

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

In the Matter of the Application of:

THOMAS DEAN KRUSE HIEBER

ORDER ISSUING A PROBATED PRENEED AGENT REGISTRATION

COMES NOW, the State Board of Embalmers and Funeral Directors (the "Board") and pursuant to Section 324.038, RSMo¹, issues this order granting a **PROBATED PRENEED AGENT REGISTRATION** (the "license" or "registration") 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 non-probated 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 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

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

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 333.325, RSMo, requires a license to engage in the practice of being a preneed agent and states:

1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

(2) Be eighteen years of age or older;

(3) Be otherwise eligible for registration under section 333.330;

(4) Have successfully passed the Missouri law examination as designated by the board;

(5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

3. Each preneed agent shall apply to renew his or her registration on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A registration which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

- (1) File an application for renewal on a form established by the board by rule;
- (2) Pay a renewal fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license renewal; and
- (3) Provide the name and address of each seller for whom the preneed agent is authorized to sell, negotiate, or solicit the sale of preneed contracts for or on behalf of.

4. Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit the sale of preneed contracts as part of their biennial renewal form. Each funeral director preneed agent shall be included on the board's registry.

5. Any registration which has not been renewed as provided by this section shall expire and the registrant shall be immediately removed from the preneed agent registry by the board. A registrant who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board.

3. Section 333.330, RSMo, authorizes the Board to deny an application for registration as a preneed agent 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

4. 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

5. 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.

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

7. Hieber submitted his "Application for Preneed Agent/Funeral Director" to the Board that he signed before a notary public on July 8, 2011, 2010 (the "Application").

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

9. 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.

10. The Board issued Hieber a funeral director license on August 31, 2011 by issuance of "Order Issuing a Probated License". This order issued Hieber a funeral director license subject to Hieber's compliance with enumerated terms and conditions for a period of two years beginning on August 31, 2011 and ending on August 30, 2013.

Basis for Probation

Criminal Conduct

11. 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.

12. 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

13. 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)).

14. 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)).

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

16. Driving a motor vehicle is part of the work, functions and duties of a funeral director and being a funeral director is a prerequisite to be included in the Board’s registry as a funeral director preneed agent.

Cause To Deny Licensure

17. The Board has cause to deny Hieber's application for agent registration pursuant to Section 333.330.2(1) and (2), RSMo.

18. The Board finds that issuance of a probated agent registration, 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 a preneed agent registration to Thomas Dean Kruse Hieber, on **PROBATION** for a period **TO RUN CONCURRENTLY WITH THE TERM OF PROBATION ON HIS MISSOURI FUNERAL DIRECTOR'S LICENSE** (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of Probation

19. 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 comply with all terms and conditions of any other order issued by the Board placing any other license or registration on probation including, but not limited to, his Missouri funeral director, Missouri embalmer and/or Missouri embalmer apprentice license(s);
- e. 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;
- f. 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;
- g. 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;

- h. 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;
- i. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- j. 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;
- k. Licensee shall not operate a motor vehicle in the conduct of any business of funeral directing unless Licensee holds proper licensure issued by the State to operate a motor vehicle;

Chemical Dependency Requirements

- l. 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 or to fulfill a similar requirement for his Missouri funeral director or embalmer license, 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;

- m. 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;
- n. **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;

o. 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;

- p. 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;
- q. 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;
- r. 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;
- s. 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

- t. 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.

20. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's agent registration 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 agent registration.

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

22. 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).

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

24. 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: 10-14-11

Sandy Sebastian
Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors