

Interim Stay of Order Granted

On April 23, 2019, the Insurance Council of British Columbia (“Council”) issued the attached Order to Luan Charles Xing (the “Licensee”) which imposed a number of conditions, a fine, investigation costs, a one year licence suspension, and two years of subsequent supervision.

On May 7, 2019, the Licensee appealed Council’s Order to the [Financial Services Tribunal](#) (“FST”) and Appeal Case No. 2019-FIA-004 was assigned by the FST. The Licensee also applied to the FST for a stay of the licence suspension and supervision requirement pending determination of the appeal. Further, the Licensee applied for an interim stay of the licence suspension and supervision requirement pending determination by the FST of the stay application. On May 17, 2019, the FST granted the interim stay.

On August 2, 2019, the FST granted a stay of the licence suspension until the appeal to the FST has been disposed of, but did not grant a stay of the supervision requirement. The stay of the suspension is conditional on the Licensee being supervised by a supervisor approved by Council during the period in which the suspension is stayed, and on the Licensee completing other terms required by Council’s Order.

An update on this matter will be provided when the FST has issued a determination.

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

LUAN CHARLES XING
(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 May 30, 2017.

The subject of the hearing was set out in a Notice of Hearing dated September 6, 2018.

A Hearing Committee heard the matter on September 28, 2018 and presented a Report of the Hearing Committee (the “Report”) to Council at its February 26, 2019 meeting.

After considering the Report, Council determined that the Licensee’s misconduct, specifically his repetitive and deliberate dishonesty as detailed in the Report, raises serious concerns about his competency and trustworthiness and that, in order to achieve specific and general deterrence, protect the public, and maintain public confidence in the insurance industry, a more significant sanction is warranted than that recommended by the Hearing Committee. Accordingly, Council made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee’s life and accident and sickness insurance (“Life Agent”) licence is suspended for a period of one year commencing April 23, 2019 and ending at midnight on April 22, 2020;
2. A condition is imposed on the Licensee’s Life Agent licence that requires the Licensee to be supervised for a period of two years by a supervisor approved by Council, commencing April 23, 2020 and ending at midnight on April 22, 2022;
3. A condition is imposed on the Licensee’s Life Agent licence that, during the two year period the Licensee is under supervision, the Licensee may serve as the nominee of an insurance agency provided he is the only licensee authorized to represent the agency;
4. The Licensee is fined \$2,500;

5. The Licensee is assessed Council's investigation costs of \$1,487.50;
6. A condition is imposed on the Licensee's Life Agent licence that requires the Licensee to successfully complete the Council Rules Course;
7. A condition is imposed on the Licensee's Life Agent licence that requires the Licensee to successfully complete the course entitled, Making Choices: Ethics and Responsibility and Practice (Modules I and II), available through Advocis; and
8. A condition is imposed on the Licensee's Life Agent licence that requires him to fully pay the above-ordered fine and investigation costs and complete the above-ordered courses by no later than **July 23, 2019**. If the fine and costs remain unpaid or the courses remain incomplete by the end of the Licensee's Life Agent licence suspension at midnight on April 22, 2020, the Licensee's Life Agent licence will automatically remain suspended and his 2020 annual filing will not be processed by Council until such time as the fine and costs are paid in full and the courses are completed.

This order takes effect on the **23rd day of April, 2019**.



Ken Kukkonen
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*
(R.S.B.C. 1996, c. 141)
(the "Act")

AND

LUAN CHARLES XING
(the "Licensee")

Date: September 28, 2018
9:30 a.m.

Before: Ken Kukkonen Chair
John Van Tassel Member
David Russell Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight/Naomi Krueger Counsel for Council
Michael D. Shirreff Independent Counsel
for the Hearing Committee
Leah Shepherd Counsel for the Licensee

BACKGROUND AND ISSUES

The Licensee has been licensed as a life and accident and sickness insurance agent ("Life Agent") with Council since November 9, 2010. The Licensee is the nominee and the only authorized representative of [REDACTED] (the "Agency"), which has been licensed with Council since June 24, 2014.

