

**In the Matter of the**

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

**and the**

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

**and**

**BRIAN GARCIA ACUNA**  
(the “Licensee”)

**ORDER**

As Council made an intended decision on July 13, 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 August 27, 2021; and

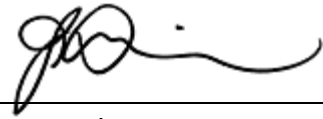
As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

1. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence that requires him to be supervised for 24 months of active licensing by a supervisor approved by Council, commencing on or before October 18, 2021;
2. The Licensee is required to complete the following courses, or equivalent courses as acceptable to Council, by December 16, 2021:
  - 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;

3. The Licensee is required to attend Council's Life Agent Webinar by September 17, 2022;
4. The Licensee is assessed investigative costs in the amount of \$2,520, to be paid by December 16, 2021; and
5. A condition is imposed on the Licensee's Life Agent licence that failure to complete the required courses or to pay the investigative costs by their deadlines will result in the automatic suspension of that licence, and the Licensee will not be permitted to complete his 2023 annual filing until such time as he has completed the courses and paid the costs in full.

This order takes effect on the 17<sup>th</sup> day of September, 2021.



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Janet Sinclair, Executive Director  
Insurance Council of British Columbia

**INTENDED DECISION**

of the

**INSURANCE COUNCIL OF BRITISH COLUMBIA**

(“Council”)

**respecting**

**BRIAN GARCIA ACUNA**

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation regarding allegations including that the Licensee had persuaded policy holders to cancel policies solely for the purpose of selling them new policies, that he failed to pay due regard to possible disadvantages to policy holders while doing so, that he failed to follow proper replacement procedures – including by not completing mandatory Life Insurance Replacement Declarations (“LIRD”) – and that he had inappropriately made a personal loan of \$200 to a client and/or inappropriately rebated part of the premium stipulated in the client’s policy.
2. In the course of its investigation, Council reviewed whether the Licensee’s actions amounted to breaches of the Act, the Insurance Contracts (Life Insurance Replacement) Regulation (the “Replacement Regulation”), the Council Rules, and/or the Code of Conduct. Of particular relevance to the investigation were section 3 of the Replacement Regulation, regarding the duties of licensees when replacing a life insurance contract, Council Rule 7(9), which requires licensees to properly record insurance transactions, and sections 3 (“Trustworthiness”), 4 (“Good Faith”), 5 (“Competence”), 7 (“Usual Practice: Dealing with Clients”), 8 (“Usual Practice: Dealing with Insurers”), and 13 (“Compliance with Governing Legislation and Council Rules”) of the Code of Conduct.
3. On May 18, 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 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.
4. The investigation report, the Committee’s report to Council, and the Licensee’s submissions were reviewed by Council at its July 13, 2021, meeting where it was determined the matter should be disposed of in the manner set out below.

## **PROCESS**

5. 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**

### **The Licensee's Background**

6. The Licensee has been licensed with Council as a life and accident and sickness insurance agent ("Life Agent") since October 31, 2018. Since that time, the Licensee has been authorized to represent an agency (the "Agency").
7. At the material time, the Licensee was being supervised by a licensee who had been licensed with Council as a Life Agent since October 2012 (the "Supervisor").

### **Insurer's Reports to Council**

8. On December 24, 2019, an insurance company (the "Insurer") advised Council it had concerns about the Licensee's replacement of life insurance policies. In particular, the Insurer alleged 13 incidents of undisclosed and/or systematic policy replacements for new policies submitted through the Agency.
9. The new policies included:
  - (a) 3 existing policies that were surrendered after the new policies were put in force;
  - (b) 1 existing policy that was surrendered months prior to the new policy applied for;
  - (c) 1 existing policy that lapsed 1 week after the new policy was put in force;
  - (d) 4 existing policies that remained in force and paying premiums, in addition to the new policies; and
  - (e) 4 existing policies that have had pre-authorized payments stopped or put on premium holiday.(collectively, the "Applications").

10. The Insurer also alleged that the Licensee was in a conflict of interest and/or had engaged in premium rebating when he gave a client (“the Client”) a loan of \$200 when she applied for a policy from the Insurer.

### **The Licensee’s Submissions to the Committee**

11. The Licensee advised the Committee that his clients are mostly referrals from friends. His business mix is mostly Universal Life and specifically Insured Retirement Strategy (“IRS”). He is contracted with the Insurer, as well as another insurance company.

