



DECISION OF THE DIRECTOR

In the Matter of:	<i>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</i>
Respondent:	Joseph Flannery
Case Number:	31108
Licence Number:	16105
Adjudicator:	Shahid Noorani, Vice President
Date of Decision:	April 26, 2021

A. INTRODUCTION

1. Joseph Flannery (“the respondent”) is funeral director and embalmer, licensed to engage in these activities under Consumer Protection BC licence number 16105 (“the licence”).
2. Unless ordered otherwise by the Director, all funeral directors must complete six hours of training in a funeral services program approved by the Director during each successive two-year period (“the successive period”) from the when the licence was issued. Similarly, embalmers must complete six hours of approved training in an approved program of embalming. A person that is both a funeral director and embalmer must complete the required training for both designated activities.
3. On March 15, 2021 a Business Practices Officer with Consumer Protection BC delivered to the respondent a Report to Director (“the Report”). The Report alleged the respondent failed to complete the required training as a funeral director and as an embalmer in the past two-year successive period, as required under the Cremation Interment Funeral Services Regulation (“CIFSR”).

4. As the Vice President I have been delegated the authority of the Director to decide if a contravention to the legislation has taken place and what consequences, if any, should flow from a confirmed contravention.

B. OPPORTUNITY TO BE HEARD.

5. Prior to an action being taken under the *Business Practices and Consumer Protection Act* (“BPCPA”) and the *Cremation Interment and Funeral Services Act* (“CIFSA”), the person subject to the action must be provided with an opportunity to be heard.
6. A notice of hearing was sent to the respondent on March 18, 2021. It provided the respondent with the opportunity to submit a written reply to the Report by March 31, 2021. The hearing notice indicated that after the opportunity to respond was completed, a decision maker for Consumer Protection BC would determine whether the alleged violation occurred. The hearing notice also set out possible licensing and enforcement consequences should the contravention be confirmed.
7. The respondent submitted a written response to the Report on March 19, 2021.
8. I conclude the requirement for providing an opportunity to be heard has been completed.

C. ALLEGED CONTRAVENTION

9. The Report advances the following allegation:
 - i. The respondent contravened CIFSR section 38(1)(a)(b) by failing to complete the minimum required six hours of training in a program of funeral services approved by the Director AND by failing to complete the minimum required six hours of training in a program of embalming services approved by the Director during the past two-year successive period commencing on the date the respondent was first issued a funeral director and embalmer licence.

D. LEGISLATION

10. The legislation relevant to the alleged contravention is contained with the CIFSR:

Continuing education

- 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, and

(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 his or her 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.

E. EVIDENCE

11. I have reviewed the Report and the respondent's written reply in their entirety. I limit my comments to only the parts of the evidence necessary to give context to my decision.
12. The respondent was first issued the licence on January 19, 1999 to act and hold themselves out as funeral director and embalmer.
13. The successive two-year periods from when the respondent was first issued the licence commenced on January 19, 1999 and continued to January 19, 2001. The last successive two-year period was January 19, 2019 to January 19, 2021.
14. On July 20, 2020, Consumer Protection BC sent an email to all licensed funeral directors and embalmers providing information about changes being made to share the status of individual continuing education training requirements. The communication provided a reminder that it was the responsibility of the funeral director and embalmer to ensure course completion documentation is submitted to Consumer Protection to receive credit for completion. It was also noted in the communication that funeral directors and embalmers would receive a status report every six months as a reminder of credits completed and how many remained due.
15. On July 21, 2021, the respondent was sent an email from Consumer Protection BC that showed the respondent had not completed any credits for funeral services or embalmer service in the current two-year successive period. The communication noted the required education credits would come due on "1/19/21."
16. On January 20, 2021 the respondent was sent an email from Consumer Protection BC indicating continuing education requirements for funeral services and embalming services were due to be completed by January 19, 2021 and were now considered outstanding.

