

**DECISION**  
**of the**  
**LIFE INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**Respecting**  
**DEBBIE CURRAN**  
**(“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*.

In response to information received by Council 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 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 Licensee was given an opportunity to make submissions with respect to Council’s concerns.

On October 14, 2015, during a meeting of Council, the evidence compiled during the investigation was presented; upon review Council determined its intended decision. Pursuant to section 375(1) of the *Act* and *Regulation 227/91*, Council hereby renders its intended decision and corresponding reasons.

**ISSUES**

1. Did the Licensee 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 Licensee carry on the activities of an insurance agent while not insured under a policy of liability insurance (E&O) in violation of section 372.1(1) of the *Act*?
3. Did the Licensee 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*?

4. Did the Licensee violate section 4 of the *Code of Conduct* – Professionalism – Financial Accountability, by failing to continually maintain liability insurance?
5. Did the Licensee 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?

## **FACTS AND EVIDENCE**

1. At all material times, the 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, 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. The Licensee lapsed her E&O from January 1, 2015 to February 16, 2015 – this lapse was not disclosed to Council until the Licensee submitted her 2015 renewal application (the “Renewal”) on May 21, 2015.
4. An audit revealed the Licensee had previously lapsed her E&O and continued to hold Life and Accident and Sickness licences for the following periods:
  - April 1, 2007 – May 31, 2007
  - February 1, 2008 – June 4, 2008
  - February 1, 2011 – December 6, 2011
  - February 1 – 16, 2012
  - February 1, 2014 – March 11, 2014
5. The Licensee falsely declared on her 2011, 2012 and 2014 licensing renewal applications that she had continually maintained E&O.
6. The Licensee’s Managing General Agency (“MGA”) and Insurers provided to Council a summary of insurance business placed by the Licensee in periods when she lacked E&O; relevant business included multiple applications, involving multiple clients, spanning 2007, 2008, 2011 and 2012.
7. In reply to a letter from Council dated May 22, 2015, on May 25, 2015 Council received an email from the Licensee which advised:

- a. She acknowledged having received an email renewal notice from her E&O broker in December 2014.
  - b. Health reasons interfered with her ability to renew her E&O.
  - c. The requirement to notify Council of the 2015 lapse did not occur to her.
  - d. She was under the impression there was a sixty (60) day grace period to renew E&O providing no business was conducted.
  - e. She indicated any wrong-doing was unintentional.
  - f. She was not aware of any prior lapses.
8. In reply to a letter from Council dated July 28, 2015, on August 10, 2015 Council received an email from the Licensee which advised:
- a. She was not aware of the 2007 lapse; her previous sponsor handled payment of E&O directly off her pay.
  - b. She doesn't recall the 2011 lapse and may have done business without E&O.
  - c. The 2012 lapse was due to her broker not promptly receiving her payment by cheque.
  - d. She was having issues determining E&O requirements in 2014 and should have reported the 2014 lapse to Council.
9. The Licensee commented on the insurance business conducted when she was without E&O by emails dated September 21<sup>st</sup> and 24<sup>th</sup>, 2015, wherein she advised Council:
- a. It is her belief that her former sponsor would have let her know of the 2007 lapse and would have told her not to do business; she assumed that she had no knowledge that she lacked E&O.
  - b. She wrote an application on herself in 2008 and did not believe this to be an issue; there was no new money for 2008 fund switches.

- c. Reinstatement of her own policy in 2011 did not seem to be a problem; it did not occur to her to report to Council the delivery of policies in 2011 when she lacked E&O – she now understands that she was incorrect in her thinking.
- d. The excuse for not reporting to Council new business in 2011 is due to her memory; personal issues contributed to 2011 being a rough year.
- e. She did not believe she was required to report a 2012 policy delivery to herself.

10. Council found further significance in:

- a. The Licensee had previously disclosed to Council a 2008 lapse of E&O.
- b. The Licensee's previous E&O broker confirmed a gap in coverage from February 1, 2011 to December 6, 2011. On May 26, 2011, the Licensee advised this broker that she was unable to pay for E&O but completed her renewal application with Council on which she falsely declared that she had maintained E&O.
- c. The Licensee's previous E&O broker confirmed that payment for her 2012 E&O was late.

