IN THE MATTER OF A HEARING UNDER THE *FUNERAL SERVICES ACT*, RSA 2000, CHAPTER F-29, AS AMENDED AND RELATED REGULATIONS

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF GORDON MATHERS ON BEHALF OF CENTRAL ALBERTA FAMILY FUNERAL SERVICES LTD.

DECISION OF THE HEARING BOARD OF THE ALBERTA FUNERAL SERVICES REGULATORY BOARD ("AFSRB") JUNE 7, 2024

I. INTRODUCTION

1. The hearing board of the AFSRB (the "Hearing Board") held a hearing into the conduct of Gordon Mathers on behalf of Central Alberta Family Funeral Services Ltd. on May 14, 2024, in person at Suite 180, 2755 Broadmoor Boulevard, Sherwood Park, Alberta and via videoconference.

The members of the Hearing Board were:

- S. Murray Chair
- J. Jackman Vice-Chair
- D. Gust Member
- R. Krushel Member
- K. Tourangeau Member

Also present were:

- K. Carruthers, Executive Director of the AFSRB
- G. Mathers, on behalf of Central Alberta Family Funeral Services Ltd., (the "Investigated Member")
- C. Nelson, representing Central Alberta Family Funeral Services Ltd. and G. Mathers
- T. Zimmer, Independent Legal Counsel for the Hearing Board
- A. Ben Khaled, Student-at-Law, Independent Legal Counsel for the Hearing Board
- C. MacDonald-Davis, Hearings Officer of the AFSRB
- B. Mathers, Central Alberta Family Funeral Services Ltd.

II. OPENING OF THE HEARING

2. The hearing opened, and all persons present introduced themselves for the record. The hearing was recorded by the Hearings Officer.

III. PRELIMINARY MATTERS

- 3. There were no objections to the members of the Hearing Board and no preliminary or jurisdictional issues were raised.
- 4. The hearing was open to the public. There were no applications to hold the hearing or part of the hearing in private.

IV. EVIDENCE AND DOCUMENTS BEFORE THE HEARING TRIBUNAL

5. The Hearing Board confirmed receipt of an Agreed Exhibit Book from the parties, which was marked as Exhibit 1. The contents of the Agreed Exhibit Book are described in Appendix A of this decision.

V. NOTICE OF HEARING

6. The allegations against the Investigated Member were set out in the Notice of Hearing as follows:

This letter serves as your Notice of Hearing from the AFRSB to determine whether breaches of the legislation have occurred under the *Funeral Services Act*, RSA 2000, c F-29 (the "Act") and *Funeral Services Act General Regulation*, Alta Reg 226/1998 (the "Regulation"). Specifically:

- i. unlicensed activity (Act, section 3(2)),
- ii. controlling disposition (Regulation, section 36(2)), and
- iii. embalming without permission from the appropriate party (Regulation, section 13.1).

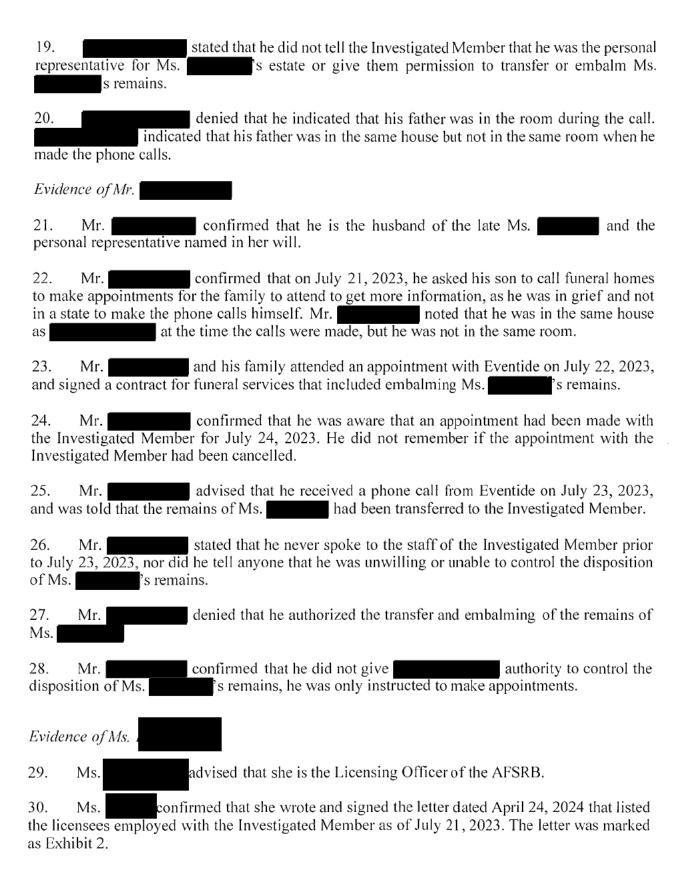
VI. SUMMARY OF THE EVIDENCE AND SUBMISSIONS

