In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

SANDY B B LU
(the "Licensee")

ORDER

As Council made an intended decision on July 13, 2010, pursuant to sections 231 and 236 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 July 28, 2010; 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 and 236 of the Act, Council orders that:

1. the Licensee pay a fine of $1,500.00; and

2. as a condition of this decision, the Licensee is required to pay the above mentioned fine by **November 24, 2010.** If the Licensee does not pay the ordered fine by this date, the Licensee's licence is suspended as of **November 25, 2010**, without further action from Council.

This order takes effect on the **24th day of August, 2010.**

Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

SANDY B B LU
(the "Licensee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* ("Act"), Council conducted an investigation to determine whether there was compliance by the Licensee with the requirements of the Act.

As part of Council's investigation, on May 17, 2010 an Investigative Review Committee ("Committee") met with the Licensee to discuss an alleged failure to comply with the requirements of Council Rule 7(11). Specifically, the Licensee failed to notify Council of the loss of mandatory errors and omissions insurance ("E&O") coverage within five business days of the loss of coverage and did not cease conducting insurance activities.

The Committee was comprised of one voting and two non-voting members of Council. Prior to the Committee's meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to clarify the information contained therein and make further submissions. After reviewing the investigation materials, and discussing this matter with the Licensee, the Committee made a recommendation to Council regarding the manner in which this matter should be disposed.

A report setting out the Committee's findings and recommended disposition, along with the aforementioned investigation report, was presented to Council at its July 13, 2010 meeting. At the conclusion of its meeting, Council determined that the matter should be disposed of in the manner set out below.

INTENDED DECISION PROCESS

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 and 236 of the Act before taking any such action. The Licensee may then either accept Council's decision or request a formal hearing. This intended decision serves as written notice of the action Council intends to take against the Licensee.

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FACTS

Based on the information contained in the investigation report, Council made the following findings of fact:

1. The Licensee was licensed as a life and accident and sickness insurance agent ("Life Agent") from 1994 to 2003. In October 2007, the Licensee applied for and became licensed as a Life Agent with Future Planning Services Inc. ("FPS") and the Licensee has remained a licensed representative of FPS to date.

2. On November 11, 2009, Council received notification from Willis Canada Inc. that the Licensee's E&O coverage had lapsed on August 7, 2009. Council staff contacted the Licensee on December 18, 2009 to determine if the Licensee had obtained replacement coverage as required under Council Rule 7(11).

3. The Licensee advised Council staff on January 4, 2010 that she had obtained the required E&O coverage.

4. The Licensee continued to conduct insurance activities while in breach of Council Rule 7(11), delivering a term policy in October 2009, and completing three applications for insurance.

5. In the summer of 2009, the Licensee's fiancé was diagnosed with a terminal illness. The couple had planned to marry later that year. The Licensee was focused on caring for her fiancé, as well as caring for her two children.

6. The Licensee was aware of her responsibilities under Council Rule 7(11), however, the news of her fiancé's illness was devastating. It resulted in her focus being on dealing with his medical appointments and treatment, as well as caring for her two children and not her insurance practice.

LEGISLATION

Council Rule 7(11) states:

(11) Effective January 1, 2006, unless otherwise determined by Council a licensee:
  (a) must maintain or be covered by E&O insurance, which extends to all activities as a licensed insurance agent, salesperson or adjuster, with:
    (i) a minimum limit of $1,000,000.00 per claim; and
    (ii) a minimum aggregate limit of $2,000,000.00;

(b) who is a direct employee of an insurer is exempt from subsection (a) where:
  (i) the licensee only sells the products of that insurer; and
  (ii) the licensee provides certification from the insurer that:
    (A) the licensee is an employee of the insurer;
    (B) the company accepts responsibility for the licensee's activities as a licensee; and
    (C) the company will respond to E&O claims against the licensee on the same basis as set out in subsection (a);

(c) that is no longer insured as required under subsection (a) or (b) must:
  (i) notify Council within 5 business days; and
  (ii) immediately stop conducting any insurance activities;

(d) will have the licence automatically suspended without Council taking any action, where the licensee remains uninsured for a period exceeding 30 calendar days; and

(e) will have the licence suspended under subsection (d) automatically reinstated where:
  (i) the licensee obtains the required E&O insurance within 30 calendar days from the date of the suspension; and
  (ii) the licensee delivers to Council the required verification;
  otherwise the licence is terminated.

Section 231 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Council may suspend, cancel or restrict licences and impose fines

(1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee

(a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
(b) has breached or is in breach of a term, condition or restriction of the licence of the licensee,
(c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
(d) has refused or neglected to make a prompt reply to an inquiry addressed to the licensee under this Act,
(e) has contravened section 79, 94 or 177, or
(e.1) has contravened a prescribed provision of the regulations,

then the council by order may do one or more of the following:

(f) reprimand the licensee or former licensee;
(g) suspend or cancel the licence of the licensee;
(h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
(i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
(j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
(k) in respect of conduct described in paragraph (a), (b), (c), (d), (e), or (e.1), fine the licensee or former licensee an amount

(i) not more than $20 000 in the case of a corporation, or
(ii) not more than $10 000 in the case of an individual.

