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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JENNIFER WAI YIN MOK
(the "Former Licensee")

As Council made an intended decision on February 11, 2020, pursuant to sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated March 10, 2020; and

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

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

1. the Former Licensee is assessed a fine of $5,000, due and payable no later than June 29, 2020;

2. the Former Licensee is assessed investigative costs of $4,187.50, due and payable no later than June 29, 2020; and

3. Council will not consider any future licensing applications by the Former Licensee until the fine and investigative costs are fully paid.

This order takes effect on the **31st day of March, 2020.**

Janet Sinclair
Executive Director, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

JENNIFER WAI YIN MOK
(the "Former Licensee")

1. Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Former Licensee acted contrary to Council Rule 7(8), which requires compliance with Council's Code of Conduct, and sections 3.2, 4.2, 5.2, 7, and 12.2 of the Code of Conduct, which respectively require licensees to conduct all insurance activities in a trustworthy and competent manner and act in the usual practice of dealing with clients by protecting clients' interests, evaluating clients' needs, and acting with integrity, competence and the upmost good faith, as well as to respond promptly to Council.

2. On November 14, 2019, as part of Council's investigation, a Review Committee comprised of Council members met respecting allegations that the Former Licensee facilitated insurance applications under false pretenses, submitted policy applications without client consent or knowledge, and populated incorrect information in policy applications. The Committee also considered whether the Former Licensee replied adequately to Council's inquiries.

3. A copy of an investigation report prepared by Council staff was forwarded to the Former Licensee in advance of the meeting. The Former Licensee was offered the opportunity to meet with the Review Committee to discuss the results of the investigation and provide any additional information or make further submissions but she declined to do so.

4. The Review Committee's report was reviewed by Council at its February 11, 2020 meeting where it was determined the matter should be disposed of in the manner set out below.

PROCESS

5. Pursuant to section 237 of the Act, Council must provide written notice to the Former Licensee of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Former Licensee may then accept Council's decision or

request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Former Licensee.

FACTS

6. The Former Licensee became licensed with Council as a life and accident and sickness insurance agent ("Life Agent") in January 2016. While her licence was active, she worked for an insurer (the "Insurer"). Her licence became inactive in November 2017 when she resigned from the Insurer and her supervisor (the "Supervisor") notified Council that he was no longer supervising her. Her licence was cancelled for non-filing in August 2018.

7. In July 2017, Council received communication from two of the Former Licensee's clients (the "Complainants") raising concerns about her conduct. The Complainants made several allegations against the Former Licensee, including that she facilitated insurance applications for them under false pretenses, submitted the policy applications without their consent or knowledge, and populated incorrect information in their policy applications.

8. The Former Licensee did not reply fully or promptly to Council's inquiries on the matter. She agreed to be interviewed at Council's office but did not attend, and subsequently ceased communicating with Council staff for several months.

9. Council expanded its investigation to include a review of all the Former Licensee's insurance business. Of the 177 policies she wrote, 66 had been cancelled. Of the cancellations, 30 were cancelled the same day they were issued. Council attempted to contact 10 of the Former Licensee's customers, four of whom raised concerns with her conduct.

10. Council staff ultimately met with the Former Licensee in May 2018 and conducted an interview (the "May Interview"), where she attributed many of the contraventions to poor training, poor supervision, and following direct instructions from the Supervisor and another branch manager (the "Manager").

The Insurer

11. The Insurer has agreements with labour unions to market insurance products to their members. The Supervisor provides Life Agents at his branch with the phone numbers of union members who have consented to being contacted about insurance. The consent can be tied to promotions, such as receiving a free accidental death and dismemberment benefit, or a product, like a child safety kit.

The Complainants

12. The Complainants' union offered a no-cost $4,000 accidental death and dismemberment benefit provided by the Insurer. To receive the benefit, the Complainants had to complete a form that also offered the option of receiving child safety kits. As the Complainants opted to receive the kits, the Former Licensee called them to arrange an appointment to deliver the kits.

13. On June 2, 2017, the Former Licensee met with the Complainants at their home, delivered the child safety kits, and provided a product presentation. The Complainants advised the Former Licensee that they wanted time to think about the policies. She encouraged them to complete insurance policy applications anyway so that she would not have to return if they decided to purchase the policies. She assured the Complainants that the applications would not be submitted without their further authorization. The Complainants agreed to complete the applications on the condition that the Former Licensee would call them on June 5, 2017 to confirm their decision.

