In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(RS 1996, c.141)
(the "Act")

and

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

MICHAEL ANTHONY EDWIN CROWE
(the "Licensee")

ORDER

Pursuant to section 237 of the Act, Council convened a Hearing at the request of the Licensee to dispute an intended decision dated February 6, 2012, pursuant to sections 231, 236 and 241.1 of the Act.

The subject of the Hearing was set out in a Notice of Hearing dated May 30, 2012.

A Hearing Committee heard the matter on July 24, 2012, and presented a Report of the Hearing Committee to Council at its September 11, 2012 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee is prohibited from using any marketing material, directly or indirectly, in the solicitation of insurance unless the material is specifically provided to him by the insurance company whose product he is soliciting.

2. The Licensee is fined $10,000.00.

3. The Licensee is assessed Council's investigative costs of $2,325.50.

4. A condition is imposed on the Licensee's life and accident and sickness insurance licence requiring that he pay the above-mentioned fine and investigative costs in full no later than **December 12, 2012**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **December 13, 2012**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

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This order takes effect on the **12th day of September, 2012.**

Rita Ager CFP, CLU, RHU, CSA
Vice Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

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

AND

MICHAEL ANTHONY EDWIN CROWE
(the "Licensee")

Date:	July 24, 2012 9:30 a.m.	
Before:	Eric Yung Darren Lee Ken Kukkonen	Chair Member Member
Location:	Suite 1650, 885 West Georgia Street Vancouver, British Columbia	
Present:	David McKnight Michael Anthony Edwin Crowe J. J. McIntyre	Counsel for Council Licensee Counsel for Licensee

Background and Issues

On January 17, 2012, Council made an intended decision with respect to the Licensee, pursuant to sections 231, 236, and 241.1 of the Act, which included findings that the Licensee failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance. These findings stemmed from allegations the Licensee:

1. created and distributed misleading marketing material that contained an unfair portrayal of a competitor's insurance coverage intended primarily to reflect negatively on the competitor and the insurer underwriting the coverage;

2. created and distributed marketing material that contained confidential information related to clients who had not approved the use of the information to the extent represented in the material;

3. breached the confidentiality of clients by distributing information related to clients who had not approved the use and/or distribution of their information;

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4. created and distributed marketing material without first receiving consent or approval from the insurer underwriting the insurance; and

5. continued to distribute the above-mentioned marketing material despite being directed to stop doing so by Council staff.

The purpose of the hearing was to determine if the Licensee is able to carry on the business of insurance in a trustworthy and competent manner, in good faith, and in accordance with the usual practice, as required under Council Rule 3(2) and pursuant to section 231(1)(a) of the Act. If the Hearing Committee determines the Licensee acted in a manner that brought into question his suitability, it may recommend to Council appropriate disciplinary action in the circumstances.

The Hearing Committee is constituted pursuant to section 232 of the Act. This is a report of the Hearing Committee as required by section 223(4) of the Act.

Evidence

Evidence reviewed by the Hearing Committee in consideration of this matter:

Exhibit 1: Agreed Statement of Facts
Exhibit 2: Council's Book of Documents

Agreed Statement of Facts

In advance of the hearing, the following facts were agreed to:

The Licensee is a licensed life and accident and sickness insurance agent ("Life Agent"), as well as the nominee for his agency, Advantage Benefits Plus Inc., which also operates under the trade name Provident Firefighter Benefit Services.

Part of the Licensee's business includes the marketing of a group accident and sickness insurance plan under the name Provident Firefighter Benefit Services (the "Provident Plan"). The Provident Plan is underwritten by Chubb Insurance Company of Canada ("Chubb") and caters specifically to volunteer fire departments.

A primary competitor to the Provident Plan is the Volunteer Firemen's Insurance Services (the "VFIS Plan"). The VFIS Plan is underwritten by Chartis Insurance Company of Canada and promoted by another Life Agent, Kip Eric Cosgrove, the regional sales manager for the VFIS Plan.

In 2007, the Licensee was holding himself out as representing an insurance company that was not authorized to do business in British Columbia. Council advised the Licensee he was not permitted to solicit business using a name or slogan that was misleading to the public. The Licensee was reminded of his obligation under Council's Code of Conduct to represent an insurer's product fairly and accurately; adhere to the authority granted by the insurer; and not make false or misleading statements in the solicitation of or negotiation for insurance.

