

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

and the

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

and

**VARINDER KAUR**  
(the “Licensee”)

**ORDER**

As Council made an intended decision on June 23, 2020, pursuant to sections 231 and 236 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 15, 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 and 236 of the Act, Council orders that:

1. The Licensee is fined \$1,500 for failing to maintain her errors and omissions (“E&O”) coverage and for conducting insurance business while she was without E&O;
2. The Licensee is reprimanded for her failure to notify Council that she was without E&O insurance and an authority to represent an agency;
3. The Licensee is required to complete the Council Rules Course;
4. A condition is imposed on the Licensee’s life and accident and sickness insurance agent (“Life Agent”) licence that failure to complete the Council Rules Course by October 29, 2020 will result in the automatic suspension of her licence and she will not be permitted to complete her 2021 annual filing until the Council Rules Course is complete; and

Order  
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5. A condition is imposed on the Licensee's Life Agent licence that failure to pay the fine by January 27, 2021 will result in the automatic suspension of her licence and she will not be permitted to complete her 2021 annual filing until the fine is paid in full.

This order takes effect on the **31<sup>st</sup> day of July, 2020.**



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Janet Sinclair, Executive Director  
Insurance Council of British Columbia

## **INTENDED DECISION**

of the

### **INSURANCE COUNCIL OF BRITISH COLUMBIA**

("Council")

respecting

### **VARINDER KAUR**

(the "Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation respecting allegations that the Licensee, a life and accident and sickness agent ("Life Agent"):
  - a) breached Council Rule 7(3)(b) when she failed to notify Council within five business days that her authorization to represent an agency had been withdrawn;
  - b) breached Council Rule 7(11)(a) by failing to maintain or be covered by errors and omissions ("E&O") insurance; and
  - c) breached Council Rule 7(11)(c) for :
    - (i) failing to notify Council within 5 business days that she was no longer covered by E&O insurance; and
    - (ii) failing to immediately stop conducting insurance activities when she ceased to be covered by E&O insurance.
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 email submissions provided by the Licensee after the Committee meeting 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 and 236 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. On May 21, 2019, the Licensee's agency wrote to her to advise that she was no longer authorized to represent the agency.
6. On May 29, 2019, the insurer sent a letter to the Licensee advising that her contract was terminated.
7. On June 25, 2019, the agency's E&O broker emailed the Licensee advising that, because her insurer contract had been terminated, her E&O coverage was cancelled, effective May 30, 2019. The Licensee advised this was the first she learned of the contract cancellation. She immediately called her agency to confirm the information, leaving phone messages.
8. On June 27, 2019, the Licensee received an email from the agency confirming that her authority to represent had been terminated.
9. On July 12, 2019, the agency advised Council that the Licensee was no longer authorized to represent the Agency.
10. On July 15, 2019, the E&O broker wrote to the Licensee to confirm that her E&O coverage had been cancelled. The letter advised that the coverage ended June 28, 2019, contrary to the broker's June 25, 2019 email which advised the coverage had ended May 30, 2019.
11. On July 21, 2019, the Licensee wrote a policy for super visa insurance.
12. On August 1, 2019, Council staff wrote to the Licensee, advising her that her licence status had been changed from active to inactive.
13. On August 14, 2019, the Licensee wrote another policy for super visa insurance. She advised that she received Council's August 1st letter that same day and immediately telephoned Council staff to self-report that she had written the two policies.

### **THE LICENSEE'S SUBMISSIONS**

14. In December 2015, the Licensee became a licenced Life Agent with Council, working part-time in insurance while maintaining full-time employment. During her meeting with the Committee, the Licensee advised of several personal circumstances that require a significant amount of time and attention and that she is presently on leave from her full-time job as a result.

