

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

ALLEN STANLEY YOUNG
(the “Licensee”)

ORDER

As Council made an intended decision on July 6, 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 Licensee with written reasons and notice of the intended decision dated July 6, 2022; 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 Agent, as approved by Council, for a period of 12 months, commencing on the date of this order;
- 2) The Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, currently available through Advocis, the Advocis’ “Compliance Toolkit: Know your Client and Fact Finding” course, and the Advocis’ “Compliance Toolkit: Know your Product and Suitability” course and the Council Rules Course for Life and/or accident & sickness insurance (collectively the “Courses”) by February 6, 2023;
- 3) The Licensee is assessed Council’s investigation costs of \$2,425, to be paid by February 6, 2023; and
- 4) A condition is imposed on the Licensee’s Life Agent licence that failure to pay the investigative costs and complete the Courses by February 6, 2023, will result in the

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automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal until such time as the Licensee has complied to the conditions listed herein.

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



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

ALLEN STANLEY YOUNG

(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 Rule 7(8) and section 3 (“Trustworthiness”); section 4 (“Good Faith”); section 5 (“Competence”); section 7 (“Usual Practice of Dealing with Clients”); and Section 10 (“Usual Practice: Dealing with the Public”) of the Code of Conduct related to allegations from a complainant (“GS”) who raised privacy concerns and concerns regarding the Licensee’s failure to honestly represent himself for the services provided and non-disclosure of fees.
2. On December 1, 2021, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee and the Licensee’s legal counsel via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Licensee and the Licensee’s legal counsel 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. The Committee met on May 3, 2022 for further discussion of the Licensee’s matter. Having reviewed the investigation materials and discussed the matter with the Licensee and the Licensee’s legal counsel, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its June 14, 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 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 has been licensed with Council as a life and accident and sickness insurance agent ("Life Agent") since October 1984. The Licensee held an unaffiliated authorization to represent from June 1, 2008, to April 23, 2018. The Licensee is the owner and nominee of Allen Young Financial Ltd. ("AYF") which has held an active corporate life licence with Council since April 2018.
6. At the material time, the Licensee shared an office space with another Life Agent licensee, ("the Other Licensee"). The Other Licensee was the owner and nominee of an insurance agency. The Licensee did not have authority to represent the Other Licensee's agency and each agent had separate businesses.
7. In October of 2016, due to health concerns, the Other Licensee moved to another town, however the Other Licensee's agency's head office remained and operated in [REDACTED]. The Licensee continued to work out of the office space that was shared with the Other Licensee's agency. The Licensee stated he began helping the Other Licensee during this time by completing administrative tasks for clients of the Other Licensee. The Licensee stated that during the period of October 2016 to December 2016, he met with approximately three to four of the Other Licensee's clients each month. The Other Licensee remained as the agent of record for his own clients during the period of October 2016 to December 2016.
8. The Licensee states that during the period of October 2016 to December 2016, his role was limited to completing administrative tasks and relaying instructions to the Other Licensee regarding requests from the Other Licensee's clients. The Licensee advised that during this period, he did not have access to the Other Licensee's client files. The Licensee advised that the Other Licensee's office was locked with a key that the Licensee did not have possession of. Additionally, the Licensee stated that the Other Licensee's client files were in a locked cabinet, for which the Licensee did not have a key or access to.
9. In January of 2017, the Licensee and the Other Licensee made a formal agreement for the Licensee to purchase the Other Licensee's client book, which was to take place over a period of five years. However, the Other Licensee said that the formal agreement with the Licensee for the purchase of his book was made in the summer of 2018. The parties had differing accounts for when the formal agreement was made. There was no documentation presented by the parties to confirm the date of the formal agreement. The

Licensee stated that it was only after the formal agreement was made, which he believed to be in January of 2017, that the Licensee began the process to take over as agent of record for the Other Licensee's clients. The Licensee stated it was his intention to send a formal letter to the Other Licensee's clients advising that the Licensee had purchased the Other Licensee's book of business. However, due to the Other Licensee's sudden health concerns, the timeline of the planned buy out of the Other Licensee's business was accelerated. The Licensee did not send letters to the Other Licensee's clients advising of the transition. It was during this time, after the formal sale agreement had been made, that the Licensee claims he was able to access the Other Licensee's client files.

