

**In the Matter of**

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

**and**

**THE INSURANCE COUNCIL OF BRITISH COLUMBIA**  
**(“Council”)**

**and**

**CARY PETERSON LEUNG**  
**(the “Licensee”)**

## **ORDER**

As Council made an intended decision on August 18, 2009, under 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, 2009; and

As the Licensee has not requested a hearing of Council’s intended decision within the time provided to request a hearing;

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

1. the Licensee is fined \$5,000.00;
2. the Licensee complete the Advocis errors and omissions course (or a comparable errors and omissions course as approved by Council) within twelve months of the date of this order. If the Licensee does not complete the course by this date, the Licensee’s licence will be suspended as of **October 7, 2010**, until the course is completed;
3. the Licensee pay the costs of Council’s investigation in the amount of \$1,237.50; and
4. a condition is imposed on the Licensee’s licence that he pay the above mentioned fine and costs by **January 4, 2010**. If the Licensee does not pay the ordered fine and costs by this date, the Licensee’s licence is suspended as of **January 5, 2010**, without further action from Council, until the fine and costs are paid.

This order takes effect on the 6<sup>th</sup> day of October, 2009.

  
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Graham Calder, CFP, CLU, ChFC, RHU  
Chairperson, Insurance Council of British Columbia

**INTENDED DECISION**  
**of the**  
**INSURANCE COUNCIL OF BRITISH COLUMBIA**  
**(“Council”)**  
**respecting**  
**CARY PETERSON LEUNG**  
**(the “Licensee”)**

**INTRODUCTION**

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

As part of Council’s investigation, on July 27, 2009, an Investigative Review Committee (the “Committee”) met with the Licensee to discuss the allegation that the Licensee altered or modified numerous insurance application signature pages, resulting in the creation of false documents. The Licensee was accompanied by a former Financial Centre Manager with Sun Life Financial Assurance Company of Canada (“Sun Life”).

The Committee is 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 had been 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 advised the Licensee that it would present its findings. Council would then consider the appropriate disposition and subsequently provide the Licensee with notice as to any Council decision in this regard.

A report setting out the Committee’s findings and the aforementioned investigation report, was presented to Council at its August 18, 2009 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 a written notice of the action Council intends to take against the Licensee.

## FACTS

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

### General

1. The Licensee was first licensed on April 2, 1985, as a Level 1 life insurance agent. He is currently licensed as a life and accident and sickness insurance agent.
2. In 2008, Sun Life conducted a review of 757 insurance applications completed by the Licensee since he began working with Sun Life in or around 1985. From the total number of insurance applications, Sun Life found that approximately 25 insurance application signature pages had been altered or modified by the Licensee.
3. Sun Life found that the Licensee had not altered any signature pages prior to 2001.
4. Sun Life determined the Licensee altered or modified signature pages for clients who had existing policies with Sun Life which had been previously arranged by the Licensee.
5. Insurance application signature pages accompany an electronic application for insurance and are signed by the client at the time of the application. When signing a signature page, the client attests to, among other things, the accuracy of the information being reported in the electronic application.

### Submissions of Licensee

6. The Licensee admitted that, on approximately 21 occasions, he altered or modified the signature page on insurance applications. He did so in the following manner: he made a photocopy of a signature page which had been signed by a client in a previous insurance transaction with the Licensee; he covered the old policy number on the photocopied signature page with "white out"; he wrote in a new policy number; and he wrote in a new date over an old date.
7. The Licensee stated that during the period in question, which was approximately five years, he was operating out of his home office, did not have any administrative support, and was "always on the road."
8. From time to time, he would meet clients and sell them more than one type of insurance policy. On some occasions, he was not in possession of two insurance application signature pages. Consequently, he would alter or modify a copy of the signature page from one insurance application form to place insurance on a separate policy.
9. The Licensee stressed that in all cases he met with the clients on the date in question, that the clients were aware of the questions on the application, and that the clients agreed to purchase the product being offered. The Licensee further submitted that he did not forge any client signatures and only "whited-out" dates and policy numbers to facilitate the issuance of a new policy on behalf of his clients.

10. The Licensee acknowledged that at the time he was altering or modifying the signature pages, he knew his conduct was improper. His explanation for doing so was because he “got so busy,” was “exhausted,” did not have a support network in place, and it was “more expedient” to operate in this fashion.
11. Since the investigation, the Licensee has moved his business from his home to a Sun Life Financial Centre and allied himself with a senior life and accident and sickness insurance agent.
12. The Licensee now has the assistance of a four person support staff.
13. The Licensee accepted full responsibility for his actions and advised that because of his new office arrangement, he has adopted the practice of securing signatures electronically. As this is now available to him, there is no possibility of this problem ever reoccurring.

Submissions of Sun Life

14. As a result of its investigation, the Licensee is now under “close supervision” with a Sun Life Financial Centre Manager for a period of one year. The supervision requires that the Manager review, on a monthly basis, the Licensee’s entire book of business.
15. After this matter came to light, Sun Life met with all of the Licensee’s clients in question. In all instances, the clients were aware of the policies which the Licensee had placed on their behalf. The clients had answered all of the questions on the policy application forms, and none of the clients had lost any money. Furthermore, all of the insurance applications were valid applications and there was no suggestion that the Licensee had been involved in fraudulent activity.
16. The Licensee’s persistency rate is approximately 82 percent, which is considered to be normal. There have been no other serious incidents involving the Licensee during their business relationship of 24 years.

