

**DECISION**  
**of the**  
**LIFE INSURANCE COUNCIL OF MANITOBA**  
**(“Council”)**  
**Respecting**  
**MATTHEW EDWARD AKINS**  
**(“Former 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)(e) of the *Act*, and section 7(2)(e) of *Regulation 227/91* to determine whether the Former 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 Former Licensee was given an opportunity to make submissions with respect to Council's concerns.

On March 21, 2018, during a meeting of Council, the information and evidence compiled during the investigation was presented. Upon review of the information and evidence, Council determined its then Intended Decision. Pursuant to sections 375(1) and 375(1.1) of the *Act* and *Regulation 227/91*, Council determined, based on its investigation and information received from the Former Licensee, that the issues were as follows:

1. Did the Former Licensee violate section 375(1)(a) deceit or dishonesty and (e) untrustworthiness, of the *Act*, by allowing an unlicensed individual to act as a Sales Leader by running team meetings and providing in-office training and field training to his sales team, thus contributing to the unlicensed individual acting without a license in violation of the *Act*?
2. Did the Former Licensee violate the *Code of Conduct*, section 1 (Interests of the Client), and section 4 (Professionalism) by putting his needs before the needs of the client's by allowing and/or encouraging the unlicensed individual to act as an agent by soliciting insurance products, to increase his team's sales?

3. Did the Former Licensee violate section 5 of the *Code of Conduct* (Confidentiality) by allowing the unlicensed individual to provide field training to, and to attend sales calls with, licensed agents where he would be privy to confidential client information?
4. Did the Former Licensee violate sections 375(1)(a) deceit or dishonesty and (e) untrustworthiness, of the *Act*, by asking his team members to falsely witness client signatures?
5. Did the Former Licensee violate the *Code of Conduct*, section 9 (Dealing with the Insurance Council of Manitoba) by providing false, evasive or incomplete statements to Council?
6. Did the Former Licensee violate section 391 of the *Act* (Holding Out) by advertising on a social media website that he worked for the Agency from October 2012 until Present?

### **INTENDED DECISION**

By its Intended Decision dated May 1, 2018, Council determined, on a preliminary basis, that the Former Licensee had committed the following violations, namely:

1. In breach of section 375(1)(a) and section 375(1)(e) of the *Act*, the Former Licensee allowed an unlicensed individual who has never held a licence to act as a Sales Leader by running team meetings and providing in-office and field training to licensed agents;
2. The Former Licensee violated section 1 of the *Code of Conduct* (Interest of the Client) by placing his team's sales targets ahead of clients' interests when he allowed an unlicensed individual to act as an agent by soliciting insurance products, in order to increase his team's sales;
3. The Former Licensee violated section 5 (Confidentiality) of the *Code of Conduct* by allowing an unlicensed individual to attend on sales calls with licenced agents where he would be privy to confidential client information;
4. The Former Licensee violated section 9 of the *Code of Conduct* (Dealing with the Insurance Council of Manitoba) by failing to respond honestly and with full disclosure to the Council;
5. In breach of section 375(1)(a) and section 375(1)(e) of the *Act*, the Former Licensee encouraged and/or permitted agents in his sales team to complete and sign applications while not being present at the time of the sale; and

6. In breach of section 391 of the *Act*, the Former Licensee represented or held himself out to the public that he was an agent, or was engaged in the insurance business, or was licensed as an agent.

Accordingly, based on these violations and pursuant to sections 375(1.1)(c) and (d) of the *Act* and section 7(1) of *Regulation 227/91*, Council's Intended Decision contemplated an Order that:

1. The Former Licensee be fined \$2,000.00 and assessed partial investigation costs of \$1,000.00;
2. Any application for a new licence be brought to Council for a review as to Suitability;
3. If a licence would be issued in the future, the Former Licensee would be required, as follows:
  - a. To complete the Life License Qualification Program (LLQB) Ethics and Professional Practice module and successfully pass the written exam;
  - b. To be under supervision for a continuous one-year period with a supervisor who must be approved by Council; and
  - c. That Council be provided with written confirmation from a new Sponsor that they have been provided with a copy of this Decision and wish to continue the Sponsorship.

