ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3
(the "Act")

And

In the Matter of Pharmassurance Pharmaceutical Insurance Marketing Inc./Pharmassurance marketing d'assurances pharmaceutics inc.,
(the "Agency")

As represented by
Designated Representative Chanaz Sarraj
(the "DR")

DECISION
OF
The Life Insurance Council
(the "Council")

This case involved an allegation pursuant to s. 499 of the Act. Specifically, it is alleged that the Agency compensated an unlicensed person to act as an insurance agent ("MDG") during a period of time in which MDG did not hold a valid and subsisting certificate of authority to act as an insurance agent. In so doing, it is alleged that the Agency breached s. 499 of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated November 19, 2015 (the "Report"). The Report was forwarded to the DR for review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. The DR signed the Report on December 9, 2015 and it provided us with further written evidence and submissions that were prepared on its behalf by legal counsel.

The Agency is the holder of valid and subsisting certificates of authority to transact the sale of life and A&S insurance. It has held certificates of authority since at least September 26, 2007 and the insurer recommending its certificates is BMO Life Assurance Company ("BMO"). MDG is the holder of valid and subsisting certificates of authority to transact the sale of life and A&S insurance. MDG first held

certificates in 2012 but they expired on June 30, 2014 and she did not submit an online renewal application to receive her 2014/2015 certificates. She subsequently applied for new certificates and these were issued on July 27, 2015.

In the process of applying for her certificates in 2015, MDG provided the AIC with information as to the insurance agent activities she undertook on the Agency's behalf while she did not hold a certificate. In a July 27, 2015 email MDG wrote that that she did not know her Alberta certificates expired. In a further email dated September 24, 2015, MDG wrote that she was under the impression that the Agency conducted internal monthly license audits. She also advised that she completed a new Form 1 application which she had on file (mistakenly thinking that it was the required application to renew her licenses) and that she submitted this to the Agency for signature. The documents accompanying MDG's email indicate that she acted on 309 Alberta transactions while she was unlicensed.

The investigator wrote to a BMO official ("PK") on September 28, 2015 and requested that BMO provide information and documentation related to MDG's activities and sales. PK replied by way of email dated October 13, 2015. In this email PK indicated that MDG acted on of 357 sales. PK further advised that BMO has a contractual agreement with the Agency but not MDG and that the Agency bills BMO on a monthly basis for the time that the Agency devotes to BMO clients.

The AIC investigator wrote to the DR on October 30, 2015 to request that she provide information about the Alberta insurance agent activities that MDG undertook on the Agency's behalf when she did not have a valid certificate of authority. "DG" responded on the Agency's behalf by email dated November 10, 2015. In his response, DG outlined MDG's duties and said that she received hourly compensation for her services paid by Agency's marketing division. DG also advised that their "Insurance Brokers" are responsible for licensing with each provincial body and he suggested that MDG had confirmed that MDG completed her renewal in Alberta. DG further advised that they also verified their agents' licenses on a monthly/bi-monthly basis and he suggested that AIC website had shown that MDG was licensed during the time period in question.

Counsel for the Agency appears to acknowledge and accept that MDG's certificates of authority expired and that she continued to act as an insurance agent on the Agency's behalf. However, he submits that the Agency exercised due diligence in determining whether or not MDG held a certificate during the relevant period. In this regard, he indicated, among other things, that DG visited the AIC website during

the period in question and viewed a "version" of the licensing information history found in Exhibit "B" of the Report. This document contains an agent's AIC licensing history and shows the issuing dates of new and renewed licenses and corresponding suspension dates of old licenses that are replaced by newly renewed licenses and counsel suggests that it would be confusing to the viewer. Counsel suggests that this would particularly be the case if the viewer visited the website during the period in which the AIC renews licenses. The reason for this is that a viewer would see an agent's existing license in addition to a pending renewal application. He also wrote, among other things, that the Council should not assume that an agent or agency would know that licenses expire on June 30th of a year. Based on these and other arguments, counsel submits that the Agency exercised due diligence such that it is not guilty of the offence as alleged in the Report.

