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**Financial Services
Commission
of Ontario**

5160 Yonge Street,
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REGARDING the *Insurance Act*, R.S.O. 1990, c.1.8, as amended (the "Act"), in particular, sections 31(1) (c), 393(9) – 393(11) and 443(1) (2) & (3), and Ontario Regulation 347/04 (the "Regulation"), in particular, sections 4(1) and 13

AND REGARDING Robert Edge, life insurance agent

DECISION and ORDER

Introduction:

Pursuant to a Notice of Hearing dated April 26, 2011, an Advisory Board was duly appointed under section 393(9) of the Act. The hearing was conducted on November 3, 2011.

The allegations were set out in Schedule "1" as attached.

The report of the Advisory Board is attached.

Findings of Fact

The Advisory Board found that the first and second allegations were established. The Advisory Board did not find the third allegation to be established. I hereby adopt the findings of fact of the Advisory Board.

Recommendation of the Advisory Board:

The Advisory Board recommended that Mr. Edge's licence be suspended for a period of nine months.

The Advisory Board set out the factors it considered in recommending this penalty. Reference was made to other cases, in particular, *Conklin, Rutgers, and Gillespie*. The Advisory Board noted that these cases involved the following factors that it considered in making its recommendation for this case - the degree of co-operation with the Commission, stressful personal circumstances, awareness of the absence of E&O insurance, and doing business without E&O insurance.

The Advisory Board noted that "The most significant issues remain (a) that Mr. Edge had been given two opportunities to obtain E&O coverage and chose not to do so; (b) that he was without E & O insurance for a 12 month period; and (b) [SIC] that he conducted business with seven different clients , knowing that he was uninsured." The Advisory Board "found that Mr. Edge's stressful personal situation during the 12-month lapse of coverage did not absolve him from complying with the legal requirement to obtain E&O insurance."

The Advisory Board noted that "The purpose of penalties is to correct the behaviour of the agent and to set an example for the insurance industry."

The Advisory Board considered mitigating factors. These included "an unblemished history in his 31 years in the insurance business" and his co-operation with the Commission.

Decision:

The Advisory Board has found that Mr. Edge failed to maintain errors and omissions insurance and knowingly conducted business with clients in the absence of such insurance

Errors and omissions insurance is necessary to protect consumers from negligence by insurance agents. Insurance agents without errors and omissions insurance may not have sufficient assets to indemnify policy holders or applicants for insurance from such losses. Errors and omissions insurance coverage is provided on a "claims made" basis, and accordingly claims related to business done in prior years can be made regardless if the agent is or is not doing business in the current year. These claims would only be covered if an insurance policy is in force at the time the claim is made. Accordingly insurance agents that do not have errors and omissions insurance cannot be allowed to be engaged in the business of insurance.

Agents are required to attest on their licence applications to having errors and omissions insurance and to maintain it. Accordingly this requirement is plainly acknowledged by agents when they apply for their licences. In this case, Mr. Edge was also aware he did not have E&O insurance and failed to act when presented with two opportunities to obtain such insurance.

The purpose of penalties is to correct behaviour of the agent and to set an example for the industry.

Penalties ordered in previous cases related to maintenance of errors and omissions insurance have ranged from licence revocation to licence suspension. Generally where there was a finding of lack of suitability as a result of the failure to maintain errors and omissions insurance and the failure to facilitate an examination, revocation of the agent's licence has been ordered. In other circumstances, a period of suspension has been ordered.

The Advisory Board has not concluded that Mr. Edge is unsuitable to be a life insurance agent, and accordingly it recommended a period of suspension rather than revocation of his licence.

I agree that a period of suspension is required. Both the *Rutgers* and *Conklin* orders imposed periods of suspension of nine months, a requirement to take a course in professional ethics and an obligation to provide proof of E&O insurance. These cases involve some similarities with and some differences from the facts of this case. The similarities in facts are the lapse in E&O insurance for a similar significant period of time and stressful personal circumstances.

The differences in facts are Mr. Edge's willingness to facilitate an examination, offset by the fact that he conducted business while knowingly being uninsured. The *Rutgers* and *Conklin* cases reflect a knowing disregard of the authority of the Superintendent which is not present in this case. However this case reflects a knowing disregard for the law and a disregard for the security of the clients with whom Mr. Edge did business while uninsured which was not present in the *Rutgers* and *Conklin* cases. The cases also differ in that Mr. Edge ultimately acquired E&O insurance without requiring an order of the Superintendent. However, the impact of the offsetting differences is not sufficient to warrant a distinction in period of suspension. Accordingly I agree that a period of suspension of nine months should be imposed.

ORDER

Accordingly, the life insurance agent licence of Mr. Robert Edge is hereby suspended for a period of nine months commencing February 1, 2012 by this order.

Dated at Toronto, this fourth day of January, 2012

Original Signed By

Grant Swanson
Executive Director, Licensing and Market Conduct
by delegated Authority from
Superintendent of Financial Services

Schedule 1

The following allegations were set out in the Notice:

1. Edge has failed to maintain appropriate errors and omissions insurance (“E&O”), as is required by section 13 of Regulation 347/04.
2. Edge is not amenable to regulation, pursuant to sections 4(1)(i) and 8(d) of Regulation 347/04. Repeated efforts made to contact the agent were unsuccessful in obtaining required information regarding E&O insurance coverage.
3. As a result of the above violations, he is not suitable to maintain his licence pursuant to section 4(1) (i) of the Regulation.
4. Such further allegations as counsel for FSCO may advise.

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