

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

RANDAL THOMAS BRETT HAW
(the “Licensee”)

ORDER

As Council made an intended decision on June 23, 2020, pursuant to sections 231, 236 and 241.1 of the Act; and

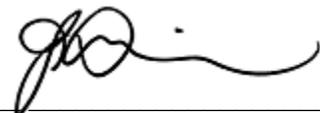
As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated July 10, 2020; and

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;
2. The Licensee is assessed investigation costs of \$1,337.50;
3. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence that requires him to complete the Council Rules Course; and
4. A condition is imposed on the Licensee’s Life Agent licence that failure to pay the fine and investigation costs or complete the Council Rules Course by October 26, 2020 will result in the automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until the fine and investigation costs are paid in full and the Council Rules Course is complete.

This order takes effect on the **27th day of July, 2020.**



Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

RANDAL THOMAS BRETT HAW

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation respecting allegations that the Licensee:
 - a) Forged two clients’ signatures on an insurer’s application documents;
 - b) Obtained copies of the clients’ signatures from a home insurance application;
 - c) Completed life insurance application questions over the phone for both clients, when only one was present on the call; and
 - d) Withdrew the clients’ life insurance applications without their consent.
2. On May 20, 2020, 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 any further information. A copy of the investigation report was forwarded to the Licensee in advance of the meeting.
3. Staff’s investigation report, the Committee’s report to Council, the Licensee’s submissions and additional documentation provided by the Licensee were reviewed by Council at its June 23, 2020 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 March 2005 and is a Life Agent nominee.
6. In May 2018, the complainant and her partner were referred to the Licensee. Over a span of several months, there were many insurance discussions involving different products such as disability, group, and life insurance.
7. On April 24, 2019, the Licensee completed two individual electronic life insurance applications over the telephone with the complainant who answered all the questions on both applications, including for Temporary Insurance Agreements, for both herself and her partner. Afterward, the Licensee emailed them copies of the completed electronic applications.
8. On April 25, 2019, the complainant questioned the Licensee after noticing that both applications were signed even though neither she nor her partner had signed them.
9. On May 2, 2019, the Licensee explained to the complainant that he had obtained copies of their signatures from their home insurance policy which had been placed through his agency’s general insurance services.
10. On May 16, 2019, the Licensee emailed the complainant to advise that he was cancelling both applications because he had made an error and used the incorrect forms for a Non-Face-to-Face (“NFTF”) sale.
11. On May 29, 2019, the insurer wrote to the complainants to return their premiums and advise their file was closed due to their decision to decline coverage.

THE LICENSEE’S SUBMISSIONS

12. The Licensee advised that, at the time of the above noted events, he was working a lot of extra hours at his agency in a very fast paced environment. Further, he advised he was the only one in the Agency who was active in selling life insurance. He also stated that he was dealing with several serious and concurrent issues in his personal life.

The Application Signatures

13. The Licensee explained that, using a computer mouse, he signed the clients’ signatures on the electronic applications because he believed that was the appropriate and valid NFTF

process. He stated that a senior life insurance broker had told him that the advisor in a NTFF sale signs on behalf of the client since the electronic application cannot be completed without a signature. He advised that the broker also told him that the physical signature for the application was to be obtained at the paramedical exam and at policy delivery. Based on this information and from various insurance companies' NTFF procedures, the Licensee assumed that the insurer followed a similar process. He acknowledged that he had neglected to confirm the NTFF process with the insurer directly.

14. The Licensee further advised that he had told the complainant about this NTFF process on the phone. He stated he explained the process as he understood it to be true. He further advised that he specifically told her that he would enter the initial signatures and then she and her partner would provide "wet" signatures when they attended the paramedical examination. The Licensee advised that he believed he could have just signed an "X" for the clients but he admitted he did not because, in his experience, applications tended to be second guessed by the insurer when there was no actual signature.

Viewing the Clients' Home Insurance File

15. With regard to accessing the clients' home insurance file, the Licensee advised he did so by asking an employee on his agency's general insurance business at another location to retrieve it for him. He thought this was permissible because he was accessing the file of existing agency clients. He also added that he was incredibly distracted by his personal situation at the time. In hindsight, the Licensee agreed that he should not have done this. He advised he now understands the privacy implications and he was very embarrassed and apologetic.

Not Obtaining the Client's Application Information Directly

16. The Licensee conceded that he should have spoken to both clients directly to obtain their information for the application. He added, however, that he did email the applications to the Complainant on the day they were submitted asking her and her partner to review them for any errors so he could have corrections made before the policies were issued.

Withdrawing the Clients' Applications

17. The Licensee advised that, as soon as he found out he was wrong about the insurer's NTFF process, he decided the insurance applications could not continue because he believed the resulting policies could be voidable. Therefore, he advised the insurer to cancel the

applications, but he did not provide the insurer with an explanation. He confirmed that the premiums were subsequently refunded to the clients by the insurer.

18. The Licensee advised the Committee that he made an honest mistake with regard to his understanding of the process. He agreed he should have researched the procedure himself and could only explain that he did not because of his personal situation and long hours of work at that time. He expressed extreme remorse, shame, embarrassment, and humiliation and was only trying to amend the situation by withdrawing the applications when he realized he had made an error.