Decision of the Council

From the evidence in the Report, it is clear that MDG's certificate of authority to act in the capacity of an insurance agent expired on June 30, 2014. It is equally clear that the Agency continued to compensate her for acting in the capacity of an insurance agent.

Counsel for the Agency recognizes that the offence alleged is one of strict liability. This means that the AIC does not need to prove that the Agency acted with the specific intention to breach a section of the Act. However, the Agency would not be guilty of the offence if it could demonstrate that it, in the words of the Supreme Court of Canada in *R.* v. *Sue Sault Marie (City)*, [1978] 2 S.C.R. 1299, "…took all reasonable steps to avoid the particular event." Additionally, in the event that we find the Agency guilty of the offence counsel submits that an appropriate penalty would be $300.00 given prior decisions of the Council.

In considering all of the evidence and submissions we do not believe that the Agency has met the defence of due diligence. As to the Agency's submissions regarding its diligence in checking the AIC website, the Agency states that it performed these checks repeatedly and that MDG also looked at it in June of 2015. The AIC website contains a search feature that shows whether or not an agent holds a current certificate of authority and, during the renewal period from approximately May 1 to June 30 of any given year, whether or not there is a pending application to renew that certificate. If there is no license in place none will appear and a renewal application would likewise be absent because there is no license to renew.

Further, the license history found as Exhibit B of the Report is not displayed on the website. Therefore, even if it could be said that it is confusing it is irrelevant. They likewise would have not seen MDG's certificate of authority or a renewal application in June, 2015 as her certificate expired on June 30, 2014.

As to the Agency's conduct, counsel wrote:

> While it is recognized that as of July 1, Pharmassurance may well have had an obligation to make further inquiry, without the benefit of "screen shots" of what was on the screen at the time they viewed it or even when they did view the screen, it is not possible to speak directly to these issues.
>
> What is known is that sometime at the beginning of June 2015 – she is "looking for the status of [her] application, it has been over a month". As such, as far as Pharmassurance was concerned, having seen [MDG's] valid certificate at some time in 2014, it reasonably assumed her certification was valid. Thereafter, throughout the 2014-2015 year, having been informed by [MDG] that she was indeed properly certified for that year…, Pharmassurance would not have known that anything else was amiss until [MGD] sought to renew her certification online, having to resort to a Form 1 application since she could no longer register online. (bracketed reference to the agent's initials are ours, underlined emphasis in original)

We have a number of difficulties with this statement. First, the Agency earlier wrote that it checked the AIC website repeatedly to determine whether or not its agents held valid licenses. However, in this passage the Agency is suggesting that it only assumed that MDG's certificate remained valid. Second, this assumption is based upon the "fact" that it viewed a valid certificate "some time in 2014." MDG did have a valid certificate at some time during 2014. The problem, however, is that it expired on June 30, 2014. Operating on the basis of this assumption cannot constitute due diligence. Finally, the Agency states that it relied on MDG and her assurance that she was properly certified. Once again, we do not believe that relying on the Agent's statement constitutes taking "all reasonable steps to avoid the particular event." Therefore, on the basis of all of the evidence before us and the parties' submissions, we find that the Agency breached s. 499 of the Act and that it contravened a section of the Act as contemplated in s. 480(1)(b).

As to the applicable sanctions, we have the ability to levy a civil penalty in an amount not exceeding $1,000.00 pursuant to ss. 480(1)(b) of the Act and 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001 per offence. We could also order that the Agency's certificate of authority be suspended or revoked. Given the fact that this is the Agency's first contravention of the Act and the

submissions of its counsel we order that a civil penalty in the amount of $300.00 be levied against the Agency. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the penalty is not paid within thirty (30) days, the Agency's certificate of authority will be automatically suspended pursuant to s. 480(4) of the Act. Pursuant to s. 482 of the Act (copy enclosed), the Agency has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the Life Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: February 24, 2016

Original Signed By

Kenneth Doll, Chair
Life Insurance Council

Extract from the *Insurance Act*, Chapter I-3

Appeal

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001

Notice of appeal

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

a) a copy of the written notice of the decision being appealed;

b) a description of the relief requested by the appellant;

c) the signature of the appellant or the appellant's lawyer;

d) an address for service in Alberta for the appellant;

e) an appeal fee of $200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3