

# WA 3-Hour Ethics

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# WA 3-Hour Ethics

## I. INSURANCE AND ETHICS

The very nature of insurance raises ethical questions. Insurance can be seen as a human attempt to control and influence an environment that is, depending on one's philosophy, controlled by the hand of the Almighty or subject to the arbitrary whims and caprices of nature. As a result, the attempt by humans to "insure" anything will only meet with limited success. Insurance is the spreading of risk- a pooling of money to provide limited reassurance for a limited set of assets or circumstances. Insurance is perceived as a panacea. When insurance is purchased, some people think, "Oh, now I don't have to worry, everything will be taken care of for me."

With the help of advertising, the insurance industry has often nurtured this warm and fuzzy yet incorrect notion. Insurance is only a partial or stopgap measure to deal with the uncertainties that the world presents. Insurance does not control the fates. Insurance does not provide the kind of universal coverage and assurance that many people look for. Ethical concerns about insurance are created because of this gap between consumer expectations and genuine insurable risk. Policyholders are often disappointed, angry or disillusioned to find that the insurance they have been paying for does not cover a particular situation. This can leave consumers feeling that insurance is a bad bargain.

The media feeds on consumer sentiment such as "I've paid thousands of dollars of premiums, and this small claim isn't covered", or "Because I forgot two payments, my coverage was cancelled. Now my claim won't be paid after paying premiums for many years", or "I didn't understand what I bought, I thought everything was covered." This decoupling of expectations and reality leads to client frustration and dissatisfaction. As a result, insurance is one of the more tightly regulated industries in the U.S. The business is primarily regulated at the state level with a different set of laws and regulations governing insurance in each state. Unfortunately, there are times when the industry has not been a good corporate citizen. Every time a Martin Frankel or Baldwin United crisis happens, every time some political faction jumps up and down about the number of uninsured in the country, somebody wants more and more regulation of the industry. Often the call comes for federal regulation of the insurance industry; a plan to simply overlay the current system with another, federal layer of regulation and bureaucracy.

People in the business and anyone else who has given it much thought realize what a great product insurance is. As stated earlier, insurance is a pooling of risks by a group with similar loss exposure. It is an efficient method for people to come together and help each other. With each life insurance premium, policyholders are putting their money together, not to help themselves, but to help their families and, indirectly, to help other families as well. When someone else dies, his or her family benefits because a payment can be made from this pool of premiums and the investment income that arises from it. When John Q. Public dies, his claim is paid to his family, from the same pool. People, in more informal ways, have done this for centuries. When someone dies, those remaining help the family. This may appear very basic, but insurance is more than just survivor benefits. Insurance allows people to live a life of financial security in the face of catastrophe. Insurance is required in most industries and professions. This gives assurance of the quality of goods and services that are offered. Commercial insurance

for industries and professions has underwriting standards that require certain practices, safeguards, and licensing. In this way, insurance provides a safety net for consumers both in terms of the product or service delivered and financial surety if there is a problem. No one would have surgery, ride in an airplane, get on an elevator, eat in a restaurant, or even drive, if there was no insurance in place. Beyond that, without insurance these businesses could not get off the 'ground floor' as far as tackling the risk issue. One mistake could bankrupt the business and shatter customer confidence. Insurance not only provides protection to the consumer, but also allows consumers to conduct business. Insurance is a tool that can be used in many helpful ways.

Once we accept the proposition that insurance is good for business, the ethical concerns do not end. In many ways, they just begin. Every day in running an insurance business, ethical considerations arise-

1. What is a fair price to charge? Should we charge as much as we can, as little as we can, or something in-between?
2. What is the proper level of customer service? Just enough to get by, more than the customer has bargained for, or something in-between?
3. What kinds of policies and procedures should govern the running of the company? Should we follow the letter of the law, the spirit of the law, or both?
4. Which laws are we talking about, man's laws, God's laws, or both? When can and should we make exceptions to our policies and procedures?
5. How should we contract with other companies? Should we get as much as possible, give as much as possible, or something in-between?
6. What should our benefits and compensation be for the people working within the company? Should we pay them as little as possible, as much as possible, or something in-between?
7. What should be done when someone is not doing the job? Should we help them, get rid of them, or keep them no matter what? How can we best address these ethical dilemmas?

If the reader is looking for simple solutions to these questions, the thing to remember is that above all else the licensee owes an ethical duty to the insurance-buying public. With any given set of circumstances, any of the answers may be right. The questions and the answers change every day. Children are admonished to, "Let your conscience be your guide." Over the years, from being a child, a teenager, a young adult, and ever onward, the ethical questions can become more and more difficult. One day it will turn out that letting your conscience be your guide is not enough. One needs a moral compass, a set of values to help in difficult situations. In ethical situations, pride, ego, or the dollar can sometimes be the deciding factor. The agent must ask of themselves the following questions:

- How would I want to be treated, not how would someone else want to be treated.
- Does my decision assume people are good and will do the right thing, or does it assume that people will act poorly?
- Am I making my decision based upon what I know today, or am I trying to predict the future?
- Will my decision leave things better than I found them, or create chaos, instability, or despair?
- Do I feel at peace with the decision, or do I feel unsure or uneasy?
- Am I allowing myself to be pushed into a decision when no decision on my part is even needed?

These questions look like a tall order. If taken one at a time, and practiced on a regular basis, they can be mastered. The success of a business is based on more than just financial and operational strategies, goals, and targets. Here are some ideas that can help the agent carry out the mission of doing business the right way, incorporating guiding principles into everyday decision-making-

- Pursue and review every opportunity
- Manage money wisely
- Treat all with respect and dignity
- Follow the letter and spirit of the law
- Lead with your values

## II. ETHICAL FOUNDATION

Ethics may be understood most comprehensively as reflection on the moral significance of human action. Ethics also includes the results of such reflection in rules of conduct or ways of life. The terms "ethics" and "morals" are derived from Greek and Latin words meaning "customs, conduct, and character." **Ethics** has come to mean "reflection on values and morality," and may also be called moral philosophy or moral theology.

**Morals** have remained closer to the original denotations relating to the customary behavior of people and communities.

### Areas of Ethical Reflection.

**Religious or theological ethics-** This is ethical reflection and formulation within the context of religious traditions. Jewish and Christian ethics are the dominant forms of religious ethics in the Western tradition. If one or another form of Western ethics is taken as the defining norm of all ethics, then the question may be raised whether there is any Hindu or Buddhist ethics. If, however, ethics is understood as reflection on the moral significance of action in all the varied forms this reflection appears, then ethics is clearly a part of non- Western traditions.

**Philosophical ethics-** A reflection on the moral significance of action in rational, philosophical perspective. A major pattern of ethics in ancient Greek and Roman cultures and in the Western tradition, philosophical ethics is often erroneously described by philosophers as the only form of ethics. Religious and philosophical ethics are frequently in close interaction with one another and may be combined in a single thinker.

**Social ethics-** Reflection on the moral significance of human action in communities and societies is the basis of this ethical study. The focus of social ethics may be on the overall social system, on particular sectors or issues in society, on organizations, or on individual action within social collectivities. Social ethics draws upon the resources of the social and natural sciences as well as upon theological and philosophical ethics.

**Comparative ethics-** This is the study and reflection on the moral significance of action in diverse cultures and social contexts. Comparative perspectives in ethics may be provided by different cultures, different historical periods, or different academic disciplines. Some methodological formulations in comparative ethics are too narrowly Western and rational to be useful for cross-cultural purposes. Cross-disciplinary approaches hold promise of more widely applicable methods.

## **Ethical Values**

Positive characteristics are used to describe the 'ideal' ethical person. Arguing over what best describes such a person is beyond the scope of this book. However, whatever values are chosen work just as well for adults as for people entering their teenage years. It is important that ethical values are taught at a young age. Then they will (hopefully) become a part of the person's mindset for life. The following statement of core values from a middle school serves as a good example-

**We** believe there are universal moral values, those associated with "should" or "ought" to which people in all successful civilizations subscribe. These values serve as the basis for ethical behavior across all societies and all major religions. In a public education setting, therefore, we believe it is appropriate to foster and promote such ethical values and principles. Though not inclusive of every commonly accepted moral value, the list below, endorsed by the Board of Education, has been developed to include values that are powerful and important to life.

### **Honesty**

Conducts human interactions in a fair and straightforward manner; tells the truth; does not cheat, steal or intentionally mislead; behaves in a manner consistent with one's professed values and ideals (integrity).

### **Responsibility**

Accepts responsibility for the foreseeable consequences of one's actions, reactions, choices, and goals; demonstrates an active commitment to the welfare of others.

### **Compassion**

Demonstrates sensitivity and a decent measure of caring and concern for fellow human beings; exhibits generosity and love. Perseverance continues the pursuit of goals in the face of adversity; demonstrates a willingness to work (diligence).

### **Respect**

Holds one's self, each other person, and the environment in high regard; acknowledges the inherent value in each human being and each living thing; honors the rights of others to be autonomous and to be treated with dignity. (Not to be confused with an insistence that one is entitled to someone else's respect.)

### **Cooperation**

Interacts with others in a mutually beneficial way; seeks thoughtful and peaceful ways of resolving conflict.

