

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
BEVERLEY ANNE SULLIVAN
(“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*.

Following an audit of the Former Licensee regarding errors and omissions insurance, 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 December 14, 2016, during a meeting of Council, the evidence compiled during the investigation was presented; upon review Council determined its intended decision. Pursuant to sections 375(1) and 375(1.1) of the *Act* and *Regulation 227/91*, Council hereby renders its intended decision and corresponding reasons.

ISSUES

1. Did the Former Licensee repeatedly 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 repeatedly 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 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 repeatedly 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?
5. Did the Former Licensee fail to comply with her reporting requirements to disclose a material change and misrepresent to Council that she was not engaged in any other occupation, in violation of section 375(1)(a) of the *Act* and section 9 of the *Code of Conduct*?

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, continual maintenance of 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. An audit revealed the Former Licensee lapsed her E&O from September 1 – 2, 2014 and continued to hold Life and Accident and Sickness licences.
4. Information provided by the Former Licensee's E&O Broker ("the E&O Broker") confirmed the Former Licensee remained licensed without E&O for two (2) previous periods:
 - September 1 – 26, 2013
 - September 1 – 4, 2012
5. The Former Licensee failed to notify Council of any of the E&O lapses.
6. The Former Licensee misrepresented on three (3) licensing renewal applications (2013, 2014, 2015) that she had continuously maintained E&O.
7. By email September 9, 2016, the Former Licensee:

- a. Acknowledged the 2014 lapse.
 - b. Advised her failure to notify Council of the lapse was an oversight and not intentional.
 - c. Advised that she had not lapsed her E&O on any other occasions.
8. On or about October 3, 2016, Council became aware that the Former Licensee had been engaged in another occupation which was never disclosed to Council.
9. Dated May 31, 2016, question 1 of the Former Licensee's 2016 licensing renewal application asked whether she was engaged in any business or occupation that had not been disclosed to and approved by the ICM – the Former Licensee answered "N".
10. In response to an October 25, 2016 email from Council raising concerns of non-disclosure and misrepresentation, by email dated October 27, 2016, the Former Licensee advised Council that:
 - a. At no time did she "intentionally" not disclose information to Council.
 - b. If there were other lapses it was probably because she did not have funds to pay for E&O.
 - c. She did not think working outside of being an insurance advisor would have any interest to Council.
11. By emails dated October 27, 2016, the Former Licensee further advised Council:
 - a. She was in the wrong to not disclose her other occupation.
 - b. She began working in the other occupation, effective April 1, 2016.
 - c. Failure to report her other occupation on her May 31, 2016 licensing renewal application was not intentional, but she had neglected to advise Council due to circumstances in her personal life.

- d. Non-disclosure of her other occupation was not intentional misrepresentation as she did not believe the other occupation was a conflict with her licence.

12. Council found further significance in that:

- a. Renewal notices for the E&O coverage were sent to the Former Licensee for each lapse.

- b. For the 2014 lapse:

- Coverage expired September 1, 2014. The Former Licensee did not apply for and have replacement E&O issued to her until September 3, 2014.

- c. For the 2013 lapse:

- By email dated September 3, 2013, the Former Licensee confirmed to the E&O Broker that she made a jurisdictional error on her application dated September 1, 2013.
- By emails dated September 9, 2013, the E&O Broker advised the Former Licensee that she was sent a renewal notice; that her E&O lapsed September 1, 2013; and, that she did not have coverage.
- By letter dated September 9, 2013, the E&O Broker issued the Former Licensee an E&O lapse notice.
- By email dated October 3, 2016, the E&O Broker confirmed to Council that the Former Licensee's application underwent review, additional information was requested and coverage was not bound until September 27, 2013.

- d. For the 2012 lapse:

- Coverage expired September 1, 2012. The Former Licensee did not apply for and have replacement E&O issued to her until September 5, 2012.

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.

The Former Licensee declared on her 2011 licensing application that she would maintain liability insurance (E&O) and understood she was to notify Council without delay if her liability insurance lapsed or was cancelled.

The Former Licensee further acknowledged on her licensing applications (2012, 2013, 2014, 2015) that she would notify Council within 15 days of any material change(s) – this includes a lapse of E&O.

Upon review of the facts and evidence before it, Council has determined that the Former Licensee failed to maintain E&O while holding Life and Accident and Sickness licences on three (3) occasions and failed to notify Council of any of the lapses in violation of sections 371(1.1) and 372.1(2) of the *Act* and section 12(1) of *Regulation 389/87*. 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 falsely declared on three (3) 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.

Further non-disclosure (within 15 days) and misrepresentation existed on the Former Licensee's 2016 licensing renewal application regarding an additional occupation, in violation of section 375(1)(a) of the *Act* and section 9 of the *Code of Conduct*.

The Former Licensee was sent renewal notices for each lapse and a lapse notice in 2013. In 2012 and 2014, the Former Licensee applied for replacement coverage after her coverage had already expired. The Former Licensee's 2013 correspondence with her E&O Broker demonstrates she was aware or ought to have been aware of the need to continually maintain E&O. The Former Licensee acknowledged the 2014 lapse and that any other lapses were probably the result of not having the funds to pay for E&O.

Council did not accept the Former Licensee's financial reasons as a valid excuse for repeatedly failing to maintain E&O nor the Former Licensee's explanation that she did not believe Council would have an interest in her other occupation.

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 can be serious enough to warrant discipline. The Former Licensee's violations occurred over three (3) years and involved several violations.

Council found the Former Licensee to have a repeated disregard for the licensing/regulatory requirement to maintain E&O and concluded that discipline is warranted.

PENALTY AND FINAL DECISION

Having regard to the determination of the violations listed above, and pursuant to Council's power to impose disciplinary action pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council hereby imposes the following penalty on the Former Licensee, namely:

1. The Former Licensee is hereby fined the sum of \$500.00; and
2. The Former Licensee is hereby assessed investigation costs of \$250.00.

As part of its Decision, Council further informed the Former Licensee of her right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Former Licensee expressly declined her right, chose not to pursue a statutory Appeal, and accepted this Decision.

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 May 11, 2017.