(2) A person whose licence is suspended or cancelled under this section must surrender the licence to the council immediately.

(3) If the council makes an order under subsection (1)(g) to suspend or cancel the licence of an insurance agent, or insurance adjuster, then the licences of any insurance salesperson employed by the insurance agent, and of any employees of the insurance adjuster are suspended without the necessity of the council taking any action.

(3.1) On application of the person whose licence is suspended under subsection (1)(g), the council may reinstate the licence if the deficiency that resulted in the suspension is remedied.

(4) If an insurance agent's licence or an insurance adjuster's licence is reinstated, the licences of any insurance salespersons or employees of the insurance adjuster who
(a) were employed by that agent or adjuster at the time of the suspension, and
(b) remain employees of that agent or adjuster at the time of reinstatement,
are also reinstated without the necessity of the council taking any action.

Section 236 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 3 – Hearings and Appeals

Power to impose conditions

(1) The commission, superintendent or council, depending on which of them has the power to make the order, give the consent or issue the business authorization, permit or licence may

(a) impose conditions that the person considers necessary or desirable in respect of
(i) an order referred to in section 235 (1),
(ii) a consent referred to in section 235 (2),
(iii) a business authorization,
(iv) a permit issued under section 187 (1), or
(v) a licence issued under Division 2 of Part 6, and

(b) remove or vary the conditions by own motion or on the application of a person affected by the order or consent, or of the holder of the business authorization, permit or licence.

(2) A condition imposed under subsection (1) is conclusively deemed to be part of the order, consent, business authorization, permit or licence in respect of which it is imposed, whether contained in or attached to it or contained in a separate document.

(3) Except

(a) on the written application or with the written permission of the holder, or
(b) in the circumstances described in section 164, 231 or 249 (1), a power of the commission, superintendent or council under this Act to impose or vary conditions in respect of
(c) a business authorization is exercisable only on or before its issue date, or
(d) a permit under section 187 (1) or a licence under Division 2 of Part 6 is exercisable only on or before its issue date with effect on and after that date.

ANALYSIS

Council found the above mentioned facts constituted a breach of Council Rule 7(11)(c)(i) and 7(11)(c)(ii), as the Licensee failed to notify Council within five business days of losing E&O coverage, and continued to conduct insurance activities without E&O coverage in place.

Council felt operating without E&O coverage, regardless of the circumstances, had the potential for placing the public at risk. Council acknowledged that the Licensee was facing significant personal challenges at the time her E&O insurance expired and was sympathetic to the challenges the Licensee was facing. However, Council noted that the Licensee, while not engaged full-time in insurance activities during this period, she did transact some insurance business. Council concluded that if the Licensee was capable and focused enough to conduct life insurance business, she should have been able to ensure she was in compliance with Council Rules.

Council noted that the Committee had recommended the Licensee be fined but had proposed that the fine be less than what is standard practice because of the Licensee's personal circumstances at the time. Council did not accept this recommendation. The Licensee had a responsibility to ensure she carried on her insurance business in accordance with the Act, regulation and Council Rules. If the Licensee was too distracted to ensure her insurance practice was in compliance, then Council has to believe she was too distracted to be engaging in any insurance transactions. If Council's assumption is correct, then the Licensee's actions placed the public at greater risk as she was not functioning at her best and was without E&O insurance.

Council considered prior decisions relating to breaches of Council Rule 7(11). These decisions included cases where for various personal reasons, including health issues, licensees continued to conduct insurance activities without minimum E&O insurance in place. In such cases the usual penalty was a fine equal to approximately two times the licensee's annual E&O insurance premium. Council determined this matter was similar in nature and warranted a similar penalty.

INTENDED DECISION

Pursuant to section 231 and 236 of the Act, Council intends to order the following:

1. the Licensee pay a fine of $1,500.00; and
2. as a condition of this decision, the Licensee is required to pay the above mentioned fine by **November 24, 2010**. If the Licensee does not pay the ordered fine by this date, the Licensee's licence is suspended as of **November 25, 2010**, without further action from Council.

The intended decision will take effect on **August 24, 2010,** subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, she may present her case at a hearing before Council where she may be represented by legal counsel. 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 by **August 23, 2010**. 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 by **August 23, 2010**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission 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 www.fic.gov.bc.ca/fst/ or contact them directly at:

Suite 1200 - 13450 102nd Avenue
Surrey, British Columbia
V3T 5X3
Telephone: 604-953-5300

Dated in Vancouver, British Columbia, on the **28th day of July 2010**

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

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