### **Civic Duty**

Respects the principles of representative democracy; expresses informed views; participates in the democratic process; observes rules and laws; demonstrates a commitment to the public good.

### **Courage**

Demonstrates a willingness to act positively on a moral value even in the face of potential personal loss; a willingness to take calculated risks to

achieve a positive result. (Not to be confused with aggressive physical or emotional behavior.)

The real test of the effectiveness of any moral education effort will be its impact on the decisions students make. In the final analysis, we want our students to routinely make ethical choices - choices distinguishing what should be done from what can be done.<sup>1</sup>

### **The Link- Law, Ethics and Justice**

The link between ethics and justice is difficult to define, and an exploration into its nature has occupied much time for philosophers. Ethics is the study of what is right and wrong, in the sense of obligations in action. Justice is a concept involving the fair, moral, and impartial treatment of all persons. In its most general sense, it means according individuals what they actually deserve or merit, or are in some sense entitled to. Justice is a particularly foundational concept within most systems of "law," and draws highly upon established and well-regarded social traditions and values. From the perspective of pragmatism, it is the name for a fair result.

In his book *The Law*, (1850) Frederic Bastiat concluded that "law is organized justice." The law is no guarantee of justice, and these terms are by no means synonymous. Justice is an ideal which good law continually strives to achieve. If the law is regarded as the sum total of the rules enforced and administered by courts and other agencies of government, the disparity between law and justice becomes apparent. As explained by Bastiat, law is inseparable from a politically organized society. In a government by a dictatorship, its laws might be oppressive, harsh, and calculated chiefly to maintain the control and domination of the dictator. A rule, regulation, edict or order is no less a law because it is harsh, unwise, or unjust. Law is ever changing and its change should be in the direction of fair, reasonable, equal and impartial treatment of the competing interests and desires of the individuals in the community to whom it applies. To the extent that it fails to do so, it fails to achieve justice.

On the portico of the Supreme Court Building in Washington, D. C. is inscribed in stone "Equal Justice under Law". These words express not only an ideal, but also the relative position of law and justice. Without law and order there can be no justice. The present and future welfare of mankind depends upon the administration of justice according to law. Here are six arguments for the administration of justice according to the law:

1. Law makes it possible to predict the course which the administration of justice will take.
2. Law secures against errors of individual judgment.
3. Law secures against improper motives on the part of those who administer justice.
4. Law provides the magistrate with standards on which the ethical ideas of the community are formulated.
5. Law gives the magistrate the benefit of all the experience of his predecessors.
6. Law prevents the sacrifice of ultimate interests, social and individual to the more obvious and immediately pressing but less weighty immediate interests."

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<sup>1</sup> Lakeside Middle School, Irvine, California

## Moral Relativism

The position taken by **moral relativism** is that moral or ethical propositions do not reflect absolute and universal moral truths but instead are relative to social, cultural, historical or personal references, and that there is no single standard by which to assess an ethical proposition's truth. Relativistic positions often see moral values as applicable only within certain cultural boundaries or the context of individual preferences. An extreme relativist position might suggest that it is meaningless for the moral or ethical judgments or acts of one person or group to be judged by another, though most relativists propound a more limited version of the theory.

Some moral relativists — for example, the existentialist Jean-Paul Sartre — hold that a personal and subjective moral core lies or ought to lie at the foundation of individuals' moral acts. In this view public morality is a reflection of social convention, and only personal, subjective morality is truly authentic.

Moral relativism does not equate to moral pluralism, or value pluralism, which acknowledges the coexistence of opposing ideas and practices, but does not require that they be equally valid. Moral relativism, in contrast, contends that opposing moral positions have no truth value, and that there is no preferred standard of reference by which to judge them.

## Views on Moral Relativism

To express moral relativism another way: There is my truth, and there is your truth, but there is no the truth. A passage from a great author shows that these perplexities have been around for some time--

### Anna Karenina

(1877) By Leo Tolstoy      Part III, Chapter 20

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[Count] Vronsky's life was particularly happy in that he had a code of principles, which defined with unfailing certitude what he ought and what he ought not to do. This code of principles covered only a very small circle of contingencies, but then the principles were never doubtful, and Vronsky, as he never went outside that circle, had never had a moment's hesitation about doing what he ought to do. These principles laid down as invariable rules: that one must pay a cardsharp, but need not pay a tailor; that one must never tell a lie to a man, but one may to a woman; that one must never cheat any one, but one may a husband; that one must never pardon an insult, but one may give one and so on. These principles were possibly not reasonable and not good, but they were of unfailing certainty, and so long as he adhered to them, Vronsky felt that his heart was at peace and he could hold his head up. Only quite lately in regard to his relations with Anna, Vronsky had begun to feel that his code of principles did not fully cover all possible contingencies, and to foresee in the future difficulties and perplexities for which he could find no guiding clue.

His present relation to Anna and to her husband was to his mind clear and simple. It was clearly and precisely defined in the code of principles by which he was guided. She was an honorable woman who had bestowed her love upon him, and he loved her, and therefore she was in his eyes a woman who had a right to the same, or even more, respect than a lawful wife. He would have had his hand chopped off before he would have allowed himself by a word, by a hint, to humiliate her, or even to fall short of the fullest respect a woman could look for.....



### One man's meat...

Shortly before he was elected pope, Cardinal Joseph Ratzinger delivered a withering denunciation of relativism. In its extreme, the view that there are no hard and fast rules on what is right and wrong, on which values are set and should be fought for. It is in contrast to absolutism, that there is one truth. Relativism is "Different opinions, no one authority, and as many 'truths' as there are people or societies or cultures advancing different ways of doing things," says Simon Blackburn, Professor of Philosophy at Cambridge University. It is easy, he says, "to give relativism a slogan: Beauty lies in the eye of the beholder. One man's meat is another man's poison." And when that is applied to ethics, then goodness, virtue and duty also lie in the eye of the beholder.

“ We are moving toward a dictatorship of relativism which does not recognize anything as for certain and which has as its highest goal one's own ego and one's own desires”

Pope Benedict XVI  
(when Cardinal Ratzinger)

So, for the western liberal, living under western liberal influences, with western liberal opinions, he says, contraception and abortion are in, but for the Catholic Church, they are out. In his sermon ahead of the conclave to choose a new Pope, then-Cardinal Ratzinger warned of the need to preserve the Church's traditional Catholic tenets against modern trends, against the "dictatorship of relativism".

### **Measuring Ethical Judgments**

Those who support positions of moral absolutism or universalism often criticize moral relativism; sometimes equating it with outright "immorality" or amorality. Various historical and cultural events and practices, including The Holocaust, Stalinism and communist atrocities of the 20th century, genocide, unjust wars, slavery, terrorism, Nazism, etc., present difficult problems for relativists. An observer in a particular time and place, depending on his outlook (e.g., culture, religion, background), might call something *good* that another observer in a particular time and place would call *evil*. Slavery, for example, was thought by many to be acceptable, even good, in other times and places, while it is viewed by many (though certainly not all) today as a great evil. Critics contend that stating there is no preferred standard of truth, or that standards are equally true, addresses the ultimate validity and truth of the ethical judgments themselves, which, they contend, is a normative judgment (judging how things should or ought to be).

## **III. ETHICS AND COMMERCE**

**Business ethics** is a form of applied ethics that examines ethical rules and principles within a commercial context. The various moral or ethical problems that can arise in an insurance setting, and any special duties or obligations that apply to persons who are engaged in insurance are included. Generally speaking, business ethics is a normative discipline, whereby particular ethical standards are assumed and then applied. It makes specific judgments about what is right or wrong, which is to say, it makes claims about

what *ought* to be done or what *ought not* to be done. While there are some exceptions, business ethicists are usually less concerned with the foundations of ethics (metaethics), or with justifying the most basic ethical principles, and are more concerned with practical problems and applications, and any specific duties that might apply to business, and hence insurance, relationships.

## **Overview of issues in business ethics**

### **General business ethics**

This part of business ethics overlaps with the philosophy of business, one of the aims of which is to determine the fundamental purposes of a company. If a company's main purpose is to maximize the returns to its shareholders, then it could be seen as unethical for a company to consider the interests and rights of anyone else. This is especially relevant to the business of insurance, where the 'product' is not porcelain, plastic, or paint, but instead protection against risk of loss for the public. Other issues include-

- ♦ Corporate social responsibility or CSR: an umbrella term under which the ethical rights and duties existing between companies and society are debated.
- ♦ Issues regarding the moral rights and duties between a company and its shareholders: fiduciary responsibility, stakeholder (policyholders, employees and retirees) concept v. shareholder concept.
- ♦ Ethical issues concerning relations between different companies: e.g. hostile take-overs, industrial espionage.
- ♦ Leadership issues: corporate governance.
- ♦ Political contributions made by corporations.
- ♦ Law reform, such as the ethical debate over introducing a crime of corporate manslaughter.
- ♦ The misuse of corporate ethics policies as marketing instruments.

### **Professional ethics**

Professional ethics covers the myriad of practical ethical problems and phenomena which arise out of specific functional areas of companies or in relation to recognized business professions.

