

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

SHERLOCK HSU
(the “Licensee”)

ORDER

As Council made an intended decision on August 1, 2023, 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 9, 2023; and

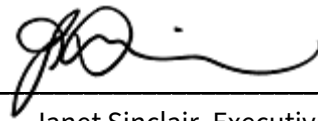
As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

- 1) The Licensee is fined \$2,000, to be paid by December 11, 2023;
- 2) A condition is imposed on the Licensee’s life and accident and sickness insurance agent licence that the Licensee be supervised for 24 months of active licensing by a supervisor approved by Council, commencing on September 11, 2023 and ending at midnight on September 10, 2025;
- 3) The Licensee is assessed Council’s investigation costs in the amount of \$2,437.50, to be paid by December 11, 2023;
- 4) The Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, by March 11, 2024:

- i. the Council Rules Course for Life and/or accident & sickness insurance;
 - ii. Compliance Toolkit: Know Your Client and Fact Finding, currently available through Advocis; and
 - iii. Compliance Toolkit: Know Your Product and Suitability, currently available through Advocis;
- (collectively the “Courses”); and
- 5) 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 December 11, 2023 and failure to complete the Courses by March 11, 2024 will result in the automatic suspension of the Licensee’s licence, and the Licensee will not be permitted to complete the Licensee’s 2025 annual licence renewal.

This order takes effect on the **11th day of September, 2023**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

SHERLOCK HSU

(the “Licensee”)

1. 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, Council Rules, and Code of Conduct, and in particular to determine whether the Licensee breached 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 of Conduct by submitting applications to obtain insurance products without the client’s full understanding, and for failing to maintain proper and adequate books and records of insurance transactions, client communication and instructions to ensure mutual understanding.
2. On May 24, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Licensee prior to the meeting. A discussion of the investigation report took place at the meeting and the Licensee was given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and discussed the matter with the Licensee, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its August 1, 2023, meeting, where it was determined 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

5. The Licensee first became licensed with Council as a life and accident and sickness insurance agent (“Life Agent”) in June 2019. The Licensee has had an authorization to represent (“ATR”) a managing general agency (“MGA”) from June 10, 2019, to February 18, 2023. Currently, the Licensee holds no ATR, and his Life Agent licence is inactive.
6. Around April 2021, a client of the Licensee, YL (the “Complainant”), contacted the Insurance Council regarding the Licensee’s conduct alleging the Licensee had used her signature without consent on application forms, submitted those applications to obtain a loan and insurance products she did not apply for or without her full knowledge, and proceeded to conduct five credit checks on her in January 2021.
7. The Licensee first met the Complainant in early 2020 at his office, where the Complainant opened a tax-free savings account with the Licensee.
8. The Licensee explained that after COVID-19, most of his business was conducted through phone calls.
9. The Licensee contacted the Complainant by telephone in January 2021, to conduct an investment review and to assess whether the Complainant was satisfied with her investment performance. The Licensee was aware that the Complainant was saving to purchase a property.
10. The Licensee advised the Complainant about a product that could help improve her investment strategy by using loans with no change to her monthly budget. The Licensee advised that the Complainant agreed with the recommendation and the Licensee made pre-approval applications with various companies so they could run credit checks on the Complainant. One of the companies approved the pre-approval application, and the Licensee faxed the request forms signed by the Complainant to that company.
11. The Licensee explained that based on his discussion with the Complainant, the Licensee recommended a leveraged investment strategy and that it was the client’s choice whether to try the product or not. The Licensee described the investment strategy as a trial. The Licensee explained the product to the Complainant, and that she could decide if she wanted to pursue it. The Licensee explained that for the investment loan, the Licensee had the Complainant apply to various companies so that the Complainant could pick between the companies once it was approved. The Licensee was unable to provide an answer as to how the initial amounts to open the investments were derived or calculated.

