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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

RICHARD JONES
(the "Licensee")

and

THE RICHARD JONES FINANCIAL GROUP LTD.
(the "Agency")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to determine if the allegations in the Notice of Hearing, dated February 28, 2024, would be established.

The Hearing Committee first heard the matter on April 8-12, 2024. During that initial hearing, the Hearing Committee determined whether Council had established the allegations in the Notice of Hearing.

The Hearing Committee then prepared its Reasons for Decision, dated September 13, 2024.

Council then convened a further hearing to determine the disciplinary measures and costs that would result from the Hearing Committee's conclusions. That hearing was convened on December 11, 2024.

In accordance with the decision-making powers delegated to the Hearing Committee pursuant to section 223 of the Act, Council makes the following orders:

a. The Licensee's life and accident and sickness licence (the "Life Agent Licence") be suspended for a period of eight (8) months, commencing on March 22, 2025 and ending at midnight on November 21, 2025;

b. A condition be imposed on the Licensee's Life Agent Licence that requires him to be supervised for a period of 24 months of active licensing by a supervisor approved by Council, commencing when the suspension has been lifted;

c. A condition be imposed on the Licensee's Life Agent Licence that requires him to complete the following courses, or equivalent courses as acceptable to Council, prior to the suspension being lifted:

   i. Advocis Module 911 ("Financial Planning Profession & Financial Services Industry Regulation"),

   ii. Advocis Module 912 ("Financial Analysis"),

   iii. Advocis Module 918 ("Investments"),

   iv. an ethics course, and

   v. the Insurance Council Rules Course for Life and/or Accident & Sickness Agents;

d. A fine against the Licensee in the amount of $10,000, to be paid by May 26, 2025, and which must be paid fully prior to the suspension being lifted;

e. A fine against the Agency in the amount of $1,000, to be paid by May 26, 2025;

f. A condition be imposed on the Agency's licence that failure to pay its $1,000 fine by May 26, 2025 will result in the automatic suspension of the Agency's licence, and the Agency will not be permitted to complete its annual licence renewal until such time as the Agency has paid the fine in full; and

g. The Licensee and Agency are also ordered to pay costs of the proceeding in the amount of $44,490.40 to Council, with that obligation being joint and several as between the Licensee and the Agency. These costs are also to be paid by May 26, 2025, and in any event before the suspension is lifted.

This order takes effect on the **24th day of February, 2025.**

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Peter Jong
Chair of the Hearing Committee

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
*(*R.S.B.C. 1996, c. 141)
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And

THE INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

And

RICHARD JONES
(the "Licensee")

And

THE RICHARD JONES FINANCIAL GROUP LTD.
(the "Agency")

Date:	April 8, 9 and 10, 2024 9:30 a.m.	
Before:	Peter Jong Claire Wang Kawkab Jamal	Chair Member Member
Location:	Insurance Council of British Columbia 1400 – 745 Thurlow Street Vancouver BC	
Present:	Taymaz Rastin/Laura Wilson	Counsel for Council
	Tom Newnham	Counsel for the Licensee/Agency
	Michael Shirreff	Counsel for the Hearing Committee

REASONS FOR DECISION
OF THE HEARING COMMITTEE

BACKGROUND

Overview

1. The Licensee has been licensed with Council as a life and accident and sickness insurance agent ("Life Agent") since 1987. He has also held a Certified Financial Planner designation since 2010.

2. The Licensee is the owner and nominee of the Agency, which has held a corporate life and accident and sickness licence with Council since December 1995.

3. This matter began with a complaint to Council in May 2020 made by a former client of the Licensee and the Agency. The complainant raised a number of allegations about the professional advice and services provided by the Licensee (through the Agency) between 2013 and 2018. During that time, the Licensee facilitated the complainant's purchase of nine products, including seven insurance policies.

4. In terms of this decision, it is important to note that Council did not advance any allegations with respect to the *suitability* of the insurance products that the Licensee placed for the complainant. The professional conduct issues in this matter related to other aspects of the relationship between the Licensee and the complainant.

5. On April 25, 2023, Council issued an intended decision. Written reasons and notice of the intended decision were provided by Council to the Licensee and the Agency on June 12, 2023, as required by section 237(2) of the Act.

6. In accordance with section 237(3) of the Act, the Licensee and the Agency requested a hearing to dispute the intended decision. This is the decision of the Hearing Committee following a three-day hearing.

Procedural history – a two-phase hearing process

7. By way of letter, dated October 16, 2023, Council and the respondents jointly requested that the Hearing Committee undertake the hearing of this matter in two phases. The parties proposed that the initial phase would address evidentiary issues and liability, after which the Hearing Committee would make determinations as to whether Council had established the allegations detailed in the Notice of Hearing.

8. If there were adverse findings against the Licensee and/or the Agency, the parties proposed a second hearing, during which they would make submissions with respect to the penalties and costs that ought to result from the initial decision.

9. The jurisdiction of the Hearing Committee is established in the Act. There are no specific provisions in the Act that mandate the procedure to be followed by Council at a hearing. In the result, Council has established policies and guidelines that provide guidance with respect to process and procedures, specifically Policy J.5 – Hearing Guidelines. Section 9 of Policy J.5 offers some limited guidance on the manner of proceeding:

> **9. Decision of the Hearing Committee**
>
> After the hearing concludes, the Committee deliberates to make findings of fact and law, and to reach a determination as to the disposition of the matters at issue at the hearing. Findings of fact and law and Committee decisions must have the agreement of a majority of the Committee members.
>
> The Committee reports its findings and determinations in writing by way of a report to Council titled Reasons for Decision of the Hearing Committee ("Reasons for Decision"). The disciplinary action imposed on the Party, if any, will be issued in writing to the Party in the form of an order, which constitutes Council's final decision. The Party is provided with a copy of the Reasons for Decision and the order, and they are published on Council's website and on the Canadian Insurance Regulators Disciplinary Actions (CIRDA) website.

10. Traditionally, hearings before Council have occurred in one phase, with the liability portion of the hearing occurring together with submissions on sanctions and/or costs. The Hearing Committee understands there have, at times, been challenges arising from a single-phase proceeding, as it may be more difficult for the parties to make submissions about an appropriate disciplinary action without first understanding the Hearing Committee's conclusions with respect to the evidence, as well as whether or not Council has established the allegations in the Notice of Hearing.

11. The procedure that is followed during an administrative proceeding can vary depending on the statutory regime. It is widely recognized that the process and procedure to be followed by an administrative tribunal must be flexible and ought to ensure that the parties involved in the proceeding are treated fairly. What is essential is that any decision which might affect the rights of an individual must be made in a manner that is fair and in which the potentially affected party has an opportunity to respond to and influence the decision. Administrative tribunals are often given significant latitude in establishing their own procedures, so long as these fundamental principles are met (*Baker v. Canada (Minister of Citizenship & Immigration*, [1999] S.C.J. No. 39).

12. There is considerable jurisprudence which confirms that administrative tribunals are the "masters" of their own proceedings. In the absence of specific rules laid down by statute or regulation, a tribunal controls its own procedures, subject again to the proviso that the processes utilized must comply with the overarching rules of fairness and natural justice (*Prassad v. Canada (Minister of Employment & Immigration)*, [1989] 1 S.C.R. 560).

13. In this matter, the parties came before the Hearing Committee with a joint request that the hearing proceed in two phases. The Hearing Committee considered this request and granted the order sought by the parties. It seemed sensible to the Hearing Committee to only address the penalty phase of the proceeding after the initial decision was rendered. This will allow for a fair and efficient process. In the result, after the release of this decision, the parties will need to convene for a further hearing to make submissions on penalties and costs. Following that appearance, the Hearing Committee will release a second decision that can be merged with or combined into this decision.

Notice of Hearing

14. Given that the suitability of the insurance products purchased by the complainant was not at issue, it may assist to outline the specific issues that Council alleged against the Licensee and the Agency. The Notice of Hearing stated:

> 1. Whether, with respect to the client and the transactions referenced in the Intended Decision, the Licensee breached section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients"), section 8 ("Usual Practice: Dealing with Insurers") and/or section 10 (Usual Practice: Dealing with the Public") of Council's Code of Conduct, Council Rules 2(18), 7(8), 7(9), and/or section 177(b) of the Act, by:
>
> a) signing documents in the name and on behalf of the client, in circumstances in which the Licensee did not have power of attorney or written authorization from the client to sign documents in the name and on behalf of the client;
>
> b) modifying information on the face of documents with respect to the client after the documents had been signed by the client;
>
> c) providing false confirmation about having witnessed the client affix his signature on documents;
>
> d) allowing the Licensee's assistant who worked at the Agency to provide false confirmation about having witnessed the client affix his signature on a document;

e) failing to perform appropriate needs analyses for the client or prepare any written financial plan;

f) failing to keep proper and adequate records, including of:

(i) any written financial plan or other record demonstrative of the preparation of needs analyses by the Licensee for the client,

(ii) the Licensee's dealings with and recommendations to the client, and

(iii) advice or warning to the client on the client's potential risk and cost exposures in following the Licensee's recommendations;

g) failing to communicate with the client in writing to ensure understanding between the client and the Licensee regarding:

(i) the Licensee's assessments of the client's needs and the facts and assumptions based on which the Licensee made the assessments,

(ii) the Licensee's recommendations and ongoing advice to the client on product selection and management, and

(iii) the client's potential risk and cost exposures in following the Licensee's recommendations;

h) making false or misleading statements to an insurer about the length of time that the Licensee had known the client and had been engaged by him; and

2. conducting insurance business on behalf of the Licensee and the Agency under names which were not registered or approved by Council. Whether, with respect to the client and the transactions referenced in the Intended Decision, the Agency breached section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence") and/or section 10 (Usual Practice: Dealing with the Public") of Council's Code of Conduct, and Council Rules 2(18) and/or 7(8), by:

a) failing to properly supervise and instruct the Licensee's assistant who worked at the Agency, and in particular by allowing the aforesaid individual to provide false confirmation about having witnessed the client affix his signature on a document; and

b) conducting insurance business under names which were not registered or approved by Council.

15. As outlined in detail below, the Licensee admitted the misconduct alleged in paragraphs 1. a), b), c), d) and h) of the Notice of Hearing.

16. The Agency admitted the misconduct alleged in paragraphs 2. a) and b) of the Notice of Hearing.

17. The allegations in paragraphs 1. e), f) and g) of the Notice of Hearing were not admitted by the Licensee.

EVIDENCE

18. The parties were able to reach agreement on several matters in advance of the hearing, which assisted significantly with respect to the efficiency of the proceeding. There was a comprehensive Agreed Statement of Facts ("ASF") that was prepared and filed, which contained significant documentary evidence, as well as the admissions of misconduct by the Licensee and the Agency.