The Former Licensee subsequently exercised his right to dispute Council's Intended Decision and to request a hearing before Council. The hearing occurred on September 11, 2018. At that time, the Former Licensee, who was not represented by counsel, gave evidence and made representations. The hearing was adjourned to afford Council the opportunity to carefully review the remarks made and evidence submitted by the Former Licensee.

### **ISSUE**

Has the Former Licensee provided sufficient particulars, through evidence or argument, to show why the Intended Decision should not be implemented, either in relation to any of the violations which were determined on a preliminary basis to have occurred, or with respect to the contemplated Order?

## **BACKGROUND**

The facts relied upon in its then Intended Decision were as follows:

1. The Former Licensee obtained his Accident and Sickness license on December 14, 2012 and his Life license on September 23, 2014.
2. The Former Licensee was contracted with the Insurer during the period between December 14, 2012 and October 19, 2017, at which time his contract was terminated, with cause.
3. On October 19, 2017, Council received the notice of the Former Licensee's termination with cause from the insurer. The Insurer alleged that the Former Licensee was terminated because he violated internal company guidelines and displayed a lack of judgment required to carry out sound business practices while representing the Insurer. An investigation was opened regarding the Former Licensee's conduct and documents were requested from the Insurer.
4. By email dated October 24, 2017, the Insurer provided Council with their results of an internal investigation conducted by the Insurer regarding the Former Licensee's conduct. In their letter, the Insurer alleged that the Former Licensee:
  - a. Created a letter of employment on the Insurer's letterhead for the unlicensed individual. The letter of employment contained false information regarding job title and compensation;
  - b. Allowed the unlicensed individual to provide field training and in-office training to his sales team;
  - c. Provided a listing of clients' information to other agents and asked them to complete and sign applications without seeing the clients; and
  - d. Gave a policy to one of his agents while this agent was not present at the time of sale. The Insurer described this practice as "*application swapping*".
5. In a handwritten statement to the Insurer dated July 28, 2017, the Former Licensee admitted that he created the employment letter and provided it to the unlicensed individual's landlord.
6. On December 1, 2017, the Former Licensee advised Council that "the unlicensed individual *provided training in positive mental attitude, effective time management, how to build rapport with clients, etc. he* [the unlicensed individual] *did not train on any insurance products.*"

7. In the package of information provided to Council on January 30, 2018, the Insurer included transcribed telephone interviews with the unlicensed individual, four Sales Representatives, and a letter from a former agent, which together indicated:
  - a. The unlicensed individual provided in-field training which included:
    - i. Sales presentations of Company products to potential clients.
    - ii. Answering questions regarding sales.
    - iii. Assisted in closing sales.
  - b. The unlicensed individual assisted in closing 50 sales between July and August 2017.
8. In a statement to Council dated November 21, 2017, Agent A, a former member of the Former Licensee's sales team, indicated that the Former Licensee *"had me sign up about 7 clients."* *"Mr. Akins [the Former Licensee] provided all the necessary information needed to fill out all of the forms. Most of the info provided was verbal, some of the info he had written on a piece of paper which he would shred afterwards."* Agent A indicated that *"I did what my District Manager told me to do in fear of him firing me."*
9. On November 7, 2017, the Insurer provided Council with a signed statement from a policyholder ("policyholder A"), to the Insurer, indicating that policyholder A purchased the coverage from the Former Licensee and that the Former Licensee was the only agent present at the time of the sale.
10. The signature on policyholder A's application did not belong to the Former Licensee but showed as belonging to another agent on his sales team, Agent B.
11. By email dated December 1, 2017, the Former Licensee advised Council that *"I have never given Agent B a sale."*
12. In emails dated November 9, 2017, December 1, 2017, December 4, 2017 and December 6, 2017, Agent B indicated to Council that:
  - a. *"At no time can I recall that Matt [the Former Licensee] gave me this policy to sign."* (November 9, 2017)
  - b. *"The signature looks like mine. I cannot verify that the other writings on the document is mine however neither can I remember completing this form."* (December 1, 2017)