14. The Former Licensee did not call the Complainants as agreed. Rather, on June 6, 2017, she submitted the insurance applications to the Insurer without the Complainants' authorization or knowledge. Of note, the Complainants' electronic signatures on the applications were date-stamped June 6, 2017 instead of June 2, 2017, the date the Complainants had actually completed the applications.

15. On June 7, 2017, the Former Licensee emailed the Complainants with their policy details, to which the Complainants immediately replied advising that they did not want the policies. However, the Former Licensee did not reply and, on June 8, 2017, premium payments were withdrawn from the Complainants' bank account.

16. On June 9, 2017, when the Complainants became aware of the premium withdrawal, they instructed the Former Licensee by email to cancel the policies and arrange a refund. The Former Licensee replied by email advising that, after she had received the Complainants' June 7, 2017 email, she had asked the Insurer to cancel the policies. She further advised that she did not know the Complainants had been charged but promised that a refund would be issued as soon as possible. However, when the refund was not received, the Complainants tried to contact the Former Licensee by phone and email but she did not reply.

17. The Complainants also left several messages with the Insurer's head office but the messages were not returned. Therefore, on June 28, 2017, they lodged a formal complaint

with the Better Business Bureau. On July 5, 2017, they were contacted by the Insurer and, as a result, the policies were cancelled and the refund was issued.

18. On examination of the policy documents emailed to them by the Former Licensee, the Complainants found several errors including an incorrect date of birth and phone number. Despite not having provided the Former Licensee with any physician information, a medical questionnaire indicated that one of the Complainants had been treated by a certain doctor at a specified clinic. However, that Complainant had never met the doctor or been treated at the clinic for the indicated condition. Council staff confirmed the listed address is a walk-in clinic and that no doctor by the listed name has ever practiced there. In addition, a review of the College of Physicians and Surgeons of British Columbia's registration list confirmed that no doctor by that name is practicing anywhere in British Columbia.

The Former Licensee's Submission Regarding the Complainants

19. Council staff began communicating with the Former Licensee about the complaint in July 2017 and requested a written summary of what occurred, along with copies of the applicable documents. The Former Licensee missed several deadlines to reply and, when she did, the information she supplied was insufficient, and various submissions contained contradicting information. Numerous follow-ups, letters, and communication with the Supervisor were required before the Former Licensee met Council's requests in November 2017.

20. Eventually, the Former Licensee stated that, on June 2, 2017, she had explained the insurance products to the Complainants and they decided to apply that day. She advised she told them the policy applications would be submitted to the Insurer the following week.

21. In regard to the incorrect information on the medical questionnaire, the Former Licensee stated the Complainants had verbally provided her with the information, which she duly entered into the electronic policy application.

22. The Former Licensee did not initially address the allegation that she did not respond to the Complainants' attempts to contact her regarding the refund, but during the May Interview, she advised that she did not reply because the Complainants had been rude to her. She further stated that the Manager provided approval to not reply as the cancellation request had already been submitted to the Insurer.

23. The Former Licensee explained the reason the Complainants' electronic signatures were dated four days after their meeting with her was that the Insurer's software had a history of deleting application information and, as such, had deleted the original applications. Therefore, she re-entered the information using her back-up which consisted of photographs she had taken of the applications with her personal cellphone. She said she was provided authorization to follow this procedure, which resulted in inaccurate date-stamps, by the Manager.

Review of the Former Licensee's Insurance Business

24. The Insurer's head office provided Council with a list of all the Former Licensee's cancelled policies. The Insurer explained that Life Agents are paid a commission advance when a policy is issued. If a policy is cancelled before the advance has been fully earned, the Insurer attempts to recover the unearned portion of the advance through future commissions. The Insurer confirmed the Former Licensee had a debit balance at the time she resigned that, as of March 2018, had still not been recovered.

25. In March and April 2018, Council staff conducted reviews of the following former policy holders.

Policy Holder 1 ("JK")

26. In November 2016, the Former Licensee wrote two insurance policies for JK. JK had understood that she would pay a set premium amount annually. When she discovered this premium amount was to be paid monthly, she immediately attempted to cancel the policies. JK stated that she felt misled by the Former Licensee on this matter.

27. JK attempted unsuccessfully to contact the Former Licensee several times to cancel the policies. She eventually was able to get them cancelled and the premiums refunded directly with the Insurer's American office after two to three months.

28. JK expressed concern to Council staff that the signature on her copies of the policy applications was not her own and that she had not authorized the use of an electronic signature.

