In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

ROSALIE ABANDO NINALGA
(the "Licensee")

ORDER

As Council made an intended decision on January 30, 2024, 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 February 26, 2024; 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 required to be supervised by a qualified life and accident and sickness insurance agent, as approved by Council, for a period of 12 months of active licensing, commencing, at the latest, on April 15, 2024;

2) The Licensee is assessed Council's investigation costs in the amount of $1,000, to be paid by June 12, 2024;

3) The Licensee is required to complete the following courses, or equivalent courses, as acceptable to Council, by June 12, 2024:

a) The Council Rules Course for life and/or accident and sickness insurance;

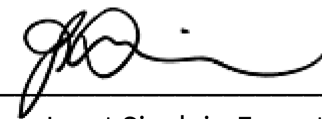
b) The Challenge of Documenting Nothing, currently available through Advocis;

c) Compliance Toolkit: Know Your Client and Fact Finding, currently available through Advocis;

d) Compliance Toolkit: Know Your Product and Suitability, currently available through Advocis
(collectively the "Courses"); and

4) A condition is imposed on the Licensee's life and accident and sickness insurance agent licence that failure to obtain a supervisor as required, and failure to complete the Courses, and pay the investigation costs by June 12, 2024 will result in the automatic suspension of the Licensee's licence and the Licensee will not be permitted to complete the Licensee's 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

This order takes effect on the **14th day of March, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

ROSALIE ABANDO NINALGA
(the "Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Licensee had acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct. The investigation was regarding allegations that the Licensee sold insurance products without completing an adequate needs analysis, fact-finding, or reason why letters, and for failing to maintain proper and adequate books and records of insurance transactions, client communication, and instructions to ensure mutual understanding.

2. On December 14, 2023, as part of the Council's investigation, a Review Committee (the "Committee") comprised of Council members met with the Licensee via video conference to discuss the investigation. The Investigation Report was distributed to the Committee and the Licensee before 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.

3. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee's report, along with the Investigation Report, were reviewed by Council at its January 30, 2024, 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 the 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") on August 4, 2011. The Licensee has held the authority to represent [redacted] since August 4, 2011.

6. On February 15, 2022, Council received a complaint from MM (the "Complainant") regarding her aunt, CC's insurance policy. The complaint stated that the Licensee did not conduct any fact-finding needs analysis and that the Licensee asked CC to sign the insurance application without explaining the details of the declaration of insurability. The complaint further alleged that the Complainant was not provided a copy of CC's policy when she had authorization to receive the policy.

7. On February 18, 2022, Council received additional information regarding the complaint. The Complainant advised that the payor of CC's insurance policy was her sister, CS, and that CS had requested the Licensee to cancel the policy on February 14, 2022. The Complainant advised that the insurer confirmed the cancellation request was never received. On February 16, 2022, CC submitted a request to the insurer to cancel the insurance policy. On February 17, 2022, the policy was cancelled.

8. As part of the investigation, Council staff requested the Licensee provide the last five life insurance policies sold by the Licensee with supporting documentation in addition to the information requested regarding the complaint.

9. The Licensee provided a timeline of events regarding the complaint. The Licensee advised that on January 1, 2022, CS contacted the Licensee to assist with a life insurance application for her sister, CC. CC had recently been admitted to the hospital due to a mild stroke. On January 9, 2022, the Licensee met with CC in person, along with many of her family members, including CS. The Licensee advised that CC's family members were advising CC of the importance of life insurance. CC agreed to apply for life insurance but advised she did not want to pay for the policy or provide her financial information. CC's sister, CS, agreed to be the policy payor.

10. On January 14, 2022, the Licensee met in person with CC, along with the family members, to complete the online insurance application. The Licensee recommended a deferred life plan to CC due to her health condition as this policy did not require a medical inquiry. The Licensee further advised that this plan was more expensive but given CC's health condition, this policy was the best option. The Licensee further advised that the family's objective of obtaining the policy was to cover burial costs only and that is how the Licensee determined the appropriate policy coverage. The Licensee further advised that as CC did not have an email address, her sister, CS, provided her email address in the online insurance application with CC's consent. The Licensee stated that CS was listed as the

beneficiary of the insurance policy as she was also the payor of the policy. The Licensee stated that the mother of the Complainant objected to this, but that CC agreed to have CS as the beneficiary. The Licensee stated there were some disagreements with the family members regarding the beneficiary of the insurance policy and the Licensee advised them that the beneficiary of the policy could be changed at a later date.

11. The Licensee stated that a financial needs analysis was not conducted as CC did not want to provide financial information. The Licensee denied that she failed to complete fact-finding or a needs analysis. The Licensee advised she obtained information regarding the identity of the insured, marriage status, employment status, and health information.

12. The Licensee provided a copy of CC's policy summary for the deferred life policy issued on January 14, 2022, together with a letter from the insurer addressed to CC, dated February 16, 2022, which explained that the insurance contract was now available. The policy coverage amount was $60,000 with $207.68 monthly premiums for 41 years. The coverage amount was determined based on estimated burial expenses.

13. The Licensee stated she did not provide the Complainant with a copy of CC's policy because the Licensee had doubts regarding the letter of consent provided by the Complainant due to "pen corrections" on the letter. The Licensee wanted to speak to the insured, CC, to confirm the Complainant could receive a copy of the policy but was unable to get a hold of CC. The Licensee further stated that she did not withhold the policy from CC. The Licensee advised that the policy was emailed to the payor, CS' email address, with CC's consent. CC did not have an email address, and the Licensee advised that she consented to use the email address of her sister, CS, for delivery.

14. Regarding the five policies audited by Insurance Council staff, Council noted concerns regarding the suitability of the products for the clients and the documentation kept by the Licensee.