On February 11, 2016, Council received an investigation report from [REDACTED] ("[REDACTED]") that identified certain concerns with respect to the Licensee's insurance services, as described in more detail below. The [REDACTED] report led to an investigation into the conduct of the Licensee by Council.

On May 30, 2017, Council issued written reasons and gave notice of an intended decision to the Licensee, pursuant to section 237 of the *Act*. On June 16, 2017, the Licensee requested a hearing and this Hearing Committee was subsequently constituted pursuant to section 223 of the *Act*.

At the hearing, Council and the Licensee advised the Hearing Committee that the Licensee had admitted the alleged misconduct; the parties had agreed on the underlying facts of the matter; and the parties had agreed on a joint submission for the appropriate penalty.

Against that backdrop, this is the written report of the Hearing Committee. The report has been prepared in accordance with section 223(4) of the *Act*.

EVIDENCE

a. Exhibits

There were no witnesses called to give evidence at the hearing. Council and the Licensee agreed to an Agreed Statement of Facts (the “ASF”), which provided the evidentiary background to this matter. The ASF was marked at the hearing as Exhibit 1.

Together with the ASF, the parties also introduced a Book of Documents, which contained 35 documents relating to Council’s investigation of the Licensee, including materials provided by [REDACTED] as well as a transcript from an interview with the Licensee during the course of the investigation. The Book of Documents was marked at the hearing as Exhibit 2.

During the course of the hearing, Council and the Licensee also provided written submissions, but neither of these documents was marked as an exhibit.

b. Facts

The facts summarized in this hearing report are taken from the ASF that was filed as Exhibit 1.

The Licensee was first licensed as a life agent with Council of November 9, 2010. The Licensee is the nominee and the only authorized representative of the Agency, which has been licensed with Council since June 24, 2014.

The Agency is the Licensee’s personal corporation and its business is located at [REDACTED].

The Agency currently has contracts with [REDACTED] and [REDACTED]. The Licensee also has a contract with [REDACTED] (“[REDACTED]”), which is a managing general agent. During the material period, the Licensee also had a contract with [REDACTED] through [REDACTED].

The Agency belongs to a group of companies that fall under the umbrella of what has been referred to as the “[REDACTED]”. The [REDACTED] is not a legal entity and it has no principals. Other [REDACTED] companies include: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

██████████.; ██████████.; ██████████.; and ██████████. (the “██████████”).

The ██████████ are, for the most part, engaged in non-insurance related activities, particularly the provision of services to new immigrants to Canada. Many of the ██████████ share the same address and office space as the Agency. It has been common for the ██████████ to refer clients to the Agency for insurance related services. Where such referrals were made, referral fees were paid by the Agency. By way of example, for the year ending July 31, 2014, the Agency paid \$1.6 million in referral fees to the ██████████.

The Licensee was business partners during the material period with an individual named ██████████ H who was the principal of at least four of the ██████████. ██████████ H shared office space with the Licensee at the address for the Agency address in ██████████. ██████████ H was a regular source of referrals for the Agency.

The allegations in this matter relate to insurance services provided by the Licensee to certain clients. The individual transactions are discussed below, with reference to the particular clients. The Hearing Committee has used initials to describe each client in order to protect the privacy of these individuals.

Clients X and C

One of the insurance transactions identified in the ██████████ report as being of concern related to certain insurance sold by the Licensee to clients X and C.

X and C arrived in Canada on July 24, 2014 and returned to China shortly thereafter in August 2014. On July 29, 2014, the Licensee sold X and C each a life insurance policy. At that time, the Licensee was aware that X and C did not have a residential address in Canada. The Licensee submitted a note with the insurance applications explaining that X and C had just arrived in Canada and that they were in the process of shopping for a home.

The insurance applications submitted by the Licensee on behalf of X and C stated that X and C had a residential address in ██████████. The Licensee knew at that time that this was not the residential address of X and C, but was only the homestay address for the daughter of X and C.

Subsequently, X and C provided the Licensee with an updated residential address in ██████████, ██████████. Again, the Licensee was aware that this new address was simply the new homestay address for the daughter of X and C.

