In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

CHRISTOPHER ROBERT GERKE
(the "Licensee")

ORDER

As Council made an intended decision on July 26, 2022, 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 with written reasons and notice of the intended decision dated August 10, 2022; and

As the Licensee has 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 that:

1. The Licensee is fined $1,000, to be paid by November 28, 2022;

2. The Licensee is required to complete the Council Rules Course for life and/or accident and sickness insurance by November 28, 2022, unless taken within the last 12 months of August 30, 2022;

3. The Licensee is assessed Council's investigation costs of $1,937.50, to be paid by November 28, 2022;

4. A condition is imposed on the Licensee's life and accident and sickness insurance agent licence that failure to pay the fine and the investigation costs by November 28, 2022 will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal; and

5. A condition is imposed on the Licensee's life and accident and sickness insurance agent licence that failure to complete the Council Rules Course for life and/or accident and sickness insurance by November 28, 2022, unless already taken within the last 12 months of August 30, 2022, will result in the automatic suspension of the Licensee's licence and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal.

This order takes effect on the **30th day of August, 2022**.

Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

CHRISTOPHER ROBERT GERKE

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee breached the Council Rules and/or the Code of Conduct (the “Code”) when he falsified signatures for five clients, made false documents, engaged in unsatisfactory advisor practices by failing to obtain proper documentation during insurance transactions, and provided false and misleading information to an insurer (the “Insurer”) during their investigation.

2. On May 25, 2022, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee via video conference to review an investigation report prepared by Council staff and to provide the Licensee an opportunity to make submissions or provide further information. A copy of the investigation report was forwarded to the Licensee and the Committee in advance of the meeting.

3. Having reviewed the investigation materials and having discussed the matter at the May 25, 2022 meeting, the Committee prepared a report for Council which was reviewed by Council at its July 26, 2022 meeting. Council determined that the matter should be disposed of in the manner set out below.

PROCESS

4. Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Licensee 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.

FACTS

<u>Background</u>

5. The Licensee has been licensed with Council as a life and accident and sickness insurance agent (“Life Agent”) since May 2005. The Licensee is also licensed as a life agent and an

accident and sickness agent in Alberta. The Licensee has held an authority to represent an agency (the "Agency") since becoming licensed.

6. On June 8, 2020, Council received a letter from the Insurer, which reported that they had identified signature discrepancies, as well as a lack of needs analyses, Know Your Client ("KYC") information, and Reason Why Letters, in the Licensee's files. The letter, which was accompanied by a Life Agent Reporting Form also stated that the Insurer had officially reprimanded the Licensee but had not terminated its contract with him.

7. In a follow-up email on June 9, 2020, the Insurer advised Council that they had reprimanded the Licensee after conducting an Advisor Practice Review (the "APR") between May 2019 and April 2020. The Licensee was given an overall rating of "*Unsatisfactory*" for his APR.

8. The Insurer reviewed ten of the Licensee's client files and identified several missing documents. The Licensee provided some of the missing documents for seven of the ten files. The Insurer noted signature inconsistencies in five of the additional documents submitted by the Licensee and requested an explanation.

9. The Licensee stated that he had never submitted "*any client correspondence which was presented as signed by the client, but was actually signed by a third party.*" The Licensee further stated that he had "*never accepted any pre-signed documents or applications,*" nor had he ever "*altered any client's correspondence without their knowledge.*"

10. In April 2020, the Insurer asked the Licensee for written confirmation that he had met with the seven clients in October 2019, and the next day the Licensee admitted to forgery by making false documents and falsifying client signatures for five clients, for a total of eleven documents. He said that he had been unable to meet five of the clients prior to the date by which the Insurer had requested the documents, and he panicked and signed on behalf of the clients.

11. The Licensee admitted that he had not implemented the Reason Why Letters before the APR. Further, he acknowledged some issues with the KYCs and needs analyses in his previous files.

12. On April 15, 2020, the Licensee advised that he had contacted all clients whose signatures he had forged and obtained genuine signatures on the Reason Why Letters and Life Insurance Advisor Disclosure Forms.