15. For client NB, age 85, the Licensee recommended a policy that cost almost $400 a month when the client was retired and only had a $2,000 monthly income. The Licensee advised that NB's husband was present at the meeting, and he assisted NB with living expenses. The Licensee agreed she would not have recommended this policy to NB without the spousal support. However, the Licensee's notes did not contain any information related to the spousal income. The Licensee further commented that this was one of the few products the client could apply for due to her age. The application was ultimately denied by the insurer.

16. For client DL, age 39, the Licensee recommended a universal life insurance policy. When questioned as to why this product was suitable, the Licensee advised that other critical illness and disability

insurance was discussed with the client. The Licensee further advised that DL was a previous client who purchased critical illness and disability in the past but canceled the policies afterward. The client's previous history was not mentioned in the Licensee's client notes as the Licensee stated the previous policies were sold years before and it was not relevant to the sale of this policy.

17. The Licensee was able to provide a one-page "Fact Finding Questionnaire" and one-page "Life Needs Analysis" for the five additional policies audited. However, there was little information regarding the clients in these documents. In three of the policies, NB, DL, and FP, all clients had listed expenses of $50,000 and debts of $10,000. The Licensee stated that the clients having the same numbers was just coincidental. The Licensee was unable to provide any further client files, communication documentation, or any other file notes.

Analysis

18. Council's impression of the Licensee was that her intentions were to act in the best interests of her clients and to assist them in their insurance needs. However, Council noted that there was a lack of record-keeping regarding the client files. The Licensee was unable to provide adequate documentation of client instructions, client notes or summaries related to the specific assessment of the client's needs or circumstances. Council noted the importance of a licensee to maintain records that demonstrate an adequate fact-finding assessment of the client's insurance needs and properly document client instructions to ensure mutual understanding. Council noted that in the policies investigated, the Licensee advised of facts that were not written or documented in the client files. While the Licensee may have sold policies that were appropriate for the clients, without a properly documented needs analysis, that illustrates sufficient 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, Council questioned whether the Licensee could provide full and accurate information to the insurers when it is unclear if the Licensee had an adequate understanding of the clients, given the lack of documentation.

19. Council concluded that based on the materials, the Licensee failed to maintain proper books and records, and raised questions about the Licensee's competency as the conduct did not amount to the knowledge and skill consistent with the usual practice of the business of insurance.

20. Council considered the impact of Council Rule 7(8), 7(9) and Council's Code of Conduct guidelines on the Licensee's conduct, including section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients") and section 8 ("Usual Practice: Dealing with Insurers"). Council concluded that the Licensee's

conduct amounted to breaches of the above Code of Conduct sections and the professional standards set by the Code.

PRECEDENTS

21. Prior to making its intended decision, Council took into consideration the following precedent cases. While Council is not bound by precedent and 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.

22. 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 12 months, be required to complete various courses, and assessed investigation costs.

23. 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 per the usual practice of the business of insurance. Council also found it was 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 24 months, complete the Advocis Getting Established course, and pay Council's investigation costs of $1,112.50.

24. 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 transactional form. The 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, a condition that the licensee complete the Advocis Getting Established Course, a condition imposed that the licensee be prohibited from acting as a supervisor for three years after the completion of his supervision and assessed investigative costs.

25. 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 competently, in accordance with the usual practice of the business of insurance, in recommending the product and in addressing the clients' concerns about the product. Council placed a condition on his life agent licence that he be supervised by a qualified Life Agent for 24 months; that he complete certain courses designated by Council; and that he be assessed Council's investigative costs.

Mitigating and Aggravating Factors

26. Council considered relevant mitigating and aggravating factors in this matter. Council determined that as the Licensee's practice is not in line with the usual practice of the business of insurance, there could be a risk to the public. Council viewed this as an aggravating factor. Council considered the Licensee's cooperation throughout the investigation to be a mitigating factor.

Conclusions

27. Council considered the facts of this case to be the most similar to the Young case. 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.

28. After weighing all the relevant considerations, Council views the Licensee to be in breach of Council's Rules and the Code of Conduct and recommends that a condition be imposed on the Licensee's life and accident sickness agent licence that requires the Licensee to be supervised for one year by a supervisor, as approved by Council, and be required to complete courses. Council determined that it is appropriate for the Licensee to be assessed the investigation costs of $1,000.

29. 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

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

    a. That the Licensee be required to be supervised by a qualified life and accident and sickness insurance agent, as approved by Council, for a period of 12 months of active licensing, commencing, at the latest, one month from the date of Council's order;

    b. That the Licensee be assessed Council's investigation costs in the amount of $1,000, to be paid within 90 days of Council's order;

    c. The Licensee be required to complete the following courses, or equivalent courses as acceptable to Council within 90 days of Council's order:

        i. the Council Rules Course for life and/or accident and sickness insurance;

        ii. The Challenge of Documenting Nothing, currently available through Advocis;

        iii. Compliance Toolkit: Know Your Client and Fact Finding, currently available through Advocis; and

        iv. Compliance Toolkit: Know Your Product and Suitability, currently available through Advocis
        (collectively the "Courses"); and

    d. That a condition be imposed on the Licensee's life and accident and sickness insurance agent licence that failure to obtain a supervisor as required, and failure to complete the Courses, and pay the investigation costs within 90 days 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 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

31. 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.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

32. Council may take action or seek legal remedies against the Licensee to collect outstanding fines and/or costs, should these not be paid by the 90-day deadline.

RIGHT TO A HEARING

33. 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 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.**

34. 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 https://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 **26th day of February 2024.**

For the Insurance Council of British Columbia

Janet Sinclair
Executive Director