



Insight

The Voice of the Alberta Insurance Council

ON-LINE RENEWALS

The AIC has moved away from a paper-based system of renewals and has implemented a mandatory on-line renewal system which will begin with the Life and Accident and Sickness agent renewals in December of 2008. The General agents and Insurance Adjusters on-line renewals will commence in 2009. Your certificate(s) may be renewed on-line at the AIC website www.abccouncil.ab.ca, however, to use this service you must have a User ID and Password. If you have lost that information and have not completed your profile you must do so before proceeding to complete your renewals. If you previously completed your profile, including the security question, and have lost or forgotten your password a new one can be obtained off the web site. If you did not complete your profile you must contact the AIC to obtain a new password.

Payments for renewals can be made on-line using either Visa or Master Card. Agents or adjusters who do not wish to use a credit card on-line may send payment of their fees to the AIC before renewing their certificate and request that the payment be applied to their account. Following receipt of the appropriate fee payment the agent or adjuster can log on the AIC web site and complete the renewal. A link to the certificate(s) issued on-line will be sent to the agent immediately by email. Once your certificate(s) have been issued you may retrieve or print a copy of that certificate(s) under your login at any time through the year.

The AIC is also positioned to accommodate bulk payments in cases where agencies, adjusting firms or insurers wish to make the payment for their agents' or adjusters' certificates. Agencies, Adjusting Firms or Insurers wishing to use this service should contact one of the AIC offices to obtain further information.

ENTER YOUR CE COURSES ON-LINE

The AIC has expanded the services on its web site in regard to Continuing Education. Once you have recorded your CE course information under your personal profile you will be able to determine whether the course(s) you

have entered are valid. In the event that you entered a course which has not been approved by the Accreditation Committee and added to the list of approved courses, an indication that the course is **not valid** will be displayed. If you see such a message please contact the provider of the course to confirm the validity of the course. Invalid courses are not included in the calculation for trial audit purposes. A summary of all courses is provided and a trial audit for compliance is performed as you enter and save your information.

CONTINUING EDUCATION UPDATE

To allow for a smooth transition from the current system of reporting continuing education credits to the on-line system of reporting, agents and adjusters will continue to make a declaration regarding their continuing education on their next renewal. When completing their 2010 renewals in the following year an agent or adjuster will not be permitted to renew his or her certificate unless sufficient CE credits have been entered on-line. As a result, all agents and adjusters would be well-served to enter their continuing education credits on the web site prior to the adoption of mandatory online renewal.

How long must I retain my continuing education certificates?

A common question arising from the continuing education requirement is: How long must I retain my continuing education certificates? The current regulation which deals with continuing education does not set a time limit for the period of retention. As such, agents and adjusters should retain these certificates since inception of the requirement. The AIC is currently working with the government to effect a change in the regulation which would establish a specific period for the retention of certificates. However as this change is only proposed at this point agents and adjuster should follow the current standard which is to retain all certificates.



Alberta Insurance Council

THE PAYMENT OF REFERRAL FEES BY AGENTS

One of the questions that I have been frequently asked is whether or not insurance agents can pay referral fees to unlicensed individuals. To the consternation of some, I usually answer the question by saying: “It depends.”

Prior to 2001, the *Insurance Act* (the “Act”) contained a broadly-written provision that spoke to the payment or compensation of unlicensed individuals. This section read as follows:

“No insurer licensed under this Act and no officer, agent or employee of an insurer and no insurance agent authorized under this Act shall, directly or indirectly, pay or allow or offer or agree to pay or allow any commission or other compensation or anything of value to any person in respect of the effecting or undertaking of insurance in Alberta, unless that person holds at the time a subsisting insurance agent’s certificate of authority under this Act.”

The effect of this section was that agents could not pay referral fees to unlicensed individuals where insurance was placed. It could also be read to prohibit raffles or other types of promotional practices where incentives were given to clients because it not only prohibited payments but giving “anything of any value”.

When the *Insurance Act* underwent a major amendment that became effective in 2001 this section was repealed and one of the new sections governing the compensation of individuals was much more limited in scope. Section 499 reads as follows:

“No insurer, no officer, employee or agent of an insurer and no insurance agent may, directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person acting or offering to act as an insurance agent in Alberta, unless that person is authorized to act as an insurance agent under this Act.”

