

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
JOEL 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 carry on the activities of an insurance agent while not insured under a policy of liability insurance (E&O) in violation of section 372.1(1) of the *Act*?
3. 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*?

4. 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 April 5, 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*;
 - b. Understood that he shall not carry on the activities of an insurance agent while not insured under a policy of liability insurance; and,
 - c. 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 20, 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 July 7, 2014.
9. By email dated November 6, 2014, the Broker advised Council that the Licensee did not respond to any of their six (6) renewal notices sent to the Licensee's valid email and business addresses.
10. By email dated October 22, 2014, the Licensee advised Council that he carried on the activities of an agent without the mandated E&O coverage.
11. By letter to the Licensee dated October 31, 2014, Council:
 - a. Requested the Licensee advise as to the reason his E&O had lapsed; and,
 - b. Why he failed to notify Council of the lapse of coverage within the mandated 15 day period.
12. In reply to Council's October 31, 2014 letter, on November 6, 2014 Council received a letter from the Licensee which advised:
 - a. He received an E&O renewal notice on May 2, 2014;
 - b. Payment of an association membership fee (the "Association") was confused with his E&O renewal premium;
 - c. He was unaware that he was required to notify Council should his E&O lapse; and,
 - d. He carried on the activities of an agent without E&O.
13. By email dated November 18, 2014, an insurance company (the "Insurer") provided Council with an insurance application that the Licensee completed on July 2, 2014.
14. An audit of the Licensee's E&O for previous years was conducted.

15. By email dated November 13, 2014, the Broker advised Council that a previous application for E&O was received on April 26, 2011; coverage was issued on May 2, 2011 and backdated to April 22, 2011.

16. By email dated December 3, 2014, the Licensee's previous E&O broker ("Broker B") advised Council that a late application for renewal of E&O coverage was made by the Licensee on April 25, 2008 and coverage was backdated to April 22, 2008.

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; to refrain from carrying on the activities of an agent while not insured under a policy of liability insurance 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 determined that during the period of July 1 – 6, 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*.

The Licensee breached section 372.1(1) of the *Act* by continuing to carry on the activities of an agent on July 2, 2014 without being insured under a policy of liability insurance (E&O). Completion of insurance business was confirmed by the Insurer to which the Licensee submitted business.

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 six (6) renewal notices from his Broker to renew his E&O. By the Licensee's own admission, he had received a renewal notice dated May 2, 2014. These notices had been sent to the Licensee's valid email and business addresses to which he did not respond prior to the expiry of his E&O on July 1, 2014.

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.

An audit revealed the Licensee failed to continually maintain E&O on two (2) previous occasions when he held Life and Accident and Sickness licenses.

Council therefore concluded that the Licensee 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 \$1,000.00 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.