10. GS had been a client of the Other Licensee's since 2010 and remained a client of the Other Licensee during the transition of the business between the Licensee and the Other Licensee. The Licensee advised that he did not at any point become the agent of record for GS. The Licensee advised that GS frequently visited the office, dropping in without appointments. Following the Other Licensee's move in October 2016, the Licensee advised that GS dropped in at the office and they discussed real estate but did not discuss her personal file. The Licensee advised this was his first meeting with GS after the Other Licensee's move.
11. The Licensee stated that GS attended the office in early January 2017 to discuss her financial situation. The Licensee advised that GS brought, and presented to him, her end-of-year statement ending December 2016 from the insurer. The Licensee stated that this was the first time he had seen any documentation related to GS's accounts. The Licensee stated that as the Other Licensee was still the agent of record, he did not keep notes of his meeting with GS. The Licensee denied having GS's client file or access to her file during this meeting.
12. On April 5, 2017, The Licensee stated that he helped provide administrative help to GS by completing and witnessing a Guaranteed Investment Funds Change (Deposits, Switches, Resets and Address Change) form. The Licensee stated that he did not advise GS of any fees related to this switch, as this particular transaction did not incur any fee to GS. The Licensee helped switch GS from a more "conservative" fund to an "aggressive" fund. The Licensee stated that he faxed the completed form to the Other Licensee to process. The Licensee advised that GS's complaints of the deferred sales charge ("DSC") were not related to transactions that he provided administrative aid for, and the only charges related to the Licensee for GS's file was in relation to two withdrawal fees. The Licensee stated that he was not the agent of record and did not process any transactions where there was a fee or commission.
13. In GS's complaint, they provided an email dated May 26, 2017, in which the Licensee had listed the Other Licensee's agency in his email signature line. The Licensee stated there

was no benefit for him to include the Other Licensee's agency in his email signature, as this would have been confusing to his clients. The Licensee was not sure of the duration that the Other Licensee's agency was included in his email signature but removed the Other Licensee's agency from his signature line when this was brought to his attention. The Licensee admitted that other clients may have received an email where the Other Licensee's agency was in his email signature line.

ANALYSIS

14. Council has concluded that the Licensee did not demonstrate a breach of Council's Code of Conduct guidelines, section 3 ("Trustworthiness"). Council concluded that the inclusion of the Other Licensee's agency in the Licensee's signature line was inappropriate but did not feel that the Licensee was intentionally or purposely misleading clients. Council further concluded that the Licensee did not intentionally mislead GS regarding the services he provided when he was helping the Other Licensee manage his client files. However, Council noted that the inclusion of the Other Licensee's agency in the Licensee's email signature, and providing administrative support to a client while licensed, could be misleading from a client's perspective. Council did not feel that the actions of the Licensee amounted to the level of intentional misleading. As well, in this paragraph and in this decision, Council is not deciding whether GS or any other client was actually misled.
15. Council concluded that the Licensee failed to engage in the usual practice of the business of insurance by his failure to document communications and instructions from GS. The familiarity of all parties and difficult situation with the Other Licensee's health likely resulted in a more relaxed documentation system. However, the Licensee had been licensed for over thirty years at the time and he should have known his obligation to properly document all communications and instructions from a client. Council concluded that the Licensee provided GS advice, in his capacity as a licensed Life Agent, to switch her funds from a more "conservative" fund to a more "aggressive" fund. Council does not find that the Licensee was limited to aiding GS in an administrative manner if he was providing advice on switching funds from a conservative to aggressive fund. The Licensee is a licensed Life Agent, and it likely would be misleading for a client, such as GS, to understand that the Licensee was only providing administrative help to the Other Licensee's clients. Further, Council believes that once the Licensee provided advice on switching GS's fund from conservative to aggressive, or commented on her financial statements, he was acting outside the scope of an administrative role, and this would amount to providing advice as a licensed Life Agent. In that situation, the Licensee should have documented instructions and his conversation with GS, and documented that this product was suitable for GS based on that client's needs. Additionally, the Licensee should have advised GS of the potential risks and relevant information for the switch of her funds.

