

**In the Matter of**

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

**and**

**The *INSURANCE COUNCIL OF BRITISH COLUMBIA***  
**("Council")**

**and**

**SAW HEW MOH**  
**(the "Former Licensee")**

**ORDER**

As Council made an intended decision on August 14, 2012, pursuant to sections 231, 236 and 241.1 of the Act; and

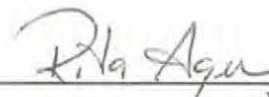
As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated August 24, 2012; and

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:

1. The Former Licensee is fined \$1,000.00.
2. The Former Licensee is assessed Council's investigative costs of \$787.50.
3. As a condition of this order, the Former Licensee is required to pay the above-ordered fine and investigative costs in full no later than **December 12, 2012**.

This order takes effect on the **12<sup>th</sup> day of September, 2012**.



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Rita Ager CFP, CLU, RHU, CSA  
Vice Chairperson, Insurance Council of British Columbia

## **INTENDED DECISION**

of the

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

**respecting**

**SAW HEW MOH**  
(the “Former Licensee”)

#### **INTRODUCTION**

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee, who had held a Level 2 general insurance agent’s licence, acted in compliance with the requirements of the Act.

As part of Council’s investigation, on July 16, 2012, an Investigative Review Committee (the “Committee”) met with the Former Licensee and his legal counsel to discuss allegations he signed insurance documents in a manner that created the appearance they had been signed by an insured.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Former Licensee, an investigation report was distributed to the Committee and the Former Licensee for review. A discussion of this report took place at the meeting and the Former Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Former Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, was reviewed by Council at its August 14, 2012 meeting. After completing its review, Council accepted the Committee’s recommended disposition and 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 Former Licensee of the action it intends to take under sections 231, 236 and/or 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

The Former Licensee reported that upon renewing an insured's (the "Insured") Insurance Corporation of British Columbia ("ICBC") automobile insurance, he was instructed by the Insured to remove a ten-year driving experience restriction on the coverage in order for her daughter, who did not have ten years of driving experience, to drive her vehicle. The Former Licensee completed the initial transaction as requested, delivered the ICBC policy to the Insured, and obtained her signature on the required documents, which included a premium financing document.

The Former Licensee submitted the Insured changed her mind about removing the restriction on the ICBC policy after the documents were signed, as it would result in a higher insurance premium. As well, the Insured stated her daughter was not yet driving. The Former Licensee advised the Insured that he could process the change and mail her a set of new insurance documents to sign and return.

The Former Licensee returned to the agency he was authorized to represent at the time (the "Agency") and changed the Insured's policy back to its original terms with the ten-year driving restriction. In doing so, he "wrote" the Insured's name on the transactional documents as a temporary measure to clear the Agency's batching system. Once the Insured signed and returned the updated transactional documents, the Former Licensee planned to swap them with those he had previously remitted to the Agency's batcher. This never occurred, as the Former Licensee forgot to follow up with the Insured regarding the updated documents.

Subsequently, the Insured's daughter was involved in a motor vehicle accident. When the Insured claimed a loss under her vehicle's collision coverage, ICBC denied the claim due to a breach in vehicle use. The Insured submitted she did not authorize the Former Licensee to change her policy back to its original terms with the ten-year driving restriction. When the Agency learned of the matter, it terminated the Former Licensee effective November 9, 2011.

The Former Licensee's legal counsel indicated it was the Licensee's intention to accommodate the Insured. He had no view to personal gain, and he was forthright with the Agency about the incident when asked about it. In addition, the Former Licensee described a similar incident to the Committee where he processed a change in insurance coverage with a client's consent but without the client's signature on the required transactional documents.

### ANALYSIS

Due to conflicting statements from the Insured and the Former Licensee, the Committee and Council were unable to reconcile with any certainty whether the Insured had in fact told the Former Licensee to revert her vehicle's insurance coverage back to its original terms with the ten-year driving restriction. However, Council accepted that the Former Licensee did not stand to materially gain from his actions, noting he had been the Insured's agent for several years.

Ultimately, Council did not view this matter as a situation of untrustworthiness. Rather, given the facts of this case and the Former Licensee's acknowledgement that he had engaged in similar misconduct on a few occasions in the past in order to convenience clients, Council concluded the Former Licensee did not fully appreciate the importance of properly executing insurance transactions. Council determined the Former Licensee had fallen short of the requirements to carry on the business of insurance in a competent manner and in accordance with the usual practice when he failed to follow up with the Insured with respect to the allegedly requested changes.

In determining an appropriate disposition, Council took into consideration that the Former Licensee was remorseful, forthright, and had already faced consequences for his actions as he was dismissed from the Agency and has not been employed for approximately nine months. Council further noted that, other than the aforementioned concerns with his practices, Council had not been made aware of any other issues with the Licensee over his 15-year career as an insurance licensee.

Notwithstanding, Council held that executing insurance transactions in the manner described above should never be tolerated and such conduct should be admonished. In this regard, Council considered the *Livingstone* precedent where a licensee committed a forgery for convenience. In *Livingstone*, the licensee forged her husband's signature on an insurance transaction. Council found this was an isolated incident and the licensee was acting to convenience her husband. Council took into consideration the financial consequences suffered by the licensee as a result of the termination of her employment, and fined her \$500.00 in addition to assessing investigative costs.

Council held that unlike *Livingstone*, the repeated nature of the Former Licensee's improper actions raised a concern that he could pose a risk to the public as a licensee, as demonstrated in this case through the prejudice suffered by the Insured. Council did not believe a fine higher than \$1,000.00 was warranted given the financial consequences the Former Licensee has already experienced through his loss of employment in the industry.

### **INTENDED DECISION**

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

1. fine the Former Licensee \$1,000.00; and
2. assess the Former Licensee Council's investigation costs of \$787.50.

Council determined that should the Former Licensee qualify to hold a general insurance licence in the future, he will be required to be under the direct supervision of a licensee approved by Council until such time as he accumulates 12 months of active licensing. In addition, a licence condition would be imposed requiring the Former Licensee to complete an errors and omissions course approved by Council within six months of the effective date of the general insurance licence.

The Former Licensee is advised that should the intended decision become final, the fine and costs which will form part of the order, will be due and payable within 90 days of the date of the order.

The intended decision will take effect on **September 12, 2012**, subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

### **RIGHT TO A HEARING**

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 at 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 by **September 11, 2012**. 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 **September 11, 2012**, the intended decision of Council will take effect.

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119813-11107  
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Even if this decision is accepted by the Former 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 [www.fst.gov.bc.ca](http://www.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](mailto:FinancialServicesTribunal@gov.bc.ca)

Dated in Vancouver, British Columbia, on the 24<sup>th</sup> day of August, 2012.

For the Insurance Council of British Columbia



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Gerald D. Matier  
Executive Director

GM/cc