

## **Summary of Appeal Decision Respecting**

### **Dylan Nathaniel Alexander (the “Former Licensee”):**

*This is a Decision of The Insurance Agents’ and Adjusters’ Licensing Appeal Board (the “Panel”), which heard this case on January 9, 2023. It is an appeal from a decision of the Life Insurance Council of Manitoba (the “Council”) which was rendered on June 3, 2021.*

*In its 2021 decision, the Council had found that the Former Licensee was in violation of ss. 375(1)(a) Misrepresentation and 375(1)(e) Incompetency and Untrustworthiness, of The Insurance Act of Manitoba (the “Act”), and section 4 (Professionalism) of the Life Insurance and Accident and Sickness Agent’s Code of Conduct (the “Code”) and imposed a fine of \$7,500.00 and assessed partial investigation costs of \$4,000.00. In addition, Council’s decision indicated that any future licensing application submitted by the Former Licensee must be reviewed and approved by Council. The decision of the Council was under ss. 375(1) and 375(1.1) of the Act and Insurance Councils Regulation 227/91.*

*The Former Licensee appealed this decision of Council to The Insurance Agents’ and Adjusters’ Licensing Appeal Board on June 22, 2021.*

*During the appeal, the Panel heard evidence from the Former Licensee and from Council outlining the facts of the case. In its decision, the Panel found the following:*

- *That the Former Licensee did breach section 375(1)(e) Incompetency, but not Untrustworthiness of the Act in that he did not display competency in his preparation of applications. There were errors in completion of the applications and failures to follow written instructions in the applications completed for Proposed Insureds. The most basic requirements of obtaining void cheques and comparing photo identification were not adhered to;*
- *That the Former Licensee was not properly supervised by the Former Sponsor; and*
- *That the Former Licensee breached section 4, Professionalism, of the Code as the Former Licensee did not display the requisite professionalism and skill expected on an insurance agent, as he did not ensure that the needs of clients were met in the completion of their applications.*

*The Panel found that a fine of \$4,000.00 and investigation costs of \$2,000.00 were appropriate in this case.*

*An addendum was issued on August 12, 2023 which indicated that as the Former Licensee was not guilty of untrustworthiness, that the Former Licensee’s suspension should be removed, and that the Former Licensee may make an application for a licence to the Superintendent of Insurance of Manitoba upon completion of payment of the fine and costs which were to be paid within 12 months of the date of August 3, 2023.*

*The entirety of the written decision of the Panel rendered on August 3, 2023 and the addendum dated August 12, 2023 is included below.*

**REASONS FOR DECISION OF THE INSURANCE AGENTS' AND ADJUSTERS'**

**LICENSING APPEAL BOARD**

**Respecting**

**DYLAN NATHANIEL ALEXANDER**

**(the "Former Licensee")**

This is an appeal by Dylan Nathaniel Alexander (the "Former Licensee") from a decision of the Life Insurance Council of Manitoba (the "Council") dated June 3, 2021. The appeal hearing by a panel of the Insurance Agents' and Adjusters' Licensing Appeal Board (the "Panel") took place on January 9, 2023.

The decision of Council was that the Former Licensee was guilty of incompetence, untrustworthiness and a lack of professionalism in violation of The Insurance Act, Sections 375(1)(a) Misrepresentation and 375(1)(e) Incompetency and Untrustworthiness. Council also found that he was guilty of a breach of Section 4 Professionalism of the Life Insurance and Accident and Sickness Agent's Code of Conduct (the "Code").

Council made its decision following a show-cause hearing that was held on April 13, 2021.

This matter involved the Former Licensee's employment with [redacted], his former sponsor (the "Former Sponsor"). The Former Sponsor had made a complaint to Council in November, 2018 following the Former Sponsor's review of the Former Licensee's completion and submission of numerous life insurance applications. The Former Sponsor complained that there were administrative discrepancies identified in the applications completed by the Former Licensee in terms of client addresses, employers, telephone numbers and banking information.

An investigation was carried out by Council, which revealed issues including invalid e-mail addresses and questionable employment information specified on needs analyses and/or applications for a number of Proposed Insureds (the "Proposed Insureds"). The Former Sponsor informed Council that on thirteen (13) applications completed by the Former Licensee, only one policy remained active (K.P.) and that twelve (12) policies being for Proposed Insureds, being for H.A., D.M., R.N., R.G., C.H., A.M., J.N., S.D. & M.D., M.H. & S.H., S.N., P.R. and D.K. were inactive. In addition, attempts to obtain the first month's premium from eleven (11) of the thirteen (13) Proposed Insureds were

returned by the banks for various reasons and eight (8) were returned as invalid accounts. The Former Sponsor indicated to Council that it was unable to contact a number of Proposed Insureds due to inaccurate contact information submitted by the Former Licensee, including inaccurate phone numbers and/or mailing addresses.

