

NO. A10-1440

State of Minnesota
In Supreme Court

Amanda Tatro,

Appellant,

vs.

University of Minnesota,

Respondent.

**BRIEF AND APPENDIX OF AMICUS CURIAE
AMERICAN BOARD OF FUNERAL SERVICE EDUCATION**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF *AMICUS CURIAE*¹

The University of Minnesota Program of Mortuary Science is a funeral service program accredited by *Amicus Curiae*, the American Board of Funeral Service Education (“ABFSE”). Nationally, there are 57 total ABFSE accredited funeral service programs, of which 44 are public programs. As the sole accrediting entity for funeral service programs in the United States, the ABFSE accreditation standards require all programs to meet the highest societal and ethical standards. Given the sensitive nature of funeral service education and the funeral service profession, college programs must be equipped to respond to student conduct that negatively affects not only the viability of a single accredited institution, but also reflects upon programs nationwide and the funeral service profession. Funeral service education and the profession cannot thrive without donated cadavers to allow students to properly learn the skills necessary to join the profession. Universities must enact and enforce rules requiring the highest ethical standards to ensure the proper respect is given to the donated cadavers and their families, as well as to make certain that donations continue.

The rules adopted by the University of Minnesota are of the type required by the ABFSE’s accreditation standards in order to protect funeral service education and the profession. A student’s violation of those rules without a response from the university would put the University of Minnesota’s program, as well as the profession, at risk. The

¹ Counsel certifies that this brief was authored in whole by listed counsel for *Amicus Curiae* ABFSE. No person or entity other than *Amicus Curiae* made any monetary contribution to the preparation or submission of the brief. This brief is filed on behalf of the ABFSE, which was granted leave to participate as *Amicus* by this Court’s Order dated October 19, 2011.

ABFSE supports the University of Minnesota's authority to take disciplinary action because the ability to regulate the conduct of students in such a sensitive environment is critical to the preservation of funeral service education and the integrity of the funeral service profession.

STATEMENT OF CASE AND STATEMENT OF FACTS

The parties have set forth the facts of the case in detail. The United States Department of Education recognizes the ABFSE as the sole accrediting agency in the United States in the field of funeral service education. *U.S. Department of Education: Accreditation > Agency List*, <http://ope.ed.gov/accreditation/Agencies.aspx> (last visited Dec. 5, 2011). The ABFSE is composed of representatives from its 57 accredited academic programs, representatives from various professional associations, and two representatives from the general public. The ABFSE has a standing Committee on Accreditation and maintains the “Accreditation and Policy Manual” (ABFSE Policy Manual) detailing the objectives of the ABFSE and articulating the standards that funeral service programs are required to meet in order to receive and maintain accreditation.

The ABFSE serves the interests of the public and the funeral service profession by working to “ensure funeral service/mortuary science education is of high quality and meets the needs of society.” ABFSE Policy Manual, p. 2-1 (ABFSE Appendix p. 6). Consequently, the ABFSE requires that its accredited programs and institutions not only provide the appropriate substantive education, but also train students to become the ethical professionals demanded by society. The University of Minnesota’s Program of Mortuary Science is a funeral service program accredited by the ABFSE. Accordingly, the University incorporates into its program rules designed to hold students to the ethical standards required of funeral service professionals.

The University of Minnesota alleges that Amanda Tatro violated Anatomy Laboratory Rules governing Tatro’s Human Anatomy Laboratory course and the rules

contained in the Anatomy-Bequest-Program orientation and disclosure form, each of which conforms with the ABFSE accreditation standards. The University evicted Tatro from her laboratory course and required Tatro to engage in additional study in the area of ethics. Such disciplinary measures—which were not the most severe measures available—are appropriate and necessary to protect the University’s accreditation, uphold the ethical expectations of funeral service students and professionals, and foster and secure the public’s confidence that willed and donated cadavers be treated with the highest integrity and respect.

ARGUMENT

The University of Minnesota’s Program of Mortuary Science is charged with training professionals in the technical and ethical rules that govern those who seek to enter the funeral service profession. That educational goal includes not only educating the students, but ensuring that students are held to the same standards that will bind them upon graduation. Just as law students are bound by the Rules of Professional Responsibility, students in funeral service programs are bound to abide by the professional rules established by the funeral service profession and the rules established by the school they attend. By entering programs such as the University of Minnesota’s Mortuary Science Program and seeking to become licensed funeral service professionals, students agree to follow certain standards as a part of their education. Importantly, the rules established and enforced by the University of Minnesota are of the type required by the ABFSE’s accreditation standards. Enforcing the rules and standards is essential to protecting the viability of funeral service education and the integrity of the profession.

I. RULES GOVERNING STUDENT CONDUCT IN THE UNIVERSITY OF MINNESOTA’S MORTUARY SCIENCE PROGRAM ARE CONSISTENT WITH THOSE REQUIRED BY THE ABFSE ACCREDITATION STANDARDS.