12. In February of 2021, the Complainant contacted the Licensee stating that the loans applied for would affect her mortgage application and that the Licensee had not explained the leveraging option clearly. The Licensee stated that he re-explained what he had discussed with the Complainant in his telephone call with the Complainant in January 2021.
13. Afterwards, the Complainant made a complaint to the Vancouver Police Department. The Licensee contacted the Complainant to explain the situation to her again, at which time the Complainant decided to cancel her contracts. The Licensee helped the Complainant cancel her contract with the first company and the loan was paid off. Additionally, the Licensee helped the Complainant cancel the Complainant's second policy which was a non-registered contract, and the \$25 initial investment from that policy was returned to the Complainant.
14. The Licensee did not meet the Complainant in person for the applications in question as this occurred during COVID-19. The Complainant provided a screenshot of telephone calls with the Licensee, and the Licensee provided limited text messages between the Complainant and the Licensee. The Licensee advised that due to switching phones he was unable to retrieve older messages or notes on his phone related to this transaction with the Complainant.
15. During the investigation, Council staff referred the Licensee to the investment loan application documents of an insurer that were provided by the Complainant. The Licensee confirmed that the Complainant signed the loan application form, and he signed as a witness to her signature. The Licensee confirmed the Complainant reviewed the application and signed it. The Licensee stated he went through the application with the Complainant before she signed it, and she did not ask any questions. The Licensee confirmed that he only went through the forms with the Complainant on the phone and did not meet the Complainant in person.
16. The Licensee advised that the Complainant signed an insurer's identification verification form and an assignment of contract of annuity form. The Licensee sent the documents to the Complainant by email and asked her to check the documents and said that she could ask him any questions. The Licensee advised he "*did not do the face-to-face.*"
17. The Licensee advised that the primary record of communication for these forms was through email. The Licensee did not keep any records of emails between himself and the Complainant asking her to review the forms. The Licensee stated that his email capacity only held 200 megabytes and he did not have the capacity to keep old emails.
18. The Licensee was asked to provide any documentation relating to this incident. The Licensee provided to Council staff various application forms, some forms that were not signed by the Complainant, and a broker and MGA disclosure form e-signed by the Complainant.

19. The Licensee also provided cell phone text messages between the Licensee and the Complainant which the Licensee claims contain his file notes. In February 2021, the Complainant texted the Licensee *“help me cancel the investment loan”* and *“can my TFSA account be stopped? I received a notice yesterday that the property will be handed over in March or April. So, presumably, the money needs to be withdrawn in March or April.”*
20. The Licensee provided copies of emails from one of the insurers to the Complainant advising her that her non-registered contract will be cancelled, and the \$25 initial investment returned to her account. The insurer advised that as the e-signature to open the contract was from the same email address as that from which the Complainant was filing her complaint, they would not be investigating this case any further. A copy of an email thread between the Licensee and a second insurer was also provided. On May 18, 2021, the second insurer advised the Licensee that the Complainant’s contract had been terminated and the loan paid out. They were unable to pay the Complainant a residual/excess amount that remained after the loan was paid out and the Licensee was requested to fax them a new voided cheque from the Complainant.
21. On May 30, 2022, one of the insurers emailed Council staff to advise that the Complainant signed the attached document electronically using her email address. The insurer did not investigate the Licensee as the email used for the application was the same one used to inform the insurer of this issue. The Complainant was still in the grace period to cancel the contract so the \$25 was returned to the Complainant and the contract was closed.
22. The Complainant was asked to provide her response to the insurer’s submission and how her email address was used to e-sign the savings application, which was attached for reference. The Complainant responded by advising, *“I have no idea how my email address was used for the e-sign document.”*
23. The Licensee stated that when he was first licensed as a Life Agent, the MGA did not explain the importance of keeping notes of client communication and insurance transactions. When questioned about his business practice related to recording or documenting these transactions with the Complainant and generally the Licensee’s business practice, the Licensee stated that he did not take notes from client phone calls during that time. The Licensee would add notes to his cell phone, however, the notes provided for this interaction were limited as the Licensee could not retrieve old messages from his previous cell phone. The Licensee further explained that the MGA did not have any recording feature to record telephone calls. In response to questions regarding the Licensee’s practice of taking notes of what was discussed with the client, and explaining the advantages or disadvantages of certain products, the Licensee reiterated that he did not do this but if there was a recording of his telephone calls it would demonstrate what he did. The Licensee

further confirmed that it is not his usual practice to use documents such as Know Your Client or Reason Why Letters.