In late 2010, the Licensee circulated a marketing document entitled *Provident Benefits Briefing – Comparing Disability Plans* (the "Comparison Document") to 1,308 volunteer fire departments across Canada. In January 2011, the Comparison Document was brought to the attention of Council due to concerns that the marketing material was inaccurate and misleading.

The Comparison Document included descriptions of four individual insurance claims; two of which were made under the VFIS Plan and two of which were made under the Provident Plan. The names and health information of each of the individual claimants (all of whom were volunteer firemen) were included in the Comparison Document. The Comparison Document identified the VFIS Plan claims as denied and the Provident Plan claims as approved.

The Comparison Document included specific examples to illustrate differences between the VFIS Plan and the Provident Plan. The Licensee stated he relied on direct contact and discussions with each of the individual claimants, but conducted no independent review to confirm their information.

The Licensee emailed copies of the Comparison Document to each of the claimants before distribution, and then followed up by telephone to confirm that it was okay to use their personal information.

One of the two VFIS Plan claimants referred to in the Comparison Document acknowledged he was asked by and consented to the Licensee using his information, but the first time he saw the Comparison Document was when it arrived at the fire department via email.

In the first comparison of two claimants (one with the Provident Plan and the other with the VFIS Plan), the scenarios were similar with both having been injured. In the Comparison Document, the Provident Plan claimant is paid and the VFIS Plan claimant is reported as having had his claim denied. In fact, the VFIS Plan claimant received a one-time payment in return for withdrawing his claim. The Licensee acknowledged he was aware of this information before preparing the Comparison Document, but believed the Comparison Document remained accurate and true to its objectives, even though this information was not included and he elected to portray the VFIS Plan claim as denied rather than withdrawn.

In the second comparison, the Provident Plan claimant and VFIS Plan claimant were self-employed volunteer firemen. In the VFIS Plan claimant's case, the Comparison Document indicated the claimant did not qualify for benefits when, in fact, he received benefits for a number of months. The VFIS Plan claimant stated he did not give the Licensee written permission or consent to use his information in the manner in which it was used. The VFIS Plan claimant stated he did not advise the Licensee that his claim was denied outright, and specifically told the Licensee he received benefits which were only subsequently withdrawn when the insurer determined he was working.

The Provident Plan claimant in the second comparison stated he did not know the context in which his information would be used until after the Comparison Document was distributed. The Provident Plan claimant stated that, had he seen the document beforehand, he would not have consented to the use of his information.

The Licensee acknowledged that while he may not have received verbal or written consent from the four individual claimants to use their information in his Comparison Document, he believed he had the claimants' implied consent.

The Provident Plan's insurer, Chubb, advised the Comparison Document is not something it would approve and confirmed it had not authorized it. Further, in 2009, the Licensee sought Chubb's assistance with respect to another piece of marketing material. After its review, Chubb advised the Licensee that instead of referencing competitors, he should focus on Chubb's strong financial position, its highly-rated position within the industry, and the merits of its policy.

After learning of the Comparison Document, Council directed the Licensee against further distribution given concerns that it may be in breach of clients' confidentiality and because it appeared to contain inaccurate information. Notwithstanding these instructions, the Licensee continued to distribute the Comparison Document outside of British Columbia.

The Licensee subsequently issued a retraction letter to the recipients of the Comparison Document requesting they destroy it.

In July 2011, the Licensee entered into a new contract with Chubb, with one of the terms requiring that he obtain Chubb's prior approval for any marketing material. In February 2012, the Licensee issued marketing material entitled *Comparing On-Duty Disability Plans*, which he forwarded to the Campbell River Fire Department. Chubb confirmed the Licensee did not obtain its approval, as required by his contract.

Testimony of the Licensee

The Licensee testified he had more than 35 years of experience in the insurance industry, including claims experience. The Licensee acknowledged he understands the importance of accurate information when advertising. The Licensee stated that his intent in preparing the marketing material was to address the definition of "disability" and the differences between the Provident Plan and the VFIS Plan.

The Licensee acknowledged he was aware that one of the VFIS Plan claimants had received benefits, although he was unaware of the duration, and that the other VFIS Plan claimant had accepted a one-time payment in exchange for withdrawing his claim. The Licensee submitted the omission of these details did not reflect on the Comparison Document's accuracy, explaining these two factors were not relevant.

In preparing and distributing the Comparison Document, the Licensee argued he believed he had implied consent from all parties. The Licensee explained he emailed the material to all the claimants and either spoke to them directly or felt he had implied consent when there were no dissenting opinions in response to his emails. The Licensee continued to take this position although three of the claimants involved stated they either did not see the material prior to its publication, or would not have agreed to the use of their information if they had seen the material first.

