



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: **Robert Hodgson**

Case Number: **31248**

Licence Number: **61663**

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

Date of Decision: **November 9, 2021**

A. INTRODUCTION

1. Robert Hodgson (“the respondent”) is a funeral director and embalmer, licensed to engage in the activity under Consumer Protection BC licence number 61663 (“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 who is both a funeral director and embalmer must complete the required training for both designated activities.
3. On August 12, 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 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 August 24, 2021. It provided the respondent with the opportunity to submit a written reply to the Report by September 14, 2021. The notice indicated 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 18th, 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 allegation(s):
 - 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 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 July 23, 2013, 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 July 23, 2019 to July 23, 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 embalming services in the current two-year successive period. The communication noted the required education credits were due on "7/23/2021".
16. Separately, a Notice of Transfer Form dated March 23, 2021 submitted from the respondent's current funeral home to Consumer Protection BC showed the Respondent had ended their employment with a former funeral home (effective January 26, 2021) and had begun employment at the current funeral home (effective March 15, 2021).
17. The respondents email address at the current funeral home was not updated with Consumer Protection BC until August 12th, 2021 when a Business Practices Officer attempted to email the Report to the respondent. The email was returned as "undeliverable". The Business Practices Officer reached out to identify the correct email address. The email address was subsequently

updated in Consumer Protection BC's records, and the Report was emailed to the correct email address that same day.

18. The August 12th Report alleged the respondent failed to comply with CFSR 38(1)(b) by failing to complete the required minimum education credits in a program of embalming services.
19. The Report stated, *"During the past two-year period (July 23, 2019 – July 23, 2021), Consumer Protection BC has been provided with no records from the respondent to confirm completion of the required continuing education requirements for Funeral Director and Embalmer prior to the due date."* The Report later states: *"To date, our office has not received records of completion from the respondent of the required continuing education."*
20. Exhibit 2 of the Report (reminder email dated July 21, 2020) showed the respondent had 6 embalmer credits outstanding and 0 funeral director credits outstanding at that time.
21. Before the end of the two-year successive period (July 23, 2019 to July 23, 2021), Consumer Protection BC received records of course completion for 3 embalmer credits (leaving an additional 3 embalmer credit outstanding for the period).
22. An approved course (worth 2 embalmer credits) was completed on 2021/05/18. An email dated August 16, 2021 to Consumer Protection BC from the respondent's current funeral home indicated this completion certificate had already been provided to Consumer Protection BC. Neither Consumer Protection BC staff, staff from the respondent's current funeral home, nor the respondent were able to provide evidence of this certificate of completion being provided to Consumer Protection BC. After taking this course into account, the respondent had completed a total of 5 credits in embalming services, leaving 1 credit outstanding.
23. On August 18, 2021, the respondent emailed their response to the August 24th notice.
24. The August 18th email stated the respondent was able to complete 2 credits for embalming that same day. A certificate of completion was included with the email showing that an approved course (worth 2 embalmer credits) was completed by the respondent on August 18, 2021.
25. A letter from the respondent dated Aug 18th was attached to the email.
26. In the letter the respondent apologized for the confusion and stated, *"it appears that a change of employment location, a change of contact email address, and error within our internal tracking system regarding CEU credit completion and an oversight on my part, resulted in one outstanding Embalmer credit for the period"*.

27. The letter further stated, *“The final course... was completed August 18, 2021. I believe all deficiencies and errors have now been corrected at this end. I will ensure to stay more current with status of CEU credits and current with deadlines”*.

28. No further responses were submitted.

F. ANALYSIS

29. The Report provided to the respondent on August 18th incorrectly stated Consumer Protection BC had not received any records of completion from the respondent. I clarify that as illustrated in point 20 above, the respondent did not have any credits outstanding for funeral services, which indicates they had already submitted those credits to Consumer Protection BC. Similarly, as described in point 21 above, the respondent also submitted records of completion for 2 embalming courses (totaling 3 credits) to Consumer Protection BC prior to receiving the Report. While I point out that the two statements made in the Report (see point 19 above) were incorrect, there is no evidence to suggest this error caused any confusion on the part of the respondent regarding their responsibility surrounding continuing education credits.

30. An additional 2 embalmer credits were claimed to have been submitted to Consumer Protection BC by staff at the respondent’s current funeral home prior to the due date of July 23, 2021. After requesting copies of emails from staff at the respondent’s current funeral home and Consumer Protection BC staff, no evidence was produced to support this. Regardless of whether the completion certificate was provided to Consumer Protection BC, I accept that the course was completed prior to the due date.

31. The respondent’s reply states, *“it appears that a change of employment location, a change of contact email address, and error within our internal tracking system regarding CEU credit completion and an oversight on my part, resulted in one Embalmer credit for the period”*. I point out that the two reminder emails sent to the respondent on July 20, 2020 and July 21, 2020 were emailed prior to the change of employment location and were emailed to the correct email address. I further point out that the only communication (related to continuing education) affected by the change in employment location/email address was the Report which was first emailed to the former email address on August 12, 2021. The updated email address was identified by the Business Practices Officer and the Report was emailed to the updated email address that same day.

32. I have not been presented with any evidence regarding an *“error within our internal tracking system”* or the *“oversight”* on the part of the respondent. I agree that the respondent had 1 embalmer credit outstanding for the period.

33. The evidence clearly establishes in the last two-year successive period of July 23, 2019 to July 23, 2021, the respondent was required to complete a minimum of six hours of approved training in embalming services. The respondent did not complete the minimum 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

34. 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. I was not presented with any evidence to show due diligence by the respondent.

H. CONCLUSION

35. 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 (July 23, 2019, to July 23, 2021) from when the licence was first issued.

I. LICENSING AND ENFORCEMENT ACTION

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

Compliance Order

37. 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 exercise my authority under BPCPA section 155(4)(c) and CIFSFA 56(2)(c) to order that the two

hours of training in embalming services (taken on August 18, 2021) be applied to the previous period of July 23, 2019 to July 23, 2021 to satisfy the requirements for that period. For clarity, credits cannot be split between two different periods, which is why I am ordering that both embalming credits be applied to the previous period as opposed to just one credit. The respondent must still complete a minimum of 6 hours of approved training in a program of funeral services and a minimum of 6 hours of approved training in a program of embalming services during the current successive period which ends on July 23, 2023. The precise terms are described in the Compliance Order attached to this decision.

38. 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

39. 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) or 38(1)(b) is prescribed by the Administrative Penalties Regulation and may, therefore, attract an AMP.
40. Recognizing the Respondent completed 5 of the minimum required 6 embalmer credits prior to the due date of July 23, 2021 and the missing credit was promptly remedied, I have decided not 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.

J. RECONSIDERATION

41. A compliance order 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 November 9, 2021, in Burnaby, BC.



Tegan Scardillo

Director of Business Practices and Classification