

**DECISION**  
**of the**  
**LIFE INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**Respecting**  
**CONSTANCE KILE**  
**(“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*.

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 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 April 27, 2016, 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 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 Former Licensee fail to notify Council, without delay, of the lapse of her E&O in violation of section 372.1(2) of the *Act*?
3. Did the Former Licensee violate section 4 of the *Code of Conduct* – Professionalism – Financial Accountability, by failing to continually maintain liability insurance?

4. Did the Former Licensee violate section 375(1)(a) of the *Act* and section 9 of the *Code of Conduct* – Dealing with the Insurance Council of Manitoba, by misrepresenting to Council that she had continually maintained E&O?

### **FACTS AND EVIDENCE**

1. At all material times, the Former Licensee held Life and Accident and Sickness licences for the Province of Manitoba.
2. To hold/maintain a Life and/or Accident and Sickness licence(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. The Former Licensee allowed her E&O to lapse on January 1, 2016 and continued to hold Life and Accident and Sickness licences.
4. On February 2, 2016, Council received notification of this lapse from the Former Licensee's E&O broker (the "Broker"); Council requested the Former Licensee provide proof of in force E&O.
5. On February 5, 2016, the Former Licensee responded by providing evidence of in force E&O, which was not issued and effective until February 5, 2016.
6. In reply to a letter from Council dated March 4, 2016, by letter dated March 18, 2016, the Former Licensee advised Council:
  - a. She acknowledged the 2016 lapse and that it was done in error.
  - b. She had scheduled a renewal reminder in her calendar but computer issues contributed to the lapse.
  - c. She was not aware that she was required to notify Council within 15 days.
  - d. She had not let her E&O lapse in the past.
  - e. She was not able to find any renewal reminder from either the Broker or the Insurer ("Insurer A").
7. Council reviewed evidence that the Broker had sent the Former Licensee three (3) renewal reminders (dated November 25, 2015, December 15, 2015 and December

30, 2015) to an email address that was used during this period and continues to be used to communicate with Council.

8. An audit revealed the Former Licensee had lapsed her E&O previously (April 1, 2013) and continued to hold Life and Accident and Sickness licences.
9. The Former Licensee failed to notify Council of the April 1, 2013 lapse and misrepresented on her May 27, 2013 licensing renewal application that she had continually maintained E&O.
10. The Former Licensee's previous E&O broker ("Broker B") and previous E&O insurer ("Insurer B") confirmed the one (1) day lapse.
11. Broker B further advised Council that the Former Licensee confirmed in 2013 that she had received renewal emails advising of the policy expiry date.
12. In reply to a letter from Council dated March 22, 2016, by email dated April 13, 2016, respecting the 2013 lapse, the Former Licensee advised Council:
  - a. She acknowledged neglecting her E&O renewal in 2013.
  - b. She noted health issues at the time of her initial reply to Council.
  - c. She had no explanation for the lapse and in hindsight did not recognize the severity of the issue.
  - d. She overlooked the relevance of the one (1) day lapse and the impact of the E&O question on her 2013 licensing renewal application.

## **ANALYSIS**

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

On her licensing application dated October 12, 2011, the Former Licensee declared that she: i) 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 that she, ii) 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*. Section 21 of the application contained a "Certification" section to which the Former Licensee affixed her signature affirming that she would notify Council in writing of any material change within 15 days.

The Former Licensee further acknowledged her requirement to disclose material changes, within 15 days, on her licensing renewal applications dated May 14, 2012, May 27, 2013, May 5, 2014 and May 28, 2015.

Upon review of the facts and evidence before it, Council has determined that during the period of January 1, 2016 to February 4, 2016, the Former 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 licences. The Former 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 Former Licensee further breached section 372.1(2) of the *Act*, by failing to notify Council without delay that her E&O had lapsed.

Council noted that the Former Licensee had been sent three (3) renewal reminders in 2015. The Former Licensee documented on her May 28, 2015 licensing renewal application that her E&O had an expiry date of January 1, 2016 and she acknowledged scheduling a renewal reminder in her calendar – she was aware, or ought to have to been aware, of her obligation to renew her E&O regardless of whether the renewal notices had been received. Council did not accept the Former Licensee's computer issues as a valid reason for failing to maintain E&O.

Council noted the timing of the Former Licensee obtaining replacement E&O – this occurred subsequent to Council requesting proof of in force coverage.

The Former Licensee advised Council that she had not let her E&O lapse previously. An audit revealed the Former Licensee failed to continually maintain E&O on April 1, 2013 when she held Life and Accident and Sickness licences, in violation of section 371(1.1) of the *Act*; section 12(1) of *Regulation 389/87* and section 4 of the *Code of Conduct*; prompt notice to Council was not given in violation of section 372.1(2) of the *Act*.

Review of the Former Licensee's 2013 licensing renewal application revealed a false declaration that she had continually maintained E&O, in violation of section 375(1)(a) of the *Act* and section 9 of the *Code of Conduct* – Dealing with the Insurance Council of Manitoba.

The Former Licensee was not forthcoming in disclosing the 2013 lapse. Council did not accept the Former Licensee's health reasons for failing to disclose the previous lapse in reply to a letter from Council dated March 4, 2016.

The Former Licensee offered no explanation for the 2013 lapse and acknowledged that she did not recognize the severity of the issue and the impact of the renewal application.

Council notes that even an isolated incident of failure to maintain E&O; failure to notify Council of a lapse or cancellation; and/or misrepresentation on a licensing application is serious enough to warrant discipline. The Former Licensee's violations, however, were multiple and inclusive of two (2) renewal periods.

Council concluded that the Former Licensee's conduct demonstrates repeated disregard for statutory compliance and that discipline is warranted.

### **DECISION AND PENALTY**

Council's Intended Decision dated May 4, 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 section 375(1.1)(c)&(d) of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Former Licensee be fined \$250.00 and assessed partial investigation costs of \$750.00.

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 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 June 6, 2016.