

Insurance Council

BRITISH COLUMBIA

CODE OF CONDUCT

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IMPORTANT INFORMATION REGARDING THE CONTENTS OF THIS CODE

Unless otherwise qualified in this Code, read:

“Act” as the *Financial Institutions Act*;

“adjusting firm” as a licensed corporation or partnership, or an individual sole proprietor insurance adjuster, that meets the nominee requirements set out in Council Rules;

“agency” as a licensed corporation or partnership, or an individual sole proprietor agent, that meets the nominee requirements set out in Council Rules;

“client” as a person who may reasonably be expected to rely on a licensee’s advice or actions in relation to insurance;

“Code” as the Code of Conduct;

“Council” as the Insurance Council of British Columbia;

“licensee” as a licensed insurance salesperson, agent or adjuster;

“nominee” as a licensee nominated to exercise the rights and privileges of an insurance licence issued to an insurance agency or an insurance adjusting firm;

“principal” as a person on whose behalf a licensee has undertaken to perform adjusting services;

“person” includes a corporation, partnership, society, association or other organization or legal entity;

“Rule” as a rule made by Council pursuant to section 225.1 of the Act; and

“transaction” as a situation in which a licensee provides an insurance product or service to any person.

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Appendix B

CLIENT CONFIDENTIALITY GUIDELINES FOR INSURANCE AGENTS, ADJUSTERS, AND SALESPERSONSB1

1. INTRODUCTION

The strength of the insurance industry is based, in part, on industry members providing advice and services to the public in a competent and professional manner. The underlying principle of all insurance business is utmost good faith. To command the confidence and respect of the public, the insurance industry must maintain a reputation for integrity, competence, and good faith.

The provincial legislature has entrusted Council with the responsibility for maintaining standards of professional conduct in the insurance industry. The Act and Rules empower Council to set standards for insurance salespersons, agents and adjusters and to take remedial action where those standards have not been met. Rule 7(8) requires that licensees comply with this Code.

Council's mission statement is:

We serve the public by ensuring licensed insurance agents, salespersons and adjusters act within a professional framework, which promotes ethical conduct, integrity, and competence.

In keeping with Council's mandate, the purpose of the Code is to define and communicate standards of conduct for use by licensees in their practice of the business of insurance. The Code is also used as a guide by Council in its deliberations on proper and usual practice in particular circumstances.

The Code sets out minimum standards of conduct. The extent to which each licensee rises above these standards is a personal decision. However, by striving to maintain the highest possible standards of ethical conduct, a licensee will enjoy the respect and confidence of the public and other members of the industry.

Licensees have a responsibility to assist in the regulatory process and act as gatekeepers for the industry by discouraging misconduct and reporting it where identified.

2. INTERPRETATION

The Code is divided into a number of subsections, each of which addresses a specific principle. Each Principle is defined and then further clarified with a stated Requirement. To provide licensees with additional guidance, each subsection also includes Guidelines and Examples of Misconduct taken from past Council decisions.

The Code provides a framework for a licensee to measure his or her conduct in particular circumstances. It is not possible to foresee every possible situation and describe the proper conduct. When reading the Code, keep in mind that although presented separately, all principles and requirements are interconnected. For example, the principle of Trustworthiness is fundamental to all activities of a licensee and to each of the principles outlined.

The Code applies to all licensees and should be read and interpreted in the context of a licensee's area of insurance practice and Council's primary concern, which is protection of the public interest. For clarity the Code refers to licensees by the first person "you".

The Code is written in plain language to be clear and concise and should be read in conjunction with governing legislation and the Rules. Council has additional resources available which expand on many of the principles and requirements detailed in the Code. These include our Notices and Bulletins which are available on our website at insurancecouncilofbc.com, as well as appendixes to the Code. Throughout the Code, when a published article or appendix was identified as addressing a particular subject, the Notice, Bulletin, or appendix is referenced.

3. TRUSTWORTHINESS

3.1 PRINCIPLE

In an industry where trust is the foundation for all dealings, you must meet rigorous standards of personal integrity and professional competence. These characteristics speak to the essence of what a licensee does. Failure to adhere to these standards reflects not only on you, but also on the profession. Trustworthiness is a fundamental element of each requirement in the Code.

3.2 REQUIREMENT

You must be trustworthy, conducting all professional activities with integrity, reliability and honesty. The principle of trustworthiness extends beyond insurance business activities. Your conduct in other areas may reflect on your trustworthiness and call into question your suitability to hold an insurance licence.

3.3 GUIDELINES

3.3.1 Conduct that would reflect adversely on your trustworthiness includes:

- a) dishonestly dealing with money or property;
- b) improper use of your position or knowledge as a licensee for personal benefit; (Bulletin – April 2003)
- c) intentionally misleading clients, insurers or Council through false statements or by withholding material information;
- d) knowingly prejudicing the interests of a client or principal for personal gain; and
- e) conduct in the nature of theft or fraud.

3.3.2 Acts of dishonesty outside your professional life may reflect on your trustworthiness to hold an insurance licence.

3.4 EXAMPLES OF MISCONDUCT

3.4.1 A chartered accountant accepted unsecured loans from clients, breached terms of a suspension order, swore a false affidavit and mishandled trust funds.

3.4.2 While acting in a position of trust for a volunteer organization, misappropriated funds from the organization.

3.4.3 Used confidential client information provided by an insurer for a purpose other than intended. (Appendix B)

3.4 EXAMPLES OF MISCONDUCT – *continued*

- 3.4.4 Made or assisted in making a false insurance claim.
- 3.4.5 Materially misrepresented odometer readings and previous vehicle damage in the private sale and registration of a licensee's motor vehicles.
- 3.4.6 Signed and submitted segregated fund applications solicited and completed by another agent, to help the other agent circumvent the insurer's internal policy that prohibited life agents from selling segregated funds unless they were also licensed to sell mutual funds.
- 3.4.7 Improperly rated a motor vehicle to circumvent AirCare.
- 3.4.8 Made false declarations to an insurer.
- 3.4.9 "Witnessed" a signature known to be a forgery.
- 3.4.10 Made false or misleading statements to Council.
- 3.4.11 Raised capital from clients of an insurance agency of which the licensee was owner and principal, without disclosing to the clients that they were investing in the agency and without providing material information to them about the investment, such as agency financial statements and disclosure on how the investments would be used.

