

ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3
(the "Act")

And

In the Matter of Alexander Niles
(the "Agent")

DECISION
OF
The General Insurance Council
(the "Council")

This case involved an alleged violation of s. 481(2) of the Act. Specifically, that the Agent failed or refused to provide information requested by the Minister, through the AIC, by way of a formal demand for information (the "Demand"). In so doing, it is alleged that the Agent subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated September 30, 2021 (the "Report"). The Report was forwarded to the Agent for review, and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum.

The AIC conducted an audit in August 2021, which sought to verify that the CE credits declared on the licensees' licensing application for the 2020/2021 certificate term were correct. The auditees were selected at random and asked to provide proof of continuing education ("CE") credits, in accordance with the requirements of s. 31 of the *Insurance Agents and Adjusters Regulation*, AR 122/01 (the "Regulation"). The Agent was selected as an auditee and, in this instance, was asked to provide records relating to the 2020/2021 certificate term.

The Agent held a General Insurance Level 1 certificate of authority during the period of June 6, 2019 to September 24, 2021, when the Agent's certificate of authority was suspended due to the failure to produce CE records in accordance with s. 31(3) of the Regulation.

Section 31 of the Regulation provides:

(3) If the individual does not provide the records **within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

On August 23, 2021, the AIC emailed the Demand to the Agent which provided a deadline of 30 days to respond and produce the required CE certificates. The deadline provided was September 21, 2021. On September 7 and September 13, 2021, an email was sent by the AIC reminding the Agent to respond to the Demand by the deadline provided. On September 17, 2021, the AIC attempted to contact the Agent by way of telephone, however, the Agent did not answer the phone call and no voicemail message could be left. A final reminder email was sent by the AIC on September 20, 2021.

By the date the Report was provided to the Agent, the AIC still had not received a response to the Demand from the Agent. As such, the Agent's certificate was suspended in accordance with s. 31(3) of the Regulation.

After receiving the Report which detailed the above, the Agent provided all of the records requested under s. 31 of the Regulation, along with the following explanation dated October 15, 2021:

[...] I would like to apologize for not responding to the demand for a CE Audit in a timely manner. It was not my intention to ignore or not comply with the request, I first learned of the CE Audit through the mail as I had received documentation on Friday the 8th of October 2021 which outlined a report to the council. After reviewing the documentation, I had immediately informed both my people manager and Licensing officer to comply with the CE audit and have sent the required information as soon as I was able to.

In the future I do plan on being timely in all communications I will continue to be open and honest about the CE hours that I report and fully intend to comply with all future requests. Reviewing my email, I did discover the emails that were sent to me but unfortunately these were filtered out of my main email list and so when I check my emails I did not see these. On the file I did see that a call was placed, and no voicemail was able to be left. To further avoid any issues in the future I had updated my email and flagged all future communication as important. I also have double checked my voicemail is set up and mailbox is not full so as to avoid any miscommunication by phone. I take full responsibility for what has transpired, and I hope that the council may be willing to reinstate my AB license and waive the \$750.00 fine as a one time concession.
[...]

The licensing profile of the Agent confirms an entry from the Compliance Department to the Director of Licensing advising that the Agent had, as of October 15, 2021, passed the CE audit. The Agent did respond, but it was outside of the period set out in the Demand.

Discussion

The Minister of Treasury Board and Finance has delegated its authority to the AIC to investigate complaints against holders, and former holders, of certificates of authority. Pursuant to Ministerial Directive 01/11 to the AIC "[t]he Minister may direct the holder or former holder of a certificate of authority to provide to

the Minister within a reasonable period of time specified in the direction any information specified by the Minister relating to the matters in s. 480(1).” Subsection 2 states that “... *A person served with a direction ... who has the information **must** provide the information in accordance with the direction*” (emphasis added).

The Demand referenced compliance with s. 31 of the Regulation. Specifically, this section provides;

Records

- 31(1) An individual who holds a certificate of authority must keep a record issued by a continuing education provider respecting the continuing education courses completed by the individual during that certificate term.
(2) The records must be kept for a period of 3 years following the expiry of the certificate term and **must be provided to the Minister upon request.**
(3) If the individual **does not provide the records within 30 days after receiving a request from the Minister, the certificate of authority is suspended until the demand is complied with.**

The Demand itself is formed under s. 481(2) of the Act.

