

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

**and**

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

**and**

**CUI HUA DENG**  
**(the “Licensee”)**

**ORDER**

As Council made an intended decision on April 15, 2014, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated May 5, 2014; and

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

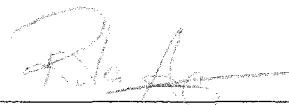
Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. A condition is imposed on the Licensee’s general insurance licence that requires her to successfully complete the Insurance Corporation of British Columbia’s (“ICBC”) Privacy Please – Protecting Customers’ Information Course and the Insurance Brokers Association of British Columbia’s (“IBABC”) Privacy Compliance for Insurance Brokers course on or before **November 24, 2014**.
2. A condition is imposed on the Licensee’s general insurance licence that if the Licensee does not complete the ICBC’s Privacy Please – Protecting Customers’ Information Course and the IBABC’s Privacy Compliance for Insurance Brokers course on or before **November 24, 2014**, the Licensee’s general insurance licence is suspended as of **November 25, 2014**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered courses are completed.
3. The Licensee is fined \$2,000.00.

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4. The Licensee is assessed Council's investigative costs of \$612.50.
5. A condition is imposed on the Licensee's general insurance licence that requires her to pay the above-ordered fine and investigative costs no later than **August 27, 2014**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's general insurance licence is suspended as of **August 28, 2014**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **27<sup>th</sup> day of May, 2014**.



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Rita Ager, CFP, CLU, CHS, CPCA, FEA  
Chairperson, Insurance Council of British Columbia

## **INTENDED DECISION**

of the

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

**respecting**

**CUI HUA DENG**  
(the “Licensee”)

#### **INTRODUCTION**

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on March 10, 2014 a Review Committee (the “Committee”) met with the Licensee to discuss allegations the Licensee improperly processed an Insurance Corporation of British Columbia (“ICBC”) transaction on a vehicle without the vehicle owner’s authority and accessed and provided the vehicle owner’s ICBC insurance information to a third party without the owner’s consent.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee’s findings and recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its April 15, 2014 meeting. At the conclusion of its meeting, Council determined the matter should be disposed of in the manner set out below.

#### **PROCESS**

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee may then accept Council’s decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

## **FACTS**

The Licensee provided ICBC Autoplan insurance for a client (the "Owner"). The Owner was the registered owner of a vehicle (the "Vehicle") and the Owner's husband (the "Husband") was listed as the principal operator. The Owner and the Husband went away to China for a period of time and cancelled the Vehicle's insurance policy. The Licensee had conducted insurance transactions for the couple in the past, and had met them together in-person for this purpose.

In March 2013, the Husband called the Licensee advising that they had returned from China, and stated they needed to get insurance and new license plates for the Vehicle. During this conversation, the Licensee checked ICBC's extranet to obtain information about the Owner's ICBC insurance and noticed that there was an outstanding claim. The Licensee relayed this information to the Husband and recommended the claim be paid first in order to keep the premium lower. The Licensee recommended the Husband talk to the Owner before proceeding.

The Husband later advised the Licensee that the Owner was still in China, and would not be returning to Canada until July or August, 2013. The Husband stated that this was an urgent situation and that the Vehicle must be insured. The Licensee responded that she could not process the transaction as the Husband was not the registered owner. She told the Husband that either the Owner would have come back from China to sign the ICBC documents or the Husband would have to obtain a power of attorney ("POA") from the Owner. The Husband replied that the POA would be forthcoming.

The Licensee processed the ICBC transaction without first obtaining a POA. The Husband signed the ICBC transaction and told the Licensee that the couple had decided not to pay off the claim.

The Husband never provided the Licensee with the POA and the Licensee failed to follow up with him. The Licensee stated that this incident was the first time she ever completed a transaction requiring a POA in this manner.

In August 2013, the Owner returned from China and contacted the Licensee. The Owner advised that she wanted to pay off the claim and that she had not consented to the Husband signing ICBC documents on her behalf.

## **ANALYSIS**

Council considered the actions of the Licensee and determined that she improperly accessed and provided the Owner's ICBC insurance information to the Husband without first obtaining the Owner's authorization. In addition, Council found the Licensee improperly processed the ICBC transaction by failing to first obtain a POA from the Owner.

Council determined the Licensee failed to identify her disclosure of personal information to the Husband as a privacy concern, as she had always dealt with the Husband and the Owner together. The Licensee did not appreciate that she was not authorized to discuss the Owner's claim information with the Husband. Council was concerned that the Licensee did not identify this disclosure as improper.

Council accepted that the Licensee made the improper disclosure in the context of what she mistakenly thought was a proper insurance transaction, and found this to be a mitigating factor.

Council considered several precedents regarding the failure to process insurance transactions in accordance with the requisite client authority.

In *M. Le Flour*, the licensee processed an ICBC automobile insurance transaction without proper authority while the registered owner was out of the country. In particular, the licensee processed changes upon renewal to the ICBC policy at the request of a third party, who asked to be named as the principal operator, and changed the bank account information of the registered owner's Autoplan finance agreement to reflect the third party's account, all without the involvement of the registered owner. Council accepted that the licensee's actions were solely to convenience the third party, and not for personal benefit. Council also accepted that there was no evidence to suggest that the owner was not in agreement with the transactions.