4. GOOD FAITH

4.1 PRINCIPLE

The insurance industry is based on fiduciary relationships. Accordingly, the exercise of good faith by licensees in the practice of the business of insurance is essential to public confidence in the industry. Good faith is a fundamental aspect of your conduct and a key element in each of the Code's requirements.

4.2 REQUIREMENT

You must carry on the business of insurance in good faith. Good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligations as an insurance licensee.

You also owe a duty of good faith to insurers, insureds, fellow licensees, regulatory bodies and the public.

4.3 GUIDELINES

4.3.1 Conduct that would reflect adversely on your intention to practice in good faith includes:

- a) wilful disregard of duties and obligations under the Act, Rules and Code;
- b) misrepresentation or failure to disclose material information where required; (Bulletin – November 2002)
- c) unauthorized access, use or disclosure of confidential information; (Appendix B)
- d) making improper use of your position as a salesperson, agent or adjuster;
- e) employing or remunerating unlicensed persons to conduct insurance business; and
- f) taking advantage of a client's or insured's inexperience, ill health or lack of sophistication.

4.4 EXAMPLES OF MISCONDUCT

4.4.1 Signed as witness to applications, but had not in fact seen them signed.

4.4.2 Directed an employee to sign a document as agent of record, when the employee had not completed the form or met the policyowner.

4.4.3 Directed an unlicensed employee to take an insurance application.

4.4 **EXAMPLES OF MISCONDUCT** – *continued*

- 4.4.4 Submitted applications that were known to have been completed by an unlicensed person.
- 4.4.5 Used premium money for personal use.
- 4.4.6 Backdated a client's automobile insurance and subsequently lied to an ICBC adjuster about when and how the transaction was processed.
- 4.4.7 Counseled a client to misrepresent material information to an insurance company.
- 4.4.8 Accessed confidential client information from an insurer's computer database without authority and subsequently communicated that information to another person. (Appendix B)
- 4.4.9 Drafted and signed a false certificate of insurance for a family member who required evidence of insurance coverage.

5. COMPETENCE**5.1 PRINCIPLE**

Clients rely on the knowledge and advice of licensees. Accordingly, competence on the part of licensees is an essential requirement of the practice of the business of insurance. Incompetent conduct can result in significant prejudice to clients and insurers. It follows that you should not undertake to perform any insurance services beyond your level of competence.

5.2 REQUIREMENT

You must conduct all insurance activities in a competent manner. Competent conduct is characterized by the application of knowledge and skill in a manner consistent with the usual practice of the business of insurance in the circumstances.

You must continue your education in insurance to remain current in your skills and knowledge.

5.3 GUIDELINES

5.3.1 Your practice and level of service to clients should be consistent with that which a reasonable and prudent licensee in similar circumstances would exercise. Honest mistakes do not necessarily constitute a failure to adhere to the Code.

5.3.2 Conduct that would reflect on your competence includes:

- a) failing to properly place insurance coverage as instructed;
- b) failing to provide evidence of insurance coverage when required;
- c) failing to advise a client of a lapse or change in insurance coverage;
- d) failing to conduct an adequate fact finding and assessment of a client's insurance needs;
- e) failing to properly handle and account for money or property;
- f) failing to maintain proper and adequate books and records of insurance transactions and related financial affairs;
- g) failing to provide for the safekeeping and confidentiality of records (Appendix B);
- h) failing to advise an insurer/principal of a risk or claim;
- i) failing to properly document communications and instructions from a client to ensure mutual understanding and provide a record of the transaction; and
- j) practicing in an area where you lack sufficient expertise, training or experience.

5.3.3 Nominees are responsible to Council for all activities of the insurance agency or adjusting firm and must ensure the agency or firm and its employees are properly supervised and operate in accordance with the conditions and restrictions on their licences.

5.3 GUIDELINES – *continued*

- 5.3.4 Licensees who have supervisory duties must fulfil those duties competently. Improper practice by supervised employees may bring a supervisor's competence into question if the conduct occurred due to inadequate supervision, including lack of policies, procedures and training.
- 5.3.5 You must comply with the continuing education requirements under the Rules. However, these are minimum requirements and may not be sufficient to maintain appropriate standards, particularly if you work in specialized areas.
- 5.3.6 You must refrain from giving advice in areas beyond your expertise as an insurance licensee. For example, you should refer matters that would be more properly dealt with by a lawyer or accountant.

5.4 EXAMPLES OF MISCONDUCT

- 5.4.1 Sold an insurance policy that was inappropriate given the client's stated objectives and circumstances and that a prudent and competent agent would not have recommended.
- 5.4.2 Counseled a client to conduct an assignment of a life insurance policy in a manner that failed to meet the client's stated objective.
- 5.4.3 Failed to properly manage the business and financial aspects of an agency, including the proper handling and remittance of premium money to insurers.
- 5.4.4 Altered the effective date of an insurance contract.
- 5.4.5 Permitted a Level 1 salesperson to conduct general insurance business without the direct supervision of a Level 2 or Level 3 agent.
- 5.4.6 Employed an unlicensed individual in a licensed capacity for a period of five months because procedures were inadequate to ensure employees were properly licensed before they commenced insurance activities.
- 5.4.7 Provided written notice to clients that their insurance coverage had been renewed, prior to receiving confirmation from the insurance company that renewal terms would be offered.

6. FINANCIAL RELIABILITY**6.1 PRINCIPLE**

As an insurance licensee, clients and insurers entrust money, property and financial instruments to you to facilitate transactions or claims on their behalf. Accordingly, your reliability in handling these funds is essential to your practice as a licensee.