Section 481 of the Act provides, in part;

Demand for information

481(1) The Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified in the direction **any information specified by the Minister relating to the matters in section 480(1).**

(2) A person served with a direction under subsection (1) who has the information must provide the information in accordance with the direction.

Section 480 of the Act provides:

Sanctions affecting certificates

480(1) If the Minister is satisfied that the holder or a former holder of a certificate of authority [...] (b) **has contravened any provision of this Act or the regulations** or similar legislation in another jurisdiction or legislation that is a predecessor of this Act or the regulations, [...]

Section 780 of the Act stipulates:

Offences

780 A person who contravenes any of the following provisions is guilty of an offence:
[...] (c) in Part 3, sections [...] 481(2)

In this regard, the act of failing to provide the CE certificates (or “credits”) in accordance with s. 31(3) of the Regulation, and the potential violation of s. 481(2) of the Act regarding the Demand prompted the AIC to commence an investigation.

Regulatory offences such as these are strict liability offences. As such, the AIC has the onus to prove that the Demand was properly made upon the Agent, proper in the sense that they meet all of the requirements under the Act, and that the Agent did not comply. Once this occurs, the responsibility then shifts to the Agent to establish that due diligence was exercised in meeting the statutory requirement to respond. To substantiate this due diligence defence, the Agent must prove that all reasonable means were taken to avoid making the offence. There is nothing that requires the AIC to prove that the Agent's failure to respond was intentional. Given the facts in their entirety, it is clear that the Agent did not act with due diligence and the Council finds the Agent guilty of violating s. 481(2) of the Act and subsequently violated s. 480(1)(b) of the Act, as alleged.

In consideration of the evidence before it, and the appropriateness of the request to confirm CE records under the Regulation, the Council is satisfied that the Demand met the requirements of s. 481 of the Act. The Council agreed that the Agent was given a reasonable opportunity to respond to the Demand. Given the fact that the Agent failed to respond when called upon, the Agent has not met the burden of proof to establish the due diligence defence. As such, the Council finds the Agent guilty of violating s. 481(2) of the Act, and also finds that the Agent has subsequently violated s. 480(1)(b) of the Act.

In terms of the applicable sanction, the Act requires that all holders, and former holders, of certificates of authority produce information when called upon. The public is not well-served when agents fail to comply with demands, like the Demand made in this case. Pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001, the Council has the discretion to levy a civil penalty in an amount up to \$1,000.00. In this case, the Agent did not satisfy the audit by the deadline provided, however subsequently satisfied the audit after receiving the Report. In consideration of all of the evidence, the Council orders that a penalty in the amount of \$500.00 be levied against the Agent.

The civil penalty of \$500.00 must be paid within thirty (30) days of the mailing of this Decision. In the event that the civil penalty is not paid within thirty (30) days interest will begin to accrue at the prescribed rate. If the Agent has active certificates of authority at the time that the civil penalty becomes due, and that civil penalty has not been duly satisfied, the Agent's active certificates of authority will be suspended in accordance with s. 480(4) of the Act. Pursuant to s. 482 of the Act (excerpt enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a Notice of Appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Dated: December 2, 2021

[Original Signed By]
Ross Bucsis, Vice-Chair
General Insurance Council

Extract from the *Insurance Act, Chapter I-3***Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation, Alberta Regulation 126/2001***Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Contact Information and Useful Links for Appeal:

Email: tbf.insurance@gov.ab.ca

Phone: 780-643-2237

Fax: 780-420-0752

Toll-free in Alberta: Dial 310-0000, then the number

Mailing Address: 402 Terrace Building, 9515 – 107 Street Edmonton, AB T5K 2C3

Link: [Bulletins, notices, enforcement activities | Alberta.ca](#) – *Interpretation Bulletin 02-2021 – Submitting Notices of Appeal of Insurance Council Decisions*