The ABFSE requires funeral service education programs to develop rules—such as those adopted by the University of Minnesota—in order to achieve and maintain accreditation. The accreditation process, “through which a program or institution voluntarily submits to evaluation by its peers against an established set of standards,” is intended to achieve numerous purposes, including “develop[ing], approv[ing] and

improv[ing] the standards of funeral service education and thereby protect the public interest.” ABFSE Policy Manual, p. 3-1 (ABFSE Appendix p. 15).

“Funeral service is a profession practiced by men and women who are required to meet certain educational, societal, and governmental standards. ... The primary focus of funeral service lies in competent, ethical service to the public.” *Id.* at 9-1 (ABFSE Appendix p. 26). The accreditation standards foster this primary focus and further ensure that “those ingredients necessary to the successful practice of funeral service are offered each student in a consistent and universal manner.” *Id.* These obligations have been recognized by the ABFSE for decades. The accreditation standards specifically include a requirement that each accredited program maintain the following objectives: “to educate students in every phase of funeral service and to help enable them to develop proficiency and skills necessary for the profession...; to educate students concerning the responsibilities of the funeral service profession to the community at large; [and] to emphasize high standards of ethical conduct.” *Id.* at 9-3 (ABFSE Appendix p. 28).

The University of Minnesota’s Mortuary Science Program and Anatomy Laboratory course rules not only effectuate these required objectives, but are necessary to protect the long-term trustworthiness and reputation of the mortuary science and funeral service profession. Specifically, the course rules advise students that the opportunity to examine and dissect the human body is a privilege and the grant of that privilege requires students to treat the person who donated his or her own body with the “utmost respect and dignity.” (Appellant’s Addendum 17A.) The University’s rules are abundantly clear: students must handle human material with respect at all times and “[c]onversational

language of cadaver dissection *outside* the laboratory should be respectful and discreet. *Blogging about the anatomy lab or the cadaver dissection is not allowable.*” (Appellant’s Addendum 17A) (emphasis added.) These rules instruct students to show respect for the human donation to which they are privileged to have access, and specifically advise students to restrict their communications regarding the anatomy lab and dissection, particularly outside of the laboratory class itself.

Notably, the rules governing the conduct of students in the funeral service program apply regardless of whether the student is on or off campus. The proper development of professionals and protection of the profession, both of which mirror the required objectives for funeral service education, require an institution to be able to respond to student conduct inside or outside of the laboratory. Funeral service programs involve off-site instruction including embalming cases, restorative arts cases, and internships. But more importantly, unethical or disrespectful conduct towards human donors and, thereby, their families—regardless of whether it occurs on or off campus—negatively impacts funeral service education programs as well as the trustworthiness and reputation of the profession.

The University of Minnesota’s discipline of Tatro for violating course and orientation rules was consistent with the compelling need to enforce the highest ethical standards for this sensitive area in order to maintain accreditation, protect the donor, and uphold the integrity of the profession.

II. RULES GOVERNING STUDENT CONDUCT ARE ESSENTIAL TO MAINTAIN THE UNIVERSITY'S FUNERAL SERVICE PROGRAM, PROTECT SIMILAR PROGRAMS NATIONWIDE, AND UPHOLD THE INTEGRITY OF THE FUNERAL SERVICES PROFESSION.

A. Regulating Disrespectful And Unethical Student Conduct is Critical To Maintaining A Funeral Service Program's Accreditation.

The University of Minnesota's rules enforced against Tatro are, in part, developed to meet the ABFSE's accreditation standards. In order to retain accreditation, the University must comply with all accreditation standards. ABFSE Policy Manual at 2-1 (ABFSE Appendix p. 6). The ABFSE Committee on Accreditation has the responsibility of "ensur[ing] that all programs remain in compliance with ABFSE standards throughout their accreditation or preaccreditation period." *Id.* at 8-5 (ABFSE Appendix p. 23). A program reported as being out of compliance is required to respond in writing to the allegation and may be subject to a special site evaluation. *Id.* The cost of this review is borne by the institution. *Id.* Ultimately, failure to come into compliance will result in withdrawal of the program's accreditation.

The Committee on Accreditation's ultimate decisions regarding accrediting individual programs are based "on the objectives of the program, the manner in which it is currently meeting its objectives, and the probability that it will continue to meet its objectives in the future as well as the Accreditation Standards." *Id.* at 9-1 (ABFSE Appendix p. 26). Those objectives, which are dictated by the ABFSE's accreditation standards, require accredited institutions to emphasize ethical conduct and prepare students for future professional responsibilities to the community in addition to providing

the technical training and skills required of a funeral service professional. An accredited program's failure to respond to a student's disrespectful and unethical conduct in violation of school and course rules would place the program's accreditation at risk. The loss of accreditation would end a program's ability to issue degrees in funeral service and mortuary science education and produce candidates eligible for state licensure. The impact of such a loss would go beyond the program itself and adversely affects the education and careers of current students and program alumni. Accordingly, all accredited funeral service programs operate with rules similar to those employed by the University of Minnesota, and must enforce those rules in order to maintain their accreditation.