In Council's investigation, it attempted to contact all Proposed Insureds under the contact information that had been specified on their applications and through contact information submitted to Council by the Former Licensee during the course of the investigation. It was found by Council through its investigation that the majority of Proposed Insureds' information was inaccurate or unverifiable. In particular, the Council investigation determined that six (6) of the Proposed Insureds had telephone numbers that were not in service or the wrong number, two (2) Proposed Insureds had e-mail addresses that were not found at gmail.com and that three (3) of the Proposed Insureds had residential addresses that did not exist or were incomplete and inaccurate. Seven (7) letters to Proposed Insureds were returned to Council as moved/unknown address incomplete or unclaimed. In addition, attempts to contact nine (9) Proposed Insureds at their place of employment as specified on their applications were not successful. Two (2) of the Proposed Insureds, being D.M. and R.G., indicated in writing to Council that they had not applied for life insurance and one (1) Proposed Insured indicated this to the Former Sponsor. None of the Proposed Insureds testified at the show-cause hearing or this hearing. The Former Licensee testified that they had all applied for insurance.

In addition, the Former Licensee had submitted to the Former Sponsor three (3) different home addresses for R.N. The Former Licensee also specified the same banking information on insurance applications for two separate Proposed Insureds (D.M. and R.N.).

Before Council at the show-cause hearing, the Former Licensee advised Council that these issues were not brought to his attention by the Former Sponsor while he remained under their sponsorship. The Former Sponsor suspended the Former Licensee by way of letter dated October 22, 2018. This letter brought the questionable business to the Former Licensee's attention and requested his comments. The Former Licensee resigned by e-mail dated November 5, 2018. At the show-cause hearing, the Former Licensee attributed the application discrepancies to a lack of supervision as he was not trained on how to complete applications so he allowed the Proposed Insureds to complete their electronic insurance applications on his phone or e-mail. He stated that he had witnessed all Proposed Insureds electronically sign their applications, that he had reviewed their identification and he denied having forged any signatures.

Council found a dissonance between the position taken by the Former Licensee and the reality of his situation. Each application of insurance contains a section entitled "Agent Certification", which states that:

I certify that: I personally have asked and recorded completely and accurately answers to all questions on this application; to the best of my knowledge and

belief all answers provided by the Proposed Primary Insured/Spouse for and on behalf of the applicants on all completed parts are true...

In addition, Council noted that in the Payment Authorization section of the application form, it refers to taping a blank voided cheque for all drafts from the chequing account. The Former Licensee did not do so. Council concluded there was no excuse for incorrect entry in the application form of a proposed insured's banking information. Council found that the Former Licensee failed to take appropriate care for the process and attention to detail that would enable anyone to complete the necessary forms accurately. This plenitude of errors and omissions was as a result of significant negligence and incompetence on the part of the Former Licensee. On this basis, Council found that the Former Licensee was guilty of misrepresentation, incompetence, untrustworthiness and lack of professionalism in violation of Section 375(1)(a) (misrepresentation) and 375(1)(e) (incompetency and untrustworthiness) of *The Insurance Act* and Section 4 – Professionalism under the Code. This section provides that:

Agents must act in good faith at all times. They must acquire an appropriate level of knowledge relating to their particular business and meet professional ethical standards. They must act with honesty, integrity, fairness, due diligence and skill.

On this basis, Council found that the penalty should be that:

1. The Former Licensee be fined \$7,500.00 and assessed partial investigation costs of \$4,000.00; and
2. Any future licensing applications submitted by the Former Licensee must be reviewed and approved by Council.

Under Section 389.3(3) of *The Insurance Act*, an appeal under subsection 389.0.1(1) is a new hearing and the appeal board may consider any material filed or evidence submitted by the appellant or the superintendent touching on the subject of the appeal, and any other materials or evidence it considers relevant.

At the hearing, the Panel heard evidence from Compliance staff on behalf of Council. Compliance staff testified that Council received notice from the Former Sponsor and found a number of discrepancies in reviewing the Former Licensee's applications. Council's Former Investigator investigated and found a number of discrepancies in the applications, including invalid e-mails and addresses. The Investigator reviewed sixteen (16) life insurance applications, thirteen (13) of which were a concern in the investigation. The Former Sponsor had attempted to contact a number of Proposed Insureds by telephone and found a number of telephone numbers were not in service, a number of e-mails were not found and seven (7) letters sent to Proposed Insureds had been returned. Compliance staff testified that it is important that banking and contact information be accurate as money has to flow in order for policies to be activated. Compliance staff reviewed a number of errors on applications.