19. There were six exhibits marked at the hearing, as follows:

a. Exhibit 1 – the Notice of Hearing;

b. Exhibit 2 – an October 16, 2023 letter from counsel that addressed the phasing of the hearing;

c. Exhibit 3 – the ASF;

d. Exhibit 4 – a joint book of documents that corresponded to the admissions in the ASF;

e. Exhibit 5 – a document agreement executed by the parties which addressed the manner in which the Hearing Committee was to treat the documents in the joint book; and

f. Exhibit 6 – a subpoena issued by Council requiring Mr. Jones to testify as an adverse witness.

20. Given the admissions made by the Licensee and the Agency in the ASF, there was a narrowing of the issues that required consideration and adjudication by the Hearing Committee.

Witnesses

21. There was only one witness at the hearing – the Licensee. The Licensee was subpoenaed by Council and was called as an adverse witness during the course of Council's case. The parties had discussed this process in advance and the Licensee confirmed that there were no concerns about the permissible scope of Council's cross-examination.

22. After Council closed its case, the Licensee testified a second time during the respondents' case.

DECISION – ADMITTED MISCONDUCT

Relationship between the Licensee and the complainant

23. The professional relationship between the Licensee and the complainant began in 2013. At the time, the complainant was a professional athlete. When he was referred to the Licensee, the complainant was in his late 20s. He was a high-earning individual who had significant annual disposable income, but a career that was likely going to come to an end at an early age.

24. Between August 2013 and August 2018, through the Agency, the Licensee provided professional advice to the complainant and facilitated his purchase of nine products. These products included insurance products consisting of three universal life insurance policies; two segregated fund policies; one critical illness policy; and one participating whole life policy.

25. In addition to the policies, the Licensee facilitated the complainant's purchase of a registered retirement savings plan, as well as a business loan plan which was used to fund the purchase of one of the segregate fund insurance policies.

26. When he started working with the Licensee, the complainant already owned a whole life insurance policy that he had purchased from another insurance agent. The complainant also had life insurance under the Term "1 to 10" Insurance Policies (owned by his employer and for which the employer was the beneficiary).

27. During their professional relationship, the Licensee and the complainant met in person to discuss the products that the complainant purchased. The Licensee at times provided documents to the complainant that summarized the performance of the various accounts, typically in the form of one-page summaries. They also exchanged somewhat regular text messages and emails during the material period. Many of these communications were introduced into evidence through the documents appended to the ASF.

28. The relationship between the Licensee and the complainant came to an end in the summer of 2018. The Licensee said that the complainant did not offer a reason for ending the relationship. In 2019, the complainant commenced a civil action against the Licensee and the Agency (among others). The Notice of Civil Claim and the Response were entered into evidence at the hearing, but only limited information was provided about how the lawsuit was advanced or resolved, if at all.

29. In May 2020, the complainant filed the complaint with Council that eventually led to this hearing. During the investigation, the Licensee provided a written response to the allegations raised by the complainant. The Licensee also participated in an interview with Council in the spring of 2022. These materials were also included with the ASF.

30. In the following section of this decision, the Hearing Committee will review the allegations that were admitted by the Licensee and the Agency.

Signing documents on behalf of the complainant/modifying documents – allegations 1. a) and b)

31. The Hearing Committee was provided with many documents relating to the application for, and issuance of, the policies and products that the Licensee arranged for the complainant to purchase.

32. With respect to certain of these products, the Licensee admitted that he at times signed documents on behalf of the complainant when the complainant was not present. Specifically, the Licensee admitted that:

a. he would sign documents in the name of, and on behalf of, the complainant by handwriting the word “per” and then adding the complainant’s name on the signature line of documents; and

b. he “re-used” previous signatures from the complainant by copying the original signature from incomplete transactional forms (which had been signed by the complainant) and then adding different dates and/or instructions.

33. When the Licensee signed documents on behalf of the complainant, he did not keep or retain a written record of any authorization or instruction from the complainant confirming that the Licensee was permitted to sign these documents.

34. Council introduced eight documents, all prepared in 2013 and 2014, where the Licensee acknowledged that he had either signed the document under his own hand, with the handwritten addition of the word “per” and the complainant’s name or had taken a previous copy of the complainant’s signature and then copied that signature onto subsequent insurance forms on different dates.

35. The Licensee maintained that he signed documents for the complainant as a matter of convenience and only with the complainant's knowledge. The complainant was not called as a witness at the hearing by either party and Council did not meaningfully challenge the Licensee on these explanations.

36. The Licensee also admitted that he twice modified information on the face of a document that had been signed by the complainant *after the document had been completed*. The first document was an insurance application form, dated July 31, 2013, that the Licensee modified with respect to certain pre-authorized payment instructions. Specifically, the Licensee struck out the instructions for a pre-authorized withdrawal of "$300,000 lump sum" and changed that instruction to be "a monthly pre-authorized withdrawal of $25,000 on the 12th of each month". The Licensee also changed the date on the form from July 31, 2013, to August 11, 2013.

37. The second document was the application for the purchase of a segregated fund policy, where the Licensee changed the date next to the complainant's signature after the document had been executed.

38. Manipulation of insurance applications and other documents is not acceptable professional behaviour for an insurance agent at any time. The sanctity and reliability of documents prepared to assist people apply for and obtain insurance is a cornerstone element of the profession. It may have been that the Licensee took these steps to convenience his client, but that does not excuse such misconduct. Apart from the Licensee's testimony, there was no evidence to suggest that the complainant was aware that the Licensee was modifying documents in this manner or adding his signature under the "per" designation. The Licensee did not have any documents that showed the complainant agreeing to such a process.

39. The Licensee admitted that he committed misconduct in relation to these issues. He accepted that his conduct breached sections 3 ("Trustworthiness"), 4 ("Good Faith"), 8 ("Usual Practice: Dealing with Insurers") and 10 ("Usual Practice: Dealing with the Public") of the Code of Conduct. The Licensee also admitted that this misconduct breached his obligations in Council Rules 7(8) and 7(9).

40. The Hearing Committee accepts these admissions as being appropriate in the circumstances. There are several prior decisions that establish that misconduct of this nature, even if undertaken for client convenience and without any malicious intent, still amounts to a breach of the above sections of the Code of Conduct and Council Rules (see: *Cary Leung*, October 2019; *Christine Craig*, August 2019; and *Barry Turnbull*, November 2013).

41. In certain of these prior decisions, it was said that adding client signatures to insurance forms must be considered an act of forgery by a licensee. The misconduct of the Licensee in this instance was similar to prior misconduct that has been said to involve forgery. It is fair to say that absent clear instructions, a licensee ought never to sign an insurance

document on behalf of a client, or modify a document after it has been executed. The Hearing Committee accepts that, at least in relation to the documents where the Licensee used photocopies of previous signatures, such documents are properly seen as forgeries.

42. The Licensee did not admit that his misconduct was also a breach of section 5 ("Competence") and section 7 ("Usual Practice: Dealing with Clients") of the Code of Conduct. The Hearing Committee has concluded that the Licensee's conduct was also a breach of these sections of the Code of Conduct. As set out in section 5.2 of the Code of Conduct, competent conduct is characterized by the application of knowledge and skill in a manner consistent with the usual practice of the business of insurance. Modifying or altering insurance forms is entirely inconsistent with the usual practices of an insurance agent and licensee. It is misconduct that cannot be tolerated in any fashion. The Licensee's admitted misconduct in relation to these issues raises serious concerns about his competency and the Hearing Committee is of the view that the Licensee breached his obligations in both sections 5 ("Competence") and 7 ("Usual Practice: Dealing with Clients") of the Code of Conduct.

Falsely confirming to have witnessed signatures – allegations 1. c), d) and 2. a)

43. The Licensee admitted to four occasions where he executed an insurance form confirming that he had witnessed the complainant sign the document before he had even provided the document to the complainant for signature. Put simply, the Licensee pre-signed insurance application forms. These forms were completed on various dates between 2014 and 2016.

44. On two other occasions in 2016, the Licensee allowed his assistant to falsely confirm that she had witnessed the complainant affix his signature on documents. These forms had also been completed and signed before the complainant had signed them.

45. The Licensee admitted that he was aware, as the Agency's nominee, that he was responsible for supervising the employees of the Agency in all insurance business activities. In allowing his assistant to pre-sign these documents, the Licensee admitted that he fell short with respect to his professional obligations.

46. There have been prior decisions that address similar misconduct. ln *Mark Wagner* (September 2018), the licensee improperly completed insurance forms; signed blank forms; altered forms; and filled out the witness section of forms prior to the client's execution. Similar to the present matter, Mr. Wagner's misconduct was for client convenience and there was no harm to any client. Another decision that assists in examining these issues was *Hugo Donais* (July 2018), where the licensee had, in advance, collected client signatures on blank and/or partially completed agency forms.

47. The Licensee was an experienced insurance agent at the time of the underlying events. He would have known that it was not appropriate to pre-sign documents in advance of

meeting with clients. He would also have known that such a practice ought not to have been encouraged or allowed with respect to his staff.

48. With respect to these allegations, the Hearing Committee accepts that the Licensee committed misconduct and breached the same sections of the Code of Conduct and Council Rules noted above, including sections 5 and 7 of the Code of Conduct. The usual practice of the business of insurance requires that licensees are scrupulously careful to ensure that all insurance documents are completed accurately and, where necessary, in the presence of the client or applicant.

49. Because the assistant worked for the Agency, it separately admitted that it breached its professional obligations by failing to properly supervise or instruct its employee with respect to the appropriate manner in which to witness documents. The Hearing Committee sees the Agency's admission as being appropriate and finds that Council has proven allegation 2. a) in the Notice of Hearing.

False or misleading statements to an insurer – allegation 1. h)

50. The Licensee admitted that he made false or misleading statements to an insurer about the length of time the Licensee had known the complainant and how long he had been engaged by him. These false statements were made on July 2, 2013 and July 12, 2016.

51. On the first occasion, the Licensee certified that he had known the complainant for one year. That was not accurate. The Licensee had only been introduced to the complainant earlier in the summer of 2013.

52. On the 2016 form, the Licensee certified that he had known the complainant for five years. Again, this statement was not correct. By that date, the Licensee had known the complainant for just over three years.

53. Licensees act as important intermediaries between an insured and the insurer. The insurers' ability to assess and consider an application for insurance relies on the information provided by the potential insured, through the licensee, during the application process. Licensees have a professional duty to provide full and accurate information to an insurer. That obligation is specifically set out in section 8 ("Usual Practice: Dealing with Insurers") of the Code of Conduct (see: section 8.2).

