

DECISION
of the
GENERAL INSURANCE COUNCIL OF MANITOBA
(“Council”)
respecting
JULIAN BURDENIUK
(“Licensee”)

INTRODUCTION

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

Following receipt of information from Manitoba Public Insurance (“MPI”) with respect to contravention of insurance provider rules regarding the issue of vehicle temporary permits, an investigation was conducted pursuant to sections 375(1) and 396.1(7)(e) of the *Act* and s. 7(2)(e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee’s activity violated the *Act* and/or the General Insurance Agent Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was notified of the complaint and given an opportunity to make submissions.

On February 24, 2016, during a meeting of Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

ISSUE

1. Did the licensee issue multiple temporary permits for a vehicle contrary to MPI’s business rules?

FACTS AND EVIDENCE

1. The Licensee has held a valid general insurance agent licence in Manitoba since 2001 and presently holds a level 3 licence.
2. In July 2015, MPI's Broker Services Administrator brought to the Licensee's attention the issue of the limitation of temporary permits to three for the same vehicle per customer within a calendar year unless a Certificate of Inspection (COI) was submitted to MPI with the transaction, and Broker Enquiries authorized the transaction.
3. Correspondence dated July 14, 2015, from MPI's Broker Services Administrator to the Operating Agent of the Agency noted that the Agency had a warning on October 2013 with respect to a three strike system for this type of breach. One prior violation of the temporary permit requirements by the Licensee was a result of MPI error and was withdrawn by MPI.
4. On September 21, 2015 the Licensee sold a 4th permit to customer, KD. The customer was not present in the office and the authorization form accepted by the Licensee via the customer's father had a generic instruction "conduct Autopac as required" - no specific instructions were provided.
5. No valid COI was presented, and the Licensee did not call Broker Enquiries before proceeding to issue a 4th temporary permit within the calendar year. No notes were made on the customer file by the Licensee.
6. On October 5, 2015, the Licensee sold the customer a 5th temporary permit for this vehicle without proper documentation or process.
7. As a result of these recurrent violations, the Licensee served a one week suspension from MPI which prohibited him from selling MPI products or counseling its customers.
8. In his response to Council dated November 16, 2015, the Licensee stated that he was unaware that he was not adhering to the business rules. He stated that he had assumed that as the vehicle could be plated normally, the three permit rule did not apply.
9. The Licensee stated that the form used by K. B. was a general "blanket" authorization provided by the customer. The customer's father conducted transactions on her behalf and that was the easiest way to execute multiple and varying transactions. The blanket authorization form was no longer used by the agency.

ANALYSIS

The Licensee was required to apply the Manitoba Public Insurance rules for Temporary Registration Limitations. The Licensee had held a licence since 2001 and the rules regarding issue of temporary permits have been in place during that period. In July 2015, concern over the issue of a fourth permit by the Licensee was brought to his attention. Although the Licensee had not violated the rules at that time, this was a further opportunity for the Licensee to review the rules. Two months later he violated the rules, followed by another violation two weeks later with the same vehicle. His recurrent failure to properly advise the clients of the required COI and provide proper service to the client placed his competence in question and placed his client in jeopardy. His explanation that he was unfamiliar with the rules was not accepted by the Council as an excuse: licensees are required to understand and adhere to the rules of MPI and insurers for which they place business. Further, the Licensee had ample opportunity to ensure that he was fully familiar with the requirements or alternatively to seek clarification from MPI. The Council determined that the Licensee violated the *Code of Conduct*: s. 2, 3, and 4 with respect to his customer and s.10 with respect to his responsibility to his carrier.

PENALTY AND FINAL DECISION

Council's Intended Decision dated March 15, 2016, 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 sections 375 (1.1) of the Act and section 7 (1) of Regulation 227/91:

1. The Licensee be fined \$500.00 and assessed partial investigation costs of \$225.00.
2. The Licensee complete the MPI – temporary vehicle registration module within thirty (30) days of acceptance of the intended decision and provide proof of completion to the Council.

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 duly paid the levied fine and partial investigation costs, and agreed to the completion of the educational requirement.

The Decision is therefore final. In accordance with Council's determination that publication of its decisions are in the public interest, this will occur, as fully contemplated by section 7.1(1) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 13th day of April, 2016.