



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: **Stewart McLean**

Case Number: **31161**

Licence Number: **16216**

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

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

A. INTRODUCTION

1. Stewart McLean (“the respondent”) is a funeral director and embalmer, licensed to engage in the activities under Consumer Protection BC licence number 16216 (“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 May 14, 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. 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 May 19, 2021. It provided the respondent with the opportunity to submit a written reply to the Report by June 10, 2021. This response deadline was later extended to June 16, 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 three written responses to the Report on June 14, 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 April 7, 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 April 7, 1999 to April 7, 2001. The last successive two-year period was April 7, 2019 to April 7, 2021.
14. Before the end of the two-year successive period (April 7, 2019 to April 7, 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 "4/7/2021".
17. A reminder email was sent to the respondent on March 1, 2021 stating that there was 6 embalmer credits due. The email also advised that the credits needed to be completed by "2021/04/07".
18. A Report to Director was emailed to the respondent on May 14, 2021. The report alleges that the respondent was missing 6 hours of training in a program of embalming services.
19. The Respondent received the Opportunity to be heard notice on May 19, 2021. The Respondent was given until June 10, 2021 to submit a written reply to the report. A response was submitted on June 14, 2021. Further to this, an extension to provide a response was given to June 16, 2021.

20. On June 14, 2021, the respondent submitted a response to the notice in three emails.
21. In the respondent's first email received on June 14, 2021, he apologized for not responding sooner.
22. The respondent explained they had health issues in January 2021 and because of this had been "...off work until part way through May when [they] returned to work on a part time basis."
23. The respondent stated it has been a long and difficult recovery.
24. The respondent explained they did not complete the education requirements as they did not intend to renew the embalmer license.
25. They respondent explained that because they could "no longer physically do embalming work," they had trade embalmers available to do the work.
26. In response to the respondent's email, the writer accepted the late response to the notice and offered an extension to June 16, 2021 for any further submissions.
27. The respondent replied: "I don't want my embalmer's license renewed what more is there to say. You can't fine me for something I don't want."
28. The writer informed the respondent via email that the adjudication process would proceed after June 16, 2021.
29. The respondent stated it was their intention to advise Consumer Protection BC of their decision to not renew the embalmers license in January 2021 but did not get the opportunity due to their illness.
30. The respondent explained they were able to return to work part time through May 2021 but was behind in paperwork and many other things.
31. The respondent stated they did not understand that Consumer Protection BC would proceed with the process when the license was not something they wanted.
32. No further responses were received.

F. ANALYSIS

33. The respondent states they experienced health issues in January 2021 and have since been focusing on the "long and difficult recovery". While I can understand this would have prevented

the respondent from taking courses at that time, I point out the respondent had a period of two years to complete the continuing education credits. The decision to leave the courses until only months before the deadline to complete the courses was a decision they made and does not excuse the respondent from taking the required courses.

34. The respondent explains they did not take the required courses because they did not intend to renew the embalming license as they could no longer physically do the embalming work. Even if that was the case, the respondent was still licensed to work as an embalmer during the period of April 7, 2019 to April 7, 2021 and with that comes the licensing requirements, specifically completing the required training. If the respondent made the decision to not take the courses because they no longer wanted the embalmer license, the respondent could have easily contacted our office and requested their embalmer license be cancelled. Had this been done before the April 7, 2021 due date to complete the course credits, they respondent would not be in the current situation. Evidence in the report shows ample notice was given the respondent through emails on July 21, 2020 and March 1, 2021 stating embalming courses were due on April 7, 2021. It was only after the report was given to the respondent and formal regulatory proceedings were commenced did the respondent decide to advise Consumer Protection BC they no longer wanted to be licensed as an embalmer. To provide such notice in defense to the allegation is too late.
35. The respondent says, “You can’t fine me for something I don’t want” which overlooks that the contravention took place during the time when the respondent had an embalmer license in place. That license was something they wanted because they applied for the embalmer license. I repeat my earlier comments that if the respondent wanted to cancel the embalmers license, the responsibility lay with them to take the necessary steps to cancel the license. As the license was never cancelled, the continuing education requirements were still required. Failure to complete the educational requirements when the embalmer license was in place and active is subject to enforcement action.
36. The respondent notes that it was their intention to inform us of the license cancellation in January of 2021 but did not get the chance due to health issues, recovery from those health issues and the resulting backlog of work. I understand the respondent experienced hardship between the period of January 2021 and April 2021. Contacting our office to cancel the embalmer license would not have been a long or complicated process and could have been done with ease.
37. The respondent stated that they did not understand why Consumer Protection BC would continue with the [enforcement] process when [the embalming licence] was something the respondent no longer wanted. Giving up the license is not a substitution for the enforcement hearing process.

38. The evidence clearly establishes that in the last two-year successive period April 7, 2019 to April 7, 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).

39. The respondent has provided me with notice they no longer want to be licensed as an embalmer. I will accept that notice as a voluntary surrender of the embalmer license. I will inform Consumer Protection BC's licensing division to cancel the license based on the respondent's request. A communication to this effect from the licensing division will be sent to the respondent.

G. DUE DILIGENCE

40. 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

41. I conclude the respondent contravened CFSR 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 (April 7 2019 – April 7, 2021) from when the licence was first issued.

I. LICENSING AND ENFORCEMENT ACTION

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

Compliance Order

43. I 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

44. As per CIFSA section 58(1), an administrative monetary penalty (“AMP”) may be imposed where a person contravenes a prescribed provision of the CFSR. A contravention to CIFSA section 38(1)(a) is prescribed by the Administrative Penalties Regulation and may, therefore, attract an AMP.
45. 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
46. 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.
47. 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.

48. 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.
49. 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.
50. 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.
51. 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.
52. 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 (April 7, 2019 to April 7, 2021), beginning from when the licence was first issued. I now will consider the specific AMP to be applied.

Calculation of the AMP amounts

53. 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.

54. A breach to CIFS R 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.

55. 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.

56. 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	Continuing education requirements are in place to embalmers grow and expand their knowledge in the profession. During the successive period of April 7, 2019 to April 7, 2021 the respondent was licensed as an embalmer, freely able to provide these services to consumers. As noted in the reasons above, whether the respondent worked as an embalmer during this period is not determinative as to whether education requirements had to be completed. Education requirements had to be completed if the embalmer license was in place, which it was for the respondent. The respondent should also recognize that its submission about not working since January 2021 as an embalmer fails to grasp that there would have still be 20 months (April 2019 to January 2021) where the respondent worked as a licensed embalmer without the approved training. I maintain the gravity level at neutral.

<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 effects of the contravention</p>	<p>0</p>	<p>The respondent has not made any efforts to mitigate or reverse the effects of the contravention. I maintain the gravity level at neutral.</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

57. According to my application of the Policy and its AMP Matrix, the overall adjustment for the CIFSA section 38(1)(b) contravention involves an overall score of "zero".

58. The Policy determines that a violation of CIFSA 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

59. 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: Tegan Scardillo, Director of Business Practices and Classification
200 – 4946 Canada Way, Burnaby, BC V5G 4H7
Tegan.scardillo@consumerprotectionbc.ca

Decided on July 14, 2021 in Burnaby, BC.



Tegan Scardillo
Director of Business Practices and Classification