As an example, the Compliance staff member reviewed the application for individual term life insurance by R.N. No driver's licence was included for identification purposes and there was no voided cheque provided with this application. The Agent Certification requires that the agent review the identification provided by the applicant and confirm that the name and address details of the applicant are consistent with the application, that the photograph bears a good likeness to the applicant and that the name and address details in the application are consistent with the applicant's identification. The certification also states that the agent has not put their personal interest before their client's and they believe this transaction to be in the best interest of their client at this time.

Compliance staff also reviewed the Intended Decision of Council, the fine imposed by Council after the show-cause hearing and how costs were calculated. Costs were calculated at \$75.00 per hour and Council's Former Investigator spent 56.25 hours investigating. This resulted in costs of \$4,218.00 and so Council awarded \$4,000.00. At this stage, Council estimates that 118 hours were spent on the investigation, resulting in total costs of \$8,850.00, not including legal fees.

Counsel for the Former Licensee cross-examined the Compliance staff member. The Compliance staff member did not conduct the investigation themselves. Council's Former Investigator contacted some of the applicants' employers, who indicated that the Proposed Insureds had not worked at the employers stated on their applications. With regard to C.H., the employer advised on March 20, 2019 that she did not work at the employer. The date of the application for C.H. had been July 1, 2018 and it was acknowledged that the investigator had spoken to the receptionist, who might not know everyone who worked for the employer. Compliance staff was unable to answer whether Council's Former Investigator had asked whether C.H. had ever worked there.

During the investigation, Council's Former Investigator obtained a statement from the Supervisor of the Former Licensee. In this Statement, the Supervisor indicated that in May of 2018, the Former Licensee wrote four insurance deals and he only helped him with the first one and the Former Licensee had done the other three on his own. In July, 2018, five insurance applications were submitted and the Supervisor helped him on one. Given that the Supervisor was aware that the Former Licensee was having some difficulties with writing applications, it is unclear why his supervision only appears to have extended to two applications during the relevant time period, from May to September of 2018. There was no indication that social insurance numbers were incorrect and of the applications prepared by the Former Licensee, only two were withheld by the Supervisor. The Former Licensee did not provide a void cheque with any of the applications, although the documents indicated that this was a requirement. Despite this, it appears that these applications were not withheld by the Supervisor.

The Former Licensee also testified before the Panel. He confirms his supervision was carried out by the Supervisor. He indicated that the Supervisor did not supervise him in taking applications and that he had also asked him to help with the taking of applications. The Supervisor had told him it was okay to take applications on the phone. With regard

to the major concerns raised by the Former Sponsor later on, the Former Licensee didn't know for example that he needed to take photo identification. He indicated that the Supervisor had never raised concerns with him about his applications. Other employees had also complained about poor supervision under the Supervisor. In this regard, the Former Licensee referred to a letter from colleagues that indicated that after the new licensees received their licenses, the Supervisor no longer went with the agent for field training as they had their own appointments. G.C. provided correspondence which indicated during his training with the Supervisor, the Supervisor told them that the standard was that every person needed \$300,000.00 of life insurance face value for 35 years. He was also told that the Financial Needs Analyses (FNAs) were to be completed after policies were written.

The Former Licensee testified as to the problems raised by Council and the Former Sponsor with his policies. One particular concern raised was with regard to two applications which had the same bank account for two different applicants. It was the Former Licensee's evidence that Google was saving documents and the bank account number populated in his next application. He testified that all applicants did want insurance and that they did sign the applications themselves. With regard to errors in the applications, he indicated that the Supervisor would not help him. He also testified that the Supervisor did not tell him to get identification from clients or to confirm their bank account information and addresses. In cross-examination, the Former Licensee acknowledged that if monies are not paid to the Former Sponsor, people would not obtain their insurance. He indicated that he was unable to control if people didn't have funds. With regard to the reason why he did not ask for photo identification, he indicated that he did not know that this was a requirement. The Former Licensee acknowledged that he should have gotten identification from applicants but no one had advised him to do so. He indicated that the Supervisor had not walked him through the application processes. He acknowledged that he should have read the certifications on the applications and he did not do so.

In argument, counsel for the Insurance Council stated that the applicants had wanted to have life insurance and ultimately they were not insured in these cases. With regard to the Code, it was argued that the Former Licensee did not meet the standard required under the Code and the Former Licensee did not take responsibility for his completion of the applications. It was also argued that it was not an excuse for the Former Licensee to say that he had not been trained. Council acted reasonably in finding the Former Licensee in breach of Section 375(1)(e) of Incompetency and Untrustworthiness. It is the position of Council that the fine of \$7,500.00 should be maintained and costs should be increased to \$7,000.00.