While similar in many respects, the critical difference

between the old and new provisions is that the new provision only prohibits the compensation where the individual being paid is “...acting or offering to act as an insurance agent.” Given this, when looking at any situation to determine whether or not a referral payment to an unlicensed individual is permitted, one must first look to the definition of “insurance agent” as found in the Act.

Section 1(bb) of the Act defines “insurance agent” as someone who, for compensation:

- (i) solicits insurance on behalf of an insurer, insured or potential insured;
- (ii) transmits an application for insurance from an insured or potential insured to an insurer;
- (iii) transmits a policy of insurance from an insurer to an insured,
- (iv) negotiates or offers to negotiate insurance on behalf of an insurer, insured or potential insured; or
- (v) enrolls individuals in prescribed contracts of group insurance

but does not include an insurer.

Where the unlicensed individual receiving the referral fee undertakes any “insurance agent” activities that fall within this definition the payment of any referral fee would be prohibited. Further, any licensed insurance agent who pays a referral fee in those circumstances could be subject to disciplinary proceedings that could result in the imposition of a civil penalty, certificate suspension or revocation.

In many cases it is difficult to draw an exact line between conduct that requires a certificate and conduct that does not. Obviously, where an unlicensed person handles application or policy documents the argument that they are acting as an agent is quite strong. However, there are many types of innocuous activities that could arguably fall within the sphere of “soliciting” as set out in the agent definition. Therefore, we would recommend that some degree of thought and planning take place before you enter into any insurance referral fee arrangement with an unlicensed person.

The writer is the Director of Legal and Regulatory Affairs for the AIC and is based in the Calgary Office.

Alberta Insurance Council



RECENT DISCIPLINARY ACTIONS

In the Matter of the General Insurance Council (the "GIC") and the Appeal of Agent "M"

This case involved four allegations pursuant to ss. 480(1)(a) of the Act and four allegations pursuant to ss. 505(2) and s. 780(d) of the Act. Specifically, in the first four allegations it was alleged that the Agent altered premium amounts on policy declaration pages and then, in turn, invoiced retail brokers (and therefore their clients) the amended premium amounts. As a result, it was alleged that the Agent made a misrepresentation or acted in a deceitful, untrustworthy or dishonest manner contrary to section 480(1)(a) of the Act. In the remaining four matters it was alleged that the Agent charged additional fees before obtaining an agreement in writing as required by s. 505(2) of the Act and that the Agent thereby breached a section of the Act as contemplated by s. 480(1)(b).

After reviewing the evidence in its totality, the GIC was convinced that the Agent had altered the policy documents in question and that in so doing the Agent had made a misrepresentation or acted in a deceitful, dishonest and untrustworthy manner as contemplated in s. 480(1)(a) of the Act. Further, the GIC concluded that the Agent had charged fees before obtaining the written agreement required by s. 505(2) of the Act. In regard to the offences pursuant to s. 480(1)(a) of the Act the GIC levied four civil penalties in the amount of \$2,500.00 each. The GIC further ordered that the Agent's certificate of authority be revoked. As to the remaining four offences pursuant to s. 480(1)(b) of the Act the GIC levied four civil penalties of \$250.00 each. As such, a total of \$11,000.00 in civil penalties was levied. The Agent appealed to the Alberta Insurance Council Appeals Board.

The Appeal Panel conducted an oral hearing of the matter and subsequently issued a written decision that upheld the GIC's decision in part and varied it in part. The Appeal Panel stated that policy documents were sacrosanct and that the Agent's alteration of the documents constituted a misrepresentation pursuant to s. 480(1)(a). The Appeal Panel also found that the Agent had breached s. 505(2) in charging a fee without first obtaining a signed written agreement to do so. In terms of the applicable sanction for these offences, the Appeal Panel adduced the same civil penalties (\$11,000.00) in regard to the offences but set aside the GIC's revocation order of the Agent's certificate. The Ap

peal Panel also ordered that the Agent's appeal fee be remitted to the AIC.

In the Matter of the Life Insurance Council ("LIC") and Agent "R"

This case involved an allegation pursuant to s. 480(1)(a) of the Act. Specifically, it was alleged that the Agent submitted an application to renew his certificate of authority to act as an insurance agent thereby attesting to the fact that he had obtained sufficient continuing education ("CE") hours to renew the certificate when he did not, in fact, obtain them. In so doing it was alleged that he misrepresented his CE status or, acted in a dishonest or untrustworthy manner as contemplated in s. 480(1)(a) of the Act.