29. During the May Interview, the Former Licensee stated she explained the premiums properly to JK. She had no answer for why she did not respond to JK's attempts to contact her.

Policy Holder 2 ("SL")

30. In February 2017, the Former Licensee met with SL at her home to discuss insurance policies for SL and her two children. After the product presentation, SL told the Former Licensee that she and her family would be traveling for two weeks and did not want to decide until they returned. SL told Council staff she had no intention of buying the policies and said this to avoid rejecting the Former Licensee in person. The Former Licensee encouraged SL to fill out the policy applications and assured her they would not be processed without her authorization. The Former Licensee told SL she would follow up in two to four weeks.

31. SL did not hear from the Former Licensee after she and her family returned from their trip. She forgot about the policies until the Insurer began making withdrawals from her bank account. SL bypassed the Former Licensee and made arrangements with the Insurer's American office to backdate cancel the policies and obtain a refund. The resolutions took approximately two months.

32. During the May Interview, the Former Licensee stated she contacted SL the day after their meeting, at which point, SL instructed her to proceed with submitting the applications.

Policy Holder 3 ("SD")

33. In March 2017, SD met with the Former Licensee about insurance policies for himself and his two children. After discussing the policies, he did not want to purchase them. The Former Licensee encouraged SD to complete electronic policy applications with the guarantee that they would not be processed until he provided confirmation to proceed. SD stated he did not provide further confirmation to proceed.

34. The Insurer began withdrawing money from SD's bank account soon after the meeting. SD stopped the payments immediately with his bank. The policies lapsed due to non-payment. It took several months to resolve the matter, but SD was ultimately refunded with help from his bank.

35. During the May Interview, the Former Licensee stated she did not remember SD and declined to comment specifically on his allegations.

Policy Holder 4 ("BP")

36. In May 2017, BP met with the Former Licensee about the Insurer's products. After the discussion, BP expressed unwillingness to commit as she was still researching other

insurers' plans. At that point, the Former Licensee encouraged BP to complete electronic applications for two policies with a guarantee that they would not be submitted until BP provided confirmation to proceed.

37. Approximately a week after the meeting, the Insurer began withdrawing money from BP's bank account. BP immediately texted the Former Licensee for an explanation, as she had not authorized the Former Licensee to proceed. The Former Licensee replied four days later, stating she assumed BP had confirmed she wanted the policies. The Former Licensee advised that the policies would be cancelled.

38. Several weeks later, the Insurer withdrew another payment. BP tried to contact the Former Licensee and the Manager numerous times, but the Former Licensee did not respond and the Manager did not resolve the matter. Eventually, the Insurer's American office facilitated the refund and the cancellation was backdated to the issue date.

39. BP advised she did not physically sign any applications and was not aware that the Former Licensee was using an electronic signature feature. However, during the May Interview, the Former Licensee stated that BP wanted the policies and understood the electronic signature feature. She further stated that she processed BP's request to cancel the policies. In regard to BP's claim of unanswered text messages, the Former Licensee explained she marked them as "junk" on her phone and did not read them because she did not know who was sending them, despite previously having communicated with BP through text messaging.

The Licensee's Response

40. In general, the Former Licensee generally attributed the complaints against her by the various clients and the issues raised by Council's further review to poor training, poor supervision, and following direct instructions from the Supervisor and the Manager. In her summation she stated, "I honestly just didn't know what I was doing and I didn't know that I was doing it wrong".

41. The Former Licensee stated she did not understand that electronic signatures on the policy applications were binding. In retrospect, she stated that by not understanding the importance of the electronic signature, she was not able to convey the importance to the customer.

42. In regard to not responding to customers, the Former Licensee stated the Manager provided his approval to not reply to customer correspondence if the policy cancellation request had been processed.

The Supervisor Interview

43. In November 2018, Council staff interviewed the Supervisor with regard to the Former Licensee's statements made during the May Interview. He disputed her allegations regarding her lack of training and lack of supervision. Further, he provided copies of two letters (respectively dated March 22, 2017 and October 3, 2017) that the Insurer had sent to the Former Licensee about customer complaints regarding electronic signatures. Both letters reminded the Former Licensee that a customer must physically type their own name in order for an electronic signature to be binding. During the May Interview, the Former Licensee denied receiving any notices about her conduct other than with the Complainants.

The Former Licensee's Status

44. The Former Licensee told Council staff during the May Interview that she does not intend to return to the insurance industry.

