

**DECISION**  
**of the**  
**GENERAL INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**respecting**  
**TRACY’S INSURANCE SERVICES (“Agency”)**  
**TRACY BARTELS (“Licensee”)**

**INTRODUCTION**

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

Following receipt of documentation from Manitoba Public Insurance (“MPI”) detailing insurance transactions allegedly performed by the Licensee while she was incapacitated, 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*. The purpose of the investigation was to determine whether the Licensee and/or the Agency had violated the *Act*, and/or the General Insurance Agent Code of Conduct (“*Code of Conduct*”). During the investigation the Licensee was provided an opportunity to make submissions.

On July 21, 2016, during a meeting of the Council, the evidence compiled during the investigation was presented and reviewed. Upon assessment of the evidence, Council determined its intended decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

**ISSUES**

1. Did the Licensee, in her role as the Agency’s Operating Agent, violate *the Act* and *Code of Conduct* by permitting an individual to act as an agent without holding a valid licence?
2. Did the Licensee, permit an unlicensed individual to impersonate her in the transaction of insurance with a carrier by use of a unique identifier specific to the Licensee?

## **FACTS AND EVIDENCE**

1. At all material times, the Licensee was the Operating Agent of the Agency.
2. On April 5, 2016, the Licensee affixed her signature and submitted the Agency Attestation Form – Operating Agent/Broker Level 3 attesting that she understood that she was required:
  - To immediately notify the Insurance Council of Manitoba (“the ICM”) in writing, at any time during the licensing year, if a licence holder leaves the agency, providing the reason and effective date of termination - use of the ICM’s Termination Form is encouraged.
  - To submit an application for a new employee and to ensure that a valid licence has been issued by the Insurance Council of Manitoba prior to that applicant acting as an agent.
  - To ensure that licensing rules with respect to agency licensing and activities are enforced.
3. MPI verifies that an individual holds a valid insurance agent licence prior to unlocking its Insurance Workstation System (IWS) to allow the individual agent to conduct Autopac transactions. Each licensed agent has a unique ID which is referenced with each transaction. Without a valid IWS – ID an individual cannot perform insurance activity. Agents are aware that the ID is a security feature and cannot be shared with others.
4. On April 26, 2016, the Licensee was advised that her ankle was broken and she would require surgery. Prior to travelling to the hospital, the Licensee came to the office, logged on the MPI system using her IWS - ID, and asked HS to do payments and basic renewals. HS had been shadowing the Licensee for two weeks while taking her education to qualify as an agent. HS was not qualified and did not hold a valid insurance agent’s licence.
5. The unlicensed HS, without any supervision, performed Autopac transactions between April 26, 2016 and April 29, 2016 using the Licensee’s IWS - ID.
6. On May 4, 2016, MPI’s Broker Services Administrator (“BSA”) for the Agency received the Document Reconciliation Report for the period between April 26, 2016 and May 2, 2016. It indicated that although 24 documents had been generated by the Agency, none had been received by the MPI document management system (24-0-24).
7. When the BSA called the Licensee, she received a voice message that the office was closed from May 2, 2016 until May 6, 2016 as the Licensee had broken her ankle.
8. On May 11, 2016, MPI received the May 3, 2016 – May 9, 2016 report showing activity of 8-0-8. Again although eight transactions had been recorded, no documents were forwarded to MPI.

9. On May 16, 2016, the Licensee advised MPI that she would be closed between May 16, 2016 and May 20, 2016 and possibly between May 24, 2016 and May 27, 2016 as she had broken her leg and was unable to walk without help.
10. On May 17, 2016, MPI received the May 10, 2016 to May 16, 2016 Document Reconciliation Report indicating 38-0-38. Again although transactions were recorded, there were no documents received by MPI. When the BSA telephoned to question this report, no one answered the phone: only phone voice mail.
11. MPI work summaries showed transactions between April 26, 2016 and April 29, 2016; May 9, 2016 and May 13, 2016; and a NSF dishonored on May 17, 2016. All transactions were under the Licensee's IWS Operator ID.
12. On May 17, 2016, in a conversation between the Licensee and MPI, the Licensee advised that HS had attended the Fundamentals of Insurance course the first week of May, and she had attended and passed the MPI course in February 2016. Initially the Licensee stated that HS had taken insurance payments only. Later after the BSA stated that there had been other activities, the Licensee confirmed that HS had been processing transactions using her IWS - ID. Previously the MPI representative and Licensee had discussed that HS had to be licensed before processing MPI transactions.
13. On May 30, 2016, HS completed an Insurance Agent's Licence Application. She affixed her initials beside question 18: "I will not act, or offer or undertake to act, as an insurance agent in this province without having first obtained a licence under *The Insurance Act*."
14. Further HS affixed her signature to this application stating that "I declare that the information contained in this application, including attachments, is true and complete. ...I also understand that it is an offense under The Insurance Act to make a material misstatement to the ICM."
15. The Sponsorship section of HS's application was signed by the Licensee on May 30, 2016.
16. On June 13, 2016, Council received HS's application for an agent's licence.

