

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

and the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and
KA FAI (PATRICK) CHENG
(the “Licensee”)

ORDER

As Council made an intended decision on January 25, 2022, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated February 10, 2022; and

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

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

1. The Licensee is fined \$2,000, to be paid by June 2, 2022;
2. The Licensee is required to complete the following courses, or equivalent courses as acceptable to Council: The Council Rules Course, currently available through Advocis, and the Advocis Knowing the Code of Professional Conduct course (the “Courses”) by June 2, 2022;
3. The Licensee is assessed Council’s investigation costs in the amount of \$1,500, to be paid by June 2, 2022; and
4. A condition is imposed on the Licensee’s licence that failure to pay the fine and costs and complete the Courses by June 2, 2022 will result in the automatic suspension of the Licensee’s licence, and the Licensee will not be permitted to complete his 2023 annual

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licence renewal until such time as the Licensee has complied with the conditions listed herein.

This order takes effect on the **4th day of March, 2022.**

A handwritten signature in black ink, appearing to read 'Janet Sinclair', positioned above a horizontal line.

Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

Respecting

KA FAI (PATRICK) CHENG

(the “Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct, and in particular to determine whether the Licensee breached section 3 (“Trustworthiness”); section 4 (“Good Faith”); section 5 (“Competence”); section 7 (“Usual Practice of Dealing with Clients”); and section 8 (“Usual Practice of Dealing with Insurers”) of the Code of Conduct by signing as a witness to a transfer of ownership form, when he did not witness the signature of the person who signed the document on behalf of the insured and that the Licensee did not advise of the tax implications of the transfer of the policy.
2. On December 1, 2021, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met with the Licensee via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Licensee prior to the meeting. A discussion of the investigation report took place at the meeting and the Licensee was given an opportunity to make submissions and provide further information. Having reviewed the investigation materials and discussed the matter with the Licensee, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report, were reviewed by Council at its January 25, 2022, meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

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

FACTS

5. The Licensee has held a life and accident and sickness insurance agent (“Life Agent”) licence with Council since October 1995 and is an unaffiliated Life Agent.
6. The policy at issue for this matter was a life policy that was issued in 1998 (the “Policy”) and owned by ST. The Licensee was the agent of this Policy from inception.
7. In 2003, the Licensee changed the ownership of the Policy to JT, ST’s daughter, as instructed by ST. The Licensee did not meet with JT prior to the change of ownership. The Licensee advised he prepared the transfer forms at ST’s instructions and mailed the transfer of ownership documents to ST. The transfer was completed and JT became the Policy owner.
8. In November 2017, ST asked the Licensee to change the ownership of the Policy back to himself. As ST was the original owner of the Policy, the Licensee did not question this request and did not contact JT for consent. Due to the Licensee’s long standing client relationship with ST, he continued to view ST as the owner of the Policy, although he was no longer the legal owner of the Policy at that time.
9. The Licensee prepared the transfer of ownership forms (the “Transfer Forms”) and on November 3, 2017, the Transfer Forms were mailed to the address on record. It was later discovered that the address on record for the Policy was not JT’s address.
10. The completed Transfer Forms were returned to the Licensee by mail but were incorrectly filled out, so they were mailed again to be re-signed. After the Transfer Forms had been re-signed, the Licensee arranged a meeting with ST to retrieve the Transfer Forms.
11. The Licensee advised the Committee that he requested to pick up the Transfer Forms in person as he wanted to meet JT. However, JT did not attend the meeting. The Licensee admitted he did not have any contact information for JT and had not met her in person since the Policy was issued in 1998.
12. The Licensee met with ST and reviewed the Transfer Forms. The Licensee saw the witness section of the Transfer Forms had not been completed. The Licensee stated that ST told him that he forgot to obtain a witness signature and asked the Licensee to sign as a witness.
13. The Licensee found JT’s signature on another form and compared it to the signature on the Transfer Form. As the Licensee had known ST for over 20 years, he believed everything to

be true and signed as a witness. The Licensee admitted he had not witnessed JT's signature, although he had signed the document indicating that he had done so.

