

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 McMillen 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.

Based upon the foregoing, the Board states:

I.

FINDINGS OF FACT

1. The Board is an agency of the state of Missouri created and established pursuant to § 333.151, and is responsible for executing and enforcing the provisions of Chapter 333 and §§ 436.400 – 436.525, RSMo (as amended), relating to the practice of funeral directing, embalming and preneed funeral contracts.

2. On or about March 4, 2010, Jason M. McMillen submitted an application to the Board to be licensed as a preneed agent.

3. In the application, question number D. 6. asks “Have you ever been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not sentence was imposed (include SIS), or are such actions currently pending (excluding traffic violations): **If yes, attach a full explanation and provide certified court documents (i.e., Docket Sheet, Information or Indictment, and Final Disposition)**” (emphasis in original).

4. In response to question number D. 6., McMillen checked “YES.” In explanation, McMillen attached a statement, dated February 19, 2010, in which he describes how he used

\$4,997 from the account of Cub Scout Pack 376, for which he was treasurer, to pay personal expenses. McMillen states that he has since made full restitution and has resigned from his treasurer position.

5. On or about June 18, 2009, McMillen plead guilty to class C felony stealing in the case of State v. Jason McMillen, case number 09PO-CR00207-01, Polk County Circuit Court, state of Missouri, for which he received a suspended imposition of sentence with 3 years probation.

II.

CONCLUSIONS OF LAW

6. The Board has authority to deny or refuse a license application pursuant to § 333.330.1, RSMo Cum. Supp. 2009, which 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.

7. The Board has cause to deny or refuse McMillen's application for a preneed agent registration pursuant to § 333.330.2(2) and (14), RSMo Cum. Supp. 2009, which provides:

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 or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

...

(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;

...

(14) Violation of any professional trust or confidence[.]

8. The Board has grounds to deny McMillen's preneed agent registration application under § 333.330.2(2) in that McMillen plead guilty to class C felony stealing for using Cub Scout Pack 376's funds for his own personal expenses.

9. The Board has grounds to deny McMillen's preneed agent registration under § 333.330.2(14) in that McMillen violated the professional trust and confidence placed in him by Cub Scout Pack 376 when he obtained \$4,997 from Cub Scout Pack 376 through his role as the pack's treasurer and then converted those funds to his own personal use.

10. As an alternative to denial of an application, the Board may, at its discretion, grant an application subject to probation, pursuant to § 324.038, RSMo Cum. Supp. 2009, which provides:

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.

11. The Board issues this Order in lieu of denial of Respondent's application for a preneed agent registration. The Board has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Based on the foregoing, and after having fully considered all the evidence, it is the **ORDER** of the Board that Jason M. McMillen's preneed agent registration shall be placed on probation for a period of **TWO (2) YEARS**, beginning upon the effective date of this Order. During the period of probation, McMillen shall be entitled to operate as a registered preneed agent as defined in Chapter 333, RSMo, subject to the following terms and conditions:

- A. During the probationary period, McMillen shall comply with all applicable provisions of Chapter 333 and §§ 436.400 – 436.525, RSMo, as amended, all applicable Board regulations and all applicable federal and state laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- B. McMillen shall meet in person with the Board or its representative at any such time and place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the probationary period.
- C. McMillen 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. A copy of the required report may be obtained from the Board.
- D. In addition to the required compliance reports, McMillen shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested by the Board or its designee.
- E. McMillen shall keep the Board apprised at all times of his current address, telephone number and preneed seller. McMillen shall immediately inform the Board in writing within two (2) days of any change in this information.
- F. During the probationary period, McMillen shall timely renew his license(s) and registration(s), timely pay all fees required for licensure or registration and comply with all other requirements necessary to maintain his license(s) or registration(s) current and active.
- G. During the probationary period, McMillen shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- H. If McMillen fails to comply with the terms of this order during the probationary period,

in any respect, the Board may choose to conduct a hearing before it either during the probationary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose disciplinary action under § 324.042, RSMo. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

- I. In the event the Board determines that McMillen has violated any term or condition of this Order, the Board may, in its discretion, vacate this Order and may impose additional discipline as deemed appropriate by the Board, including revocation of the license.
- J. This Order does not bind the Board or restrict the remedies available to the Board for any violation of Chapter 333 or §§ 436.400 – 436.525, RSMo, as amended, not specifically mentioned in this document.
- K. Upon the expiration of the probationary period, McMillen's preneed agent registration shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that McMillen has violated any term or condition of this Order, the Board may, in its discretion, vacate and set aside the probation imposed herein and may impose any other lawful discipline the Board shall deem appropriate, including, revocation of said registration. No order shall be entered by the Board pursuant to this paragraph without any required notice and opportunity for a hearing before the Board in accordance with Chapter 536, RSMo, as amended.
- L. If the Board determines that McMillen 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 that violation.
- M. Any failure by McMillen to comply with any condition of discipline set forth herein constitutes a violation of this Order.
- N. If, at any time during the probationary period, McMillen changes his address from the state of Missouri, or ceases to be currently registered under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of its current places of business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- O. Unless otherwise specified by the Board, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board shall be forwarded to: State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102.

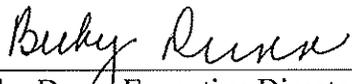
The terms of this Order are contractual, legally enforceable, and binding and not mere recitals. Except as otherwise contained herein, neither this Order nor any of its provisions may

333, RSMo, or fails to keep the Board advised of its current places of business, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the Disciplinary period.

- Q. Unless otherwise specified by the Board, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board shall be forwarded to: State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102.

The Board will maintain this Order as an open record of the Board as provided in Chapters 333, 610 and 324, RSMo.

SO ORDERED EFFECTIVE THIS 4th day of May, 2010.



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