

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

and the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and
YUN-WEI (ERICA) NIU
(the “Former Licensee”)

ORDER

As Council made an intended decision on January 25, 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 Former Licensee with written reasons and notice of the intended decision dated February 16, 2022; and

As the Former 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 Former Licensee is reprimanded for conducting insurance activities under a business name not registered with Council;
2. The Former Licensee is fined \$10,000, to be paid by June 6, 2022, and which must be paid prior to the Former Licensee being licensed in the future;
3. In the event that the Former Licensee reactivates her life and accident and sickness insurance agent licence, a condition will be imposed requiring her to be supervised for a period of 24 months of active licensing by a supervisor approved by Council;
4. The Former Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, prior to being licensed in the future:

Order

Yun-Wei (Erica) Niu

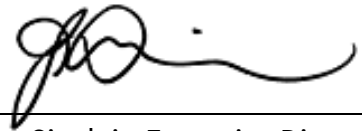
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March 8, 2022

Page 2 of 2

- a) The Insurance Institute's "Ethics and the Insurance Professional" course;
 - b) Advocis' "Compliance Toolkit: Know Your Client and Fact Finding" course;
 - c) Advocis' "Compliance Toolkit: Know Your Client and Suitability" course; and
 - d) The Council Rules Course, currently available through Advocis; and
5. The Former Licensee is assessed Council's investigation costs of \$2,500, to be paid by June 6, 2022, and which must be paid prior to the Former Licensee being licensed in the future.

This order takes effect on the **8th day of March, 2022**.



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

YUN-WEI (ERICA) NIU

(the “Former Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct. The allegations received by Council regarding the Former Licensee included that she had failed to act as instructed by clients, was responsible for and failed to inform clients of a life insurance policy lapse, forged signatures on life insurance applications, and rebated the entirety of the first year premium on a life insurance policy. The investigation also reviewed concerns that the Former Licensee had conducted insurance business under a name that had not been registered with Council, that she had completed an application for a replacement life insurance policy for a client without adhering to the replacement disclosure statement requirements established by regulation, and that she had failed to notify Council of a lapse in her errors & omissions (“E&O”) insurance of over 15 months, during which time she sold an insurance policy.
2. On October 26, 2021, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Former Licensee via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Former Licensee and Committee prior to the meeting. A discussion of the investigation report and its exhibits took place at the meeting and the Former Licensee was given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and discussed the matter with the Former 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 January 25, 2022, 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 Former Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Former 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 Former Licensee.

FACTS

5. In March 2018, Council received notice of allegations concerning the Former Licensee, which included allegations that she had misrepresented information to insurers, failed to act as instructed by a couple who were her former clients (the "Complainants"), was responsible for a lapse in one of the Complainants' life insurance policies, failed to notify the Complainants of the lapse, forged the signatures of the Complainants' adult children on life insurance applications, and enticed them to purchase a policy by promising to pay the entirety of its first year premiums.
6. Council staff proceeded to communicate and gather evidence from the Former Licensee, the Complainants, the Complainants' son, and the Complainants' legal counsel. The Former Licensee provided a written response to the allegations in February 2019 and was interviewed by a Council investigator in September 2020.
7. In June 2019, the Former Licensee informed Council of a lapse in her E&O insurance coverage. The Former Licensee explained to Council staff that, when she had attempted to renew her coverage online in 2017, she received a message prompt on the online portal telling her that she would be contacted for further details before her renewal could be completed. However, she was not contacted and did not follow up on the matter herself. As a result, the Former Licensee went without E&O coverage between January 2018 and April 2019.
8. The Former Licensee informed Council staff that she sold an insurance policy while without E&O coverage. She obtained E&O coverage again in April 2019, after being asked by her managing general agent ("MGA") to provide proof of E&O coverage. The Former Licensee informed Council of the lapse in June 2019 after being prompted to do so by her MGA. She explained that she had not been aware of the requirement to report lapses of E&O coverage to Council, as is set out in Council Rule 7(11).