#### ***Failure to Notify Authority to Represent Withdrawn***

15. The Licensee advised that she uses a relative's home as her mailing address, relying on that relative to deliver her mail. She provided this address to the agency and the insurer but advised she never received any mail from either. She denied having received the agency's May 21, 2019 letter or the insurer's May 29, 2019 letter. She did, however, receive the E&O broker's July 15, 2019 letter and Council's August 1, 2019 letter as both were sent to a different address that she had provided.

16. The Licensee advised that she did not know her authority to represent the agency had been cancelled until she received the E&O broker's email on June 25, 2019 and the agency's email confirmation of June 27, 2019. She further advised that she did not know she was required by the Council Rules to notify Council of the cancellation.

#### ***Failure to Maintain E&O Insurance***

17. The Licensee advised that she did not realize she was supposed to maintain her own E&O insurance. She explained that she thought E&O was only for the purpose of litigation and that her agency did not tell her it was mandatory. She was very apologetic for not having taken steps to identify what was required herself.

#### ***Failure to Notify No Longer Insured***

18. The Licensee apologized that she was unaware of the requirement to advise Council when her E&O insurance was no longer in place.

#### ***Failure to Stop Conducting Insurance Business***

19. The Licensee confirmed that she wrote the two super visa policies, one on July 21, 2019 and the other on August 14, 2019. She advised she thought she could do so because, to her knowledge, her insurance licence with Council was still active.

20. On August 14, 2019, the Licensee received Council staff's August 1, 2019 letter advising that her licence status had been changed from active to inactive. As a result, the Licensee immediately contacted Council staff to self-report that she had written the two policies.

#### **ANALYSIS**

21. Council considered staff's investigation report, the Committee's report to Council, the Licensee's submissions to the Committee and the additional email submissions provided by the Licensee, and agreed that the Licensee breached the Council Rules.

22. Council accepted that the Licensee did not commit the breaches intentionally and that she is extremely remorseful. However, Council agreed that, as a licenced insurance agent, the Licensee ought to have known the responsibilities and duties conferred upon her under the Rules. E&O insurance and an authority to represent an agency are requirements for holding an active licence whether conducting insurance business or not. The Licensee had a responsibility and obligation to be familiar with the Council Rules and govern herself accordingly, even if insurance was only a part-time endeavor. Misunderstanding or ignorance of the Rules does not justify a failure to comply. Furthermore, Council agreed that the Licensee's failure to maintain E&O coverage as required put her clients at risk.

23. 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**

24. 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.

25. In considering the appropriate penalty, Council reviewed the Committee's recommendation and several previous cases involving similar breaches.

26. In *Maria Rhodora Banada Thomas* (October 26, 2018), a Life Agent failed to maintain her E&O insurance for approximately seven months. She apologized and explained that the failure to renew was in error and partially due to personal circumstances. She also advised that she did not conduct insurance business during the period she was without coverage. She promised it would not happen again and that she would take extra care to

ensure procedures were in place to keep track of expiry and renewal dates on her E&O insurance. Council accepted that the licensee's failure was unintentional and that she did not conduct any insurance activities while she was without E&O insurance and, therefore, did not place any clients at risk. Nevertheless, the licensee was responsible to fulfil this requirement and failed to do so. Accordingly, Council determined that her actions warranted discipline and that a failure to comply with this requirement ought to be subject to a minimum fine of \$1,000 regardless of the reason for the breach. In the result, the licensee was fined \$1,000.

