



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: **Jaron Chasca**

Case Number: **31230**

Licence Number: **28356**

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

Date of Decision: **October 18, 2021**

A. INTRODUCTION

1. Jaron Chasca (“the respondent”) is a funeral director and embalmer, licensed to engage in the activity under Consumer Protection BC licence number 28356 (“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 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 July 20, 2021, a Business Practices Officer with Consumer Protection BC delivered a Report to Director (“the Report”) to the respondent. 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. 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 July 26, 2021. It provided the respondent with the opportunity to submit a written reply to the Report by August 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(s) occurred. Possible licensing and enforcement consequences for a confirmed contravention were described in the notice.
7. The respondent provided a written response to the notice on August 13, 2021.
8. I conclude the requirement for providing an opportunity to be heard has been completed.

C. ALLEGED CONTRAVENTION(S)

9. The Report advances the following allegations:
 1. 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 commencing on the date the respondent was first issued a funeral director and embalmer licence.
 2. 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 a funeral director and 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

- (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.

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 June 24, 2003, to act and hold themselves out as a funeral director and embalmer.
13. The most recent successive two-year period from when the respondent was first issued the licence commenced June 24, 2019 to June 24, 2021.
14. 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.
15. On July 21, 2020, the respondent was sent an email from Consumer Protection BC that showed the respondent had not completed any credits for funeral service or embalming in the current two-year successive period. The communication noted the required education credits were due on "6/24/2021".
16. On May 6, 2021, the respondent was sent an email reminder stating there were 6 funeral director and 6 embalmer credits due by "2021/06/30". [I note that credit due date on this email is incorrect and should have read "2021/06/24".]

17. Before the end of the two-year successive period (June 24, 2019 to June 24, 2021), Consumer Protection BC did not receive a record or other form of confirmation from the respondent to confirm completion of the education requirements for a funeral director or embalmer.
18. The Report to Director was emailed to the respondent on July 20, 2021.
19. On August 13, 2021, the Respondent emailed their response to the July 26th notice.
20. In the August 13th email, the Respondent noted that their records indicated they have been in compliance with the CEU credits for the past several years.
21. The respondent stated, *"It has also been my understanding for the past 20 years of me being licensed that my renewal date for CEU credits and license renewal has always been September 15th."*
22. The respondent stated *"I have taken the liberty to update my 'continuing education status report' according to my records (which you will find in the PDF). If you should require any further information please let me know. Thank you again for allowing me to share my records with you."*
23. The PDF attached to the email (8 pages) included various documents referring to courses completed for periods prior to June 24, 2019.
24. The PDF included a certificate of attendance for a course taken on February 26, 2020, for 5 funeral credit hours and another certificate dated July 7, 2021, for 6 credited embalming hours.
25. There was also a page indicating that the respondent had registered or would be registering for a course (worth 6 funeral director credits) taking place on September 10, 2021.
26. The PDF included a copy of the CPBC Continuing Education Status Report that the respondent revised. Instead of 0 funeral and 0 embalming credits for the period of 2017/06/24 – 2019/06/24, the respondent added "6" and "6" to indicate the credits were complete. For the period of 2019/06/24 – 2021/06/24 which showed 0 funeral and 0 embalming, the respondent added "6" and "6" to indicate that credits were completed. For the current reporting period of 2021/06/24 – 2023/06/24 the report showed 3 funeral credits and 6 embalmer credits. The respondent changed the 6 embalmer credits to "0" and indicated that those 6 hours were for the 2019-2021 period.
27. No further responses were submitted.

F. ANALYSIS

28. The respondent's statement that they have been compliant with CEU credits for the past several years is not relevant to the current allegation, which refers to the last successive period of 2019 – 2021. In this decision I am only focusing on evidence relating to the current allegation.
29. The respondent's statement that the renewal date for the past 20 years for the license and CEU credits has been September 15th is a misunderstanding on the part of the respondent. While the respondents license renewal date is September 15th, the continuing education credit due date fall on June 24th every second year. The email sent to the respondent on July 21, 2020 explains that the CEU due date may not line up with the September due date, and states the credit due date is "6/24/2021".
30. I note that the May 6, 2021 email to the respondent includes an incorrect credit due date of "2021/06/30". The same email contained a continuing Education Status Report with the correct credit due date of June 24, 2021. Any confusion the incorrect date may have potentially caused the respondent could have been mitigated with an email or phone call to clarify the due date. I have not been presented with any evidence as such; therefore, I assume there was no confusion on the part of the respondent regarding the course due date resulting from the May 6th email. I have not been presented with any evidence that courses were completed between June 24, 2021 and June 30, 2021; therefore, there is no effect on the outcome of this decision.
31. The respondent manually updated their Continuing Education Status Report to show their understanding of what credits were taken and what period they applied to. This does not necessarily reflect an accurate reporting of which credits will be applied to which period. The respondent can request an updated copy of the Continuing Education Status Report from our office.
32. The 8-page PDF attached to the email included information referring to courses taken to satisfy reporting periods other than the one in question, which covers 2019 – 2020. Any information referencing prior reporting periods is dismissed, as it is not relevant to the current allegation.
33. A Certificate of Attendance was attached to the emailed response showing the respondent completed a course on February 26, 2020, to which 5 funeral director credits applied. These 5 credits were taken prior to the due date, leaving 1 credit outstanding in funeral services and 6 credits outstanding in embalming services.
34. Another attached Certificate of Attendance showed that the respondent completed 6 hours in a program of embalming services on July 7, 2021, which falls after the credit due date of June 24, 2021.