LEGISLATION

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 not 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 good faith and carry on the business of insurance in accordance with the usual practice as required by Council's Code of Conduct. In particular, Council concluded that during the period leading up to the investigation conducted by Sun Life in 2008, the Licensee altered or modified insurance application signature pages, resulting in the creation of false documents which he remitted to an insurer.

The Licensee's manipulation of insurance documentation resulting in the creation of false documents was intentional, and occurred on a repeated basis. Misconduct of this nature is not acceptable. Accordingly, Council determined that it is necessary to sanction the Licensee as a means to deter him from repeating such conduct in the future and also to serve as a general deterrence for the industry. Additionally, as a rehabilitative measure, Council feels that the sanction should include education on the importance of properly executing insurance documentation and transactions.

Ultimately, Council did not find that the Licensee posed a continuing risk to the public. He has addressed some of his past administrative issues by securing more support and his practice is now subject to greater oversight by his primary insurance market. Through its internal investigation, Sun Life determined that the insurance policies in which altered signature pages were found, were properly placed in accordance with the clients needs. For these reasons and because no concerns have surfaced with the Licensee's competency, Council did not consider it in the interest of the public to suspend his licence, as this would only detriment his clients, who appear to be satisfied with their business relationship with him.

Council noted that the Licensee understands the significance of his actions as he took full responsibility in the matter. He presented his submissions in a forthright manner. Council considered these facts and the Licensee's lack of prior disciplinary action to be relevant mitigating factors in its assessment of the appropriate punitive measures arising from this matter.

In considering the appropriate disposition in this matter, Council reviewed the 2005 Financial Service Tribunal (the "Tribunal") decisions of *Branislav Novko and Maria Pavicic*, the 2007 Tribunal decision of the *Zong Li Wang and Yu Zuan Liu*, and the 2008 Council decision of *Michelle Angela Hunter*.

In *Branislav Novko and Maria Pavicic*, the licensees had signed as witnesses to signatures on several insurance applications without having met or discussed the transactions with the applicants, and subsequently remitted the applications to insurers for placement of coverage. The applications had been solicited and completed by Nukmanovic, an unlicensed person, and the licensees compensated her for the business. *Maria Pavicic* was suspended for 30 days, and *Branislav Novko* was suspended for 60 days. The licensees were also fined \$1,000.00 each. The primary distinguishing feature in the *Maria Pavicic* decision was that she reported her misconduct to Council before it was discovered.

In *Zong Li Wang and Yu Zuan Liu*, the licensees worked jointly on a life insurance case and they misstated information on a client's life insurance application regarding his travel plans outside North America. The insurer also required the client to sign an addendum confirming the status of his health. The client was in China at the time and, in a misguided effort to assist him and ensure that insurance coverage took effect, *Yu Zuan Liu* forged his signature on the addendum and then both himself and *Zong Li Wang* signed as witnesses to the forged signature. The Tribunal ordered that the licensees each be suspended for 60 days and fined \$1,000.00.

In the case of *Michelle Angela Hunter*, the licensee signed a client's name on two separate insurance documents and submitted these documents to an insurer. The licensee was motivated to assist the client, who was out of town on holidays, but wanted the issuance of his policy expedited to avoid having to continue paying premiums on the existing policy which was being replaced by the policy sold by the licensee. The licensee was purely acting to convenience the client. However, aggravating the circumstances was the licensee's failure to be forthright to Council respecting the forgeries. The licensee was suspended for 30 days and fined \$1,000.00.



In the present case, the Licensee's actions were found to be distinguishable from the conduct in the cases of *Branislav Novko and Maria Pavicic* as well as *Zong Li Wang and Yu Zuan Liu*, in that the Licensee met with his clients in all cases, explained the types of products being offered, and all of the clients had agreed to purchase the products from him.

Council found the Licensee's case to be more comparable to the *Michelle Angela Hunter* decision, as they were both acting to convenience clients with the exception of *Michelle Angela Hunter*'s attempt to deceive Council.

Based on the foregoing, Council determined the Licensee should receive a \$5,000.00 fine. The amount of the fine is based in part on the above cited previous Council decisions and also reflects the significant volume of occurrences of altered insurance application signature pages. In order to rehabilitate the Licensee, Council concluded that the Licensee ought to complete the Advocis errors and omissions course (or a comparable errors and omissions course as approved by Council) within 12 months of the date of the final order. As the course is only offered once or twice a calendar year, this time period is intended to provide the Licensee with an opportunity to fulfill this portion of the order.

#### INTENDED DECISION

Pursuant to section 231, 236 and 241.1 of the Act, Council made the following intended decision:

1. the Licensee be fined \$5,000.00 to be paid within 90 days of the final order;
2. the Licensee complete the Advocis errors and omissions course (or a comparable errors and omissions course as approved by Council) within 12 months of the date of the final order; and
3. the Licensee pay \$1,237.50, which represents Council's investigative costs into this matter and these costs must be paid within 90 days from the date of Council's final order.

The intended decision will take effect on **October 6, 2009**, 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 5, 2009**. 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 **October 5, 2009**, 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/](http://www.fic.gov.bc.ca/fst/) or contact them directly at:

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Surrey, British Columbia  
V3T 5X3  
Telephone: 604-953-5300

Dated in Vancouver, British Columbia on the 8<sup>th</sup> day of September, 2009.

For the Insurance Council of British Columbia



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Gerald D. Matier  
Executive Director

GM/RT/cs