### **ANALYSIS**

It was the Licensee's responsibility to ensure that she continually maintained liability insurance (E&O) while holding Life and Accident and Sickness licences; to refrain from carrying on the activities of an agent while not insured under a policy of liability insurance and to notify Council without delay in the event her E&O lapsed or was cancelled.

On her licensing application dated June 7, 2007, the Licensee declared that she: i) would maintain liability insurance (E&O) as required under section 371(1.1) of the *Act* and section 12(1) of *Regulation 389/87*; ii) understood that she shall not carry on the activities of an insurance agent while not insured under a policy of liability insurance; and, iii) understood she was to notify Council without delay if her liability insurance (E&O) lapsed or was cancelled, pursuant to section 372.1(2) of the *Act*. Section 22 of the application contains a "Certification" section to which the Licensee affixed her signature affirming that she would notify Council in writing of any material change within 15 days.

The Licensee further acknowledged her requirement to disclose material changes, within 15 days, on her licensing applications dated May 24, 2012, June 6, 2013 and May 28, 2014.

Upon review of the facts and evidence before it, Council has determined that during the period of January 1, 2015 to February 16, 2015, the Licensee was in breach of section 371(1.1) of the *Act* and section 12(1) of *Regulation 389/87* by failing to continually maintain liability insurance (E&O) while holding Life and Accident and Sickness licences. The 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 Licensee further breached section 372.1(2) of the *Act*, by failing to notify Council without delay that her E&O had lapsed.

Council noted that the Licensee acknowledged having received an email renewal notice in December 2014. Council did not accept the Licensee's health reasons as a valid reason for failing to maintain E&O nor her mistaken understanding that there is a sixty (60) day grace period for maintenance of E&O, providing no business is conducted.

The Licensee advised Council that she was unaware of any lapses prior to 2015. An audit revealed the Licensee failed to continually maintain E&O on five (5) previous occasions when she held Life and Accident and Sickness licences, in violation of section 371(1.1) of the *Act* and section 12(1) of *Regulation 389/87*; prompt notice to Council was not given on four (4) of the five (5) lapses in violation of section 372.1(2) of the *Act*.

Review of the Licensee's 2011, 2012 and 2014 licensing renewal applications revealed false declarations 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.

The most egregious lapse occurred in 2011 when the Licensee advised her E&O broker that she was unable to pay for coverage; on the same day (May 26, 2011) the Licensee submitted to Council her 2011 renewal application which falsely declared that she had continually maintained E&O. The Licensee acknowledged that payment for E&O was late in 2012 and that she was having issues in determining E&O requirements in 2014.

The Licensee breached section 372.1(1) of the *Act* by continuing to carry on the activities of an agent in 2007, 2008, 2011 and 2012 without being insured under a policy of liability insurance (E&O). Completion of insurance business was confirmed by the Licensee's MGA and the Insurers. The Licensee was not forthcoming in disclosing the business she had acted upon when without E&O. Only through further questioning with a summary of the business provided to her did the Licensee offer further disclosure. The Licensee was aware, or ought to have been aware, that she had previously lapsed her E&O and had acted as an agent multiple times without the mandated coverage.

Council notes that even an isolated incident of failure to maintain E&O; acting as an agent without E&O and/or misrepresentation on a licensing application is serious enough to warrant discipline. The Licensee's violations, however, spanned a number of years, and involved numerous transactions.

Council concluded that the Licensee's conduct demonstrates repeated disregard for statutory compliance and that discipline is warranted.

### **DECISION AND PENALTY**

Council's Intended Decision dated November 13, 2015 outlined the foregoing background, analysis and conclusions on a preliminary basis. Having regard to its initial determination that the foregoing violations had occurred, Council imposed the following penalty and sanction pursuant to section 375(1.1)(c)&(d) of the *Act* and section 7(1) of *Regulation 227/91*:

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

As part of its Intended Decision, Council further informed the Licensee of her right to request a Hearing to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined her right to a Hearing and chose not to pursue a statutory Appeal; she instead expressly accepted the Intended Decision and duly paid the levied fine and investigation costs.

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 January 18, 2016.