

DECISION
of the
LIFE INSURANCE COUNCIL OF MANITOBA
(“Council”)
Respecting
GRANT EDMOND WILSON
(“Licensee”)

INTRODUCTION

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

In response to information received from an insurer (“Insurer B”) relating to the Licensee, an investigation was conducted pursuant to sections 113(3), 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* and/or the Life Insurance and Accident and Sickness Agent’s Code of Conduct (the “Code of Conduct”).

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

On December 18, 2019, during a meeting of Council, the evidence compiled during the investigation was reviewed. Upon assessment of the evidence, Council determined its Intended Decision.

As part of its Intended Decision, Council informed the Licensee that he may request a Hearing to dispute Council’s determinations and its penalty/sanction. The Licensee expressly declined his right and chose not to pursue a Hearing; he instead expressly accepted the terms of the Intended Decision and duly paid the levied fine and investigation costs.

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 represent the best interests and needs of a consumer and lack professionalism when replacing a consumer's life insurance policy in violation of the *Act* and/or the *Code of Conduct*?
2. Did the Licensee act in an unfair or deceptive manner by completing a comparison of policies months subsequent to an application for replacement life insurance in violation of the *Act* and/or the *Code of Conduct*?
3. Did the Licensee make false declarations to Insurer B on a life insurance application in violation of the *Act* and/or the *Code of Conduct*?

FACTS AND EVIDENCE

1. Council received information from Insurer B alleging the Licensee never met with the insured ("Insured A") and, having acted on her behalf for her policy through Insurer B, she did not know who he was.
2. Dated July 2, 2018, a life insurance application through Insurer B was completed by the Licensee on behalf of Insured A; this application served as replacement life insurance coverage for Insured A's life insurance policy through Insurer A.
3. To section "*Life Insured Insurance History Summary*" in the application with Insurer B, the Licensee documented "Yes" to the question: "*Policy to be replaced by this application?*"
4. As per Council's Direction and Guidance Notes for the replacement of life insurance, the Licensee was required to have completed two (2) separate replacement documents: a Life Insurance Replacement Declaration ("LIRD") and a written explanation of the advantages and disadvantages of replacing the existing policy (a Written Comparative Analysis – "WCA").
5. The Licensee completed a LIRD dated September 17, 2018, and Insurer B received the LIRD on October 4, 2018, months subsequent to the application dated July 2, 2018.

6. The LIRD contained information applicable to Insured A's existing policy with Insurer A (insurer name, policy number, premium amount, and outstanding term period).
7. In responding to Council, by emails dated July 29, 2019 and November 14, 2019 the Licensee acknowledged that:
 - He never met with Insured A.
 - He doesn't know Insured A.
 - He did not complete a full Needs Analysis for Insured A.
 - He didn't discuss with Insured A the replacement of her life insurance.
 - He didn't have a chance to speak with Insured A about questions on the application.
 - He did not meet with Insured A to complete the LIRD; rather, he relied upon personal and policy file information collected from her husband, ("Insured B"), and conveyed to him by another agent ("Agent B") (another Licensee at the time of the application).
 - He does not have a WCA because he never met with Insured A to do a comparison.
 - He relied upon notations contained on the LIRD as a policy comparison and never met with Insured A to complete a WCA.
8. In his response to Council as to whether he felt it was ethical to replace a consumer's life insurance policy without ever talking to that consumer to discuss the replacement process, by email dated November 14, 2019, the Licensee stated:

"No... I should have spoke [sic] to the client, I take full responsibility for my error in judgement."

Expanding on his response, the Licensee further stated:

"I understand my oversight caused [Insured A] to question who her advisor was. I take full responsibility for my error in judgement. I truly regret that I

participated in facilitating a life insurance application without dealing directly with this client; it was an error on my part. I wasn't aware of the severity of getting involved to facilitate the client application. There is no excuse for this."

9. The application declarations made by the Licensee were presented to Council for a determination as to whether he made any misrepresentation(s) to Insurer B. As the Licensee doesn't know and never met nor spoke with Insured A the following declarations were germane to Council's assessment:

In the section of "*Signature of Advisor who completed the Application and Advisor's Report*", the Licensee agreed to the following statements by signing this section as the Advisor:

- *"To the best of my knowledge and belief, the information provided in the Application and in this Advisor's Report is current, correct and complete."*
- *"I am confident that each Owner and each Life Insured understood the meaning and importance of all questions asked on the Application."*

ANALYSIS

Council's role and mandate is one of public protection. Council received allegations from Insurer B that the Licensee never met with a client and that the client did not know who he was in relation to the replacement of her life insurance policy. Pursuant to section 113(3) Investigation by Superintendent, of the *Act*, Council has the authority to examine and investigate the business practices of every person engaged in the business of insurance in Manitoba in order to determine whether the person has been, or is, engaged in any unfair or deceptive act or practice.