17. Before the end of the last two-year successive period (January 19, 2019 to January 19, 2021), the respondent had completed two hours of approved training in embalming services.
18. The respondent acknowledges the July 20, 2021 correspondence indicated continuing education credits were due by January 19, 2021. The respondent further acknowledges they did not complete the training by January 19th but says they “had every intention of completing and submitting them as soon as possible.”
19. The respondent says that after receiving the January 20, 2021 correspondence they obtained the other credits necessary in February.
20. The respondent says a recent continuing education report received from Consumer Protection BC shows the training completed in February has been applied to training requirements for the current successive period (January 19, 2021 to January 19, 2023). The respondent says these credits should be put to the period ending January 19, 2021 and that they will complete the necessary training for the current period (January 19, 2021 to January 23, 2023) before the due date.
21. In reviewing an up-to-date Consumer Protection BC records continuing education status report dated April 20, 2021, I note that between January 27 and February 1, 2021 the respondent did complete six hours of approved training in funeral services. The respondent also completed four hours of approved training in embalming services between the dates February 1 and February 5, 2021.

F. ANALYSIS

22. The evidence clearly establishes that in the last two-year successive period of January 19, 2019 to January 19, 2021, the respondent was required to complete six hours of approved training in an approved funeral director program, and six hours of approved training in embalming services. The respondent did not complete any of the required training in funeral services and only two hours of training in embalming services before the end of the last two-year successive period. Therefore, I find the respondent contravened CFSR section 38(1)(a)(b).
23. The respondent’s completion of the required training in late January and early February does not militate against the commission of the contravention. It is a factor that I may consider in assessing whether a licensing or enforcement consequence is necessary.

G. DUE DILIGENCE

24. The respondent is entitled to the complete defence of due diligence against the allegation if they show that all reasonable steps were taken to *prevent* the contravention from happening. The onus is on the respondent to establish this defence. I was not presented with any evidence to show due diligence by the respondent. The defence cannot be relied upon by the respondent.

H. CONCLUSION

25. I conclude the respondent contravened CIFSRS section 38(1)(a)(b) by failing to complete the minimum required six hours of training in a program of funeral services approved by the Director AND by failing to complete the minimum required six hours of training in a program of embalming services approved by the Director during the past two-year successive period (January 19, 2021 to January 19, 2021) from when the licence was first issued.

I. LICENSING AND ENFORCEMENT ACTION

26. As the Director determining that a contravention has occurred, I may take one or more of the following actions:
- suspend, cancel a license and/or impose conditions on a license (BPCPA section 146 and CIFSRS section 55(3));
 - accept an undertaking on terms I consider appropriate (BPCPA section 154 BPCA and CIFSRS section 56(2)(b));
 - issue a compliance order to take specified further corrective action, and to repay Consumer Protection BC costs of this inspection and any associated legal costs (BPCPA section 155(4)(c)(d) and CIFSRS section 56(2)(c));
 - impose an administrative penalty of up to \$5,000 on an individual (BPCPA section 164-165 BPCPA and CIFSRS section 58)

Compliance Order

27. Education requirements are in place to ensure funeral director and embalmers stay up to date and expand in their level of skill and knowledge to perform the functions of the profession. I am not comfortable in allowing the respondent to maintain the licence without acquiring the full training that should have been obtained during the last two-year successive period. To that end, I agree with the respondent's proposal that the approved training completed in February 2021 should be applied to the period of January 19, 2019 to January 19, 2021. In applying the hours of approved training completed in February 2021 to the previous successive period, the respondent's continuing education report will now show zero hours of approved training completed in the current successive period of January 19, 2021 to January 19, 2023. The respondent should take note of this to ensure they meet education requirements that will come

due on January 19, 2023. The precise terms of my order are set out in the attached Compliance Order.

28. I also exercise my authority under BPCPA section 155(4)(d) and CIFSA section 56(2)(c) to require the respondent reimburse Consumer Protection BC *partial* inspection costs associated with preparing the Report in the amount of \$150.00. Attached is a Compliance Order to this effect.

