

In the Matter of the

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

KAI DI ZHU
(the “Licensee”)

ORDER

As Council made an intended decision on October 19, 2021, 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 November 16, 2021; and

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

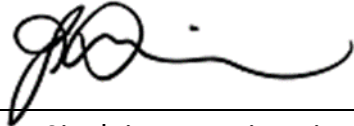
Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

1. The Licensee is required to complete the following courses by March 8, 2022:
 - a) the Insurance Institute’s “Ethics and the Insurance Professional” course; and
 - b) the Council Rules Course, currently available through the Insurance Brokers Association of British Columbia;
2. The Licensee is assessed investigation costs in the amount of \$1,312.50, to be paid by March 8, 2022; and
3. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence and general insurance licence that failure to complete the required courses or to pay the investigation costs by March 8, 2022 will result in the automatic suspension of the Licensee’s Life Agent licence and general insurance licence, and the

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Licensee will not be permitted to complete her 2023 annual filings until such time as the Licensee has completed the required courses and paid the investigation costs in full.

This order takes effect on the **8th day of December, 2021.**

A handwritten signature in black ink, appearing to read 'Janet Sinclair', written over a horizontal line.

Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

KAI DI ZHU

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee breached the Council Rules and/or the Code of Conduct (the “Code”) when she used her previous broker credentials from her former employer (the “Former Employer”) to access an insurer’s (the “Insurer”) proprietary insurance portal (the “Portal”). The Licensee was also alleged to have made material misstatements to Council staff during the investigation.
2. On August 11, 2021, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee via video conference to review an investigation report prepared by Council staff and to provide the Licensee an opportunity to make submissions or provide further information. A copy of the investigation report was forwarded to the Licensee and the Committee in advance of the meeting.
3. The investigation report, the Committee’s report to Council, and the Licensee’s submissions were reviewed by Council at its October 19, 2021 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

Background

5. The Licensee became licensed with Council as a Level 1 general insurance salesperson on August 8, 2018 and became a Level 2 general insurance agent in November 2020. The Licensee has also held a life and accident and sickness insurance agent licence since June 11, 2021. At all material times, the Licensee held an authority to represent (“ATR”) the Former Employer and another insurance agency (the “Second Employer”).
6. On January 7, 2021, the Licensee reported her misconduct to the nominee of the Second Employer (the “Nominee”), after being contacted by the Insurer’s legal counsel. She told the Nominee that the incident had occurred while she was working at a motor vehicle dealer and asked the Nominee to review her proposed response.
7. On January 8, 2021, the Nominee advised Council that the Licensee’s ATR had been terminated for agent misconduct. At this time, Council was only aware of one instance where the Licensee had accessed the Portal. The Licensee had been employed by the Second Employer since July 13, 2020.
8. On January 13, 2021, Council was advised by the Insurer that their legal counsel had issued a cease-and-desist letter to the Licensee for unlawful access and use of the Portal. The Insurer alleged that the Licensee was documented in their system to have unlawfully accessed the Portal on four occasions from July 9, 2020 to November 17, 2020:
 - July 9, 2020 - Form was downloaded (Benefits Request Form)
 - August 13, 2020 - Blackbook API call
 - October 17, 2020 - Form was downloaded (Cancellation Request Form)
 - November 17, 2020 - Blackbook API call

The Licensee’s Submissions

9. The Licensee accepted full responsibility and expressed remorse for her actions. She described her conduct as an error in judgment.
10. When asked to explain her actions, the Licensee said that she had accessed the Portal on October 17, 2020 as her client (the “Client”) had sold a vehicle and wanted to cancel her insurance policy with the Insurer. She claimed that she was unable to locate a release-of-interest form on the Insurer’s website, so she proceeded to download one on the Portal. The Licensee confirmed that she did not share the information with others, and that she will no longer access any portal without authorization.

11. When asked to clarify her purpose for each time she accessed the Portal, the Licensee replied that the only time she had logged into the Portal with a purpose was to download the release-of-interest form, and all other attempts to log in were to confirm whether her account was still active. She was surprised that the Insurer had not deleted her account after she left the Former Employer; however, she stated that her actions were inexcusable.
12. The Licensee confirmed that she was still under the employment of the Former Employer on July 9, 2020; hence, the July 9, 2020 access was authorized. The Former Employer confirmed to Council staff that the Licensee's employment ended on July 11, 2020.
13. Regarding the other accesses on August 13 and November 17, 2020, the Licensee claimed the Portal was easier to use than the Insurance Corporation of British Columbia ("ICBC") website. The Licensee claimed that the ICBC database search provides several numbers, and as a result, she did not know which one was the most accurate. The Licensee explained that the reason she did not inform Council staff of these two unauthorized accesses was due to her understanding that it was not as severe as downloading the release-of-interest form, and that she could not recall the dates of each access.
14. The Licensee confirmed that she did not receive any financial benefits for cancelling the Client's insurance. In addition, she confirmed that she no longer accesses the Portal, and her current employer (the "Current Employer") does not use the Portal.

ANALYSIS

15. Council considered the investigation report, the Committee's report to Council, and the Licensee's submissions and determined that the Licensee's conduct regarding the unauthorized accesses to the Portal amounted to clear breaches of sections 3 ("Trustworthiness") and 4 ("Good Faith") of the Code. Licensees are required by Council Rule 7(8) to comply with the Code. However, Council concluded that the Licensee's conduct could be attributed to poor judgment which is more a reflection of her competence than an indication of a deliberate intent to act dishonestly.
16. Although the Licensee's conduct may not have resulted in the disclosure of confidential client information, Council determined that her conduct amounted to a breach of trust, as the accesses to the Portal were unauthorized. Similarly, although the Licensee may have acted in good faith to the Client by obtaining the correct release-of-interest form, she breached her parallel duty of good faith to the Insurer by accessing the Portal after her employment with the Former Employer ended.