LEGAL FRAMEWORK

45. The following Council Rule applies in these circumstances:

    7(8) *A licensee must comply with the Council's Code of Conduct, as amended from time to time.*

46. The following sections of the Code of Conduct apply in these circumstances:

    <u>Section 3, Trustworthiness</u>
    ...
    3.2 Requirement

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

    <u>Section 4, Good Faith</u>
    ...
    4.2 Requirement

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

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

Section 5, Competence

...

5.2 Requirement

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

Section 7, Usual Practice: Dealing with Clients

...

7.2 Requirement

When dealing with clients you must:

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

...

7.3 Guidelines

...

7.3.15 Protecting Clients' Interests

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

Section 12, Dealing with the Insurance Council of British Columbia

...

12.2 Requirement

You must respond promptly and honestly to inquiries from Council.

ANALYSIS

47. Council considered the actions of the Former Licensee and noted that she did not seriously dispute the allegations, other than to explain in the May Interview that her incompetence and errors were the product of inadequate supervision and training.

48. While Council recognized that the Former Licensee was a new agent at the time of the transactions at issue, it noted that the evidence revealed serious breaches of Council's competency, good faith, and trustworthiness requirements. By falsifying applications and placing policies with the intent to cancel, the Former Licensee caused potential client

harm and knew or should have known that her actions were inappropriate. Council also noted that the Former Licensee complicated the investigation into her conduct by her failure to cooperate with Council investigators and respond in a timely manner.

49. As a result, Council determined the Former Licensee breached Council Rule 7(8), which requires compliance with Council's Code of Conduct, and sections 3.2, 4.2, 5.2, 7, and 12.2 of the Code of Conduct, which require licensees to conduct all insurance activities in a trustworthy and competent manner and act in the usual practice of dealing with clients by protecting clients' interests, evaluating clients' needs, and acting with integrity, competence and the utmost good faith, as well as to respond promptly to Council. As such, Council determined a sanction is warranted.

50. Council is not bound by precedent to follow the outcomes from prior decisions, but similar conduct should result in similar outcomes within a reasonable range depending on the particular facts of the case. In this regard, Council considered general principles in relation to remediation of incompetent conduct, for example, the precedent of *Ismat Simo* (September 13, 2017). In that case, the licensee made insurance and investment recommendations to a 79-year-old client that were not in her best interest and brought into question his competency as a Life Agent. The client incurred significant tax penalties as a result. Council suspended the licensee's licence pending the completion of the first four courses of the Certified Financial Planner program, required two years of supervision and assessed investigative costs against him.

51. In light of the largely undisputed conduct set out in detail in the investigation report, had the Former Licensee indicated an intention to continue to practice in the insurance industry, Council would have considered licence suspension or cancellation in addition, or in the alternative, to a fine. In consideration of the fact that the Former Licensee must now requalify before admittance to the industry and has no intention of re-licensing, Council determined that a fine of $5000 is the appropriate sanction in this matter in order to achieve punishment of the offender, denunciation of the misconduct, maintenance of the public's confidence in the integrity of the insurance profession and Council's ability to properly supervise its members, and general deterrence of other licensees.

52. Additionally, as a self-funded body, Council looks to licensees (and former licensees, as the case may be) who have engaged in misconduct to bear the costs of their disciplinary proceedings so they are not borne by other licensees in general. Therefore, Council also determined that the assessment of investigative costs of $4,187.50 (33.5 hours x $125/hour) is appropriate in this case.

INTENDED DECISION

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

    a) Fine the Former Licensee $5,000, to be paid within 90 days of Council's order;

    b) Assess the Former Licensee Council's investigative costs of $4,187.50, to be paid within 90 days of Council's order; and

    c) Any future licensing application submitted by the Former Licensee to Council will not be considered until the fine and investigative costs are fully paid.

RIGHT TO A HEARING

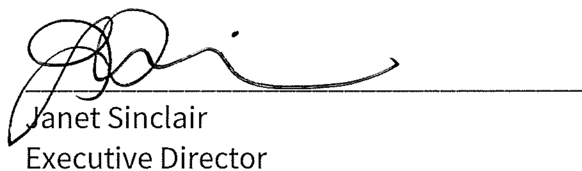
54. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee must give notice to Council by delivering to its office written notice of this intention within 14 days of receiving this intended decision. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. If the Former Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.

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

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1
Reception: 250-387-3464
Fax: 250-356-9923
Email: financialservicestribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **10th day of March, 2020**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director