On the Identity Verification, third party determination and politically exposed foreign persons (PEFP) form (“PEFP”) provided to ██████████ by the Licensee with the insurance applications for X and C, ██████████ H was listed as a relative and payor of the respective insurance policies.

The information relating to [H] in the applications prepared for X and C was provided to the Licensee by the clients. However, the Licensee did not verify the accuracy of the information relating to [H] in those applications.

The Licensee earned approximately \$300,000 in commission from the insurance policies that he sold to X and C.

The cost of the X and C policies annually was a combined total of \$216,310 CAD. The Licensee received two cheques from [H] for the premiums for the first year, which he delivered to [REDACTED]

X and C then paid [H] approximately \$125,000 CAD in Chinese currency via bank transfer for the first years' premiums.

Clients L, W and Y

The Licensee sold insurance policies to L, W and Y in December 2013. At the time, the Licensee was aware that L, W and Y did not have a residential address in Canada. As a result, the insurance applications listed the Agency's address as the applicants' residential addresses.

Neither W nor L instructed the Licensee to use the Agency address as their residential address on the PEFP.

On the PEFP provided to [REDACTED] with the insurance application for W, [H] was listed as W's sister and payor of the policy premiums. [H] was not W's sister or any other relative of W.

[H] purchased a bank draft, dated September 4, 2014, in the amount of \$191,750, payable to [REDACTED] for W's first year's policy premium. [H] then received two bank drafts, dated October 20, 2014, in the amounts of \$70,000 CAD and \$100,000 CAD, which were kept in W's file at the Agency by the Licensee.

L used her own cheques to pay for her policy premium. L provided the Licensee with cheques on two occasions and made two payments directly to [REDACTED]

Despite the fact that neither W nor L instructed the Licensee to use the Agency address on the insurance applications, in his letter to [REDACTED] dated January 8, 2016, the Licensee stated that the Agency's address was used for the following reasons:

1. the Agency shared office space with [REDACTED], which provided settlement services to the clients;
2. the clients did not have a permanent fixed address because they were newly landed immigrants residing in temporary accommodations; and

3. the clients spoke minimal English and wished to have important documents mailed to the Agency office.

Clients X2 and W2

In December 2015, the Licensee sold life insurance policies to clients X2 and W2. On the Out of Canada Policy Delivery Authorization forms provided to [REDACTED] with the applications, [REDACTED] H [REDACTED] was listed as the representative to receive delivery of the policies in Canada on behalf of X2 and W2.

Client Z

In March 2015, the Licensee sold an insurance policy to client Z. Z had come to Canada in July 2012 and had otherwise resided in Canada in the three years before she purchased insurance through the Licensee.

On the PEFP provided to [REDACTED] in April 2015, [REDACTED] H [REDACTED] was listed as Z's sister and payor of the policy premiums. [REDACTED] H [REDACTED] was not Z's sister.

With respect to the Z policy, [REDACTED] H [REDACTED] issued two cheques, dated April 9, 2015, payable to [REDACTED] which referenced Z and her policy number. The first cheque is in the amount of \$40,200 CAD and the second was in the amount of \$50,000 CAD.

Client Y

Again, the Licensee sold client Y a life insurance policy in June 2014. On the PEFP form, which was provided to [REDACTED] with the insurance applications on June 26, 2014, the Licensee's corporation ([REDACTED]) was initially listed as the payor and the Licensee was listed as a friend of client Y.

On or about July 2, 2014, the Licensee resubmitted page 9 of the PEFP, this time incorrectly listing [REDACTED] H [REDACTED] as client Y's payor and sister.

The Licensee's Declarations on the Applications

On each occasion that he submitted the various insurance applications and other documents referred to above, the Licensee made a series of declarations to [REDACTED]. The Licensee understood that [REDACTED] would rely on the information provided by the Licensee in order to conduct customer due diligence and to satisfy applicable regulatory requirements.

On each insurance application, the Licensee declared that:

1. all of the identification details provided to him for the application matched the original identification document shown to him;

2. reasonable effort was exercised to determine if each proposed owner was acting on behalf of a third party;
3. he had disclosed to each proposed owner that he might also receive additional compensation in the form of bonuses or non-monetary benefits such as travel incentives or attendance at conferences; and
4. he had disclosed to each proposed owner any conflicts of interests that he may have had with respect to the respective transactions.