- c. *"I cannot verify that all the writings on the form is my hand writing."* (December 4, 2017)
  - d. *"No I do not know whose writing it is."* (December 4, 2017)
  - e. He could not recall if he was present at the time of the sale. (December 6, 2017)
13. By email dated December 8, 2017, Agent A advised Council that the handwriting on the application with Agent B's signature does look like Agent A's handwriting.
14. As of March 21, 2018, on the social media website, LinkedIn, the Former Licensee continued to hold himself out as a District Manager with the Insurer, indicating employment from October 2012 to Present. The Former Licensee's sponsorship was terminated by the Insurer on October 19, 2017, at which point he was no longer licensed.

### **THE SHOW-CAUSE HEARING**

At the show-cause hearing on September 11, 2018, the Former Licensee testified under oath. The most salient evidence and submissions made by the Former Licensee for present purposes were as follows.

The Former Licensee indicated that at all material times, he acted as an independent contractor of the Insurer and that no contract existed between himself and the other agents of the Insurer. He further indicated that his role as a district manager was limited to sales and recruiting and did not involve any supervisory role over other agents of the Insurer. The Former Licensee appeared to minimize his role as a district manager until, in response to questioning, the Former Licensee agreed that he was responsible for collecting and reviewing weekly sales reports and verifying all sales and that agents of the Insurer would submit their sales to him and would ask his advice on matters pertaining to sales and other issues.

The Former Licensee produced a letter dated August 14, 2018 purportedly signed by one of seven policyholders whose applications and forms Agent A alleged that the Former Licensee had provided him with all necessary information in order to complete without meeting or contacting the policyholders. In that letter, policyholder A stated that the Former Licensee discussed insurance with him and *"indicated someone would come around and review some policies that would suit my needs ... A few weeks had pass [sic] and two guys showed up and I bought some insurance from them"*. However, it is worth noting that this letter produced by the Former Licensee for the purposes of the hearing runs contrary to Client A's previous signed statement of July 27, 2017 where he confirmed that he purchased insurance coverage from the Former Licensee and that *"[the Former Licensee] was the only agent present at the time of sale"*.

With respect to the allegations that he allowed an unlicensed person to act as a sales agent, the Former Licensee indicated that his involvement with the unlicensed individual was limited to telling the latter that he should focus on studying and should not engage in any insurance-related activities until he was licensed. The Former Licensee initially advised that he only became aware of the unlicensed individual's activities a few days before he was terminated on October 19, 2017. When asked to confirm when he first learned of the unlicensed individual's activities, the Former Licensee then indicated that he learned of it at the end of September 2017.

The Former Licensee's aforementioned statement is, however, contradicted by a screenshot of a text message conversation purportedly between the Former Licensee and Agent C, who was then the Insurer's regional manager. In that text message conversation, Agent C suggests that the unlicensed individual call the prospective client and the Former Licensee indicates that "[a licensed agent] *and* the unlicensed individual *are going to the* [client's] *address on Monday*". The exchange of text messages between the Former Licensee and Agent C took place on September 9, 2017, more than twenty days before the Former Licensee indicated that he learned of the unlicensed individual's activities.

Upon being presented with the aforementioned text message conversation, the Former Licensee denied that he had ever sent or received the text messages in the screenshot. When asked whether a different "Matt" was being referenced at the top of the text message conversation, the Former Licensee stated that he had "no clue" and that he had no recollection of ever sending the text message shown in the screenshot.

