings, Respondents consent to the terms of this Consent Order. However, Respondents do not admit for any other purposes or proceedings, other than this disciplinary matter and any other disciplinary or licensure proceedings before this Board, the Findings of Fact and Conclusions of Law contained in this Consent Order.

### **FINDINGS OF FACT**

1. Respondent Cody T. McCain (“McCain”) is licensed by the Board as Funeral Director No. 4071, holds a preneed sales license on behalf of Respondent Colvin Funeral Home & Crematory (“Colvin FH”), serves as the licensed manager of Colvin FH, and is subject to Chapter 90 of the North Carolina General Statutes; Title 21, Chapter 34 of the North Carolina Administrative Code; and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).
2. Respondent Henry Colvin, Jr. (“Colvin”) is licensed by the Board as Funeral Service No. 1031, holds a preneed sales license on behalf of Colvin FH, is President of the North Carolina corporation owning Colvin FH, and is subject to Chapter 90 of the North Carolina General Statutes; Title 21, Chapter 34 of the North Carolina Administrative Code; and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).
3. Respondent Colvin FH is licensed by the Board as Funeral Establishment No. 111 and Preneed Funeral Establishment No. 172, and is subject to Chapter 90 of the North Carolina General Statutes; Title 21, Chapter 34 of the North Carolina Administrative Code; and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).
4. On January 24, 2017, the Board’s inspector M. David Hall (“Inspector Hall”) conducted an examination of Colvin FH’s trust and insurance funded preneed contracts (“2017 Examination”) pursuant to N.C. Gen. Stat. §§ 90-210.24 and 90-210.68.
5. During the 2017 Examination, Inspector Hall determined that multiple preneed funeral contract files specifying cremation were incomplete in that they did not specify the disposition of the subject cremated remains subsequent to the death.

6. During the 2017 Examination, Inspector Hall determined that the trust-funded preneed contract files for two (2) preneed consumers could not be audited because the associated most recent bank statements were not available for review and inspection.
7. During the 2017 Examination, Inspector Hall determined that pay-out information relating to the performance of the preneed funeral contracts for two (2) preneed contract files was unavailable for the review and inspection at the location where the funeral service was performed.
8. During the 2017 Examination, Inspector Hall determined that copies of at-need Statements of Funeral Goods and Services Selected, signed by a licensed funeral director, for closed preneed contract files were unavailable for review and inspection.
9. During the 2017 Examination, Inspector Hall determined that copies of certificates of performance associated with certain closed files were unavailable for review and inspection.
10. During the 2017 Examination, Inspector Hall determined that Respondents failed to file Certificates of Performance for multiple preneed contract beneficiaries.
11. During the 2017 Examination, Inspector Hall determined that in the closed preneed contract file for one preneed contract file, final payout at the time of death was not recorded and thus unavailable for review and inspection, making it impossible to compute the formula for calculating the cash advance and sales tax items and subsequent possible refunds owed to the beneficiary's family.
12. Colvin FH's Preneed Annual Report for 2014 was not timely submitted to the Board for review and inspection..

13. Colvin FH's Preneed Annual Report for 2015 was not timely submitted to the Board for review and inspection.

14. Colvin FH's Preneed Annual Report for 2016 was not timely submitted to the Board for review and inspection. BASED upon the foregoing Findings of Fact, the Board makes the following:

### **CONCLUSIONS OF LAW**

1. Pursuant to N.C. Gen. Stat. §§ 90-210.23, 90-210.69, and 90-210.80, the Board has the power and responsibility to administer Articles 13A, 13D, 13E, and 13F of Chapter 90 of the North Carolina General Statutes and their promulgated rules.
2. The Board has jurisdiction both over the subject matter of this action and over the parties. Venue is proper.
3. Respondents' conduct described herein violated N.C. Gen. Stat. § 90-210.68 and 21 NCAC 34D .0301 by failing to maintain for review and inspection accurate and complete preneed records at all times.
4. Respondents' conduct described herein violated N.C. Gen. Stat. §§ 90-210.64(a) & (e)(3) and 21 NCAC 34D .0301(b) by failing to timely file certificates of performance with the Board.
5. The Board has determined that Respondents remain fit to practice funeral service.
6. Pursuant to N.C. Gen. Stat. §§ 90-210.25(e) and 90-210.69(c)(6), the Board may take disciplinary action against a licensee who violates or cooperates with others to violate the laws, rules and regulations enforced by the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time. Upon a finding that a licensee has committed a violation of a law or rule enforced by the



Board but remains fit to practice, the Board has the authority to place the licensee on probation and to assess a civil penalty not to exceed \$5,000.00.