14. JT did not become aware of the transfer of ownership of the Policy until her taxes were reassessed by the Canada Revenue Agency and was issued a T5 Form as a result of the Transfer.
15. JT claims she did not sign the Transfer Forms and objected to the change in ownership of the Policy. JT noted that the address of the policy holder on the Transfer Forms was not her address and was ST's postal box address.
16. The Licensee admitted he was not aware that there could be tax consequences from the transfer of ownership of the Policy. As the Licensee was not in communication with JT, the Licensee did not advise JT of the potential tax consequences associated with the transfer or advise JT to seek external advice.
17. The insurer accepted that JT did not sign the Transfer Form and accordingly reversed the Policy back into her name and reversed the capital gain.
18. The Licensee acknowledged that he has been in the insurance industry for over 25 years. The Licensee explained that he has not completed more than a handful of change of ownership forms.
19. When interviewed by the Committee, the Licensee admitted he had not witnessed JT's signature, although he had signed the document indicating that he had done so. The Licensee also admitted he was unaware of the tax implications related to the transfer of ownership of the Policy. However, Council feels that the Licensee tried to minimize the severity of his conduct. Council felt the Licensee attempted to shift responsibility to the insurer, stating the final authority to complete the transfer of the Policy would be the insurer and that his facilitating the transfer forms was only one aspect of the transfer of ownership. The Licensee stated that the insurer has a procedure to verify signatures before processing the documentation and implied that he relied on this procedure. The Licensee further stated that if the Transfer Forms had come back fully completed, anyone would have been able to witness the signature on the Transfer Form, without the Licensee knowing if the witness had properly witnessed the appropriate signatures. Council determined that the Licensee was diminishing the fact that he signed as a witness on a document, when he had in fact not witnessed the appropriate signature.
20. Following the deliberations, the Licensee sent Council staff further submissions related to his conduct, some of which he alluded to at the Review Committee meeting. Council

considered the submissions but did not find that this information changed their recommendations.

ANALYSIS

21. Council has concluded that the Licensee failed to engage in the usual practice of the business of insurance by failing to obtain client instructions before processing the transfer of ownership forms. The Licensee did not properly identify who the client was by engaging with ST, who was not the current owner of the Policy at the time of the transfer request. Although Council recognized that the Licensee had a long-standing client relationship with ST, the Licensee failed to recognize that ST was no longer the owner of the Policy when he requested the transfer of ownership. Council noted that the Licensee did not take any steps to confirm JT's instruction to transfer the Policy.
22. Council has concluded that the Licensee failed to engage in the usual practice of the business of insurance by witnessing a signature on the Transfer Form when he had not in fact witnessed the signature. Council felt that although the Licensee did not intend to purposely mislead the insurer by falsely witnessing the signature on the Transfer Form, the Licensee was not fulfilling his responsibility to the Insurer to provide insurance documents that are correct and accurate.
23. Council has concluded that the Licensee failed to engage in the usual practice of the business of insurance by failing to inform the client of the tax implications related to the transfer of ownership of the Policy and in that regard did not properly evaluate the client's needs.
24. Council has concluded that the Licensee should have been aware of the potential consequences of issuing a transfer of ownership without communicating with the legal owner of the Policy. Council notes that obtaining client instruction and properly executing insurance forms are part of the basic fundamentals of the usual practice of the business of insurance.
25. Council considered the impact of Council's Code of Conduct guidelines on the Licensee's conduct, including section 3 ("Trustworthiness"); section 4 ("Good Faith"); section 5 ("Competence"); section 7 ("Usual Practice of Dealing with Clients"); and section 8 ("Usual Practice of Dealing with Insurers"). Council concluded that the Licensee's conduct amounted to breaches of the above Code of Conduct sections and the professional standards set by the Code.

26. Prior to making its recommendation, Council took five precedent decisions into consideration. While it is recognized that Council is not bound by precedent and that each matter is decided on its own facts and merits, Council found that these decisions were comparable and instructive in terms of providing a range of sanctions for similar misconduct.
27. *Grant Donald Stobbe and Okanagan Valley Insurance Services Ltd.* (July 2020) concerned a Level 3 general insurance agent who allowed a client to take Temporary Operating Permit paperwork out of the office, into the parking lot, supposedly to be signed by the vehicle's owner. The owner's signature was then forged by the client and the licensee took no action to confirm that it was the owner's signature. Council concluded that it was appropriate for the licensee to be fined and be required to complete educational courses. However, Council concluded that the fine should be in the higher range to reflect that the licensee was a nominee and an experienced Level 3 agent at the time of the misconduct. As a result, Council imposed a fine of \$2,500, imposed conditions that the licensee be required to complete the Council Rules Course and the Insurance Brokers Association of British Columbia's Duties and Responsibilities for Level 3 Agents and Nominees in British Columbia course, and assessed the Agency investigative costs in the amount of \$2,375.
28. *Gurjeet Singh Malhi* (October 2021) concerned a licensee that failed to engage in the usual practice of the business of insurance by allowing ICBC transitional documents to leave his presence for the authorized signatures, not witnessing the signature of MT or the person who signed the documents on behalf of MT, and then processing the transactions once the paperwork was brought back to him. Harm was caused by the Licensee's failure to adhere to the Code of Conduct. While the Licensee may not have known of DT's motives in forging MT's signatures, bank loans were registered under false pretenses and the loans later went into default with the vehicles being repossessed. Council imposed a fine of \$2000, imposed conditions that the licensee be required to complete the Council Rules Course, and assessed the investigative costs in the amount of \$1700.
29. *Mark Wagner* (September 2018) concerned an unaffiliated life and accident and sickness agent. Council found the licensee had 25 improperly completed insurance forms in client files, including signed bank forms, altered forms, incomplete forms, forms witnessed prior to client execution, and forms with date discrepancies. No client harm was identified in the improperly filled out documents. The licensee admitted that the administrative aspect of his business was not his strength. The licensee submitted that any document alterations were done for client convenience rather than for any improper benefit. Council imposed a fine of \$2500, imposed conditions that the licensee be required to complete the Council Rules Course, and the Advocis Making Choices: Ethics and Responsibility and Practice, and a period of supervision of two years.