16. Council further concluded that the Licensee's failure to inform the Other Licensee's clients formally in writing of the transition and purchase of the Other Licensee's clients by the Licensee demonstrated a failure to engage in the usual practice of the business of insurance. Council concluded that these actions called into question the Licensee's documentation system in place for his practice and demonstrated a recurring pattern of failing to document communications with clients or client instructions.
17. Council was troubled by the Licensee's lack of systems for record keeping in regard to client file documentation and documentation of instructions. There was no written documentation provided to clients that the Licensee was taking over the Other Licensee's book of business or documentation of express written client authorization for the Licensee to access or conduct insurance business on the client files. Council acknowledges that when GS came into the office with their insurer statement and asked the Licensee to discuss the statement, there was implied consent from GS at that time to discuss her file. However, after that point, there was no express written consent for the Licensee to comment or provide advice to GS related to her file, including when the Licensee provided advice for GS to switch to a more "aggressive" fund from their "conservative" fund.
18. Council notes that section 10 ("Usual Practice of Dealing with the Public") of the Council's Code of Conduct (Appendix B), clearly states that express authority from a client must be clear and leave no dispute that the client has allowed a licensee to use or disclose his or her personal information ... without written express authority. It is difficult for a licensee to demonstrate that he or she acted appropriately should a concern arise regarding the handling of the client's information. In this situation, GS has raised concerns regarding the handling of her client information, and the Licensee has not been able to provide any express written authority that he was allowed to act on GS's file at any point, including aiding with the recommendation of the fund switch in April 2017.
19. Council concluded that the inclusion of the Other Licensee's agency in the Licensee's email signature demonstrated that the Licensee was holding himself out in a manner inconsistent with his licence. The inclusion of the Other Licensee's agency could have misled clients to believe the Licensee had authority to represent the Other Licensee's agency. The Licensee has since removed the Other Licensee's agency from his email signature; however, he was unaware of how long the Other Licensee's agency was included in his email.
20. Council considered the impact of Council's Code of Conduct guidelines on the Licensee's conduct. Council concluded that the Licensee's conduct amounted to breaches of the Code of Conduct and the professional standards set by the Code.

21. Prior to making its recommendation, Council reviewed precedent decisions into consideration. While it is recognized that Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were comparable and instructive in terms of providing a range of sanctions for similar misconduct.
22. *Elliott T. Herrera* (November 2017) concerned a Level 2 general insurance agent licensee who enlisted the assistance of his spouse, who was unlicensed at the time, to contact clients regarding their ICBC Autoplan renewals. The licensee's spouse assisted the licensee from their home and was provided with a printout of a client coverage renewal list, which included client information. The licensee's wife became licenced and began working for a different agency than the licensee. The licensee's wife continued to contact the licensee's agency's clients on behalf of the licensee from the agency in which she worked. Council determined the licensee breached client confidentiality when he shared the agency's client information with his spouse. Council determined that the licensee failed to provide clients with proper disclosure with regards to his spouse's involvement and that of their respective agencies. Further, the licensee allowed another licensee to conduct insurance transactions on his behalf without the appropriate authority to represent. Council ordered that the licensee's general insurance licence be suspended for one year, impose a condition that the licensee complete the Council Rules Course and ICBC's Privacy and Education Course, and assessed investigative costs of \$1,112.50.
23. *Teresa Anne Cantin* (February 2013) concerned a Level 1 general insurance agent licensee who provided client information to a former supervisor who was working at another agency at the time of the disclosure requests. Council determined that the licensee breached client confidentiality when releasing client information to the former supervisor without required authorization. It was accepted that because of the former relationship, the licensee mistakenly assumed the required authorization had been secured from the client. Council ordered that a condition be imposed on the licensee's general license that restricted her to holding a level 1 general insurance license for 12 months, impose a condition that the licensee complete the ICBC Privacy Please Tutorial, fined \$1000 and assessed investigative costs of \$825.00.
24. *Suzanne Annette-Marie Clement* (November 2013) concerned a life agent licensee who provided client information to an agency "associate member" who was not licenced with Council. As an "associate member" of the agency, the licensee believed that client information could be provided to that person. The licensee advised she did not have consent from any of the clients to release their personal information, but it was not her intent to cause any harm to any clients. Council determined that the licensee did not intend to harm any party intentionally or breach confidentiality, given the associate member status of the individual within the agency. Council determined that the licensee

did not pay attention to client confidentiality and whether client consent was required, particularly as the associate was unlicensed. Council ordered that the licensee be fined \$1000 and assessed investigative costs of \$562.50.