6.2 REQUIREMENT

You must be financially reliable. This means you can be relied upon to properly safeguard and account for money and property entrusted to you and to promptly deliver them in accordance with the circumstances.

6.3 GUIDELINES

- 6.3.1 Conduct outside your professional life may reflect on your financial reliability.
- 6.3.2 Outstanding judgements, pending legal proceedings and/or bankruptcies can reflect on your financial reliability.
- 6.3.3 Where you collect or receive funds on behalf of an insurer, you must:
 - a) not encumber the funds without the prior written consent of the insurer;
 - b) not use or apply the funds for purposes other than as described in the agreement with the insurer; and
 - c) pay to the insurer all funds collected or received less any deductions authorized by the insurer.

6.4 EXAMPLES OF MISCONDUCT

- 6.4.1 Failed to account for or repay unauthorized withdrawals from a bank account over which the licensee held a power of attorney.
- 6.4.2 Failed to invest a client's money in mutual funds as instructed.
- 6.4.3 Contrary to his clients' interests and for personal gain, solicited clients to invest the cash value of their life insurance policies in a company he had a vested interest in, without disclosing his inherent conflict of interest and the true risks involved.

6.4 EXAMPLES OF MISCONDUCT – *continued*

- 6.4.4 Personal debts and questionable financial involvement with a number of companies that solicited investors for offshore investments.
- 6.4.5 Legal proceedings by a group of former clients alleging misappropriation of funds and by a bank seeking payment for personal credit line agreements and two promissory notes.

7. USUAL PRACTICE: DEALING WITH CLIENTS

7.1 PRINCIPLE

Under the Code, a client includes anyone who might reasonably be expected, in the circumstances, to rely on your professional advice or actions in relation to his or her insurance. You are required to put the best interests of the client as your first concern, as befits the role of a fiduciary.

7.2 REQUIREMENT

When dealing with clients you must:

- protect clients' interests and privacy;
- evaluate clients' needs;
- disclose all material information; and
- act with integrity, competence and the utmost good faith.

7.3 GUIDELINES

Conflict of Interest

A conflict of interest exists when your loyalty to, or representation of, a client or insurance company could be materially or adversely affected by your interest or duty to another party. A conflict of interest may be real, potential or apparent.

Conflict of Interest of Guidelines for Insurance Agents, Adjusters, and Salespersons is included as Appendix A.

Disclosure

- 7.3.1 What information is material and should be provided to a client depends on the circumstances of the transaction. You should disclose any information relevant to the client's insurance needs that a reasonable and prudent licensee would disclose in the same circumstances.
- 7.3.2 Prior to arranging an insurance transaction with a client who has been referred to you by an unlicensed third party, you must disclose to the client, in writing, any fee or compensation paid to the third party for the referral.

7.3 GUIDELINES – *continued*

- 7.3.3 Prior to conducting a transaction, you must disclose any fees you charge in addition to the policy premium. The fee should be disclosed in writing to the client and include separate dollar values for the total insurance premium charged by the insurer, the total additional fee charged by the agent and any premium finance fees charged by the agent.
(Bulletin – October 2001)
- 7.3.4 You must disclose to the client any arrangement to place the client’s insurance through another agent and meet Council’s sub-brokering guidelines.
(Notice ICN 98-003 *Sub-Brokering*)
- 7.3.5 You must fully inform clients about all aspects of the insurance products they purchase, including any changes that occur during the term of the policy.
- 7.3.6 You must make full and fair disclosure of all material facts to enable clients to make informed decisions regarding their insurance.
- 7.3.7 You must not use sales materials or illustrations that are misleading or unnecessarily confusing.
- 7.3.8 You must not use terms such as “guaranteed” without appropriate qualification or evidence to support the statement.

Duty of Care

- 7.3.9 The client’s interests take priority over your interests and should not be sacrificed to the interests of others. You must not engage in practices that place the interests of others ahead of the client’s interests.

Confidentiality

- 7.3.10 You must hold in strict confidence all information acquired in the course of your professional relationship concerning the personal and business affairs of a client, and must not divulge or use such information other than for the purpose of that transaction or of a similar subsequent transaction between you and the same client unless expressly authorized by the client or as required by law. (Appendix B)

Withdrawal of Services

- 7.3.11 If you choose to terminate your business relationship with a client you must do so in a manner that avoids prejudice and allows for the orderly transfer of the client’s insurance business elsewhere. You must provide the client with adequate notice of your intent to withdraw your services, as well as comply with any applicable statutory and professional obligations.

Withdrawal of Services - *continued*

7.3.12 Clients should be notified at least 60 days prior to the expiration of their existing insurance if you are unable to renew their insurance at the same terms and conditions.

Protecting Clients' Interests

7.3.13 You must report all claims promptly.

7.3.14 You must deliver insurance policies or evidence of insurance coverage within a reasonable time and, in any event, in accordance with the terms of your agreement with the insurance company.

7.3.15 You must deal with all formal and informal complaints or disputes in good faith and in a timely and forthright manner, including, when necessary, referring the complainant to other more appropriate people, processes and/or organizations.

7.4 EXAMPLES OF MISCONDUCT

7.4.1 Failed to fully assess a client's needs and objectives and neglected to advise the client of changes to the insurance plan as a consequence of a medical rating.

7.4.2 Provided a copy of a client's insurance policy to two other customers as an example of the product being offered. (Appendix B)

7.4.3 Failed to refund all money due to a client in accordance with the cancellation provisions set out in the client's insurance contract and as agreed to in the licensee's contract with the insurer.

7.4.4 Requested an insurer cancel a client's insurance policy for non-payment of premium, when the premium had been paid, in order to apply the pro-rata return premium against an outstanding debt owed by the client.

8. USUAL PRACTICE: DEALING WITH INSURERS

8.1 PRINCIPLE

Licenses act as intermediaries between clients, insureds and insurers in a contractual relationship. The insurers' ability to meet their contractual duties is based on your honesty and competence in providing advice and information.

