

**DECISION**  
**of the**  
**LIFE INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**Respecting**  
**DAMEN JONATHAN MICHAEL MACGILLIVRAY**  
**(“Licensee”)**

**INTRODUCTION**

The Life Insurance Council of Manitoba (“Council”) derives its authority from *The Insurance Act C.C.S.M. c. I40* (the “Act”) and the *Insurance Councils Regulation 227/91*.

Following an audit of the Licensee regarding errors and omissions insurance, 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* 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 (the “Code”).

During the investigation the Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On October 23, 2019, during a meeting of Council, the evidence compiled during the investigation was reviewed. Upon assessment of the evidence, Council determined its Intended Decision.

The Intended Decision advised the Licensee that if he does not submit a Notice to Council form either accepting the Intended Decision or requesting a show-cause hearing, the Intended Decision would become a Decision of Council and a copy would be forwarded to him. The Licensee did not request a show-cause hearing before Council.

Pursuant to section 375(1) of the Act and *Regulation 227/91*, the Council now renders its Decision and corresponding reasons.

## **ISSUES**

1. Did the Licensee fail to continually maintain a liability insurance policy (Errors and Omissions insurance ("E&O")) while being licensed as a Life and Accident and Sickness Agent in violation of section 371(1.1) of the *Act*, section 12(1) of the *Insurance Agents and Adjusters Regulation 389/87*, and section 4 – Professionalism (Financial Accountability), of the *Code*?
2. Did the Licensee fail to notify Council, without delay, of a lapse of his liability insurance policy in violation of section 372.1(2) of the *Act*?
3. Did the Licensee violate section 375(1)(a) of the *Act* and section 9 – Dealing with the Insurance Council of Manitoba, of the *Code*, by falsely declaring on a licensing renewal application that he had continually maintained E&O?
4. Did the Licensee violate section 375(1)(a) of the *Act* and section 9 – Dealing with the Insurance Council of Manitoba, of the *Code*, by falsely declaring on a licensing application that he had not been placed under investigation?
5. Did the Licensee respond to Council in an evasive manner during the investigation in violation of section 9 – Dealing with the Insurance Council of Manitoba, of the *Code*?

## **FACTS AND EVIDENCE**

1. To hold/maintain a Life and/or Accident and Sickness licence(s) in the Province of Manitoba, continual maintenance of a liability insurance policy (E&O) is required pursuant to section 371(1.1) of the *Act* and in accordance with section 12(1) of *Regulation 389/87*.
2. In completing his May 29, 2018 licensing renewal application, the Licensee specified that he was insured with E&O coverage that had an expiry date of July 1, 2018; this application contained a Declaration section which included the statement:

I agree to notify Council within 15 days of any material changes to the information contained in this application.

3. An audit revealed the Licensee allowed his E&O to lapse from July 1 – 17, 2018 and that he continued to hold Life and Accident and Sickness licences during this period.
4. The Licensee failed to notify Council of the E&O lapse for the period of July 1 – 17, 2018.
5. The Licensee purchased replacement E&O coverage on and effective July 18, 2018.
6. The Licensee falsely declared on his May 31, 2019 licensing renewal application that he had continuously maintained professional liability insurance (E&O); this application contained a Declaration section which included the statement:

I declare that the foregoing information is true and I accept the responsibility for these answers and undertakings. I further understand that a false declaration on this application could lead to disciplinary action.

7. By email dated June 28, 2019, Council informed the Licensee that he had been placed under investigation by the Insurance Council of Manitoba ("ICM") for failing to continually maintain errors and omissions insurance ("E&O") / professional liability insurance while holding Life and Accident and Sickness licences in Manitoba and for failing to advise Council that his E&O coverage had lapsed.
8. The Licensee's Life and Accident and Sickness licences had been disqualified as of July 1, 2019 for failing to report E&O coverage information to Council.
9. The Licensee submitted to Council a July 7, 2019 licensing application to re-instate his licences. To question 16(b) the Licensee falsely declared that he had not been under investigation by any Regulatory Authority; in response to further questioning regarding this false declaration (that he had not been under investigation), by email dated September 3, 2019, the Licensee stated to Council:

...this was the first time being placed under investigation. At this time, I didn't fully understand everything happening at the time the investigation was being launched. I have no excuse for this misrepresentation...

