



DECISION OF THE DIRECTOR - RECONSIDERATION

In the Matter of: *Business Practices and Consumer Protection Act, S.B.C. 2004, c.2
Cremation Interment Funeral Services Act, S.B.C. 2004, c.35 and
Cremation Interment Funeral Services Regulation*

Respondent: **Christina Koh**

Case Number: **31332**

Licence Number: **74701**

Adjudicator: **Tegan Scardillo, Director of Business Practices and Classification**

Date of Decision: **March 4, 2022**

**Date of
Reconsideration:** **April 27, 2022**

A. INTRODUCTION

1. Christina Koh (“the respondent”) is a funeral director and embalmer, licensed to engage in the activity under Consumer Protection BC licence number 74701 (“the licence”).
2. In a Decision dated March 4, 2022, the respondent was confirmed to have contravened CFSR section 38(1)(a) and 38(1)(b) by failing to complete the minimum required hours in a program of funeral services and embalming services approved by the Director during the 2019 – 2021 period. A Compliance Order and Notice of Administrative Penalty were issued with the decision. The decision was made after the respondent failed to provide a response to the allegation as part of their opportunity to be heard.
3. The respondent made a request for a reconsideration on March 15, 2022. After being satisfied the respondent’s request contained “new evidence” under the requirements of the Cremation

Interment and Funeral Services Act, I accepted the reconsideration request. This decision pertains to the reconsideration of the March 4, 2022 determination that imposed an administrative monetary penalty and issuance of a Compliance Order.

B. BACKGROUND

4. The Compliance Order dated March 4, 2022 required the respondent to:
 - i. *Before April 5, 2022, complete six hours of training in an approved program of embalming services and complete 6 hours in an approved program of funeral services. These twelve hours of approved training will be credited to the respondent's continuing education requirements for the two-year period of October 26, 2019, to October 26, 2021 in order to satisfy minimum training requirements for the period. For clarity, these ordered hours of approved training in embalming services and funeral services are in addition to the minimum hours of approved training the respondent must complete during the current two-year period of October 26, 2021 to October 26, 2023.*
 - ii. *Before April 12, 2022, provide Consumer Protection BC with certificates of completion for the approved training required in paragraph 1.*
 - iii. *Before April 5, 2022, make payment to Consumer Protection BC the amount of \$150.00 as partial reimbursement for inspection costs.*
5. A Notice of Administrative Penalty was issued on March 4, 2022 in the amount of \$500.00.
6. Following the publication of the decision (March 9, 2022), Consumer Protection BC was contacted by the respondent's employer on March 10, 2022, who stated the respondent was "on medical leave" and "[REDACTED] and unable to complete her continuing education credits".
7. Pursuant to Section 181 of the BPCPA, a reconsideration request can be submitted by a "person" within 30 of receiving a determination. The respondent's employer submitted a reconsideration request ("the request") on the respondent's behalf on March 15, 2022. After considering the request and being satisfied the grounds met the "new evidence" requirements under CIFSA, I agreed to a reconsideration hearing.

C. LEGISLATION

Cremation, Interment and Funeral Services Regulation:

38 (1)A person licensed as a funeral director, embalmer or both must complete a minimum of

(a) 6 hours of training in a program of funeral services that is approved by the director, if licensed as a funeral director,

(b) 6 hours of training in a program of embalming that is approved by the director, if licensed as an embalmer,

during each successive two-year period where the first two-year period commences on the date the person first received their licence to act as a funeral director or an embalmer or both in the Province.

(2) Despite subsection (1), the director may at any time require a funeral director or embalmer to take additional training in a program of funeral services education or embalming.

Cremation, Interment and Funeral Services Act:

Application of Division 1 of Part 12 — reconsiderations

60 (1) For the purposes of this section, a reference to "determination" in the Business Practices and Consumer Protection Act and in this section must be read as

(a) a decision, an order or a ruling in respect of a matter that relates to a certificate of public interest,

(b) a decision made under section 55 [application of Part 9 — licences] with respect to a licence,

(c) a compliance order,

(d) a notice imposing an administrative penalty under this Act,

(e) a decision in respect of a sale, lease or encumbrance under section 27 [sale, lease or encumbrance of land restricted], and

(f) a decision in respect of a change of use of a place of interment under section 52 [granting approval to change use of place of interment].

(2) A director may vary or cancel a type of determination referred to in paragraphs (c) to (f) of subsection (1) only if the director is satisfied that new evidence has become available or been discovered that

(a) is substantial and material to the determination, and

(b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

(3) If the director has delegated powers and duties respecting a determination referred to in paragraph (b) of the definition of "determination", the director must not delegate the reconsideration of the determination to the same person.

(4) If the director made a determination referred to in paragraph (b) of the definition of "determination", the director must delegate the reconsideration to one or more persons who did not participate in the determination.

(5) Sections 181 [reconsideration by director], 182 (1), (5) and (6) [powers of director on reconsideration] and 186 [publication by director] of the Business Practices and Consumer Protection Act apply for the purposes of this Act.

Business Practices and Consumer Protection Act:

Part 12 – General

Division 1 – Reconsiderations

Reconsideration by director

181 (1) A person may request the director to reconsider a determination

(a) within 30 days of receiving the later of

(i) the determination, and

(ii) any written reasons respecting the determination, or

(b) within the time period specified by the director, if the director is satisfied that

(i) special circumstances existed which precluded the filing of a request for reconsideration within the time period required in paragraph (a), and

(ii) an injustice would otherwise result.

(2) The person must make the request in writing and must identify the error the person believes was made or the other grounds for which reconsideration is requested.