Counsel for the Former Licensee argued that there was no evidence anyone was harmed and no individuals had made a complaint that they had not obtained insurance. It was argued that the Supervisor, turned down the Former Licensee's request for help. Under *The Insurance Act*, Life Insurance Agents and Accident and Sickness Agents Licensing Rules (the "Rules"), Section 7(1) provides that the holder of a life insurance agent licence

who has not held it for at least one continuous year must be supervised by a supervising agent.

Under clause 9(1)(a) of the Rules, it provides that a supervising agent or supervising agent's designate must review all applications for insurance completed by the agent under his or her supervision and ensure that the agent completes a needs analysis in connection with each application. Under clause 9(1)(c), the supervising agent must counter-sign each needs analysis referred to in clause 9(1)(a). The Supervisor signed applications but there is no indication that feedback was given where there were problems.

In reply argument, counsel for Council indicated that Council did not find fraud or deceit on the part of the Former Licensee, but it did find unprofessional conduct on his part. It acknowledged there was some fault on the part of the supervisor as when the Former Licensee was having trouble with applications and interviews, the supervisor did not step in.

In reviewing the evidence and the arguments of both parties, this Panel finds that the Former Licensee did breach Section 375(1)(e) of *The Insurance Act* in that he did not display competency in his preparation of applications. There were errors in completion of the applications and failures to follow written instructions in the applications completed for Proposed Insureds. The most basic requirements of obtaining void cheques and comparing photo identification were not adhered to. However, the Panel does find that throughout the Former Licensee's employment, he was not properly supervised by the Former Sponsor. As an example, it is noted by the Panel that the Supervisor signed off on applications which had inconsistent responses on various documents for the Proposed Insureds. As an example, the Supervisor signed off on the application for C. H., despite the lack of a void cheque, and the discrepancy in income between C.H.'s application and the FNA "Data You Entered" pages. In the application, it was indicated that C.H.'s gross monthly earnings were \$4,000.00, whereas under the FNA, gross monthly earnings were indicated as being \$5,000.00 per month. Despite this, the Supervisor had initialed and signed off on this FNA. Likewise, similar errors were found with regard to the applications of R.G. and D.K. For R.G., his gross monthly earnings were indicated at \$3,000.00 on his application and \$3,500.00 in his FNA. For D.K., his gross monthly earnings were indicated as being \$2,500.00 in the application and \$2,800.00 on the FNA, which was also signed off by the Supervisor.

In addition, the Panel finds that under Code 4, Professionalism, the Former Licensee did not display the requisite professionalism and skill expected of an insurance agent. He did not ensure that the needs of clients were met in the completion of their applications. He should have taken appropriate steps, such as obtaining identification from applicants as was required under the Agent Certification.

The Panel does not find that he demonstrated untrustworthiness. He testified that he did have all applicants sign their applications. Council did not establish on a balance of probabilities that this was not the case.

The Panel accepted the Former Licensee's explanations regarding how the two different applications had the same bank account information and that the applicants did want insurance and did sign the applications. Given these explanations, the Panel does not find that the Former Licensee displayed untrustworthiness. The Panel had significant concerns with regard to the lack of supervision of the Former Licensee, who at the time was 20 or 21 years old and a new life insurance agent. Of particular concern to the Panel is the failure of the supervising agent to identify the obvious errors and shortcomings in the documents prepared by the Former Licensee he was required to supervise. As an example, if the Former Licensee did not include a void cheque and one was required, these applications should not have been accepted by the supervising agent.

Given the Panel has found incompetency and a breach of professionalism but not untrustworthiness, and taking into account the contribution of the failure of the Former Sponsor to properly supervise the Former Licensee, the Panel orders that the Former Licensee be fined in the amount of \$4,000.00 and that he pay investigation costs in the amount of \$2,000.00. The fine is payable to the Minister of Finance, and the costs are payable to the Insurance Council of Manitoba. The Panel orders that the Former Licensee pay the fine and costs within 12 months from the date of this Order. All cheques paying the fine and costs should be provided to the Insurance Council office.

These Reasons for Decision may be signed in counterparts.

## **ADDENDUM TO REASONS FOR DECISION OF THE INSURANCE AGENTS'**

### **AND ADJUSTERS' LICENSING AND APPEAL BOARD**

**Respecting**

**DYLAN NATHANIEL ALEXANDER**

**(the "Former Licensee")**

This Addendum is further to the Reasons for Decision dated August 3, 2023.

With regard to the suspension of the appellant's licence, as the Panel has found the Former Licensee was not guilty of untrustworthiness, the Panel further orders that the Former Licensee's suspension should be removed, and that the Former Licensee may make an application for a licence to the Superintendent of Insurance of Manitoba subject to the provisions of *The Insurance Act* C.C.S.M, c140, upon completion of payment of the fine and costs which are to be paid within 12 months of the date of August 3, 2023.

These Reasons for Decision may be signed in counterparts and may be executed by way of facsimile or electronic signature, and if so, shall be considered an original.