The Former Licensee was also directed to a Facebook message purportedly sent by the unlicensed individual to Agent C on August 5, 2017 where the former states "*Hey Agent C Akins [the Former Licensee] told me not to post in the impact until further notice because of compliance*". Although the Former Licensee agreed that it was likely the unlicensed individual who sent the message, he denied ever having a conversation with the unlicensed individual about not making any further posts about sales. When questioned as to the reason why the unlicensed individual would invent such a conversation, the Former Licensee could give no explanation.

Although the Former Licensee acknowledged that the unlicensed individual should not have been meeting with clients, as referred to in the text message conversation referenced above, he stated that the Insurer permitted and even encouraged unlicensed recruits to attend in-field training with licensed agents, even where no contract was in place between the recruit and the Insurer, as long as they did not solicit insurance. The Former Licensee then indicated that he was not aware that the unlicensed individual's contract had been terminated on July 19, 2017 and that throughout July, August and September 2017, he was under the impression that he was still an active or pending agent with the Insurer.

When it was pointed out to him that the Former Licensee had sent an email enclosing the unlicensed individual's reinstatement of contract package to a representative of the Insurer on September 28, 2017, the Former Licensee stated that at the time, he believed the unlicensed individual's contract had to be reinstated as six months had elapsed since his initial contract with the Insurer.

Similarly, the Former Licensee was asked about an email dated September 15, 2017 from himself confirming a telephone conversation he had with a member of the Insurer's compliance department in which he stated that he would "*have a conversation with the unlicensed individual about stopping all field training/activities and office training.*" When asked what he believed to be the compliance department's rationale for making such a request of him, the Former Licensee stated that it was because the unlicensed individual had been showing and selling family policies and that, as a result, the compliance department wanted him to "stop everything".

The Former Licensee agreed that his contract with the Insurer was terminated in October 2017 and that his LinkedIn page should have been promptly modified to reflect the fact that he was no longer contracted as a district manager with the Insurer as of October 19, 2017. He indicated that it wasn't the first thing on his mind and that he had then believed that he would be rehired by the Insurer, but later acknowledged that he made a mistake and modified his LinkedIn page once it was pointed out to him by Council.

The Former Licensee agreed that less than a month after recruiting the unlicensed individual as a sales agent on March 23, 2017, he prepared a letter to a prospective landlord of the unlicensed individual (the "Employment Letter") in which he stated that the latter was a "*Sales Manager with the Insurer since May of 2017*" and that "*His Annual Salary is \$150,000.00 plus bonus.*" The Former Licensee indicated that it was his impression that the unlicensed individual would be starting as a sales manager and that the Employment Letter should have read March 2017, not May 2017. Although he acknowledged that the Insurer was not paying the unlicensed individual an annual salary of \$150,000.00, he indicated that he believed that the unlicensed individual would be making that much based on a PowerPoint presentation he had seen around that time.

The Former Licensee asserted that throughout Council's investigation, he provided information and evidence as truthfully and honestly as possible and that he takes issue with any suggestion that he was not forthcoming throughout the process. He wanted to make it clear that he has never had any infraction with Council until the present situation and that he is an honest person who did as much as he could do under the circumstances.



## **ANALYSIS**

Section 375(1)(a) of the *Act* prohibits misrepresentation, deceit or dishonesty, and section 375(1)(e) of the *Act* provides that a holder or former holder of a license violates the *Act* if he or she has demonstrated incompetency or untrustworthiness.

In accordance with the *Code of Conduct* section 1 (Interest of the Client), section 4 (Professionalism), section 5 (Confidentiality) and section 9 (Dealing with the Insurance Council of Manitoba), the client's interests take priority over the agent's interests and an agent must act in good faith at all times. He or she must acquire an appropriate level of knowledge relating to his particular business and meet professional ethical standards. He or she must act with honesty, integrity, fairness, due diligence and skill, and take reasonable steps to protect clients' personal information and to ensure that personal information is not divulged and is only used for the purpose for which it is collected. An agent must respond honestly, with full disclosure, to inquiries from Council.