54. Once again, the Hearing Committee accepts the Licensee's admission of misconduct in relation to this allegation. The Hearing Committee is of the view that the Licensee breached sections 3 ("Trustworthiness"), 4 ("Good Faith") and 8 ("Usual Practice: Dealing with Insurers") of the Code of Conduct when he provided information to the insurer that was incorrect with respect to how many years he had known the complainant. This conduct is also a breach of Council Rule 7(8).

Conducting insurance business under names not registered or approved by Council – allegations 1. i) and 2. b)

55. At various times dating back to 2013, the Licensee and the Agency conducted insurance business activities through names that were not registered or approved by Council, as follows:

a. In 2013 and 2014, the Licensee used the names "RJ Financial Group Ltd" and "RJ Financial Group" in emails, on business cards and in documents provided to the complainant;

b. In February 2014, the Licensee used the name "RJ Financial Ltd" in an illustration document that was prepared and provided to the complainant;

c. In March 2015 through September 2018, the Licensee used the name "RJ Financial & Wealth Advisory" in email correspondence and documentation provided to the complainant; and

d. In November 2016, the name "RJ Financial Athletes Advisory" was used in an illustration document that was prepared and provided to the complainant.

56. During the investigation, the Licensee confirmed that he is no longer using any business names that are not appropriately registered with Council.

57. The Council Rules are clear with respect to the need for a licensee to register and obtain approval for any business name through which an agent seeks to conduct insurance business (Council Rule 2(18)).

58. The Licensee and the Agency admitted that they conducted insurance business activities under names that were not registered or approved by Council. The Hearing Committee finds that both respondents breached Council Rule 2(18) in the manner alleged by Council and the allegations in paragraphs 1. i) and 2. b) of the Notice of Hearing have been established.

Misconduct of the Agency – allegations 2. a) and b)

59. The Notice of Hearing listed two instances of potential misconduct specific to the Agency. These are referred to in paragraph 2 of the Notice of Hearing. First, it was alleged by Council that the Agency had failed to properly supervise and instruct the Licensee's assistant, by allowing her to provide false confirmations about witnessing signatures. Second, it was alleged that the Agency had breached various provisions of the Code of Conduct and Council Rules by conducting insurance business through names which were not registered or proved by Council.

60. The Agency admitted that these allegations in the Notice of Hearing were proven by Council and, for the reasons noted above, the Hearing Committee agrees that the Agency committed the alleged misconduct.

DECISION – ALLEGATIONS NOT ADMITTED

61. As a result of the admissions made by the Licensee and the Agency, the focus of the hearing was on paragraphs 1. e), f) and g) in the Notice of Hearing. With respect to those matters, certain admissions of fact were made by the Licensee and the Agency, but the respondents took the position that Council had *not* proven those allegations to the requisite balance of probabilities standard (*FH v. McDougall*, 2008 SCC 53).

62. The Hearing Committee will carefully review each of these allegations in the following section of this decision.

Failing to perform an appropriate needs analysis or prepare a written financial plan – allegation 1. e)

63. The Licensee admitted that he did not prepare and provide the complainant with a stand-alone written needs assessment document that recorded the following types of information: (a) the complexity of the complainant's circumstances and information relevant for assessing his risk tolerance; (b) an explanation of the Licensee's recommendations and how they addressed the complainant's needs considering the above; and (c) unmet needs of the complainant that were to be addressed in the future.

64. The Licensee also admitted that he never prepared or provided the complainant with a written financial plan.

65. It was the Licensee's evidence that he offered to provide the complainant with a written financial plan during one of their early meetings in 2013. The Licensee described showing the complainant a sample plan that had been prepared for another client. The Licensee said that the complainant was clear that he did not have any interest in such a plan and that it was not a document that he would read – it would just "end up in a drawer."

66. Many years later, in or around 2018, the Licensee was in the process of putting together a written financial plan for the complainant when the professional relationship came to an end. The Licensee agreed that having a financial plan would have been helpful for the complainant at that time, but said it was not something that the complainant had ever requested during their professional relationship.

67. Again, there was no evidence from the complainant at the hearing. It would likely have assisted to hear from the complainant about what was discussed and his expectations. There was some documentary evidence that showed the Licensee taking steps, shortly after he was retained, to provide a broad financial plan for the complainant. For example, in July 2013, the

Licensee emailed the complainant's employer, noting that he was "working on a comprehensive financial plan" for the complainant. A similar email was also sent by the Licensee to the complainant's banker that same month.

68. The Licensee and the complainant signed an engagement agreement in May 2013 that set out the scope of services to be provided, including that the Licensee was to provide a broad financial strategy for the complainant. The Licensee acknowledged that this broad agreement was signed but said that it was never acted on; he never charged the complainant any hourly rates for such work; and the broad services contemplated in the agreement were never required by the complainant.

69. The Licensee and the Agency did accept that the complainant's financial circumstances were unique considering his age, income and the amount of insurance coverage that was being recommended and purchased within a relatively short period of time.

70. With respect to a "needs assessment", the Licensee's position was that he performed a comprehensive and effective needs assessment for his client, but he did not commit that assessment to writing. The Licensee submitted that there was no professional requirement at the time to perform a *written* needs assessment. His position was that a detailed and appropriate verbal assessment of the complainant's needs was undertaken, and he suggested that the Hearing Committee must consider the entirety of his client file, as well as his evidence at the hearing, to consider whether he met his professional obligations to assess the complainant's needs for the products that he placed for his client.

71. The Licensee was familiar with the basic components of a needs assessment. In 2013, when he met the complainant, the Licensee had access to needs analysis and financial planning software that he utilized to prepare written needs and assessment and financial plans for his clients. In fact, he accepted that it was his usual practice in 2013 to prepare a written needs assessment for his clients. Even if the complainant was not interested in reading lengthy documents, he conceded that it would have been relatively straightforward to have provided some sort of summary assessment of his recommendations, particularly given the nature of the advice that the Licensee was providing, combined with the unique financial circumstances and needs of the complainant and the significant investment dollars being committed to the policies over many years.

72. A review of the Licensee's client file confirms that he did seek and obtain a significant amount of information from the complainant. Efforts were made by the Licensee to obtain and review the complainant's contract, as well as information about his personal assets and liabilities. The Licensee also reached out to the complainant's employer, agent and other advisors. The Licensee asked about the complainant's pre-existing insurance coverage under his group plan, as well as the other whole life policy that he owned (although he did not take steps to obtain copies of the actual policies).

73. The Licensee described his initial meetings with the complainant as an exercise in verbal fact-finding. He had wide-ranging discussions with the complainant. He learned that the complainant had not saved a lot of money for retirement and had relatively simple financial affairs. He understood that the complainant was looking to minimize taxes in the short term, but also wished to establish a savings portfolio for after he stopped playing professional sports. The Licensee did not find the complainant to be sophisticated in insurance matters, but he said the complainant was reasonably knowledgeable on financial matters. After a couple of in-person meetings with the complainant, the Licensee developed a strategy and took steps to help him purchase the initial insurance products noted above.

74. The Licensee testified that before he recommended the policies he had a detailed understanding of the complainant's overall financial situation, his income in the foreseeable future, his current finances, including his regular expenses, as well as his professional and personal goals and future plans. The Licensee described this as understanding both "soft" and "hard" information about his client.

75. The Hearing Committee noted that there were almost no documents in the Licensee's client file that synthesized this information or set out his rationale for the recommendations and advice he gave to the complainant. There were many emails between the Licensee and the complainant in which insurance and investment products were discussed (often with the Licensee providing some information about how the product would work), but the bulk of these communications were from periods after the products had been purchased. The Licensee was able to point to handwritten notes that he made during some of his initial meetings with the complainant that referenced information about the complainant's personal financial circumstances, but there was no distillation of this information into one document.

76. The allegation in the Notice of Hearing was that the Licensee failed to perform an appropriate needs analysis for his client. In closing submissions, Council argued that the circumstances demanded that the needs analysis be committed to writing. Council said that the notes taken by the Licensee in the early years that he worked with the complainant may have showed some information gathering, but the notes did not set out anything regarding important client matters, such as risk tolerance, liquidity preferences or the complainant's need for insurance guarantees a number of years down the road. Council emphasized that no document of any kind was prepared or retained by the Licensee that set out *why* the Licensee was recommending certain products to the complainant. Even though it was conceded that there were no issues with respect to the suitability of the insurance products, Council submitted that there was an absence of information in the Licensee's files that would allow for a reasonable understanding of the Licensee's assessment of the complainant's needs based on the fact-finding process undertaken by the Life Agent. Again, the Licensee argued that his fact-finding and assessments were done verbally, through his meetings with the complainant.

77. A licensee's recommendations and financial advice must always be appropriate to the client's assessed needs and risk tolerance. That is a foundational professional obligation of an insurance agent and it is critical to the proper functioning of the profession. An insurance agent must always act in the best interests of the client. There were only limited documents, if any, in the Licensee's files that would allow for an objective assessment of the rationale for the recommendations that were made by the Licensee, or the advice that he gave to the complainant. Particularly in the early years of the relationship there were many emails back and forth between the Licensee and the complainant through which the Licensee gathered information, but there was no document prepared by the Licensee that outlined the reasons behind the overall strategy he had designed for the complainant or the Licensee's assessment of the complainant's need for the products he was purchasing.

78. There are prior disciplinary decisions of Council that have emphasized the importance of a properly conducted needs assessment. As noted above, this is an important professional obligation. In *Rosalie Ninalga* (March 2024), the licensee was unable to provide adequate documentation of client instructions, client notes or summaries relating to the assessment of her clients' needs or circumstances. In that instance, even though it was accepted that the licensee may have sold policies that were appropriate for her clients, without a properly documented needs analysis that illustrated sufficient fact-finding or justification of the recommendations and/or strategy, it was noted to be difficult for an outside party to assess the transaction in question and objectively verify if the products recommended were suitable or understood by the client. There is another recent decision of Council that suggest a verbal needs assessment is not sufficient, although the analysis of that issue in the decision is somewhat perfunctory (see: *Kamna Suri* (November 2020)).

79. The Hearing Committee believes there have been a number of evolutions with respect to insurance practices in recent years in relation to the preparation of client needs assessments. For example, it is now considered standard practice for a licensee to provide a *Reason Why* letter to a client at the time a policy is purchased. These letters, for which most insurers have detailed precedents that they recommend licensees use, require the insurance agent to provide a plain language summary to the client of the circumstances that led to the recommendation, along with a description of the needs that will be addressed if the licensee's advice is accepted. Such letters are also expected to explain different product options for the client, as well as plans to address anticipated issues in the future (along with fee structures). With respect to other products that have an investment component, such as segregated funds, the standards today require a licensee to document why recommendations are being made.