- ♦ Ethics of finance and accounting
- ♦ Creative accounting, earnings management, misleading financial analysis.
- ♦ Insider trading, securities fraud, bucket shop, forex scams: concerns (criminal) manipulation of the financial markets.
- ♦ Executive compensation: concerns excessive payments made to corporate CEO's.
- ♦ Bribery, kickbacks, facilitation payments: while these may be in the (short-term) interests of the company and its shareholders, these practices may be anti-competitive or offend against the values of society.

### **Ethics of human resource management**

The ethics of human resource management (HRM) covers those ethical issues arising from the employer-employee relationship, such as the rights and duties owed between employer and employee-

- ♦ Discrimination issues include discrimination on the bases of age (ageism), gender, race, religion, disabilities, weight and attractiveness.
- ♦ Issues affecting the privacy of the employee: workplace surveillance, drug testing.
- ♦ Issues affecting the privacy of the *employer*: whistle-blowing.

- ♦ Issues relating to the fairness of the employment contract and the balance of power between employer and employee: slavery, indentured servitude, employment law.
- ♦ Occupational safety and health.

### **Ethics of sales and marketing**

Marketing which goes beyond the mere provision of information about (and access to) a product may seek to manipulate our values and behavior. To some extent society regards this as acceptable, but where is the ethical line to be drawn?

- ♦ Pricing: price fixing, price discrimination, price skimming.
- ♦ Anti-competitive practices: these include but go beyond pricing tactics to cover issues such as manipulation of loyalty and supply chains.
- ♦ Specific marketing strategies: greenwash, bait and switch, shill, viral marketing, spam, pyramid scheme, planned obsolescence.
- ♦ Content of advertisements: attack ads, subliminal messages, sex in advertising.
- ♦ Children and marketing: marketing in schools.
- ♦ Black markets, grey markets.

#### **Issues in Product advertising**

Alcohol advertising  
Cosmetics advertising  
Gambling advertising  
Tobacco advertising  
Professional Services advertising  
Pharmaceuticals advertising

### **Ethics of production**

This area of business ethics deals with the duties of a company to ensure that products and production processes do not cause harm. Some of the more acute dilemmas in this area arise out of the fact that there is usually a degree of danger in any product or production process and it is difficult to define a degree of permissibility, or the degree of permissibility may depend on the changing state of preventative technologies or changing social perceptions of acceptable risk. This includes-

Defective, addictive and inherently dangerous products and services.

- ♦ Ethical relations between the company and the environment: pollution, environmental ethics, carbon emissions trading
- ♦ Ethical problems arising out of new technologies: genetically modified food, mobile phone radiation and health.
- ♦ Product testing ethics: animal rights and animal testing, use of economically disadvantaged groups (such as students) as test objects.

### **International business ethics**

While business ethics emerged as a field in the 1970's, international business ethics did not emerge until the late 1990's, reflecting the international developments of that decade. Many new practical issues arose out the international context of business. Theoretical issues such as cultural relativity of ethical values receive more emphasis in this field. Other, older issues can be grouped here as well. Issues and subfields include:

- ♦ The search for universal values as a basis for international commercial behavior.
- ♦ Comparison of business ethical traditions in different countries.
- ♦ Comparison of business ethical traditions from various religious perspectives.
- ♦ Ethical issues arising out of international business transactions
- ♦ Issues such as globalization and cultural imperialism.

- ♦ Varying global standards - e.g. the use of child labor.
- ♦ The way in which multinationals take advantage of international differences, such as outsourcing production (e.g. clothes) and services (e.g. call centers) to low-wage countries.
- ♦ The permissibility of international commerce with pariah states.

## Issues in business ethics

**Conflicting interests-** Business ethics can be examined from various perspectives, including the perspective of the employee, the commercial enterprise, and society as a whole. Very often, situations arise in which there is conflict between one or more of the parties, such that serving the interest of one party is a detriment to the other(s). For example, a particular outcome might be good for the employee, whereas, it would be bad for the company, society, or vice versa. Some ethicists see the principal role of ethics as the harmonization and reconciliation of conflicting interests.

**Ethical issues and approaches-** Philosophers and others disagree about the purpose of a business in society. For example, some suggest that the principal purpose of a business is to maximize returns to its owners, or in the case of a publicly-traded concern, its shareholders. Thus, under this view, only those activities that increase profitability and shareholder value should be encouraged. Some believe that the only companies that are likely to survive in a competitive marketplace are those that place profit maximization above everything else. However, some point out that self interest would still require a business to obey the law and adhere to basic moral rules, because the consequences of failing to do so could be very costly in fines, loss of licensure, or company reputation. The economist Milton Friedman is a leading proponent of this view.

Other theorists contend that a business has moral duties that extend well beyond serving the interests of its owners or stockholders, and that these duties consist of more than simply obeying the law. They believe a business has moral responsibilities to so-called stakeholders, people who have an interest in the conduct of the business, which might include employees, customers, vendors, the local community, or even society as a whole. They would say that stakeholders have certain rights with regard to how the business operates, and some would even suggest that this even includes rights of governance.

**Smokescreen-** Some observers believe that corporate ethics policies are primarily rooted in utilitarian concerns, and that they are mainly to limit the company's legal liability, or to curry public favor by giving the appearance of being a good corporate citizen. Ideally, the company will avoid a lawsuit because its employees will follow the rules. Should a lawsuit occur, the company can claim that the problem would not have arisen if the employee had only followed the code properly. Sometimes there is disconnection between the company's code of ethics and the company's actual practices. Thus, whether or not such conduct is explicitly sanctioned by management, at worst, this makes the policy duplicitous, and, at best, it is merely a marketing tool.

## Creating an Ethical Workplace

Being ethical involves knowing how to choose between right and wrong. Those who have been involved in ethical discourse know that no two dilemmas are ever alike. When contemplating an ethical dilemma and choosing between competing alternatives and consequences, the ethical person metaphorically takes out his or her moral compass and navigates through the decision-making process and arrives at a “right” course of action-

- ♦ How do those involved in business learn to think systematically about an ethical dilemma?
- ♦ What factors are considered when choosing a “right” course of action?
- ♦ Does business management support ethical decision-making by providing appropriate ethics support to assist employees in dealing with ethical dilemmas encountered in the workplace?

## Corporate ethics policies

Many companies have formulated internal policies pertaining to the ethical conduct of employees. These policies can be simple exhortations in broad, highly-generalized language (typically called a corporate ethics statement), or they can be more detailed policies, containing specific behavioral requirements (typically called corporate ethics codes). They are generally meant to identify the company's expectations of workers and to offer guidance on handling some of the more common ethical problems that might arise in the course of doing business. It is hoped that having such a policy will lead to greater ethical awareness, consistency in application, and the avoidance of ethical disasters.

**Successful Policy-** To be successful, most ethicists would suggest that an ethics policy should be:

- ♦ Given the unequivocal support of top management, by both word and by example.
- ♦ Explained in writing and orally, with periodic reinforcement.
- ♦ Doable....something employees can both understand and perform.
- ♦ Monitored by top management, with routine inspections for compliance and improvement.
- ♦ Backed up by clearly stated consequences in the case of disobedience.
- ♦ Remain neutral and nonsexist.

## Ethics officers

Ethics officers (sometimes called "compliance" or "business conduct officers") have been appointed formally by organizations since the mid-1980s. One of the catalysts for the creation of this new role was a series of fraud, corruption and abuse scandals that afflicted the U.S. defense industry at that time. This led to the creation of the Defense Industry Initiative (DII), a pan-industry initiative to promote and ensure ethical business practices. The DII set an early benchmark for ethics management in corporations. Another critical factor in the decisions of companies to appoint ethics/compliance officers was the passing of the Federal Sentencing Guidelines for Organizations in 1991, which set standards that organizations (large or small, commercial and non-commercial) had to follow to obtain a reduction in sentence if they should be convicted of a federal offense. Although intended to assist judges with sentencing, the influence in helping to establish best practices has been far-reaching.

In the wake of numerous corporate scandals between 2001-04 (affecting large corporations like Enron, WorldCom and Tyco), even small and medium-sized companies have begun to appoint ethics officers. They often report to the Chief Executive Officer and are responsible for assessing the ethical implications of the company's activities, making recommendations regarding the company's ethical policies, and disseminating information to employees. They are particularly interested in uncovering or preventing unethical and illegal actions. This trend is partly due to the Sarbanes-Oxley Act in the United States, which was enacted in reaction to the above scandals. A related trend is the introduction of risk assessment officers that monitor how shareholders' investments might be affected by the company's decisions.

**Moral Autonomy-** An increasing number of companies require employees to attend seminars regarding business conduct, which often include discussion of the company's policies, specific case studies, and legal requirements. Some companies even require their employees to sign agreements stating that they will abide by the company's rules of conduct. Not everyone supports corporate policies that govern ethical conduct. Some claim that ethical problems are better dealt with by depending upon employees to use their own judgment. Central to acting ethical is the development of individual moral autonomy. To act morally autonomous, an individual must sense a demand to act in a given situation rather than exist in a state of avoidance. Moral choosing involves the exercise of will by a person who is present to a situation, conscious of what he or she is doing and aware of a purpose to be achieved. Ethical choice is an action that is freely undertaken. Moral autonomy is developed in individuals as part of a formal learning process and that process is a distinct form of thought which has its own particular concepts, methodology and procedures. An individual must have reasoning skills to deal with the dilemma prior to the presentation of the situation. To encourage moral autonomy in the workplace, an organization must achieve a balance between the environment it creates and the ways in which it encourages and supports ethical behavior. With a diverse employee population, an organization must first understand the dynamics of its workforce, and then provide the appropriate kinds of ethics support that encourages ethical behavior among all its employees.