8.2 REQUIREMENT

You have a duty to insurers with whom you are transacting business to:

- make reasonable inquiries into the risk;
- provide full and accurate information;
- promptly deliver all insurance documents and monies due;
- represent the insurer's products fairly and accurately;
- adhere to the authority granted by the insurer; and
- promptly report all potential claims.

You must not defame or discredit insurers.

8.3 GUIDELINES

Conflict of Interest

A conflict of interest exists when your loyalty to, or representation of, a client or insurance company could be materially or adversely affected by your interest or duty to another party. You have a responsibility to avoid a conflict of interest with an insurer. A conflict of interest may be real, potential or apparent.

Council's *Conflict of Interest of Guidelines for Insurance Agents, Adjusters, and Salespersons* is included as Appendix A.

Disclosure

8.3.1 You have a duty to fully and accurately disclose any information material to the insurer's decision to issue a contract of insurance.

8.3.2 Where you are placing insurance on behalf of another agent who is acting for the insured, you should disclose this to the insurer.

8.3 GUIDELINES – *continued*

Duty of Care

Insurers rely on licensees for information to make underwriting decisions. Therefore, you must make reasonable inquiries into a risk. This means making inquiries that a reasonable and prudent licensee would make in the same circumstances.

8.3.3 In accordance with the Rules, it is a condition of every licence issued that, where the licensee collects or receives insurance premiums on behalf of an insurer, the licensee must:

- a) not encumber the funds without the prior written consent of the insurer;
- b) not use or apply the funds for purposes other than as described in the agreement with the insurer; and
- c) pay to the insurer all funds collected or received less any deductions authorized by the insurer.

8.3.4 Insurance should be sold or conserved based on the merits of the particular policy as it relates to the needs of the client. Attempts to discredit insurance companies are not the proper practice of the business of insurance. This requirement is not meant to prevent licensees from providing information that is relevant to the client's ability to make an informed decision about his or her insurance. However, information offered solely for the purpose of undermining the reputation of an insurer is inappropriate.

8.4 EXAMPLES OF MISCONDUCT

8.4.1 Failed to remit to the insurer all premiums collected or received in accordance with the terms of the agency's agreement with the insurer.

8.4.2 Offered and bound terms under a policy that were not authorized by the insurer.

8.4.3 Issued a cover note purporting to bind an insurer the agency did not represent.

9. USUAL PRACTICE: DEALING WITH LICENSEES

9.1 PRINCIPLE

Along with your fellow licensees, you represent the insurance industry to the public. The public views the industry as a single entity, so by maligning a fellow licensee you are bringing your own reputation and that of the industry into public disrepute. Treating your colleagues with courtesy and respect enhances your own reputation and the public's confidence in the insurance industry.

9.2 REQUIREMENT

You must not defame or discredit other licensees.

9.3 GUIDELINES

9.3.1 Insurance should be sold or conserved based on the merits of the particular policy as it relates to the needs of the client. Attempts to discredit another licensee are not the proper practice of the business of insurance. This rule is not meant to prevent licensees from providing information that is relevant to the client's ability to make an informed decision about his or her insurance. However, information offered solely for the purpose of undermining the reputation of another licensee is inappropriate.

9.4 EXAMPLE OF MISCONDUCT

9.4.1 Used the Discipline section of the Bulletin to discredit another licensee.

10. USUAL PRACTICE: DEALING WITH THE PUBLIC

10.1 PRINCIPLE

The insurance industry provides services upon which the well-being of individuals and businesses will often depend. Therefore, it is incumbent upon all licensees to take their duty of care to the public seriously. Your forthrightness and conduct in representing yourself and your services reflects on other licensees and the industry as a whole. Accordingly, it is in the interest of all licensees to conduct themselves in a manner that promotes public confidence in the integrity and reliability of the industry.

10.2 REQUIREMENT

You must honestly represent yourself and the services and products you provide so as not to mislead the public.

10.3 GUIDELINES

Holding Out

- 10.3.1 You must hold yourself out in the manner in which you are licensed.
- 10.3.2 You must disclose you are an insurance agent prior to conducting insurance activities with the public.
- 10.3.3 You must not use the term “and Associates”, or similar phrase, as part of a business or trade name when there are not two or more licensees in the business.
- 10.3.4 You must not represent yourself as having specific expertise in a given area of practice or industry designations unless you are suitably qualified by virtue of your experience, training or both.
- 10.3.5 You must not purport to be a financial planner or provide financial planning advice, unless you meet the qualifications and disclosure requirements set by Council.
(Notice ICN 02-001 *Financial Planning*)
- 10.3.6 You must not make any false or misleading statements in the solicitation of or negotiation for insurance.

Advertising

- 10.3.7 You must not engage in misleading advertising by offering prices, rates of return, products or services you cannot reasonably provide or that are subject to undisclosed qualifications.

11. USUAL PRACTICE: CONDUCT SPECIFIC TO INSURANCE ADJUSTERS

11.1 PRINCIPLE

Each requirement under the Code applies equally to all licensees. However, insurance adjusters play a unique role in the business of insurance, particularly in their relationships with insureds and insurers. Accordingly, the following sets out additional, specific duties applicable to licensees engaged in the role of insurance adjusting. This does not limit applicable duties under the other requirements of the Code. Adjusters must also refer to and comply with each requirement identified in the Code in the course of their practice.

11.2 REQUIREMENT

Duties to Principals

You must:

- protect your principal's interests;
- protect your principal's confidential information;
- disclose all information material to the loss or claim;
- decline to act where you have an undisclosed conflict of interest or financial interest in a loss or claim; and
- act within the authority and instructions of your principal.

Duties to Insureds

You must:

- properly identify yourself, your principal and your role as an adjuster;
- adjust claims promptly and fairly;
- protect the insured's confidential information; and
- fully disclose information material to the insured's policy coverage, rights and obligations.

