

**DECISION**  
**of the**  
**LIFE INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**Respecting**  
**JOHN GUY ARNOTT**  
**(“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 12, 2016, during a meeting of Council, the evidence compiled during the investigation was presented; upon review Council determined its intended decision. Pursuant to sections 375(1) and 375(1.1) of the *Act* and *Regulation 227/91*, Council hereby renders its intended decision and corresponding reasons.

**ISSUES**

1. Did the Licensee repeatedly 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 repeatedly fail to notify Council, without delay, of the lapse of his liability insurance (E&O) in violation of section 372.1(2) of the *Act*?
3. Did the Licensee violate section 4 of the *Code of Conduct* – Professionalism – Financial Accountability, by failing to continually maintain liability insurance?

4. 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 he 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 his E&O from January 1, 2016 – February 2, 2016 – this lapse was not disclosed to Council until the Licensee’s E&O broker (“the E&O Broker”) notified Council on February 2, 2016.
4. Information provided by the E&O Broker confirmed the Licensee remained licensed without E&O for three (3) previous periods:
  - January 1, 2015 – May 29, 2015
  - January 1, 2014 – April 7, 2014
  - January 1 – 10, 2013
5. The Licensee failed to notify Council of any of the E&O lapses.
6. The Licensee falsely declared on three (3) licensing applications (2013, 2014, 2015) that he had continually maintained E&O.
7. By emails dated March 10, 2016 and September 8, 2016, the Licensee:
  - a. Acknowledged having received renewal notices for the 2016 lapse.
  - b. Advised that he expected his 2016 replacement coverage to be issued late.
  - c. Acknowledged making careless errors resulting in gaps in coverage for the last three (3) years.
  - d. Acknowledged coverage needed to be backdated to January 1, 2013.
  - e. Apologized as he did not understand the terms of the coverage.

- f. Acknowledged that he didn't pay enough attention to the questions being asked on his licensing renewal applications.
  - g. Confirmed that he was not covered under any E&O coverage through the General insurance agency ("the Agency") he represents.
  - h. Realized that "being a nice guy" doesn't excuse his errors.
  - i. Recognized that he needs to pay closer attention to these specific licensing requirements.
8. By email dated September 8, 2016, the Agency confirmed that:
- a. It doesn't look after any E&O for the Licensee.
  - b. The Licensee is not covered under the Agency's E&O coverage for life activities.
9. Council found further significance in that:
- a. Renewal notices were sent to the Licensee for each lapse.
  - b. For the 2016 lapse:
    - By email dated February 2, 2016, the E&O Broker advised the Licensee that the date of his application is February 2, 2016.
    - By email dated February 5, 2016, the Licensee advised the E&O Broker that he forgot to do the E&O renewal application.
    - By email dated February 8, 2016, the Insurer advised the E&O Broker that regulatory pressure to ensure compliance with licensing is becoming a very big issue for both the regulator and the Insurer – backdating of coverage was declined.
  - c. For the 2014 lapse:
    - By email dated July 8, 2014, the E&O Broker confirmed to the Insurer that the Licensee did not apply for coverage until April 8, 2014 and that the Licensee asked in June 2014 if coverage could be backdated to January 1, 2014.

- By emails dated July 8, 2014, the Insurer advised the E&O Broker and the E&O Broker advised the Licensee that coverage could not be backdated.

d. For the 2013 lapse:

- By email dated January 8, 2013, the Licensee informed the E&O Broker that he forgot to renew his E&O.
- By emails dated February 24 and 25, 2016, the E&O Broker confirmed that the Licensee did not apply for coverage until January 11, 2013; that coverage was not bound and issued until January 11, 2013 and that coverage was then backdated to January 1, 2013.
- Backdating was not completed until payment from the Licensee was received in May 2013.

## **ANALYSIS**

It was the Licensee's responsibility to ensure that he continually maintained liability insurance (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 licensing application (December 13, 2005) that he would maintain liability insurance (E&O) and understood he was to notify Council without delay if his liability insurance lapsed or was cancelled.

The Licensee further acknowledged on his licensing applications (2012, 2013, 2014, 2015) that he would notify Council within 15 days of any material change – this includes a lapse of E&O.

Upon review of the facts and evidence before it, Council has determined that the Licensee failed to maintain E&O while holding Life and Accident and Sickness licences on four (4) occasions and failed to notify Council of any of the lapses in violation of sections 371(1.1) and 372.1(2) of the *Act* and section 12(1) of *Regulation 389/87*. 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 falsely declared on three (3) licensing applications that he had maintained E&O, in violation of section 375(1)(a) of the *Act* and in violation of section 9 of the *Code of Conduct* – Dealing with the Insurance Council of Manitoba. The most egregious misrepresentation occurred when the Licensee had a gap in coverage from January 1, 2015 extending to May 29, 2015, and then two (2) days subsequent falsely declared on his May 31, 2015 that he had maintained E&O.

The Licensee acknowledged having received renewal notices; having made errors with respect to E&O; and, having gaps in coverage.

In 2013, the Licensee informed his E&O Broker that he forgot to renew his E&O and in 2016 that he forgot to complete his E&O renewal application.

Council considers backdated coverage to be a lapse in coverage – hence the need to backdate. In 2013, the Licensee requested backdating of coverage. In 2014, the Licensee was informed that backdated coverage was denied, and in 2016, the Licensee's Insurer again declined to backdate coverage recognizing that regulatory pressure to ensure compliance with licensing is becoming a very big issue.

The Licensee's correspondence with his E&O Broker demonstrates he was aware or ought to have been aware of the need to continually maintain E&O. Council therefore did not accept the Licensee's statement that he did not understand the terms of E&O coverage.

Council notes that even an isolated incident of failure to maintain E&O; failure to notify Council of a lapse 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 violations.

Council found the Licensee to have a repeated disregard for the licensing/regulatory requirement to maintain E&O and concluded that discipline is warranted.

### **DECISION AND PENALTY**

Council's Intended Decision dated November 8, 2016 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 \$750.00 and assessed partial investigation costs of \$500.00.

As part of its Intended Decision, Council further informed the Licensee of his right to request a Hearing to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right to a Hearing and chose not to pursue a statutory Appeal; he 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 December 14, 2016.