10. During the course of the investigation, in addressing his lapse of E&O on July 1, 2018, by email dated July 8, 2019 the Licensee advised Council:

I did not realize that my coverage had lapsed until you brought it to my attention.

11. Council drew to the Licensee's attention evidence that he had received notice by registered mail from his E&O broker that his E&O had lapsed on July 1, 2018.
12. By email dated August 21, 2019, the Licensee apologized for misrepresenting to Council that he had not realized that his E&O had lapsed:

My apologies for misrepresenting this. The letter received slipped my mind as this was over one year ago. Obviously as the tracking shows, I received the letter from [the E&O broker] but failed to inform the lapse of coverage. I have no excuse and realize the issue at its fullest. I did not understand the process of reporting the lapse and consequences of not doing such thing. I don't much else to say other than now knowing the severity of my actions.

13. By email dated July 8, 2019, the Licensee acknowledged having received a few emails from his E&O broker that his E&O was up for renewal:

Looking back through my emails, I see there is a few emails from [the E&O broker] stating my E&O was up for renewal. I do not see anything stating it has lapsed.

14. According to the E&O broker, the Licensee was emailed a renewal notice on May 27, 2018 and a lapse notice on July 4, 2018; these notices were sent to the Licensee's currently valid email address.

## **ANALYSIS AND DETERMINATIONS**

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

The Licensee declared on his August 28, 2017 licensing application that he would continually be insured under a policy of liability insurance and understood he was to notify Council without delay if his liability insurance lapsed or was cancelled.

The Licensee further acknowledged on his May 29, 2018 licensing renewal application that he would notify Council within 15 days of any material change(s) – this includes a lapse of E&O.

The Licensee failed to maintain E&O while holding Life and Accident and Sickness licences in the period of July 1 – 17, 2018 in violation of section 371(1.1) Liability insurance required, of the *Act*, section 12(1) Liability insurance – life, accident and sickness, of *Regulation 389/87*, and section 4 – Professionalism – Financial Accountability, of the *Code*.

The Licensee failed to notify Council of the lapse in violation of section 372.1(2) Notice to Superintendent, of the *Act*.

The Licensee falsely declared on his May 31, 2019 licensing renewal application that he had continuously maintained professional liability insurance, in violation of section 375(1)(a) Misrepresentation, of the *Act* and section 9 – Dealing with the Insurance Council of Manitoba, of the *Code*.

The Licensee also violated section 375(1)(a) of the *Act* and section 9 of the *Code* by falsely declaring on his July 7, 2019 licensing application that he had not been placed under investigation.

Furthermore, Council found the Licensee in violation of section 9 of the *Code* based upon his evasive response that he was not aware of the lapse until it was brought to his attention by way of the investigation; whereas, he had received renewal and lapse notices by email, a lapse notice by registered mail, and had applied for replacement coverage in 2018. He was aware, or reasonably ought to have been aware, that his E&O lapsed in 2018.

Council notes that even an isolated incident of failure to maintain E&O, failure to notify Council of an E&O lapse, and/or misrepresentation on a licensing application can be serious enough to warrant discipline; in this instance, the Licensee's conduct amounted to several violations. Maintenance of appropriate E&O is an important element of public protection.

Having duly considered the facts, Council concluded that the Licensee is to be disciplined.

## **PENALTY AND FINAL DECISION**

Council's Decision dated January 30, 2020 was delivered to the Licensee by registered mail on February 11, 2020. The Decision outlined the foregoing background, analysis, and conclusion 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)(c) and (d), of the *Act* and section 7(1) of *Regulation 227/91*:

1. The Licensee was fined \$1,000.00 and assessed partial investigation costs of \$1,000.00.

Pursuant to section 389.0.1(1) of the *Act*, the Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Licensee was advised of this right in the Decision and was provided with the Notice of Appeal form, in accordance with section 389.0.1(2) of the *Act*. As an appeal was not requested in this matter, this Decision of Council is final.

In accordance with Council's determination that publication of its Decisions are in the public interest, this Decision is published pursuant to sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 24<sup>th</sup> day of March, 2020.