24. The MGA confirmed to Council staff that life and accident and sickness insurance agents are expected to maintain their own client files containing documents such as the Disclosure Form, Reason Why Letters, and any other documents used to support their recommendations to their clients and demonstrate suitability such as fact-finding, needs analysis and client interaction logs.
25. On June 21, 2023, the Licensee provided additional submissions to Council staff regarding the Licensee's concerns about the MGA's practices and lack of training. These submissions were taken into consideration.

ANALYSIS

26. Council was troubled by the Licensee's lack of systems for record-keeping regarding client file documentation and documentation of instructions. The Licensee was unable to provide sufficient evidence in the form of documentation for summaries of the discussions that the Licensee had with the Complainant, documentation of client instructions, client emails, notes or summaries related to the specific assessment of the client's needs or circumstances. Without documentation that illustrates the fact-finding or justification of the recommendations and/or strategy sent, it is very difficult for an outside party to assess the transaction in question and objectively verify if the products recommended were suitable or understood by the client. Additionally, without that information, it is difficult to assess whether the Licensee was selling products based on the client's needs or based on broad concept selling, where clients are encouraged to try products they may not necessarily need or may not be suitable for their stated objectives and circumstances. Council emphasizes the importance of a licensee to maintain records that demonstrate an adequate fact-finding assessment of the client's insurance needs and proper documentation of client instructions to ensure mutual understanding. Council has concerns about whether the Licensee could properly provide full and accurate information to the insurers when it is unclear if the Licensee had an adequate understanding of the client.
27. Council questions whether the leveraged investment was suitable for a client who was trying to purchase a home and was concerned about her credit for a mortgage application. Council concluded that the Licensee failed to maintain proper books and records, which in turn raised questions of the Licensee's competence as the Licensee could not demonstrate that a proper needs analysis was conducted, or that proper explanations were provided to the client to make an informed decision.

28. Furthermore, Council notes the Licensee signed as a witness to the Complainant's signature on an insurer's investment loan application, however, the Licensee confirmed that the Licensee sent the documents to the Complainant by email and did not meet with the client in person to fill out the forms. As the Licensee was not present when the Complainant signed the forms, Council concluded the Licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on the application form when the Licensee had not, in fact, witnessed the signature. This practice, combined with the concerns identified above regarding maintaining records, led Council to conclude that the Licensee was not acting in a trustworthy and competent manner consistent with the usual practice of the business of insurance.

PRECEDENTS

29. Prior to making its determination in this matter, Council took into consideration the following precedent cases related to competence and witnessing signatures in the usual practice of the business of insurance. While Council recognizes that it is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were instructive in terms of providing a range of sanctions for similar types of misconduct.
30. [Allen Stanley Young](#) (August 2022): concerned a Life Agent licensee who was found to have failed to document client communications and instructions. Council noted it is difficult for a licensee to demonstrate that he or she acted appropriately should a concern arise regarding the handling of the client file. The lack of a documentation system in place called into question the licensee's ability to engage in the usual practice of insurance and called into question the licensee's competency. Council ordered that the licensee be supervised for a period of 12 months, be required to complete various courses, and assessed investigation costs.
31. [Edraline Buetipo Borginia](#) (June 7, 2016): a Life Agent was alleged to have sold life insurance policies to a client to replace existing policies, contrary to the client's best interests. Council found no evidence to suggest that the new policies were inferior to the existing ones. However, it did find that the process by which the licensee implemented the new policies was less than satisfactory in that the policy comparison provided by the licensee was based on incomplete information. Council found that by providing comparisons without full information, the licensee failed to act in accordance with the usual practice of the business of insurance. Council also found it inappropriate for the licensee to have had the client sign post-dated policy cancellation letters. 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 brought into question her ability to act in a competent manner, and in accordance with the usual practice of the business of insurance. As a result, Council imposed conditions on the licensee's licence