Part of the foundation of every business should be a well thought-out and executed ethics program. To begin the process of implementing an ethics program, an organization should conduct an ethics assessment to identify those specific elements that comprise the ethics program and support the organization's ethical culture. Ethics can be taught within an organization. Tools are used to sensitize employees to ethical issues encountered in the workplace and provide ethics support mechanisms to assist in choosing a "right" course of action.

### **Ethics Tools: Codes of Ethics**

A code of ethics is a type of credo or statement of belief. It can contain things permitted along with things proscribed as a part of its rules of operation. In the late 1980s, The Conference Board, a leading business membership organization, found that 76% of corporations surveyed had codes of ethics. Some business ethicists disagree that codes have any value. Usually they explain that too much focus is put on the codes themselves, and that codes themselves are not influential in managing ethics in the workplace. Many ethicists note that it's the *developing* and *continuing dialogue* around the code's values that is most important. Occasionally, employees react to codes with

suspicion, believing the values are "motherhood and apple pie" and codes are for window dressing. But, when managing a complex issue, especially in a crisis, having a code is critical. More important, it's having *developed* a code that matters.

### **Developing Codes of Ethics**

To avoid the window dressing effect, a code should not be a mail order laminate copy of someone else's, or mandated by the human resource department. Codes are insufficient if intended only to ensure that policies are legal. All staff must see the ethics program being driven by top management. Note that codes of ethics and codes of conduct may be the same in some organizations, depending on the organization's culture and operations and on the ultimate level of specificity in the codes

The following guidelines are considered when creating a code of ethics:

**1. Review any values need to adhere to relevant laws and regulations;** this ensures the organization is not (or is not near) breaking any of them. Increased priority is placed on values that will help the company organization operate to avoid breaking these laws and to follow necessary regulations.

**2. Review which values produce the top three or four traits of a highly ethical and successful product or service-** for insurance, this includes objectivity, confidentiality, and accuracy, etc. Identify which values produce behaviors that exhibit these traits.

**3. Identify values needed to address current issues in the workplace.** A company representative can be appointed to interview staff to collect descriptions of major issues in the workplace. These issues can be considered to determine which is ethical in nature, e.g., issues in regard to respect, fairness and honesty. Identify the behaviors needed to resolve these issues. Identify which values would generate those preferred behaviors. There may be values included here that some people would not deem as moral or ethical values, e.g., team-building and promptness, but for managers, these practical values may add more relevance and utility to a code of ethics.

**4. Identify any values needed, based on findings during strategic planning.**

Companies must self-analyze their SWOT status (identifying the organization's Strengths, Weaknesses, Opportunities and Threats). Determine which behaviors are needed to build on strengths, shore up weaknesses, take advantage of opportunities and guard against threats

**5. Consider any top ethical values that might be prized by stakeholders.** For example, consider expectations of employees, clients/customers, suppliers, members of the local community, etc.

**6. Collect from the above steps, the top five to ten ethical values which are high priorities in the organization**

**Examples of ethical values might include**

- a) Trustworthiness: honesty, integrity, promise-keeping, loyalty
- b) Respect: autonomy, privacy, dignity, courtesy, tolerance, acceptance
- c) Responsibility: accountability, pursuit of excellence
- d) Caring: compassion, consideration, giving, sharing, kindness, loving
- e) Justice and fairness: procedural fairness, impartiality, consistency, equity, equality, due process
- f) Civic virtue and citizenship: law abiding, community service, protection of environment

**7. In the code of ethics; attempt to associate with each value, two example behaviors which reflect each value.** A code of ethics may seem as empty words because many only list ethical values and don't clarify these values by associating examples of behaviors.

**8. Include wording that indicates all employees are expected to conform to the**

**values stated in the code of ethics.** Add wording that indicates where employees can go if they have any questions.

**9. Obtain review from the floor.** Get input from as many people in the company as possible.

**10. Announce and distribute the new code of ethics.** Ensure each employee has a copy and post codes throughout the facility.

**11. Update the code at least once a year.** As stated before, the most important aspect of codes is developing them, not the code itself. Continued dialogue and reflection around ethical values produces ethical sensitivity and consensus.

**12. Note that the code does not include values and preferred behaviors for every possible ethical dilemma that might arise.** The goal is to focus on the top ethical values needed in the company and to avoid potential ethical dilemmas that seem mostly likely to occur.)

For an example of an ethical values code, see 'Ethical Values' in Section II above.

### **Ethics Tools: Codes of Conduct**

Codes of conduct specify actions in the workplace and codes of ethics are general guides to decisions about those actions. Corporate codes of conduct can take a number of formats and address any issue - workplace issues and employee rights for example. Also, their implementation depends totally on the company concerned. Crafting of a code can involve management, employee representatives and/or randomly or otherwise selected employees. The Conference Board distributes the formats in three categories:

- **Compliance codes:** directive statements giving guidance and prohibiting certain kinds of conduct.
- **Corporate credos:** broad general statements of corporate commitments to constituencies, values and objectives.
- **Management philosophy statements:** formal enunciations of the company or bosses' way of doing business.

Fundamentally, a code of conduct depends on its credibility: the extent to which it is taken seriously by industry, employees, consumers and governments. Credibility, in turn, depends on monitoring, enforcement and transparency: the extent to which outside contractors, workers, the public, nongovernmental organizations and governments are aware of the code's existence and meaning.

A code can be made transparent through its posting and dissemination and through training regarding its provisions. Monitoring can be internal or external. Responses to violations by employees, subsidiaries, vendors or business associates can include: monetary fines or penalties, the imposition of probationary status, demands for corrective action, providing education to the violator, cancellation of contract, or termination.

### **Developing a Code of Conduct**

The following concepts should be considered when developing codes of conduct:

- 1. Identify key behaviors needed to adhere to the ethical values proclaimed in the code of ethics,** including ethical values derived from review of key laws and regulations, ethical behaviors needed in the product or service area, behaviors to address current workplace issues, and behaviors needed to reach strategic goals.
- 2. Include wording that indicates all employees are expected to conform to the**



**behaviors specified in the code of conduct.** Add wording that indicates where employees can go if they have any questions.

3. **Obtain review from key members of the organization.** Be sure legal counsel reviews the drafted code of conduct.

4. **Announce and distribute the new code of conduct** Ensure each employee has a copy and post codes in a prominent place.

5. **Note that the code cannot include preferred behaviors for every possible conduct issue that might arise.)**

6. **Examples of topics typically addressed by codes of conduct include:** preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt, maintaining confidentiality, not accepting personal gifts from stakeholders as a result of company role, avoiding racial or sexual discrimination, avoiding conflict of interest, complying with laws and regulations, not using organization's property for personal use, not discriminating against race or age or sexual orientation, and reporting illegal or questionable activity.

### **Ethics Tools: Policies and Procedures**

Policies and procedures can be designed with the idea in mind to elicit desirable behaviors from the code of conduct, including personnel reports, job descriptions, performance appraisal forms, management-by-objectives expectations, standard forms, checklists, budget report formats, and other relevant control instruments to ensure conformance to the code of conduct. In doing so, a company should avoid creating ethical dilemmas such as conflicts-of-interest or infringing on employee's individual rights.

1. Manage values- Organizations can manage values through use of policies and procedures. With social responsibility for example; to produce behavior aligned with this value, organizations often institute policies such as recycling waste, donating to local charities, or paying employees to participate in community events.
2. A high value on responsiveness to customers might be implemented by instituting policies to return phone calls or answer insurance policy questions within a certain period of time.
3. Job descriptions and performance appraisals- a business might particularly value technical knowledge, creativity and systems thinking. They use job descriptions and performance appraisals to encourage behaviors aligned with analysis and design skills.
4. Include policies and procedures to address ethical dilemmas. See the next section, "Ethics Tools: Resolving Ethical Dilemmas," to select a method.
4. Include policies and procedures to ensure training of employees about the ethics management program. See the section, "Ethics Tools: Training."
5. Include policies and procedures to reward ethical behavior and impose consequences for unethical behavior.
6. Include a grievance policy for employees to use to resolve disagreements with supervisors and staff.
7. Once a year, review all personnel policies and procedures. Consider including all staff during this review.

### **Ethics Tools: Resolving Ethical Dilemmas**

**Definition of an Ethical Dilemma.** Perhaps too often, business ethics is portrayed as a matter of resolving conflicts in which one option appears to be the clear choice. For example, case studies are often presented in which an employee is faced with whether

or not to lie, steal, cheat, abuse another, break terms of a contract, etc. However, ethical dilemmas faced by managers are often more real-to-life and highly complex with no clear guidelines, whether in law or often in religion.

**Guide-** A practical standard for recognition of a significant ethical conflict involves noting the presence of

- a) significant value conflicts among differing interests
- b) real alternatives that are equally justifiable, and
- c) significant consequences on "stakeholders" in the situation.