(3) If the director decides to reconsider a determination,

(a) the director must give notice to any person that the director considers will be affected by the reconsideration of the determination, and

(b) the determination is stayed unless the director orders that the determination is not stayed.

Powers of director on reconsideration

182 (1) If the director reconsiders a determination, the director

(a) has all the powers and duties the director had with respect to the determination, and

(b) subject to subsection (2), may confirm, vary or cancel the determination.

(2) The director may vary or cancel a determination referred to in paragraphs (a), (c) and (e) of the definition of "determination", only if the director is satisfied that new evidence has become available or has been discovered that

(a) is substantial and material to the determination, and

(b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

(3) If the director has delegated powers and duties respecting a determination referred to in paragraphs (b) and (d) of the definition of "determination", the director must not delegate the reconsideration of the determination to the same person.

(4) If the director made a determination referred to in paragraph (b) or (d) of the definition of "determination", the director must delegate the reconsideration to one or more persons who did

not participate in the determination.

(5) The director must give written reasons for the director's decision in respect of the reconsideration to the person who made the request under section 181 (2) or a person given notice under section 181 (3).

(6) For certainty, a decision made under this section may not be reconsidered.

Publication by director

186 (1) *The director may publish information respecting the following:*

(a) the suspension or cancellation of a licence;

(b) an undertaking;

(c) a compliance order;

(d) a direct sales prohibition order;

(e) a property freezing order;

(f) the imposition of an administrative penalty;

(g) a court order made under this Act;

(h) a conviction of an offence under this Act.

(2) *Without limiting subsection (1), the director may publish*

(a) the name of the person against whom action is taken,

(b) the amount of any penalty, and

(c) the reason for the action taken or the nature of the contravention.

D. EVIDENCE OF RESPONDENT

8. On March 15, 2022, the respondent's employer submitted a reconsideration request on behalf of the respondent. The request stated:

"We are asking for reconsideration of Christina Koh's administrative penalties. I am making this application on her behalf, as she is [REDACTED]

*[REDACTED]
[REDACTED]
[REDACTED] has been on medical*

leave. We have continued to keep her license while she has been on leave with the hope when she is recovered she can come back to join our team. [REDACTED]

*[REDACTED]
[REDACTED] For this reason, we are asking for a reconsideration of her administrative penalties as she simply lacks the ability to complete these credits at this time and any further financial burden to her family would be considerable given the circumstances."*

9. The employer submitted medical documentation supporting the information provided in the request.
10. The Act states in order to consider new evidence, it must be substantial and material to the determination, and either did not exist at the time of the review or did exist at that time but was not discovered and could not, through the exercise of reasonable diligence have been discovered. I am prepared to allow the new evidence on the grounds that it is material and substantial to the determination, and that it was not discovered and could not have been through the reasonable diligence on the part of the respondent, as the respondent was unable to respond to any communications.

E. ANALYSIS

11. Having accepted the new evidence, the Act provides all the powers the Director had with respect to the determination, and with the ability to confirm, vary or cancel the determination.
12. The request asks for reconsideration to the determination that imposed a \$500 administrative monetary penalty.
13. The new evidence submitted shows the respondent was unable to complete the continuing education requirements for the 2019 – 2021 period. While the new evidence did exist at the time of the original determination, I do not believe it could have been presented by the respondent given their current medical condition. It was only brought forward by the respondent's employer *after* becoming aware of the original decision.
14. After taking into consideration this new evidence provided by the respondent's employer, I have decided it is relevant to my decision, and therefore have decided to cancel the \$500.00 AMP that was imposed on March 4, 2022.
15. The Decision confirmed the respondent contravened CFSR section 38(1)(a) and 38(1)(b) by failing to complete the minimum required hours in a program of funeral services and embalming services approved by the Director during the 2019 – 2021 period. The request did not dispute these contraventions; therefore, they will not be discussed in this reconsideration. The conclusion made in the March 4, 2022 determination that the respondent contravened CFSR section 38(1)(a) and 38(1)(b) remains.
16. Although not brought forward in the reconsideration request, I find that it would not be appropriate to require the respondent to comply with the terms of the March 4, 2022 Compliance Order (referenced in point 4 above). I therefore have decided to vary the Compliance Order by replacing it with a new Compliance Order dated April 27, 2022 (attached) in which the respondent is ordered to complete any overdue training prior to returning to work

as a funeral director or embalmer. The precise terms are described in the Compliance Order attached to this decision.

F. CONCLUSION

17. The confirmed allegation that the respondent contravened CFSR section 38(1)(a) and 38(1)(b) by failing to complete the minimum required hours in a program of funeral services and embalming services approved by the Director during the 2019 – 2021 period remains unchanged.
18. Pursuant to section 60(2) of the Cremation, Interment and Funeral Services Act, the \$500.00 administrative monetary penalty issued on March 4, 2022 is cancelled.
19. The Compliance Order dated March 4, 2022 is varied to require the respondent to complete any overdue training prior to returning to work as a funeral director/embalmer and to submit proof of course completion to Consumer Protection BC. The Inspection costs originally ordered under the March 4th Compliance Order have been cancelled and are not included in the varied Compliance Order of April 27th.

G. JUDICIAL REVIEW

20. Pursuant to section 60(5) of the Act (referenced to Section 182(6) of the Business Practices and Consumer Protection Act) this decision may not be reconsidered. A party who disputes a reconsideration decision or order may seek judicial review by bringing a petition in the British Columbia Supreme Court under the Judicial Review Procedure Act.

Decided on April 27, 2022, in Burnaby, BC.



Tegan Scardillo
Director of Business Practices and Classification