Administrative Penalty

29. I believe the imposition of an administrative monetary penalty in this matter to be warranted. The respondent was given plenty of advance notice with the July 2020 communications from Consumer Protection BC to ensure continuing education requirement were completed on time. The communication also warned that failing to complete the training may result in enforcement action being taken. This communication was to be taken seriously. The respondent's failure to complete the training before the deadline suggests that it was not viewed in this important light. Imposing an administrative monetary penalty is meant to promote a change in the respondent's non-compliance in meeting the training requirements and to encourage future compliance.
30. Failing to complete the required training in funeral services and failing to complete the required training in embalming services are two separate contraventions. A person can be found to be contravention of either or both. Each is independent of the other and can attract its own administrative monetary penalty. Although both contraventions are confirmed to be proven, I exercise my discretion to impose an administrative monetary penalty only for the contravention of failing to complete the required six hours of training in an approved program of funeral services, contrary to section 38(1)(a).
31. As per CIFSA section 58(1), an administrative monetary penalty ("AMP") may be imposed where a person contravenes a prescribed provision of the CIFSR. A contravention to CIFSA section 38(1)(a) is prescribed by the Administrative Penalties Regulation and may, therefore, attract an AMP.
32. BPCPA section 164 (2) and CIFSA section 58(3) set out the following factors that must be considered before imposing an AMP:
- (a) previous enforcement actions for contraventions of a similar nature by the respondent
 - (b) the gravity and magnitude of the contravention
 - (c) the extent of the harm to others resulting from the contravention
 - (d) whether the contravention was repeated or continuous
 - (e) whether the contravention was deliberate
 - (f) any economic benefit derived by the person from the contravention

(g) the person's efforts to correct the contravention

33. For the contravention at issue, I consider all these factors to decide whether an AMP should be imposed. If imposing an AMP, to determine the *amount* that should be imposed, I consider the BPCPA section 164(2) and CIFSA section 58(3) factors together with the Consumer Protection BC policy, “Calculation of Administrative Monetary Penalties Policy and Procedures” (the “Policy”). The Policy model and rationale are discussed below.
34. The Policy, normally applied by Consumer Protection BC, sets out how the AMP amount is calculated, starting with a base penalty amount. The Policy helps to ensure that calculations of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue, and that suppliers subject to AMPs know how Consumer Protection BC interprets the BPCPA and CIFSA, and analyses the criteria determining AMP amounts. Consumer Protection BC has developed the Policy from its experience and expertise in providing consumer protection services, and from its mandate to administer the BPCPA and CIFSA in the public interest.
35. According to the Policy, contraventions for which AMPs are imposed are first categorized into Type A, Type B, or Type C, as set out in the Appendix. Consumer Protection BC makes these assignments based on its purposes and experience in delivering consumer protection services in the public interest, and the consideration of two factors: (1) the inherent severity of harm specific to the contravention, and (2) the probability that a person will experience harm from the contravention.
36. After categorization of the contravention, the decision maker considers a set of “adjustment factors” laid out in the Policy. These “adjustment factors” are based on section 164 (2), plus one additional criterion consistent with the legislation. The Policy requires the decision maker to choose a “gravity” value for each adjustment factor based on consideration of the relevant aggravating or mitigating circumstances.
37. When applying the Policy, the decision maker is considering all the factors under BPCPA section 164 (2) and CIFSA section 58(3) in his or her calculation or analysis of the AMP amount that should be imposed. The decision maker continues by then deciding in his or her discretion whether the amounts in the Policy or different amounts imposed based on consideration of the factors under BPCPA section 164 (2) and CIFSA section 58(3) (and one additional related criterion) and any other relevant circumstances.
38. In the respondent’s notice of hearing, I identified the Policy and advised that it will be applied as part of any decision that may impose an AMP. This notice further stated that the Policy can be viewed on our website and would be otherwise provided to the Respondent in paper form upon

its request. Therefore, in this hearing the respondent had an opportunity to respond to the Policy by making submissions on the appropriateness of its application or its consistency with criteria in the BPCPA and CIFSA. However, in this hearing I have not received any submissions from the respondent on the Policy.

39. I have determined that an AMP should be imposed for the respondent’s failure to complete the minimum required six hours of training in a program of funeral services approved by the Director during the past 2-year successive period (January 19, 2019 to January 19, 2021), beginning from when the licence was first issued. I now will consider the specific AMP to be applied.

