

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the "Act")

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

MICHAEL ANTHONY EDWIN CROWE
(the "Licensee")

and

ADVANTAGE BENEFITS PLUS INC.
dba PROVIDENT FIREFIGHTER BENEFIT SERVICES
(the "Agency")

ORDER

As Council made an intended decision on December 8, 2015, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee and the Agency with written reasons and notice of the intended decision dated January 15, 2016; and

As the Licensee and the Agency have not requested a hearing of Council's intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Licensee is fined \$10,000.00.
2. The Agency is fined \$10,000.00.
3. The Licensee is assessed Council's investigative costs of \$887.50.

Order

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4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **May 3, 2016**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **May 4, 2016**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.
5. A condition is imposed on the Agency's life and accident and sickness insurance licence that requires it to pay the above-ordered fine no later than **May 3, 2016**. If the Agency does not pay the ordered fine in full by this date, the Agency's life and accident and sickness insurance licence is suspended as of **May 4, 2016**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **3rd day of February, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

MICHAEL ANTHONY EDWIN CROWE
(the “Licensee”)

and

ADVANTAGE BENEFITS PLUS INC.
dba PROVIDENT FIREFIGHTER BENEFIT SERVICES
(the “Agency”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on October 26, 2015, a Review Committee (the “Committee”) met with the Licensee and his legal counsel, J.J. McIntyre, to discuss an allegation that the Licensee and the Agency used marketing material in the solicitation of insurance that was not approved by an insurer, in contravention of the Licensee’s licence condition.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee prepared a report of its meeting for Council.

The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its December 8, 2015 meeting, where it was determined the matter should be disposed of in the manner set out below.

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PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee and the Agency of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee and Agency may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee and the Agency.

FACTS

The Licensee has been licensed with Council as a life and accident and sickness insurance agent ("life agent") since November 30, 1981. On November 30, 1999, the Agency became licensed and the Licensee became the nominee for the Agency.

The Licensee promotes a group accident and sickness insurance plan that caters specifically to voluntary fire departments ("Plan A"). In this market, the Licensee competes with a similar plan ("Plan B") offered through another life insurance agency, which is promoted by another licensee (the "Competitor").

In September 2012, the Licensee was before Council relating to his use of marketing material, which resulted in disciplinary action that included the imposition of the following licence condition:

- 1. The Licensee is prohibited from using any marketing material, directly or indirectly, in the solicitation of insurance unless the material is specifically provided to him by the insurance company whose product he is soliciting.*

In reaching its decision, Council stated that any subsequent breach by the Licensee involving marketing material, improper solicitation of insurance, or breach of confidentiality would result in a review of whether the Licensee is still suitable to hold a life agent licence.

Once the licence condition was imposed on the Licensee, there was follow up communication between the Licensee and Council that addressed his use of the marketing material and the intent of the licence condition, which should have prompted the Licensee to question whether he could utilize marketing materials without first obtaining his insurer's consent.

On December 22, 2014, Council received a complaint expressing concern that the Licensee was using marketing materials that were not approved, in accordance with the Licensee's licence condition.

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The marketing materials in question are insurance coverage comparisons between Plan A and Plan B, prepared by the Licensee, that were sent to the Competitor's client by another insurance agent who was attempting to replace the coverage on behalf of the Licensee. The Licensee also met with another client of the Competitor's and together they reviewed an insurance coverage comparison between Plan A and Plan B.

The insurer responsible for reviewing and approving the Licensee's marketing material confirmed that it did not review or approve the coverage comparisons, and noted that materials referring to another insurer's coverage would not be approved.

The Licensee confirmed that he prepared the coverage comparison that was provided to the insurance agent, but explained that he was not the one who provided it to the Competitor's client. However, the Licensee acknowledged he was aware that his comparison material would be shared with a potential client. The comparison documents were prepared and sent under the Agency's name.

The Licensee advised that he did not consider the coverage comparison, and associated comments forwarded by the insurance agent, to be marketing material, because the material was provided in response to a client's request for information about a policy, and not as general marketing material. The Licensee viewed the coverage comparison as "correspondence" rather than marketing material, and therefore not covered by his licence condition.

ANALYSIS

Council determined that policy comparisons provided to potential or existing clients by the Licensee, either directly or indirectly, constituted marketing material, regardless of whether it is being distributed to a single client or through mass distribution. Council found that the Licensee's licence condition was not limited to mass marketing material.

In its review of the comparison prepared by the Licensee, Council found that the comparison was incomplete and misleading. Council found the comparison document to be selective in the information provided and did not fairly represent the differences between the two plans.

Council was troubled that the comparison was provided to another insurance agent without any qualifying language, such as "internal use only" or an acknowledgment that the full product details were not set out. In fact, the Licensee acknowledged that he prepared the materials knowing they were to be shared with the Competitor's client.

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Council determined that the preparation and distribution of the policy comparison by the Licensee qualifies as marketing material as contained in the licence condition. Council found that by distributing this material the Licensee acted contrary to his licence condition. Further aggravating the Licensee's breach of his licence condition, was Council's finding that the comparison was neither accurate nor complete, bringing into question the Licensee's ability to act in a competent manner, and in accordance with the usual practice of the business of insurance.

Council found that the Licensee's failure to take the necessary steps to ensure he acted in accordance with his licence condition, particularly since Council's concerns had been made clear to the Licensee in the past, to be an aggravating factor.

Council concluded that, in light of the Licensee's prior disciplinary history, a significant penalty was appropriate. Council considered whether the Licensee's actions warranted a decision that would find the Licensee either unsuitable to be licensed or, at the very least, licensed under direct supervision, but concluded the Licensee should be granted one more opportunity to demonstrate that he can conduct insurance activities in accordance with his licence condition. However, Council determined the Licensee and the Agency needed to be sent a significant message that this type of conduct will not be accepted.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

2. Fine the Licensee \$10,000.00.
3. Fine the Agency \$10,000.00.
4. Assess the Licensee Council's investigative costs of \$887.50.

The Licensee and the Agency are advised that should the intended decision become final, the fines and investigative costs will be due and payable within 90 days of the date of the order.

The Licensee is advised that failure to pay the fine and investigative costs within the 90 days will result in the automatic suspension of his life and accident and sickness insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fine is paid in full.

The Agency is advised that failure to pay the fine within the 90 days, will result in the automatic suspension of its life and accident and sickness insurance licence and the Agency will not be permitted to complete any annual filing until such time as the fine is paid in full.

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The intended decision will take effect on **February 3, 2016**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **February 2, 2016**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **February 2, 2016**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1


Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **15th day of January, 2016**.

For the Insurance Council of British Columbia



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Executive Director
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GM/bk