

**BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS**

In the Matter of the Application of:

THOMAS DEAN KRUSE HIEBER

**ORDER ISSUING A PROBATED
EMBALMER APPRENTICE REGISTRATION LICENSE**

COMES NOW, the Missouri State Board of Embalmers and Funeral Directors (the "Board") and pursuant to Section 324.038, RSMo¹, issues this order granting a **PROBATED EMBALMER APPRENTICE REGISTRATION LICENSE** to Thomas Dean Kruse Hieber. ("Hieber" or "Licensee"), 227 S. Washington, Nevada, Missouri 64772.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. 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. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee's profession. If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

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. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

1. 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.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.021.1, RSMo, requires a license to engage in the practice of embalming and states:

No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.

3. Section 333.041.3, RSMo, sets forth the requirements for licensure as an embalmer and requires every applicant for a full embalmer's license to serve an apprenticeship of not less than twelve consecutive months and states:

3. Each applicant for a license to practice embalming shall furnish evidence to establish to the satisfaction of the board that he or she:

- (1) Is at least eighteen years of age, and possesses a high school diploma or equivalent thereof;
- (2) Is either a citizen or bona fide resident of the state of Missouri or entitled to a license pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of Missouri who is employed by a funeral establishment located within the state of Missouri, to practice embalming upon the grant of a license to do so;
- (3) Is a person of good moral character;
- (4) Has graduated from an institute of mortuary science education accredited by the American Board of Funeral Service Education, or any successor organization recognized by the United States Department of Education, for funeral service education. If an applicant does not appear for the final examination before the board within five years from the date of his or her graduation from an accredited institution of mortuary science education, his or her registration as a student embalmer shall be automatically canceled;
- (5) Upon due examination administered by the board, is possessed of a knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative art, together with statutes, rules and regulations governing the care, custody, shelter and disposition of dead human bodies and the transportation thereof or has passed the national board examination of the Conference of Funeral Service Examining Boards. If any applicant fails to pass the state examination, he or she may retake the examination at the next regular examination meeting. The applicant shall notify the board office of his or her desire to retake the examination at least thirty days prior to the date of the examination. Each time the examination is retaken, the applicant shall pay a new examination fee in an amount established by the board;
- (6) Has been employed full time in funeral service in a licensed funeral establishment and has personally embalmed at least twenty-five dead human bodies under the personal supervision of an embalmer who holds a current and valid Missouri embalmer's license or an embalmer who holds a current and valid embalmer's license in a state with which the Missouri board has entered into a reciprocity agreement during an apprenticeship of not less than twelve consecutive months. "Personal supervision" means that the licensed embalmer shall be physically present during the entire embalming process in the first six months of the apprenticeship period and physically present at the beginning of the embalming process and available for consultation and personal inspection within a period of not more than one hour in the remaining six months of the apprenticeship

period. All transcripts and other records filed with the board shall become a part of the board files.

4. Board regulation 20 CSR 2120-2.010(12)-(15) and (19) sets forth the process for serving an embalmer apprenticeship and states:

(12) After the applicant has made a passing grade on the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the embalming examination, s/he then may apply for registration as an apprentice embalmer. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination. This application shall contain the name(s) of the Missouri licensed embalmer(s) under whom s/he will serve. Each supervisor must be licensed and registered with and approved by the board. Any change in supervisor shall also be registered and approved within ten (10) business days after the change has been made. Applications shall be submitted on the forms provided by the board and shall be accompanied by the applicable fee. Application forms are available from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(13) Each apprentice embalmer shall provide to the board, on the application provided by the board, the name(s), location(s), and license number(s) of the licensed funeral establishment(s) where s/he is serving as an apprentice. If the apprentice embalmer begins work at any other licensed funeral establishment during the period of apprenticeship, the apprentice embalmer shall notify the board, on the form provided by the board, within ten (10) business days after the change has been made.

(14) The period of apprenticeship under this rule shall be at least twelve (12) consecutive months. The apprentice embalmer shall devote at least thirty (30) hours per week to his/her duties as an apprentice embalmer. During the period of the apprenticeship, the certificate of registration issued to the apprentice shall be displayed, at all times, in a conspicuous location accessible to the public at each funeral establishment where the apprentice is working.

(15) Prior to completion of the period of apprenticeship, the apprentice embalmer shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. This exam may be taken any time after graduating from an accredited institution of mortuary science, but shall be successfully completed prior to appearing before the board for oral

examination. The Missouri Law exam covers knowledge of Chapter 333, RSMo, and the rules governing the practice of embalming, funeral directing, and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition, and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo, relating to pre-need statutes and Chapters 193 and 194, RSMo, relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this section of the examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

(16) An affidavit provided by the board, signed by both the apprentice and the supervisor(s) verifying that the applicant has successfully completed the embalming of twenty-five (25) dead human bodies, shall be submitted to the board at the time of completion of the apprenticeship period and prior to the oral examination.