Council held that the licensee failed to carry on the business of insurance in accordance with the usual practice, and had additional concerns regarding the licensee's competency. Council determined that a fine of \$1,000.00 and the assessment of investigative costs was appropriate to address the improper transaction, and imposed licence conditions requiring that the licensee complete the Autoplan Essentials course and remain under supervision for 12 months, to address concerns with her competency and practice management issues.

In *E. Dela Cruz*, the licensee allowed a customer to sign automobile insurance transactions on behalf of her ex-husband without first obtaining the requisite POA. The POA was received after the transactions were complete. Council found the licensee failed to carry on the business of insurance in accordance with the usual practice. Council determined the licensee should have known that allowing the customer to sign on behalf of her ex-husband without written authorization was wrong. Council accepted that the licensee's actions were solely to convenience the client. Council found that the execution of a POA by the ex-husband on the same day as the vehicle transactions was evidence the ex-husband was in agreement with the transactions. Council determined that a fine of \$1,000.00 and the assessment of investigative costs was appropriate to address the improper transaction. Council did not have concerns with the licensee's competency and declined to impose supervision or educational conditions.

In *S. Xian*, the licensee allowed the client's sister to sign two insurance documents on the client's behalf on the understanding that he would subsequently obtain written authorization from the client. The licensee spoke with the client on the phone and obtained her verbal consent for the third party to sign on her behalf; however, written authorization was required. Council found the licensee failed to carry on the business of insurance in accordance with the usual practice. Council determined that as an experienced life and accident and sickness insurance agent, the licensee should have known that allowing a third party to sign on behalf of a client without written authorization was wrong. Council determined that a fine of \$2,000.00 and the assessment of investigative costs was appropriate to address the two improper transactions. Council did not have concerns regarding competency, and declined to impose supervision or educational conditions.

With respect to the privacy concern, Council considered the precedent of *T. Li*.

In *T. Li*, the licensee improperly accessed the ICBC database and provided a policyholder's phone number to an agency client who wanted to contact the policyholder to resolve a claim. Council concluded the licensee unintentionally acted contrary to the requirements surrounding confidentiality in a misguided attempt to assist an agency client in a claim matter. In particular, the licensee had no personal relationship with the client and, as it was apparent to her that the client and the policyholder had voluntarily exchanged some personal information, she assumed that accessing the policyholder's telephone number in ICBC's database and sharing this information with the client was acceptable. She failed to realize, despite her previous training on privacy, that it is never acceptable to access ICBC's database without the required authorization.

Council determined that a fine of \$1,000.00 and the assessment of investigative costs was appropriate to address the unintentional privacy breach, and distinguished this penalty from other privacy breach cases resulting in lengthy suspensions on the basis that the cases involving lengthy suspensions involved database accesses that were clearly intentional and not in the context of an insurance transaction. Council further determined that a 12 month period of supervision and the requirement to complete ICBC's Privacy Please course were appropriate penalties in the circumstances of *T. Li*.

Council determined that based on the Licensee's lack of intent to breach privacy and the context of the breach, a fine of \$1,000.00 would be appropriate to address the improper access and disclosure.

Council further held that a condition requiring the Licensee to complete ICBC's Privacy Please course and the Insurance Brokers Association of British Columbia's ("IBABC") Privacy Compliance for Insurance Brokers course was necessary to address the Licensee's failure to identify the concerns regarding sharing claim information in these circumstances. Council considered whether a supervisory condition was appropriate, but held that as there were no concerns generally with the Licensee's competency, this was not required.

With respect to the failure to obtain the POA, Council accepted that this was an isolated incident, and the Licensee took responsibility and apologized for her error. Council determined that an additional fine of \$1,000.00 and the assessment of investigative costs was appropriate to address the Licensee's failure to complete an insurance transaction in accordance with correct procedures.

### **INTENDED DECISION**

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

1. Impose a condition on the Licensee's general insurance licence that requires her to successfully complete ICBC's Privacy Please course and the IBABC's Privacy Compliance for Insurance Brokers course within six months of the date of Council's order.
2. Fine the Licensee \$2,000.00.
3. Assess the Licensee Council's investigative costs of \$612.50.

The Licensee is advised that should the intended decision become final, the fine and costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and costs within the 90 days, or failure to successfully complete ICBC's Privacy Please course and IBABC's Privacy Compliance for Insurance Broker's course within 180 days, will result in the automatic suspension of the Licensee's general insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fine and costs are paid in full and the courses are completed as required.

The intended decision will take effect on **May 27, 2014** subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

### **RIGHT TO A HEARING**

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **May 26, 2014**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **May 26, 2014**, the intended decision of Council will take effect.

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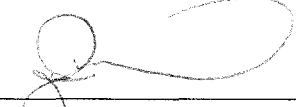
Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at [www.fst.gov.bc.ca](http://www.fst.gov.bc.ca) or contact them directly at:

Financial Services Tribunal  
PO Box 9425 Stn Prov Govt  
Victoria, British Columbia  
V8W 9V1

Reception: 250-387-3464  
Fax: 250-356-9923  
Email: [FinancialServicesTribunal@gov.bc.ca](mailto:FinancialServicesTribunal@gov.bc.ca)

Dated in Vancouver, British Columbia, on the **5<sup>th</sup> day of May, 2014.**

For the Insurance Council of British Columbia



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Gerald D. Matier  
Executive Director

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