Submissions of the Executive Director of the AFSRB

- 7. The Executive Director alleged that the Investigated Member committed three breaches of the Act and the Regulation. The Executive Director elaborated on the allegations outlined in the Notice of Hearing as follows:
 - a. Taking instruction from persons without the right to control the disposition of human remains, contrary to section 36(2) of the Regulation ("Allegation 1");
 - b. Embalming a dead body without express authorization from the authorized persons, contrary to section 13.1 of the Regulation ("Allegation 2"); and
 - c. Entering into a funeral services contract without a licence, contrary to section 3(2) of the Act ("Allegation 3").

8.	In relation to Allegation	1, the Executive Director referred	d to Exhibit 1 for the will of the
late Ms	. which	ch designated her spouse, Mr.	("Mr.

as the personal representative. However, the Executive Director noted that the Investigated Member took direction from the son, to Mr. to confirm that had authority to give the direction.
9. Concerning the Allegation 2, the Executive Director submitted that the Investigated Member then embalmed Ms. 's remains based on the conversation with when they knew, or ought to have known, that Mr. was the appropriate authorizing person.
10. With respect to the Allegation 3, the Executive Director stated that Ms. Lorraine Oakes, a staff member of the Investigated Member, was improperly performing the duties of a licenced funeral director by entering into a funeral services contract without the proper licence to do so.
Evidence of AFSRB Witnesses
11. Below is a summary of the evidence provided by each AFRSB given during direct examination, cross-examination, and questions from the Hearing Board.
Evidence of
stated that on July 21, 2023, he called a list of funeral homes, which included the Investigated Member, at the request of his father. The purpose of the calls was to make appointments for his family to meet with funeral directors and discuss funeral arrangements after his mother's recent passing. explained that he took on this responsibility to take the burden off his father. He confirmed that this had been his first time helping with funeral arrangements.
13. scheduled appointments with Eventide Funeral Home ("Eventide") for July 22, 2023, and the Investigated Member for July 24, 2023.
advised that the family engaged Eventide for funeral services on July 23, 2023. He did not recall whether he cancelled the Investigated Member appointment after meeting with Eventide.
did not recall the specific questions the staff of the Investigated Member asked him during his call on July 21, 2023. He believed all the funeral homes had asked about a will, and he responded that his father was named as executor in his mother's will.
16. More specifically, stated he did not remember having a discussion with the staff of the Investigated Member about the hospital his mother was located in, about embalming, whether any discussion was had about funeral arrangements, or about any of his mother's wishes.
17. stated that he did not ask about the costs of the arrangements during the phone calls as he believed this would have been something for discussion during the appointments.
18. did not remember which funeral homes he called or which he had booked appointments with. He stated that he made appointments with four or five different funeral homes.