### ***Replacement Allegation***

12. The Licensee explained to the Committee that his practice at the time was to advise clients at his first meeting with them that the IRS was not meant to replace existing coverage but rather to supplement existing coverage. He says it was not his intention to replace any existing policies when he submitted the Applications.
13. Despite the Licensee’s intentions, four of his clients surrendered their existing policies with the Insurer after he sold them the new policies. One client’s existing policy lapsed after the Licensee sold him a new policy. Eight clients kept their existing policies after the Licensee sold them new policies.
14. The Licensee’s client notes indicate that each of the clients contemplated cancelling their existing policies after the new policies were issued and in many cases the premiums for the new policies were the same or more than for the old policies.
15. The Licensee told the Committee that when he submitted the Applications, he did not understand he needed to complete a LIRD. He thought the Replacement Regulation did not apply unless clients confirmed their intention to cancel existing policies during meetings or at policy delivery. He did not complete a LIRD for any of the Applications because none of the clients told him they intended to cancel an existing policy. He believed he only needed to complete a LIRD if clients insisted on replacing their policies.
16. The Licensee acknowledged his mistake and apologized to the Committee.

### ***Insured Retirement Strategy***

17. The Licensee told the Committee that, in his opinion, anybody would be suitable for the IRS strategy and that it would benefit all types of clients. He advised that most clients usually have a Registered Retirement Savings Plan (“RRSP”) and Tax-Free Savings

Account (“TFSA”) held by a bank. He explains to clients that the bank will only give 1% or 2% return. The IRS appeals to clients because they can gain more by investing in the stock market through the IRS.

18. The Licensee explained that most of his clients told him they had to think about replacing policies because they were interested in IRS instead of a RRSP or TFSA.
19. The Licensee believes clients think investing in an IRS is better than investing in RRSPs or TFSAs offered by a bank. He did not intend to replace clients’ existing insurance policies; rather, he intended to use IRS as an investment vehicle instead of an RRSP or TFSA.

### ***Loan to Client***

20. The Licensee advised the Committee he met the Client on August 1, 2019, when he conducted a presentation on the IRS. The Client was interested in a quote for a \$425,000 insurance policy with a \$75,000 term 20 rider and a \$30,000 critical illness rider with a \$200 monthly premium.
21. Although the Client had an existing policy from the Insurer, she was interested in the new coverage because she did not have any retirement savings and her husband would be moving to Canada soon. According to the Licensee, the Client “begged” to borrow money from the Licensee, as a personal loan, to purchase a plane ticket for her husband, who was moving to Canada.
22. Subsequently, the Licensee discovered the Client had joined another agency. When the Client instructed the Licensee to cancel her application with the Insurer, he was disappointed and asked her to return the money he had loaned her.
23. The Licensee confirmed he has never given a personal loan to any other clients.

### **The Supervisor’s Submissions to Council**

24. The Supervisor told Council’s investigator he had been supervising new licensees for four years. His practice at the time was to review each new piece of business a new licensee completed; however, he only reported a random sampling to the Agency’s Compliance Officer.
25. The Supervisor provided feedback to new licensees and followed up with them to confirm his recommendations or suggestions were being followed. He conducted meetings with new licensees and went through best practices, policies, and procedures with them. As

part of his training for the Licensee, the Supervisor reviewed all relevant insurance forms and documents with the Licensee.

26. The Supervisor reviewed all applications the Licensee submitted prior to the complaints and does not recall seeing any indication of any intention to replace existing in-force policies. He did not review any LIRD forms because none had accompanied the applications he reviewed. As far as he knew, the policy replacements all took place after the policies were delivered to the clients, so he had no knowledge of them.
27. The Supervisor was asked if he discussed completing a LIRD with the Licensee during his training in relation to handling a potential replacement with his clients. The Supervisor advised Council staff that the Agency's advisors are trained to discourage clients from cancelling their existing policies, so there isn't much of a focus on replacements or LIRD during training.

#### **ANALYSIS**

28. Council considered the investigation report, the Committee's report to Council, and the Licensee's submissions and determined that the Licensee acted contrary to the Replacement Regulation, Council Rule 7(9) and Council's Code of Conduct (section 5 ("Competence"); section 7 ("Usual Practice in Dealing with Clients"); section 13 ("Compliance with Legislation").
29. Specifically, Council determined the Licensee:
- (a) persuaded policy holders to drop existing policies so he could sell them new policies;
  - (b) failed to follow proper replacement procedures by not completing a LIRD for each of the Applications; and
  - (c) failed to consider the risks and possible disadvantages of the new policies to the policy holders.
30. Although Council considered whether the Licensee's actions raised concerns about his adherence to section 3 ("Trustworthiness") and section 4 ("Good Faith") of the Code of Conduct, it was determined that the Licensee's chief failing was in regard to Code of Conduct section 5 ("Competence").
31. Council determined that because the Licensee was newly licensed at the time and was under supervision by his Agency, his misconduct was largely the result of inadequate

training about how to conduct suitability analyses and when to use prescribed forms. That said, Council was concerned by the Licensee's continued lack of understanding about the suitability of the policies and strategies he has been trained to recommend to his clients.