By way of example, with respect to the life insurance application submitted for client L, the “advisor’s declaration” section of the application that was signed by the Licensee expressly stated (this is the same language used in the applications for the other clients noted above):

18.4 Advisor declaration and notice of disclosure (Must be signed by advisor only).

With the understanding that [REDACTED] will rely on the information to conduct customer due diligence and to satisfy applicable regulatory requirements, I, the advisor, confirm that

- All of the identification details provided in this application match the original identification documents shown to me.
- Reasonable effort was exercised to determine if each proposed owner is acting on behalf of a third party,
- I have disclosed to each proposed owner that I am an independent advisor that has a contract to sell products issued by [REDACTED] and I have also identified any other companies I represent,
- I have disclosed to each proposed owner that I will receive compensation in the form of commissions or salary for the sale of life and health insurance products,
- I have disclosed to each proposed owner that I may also receive additional compensation in the form of bonuses or non-monetary benefits such as travel incentives or attendance at conferences,
- I have disclosed to each proposed owner any conflicts of interest that I may have with respect to this transaction, and
- I am licensed in the province in which this application was completed and this signature page was signed.

If applicable (see 18.5 below) I, the advisor, also confirm that:

- I have reviewed with each proposed owner, proposed insured and PAC payor, all of their information in this application and, to the best of my knowledge, this information is complete and true, and has all the facts material to the insurance applied for, and
- I saw every person sign this application.

...

Each of the PEFPs provided to [REDACTED] by the Licensee contained the following instruction to the agent:

Always verify the identity of clients and find out whether any third parties are involved. This helps [REDACTED] Financial and you to manage risk and comply with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and other relevant legislation/regulations.

After the [REDACTED] investigation of the Licensee, [REDACTED] terminated its sales agreements with the Licensee, effective March 17, 2016.

c. Other Discipline of the Licensee

In July 2015, the Licensee was disciplined by Council for failing to disclose his certified general accountant designation on his 2010 licence application, and subsequently failing to disclose disciplinary action by the Certified General Accountants Association of British Columbia as required by Council Rule 7(3). On that occasion, the Licensee was fined \$2,000 and assessed Council's investigative costs.

In October 2015, the Licensee advised Council that he was the subject of an ethics complaint from the organization of Chartered Professional Accountants of British Columbia ("CPABC") regarding his attendance at professional development courses. In brief, the Licensee had arranged for a person to impersonate him at two seminars he was required to attend as part of his membership registration requirements with CPABC.

As a result of that complaint, the Licensee resigned his membership with CPABC on November 26, 2015. In the result, discipline was no longer pursued by the CPABC. The Licensee admitted in this proceeding before the Hearing Committee that he had in fact arranged for a person to impersonate him at the two CPABC seminars.

FINDINGS OF THE HEARING COMMITTEE

The burden at these hearings always lies with Council, which must prove any allegations against a licensee on the civil standard of a balance of probabilities.

In the circumstances of this matter, Council and the Licensee have agreed that the Licensee's conduct as outlined in the ASF fell short in terms of the Licensee's professional obligations of competence, trustworthiness and good faith. The Licensee has expressly accepted "that his conduct described in the ASOF is deserving of sanctions" (para. 3, Licensee's written submissions).

In light of the Licensee's misconduct, Council and the Licensee have proposed the following joint submission with respect to a proposed penalty:

1. that the Licensee be supervised by a life agent supervisor approved by Council for a period of one year of Council's penalty decision being issued;
2. the Licensee not provide supervision to any life agents for a period of one year after Council's penalty decision is issued;
3. the Licensee complete the "Making Choices: Ethics and Professional Responsibility in Practice (Modules I and II)" course, at his own expense, within 90 days of Council's penalty decision being issued;
4. the Licensee complete the Council Rules course, at his own expense, within 90 days of Council's penalty decision being issued; and
5. the Licensee pay Council's investigation costs in the amount of \$1,487.50, within 30 days of Council's penalty decision being issued.