An ethical dilemma exists when one is faced with having to make a choice among these alternatives.

### **Examples of Ethical Dilemmas**

"A customer asked for a policy quote from us today. After giving him the quote, he said he couldn't afford it. I know he could get it cheaper policy from a competitor. Should I tell him about the competitor -- or let him go without getting what he needs? What should I do?"

- "Our company prides itself on its merit-based pay system. One of my employees has done a tremendous job all year, so he deserves strong recognition. However, he's already paid at the top of the salary range for his job grade and our company has too many people in the grade above him, so we can't promote him. What should I do?"
- "The business bordering our property is in poor shape. As a result, the people from that business come over and try to get jobs at our place. At first they were given the jobs nobody else wanted. Now there are so many of them here wanting to work, the business owners are afraid to tell them to leave. Other company 'stakeholders' seem to think it's a good idea to let them come over and stay here, no matter what. How should this be resolved?"
- "My boss told me that one of my employees is among several others to be laid off soon. I'm not to tell my employee yet or he might tell the whole organization which would soon be in an uproar. Meanwhile, I heard from my employee that he plans to buy braces for his daughter and a new carpet for his house. What can be done?"
- "My data management supervisor told me she had noticed several personal letters printed from a computer that I was responsible to manage. While we had no specific policies then against personal use of company facilities, I was concerned. I approached the letter writer to discuss the situation. She told me she'd written the letters on her own time to gain proficiency using our word processing system. What should I do?"
- "A fellow employee told me that he plans to quit the company in two months and start a new job which has been guaranteed to him. Meanwhile, my boss told me that he wasn't going to give me a new opportunity in our company because he was going to give it to that fellow employee of mine now. How do I handle this situation?"

### **Methods to Resolve Ethical Dilemmas**

Organizations should develop and document a procedure for dealing with ethical dilemmas as they arise. Ideally, ethical dilemmas should be resolved by a group within the organization to which every employee has access and feels comfortable approaching. On an individual level, methods which can be used include emphasis of the Golden Rule, an ethical checklist, and a list of key questions.

### **The Golden Rule**

Do unto others as you would have them do unto you

Simple and sure, this advice has stood the test of time. Note that The Golden Rule is probably the most common method to resolve ethical dilemmas.

## **Ethical Checklist**

### **An Ethical Checklist**

A code of ethics, a code of conduct, policies, procedures, and seminars on ethics are all important to ensuring a company is doing all it can to be an ethical, upright organization. For practical implementation managers and employees can use the following ethical checklist. To gauge how a person is handling a specific ethical dilemma, use the set of questions in the “Litmus Test” section further on in the book or the questions found on page 2.

Each question is answered. Answers can be “Strongly agree/disagree” (or a modifier between these two extremes) or a yes-no (equivalent of a digital 1 or 0) value. Sort of a moral inventory of the situation. Weight is given to the responses and the results are judged accordingly. Participants can then determine from their own answers how to handle the ethical dilemma.

### **A Dozen Questions to Address Ethical Dilemmas**

1. Have you defined the problem accurately?
2. How would you define the problem if you stood on the other side of the fence?
3. How did this situation occur in the first place?
4. To whom and to what do you give your loyalty as a person and as a member of the corporation?
5. What is your intention in making this decision?
6. How does this intention compare with the probable results?
7. Whom could your decision or action injure?
8. Can you discuss the problem with the affected parties before you make your decision?
9. Are you confident that your position will be as valid over a long period of time as it seem now?
10. Could you disclose without qualm your decision or action to your boss, your CEO, the board of directors, your family, society as a whole?
11. What is the symbolic potential of your action if understood? misunderstood?
12. Under what conditions would you allow exceptions to your stand? <sup>2</sup>

### **Ethics Tools: Training**

The ethics program is essentially useless unless all staff members are trained about what it is, how it works and their roles in it. The nature of the system may invite suspicion if not handled openly and honestly. In addition, no matter how fair and up-to-date is a set of policies, the legal system will often interpret employee behavior (rather than written policies) as de facto policy. Therefore, all staff must be aware of and act in full accordance with policies and procedures. This is true, whether policies and procedures are for ethics programs or personnel management. This full accordance requires training about policies and procedures.

1. Orient new employees to the organization's ethics program during new-employee orientation.
2. Review the ethics management program in management training experiences.

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<sup>2</sup> Adapted from: Nash, L. (1981). Ethics Without the Sermon. Harvard Business Review, (59))

3. Involving staff in review of codes is strong ethics training.
4. Involving staff in review of policies (ethics and personnel policies) is strong ethics training.
5. One of the strongest forms of ethics training is practice in resolving complex ethical dilemmas. Have staff apply them to real life ethical dilemmas.
6. Include ethical performance as a dimension in performance appraisals.

## **Religious views on business ethics**

Many faiths have extensive literature and legal code on the accumulation and use of wealth; and many businesses rely on these ethical guidelines, both as a result of the religious beliefs of owners and managers, and as a way of ensuring that their actions meet the otherwise unwritten ethical standards of local communities.

**Christian Business Ethics-** In Christianity, the basis of this theology is the Old Testament and the New Testament. For example, Jesus asked his disciples, "If you lend to those from whom you hope to receive, what credit is that to you?" (Luke 6:34). Although this may be a general injunction to disinterested benevolence, it has also been read as a condemnation of interest or usury. Jesus referenced this especially when one lends to another believer, the idea being that, as a Christian with an eternal mindset, ultimately God is our rewarder and lending to a fellow believer should be left to God to reward over collecting nominal interest.

Business can be compared to a poker game. Both, it is argued, require nondisclosure and distrust in order to succeed, with only the naive showing their true intentions. Mark Twain's observation that "an ethical man is a Christian holding four aces" reflects a notion still in vogue today-that ethics and competitive environments like business or winner-takes-all games rarely mix.

**A Separate Business Ethic? -** The poker metaphor serves to legitimize business behavior that would be considered immoral in the personal realm- bluffing, deception and contributing to another's harm. All of these behaviors are justified in the name of their "real world" contexts. Advocates of dual morality, that is, applying one set of ethics in the marketplace and another in the home and church, expect employees to lay aside personal values and to focus solely on generating corporate profits. Everything possible, except perhaps breaking the law, must be done to enhance the bottom line. Subordinates have no right to interject personal values, such as environmental protection, fairness to fellow workers or contempt for dishonest sales techniques, into corporate matters

Oil baron John D. Rockefeller was Influenced by his devout Baptist mother. He developed on the one hand a strong personal religious ethic. His shrewd father taught him on the other hand to win at any cost in business, once boasting, "I cheat my boys every chance I get. I want to make them sharp." Rockefeller resolved this contradiction by compartmentalizing his life into two separate realms. Ruthless in business, he gave kickbacks to railroads, violently suppressed labor unrest and bribed competitors' employees to give him inside information. However, in his personal life he donated nearly half a billion dollars to a countless variety of worthy causes. One writer concludes that "Rockefeller was a conscientious Christian who struggled to end the livelihood of his every rival."

Such a segmented ethical system seems inherently unchristian because it ignores the twin doctrines of creation and sovereignty. The apostle Paul argues that no realm of life is beyond the lordship of Christ. No human activity-including the practice of business-falls outside of His lordship. To argue otherwise is to denigrate His authority. On the contrary, Martin Luther correctly asserted that Christian vocation is best expressed in life's most common experiences.

**Jewish Business Ethics-** The basis of all Jewish law is the Torah; and in it there are commandments concerning the kashrut (fitness) of one's money. These laws are developed and expanded upon in the Mishnah and the Talmud.

An interesting discourse on Jewish Business Ethics comes from Rabbi Yitzchok Breitowitz<sup>3</sup>. As with the Rockefeller example above he observes many people have an attitude that ... "if I don't tell the rabbi how to run his business, the rabbi shouldn't tell me how to run mine." Very often, people live fragmented dichotomized lives where what one does in the office from 9 to 5 (or if you're a workaholic from 8 to 7), are their own private affair and then at home a person can observe the holidays, or the rituals of Judaism, on the weekends, or three-days-a-year, or whatever.

The Rabbi goes on to say-

And yet we find in the Talmud a very interesting statement. The Talmud discusses what types of questions people are asked by God after their deaths. They come up to heaven; God asks them a variety of questions. The very first question that we are held accountable for after our deaths is "Nasata V'netata Be'emunah" which means "did you conduct your business affairs with honesty and with probity?" The second question is "did you set aside time for the study of the Torah, etc." But question #1 is- were we ethical in the conduct of our business. If you look throughout the Torah, you will see a constant juxtaposition between the ritual commands of Judaism and the ethical obligations between one human being and another. One verse may say, don't eat meat and milk and the other verse will say, do not cheat, do not misrepresent, do not engage in fraud, because they are all part of the same religious structure. The notion of a dichotomy between ritual behavior and social behavior is a dichotomy that is totally foreign to Judaism because all of them are part of the same God-given basis of morality.