9. In addition to the Complainant's allegations and the E&O lapse issue, it was also noted by Council staff in the course of the investigation that the Former Licensee appeared to have replaced a life insurance policy for one of the Complainants in 2006 without adhering to the process required by the *Insurance Contracts (Life Insurance Replacement) Regulation*, and that she had carried out insurance business under a business name not registered with Council, contrary to Council Rule 2(18).
10. The Former Licensee was able to provide Council with several written documents, including correspondence with the Complainants and letters from insurers, that contradicted or otherwise did not support some of the allegations made against her. Specifically, the allegations that the Former Licensee acted against client instructions, was culpable for the lapse in one of the Complainants' life insurance policies, failed to inform the Complainants about the lapse that ensued, and that she coerced the Complainants into purchasing a life insurance policy by promising to pay the entirety of first year premiums, were among the allegations not supported by the evidence.
11. The Former Licensee met with the Committee on October 26, 2021. The Former Licensee, who is also a Chartered Professional Accountant, told the Committee that, although she used to do insurance business full time between approximately 2000 and 2012, most of her business in recent years has been accounting work. She estimated that she gets about five insurance clients per year, who are typically tax clients who learn that she can also sell insurance, or referrals.
12. The Former Licensee explained to the Committee that some of the allegations against her were the result of the Complainants confusing the concepts of whole life insurance, universal life insurance, and term insurance. This led to one of the Complainants incorrectly believing there was an inconsistency between the type of policy she had requested, and what the Former Licensee procured for her. The Former Licensee also described the allegations as being driven, at least in part, by a personal motive following the breakdown of her friendship with the Complainants.
13. The Committee asked the Former Licensee questions about the life insurance policy that she arranged for one of the Complainants in February 2006, which appeared to have replaced a preexisting policy that had been applied for in 2002. Although the Former Licensee showed confusion as to what years these applications had been made in, she admitted that she had not completed a disclosure statement, as required by the *Insurance*

Contracts (Life Insurance Replacement) Regulation. She did not attempt to argue that the policy applied for in February 2006 was not intended to replace the preexisting policy.

14. The Former Licensee also admitted to forging the signatures of the Complainants' adult children on application forms for two life insurance policies in 2012. She admitted that doing so was a mistake and expressed regret for her actions. The Former Licensee stated that she had forged the signatures at the request of one of the Complainants who had left Canada at the time and did not want the application sent to her.
15. When asked about the excessive rebating allegation, the Former Licensee admitted that what she had done for the policy in question had the appearance of a 100% rebate but characterized most of the amount she had paid as having been intended as the repayment of money that she owed to one of the Complainants in a personal capacity. She explained that one of the Complainants had bought her several luxury goods during the time of their friendship, and that \$7,500 of the \$10,000 amount of first year premium rebate had been intended to serve as repayment for those luxury goods. The Former Licensee admitted to the Committee that she should have dealt with the amount she owed to the Complainants in a different manner.
16. The Former Licensee's statements to the Committee regarding her E&O lapse were consistent with the information she provided to Council staff. When attempting to renew her E&O coverage online in 2017, she received a prompt telling her that she would be contacted for further details before she could complete her renewal. She did not receive follow up contact. The Former Licensee did not follow up regarding her E&O insurance until she sold an insurance policy in 2019 and was asked by her MGA for evidence of her E&O coverage. She ultimately obtained coverage in April 2019. The Former Licensee proceeded to notify Council of the E&O coverage lapse in June 2019 after being prompted by her MGA. When asked by the Committee why she had not notified Council sooner, the Former Licensee explained that she had not known she was required to.
17. The Former Licensee was also asked about her use of a business name that was not registered with Council in connection with her insurance activities. The Former Licensee carries out her accounting business using a corporation of which she is the sole owner and sole director. The corporation's name is not registered with Council, but it appeared on several documents relating to the Former Licensee's insurance business. The Former Licensee told the Committee that, at the material time, she had not known that using the corporation's name in conjunction with her insurance work was a problem. She explained

that she stopped using the name when conducting insurance business approximately two years ago, when a representative of her MGA told her she should not use the name if it is not registered with Council.