Evidence of the Executive Director, AFSRB			
32. As the AFSRB had not provided a witness to speak to the Act or Regulation, the Executive Director was presented as a witness on the topic for the purposes of cross-examination by the Investigated Member.			
3. In response to questions by the Investigated Member's representative, the Executive Director provided the following evidence:			
 A person does not need to be a licenced funeral director to answer the phone and make appointments. 			
b. A "representative of the funeral services business" in section 13.1 of the Regulation is not defined in the Act or Regulation. The definition would be determined based on context.			
c. The order of who has authority to make control disposition starts with the personal representative designated in the will.			
d. Disposition is defined under the <i>Cemeteries Act</i> , RSA 2000c C-3. Embalmment does not constitute a disposition.			
Closing Submissions of the Executive Director			
34. The Executive Director submitted that the staff of the Investigated Member never spoke to Mr. on July 21, 2023. The staff made the decision to take instructions from and embalm Ms. remains based on assumptions rather than obtaining express authorization from Mr. who was the person with the authority to control the disposition.			
35. The Executive Director noted that section 36 of the Regulation states that the personal representative has the priority right to control the disposition of human remains. This does not include all persons named in the will as alternative representatives.			
36. The Executive Director emphasized that based on Mr. sevidence and signing of a contract with Eventide, he was willing and able to give instructions and maintained his authority to do so. Mr. had only given his son authority to make appointments and not give permission to transfer and embalm Ms. seremains.			
37. The Executive Director submitted that the Investigated Member contravened section 3(2) of the Act by allowing an unlicenced staff member to enter into a funeral services contract when they allegedly obtained permission to transfer and embalm Ms. s remains. Embalming is a funeral service defined under the Act and requires a licenced funeral director to obtain authorization. The Investigated Member knew these requirements, as a licenced staff member			

31. Ms. confirmed that Ms. Oakes was not licenced under the Act or Regulation as of July 21, 2023 as a business manager, funeral director, student funeral director, or an embalmer.

signed the permission to embalm form. However, the licensed staff member did not take nor confirm the authorization directly.

- 38. The Executive Director requested an administrative penalty of \$1,500 noting it is the Investigated Member's first offence before the Hearing Board for contravening section 3(2) of the Act.
- 39. The Executive Director requested licensing action be taken against the Investigated Member for contravention of the Regulation, specifically section 36(2) regarding control of the disposition of human remains and section 13.1 regarding embalming without permission from the appropriate person.

Submissions of the Investigated Member

40. Ms. Nelson made submissions on behalf of the Investigated Member. No opening statements were made before proceeding to the Investigated Member's witnesses.

Evidence of Ms. Rebekah Harper

41. Ms. Rebekah Harper advised that she was a licenced student and was being trained of taking calls when she completed the first call sheet with on July 21, 2023, which is included in Exhibit 1. She described the first call sheet as a document filled out with information regarding the deceased, including the place of death, next of kin, and funeral options.
42. Ms. Harper denied that mentioned requesting an appointment during the confirmed he was the next of kin and was in the hospita with his father at the time of the call.
43. Ms. Harper explained that she did not speak directly with Mr. stated that his father was distraught, and he was calling on his behalf.
44. Ms. Harper confirmed that she did not ask if Ms. had a will.
Ms. Harper stated that she confirmed with could transfer Ms. It's remains from the hospital to the funeral home. She asked if the family wanted to embalm the remains but did not ask for specific permission to proceed with the embalming. She gathered information on the transfer from including that Ms including that Ms is remains were located at Red Deer Hospital, and then stated that another staff member Ms. Oakes, would follow up on the information. Ms. Harper stated that her call with was about 2 to 4 minutes long.
Ms. Harper advised that she provided the information to Ms. Oakes, who then called back moments later while Ms. Harper was present.