With respect to hearing costs, Council did not make any submissions as to whether the Hearing Committee should recommend that hearing costs be ordered, but did draw the availability of hearing costs to our attention for consideration.

In light of the admission of misconduct by the Licensee, together with the joint submission on the proposed penalty, the primary issue for the Hearing Committee is to assess whether or not the proposed joint penalty satisfies Council's public interest mandate when one considers the nature of the misconduct raised in this hearing, together with the penalties assessed in other previous matters involving other licensees that have been disciplined by Council. There is of course a need for the penalty in this instance to be consistent with penalties received by other licensees in similar circumstances in the past.

As outlined in further detail below, the Hearing Committee is of the view that the penalty for the Licensee in this matter should be more significant than that proposed by way of the parties' joint submission.

An oft-cited statement as to the factors to be taken into account when considering how to determine an appropriate penalty for misconduct in a regulatory setting is that set out by James T. Casey in the *Regulation of Professions in Canada*, as follows:

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, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members, and ensuring that the penalties imposed is not disparate with penalties imposed in other cases.

It is the view of the Hearing Committee that in addition to the over-arching mandate to ensure the protection of the public, the key factor in terms of assessing a disciplinary penalty in this matter is specific deterrence; ensuring that the Licensee does not commit further misconduct in the future.

There are a number of provisions of Council's Code of Conduct (the "Code") that are directly applicable to the Licensee's actions. The Code emphasizes throughout that licensees must conduct all professional activities with integrity, reliability and competence. Some of the relevant Code provisions include:

3. TRUSTWORTHINESS

3.1 PRINCIPLE

In an industry where trust is the foundation of all dealings, you must meet rigorous standards of personal integrity and professional competence. These characteristics speak to the essence of what a licensee does. Failure to adhere to these standards reflects not only on you, but also on the profession. Trustworthiness is a fundamental element of each requirement in the Code.

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 license.

...

4. GOOD FAITH

4.1 PRINCIPLE

The insurance industry is based on fiduciary relationships. Accordingly, the exercise of good faith by licensees in the practice of the business of insurance is essential to public confidence in the industry. Good faith is a fundamental aspect of your conduct and a key element in each of the Code's requirements.

...

8. USUAL PRACTICE: DEALING WITH INSURERS

8.1 PRINCIPLE

Licensees act as intermediaries between clients, insureds and insurers in a contractual relationship. The insurers' ability to meet their contractual duties is based on your honesty and competence in providing advice and information.

8.2 REQUIREMENT

You have a duty to insurers with whom you are transacting business to:

- make reasonable inquiries into the risk;
- provide full and accurate information;

...

As acknowledged by the Licensee, he failed in a variety of ways to meet these professional obligations.

During the hearing, the Hearing Committee was referred by Council to the following four decisions as being potentially relevant in terms of establishing the range of an appropriate penalty for the Licensee:

1. *Jack Leonard Parkin* (January 2015);
2. *Patie Kaur Johl* (May 2015);
3. *Roel Reyes Bernardino* (May 2015); and
4. *Pamela Peen Hong Yee* (December 2014)

The Licensee provided the decision in *Clayton Daniel Snow* (August 2015) and submitted that it is also of assistance in terms of ensuring that the Licensee's penalty is proportional to the overall level of his wrongdoing or culpability.

In considering the proposed joint penalty in this matter, the Hearing Committee has carefully read and reviewed all of the previous decisions to which we were referred. It goes without saying that no two decisions are precisely the same. The facts of this matter are unique, but there are elements of some of these other decisions that the Hearing Committee found to be of assistance in terms of assessing the reasonableness of the proposed penalty put forward by Council and the Licensee in this matter. That being said, as Council emphasized on a number of occasions during the course of the hearing, the Hearing Committee is not bound by the joint submission put forward by Council and the Licensee.