Calculation of the AMP amounts

40. I first apply the Policy to calculate an AMP amounts. I then decide whether that amount or a different amount should be imposed based on consideration of the factors under BPCPA section 164(2) and CIFSA section 58(3), and one additional criterion, and any other relevant circumstances.

41. A breach to CIFSR section 38(1)(a) is a Type A contravention under the Policy (page 20 Appendix A, line 225). I agree with this categorization given the circumstances of this violation. It represents the appropriate level of severity and potential harm for prescribed contraventions according to the Policy.

42. Consequently, according to the AMP “Matrix” in part 4.3 (page 5) of the Policy, the “base” amount for penalty is \$500.00 for an individual.

43. My assessment of the adjustment factors applicable to these contraventions under the Policy’s penalty matrix is set out in the table below and on page 9.

Adjustment Factor	Effect on Gravity	Analysis
1. <i>Previous enforcement actions for contraventions of a similar nature</i>	0	There are no previous enforcement actions by Consumer Protection BC against the respondent. I maintain the gravity level at neutral.

<p>2. Gravity and magnitude of the contravention</p>	<p>0</p>	<p>As mentioned in the decision, continuing education requirements are in place to ensure funeral director and embalmers grow and expand their knowledge in the profession. This is extremely important for funeral directors when dealing with grieving and vulnerable families. The respondent has continued to offer its service and professional expertise as funeral director without completing the requisite training. Imposing an AMP is intended to correct the non-compliance and deliver a message to the respondent about completing their education requirements into the future.</p>
<p>3. Extent of the harm to others resulting from the contravention</p>	<p>0</p>	<p>There is no evidence or basis to infer harm to others resulting from the contraventions. I maintain the gravity level at neutral.</p>
<p>4. Whether the contravention was repeated or continuous</p>	<p>0</p>	<p>The contravention was not repeated or continuous. I maintain the gravity level at neutral.</p>
<p>5. Whether the contravention was deliberate</p>	<p>0</p>	<p>I have no reason to believe the respondent's actions were of a deliberate or intentional nature. I maintain the gravity level at neutral.</p>
<p>6. Economic benefit derived by the person from the contraventions</p>	<p>0</p>	<p>I have no reason to believe the respondent derived any economic benefit from the contravention. I maintain the gravity level at neutral.</p>
<p>7. Whether the person made reasonable efforts to mitigate or reverse the</p>	<p>-2</p>	<p>I have taken into consideration that following receipt of the January 20, 2021 correspondence advising continuing education credits were outstanding, the respondent took fairly immediate steps and prior to receipt of the Report to obtain all of the outstanding training. As such, I have treated</p>

<i>effects of the contravention</i>		this as a mitigating factor and have reduced the gravity level accordingly.
8. The person's efforts to correct the contraventions & prevent recurrence	0	I have not been given evidence on measures that will be taken to ensure completion dates for education requirements are not missed again. I maintain the gravity level at neutral.

Final Calculation of AMP

44. According to my application of the Policy and its AMP Matrix, the overall adjustment for the CIFS section 38(1)(a) contravention involves an overall score of “minus two.”
45. The Policy determines that a violation of CIFS section 38(1)(a) is a Type A contravention with a base penalty amount of \$500.00 for an individual. In this case, having found a gravity level of “minus two” and in following the Matrix, I apply a penalty of **\$400.00**. In this hearing no additional relevant circumstances have been brought to bear on my analysis and calculation of penalty as to vary it from the Policy amount. Attached to these reasons is a Notice of Administrative Penalty in the amount of **\$400.00**.

J. RECONSIDERATION

30. A compliance order or monetary penalty may be reconsidered in accordance with Division 1 of Part 12 of the Act, subject to the provisions outlined in sections 181 and 182 (2). A request for reconsideration must be submitted within 30 days of delivery of the order to the respondent. The request must be in writing, identify the error the person believes was made or other grounds for reconsideration, and be accompanied by a \$252 application fee. A request for reconsideration should be addressed to:

Consumer Protection BC
Attention: Shahid Noorani, Vice President
200 – 4946 Canada Way, Burnaby, BC V5G 4H7
shahid.noorani@consumerprotectionbc.ca

Decided on April 26, 2021 in Burnaby, BC.



Shahid Noorani, Vice President