11.3 GUIDELINES

Conflict of Interest

A conflict of interest exists when your loyalty to, or representation of, a client, insurance company, or principal could be materially or adversely affected by your interest or duty to another party. You have a responsibility to avoid a conflict of interest with an insurer. A conflict of interest may be real, potential, or apparent.

11.3 GUIDELINES - *continued*

Council's *Conflict of Interest of Guidelines for Insurance Agents, Adjusters, and Salespersons* is included as Appendix A.

- 11.3.1 You must take reasonable steps to keep the insured informed of the status of a claim and respond promptly to the insured's communications.
- 11.3.2 You must not attempt to influence a claim through coercion, false or misleading statements or other improper means.
- 11.3.3 You must not seek to discourage legitimate claims or cause undue delay in adjusting a claim.
- 11.3.4 You must fully and promptly inform insureds of material information regarding policy coverage, limitation periods, claim denials and their rights and obligations in the claims process, as required in the circumstances.
- 11.3.5 You must not mislead anyone as to your role in adjusting a claim. This includes who is your principal. For example, when acting on behalf of an insurance company, you should advise the insured in your first meeting that you act for the insurance company in the claim and that the insured is responsible for the hiring and work of contractors, even if facilitated by you.
- 11.3.6 You must refrain from giving legal advice or discouraging insureds from seeking legal advice.
- 11.3.7 You must not deal directly with an insured represented by legal counsel without consent.
- 11.3.8 You must only act on an adjustment when you have authority from your principal, and then according to your principal's instructions.
- 11.3.9 You must not obtain medical information about an individual without the consent of that person. (Appendix B)

11.4 EXAMPLES OF MISCONDUCT

- 11.4.1 Failed to identify a provision in a policy which required the insured to repair or replace damaged property within 180 days from the date of the loss in order to receive replacement cost.
- 11.4.2 Entered a restricted fire scene for the purpose of adjusting the property loss without authorization from the local fire department.
- 11.4.3 Disclosed confidential information in promotional material, including testimonials from claim files, claimant names, file numbers, negotiated settlements and liability decisions. (Appendix B)

12. DEALING WITH THE INSURANCE COUNCIL OF BRITISH COLUMBIA

12.1 PRINCIPLE

Licenses benefit from a degree of self-regulation under the Act, in that they are able to participate in the regulation of their industry. This privilege requires the co-operation and support of licensees.

12.2 REQUIREMENT

You must respond promptly and honestly to inquiries from Council.

12.3 GUIDELINES

12.3.1 Section 231(1)(d) of the Act requires licensees to make a prompt reply to an inquiry from Council.

12.3.2 It is a breach of the Act under section 231(1)(c) to make a material misstatement in an application for a licence or in response to an inquiry from Council.

12.4 EXAMPLES OF MISCONDUCT

12.4.1 Failed to reply over several months to a number of inquiries from Council during the course of a Council investigation.

12.4.2 Swore a false affidavit advising Council that insurance activities had not been conducted while unlicensed.

12.4.3 Provided false and misleading information on licensing applications to conceal not having sufficient credits to meet the continuing education licence condition.

12.4.4 Made material misstatements in reply to an inquiry from Council.

12.4.5 Refused to reply to an inquiry from Council.

13. COMPLIANCE WITH GOVERNING LEGISLATION AND COUNCIL RULES

13.1 PRINCIPLE

Licenses are expected to adhere to all regulatory requirements. In terms of professional practice, as a licensee you come under the direct regulation of the Financial Institutions Commission and Council. Violation of the regulatory requirements administered by these bodies not only contravenes the Code, it can also subject you to prescribed disciplinary action under the Act.

13.2 REQUIREMENT

You must be aware of and comply with your duties and obligations under the Act, the *Insurance Act*, the Rules and the Code.

13.3 GUIDELINES

13.3.1 You are required to read, understand and remain current on the applicable regulatory requirements that apply to you under the Act and Rules. This information is readily available from a variety of sources. As necessary, Council publishes guidelines and directives to licensees on specific issues through its Notices, Bulletins and website. To assist you, the following is a list of specific resources that should be particularly noted. Legislation is available online at bclaws.ca or at your local library. All other information is available on Council's website at insurancecouncilofbc.com or may be obtained by contacting Council's office.

13.3.2 You should also be aware of any other legislation, such as the *Income Tax Act*, *Motor Vehicle Act*, or *Personal Information Protection Act* which may impact your particular practice.

Publications

- *Financial Institutions Act*
- *Insurance Act*
- [Council Rules](#)
- [Notices](#)
- Bulletins
- [Council Decisions](#)
- [Licence Conditions](#)

CONFLICT OF INTEREST GUIDELINES FOR INSURANCE AGENTS, ADJUSTERS, AND SALESPERSONS (“Guidelines”)

Insurance agents, adjusters, and salespersons (“licensees”) have a responsibility to avoid conflicts of interest arising between themselves and their clients or insurance companies. When a conflict of interest arises, or has the potential to arise, a licensee needs to take appropriate action before acting, or continuing to act, on behalf of a client, an insurance company, or other principal.

The purpose of these Guidelines is to identify situations, actions, or conduct that could lead to, or result in, a conflict of interest and to assist licensees in understanding the issues relating to conflicts of interest. In addition, these guidelines provide direction on how to plan for and address situations when a conflict of interest arises, which licensees may use to manage, or avoid, such conflicts. By doing so, it may reduce the risk of harm to all parties, including potential harm that could result to a licensee’s reputation and insurance practice.

1. DEFINITION OF CONFLICT OF INTEREST

A conflict of interest exists when there is a risk that a licensee’s loyalty to, or representation of, a client, an insurance company, or other principal could be materially or adversely affected by a licensee’s own interests or by a licensee’s duty to another client, former client, insurance company, or other third party.

