

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141

(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

and

XIAO YAN (CELIA) XU

(the “Licensee”)

ORDER

As Council made an intended decision on March 12, 2024, 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 April 15, 2024; and

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

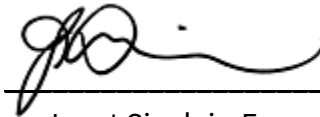
Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

- 1) The Licensee is fined \$2,000, to be paid by August 6, 2024;
- 2) The Licensee is required to complete the Council Rules Course for life and/or accident and sickness insurance by August 6, 2024;
- 3) The Licensee is required to complete the Continuing Education Guidelines and Requirements Course by August 6, 2024;

- 4) The Licensee is assessed Council's investigation costs of \$687.50, to be paid by August 6, 2024; and

- 5) A condition is imposed on the Licensee's life and accident and sickness insurance agent licence that failure to complete the Council Rules Course and Continuing Education Guidelines and Requirement Course, and to pay the fine and investigation costs by their deadlines will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

This order takes effect on the **7th day of May, 2024**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

XIAO YAN (CELIA) XU

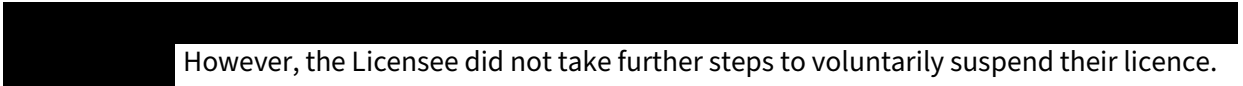
(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee had acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct.
2. An investigation report prepared by Council staff (the “Investigation Report”) indicated the Licensee failed to complete required continuing education credits (“CE”) for the 2019/2020 and 2020/2021 licence periods (the “Licence Periods”) and maintain required errors and omissions insurance (“E&O”).
3. On December 7, 2023, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee via video conference to discuss the investigation. The Investigation Report was distributed to the Committee and the Licensee 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.
4. Having reviewed the investigation materials, the Committee prepared a report for Council. The Committee’s report, along with the Investigation Report, were reviewed by Council at its March 12, 2024, 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

6. The Licensee first became licensed with Council as a Life and Accident and Sickness agent (“Life Agent”) on December 14, 2017. The Licensee held the authority to represent (“ATR”) one agency from December 14, 2017, to April 12, 2018, and currently holds an ATR with a second agency (the “Current Agency”), effective January 1, 2018.
7. On May 31, 2021, Council received an email from the Licensee requesting an extension to complete their CE due to a medical condition.
8. The Licensee was advised by Council staff (“Staff”) that Council had a CE deferral policy in place, which would allow the Licensee to defer completion of their CE credits for a maximum of two licence periods (the “Policy”). To avail themselves of the Policy, the Licensee was required to provide documentary support establishing they were unable to complete CE for unforeseeable reasons, and voluntarily suspend their licence during the deferral period.
9.  However, the Licensee did not take further steps to voluntarily suspend their licence.
10. Staff later determined the Policy could not apply to the Licensee’s situation because the Licensee indicated a return to work in other industries and maintained an active ATR. Staff communicated this determination to the Licensee by email, and requested the Licensee submit their CE records for the 2020/2021 licence period.
11. Subsequently, the Licensee advised they were unable to complete the CE requirements for the 2020/2021 licence period and requested they be waived. Staff responded by reiterating the Policy was not available to the Licensee because they had returned to work and active licensees who are capable of working are expected to be capable of completing CE requirements.
12. The Licensee ultimately provided CE records to Staff demonstrating they had completed only 4 of the 15 CE required in the 2019/2020 licence period and 2 of the 15 CE required in the 2020/2021 licence period, for a total of 6 of the required 30 CE completed.
13. Following Council’s investigation, the Licensee provided Staff with records for 48.25 CE credits they completed during the 2021/2022 licence period.

14. On the morning of the Committee meeting, the Licensee provided further CE credits, some of which had been completed during the 2019/2020 licence period. After accounting for duplicate records, Staff determined the Licensee had completed CE credits as follows:

2019/2020: 7 / 15 CE

2020/2021: 2 / 15 CE

2021/2022: 54.75 / 15 CE (surplus of 39.75 CE)

15. During the investigation, Staff requested the Licensee's E&O certificates covering the Licence Periods.
16. The Licensee provided E&O certificates demonstrating they had a lapse in E&O coverage from October 2, 2021, to April 4, 2022 (the "Lapse Period"). The Licensee maintained an active licence and ATR during the Lapse Period.
17. Staff contacted the Current Agency, who advised the Licensee had not conducted any insurance business during the Lapse Period.

18. [REDACTED]

19. [REDACTED]

20. The Licensee advised the Committee they had paid for a CE package offered by Council, which they understood to have been valid for one year. However, they were not aware the package expired after one month, and they were not able to complete these CE credits.

ANALYSIS

21. Council determined that the Licensee had failed to obtain the required CE credits for the 2019/2020 and 2020/2021 licence periods, in breach of Council Rules 7(5) and 7(8) and Code of Conduct section 13.
22. In particular, Council reviewed the CE provided by the Licensee and noted they completed only 9 of the 30 CE required for the Licence Periods. Out of the 21 missed CE credits required for the Licence Periods, 8 were from the 2019/2020 licence period, and 13 were from the 2020/2021 licence period.