The Licensee acknowledged that while he believed he had implied consent, he had neither obtained written authorization from the claimants before using their information, nor showed them final documents or provided detailed explanations regarding how the information was to be used.

The Licensee explained that he continued to use the Comparison Document after being warned against its distribution by Council staff because he felt the regulatory regimes varied from jurisdiction to jurisdiction, and this direction applied only in British Columbia. The Licensee acknowledged Council staff informed him the Comparison Document contained confidential client information and should not be used without the explicit consent of the clients. The Licensee also acknowledged he was warned the Comparison Document was misleading and therefore should not be used. The Licensee further acknowledged he should not have distributed this information after being advised not to, and subsequently took steps to issue a retraction.

The Licensee's testimony initially was to argue the Comparison Document was accurate, and only through cross-examination did he acknowledge that he erred in publishing the Comparison Document.

With regard to a subsequent marketing document prepared and distributed by the Licensee in November 2011, the Licensee acknowledged he did not first obtain the consent of Chubb, as required by his contract.

Summation by David McKnight ("McKnight")

McKnight argued the Licensee was inconsistent in both his dealings with Council and in his testimony at the hearing. In his testimony, he attempted to backtrack on a couple of points contained in the Agreed Statement of Facts.

When warned by Council staff not to use the Comparison Document due to concerns with confidentiality and accuracy, the Licensee confirmed he would not distribute it further. He then proceeded to distribute it in Alberta, arguing he believed the direction from Council staff applied only in British Columbia. The Licensee stated he understands the importance of confidentiality and acknowledged Council staff advised him of their concerns with the information contained in the Comparison Document; however, he felt there was no issue in distributing it outside of British Columbia.

The Licensee acknowledged that when preparing the Comparison Document, he knew the two VFIS Plan claimants had received payments or benefits from the VFIS Plan, but elected to omit this information from the Comparison Document. McKnight argued the Licensee operated with reckless indifference, developing the Comparison Document with the primary purpose of discrediting a fellow Life Agent and a competitive insurance program.

McKnight pointed out that, even before preparing the Comparison Document, the Licensee had dealings with Council regarding advertising and holding out when he was cautioned about using false or misleading material in the solicitation of insurance. Consequently, he was directed by his insurer to avoid advertising in the manner found in the Comparison Document and instead rely on material focusing on the positive attributes of the insurer and the program. Despite these earlier directions, the Licensee went ahead with the Comparison Document and continued, even in his testimony at the hearing, to defend and justify his actions.

Further, even after being directed by his insurer to have all subsequent marketing material approved by the insurer, the Licensee prepared and distributed new marketing material without first obtaining the insurer's approval.

McKnight argued the Licensee's actions demonstrate he failed to act in a competent and trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance. McKnight identified the following cases as precedent for consideration: *G. Doerr; Pelling & Associates Insurance Brokers Consultants Inc.; J.S. Gill; J. Quesnel; J.S. Bhandari; P. Lipski;* and *T. Poy.*

Summation by J.J. McIntyre ("McIntyre")

McIntyre submitted the Licensee honestly believed at the time he distributed the Comparison Document that he had the consent of the four claimants, based on discussions that took place and the fact that the claimants were provided drafts and provided feedback on these drafts. With the benefit of hindsight, the Licensee now recognizes it was inappropriate to rely upon *"disgruntled"* claimants and he should never have distributed the Comparison Document.

On the issue of confidentiality, McIntyre noted that Council's Code of Conduct addresses confidentiality as follows:

> *"You must hold in strict confidence all information acquired in the course of your professional relationship concerning the business affairs of a client. And you must not divulge or use such information other than for the purpose of that transaction or of a similar or subsequent transaction between you and the same client unless expressly authorized by the client or as required by law."*

McIntyre noted the two VFIS Plan claimants were not insurance clients of the Licensee and, as such, the use of their information did not represent a breach of Council's guidelines on confidentiality as it is limited to client information.

As for the two Provident Plan claimants, there is evidence that there were discussions with the claimants regarding the information the Licensee intended to use. With regard to one Provident Plan claimant, there was an implication of consent.

The Licensee did not intentionally set out to breach clients' confidentiality. He had discussions with each of the claimants, provided them with drafts and made changes based on those comments. At the time the Comparison Document was distributed, the Licensee had a reasonable basis to believe he had the claimants' consent.