13. The Insurer advised that they had not identified any client harm in this matter and had not elected to terminate their contract with the Licensee. The Insurer formally reprimanded the Licensee and placed him under supervision for one year and required him to undergo

additional training and provide the Insurer with copies of his policies and procedures on various conduct requirements.

14. With respect to training, the Licensee was required to complete an ethics course through the Canadian Securities Institute, and a compliance and best practices module through the Insurer. In addition, the Licensee was required to undergo additional training under the Insurer's Sales Director. Council received confirmation that the above-noted requirements were completed by the Licensee.

15. On December 15, 2021, the Licensee's supervisor (the "Supervisor") emailed Council four Supervision Agreement Report Forms covering each quarter of the twelve months that the Licensee was under his supervision. The Supervisor's notes indicated that his review found all the insurance recommendations suitable, and that the insurance documents supported the suitability of each sale.

16. In an email to Council on January 17, 2022, the Supervisor stated that the Licensee's improvement was "*immediate and consistent*" and that his supporting documentation was in good order during his period of supervision.

The Licensee's Submissions

17. The Licensee expressed remorse for his misconduct and admitted that he made a poor decision to forge the clients' signatures. At the time, he did not believe the repercussions of forging the signatures was greater than missing the deadline imposed by the Insurer. The Licensee expressed disappointment with his conduct.

18. When asked to explain the changes the Licensee made to his practice, the Licensee stated that he implemented checklists for client meetings, created a financial needs analysis template to ensure clients are aware of the calculations used to derive their needs for life insurance, and implemented the Agency's template for advisor disclosure. Further, the Licensee stated that his assistant, a licensed Life Agent, checks over all necessary paperwork to ensure compliance.

19. With respect to the supervision requirement imposed by the Insurer, the Licensee confirmed that he submitted to the Supervisor every piece of business that he wrote during the year of supervision. He believed that he became very good with client notes.

20. Moving forward, he is committed to staying abreast with developments in his practice by completing continuing education courses and reviewing the Council Rules. The Licensee

stated that the Agency provides monthly compliance meetings to ensure its agents are informed of the latest developments in the insurance industry.

21. The Licensee confirmed that he has not been disciplined by other regulators for this matter and that the only investigation that was undertaken was by Council.

ANALYSIS

22. Council considered the investigation report, the Committee's report to Council, and the Licensee's submissions and determined that the Licensee's conduct amounted to clear breaches of section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients"), and section 8 ("Usual Practice: Dealing with Insurers") of the Code. Council Rule 7(8) requires licensees to comply with the Code.

23. Council found that the Licensee's decision to forge the signatures of five clients was a clear violation of the principle of trustworthiness. In addition, even though the Licensee eventually admitted to the Insurer that he forged the client signatures, he made a false statement to the Insurer by stating that he had never submitted client correspondence, which was presented as signed by the client, but was signed by a third party.

24. By forging client signatures, the Licensee did not act in good faith towards the Insurer. While Council understood that the Licensee was expected to comply with the Insurer's request to provide the missing documentation by the deadline, Council opined that a licensee should always remain faithful to their duties and obligations as an insurance licensee. The Licensee's actions demonstrated a willful disregard of his duties and obligations under the Act, Council Rules, and the Code. Further, the unsatisfactory advisor practices proved that the Licensee did not act in a manner consistent with his clients' best interests.

25. With respect to the principle of competence, Council noted that the Licensee did not act in accordance with the usual practice of the business of insurance. The Insurer's APR identified missing Insurance Advisor Disclosure Forms, needs analyses and Reason Why Letters from several client files. Similarly, Council determined that the Licensee breached Council Rule 7(9) as he did not maintain records necessary for the proper recording of insurance transactions. Council recognized that the Licensee had since undergone training and supervision and believed the Licensee had demonstrated substantial improvement.

26. Since the Licensee did not disclose to his clients that their signatures were forged, Council determined that he breached the usual practice: "dealing with clients" principle. The Licensee also breached his duty of care to clients by not performing adequate needs analyses and not obtaining signed Insurance Advisor Disclosure Forms as illustrated in the Insurer's APR. Council found that the Licensee did not provide full and accurate information to the Insurer and thus, breached the usual practice: "dealing with insurers" principle. Council noted that the Insurer identified missing documentation in its APR of the Licensee.

