

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

**ORDER ISSUING A PROBATED PRENEED AGENT
REGISTRATION TO SCOTT D. SOUDER**

The Missouri State Board of Embalmers and Funeral Directors (the "Board"), pursuant to Section 324.038, RSMo¹, issues this order granting a **PROBATED PRENEED AGENT REGISTRATION** to Scott D. Souder ("Souder" or "Licensee"), 1333 NE Barry Road, Kansas City, Missouri 64155.

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 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

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

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 333.325, RSMo, requires a registration to engage in the practice of a preneed agent and states, in relevant part:

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. . . .

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.

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

(3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of registration or authority, permit, or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

* * *

(12) Issuance of a certificate of registration or authority, permit, or license based up on a material mistake of fact;

* * *

(14) Violation of any professional trust or confidence.

Parties and Background

4. 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.

5. Scott D. Souder is an individual who has registered his address with the Board as 1333 NE Barry Road, Kansas City, Missouri 64155.

6. Souder holds funeral director license number FDR 007244 which is current and active.

7. Souder submitted his “Application for Preneed Agent/Funeral Director” to the Board that he signed before a notary public on October 9, 2012 (the “Application”).

8. Souder is eligible for registration as a preneed agent due to his current and active funeral director license.

Basis for Probation

Disclosures by Applicant

9. On the Application, Souder answered “no” to question 6 that stated:

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.)?

10. On the Application, Souder answered “yes” to question 7 that stated:

Have you ever been convicted, adjudged guilty by a court, pled guilty or nolo contendere to any traffic offense resulting from or related to the use of drugs, alcohol, whether or not sentence was imposed (includes SIS), or are such actions currently pending?

11. Along with his Application, Souder provided the requested information about his offenses.

Offenses

12. In January, 1996, Souder was arrested and was subsequently charged and pled guilty to the class B misdemeanor of “DWI (Alcohol Intoxication). On April 17, 1996, Souder plead guilty and was placed on probation for 2 years and given a suspended imposition of sentence. Souder completed his sentence in April, 1998. *State v. Scott David Souder*, Circuit Court of Clay County, Missouri, Case number 7TR196000337

13. In January, 2003, Souder was arrested for driving while intoxicated and was subsequently charged with the ordinance violation of Excessive BAC and was sentenced to 30 days incarceration with suspended execution of sentence and placed on probation for 2 years. Souder completed his sentence in March, 2005. *City of Gladstone v. Scott D. Souder*, Case number 230754.

14. In 2005, Souder was arrested and, subsequently charged with an A misdemeanor driving while intoxicated, as a prior offender. On August 9, 2005, Souder as found and adjudged guilty and sentenced to 180 days incarceration, with a suspended execution of sentence and placed on supervised probation for 2 years. Souder completed his probation in August, 2007. *State v. Scott David Souder*, Case number 040941240.

Licensure Renewal Statements

15. Souder submitted to the Board an “Application for Registration as an Intern Funeral Director” to the Board that he signed on March 18, 1997; an “Application for Registration as an Intern Funeral Director” that he signed on June 2, 1999; an “Application for Examination” that he signed on September 21, 1997; an “Application for Registration as an Apprentice Funeral Director” that he signed on December 2, 1997; and, an “Application for Practical Examination” that he signed in May 1998 (collectively, the “Funeral Director Applications”). On each of the Funeral Director Applications, Souder responded “no” to the following questions:

- a. Have you ever been convicted, adjudged guilty by a court, pleaded guilty or pleaded nolo contendere to any crime (excluding traffic violation)?

- c. Have you ever been in the past five (5) years convicted, adjudged guilty by a court, pled guilty or nolo contendere to any traffic offense resulting from or related to the use of drugs or alcohol?

16. At the time Souder submitted the Applications, he had plead guilty to a crime and plead guilty to a traffic offense related to the use of drugs or alcohol and was on probation for that criminal conduct up until a few weeks before Souder submitted his Application for Practical Examination, but he did not truthfully answer the questions on the Funeral Director Applications.

17. Until submission of the Application, Souder had never disclosed to the Board his offenses as listed above.

18. On each license renewal, Souder was asked to disclose any offenses and he disclosed none.

19. On his funeral director renewal form he signed on March 6, 2004 (the "2004 Renewal"), Souder checked "no" to the following questions:

9. Have you 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 if (sic) the United States since you last renewed this license. Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES").

11. Since you last renewed this license, have you been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any traffic offense (including municipal violations) resulting from or related to the use of drugs or alcohol?

20. Souder was adjudged guilty for the traffic offense of driving with excessive blood alcohol in January, 2003. At the time Souder submitted his 2004 Renewal, Souder had submitted his previous license renewal on April 1, 2002. Souder did not truthfully complete his 2004 Renewal.

21. On this funeral director license renewal Souder signed on March 23, 2006 (the "2006 Renewal"), Souder checked "no" in response to the following questions:

7. Have you ever been arrested for, or subject to prosecution for, or entered a plea of guilty to, or been found guilty of, an offense against the laws of any state or the United States, whether or not sentence was imposed? Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES").

8. Have you been arrested for, or the subject of proceedings regarding, or entered a plea of guilty to, or been found guilty of, conduct that involved the use of alcohol or drugs, whether the proceedings were criminal, civil, or military, and whether or not any sentence was imposed? Please answer "yes" even if you received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES").

22. In 2005, Souder was arrested, charged and adjudged guilty for driving while intoxicated, as a prior offender. At the time he submitted the 2006 Renewal, Souder had submitted his previous license renewal on March 6, 2004; he did not truthfully complete the 2006 Renewal.

23. A licensee of the Board has the professional duty to truthfully complete all license application and renewal forms submitted to the Board.

24. Driving while intoxicated is an offense reasonably related to the qualifications, functions and duties of a licensee of the Board.

Cause to Deny

25. The Board has cause to deny Souder's application for a preneed agent registration pursuant to Section 333.330.2 (1), (2), (3), (12), (14) RSMo.

26. The Board finds that issuance of a probated preneed agent 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 a preneed agent registration to Scott D. Souder, on **PROBATION** for a period of **THREE YEARS** beginning on the effective date of this Order (the “Disciplinary Period”) subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of Probation

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

- 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. 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;
- f. 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;
- g. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation; and
- h. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer 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;

- i. 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; and
- j. 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.

28. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's 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 impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license.

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

30. 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).

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

32. 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: 1-15-13

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors