In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JIAN BO YANG
("Licensee")

ORDER

As Council made an intended decision on August 10, 2010, 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 September 8, 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, 236 and 241.1 of the Act, Council orders:

1. the suspension of the Licensee's life and accident and sickness and general insurance licences for a period of six months;
2. that as a condition of reactivation of the Licensee's general insurance licence that the Licensee successfully complete the Insurance Corporation of British Columbia's Autoplan Basics for Brokers course;
3. a condition imposed on the Licensee's general insurance licence that the Licensee is only authorized to act as a Level 1 general insurance salesperson until such time as the Licensee has accumulated 12 months of active licensed experience;
4. the Licensee is fined $1,000.00;
5. the Licensee is assessed Council's investigative costs of $1,237.50; and

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6. as a condition of this order, the Licensee is required to pay the fine and investigative costs no later than **January 5, 2011**, or the Licensee's life and accident and sickness and general insurance licences will be suspended without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and costs are paid in full.

This order takes effect on the **5th day of October, 2010.**

Barbara MacKinnon, CAIB
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

JIAN BO YANG
(the "Licensee")

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the "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 July 12, 2010, an Investigative Review Committee (the "Committee") met with the Licensee to discuss an allegation the Licensee misused an Insurance Corporation of British Columbia ("ICBC") insurance decal for his own personal benefit.

The Committee was comprised of one voting and two non-voting members of Council, all of whom have significant experience in the insurance business. 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. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee made a recommendation to Council as to 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 August 10, 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, 236 and/or 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.

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FACTS

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

Licensing and Employment Information:

1. the Licensee was first licensed as a life and accident and sickness insurance agent ("Life Agent") on August 25, 2005;
2. the Licensee was first licensed as a Level 1 general insurance salesperson ("Salesperson") on October 3, 2005;
3. for his general insurance activities, the Licensee is currently authorized to represent IC Financial Corporation (the "Agency") as a Level 2 general insurance agent ("Level 2 Agent");
4. the Licensee has not been subject to any discipline by Council in the past;

Acquisition of Decal:

5. on Saturday, June 20, 2009, a customer (the "Customer") attended an insurance agency in Richmond to renew his ICBC utility trailer policy which was due to expire on June 29, 2009;
6. the Customer was issued an ICBC decal for the insurance on his trailer and the decal displayed an expiry date of June 2010;
7. on Tuesday, June 23, 2009, the Customer attended the Agency to complete a licence plate substitution transaction for the same utility trailer policy;
8. the Licensee assisted the Customer with the transaction. He issued a new licence plate to the Customer with a new ICBC insurance decal;
9. when the Customer met with the Licensee, he provided the Licensee with the ICBC decal he had received a few days prior from the insurance agency in Richmond;
10. the Customer did not have his old licence plates in his possession at the time he attended the Agency;
11. the Licensee recalled the Customer stating he would bring in the old plates at a later date, but he failed to follow up with the Customer and did not internally record the fact that the old plates had not been collected, or file any documentation to report this fact to ICBC;

12. the Licensee submitted that the ICBC decal associated with the Customer's old plates was left on the desk in the course of conducting the plate substitution transaction for the Customer; and after the Customer left the Agency, the Licensee placed this decal in his desk drawer;

13. approximately one month later, the Licensee noticed the decal in the drawer and placed it in his pocket. The Licensee acknowledged that the only explanation for his decision to put it in his pocket was that he intended to use the decal at some point in the future, for his own purpose;

14. the decal remained in the Licensee's pocket for some time. According to the Licensee, it was not unusual for him to carry around loose papers in his pocket and the decal blended in with these other items;

15. the Licensee owns two vehicles: a 2004 Toyota Sienna (the "Sienna"), and a 2001 Toyota Corolla (the "Corolla");

16. the Corolla has been continuously insured since April 24, 2009. It remains insured today, with an expiry of April 23, 2011;

17. insurance on the Sienna lapsed on September 19, 2009;

18. the Licensee submitted that he and his wife made a conscious decision not to renew the insurance for the Sienna in order to save some money;

19. in or around October 2009, family activities and logistics made it necessary for the Licensee to use the Sienna;

20. the Licensee remembered the decal he had in his pocket and placed it on the back of the expired licence plate belonging to the Sienna; and over the course of approximately the next seven months, the Licensee drove the Sienna without valid insurance;

21. on Friday, May 14, 2010, at approximately 4:30 p.m., shortly after leaving the Agency, the Licensee was stopped at an intersection in his Sienna. A police vehicle pulled up behind the Licensee at the intersection, observed the Sienna's licence plate, checked for information on it in their records, and then pulled the Licensee over;

22. the Licensee advised the police that his Sienna was not insured and he explained that he obtained the ICBC decal during the course of his duties as an insurance broker and stuck it on the Sienna plates, after the insurance expired;