27. Council took several mitigating factors into consideration. For instance, Council noted that the Licensee cooperated with Council's investigation. Council accepted that the Licensee acknowledged his misconduct and was remorseful. In addition, Council agreed that the Licensee's misconduct did not result in client harm. Further, the Licensee was disciplined by the Insurer, and the Licensee made efforts to remedy his misconduct by implementing procedures to reduce the likelihood of future misconduct. Council also noted that the supervision reports showed that the Licensee's improvement was immediate and consistent, and that supporting documentation was in good order. Lastly, Council understood that the Licensee obtained genuine client signatures from all clients after he forged their signatures.

28. In terms of aggravating factors, Council found the Licensee's experience in the insurance industry to be relevant. Council believed that the Licensee ought to have known that his conduct was not acceptable.

29. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.

30. With respect to the Licensee's misconduct, Council considered the cases of *Kamna Suri* (November 2020), *Christine Helene Craig* (August 2019), *Paramjit Sandhu* (March 2017), *Avninder Kaur Dhanoa* (February 2016), *Barry Ann Michelle Turnbull* (November 2013), *Lambert John Schmid* (March 2012), and *Cary Peterson Leung* (October 2009).

31. *Kamna Suri* (November 2020) concerned a relatively new life and accident and sickness insurance agent who failed to conduct a written financial needs analysis for a client's policy, failed to provide accurate information in the client's insurance application, provided the client with a copy of an illustration for another person, and failed to properly document her conversations with the client. Council determined that the licensee did not act with ill intent; rather, Council found that the licensee's conduct was careless. The licensee had no prior discipline history and there was no objective client harm. Council fined the licensee $1,000, required the licensee to complete the Council Rules course and

an ethics course, required the licensee to be supervised for six months, and assessed the licensee investigation costs of $1,543.75.

32. *Christine Helene Craig* (August 2019) concerned a Level 3 general insurance agent who forged a number of client signatures on Insurance Corporation of British Columbia ("ICBC") documents. The licensee had been licensed with Council for over 28 years at the time of misconduct. Council accepted that the misconduct did not occur regularly and only occurred when efforts to contact the clients were unsuccessful. Council further accepted that the licensee had no malicious intent, no clients were harmed, and that she was extremely remorseful. However, given the licensee's experience, Council found that she ought to have known it was wrong to forge a client's signature. Council also considered the fact that her agency continued to employ her was highly indicative of their support for her. Council fined the licensee $1,000, required the licensee to complete an ethics course and the Council Rules Course, and assessed the licensee investigation costs of $1,512.50.

33. *Paramjit Sandhu* (March 2017) concerned a former Level 1 general insurance salesperson who falsified two ICBC documents and accessed the ICBC extranet without consent. Council found the former licensee had exercised poor judgement and had failed to act in good faith and in accordance with the usual practice of the business of insurance. While Council accepted that the former licensee was remorseful for his actions, the former licensee was motivated in part by the potential for personal gain. Council noted that the former licensee was suspended by ICBC for a year and that his employment was terminated by his employing agency. Council fined the former licensee $1,000, required the former licensee to complete a privacy course, an errors and omissions course and the Council Rules Course, and assessed the former licensee investigation costs of $1,175. In addition, Council ordered that the former licensee was unsuitable to hold a general insurance licence for a period of one year.

34. *Avninder Kaur Dhanoa* (February 2016) concerned a relatively new life and accident and sickness insurance agent who knowingly misdated a client's signature and then failed to be forthright when confronted about the matter. When confronted by the insurer, the licensee panicked and misled the insurer about the signing of the documents. In addition, Council found the licensee added to the problem by failing to document her meetings and discussions with the client. Council determined that the licensee's actions were not in accordance with the usual practice of the business of insurance and that the matter reflected on the licensee's competency. Council required the licensee to be supervised for one year, required the licensee to complete Advocis' ARMED seminar, and assessed the licensee investigation costs of $1,475.

