



July 6, 2015

The Conference at Odds with Former AAMI Students After Exam Dispute

If you thought that a confidential agreement between the International Conference of Funeral Service Examining Boards and the American Academy McAllister Institute of Funeral Service in New York City was going to end a dispute involving the integrity of The Conference's National Board Exam, then you were wrong.

The Conference announced in a June 24 news release that despite a previously announced settlement between it and AAMI, it's moving forward with an investigation meant to identify the individual students that participated in what The Conference alleges was an organized campaign to share questions, answers, answer choices and other "highly sensitive information" regarding the NBE with AAMI faculty and students. AAMI has denied the allegations.

"Unfortunately, when faced with evidence that an individual had access to exam content before taking the NBE, the validity of that person's passing score is in question," Hari P. Close II, president of The Conference, says in the news release.

The Conference will be issuing "notices of investigation" to affected individuals, according to the news release, and it has already invalidated the scores of numerous former AAMI students. "Generally, I can tell you that they (the Conference) anticipates it could be several hundred test takers at issue," says Jennifer Ancona Semko with Baker & McKenzie LLP's Washington, D.C. office, which is the firm representing The Conference.

The invalidation of test scores, however, has already led at least 12 former students to file lawsuits against The Conference, its executive director, Dalene Paull; and current and former members of its board of directors. The complaints challenge The Conference's right to take action in response to the alleged security breach.

The Conference, however, remains undaunted in its effort to preserve the integrity of the National Board Exam, and it's seeking to get complaints from former students dismissed. "The Conference has a duty to ensure that passing scores are valid, and we would be acting irresponsibly if we turned a blind eye to the situation," Close says. "The Conference believes strongly in its right to protect its exam, and we will do so vigorously as we defend ourselves against these lawsuits."

The former students who allegedly participated in the breach will have the opportunity to retake the examination, according to the news release. However, individuals who allegedly shared information about the exam after taking it could face restrictions on future access – including a provision that prevents them from retaking the test for five years.

Students suing The Conference argue that stripping them of a passing grade is unjust for various

reasons, including it violates their constitutional rights, it tortuously interferes with future business relationships and it defames their character, according to court filings.

Brian S. Sokoloff with Sokoloff Stern LLP in New York City is representing the 12 students that have so far filed complaints against The Conference. The Forum, an online magazine published by the New Jersey State Funeral Directors Association, reported in June that AAMI will pay the costs and expenses incurred in providing the students with legal services. Sokoloff's retainer agreement specifies that "our retainer does not include work regarding any legal issues you have with the school" nor does the retainer "preclude you from seeking separate counsel on any issues you have with the school," according to The Forum's report.

Semko believes The Forum's reporting on the retainer agreement is accurate. "We had heard from certain AAMI students that this was the case earlier this year," she says. "And let me say in discussion with both AAMI's litigation counsel and the attorney who represents the students, we have the understanding from them that this is indeed correct."

Fair or Foul?

Christopher Pannese is one of the students who had his exam score invalidated, and he's suing the State of Connecticut, the State of Connecticut Department of Public Health, the Connecticut Board of Examiners of Embalmers and Funeral Directors, The Conference and others. A lawsuit filed on his behalf by Sokoloff Stern, LLP in the United States District Court for the State of Connecticut, states that he is "one of the many innocent students caught in the crossfire of a legal battle" between The Conference and AAMI.

Pannese's dream is to operate his own funeral home, the lawsuit states. "After many years of study and work, plaintiff is about to realize that dream; he is in the process of purchasing his own funeral home. The Conference and the State threaten to take all that away, arbitrarily, maliciously, tortuously, and in violation of Plaintiff's constitutional and statutory rights," the lawsuit states.

His score was invalidated "without proper notice and with no meaningful opportunity to be heard," the complaint states. "Additionally, the Conference has imposed arbitrary, unauthorized, excessive, and punitive sanctions; required Plaintiff to re-retake the NBE, required Plaintiff to pay a monetary fine; and barred Plaintiff from retaking the NBE for five years, which effectively amounts to a ban on practicing in the profession – all without sufficient notice and with no meaningful opportunity to be heard."