30. *Gerald Douglas Spielmacher* (June 2016) concerned a Life Agent who had over 30 years' experience and was the nominee of his agency. The licensee had signed two of a client's insurance applications without meeting the client. The applications were completed by an agent who was a member of the Licensee's insurance team. The Licensee stated this was the only time this had ever occurred and that he was only trying to assist his agent. Before signing, he reviewed the applications and discussed them with the agent. He acknowledged that he never met or talked with the client. He was aware this practice was inappropriate. Council imposed a fine of \$2500, imposed conditions that the licensee be required to complete the Advocis' ARMED seminar, and assessed the investigative costs in the amount of \$525.
31. *Lambert John Schmid* (March 2012) concerned a licensee who had been licensed as a life agent for 24 years at the time of the incident. The licensee proceeded to complete an application for insurance for a female client, in her absence with the assistance of a male client. The male client completed portions of the female client's application for insurance, including signing her name. The licensee witnessed the forged signature on a life insurance application. The applications were then submitted without the licensee ever meeting or communicating with the female client. The licensee wrongfully assumed that the male client who signed on behalf of the female client was her husband. Council imposed a fine of \$2000, imposed conditions that the licensee be required to complete the Advocis Best Practices course, and assessed investigation costs of \$850.
32. In the present case, Council acknowledges, as mitigating factors, that the Licensee has no prior disciplinary history and that the Licensee fully cooperated throughout the investigation with Council.
33. In terms of aggravating factors, the Council noted that regardless of the Licensee's motivation and intent, the improper execution of the insurance documents demonstrated a flagrant disregard for the Council's Code of Conduct. Council noted that the Licensee did not appear to demonstrate proper awareness of how his conduct breached the Council's Code of Conduct.
34. Council views the Licensee's conduct to be a breach of Council's Rules and the Code of Conduct and concludes that it is appropriate for the Licensee to be fined, as well as complete the following courses, or equivalent courses as acceptable to Council: the Council Rules Course, and the Advocis Knowing the Code of Professional Conduct course. Council accepted that this incident was a single occurrence of misconduct. Council considered whether placing the Licensee under supervision was appropriate and determined that supervision was not supported by a single occurrence of misconduct, in keeping with the precedents.

35. Accordingly, Council's disposition includes a fine in order to communicate to the Licensee, the insurance industry, and the public, that insurance agents are expected by Council to perform their roles and conduct insurance business ethically and competently.
36. With respect to investigation costs, Council believes that these costs should be assessed to the Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

37. Pursuant to sections 231, 236 and 241.1 of the Act, Council made an intended decision to:
- a. Fine the Licensee \$2,000, to be paid within 90 days of Council's order;
 - b. Require the Licensee to complete the following courses, or equivalent courses as acceptable to Council: The Council Rules Course, currently available through Advocis, and the Advocis Knowing the Code of Professional Conduct course (the "Courses") within 90 days of Council's order;
 - c. Assess Council's investigation costs in the amount of \$1,500 against the Licensee, to be paid within 90 days of Council's order; and
 - d. Impose a condition on the Licensee's licence that failure to pay the fine and costs and complete the Courses within 90 days will result in the automatic suspension of the Licensee's licence, and the Licensee will not be permitted to complete his 2023 annual licence renewal until such time as the Licensee has complied with the conditions listed herein.
38. Subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

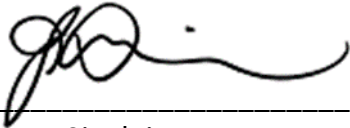
39. If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention within fourteen (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 Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.

40. Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority (“BCFSA”) still has a right of appeal to the Financial Services Tribunal (“FST”). The BCFSA has thirty (30) days to file a Notice of Appeal once Council’s decision takes effect. For more information respecting appeals to the FST, please visit their website at www.fst.gov.bc.ca or visit the guide to appeals published on their website at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **10th day of February, 2022.**

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director