80. There is no doubt that the current standard practice would also require the provision of this type of letter or written summary to a client when a licensee is making recommendations similar to those that he made to the complainant. To adequately assess and consider appropriate products for a particular client, a licensee must consider a range of factors, including not only the client's current financial circumstances, but also long-term financial goals, risk tolerance and liquidity needs. These obligations are intended to ensure

that clients are fully apprised of not only what is being recommended, but also why the recommendations have been made.

81. The Hearing Committee was less clear as to whether the standard practice in 2013-2014 required the preparation of a written needs assessment (noting that the allegation in the Notice of Hearing is that the Licensee did not perform *any* needs assessment).

82. At the hearing, Council introduced a document produced by the Canadian Life and Health Insurance Association titled "The Approach: Serving the Client Through Need-based Sales Practices". The document was after the material events in this proceeding and it was conceded by Council that the document was not incorporated in the Code of Conduct or Council Rules, but it was provided to the Hearing Committee as an explanation of a licensee's general obligations with respect to performing a needs analysis. Council also noted that the document attached different examples of *Reason Why* letters.

83. In its closing submissions, Council's position was that a detailed and written needs analysis was required to be prepared by the Licensee in relation to the complainant, given his personal financial circumstances, the amount of money at issue with the product being purchased, including the face value of the policies, along with the significant surrender charges and the general complexity of the transactions that the Licensee facilitated. Council submitted that such a document ought to have been prepared by the Licensee to ensure that his client understood what needs were being served through the products that he was purchasing.

84. The Licensee maintained that he had many verbal discussions with the complainant about these matters. The Licensee noted that each policy application process included a review of detailed policy illustrations and diagrams with the complainant. He also emphasized the many written communications with the complainant, including emails and/or text messages, in which the Licensee set out recommendations and advice, all of which he said was specifically tied back to the complainant's needs and the assessment that he had performed. The Licensee also noted his frequent communications with the complainant's agent and other advisors, noting that he reported on the policies and products to a number of other professionals who were advising the complainant.

85. The allegation in the Notice of Hearing also includes a suggestion that the Licensee committed misconduct by not providing the complainant with a written financial plan. The Licensee conceded that a written financial plan had not been provided. He indicated that he had offered to provide a written financial plan in 2013, but the complainant had expressly indicated that such a plan was not necessary. Eventually, when the Licensee was working on a written financial plan in 2018, the complainant ended the professional relationship.

86. Had these underlying events taken place in the past few years, the Hearing Committee would have had no hesitation in concluding that the Licensee did not meet his professional obligations. The Licensee was assisting the complainant with the purchase of several significant and expensive policies and products. The complainant had unique personal and financial circumstances. He was also not sophisticated with respect to insurance products. At no time did the Licensee provide a summary to the complainant setting out why he was recommending the investment strategy. Similarly, there was nothing provided to the complainant that discussed alternative products, or the risks and downsides of the policies that the Licensee had recommended.

87. To borrow a phrase from the *Ninalga* decision, it was also impossible for the Hearing Committee to understand the Licensee's recommendations or strategies from a review of his client files. There is no question that a written financial plan would also have been a useful exercise for the Licensee to undertake, even if the client was not keen to have such a document.

88. In order to place a client in an appropriate product, a licensee must undertake an adequate assessment of the clients' needs. What is necessary will depend on the specific circumstances of the professional relationship, but in a situation like the one between the Licensee and the complainant, a licensee should be expected to undertake a comprehensive and detailed analysis of the client's needs and goals and provide that work, in some format, to the client.

89. This was not a situation where the Licensee did not make efforts to obtain information about his client, as the files showed certain steps taken in that regard. That being said, there was no distillation of this information into any document provided to the complainant, or even maintained in the Licensee's client files. Further, there were several communications between the Licensee and the complainant that appear to indicate that the complainant may not have had an adequate understanding of the overall strategy developed by the Licensee or why certain products had been recommended to him. Had the Licensee set that information out in writing for the complainant, there would be no debate as to the reasons behind the strategy that was being implemented.

90. The Hearing Committee is required to assess this allegation to determine if it has been proven by Council on a balance of probabilities. During the material period, there was no provision in the Code of Conduct or Council Rules that addressed the need for a *written* needs analysis or financial plan by an insurance agent. That is not to say that a licensee was not obliged to perform an appropriate needs analysis for a client. Section 5.3.2 d) of the Code of Conduct specifically noted that a licensee's failure to "conduct an adequate fact finding and assessment of a client's insurance needs" would be professional conduct fell below the expected level of competency.

91. There was no evidence before the Hearing Committee that established that there was a professional requirement during the material period for a licensee to prepare a written financial plan for a client. In the result, the Hearing Committee has concluded that Council has not established that aspect of paragraph 1. e) of the Notice of Hearing.

92. The decision with respect to the needs analysis is not as simple. There was no written needs analysis performed by the Licensee. That was conceded. Council did not point the Hearing Committee to any provision of the Code of Conduct or Council Rules from the material period that set out a licensee's obligation to perform a written needs analysis for a client. That being said, it was certainly a common practice in 2013-2014 and the Licensee himself conceded that his usual practice at the time was to use software to perform that type of analysis for a client.

93. With respect to the complainant, a higher level of planning would have been necessary given his age, high net worth and unique financial circumstances. Particularly when an insurance agent is recommending products like segregated funds, which have a significant investment component (and corresponding investment risk) and more complicated features, there is a need for a licensee to articulate and explain why certain products are being recommended. The Licensee did not provide a written assessment to the complainant, but he testified at the hearing that he conducted an appropriate analysis and he said that his file materials reveal the depth of information that he considered at the time.

94. When looking at the Licensee's file materials, and taking into account his testimony at the hearing, the Hearing Committee has concluded that there was clearly room for the Licensee to have done a more comprehensive job as an agent. That being said, although the Licensee's professional conduct was lacking, the Hearing Committee does not believe it can be said, on a balance of probabilities, that the Licensee's conduct did not meet the expected standards in the material period when he was helping the Licensee purchase these products. On the basis of the material presented at the hearing, the Hearing Committee concluded that Council was not able to meet its burden to establish that a written needs assessment was required in 2013-2014. Perhaps the analysis on this issue would be different if there was evidence revealing that the products purchased were not suitable for the complainant, but there were no concerns about suitability advanced at the hearing. Similarly, the analysis might also change depending on what the client might say about his or her interactions with the licensee. Considering the absence of clear professional standards during the material period, the Hearing Committee is unable to conclude that the Licensee failed to adequately assess the needs of his client. In the result, allegation 1. e) in the Notice of Hearing has not been established by Council.

Failure to keep proper and adequate records – allegation 1. f)

95. Council also alleged that the Licensee failed to keep proper and adequate records, specifically that he did not keep records relating to a needs analysis or a written financial plan.

It was also alleged in the Notice of Hearing that the Licensee failed to keep records relating to his "dealings with and recommendations" to the client and/or "advice or warning to the client on the client's potential risk and cost exposures in following the Licensee's recommendations."

96. Again, it was admitted that there was no documentation retained by the Licensee relating to a needs assessment or written financial plan. As discussed above, the Licensee did not prepare either of those documents for the complainant. Additionally, the Licensee acknowledged that he did not retain any records showing that he had been authorized or instructed by the complainant to sign documents on his behalf or permitted by the complainant to modify information on the face of documents that had already been signed. That being said, given the Hearing Committee's conclusions with respect to paragraph 1. e) in the Notice of Hearing, the failure on the part of the Licensee to retain documents relating to those issues must also be dismissed. A licensee cannot be said to commit misconduct for not retaining documents that were not part of standard practices so many years ago.

97. Assessing at a more general level whether the Licensee kept proper and adequate records of his "dealings with and recommendations to the client" is more challenging. Again, as noted above, the advice given by the Licensee to the complainant was never synthesized into a simple or comprehensive explanatory document or email. However, there were dozens of documents in the Licensee's files that showed explanations and recommendations being made by the Licensee to the complainant. In particular, the Licensee provided policy illustrations to the complainant with respect to the insurance products that were sold. The illustrations typically contained declarations signed by the complainant indicating that the illustration had been explained to him and he understood the assumptions upon which it was based.

98. There were also many emails exchanged between the Licensee and the complainant in which the Licensee offered information about the policies, including the expected returns. The Licensee also provided regular updates to the complainant (and often to his other advisors) which set out a summary of his various holdings as at certain dates, all reduced to one or two pages. It was the Licensee's evidence that the complainant preferred to receive information in that abbreviated form.

99. During the same period of time, the Licensee emailed with other professional advisors of the complainant, including his agent, banker and accountant. In many of those communications, the Licensee set out, in some detail, his dealings with and recommendations to the complainant in terms of the various products that were being purchased. He responded to questions from the complainant's other advisors.

100. It is true that the Licensee was unable to point to any emails or documents sent to the complainant discussing potential alternative products to the policies that were sold, or documents that addressed the Licensee's risk tolerance. There was also nothing documented showing potential risks and cost exposures to the complainant with respect to early

withdrawals from certain of the policies or explaining the potential risks of a leveraged investment product. Licensees should be encouraged to prepare and provide those types of records to their clients as part of their overall professional obligations.

101. Proper record-keeping is an important and critical component of professional practice in the insurance business. The Hearing Committee has reviewed the decisions presented by Council in which licensees have been found to have failed to retain adequate records. The *Sherlock Hsu* (September 2023) decision was emphasized by Council during the course of submissions as assisting on this allegation. It is fair to say that the facts of the *Hsu* decision are starkly different from the within matter. In *Hsu*, the licensee was unable to provide *any* emails between himself and the complainant and he did not have any notes in relation to his phone calls with his client. The licensee accepted that he had not taken notes about what was discussed with the client and he also did not explain to the client the advantages or disadvantages of certain products. It was also not his usual practice to use documents such as "Know Your Client" or *Reason Why* letters.

102. In *Hsu*, there were significant concerns about the licensee's interactions with his client. The Licensee was unable to demonstrate that any type of needs analysis was conducted, or that explanations were provided to the client to assist her in making an informed decision. The licensee also failed to engage in the usual practices designed to ensure that appropriate advice was being given. Those facts are distinguishable from the matter at hand. In this instance, the Licensee's files contained a lot of information about the complainant, but very little in the way of anything relating to a number of key areas, including: the Licensee's risk tolerance; the availability or suitability of alternative products; any sort of synthesis of the fact-finding and needs assessments that the Licensee testified that he undertook; the drawbacks to early withdrawals from some of the policies; or the potential for the complainant to be exposed to adverse costs depending on his future actions with respect to the products.