Pursuant to section 391 of the *Act*, any person who, not being duly licensed as an agent, a broker, or an adjuster, represents or holds himself out to the public as being an agent, broker, or adjuster, or as being engaged in the insurance business; or being duly licensed as an agent, is guilty of an offence.

Upon review of the information and evidence in respect of the Former Licensee having asked his team members to falsely witness client signatures in breach of sections 375(1)(a) and (e) of the *Act*, the Council makes no determination thereon.

The Former Licensee acknowledged that he had made a mistake in failing to promptly modify his LinkedIn page after his contract was terminated with the Insurer in October 2017. He also acknowledged in a handwritten statement to the Insurer dated July 28, 2017 that he created the Employment Letter and provided it to the unlicensed individual's landlord but did not admit it was wrong to do so at the hearing before Council.

As indicated above, the Former Licensee consistently sought to minimize his role and responsibility as a district manager and insisted that his contract was only with the Insurer, and not with the agents in his sales team. Only on questioning did he appear to acknowledge that as a licensee he owed duties other than purely contractual duties. Only on questioning did he acknowledge his role in reviewing and verifying sales and fielding questions from other agents on his sales team on matters pertaining to sales and other issues. Indeed, although the Former Licensee initially indicated that his only involvement with the unlicensed individual was to tell the latter that he should focus on studying, he later acknowledged that he saw the unlicensed individual at office meetings twice a week during the relevant period of time and that they would speak about how things were going between them.

The Former Licensee stated that he only became aware of the unlicensed individual's insurance-related activities shortly before his contract was terminated, that is, in or around the end of September 2017. However, this is contradicted by the September 9, 2017 text messages purportedly between Agent C and the Former Licensee where they discuss the unlicensed individual calling and making a sales presentation to a prospective client. Although the Former Licensee denies that he is the "Matt" referred to in the screenshot of the exchange, it is difficult to believe that Agent C would be discussing the unlicensed individual's sales activities to any other "Matt" having the initials "MA" (as referenced at the top of the text message conversation) when the unlicensed individual was on the Former Licensee's sales team.

The statement that he had no knowledge of the unlicensed individual's activities until late September 2017 is further contradicted by the August 5, 2017 Facebook message from the unlicensed individual to Agent C in which the former references a conversation with the Former Licensee: "*Akins [the Former Licensee] told me not to post in the impact until further notice because of compliance*". While the Former Licensee denied ever having the conversation referenced in the Facebook message, it is difficult to believe or understand why the unlicensed individual would fabricate a conversation with the Former Licensee to Agent C.

Both the September 9, 2017 text messages and the August 5, 2017 Facebook message suggest that the Former Licensee was not only aware of the unlicensed individual's activities but also, in the latter case, was concerned about keeping those activities quiet "*because of compliance*".

Moreover, the Former Licensee's statement is also contradicted in his email dated September 15, 2017 to the Insurer's compliance department where he stated that he would have a conversation with the unlicensed individual "*about stopping all field training/activities and office training*". The Former Licensee's explanations, i.e. the Insurer's compliance department was concerned about the unlicensed individual selling family policies, are not convincing.

The Former Licensee indicated that the Insurer permitted unlicensed recruits to attend in-field training with licensed agents and that he was not aware that the unlicensed individual's contract had been terminated in July 2017. Rather, he was under the impression that the unlicensed individual was still an active agent with the Insurer between July and September 2017. This statement is undermined by the fact that the Former Licensee had sent a reinstatement of contract package for the unlicensed individual to representatives of the Insurer on September 28, 2017.

His suggestion that the unlicensed individual's contract needed to be renewed after six months does not stand up to scrutiny, particularly in light of another contradictory piece of

evidence, namely an email from a representative of the Insurer dated July 11, 2017. In that email, the Insurer's representative advises that the unlicensed individual had failed his provincial exams for the third time. As a district manager in charge of recruiting, the Former Licensee did know or should have known that the unlicensed individual's third time failing his provincial exam meant that his contract would be terminated. Indeed, in her email to the Former Licensee, the Insurer's representative asked him to confirm whether it was the unlicensed individual's third try "so that [she] can process his term today".