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The lawsuit also states, “Connecticut state law requires the examination for licensure to be given at least twice every year. Upon information and belief, there is no provision under Connecticut state law allowing the Conference or board to ban an applicant for any period of time from taking the required licensing exam.”

Another former student, Joanna Scaramuzzo, is also suing The Conference, even though she conceded that during her time at AAMI, the sharing of examination content occurred and that the college’s president, Mary Margaret “Meg” Dunn “encouraged the students who would be taking the NBE to report back with feedback and information about the exam so AAMI could better prepare its students for the NBE,” according to a motion to dismiss her complaint filed by Baker & McKenzie LLP.

That motion adds, “Petitioner explains that students would willingly do so because Ms. Dunn ‘was an influential person, and students were expected and required to comply with her instructions.’” It continues, “Although Petitioner contends that she did not ‘knowingly’ receive advance access to specific NBE questions, she acknowledges that she believed the sharing of information about NBE content was ‘expected and required by the school.’”

In Scaramuzzo’s case, The Conference states in its motion to dismiss her complaint that she not only admitted receiving inside information about the examination, but she also “shared confidential information regarding the NBE with AAMI, in violation of her obligation to keep the examination confidential.” The motion notes, “her eligibility to re-take the examination was therefore suspended for a five-year period.”

The Conference notes in its motion to dismiss her complaint that “the Conference does not hold the power to deny Petitioner a license under New York state law, and all licensure decisions are made independently by the DOH.” The motion continues, “Petitioner is nonetheless suing the Conference, each of its directors, and its Executive Director to reclaim her invalidated examination score, notwithstanding her admitted participation in the most significant examination security breach in the Conference’s history. Petitioner contends that the Conference has ‘embarked on a campaign to retaliate against AAMI students’ and has levied ‘arbitrary, vengeful and punitive measures.’”

The Conference, however, contends, “To the contrary, at all times the Conference has acted in good faith to protect the security of the NBE and to fulfill its duty to ensure that passing scores on the NBE are valid – as is the Conference’s right under its contract with Petitioner and other test takers.”

The Conference notes in court filings that it is a private, Arkansas nonprofit corporation that does not wield any governmental powers. In its motion to dismiss the lawsuit filed by Scaramuzzo, it states, “The

About The Conference

The Conference’s website states that it traces its beginnings back to 1903, when a group of state licensing boards came together in Denver to discuss their common problems in transporting bodies across state lines. According to its website:

In 1904 delegates convened for the second meeting of this organization at St. Louis and adopted the name “The Joint Conference of Embalmers’ Examining Boards and State Boards of Health” and formally organized.

In 1928 the organization began to consider the question of accrediting schools of Mortuary Science and Education, and a system of grading schools was established.

By 1934, 27 states had adopted rules and regulations that applicants for licensure had to be graduates of Conference-approved schools. In 1930 The Conference established the first National Board Examination, which was sent directly to State Boards for administration and grading.

By 1932 an Exam Committee was established to grade the exams and report the results back to the respective state boards. In 1940 the organization’s name was changed to “The Conference of Funeral Service Examining Boards of the United States, Inc.” In 1997 “International” was added to the name to reflect the Canadian membership.

Conference's decision to invalidate Petitioner's NBE score is not a 'final determination' as to Petitioner's application for licensure ... Because the Conference does not have the power to deny or revoke a license, it thus does not have the power to affect Petitioner's licensure rights." The motion adds, "The Conference does not issue licenses, and it plays no role at all in state licensure decisions – it does not determine whether to grant, deny, or suspend/revoke a state license."

In a telephone interview, Semko emphasized how serious the conduct in question is – especially that of those students who shared information about the exam after the fact. "Responding to this breach – this event – has been fairly devastating for The Conference; it's been disruptive and very costly and obviously upsetting to many professionals in the industry," Semko says.