32. In addition, Council determined the Licensee should have recognized the need to complete the LIRD for each of the Applications, despite being newly licensed at the time. His failure to do so demonstrates a lack of the competence expected of a licensee.
33. Council contemplated imposing a fine on the Licensee due to the number of applications at issue; however, because the Licensee appeared to have adopted a specific investment strategy employed widely throughout the Agency and was following his training in that regard, Council determined supervision by a licensee approved by Council, combined with education requirements, would be sufficient to address the identified competency concerns.
34. With adequate training and supervision, Council believes the Licensee will have the information he requires to ensure future compliance with the Rules, Code of Conduct, and the Regulation.
35. Although Council has concerns about the Licensee's personal loan to the Client, the evidence does not support a finding that the loan was provided for business purposes.
36. 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.
37. With respect to the Licensee's misconduct, Council considered the cases of *Paul William Moore* (January 2019), *Jack Leonard Parkin* (January 2015), *Ismat Simo* (September 2017) and *Barbara Ann Nash* (June 2020). Of these decisions, Council determined that the cases of *Moore*, *Simo*, and *Parkin* provided the most guidance.
38. *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.

39. *Ismat Simo* (September 2017) concerned a Life Agent licensee who made recommendations to a client that were inappropriate and not in the client's best interests given her financial circumstances and risk tolerance. Council found the licensee's recommendations were detrimental to the client and were made without any due diligence, including the most basic of needs analysis, by the licensee. Council found that the licensee was ill-prepared to provide proper advice to the client and that his recommendations, including his failure to document or conduct a needs analysis, brought into question his competency. Council suspended the licensee's licence pending the completion of certain courses; required him to be supervised by a qualified life agent for two years; and assessed investigation costs against him.
40. *Jack Leonard Parkin* (January 2015) concerned a Life Agent licensee who had held a 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 concluded that the licensee had failed to act in a competent manner 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 completes certain courses designated by Council; and that he be assessed Council's investigative costs.
41. Like in *Simo* and *Parkin*, the Licensee does not appear to truly understand the policies he was recommending to his clients. Although he believes the policies were suitable for the clients – likely, at least in part, due to the training he has received – in some situations his clients appear to be worse off after they were issued the new policies.
42. Unlike in *Moore*, the Licensee was not acting out of convenience or to benefit himself, but he nevertheless demonstrated a profound lack of understanding of the investing features he recommended to clients. Furthermore, Council determined the Licensee had demonstrated remorse by acknowledging his mistake and apologizing to the Committee.
43. Council has also determined that investigative costs should be assessed against the Licensee. As a self-funding regulator, the cost to investigate the misconduct of a 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 have amounted to misconduct.

## **INTENDED DECISION**

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

- (a) Impose a condition on the Licensee's Life Agent licence that he be supervised for 24 months of active licensing by a supervisor approved by Council, commencing, at the latest, one month from the date of Council's order;
- (b) Require the Licensee to complete the following courses, or equivalent courses as acceptable to Council, within 90 days of the date of Council's order:
  - (i) the Insurance Institute's "Ethics and the Insurance Professional" course;
  - (ii) Advocis' "Compliance Toolkit: Know your Client and Fact Finding" course;
  - (iii) Advocis' "Compliance Toolkit: Know your Client and Suitability" course; and
  - (iv) the Council Rules Course, currently available through Advocis;
- (c) Require the Licensee to attend Council's Life Agent Webinar within one year of the date of Council's order;
- (d) Assess the Licensee investigative costs in the amount of \$2,520, to be paid within 90 days of the date of Council's order; and
- (e) Impose a condition on the Licensee's Life Agent licence that failure to complete the required courses or to pay the investigative costs by their deadlines will result in the automatic suspension of that licence, and the Licensee will not be permitted to complete his 2023 annual filing until such time as he has completed the courses and paid the costs in full.

45. Subject to the right of the Licensee 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**

46. 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.**

47. 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 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](http://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](http://www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf).

Dated in Vancouver, British Columbia, on the 27<sup>th</sup> day of August, 2021.

For the Insurance Council of British Columbia



For Janet Sinclair  
Executive Director