35. An attached document also implied that the respondent had registered for a course worth 6 credits in funeral services to be completed on September 10, 2021, after the credit due date.
36. Completing the training after the due date does not provide a defense as to why the training was not completed on time.
37. The evidence clearly establishes that in the last two-year successive period of June 24, 2019, to June 24, 2021, the respondent was required to complete a minimum of six hours of approved training in funeral services. The respondent completed five hours in a program of funeral services. The respondent did not complete the required training in funeral services before the end of the last two-year successive period; therefore, I find the respondent contravened CFSR section 38(1)(a).
38. The evidence clearly establishes that in the last two-year successive period of June 24, 2019 to June 24, 2021, the respondent was required to complete a minimum of six hours of approved training in embalming services. The respondent did not complete 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

39. 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

40. I conclude the respondent contravened CFSR 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 (June 24, 2019, to June 24, 2021) from when the licence was first issued.
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 (June 24, 2019, to June 24, 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 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

43. 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 56(2)(c) to order that the 5 credits in funeral services completed on February 26, 2020, be applied to the previous two-year successive period that ended on June 24, 2021. I order that the 6 credits in embalming services completed on July 7, 2021, be applied to the previous successive period that ended on June 24, 2021. I order that the respondent complete the remaining outstanding credit in a program of funeral services, which will be credited to the previous successive period. The respondent must still complete 5 hours of approved training in a program of funeral services and 6 hours of approved training in a program of embalming services during the current successive period that ends on June 24, 2023. The precise terms are described in the Compliance Order attached to this decision.

44. 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

45. 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) and 38(1)(b) is prescribed by the Administrative Penalties Regulation and may, therefore, attract an AMP.

46. I have decided to impose an AMP for the contravention to section 38(1)(b) for failing to complete the minimum required six hours of training in a program of embalming services approved by the Director.
47. 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
48. 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.
49. 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 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.
50. 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.
51. 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.

52. When applying the Policy, the decision maker is considering all the factors under BPCPA section 164 (2) and CIFSA section 58(3) in their calculation or analysis of the AMP amount that should be imposed. The decision maker continues by then deciding in their 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.
53. 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.
54. 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 (June 24, 2019, to June 24, 2021), beginning from when the licence was first issued. I now will consider the specific AMP to be applied.

Calculation of the AMP amounts

55. 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.
56. A breach to CIFSR 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.
57. 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.
58. My assessment of the adjustment factors applicable to these contraventions under the Policy's penalty matrix is set out in the table below.

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 ensure 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.
4. <i>Whether the contravention was repeated or continuous</i>	0	The contravention was not repeated or continuous. I maintain the gravity level at neutral.
5. <i>Whether the contravention was deliberate</i>	0	I have no reason to believe the respondent’s actions were of a deliberate or intentional nature. I maintain the gravity level at neutral.
6. <i>Economic benefit derived by the person</i>	0	I have no reason to believe the respondent derived any economic benefit from the contravention. I maintain the gravity level at neutral.

<i>from the contraventions</i>		
7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention	-1	I have taken into consideration that the respondent completed the required training after the due date but prior to receiving the Report to Director. As such, I have treated these as a mitigating factor and have reduced the gravity 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

59. 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 “minus one”.

60. 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 “minus one” and in following the Matrix, I apply a penalty of **\$450.00**. 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. I consider this penalty amount to be appropriate for the contravention. Attached to these reasons is a Notice of Administrative Penalty in the amount of **\$450.00**.

J. RECONSIDERATION

61. 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 October 18, 2021, in Burnaby, BC.

A handwritten signature in black ink, appearing to read "Tegan Scardillo", is written over a horizontal line.

Tegan Scardillo
Director of Business Practices and Classification