

1984-1029-030-011

001246

STATE OF CONNECTICUT BOARD OF EXAMINERS
OF EMBALMERS AND FUNERAL DIRECTORS

CERTIFIED MAIL NO. _____

IN THE MATTER OF:

Edmund Dougiello, Embalmer
License No. 1246
36 South Pine Creed Road
Fairfield, CT 06430

MEMORANDUM OF DECISION

The Department of Health Services (hereinafter "Department") presented the Connecticut Board of Examiners of Embalmers and Funeral Directors (hereinafter "Board") with a Statement of Charges, dated June 24, 1985 brought against Edmund Dougiello, Embalmer (hereinafter "Respondent"). The Charges alleged violations of Conn. Gen. Stat.

¶¶ 46a-60(a)(8)(3) and 20-227(4).

A Notice of Hearing dated June 26, 1985 was issued to Respondent by the Board. The Department's Statement of Charges was attached to the Notice. The hearing was held on July 31, 1985 and August 13, 1985 at 90 Washington Street, Hartford, Connecticut, and consolidated with the hearing of Kenneth L. Abriola, Embalmer.

The Respondent was present and had full opportunity to present evidence and cross examine witnesses.

All members of the Board involved in this decision attest that they have read and reviewed all transcripts of the proceedings and all evidence submitted. The decision is thus based entirely on the record presented and on the specialized professional knowledge of the Board members in evaluating such evidence.

FINDINGS OF FACTS

- (1) Respondent, Edmund Dougiello, was at all pertinent times licensed to practice embalming by the State of Connecticut Department of Health Services under Licence No. 1246.
- (2) Pursuant to Conn. Gen. Stat. ¶ 4-182(c), Respondent was provided full opportunity prior to the institution of agency action to show compliance with all the terms for retention of his license.
- (3) On or about October 1, 1984, one Frank Smerglinolo, who is not a licensed

embalmer or funeral director, was present at the Respondent's funeral home in Fairfield, Connecticut rendering assistance to Respondent in his licensed embalming activities.

(4) Frank Smerglinolo was not a salaried hourly or permanent employee of Respondent, but assisted him from time to time at a set predetermined price to perform physical non-professional services required by Respondent in receiving and preparing remains of deceased persons for burial.

(5) On or about October 1, 1984, Cynthia Cook and Karen Toppi, employees of the State Medical Examiner's Office were present at Respondent's funeral home to transport the remains of persons who recently died in an automobile accident to the Chief Medical Examiners Office in Farmington, Connecticut for further examination.

- (6) While on such premises, Frank Smerglinolo made sexually offensive comments to Cynthia Cook and Karen Toppi in the presence of the Respondent. Specifically he asked Cynthia Cook and Karen Toppi if they would allow themselves to be molested in view of the fact that he had helped them and he also asked Karen Toppi if she would become unscathed with him before she went down the altar.
- (7) Respondent did not intervene to prevent Frank Smerglinolo from making such remarks.
- (8) Some of such remarks were made inside the funeral home in Respondent's office and caused Cynthia Cook and Karen Toppi to become fearful of their safety.
- (9) Respondent himself did not make any such comments to Cynthia Cook and Karen Toppi.

DISCUSSION AND CONCLUSION

Introduction

Counts one and two of this three count statement of charges allege that respondent violated inter alia Conn. Gen. Stat. ¶46a-60 (A) (8) (3). This provision is part of Chapter 814c of the General Statutes, entitled Human Rights and Opportunities. Responsibility for enforcement of such Chapter including Conn. Gen. Stat. ¶46a-60(a)(8)(3),^{1/} is vested primarily in the Commission on Human Rights and Opportunities. Without deciding whether the Board may enforce § 46a-60, the Connecticut Board of Examiners of Embalmers and Funeral Directors decision is predicated on Conn. Gen. Stat. ¶20-227 (4).^{2/}

1/ Sec. 46a-60. Discriminatory employment practices prohibited. (a) It shall be a discriminatory practice in violation of this section: (8) For an employer, by himself or his agent, for an employment agency, by itself or its agent, or for any labor organization, by itself or its agent, to harass any employee, person seeking employment or member on the basis of sex. "Sexual harassment" shall, for the purposes of this section, be defined as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating hostile or offensive working environment.

2/ Sec. 20-227. Disciplinary action, grounds; appeals. The department of health services may refuse to

(footnote cont'd)

misconduct on Respondent's part not to intervene to eliminate an offensive working environment for two females who were temporarily on his funeral premises for business purposes only. Findings # 3, 4, 5, 6, 7, 8. The Respondent, therefore, has violated Conn. Gen. Stat 20-227 (4) only.

Third Count

The Respondent is charged with associating with Frank Smerglinolo in the course of conducting licensed activities on his funeral home premises when said Frank Smerglinolo made sexually offensive or harassing comments to Cunthia Cook or Karen Toppi in violation of Conn. Gen. Stat ¶ 20-227 (4).

The Board concludes, after reviewing all the evidence that this claim as alleged has been proven in that it was misconduct on Respondent's part not to intervene to eliminate an offensive working environment for two females who were temporarily on his funeral premises for business purposes only. Findings # 3, 4, 5, 6, 7, 8. The Respondent therefore has violated Conn. Gen. Stat. ¶ 20-227(4).

ORDER

Pursuant to its authority under Conn. Gen. Stat. ¶ 19a-17, the Board hereby orders the following:

- (1) That a letter of reprimand be written and placed in Respondent's file at the Department of Health Services.
- (2) That such letter state the Respondent was guilty of unprofessional conduct and that he violated Conn. Gen. Stat. ¶ 20-227 (4).
- (3) That such letter state that he make more selective his choice of non-professional persons to assist him in performing his professional functions.
- (4) That such letter be considered if Respondent is brought before the Board in any further disciplinary activities.

CONNECTICUT BOARD OF EXAMINERS
OF EMBALMERS AND FUNERAL DIRECTORS

April 24, 1966
Date

BY: [Signature]
Chairman

STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

Letter of Reprimand

Edmund Dougiello
License No. 1246
36 South Pine Creek Road
Fairfield, CT 06430

RE: EDMUND DOUGIELLO

Dear Mr. Dougiello,

This is to advise that the Connecticut Board of Examiners for Embalmers and Funeral Directors in the enclosed MEMORANDUM OF DECISION unanimously ordered that this Letter of Reprimand be written and placed in your file at the Department of Health Services.

This Reprimand was ordered as the result of the July 31, 1985 and August 13, 1985 hearings alleging that you violated Conn. Gen. Stat. §§ 46a-60(a)(8)(4) and 20-227(4) for failing to intervene when Frank Smerglino who was assisting you in carrying out your licensed activities made sexually offensive or harassing comments to two female State employees who were on your premises to transport human remains to the Chief Medical Examiners office. In its findings and conclusion the Board determined that such allegations under Conn. Gen. Stat. 20-227(4) have been proven in that such comments were made in your presence under circumstances where you could have terminated the making of such remarks. So that this will not recur, in the future you are to be more selective in your choice of persons assisting you in your professional functions. This will further advise that this Letter of Reprimand will be considered if you are brought before the Board in any further disciplinary proceedings.

CONNECTICUT BOARD OF EXAMINERS OF
EMBALMERS AND FUNERAL DIRECTORS

April 24, 1986
Date

BY:

Paul E. [Signature]
Chairman