

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

SHENGLIN XIAN
(the “Licensee”)

ORDER

As Council made an intended decision on May 14, 2013, 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 May 29, 2013; 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:

1. The Licensee is fined \$2,000.00.
2. The Licensee is assessed Council’s investigative costs of \$1,837.50.
3. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **September 18, 2013**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee’s life and accident and sickness insurance licence is suspended as of **September 19, 2013**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

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This order takes effect on the **18th day of June, 2013.**



C. David Porter, LL.B., FCIP, CRM
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

("Council")

respecting

SHENGLIN XIAN

(the "Licensee")

INTRODUCTION

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.

As part of Council's investigation, on April 22, 2013, an Investigative Review Committee (the "Committee") met with the Licensee and his legal counsel to discuss allegations the Licensee made discretionary policy structure changes without client consent, and executed insurance documents without the signature of the insured/policyholder.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the 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 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 May 14, 2013 meeting. At the conclusion of its meeting, 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 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

In December 2009, the Licensee procured two participating whole-life insurance policies for a married couple (the "Complainants"). The Complainants allege the Licensee used his own discretion to change the initial application by changing the structure and dividend option, which appeared to prompt a subsequent policy-change application process. The Licensee stated he reviewed the initial applications in full with the Complainants and they understood that after their medical reviews were complete they would select the appropriate policy structure.

The investigation raised issues with the Licensee's execution of insurance documents without one of the insured/policyholder's signature. Both the Licensee and the Complainants have disputed the ownership of the signatures related to the female client's Policy Change Application and Use of Funds forms. It is, however, not disputed that the female client did not sign the insurance documents in question. The Licensee stated that he spoke with the female client by phone and obtained verbal authorization for her sister to sign on her behalf, along with a promise that the female client would subsequently provide written authorization. The Licensee incorrectly assumed that this written authorization was obtained by his office, when in fact it was not.

Although the Complainants have disputed the female client's signatures on the aforementioned insurance documents, their actions support the Licensee's position that they approved the transactions (i.e., payment received with initial application and remittance of premium with Use of Funds Form). Further, there is no dispute that the male client signed all relevant documents.

The Complainants also expressed concern about the suitability of the product recommendation. As a result of the Complainants' concern, the insurer conducted an examination of the policies and their suitability for the Complainants. The insurer did not identify any concerns.

ANALYSIS

The Licensee took responsibility for his error in allowing another party to sign on behalf of the female client without proper written authorization. The Licensee's position was that this was an isolated event in his otherwise unblemished 22-year insurance career. The Licensee stated that he recognizes and is embarrassed by his error, and gave his assurance that it will not happen again.

Council found the Licensee failed to carry on the business of insurance in accordance with the usual practice. Council determined that as an experienced life and accident and sickness insurance agent, the Licensee should have known that allowing a third party to sign on behalf of a client without written authorization was wrong.

Council accepted the Licensee's submissions that he acted solely to convenience the Complainants. Council was satisfied that the Complainants were present during the initial application process and that at least the husband was present for all subsequent meetings and discussions. Council determined that this was an issue of an experienced licensee allowing an improper signature on two occasions.

Council considered the precedents *C. Leung* and *L. Schmid*.

In *C. Leung*, the licensee altered insurance application signature pages using client signatures from previous applications in at least 25 cases, rather than obtaining the required new signatures from the clients. Council determined that the licensee altered the insurance documents as a result of time constraints in his practice, and all policies were placed in accordance with the clients' wishes. Council held that the licensee failed to act in good faith and carry on the business of insurance in accordance with the usual practice, but did not find that he posed an ongoing risk to the public. Council fined the licensee \$5,000.00, required him to complete an errors and omissions course, and assessed him Council's investigative costs.

In *L. Schmid*, the licensee witnessed a forged signature on a life insurance application completed for a third party who was not present at the time. The licensee wrongfully assumed that the person who signed on behalf of the third party was her husband. Council fined the licensee \$2,000.00, assessed him Council's investigative costs, and required that he complete all of the courses in Advocis' Best Practices program. The licensee was also required to successfully complete the Life Licence Qualification Program examination on a first attempt, or he would be required to re-qualify educationally. Council further imposed a condition that the licensee be subject to supervision for an additional period of 12 months, or until such time as he completed the educational conditions.

The Licensee submitted that in both of these cases, the breaches were much more serious. In *C. Leung*, the breaches were numerous. In *L. Schmid*, the licensee did not have verbal approval from the third party to allow someone to sign on her behalf, and falsely stated to the insurer that he had witnessed her signature. Council acknowledged that the conduct in the *C. Leung* and *L. Schmid* precedents were more serious than in this case. Council noted, however, that the more egregious conduct of the licensees in these precedents was addressed by significant education and supervision requirements.

In this case, Council held that the Licensee recognized his error and did not pose a risk to the public. Accordingly, it did not feel that education or supervision was required. Council determined that a fine of \$1,000.00 per improper signature transaction was an appropriate penalty in the circumstances.

INTENDED DECISION

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

1. Fine the Licensee \$2,000.00.
2. Assess the Licensee Council's investigative costs of \$1,837.50.

The Licensee is advised that should the intended decision become final, the fine and costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and costs within the 90 days will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence until such time as the fine and costs are paid in full.

The intended decision will take effect on **June 18, 2013**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

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 by **June 17, 2013**. 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 **June 17, 2013**, the intended decision of Council will take effect.

Even if this decision is accepted by the 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 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

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Dated in Vancouver, British Columbia, on the 29th day of May, 2013.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

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