BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

In the matter of the application of:

GEORGE H. TREASTER
DBA WHITE FUNERAL HOME

ORDER OF THE MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS ISSUING A PROBATED PRENEED PROVIDER LICENSE TO GEORGE H. TREASTER DBA WHITE FUNERAL HOME

Comes now the Missouri State Board of Embalmers and Funeral Directors (the "Board") and hereby issues its ORDER granting a PROBATED preneed provider license to George H. Treaster doing business as White Funeral Home ("Treaster") 156 S. Main Street, Ironton, Missouri, 63650 pursuant to the provisions of Section 324.038, RSMo (2000).[1] As set forth in Section 324.038, RSMo, Treaster may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated preneed provider license. Such written request must be filed with the Administrative Hearing Commission within 30 days of issuance of this order of the Board. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Such request shall set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession.

[1]Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri 2000, as amended.

If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Treaster shall have the right to present testimony, call witnesses on his behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board. Following the hearing, the Administrative Hearing Commission shall issue findings of fact, conclusions of law and a decision based on all evidence admitted at the hearing. A copy of the findings of fact, conclusions of law and decision shall be delivered to the parties. Review of the decision of the Administrative Hearing Commission shall be pursuant to Chapter 536, RSMo.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should Treaster file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

I.

Accordingly, the Board hereby states:

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, for the purpose of executing and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

2. George Treaster is a licensed funeral director and a licensed embalmer in the State of Missouri. Prior to August 28, 2009, Treaster was registered with the Board as a preneed provider.

3. On or about October 30, 2009, Treaster filed a Provider Application with the Board for a preneed provider license for George Treaster doing business as White Funeral Home.

4. Prior to this application and prior to August 28, 2009, Treaster entered into preneed contracts with consumers but failed to deposit the payments of these contracts into a preneed trust. Instead, Treaster deposited such payments into his own business account.

5. Specifically, Treaster entered into separate preneed contracts with Ruth Propst (in the amount of $3,595.72), Henry Harbison (in the amount of $5,424.77) and Brenda Tiefenauer (in the amount of $5,645.95). Treaster received payments greater than twenty percent of the face value of each contract. Treaster deposited the payments made toward these contracts into his own business account and not into a preneed trust account. Forethought Federal Savings Bank, the trustee listed on each of the preneed contracts listed above, was unaware of these three contracts until receiving an inquiry from Board staff. As of the date of this Order, Treaster has still not deposited any of the payments made toward these contracts into a preneed trust account.

6. Section 333.315.1 provides:

> No person shall be designated as a provider, or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

7. Section 333.330.1 provides:

> The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

8. Cause exists for the Board to refuse to issue a preneed provider license to Treaster pursuant to § 333.330.2 (4), (5), (6), (10), (14) and (19),[2] which provide:

> The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:
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> (4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;
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> (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
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> (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;
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> (10) Misappropriation or theft of preneed funds;
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> (14) Violation of any professional trust or confidence;
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> (19) Violation of any of the provisions of chapter 193, 194, 407, or 436, RSMo[.]

9. Section 333.121, RSMo (Cum. Supp. 2008) provided, in pertinent part:

> 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in

[2] Effective August 28, 2009, § 333.330 replaced § 333.121. *See* House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1, 95th General Assembly, First Regular Session, 2009. At the time the violations set forth herein initially occurred (pre-August 28, 2009), § 333.121, RSMo (Cum. Supp. 2008) was in effect.

writing of the reasons for the refusal and shall advise applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

. . .

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

. . .

(13) Violation of any professional trust or confidence;

. . .

(15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo[.]

10. Section 436.027, RSMo (Cum. Supp. 2008) provided:

The seller may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until his has received for his use and benefit an amount not to exceed twenty percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

11. Sections 436.031 and 436.045, RSMo (Cum. Supp. 2008) set out the duties and requirements for a preneed contract trustee. Forethought Federal Savings Bank, the trustee listed

on the three contracts referenced above, has been unable to fulfill its duties as trustee due to Treaster's failure to deposit the contract payments into trust.

12. Treaster's failure to deposit payments on the preneed contracts referenced herein into trust and instead placing the payments into his own business account violates the statutory requirements set out herein.

13. Section 324.038.1 provides:

> Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

14. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues a probated provider license to George Treaster doing business as White Funeral Home. Such license is issued subject to the terms and conditions set forth below.

15. The Board issues this Order in lieu of denial of Treaser's application for a preneed provider license.

16. The Board has determined that this Order is necessary to ensure the protection of the public.

II.

Based on the foregoing, it is the Board's ORDER that George Treaster doing business as White Funeral Home is issued a preneed provider license and that license is placed on **PROBATION** for a period of **FIVE (5) YEARS** (the "Disciplinary Period"), commencing on the date of this Order. However, should Treaster provide to the Board documentation demonstrating to the Board's satisfaction that Treaster has deposited into trust the payments

made on all of the preneed contracts referenced herein as required by law, then this Disciplinary Period shall end at that time. During the Disciplinary Period, Treaster shall be authorized to function as a licensed preneed provider if he complies with all terms and conditions of the Disciplinary Period listed below.

Terms and Conditions of the Disciplinary Period

Terms and conditions of the Disciplinary Period are as follows:

A. Treaster shall keep the Board apprised at all times in writing of his current address and telephone number at each place of residence and business.

B. Treaster shall timely renew all preneed provider licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain this license in a current and active state.

C. If, at any time within the Disciplinary Period, Treaster changes his place of business or residence from the State of Missouri, ceases to be currently licensed as a preneed provider under the provisions of Chapter 333 and 436, RSMo, or fails to keep the Board advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.

D. Treaster shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws, rules and regulations related to the preneed funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

E. Treaster shall appear before the Board or its representatives for a personal interview upon the Board's request.

F. Treaster shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor its compliance with these terms and conditions.

G. Treaster shall submit written reports to the Board by no later than **January 1** and **July 1** during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Order.

Upon the expiration and successful completion of the Disciplinary Period, Treaster's preneed provider license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Treaster has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Treaster's preneed provider license.

No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

If the Board determines that Treaster has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing before it either during the Disciplinary Period, or as soon

thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 436, 610 and 324, RSMo.

IT IS SO ORDERED.

Becky Dunn Dated: 2/1/10

Becky Dunn
Executive Director
Missouri State Board of Embalmers and Funeral Directors