103. Although the *Hsu* matter is different, the Hearing Committee nevertheless believes that the Licensee was required to maintain much better client records. Given the absence of important documents addressing the issues set out above, the Hearing Committee has concluded that the Licensee failed to keep adequate and proper records of his dealings with and recommendations to the complainant, as well as the advice that he was giving his client. The Hearing Committee has concluded that Council established the misconduct alleged in allegations 1. f) (ii) and (iii) of the Notice of Hearing.

Failure to communicate with the client in writing to ensure understanding between the client and the Licensee – allegation 1. g)

104. The third and final category of contested allegations relates to the Licensee's communications with the complainant. Specifically, it is alleged in the Notice of Hearing that the Licensee failed to communicate with the complainant *in writing* to *ensure understanding*

between the complainant and the Licensee regarding aspects of the advice that was being given with respect to product selection and risks and cost exposures.

105. During the course of oral submissions, Council emphasized that the essence of this allegation related to the Licensee's professional obligation to ensure that the complainant fully understood the Licensee's assessment of the client's needs; his recommendations and advice; and the risks and costs exposures in following the recommendations. Council submitted that a review of the email correspondence exchanged between the Licensee and the complainant revealed that the complainant did not have a "good understanding" of the insurance products that he had obtained through the Licensee, including the purpose of the products and the potential costs and risks associated with the products, including the deferred charges.

106. As addressed in the preceding section, Council argued that the Licensee's file did not contain any documentation reviewing his recommendations and ongoing advice to the complainant with respect to product selection and management. Council noted that there are no documents to suggest that the Licensee provided a complainant with a comparison of competing products, or discussion of different product options, or even at a more basic level, demonstrating how and why the Licensee was recommending certain products to the complainant. There would appear to be some overlap between this allegation and the allegation above, but for the purposes of this decision the Hearing Committee has restricted its assessment of this allegation to a review of the Licensee's communications with the complainant.

107. With respect to risks and cost exposure, there was a telling email exchange between the Licensee and the complainant in October 2014 which might suggest that the complainant was not fully understanding the products that had been recommended. Responses from the Licensee in that email appeared to give the complainant the impression that he could withdraw his money in the short term without having to pay any deferred sales charges or surrender fees. The Licensee said that the email from his client did not raise concerns for him and that it was not a situation where his client did not understand the policies that had been recommended, but instead suggested his client was engaged and giving thought to his various investments.

108. Ultimately, when the client file is examined objectively and, in its entirety, the Hearing Committee has concluded that the Licensee failed to take adequate steps to ensure that his client understood what was being recommended and purchased. At no point did the Licensee provide any written communication to the complainant setting out why he was recommending a particular product or overall strategy. There were no written communications that addressed important features of the products, such as deferred sales changes or surrender charges. There were also no records in which alternative products were discussed. Communicating with a client is an important aspect of a licensee's professional

obligation. It is one thing to develop a sensible and appropriate plan for a client, but a licensee must also ensure that the client understands what is being recommended.

109. In the absence of evidence from the complainant it is not possible for the Hearing Committee to make any conclusions about what the complainant truly understood about these products. The Hearing Committee's decision in relation to this allegation is based on the evidence given by the Licensee at the hearing, along with our review of the Licensee's files. On the basis of that evidence alone, the Hearing Committee has concluded that Council has met its burden to establish the allegations in paragraph 1. g) of the Notice of Hearing.

CONCLUSIONS OF THE HEARING COMMITTEE

110. For the reasons set out above, the Hearing Committee has concluded that Council has established the misconduct alleged in the following paragraphs of the Notice of Hearing: 1. a), b), c), d), f), g), h) and i) and 2. a) and b).

111. The Hearing Committee has concluded that Council did not prove the allegations against the Licensee set out at paragraph 1. e) of the Notice of Hearing.

112. The parties will now have the opportunity to schedule a date for submissions with respect to penalties and costs. The Hearing Committee asks that the parties establish a schedule for the exchange of written submission on these issues in advance of the hearing date. Counsel for the Hearing Committee can be contacted should the parties require assistance from the Hearing Committee to set a schedule.

Dated at Victoria, British Columbia, on the 13 day of September 2024.

Peter Jong
_____
Peter Jong, Chair of the Hearing Committee

In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
*(*R.S.B.C. 1996, c. 141)
(the "Act")

And

THE INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

And

RICHARD JONES
(the "Licensee")

And

THE RICHARD JONES FINANCIAL GROUP LTD.
(the "Agency")

Date:	December 11, 2024 9:30 a.m. (by video)	
Before:	Peter Jong Barbara Price Kawkab Jamal	Chair Member Member
Location:	Insurance Council of British Columbia 1400 – 745 Thurlow Street Vancouver BC	
Present:	Taymaz Rastin/Laura Wilson	Counsel for Council
	Tom Newnham Mostafa Elfakhani (articling student)	Counsel for the Licensee/Agency
	Michael Shirreff	Counsel for the Hearing Committee

REASONS FOR DECISION
OF THE HEARING COMMITTEE
(DISCIPLINARY MEASURES AND COSTS)

INTRODUCTION

1. In our initial decision in this matter, the Hearing Committee concluded that the Licensee and Agency had failed to meet their professional obligations and had committed misconduct during the Licensee's professional relationship with the complainant. There were several specific allegations of misconduct advanced by Council, most of which were admitted by the Licensee and the Agency at the hearing. Having reviewed the evidence, the Hearing Committee was satisfied that the admissions were appropriate and that Council had proven most of the misconduct alleged in the Notice of Hearing.

2. The Hearing Committee is now tasked with determining an appropriate penalty or disciplinary action for both the Licensee and the Agency given our earlier findings. When considering the approach to be used at this second stage of this proceeding, the Hearing Committee has been mindful of the overarching purpose of the Act, being the protection of the public. Council is responsible for protecting the public and ensuring that licensees are competent and carry on the business of insurance in accordance with the usual practices in the industry. When a licensee or Agency falls short in terms of its professional conduct, any resulting disciplinary action must consider the public interest. It is through this lens that the Hearing Committee has assessed the positions of the parties as to the appropriate disciplinary order.

3. Although not advanced as joint submission, there was significant agreement between the parties with respect to the disciplinary action that should result from the misconduct proven by Council in this matter. Council set out its position in writing in advance of the hearing. The Licensee and the Agency then confirmed, in writing, that they did "not dispute the vast majority of penalty sought by Council." Even if the parties are on the same page with respect to the penalty, the Hearing Committee must still assess the reasonableness of the penalties being proposed, but it is worth noting at the outset that the Licensee does not oppose the following terms sought by Council:

    a. a condition be imposed on the Licensee's life agent licence that requires him to be supervised for a period of 24 months of active licensing by a supervisor approved by Council, commencing when the suspension has been lifted;

    b. a condition be imposed on the Licensee's life agent licence that requires him to complete the following courses, or equivalent courses as acceptable to Council (collectively, the "Courses"), prior to the Licensee's suspension being lifted:

        i. Advocis Module 911 ("Financial Planning Profession & Financial Services Industry Regulation"),
        ii. Advocis Module 912 ("Financial Analysis"),
        iii. Advocis Module 918 ("Investments"),
        iv. an ethics course, and

v. the Insurance Council Rules Course for Life and/or Accident & Sickness Agents; and

c. a fine, in the amount of $10,000, be paid by the Licensee within 90 days of Council's order.

4. With respect to the Agency, Council sought an order that the Agency be fined $1,000, to be paid within 90 days of Council's order, and that a condition be imposed on the Agency's corporate licence that a failure to pay the fine as ordered will result in the automatic suspension of the Agency's licence, and the Agency will not be permitted to complete its annual licence renewal until such time as the Agency has paid the fine in full.

5. Again, the Agency agreed that the disciplinary action sought by Council was appropriate and these orders were not opposed.

6. There was also no disagreement by the Licensee and the Agency with respect to the costs sought by Council. In keeping with the provisions of section 241.1 of the Act, as well as Council's Policy – Assessing Investigation Costs and Hearing Costs Policy, Council sought total costs from the Licensee and the Agency in the amount of $44,490.40. Council asked that the costs be ordered to be paid jointly and severally against the Licensee and the Agency.

7. These costs consisted of the following: investigation costs ($18,625); hearing costs ($12,375); and other flat-rate hearing costs ($13,490.40).

8. The Licensee and Agency did not take issue with Council's entitlement to costs or the quantum of the costs sought by Council.

9. There was one significant matter where the parties were not on the same page – whether it was also necessary for the Hearing Committee to order that the Licensee's licence be suspended in addition to other orders noted above. Council took the position that the Licensee's licence should be suspended for a **one-year period**, starting on the date of Council's order. The Licensee argued that there was no need for any period of suspension. It was the Licensee's position that the combination of the fine, supervision and remedial education combined to be an adequate penalty to provide deterrence to the Licensee, while also protecting the public interest.

10. As this was the key issue, the Hearing Committee has devoted much of this decision to analyzing and assessing the submissions of the parties with respect to the licence suspension sought by Council.

LEGAL PRINCIPLES: DISCIPLINARY ACTION

11. The starting point in terms of assessing an appropriate disciplinary action in any matter in which misconduct has been found are the provisions in sections 231(1) and 236 of the Act. These sections of the Act provide Council with broad powers to craft an appropriate disciplinary order depending on the circumstances of each individual case. There is considerable discretion provided to Council in terms of the disciplinary action order that can be made. Among other things, Council is able to fine or suspend a licensee or agency, or impose conditions on an agent's licence.

12. It is always with a view to the public interest that the Hearing Committee must assess the appropriate penalty. In this proceeding, the Hearing Committee has carefully reviewed the written submissions provided by both parties, both of which addressed the broad principles to be applied when setting an appropriate administrative sanction (see: *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic*, November 22, 2005).

13. Broadly speaking, the disciplinary action must be intended to encourage compliance with the professional obligations of the industry, but also with a view to specific deterrence of the party being disciplined and general deterrence in order to send the appropriate message to the public. The penalty is not intended to be punitive.

14. There are many summaries of the legal principles that apply when crafting an appropriate sanction in a professional disciplinary matter. Hearing Committees have often referred to the following guidance set out by James T. Casey in his textbook, *Regulation of Professions in Canada*:

> A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.

15. Those factors have been quoted, with approval, in a several earlier decisions of Council, including *Pamela Peen Hong Yee* (June 2019).