17. Council concluded that the Licensee did not breach section 12 of the Code (“Dealing with the Insurance Council of British Columbia”). The Licensee was cooperative with Council’s investigation. Council believed that the misstatements, if any, were mainly due to the Licensee’s belief that it was not material.
18. Council took several mitigating factors into consideration. For instance, Council accepted that the regret displayed by the Licensee was genuine. Council noted that there was no evidence to suggest that the public was harmed, and the Licensee has suffered professional and financial consequences due to the termination of her employment with the Second Employer. Further, the Licensee has offered to indemnify the Insurer for her misconduct and was overall cooperative with Council’s investigation.
19. Council acknowledged that the Licensee was relatively new to the insurance industry and that the Former Employer was her first office-related employment. Council was also mindful that the Licensee did not appear to receive any meaningful mentorship from her employers.
20. In terms of aggravating factors, Council understood that the Licensee did not notify the Current Employer of her misconduct; however, Council accepted that the Licensee needs to be employed for her livelihood. Accordingly, Council did not treat this as an aggravating factor. On the other hand, Council acknowledged that the Licensee consciously accessed the Portal when she knew she was not allowed to.
21. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case.
22. With respect to the Licensee’s misconduct, Council considered the cases of *Katharine Rachael Mae Styles* (April 2014), *Kristen Michelle Burr* (October 2014), and *Nirmal Kaur Binnag* (December 2015).
23. *Katharine Rachael Mae Styles* (April 2014) concerned a Level 1 general insurance salesperson with approximately 3 years of experience, who accessed the ICBC database to obtain information about a third party without consent, and for a purpose other than conducting an insurance transaction. The licensee looked up the Claim-Rated Scale discount of her friend. Council took into consideration that the licensee was forthcoming to her employer and Council, and that the licensee was terminated from the agency. As a result, Council ordered the suspension of the licensee’s licence for a period of eight months and assessed investigative costs of \$625.
24. *Kristen Michelle Burr* (October 2014) concerned a licensee who used the ICBC database to obtain information about a consumer without obtaining consent. There was no evidence

that the information was passed to other parties outside of ICBC. The licensee was cooperative with the investigation. The licensee looked up a driver's information on the ICBC database after the driver allegedly collided with her vehicle. Council accepted that the licensee did not set out to breach a consumer's privacy or act in an unauthorized manner. The licensee was also cooperative with Council's investigation and Council received a reference from her manager. Council ordered the suspension of the licensee's licence for a period of six months and assessed investigative costs of \$875.

25. *Nirmal Kaur Binnag* (December 2015) concerned a Level 3 general insurance agent with approximately 8 years of experience, who used the ICBC database in an unauthorized manner to access information about a licensed driver without his knowledge or consent. There was no evidence that the information was passed to a third party. The licensee accessed the database to confirm a personal matter. Council found the licensee failed to act in a trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance. Council ordered the suspension of the licensee's licence for a period of one year and assessed investigative costs of \$650.
26. Overall, Council found the Licensee's conduct to be less egregious than the precedent decisions as there was no clear public harm. Further, Council concluded that there was no evidence to call into question the Licensee's suitability to act as an insurance agent. Combined with Council's determination that the Licensee's misconduct stems from a lack of judgment, as opposed to the precedent decisions, Council concluded that remedial sanctions would be most appropriate to address the Licensee's misconduct. Council does not believe that punitive sanctions would be in the public's interest nor of practical value with respect to the Licensee's work as a road runner.
27. Council has determined that investigation costs should be assessed against the Licensee. As a self-funding regulator, the cost to investigate the misconduct of a licensee or former licensee should not be borne by members of the insurance industry unaffiliated with the investigation. This is particularly true when the evidence is clear that the actions of a licensee or former licensee have amounted to misconduct.
28. Further, Council has determined that it is necessary to impose conditions to both classes of licenses held by the Licensee. As per Council Rule 7(8), the Licensee is required to comply with the Code for all classes of licences held. Therefore, the misconduct and breaches of the Code impacts both classes of licenses held by the Licensee and is subject to conditions on each licence.

INTENDED DECISION

29. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
- (a) Require the Licensee to complete the following courses, within 90 days of the date of Council's order:
 - (i) the Insurance Institute's "Ethics and the Insurance Professional" course; and
 - (ii) the Council Rules Course, currently available through the Insurance Brokers Association of British Columbia;
 - (b) Assess the Licensee investigation costs in the amount of \$1,312.50, to be paid within 90 days of the date of Council's order; and
 - (c) That a condition be imposed on the Licensee's life and accident and sickness insurance agent ("Life Agent") licence and general insurance licence that failure to complete the required courses or to pay the investigation costs within 90 days of Council's order will result in the automatic suspension of the Licensee's Life Agent licence and general insurance licence, and the Licensee will not be permitted to complete her 2023 annual filings until such time as the Licensee has completed the required courses and paid the investigation costs in full.
30. 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

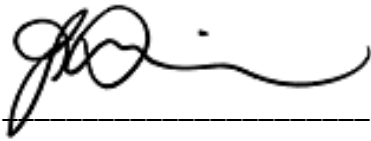
31. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. **Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention within 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 the intended decision, the intended decision of Council will take effect.**
32. 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 to appeal to the

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Financial Services Tribunal (“FST”). The BCFSA 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 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 November, 2021.

For the Insurance Council of British Columbia

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Janet Sinclair
Executive Director