27. In *Harold Wong Yang* (August 23, 2016), a Life Agent's E&O lapsed on November 1, 2013 but he did not become aware of the lapse until about two weeks later. He did not advise Council, cease all insurance activities, or take steps to renew. The licensee stated he had failed to follow up because he became ill. On December 16, 2013, the licensee purchased new E&O, but because it did not meet Council's minimum requirements, his licence was terminated. He subsequently obtained proper insurance and his licence was reissued on January 13, 2014. Council took into consideration the licensee's health issues but found this did not justify his failure to comply. Council concluded that the licensee was aware of the requirements and chose not to comply. The licensee was fined \$2,000 for failing to maintain E&O. He was also ordered to complete the Council Rules Course.
28. In *Ma-Isabel Perez Javillo* (October 28, 2014), a Life Agent's E&O insurance expired on June 26, 2013. She had received notice of the expiration but subsequently submitted her annual filing to Council confirming that she was in compliance with all of Council Rules. Due to a number of personal challenges, she continued to engage in insurance activities while without E&O. Although sympathetic, Council did not accept the licensee's personal circumstances to be mitigating as the licensee's actions had put the public at risk. Council found that in cases where the licensee intentionally operated without E&O insurance, a substantial fine is appropriate which, in this case, was \$2,800. Council also assessed a fine of \$500 for the material misstatement.
29. In *Pamela Peen Hong Yee* (December 3, 2013), a Life Agent failed to maintain E&O for approximately 7 months. She explained that she had experienced a difficult transition leaving the agency system and going out on her own. She had to learn about different insurers, their products, and underwriting requirements. She claimed she lacked confidence in herself and began to develop health issues. She processed 13 insurance applications while she was without insurance because she believed she still had E&O coverage. She stated she ceased once her MGA advised her she did not have E&O and she immediately obtained coverage. Council acknowledged that the Licensee took responsibility for her failure to comply with Council Rule 7(11). The Licensee reinstated her E&O insurance once she was advised by her MGA that her coverage had lapsed. The

Licensee had worked in the industry for over 13 years without any disciplinary action taken against her. Ultimately, Council found that the evidence before it established an unintentional breach of Council Rule 7(11). Council imposed a fine of \$1,600.

30. With the facts of the present matter and the above cases in mind, Council agreed that in light of the *Thomas* case, the minimum fine for failing to maintain E&O insurance should be \$1,000. However, the Committee then considered the fact that the Licensee knew about the cancellation of her E&O insurance as early as June 25, 2019. Accordingly, in light of this fact and the *Yang, Javillo*, and *Yee* cases, Council agreed that a total fine of \$2,000 is appropriate for the Licensee's failure to maintain E&O insurance and for conducting business while she was without E&O. However, in consideration of the Licensee's personal circumstances, that her breach was unintentional, that she took personal responsibility and was sincerely remorseful, that she immediately contacted Council when she realized she had sold two policies while her licence was inactive, and that no harm was suffered by her clients, Council agreed that a \$500 reduction for a total fine of \$1,500 is appropriate. Council decided to grant the Licensee 180 days to pay the fine, rather than the usual 90 days, due to her personal circumstances and that she is on leave from her regular employment.
31. In addition, Council agreed that the Licensee be reprimanded for her failure to notify Council that her authority to represent had been cancelled and her E&O insurance terminated. She is also ordered to complete the Council Rules Course.
32. Pursuant to sections 231 and 236 of the Act, Council made an intended decision to:
  - a) Fine the Licensee a total of \$1,500 for failing to maintain her E&O coverage and for conducting insurance business while she was without E&O;
  - b) Reprimand the Licensee for her failure to notify Council that she was without E&O insurance and an authority to represent an agency;
  - c) Require the Licensee to complete the Council Rules Course;
  - d) Impose a condition on the Licensee's Life Agent licence that failure to complete the Council Rules Course within 90 days of Council's order will result in the automatic suspension of her licence and she will not be permitted to complete her 2021 annual filing until the Council Rules Course is complete; and
  - e) Impose a condition on the Licensee's Life Agent licence that failure to pay the fine within 180 days of Council's order will result in the automatic suspension of her

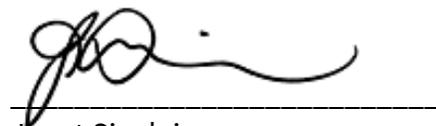
licence and she will not be permitted to complete her 2021 annual filing until the fine is paid in full.

### **RIGHT TO A HEARING**

33. 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.
34. 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](http://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 **15th day of July 2020**.

For the Insurance Council of British Columbia



Janet Sinclair  
Executive Director