16. The Financial Services Tribunal also cited Mr. Casey on these principles in *Pavicic*:

> One of the primary purposes of legislation regulating professions is protection of the public and the Insurance Council has a duty to regulate the insurance industry to help ensure the public is protected. One of the tools available to the Insurance Council to help protect the public is the application of penalties for professional misconduct. Casey reviews the factors that are to be taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender,

> punishment of the offender, the denunciation by society of the conduct, the need to maintain public confidence in the integrity of a profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases (Casey, op cit, p 14.2). Casey also provides a summary of factors relating to the offender to consider in determining the proper penalty for an offense. He also cites *Jaswal v. Medical Board (Newfoundland)* (1996), 42, Admin. L.R (2d) 233 (Nfld. T.D.) at page 249-250 where the Court described some of the factors to be considered, including "the need to promote specific and general deterrence, and, thereby protect the public", "the need to maintain the public's confidence in the integrity of the ...profession;" and "the range of sentence in other similar cases."

17. Similar principles are applied by other professional regulators when considering how to determine a fair and appropriate penalty for professional misconduct. One of the leading decisions of the British Columbia Law Society is *Law Society of BC v. Ogilvie*, [1999] LSBC 17, where the hearing panel provided a lengthy list of factors that *might* be considered when assessing a penalty, including:

    a. the nature and gravity of the conduct proven;

    b. the age and experience of the respondent;

    c. the previous character of the respondent, including details of prior discipline;

    d. the impact upon the victim;

    e. the advantage gained, or to be gained, by the respondent;

    f. the number of times the offending conduct occurred;

    g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

    h. the possibility of remediating or rehabilitating the respondent;

    i. the impact upon the respondent of criminal or other sanctions or penalties;

    j. the impact of the proposed penalty on the respondent;

    k. the need for specific and general deterrence;

    l. the need to ensure the public's confidence in the integrity of the profession; and

    m. the range of penalties imposed in similar cases.

20. Subsequent Law Society decisions clarified that not every factor set out in *Ogilvie* is to be applied in every case, and that the weight to be placed on the various factors will vary from case to case depending on the particular facts before the discipline panel.

21. Along these lines, the hearing panel in *Law Society of BC v. Dent*, 2016 LSBC 5 proposed that only four broad categories be considered and applied:

    1. the nature, gravity and consequences of conduct;
    2. the character and professional conduct record of the respondent;
    3. any acknowledgement of the misconduct and remedial action; and
    4. the need for public confidence in the legal profession including public confidence in the disciplinary process.

22. Regardless of the precise formulation of the test, the above authorities demonstrate that determining an appropriate disciplinary action requires a consideration of the unique facts of a particular case – considering both the nature of the proven misconduct, but also the specific characteristics of the licensee and/or agency. On the latter issue, a licensee's acknowledgement of the misconduct and the remedial steps that have been taken may be material, but prior discipline is also important. On that note, as discussed in *Financial Institutions Commission v. Insurance Council of British Columbia*, 2018 BCFST 5 (at paras. 100-101):

> It is my view clear beyond debate that repeated licensee conduct that causes the regulator and the public to question that licensee's trustworthiness strikes at the heart of the licence itself. The importance of trustworthiness cannot be understated. Nor should we forget what this term actually means.
>
> The work of insurance agents is regulated for a reason. Insurance agents find themselves in a position of trust in relation to important financial transactions that have implications for their clients, for insurers and for the public. The insurance licence is a solemn obligation granted on the trust that the agent will work in accordance with the rules and standards created for licensees. Trustworthiness means honouring that trust by doing the right thing even when it is inconvenient, even when no one is looking, even when an agent might not agree with the rules, even when an agent is under pressure to do the convenient thing and even when other agents are engaging in the same conduct. Anyone with the means to do so can do the easy thing or the expedient thing. The regulatory system would be meaningless if its participants, the public and the regulator could not have confidence in a licensee to act in a trustworthy fashion.

23. Finally, when considering the appropriate disciplinary action, particularly where there are multiple adverse findings against the Licensee and the Agency, the Hearing Committee has considered that appropriate and usual approach is to make the assessment on a "global" basis, taking into account the nature of all of the proven misconduct: *Law Society of BC v. Gellert*, 2005 LSBC 15. The exercise does not involve looking at each misconduct finding individually and then "tallying" up a final penalty. The

Hearing Committee must assess the appropriate disciplinary action for the Licensee and the Agency globally, considering the full range of the misconduct proven by Council.

24. It is through these principles that the Hearing Committee has analyzed the misconduct of the Licensee and the Agency in this matter.

ANALYSIS

25. As noted above, the Hearing Committee had the benefit of detailed written submissions from the parties. In setting out the parties' respective positions, their submissions tracked quite closely to the various factors set out in the above section. Council took the position that the misconduct in this matter was serious, with the Licensee's breaches of his professional obligations being numerous, multi-faceted and relating to the purchase of nine products for the complainant.

26. Further, Council emphasized the Licensee's prior disciplinary matter in 2007, which it submitted showed the Licensee committing similar misconduct that involved breaches of trustworthiness and good faith to his clients. In light of the Licensee's prior misconduct, Council took the position that the key principle in determining a disciplinary action for the Licensee was the need for progressive discipline and specific deterrence.

27. The Licensee's position was that, when all of the relevant factors are assessed, the mitigating factors outweigh any aggravating factors, such that there is no need for the Hearing Committee to order a period of suspension in addition to the disciplinary orders that were accepted by the Licensee and the Agency. The Licensee emphasized the lack of any malicious intent in his actions; the fact that his misconduct was committed for client convenience; there were no financial losses to the client; and the Licensee's cooperation during the investigation and hearing.

28. Having considered the positions of the parties, the Hearing Committee has concluded that the orders proposed by Council, which the Licensee and Agency accepted, are appropriate in this proceeding. In order to protect the public, send an appropriate message to the industry and also deter the Licensee, it is reasonable to order the fines, remedial education and supervision proposed by Council. These orders are in keeping with the legal principles that must be considered at this stage of the hearing.

29. In the following section of the decision, the Hearing Committee will review the factors that we see as being relevant in determining the disciplinary action and penalty, with a view to addressing whether the Licensee should also face a period of licence suspension.

Seriousness of the misconduct

30. Although not identified as a stand-alone factor in *Pavicic*, the Hearing Committee believes that it must consider the nature and gravity of the misconduct committed by the Licensee and the Agency. The Hearing Committee is of the view that the *seriousness* of a licensee's misconduct is critical in terms of establishing a disciplinary action that will meet the public interest mandate of Council.

31. In our initial decision, the Hearing Committee found that the Licensee had breached several sections of Council's Code of Conduct and Rules that, in our view, strike at the heart of the Licensee's

trustworthiness and good faith in his professional dealings with his clients and insurers. On several occasions, the Licensee signed documents in the name and on behalf of his client, in circumstances where he did not have written authorization from his client to do so. The Licensee also modified the information on the face of documents after they had been signed by the client and then submitted these documents to insurers. Further, the Licensee also provided false confirmation about having witnessed the client sign documents (and allowed his assistant to similarly falsely confirm to have witnessed client signatures).

32. With respect to his professional practices, the Hearing Committee concluded that the Licensee had not kept proper and adequate records of his dealings and recommendations to the complainant, including any advice or warnings that the Licensee may have provided his client with respect to risks and costs exposures in relation to the products that were purchased (many of which were significant financial investments).

33. It must be noted that there was no position taken by Council that the products recommended by the Licensee, and purchased by the complainant, were unsuitable in terms of the complainant's insurance needs. There was also no evidence of any financial harm to the complainant (Council introduced evidence of there being litigation between the complainant and the Licensee, but no evidence was adduced as to the amounts being claimed in the case or any settlement). Nevertheless, the absence of client loss and the fact that Council did not challenge the suitability of the products are factors when looking at the seriousness of the misconduct. Had this been a situation where the Licensee had recommended unsuitable products to his client, it would be much more serious misconduct.

34. That being said, the breadth and scope of the misconduct proven by Council in this instance still points to the conclusion that the misconduct must be regarded as falling at the serious end of the spectrum. Many of the conduct issues in this proceeding strike at the core of fundamental professional obligations of a licensee. The insurance industry relies heavily on the honesty and forthrightness of licensees. Altering insurance forms and forging client signatures, even for convenience, should never happen. Further, the Licensee was also seriously deficient in terms of his client record-keeping. It was impossible for the Hearing Committee to determine, based on an objective review of the Licensee's file, why he was making certain recommendations to his client and whether he was providing appropriate advice on the risks and potential costs exposures associated with the purchases. In this particular matter, the types of products that were being recommended were expensive and required significant payments by the client. The Licensee's recordkeeping was woefully inadequate, particularly given the products that he was recommending.

35. Finally, there were other examples of misconduct that, on their own, might not require a serious disciplinary action (conducting insurance business through unregistered names and making false or misleading statements to insurers about how long he had known the client). However, when these further instances of misconduct are layered over the serious issues discussed above, it appears fair to conclude that the Licensee did not treat his professional obligations with the appropriate and necessary level of care and attention.

36. The Hearing Committee has concluded that the seriousness of the misconduct mandates in favour of a strong disciplinary action and penalty.

The Licensee's Prior Discipline

37. Council placed significant emphasis on the Licensee's prior discipline and the need, in this instance, for the Hearing Committee to make an order that emphasizes the principle of progressive discipline.

38. It is worth reviewing the Licensee's prior disciplinary matter in some detail. On April 12, 2005, Council issued an Intended Decision, which was amended on December 22, 2005. The Amended Decision was accepted by the Licensee and an order was pronounced, taking effect on January 17, 2006 (the "2006 Order").

39. That 2006 Order was appealed to the FST by the Superintendent of Financial Institutions. On June 29, 2006, the FST issued its decision, affirming aspects of the 2006 Order, but varying two orders to include additional educational requirements and a payment schedule for the fine. The FST also remitted the matter back to Council for further consideration regarding the length of suspension.

40. Almost one year later, on June 6, 2007, Council issued a second Intended Decision and a second order, taking into account the directions in the FST's decision (the "2007 Intended Decision"). The Licensee was ultimately fined ($10,000) and suspended for a period of five months. At the end of the day, as detailed in the 2007 Intended Decision, that matter had a number of common elements to the current proceeding. In 2007, the Licensee was found to have breached his professional obligations by:

    a. failing to act in good faith and in accordance with the usual practices of the industry when he had two clients sign incomplete and/or blank insurance-related documents;

    b. failing to act in good faith and in accordance with the usual practices of the insurance industry by fabricating a client's signature on two insurance-related documents using a "cut and paste" method; and

    c. failing to conduct sufficient fact-finding and needs analysis to properly assess the client's circumstances, goals and needs.