The LIC reviewed the Agent's CE status at the time that he submitted his application to renew his certificate of authority and noted that when he renewed his certificate of authority in January of 2007 he only had amassed 1.75 hours of the 15 that he attested to on his renewal application.

In the LIC's view it was significant that the Agent's 1.75 hours were actually carried forward from a course that the Agent took in February of 2006 and that he did not take any intervening courses between that date and submitting his renewal application. Given all of the circumstances, the LIC concluded that the Agent either knew that he did not have the required number of CE credits to renew his certificate or was completely indifferent to the truth or falsity of his declaration such that he committed an offence pursuant to s. 480(1)(a) of the Act and levied a civil penalty in the amount of \$500.00. The Agent appealed this decision to the Alberta Insurance Council Appeals Board.

After conducting its hearing, the Appeal Panel indicated that it could not, on the evidence before them, conclude that the Agent made a misrepresentation or acted in a fraudulent, deceitful or dishonest manner. However, they did conclude that the Agent attested to the fact that he had completed sufficient hours and that the subsequent CE audit proved that he was untrustworthy in completing the renewal form. As such they found that he did commit an offence pursuant to s. 480(1)(a) of the Act and levied a civil penalty of \$500.00. The Agent appealed this decision to the Court of Queen's Bench.



Alberta Insurance Council

One of the issues before the Court of Queen's Bench was the question of the Agent's intent and the appropriate approach to proving that the Agent made a misrepresentation or act in a fraudulent, deceitful, dishonest or untrustworthy manner as contemplated in s. 480(1)(a) of the Act.

In written reasons dated September 23, 2008, Mr. Justice Marceau outlined the applicable legal principles and wrote, at paragraph 27 the following:

Clearly the false answer [regarding CE completion] was one which the Alberta Life Insurance Council could not trust as a basis for renewing the [Agent's] Life Insurance Certificate of Authority. That satisfied the objective element. Just as clearly the finding that "the best that can be said of the [Agent's] approach to the required statements is that he did not know if he had the required credits or not and likely gave the form little or no thought" is a finding of willful blindness, of recklessness, and that is sufficient to prove intent in this context. The [Appeal] Board was aware that recklessness could satisfy the intent requirement and made no error on that score. Having read the transcript of the hearing, I find that it was not unreasonable for the Appeal Board to conclude that the evidence of the [Agent] about vaguely thinking that among all the courses he took he believed there would be enough crossover from courses taken for his securities license to the life insurance requirements fell far short of the due diligence expected of someone entrusted with the fiduciary and good faith obligations.

Consequently, he did not find the Appeal Panel's decision to be unreasonable and dismissed the appeal.

COMPLEMENTARY MOUSEPAD

You will find with this newsletter a complementary mouse pad showing the homepage, internet address and On-Line Services provided by the AIC. Please use it and keep it as a reference of our services.

AIC PROGRAM AUDIT

The Government of Alberta has, over the past few years examined in some detail many of the issues surrounding Board Governance. Of particular focus have been those issues of accountability and transparency of operations. In full support of this study and in order to advance the principle of accountability, the AIC supported a request by the Assistant Deputy Minister of Finance and Enterprise for AIC to be subject to a program audit conducted by an independent auditor.

A request for proposal was issued and the firm of Meyers Norris Penny was selected to conduct the audit and provide a full report with recommendations for improvement. The Program Audit was completed by 28 April 2008 with a draft report being made available to the Steering Committee on 30 April 2008. The final report was issued July 18, 2008. This report highlights all findings, conclusions and recommendations as a result of the work performed.

The specific scope and objectives of this Program Audit, as outlined in the Request for Proposal dated 11 December 2007, were to review, evaluate, report findings and provide recommendations for improvement with respect to:

1. The effectiveness of the governance structure of the Councils;
2. The Councils' achievement of their statutory obligations pursuant to the Insurance Act and Regulations;
3. The extent to which AIC management achieves its operational objectives; and,
4. The existence of, and AIC compliance with, business processes to deliver their administrative services in an effective and efficient manner.

In each of the four identified areas the AIC performed near the upper end on a scale ranking from weak to strong.

Meyers, Norris, Penny made 15 recommendations; five classified as high priority, five as medium priority, and five classified as low priority recommendations. These recommendations can be found in detail in the main body of the report as well as being briefly discussed in the executive summary. The full report has been posted on the AIC website (www.abccouncil.ab.ca).