

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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ANGELS CREMATION & BURIAL, L.L.C., *Plaintiff/Appellant*,

*v.*

STATE OF ARIZONA BOARD OF FUNERAL DIRECTORS AND  
EMBALMERS, *Defendant/Appellee*.

No. 1 CA-CV 18-0439  
FILED 7-30-2019

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Appeal from the Superior Court in Maricopa County  
No. LC2017-000414-001  
The Honorable Patricia Ann Starr, Judge

**AFFIRMED**

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COUNSEL

Charles E. Buri, P.L.C., Scottsdale  
By Charles Buri  
*Counsel for Plaintiff/Appellant*

Arizona Attorney General's Office, Phoenix  
By Thomas Raine  
*Counsel for Defendant/Appellee*

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**MEMORANDUM DECISION**

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Peter B. Swann joined.

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**T H O M P S O N**, Judge:

¶1 This is an appeal from a decision issued by the Arizona Board of Funeral Directors and Embalmers (the Board) which, in 2017, disciplined Angels' funeral home license and imposed a civil penalty and costs pursuant to Arizona Revised Statutes (A.R.S.) §§ 32-1367 (2019), -1368 (2019).<sup>1</sup> That decision was affirmed in the superior court. We, likewise, affirm the Board's decision.

**PROCEDURAL AND FACTUAL HISTORY**

¶2 Angels holds a board-issued license to operate an Arizona funeral establishment. The owner of Angels, Sandy Greenley (Greenley), is not a licensed funeral director or embalmer and, therefore, by both statute and regulation, specifically A.R.S. §§ 32-1301(34)(a) (2019), -1382(A)(3) (2019) and Administrative Rule (A.A.C.) R4-12-204(A)(3), (16), must have a "responsible funeral director" in her employ. That funeral director is responsible for ensuring Angels complies with all applicable rules and statutes. *Id.*

¶3 In 2016, Angels' funeral director quit her job. She was denied unemployment benefits because she failed to prove that "stacking" human remains was a prohibited act in the funeral home business. Following the denial of those benefits she reported to the Board that Greenley had admitted in that administrative matter to routinely stacking containers of human remains on top of one another. Greenley considered it a normal and acceptable practice in the industry to stack the cardboard boxes holding the human remains on top of another box. She stated that she "couldn't understand what the big deal [was]" as she had "good boxes." However, despite Greenley's apparent belief that stacking was no "big deal," there

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<sup>1</sup> We cite to the current version of any statute unless the statute was amended after the pertinent events and such amendment would affect the result of this appeal.

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was testimony from employees that Greenley hid the stacking from her funeral director and she told employees “not to worry about it” that she would “take the heat.” The new responsible funeral director at Angels said he had previously observed stacking when a funeral home got “super busy,” but he “ain’t gonna do it.”

¶4 The Board issued a complaint and notice of formal hearing alleging that the practice of stacking violated A.A.C. R4-12-301(A)(1), (2), and (5). Five funeral directors, in addition to the Director of Mortuary Science at Arizona’s only accredited program, an intern who had graduated from the mortuary program, and a regulatory compliance officer all testified that the practice of stacking was not acceptable. The witnesses variously said that the practice was “completely unethical,” “very, very, disrespectful,” and that families would “find it appalling” to know this was happening. Three of the witnesses further pointed out that such a practice may cause crushing or collapsing of the boxes which might lead to the leaking of bodily fluids or insult to the human remains in the bottom box. Additionally, testimony from the decision *Alexis-Walsh Welsh-Alexis v. Board of Funeral Directors & Embalmers*, 1 CA-CV 17-0768, 2018 WL 5729413 (App. Oct. 30, 2018) (mem. decision) was stipulated to, including testimony that stacking was not a currently acceptable practice -- although it may have been at one time.

¶5 Angels presented the testimony of two witnesses employed in the transporting of human remains. These witnesses opined that stacking is acceptable and it occurs regularly in the profession, although one said he would never stack bodies because it was disrespectful and “just not right.” Those two witnesses were without formal training or education in funeral services.

¶6 Angels was disciplined for the charges listed in the complaint, namely violating the Board’s regulations A.A.C. R4-12-301. Her motion for rehearing was denied. Her appeal to the superior court was unsuccessful. Greenley timely appealed to this court.

**DISCUSSION**

**Applicable Law**

¶7 The Board may discipline licensed funeral directors and the owners of a funeral home for acts of unprofessional conduct, repeated or continuing negligence or other professional incompetence, or violations of statutes and rules governing the funeral service profession. A.R.S. §§ 32-

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1366 (anyone with a license may be disciplined); -1301(16) (defining business entity), (25) (defining funeral establishment), (32) (defining who has licenses subject to regulation), (38) (defining owner) (2019). For these purposes unprofessional conduct includes gross negligence or incompetence that is reasonably related to funeral directing. A.R.S. § 32-1301(54)(k) (2019).

