

In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

KIP ERIC COSGROVE
(the “Licensee”)

ORDER

As Council made an intended decision on January 17, 2012, pursuant to sections 231, 236 and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated February 6, 2012; 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 imposed on the Licensee’s life and accident and sickness insurance licence requiring that, before using or distributing marketing material to the public, the Licensee must have the material reviewed and approved in writing, by the insurer whose product is being marketed;
2. the Licensee reprimanded;
3. the Licensee is assessed Council’s investigative costs of \$821.25; and
4. as a condition of this Order, the Licensee is required to pay the above investigative costs no later than **June 4, 2012**. If the Licensee does not pay the investigative costs in full by this date, the Licensee’s life and accident and sickness insurance licence is suspended as of **June 5, 2012**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the investigative costs are paid in full.

Order
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161455-I845
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This Order takes effect on the **4th day of March, 2012.**



Dan Swanlund, B.Comm, CFP
Chairperson, Insurance Council of British Columbia

INTENDED DECISION
of the
INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)
respecting
KIP ERIC COSGROVE
(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. Specifically, did the Licensee create and distribute marketing material that contained misleading information, and in doing so, did he also discredit another licensee and/or an insurer.

As part of Council’s investigation, on November 21, 2011, an Investigative Review Committee (the “Committee”) met with the Licensee via teleconference. 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 clarify the information contained therein and make further submissions.

A report setting out the Committee’s findings, along with the aforementioned investigation report and a submission from the Licensee’s legal counsel, were reviewed by Council at its January 17, 2012 meeting. At the conclusion of its meeting, Council 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/or 241.1 of the Act before taking any such action. The Licensee may then accept Council’s intended decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS AND FINDINGS

The Licensee, a life and accident and sickness insurance agent (and nominee) with approximately five years of experience, created and sent material to a former client in November 2009, which provided a comparison between a group accident and sickness insurance program (the "Plan") being offered by the Licensee and a similar insurance program being offered by his competitor. The Licensee and his competitor operate in a niche group insurance market of voluntary fire departments and, in this particular case, the client had moved his business from the Licensee to his competitor.

Council found the material created and distributed by the Licensee to be problematic in that it contained information which discredited the competitor and his insurance market.

Council determined these remarks were intentionally included in the material by the Licensee to undermine his competitor and were contrary to the usual practice of the business of insurance. On this basis, Council concluded some action was warranted against the Licensee to communicate the inappropriateness of his conduct.

In determining an appropriate disposition, Council took into consideration that it had been two years since distribution of the offending document and the specific misconduct was isolated in nature. Council noted the matter was pursued civilly by the competitor and resulted in an apology by the Licensee. In this regard, Council determined civil matters should not, generally, have any bearing on regulatory matters such as this, given the different mandates.

Council considered whether there were previous decisions analogous to this case, however, it did not identify any to defer to.

Ultimately, Council concluded that while the Licensee's behaviour was concerning, it did not warrant significant action. Rather, a formal censure, along with a measure to ensure the Licensee's marketing material is acceptable to the insurer whose product is being solicited by the Licensee, was deemed to be sufficient.

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 which requires, before using or distributing marketing material to the public, the Licensee must have the material reviewed and approved, in writing, by the insurer whose product is being solicited;
2. reprimand the Licensee; and
3. assess the Licensee Council's investigative costs of \$821.25.

The Licensee is advised that should the intended decision become final, the costs which form part of the Order, will be due and payable within 90 days of the date of the Order.

The intended decision will take effect on **March 4, 2012**, 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 **March 3, 2012**. 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 **March 3, 2012**, the intended decision of Council will take effect.

Intended Decision
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February 6, 2012
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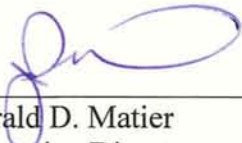
Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.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 **6th day of February, 2012.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director

GM/cc