

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

**ORDER ISSUING A PROBATED  
PRENEED AGENT REGISTRATION TO MICAH WYNES**

The Missouri State Board of Embalmers and Funeral Directors (the "Board") and pursuant to Section 324.038, RSMo<sup>1</sup>, issues this order granting a **PROBATED PRENEED AGENT REGISTRATION** to Micah Wynes ("Wynes" or "Licensee"), 1064 Redwood Lane, Liberty, Missouri 64068.

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 her behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal

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

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 per 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. A preneed agent registration is a license.

3. Section 333.325.1, RSMo, requires a registration 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 website.

4. 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, 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;

5. Section 565.074, RSMo, states:

1. A person commits the crime of domestic assault in the third degree if the act involves a family or household member, including any child who is a member of the family or household, as defined in section 455.010 and:

(1) The person attempts to cause or recklessly causes physical injury to such family or household member; or

(2) With criminal negligence the person causes physical injury to such family or household member by means of a deadly weapon or dangerous instrument; or

(3) The person purposely places such family or household member in apprehension of immediate physical injury by any means; or

(4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to such family or household member; or

(5) The person knowingly causes physical contact with such family or household member knowing the other person will regard the contact as offensive; or

(6) The person knowingly attempts to cause or causes the isolation of such family or household member by unreasonably and substantially restricting or limiting such family or household member's access to other persons, telecommunication devices or transportation for the purpose of isolation.

2. Except as provided in subsection 3 of this section, domestic assault in the third degree is a class A misdemeanor.

3. A person who has pleaded guilty to or been found guilty of the crime of domestic assault in the third degree more than two times against any family or household member as defined in section 455.010, or of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in this state, would be a violation of this section, is guilty of a class D felony for the third or any subsequent commission of the crime of domestic assault. The offenses described in this subsection may be against the same family or household member or against different family or household members.

### **Parties and Background**

6. 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.

7. Micah Wynes is an individual who has registered his address with the Board as 1064 Redwood Lane, Liberty, Missouri 64068.

8. Wynes submitted to the Board his "Application for Preneed Agent" that he signed before a notary public on April 5, 2013 (the "Application").

### **Basis for Probation**

9. On his Application, Wynes answered "yes" to question 6 on the Application that stated:

Have you ever been convicted, adjudged guilty by a court, pled guilty or 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).

10. Wynes provided additional information with the Application that explained the details of his “yes” answer to question 6.

11. Wynes answered “no” to question 9 on the Application that asked:

Are you now being treated, or have you been treated within the past five years, through a drug or alcohol rehabilitation program? If yes, attach a full explanation and provide discharge summary or other official documentation that shows your diagnosis, prognosis and treatment plan.

12. On May 5, 2005, Wynes pled guilty to violation of disturbing the peace in violation of the ordinances of the City of Liberty, Missouri.

13. On October 30, 2007, Wynes pled guilty to “Simple ASLT Not Fight” in violation of City of Kansas City, Missouri ordinance 50-169 and received a suspended imposition of sentence in *City of Kansas City v. Wynes*, case number N00076377-3, Circuit Court of Jackson County, Missouri, Municipal Division.

14. On August 1, 2008, Wynes pled guilty to “Larceny – under \$50” in violation of Section 50-106, an ordinance of Kansas City, Missouri and was sentenced to probation with imposition of sentence suspended in *Kansas City v. Wynes*, case number N00076378-1, Circuit Court of Jackson County, Municipal Division.

15. On August 19, 2009, Wynes was charged with the Class A misdemeanor of domestic assault in the third degree in violation of Section 565.074, RSMo in *State of Missouri v. Wynes*, case number 09CY-CRO 3297 in the Circuit Court of Clay County,

Missouri. Wynes pled guilty and was granted a suspended imposition of sentence and 2 years probation.

16. On October 21, 2011, Wynes was charged with the offense of “assault on a police officer by acting in an aggressive manner and resisting a lawful arrest” in violation of City of Liberty, Missouri ordinance 22-3. Wynes pled and was found guilty and *sentenced* to 10 days confinement, suspended, and probation of one year.

17. On October 21, 2011, Wynes was charged with the offense of “did hinder and interfere by refusing to comply with demands given by police” in violation of City of Liberty, Missouri ordinance 22-38. Wynes pled and was found guilty and was granted a suspended imposition of sentence and one year probation.

18. On September 24, 2013, Wynes appeared before the Board to discuss the Application.

19. At the September 24, 2013 appearance, Wynes discussed with the Board his recovery from alcohol dependency and discussed how his prior use of alcohol had been involved in him making some poor decisions that had led to various ordinance violations and criminal charges.

20. Wynes reported his clean and sober date to be November 29, 2012.

21. Wynes admitted that in November, 2012, he self-admitted to inpatient treatment for drug and alcohol dependency and that he successfully completed this inpatient treatment.

22. Wynes treatment for drug and alcohol dependency included an ongoing treatment plan to include attendance at 12 step meetings.

23. At the September meeting, the Board requested additional records from Wynes and he submitted the records the Board requested.

24. Wynes appeared before the Board on December 16, 2013 to further discuss the Application and the records he had submitted to the Board.

25. The Board has cause to deny Wyne's application for a preneed agent's license pursuant to Section 333.330.2(1), (2), and (3), RSMo.

26. The Board finds that issuance of a probated preneed 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's license to Micah Wynes, on **PROBATION** for a period of **FIVE YEARS** (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 five (5) 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 reports to the Board no later than January 1 and July 1 of each year. Each of these written reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order and shall fully explain any non-compliance. These 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 designee, 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; and
- i. Licensee shall comply with all provisions of any probation terms imposed by any court for any criminal or alcohol related sentence, if applicable.
- j. During the disciplinary period, Licensee shall abstain completely from the use or consumption of alcohol in any form, including over the counter products. The presence of any alcohol whatsoever in any biological sample obtained from the Licensee, regardless of the source, shall constitute a violation of these terms and conditions of probation.
- k. During the disciplinary period, 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(s) maintained by the health care professional that prescribed the controlled substance. The presence of any controlled substance whatsoever in any biological sample obtained from Licensee for which Licensee does not hold a valid prescription shall constitute a violation of these terms and conditions of probation.

- l. Licensee shall provide the Board with copies of results from any alcohol and drug testing conducted by his employer or any other entity performed during the Disciplinary Period. Licensee shall take the necessary steps to ensure that the Board is provided with those results to the Board within 7 days of the date the results become available.
- m. During the first year of the Disciplinary Period, Licensee shall comply with any request by the Board to submit to drug/alcohol testing, at the expense of Licensee and shall execute all necessary releases to allow the Board access to the results of that drug/alcohol testing.
- n. During the first year of the Disciplinary Period, Licensee shall submit documentation to verify that he has attended a support group meeting, such as a 12 step program like AA or NA, at least 2 times per month. Licensee shall submit documentation of this meeting attendance with his written reports of compliance due on January 1 and July 1 of each year of the Disciplinary Period. This documentation of meeting attendance must include the date and name of the meeting and contain a signature of another person verifying Licensee's attendance at the meeting.

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

29. The Board shall enter no order imposing further discipline on Licensee's preneed agent registration 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 preneed agent registration. 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: 1.17.2014

Sandy Sebastian

Sandy Sebastian

Executive Director

State Board of Embalmers and Funeral Directors