The Licensee acted on behalf of Insured A to replace a policy of life insurance. As defined by section 113(1)(e) of the *Act*, unfair or deceptive acts or practices in the business of insurance includes: any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract. And, unfair or deceptive acts or practices in the business of insurance are prohibited pursuant to section 113(2) of the *Act*.

In the course of the investigation it was discovered that the Licensee doesn't know Insured A, he never met or spoke with Insured A regarding the application questions, he hadn't completed a full Needs Analysis, and hadn't explained the policy replacement process.

Having considered the evidence, Council concluded that the Licensee violated the following sections of the *Act* and *Code of Conduct* and that disciplinary action is warranted:

- **Sections 113(1)(e) Unfair or Deceptive Acts or Practices in the Business of Insurance, and 113(2) Prohibition against Unfair or Deceptive Acts or Practices in the Business of Insurance, of the Act**, due to an incomplete comparison of policies at the time of the application.

As per Council's Direction and Guidance Notes, the Licensee should have completed two (2) separate replacement documents (the LIRD and WCA). The Licensee had the responsibility to ensure that all significant comparative information relative to the replacement was provided to the consumer prior to commencing with an application for life insurance intended to replace existing coverage.

The Licensee used a LIRD and his notations contained therein in lieu of the required written explanation, known as the WCA. The LIRD was completed on September 17, 2018 – months subsequent to the application having been completed on July 2, 2018. The Licensee was unable to demonstrate to Council that he had completed a policy comparison prior to commencing with the application.

- **Section 375(1)(a) Misrepresentation, of the Act**, due to two (2) false declarations on the application with Insurer B.

Council concluded the Licensee made misrepresentations regarding two application declarations that: i) to the best of his knowledge the information provided in the application was current, correct, and complete; and, ii) that he was confident that each owner and life insured understood the meaning and importance of all questions asked on the application.

The notion that the Licensee positively affirmed that the application was correct and complete, and that the owner/life insured understood the questions asked on the application, is antithetical to the logical circumstances of this case as he does not know, has never met, and did not speak with the client.

- **Section 375(1)(e) Incompetence, of the Act**, as the LIRD was completed months subsequent to the application; whereas, all significant comparative information must be provided to the consumer prior to commencing with an application for replacement insurance. Submitting an application for new insurance prior to completing a written comparison (in this case the LIRD) is unacceptable.
- **Section 375(1)(e) Untrustworthiness, of the Act**, as the Licensee never met nor spoke with Insured A during the replacement process.

In his response to Council, the Licensee drew to attention the longevity of his career (54 years). Keeping in mind the Licensee's experience in the industry (life licensed in Manitoba beginning in 1976), he knew, or reasonably ought to have known, that he was bound by an obligation to speak with Insured A prior to acting on her behalf. Absent any feedback from the prospective insured prior to and during the application process, Council was concerned that underwriting information on the application could be incorrect or incomplete which could lead to a denial of a future claim possibility leaving the beneficiary in a vulnerable position.

- **Sections 1 – Interests of the Client, 2 – Needs of the Client, 4 – Professionalism, and 7 – General Information Disclosure and Documentation, of the Code of Conduct**, by failing to represent the interests and needs of the client as no discussion of the replacement process ever took place with Insured A and no Needs Analysis was completed. Not only did the Licensee not speak with Insured A, he doesn't even know her. The Licensee acknowledged that it was an unethical practice to replace a consumer's life insurance without ever speaking with the consumer; he failed to provide adequate disclosure to Insured A at the time of application as the LIRD was completed months subsequent to the application. An agent has the responsibility to ensure that the client is fully informed of all relevant information before the client makes a decision and this disclosure must be appropriately documented.

Regarding the LIRD that was completed in lieu of the required WCA: Council was concerned that the Licensee sent a LIRD to Insurer B which contained information regarding the existing policy with Insurer A (insurer name, policy number, premium amount, and outstanding term period). Council reminds the Licensee that he should not be including policy information on the LIRD as this document is sent to the new insurer who is not entitled to any information regarding existing coverage through another insurer. Hence the rationale for a separate WCA to be completed and retained only by the

consumer and in the agent file. Separate LIRD and WCA documents are required to maintain the policy owner's privacy during the replacement process.

PENALTY AND FINAL DECISION

Council's Decision dated April 7, 2020 was delivered to the Licensee by mail on April 14, 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 \$1,250.00 and assessed 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 is in the public interest, this Decision is published, in accordance with sections 7.1(1) and 7.1(2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 22th day of May 2020.