*The Licensee's response dated June 21, 2016*

17. The Licensee noted that she was a small business in a somewhat remote area with most clients driving at least half an hour to her business. As such she is unable to afford a lot of employees. Most clients were on a month-to-month basis.
18. The Licensee advised Council that when she had to go to Brandon for surgery and left HS to do insurance transactions, she was not thinking about "what I was asking her to do".
19. On the first week of May 2016, HS attended the Fundamentals of Insurance course ("FOI") and the Licensee closed her office. According to the Licensee, customers were unhappy

that the office was closed and said they would not come back. She could not afford to lose her customers.

20. The Licensee noted that when HS returned from the FOI course, she assumed that the Insurance Brokers Association of Manitoba (IBAM) had contacted the Council to get a licence. The Licensee had never had a new employee and it did not occur to her that she had to contact the Council. She assumed that HS was licenced.
21. On May 17, 2016, the Licensee had her husband take her to work where she processed two NSF cheques.
22. The Licensee advised that another employee, EB, licensed by the Agency had not been with the Agency since 2015 and was unwilling to return. The Licensee had not contacted EB and had not advised the Council as was required.
23. The Licensee had not discussed her conundrum with MPI or the Council, nor had she closed her office while she sought advice.
24. The Licensee apologized, took full responsibility and noted that she had never had any violations in the past. She promised that it would not happen again.

## **ANALYSIS**

The Licensee accepted responsibility as the Operating Agent to manage and to be accountable for the operations of the Agency.

The Licensee failed to ensure that HS was licensed prior to acting as an agent. She admitted that HS had transacted business under the Licensee's IWS ID when "shadowing". Further HS hid under the Licensee's IWS-ID between April 26, 2016 and April 29, 2016, and between May 9, 2016 and May 13, 2016, when she was unlicensed and unsupervised. In April 2016, HS had not met the education requirements for a licence. While she may have met the educational requirements for a licence following the completion of the course in May, she was not licensed. In addition to being unlicensed, she acted without supervision between April 26, 2016 and April 29, 2016, and between May 9, 2016 and May 13, 2016.

Council dismissed the Licensee's excuse that she had never had a new employee and she thought IBAM would contact the Council. The matter of securing a licence before performing Autopac transactions had been discussed with the Licensee by MPI's BSA. The Licensee had been licensed with Council since 2003 and for every year that she had acted as the Operating Agent, she completed the Agency Attestation Form reminding her of her responsibility to licence an individual before allowing that person to act as an agent.

Based on the Licensee's vulnerable business position as the owner and single licenseholder of the Agency, she failed to develop a contingency plan which she could invoke in emergencies.

When she had her accident, she did not confer with MPI, the Council, or with the Level 3 agent still licensed with her Agency, to determine whether a legal, alternate solution was available in her situation. Further she did not close the Agency until a solution could be found.

Without regard for her clients or the law, she signed on the IWS using her ID and permitted an unlicensed individual to act on her own without the supervision of a licenced agent. The Licensee continued to place the public in jeopardy for her personal benefit following comments by clients to her husband and parents that they were unhappy because the Agency was closed (*during the week HS was taking her course*), and she determined that she could not afford to lose customers. As such, she violated s. 369 (1) of *the Act* and s. 9 of the *Code of Conduct*.

When initially asked by MPI's BSA about HS's activity, the Licensee stated she was taking some payments. It was not until prompted that the Licensee admitted the extent of HS's activity.

The Licensee failed to self-report to Council or have HS self-report to Council. This opportunity arose when HS completed the Insurance Agent's Licence Application and the Licensee signed the sponsorship section. Neither advised Council.

Council concluded these actions showed the Operating Agent's careless disregard for her responsibilities. She violated s. 375 (1) of *the Act* and s. 8 and 10 of the *Code of Conduct* by allowing HS to use her code and not disclosing HS's activity to the Council.

## **PENALTY AND FINAL DECISION**

Council's Intended Decision dated August 17, 2016, outlined the foregoing background, analysis and conclusions on a preliminary basis. Having regards 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 227/9*:

1. The Licensee be fined \$1,500.00 and assessed partial investigation costs of \$412.50.

As part of its Intended Decision, Council further informed the Licensee of her right to request a hearing to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined her right to a Hearing and chose not to pursue a Statutory Appeal. She instead duly paid the levied fine and partial investigation costs.

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 August 23, 2016.