



DECISION OF THE DIRECTOR

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| 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: | Gwendolen Ziprick |
| Case Number: | 31116 |
| Licence Number: | 54200 |
| Adjudicator: | Shahid Noorani, Vice President |
| Date of Decision: | April 26, 2021 |

A. INTRODUCTION

1. Gwendolen Ziprick (“the respondent”) is funeral director and embalmer, licensed to engage in these activities under Consumer Protection BC licence number 54200 (“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 training in an approved program of embalming services. 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 emailed 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 is 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 consequence, 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 number of written replies to the Report.
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. PRELIMINARY MATTER

10. In reviewing the evidence, I note the respondent did complete six hours of training in an approved program of embalming services prior to required date of January 1, 2021 (the successive date). This completed training was also reported to Consumer Protection BC. Therefore, the part of the allegation dealing with failing to complete training in a program of embalming services is dismissed at the outset. Accordingly, this decision will only address the remaining part of the allegation having to do with the respondent’s failure to complete six hours of training in a program of funeral services.

E. LEGISLATION

11. 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.

F. EVIDENCE

12. 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.

13. The respondent was first issued the licence on January 1, 2011 to act and hold themselves out as funeral director and embalmer.

14. The first successive two-year periods from when the respondent was issued the licence was January 1, 2011 and continued to January 1, 2013. The last successive period was January 1, 2019 to January 1, 2021.

15. On July 20, 2020, Consumer Protection BC emailed all licensed funeral directors and embalmers about changes being made to share the status of individual continuing education training requirements. The communication reminded funeral director and embalmers that it was their responsibility to ensure course completion documentation is submitted to Consumer Protection BC to receive credits. The communication also noted that every six months funeral directors and embalmers would receive a status report of credits completed and how many credits remained due.

16. On July 21, 2021, the respondent received an email from Consumer Protection BC that showed the respondent was still required to complete six hours of credits for funeral services. The communication noted the required education credits would come due on "1/1/21."
17. On January 20, 2021 the respondent was sent an email from Consumer Protection BC indicating six hours of continuing education requirements for funeral services were due to be completed by January 1, 2021 and were now outstanding.
18. A review of an up-to-date Consumer Protection BC continuing education report dated April 20, 2021 shows on April 7, 2021 the respondent completed six hours of approved training in funeral services.
19. The respondent explains that they went underwent some personal and professional challenges in October 2020, making it difficult to handle the general manager duties for four funeral homes.
20. After being reminded about continuing education requirements, the respondent reached out to her professional association to obtain embalming credits.
21. The respondent says because their learning style benefits from an interactive approach, they reached out to their professional association to find out about opportunities for in class learning. The association was hopeful that the COVID-19 restrictions would be lifted soon, allowing for in class teaching to return.
22. The respondent also reached out to the Cremation Association of North America (CANA) to find out about the best interactive online courses.
23. Before the respondent could get answers to their inquiries, they underwent surgery in mid-February 2021.
24. The respondent says the email received in January 2021 from Consumer Protection BC did not indicate how much time they had remaining to complete the training.
25. The respondent understands they failed to obtain the six credits for funeral services, but this was because of "extenuating circumstances."
26. The respondent submits they be allowed to complete the credits via online learning within 8 weeks of their return to work and that there be no penalty imposed.

27. The respondent says they have been ahead of credits for most of their career. They believe they were six credits ahead with funeral director requirements in the last period, but they may have overlapped, giving them a false sense of accomplishment.

G. ANALYSIS

28. The respondent says the January 20, 2021 correspondence did not indicate how much time remained for the respondent to obtain the credits. Most likely, this is because the credits had already come due as of January 1, 2021 (nineteen days earlier), and so logically the correspondence would not make mention about time remaining to complete the credits. If the respondent wanted to know when credits needed to be completed, closer attention should have been given to the July 21, 2020 correspondence that noted six funeral credit hours had to be completed by January 1, 2021.

29. The respondent points to having undergone some recent personal and professional challenges and submits these should be viewed as “extenuating” to any finding that a contravention has occurred. At the outset, I will say that it is only events that happened before January 1, 2021 that are deserving of this type of consideration. The events that happened after January 1, 2021, such as the respondent’s surgery in mid-February, are not relevant to a decision on the commission of the contravention, although they may be a factor in the assessment of any penalty that is applied.

