

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Moran v. McDonald

2025 NY Slip Op 06767 (3d Dep't 2025) · No. CV-24-0776; CV-24-0781 · Decided December 4, 2025

SUMMARY

The Appellate Division, Third Department annulled the New York Commissioner of Health's determination imposing penalties on licensed funeral directors and officials of a funeral service institute. The court held that the petitioners could not be found to have aided violations involving false or fraudulent statements because the 2018 statute created an un rebutted presumption that the affected funeral directors had validly passed the licensing examination.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Reynolds Fitzgerald, J.; Pritzker, J.P.; Ceresia, J.; McShan, J.; Powers, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	December 4, 2025
DOCKET	CV-24-0776; CV-24-0781
DISPOSITION	annulled
PROCEDURAL POSTURE	Consolidated CPLR article 78 proceedings to annul the Commissioner of Health's determination finding petitioners violated Public Health Law article 45 and imposing penalties; the proceedings were transferred to and joined in the Appellate Division.
STANDARD OF REVIEW	Judicial review of an administrative determination under CPLR article 78; the opinion does not expressly state a more specific standard.
PRECEDENTIAL VALUE	published
PARTIES	Kevin Moran, Mary M. Dunn et al. v. James McDonald, as Commissioner of Health

TOPICS

- judicial review of agency action
- administrative law
- medical licensing
- health law
- statutory interpretation

PRACTICE AREAS

administrative law

health law

professional licensing

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Department of Health could establish a violation of Public Health Law § 3455(1)(a) in an administrative licensing proceeding.
2. Whether petitioners' alleged collection and distribution of National Board Examination questions constituted aiding or inducing a false or fraudulent statement or representation under Public Health Law § 3455(1)(a).
3. Whether petitioners could be liable for aiding fraud when the Legislature had presumed that the affected funeral directors successfully passed the examination and the Department had not rebutted that presumption.

HOLDINGS

1. Petitioners did not violate Public Health Law § 3455(1)(a) because they themselves made no false or fraudulent statement or representation, and the alleged conduct of the applicants could not be attributed to petitioners as a statutory false representation.
2. Petitioners could not be liable for aiding fraud because there was no underlying fraud after Laws of 2018, chapter 270, § 1 presumed that the affected funeral directors had successfully passed the examination and the Department failed to rebut that presumption.

KEY QUOTATIONS

"While this might not have been the right thing to do, and the conference was arguably harmed in that it had to retire a "significant number of questions" and "halt testing for [AAMI] graduates for a certain period of time so that completely new questions could be written," petitioners themselves simply made no "false or fraudulent statement or representation."" (*3)

"Thus, absent a valid underlying fraud, there cannot be an action for aiding fraud" (*3)

FACTUAL BACKGROUND

Petitioners were licensed funeral directors associated with the American Academy McAllister Institute, which prepared students for New York funeral-director licensure and the National Board Examination. The examination conference alleged that petitioners collected recollections of examination questions from students who had taken the test and distributed the information to staff and other students; related federal litigation ended in a settlement and permanent injunction without an admission of wrongdoing. The conference later invalidated the passing results of 300 graduates, and the Legislature enacted Laws of 2018, chapter 270, § 1, presuming that all then-licensed New York funeral directors had successfully passed the examination unless the Department of Health rebutted the presumption after notice and a hearing. The Department never attempted to rebut that presumption for the affected individuals but nonetheless pursued administrative charges against petitioners.

PROCEDURAL HISTORY

The Department of Health commenced an administrative enforcement proceeding against petitioners, licensed funeral directors and administrators or instructors at the American Academy McAllister Institute of Funeral Service, alleging that they aided or induced applicants to violate Public Health Law § 3455(1)(a) by collecting and distributing questions from the National Board Examination. After a hearing, an Administrative Law Judge sustained the charges and recommended license suspensions or revocations, and the Commissioner adopted that determination. Petitioners commenced separate CPLR article 78 proceedings in 2024; the Supreme Court, Albany County, transferred them under CPLR 7804(g), and the Appellate Division joined them.

DISPOSITION

annulled

CASES CITED

- Oster v. Kirschner, 77 A.D.3d 51, 55 (1st Dep't 2010)
- Simon v. FrancInvest, S.A., 178 A.D.3d 436, 437 (1st Dep't 2019), appeal dismissed, 35 N.Y.3d 1057 (2020)
- Little Rest Twelve, Inc. v. Zajic, 137 A.D.3d 540, 541 (1st Dep't 2016)

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