

**DECISION**  
**of the**  
**LIFE INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**Respecting**  
**FELICIDAD FERRER**  
**(“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 September 21, 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 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 fail to notify Council, without delay, of the lapse of her liability insurance (E&O) in violation of section 372.1(2) of the *Act*?
3. Did the Licensee violate section 4 of the *Code of Conduct* – Professionalism – Financial Accountability, by failing to continually maintain liability insurance?

4. Did the 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 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 Licensee lapsed her E&O from March 6 – 18, 2016 – Council received notice of the lapse on March 10, 2016 from the Licensee’s E&O broker (“E&O Broker A”).
4. By email dated March 18, 2016, the Licensee advised Council that she did not have the funds to pay for the renewal of her E&O for 2016.
5. The Licensee’s licences were cancelled on March 18, 2016 for failure to meet mandatory E&O requirements.
6. Information from E&O Broker A and the Licensee’s previous E&O brokers (“E&O Broker B” and “E&O Broker C”) confirmed the Licensee remained licensed without E&O for the following previous periods:
  - March 5, 2014
  - October 15 – 25, 2011
7. E&O Brokers A and B confirmed to Council that had a claim been submitted on March 5, 2014 there was no in force E&O to respond.
8. The Licensee failed to notify Council within 15 days of the 2011 and 2014 E&O lapses.
9. The Licensee falsely declared on two (2) licensing applications (May 18, 2012, April 13, 2016) that she had continually maintained E&O.
10. By email received on August 2, 2016, the Licensee:

- a. Acknowledged that when she entered the insurance business she was told that she needed to have E&O.
- b. Advised that she had no intention of misrepresenting maintenance of E&O on her 2012 and 2016 licensing applications; misrepresentation in 2016 was an honest mistake as she forgot her E&O lapsed one (1) month prior.
- c. Advised that she forgot that her E&O lapsed in March 2016 when completing her April 2016 licensing application.
- d. For the 2016 lapse:
  - The Licensee acknowledged having received E&O renewal notices from E&O Broker A.
  - The Licensee gave financial and health reasons for failing to renew her E&O.
- e. For the 2014 lapse:
  - The Licensee requested cancellation of her E&O in 2014 but just now recognizes a lapse occurred.
  - The Licensee did not pay attention to the cancellation date of existing coverage and the effective date of replacement coverage.
  - The Licensee acknowledged failing to notify Council of the lapse.
- f. For the 2011 lapse:
  - The Licensee acknowledged failing to notify Council of the lapse because she did not know of the lapse.

## **ANALYSIS**

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

The Licensee declared on her licensing applications (August 18, 2009, March 1, 2014) that she would maintain liability insurance (E&O) and that she understood she was to

notify Council without delay if her liability insurance lapsed or was cancelled. The applications contained a Certification section to which the Licensee affixed her signature to declare that she would notify Council of any material change within 15 days – this includes a lapse or cancellation of E&O.

The Licensee further acknowledged on her licensing renewal applications (2012, 2013, 2015) that she would notify Council within 15 days of any material change.

Upon review of the facts and evidence before it, Council has determined that during the period of March 6 – 18, 2016, 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 licences. 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.

Information from E&O Brokers A, B and C confirmed the Licensee failed to continually maintain E&O on two (2) previous occasions 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 for the 2011 and 2014 lapses in violation of section 372.1(2) of the *Act*.

The Licensee falsely declared on two (2) licensing applications that she had 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 Licensee knew E&O was/is a requirement when she entered the insurance business. Having received renewal notices the Licensee allowed her E&O to lapse in 2016. Council did not accept financial and health reasons as valid excuses for the Licensee's violations in 2016.

The Licensee's licences were terminated on March 18, 2016 for failing to maintain E&O. In the application process to reinstate her licences, the Licensee misrepresented on her April 13, 2016 licensing application that she had maintained E&O. Council did not accept the Licensee's excuse that the misrepresentation was an honest mistake.

Replacement E&O was backdated in 2011 and 2016 which demonstrates the Licensee was aware or ought to have been aware of the need to continually maintain E&O.

The Licensee was aware or ought to have been aware, in 2014, of the 2014 lapse given her E&O was cancelled at her request.

Council found the Licensee to have a flagrant disregard for the licensing/regulatory requirement to maintain E&O.

Council notes that even an isolated incident of failure to maintain E&O; failure to notify Council of a lapse and/or misrepresentation on a licensing application is serious enough to warrant discipline. The Licensee's violations, however, spanned numerous years, and involved numerous violations.

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

### **DECISION AND PENALTY**

Council's Intended Decision dated October 17, 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 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 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 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 November 14, 2016.