There is no question that the Licensee's actions were contrary to the usual practice of the business of insurance and raise serious issues with respect to both his competency, as well as his integrity. In all instances, the Licensee was responsible for the completion of the insurance applications and was required to ensure that the applications contained accurate information. The system as between the insurer and a licensee very much relies on the licensee to provide the insurer with accurate and complete information about the applicant. In addition to incorrectly listing the Agency's address as the clients' residential address on a number of occasions, the Licensee submitted multiple insurance applications which incorrectly listed his business partner, **H** as a relative of the clients (or himself as the applicant's "friend").

The inaccurate information provided by the Licensee related to insurance applications of significant value and in circumstances where the Licensee received very sizeable commissions. Although there was no evidence at the hearing of any specific monetary payment to the Licensee

by [H] or anyone else encouraging the provision inaccurate information to the insurer, there can be no question that the Licensee had a significant financial incentive to sell these policies to his clients.

The Hearing Committee is particularly troubled by the fact that the Licensee on a number of occasions submitted applications that referred to his business partner, [H] as the payor and relative of the applicant. The repeated use of [H] with respect to these applications belies any argument by the Licensee that the errors on the applications were simple administrative errors or errors made on account of information supplied by the clients. Although no explanation was offered to the Hearing Committee by Council, there was most certainly a specific reason why the Licensee was using [H] on these applications and why many of the policy premiums were paid directly by [H] and not the Licensee's clients. These facts do not cause concerns only about the Licensee's competency, but raise serious issues his honesty and integrity.

It should also be noted that on each occasion where information was submitted to [REDACTED] the Licensee was required to confirm that he had carefully reviewed the identification details provided in the application and determined that they matched the original identification documents shown to him and that reasonable effort was exercised to determine if each proposed owner was acting on behalf of a third party. The Licensee was aware of his obligations to the insurer and repeatedly provided assurances that he had met his professional obligations in circumstances where he had not. The Hearing Committee regards this as a situation where the Licensee was untruthful with the insurer on multiple occasions. The Licensee's actions were intentionally deceptive.

Further, in addition to the issues relating to the completion of the insurance applications, this hearing also related to the Licensee's actions in enlisting an individual on two occasions to impersonate him for the purposes of professional development within the CPABC.

Taken together, the allegations that the Hearing Committee considered in this matter raise very serious questions about both the Licensee's competency and trustworthiness.

Council submitted at the hearing that the sanction in this matter should be governed by principles of proportionality in terms of assessing other similar conduct in the past. The Licensee submitted that the misconduct occurred for the administrative convenience of his client. Council was very clear in its submissions that there was no evidence of any financial gain to the Licensee with respect to these matters (apart from the significant commissions). Further, the Hearing Committee accepts that there are other mitigating factors at play, including the Licensee's acceptance of responsibility and cooperation in terms of both the hearing and the preparation of the joint submission on penalty.

As noted in the Financial Services Tribunal's decision in *Financial Institutions Commission v. Johnson et. al* (DECISION NO. 2017-FIA-002(a), 003(a), 004(a) 005(a), 006(a), 007(a) and 008(a)), repeated conduct that would cause the regulator and the public to question a licensee's trustworthiness strikes at the heart of the licence itself (at para. 101).

As the Financial Services Tribunal further noted (at para. 104):

[104] Trust in the licensee lies at the foundation of the grant of the licence. Repeated conduct that calls into question the trustworthiness of a licensee can only reasonably be addressed by a regulator taking action on the licence. Subject only to mitigating factors evident in the record before the Council at the time of the intended decision or after a hearing, it is only licensing action in the form of a suspension, cancellation or conditions (in addition to whatever other conditions the regulator may wish to attach) that can adequately protect the public, secure its confidence, achieve general deterrence and express the denunciation that such conduct warrants.

Of the five decisions that the Hearing Committee was referred to at the hearing, we have found the *Pamela Peen Hong Yee* decision to be the most insightful in terms of establishing an appropriate penalty for the Licensee's actions. Ms. Yee misrepresented information on a life insurance application with respect to whether her client had used tobacco or nicotine products in the previous five years. There was no evidence that Ms. Yee had intended to withhold material information from the insurer, but Council concluded that she should have identified the misrepresentation on the application given that she had submitted an insurance application four years earlier that had listed the client as a smoker. Focusing on Ms. Yee's lack of adequate record-keeping and poor client information management, Council concluded that the concerns about Ms. Yee's competency required a period of supervision for two years, along with a requirement that she complete further educational courses and pay a fine in the amount of \$3,000.

