

In the Matter of

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

and

The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
(“Council”)

and

EDRALINE BUENTIPO BORGONIA
(the “Licensee”)

ORDER

As Council made an intended decision on April 12, 2016, 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 May 17, 2016; 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:

1. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires the Licensee to be supervised by a qualified life and accident and sickness insurance agent until such time as the Licensee accumulates an additional 24 months of active licensing.
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires the Licensee to successfully complete the Advocis Getting Established course on or before **June 7, 2017**. If the Licensee does not successfully complete the Advocis Getting Established course by this date, the Licensee’s life and accident and sickness insurance licence is suspended as of **June 8, 2017**, without further action from Council and the Licensee will not be permitted to complete any subsequent annual filings until such time as the ordered Advocis Getting Established course is successfully completed.
3. The Licensee is assessed Council’s investigative costs of \$1,112.50.

4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires the Licensee to pay the above-ordered investigative costs no later than **September 7, 2016**. If the Licensee does not pay the ordered investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **September 8, 2016**, without further action from Council and the Licensee will not be permitted to complete any subsequent annual filings until such time as the ordered investigative costs are paid in full.

This order takes effect on the **7th day of June, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

EDRALINE BUENTIPO BORGONIA
(the “Licensee”)

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 March 14, 2016, a Review Committee (the “Committee”) met with the Licensee to discuss allegations that the Licensee sold insurance policies to a client (the “Client”) to replace her existing policies, contrary to her best interests. The Client also alleges that the Licensee submitted a request to cancel an insurance policy without her permission.

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 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 April 12, 2016 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

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

The Licensee was first licensed as a life and accident and sickness insurance agent (“life agent”) in British Columbia on March 21, 2013.

The Client’s Submission

The Client stated that she met with the Licensee on November 28, 2014 regarding a financial issue unrelated to insurance, and as a result, agreed to let the Licensee review her existing life insurance coverage (the “Existing Policies”).

The Client and the Licensee met again on December 1, 2014, and after a review of her Existing Policies, the Client alleges that she was advised by the Licensee to replace her Existing Policies with new life insurance policies recommended by the Licensee (the “New Policies”). The Client stated that she was not comfortable with the Licensee’s recommendation and told the Licensee that she wanted the opinion of another life agent before making a decision.

On December 13, 2014, the Licensee delivered the New Policy proposal to the Client, who again informed the Licensee that she needed more time before making a decision on the Licensee’s recommendations.

In January 2015, the Client met with another life agent, at which time she discovered that the premium payment for one of the Existing Policies had not been debited from her bank account. When the Client contacted the insurer, the Client was informed that the Existing Policy had been cancelled after the receipt of a cancellation request from the Client. The Client was told by the insurer that the Existing Policy could not be reinstated.

The Licensee’s Submission

The Licensee stated that the Client’s primary financial goal at their first meeting was to create cash value in a policy from which she could borrow against. The Client was also seeking to reduce her post-retirement expenditures as much as possible. The Licensee stated that she completed a budget review with the Client, which demonstrated that the Client had adequate income to afford the New Policies recommended by the Licensee. The Licensee acknowledged that, as she was not the agent of record on the Existing Policies, she did not have full details of the Existing Policies when she conducted her assessment.

The Licensee acknowledged that, initially, the Client did not want to cancel her Existing Policies, and the New Policies recommended to the Client were to be in addition to the Existing Policies. The Licensee did not consider the New Policies to fall within the definition of replacement, as the Client had not yet decided whether she would cancel her Existing Policies.

On December 13, 2014, the Licensee met with the Client again to deliver the New Policies and to discuss the advantages and disadvantages of both the Existing Policies and the New Policies.

According to the Licensee, on December 14, 2014, the Client contacted the Licensee requesting to meet again the next day, and asked the Licensee to prepare cancellation letters. The Licensee stated that she did not know which policies the Client wanted to cancel; thus, she prepared cancellation letters for all of them.

On December 15, 2014, the Licensee met with the Client to sign the cancellation letters. The Client stated that she wanted to proceed with the New Policies and cancel the Existing Policies.

The Licensee stated that the cancellation letters were very short and easy to read, and that the Client read and understood the letters prior to signing. The Licensee stated that the Client was still not comfortable with cancelling her Existing Policies, as it would mean the loss of all benefits and any paid-up values. The Licensee advised the Client to take more time to consider her decision before she canceled her Existing Policy.

As the New Policies would not have come into effect until December 28, 2014, the Licensee did not want to cancel the Existing Policies prior to that date. As a result, the cancellation letters were post-dated to December 31, 2014. The Licensee forwarded the letter to the insurer prior to December 31, 2014, which resulted in the insurer cancelling the insurance upon receipt of the cancellation letter rather than on the post-dated date.

While stating that she did not ask the Licensee to cancel her Existing Policies, the Client did recall signing some letters presented to her by the Licensee.

ANALYSIS

Council found no evidence to suggest that the New Policies were inferior to the Existing Policies, but found the process by which the Licensee implemented the New Policies to be less than satisfactory.

Council found that the Licensee provided a policy comparison for the Client at their initial meeting, which was based on incomplete information. The Licensee acknowledged that, as she was not the Client's agent of record, she did not have full details of the Client's Existing Policies. Council determined that the Licensee should not have provided the Client with policy comparisons based on only partial information. Council found that by providing policy comparisons without full policy information, the Licensee failed to act in accordance with the usual practice of the business of insurance.

Council was also concerned with the post-dated cancellation letters prepared by the Licensee, which the Client had signed. Council found that it was inappropriate for the Licensee to have had the Client sign post-dated cancellation letters. Council also determined that once the Licensee had the Client sign the post-dated cancellation letters, she should not have submitted the letters until the date of the letters and only after confirming with the Client that she still wanted to proceed with the cancellation of the Existing Policies.

While accepting that the Licensee was attempting to act in the Client's best interests, Council found that the Licensee failed to demonstrate good judgment in dealing with the Client, which brings into question her ability to act in a competent manner, and in accordance with the usual practice of the business of insurance.

In determining a penalty, Council considered the *R. Bernardino* case and concluded that the Licensee would benefit from additional training and more supervision.

INTENDED DECISION

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

1. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires her to be supervised by a qualified life and accident and sickness insurance agent until such time as she accumulates an additional 24 months of active licensing.
2. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires her to successfully complete Advocis' Getting Established course within 120 days of the date of Council's order.
3. Assess the Licensee Council's investigative costs of \$1,112.50.

The Licensee is advised that should the intended decision become final, the investigative costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the investigative costs within the 90 days, or failure to successfully complete Advocis' Getting Established course within 120 days of the date of Council's order, will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the investigative costs are paid in full and Advocis' Getting Established course is successfully completed.

The intended decision will take effect on **June 7, 2016**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

Intended Decision
Edraline Buentipo Borgonia
190547-11877
May 17, 2016
Page 5 of 5

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 **June 6, 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 **June 6, 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

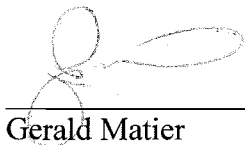
Reception: 250-387-3464

Fax: 250-356-9923

Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **17th day of May, 2016**.

For the Insurance Council of British Columbia



Gerald Matier
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