requiring her to be supervised for a period of 24 months, complete the Advocis Getting Established course, and pay Council's investigation costs of \$1,112.50.

32. [Roel Reyes Bernardino](#) (May 2015): a Life Agent was found to have misrepresented or failed to adequately explain changes to a client's insurance coverage, and to have had the client sign a blank insurance transaction form. Council found that the licensee was focused on the sale of insurance at the expense of the client's understanding of the products that the licensee was recommending. There was a finding that the licensee's competency as a Life Agent had been called into question. Council ordered that the licensee be supervised until he accumulated 24 months of active licensing, complete the Advocis Getting Established Course, be prohibited from acting as a supervisor for three years after the completion of his supervision, and assessed investigative costs.
33. [Jack Leonard Parkin](#) (January 2015): concerned a licensee who had held a Life Agent licence since 1982. Council considered allegations that he had sold his clients a product that did not suit their needs. Council concluded the licensee had failed to fully understand the product prior to recommending it to the clients and, as a result, did not adequately advise them about certain investment features. Council accepted that the licensee did not intend to harm the clients, and genuinely believed he had made appropriate recommendations. However, Council concluded that the licensee had failed to act in a competent manner, in accordance with the usual practice of the business of insurance, in recommending the product and in addressing the client's concerns about the product. Council placed a condition on his Life Agent licence that he be supervised by a qualified Life Agent for a period of 24 months; that he complete certain courses designated by Council; and that he be assessed Council's investigative costs.
34. [Randal Thomas Brett Haw](#) (July 2020): concerned a licensee who admitted to having forged client signatures on electronic applications due to an erroneous understanding of procedures. He thought it was acceptable for an advisor to sign an electronic application on behalf of a client. There were also issues with the licensee having accessed client information without authorization and failing to obtain application information directly from a client. Council acknowledged that the licensee's misconduct was not malicious or meant for personal gain; however, they also noted that he was an experienced agent and the nominee of his agency, and ought to have known that the forgeries and other misconduct were unacceptable. Council ordered a fine of \$2,000 and required the licensee to complete the Council Rules Course and assessed investigation costs.
35. [Christopher Robert Gerke](#) (August 2022): concerned a licensee who admitted to forgery by making false documents and falsifying client signatures for five clients on a total of eleven documents. The licensee had not implemented appropriate needs analyses of clients such as the Know Your Client and Reason Why Letters in client files which were being requested by the insurer. The licensee was unable to meet five of the clients prior to a deadline in which the insurer had requested documents

related to client transactions. The licensee, in a state of panic, signed on behalf of the clients. 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. The insurer formally reprimanded the licensee and required him to be supervised for one year as well as complete training. Council ordered that the licensee be fined \$1,000, required the licensee to complete the Council Rules Course, and assessed investigation costs.

