

**IN THE MATTER OF THE EMBALMERS AND FUNERAL DIRECTORS ACT
R.S.N.S. 1989, CHAPTER 144**

and

Mr. David Farmer

NOTICE OF DECISION

**RE: Decision Regarding Funeral Director Licence # 201171008F1 and Embalmer License #201371005E1
– David Farmer**

This Notice sets out the decision of the Nova Scotia Board of Registration of Embalmers and Funeral Directors (the "Board") regarding your Funeral Director Licence # 201171008F1 and Embalmer License #201371005E1 under the *Embalmers and Funeral Directors Act* (the "Act").

BACKGROUND:

A Notice of Inquiry was sent to you on January 23, 2018, which outlined allegations of negligence and professional misconduct in relation to the provision of funeral services for Sandra Bennett (deceased Dec. 20, 2017). The Notice of Inquiry notified you that because of these allegations an inquiry would be scheduled, after which the Board may decide to suspend or revoke your license as an embalmer and your licence as a funeral director pursuant to Section 23 of the *Embalmers and Funeral Directors Act*, R.S.N.S. 1989, c. 144.

The Board offered you the opportunity to make a written submission to the Board in advance of the inquiry. You were also given the opportunity to be represented at the inquiry by legal counsel. On February 12, 2018, you met with the Registrar of Funeral Services and provided a written submission.

The inquiry was held on February 13, 2018 regarding your funeral director and embalmer licences.

ISSUE:

Subsection 23(1) of the Act authorizes the Board, after due inquiry, to suspend or revoke the licence of an embalmer or funeral director. In this particular case, an inquiry was held and the Board has reviewed your written submission provided on February 12, 2018 and your presentation and responses at the inquiry. The Board now must consider whether it should revoke or suspend your embalmer and funeral director licence under subsection 23(1) of the Act and clauses 20(a) and (b) of the *Embalmers and Funeral Directors Regulations* which provide as follows:

- 23 (1)** Subject to the regulations, the Board may, after due inquiry, suspend or revoke the licence of an embalmer, an apprentice embalmer, a funeral director or an apprentice

funeral director where at least four members of the Board find that the embalmer, apprentice embalmer, funeral director or apprentice funeral director has been guilty of non-compliance with this Act, the regulations or the bylaws or any misrepresentation, negligence, professional misconduct or fraud.

20 For the purpose of the Act and regulations “professional misconduct” means

(a) personal or professional conduct of a licensed embalmer, apprentice embalmer, funeral director or apprentice funeral director which does not lend dignity to the profession and inspire confidence on the part of the public in the members of the profession;

(b) the conduct of the business of a funeral director in such manner, economically and professionally, as not to reflect credit on the profession and to inspire confidence on the part of the funeral-purchasing public;

FINDINGS OF FACT:

Based on the evidence presented at the inquiry, including a written statement provided by the Wilson family, and the written submissions provided by you and Mr. Anthony Facey, the Board finds the following facts:

Death of Myrtle Wilson

- Two Serenity Funeral Home staff members arrived in Digby to remove Ms. Myrtle Wilson from the nursing home in a Silver van, at approximately 12:05 am on December 20, 2017. There was no death certificate for Ms. Wilson available. Furthermore, the nursing home did not have an identification bracelet or tag on the deceased and so, therefore, she was put in the removal van without any label or supporting documentation.
- The two staff members made their way back to Berwick, arriving at approximately 1:45 am. Due to the very poor driving conditions, they stayed in Berwick for the night, rather than continue to Port Williams to complete the registration and processing of Ms. Wilson.
- The Silver van was parked in the Berwick Chapel garage at approximately 1:45 am.

Death of Sandra Bennett

- A call came in from the private home of Ms. Sandra Bennett at approximately 6:30 am on December 20, 2017. Two staff drove the Black van to the home of Ms. Bennett. The removal of Ms. Bennett from her residence, took approximately one half-hour to complete. Ms. Bennett’s body was not labelled.

Ms. Wilson and Ms. Bennett transferred to Port William’s Facilities

- The Black and Silver vans were driven to the Coldbrook office. Once at Coldbrook, a new call was received from the Soldier’s Memorial Hospital in Middleton.
- In preparation for responding to the call from Soldier’s Memorial Hospital, Ms. Bennett’s body was moved from the Black van into the Silver van. Ms. Bennett was placed on the left-hand side, behind the driver’s seat while Ms. Wilson was on the right.

- Apprentice Funeral Director, Ted McCreadie, provided testimony at the hearing that he then placed a hand-written label on each stretcher identifying each decedent. He was confident that he correctly labeled each decedent.
- Staff then took the Black van to Soldier's Memorial Hospital and the Silver van to Port Williams, where Mr. David Farmer had already reported to work.

