In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

MARIA CLEOFE DESCALCHUK
(the "Licensee")

ORDER

As Council made an intended decision on May 12, 2015, 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 June 8, 2015; and

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

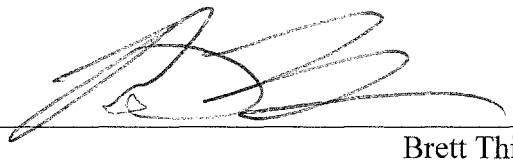
Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires her to be supervised by a qualified life and accident and sickness insurance agent until such time as she accumulates an additional 24 months of active licensing.
2. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires her to successfully complete an errors and omissions course (the "Course"), approved by Council, on or before **December 29, 2015,** otherwise her licence is suspended as of **December 30, 2015**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the Course is successfully completed.
3. The Licensee is fined $1,000.00.
4. The Licensee is assessed Council's investigative costs of $1,275.00.

.../2

5. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires her to pay the above-ordered fine and investigative costs no later than **September 30, 2015**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **October 1, 2015**, 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 investigative costs are paid in full.

This order takes effect on the **30th day of June, 2015**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

MARIA CLEOFE DESCALCHUK
(the "Licensee")

INTRODUCTION

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.

As part of Council's investigation, on March 16, 2015, a Review Committee (the "Committee") met with the Licensee to discuss an allegation that the Licensee prepared change of beneficiary documents for a life insurance policy without the direction of the policy holder (the "Policy Holder").

The Committee was comprised of one voting member and three 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 make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee prepared a report of its meeting for Council.

The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its May 12, 2015 meeting, where it was determined the matter should be disposed of in the manner set out below.

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 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.

.../2

FACTS

The Licensee has been licensed as a life and accident and sickness insurance agent ("life agent") with Council since July 2004.

The Policy Holder purchased a life insurance policy (the "Insurance Policy") through the Licensee in August 2006. At the time of purchase, the Policy Holder's mother and brother were designated beneficiaries.

In December 2009, the Policy Holder purchased additional insurance to add to the existing Insurance Policy. The designated beneficiaries for the additional amount were the Policy Holder's sister (the "Sister") and the Policy Holder's partner (the "Partner").

On September 2, 2014, the Licensee completed a beneficiary change form for the Policy Holder. All previous beneficiaries were revoked and the Sister was added as 100% beneficiary, with the Policy Holder's brother listed as the contingent beneficiary. The form was signed by the Policy Holder and witnessed by the Licensee. When the Policy Holder made the change in beneficiary, she directed the Licensee to keep this information confidential.

On September 22, 2014, the Sister was granted power of attorney over the financial affairs of the Policy Holder, as the Policy Holder had become seriously ill.

Request for Beneficiary Change

On Sunday, November 2, 2014 at 3:07 a.m., the Licensee received a text message from the Partner stating that she spoke with the Policy Holder last night regarding her life insurance, and the Policy Holder had requested changes to the beneficiaries.

The Licensee knew the Policy Holder was critically ill and was residing in a hospice, so believed there was some urgency to this request. Later that same day, the Licensee drove to the Partner's home, which was located several hours away. She met with the Partner and the Partner's sister, who was also a friend of the Licensee. The meeting took place at the home owned by the Partner and the Policy Holder.

The Licensee completed a beneficiary change form based upon instructions from the Partner. Most of the sections were filled in by the Licensee, including adding the Policy Holder's and the Partner's mortgage company as the primary beneficiary and the Partner as the contingent beneficiary. The Sister was also listed as a beneficiary. The form was pre-signed by the Licensee as "*Agent Witness.*"

The Licensee stated that she believed the Partner was acting as an agent for the Policy Holder and that the instructions reflected the Policy Holder's wishes, although the Licensee did not speak with the Policy Holder prior to, or during, her meeting with the Partner.

Attempt to Contact the Policy Holder

Upon completion of the beneficiary change forms, the Licensee, the Partner, and the Partner's sister went to the hospice to meet with the Policy Holder. When they arrived at the hospice, the Sister and other family members were in the Policy Holder's room.

The Policy Holder's family refused to allow the Licensee or the Partner access to the Policy Holder, and took the beneficiary change form and other related documents away from the Licensee.

Ultimately, none of the forms completed by the Licensee were signed by the Policy Holder, nor did the Licensee get the opportunity to meet with the Policy Holder. The Sister's position was that the Policy Holder never had any intention of making either the Partner or the mortgage company the beneficiaries of her insurance.

The Policy Holder passed away on December 4, 2014.

ANALYSIS

Council was concerned that the Licensee failed to grasp her obligations as a life agent with respect to the proper receipt of client instructions. In particular, the Licensee did not appear to recognize that taking instructions from the Partner, without clear authorization from the Policy Holder, was inappropriate.

Council questioned the Licensee's actions in accepting the Partner's authority to provide instructions on behalf of the Policy Holder, particularly as the Licensee was aware that the Policy Holder had recently removed the Partner as a beneficiary and had requested that the Licensee hold this information in confidence.

As the Policy Holder passed away before Council could speak with her Council was not able to determine whether the Policy Holder actually wanted to make a subsequent change in beneficiary. Council accepted that the Licensee believed the Partner was authorized to provide instructions on the Policy Holder's behalf and that she was carrying out the wishes of the Policy Holder.

Council was concerned that the Licensee did not appear to appreciate the important distinction between the Policy Holder and the Partner, particularly in light of the recent removal of the Partner as a beneficiary. Council determined that, as an experienced life agent, the Licensee knew or ought to have known that all of her communications regarding the Policy Holder's insurance should have been exclusively with the Policy Holder. By failing to adhere to this requirement, the Licensee risked harming the Policy Holder's interests at a time when she was most vulnerable. The Licensee's failure to appreciate this brought into question her competency to act as a life agent.

Council found the Licensee's act of pre-witnessing the beneficiary change form also raised concerns about her competency. While the Licensee explained her actions were due to the fact that she felt rushed and tired, Council concluded it could not excuse the fact that the Licensee failed to execute best practices throughout this transaction.

Council determined that a fine was required to address the improper receipt of instructions from the Partner without the Policy Holder's direct participation or prior confirmation of her consent. Council also determined that the Licensee's actions raised serious questions about her competency which could best be addressed by supervision and education.

INTENDED DECISION

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

1. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires her to be supervised by a qualified life and accident and sickness insurance agent until such time as she accumulates an additional 24 months of active licensing.
2. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires her to successfully complete an errors and omissions course (the "Course") within 180 days of the date of Council's order.
3. Fine the Licensee $1,000.00.
4. Assess the Licensee Council's investigative costs of $1,275.00.

The Licensee is advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order. Failure to pay the fine and investigative costs within the 90 days, or failure to successfully complete the Course within 180 days of the date of Council's order, will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the fine and investigative costs are paid in full and the Course is successfully completed as required.

The intended decision will take effect on **June 30, 2015**, 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, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **June 29, 2015**. 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 **June 29, 2015**, 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 fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **8th day of June, 2015**.

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

GM/bk