41. Importantly, there was additional misconduct addressed in the 2007 Intended Decision that would lead to the conclusion that the Licensee's misconduct at that time was more serious than the misconduct in within proceeding. In 2007, there were also findings that the Licensee had:

    a. recommended and facilitated the transfer of fund investments to generate commissions;

    b. misled a client into believing that a transfer of a segregated fund investment had taken place when it had not;

    c. recommended and facilitated an insurance transaction for a client that was not in her best interests; and

    d. recommended and facilitated several insurance transactions for a client that was not in the client's best interests, were not reasonable, and were done for the Licensee's personal gain.

42. The distinction between the current matter and the Licensee's discipline proceeding in 2007 is that, in the prior matter, there were elements of the Licensee's misconduct where he breached the fiduciary duties that he owed to his client and put his personal interests ahead of the interests of his client. As it was described in the 2007 Intended Decision, there was a pattern of behaviour whereby the Licensee consistently eschewed his duties and obligations as an insurance agent for his own personal benefit. There were no similar findings in the current proceeding.

43. In 2007, Council considered whether a termination of the Licensee's licence was appropriate but concluded that the mandate of Council could be met with a combination of penalties that included supervision; retraining; remedial education courses; reimbursement to his clients of approximately $25,000; a $10,000 fine; and a **five-month** period of licence suspension.

44. It is generally considered to be an important factor with respect to establishing a discipline action if a licensee has come before Council on previous occasions in relation to disciplinary issues.

45. A pattern of repeated misconduct can be relevant when looking at a penalty, as it might suggest that a licensee has not responded to previous discipline and has not taken necessary steps to ensure that misconduct does not occur in the future. It has long been noted by Council that the principle of progressive discipline ought to be applied in order to establish more severe consequences for licensees who repeat misconduct (see: *Michael Anthony Edwin Crowe* (April 2020); *Ping Hong (Gary) (Chow)* (October 2020); and *Pamela Peen Hong Yee* (June 2019)).

46. When looking at a licensee's previous discipline matter, the Hearing Committee must be mindful of the weight to be given to prior misconduct by assessing the date(s) of the previous misconduct; the seriousness of the misconduct; the similarity between the matters currently before the Hearing Committee and the previous discipline; and any remedial actions taken by the respondent in the intervening period. It is not automatic that a further instance of misconduct will attract a more severe penalty.

47. In this instance, Council emphasized the similarities between aspects of the previous disciplinary matter and the current proceeding. Council notes that on both occasions, the Licensee fabricated client signatures on insurance documents and also had clients sign incomplete or blank insurance forms. Council submitted that the Licensee's continuing pattern of misconduct revealed an overall disregard for the proper practices of the insurance industry and shows that he was not meaningfully deterred by the penalty ordered against him in 2007. In the result, Council submitted that the Hearing Committee must now make an order that will send a much stronger message to the Licensee, by suspending his licence for a period much longer than five months.

48. The Licensee strongly contested Council's characterization of his earlier misconduct. The Licensee said that his misconduct in 2007 involved much more "wide-reaching" and serious matters. The Licensee noted that his prior misconduct involved concerns about product suitability and transactions that were not in the client's best interests. He noted that no similar findings have been made in the current proceeding. In this matter, there have been no findings that the complainant suffered any losses and Council did not advance the position that the products purchased by the complainant were unsuitable.

49. Further, the Licensee suggested that there was a lengthy period of time between the events that resulted in the 2007 discipline and the events in this proceeding, which began in or around 2013. The Licensee argued that he did improve his professional practices after the 2007 matter and it is not fair to suggest that his current issues are illustrative of a licensee who did not learn from a previous discipline issue. Finally, in terms of the need for progressive discipline, the Licensee emphasized that he has support from his current MGA, which does not have concerns with his business practices and has been working with the Licensee since 2018. On that point, the Licensee submitted a letter to the Hearing Committee from his MGA.

50. Ultimately, the Hearing Committee acknowledges that there are important distinctions between the misconduct that resulted in the 2007 Intended Decision and the current matter. The prior misconduct was of a more serious variety. On that occasion, the Licensee's actions were contrary to the interests of his clients and resulted in significant client financial losses. At the same time, his actions were found to have been undertaken for his personal benefit. He put his own financial interests ahead of his clients. There was no such evidence advanced in this proceeding.

51. However, there are enough commonalities between the two proceedings that the Hearing Committee believes it is incumbent to take the previous discipline matter into account in terms of crafting an appropriate penalty in this proceeding. Both matters that came before Council involved serious misconduct arising from the Licensee's professional practices. It is troubling to the Hearing Committee that the Licensee has found himself back before Council on matters that we would have expected him to correct back in 2007. When a licensee repeats similar misconduct, Council must send an appropriate message to both the Licensee and the profession that repeat offences will be treated more seriously. The Hearing Committee accepts Council's submissions that the penalty in this instance must be more significant than in 2007 in order to address the need for specific deterrence for the Licensee. Overall, the Hearing Committee regards the Licensee's previous discipline matter as aggravating in terms of the penalty to now be assessed.

General deterrence and public confidence

52. Council did not emphasize these factors in its submissions, but the Hearing Committee believes there is also a need for the penalty in this proceeding to pay heed to the need for general deterrence. In light of the breadth of the misconduct in this case, particularly the elements that touch on licensee competence and record-keeping, the Hearing Committee is of the view that the penalty must adequately reflect the seriousness and variety of the offences in order to send a strong message to other licensees. Trustworthiness and competence are core professional elements of all licensees. There is a need on the part of Council to ensure that the disciplinary action in this proceeding adequately promotes and preserves the public confidence in the regulation of the profession.

Mitigating factors

53. In addition to the above, it is also appropriate for the Hearing Committee to consider all matters that could be said to be mitigating in terms of the necessary penalty. In this proceeding, there are a number of mitigating factors that the Hearing Committee has identified.

54. First, it is notable that the Licensee was cooperative during the investigation and hearing and made a number of appropriate admissions prior to the first stage of the hearing. The Licensee entered into a detailed Agreed Statement of Facts with Council, which included significant admissions of misconduct. The Licensee's acceptance that he had professionally fallen short, coupled with his cooperation with Council in advancing this proceeding, are both matters that the Hearing Committee considers to be mitigating in terms of the resulting order.

55. Second, it is also clear that the Licensee has the continued support of his MGA, along with a number of his long-time clients. At the hearing, the Licensee submitted a series of letters and emails of support from businesspeople and other professionals who the Licensee has worked with over the years. It was clear from a review of these letters that the Licensee has considerable support from his clients. Unfortunately, none of the letters submitted on behalf of the Licensee suggested that the writers had any knowledge or understanding of the issues being addressed by Council in this proceeding or previously in the 2007 Intended Decision. The absence of the recognition from the writers that they had knowledge of the specifics of the Licensee's misconduct detracts from the weight that might otherwise be given to letters of this nature. One would expect that a licensee who has been in the business as long as the Licensee would be able to provide letters of support from their clients. In the eyes of the Hearing Committee care must be taken not to give such letters too much emphasis at the penalty stage of the hearing. Overall, the Hearing Committee does not ascribe considerable weight to the Licensee's letters of support. We have reviewed the letters and have taken them into account, albeit not in a significant way, in reaching our decision.

56. The letter from the Licensee's MGA also has deficiencies. The MGA confirmed that its compliance team has been monitoring the Licensee's current business and suggested that the Licensee had been fully transparent and cooperative in the MGA review of the underlying complaint and litigation. However, the Executive Chairman of the MGA, although supporting the Licensee, did not grapple, in any way, with the serious misconduct issues that have been found by the Hearing Committee in this proceeding.

57. The Licensee advanced several other factors that he argued to be mitigating in terms of the penalty – his evidence that he signed documents with the complainant's knowledge; the fact that his actions were intended for client convenience purposes only; and the absence of any suggestion that the complainant suffered any financial losses. Council did not agree that these facts were properly characterized as mitigating. During oral submissions, Council took the position that the absence of an aggravated factor does not render that same factor to become mitigating in terms of a penalty. As an example, if a licensee's actions led to client losses, that would be an aggravating factor in terms of the penalty. However, the absence of financial loss does not serve to render the factor mitigating on penalty. Council argued that the factor would be neutral in such a situation. Whether or not that is the case, the Hearing Committee does not need to resolve that issue in this matter. In our view, the further factors emphasized by the Licensee in his submissions are appropriately considered in terms of the penalty, but they relate more to the assessment of the seriousness of the misconduct, as compared to being considered stand-alone mitigating factors. The Hearing Committee considered these factors when analyzing the seriousness of the misconduct set out above.

Range of penalties in prior decisions

58. The Hearing Committee acknowledges that, as an administrative tribunal, it is not bound by precedent. Nevertheless, it is typically the case that a discipline body will consider the range of sentences imposed in similar cases with a view to ensuring that the penalty in the current proceeding is not inconsistent with prior disciplinary outcomes.

59. Both parties provided the Hearing Committee with submissions on several prior decisions of Council that they argued should be considered by the Hearing Committee in terms of establishing a "range" of penalty for the misconduct of the Licensee. The Hearing Committee will not address each of the decisions advanced by the parties, but we have reviewed them all in the course of reaching this decision. We will only comment on the decisions that the Hearing Committee has found to be of assistance.

60. Among others, Council referred the Hearing Committee to the following cases as providing guidance on the "unique constellation of misconduct at issue in this case": *Jiang Ping Zhang* (September 2018); *Mark Wagner* (September 2018); *Roel Reyes Bernardino* (May 2015); and *Luan Charles Xing* (March 2020).

61. In *Zhang*, a life agent submitted insurance transactional documents on three occasions that falsely purported to bear the signature and/or initials of a client but had in fact been signed by the licensee. This was done for the client's convenience and not for personal gain. The licensee was suspended for one year with a two-year period of supervision ordered after reinstatement of his licence.

62. In *Wagner*, a life agent had at least 25 improperly completed insurance forms in his files, including signed blank forms, altered forms, incomplete forms, and forms witnessed prior to a client's execution. Again, it was accepted that the licensee's business practices were focused on assisting his clients as compared to personal gain. In that proceeding, in addition to a fine and some remedial educational, the licensee was suspended until such time as the fine was paid and the courses were successfully completed. He was also subject to a two-year period of supervision after the period of suspension.

63. The Licensee distinguished the *Zhang* decision on the basis that it involved three instances of the same misconduct by the licensee. Further, it was noted that Mr. Zhang was not forthcoming when initially questioned by the insurer. Additionally, in that matter, Council ordered a suspension, but did not seek a fine. In this proceeding, the Licensee has accepted the $10,000 fine suggested by Council is appropriate. The Licensee submitted that *Zhang* should be regarded as an outlier and not all that helpful in this instance given the combination of penalties agreed to by the Licensee.

64. It was the Licensee's position that the *Wagner* case was the most analogous in relation to the scope of misconduct found against the Licensee. In *Wagner*, the suspension was only in effect until the remedial courses were completed. Of course, the decision in *Wagner* involved a licensee without a discipline history.