McIntyre explained the Licensee now appreciates the risks associated with accepting and using information from *"disgruntled"* claimants, when such information cannot be independently confirmed. The Licensee did, however, believe the information was accurate and true at the time of the distribution of the Comparison Document.

McIntyre noted that all cases mentioned by McKnight regarding confidentiality represented breaches where clients knew nothing about the licensees' actions at the time. In this case, the Licensee had contact with the applicable parties before publishing the Comparison Document.

Findings of the Hearing Committee

The Hearing Committee found the Licensee's actions with regard to the development and distribution of the Comparison Document to have been self-serving. While the Hearing Committee accepts the Licensee may have had the best of intentions when first preparing the Comparison Document, he clearly lost sight of this by the time the Comparison Document was completed.

The Licensee explained the purpose of the Comparison Document was to provide potential clients with a practical comparison of the Provident Plan and VFIS Plan. The Hearing Committee understands the practicality of this approach; insurance contracts differ and there could be benefits to consumers in understanding different contract wording and coverages. However, whatever objectives the Licensee had when he commenced development of the Comparison Document, they appeared to get lost.

The Licensee elected to compare the experience of four claimants, two claimants with the Provident Plan, and two claimants with the VFIS Plan. It is difficult to understand how a Life Agent with over 35 years of experience could honestly believe he could provide an accurate comparison using this approach. With his experience, the Licensee should have known that each claim is unique, and to provide an adequate comparison of two plans based on only four claims was unreasonable and very subjective.

In addition, the Hearing Committee found the Licensee elected to omit relevant facts from the Comparison Document. Both VFIS Plan claimants were portrayed as having been declined, when the Licensee knew that both claimants received some form of payment from the VFIS Plan. In one case, the VFIS Plan claimant received 30 weeks of benefits. The Licensee stated he did not know the extent of the benefits paid, but also made no effort to find out before the Comparison Document was distributed.

The Hearing Committee found the Licensee set out to present a misleading view of the facts in the Comparison Document. Even in his testimony at the hearing, the Licensee continued to defend his decision not to include the details of the payments to the VFIS Plan claimants and argued the Comparison Document is still basically accurate.

The Licensee's actions in developing the Comparison Document are even more confusing when considering the fact that in December 2007, he was warned of his obligation to "...not make any false or misleading statements in the solicitation of or negotiation for insurance."

Furthermore, in 2009, the Licensee was advised by an insurer to avoid naming competitors in his marketing materials and instead focus on the insurer's strong financial position and the merits of the policy. The Hearing Committee found the Comparison Document was less than accurate and intentionally misleading.

On the issue of breaches of confidentiality, the Hearing Committee gave consideration to the Licensee's arguments that he felt he had the claimants' consent or, at the very least, implied consent before using their information. One of the primary tenets of the insurance industry is the importance of maintaining the confidentiality of client information. Council Rule 7(1) states:

> *"A licensee must hold in strict confidence all information acquired in the course of the professional relationship concerning the personal and business affairs of a client, and must not divulge or use any such information other than for the purpose of that transaction or of a similar subsequent transaction between the licensee and the same client unless expressly authorized by the client or as required by law to do so."*

The Hearing Committee found the Licensee took a very cavalier approach to this principle, and fell well short of his obligation to ensure he had express authorization to use the claimants' information in the manner in which he did. The Hearing Committee found the Licensee's explanation that he felt he had their implied consent to be inappropriate in the circumstances and self-serving. The Hearing Committee is challenged to understand how such an experienced Life Agent failed to meet his obligation to maintain confidentiality.

The Hearing Committee took note of McIntyre's argument that the two VFIS Plan claimants were not the Licensee's clients and, as such, did not fall under Council Rule 7(1). It accepts that the two VFIS Plan claimants did not fall under a strict interpretation of Council Rule 7(1); however, the Licensee knew or ought to have known the importance of maintaining the confidentiality of any person's insurance information. Further, while the VFIS Plan claimants were not clients, they were potential clients, and the Licensee only obtained their information because the claimants were aware he marketed a competing insurance product to the VFIS Plan. Furthermore, the Hearing Committee found the Licensee did have a duty to the two VFIS Plan claimants, and publishing their claim information without their specific consent represented a breach of trust and a failure to act in the best interests of members of the public.