ANALYSIS

19. Council considered staff's investigation report, the Committee's report to Council, the Licensee's submissions and additional documentation provided by the Licensee, and agreed that there is no dispute that the allegations against the Licensee are true.
20. Council agreed that the Licensee breached section 3.2 of the Code of Conduct with regard to trustworthiness. Although the Licensee's conduct did not rise to the level of deliberate fraud for his own personal benefit, he still forged clients' signatures when, by his own albeit erroneous understanding of the procedures, he could have written an "X" which he acknowledged would have drawn the insurer's attention. As such, his intent was for convenience or, in other words, so the applications would just go through unquestioned. In addition, the Licensee's access of the clients' general insurance file also supports a breach of section 3.2.
21. Council determined that the Licensee also breached section 4.2 of the Code of Conduct with regard to good faith for his unauthorized access of the clients' general insurance file, for submitting applications to the insurer that bore signatures he had falsely created, and for failing to obtain application information directly from both clients, not just one. A breach of good faith was also supported by the fact that the Licensee should have told the insurer the reason for the application withdrawals so that the letters to the clients' afterward did not erroneously state that they had decided to decline when in fact they had not. Council agreed, however, that the Licensee's action of withdrawing the applications was in the clients' best interest in the circumstances as there was a risk the policies might have been voidable for his failure to follow the proper process.
22. Council held that the Licensee breached section 5.2 of the Code of Conduct with regard to competence for failing to directly identify the appropriate NFTF procedures himself, rather than relying on hearsay from another broker.

23. It follows that the Licensee also breached Council Rule 7(8) which required him to comply with the Code of Conduct.
24. Council agreed that the Licensee's misconduct was not malicious or meant for personal gain, and accepted that he is extremely remorseful and embarrassed. However, the Licensee is an experienced Life Agent and his agency's Life nominee. Therefore, misunderstanding of the NFTF process aside, he ought to have known it is not acceptable to forge clients' signatures, access their private information, take application information from someone other than the client, or withdraw applications without the clients' consent, albeit for good reason in this case.
25. As such, Council agreed that a sanction is warranted for the purposes of specific and general deterrence, rehabilitation, punishment, denunciation of the Licensee's conduct and the need to maintain the public's confidence in the insurance industry and Council's ability to govern insurance licensees.

INTENDED DECISION

26. 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. Further, any mitigating or aggravating circumstances must be considered. In this case, the Licensee's personal circumstances, that he has not been the subject of discipline before, his remorse, and his candor both during the investigation and before the Committee were all mitigating factors. However, his lengthy experience and position as a nominee were aggravating as he ought to have known better.
27. In considering the appropriate penalty, the Committee reviewed three previous cases involving similar breaches and the Committee's recommendation.
28. In *Christine Helene Craig* (August 19, 2019), a Level 3 general insurance agent and manager of an agency's two branch locations improperly signed ICBC documents on behalf of her clients when such signatures were inadvertently missed and she was not able to quickly get in touch with the client. She believed she was fixing clerical errors and did not realise the gravity of her actions until it was brought to her attention. Once she realised the seriousness of her actions, she was very remorseful. The Council found that the licensee had no malicious intent, but ought to have known that it wrong to forge a client's signature. The licensee was fined \$1,000, assessed investigative costs of \$1,512.50, and required to complete an ethics course and the Council Rules Course.

29. In *Gerald Douglas Spielmacher* (June 7, 2016), a Life Agent for over 30 years and the nominee of his agency signed two of a client's insurance applications without meeting the client. The applications were actually completed by an agent who was a member of the Licensee's insurance team. The Licensee stated this was the only time this had ever occurred and that he was only trying to assist his agent. Before signing, he reviewed the applications and discussed them with the agent. He acknowledged that he never met or talked with the client. He was aware this practice was inappropriate. Council fined the licensee \$2,500, assessed investigation costs of \$525, and directed him to take Advocis' ARMED seminar.
30. In *FICOM and Insurance Council of British Columbia and Maria Pavicic* (November 22, 2005), an appeal to the Financial Services Tribunal ("FST"), a Life Agent falsely witnessed signatures on five applications received from a former life insurance agent, signed as a representative agent without having met the applicants, failed to conduct diligence on the status of the former licensee prior to signing, and paid a commission to a knowingly unlicensed sales person. The licensee reported her misconduct to Council before it was discovered and cooperated in the process. She attempted to contact the applicants, after the fact, and expressed remorse. The licensee had not had any prior incidents of misconduct. Bearing these distinguishing factors in mind, the FST assessed a thirty day suspension of her licence, a fine of \$1,000 and investigation costs of \$1,237.50.
31. With the facts of the present matter and the above three cases in mind, Council agreed that a fine of \$2,000, investigation costs of \$1,337.50, and a requirement to complete the Council Rules Course is an appropriate penalty for the totality of the Licensee's misconduct.
32. With regard to the investigations costs, Council confirmed that, as a self-funded body, it should look to licensees who have engaged in misconduct to bear the costs of their disciplinary proceedings so they are not borne by other licensees in general.
33. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
 - a) Fine the Licensee \$2,000;
 - b) Assess the Licensee investigation costs of \$1,337.50;
 - c) Require the Licensee to complete the Council Rules Course; and
 - d) Impose a condition on the Licensee's Life Agent licence that failure to pay the fine and investigation costs or complete the Council Rules Course within 90 days of Council's

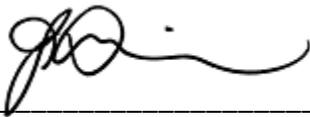
order will result in the automatic suspension of his licence and he will not be permitted to complete his 2021 annual filing until the fine and investigation costs are paid in full and the Council Rules Course is complete.

RIGHT TO A HEARING

34. 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 this intended decision, the intended decision of Council will take effect.
35. 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 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 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 **10th day of July, 2020**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director