ANALYSIS

18. Council has concluded that several of the allegations made against the Former Licensee were not supported by the evidence. These included the allegations that the Former Licensee had failed to act as instructed by the Complainants, that the Former Licensee was responsible for a lapse in one of the Complainants' policies, and that the Former Licensee had failed to properly inform the Complainants of that policy lapse. On points such as these, Council does not consider the Former Licensee culpable.
19. Nevertheless, there are several breaches of the Council Rules, Code of Conduct, and relevant legislation that are clearly established by the evidence, and which, cumulatively, must be addressed through significant sanctions. Council's conclusion is that the evidence supports findings that the Former Licensee:
 - a) Breached her mandatory E&O responsibilities by failing to be covered by E&O insurance between January 2018 and April 2019. During this period, she sold at least one insurance policy. The Former Licensee did not inform Council of the E&O lapse until prompted to do so by her MGA in June 2019. The Former Licensee's E&O lapse, and failure to notify Council of the lapse in a timely manner, constitute clear breaches of Council Rule 7(11)(a) and (c).
 - b) Forged the signatures of the Complainants' children on two insurance applications completed in 2012. By doing so, the Former Licensee acted contrary to the requirements of Code of Conduct sections 3 ("Trustworthiness"), 4 ("Good Faith"), and 7 ("Usual Practice: Dealing with Clients").
 - c) Rebated the entirety of the first year's premiums for a life insurance policy purchased for one of the Complainants' children in 2012, in the amount of \$10,000. By doing so, the Former Licensee exceeded the rebating limits established by section 79 of the Act and section 2 of the *Financial Products Disclosure Regulation*. It should be noted that, although the evidence supports a finding that this excessive premium rebate was paid, the Complainants' allegation that the Former Licensee coerced them into purchasing the policy was not similarly made out.

- d) Failed to follow appropriate procedures, as required by section 3 of the *Insurance Contracts (Life Insurance Replacement) Regulation*, when she arranged for a replacement life insurance policy for one of the Complainants in 2006. The evidence supports a finding that the 2006 policy was intended to replace an earlier life insurance policy but had been processed without a required disclosure statement having been completed.
- e) Conducted insurance activities under a business name that was not registered with Council, contrary to Council Rule 2(18)(c).

20. In addition to the specific sections of legislation, Council Rules, and Code of Conduct referred to above, Council's opinion is that the Former Licensee's conduct, when considered in its entirety, amounted to breaches of the standards established by Code of Conduct sections 3 ("Trustworthiness"), 4 ("Good Faith"), 5 ("Competence"), 7 ("Usual Practice: Dealing with Clients"), and 13 ("Compliance with Governing Legislation and Council Rules").

21. Prior to making its decision, Council took several past decisions into consideration as precedents. The following precedent summaries are categorized based on the type of relevant conduct they primarily involved.

E&O Lapses

22. *Carl Bernard Brodie* (April 2021) concerned a licensee who was disciplined by the Insurance Council of Saskatchewan in June 2019 for not notifying them that he no longer had E&O coverage. He did not report this discipline to Council, as required by the Council Rules. Council proceeded to audit the licensee's E&O coverage and found that his E&O had lapsed between December 2017 and March 2018. The lapse was accidental, contributed to by the licensee being overworked at the time, and thinking that a colleague had taken care of the renewal. Council fined the licensee \$1,000 for his failure to maintain E&O insurance. He was also fined an additional \$1,500 for his three failures to notify Council of required information (although \$1,000 per failure to notify was considered a reasonable baseline, each instance was dropped to \$500 due to mitigating factors). In addition to the total fine of \$2,500, he was also required to complete the Council Rules Course.