We know that the Torah has 613 mitzvot. Of course, none of us can do all of them but one of the mitzvot in the Torah is a mitzvah that says "Kedoshim Tiyu, be holy." Now, what does that mean? I mean, basically, is 'be holy' something that simply says do the other 612? Or is there some extra dimension that this mitzvah entails? The great commentator, the Ramban, tells us that "Kedoshim Tiyu" is a requirement of a Jew not to just obey the letter of the law but to obey the spirit of the law as well. Ramban posits that it is entirely possible for a person to be 100 percent observant, keeping all the mitzvot and yet in the famous immortal phrase, he can be a "Naval B'rshut HaTorah" he can be a repulsive, disgusting individual within the confines of the law. It is not enough just to obey the law. One must go beyond the law and embrace the ethical imperatives that are within that legal structure. This is the concept of going "Lifnim Mishurat HaDin" going beyond the law, not just confining oneself to the law.

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<sup>3</sup> Jewish Business Ethics: An Introductory Perspective (Part I) *Rabbi Yitzchok Breitowitz*  
<http://www.jlaw.com/Articles/JewBusEth.html>

Rabbi Breitowitz continues with this example-

Let me give you a story which illustrates how this works in the business context. There was a rabbi, Rabba Bar Chanah who once hired workmen to transport barrels of wine for him. They were negligent and as a result, the barrels of wine broke and this man incurred a severe financial loss. He took the workers to court, suing them for the value of the wine that was destroyed and the workers' only defense was, "You know, we can't afford it. We don't have the money. What are you going to do about it?" So the courts found in favor of the workers. So, Rabba Bar Chanah questioned the court and said, "Is this the law? Is it not the law that I am entitled to recover for their negligence?" And the court told him, "For you, this is the law. You are a righteous person and because you are a righteous person, you have to take into account the equities of the situation, the unfairness, the fact that these are people who need the money, etc., and, therefore, you are compelled by virtue of your righteous status to go beyond pressing your exact legal rights." Well then, and perhaps this is an ancient example of chutzpah, they turned around and sued him for their wages. They said, "Well, wait a second, you didn't pay us our wages for that day." So, he was dumbfounded. He said, "Okay, it's one thing to say I can't recover from you but are you going to recover from me when you broke my wine because of your negligence?" Astoundingly, the court said, "Yes! That's a good idea. You have to pay." And, once again, he asked, "Is this the law?" And they told him, "For you, that's the law. These are people who need the money and therefore, you must go beyond the law."

**What Buddha says-** A website discussing "Buddhist business ethics" echoes the same sentiment.<sup>4</sup> For brevity's sake it can be summed up with a passage from the site- "Buddhist ethical principles are very noble and in an ideal world their practice would lead to peace and harmony but, unfortunately, as the Buddha has taught, people are motivated by greed, hatred and delusion - even Buddhists."

## IV. ETHICS AND THE PROFESSIONAL

**For a society to function, rules are necessary.** Without rules and enforcement, there can only be anarchy. Ideally, the values basic to a civilized society are handed down to individuals through customs. These are rules of behavior that over generations have been found to help make it possible for people to live together peacefully. Observing these rules is largely a result of family training and peer pressure.

### Ethics and the Law

There are always individuals who through ignorance, lack of training, or sheer perversity will not follow the rules. Penalties for rule-breakers make up the basic legal system of a society, backing up customs with force. Every civilized society is founded on law, and none has ever survived without it.

Ethics goes further than law in determining everyday behavior. Law cannot cover every aspect of human relationships. Personal ethics, or individual morality, has been called "what one does when nobody is looking." Law, on the other hand, sets standards for

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<sup>4</sup> Buddha Net- <http://www.purifymind.com/BuddhistEthics.htm>

behavior in situations involving other people, and backs those standards with the power invested in law enforcement.

The subject of ethics has been prevalent in the insurance industry since the early days of insurance. In Europe, regulation was found to be a means of enforced ethics within the industry.

## **Rise of Regulation**

In America, the original pattern of expansion filled legitimate needs. The insurance industry, as well as of other forms of business, grew eventually into a relentless drive for more and more success.

The results of this uncontrolled expansion and unethical practices brought on a demand for regulation. In the insurance business, state laws and licensing practices gradually developed to set required standards for companies and agents.

At the beginning of the 19th century there were only five million people in the United States, 90 percent of them farmers. There were only six cities in the country with a population of more than 8,000.

The growing cities produced an increasingly complex society in 19th century America. Individuals working for wages in a cash economy could no longer live the self-sufficient lives of their rural ancestors. In this setting, insurance rapidly became a recognized necessity for the protection of families and property.

Early insurance companies had waited for customers to come to them. As time went on and more insurers competed for business. It became the practice to advertise and send out agents in an aggressive effort at expansion. Many of these agents had little training or understanding of the principles involved in the policies they were selling.

Insurance stock companies were organized to take advantage of the growing market, and unregulated expansion continued. From 1830 to 1850, insurance in force increased by more than 3,000 per cent. After the Civil War, the growth rate of the industry was even faster. The amount of insurance in force increased at 50 per cent a year, reaching a total of two billion dollars by the end of the 1860s.

The Civil War brought unprecedented demand for manufactured goods. After the war American enterprise continued at a fast pace. New industries sprang up. Railroads crossed the continent. Cables crossed the oceans. Coal, copper, iron mines fed the factories. America was on its way to becoming the industrial colossus of the world.

## **Standards Decline**

In the excitement, attitudes changed. Business and political life were no longer governed by the ethical standards once taken for granted. Tax and other scandals rocked Washington during the Grant administration. Business was drawn into wildcat schemes, stock-watering, and embezzlement.

Insurance executives and agents concentrated on achieving personal power and prestige through business success. There were exaggerated advertising claims, carelessly written risks, and recklessly raised commissions.

## **Ethics Turned Into Laws**

The Massachusetts legislature in 1858 was the first to pass a law making a version of Wright's legal reserve principle a requirement for insurers. A state insurance department was created to enforce the new law and Elizur Wright became its head.

As the western part of the country was settled, the insurance industry again expanded its horizons. New companies grew up to offer insurance in the growing western cities as transportation and manufacturing facilities followed the trails blazed by the pioneers.

People moved about more, and travel restrictions were removed from insurance policies. Prudential pioneered insurance for low-income groups and it became widely accepted. By the end of the 19th century, the total of insurance in force in the United States had risen to seven and a half billion dollars.

Rapid growth again led to difficulties. Since insurance companies were the custodians of much of the nation's wealth, attention focused on them as a new "muckraking" phase of attacks on questionable business practices began shortly after the turn of the century. There was a renewed public demand for investigation of the insurance industry.

The Armstrong Investigating Committee in 1905, with Charles Evans Hughes as its chief counsel, turned its attention to insurance practices in New York. Its recommendations, backed by responsible insurance companies, resulted in the adoption of the New York Insurance Code in 1906. State supervision of insurance practices was tightened by this code, and eventually public confidence in the insurance industry was restored. Throughout the 20<sup>th</sup> century insurance regulation has grown.

The National Association of Insurance Commissioners (NAIC), a group made up of insurance officials from all states, has drafted model legislation which has been widely adopted by state legislatures.

The unfair trade practices act recommended by the NAIC defines unfair claims settlements, false advertising, defamation, and unfair discrimination and prohibits all these practices. This NAIC model has been adopted by nearly every state.

The resulting laws give state insurance commissioners the power to investigate when such practices are suspected and to levy fines and suspend or revoke licenses when violations are found. Marketing and disclosure standards for life insurance agents also are recommended by the NAIC. These make deceptive practices designed to mislead clients not only unethical but also illegal.

Any statement misrepresenting the benefits or coverage offered by a policy is a deceptive practice which can lead to the loss of an agent's license. Implying that future dividends provided by a participating policy will be enough to take care of premium payments would be such a misrepresentation. So would an implication that future policy dividends are guaranteed.



To tell a prospect that certain benefits in a policy being offered cannot be found in any other policy, or that an offer must be taken at once or the opportunity will be lost, would be considered unacceptable tactics. Any misleading use of figures as to cost comparisons or other significant policy features would come under the guidelines. So would statements defamatory to competing agents or insurers.

Legitimate agents recognize such actions as unethical.

They also have been made illegal in states that have adopted the NAIC recommendations. There are other prohibitions, such as offering a rebate to make a sale, or persuading a client to drop a policy just for the sake of selling a replacement that will be discussed later in detail.

While an ethical agent would not knowingly violate these guidelines, it is necessary for any insurance professional to be aware of the particular legal provisions in effect in the state with jurisdiction. The laws are to be followed first, supplemented by one's own ethical standards.

## **Licensing**

Insurers must be licensed by a state to issue policies there. A state's guarantee fund usually covers only insurers authorized to do business in that state. An agent representing an unauthorized company may be held personally liable for losses on a contract placed with an unauthorized insurer. The agent needs to be sure the company being represented is authorized to do business in that state.

It is also important for both the agent and the company office to be aware that laws can change. Actions of the state legislature and regulations issued by the state insurance commission both can vary with time and the pressure of public opinion.

Court decisions in insurance cases can make a change in liability affecting those in the industry. The legal system in this country is not static, but fluid. Company officials need to keep abreast of such developments and let their agents in the field know about them.

## **Court Decisions**

Suits to recover damages in cases of disputes over insurance coverage are increasingly frequent... The growing tendency to consider insurance practitioners as professional people carries with it increased legal responsibility.