30. I have considered the circumstances that took place in October 2020 involving the respondent becoming ill and struggling to keep up with their managerial duties for four funeral homes. I am not convinced; however, these are “extenuating” or of such a nature to excuse the respondent from having completed the six hours of funeral service training before the successive period ending January 1, 2021.

31. The evidence establishes clearly the respondent did not complete six hours of approved training in funeral services before the successive period ending January 1, 2021. Therefore, I find the respondent contravened CFSR section 38(1)(a).

H. DUE DILIGENCE

32. The respondent is entitled to the complete defence of due diligence against the allegation if they show all reasonable steps were taken to *prevent* the contravention from happening. The onus is on the respondent to establish this defence. Measures taken by the respondent after the contravention has occurred, such as contacting their professional association to find out about courses and eventually completing the required training in April 2021 do not meet the standard of due diligence.

I. CONCLUSION

33. I conclude the respondent contravened CIFSR section 38(1)(a) by failing to complete the minimum required six hours of training in a program of funeral services approved by the Director during the past two-year successive period (January 1, 2019 to January 1, 2021) from when the licence was first issued.

J. LICENSING AND ENFORCEMENT ACTION

34. 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 CIFSA section 55(3));
- accept an undertaking on terms I consider appropriate (BPCPA section 154 BPCA and CIFSA 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 CIFSA section 56(2)(c));
- impose an administrative penalty of up to \$5,000 on an individual (BPCPA section 164-165 BPCPA and CIFSA section 58)

Compliance Order

35. Education requirements are in place to ensure funeral directors 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. Therefore, I exercise my authority under BPCPA section 155(4)(c) and CIFSA section 56(2)(c) to order the six hours of approved funeral services training completed by the respondent on April 7, 2021 be applied to the previous successive period of January 1, 2019 to January 1, 2021 to satisfy training requirements for the period. In applying the hours of approved training completed in April 2021 to the previous successive period, the respondent's continuing education report will now show zero hours of approved training in funeral services completed in the current successive period of January 1, 2021 to January 12, 2023. The respondent should take note of this to ensure they meet education requirements that will come due on January 1, 2023. The precise terms are described in the Compliance Order attached to this decision.

36. 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. Details of payment are described in the attached Compliance Order.

Administrative Penalty

37. I believe the imposition of an administrative monetary penalty in this matter to be warranted. The respondent was given plenty of advance notice in 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.
38. 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.
39. 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
40. 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.
41. 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.

42. 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.
43. 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.
44. 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.
45. 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.
46. 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 1, 2019 to January 1, 2021), beginning from when the licence was first issued. I now will consider the specific AMP to be applied.

Calculation of the AMP amounts

47. 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.

48. A breach to CIFS R 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.

49. 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.

50. 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 |
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| 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. |
| 2. <i>Gravity and magnitude of the contravention</i> | 0 | As mentioned in the decision, continuing education requirements are in place to ensure funeral directors grow and expand their knowledge in the profession. This is extremely important for funeral directors when dealing with grieving and vulnerable families. The respondent 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. |
| 3. <i>Extent of the harm to others resulting from the contravention</i> | 0 | There is no evidence or basis to infer harm to others resulting from the contraventions. I maintain the gravity level at neutral. |

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| <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 effects of the contravention</p> | <p>0</p> | <p>I have taken into consideration the respondent completed training on April 7, 2021 that amounts to the credits that were supposed to have been completed by January 1, 2021. This was done three weeks after the respondent received the Report formalizing an allegation and initiating enforcement proceedings. In the 4-week period between when the respondent received notification on that continuing education credits were outstanding (January 20, 2021) and the respondent’s surgery (February 19, 2021), the respondent could have taken online courses. This did not happen. It also appears the respondent continued to work as a funeral director for all or a large portion of this period, having not completed the requisite training from the previous successive period. I am not convinced the recent completion of training by the respondent warrants a mitigation to the gravity score; therefore, it remains at a neutral level.</p> |
| <p>8. The person’s efforts to correct the contraventions & prevent recurrence</p> | <p>0</p> | <p>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.</p> |

Final Calculation of AMP

51. According to my application of the Policy and its AMP Matrix, the overall adjustment for the CIFSA section 38(1)(a) contravention involves an overall score of “zero.”
52. The Policy determines that a violation of CIFSA 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 “zero” and in following the Matrix, I apply a penalty of **\$500.00**. 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 **\$500.00**.

K. RECONSIDERATION

30. A compliance order or administrative 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