She adds, "Anytime you offer a high stakes standardized examination, a lot of work and effort goes into the creation of psychometrically sound test questions; these are not questions that someone just spits out overnight. The process of developing a single exam question can take a year to two years; as a result, these questions are very expensive to develop and so part of the cost that The Conference is grappling with is not only the cost of replacing hundreds of compromised questions, but it had to develop new, unique exam forms for AAMI students on a temporary basis – that was another cost. It did that in an effort to enable them to take the exam when this was discovered in the fall of 2013." As of May, AAMI students were back with the general testing population, she says.

The costly nature of the wrongdoing – whether it was conscious or not – explains why students whose scores have been invalidated are being required to make a \$500 contribution to The Conference's Examination Defense Fund before retaking the test.

"The investigation of these individuals and the review of these documents are all very costly, and implementation of new security measures to try to prevent things like this from happening again is also going to involve a high cost, and as a result, part of what The Conference board has considered when making decisions about how to handle these individuals is to have them make a small, monetary contribution toward the protection of the exam," Semko says. "Thus far it has been \$500, which is a meaningful amount certainly for new graduates, but it is not intended to be a barrier to their ability to retake the exam." Whether or not a graduate must pay \$500 is determined on a case-by-case basis, "but the general presumption is it would apply to all who participated in this conduct," Semko says.

Asked about why some students whose scores have been invalidated must wait five years to retake the exam, Semko declined to comment on particular cases. But she noted, "Suspension of access to the exam is considered in situations where a test taker breached the confidentiality obligation to The Conference and shared what they saw on the exam with third parties."

According to Semko, The Conference is determining whether it has a good-faith basis for questioning the validity of an individual's exam score, and what that means could vary. She adds, "Of course, every student that is identified is given an opportunity to respond and to provide any information or a statement they would like The Conference to consider as part of the investigation of their particular case."

When asked how long it would take to decide if certain graduates would have their exam scores invalidated and/or face other penalties, Semko says, "It is in The Conference's interest to do it as promptly as possible." She adds, "The goal would be to complete everything this year ... and hopefully that is how it will go ... I can't pinpoint a specific end date for you, but The Conference is moving as quickly as it can and wants to have everything completed in terms of notifying folks this year."

Students who The Conference has determined shared information about the exam with other parties violated a sacred trust, Semko says. "When you register to take the exam, you are told that the content is confidential," she says. "You would like to think that is also common sense, but perhaps that isn't. In the last several years before this happened, students that registered were also required to watch a short video

– it’s a couple minutes long – and the speaker walks you through the importance of protecting the exam, and the potential consequences if you share what you saw, and why it is so important not to disclose in any way or share content from the exam.” In light of that, it’s challenging to understand how a student who shares information about the exam could claim not to see a problem with it, Semko says.

With that said, Semko is sympathetic to students who may have been given information about the exam without realizing they were gaining an illegal benefit – and who did not share information about the exam after the fact. “But at end of the day, The Conference has an obligation to ensure when it certified someone has a level of competence to pass the exam that it has full faith in that statement,” she says.

Invalidating test scores of students who gained an unfair advantage is the right thing to do, Semko says. “There is a suggestion that The Conference is acting vindictively to punish AAMI, and that is absolutely not the case,” she says. “When you’re talking about a high-stakes licensing exam relied on by schools, state licensing boards and employers as a measure of minimal competence, The Conference has a duty to the public and all those groups to ensure when it says someone passed the exam that it can confidently stand behind that statement. Unfortunately, when The Conference has in its hands documents that suggest particular individuals had access to exam content before they took the test, then it becomes difficult for The Conference to say in good faith that it has confidence in that passing score. And that’s true whether the person knew what they were doing was wrong or not.”

How Did We Get Here?

The Conference first learned of AAMI’s alleged copyright infringement from an AAMI graduate who notified the ABFSE Committee, The Conference and the New York Department of Health Bureau of Funeral Directing about concerns she had about what was going on at AAMI.

The graduate, who only identified herself as “a concerned student” sent the email on Sept. 16, 2013, from the address aami.concernedstudent@yahoo.com. It read:

To Whom it May Concern;

I am a graduate of American Academy McAllister Institute of Funeral Service in New York, NY. For many reasons I applied to, and attended McAllister, not the least of which is the high percentage of people who pass the National Board Exam.

I am writing to inform you of unethical actions on the part of the President, Meg Dunn. I was unable to locate contact information for AAMI’s Board of Directors, which is why they are not copied on this email. I feel not only the trust and integrity of the student body and McAllister have been betrayed, but also that there could be repercussions for the industry as a whole.

I have received several emails, as well as printed material, from Meg Dunn containing information from the National Board Exam that I believe is in direct conflict with the exam security policies of the Federation of Associations of Regulatory Boards.

In the weeks leading up to our taking the test, we were informed by Ms. Dunn that as students took the National Board Exam, she would have a better idea of how to guide us in our preparations. During this time, I received multiple emails, as well as printed material, from Ms. Dunn. These emails contained very specific and direct answers to the National Board Exam. I did not realize the extent of the information being disseminated until after I took my board exam. At this time, I received another email from Ms. Dunn with a great deal of specificity and, in particular, board questions with answers. These appeared to be taken directly from the test I had just taken. Ms. Dunn coyly referred to these as her ‘visions’. Having just taken the test, I then possessed the context needed to place these emails into perspective. I have enclosed, via attachment, examples of which contain an inordinate degree of speci-

ficity regarding test questions and their answers. These were culled directly from the current exam. I worked and studied hard for the exam, and it is unfair and unethical that test answers are given out prior to taking the exam.

The funeral service profession already struggles with a poor reputation, one of unethical business practices and actions. As I entered the school, and now the profession, I knew I would be fighting against these perceptions as a practitioner and have very much looked forward to working towards change. As a president of an educational institution, a renowned mortuary school, and a certified funeral service practitioner, teaching and encouraging unethical behavior and fraud to students, solely to maintain high passing averages for the school, is not only detrimental to the students but to the funeral profession at large.

I have decided to write this letter anonymously because I fear retribution for reporting this information, although I sincerely believe in its importance and magnitude.

– A concerned student

****please find attached email content and documents, I have only removed my name for the reasons above.*

Once The Conference analyzed the materials sent by “Jane Doe,” it concluded that the materials included “highly specific and confidential information about at least 136 exam questions, and many others revealed specific, detailed and highly sensitive confidential information about the exam content that is not available to the public,” according to its complaint against AAMI. That initial analysis led to further investigation – and a federal judge granted a seizure of documents and information related to the alleged scheme.

The Conference “discovered that Defendants have been harvesting and sharing with their students Licensure Exam questions recalled by prior test takers, whom the Defendants have induced to improperly share highly confidential details regarding the Licensure Exams, including their recollections of test questions appearing on the exam. As a result of Defendants’ conduct, numerous Licensure Exam questions have been irreparably compromised and must be retired from use. More importantly, the

A Closely Guarded Exam

The Conference’s complaint against AAMI, which was settled in December 2014, outlines the steps it takes to ensure the confidentiality of its exam questions, including:

- a. ICFSEB stores questions in a proprietary, secure database, access to which is limited to only those with direct involvement in exam development, each of whom is bound by a confidentiality agreement prohibiting disclosure;
- b. Death care professionals surveyed in developing the questions are required to sign non-disclosure agreements;
- c. The ICFSEB maintains a secure workplace for physical access and requiring usernames and passwords to access the computers;
- d. On exam day, candidates must present forms of photo identification to ensure that only registered and eligible candidates gain access to the exam. They submit biometric data in the form of a palm-vein scan to ensure their identity for re-entry into an examination after a restroom break;
- e. The ICFSEB requires that exam takers agree to certain contractual obligations intended to ensure the confidentiality of the exam content and view a video reiterating these confidentiality obligations before taking any Licensing Exam;
- f. Proctors at exam centers make written reports to the ICFSEB of any incidents involving possible breaches of exam security; and;
- g. Exam questions are registered with the U.S. Copyright Office via the Secure Test procedure, which excuses the registrant from leaving behind a public copy of the exam questions, so as to preserve confidentiality.

Defendants' conduct gives their students advance access to Licensure Exam questions, which gives those students an unfair advantage on the exam, undermines the security and validity of the exam, and jeopardizes public health and welfare," according to The Conference's complaint, which was ultimately settled with AAMI denying wrongdoing.

National Board Exam Results from AAMI (Available on the AAMI Website)

Year	Arts			Science			Combined Average Percentage
	Takers	Passed	Percentage	Takers	Passed	Percentage	
2012	76	66	87%	80	75	94%	91%
2011	106	94	89%	103	100	97%	93%
2010	94	85	90%	94	91	97%	94%
2009	69	65	94%	69	68	99%	97%

* AAMI's website does not list the average scores for 2013 or 2014

You can find national averages on The Conference's website at www.theconferenceonline.org under the "Resources" tab.

Allegations Abound

The Conference alleges that AAMI's actions constituted "willful copyright infringement, misappropriation of the ICFSEB's trade secrets and tortious interference with the ICFSEB's contractual relationships with Licensure Exam takers."

The sample questions and answers were not limited to a few students, The Conference alleges. "Defendants appear to distributing the ICFSEB's exam items to students at the New York campus and, presumably, across the United States to Defendants' online student population," the complaint states. AAMI operates one of the largest online, distance learning funeral services programs in the United States, with about 150 graduates taking the National Board Exam each year, which accounts for a significant portion of the roughly 3,500 candidates who take the exam each year, according to The Conference's complaint.

The complaint, which was filed in January 2014 in United States District Court, Southern District of New York, includes numerous examples taken from the anonymous source's forwarded materials that it says proves that The Conference's trade secrets were misappropriated. The Conference alleges that materials prepared by Dunn and forwarded to the source included information like the following about the exam:

- "Very heavy on scenarios & house removal scenarios. About 4 questions about a house removal. They all begin the same that the practitioner is called to the home and the widow is distraught. One question continues that the widow carries on about her husband's illness and its stopping the practitioner from doing his work ... what should he do? The choices were, A. stop his work and time to listen to the widow B. Keep working and ignore her 3. Tell the widow to stop and a 4th choice that was equally absurd. Obviously they were looking for A."

• “Many questions about cremains. One is a question we’ve seen about what’s required to release the cremated remains. One question is about kids who lose their parents in a car accident. They set the question up so you think its about grief. Then at the end they say the kids want the parents in 1 urn. Choices are; A. Inform the family they need an urn with minimum 400 cubic inches B. Advise the family against comingaling (sic) of remains two other answers I don’t recall. There was a previous question asking the dimensions of the urn on the test as well.”

• One question regarding a livery situation. BUT it was different than anything we’ve seen. Usually the questions about bailment are regarding family giving jewelry to the FD. Questions about livery are about agent drivers. This question asked what the funeral home gave the family by giving them use of the limousine. The only logical answer was bailment the others were frivolous such as, “a nice car to use” “A favor” and one more I can’t recall.”

Deborah H. Orecki, a former member of The Conference’s Board of Directors (her term expired in February), was among those to receive the email from the person court filings refer to as “Jane Doe.” She replied to the email inviting her to contact her by telephone, according to a sworn declaration she made Oct. 28, 2013.

According to Orecki’s statement, “On or about October 8, 2013, Ms. Doe telephoned me. During our discussion, Ms. Doe orally reiterated what she had stated in her email message. Ms. Doe also told me that in the time period leading up to her exam date, she had received numerous emails from Ms. Dunn containing very specific questions and direct answers to National Board Exam questions. Ms. Doe did not understand the amount of material being misappropriated by Defendants until she took her exam. After taking the exam, Ms. Doe realized that a number of the questions and answers supplied to students by Defendant Dunn were taken directly from the test she just completed. Defendant Dunn referred to the emails containing questions and answers as her “Visions.”

Orecki continued. “Ms. Doe also explained to me that Academy students are not permitted to sit for the National Board Exam until Defendant Dunn has personally given them permission to do so. Ms. Doe said her understanding is that Defendant Dunn permits stronger students to take the exam first, with the expectation that those students will return with information about the exam questions that can be shared with other students.”

Asked whether or not “Jane Doe” also had her test scores invalidated as a result of unfairly benefitting from the alleged scheme to share test answers, she says she does not know as her real identity was never determined. An email that *Funeral Service Insider* sent to the email address that the anonymous informant initially wrote from was not immediately returned.

In a sworn declaration, Dalene Paull, executive director of The Conference, notes that when information technology personnel with The Conference reviewed metadata properties for the PDF documents attached to the anonymous source’s email, “That metadata reflected ‘Meg Dunn’ as the author of the documents.” According to Paul’s statement, “Through its investigation, the ICFSEB has learned that Defendants appear to be engaging in a pattern of soliciting and obtaining the ICFSEB’s copyrighted and trade secret exam questions from Academy students after they took the licensure exams. Defendants then copied and shared the copyrighted exam materials with other Academy students in order to provide an unfair advantage to those students when they take the Licensure Exams. The email from Defendant Dunn, forwarded by the anonymous source, appears to indicate that Defendant Dunn is sharing recalled exam items with a school-wide email distribution group.” (*Funeral Service Insider* left a voice mail with Dunn, who remains president of the school, seeking comment, but it was not returned in time for publication.)

The Conference’s complaint against AAMI states that, “Upon information and belief, the primary purpose behind Defendants’ actions was to give their students an unfair advantage on the Licensure Exams by providing advance access to Licensure Exam Questions and details regarding exam questions

and topics – all for Defendants’ financial and reputational gain.” (As previously noted, even though the parties agreed to confidential settlement, AAMI denies those allegations.)

In her sworn declaration, which was filed with the court Oct. 25, 2013, Paull sheds some light on how beneficial the alleged scheme could have been for AAMI and, in turn, its students. “Historically, the national average passing score on the Arts portion of the National Exam has been 72 percent for first-time test takers and on the Sciences portion of the exams 76 percent for first-time test takers. The passing score of students who have graduated from the Academy has historically been significantly higher than the national average. For example, thus far in 2013 the passing rate for Academy students on the Sciences portion of the National and State Exams was 92% for first-time test takers.”

The chart on page seven provides more detailed information on the success rate of AAMI students on the exam. On a page titled “Why Enroll in the Campus Program?” on AAMI’s website, it states, “AAMI’s graduates have historically scored among the highest in the country on the National Board Exam.”

Moving Forward

The Conference’s probe led it to suspend AAMI students and graduates from accessing any Conference examinations, including the National Board Examination’s Arts and Science sections, in November 2013 as a result of “what appears to be widespread examination item harvesting and sharing among and between students and AAMI personnel,” The Conference stated in a Nov. 20, 2013, memorandum to AAMI students and graduates. The Conference reopened registration for the National Board Exam to AAMI candidates in April 2014.

In December 2014, The Conference and AAMI announced that it had agreed to a confidential settlement resolving The Conference’s allegations, with AAMI agreeing to a permanent injunction prohibiting the activities alleged in the lawsuit. The school also was required to take steps to ensure the integrity of the exam and licensure process, including creating a position for a “director of academic integrity.”

When The Conference announced the settlement of that litigation, it stated in a news release, “The parties recognize and agree that the integrity of the examination and licensure process undertaken by Conference member boards is paramount to the public-protection mission of all parties involved.”

“To deal with such an egregious case of exam piracy is always tough,” Close says in a news release. “Decisions to invalidate candidate scores are never taken lightly, but The Conference remains committed to fulfilling our obligation to provide exam results that the funeral service profession, the states and the public can rely on. The integrity of the NBE program has never been compromised on such a grand scale, so we are still reeling from the effects of what was happening at AAMI.”

Sincerely,



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Report a Breach

The Conference takes National Board Exam security breaches seriously.

To report a breach, call The Conference at 479-442-7076, write them by mail at 1885 Shelby Lane, Fayetteville, AR 72704 or visit <https://theconferenceonline.org/report-concern>.

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