B. Regulating Disrespectful And Unethical Student Conduct Is Necessary To Ensuring Funeral Service Education Programs' Access To Necessary Donations.

The accreditation standards are essential to funeral service programs across the country. These programs must make certain that students comply with an ethical code of conduct because failure to do so negatively affects the image of the individual program as well as programs throughout the country. A negative public image would greatly decrease the number of willed-bodies and donated cadavers upon which funeral service education heavily relies. A positive public image of funeral service education is paramount to the programs' viability for numerous reasons, including continuing cadaver donations.

As recognized by the Minnesota Court of Appeals, funeral service education "relies heavily on the faith and confidence of donors and their families to provide

necessary laboratory experiences for medical and mortuary-science students.” *Tatro v. University of Minnesota*, 800 N.W.2d 811, 822 (Minn. App. 2011). An important focus in a funeral service student’s education includes hands-on work in areas such as embalming and the restorative arts. ABFSE Policy Manual, pp. 9-6, 9-7 (ABFSE Appendix pp. 31-32). The substantive curriculum of all accredited programs requires each student to complete an embalming clinic that includes, at a minimum, each student actively participating in ten embalming cases. *Id.* at 9-6 (ABFSE Appendix p. 31). “Active participation” requires “hands-on” learning through the completion of at least six specific embalming tasks. *Id.* Consequently, for any given embalming “case,” a maximum of five students may actively participate and receive credit. *Id.*

In 2010, the enrollment for the then-56 accredited funeral service programs throughout the country exceeded 5,000 students. Each student needs to complete the requisite number of hands-on cases to complete his or her degree. As a result, a large number of donations are needed for each program in a given year. These donations are generally facilitated through the anatomy bequest programs of various medical schools and research-based hospital systems. Minnesota recognizes two such programs within the state: the Mayo Clinic Section of Anatomy and the Anatomy Bequest Program for the University of Minnesota Medical School. *Mortuary Science: Midwest Whole Body Donation Programs in Medical Schools*, <http://www.health.state.mn.us/divs/hpsc/mortsci/donate.htm> (last visited December 6, 2011). While some programs, such as the University of Minnesota’s Mortuary Science Program, have the fortune of being closely affiliated with anatomy-bequest programs,

nearly 50 of the 57 accredited programs nationwide are either community colleges or independent programs with limited access to cadaver donations. For many of these programs, the availability of cadavers is so limited, students rely on access to local funeral homes to complete their course requirements.

Tatro indicates in her brief that the University of Minnesota's Anatomy Bequest Program had 323 donors in 2007 and more in 2009, and "[t]here was no evidence that the incident caused a decrease in the number of donors." (Appellant's Brief at p.11.) The effect of Tatro's conduct on donations, however, may have been minimized because she was subject to discipline pursuant to the University's rules. Nonetheless, Tatro's citation of donor numbers underestimates the potential harm that disrespectful and unethical conduct could have on the resources available to funeral service education. First, donations made to the University of Minnesota's Anatomy Bequest Program are made available to more than the Mortuary Science Program; internal University research, external research, law enforcement education, and medical education all rely on access to these donations as well. (Appellee's Brief at p.3.) This is generally the case with donations made to similar programs nationwide.

Second, disrespectful and unethical conduct reaches beyond a single institution and affects the willingness of the public to make these much-needed donations across the country. For the majority of funeral service programs that are community colleges or independent programs, any change in the number of available donations—even a small change—can be significant.

Finally, for all accredited programs, but particularly for those with limited donations, students' educational training depends in part on the profession's willingness to allow students to conduct hands-on work off campus in local funeral homes. Ethical misconduct by students jeopardizes the willingness of these professionals to allow students to participate at these off-campus sites—a considerable loss to any funeral service program, and particularly to those heavily dependent on this type of relationship with the profession.

Conduct that violates the objectives required by ABFSE's accreditation standards exacerbates the already challenging task of acquiring cadavers, which is a crucial resource for all programs that are dependent on human donations as a necessary educational tool. Thus it is paramount to each accredited program to maintain enforceable rules intended to protect the public trust and confidence upon which the donation process relies.

C. Regulating Disrespectful And Unethical Student Conduct Is Essential To Protect The Public Image Of The Funeral Service Profession.