23. *Varinder Kaur* (July 2020) concerned a licensee who breached the Council Rules by having her E&O insurance lapse and failing to notify Council of such. She also failed to notify Council of her authority to represent being withdrawn, and she failed to immediately stop conducting insurance business after ceasing to have E&O. Council fined the licensee \$1,500 for her E&O lapse (\$2,000 was considered a reasonable baseline fine, decreased by \$500 due to mitigating factors). She was also reprimanded for her failure to notify Council of her loss of E&O and authority to represent, and required to complete the Council Rules Course.
24. *Maria Rhodora Banada Thomas* (October 2018) concerned a licensee who failed to maintain E&O coverage for approximately seven months. She apologized and explained that the failure to renew was in error and partially due to personal circumstances. She also advised that she did not conduct insurance business during the period she was without coverage. Council accepted that the lapse was accidental, that the licensee had not conducted business while without E&O, and that there had been no risk to clients. Nevertheless, Council concluded that a failure to comply with the E&O requirement should be subject to a \$1,000 minimum fine regardless of the reason for the breach.

Signature Forgery

25. *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, as well as the nominee of his agency, and ought to have known that the forgeries and other misconduct were unacceptable. He was fined \$2,000 and required to complete the Council Rules Course; he was also assessed investigation costs of \$1,337.50.
26. *Christine Helene Craig* (August 2019) concerned a licensee who admitted to having forged client signatures on Insurance Corporation of British Columbia (“ICBC”) documents. She was unable to say exactly how many times she had forged signatures but “believed it was rare.” She said she would occasionally find transfer of vehicle ownership forms on which staff had inadvertently missed one of multiple client signatures. On rare occasions when a client could not be contacted to come into the office to sign, she would forge the signature. Council accepted that the incidents of forgery were rare, were not made with malicious

intent, that the licensee was remorseful, and that no client harm had been caused. She was fined \$1,000 and required to complete the Council Rules Course and an ethics course; she was also assessed investigation costs of \$1,512.50.

27. *Barry Ann Michelle Turnbull* (November 2013) concerned a licensee who forged a client's signature on ICBC documents for convenience, without an attempt to do harm or seek personal gain. She stated that she had deviated from her normal practice due to pressure to service clients in a timely manner. Nevertheless, Council determined that forging client signatures was not acceptable in any circumstances. She was fined \$1,000 and assessed investigation costs of \$775.

Life Insurance Replacement Policy Issue

28. *Khamsouei Phovixayboulom* (February 2018) concerned a licensee who was alleged to have intentionally misled a client for personal benefit, failed to place insurance as instructed, failed to provide a client with necessary information prior to placing insurance, failed to include current information about a client's address on an application, used a third party's credit card information and bank information to pay policy premiums without that individual's knowledge or consent, and to have made a false declaration to an insurer by materially misrepresenting a client's address. The Hearing Committee's conclusions included that the licensee had failed to discuss options with the client prior to applying for a replacement life insurance policy for the client, and that the licensee had failed to follow the life insurance policy replacement procedures prescribed by regulation. The licensee's licence was suspended for one year, he was fined \$5,000, and he was required to be supervised for two years following completion of the suspension period. The Hearing Committee clarified that it believed a six month suspension was appropriate for the licensee's failure to take proper steps before applying for a replacement policy for the client, with an additional six months appropriate due to the licensee's breach of a third party's confidential information.

DISPOSITION

29. For the Former Licensee's E&O lapse and failure to notify Council of said lapse, Council has concluded that a fine of \$2,500 is appropriate. This is higher than the amounts issued in the examined precedents for E&O lapses, but Council considers a higher fine to be appropriate given the aggravating factors identified. These include the length of the Former Licensee's lapse (15 months), the fact that she conducted insurance business during the lapse, and

the fact that she only notified Council of the lapse after being prompted to do so by her MGA in June 2019, months after having her E&O reinstated.