* * *

(19) After satisfactory completion of these requirements, an embalmer's license shall be issued to an apprentice embalmer upon payment of the applicable fee and subject to the provisions of section 333.121, RSMo.

5. Section 333.330, RSMo, authorizes the Board to deny an application for an embalmer apprentice registration license and states, in relevant portion:

1. 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.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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:

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence;

Criminal Statutes Violated by Hieber

6. In 2011, when Hieber was charged and pled guilty to driving under the influence, Section 32-23-1 and 32-23-2 of the South Dakota Codified Laws stated:

32-23-1. Driving or control of vehicle prohibited with alcohol in blood or while under influence of alcohol or drug

No person may drive or be in actual physical control of any vehicle while:

- (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance;
- (3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving;
- (4) Under the combined influence of an alcoholic beverage and or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or
- (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

32-23-2. Punishment for prohibited driving--First offense

If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days. However, the court may in its discretion issue an order upon proof of financial responsibility, pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling programs. The court may also order the revocation of the defendant's driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

Parties and Background

7. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

8. Hieber is an individual residing at 227 S. Washington, Nevada, Missouri 64772.

9. Hieber submitted his "Application for Embalmer's License" to the Board that he signed before a notary public on May 10, 2011, 2010 (the "Application").

10. Hieber holds an Associates in Science in Funeral Services degree conferred on him by St. Petersburg College, St. Petersburg, Florida.

11. The Division of Funeral, Cemetery & Consumer Services within the Department of Financial Services of Florida issued Hieber license number F060608 as a "concurrent internship" issued June 24, 2010 and set to expire on June 24, 2011. This license was valid with no adverse licensing history as of May 27, 2011.

12. Hieber is over the age of 18 years.

13. Hieber successfully completed the requirements for licensure as an embalmer apprentice.

Basis for Probation

Criminal Conduct

14. On January 10, 2011, a Complaint was filed charging Hieber with one count of driving under the influence of alcohol and once count of driving a vehicle and having more than .08 percent by weight of alcohol in his blood, in violation of the laws of South Dakota. *State of South Dakota v. Hieber*, Minnehaha County, Case number 11-0122.

15. On February 28, 2011, the Court entered an “Order Suspending Imposition of Sentence” stating that Hieber pled guilty to one count of driving under the influence and suspended imposition of sentence on the conditions that for two years, Hieber obey all laws, pay fine and costs and serve 2 days in the Minnehaha County jail. *State of South Dakota v. Hieber*, Minnehaha County, Case number 11-0122.

Application Disclosures

16. On his Application, Hieber answered “yes” to the question that states:

Have you ever been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States whether or not sentence was imposed (includes suspended imposition of sentence (SIS)).

17. On his Application, Hieber answered “no” to the question that states:

Have you ever been arrested, charged with or found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal, drug or alcohol laws or rules whether or not sentence was imposed (includes suspended imposition of sentence (SIS)).

18. Hieber provided the Board with court records and other information requested about his conviction for driving under the influence.

Cause To Deny Licensure

19. The Board has cause to deny Hieber's application for an embalmer apprentice registration license pursuant to Section 333.330.2(1) and (2), RSMo.

20. The Board finds that issuance of a probated embalmer apprentice registration license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues an embalmer apprentice registration license to Thomas Dean Kruse Hieber, on **PROBATION** for a period of **TWO YEARS** or until the completion of his apprenticeship, whichever comes first (the "Disciplinary Period"), subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of Probation

21. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

General Requirements

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws

and regulations related to business operations in the funeral and death care industry;

- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission as set forth in Section 333.330, RSMo;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Order. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active;
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- i. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;
- j. Licensee shall not operate a motor vehicle in the conduct of any business of embalming unless Licensee holds proper licensure issued by the State to operate a motor vehicle;

Chemical Dependency Requirements

- k. Licensee shall, within six (6) weeks from the effective date of this agreement, undergo an evaluation for chemical dependency performed by a Board approved licensed chemical dependency professional. Licensee shall submit for approval by the Board, the name, address, evidence that

the chemical dependency professional is licensed and/or certified in the treatment of chemical dependency and the license type and license number of the proposed chemical dependency professional to the Board prior to the evaluation and the Board shall notify Licensee of its approval or disapproval of the proposed professional. Licensee shall provide the chemical dependency professional a copy of this Order prior to the evaluation. If Licensee has had a chemical dependency evaluation by a licensed chemical dependency professional within 6 weeks prior to this Order, Licensee may submit that chemical dependency report to the Board and the Board may, at its discretion, allow the prior report to fulfill this condition of probation;