Court decisions in many cases do not take into account any responsibility on the part of the insurance purchaser to be aware of policy provisions, even of easy-to-read policies. The outcome in many liability suits has made the agent or insurance company responsible for providing adequate coverage.

In a Louisiana case a plaintiff, the operator of a Laundromat in a leased building, asked his insurance agent to get as much property damage liability for him as possible. The agent told him \$100,000 was the maximum coverage obtainable, and the plaintiff told the agent to get that amount. Through an error, the policy was written for only \$10,000. A boiler explosion caused \$18,500 in damages at the Laundromat, and the plaintiff sued to recover the \$8,500 that was not covered by the \$10,000 policy.

The court appeared to place no responsibility on the owner for reading the policy, the declarations page, or the bill for the premium on the \$10,000 coverage. The decision was that the insured was justified in believing that the agent had obtained the limit of liability they had discussed. The resulting point of case law is that an insurance provider cannot count on having any responsibility placed on the insured to analyze the coverage provided.

The issue of professional responsibility on the part of insurance agents and agencies is playing an increasingly important part in court cases. In a Georgia decision involving business interruption policies, an insurance agency had been provided with a client's books to use in determining what coverage limit was needed. The agency used the gross profits figure rather than gross earnings to determine the coverage needs, leaving the client underinsured.

### **Professional Responsibility**

The plaintiff's argument in the court case was that the insurance agency had held itself out as an expert in the field with the needed qualifications to examine the books and determine coverage limits. The agency agreement with the client was to maintain adequate business interruption insurance based on yearly audits, and this agreement, the court held, was violated.

Such court decisions set the precedent of requiring a high standard of competence on the part of insurance professionals. Both agents and agencies need to be aware of this situation.

In addition to staying well informed and exercising due care, the responsible insurance practitioner can have professional representation available for claims protection by carrying Errors and Omissions (E & O) insurance. The E & O carrier will investigate claims situations and provide legal representation if necessary.

In the case of claims, the insurance professional needs to be prepared to deal with the claimant in a calm and competent way without overstepping limits on giving legal advice or otherwise prejudicing the case. Quick adjustment and settlement procedures are desirable in case of claims to uphold the reputation of the insurance provider, but it is important to have all the facts at hand before action is taken.

In dealing with a claimant, the insurance provider needs to remember not to give advice or promise to get the claim paid. It is also important, however, not to deny a claim without positive knowledge that it is invalid. Also, a claim should never be paid without certain authority. Any of these actions can create legal liability.

It is helpful in avoiding legal difficulties for the agent to maintain friendly relations with clients and establish a reputation for being trustworthy over the long term. A personal relationship of trust and confidence between agent and client may help avoid lawsuits and make settlements easier.

## **Ethics Commissions**

In addition to court cases, changes in the law can be brought about by an increasingly important agent, the ethics commission. Under pressure from activists, consumer protection groups and others, Ethics Commissions have been set up in state and national legislative bodies as well as in local government agencies.

Ethics Commissions tend to focus on lobbying, gifts to officials, conflicts of interest, and election procedures. They also, however, can consider other areas of public concern and produce legislation in response to consumer complaints.

An ethics commission can hold public hearings. It can determine what legislation needs to be passed in order to prevent abuses. It can investigate whether behavior of a public official has violated existing laws.

Congressional committees in both the Senate and the House have been conducting investigations into insurance cases with a view to possible federal legislation supplementing state level regulation of the industry. A Senate committee probe has centered on offshore insurers and reinsurers which are not subject to state regulation.

One reinsurer listed as its primary assets \$22 million in "treasury bills" claimed to have been issued by a Texas Indian tribe. Senate investigators believe this group to be fictitious. One of the tribe officials known as "Wise Otter" is thought to be a British subject.

The House investigation that followed the failures of large domestic insurance companies has focused on the possibility of setting up a federal support mechanism similar to the banking industry's Federal Deposit Insurance Corporation in order to protect policy holders beyond state agencies' limits.

It is important for insurance professionals to keep abreast of such legal developments affecting the industry and its traditional standards.

## **SEC Requirements**

Financial planning, a relatively new field for insurance providers, requires some specialized knowledge relating to securities and investment regulations. The Securities and Exchange Commission through the Investment Advisers Act sets high ethical standards for professional providers of investment advice.

Any transaction or business practice intended to deceive a client or prospective client is strictly forbidden under the act. The agent acting as a securities representative is legally required to act with due diligence, meaning that documented financial information must be furnished on companies whose stocks or bonds are being sold.

## **Guidelines**

In contrast to due diligence for securities salesmen, the standard established in court cases for agents only involved in selling insurance is due care. The client is given financial information on request, but the state insurance department is the agency responsible for requiring reports from companies authorized to do business in that state. The agent's legal obligation is to sell policies of insurance companies licensed in that state and not to sell policies of companies the agent knows to be insolvent.

## **Claims Defense**

An agency can establish a back-up line of defense against claims arising from insurance company insolvency. This can be done by showing proof that the agency has maintained a system for tracking financial conditions in the industry through figures from the various reporting agencies and by other means available.

It is important for the insurance agent to know the specific do's and do not's that constitute ethical behavior. Specifics that will be discussed are advertising, commissions (rebates), agent conduct, clients' files, illustrations and underwriting.

## **Agent Compliance**

### **Advertising**

When the agent advertises, he or she is making the product known to the public at large. There are many different ways to advertise. The following are the major methods, of advertising.

- Printed and/or published materials.
- Newspaper, radio, television, computers, billboards.
- Ads, circulars, leaflets, descriptive literature.
- Business cards, business brochures, prepared sales talks.
- Telephone solicitations.
- Any material used to sell, modify, update or retain a policy of insurance.

Agents wishing to advertise must obtain approval from their respective insurance company. All advertisements for life, accident, and health insurance must include and identify the insurance company the agent represents.

Advertisement that would not require prior insurance company approval would be one in which the only information given is the agent's name, address, telephone number, and description of the services being offered. Agency history and a simple statement of products offered, such as life, health, and/or annuities would also apply. There must be no reference made to specific policies, benefits or cost.

### **Advertising for Persons 65 Years and Older**

Advertisement or other device designed to produce leads based on a response from a potential insured which is directed at people age 65 or older must display and disclose in a prominent manner that an agent may contact the applicant if such is the case. Additionally, an agent who makes contact with a prospective insured as a result of acquiring that person's name from a lead generating device needs to make this fact known to the prospective in the initial contact with the person. Insurance companies and their representatives in several states must not solicit anyone age 65 and older for the purchase of disability insurance, life insurance, or annuities through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

## **Definition of advertisement**

The term 'advertising' for the purpose of this discussion of insurance includes envelopes, stationery, business cards, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance, life insurance, or an annuity.

No advertisement can employ words, letters, initials, symbols, or other devices that are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of misleading materials, include, but are not limited to, those which imply any of the following:

- The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institution or senior organizations.
- The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.

Advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer must have the written approval of the insurer before they may be used. These ads must contain the agent's name, business address, telephone number, and any insurance license number.

Ads used by insurers or their representatives cannot solicit a particular class by stating or implying that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

## **Seminars, Classes, Informational Meetings**

Beyond any other prohibition on untrue, deceptive, or misleading advertisements, the following protocol must be followed when soliciting seniors in a group; In advertisements for an event where insurance products will be offered for sale, if the terms "seminar," "class," "informational meeting," or some equivalent term is used to characterize the purpose of the public gathering, the words "and insurance sales presentation" must be used immediately following those terms in the same type size and font as those terms. Each person attending a meeting with a senior shall provide the senior with a business card or other written identification stating the person's name, business address, telephone number, and any insurance license number.

## **Direct Mailers**

If a company or insurance producer uses direct mailings, this is considered to be a device designed to produce leads based on a response from a person. Since respondents may be 65 years of age or older, these mailers must prominently disclose the fact that an agent may contact the senior.

## **Advertising Proscriptions**

Here is a list of practices in which insurers must not engage when soliciting business; Advertising may not use the name of a state or political subdivision of a state in a policy name or description.

In the same manner, it is prohibited to use any name, service mark, slogan, symbol, or device in such a way as to imply that the insurance company or its representative is connected with a governmental agency, such as the Social Security Administration. Advertising may not imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if the prospect fails to respond to the advertisement.

The insurance company or its representative is prohibited from using an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

In the trade name of its insurance policy or certificate, insurers cannot use any terminology or words so similar to the name of a governmental agency or governmental program as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser

### **Other Advertising Issues**

Every licensee must print the license number on advertisements, business cards, insurance price quotations. The number must be in the type the same size as any address, phone or fax number printed on the card. In several states, licensees must print or show on business cards, written price quotations for insurance products, and print advertisements, the word "Insurance" in type size no smaller than the largest indicated telephone number.

## **Commissions**

### **Rebating**

Commissions are the direct result of work performed by the agent with a new or existing policy owner. The agent's compensation is paid direct from the respective insurance company for the type of product and services recommended and are willing to provide. In addition to the initial commission, most insurance companies provide "renewal commissions", as an inducement to continue servicing the existing policy owners.