RECOMMENDATIONS OF THE HEARING COMMITTEE

In this instance, for the reasons identified above, the Hearing Committee is of the view that the Licensee's actions require a disciplinary penalty similar to that ordered in *Pamela Peen Hong Yee*.

It is the Hearing Committee's view that the proposed joint penalty for the Licensee does not go far enough to meet Council's public interest mandate in these circumstances and that the Licensee should be required to undergo a longer period of supervision than proposed by the parties. The Hearing Committee is therefore recommending a two year period of supervision.

Further, the Hearing Committee also believes that the actions of the Licensee are serious enough to warrant a fine in addition to a period of supervision. In *Pamela Peen Hong Yee*, the fine ordered by Council was \$3,000. In *Clayton Snow*, the fine imposed was \$2,500. These decisions can be contrasted with the decision in *Patie Johl*, where the licensee was ordered to pay a \$5,000 fine in circumstances where she had misled her client about the terms of an insurance policy, paid the policy premiums herself and had her client sign money orders to give the impression to the insurer that the clients were paying the premiums. Having reviewed these decisions, the Hearing Committee is of the view that the Licensee's actions must be regarded as

being less culpable than Ms. Johl's and we believe that Council's public interest mandate can be met with the imposition of a \$2,500 fine, together with the extended supervision noted above.

As such, the Hearing Committee recommends that Council consider the following penalty:

1. the Licensee pay a fine in the amount of \$2,500 within 90 days of Council's penalty decision being issued;
2. the Licensee be supervised by a life agent supervisor approved by Council for a period of two years after Council's penalty decision is issued;
3. the Licensee not provide supervision to any life agents for a period of two years after Council's penalty decision is issued;
4. the Licensee complete the "Making Choices: Ethics and Professional Responsibility in Practice (Modules I and II)" course, within 90 days of Council's penalty decision being issued;
5. The Licensee complete the Council Rules course, within 90 days of Council's penalty decision being issued; and
6. The Licensee pay Council's investigation costs in the amount of \$1,487.50, within 30 days of Council's penalty decision being issued.

With respect to hearing costs, Council made no submissions as to whether the Hearing Committee should recommend such costs to Council as part of our decision. There is no question that Council has the authority to order hearing costs against a licensee. The Licensee submitted that it was not necessary in these circumstances to order hearing costs as he had acted within his rights to request a hearing and had then cooperated with Council in terms of the preparation of the ASF and the joint submission of penalty. The Hearing Committee appreciates the efforts of the Licensee in this regard and thanks both parties for conducting an efficient and cooperative hearing.

However, it is the Hearing Committee's view that, even in these circumstances, it is important for Council to order hearing costs against the Licensee. The Licensee has been found to have committed professional misconduct. His level of cooperation with Council through the disciplinary process will most certainly have served to reduce the amount of the hearing costs, but it should not excuse the Licensee from the requirement to also pay costs. Further, the Hearing Committee also notes that there has been no evidence put forward in relation to the Licensee's ability to pay hearing costs in these circumstances, so this does not appear to be a situation where the Licensee is suggesting that the imposition of hearing costs will lead to undue hardship.

The Hearing Committee believes there to be no reason in this proceeding to depart from the usual rule that a licensee found to have committed misconduct must bear the burden of the hearing costs in addition to any other necessary and appropriate penalty. Although the Licensee's cooperation is to be lauded, these proceedings arose only as a result of his actions and the hearing was required so as to ensure that Council is meeting its obligations to protect of the public. It is the view of the Hearing Committee that it would not be fair or appropriate for the costs of the Licensee's misconduct to be borne by the other members of the profession. For these reasons, the Hearing Committee recommends that Council also order the Licensee to pay the costs of the hearing, being given perhaps six months to pay these costs (or some other longer period agreed to by Council).

Dated in Vancouver, British Columbia, on the 6th day of February, 2019.



Ken Kukkonen, Chair of Hearing Committee
Insurance Council of British Columbia