

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
LORNA PHELPS
(“Former 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*.

An investigation was conducted pursuant to sections 375(1) and 396.1(7)(e) of the *Act*, and section 7(2)(e) of *Regulation 227/91* to determine whether the Former 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 Former Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On March 11, 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 Former Licensee conduct unlicensed activity in violation of the *Act*, its *Regulations*, and/or the *Code of Conduct*?
2. Did the Former Licensee improperly Hold Out to the public in violation of section 391 of the *Act*?

FACTS AND EVIDENCE

3. The Former Licensee resides in Alberta.
4. The Former Licensee first applied for Life and Accident and Sickness licences by way of a licensing application dated July 2, 2006.
5. Section 21 of the licensing application is a “Declaration” section to which the Former Licensee affixed her signature. It includes the following wording:
 - (l) I understand that it is against the law of this province:
 - (a) to Act as an agent or solicitor of insurance without having obtained a licence to act as an agent.
6. The Former Licensee’s Manitoba Life and Accident and Sickness licences were first issued on October 19, 2006.
7. The Former Licensee acknowledged placement of group insurance (“the Group Insurance”) effective July 1, 2006 with Company A for a client located in Manitoba; the Former Licensee was not licensed in Manitoba at this time.
8. The Former Licensee’s Commission Agreement with Company A directed payment of commissions for the Group Insurance to an agency (“the Agency”) for which the Former Licensee has never been licensed to represent in Manitoba.
9. The Former Licensee advised Council she submitted her July 2, 2006 licensing application to Council assuming the licence(s) would be issued in the same time frame as it would take to have the Group Insurance approved through Company A – however, she acknowledged licensing requirements were outstanding.
10. Prior to the renewal deadline for the 2013 licensing year, the Former Licensee failed to renew her Life and Accident and Sickness licences; her licences subsequently expired June 1, 2013.
11. The Former Licensee acted on behalf of Manitoba clients to place three (3) life insurance applications (“the Life Applications”) dated November 5th and 8th, 2013 with Company B; the Former Licensee was not licensed in Manitoba at this time.
12. By email dated December 15, 2014, Company B confirmed to Council that the Former Licensee engaged in unlicensed activity dating to November 2013.

13. By email dated December 15, 2014 and letter dated January 21, 2015, Company B advised Council that commissions on issued life insurance were paid to the Agency on May 9, 2014; the Former Licensee was not licensed in Manitoba at this time and has never been licensed to represent the Agency in Manitoba.
14. By email dated November 4, 2014, the Former Licensee acknowledged engaging in unlicensed activity by placing life insurance business with Company B.
15. Dated November 6, 2014, the Former Licensee continued to hold out to the public on the Agency's website as a licensed life and health insurance agent in Manitoba; the Former Licensee was not licensed in Manitoba at this time.
16. Further evidence of the Former Licensee falsely claiming she represented the Agency in Manitoba, includes:
 - (a) The Agency name being specified on interest adjusted cost analyses prepared by the Former Licensee for two (2) of the Life Applications; and,
 - (b) The Former Licensee having commissions paid to the Agency for placement of group insurance in March 2013 (when licensed) with Company C.
17. By memorandum dated November 6, 2014, the President of the Agency advised Council:
 - (a) It was never the intention for the Agency to conduct business in Manitoba;
 - (b) The Former Licensee was to act independently of the Agency; and,
 - (c) The problem was ignorance of the rules and regulations.

ANALYSIS

Pursuant to section 369(1) of the *Act*, no person shall act, or offer or undertake to act, as an insurance agent in Manitoba without having first obtained a licence in Manitoba.

As the clients were located in and signed the insurance applications in Manitoba, the insurance transactions occurred in Manitoba.

The Former Licensee explicitly acknowledged that she understood that it was against the law to act as an agent, without a licence, by signing and submitting her July 2, 2006 licensing application to Council.

The Former Licensee assumed her licences would be issued on the basis of submitting her licensing application to Council - by the Former Licensee's own admission, there were outstanding licensing requirements.

Without a licence being issued, the Former Licensee acted as an agent in July 2006 by placing the Group Insurance with Company A; payment of commissions were to an Agency the Former Licensee was not licensed to represent in Manitoba.

Based on the information and evidence including comments from the Former Licensee, Council concluded the Former Licensee engaged in unlicensed activity in 2006 in violation of section 369(1) of the *Act*, by acting as an agent for a Manitoba client physically located in and signing the application in Manitoba.

Council also concluded the Former Licensee violated section 391 of the *Act* by holding out in 2006 as a licensed agent in Manitoba, when this was not the case, and by having commissions paid to the Agency for which she has never been licensed to represent in Manitoba.

The Former Licensee acknowledged engaging in further unlicensed activity by completing the Life Applications subsequent to the June 1, 2013 expiry of her licences, in violation of section 369(1) of the *Act*. Company B confirmed to Council that the Life Applications were completed, in Manitoba, in November 2013 when the Former Licensee was not licensed in Manitoba. The Former Licensee carried on business as a Manitoba agent at a time when she was not duly licensed in Manitoba, in violation of section 391 of the *Act*.

The Former Licensee had Company C pay commissions to the Agency for group insurance incepted in March 2013 for a Manitoba client; the Former Licensee has never been licensed to represent the Agency in Manitoba, in violation of section 391 of the *Act*.

By way of the Agency's website, the Former Licensee continued to hold out in November 2014 as an agent capable of conducting business in Manitoba when she was not licensed in the province, in further violation of section 391 of the *Act*.

In addition to the *Act* violations noted above, Council concluded the Former Licensee's conduct violated sections 1 and 4 of the *Code of Conduct*. The purpose of section 1 is to ensure that client interests are paramount, and section 4 stipulates that licensees are to conduct themselves with diligence and integrity. By conducting unlicensed insurance business in Manitoba, the Former Licensee put her interests before her clients' interests in violation of both sections 1 and 4 of the *Code of Conduct*.

The Former Licensee's violations occurred on multiple occasions over an extended time frame demonstrating a disregard for statutory compliance.

DECISION AND PENALTY

Council's Intended Decision dated March 17, 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 Former Licensee be fined \$2,000.00 and assessed partial investigation costs of \$2,000.00.

As part of its Intended Decision, Council further informed the Former Licensee of her right to request a Hearing to dispute Council's determinations and its penalty/sanction. The Former 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 March 30, 2015.