Evidence of Ms. Lorraine Oakes

47. Ms. Oakes described her work experience, which included working for the Investigated Member in the funeral home business for approximately 15 years. She confirmed that she was not

a licenced funeral director with the AFSRB. 48. Ms. Oakes stated that on July 21, 2023, she sat with Ms. Harper during her first call with Ms. Oakes stated that she overheard state that he was calling on behalf of his father because his father was too distressed over the loss of his wife. 49. Ms. Oakes indicated that the first call sheet would not have been filled out if the call were for information only and that she would not collect many details, including the location of Ms. 's remains, unless she knew that the parties were engaging in funeral services. 50. Following Ms. Harper's first call, Ms. Oakes called back. Ms. Oakes noted because that she never spoke with Mr. stated that his father had asked him to speak with them and make an appointment on his behalf. She stated that confirmed that his father was in the room at the time of the call. Ms. Oakes stated that, in her experience, it was common for long-time spouses to be grief-stricken and ask children to call on their behalf. Ms. Oakes stated that she confirmed all the information on the first call sheet with This included that she received permission from to transfer and embalm Ms. This included that she received permission from embalm Ms. The remains of the received permission from embalm Ms. did not give verbal authorization for funeral arrangements as funeral arrangements were never made on July 21, 2023. Ms. Oakes stated that her call with was about 8 minutes long. Ms. Oakes indicated that, to her knowledge, she did not need a licence to receive the 52. permission to transfer and embalm the remains. Ms. Oakes stated that after speaking to she took the authorization form 53. to Mr. Nash Mathers ("Mr. N. Mathers") for his signature as a funeral service business representative could not sign the verbal permission to embalm. 54. Ms. Oakes stated that on July 23, 2023, she had a call with Eventide where concerns were raised about Eventide having a a pre-arrangement for funeral services with the and that Ms. s remains should not have been in the possession of or embalmed by the Investigated Member. Following this, Ms. Oakes called to confirm and stated that he denied having conversations with Ms. Oakes and denied providing permission to the Investigated Member to transfer and embalm the remains. 55. Ms. Oakes stated that she then spoke to Mr. who confirmed arrangements had

Evidence of Mr. Nash Mathers

calm throughout the call.

been made with Eventide. Ms. Oakes indicated to Mr.

would be transferred to Eventide on July 24, 2023. Ms. Oakes stated that Mr.

56. Mr. N. Mathers advised that he is a licenced funeral director and embalmer who received his qualifications from the Canadian College of Funeral Services. He was licenced prior to July 21, 2023.

that Ms.

s remains

57. Mr. N. Mathers noted that on July 21, 2023, he spoke with Ms. Oakes, who stated that she was given verbal permission to embalm Ms. I s remains. Mr. N. Mathers indicated that he did not confirm directly with that verbal permission was given. Mr. N. Mathers confirmed that he transferred Ms. 's remains from Red Deer 58. Regional Hospital into the Investigated Member's care on July 21, 2023. Mr. N. Mathers advised that he signed the permission to embalm form at 2:35 p.m. and did the embalming directly after returning from the hospital. Mr. N. Mathers stated that embalming is often done in advance of arrangements being made. Closing Submissions of the Investigated Member Ms. Nelson submitted that the Investigated Member has never been found to contravene the Act or Regulation in his 32 years of working in the funeral services profession. Ms. Nelson emphasized that Ms. 's will appointed as personal 61. representative if Mr. was unable or unwilling to give instructions. Ms. Nelson argued that verbal authorization to embalm is allowed if Ms. Oakes believes 62. on reasonable grounds that she was speaking to the person who controls the disposition of Ms. 's remains. Ms. Nelson submitted that Ms. Oakes followed all policies and procedures outlined in the Act and Regulation and believed that was the appropriate person to provide permission to embalm. 63. Ms. Nelson stated that Ms. Oakes did not solicit or enter into a contract. Rather, Ms. Oakes 's questions concerning whether a funeral service could occur later that answered voluntarily provided the information for the first call sheet. Ms. Nelson week and

VII. DECISION OF THE HEARING BOARD

Act.