23. the police issued the Licensee a motor vehicle violation ticket, fined him $600.00, removed the plates off the Sienna and requisitioned a tow truck;

24. the Licensee was allowed to have the tow truck driver take him to the Agency to obtain insurance on his Sienna;

25. at approximately 5:30 p.m., the Licensee attended the Agency and processed ICBC insurance on his Sienna for a one year term. Immediately thereafter, the Licensee met up with the tow truck driver, produced his insurance documents, installed the new licence plates and paid the driver $90.00 to un-hook the vehicle;

26. the Licensee's manager subsequently learned of the Licensee's action from the police officer. He advised that there had never been any issues with the Licensee's performance or ethics in the past;

27. the Agency subsequently suspended the Licensee without pay for one month;

28. the Licensee feels responsible for placing the Agency in a bad position in his absence. He handles a significant portion of insurance transactions conducted at the Agency and there are a small number of staff at the Agency, particularly those that can perform the same type of work as the Licensee;

29. the Licensee submitted he felt a lot of financial pressure at the time and made poor decisions as a result. He explained that his son attends university and plans to be a doctor. The son's impending school related trip to Australia had caused some financial strain on the family, coupled with the fact that his wife quit her job in September 2009, when his daughter started kindergarten. He thought that by not insuring the Sienna, he could save some money;

30. the Licensee submitted that he would like to remain in both the general and life insurance industry; and

31. the Licensee submitted that he does not conduct a lot of life insurance business but would like to do more in the future.

LEGISLATION

Rule 7(8) of the Council Rules

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.

Section 241.1 of the Act
Part 7 – Administration of the Regulation of Financial Institutions
Division 2 – Insurance Council of British Columbia

Assessment of Costs

(1) If an order results from an investigation or hearing, the commission, the superintendent or the council may by order require the financial institution, licensee, former licensee or other person subject to the order to pay the costs, or part of the costs, or either or both of the following in accordance with the regulations:

(a) an investigation;

(b) a hearing.

(2) Costs assessed under subsection (1)

(a) must no exceed the actual costs incurred by the commission, superintendent or council for the investigation and hearing, and

(b) may include the costs of remuneration for employees, officers or agents of the commission, superintendent or council who are engaged in the investigation or hearing.

(3) If a person fails to pay costs as ordered by the date specified in the order or by the date specified in the order made on appeal, if any, whichever is later, the commission, superintendent or council, as the case may be, may file with the court a certified copy of the order assessing the costs and, on being filed, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the court.

ANALYSIS

Council found the above mentioned facts constituted a breach of section 231(1)(b) of the Act in that the Licensee failed to act in a trustworthy manner and in good faith as required by Council Rule 7(8). In particular, Council found the Licensee misused an ICBC insurance decal, obtained in the course of conducting an insurance transaction, to conceal the fact he was driving a personal vehicle without any valid insurance for approximately seven months.

It was fundamentally wrong for the Licensee to have taken advantage of his position as an insurance agent for his own benefit and particularly troubling in that he placed the public at risk in doing so. He demonstrated a lack of appreciation for the severity of the potential consequences of driving without valid insurance for approximately seven months and he appeared to rationalize the risk and convince himself that driving without insurance would not lead to serious consequences because of the route he drove, the relatively minimal traffic involved in the route, and his own driving skills.

Council noted that the Licensee felt financially constrained in September 2009, and that this led him to choose not to insure the Sienna. Council believed the Licensee offered this information to explain where he was coming from and not as an excuse, as he readily acknowledged that using the Customer's decal was a gross error in judgment. As well, though he did not immediately disclose his actions to his employer, he did accept responsibility when confronted by Agency management and expressly stated that he understood his conduct deserved a measure of punishment.

While Council believed the Licensee to be sincere, his actions on this occasion represented a significant risk to the public and were directly in violation of the principles of trustworthiness and good faith, as set out in Council's Code of Conduct. Trustworthiness refers to reliability, honesty and integrity. Good faith also relates to honesty and encompasses decency of purpose. The duty of good faith is owed to insurers, insureds, fellow licensees, regulatory bodies and the public. It was evident to Council that the Licensee did not demonstrate trustworthiness or good faith by transposing the Customer's decal on top of his expired decal in a deliberate effort to conceal the fact that the Licensee's vehicle was not insured.

Council also had concerns about the manner in which the Licensee handled the plate substitution transaction. First, the Licensee did not file a report with ICBC to reflect the fact that the Customer did not bring in his old licence plate at the time of the transaction. Second, rather than shred the decal the Customer had obtained from the insurance agency in Richmond, the Licensee elected to keep the decal in a desk drawer in the Agency. In Council's view, the Licensee's conduct in this regard was demonstrative of the need for additional training to ensure the Licensee is properly informed of ICBC procedures and appreciates the rationale behind them.

Council reviewed previous decisions involving similar misconduct to establish the appropriate parameters for discipline with respect to the misuse of the decal. In the case of *Patricia Jean Orr*, the licensee made a false statement to ICBC which was material to her insurance claim and did not undertake any corrective measures until she was directed to do so by her employer. Council suspended the licensee for six months and placed a condition on her licence thereafter, precluding her from upgrading to a Level 2 insurance agent for a one year period. She was also required to complete an ethics course approved by Council and pay the investigative costs.

In the *Amanda Lambert* decision, the licensee completed vehicle transfer documents for a motorcycle she had purchased and misstated the purchase price of the motorcycle to reduce the tax she owed on the purchase. Council prohibited her from upgrading to a Level 2 insurance agent's licence for a one year period. Council also ordered that she pay a fine of $500.00, complete an ethics course approved by Council and pay the investigative costs.

The basis for comparison between the foregoing cases and the present one is that in each instance, the licensee involved improperly took advantage of his or her position as an insurance agent for his or her own personal benefit. A distinguishing feature of this case is the significant risk to the public posed by the Licensee's conduct.

Council acknowledged that the Licensee was forthright during the investigative process and appeared to have genuinely understood the seriousness of his misconduct. Council also appreciated that it was the Licensee's intention to learn from this experience and remain in the industry. Council concluded that after a period of rehabilitation and with certain protective measures in place, the Licensee could, once again, be suitable to hold an insurance licence. Council determined that a six month suspension would be appropriate in the circumstances. Council felt that the length of the suspension ought to reflect the severity of the Licensee's transgression and further identified that anything less than that which was imposed by Council in the *Patricia Jean Orr* case, would not be appropriate. On the other hand, the isolated nature of the Licensee's misconduct and his otherwise unblemished record, weighed against increasing the suspension period beyond six months. Council also believed that the Licensee's one month suspension without pay from the Agency should be taken into consideration and applied toward any suspension of his Salesperson's licence.

In arriving at the six month suspension, Council further noted the *Jocelyn Fenelon* decision where Mr. Fenelon took and misused ICBC insurance decals, taking advantage of his position in the industry for his own personal benefit. Mr. Fenelon's licence was cancelled for three years, however, the significant penalty also took into account his repeated misuse of ICBC decals, that he made a material misstatement to Council, and that he backdated an ICBC Autoplan policy to circumvent a personal traffic violation ticket. Given the extent of Mr. Fenelon's misconduct, Council did not believe the decision was applicable to the current matter, although noting that a six month suspension of the Licensee's licence seemed reasonable when comparing the isolated nature of his misconduct to the egregiousness of Mr. Fenelon's conduct.

Council further determined that because the matter involves the Licensee's trustworthiness and ability to carry on the business of insurance in good faith, principles of equal importance to the Licensee's life insurance activities, it would be necessary to suspend his Life Agent's licence for the same period as his Salesperson's licence.

Regarding its concern about the Licensee's failure to adequately handled the plate substitution transaction, Council felt this was due to lack of sufficient knowledge and training and that education could address this area and should be a requirement of the Licensee's rehabilitation.

Further, Council determined that upon completion of his suspension, the Licensee should be restricted to a Salesperson's licence for a period of 12 months.

Finally, Council decided that because the Licensee's actions were financially motivated and related to the business of insurance, he ought to be fined. In arriving at an appropriate amount that would sufficiently deter the Licensee and others in the industry, Council took into account the value of the premium the Licensee saved by not insuring the vehicle and the financial penalty already imposed on the Licensee by the police. In addition, Council decided that based on its findings of misconduct, the Licensee ought to be assessed the costs of the investigation.

In summary, Council concluded that its intended disposition would deter the Licensee and other licensees from engaging in this type of behaviour, rehabilitate the Licensee, protect members of the public and maintain confidence in the insurance industry.

INTENDED DECISION

Pursuant to sections 231, 236 and 241.1 of the Act, Council intends to order the following:

1. both the Licensee's general and life, including accident & sickness insurance licences, are suspended for a period of six months; the suspension of the general insurance licence be credited with one month in recognition of the suspension imposed by the Licensee's employer;

2. it is a condition of the Licensee's general insurance licence that he complete ICBC's Autoplan Basics for Brokers course prior to the reactivation of the licence;

3. upon reactivation of the general insurance licence, the Licensee will only be authorized to act as a Level 1 general insurance salesperson until such time as he has accumulated 12 months' active licensed experience;

4. the Licensee is fined $1,000.00;

5. the Licensee is assessed Council's investigative costs of $1,237.50; and

6. as a condition of all of the Licensee's licences, the Licensee is required to pay the fine and investigative costs no later than **January 5, 2010**, or all licences will be suspended without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and costs are paid in full.

The intended decision will take effect on **October 5, 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, he may present his case at a hearing before Council where he 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 **October 4, 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 writer's attention.

If the Licensee does not request a hearing by **October 4, 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 **8th day of September, 2010.**

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

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