Conflicts of interest include, but are not limited to:

- a) A **real** conflict of interest denotes a situation in which a licensee has knowledge of a personal, private, financial, or professional interest that is sufficient to influence the exercise of his or her duties and responsibilities.
- b) A **potential** conflict of interest incorporates the concept of foreseeability, such as when a licensee can foresee that a personal, private, financial, or professional interest may someday be sufficient to influence the exercise of his or her duties.
- c) An **apparent or perceived** conflict of interest exists when a reasonable person has an apprehension that a conflict of interest exists. An apparent conflict of interest can exist where it could be perceived, or where it appears, that a licensee’s personal, private, financial, or professional interest or access to information could improperly influence the exercise of his or her duties, whether or not this is, in fact, the case.

Transparency and full disclosure are factors in the consideration of the existence of a conflict of interest.

2. MONITORING/MANAGING CONFLICTS OF INTEREST

A licensee should examine whether a conflict of interest exists, not only at the outset of a relationship with a client, insurance company, or other principal, but throughout the duration of the relationship, as new circumstances or information may establish themselves during that period which could reveal or lead to a conflict of interest.

Where there is a conflict of interest, or the potential for one, a licensee has a responsibility to address the conflict with the client, insurance company, or other principal before the transaction is completed, or, if the conflict is not identified until after the transaction, as soon as reasonably possible.

3. DISCLOSURE OF CONFLICTS OR POTENTIAL CONFLICTS OF INTEREST

A licensee has an obligation to provide appropriate disclosure to a client, in sufficient detail, of all real, potential, or apparent conflicts of interest to ensure a client can make an informed decision regarding an insurance transaction. The standard of disclosure should be reasonable and prudent for the circumstances. Disclosure should include an explanation of the conflict of interest, its relevance to the insurance transaction, and be provided to the client prior to the client making a decision whether to proceed with the insurance transaction. In all cases, when disclosure is required, it should be made in writing.

When there is an irreconcilable conflict between a licensee's duty to a client, an insurance company, or other principal and other duties or responsibilities the licensee may have, the licensee should decline to act, even with consent.

Insurance agents are also required to comply with the disclosure requirements contained in the *Marketing of Financial Products Regulation* under the *Financial Institutions Act*. The disclosure requirements apply every time an insurance transaction takes place. The disclosure requirements must include the following:

- a) The name of the insurance company whose service or product is being provided.
- b) Any relationship (over and above the contractual relationship to represent) between the insurance company and the licensee offering to provide the service or product (e.g., a financial institution has loaned funds to the licensee to finance his or her insurance or other business).
- c) Whether a commission or compensation is to be paid by the financial institution to the licensee offering to provide the service or product.
- d) Before acting as an insurance agent, disclosure to the public that the licensee is an insurance agent.

4. NEED FOR A CLIENT'S EXPRESS CONSENT

Where there is a conflict of interest, or the potential for one, a licensee should either not act in the transaction; or where the licensee believes he or she is able to properly represent the client, insurance company, or other principal without the conflict having a material or negative effect on the representation of that party, the licensee must act only where express consent to the conflict from the appropriate parties is obtained.

In such cases, Council recommends that the client, insurance company, or other principal's express consent be obtained, in writing, or, in the alternative, that the licensee confirm to the appropriate parties, in writing, the discussion that occurred regarding express consent.

Express consent must be informed, voluntary, and should take place only after all appropriate disclosures have been made. Disclosure is an essential requirement in obtaining consent. A licensee must inform the relevant parties of the circumstances and the reasonably foreseeable ways in which a conflict of interest could adversely affect the relevant parties interests. Such a disclosure would include the licensee's direct or indirect relationship to all parties and any interest or connection with the relevant matter. Only after the appropriate disclosure has been provided should the relevant parties be required to determine whether or not to give consent.

Where it is not possible to provide a client, insurance company, or other principal with adequate disclosure because of reasons such as confidentiality, a licensee should decline to act in the transaction and the relevant parties should not be afforded the opportunity to determine whether or not a conflict exists.

In all cases where a conflict of interest exists, or may exist, a licensee must reasonably believe that he or she is able to represent a client, insurance company, or other principal without the conflict having a material or negative effect on the licensee's representation of, and duty to, the relevant parties. It is recommended that, in such cases, the licensee clearly document why he or she believes that he or she can reasonably represent the relevant parties. This documentation should be provided to the relevant parties and maintained in the licensee's file.

5. EXAMPLES OF CONFLICTS OF INTEREST

While not intended to be an exhaustive list, the following are some examples of conflicts which may arise.

I. All Licence Classes

Situations may arise where a licensee:

- has a personal, private, financial, or professional interest that will, or could, prevent the licensee from being able to objectively exercise his or her duties and responsibilities to a client, principal, or insurance company. A licensee's personal, private, financial, or professional interest includes, but is not limited to, a direct or indirect financial interest in the outcome of any transaction or subject matter involving a client or the interests of a family member, employee, business partner, or associate.
- is in a position to take advantage of a client or consumer's inexperience, age, lack of sophistication, lack of education, language barrier, or ill health.
- uses misleading, unnecessary, and/or confusing sales material.
- may derive personal or private benefit by placing insurance business with a particular insurer because some form of financial relationship exists between the licensee and the insurance company, such as ownership or a loan.
- is in a position to give or receive an inducement to or from a third party (a third party being a person other than the client or the insurance company involved in the transaction).
- engages in other employment, job, or business activity ("business activity").

While it is acceptable to engage in a business activity while holding licence, there are business activities that may include real or perceived positions of power or trust. Some examples include immigration consultant, priest or pastor, teacher, doctor, and police officer. As an example, should a teacher be permitted to solicit insurance to the parents of his or her students or a priest or pastor be permitted to solicit members of his or her congregation?

Council, as part of its licence application process, requires applicants to disclose any (non-insurance) business activity. Council reviews such disclosures to determine if the business activity represents the potential for a conflict of interest.