35. *Barry Ann Michelle Turnbull* (November 2013) concerned a Level 1 general insurance salesperson who forged a client's signature on ICBC documents. The licensee had been licensed with Council for approximately 10 years at the time of misconduct. The licensee was terminated by the agency as a result. Council determined the forgery was done for convenience and without any intent to harm or for material gain. Nonetheless, Council held that the licensee's conduct was clearly contrary to the usual practice of the business of insurance. Council fined the licensee $1,000 and assessed the licensee investigation costs of $775.

36. *Lambert John Schmid* (March 2012) concerned a life and accident and sickness insurance agent who failed to conduct sufficient needs analysis, allowed transactional documentation to be improperly executed, proceeded with a transaction without a client's full awareness of its occurrence, witnessed forged signatures, and completed forms which misrepresented to an insurer that the client was fully informed about the nature of the insurance transaction. The licensee had been licensed with Council for approximately 24 years at the time of misconduct. Council found the licensee did not act with ill intent or for personal gain and was motivated by a genuinely held belief that the client wanted the insurance that was applied for. Council fined the licensee $2,000, required the licensee to complete the Advocis Best Practices program and assessed the licensee investigation costs of $850.

37. *Cary Peterson Leung* (October 2009) concerned a life and accident and sickness insurance agent who altered or modified the signature page on 25 insurance applications. The licensee admitted he did it purely for convenience and confirmed in all instances the clients were aware of the questions on the application and had expressly agreed to procure the new policies in question. The insurer determined that the policies were properly placed in accordance with the clients' needs. Nonetheless, Council found that the licensee's manipulation of insurance documentation resulting in the creation of false documents was intentional and occurred on a repeated basis. Ultimately, Council noted that the licensee understands the significance of his actions as he took full responsibility in the matter. In addition, Council did not find that the licensee posed a continuing risk to the public. Council fined the licensee $5,000 and required the licensee to complete an errors and omissions course and assessed the licensee investigation costs of $1,237.50.

38. Council determined that *Craig* and *Turnbull* were more instructive as the facts were similar to the subject case and that the licensees had over 10 years of licensed experience in the insurance industry. Also, the misconduct did not result in client harm. Council did not find *Leung* to be relevant as *Leung* involved the forging of signatures on insurance applications, which Council opined was more egregious than the subject case.

39. In addition to *Craig* and *Turnbull*, Council considered *Schmid* in relation to unsatisfactory advisor practices and found the case to be relevant since it also involved a life insurance matter.

40. Council has determined that investigation costs should be assessed against the Licensee. As a self-funding regulator, the cost to investigate the misconduct of a licensee or former licensee should not be borne by members of the insurance industry unaffiliated with the investigation. This is particularly true when the evidence is clear that the actions of a licensee or former licensee have amounted to misconduct.

INTENDED DECISION

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

    (a) Fine the Licensee $1,000, to be paid within 90 days of the date of Council's order;

    (b) Require the Licensee to complete the Council Rules Course for life and/or accident and sickness insurance, within 90 days of the date of Council's order, unless taken within the last 12 months of the date of Council's order;

    (c) Assess the Licensee Council's investigation costs of $1,937.50, to be paid within 90 days of the date of Council's order;

    (d) Impose a condition on the Licensee's life and accident and sickness insurance agent licence that failure to pay the fine and the investigation costs within 90 days of Council's order will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal; and

    (e) Impose a condition on the Licensee's life and accident and sickness insurance agent licence that failure to complete the Council Rules Course for life and/or accident and sickness insurance within 90 days of Council's order, unless already taken within the last 12 months of the date of Council's order, will result in the automatic suspension of the Licensee's licence and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal.

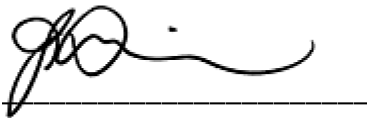
RIGHT TO A HEARING

42. 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 within 14 days of receiving this intended decision.** 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 within 14 days of receiving the intended decision, the intended decision of Council will take effect.**

43. Even if the Licensee accepts this decision, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right to appeal to the Financial Services Tribunal ("FST"). The BCFSA 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 www.fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the 10th day of August, 2022.

For the Insurance Council of British Columbia


____

Janet Sinclair
Executive Director