¶8 Discipline may be imposed for conduct reflecting “disrespect for the deceased person ... [that is] contrary to the prevailing standards and practices of the profession in this state.” A.A.C. R4-12-301(A)(1), -301(B) (noting that violations of (A)(1) are “deemed evidence” of gross negligence or incompetence subject to discipline under A.R.S. § 32-1366(A)(1)-(2)).

¶9 Angels was found to have violated A.A.C. R4-12-301(A)(1) and (2). Specifically, conduct causing “disrespect for the deceased person ... [that is] contrary to the prevailing standards and practices of the profession in [Arizona].” A.A.C. R4-12-301(A)(1); *see also* A.A.C. R4-12-301(A)(2) (regarding care, handling, or transportation of human remains “in accordance with the prevailing standards and practices of the profession in this state”). Angels was also found to have violated A.A.C. R4-12-301(5), which provides:

Licensees shall not make statements nor engage in activities which foreseeably could result in needless infliction of emotional distress on members of the decedent's family or result in exposing the remains to unnecessary indignity.

**Issue**

¶10 On appeal, Angels argues that the prohibition related to preserving the “dignity” of or causing “disrespect” to the deceased are inherently subjective and, therefore, the prohibition unconstitutional. *See Ethridge v. Ariz. State Bd. of Nursing*, 165 Ariz. 97, 105 (App. 1989) (noting that a statutory prohibition is unconstitutional when it is “so vague that persons of common intelligence must necessarily guess as to its meaning and will differ as to its application”) (citation omitted); *see also Berenter v. Gallinger*, 173 Ariz. 75, 81 (App. 1992) (noting the danger of arbitrary or discriminatory enforcement of provisions that are too vague to provide an objective standard for enforcement). They argue the laws which regulate persons must give fair notice of the forbidden or required, and these do not give such notice. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

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**Standard of Review**

¶11 On judicial review the Board's decision must be affirmed unless it “is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion.” A.R.S. § 12-910(E) (2019); *see also Horne v. Polk*, 242 Ariz. 226, 230, ¶ 13 (2017). The Board's decision will be upheld if the evidentiary record supports the decision. *Horne*, 242 Ariz. at 230, ¶ 13. Legal conclusions we review de novo. *McGovern v. Ariz. Health Care Cost Containment Sys. Admin.*, 241 Ariz. 115, 118, ¶ 8 (App. 2016). A person challenging one or more regulations has the burden of overcoming the strong presumption that the regulations are constitutional. *Cannabis Nurses Ass'n v. Arizona Dep't of Health Services*, 242 Ariz. 62, 68, ¶ 17 (App. 2017). The weighing of conflicting evidence and the assessment of a witness's credibility as to professional norms rests “peculiarly within the province of the trier of facts.” *See Anamax Mining Co. v. Ariz. Dep't of Econ. Sec.*, 147 Ariz. 482, 485-86 (App. 1985).

**Are the Funeral Board's Regulations  
Unconstitutionally Vague?**

¶12 We do not find the Board's regulations unconstitutionally vague. “The Legislature ‘need not define statutory terms with linguistic precision’ in order to withstand a vagueness challenge.” *See Golob v. Ariz. Med. Bd.*, 217 Ariz. 505, 513, ¶¶ 29-32 (App. 2008) (citation omitted).

¶13 Even assuming, for arguments sake, that “disrespect for the deceased person,” was overly subjective, the prohibition is confined to the objective requirement that the act be “contrary to the prevailing standards and practice of the profession in this state.” *See A.A.C. R4-12-301(A)(1)*. In regulations applicable to trained professionals, reliance on professional standards provide an objective baseline as to what is acceptable. *See Golob*, 217 Ariz. at 513, ¶¶ 31-32 .

¶14 Greenley admits to stacking bodies. At least eight persons, including other funeral directors and a compliance officer, opined that stacking was inappropriate, unprofessional, and was likely to cause “needless infliction of emotional distress on members of the decedent's family or result in exposing the remains to unnecessary indignity.”

¶15 In light of the industry experts' testimony, we find substantial evidence supports the conclusion that stacking occurred and it fell below professional standards. *See A.A.C. R4-12-301(A)(1), (2), (5)*; *see also Horne*, 242 Ariz. at 230, ¶ 13; *Welsh-Alexis*, 2018 WL 5729413 at 3-4, ¶¶ 17-22.

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Greenley did not meet her burden of proof and did not overcome the strong presumption that the regulations were constitutional. For those reasons, we affirm the superior court.

**Attorneys' Fees and Costs**

¶16 Without citation to the proposed basis, Angels requests an award of attorneys' fees and costs. As Angels has not prevailed on appeal, we deny Angels' requests.

**CONCLUSION**

¶17 The superior court judgment upholding the Board's final disciplinary decision against Angels is affirmed.

SWANN, J. and MORSE, J., specially concurring:

¶18 The Honorable Jon W. Thompson passed away on July 22, 2019. Judge Thompson signed this decision before his death. We concur fully in the decision.



AMY M. WOOD • Clerk of the Court  
FILED: AA