The Former Licensee asserted that he has been truthful, honest and forthcoming throughout the process. However, the Former Licensee's decision to portray his involvement with and knowledge of the unlicensed individual's activities as being limited in the face of the foregoing evidence before Council suggests otherwise. The Former Licensee's denial of the authorship of the text messages from a "Matt" having the initials "MA" about a member of his sales team's selling activities is sufficient by itself to support a determination that he has violated section 9 of the *Code of Conduct* (Dealing with the Insurance Council).

The Former Licensee managed the district. The unlicensed individual was in his district. The Former Licensee was the team leader. The unlicensed individual was on his team. He attended twice weekly meetings. The unlicensed individual was present. The Former Licensee's professions of ignorance as to the unlicensed individual's status (examination failure and contract termination) and his activities involving selling (introductions to potential clients and answering questions from clients) are not credible. The Former Licensee admitted that his earnings were, at least in part, a function of his sales team's productions and it is clear, and the Former Licensee admitted, that his sales team's productions increased during the period of the unlicensed individual's activities.

Council is satisfied that the Former Licensee allowed an unlicensed individual to engage in selling activities in breach of sections 375(1)(a) and (e) of the *Act* and section 5 of the *Code of Conduct* (Confidentiality) and that, in doing so, he placed his interests and his team's sales targets ahead of clients' interests in breach of section 1 of the *Code of Conduct* (Interest of the Client).

## **DECISION AND ORDER**

Council concluded that the following violations have occurred:

1. In breach of section 375(1)(a) and section 375(1)(e) of the *Act*, the Former Licensee allowed an unlicensed individual who has never held a licence to act as a Sales Leader by running team meetings and providing in-office and field training to licensed agents;
2. The Former Licensee violated section 1 of the *Code of Conduct* (Interest of the Client) by placing his team's sales targets ahead of clients' interests when he allowed an

unlicensed individual to act as an agent by soliciting insurance products, in order to increase his team's sales;

3. The Former Licensee violated section 5 of the *Code of Conduct* (Confidentiality) by allowing an unlicensed individual to attend on sales calls with licenced agents where he would be privy to confidential client information;
4. The Former Licensee violated section 9 of the *Code of Conduct* (Dealing with the Insurance Council of Manitoba) by failing to respond honestly and with full disclosure to the Council;
5. In breach of section 391 of the *Act*, the Former Licensee represented or held himself out to the public that he was an agent, or was engaged in the insurance business, or was licensed as an agent.

### **PENALTY AND FINAL DECISION**

Council's Decision dated October 12, 2018 was served to the Former Licensee on November 6, 2018. The Decision outlined the foregoing background, analysis, and conclusions. In consideration of the foregoing violations, Council imposed the following penalty and sanctions pursuant to sections 375(1.1)(c) and (d), and 396(1) of the *Act* and sections 7(1) and 7(2)(b) of *Regulation 227/9*:

1. The Former Licensee be fined \$2,000.00 and assessed partial investigation costs of \$1,000.00;
2. Any application for a new licence be brought to Council for a review as to Suitability;
3. If a licence would be issued in the future, the Former Licensee would be required, as follows:
  - a. To complete the Life License Qualification Program (LLQP) Ethics and Professional Practice module and successfully pass the written exam;
  - b. To be under supervision for a continuous one-year period with a supervisor who must be approved by Council; and
  - c. That Council be provided with written confirmation from a new Sponsor that they have been provided with a copy of this Decision and wish to continue the Sponsorship.

Pursuant to section 389.0.1(1) of the *Act*, the Former Licensee had the right to appeal this Decision within twenty-one (21) days of receipt. The Former 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 are 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 11<sup>th</sup> day of December, 2018.