Council has identified a number business activities which it has determined have the potential to be, or are, in a conflict of interest with the duties of those holding an insurance licence. In some cases, the conflict has been determined to be so significant that Council has declined to grant a licence, and, in other cases, Council has been able to address the conflict by placing conditions or restrictions on a licence. To assist licence applicants, Council has posted on its website a list of business activities it has determined are, or may result in, a conflict. This information is updated regularly and can be found with the Code of Conduct at <http://www.insurancecouncilofbc.com/PublicWeb/CodeofConduct.html>.

The purpose of this list is twofold: to ensure licence applicants are aware, before commencing the licence application process, that a business activity may prevent them from obtaining a licence; and to provide life agents with details on employment or business activities that Council views as creating, or having the potential to create, a conflict of interest.

For those who commence a business activity at some point after being granted an insurance licence, the responsibility rests with them to identify if the business activity creates, or has the potential to create, a conflict of interest, and to ensure they govern their insurance practice in accordance with past Council decisions.

II. Life and Accident and Sickness Insurance Agents (“life agent”)

i. Membership in an organization where charitable giving is involved

A life agent, who is also an influential member of an organization (e.g., deacon in a church or board member of a charity) and who engages in marketing of insurance as part of a charitable gift giving program for that organization, is in a position to create a conflict of interest. A life agent’s position of power or trust within the organization affects his or her ability to provide unbiased advice and a client’s ability to make a balanced and informed decision. In such a situation, it would be prudent to use the services of a life agent that is not part of, or associated with, the organization.

ii. Referral arrangements where some form of compensation to or from a third party is involved, including the sale of financial products and the giving of expert advice

Any time a life agent pays a fee to a third party as a result of an insurance transaction, the client must receive written disclosure of this fact before the insurance transaction is completed. The same is also appropriate where a life agent will receive a fee, or other form of compensation, from a third party (over and above the usual compensation received from an insurance company) as a consequence of conducting an insurance transaction. In such circumstances, written disclosure should be provided to the client, and possibly the insurance company, prior to the completion of the insurance transaction.

iii. When representing multiple interested parties

There are many scenarios where this situation can apply, with married couples, families, and business partners being a few examples. While a conflict may not exist at the outset, a divorce or a dissolution of a business partnership can result in a conflict. Acting for all parties in these situations, even if all parties agree, can lead to a conflict. In such cases, a life agent should consider whether he or she should only represent one of the parties and assist the other in obtaining insurance advice from an arm’s-length insurance agent.

Conflicts can also arise when a life agent is asked to be the sole executor for an estate, particularly when he or she is also a beneficiary or continues to act as a life agent for the estate. In such cases, a life agent needs to consider whether to continue to act as the life agent or bring in an arm’s-length life agent to represent the estate. Similar issues can arise where a life agent has been granted a power of attorney for a client. Should the client no longer be able to manage his or her affairs, continuing to exercise the power of attorney and act as the life agent creates a conflict of interest.

iv. Moving a client from one insurer to another

If the reason for moving a client from one insurance company to another is because a life agent no longer represents the original insurance company, the client needs to be advised of this, even if it is not the primary reason for the change.

v. Involving a client in investing in an insurance agency or other business activity

Any discussions with a client about investing in, or loaning money to, a life agent, a life agent's insurance business, or another business venture is a conflict of interest. Such discussions should only occur when the client is represented by independent legal and financial advisors. If a client refuses to obtain independent legal advice, the investment or loan should not occur.

The same requirements would apply if a life agent were to loan money to, or invest in, a client, a client's business, or a related business venture.

III. General Insurance Agents and Salespersons (“general insurance licensee”)

i. Direct or indirect interest in related businesses (e.g., restoration and construction companies, building supply companies, and salvage companies)

Where a general insurance licensee has an interest in a business that may be recommended to a client as a result of a loss, claim, or another insurance transaction, the client and the insurance company on risk should be advised of this interest prior to the transaction occurring.

ii. Any financial interest a general insurance licensee has in an insurer or vice versa.

See Section 3 of this Appendix regarding required disclosure.

iii. Moving a client from one insurer to another

If the reason for moving a client from one insurance company to another is because a general insurance licensee no longer represents the original insurance company, the client needs to be advised of this, even if it is not the primary reason for the change.

iv. Involving a client in investing in an insurance agency or other business activity

Any discussions with a client about investing in, or loaning money to, a general insurance licensee, a general insurance licensee's insurance business, or another business venture, is a conflict of interest. Such discussions should only occur when the client is represented by independent legal and financial advisors. If a client refuses to obtain independent legal advice, the investment or loan should not occur.

The same requirements would apply if a general insurance licensee were to loan money to, or invest in, a client, a client's business, or a related business venture.

IV. INSURANCE ADJUSTERS

i. Direct or indirect interest in related businesses (e.g., restoration and construction companies, building supply companies, and salvage companies)

Where an insurance adjuster has an interest in a business that may be recommended to a client as a result of a loss or claim, the insured and the insurance company should be advised of this interest at the time of the recommendation.

In addition, if an insurance adjuster has a relationship or understanding with a contractor, restoration company, or service or product supplier that may result in some form of compensation, gift, or inducement being paid because of a referral by the insurance adjuster, the insured and the insurance company should be advised of this interest at the time of the recommendation.

ii. Relationship – a proper explanation to an insured that the insurance adjuster “works” for the insurance company

While an insurance adjuster has duties to an insured during the claim process, the insurance adjuster is usually contracted to represent the insurance company. The insured needs to know and understand that the insurance adjuster's primary duty is to the insurance company. This relationship needs to be explained to the insured at the first meeting.

iii. Relationships that may exist between the insured and the insurance adjuster

Where a relationship exists between an insurance adjuster and an insured, the insurance adjuster must disclose this relationship to the insurance company before commencing to adjust the claim.

CLIENT CONFIDENTIALITY GUIDELINES FOR INSURANCE AGENTS, ADJUSTERS, AND SALESPERSONS (“Guidelines”)

Maintaining the privacy and confidentiality of client information is one of the cornerstones of the insurance industry. The insurance industry is built on trust and clients expect that when they provide their personal information for the purposes of an insurance transaction, the information will be properly protected and will only be used for the purpose for which the information was provided, unless the client expressly authorizes otherwise.

