

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
CLAUDE BOURGOUIN
(“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 February 4, 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 his 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 continually 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 his licensing application (the “Application”) dated March 18, 2011, the Licensee declared that he:
 - 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 he was to notify Council without delay if his 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 his signature affirming that he would notify Council in writing of any material change within 15 days.
5. On his renewal application (the “Renewal”) dated May 26, 2014, the Licensee advised Council that:
 - a. His liability insurance (E&O) had an expiry date of July 1, 2014; and,
 - b. That he would notify Council within 15 days of any material change to the information contained in the application.
6. By letter dated October 6, 2014, Council received notice from the Licensee’s E&O Broker (the “Broker”) that his liability insurance (E&O) lapsed on July 1, 2014.
7. Prior to the notification from the Broker, no notice had been provided to Council from the Licensee that his liability insurance (E&O) had lapsed.
8. The Licensee did not obtain replacement E&O until October 24, 2014 which was secured subsequent to Council’s October 20, 2014 request for proof of coverage.
9. By emails dated November 5th and 24th, 2014, the Broker advised Council that the Licensee:

- a. Had missed an on-time renewal; and,
- b. Did not respond to any of their ten (10) renewal notices sent to the Licensee's valid email and business addresses.

10. By letter dated November 12, 2014, Council requested the Licensee advise:

- a. As to the reason his E&O had lapsed;
- b. Why he failed to notify Council of the lapse of coverage within the mandated 15 day period; and,
- c. Informed the Licensee that prior E&O certificates suggested previous lapses in coverage.

11. In reply to Council's November 12, 2014 letter, on November 19, 2014 Council received a letter from the Licensee which advised:

- a. This is the first time that he has been made aware by anyone that his previous E&O had been late or had lapsed;
- b. He received notice to renew his 2014 E&O but had not kept up with emails as he should have;
- c. He did not notify Council of the lapse because he did not realize that his E&O had not been renewed; and,
- d. He took full responsibility for failing to renew his E&O.

12. By email dated November 17, 2014, the Licensee's assistant advised Council that payment of an association membership fee (the "Association") was confused with his E&O renewal premium.

13. An audit of the Licensee's E&O for previous years was conducted.

14. By emails dated November 10, 2014 and January 26, 2015, the Broker advised Council that:

- a. Previous coverage issued on April 21, 2011 was backdated [to February 28, 2011]; and,
 - b. Coverage issued on July 18, 2011 was backdated to July 1, 2011.
15. By email dated December 3, 2014, the Licensee's previous E&O broker ("Broker B") advised Council that coverage effective February 28, 2009 but dated March 18, 2009 was due to a late renewal application sent by the Licensee.
16. The application to Broker B included a no claims declaration form dated March 12, 2009 on which the Licensee acknowledged his application was late.

ANALYSIS

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

Upon review of the facts and evidence before it, Council has determined that during the period of July 1, 2014 to October 23, 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) while holding Life and Accident and Sickness licenses. 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 further breached section 372.1(2) of the *Act*, by failing to notify Council without delay that his E&O had lapsed.

The Licensee received ten (10) renewal notices from his Broker to renew his E&O and, by the Licensee's own admission, he had received notice to renew his E&O. These notices had been sent to the Licensee's valid email and business addresses to which he did not respond.

The Licensee did not obtain replacement E&O until October 24, 2014 in response to Council requesting proof of coverage.

The Licensee took full responsibility for allowing his E&O to lapse and admitted that he did not review his emails as he should have.

Council did not accept the Licensee's position that confusing payment of his Association fee with his E&O premium as being a mitigating factor for failing to continually maintain E&O.

Contrary to the Licensee's statement, that he has never been made aware that previous E&O renewals had been late or that previous certificates had lapsed, an audit revealed the Licensee failed to continually maintain E&O on three (3) previous occasions when he held Life and Accident and Sickness licenses and that he had advised Broker B that his 2009 application was late.

Council therefore concluded that the Licensee was aware he had previous lapses of coverage and that his conduct demonstrates repeated disregard for statutory compliance.

Based on the foregoing, Council has concluded that discipline is warranted.

DECISION AND PENALTY

Council's Intended Decision dated February 10, 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 \$750.00 and assessed partial investigation costs of \$500.00.

As part of its Intended Decision, Council further informed the Licensee of his right to request a Hearing to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right to a Hearing and chose not to pursue a statutory Appeal; he 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 March 17, 2015.