65. The Licensee advanced several other decisions of Council in which no suspensions were ordered, including:

a. *Christopher Gerke* (August 2022) – intended decision in which the licensee admitted to forgery by falsifying clients' signatures for five clients on 11 documents. There was no client harm identified in the matter. The Licensee had been formally reprimanded and disciplined by the insurer. The insurer also advised Council that the licensee had improved his practices immediately and consistently. The licensee was not suspended. He was fined $1,000 and required to complete remedial courses, along with a period of supervision;

b. *Christine Craig* (August 2019) – intended decision in which a 28-year licensee had a practice of adding (forging) clients' signatures on ICBC documents during a review process when it was discovered that staff had inadvertently missed obtaining one of the multiple required signatures from a client. Instead of asking the client to return the agency to finish signing, the licensee would forge the client's signature herself. The licensee was fined $1,000 and required to complete an ethics course and rules course. There was no period of suspension; and

c. *Barry Turnbull* (November 2013) – intended decision in which the licensee admitted that he had on one occasion added a client's signature to an ICBC document after the fact. There was another circumstance where the client had missed a signature on a policy document. After the client left the agency, the licensee printed the documents and forged the client's signature. Council accepted that the forgery was done for convenience and without any intention to harm the client or for the licensee to gain materially. The licensee was fined $1,000.

66. Council distinguished the decisions put forward by the Licensee as being confined to the unique facts of those decisions. Council noted that all of these decisions involved circumstances with no prior discipline and relatively narrow and confined circumstances of misconduct. In those matters, the penalties did not need to consider the concept of progressive discipline. In light of the constellation of misconduct in the within proceeding, coupled with the Licensee's prior discipline, Council submitted that it would send a bad precedent to the industry and public if the Hearing Committee did not impose a suspension on the Licensee.

67. Overall, when these prior decisions are considered, it appears to the Hearing Committee that the range of disciplinary action in similar situations is an order that includes a fine, a period of supervision and the need to complete remedial courses. Additionally, the prior decisions would indicate that a suspension may also be appropriate in more serious cases.

DECISION OF THE HEARING COMMITTEE

68. At the hearing, the Hearing Committee also had the opportunity to hear directly from the Licensee. He explained that he is currently 62 years old. He has a one-person brokerage, with long-standing clients who come to him largely because of the personal level of service that he provides. The Licensee indicated that it will be practically impossible for him to find someone to replace him for any period

that he is suspended. As the Licensee described, any significant period of suspension would likely result in the end of his business.

69. The Licensee also said that he had spent a great deal of time reflecting on his misconduct and he said that his actions did not reflect the type of licensee he typically is. He expressed great remorse for what happened and said that he works closely with his MGA and takes great care to ensure that he carefully complies with all professional obligations.

70. The Hearing Committee appreciated the opportunity to hear from the Licensee. The Hearing Committee is sympathetic to the impact that a suspension might have on a small agency, but we are also mindful that these practical considerations must be weighed together with the various factors discussed above.

71. At a fundamental level, the seriousness of the Licensee's misconduct mandates strongly towards a significant disciplinary action. Additionally, the Hearing Committee agrees with Council that the penalty in these circumstances must apply the principle of progressive discipline, ensuring that the penalty for this recent misconduct is appropriately more serious than it would it have been had the Licensee not committed prior misconduct that shared several of the same elements. Although the misconduct addressed in the 2007 Intended Decision was more serious, there are enough commonalities between that earlier matter and the within proceeding for the Hearing Committee to conclude that the prior discipline did not have desired deterrent effect on the Licensee.

72. In looking at the range of sanctions set out in the decisions addressed above, it would appear to the Hearing Committee that the *Zhang* decision is the closest on the facts to the current matter. In both *Zhang* and *Wagner*, the licensees received suspensions in addition to the other orders. We are mindful of the fact that most of the decisions relied on by the parties were intended decisions and not decisions that followed a contested hearing. In the result, it can be challenging to fully appreciate the many factors that would have gone into setting the penalty. As much as this might present a challenge when considering the value of the decisions where licensees were suspended, the same can be said in relation to the intended decisions where the licensees received very small fines and no suspensions (*Gerke*, *Craig* and *Turnbull*). The Hearing Committee does not see these decisions as being of assistance in this matter given how different those decisions are with respect to the underlying facts. Each of those decisions involved much less serious misconduct.

73. Having considered the factors outlined above, if the Hearing Committee were to not suspend the Licensee, it would not send the appropriate message to the industry and public. The Hearing Committee accepts that there are a number of mitigating factors that must be considered by the Hearing Committee in terms of reducing the necessary penalty. However, the Hearing Committee sees these factors as mitigating in terms of the length of suspension. We have concluded that a suspension is necessary to meet Council's public interest mandate. Critical in terms of our decision is our conclusion that the principle of progressive discipline must be applied given the Licensee's prior misconduct matter. The circumstances of the 2007 Intended Decision are similar enough to the misconduct addressed in this hearing, that it is our view that the disciplinary action now must include a period of licence suspension.

74. Determining the appropriate length of the licence suspension requires an assessment of all the factors reviewed by the parties. The misconduct of the Licensee was serious and he also had a prior disciplinary issue. Those are the overarching factors that mandate in favour of lengthy period of suspension. The range of penalties in prior decisions supports our conclusion that a licence suspension is an appropriate order, but there is no singular case that can be used as a clear roadmap for the Hearing Committee. At the same time, we recognize that there are mitigating factors that must be taken into account in terms of reducing the potential penalty, coupled with some consideration of the impact that a lengthy period of suspension might have on the Agency.

75. In our view, a period of licence suspension of eight (8) months balances the factors that we have been required to consider. This will no doubt cause some difficulties for the Licensee, but we have concluded that the penalty in this matter must include a suspension in addition to the fine and other orders. It would not send the right message to the industry and public if Council did not respond to serious misconduct with an appropriate penalty. A fine, even if coupled with education and supervision, is not a serious enough penalty.

76. Although the *Zhang* decision might suggest that a 12-month period of suspension is appropriate, the analysis in *Zhang* does not include a detailed analysis as to how that period of time was determined. In this instance, the Hearing Committee had the benefit of detailed submissions from the Licensee, which set out many factors that would serve to mitigate the penalty. Ultimately, having concluded that a suspension was necessary, the Hearing Committee also concluded that the period of suspension ought to be longer than the five months ordered in the 2007 Intended Decision. Although the misconduct in 2007 was more serious, the Licensee now finds himself back before Council and the Hearing Committee believes that applying the principle of progressive discipline should result in a longer period of suspension.

77. Balancing the factors set out above, and considering the submissions of both parties, the Hearing Committee has concluded that an 8-month period of licence suspension is appropriate and in keeping with the public interest mandate of Council.

COSTS

78. Even though the parties were in agreement with respect to the payment of costs by the Licensee and the Agency to Council, the Hearing Committee has also considered the reasonableness of the costs sought by Council. The Act provides for the assessment of costs in section 241.1. As set out in the Act, costs can be ordered in relation to both the investigation and the hearing.

79. Council submitted that, as a self-funding regulator, the costs to prosecute the misconduct of a licensee should not be borne by innocent members of the insurance industry. To this end, in keeping with the legislative scheme, Council has established a policy that provides guidance on the assessment of costs in a proceeding that ends up in a hearing – *Assessing Investigation Costs and Hearing Costs Policy* (the "*Policy*"). The *Policy* includes a schedule that sets out the general practices of Council with respect to the assessment of costs.

80. Council provided detailed submissions with respect to its position on costs. In broad terms, Council took the position that it was substantially the successful party at the first stage of the hearing and, therefore, it is entitled to costs based on the costs assessment schedule in the *Policy*. Council submitted that its investigation costs were $18,625. Council requested hearing costs in the amount of $12,375 because each day of the three-day hearing was over five hours and applying the tariff rates for preparation and attendance by legal counsel and the Hearing Committee. Finally, Council included a request for an additional $13,490.40 in costs relating to its disbursements, court reporter fees, and other expenses.

81. In total, Council asked for an order that it be reimbursed its costs in the amount of $44,490.40, to be paid jointly and severally by the Licensee and the Agency within 90-days and, in any event, before the Licensee's licence suspension is lifted.

82. As noted above, the Licensee and the Agency did not dispute the costs claimed by Council. The Hearing Committee has reviewed the costs claimed by Council as against the provisions in the Act and the tariff set out in the *Policy*. The Hearing Committee is satisfied that the costs sought by Council are fair and appropriate considering the manner in which this hearing proceeded.

83. The Hearing Committee, therefore, orders costs in the amount sought by Council, being $44,490.40.

ORDERS OF THE HEARING COMMITTEE

84. For the reasons set out above, the Hearing Committee has ordered that:

    a. The Licensee's life and accident and sickness insurance licence (the "Life Agent Licence") be suspended for a period of eight (8) months, commencing on **March 15, 2025**;

    b. A condition be imposed on the Licensee's Life Agent Licence that requires him to be supervised for a period of 24 months of active licensing by a supervisor approved by Council, commencing when the suspension has been lifted;

    c. A condition be imposed on the Licensee's Life Agent Licence that requires him to complete the following courses, or equivalent courses as acceptable to Council, prior to the suspension being lifted:

        i. Advocis Module 911 ("Financial Planning Profession & Financial Services Industry Regulation"),

        ii. Advocis Module 912 ("Financial Analysis"),

        iii. Advocis Module 918 ("Investments"),

        iv. an ethics course, and

v. the Insurance Council Rules Course for Life and/or Accident & Sickness Agents;

d. A fine against the Licensee in the amount of $10,000, to be paid within 90 days of Council's order, and which must be paid fully prior to the suspension being lifted;

e. A fine against the Agency in the amount of $1,000, to be paid within 90 days of Council's Order; and

f. A condition be imposed on the Agency's licence that failure to pay its $1,000 fine within 90 days of Council's Order will result in the automatic suspension of the Agency's licence, and the Agency will not be permitted to complete its annual licence renewal until such time as the Agency has paid the fine in full.

85. The Hearing Committee has decided to order the suspension to commence on Saturday, March 15, 2025. With that delayed start, the Licensee should have time to make any necessary arrangements so as to ensure that the interests of his clients are not prejudiced during his licence suspension.

86. Finally, the Licensee and Agency are also ordered to pay costs of the proceeding in the amount of $44,490.40 to Council, with that obligation being joint and several as between the Licensee and the Agency. These costs are also to be paid within 90 days, and in any event before the suspension is lifted.

Dated at Vancouver, British Columbia, on the **24th day of February, 2025.**

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Peter Jong, Chair of the Hearing Committee