23. Further, Council determined that the Licensee failed to maintain required E&O and notify Council of a lapse in E&O coverage, in breach of Council Rules 7(8) and 7(11) and Code of Conduct section 13.

PRECEDENTS

24. Prior to making its intended decision, Council took several past decisions regarding insufficient CE and E&O lapses into consideration as precedents, including the following:
25. [*William Charles Brash*](#) (April 28, 2022): A life agent's licence had been inactive at the time they called Council for assistance completing their annual renewal declaration. The licensee had been unaware that despite their licence being inactive, they were nevertheless required to complete CE, and advised Council that they had not completed the CE required. Subsequently, the licensee completed 60 CE credits. The licensee completed an additional nine courses, though they were ultimately ineligible to be used as CE credits. Council found the licensee had breached their CE requirements for four licence periods, however declined to assess a penalty of \$1,000 for each licence year (\$4,000 total). Council found the licensee's efforts to make up the deficient CE credits were mitigating, and applied a global \$1,000 penalty, in addition to a requirement to complete the Council Rules Course and pay investigation costs.
26. [*Cameron Alexander Fortin*](#) (October 10, 2019) concerned a life agent who contacted Council to report that they had fallen short on CE credits due to a misunderstanding about how many courses they were required to complete per year. Council initiated a CE audit which found the licensee had failed to fulfill their CE requirements for three years. The licensee was fined \$500 for each year, for a total of \$1,500. Council considered it mitigating that the licensee had proactively contacted Council once they realized their error, and that they quickly began to make up their missed CE credits.
27. [*Maria Rhodora Banada Thomas*](#) (July 10, 2018): The life agent's E&O coverage lapsed. The licensee advised Council that the lapse was due to inadvertence and that they had not conducted insurance business during the lapse period. Despite finding the breach of Council Rule 7(11) was unintentional, Council imposed a \$1,000 fine. This decision stands for the proposition that Council will apply a minimum fine of \$1,000 for breaches of Council Rule 7(11), regardless of the reasons for that breach.
28. [*Allen Karl Radley Aniceto*](#) (February 9, 2021): A life agent's E&O lapsed for a period of 113 days, and the licensee had not informed Council of this lapse. During its investigation, Council ascertained that the licensee had authority to represent a second agency, though the licensee had not notified Council of their departure and by extension had not notified Council that they no longer had authority to represent the agency. The licensee was fined \$1,000 for their failure to maintain E&O coverage and was

reprimanded for their failure to notify Council that their E&O lapsed, and they no longer held authority to represent the agency. They were also ordered to complete the Council Rules Course.

29. Council recognized, having reviewed the precedents, that the approach it has adopted for disciplining licensees who have breached Council Rules pertaining to CE and E&O requirements is to assess a “baseline” fine of \$1,000 for each breach, as well as require the licensee to complete the Council Rules Course. In some cases, mitigating factors are identified that support lowering the fine.

MITIGATING AND AGGRAVATING FACTORS

30. Council found the Licensee’s breaches were the result of ignorance, rather than willful disregard, of the requirements of their licence. Council also found the Licensee to have been remorseful, which was demonstrated particularly by their efforts to make up the missing CE credits. In addition, Council noted the Licensee had not conducted any insurance business during the period their E&O lapsed.
31. Council did not find any aggravating factors. Assessing the mitigating factors listed above, Council determined the mitigating factors are sufficient to displace the baseline \$1,000 fine per breach of the CE rules established by precedent. However, Council determined that the baseline \$1,000 established by precedent in relation to breaches of the E&O requirements was appropriate in this case.

CONCLUSIONS

32. Council determined a fine of \$2,000 was appropriate, representing \$500 per licence period in which the Licensee failed to complete their required CE and \$1,000 for their failure to maintain E&O as required.
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.
34. Council also determined that the Licensee would benefit from completing the Council Rules Course and the Continuing Education Guidelines and Requirements Course, in order to better familiarize themselves with the obligations that accompany licensure.

INTENDED DECISION

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

- a. Fine the Licensee \$2,000, to be paid within 90 days of Council's order;
- b. Require the Licensee to complete the Council Rules Course for life and/or accident and sickness insurance within 90 days of Council's order;
- c. Require the Licensee to complete the Continuing Education Guidelines and Requirements Course within 90 days of Council's order;
- d. Assess the Licensee with Council's investigation costs of \$687.50, to be paid within 90 days of Council's order; and
- e. Impose a condition on the Licensee's life and accident and sickness insurance agent licence that failure to complete the Council Rules Course and Continuing Education Guidelines and Requirements Course, and to pay the fine and investigation costs by their deadlines will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete the Licensee's 2026 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.

36. 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.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

37. Council may take action or seek legal remedies against the Licensee to collect outstanding fines and/or costs, should these not be paid by the 90 day deadline.

RIGHT TO A HEARING

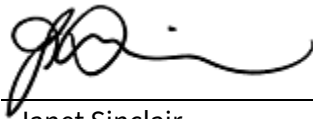
38. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee **must give notice to Council by delivering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

39. 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 <https://www.bcfst.ca/> or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Dated in Vancouver, British Columbia on the **15th day of April, 2024.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director