30. Council considers \$1,500 to be a suitable fine to address the Former Licensee's admitted signature forgeries. Although this amount is higher than the fines levied in the *Turnbull* and *Craig* cases, Council concluded that the Former Licensee's forging of the Complainants' adult children's signatures on life insurance applications that they may not have been aware of was more egregious than the forgeries committed in those precedent cases. Council accepts that the Former Licensee was likely pressured into committing the forgeries by one of the Complainants and believes that she is sincerely remorseful for this misconduct. Nevertheless, the signatures that were forged by the Former Licensee carried more significance than those at issue in the *Turnbull* and *Craig* precedents, and the Former Licensee should have known better than to acquiesce to the Complainants' request, especially considering her training as an accountant.
31. For the Former Licensee's failure to comply with the *Insurance Contracts (Life Insurance Replacement) Regulation*, Council considers a fine of \$5,000 to be a suitable penalty. Council notes that compliance with this law is expected to be learned early in the career of a life and accident and sickness insurance agent ("Life Agent"), and that a licensee's failure to complete the required disclosure statement can deprive a client of material information, can mislead the insurance company, and reflects poorly on the licensee's competence.
32. Similarly, for the excessive rebating issue, Council considers an additional fine of \$5,000 to be a suitable penalty. Although Council lacked relevant precedents to turn to on this point, it considers a fine of such a sum necessary to communicate to the Former Licensee, as well as to the industry and public generally, that it is not acceptable to Council for licensees to defy the province's rebating laws.
33. Council notes that, in her submissions, the Former Licensee described her payment of the entirety of first year premiums for one of the policies purchased by the Complainants as being intended as the repayment of a personal debt owed to the Complainants. There are no written records to support that the amount in question was a debt repayment rather than a premium rebate, and Council rejects this characterization of the premium rebate. Licensees are expected to distinguish the repayment of personal debts and other obligations clearly and unambiguously from premium rebates.

34. The total sum of the fines detailed above amounts to \$14,000. The current maximum fine amount that Council can levy against an individual following an investigation is \$25,000, as set out at section 231(1)(k) of the Act. However, Council recognizes that the misconduct in question all occurred during a time when the maximum fine that Council could levy against an individual was \$10,000. As such, in the interest of procedural fairness, Council's cumulative fine against the Former Licensee will not exceed \$10,000.
35. Council has also determined that the Former Licensee should be reprimanded for having carried out insurance activities under an unregistered name. Council has no precedent for disciplining licensees for the use of unregistered names, as typically these issues are resolved at the staff level, with licensees bringing themselves into compliance when they are made aware of the issue. In this case, however, due to the overall lack of familiarity that the Former Licensee has shown towards the Council Rules and other licensee obligations, Council considers it appropriate to formally reprimand her for this breach.
36. Overall, Council's opinion is that the Former Licensee's misconduct stems more from a competency issue than it does from an intentional lack of trustworthiness and good faith. Council intends to require the Former Licensee to be supervised for two years of active licensing if she reactivates her Life Agent licence, and to also require her to complete four relevant courses (including the Council Rules Course and an ethics course) prior to being licensed in the future.
37. With respect to the investigation costs, Council finds that these costs should be assessed to the Former Licensee. As a self-funded regulatory body, Council looks to licensees or former licensees who have engaged in misconduct to bear the investigative costs of their discipline proceedings, so that the 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

38. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
- a) Reprimand the Former Licensee for conducting insurance activities under a business name not registered with Council;

- b) Fine the Former Licensee \$10,000, to be paid within 90 days of Council's order, and which must be paid prior to the Former Licensee being licensed in the future;
 - c) In the event that the Former Licensee reactivates her Life Agent licence, a condition will be imposed requiring her to be supervised for a period of 24 months of active licensing by a supervisor approved by Council;
 - d) Require the Former Licensee to complete the following courses, or equivalent courses as acceptable to Council, prior to being licensed in the future:
 - 1. The Insurance Institute's "Ethics and the Insurance Professional" course;
 - 2. Advocis' "Compliance Toolkit: Know Your Client and Fact Finding" course;
 - 3. Advocis' "Compliance Toolkit: Know Your Client and Suitability" course; and
 - 4. The Council Rules Course, currently available through Advocis; and
 - e) Assess the Former Licensee Council's investigation costs of \$2,500, to be paid within 90 days of Council's order, and which must be paid prior to the Former Licensee being licensed in the future.
39. Subject to the Former 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

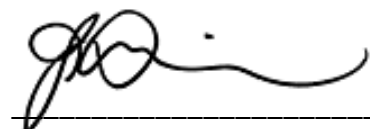
40. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee **must give notice 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 Former**

Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.

41. Even if this decision is accepted by the Former 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.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 16th day of February, 2022.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director