

THE DANGER OF NOT LEAVING A PAPER TRAIL...

Avoid problems by following three rules

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This series is based on actual cases that were brought before the syndic. We hope it will help you to reflect on the quality of your professional practice, specifically with respect to your ethical obligations.

A Consumer's Complaint

In the wake of a car accident, the insured contacts her representative and learns, to her great surprise, that her insurance policy was terminated at renewal time. Apparently, the termination had been made upon her request during a phone conversation six months earlier.

The insured goes to the syndic of the ChAD and lodges a complaint against the representative for having terminated her automobile insurance contract without her authorisation and without any notification. Indeed, had she not had an accident, she would never have known that she was driving uninsured.

The Versions of the Parties

During the ethics investigation, the parties each give their version of the facts. The versions presented to the discipline committee are contradictory.

The insured alleges that she never called the representative to notify him that her insurance policy was "not required" and that she never received a notification of termination.

The respondent, on the other hand, maintains that the insured called and asked him to terminate the insurance policy and then sent her a notice of termination. The respondent admits that he never sent a termination of mandate letter.

It is important to underscore the fact that the respondent does not present any documentary proof regarding either the phone call he received or the sending of the notification.

Furthermore, the investigation reveals that the insurer did not send a notice of termination to the insured since pursuant to section 90 of the Automobile Insurance Act, it is the firm's and the representative's responsibility to send this notice in the event of a renewal.

The Formal Complaint

I filed a formal complaint against the representative before the discipline committee. The complaint contained two charges that I have summarized as follows:

1. Acted negligently when cancelling the insured's automobile insurance policy renewal of her by not ensuring that it was the insured herself who had sent the instructions and, had this been done, not asking her to return the insurance policy to him, thus leaving the insured without insurance coverage.
2. Failed to report on the carrying out of the client's mandate by not sending her a notice of termination of mandate after having cancelled her automobile insurance policy renewal, thus leaving the client totally unaware of the situation.

The Discipline Committee's Ruling

Since the allegations were contradictory, the discipline committee had to evaluate the credibility of each party's version of the events. Though the respondent claimed to have received a phone call from the insured and to have sent her a notice of termination, the committee did not accept his version. The committee wrote:

"There is, however, no documentation to confirm this allegation: the file contains no proof that the notice was either sent or received, nor is there any note to indicate confirmation that such a notice was sent [...]."

Further on, the committee once again stresses the absence of any evidence, which further supports the insured's version:

"[...] the client's version will be accepted while the respondent's, owing to a lack of logic, will be rejected in the absence of any documentary proof confirming the receipt or even the sending of the notice of termination."

Furthermore, the committee points out that when an insured terminates his automobile insurance policy, a written notice is necessary. The representative could therefore not simply make a phone call. The committee referred, in particular, to the second paragraph of section 2477 of the Civil Code of Quebec, which reads as follows:

"A contract of insurance may also be cancelled on mere notice in writing given to the insurer by each of the insured named in the policy. The cancellation takes place upon receipt of the notice."

Given what is noted above, as well as the fact that the respondent admitted that he did not send a termination of mandate letter, he was found guilty of the two charges.

Learning from this Ruling

This ruling brings to the fore three principles:

- 1. The importance of notes in the file** – The importance of noting down and documenting your actions and interventions cannot be overemphasized. Though appropriate file-keeping is essential to proper follow-up, it also allows you to provide evidence of your actions in the event of a complaint or a dispute.
- 2. Respecting the rules of termination** – The discipline committee can rule that non-compliance with a legal provision such as those found in the Automobile Insurance Act or the Civil Code of Quebec is a breach of ethics. You must also keep in mind the importance of obtaining a signature when this is specifically required by law.
- 3. The usefulness of a termination of mandate letter** – Not sending a termination of mandate letter is a breach of ethics since it is considered to be a failure to report to the insured. However, above and beyond the breach of ethics, sending a termination of mandate letter also allows the representative to avoid certain misunderstandings, since it confirms the parties' intentions — for example, the fact that the representative terminated the insurance policy at the insured's request.

Source: www.jugments.qc.ca, ref.: 2008-07-03 (C)