Reasons for Finding Breach of Act or Regulation

Allegation 1 - taking instructions from persons without the right to control the disposition of human remains

submitted that Ms. Oakes' actions did not meet the definition of a "funeral service contract" in the

- 64. Section 36(2) of the Regulation states that, subject to a court order, the right to control the disposition of human remains vests in and devolves on persons in a specified order of priority starting with the personal representative designated in the will of the deceased. However, section 36(4) states that if the person who has the right to control the disposition of human remains is not available or is unwilling to give instructions, that right passes to the next available qualified person.
- 65. The Hearing Board does not find Allegation 1 has been proven against the Investigated Member. The Hearing Board finds that it was reasonable for the staff of the Investigated Member

to believe the right to control the disposition of Ms. It's remains was passed on from Mr. It's remains was passed on from Mr. It's was unwilling or unable to give instructions when It's called the Investigated Member.
66. Specifically, the evidence from Mr. was that he could not make phone calls to funeral homes due to his grief and that he had asked gave evidence that he advised the staff of the Investigated Member that his father was unable to make the calls and he was doing so on his behalf.
67. The Hearing Board recognizes that funeral service professionals often experience situations where grief-stricken spouses will ask their children to call on their behalf. At the time of the call, the funeral service representative often must react to the caller with care and compassion, and trust that the information being provided is factual.
68. In practice, it may not, at that time, be appropriate for the funeral professional to question the caller's authority and request proof of same. Instead, it is reasonable for the funeral professional to believe that the caller is providing accurate information.
69. The Hearing Board further notes that it is not the position of funeral professionals to review and judge the reasonableness of the family's private decision regarding who is to provide the instructions concerning the disposition of the deceased's remains. It is up to the family to decide who they feel is the next available qualified person.
Allegation 2 - embalming a dead body without express authorization from the authorized persons
70. Section 13.1 of the Regulation requires a funeral services business licensee to obtain express authorization to embalm a dead body from a person who the representative of the funeral services business believes on reasonable grounds has authority to control the disposition of the dead human body.
71. The Hearing Board finds that Allegation 2 has not been proven and the Investigated Member did not contravene section 13.1.
As explained in Allegation 1, the Hearing Board finds that the staff of the Investigated Member had reasonable grounds to believe that Mr. had the authority to control the disposition of Ms. It is remains. Therefore, he was the appropriate person to provide authorization to transfer and embalm Ms. It is remains. Furthermore, the Board finds that provided the express authorization to embalm Ms. It is remains.
73. The evidence provided through the witness testimony and the Exhibits support that provided detailed information beyond what would be expected of a call to merely make an appointment and that he did so for a significant length of time over two phone calls.
74. Although the Hearing Board was provided with contradictory testimony from the staff of the Investigated Member and Provided With contradictory testimony from the staff of the Investigated Member and Provided With Contradictory testimony from the staff of the Investigated Member and Investi

there is sufficient evidence that on a balance of probabilities, the embalming of Ms. expressly authorized 's remains.
75. The Hearing Board based the decision in part on the level of detail provided to the Investigated Member during his call on July 21, 2023 including which hospital to transfer the remains from and the wishes of Ms. regarding where she wanted to be buried, and the corroborating evidence provided by the two staff of the Investigated Member in their testimony as well as in the documents provided in Exhibit 1. The Hearing Board also recognized Ms. Oakes' years of experience in the funeral services industry, which would have given her the experience of what to discuss with a caller, confirm the information received, and assist in her interpretation of the situation.
Allegation 3 - entering into a funeral services contract without a licence
76. Section 3(2) of the Act states that "no person shall, unless that person holds a funeral director licence, solicit to enter into or enter into a funeral services contract as agent for a person who holds a funeral services business licence".
77. The Hearing Board finds that Allegation 3 is proven, and the Investigated Member contravened section 3(2). The Hearing Board finds that an agreement to embalm human remains is considered as entering into a funeral services contract. Ms. Oakes entered into an agreement for the Investigated Member to embalm and did so without a funeral director licence.
78. The Hearing Board considered the terms "funeral services contract", "funeral services", and "embalming" defined in sections 1(d), (f), and (e) of the Act.
79. A funeral services contract is defined as "an agreement relating to the provision of funeral services entered into by a licensee and a purchaser of funeral services".
80. Funeral services is defined as "the care and preparation of human remains and other arrangements necessary for their interment, cremation or other disposition and includes the supply of goods or services incidental to that purpose and the arrangement and direction of memorial rites or ceremonies, but does not include the sale of interment space".
81. Embalming is defined as "to treat human remains with chemicals for the purposes of (i) reducing the presence and growth of micro-organisms, (ii) retarding decomposition, and (iii) restoring an acceptable physical appearance".
82. In accordance with the definitions in the Act, embalming is one aspect of the care and preparation of human remains necessary for interment or other disposition and therefore it constitutes a "funeral service".
83. The evidence of Ms. Oakes is that she obtained permission from embalm Ms. 's remains. Ms. Oakes admitted that she did not have a funeral director licence when she did so. While the Hearing Board recognizes that Ms. Oakes was not acting maliciously when she obtained the permissions, it is nonetheless a contravention of the Act regardless of intent.