Placing of Ms. Sandra Bennett in the Crematorium Area

- The Silver van arrived in Port Williams, carrying both Ms. Bennett and Ms. Wilson. You (Mr. David Farmer) were there to remove the bodies. You removed the body of Ms. Bennett first, believing it to be Ms. Wilson.
- You state in your written submission that you "first put the body of Ms. Bennett in the cremation holding room thinking that this was Ms. Wilson." You then "put the body of Ms. Wilson on the prep table to be embalmed, thinking that this was Ms. Bennett".
- Your written submission goes on to explain that you "definitely got them mixed up" and that you "assumed that Ms. Wilson was the body on the left side of the van because she was the first one picked up and that Ms. Bennett was on the right side because she was picked up later."
- You gave testimony that it was your practice to always put the first removal on the left when there were two bodies. You testified that you assumed this had also been the practice of other worker's doing removals at Serenity. You testified that you did not see the labels that Ted McCreadie placed on the stretchers.
- Your written submission also acknowledges that you "should have phoned and asked the removal team to come to the crematorium and make positive identification" and that the "two bodies should have been held in our system and not touched until we had positive identification."
- Believing the body to be Ms. Wilson's, you brought her to the crematorium area. You knew from the BBM messages, which is a typical way for the Serenity staff to communicate, that Ms. Wilson's family had arranged for her to be cremated.
- Before registering Ms. Wilson in the system and creating a label and tag with her name and ledger number, you first went back to the van and retrieved the second body. Believing this to be the body of Ms. Bennett, you then brought the body to the embalming room and placed her on the embalming table.
- You then proceeded to enter both decedents into the Port Williams registration system, creating a file for each, as well as a label, and a tag, which were then attached to the bodies. Serenity Funeral Home has a policy in place that when handling more than one decedent, you must process one body at a time from start to finish, prior to embarking on the next one. In this case, you did not follow that rule.
- You then proceeded to cremate the body of Ms. Bennett, which you believed to be the body of Ms. Wilson.
- At the hearing, you testified that you were confident at the time that you had correctly identified the bodies even though you did not see a label on either one. You admitted that, in hindsight, this was

based on assumption, and that you should have verified the identities of the bodies before proceeding.

ANALYSIS:

Section 23 of the Act – Is Mr. David Farmer guilty of negligence and professional misconduct?

As a licensed funeral director you have a duty of care with respect to the remains that you are preparing. Based on the facts set out above, the Board is satisfied that the incorrect cremation of Ms. Bennett and incorrect embalming of Ms. Wilson was the result of careless human error on your part as a licensed funeral director and embalmer, and that your conduct fell below the expected standard of care with respect to the remains entrusted to you. All members of the Board find that you are guilty of negligence in this regard. All members of the Board also find that your conduct was in violation of section 20(a) of the Regulations, which defines ‘professional misconduct’ as conduct which does not lend dignity to the profession and inspire confidence on the part of the public in the members of the profession.

As a licensed funeral director, you have a professional responsibility to positively identify the body of a deceased person prior to registering, processing and committing that body to cremation or embalming. Serenity Funeral Home had a rule in place when handling multiple decedents: when handling more than one decedent, to process one body at a time from start to finish, prior to embarking on the next one. In this case, you did not follow that rule and as a result, the wrong body was mislabelled and cremated and an unauthorized embalming was performed.

This is a case involving human error and a mistaken assumption on your part. Your conduct has had far-reaching and long-lasting impacts on the loved ones of Ms. Sandra Bennett and Ms. Myrtle Wilson.

The Board finds that your responses provided at the inquiry and in your written submission do not appropriately address or acknowledge the seriousness of your actions. You submitted that this mistake happened because “we did not have a chain of custody in place and also we had never had a removal from a nursing home (no ID bracelet nor toe tag) before this. I acted the way we usually did things, as I said earlier that the body on the left, behind the driver is always removed first. Then the body on the right is removed secondly”.

You also stated that you feel your actions did not lead to professional misconduct because of the “professional way we treat all the bodies I would never disrespect a body coming into our facility.” It is the Board’s opinion that you have cooperated with the Board during the inquiry process and appear to show genuine remorse for your actions. However, it is also the Board’s opinion that you do not understand how your assumptions and carelessness directly led to this tragic event.

The Board finds that your careless actions combined with your lack of attention to the necessary identification details which resulted in this wrongful cremation and embalming, could not be construed in any way besides that of negligence and professional misconduct in the workplace.

As a result of all of the above, the Board finds that it would not be in the public interest for the Board to allow you to continue to practice as a licensed funeral director or embalmer in Nova Scotia.

CONCLUSION:

All members of the Board are satisfied that:

- Your actions demonstrate that you are guilty of negligence and professional misconduct; and
- that it would not be in the public interest to allow you to continue to practice as a licensed funeral director and a licensed embalmer.

As a result, it is the decision of the Board to immediately revoke your Funeral Director Licence #201171008F1 and Embalmer License #201371005E1 under the Act.

If you are dissatisfied with this decision you may, within three months from the date of this letter, appeal to a judge of the Supreme Court of Nova Scotia. Further information on appeals and reinstatement process is outlined in Section 23 of the Act.

The Board reminds you that, as a result of the revocation of your licences, you are not permitted to conduct any business activity related to funeral directing or embalming in Nova Scotia.

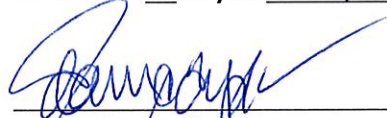
OTHER RECOMMENDATIONS:

The Board is committed to making amendments to its policies to ensure that there is a system in place to protect from an incident like this from happening again. Over the course of this investigation and inquiry it has been highlighted that the Board could be more open and transparent in how complaints are addressed and matters of enforcement are issued. It is clear that there is great public interest in how the funeral profession is regulated in Nova Scotia.

In an effort to address the above, the Board is requesting to work with Service Nova Scotia to implement the following recommendations:

1. Pursue implementation of a legislative requirement that all funeral homes and crematoriums label human remains as soon as they are taken into custody. What transpired has highlighted the need for more stringent regulations around the labeling of human remains prior to the transfer from the place of death.
2. Pursue legislative amendments to increase fine amounts under the Act so they align with other jurisdictions.
3. Review current Board By-laws and appropriate legislation to consider how consumer complaints and the disciplinary process should be made more transparent to the public. The Board has not dealt with an issue of this magnitude before and the result of this event has made it clear that the Board, as a self-regulating body, should take action to ensure that we consider the needs of the public.
4. This Board will make recommendation to Service Nova Scotia to consider implementing regulations around care and comfort for the transport of bodies.

Dated this 8th day of March, 2018.



Adam Tipert, Chair
Nova Scotia Board of Registration of Embalmers and Funeral Directors