25. *Jason Robert Verbeke* (April 2018) concerned a Level 2 general insurance agent licensee who took clients' information on a spreadsheet when he left an agency. The licensee's position was that the clients were his and that he had a right to the information. He also claimed to have the clients' verbal consent. Council accepted that the licensee genuinely believed that the clients were his own, but he had not obtained express consent from the clients to keep the client information. Council ordered that the licensee take the Privacy Course and Council Rules Course through the Insurance Brokers Association of British Columbia ("IBABC"). In addition, the licensee was fined \$2,500 and was assessed investigative costs of \$2,037.50.
26. *Paul William Moore* (January 2019) concerned a Life Agent licensee who had been licensed with Council since October 2007. Council found he engaged in churning activities, conducted trades without client consent, engaged in unauthorized trading and altered a client's trading authorization form to conduct a trade for another transaction. Council determined his actions and conduct were incompetent and did not meet the standards expected of a licensee. Council imposed a condition on his licence requiring him to be supervised for 12 months; to complete an ethics course and the Council Rules course; fined him \$7,500; assessed him Council's investigative costs; and assessed him hearing costs.
27. In *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 of \$1837.50.
28. *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 clients' concerns about the product. Council placed a condition on his Life Agent license 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.

29. In the present case, Council acknowledges as mitigating factors that the Licensee has no prior disciplinary history and that the Licensee fully cooperated throughout the investigation with Council.
30. In terms of aggravating factors, Council noted that the behaviour regarding the Licensee's failure to properly document instructions and communications from clients did not appear to be a sole occurrence. There was a lack of written documentation informing clients of the transition between the Licensee and the Other Licensee, as well as a lack of documentation in the Licensee's meetings with GS, which were determined to be in the scope of acting as a Life Agent. Further, there was a lack of documentation regarding client needs and suitability of products recommended.
31. Council views the Licensee's conduct to be a breach of Council's Rules and the Code of Conduct and concludes that it is appropriate for the Licensee to be supervised for 12 months, as well as required to complete the Council Rules Course, the Advocis' "Compliance Toolkit: Know your Client and Fact Finding" course, and the Advocis' "Compliance Toolkit: Know your Product and Suitability" course. Council determined placing the Licensee under supervision is appropriate in the circumstances to allow the Licensee to bring his insurance business practice and competency level to the standards expected of a Licensee.
32. Council concludes these actions are appropriate 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 ethically and competently.
33. With respect to investigation costs, Council believes that these costs should be assessed to 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

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

- a) That the Licensee be required to be supervised by a qualified Life Agent, as approved by Council, for a period of 12 months, commencing on the date of the order;
- b) That the Licensee be required to complete the following courses, or equivalent courses as acceptable to Council, currently available through Advocis, the Advocis' "Compliance Toolkit: Know your Client and Fact Finding" course, and the Advocis' "Compliance Toolkit: Know your Product and Suitability" course and the Council Rules Course for Life and/or accident & sickness insurance (collectively the "Courses") within 180 days of Council's order;
- c) That the Licensee be assessed Council's investigative costs in the amount of \$2,425, to be paid within 180 days of Council's order; and
- d) That a condition be imposed on the Licensee's Life Agent licence that failure to pay the investigative costs within 180 days and complete the Courses within 180 days will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2024 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

35. 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

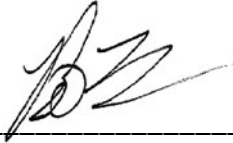
36. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering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

37. 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.fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

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Dated in Vancouver, British Columbia, on the **6th day of July, 2022.**

For the Insurance Council of British Columbia

A handwritten signature in black ink, appearing to be 'JS', written over a horizontal line.

For Janet Sinclair
Executive Director