In 2009, Council issued Notice ICN 09-003 *Penalties for Unauthorized Access of the Insurance Corporation of British Columbia’s Database* advising licensees there would be no tolerance for intentional unauthorized access to, or use of, a person’s information. Since then, Council has identified situations where licensees failed to appreciate that even seemingly innocuous activities could result in a breach of privacy.

The purpose of the Guidelines is to assist licensees in understanding client confidentiality requirements, which involve a number of factors pertaining to the collection, use, disclosure, storage, and destruction of clients’ personal information.

Licensees should make themselves aware of these factors and ensure they are accounted for in their day-to-day operations. Ideally, licensees should have written policies and procedures governing client privacy and take reasonable steps to ensure that all staff are aware of these policies and act accordingly.

I. DEFINITION OF PERSONAL INFORMATION

A client’s personal information is defined as all information collected by a licensee about the client, excluding publicly available contact information.

II. USING CLIENT INFORMATION

In accordance with Council Rule 7(1), a licensee cannot divulge or use any information derived from a client, except for the purpose for which the information was obtained, unless expressly authorized by the client or as required by law.

III. EXPRESS CLIENT AUTHORITY

Express authority from a client must be clear and leave no dispute that the client has allowed a licensee to use or disclose his or her personal information for a specific purpose other than the purpose for which the information was given or intended.

Council acknowledges that express authority can be given either orally or in writing, but recommends that, whenever possible, it be obtained in writing from the client or, if given verbally, subsequently confirmed with the client in writing by the licensee. Without written express authority, it is difficult for a licensee to demonstrate that he or she acted appropriately should a concern arise regarding the handling of the client's information.

Without express authority from the client, the following situations would be a breach of Council's confidentiality requirements:

- A client's information is used or accessed by a licensee, either directly or indirectly, for purposes other than what it was collected for.
- A licensee uses a client's information to promote the licensee's services or products.
- A licensee provides information upon request about a client to a licensee who works at a different agency.
- A licensee provides information about a client to the client's spouse, relative, or friend, regardless of the reason.
- An insurance adjuster provides information about an insured to the insured's insurance agent.
- A licensee shares a client's information with a third party so that the third party can offer another service to the client.

The above examples are not meant to be exhaustive, but are intended to demonstrate that an action, no matter how innocuous, could be a breach of client confidentiality.

IV. PROTECTING CLIENT INFORMATION

A licensee has a duty to safeguard all of a client's personal information that is in his or her possession. A licensee is responsible for determining the appropriate safeguards necessary to meet this duty. Such safeguards must address the accumulation, storage, and, when appropriate, disposal of a client's personal information.

As an example, disposal of a client's personal information in a manner that could expose the information to access by any unauthorized party, intentionally or otherwise, would constitute a breach. Disposing of personal information in a garbage or through a shredding service, where the service provider does not have appropriate confidentiality protocols in place, would be considered breaches.

V. SALE OR TRANSFER OF CLIENT INFORMATION

Section 20 of the *Personal Information Protection Act* (“PIPA”) provides direction on what is required if a licensee’s book of business is being sold to another licensee. In summary:

A licensee may disclose personal information about clients, without their consent, to a prospective purchaser (“third party”) of the clients’ information, if it is necessary for the third party to determine whether to purchase the licensee’s book of business. However, this may only occur if the licensee and the third party have entered into an agreement that limits the third party’s use or disclosure of the clients’ personal information solely for purposes related to the purchase of the book of business.

If a licensee proceeds with a sale of a book of business, the licensee may disclose, without consent, clients’ personal information contained in the book of business to a third party on the condition that the third party may only use or disclose the personal information for the same purposes for which it was collected, used, or disclosed by the licensee and is limited only to the personal information covered by the business transaction. In addition, the clients whose personal information was disclosed must be notified the business transaction has taken place and personal information about them has been provided to the third party. *In such cases Council recommends that the disclosure to the clients be timely (30 calendar days after completion of the sale) and in writing.*

If the sale does not proceed or is not completed, the licensee must ensure the clients’ information is appropriately destroyed by the third party or returned to the licensee.

Orphan Clients – Reassignment of Life Insurance Policies

When an agency (for the purposes of this section an agency means a life insurance agency or a life insurance managing general agent) knows the Agent of Record (“AOR”) for a policy is no longer available to service the client, it may assist in the reassignment of the policy to another licensed agent.

An agency may take an active role in this process by informing the client that their AOR is no longer an insurance agent or has ceased to represent the agency and by offering to assist the client in reassigning their policy to a new AOR. In such situations, the client has the option of declining the agency’s service and can elect to find their own AOR.

The appointment of a new AOR by an agency should not occur without first notifying the client and no personal information should be provided to a (potential) new AOR without first obtaining the client’s consent. The recommended process of client notification is by way of letter, advising them of the status of their AOR and what is required to obtain a new AOR.

VI. AGENCIES, FIRMS, AND NOMINEES

It is the responsibility of insurance agencies and firms and their nominees to ensure their licensees and employees understand the confidentiality requirements and that appropriate measures and safeguards are in place to protect personal information.

Such measures should include:

- Periodic reviews and testing of how clients' personal information is managed and handled.
- Appointing an appropriate person to oversee the agency's or firm's duties in this regard.
- Implementing strict procedures on the management and handling of personal information.

VII. PRIVACY LEGISLATION

Council's position and requirements on client privacy and confidentiality do not override the requirements under existing legislation. Rather, the Guidelines are intended to emphasize to licensees the importance of client privacy. Licensees are reminded that PIPA governs their activities, which includes requiring that:

- A licensee designate one or more individuals to be responsible for the licensee's compliance with PIPA.
- Policies and practices be developed to ensure compliance with PIPA.