



DECISION OF THE DIRECTOR

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: **Justin Clark**

Case Number: **31135**

Licence Number: **16975**

Adjudicator: **Shahid Noorani, Vice President**

Date of Decision: **June 14, 2021**

A. INTRODUCTION

1. Justin Clark (“the respondent”) is a funeral director and embalmer, licensed to engage in the activities under Consumer Protection BC licence number 16975 (“the licence”).
2. Unless ordered otherwise by the Director, all embalmers must complete six hours of training in a program of embalming services approved by the Director during each successive two-year period (“the successive period”) from the when the licence was issued.
3. On April 19, 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 an embalmer in the past two-year successive period, as required under the Cremation Interment and Funeral Services Regulation (“CIFSR”).

4. As 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. An opportunity to be heard notice (“the notice”) was emailed to the respondent on April 23, 2021. It provided the respondent with the opportunity to submit a written reply to the Report by May 12, 2021. The notice indicated that after the opportunity to respond was completed, a decision maker for Consumer Protection BC would determine whether the alleged violation occurred. Possible licensing and enforcement consequences for a confirmed contravention were described in the notice.
7. The respondent provided a written response to the Report on April 27, 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)(b) 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 an embalmer licence.

D. LEGISLATION

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

Continuing education

38 (1)A person licensed as a funeral director, embalmer or both must complete a minimum of
(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 March 26, 1999 to act and hold themselves out as an embalmer.
13. The successive two-year periods from when the respondent was first issued the licence commenced March 26, 1999 to March 26, 2001. The last successive two-year period was March 26, 2019 to March 26, 2021.
14. Before the end of the two-year successive period (March 26, 2019 to March 26, 2021), Consumer Protection BC did not receive a record or other form of confirmation from the respondent to confirm completion of the requiring education requirements for an embalmer.
15. On July 20, 2020, Consumer Protection BC emailed 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 is 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 credits remained due.
16. On July 21, 2020, the respondent was sent an email from Consumer Protection BC that showed the respondent had not completed any credits for embalming service in the current two-year successive period. The communication noted the required education credits were due on "3/26/2021".
17. A Report to Director was emailed to the respondent on April 16, 2021. In addition to the report alleging that the respondent was missing 6 hours of training in a program of embalming services, the report incorrectly alleged that the respondent was missing 6 hours of training in a program of funeral services. A second amended Report to Director (alleging that the respondent was only missing 6 hours of training in a program of embalming services) was emailed to the respondent on April 19, 2021.

18. The Respondent received the Report to Director on April 19, 2021 and received the Opportunity to be heard notice on April 23, 2021.
19. On April 27, 2021 the respondent sent an email stating he had received the report from the Business Practices Officer and recognized he was “out of compliance for CEU’s related to the Embalmer license.”
20. The respondent also stated in the April 27th email that he had struggled to have consistent communication with Consumer Protection BC relating to CEU’s and that since receiving the letter from the Business Practices Officer, he has taken the required education and has also submitted the certificates.
21. I note that the respondent had a discussion with a Business Practices Officer on May 7th. The Business Practices Officer advised the respondent to provide any further responses to the Director in writing.
22. The Respondent submitted certificates of completion on May 7, 2021 for three approved courses taken on April 20, 2021. In total these three courses amount to 6 credits in approved course of embalming services.
23. No further responses were received.

F. ANALYSIS

24. The respondent makes a bald assertion about receiving inconsistent communication from Consumer Protection BC about continuing education requirements but introduces no evidence in support. It was open for the respondent to provide information or documents showing when these inconsistent communications took place or what steps the respondent took to obtain information about their continuing education credits. Instead, the evidence in the Report shows clear communication sent to the respondent on July 21, 2020 advising continuing education credits were due on March 26, 2021. I don’t see anything inconsistent or unclear in the communication sent by Consumer Protection BC.
25. The evidence clearly establishes that in the last two-year successive period of March 26, 2019 to March 26, 2021, the respondent was required to complete six hours of approved training in embalming services. The respondent did not complete any of the required training in embalming services before the end of the last two-year successive period. Therefore, I find the respondent contravened CFSR section 38(1)(b).

G. DUE DILIGENCE

26. 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.

H. CONCLUSION

27. I conclude the respondent contravened CIFSR section 38(1)(b) 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 (March 26, 2019 – March 26, 2021) from when the licence was first issued.

I. LICENSING AND ENFORCEMENT ACTION

28. 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 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

29. 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 that the six hours of training in embalming services the respondent completed on April 20, 2021 be applied to the previous successive period that expired on March 26, 2021 in order to satisfy training requirements for that period. In applying the hours of approved training completed on April 20, 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 March 26, 2021 to March 26, 2023. The respondent should take note of this to ensure they

meet education requirements that will come due on March 26, 2023. The precise terms are described in the Compliance Order attached to this decision.

30. 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

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 opportunity to be heard notice, 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 embalming services approved by the Director during the past 2-year successive period (March 26, 2019 to March 26, 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 CFSR section 38(1)(b) 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 8.

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.
2. <i>Gravity and magnitude of the contravention</i>	0	As mentioned in the decision, continuing education requirements are in place to embalmers grow and expand their knowledge in the profession. The respondent has continued to offer its service and professional expertise as an embalmer 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. I maintain the gravity level at neutral.
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.

<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 that the respondent recently completed six hours of approved training in embalming services. This <i>follows</i> receipt of the Report that formalized an allegation and initiated enforcement hearings. I am left with the impression that the recent completion of embalming training was only done in response to the Report and the potential consequences. I am not convinced that this 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

44. According to my application of the Policy and its AMP Matrix, the overall adjustment for the CIFSAs section 38(1)(b) contravention involves an overall score of “zero.”

45. The Policy determines that a violation of CIFSAs section 38(1)(b) 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**.

J. RECONSIDERATION

46. 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 June 14, 2021 in Burnaby, BC.



Shahid Noorani, Vice President