7. Pursuant to N.C. Gen. Stat. §§ 90-210.25(d)(4) and 90-210.69(d), the Board has the authority to place Colvin FH on probation and to assess a civil penalty not to exceed \$5,000.00, pursuant to this Consent Order.
8. Pursuant to N.C. Gen. Stat. § 90-210.69(f), the Board considers the following in determining the amount of the penalty imposed:
  - a. No evidence of consumer harm, fraud or deceit;
  - b. Respondents' consistently failed to timely respond to correspondences from Board staff; and
  - c. A pattern of Respondents' untimely responses to correspondences from Board staff.

BASED upon the foregoing Findings of Fact and Conclusions of Law, and in lieu of further proceedings pursuant to 21 NCAC 34A .0100, 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, for good cause shown and with the consent of Respondents, it is ORDERED that:

1. The preneed funeral establishment permit, and all ancillary preneed sales licenses, of Colvin FH are hereby placed on probation for a period of two (2) years, to begin on the date this Consent Order is fully executed. Throughout the duration of the probationary period, Respondents must respond to any Board correspondence within seven (7) business days of receipt.
2. The funeral service license of Colvin is hereby placed on probation for a period of two (2) years, to begin on the date this Consent Order is fully executed.
3. The funeral directing license of McCain is hereby placed on probation for a period of one (1) year, to begin on the date this Consent Order is fully executed.
4. Within ninety (90) days from the date this Consent Order is executed, the following conditions must be satisfied:
  - a. Respondents must correct, to the reasonable satisfaction of the Board and Board staff, all deficiencies identified in the 2017 Examination and preneed annual report correspondences (a copy of all outstanding deficiencies shall

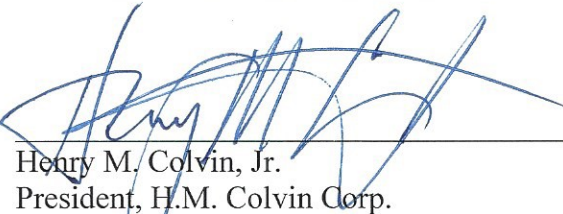
be provided by the Board staff to Respondents upon execution of this Consent Order);

- b. Colvin and Colvin FH must pay any and all fees assessed as a result of the late filing of each and every Certificate of Performance;
  - c. Colvin and Colvin FH must pay a compromise penalty of \$1,500.00; and
  - d. At the conclusion of the ninety (90) day period, Colvin FH must submit to and pass, without substantial deficiency, a re-inspection and a re-examination of its preneed contracts.
5. On or before December 31, 2018, each and every preneed sales licensee employed by Colvin FH shall provide proof to Board staff that he or she has successfully completed the sum of five (5) credit hours of continuing education courses, three (3) credit hours of which shall be the preneed course taught by Board staff and sponsored by the Board.
6. The Board shall retain jurisdiction under Article 3A, Chapter 150B for further proceedings under this Consent Order. If the Board receives evidence that Respondents committed any violation of the Board's laws and rules during their respective probationary periods, or if the Board receives evidence that a violation of this Consent Order has occurred, the Board may schedule a show cause hearing to determine if violations have occurred. If the Board determines that such violations have occurred, then the Board may impose any disciplinary action authorized by Chapter 90 of the North Carolina General Statutes and may take any action it deems appropriate in the General Court of Justice to enforce this Order.

7. This Consent Order shall take effect immediately upon its execution by all parties and reflects the entire agreement between Respondents and the Board, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Consent Order.
8. 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.
9. 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.
10. 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. **CONSENTED TO:**

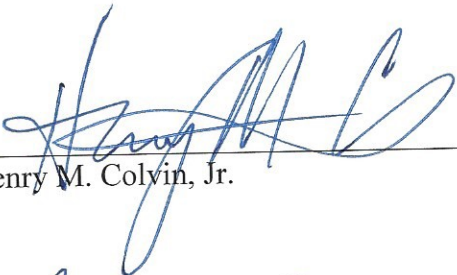
COLVIN FUNERAL HOME & CREMATORY

By:  Date: 10/12/17  
Henry M. Colvin, Jr.  
President, H.M. Colvin Corp.

By:  Date: 10/12/17  
Cody T. McCain

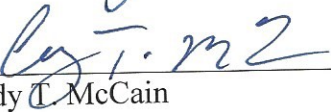


Licensed Manager, Colvin Funeral Home & Crematory



Henry M. Colvin, Jr.

Date: 10-12-17



Cody T. McCain

Date: 10/12/17

By Order of the North Carolina Board of Funeral Service, this the 12<sup>th</sup> day of

OCTOBER, 2017.

By:



Charles Graves  
Board President