

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
MARIE JANE ALVARO
(“Licensee”)

INTRODUCTION

The Life Insurance Council of Manitoba (“Council”) derives its authority from *The Insurance Act* C.C.S.M. c. 140 (“*Act*”) and the *Insurance Councils Regulation 227/91*.

In response to information received by Council an investigation was conducted pursuant to sections 375(1) and 396.1(7)(c) of the *Act*, and section 7(2)(e) of *Regulation 227/91* to determine whether the Licensee had violated the *Act*, its *Regulations*, and/or the Life Insurance and Accident and Sickness Agent’s Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On January 7, 2015, during a meeting of Council, the evidence compiled during the investigation was presented; upon review Council determined its intended decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, Council hereby renders its intended decision and corresponding reasons.

ISSUES

1. Did the Licensee fail to maintain liability insurance (Errors and Omissions insurance (“E&O”)) in violation of section 371(1.1) of the *Act* and section 12(1) of the *Insurance Agents and Adjusters Regulation 389/87*?
2. Did the Licensee fail to notify Council, without delay, of the lapse of her liability insurance (E&O) in violation of section 372.1(2) of the *Act*?
3. Did the Licensee violate section 4 of the *Code of Conduct* – Professionalism – Financial Accountability, by failing to maintain liability insurance?

FACTS AND EVIDENCE

1. At all material times, the Licensee held Life and Accident and Sickness licenses for the Province of Manitoba.
2. To hold/maintain a Life and/or Accident and Sickness license(s) in the Province of Manitoba, liability insurance (E&O) is required pursuant to section 371(1.1) of the *Act* and in accordance with section 12(1) of *Regulation 389/87*.
3. On her licensing application (the “Application”) dated May 12, 2014, the Licensee declared that she:
 - a. Would maintain liability insurance (E&O) as required under section 371(1.1) of the *Act* and section 12(1) of *Regulation 389/87*; and,
 - b. Understood she was to notify Council without delay if her liability insurance (E&O) lapsed or was cancelled, pursuant to section 372.1(2) of the *Act*.
4. Section 21 of the Application contains a “Certification” section to which the Licensee affixed her signature affirming that she would notify Council in writing of any material change within 15 days.
5. On October 15, 2014, Council received notice from the Licensee’s E&O Broker (the “Broker”) that her liability insurance (E&O) had been cancelled on July 24, 2014.
6. Prior to the notification from the Broker, no notice had been provided to Council from the Licensee that her liability insurance (E&O) had been cancelled.
7. By letter dated July 24, 2014, the Licensee was notified by her previous agency (“Agency A”) that her E&O would be cancelled; this letter was mailed to the Licensee’s valid residential address.
8. The Licensee did not obtain replacement E&O until October 22, 2014 which was secured subsequent to Council’s October 20, 2014 request for proof of coverage.
9. By email dated October 23, 2014, the Licensee acknowledged her E&O had been cancelled and advised her reason for not obtaining replacement E&O was because she “wasn’t able to find any affordable E&O by that time”.
10. By letter to the Licensee dated November 3, 2014, Council:

- a. Requested the Licensee advise as to the reason her E&O had lapsed; and,
- b. Why she failed to notify Council of the lapse in coverage within the mandated 15 day period.

11. In reply to Council's November 3, 2014 letter, Council received a November 6, 2014 email from the Licensee which advised:

- a. She submitted a resignation letter to her previous agency ("Agency A");
- b. Her E&O was cancelled upon Agency A receiving her resignation letter;
- c. Based upon cost she declined replacement E&O that had been offered by her new agency ("Agency B");
- d. It was her responsibility to inform Council of the E&O cancellation; and,
- e. She was without the mandated coverage but refrained from carrying on the activities of an insurance agent.

ANALYSIS

It was the Licensee's responsibility to ensure that she continually maintained liability insurance (E&O) while holding Life and Accident and Sickness licenses and to notify Council without delay in the event her E&O lapsed or was cancelled.

Upon review of the facts and evidence before it, Council has determined that during the period of July 24, 2014 to October 21, 2014, the Licensee was in breach of section 371(1.1) of the *Act* and section 12(1) of *Regulation 389/87* by failing to continually maintain liability insurance (E&O). The Licensee's failure to maintain liability insurance (E&O) also resulted in a breach of section 4 of the *Code of Conduct* – Professionalism – Financial Accountability. In addition, the Licensee breached of section 372.1(2) of the *Act*, by failing to notify Council without delay that her E&O had been cancelled.

The Licensee received written notification from Agency A that her E&O would be cancelled; this notice had been mailed to her valid residential address.

The Licensee was aware that her E&O had been cancelled upon resigning from Agency A, and by the Licensee's own admission, she declined replacement E&O on the basis of affordability that had been offered by Agency B.

The Licensee acknowledged that it was her responsibility to notify Council of the cancellation of her liability insurance (E&O).

The lack of any business submitted when the Licensee was without E&O was not a mitigating factor as compliance with the requirement for E&O is mandated by the *Act* and *Regulation 389/87R*.

DECISION AND PENALTY

Council's Intended Decision dated January 13, 2015 outlined the foregoing background, analysis and conclusions on a preliminary basis. Having regard to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to section 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee be fined \$250.00 and assessed partial investigation costs of \$250.00.

As part of its Intended Decision, Council further informed the Licensee of her right to request a Hearing to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined her right to a Hearing and chose not to pursue a statutory Appeal; she instead expressly accepted the Intended Decision and duly paid the levied fine and partial investigation costs.

This Decision is therefore final. In accordance with Council's determination that publication of its decisions are in the public interest, this will occur, in accordance with sections 7.1(1) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on February 18, 2015.