1. Licensee shall cause the results of the chemical dependency evaluation to be mailed directly to the Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65109 within ten days after the evaluation has been completed. Each written evaluation report shall include the Licensee's present state of impairment, a description of the tests performed and the results, discussion of relevant clinical interview findings/interpretations, specification of DSM IV diagnosis/es, appropriate treatment recommendations/plan, the beginning date of treatment, and an assessment for future prospects for recovery. If there is no diagnosis requiring treatment, this should be reported in the evaluation. Licensee shall follow any treatment recommendations made by that chemical dependency professional;

m. **IF TREATMENT IS RECOMMENDED**, Licensee shall comply with the following:

i. Licensee shall follow all recommendations for treatment made by the chemical dependency professional.

ii. If the treating chemical dependency professional becomes unable or decides not to continue serving in his/her capacity as a treating professional or otherwise ceases to serve as a treating professional during the disciplinary period, then, the Licensee shall:

1. Within three (3) business days of being notified of the treating chemical dependency professional's inability or decision not to continue to serving as a treating professional, or otherwise learning of the need to secure a treating professional, advise the Board in writing that he/she is needing to secure a different treating chemical dependency professional and the reasons for such change; and

2. Within twenty (20) business days of being notified of the treating chemical dependency professional's inability or decision not to continue serving as the treating professional, or otherwise learning of the need to secure a treating, secure a treating chemical dependency professional subject to the same Board approval process as

this Order required for the initial chemical dependency professional;

- iii. Licensee shall cause an update of treatment evaluation from the chemical dependency professional to be submitted no later than January 1 and July 1 of each year of probation. This update shall be submitted directly to the Board and shall include an evaluation of Licensee's current progress and status related to the treatment recommendations/plan and Licensee's current prognosis and treatment recommendation/plan;
- iv. If a 12 step program, or other support group attendance is recommended, Licensee shall submit to the Board evidence, to the Board's satisfaction, to verify such recommended attendance, as part of his January 1 and July 1 compliance reports;
- v. If treatment of Licensee is successfully completed at any time during the period covered by this agreement, Licensee shall cause the chemical dependency professional to submit a report of final evaluation/summary which includes a statement that the Licensee has successfully completed treatment and indicate whether Licensee should continue in a 12 step program. If continuance in a 12 step program is recommended, Licensee shall continue submit evidence of attendance with his January 1 and July 1 compliance reports;

- n. Licensee shall submit to periodic drug and alcohol screens, at Licensee's cost. The timing and/or scheduling for testing is within the Board's sole discretion. Such screenings may be conducted on any biological sample including blood, hair, urine or breath. If any drug and alcohol screen is performed on any biological sample of Licensee by any other entity, Licensee shall cause a copy of the report from that screening to be provided to the Board within 10 days of Licensee's receipt or knowledge of the results of said screening;
- o. Licensee shall execute a limited medical release effective for the entire disciplinary period authorizing any chemical dependency professional or medical professional to release records and/or communicate with the Board, or its representative, regarding Licensee's treatment and/or counseling. Licensee shall not take any action to cancel this release. Licensee shall take all steps necessary to continue the release in effect and shall provide a new release when requested;
- p. Licensee shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes. The presence of any alcohol or alcohol metabolite whatsoever or controlled substance for which Licensee does hold a valid prescription in any biological sample shall constitute a violation of discipline;
- q. Licensee shall provide the Board office, within ten (10) days of the effective date of this Agreement, a copy of all controlled substance prescriptions, dispensed or to be dispensed, in Licensee's possession on

the effective date of the discipline. The following information shall be provided: the prescription number, drug name, strength, dosage instructions, prescriber's name and address, the name and address of the pharmacy where the prescription was dispensed, date dispensed, number of refills available, and any other requested information concerning the prescription;

- r. Licensee shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Licensee has a bona-fide relationship as a patient. Upon request, Licensee shall execute a medical release authorizing the Board to access all records pertaining to Licensee's condition, treatment, and prescription maintained by the health care professional that prescribed the controlled substance or other drug for which a prescription is required to release records and/or communicate with the Board, or its representative, regarding Licensee's treatment. The presence of any controlled substance whatsoever in any biological sample for which Licensee does not hold a valid prescription shall constitute a violation of Licensee's discipline. Licensee shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days Licensee's receipt of the prescription; and

s. Licensee shall provide a copy of this Order to any employer engaged in the funeral industry within 5 business days of the commencement of his employment or within 5 days of Licensee's receipt of this Order.

22. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's embalmer apprentice registration 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 Licensee 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 Licensee's embalmer apprentice registration license.

23. The Board shall enter no order imposing further discipline on Licensee's embalmer apprentice registration license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

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

25. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on Licensee's embalmer apprentice registration license. The

Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

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

IT IS SO ORDERED.

Dated: 7.11.11

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors