

# Top Regulatory Cases

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Welcome

Thank You

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That is not really me...

## Top Recent Regulatory Cases

- Where are the recent funeral cases?



# Court Case Names & Captions

Robin Hood v. United States

United States v. Forty-Three Gallons of Whiskey

## Death v. Graves

*Complaint alleging that the defendants' vehicle crashed into plaintiff Alan Death's motorcycle; Death lived.*

Batman v. Commissioner

Schmuck v. United States

Terrible v. Terrible

Association of Irrigated Residents v. United States EPA

Juicy Whip v. Orange Bang

# Criminal Intent

*Boatright v. State*, 968 N.E. 2d 345 (App. Ct. IN 2012)

- Licensee convicted of forgery as Class C Felony.
- Signed Certificate of Death as Funeral Director after his funeral directors' license was suspended.
- Court rejected lack of intent argument.
- Conviction affirmed.

# Reinstatement Petitions



## *Collins v. Arkansas Board of Embalmers,*

*430 S.W. 3d 213 (App. Ct. AR 2013).*

- Reinstatement applications denied
- Applicants for reinstatement of funeral director and establishment licenses
- Denial of reinstatement NOT arbitrary or capricious
- Denial supported by evidence
- Applicants engaged in practice even after revocation
- Denial decision affirmed by court

## Administrative Stay

## *Gary v. Board of Embalmers & Funeral Directors,*

*2011 Ohio MISC. LEXIS 16646.*

- Funeral Director signed death certificates of decedents where he had not participated in the “final disposition of the remains”
- Board imposed 30-day suspension of Funeral Director license and Embalmers license.
- A stay of execution of the suspension was agreed to pending an appeal.
- Court found probative evidence existed and affirmed suspension

# Summary Suspension & Permanent Revocation

## *Moraski v. Connecticut Board of Examiners of Embalmers & Funeral Directors, 967 A2d 1199 (CT 2009).*

- Board summarily suspended Embalmers license and funeral home Certificate of Inspection.
- Ultimately permanently revoked both license and certificate and imposed a \$50K fine.
- Sanction premised upon several alleged wrongdoings related to providing list of goods and services, failure to properly store remains, failure to release remains, verbal abuse, and misleading family members.
- Court upheld dismissal of appeal by lower court and sanctions imposed.

# Sovereign Immunity

## *Mothe v. Louisiana Board of Embalmers & Funeral Directors, 2019 U.S. Dist. LEXIS 133438 (U.S. Dist. LA 2019).*

- Board sought information from a funeral establishment re an embalmer believed to not have timely renewed his license.
- Board alleged embalming procedures conducted without a license, charges eventually dismissed by Board.
- Establishment filed suit in federal court alleging violations under section 1983.
- District Court dismissed case citing sovereign immunity, absolute immunity and qualified immunity principles.

# Home License Responsible for Acts of Individual Licensees



## *Paine Funeral Home v. Board of Embalmers & Funeral Directors, 780 N.E. 2d 1036 (App. Ct. OH 2002).*

- Funeral home owner, not a funeral director, “ordered” someone to forge the name of the Funeral Director on 2 death certificates.
- Owner also owned an additional funeral home.
- Owner pleaded guilty to 2 criminal counts.
- Board sought sanctions against both funeral home licenses.
- Hearing officer recommended 6 month suspension of both licenses.
- Board modified recommendation, imposed suspension on 1 funeral home.
- District court affirmed
- Appellate Court affirmed

Loose Lips

## *Schoeller v. Board of Registration of Funeral Directors & Embalmers, 977 N.E. 2d 524 (MA 2012).*

- Funeral Director/Embalmer was interviewed and quoted by reporter.
- Licensee comments graphically described certain consequences of embalming but did not identify and decedent or family.
- Board sought sanctions, arguing ethical prohibitions from commenting on conditions of dead human body entrusted to him, unprofessional conduct, re undignified and salacious comments.
- Board imposed permanent revocation of licensure.
- Supreme Judicial Court remanded principally based upon First Amendment.

## Reciprocal License

## *Smith v. North Carolina Board of Funeral Service, 817 S.E. 2d 924 (App. Ct. NC 2018).*

- Board refused to grant a “reciprocal” license because Vermont’s licensing requirements were not substantially similar to NC’s.
- Licensee also failed to submit proof of having passed 2 exams required for nonreciprocal licensure.
- Court affirmed the Board, as plaintiff failed to raise them before the loser court or were meritless

# Double Jeopardy

## *Sweeny v. State Board of Funeral Directors,*

*666 A. 2d 1137 (COMM. Ct. PA 1995).*

- Funeral director pled guilty to theft and misappropriation of funds in estate to which he was executor; Board revoked license.
- Licensee argued double jeopardy but court affirmed the Board
- Court: Board action is based on duty to protect public, not deter or punish licensee.
  - Revocation not too harsh, as licensee violated estate's trust

Prior Permission



## *Toms v. Bureau of Professional & Occupational Affairs,* *800 A. 2d 342 (COMM. Ct. PA 2002).*

- Funeral director embalmed body without direction and refused to release body to family until paid.
  - Because of “prior affiliation” with Board, only recourse was to pay fee
- Board suspended license and levied a fine
- Court held that failure to obtain express permission violated Board regs – affirmed the Board

## Lapsed License & Nexus

## *Ulrich v. State Board of Funeral Service,*

*961 P. 2d 126 (MT 1998).*

- Mortician allowed his license to lapse while working in another profession; had it reinstated then pled guilty to felonies related to other profession. Board revoked mortician license
- Lower court affirmed
- State Supreme Court reversed and remanded
  - Felony conviction did not disqualify him from licensure – no nexus
  - Licensee did not have to pay all restitution before applying for reinstatement

# Crime of Moral Turpitude

## *Vogelman v. Commonwealth, State Board of Funeral Directors, 550 A. 2d 1367 (COMM. Ct. PA 1988).*

- Funeral director pled guilty to fraud & Board revoked his licenses and issue a fine.
- Licensee argued that conduct occurred years before licensure, conduct wasn't related to profession, and revocation was too harsh.
- Court affirmed the Board
  - Crime involved moral turpitude and was related to profession and close enough in time.

Thank You