The standards imposed through the accreditation process, which are in part embodied in the University's rules enforced against Tatro, impact more than the quality of student education; they ultimately affect the image and character of the funeral service profession. These standards and the rules are essential to maintaining the reputation of the profession itself, both in making certain that student conduct that could negatively affect the public's trust in the profession does not go unaddressed and also in ensuring

that students entering the funeral service profession are prepared to provide competent and ethical service to the public.

The funeral service profession deals with highly sensitive situations, and those who practice within it are responsible for more than applying the technical skills of preparing bodies or organizing funeral services. “[F]uneral service involves significant considerations of public health, both as it relates to the proper disposition of human remains and to the counseling of bereaved persons.” ABFSE Policy Manual, p.10-1 (ABFSE Appendix p. 40). The public expects funeral service professionals to treat deceased persons with the utmost respect and to provide both competent and ethical services to support grieving families. Because the public is entrusting the care of its loved ones into the hands of these professionals, it is crucial for the profession as a whole to retain the confidence of the public. However, conduct that is disrespectful to both a deceased person and his or her family undermines the longstanding integrity of the industry. This is true regardless of whether it is a professional or a student engaged in the inappropriate conduct, and “[a]ccordingly, programs of education relating [to funeral services] must maintain as high a standard of excellence as possible.” *Id.*

Even more, disrespectful conduct by a student can further undermine the profession’s reputation to the extent the student will ultimately join the funeral service practice. Unlike other paths to becoming a licensed professional, such as becoming a lawyer, the process of becoming a licensed funeral service practitioner does not include an evaluation of a candidate’s character and fitness. There is oversight of a practitioner’s professional conduct, but that oversight applies only after a person becomes licensed or

while acting as an intern. Minn. Stat. § 149A.70, subd. 7 (2010). In most states, the process to become licensed requires degree completion, possibly an internship, and a substantive examination, but does not involve a review of one's character. The National Board Examination tests topics such as funeral directing, funeral service law, restorative arts, and embalming. This exam is intended to test the competency of a particular candidate and does not evaluate one's preparedness to address the ethical concerns of a career in the sensitive area of funeral service. Nor do state licensing requirements evaluate a candidate's character. To become a licensed mortician in Minnesota, for example, a candidate must have a bachelors of science degree, complete an accredited funeral service education program, pass the National Board Examination, pass a state board examination, and complete a one-year internship. Minn. Stat. § 149A.20 (2010); *see also License Minnesota: Mortuary Science (Mortician) License*, http://www.license.mn.gov/licenses/licensedetail.jsp?URI=tcm:29-3056&CT_URI=tcm:27-117-32 (last visited Dec. 2, 2011). Because neither the examination nor the state licensing standards evaluate an applicant's character and fitness, that burden is left to the funeral service programs themselves to ensure licensure candidates have the proper ethical training to enter the profession.

The ABFSE recognizes the profession's reliance on these programs to educate students on the ethical standards expected from society for this sensitive professional role. This is evidenced by the requirement that each student complete a course in ethics, and is also reiterated throughout the ABFSE Policy Manual including the accreditation standards such as requiring programs "to emphasize high standards of ethical conduct."

ABFSE Policy Manual, pp. 9-3, 9-7 (ABFSE Appendix pp. 28, 32). With no official review of each student's character, there is a greater onus on the funeral service programs or institutions to evaluate and address any character or ethical issues, which is achieved through articulable, enforceable rules that govern a student's conduct.

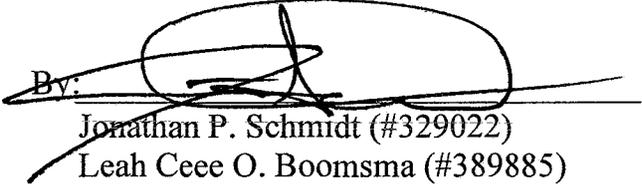
CONCLUSION

Accreditation for funeral service programs requires institutions to enact and enforce certain rules to ensure that students abide by the profession's ethical standards. Failure to enact or enforce rules places a program's accreditation at risk. Even worse, a violation of the rules that goes without a response places all funeral service education and the profession at risk. Public confidence that donated or willed cadavers will be treated with the utmost integrity and respect is essential to the continued success of funeral service education and the profession.

The University of Minnesota's rules and standards are appropriate and consistent with the ABFSE accreditation standards. The University must be allowed to enforce its rules and standards against student conduct—whether on or off campus—in order to maintain accreditation and protect public confidence in the profession. The University's response to Amanda Tatro's conduct was appropriate and necessary. The ABFSE respectfully requests this Court to affirm.

Dated: December 8, 2011

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for *amicus curiae* American Board of Funeral Service Education, certifies that this brief complies with the requirements of Minn. R. App. P. 132.01 in that it is printed in 13 point, proportionately spaced typeface utilizing Microsoft Word 2007 and contains 3,413 words, including headings, footnotes and quotations.

Dated: December 8, 2011

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