36. [Ka Fai \(Patrick\) Cheng](#) (March 2022): concerned a licensee who admitted to signing as a witness on a transfer of ownership policy form, although he had not witnessed the individual signing the document. The licensee had a longstanding client who was the former owner of the policy, and that client provided signed transfer of ownership forms. The licensee genuinely believed that the owner of the policy had signed the forms and therefore signed as a witness on the form. Council has concluded that the licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on the transfer form when he had not, in fact, witnessed the signature. Council concluded that although the Licensee did not intend to purposely mislead the insurer by falsely witnessing the signature on the transfer form, the licensee was not fulfilling his responsibility to the insurer to provide insurance documents that are correct and accurate. Council ordered that the licensee be fined \$2,000, required the licensee to complete the Council Rules Course, and the Advocis Knowing the Code of Professional Conduct course and assessed investigation costs.
37. [Anita Yin Ling Ip](#) (March 2022): concerned a licensee who admitted to signing as a witness on a transfer of ownership policy form, although she had not witnessed the individual signing the document. The licensee had a longstanding client who was the former owner of the policy, and that client provided signed transfer of ownership forms. Council concluded that the licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on transfer forms when she had not, in fact, witnessed the signature. Additionally, the licensee failed to inform the client of the tax implications related to the transfer of ownership of the policies and in that regard did not properly evaluate the client's needs. Council ordered that the licensee be fined \$2,000, required the licensee to complete the Council Rules Course and the Advocis Knowing the Code of Professional Conduct course and assessed investigation costs.

MITIGATING AND AGGRAVATING FACTORS

38. Council considered relevant mitigating and aggravating factors in this matter. The Licensee's failure to recognize the importance of notetaking and failure to understand the misconduct were considered aggravating factors that further called into question the Licensee's ability to act in a competent manner. Council determined that the Licensee's cooperation throughout the investigation and relative inexperience as a Life Agent are mitigating factors.

CONCLUSIONS

39. Council considered that a fine of \$2,000 is appropriate in the present case. Council cited the [Ip](#) and [Cheng](#) cases, wherein the licensees signed as witnesses to signatures they had not witnessed and felt that a similar fine is appropriate in this instance. In line with [Parkin](#), [Borginia](#), and [Bernardino](#), Council determined that education and supervision should be required in these circumstances. Council believes the Licensee would benefit from additional training and supervision to ensure the Licensee's conduct meets the requirements of the usual practice of the insurance industry.
40. After weighing all of the relevant considerations, Council concludes the Licensee to be in breach of Council's Rules and the Code of Conduct and determined that it is appropriate to fine the Licensee \$2,000. Council has concluded that a fine is appropriate in the circumstances to communicate to the Licensee, the insurance industry, and the public, that insurance agents are expected by Council to perform their roles and conduct insurance business competently and ethically. Council further determined that it is appropriate to impose a condition on the Licensee's life and accident sickness agent licence that requires the Licensee to be supervised for a period of two years by a supervisor, as approved by Council, and that he be required to complete the Council Rules Course, Compliance Toolkit: Know Your Client and Fact Finding course, and the Compliance Toolkit: Know Your Product and Suitability course.
41. With respect to investigation costs, Council has determined that these costs should be assessed against the Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

42. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
 - a. Fine the Licensee \$2000, to be paid within 90 days of Council's order;
 - b. Impose a condition on the Licensee's life and accident and sickness insurance agent licence that the Licensee be supervised for 24 months of active licensing by a supervisor approved by Council, commencing on the date of Council's order;

- c. Assess the Licensee Council's investigation costs in the amount of \$2,437.50, to be paid within 90 days of Council's order;
- d. Require the Licensee to complete the following courses, or equivalent courses as acceptable to Council within 180 days of Council's order:
 - i. the Council Rules Course for Life and/or accident & sickness insurance;
 - ii. Compliance Toolkit: Know Your Client and Fact Finding, currently available through Advocis; and
 - iii. Compliance Toolkit: Know Your Product and Suitability, currently available through Advocis;(collectively the "Courses"); and
- e. 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 and failure to complete the Courses within 180 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 2025 annual licence renewal.

42. Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

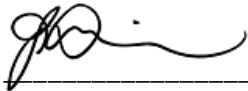
RIGHT TO A HEARING

43. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in 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 fourteen (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 this intended decision, the intended decision of Council will take effect.

44. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority (“BCFSA”) still has a right of appeal to the Financial Services Tribunal (“FST”). The BCFSA has thirty (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.bcfst.ca or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Dated in Vancouver, British Columbia, on the **9th day of August, 2023.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director