The Hearing Committee also considered McIntyre's argument that Council did not have specific guidelines on what constitutes express authorization, and therefore the steps taken by the Licensee to ensure he had the claimants' consent were reasonable. The Hearing Committee does not accept this argument. As referenced above, Council Rule 7(1) states in part:

> *"[A licensee]...must not divulge or use any such information other than for the purpose of that transaction or of a similar subsequent transaction between the licensee and the same client unless expressly authorized by the client..."*

The Licensee stated on numerous occasions when testifying that he felt he had implied consent. The Hearing Committee found that implied consent falls far short of the "expressly authorized by the client" requirement in Council Rule 7(1). This is supported by the fact that at least three of the claimants indicated they would not have authorized the use of their information had they known how it would be used. In this regard, it is clear that the Licensee never obtained express authorization from the individuals involved.

The Hearing Committee determined the Licensee had an obligation to ensure the claimants understood the information he was using as well as the purpose for which it was intended. The Hearing Committee concluded the Licensee was responsible for obtaining authorization to use claimants' personal information and, based on the information present, did not come close to meeting this requirement.

The Hearing Committee noted the Licensee continued to justify his actions and argue that he believed the Comparison Document was accurate. Even when faced with specific information suggesting the Comparison Document was less than accurate, the Licensee continued to defend his actions. This position is made more challenging when the Licensee's actions after being warned by Council staff about continuing to use the Comparison Document are taken into consideration.

In early 2011, the Licensee was warned the Comparison Document may contain confidential information, and some of the information may be inaccurate and misleading. Even with this warning, the Licensee proceeded to distribute the material in Alberta. The Licensee explained that he did so because he thought the warning applied only to British Columbia, and he felt Council had no jurisdiction outside British Columbia and regulatory requirements differed between jurisdictions.

The Hearing Committee was concerned that, having been told the material represented a breach of confidentiality, the Licensee felt the warning applied only in British Columbia and he was free to make similar breaches of confidentiality in other jurisdictions. The Licensee took no steps to determine whether his actions would represent similar breaches if he were to use the material in other jurisdictions. This one action by the Licensee led the Hearing Committee to believe the Licensee had only one objective in mind when preparing and distributing the marketing material: to discredit a competitor at all costs.

Finally, the Hearing Committee noted that after July 2011, the Licensee had an obligation in his contract with the insurer to obtain its consent before using any marketing material. The Licensee then proceeded to prepare and distribute new marketing material without first obtaining the consent of the insurer. When questioned about this, the Licensee was reluctant to acknowledge that he neither forwarded the material to nor obtained the approval of the insurer.

The Hearing Committee concluded the Licensee's actions were clouded by a personal dispute he had with another Life Agent. That the Licensee would let a dispute drive his actions to the detriment of members of the public represents a serious issue. Based on his testimony, the Hearing Committee was concerned the Licensee still does not fully appreciate the consequences of his actions, and had doubts about whether this could not happen again.

In reviewing the actions of the Licensee, the Hearing Committee determined he failed to act in a competent and trustworthy manner, in good faith and in accordance with the usual practice of the business of insurance.

In recommending penalty, the Hearing Committee noted there were no other complaints involving the Licensee, and his actions related specifically to the marketing of the Provident Plan. The Hearing Committee heard no evidence to suggest the Licensee was not a knowledgeable insurance agent who is capable of providing quality insurance advice to clients. However, the Hearing Committee felt the Licensee failed to appreciate his obligations as a Life Agent, particularly as it applies to the marketing of insurance products, and was concerned he could repeat his actions.

The Hearing Committee recommends the Licensee receive a significant penalty. It is proposing a $10,000.00 fine, which was determined as follows:

1. $1,000.00 for each of the four claimants whose information was included in the Comparison Document;

2. $2,000.00 for the use of incomplete information intended to mislead the public; and

3. $4,000.00 for failing to heed the direction of Council staff when told not to use the material any further.

The Licensee should also be assessed the cost of Council's investigation and consideration should be given to assessing some or all of the hearing costs.

The Hearing Committee gave strong consideration to placing the Licensee under direct supervision, but determined this may be excessive in the circumstances. The issues at hand relate only to the use of marketing material. All other aspects of the Licensee's insurance activities are not in question. Consequently, to ensure this does not occur again, the Hearing Committee is proposing the Licensee be banned from using any marketing material in the solicitation of insurance unless specifically provided to him by an insurance company. In making this recommendation, the Hearing Committee urges Council to make it clear to the Licensee that any subsequent breach involving marketing material, improper solicitation of insurance, or breach of confidentiality will result in a review of whether he is still suitable to hold a Life Agent's licence.

Dated in Vancouver, British Columbia, on the **4th day of September, 2012.**

Dr. Eric Yung
Chair of Hearing Committee