Penalty

- 84. It is the jurisdiction of the Hearing Board to impose sanctions for breach of the Act and Regulation. The Hearing Board has a role in protecting the public from persons who breach them. The Hearing Board has been delegated the powers of the Director under section 15 and section 34.1 of the Act.
- 85. Schedule 4 of the Regulation permits the imposition of an administrative penalty for contraventions of section 3(2) of the Act. Given the findings with respect to Allegation 3, the Hearing Board is of the view that an administrative penalty is appropriate. The Hearing Board imposes on the Investigated Member an administrative penalty of \$1,500. The time for payment is 30 days from the service of this decision.
- 86. The Hearing Board has considered the submissions made by the parties in regard to potential penalties. The Hearing Board has taken into account that Schedule 4 of the Regulation sets out administrative penalties which can be imposed. In addition, under section 34.1(1), the Hearing Board, exercising the powers of the Director, may require a person to pay an administrative penalty if of the opinion that the person has contravened the Act or Regulation.
- 87. The Hearing Board is concerned about the lack of compliance with section 3(2) of the Act and considers unlicenced staff entering into a funeral service contract to be a significant issue. The licensing requirement is critical to the protection of the public as they enter into contracts with licensed funeral service professionals who have the necessary knowledge and skills. The Hearing Board believes that the public needs to have confidence in the profession, and the lack of compliance with section 3(2) of the Act if left unsanctioned, would lead to the reputation of the profession being lowered.
- 88. The Hearing Board believes that imposing this sanction reflects its concern with the lack of compliance and will encourage compliance with the Act in the future. The Hearing Board acknowledges that the public needs to have confidence in the AFSRB to regulate its members and that the above penalties are required to protect the reputation of the profession and act as a general deterrent to other members of the profession.

General Notes

- 89. During the hearing, Ms. Nelson requested additional evidence be admitted on behalf of the Investigated Member that was not being admitted through a witness. The Executive Director objected to the admission of the additional evidence. The Hearing Board heard submissions from both parties as well as reviewed the additional evidence.
- 90. The Hearing Board determined that the additional evidence would not be admitted as it related to matters that were outside the scope of the allegations before the Hearing Board in this hearing.
- 91. The Hearing Board has decided that the results of this hearing will be published on the AFSRB's webpage as has been the AFSRB's practice for other disciplinary matters under its authority under section 21 of the Act. If there is no appeal filed, the decision will be published at that time. If an appeal is filed, the AFSRB will not post this decision until the appeal is completed.

At the completion of the appeal, this decision and the decision of the Appeal Tribunal will be published on the AFSRB's webpage. Publication will provide information to the industry to assist in general deterrence.

VIII. CONCLUSION

- 92. For the reasons set out above, the Hearing Board finds that Allegation 3 has been proven against the Investigated Member on a balance of probabilities.
- 93. As a result, the Hearing Board imposes an administrative penalty of \$1,500 in accordance with to section 34.1 of the Act and Schedule 4 of the Regulation.

Dated this $\frac{11}{2}$ day of June 2024.

Signed on behalf of the Hearing Board of the Alberta Funeral Services Regulatory Board.

S. Murray, Chair