### **The Concept**

This concept, initiated many decades ago, was intended to accomplish two primary objectives:

1. Compensate the agent for future servicing needs the policy owner will require -- such as beneficiary changes, bank draft changes, endorsements, etc.
2. Provide the agent with an opportunity to perform periodic reevaluations of the policy owners' needs, thereby resulting in additional sales opportunities.

The agent, as a licensed insurance person, shall not directly or indirectly rebate or attempt to rebate all or any part of a commission for insurance. Rebating is illegal in most states, and is strictly prohibited. It can be punishable by fine, cancellation of contract with insurance company, and loss of license, or a combination of all three. Rebating can be described as offering any type of inducement other than what is contained in the policy itself, in exchange for purchase of insurance. Examples include, but are not limited to the following:

- Any verbal or written agreement for the agent to pay any part of a policy owner's premium.
- Any payment, allowance, or gifts of any kind offered or given as an inducement to purchase insurance.
- Any paid employment or contract for services.
- Returning any part of the premium to the policy owner.
- Offering any special advantage regarding the dividend, interest, or other policy benefits to the policy owner which are not specified in the policy.
- Offering to buy, sell, or give any type of security (stocks, bonds, etc.) or property, or any dividends or income from securities or property, to the policy owners' benefit.
- Giving anything of value to the policy owner in return for buying an insurance product.

### **Borderline Situations**

Rebating, or the attempt to rebate, is an offense not only under most codes of ethics, but also under state insurance laws. There may be borderline situations in which it is difficult to determine whether rebating has taken place.

It is fairly common practice, as an example, for an insurance agent to entertain policy owners or prospective purchasers with a meal and perhaps give a nominal or token gift such as a policy wallet. Such things are considered to be normal business practice, and not in the nature of a rebate. However, should the agent contemplate anything more than such token gestures of appreciation, then the greatest caution and good judgment must be exercised. Excessive benefits or gifts conferred upon policy owners or prospective purchasers, will at the very least be considered in bad taste, and at the worst, depending on all the circumstances, may expose the licensee to a charge of rebating. In no circumstances should a gift of anything of value be given as an inducement to purchase insurance.

The rules for rebating do not apply to splitting of business with another licensed insurance agent. Joint case work is very common throughout the industry, and splitting of commissions is normal business practice. This practice does not apply to equity and variable life products, since they are sold under the rules and guidelines of the Securities Exchange Commission.

### **Agents' Conduct**

As an insurance professional, the agent becomes part of the insurance industry's public relations arm. The agent meets the public every day, and the manner and conduct exhibited leaves a lasting impression with everyone with whom that agent had contact.

A big part of professionalism is the attitude toward competition; therefore, agents should avoid criticizing other agents. Such activity is detrimental to everyone in the business. Any criticism of another company's policies should be avoided. An incomplete comparison is not only misleading and harmful to the public; it can also result in license revocation for the guilty party. Respect for competitors helps to keep policy owners satisfied.

The agent is under an obligation to make accurate and complete disclosure of all information which policy owners or prospective purchasers should have, in order for them to make a decision in their best interest.

### **Representing the Insurance Product**

The agent is called upon daily to make many statements and representations, oral and written, upon which policy owners and prospects are entitled to rely. Such statements and representations must not only be accurate, but must also be sufficiently complete to prevent any wrong or misleading conclusions from being made by policy owners or prospects. It is just as wrong for a life underwriter to omit giving essential information, such as, failing to correct a mistaken impression which is known to exist, as it is to give inaccurate or misleading information. Representing insurance products as exclusively "retirement plans", "college education plans" or "savings plans", without noting that the life insurance is primary and the cash value features are secondary, can result in serious charges of misrepresentation of insurance products. Use of the word "deposit" versus "premium" can have a like effect.

### **Deceptive Practices**

**Deceptive practices as they pertain to our industry have countless examples, a few of which are:**

- Passing off the agent's own goods or services as someone else's.
- Misrepresenting the benefits, uses, or characteristics of the product.
- Making disparaging remarks pertaining to someone else's products, services, company, by making false or misleading representations.
- Advertising the product or rates while intending not to sell them as advertised.
- Misrepresenting the agent's authority as a sales person, representative, or agent to negotiate the final terms of the contract with the policy owner.
- Offering, in connection with an insurance purchase, participation in a "multi-level distributorship" under which payments are conditioned on the recruitment of additional sales people rather than the proceeds from the product sales.
- Using the terms "corporation" or "incorporated" or their abbreviations in the name of a non-incorporated business.
- Failing to disclose information during a transaction with the intent of inducing a prospect or policy owner to do something he or she would not do otherwise.
- The law allows courts to award an insured triple damages, court costs, and attorney fees, for deceptive insurance trade practices.
- Insurance is not only a complex product, it is an extremely complex industry. The insurance agent must be very careful not to mislead the consumer regarding any aspect of an insurance transaction.
- Misrepresentations can be in the form of an oral or written statement, advertisement in any media, use of a business logo or advertising



slogan, or anything else that communicates a false or misleading idea. A few examples of misrepresentation include:

- False or misleading statements about a particular policy.
- False or misleading statements about the financial condition of a respective insurance company.
- Telling a prospect or policy owner that dividends or current assumption mortality charges are guaranteed.
- Identifying a term life policy by a name that implies cash value accumulation, or vice-versa.
- Indicating that premiums on a policy are payable for a shorter time period, when the premiums may be payable for life.
- Indicating that the agent represents several insurance companies, when in fact the agent represents only one.

A high degree of ethical representation is good solid business. The agent's insurance career can provide financial gain and personal growth. Practicing as an ethical professional will bring both. The agent's actions will gain the respect of the policy owners as well as that of the insurance carriers. The agent's reputation will be significantly enhanced, and people in the community will want to do business with that agent.

## **Documenting Clients' Files**

Documenting the client files involves keeping track of the actions taken in dealing with the policy owner. A properly documented file should contain complete and accurate answers to all pertinent questions. This allows the agent to properly assess the need for insurance and substantiates the reason for the sale.

## **Paper Trail**

After the fact-finding meeting, the agent should send a discovery agreement to the prospective policy owner summarizing the initial meeting and outlining the agent's understanding of the policy owner's short-term and long-term financial goals. This document should also contain information about the policy owner's salary and expenses, and the amount of money in savings accounts and investments. It should also reiterate the amount of insurance in force and the amount of money the policy owner would be able to allocate for insurance premiums. In addition to this, the discovery agreement should thank the policy owner for the chance to work with them, and confirm the date of the agent's next meeting. Documentation not only can help the insurance professional minimize exposure to potential trouble but also can provide the client with additional services. It can help a client understand all of the options as well as the context in which the information is provided. This will help prevent situations in which, for example, an informal conversation is considered an endorsement for an investment. Documentation is a tangible work product the client can see, store with files and retrieve when needed. Documentation should detail interaction with clients to ensure the client understands the boundaries of the agent's commitment. It is important to take the time to record the kinds of critical conversations and information shared by the agent and the client that typically go undocumented.

The agent should always keep on file a proper ledger illustration. This should be an approved insurance company ledger, a sales proposal/idea that contains the following elements:

1. Insurance company name.
2. A full dividend/interest rate crediting disclaimer.
3. A clear description of the product.
4. The agent's name and illustration date.
5. Guaranteed values.
6. A page containing full explanation of any assumptions or special instructions.

### **Data Note and Log**

Effective case notes should also be kept in the policy owner's file. These should list the date and time of contact with the policy owner and concise summaries of all interactions. It is also recommended that the agent document the level of service provided to the policy owner.

An effective log of all telephone calls should be kept, listing the date, time, reason, and follow-up action of all telephone conversations with the policy owner. The agent should also note all unsuccessful calls to the policy owner in order to verify the attempts to provide proper service, thus, once again, documenting the level of service provided.

A delivery letter should be sent to each policy owner with a copy kept in their file. This letter would reinforce the information already discussed, such as the reason for purchasing the insurance, and the type of plan as well as the face amount of coverage. The agent should reiterate the amount and duration of premium payments, as well as the premium payment method. The agent should also restate the impact on policy values as it relates to borrowing, partial surrenders, advanced premiums, interest requirements, dividend usage, and if appropriate, interest or dividend crediting performance.

Many companies provide a delivery receipt with the policy that must be signed by the policy owner upon delivery. If the company does not, it is recommended that the agent prepare such a document to be signed upon delivery to the policy owners. It should list the date the policy was received by the agent, the policy number, and the insurance company's name. It should also contain the owner's signature and the date they signed for delivery of the policy. All of this should be kept in the policy owner's file.

### **Illustrations**

Illustrations were used extensively in the insurance industry in the past to help secure sales. Agents obtained them from the respective insurance company, and they were fairly bland and standardized for many years. They were straight forward and represented a close approximation of actual future performance. The advent of desktop computing brought about a sea change. With the use of confidence-inspiring, computer-generated sales illustrations, life insurers and life insurance agents routinely represented that the "vanishing premium" life insurance policy only required premium payments for a few years and thereafter the policy "paid for itself" out of interest or dividend earnings.

In reality, in many cases, these sales illustrations were based upon unrealistic assumptions about future interest rates and the insurance company's earnings. What then happened is, in later years, while the policyholder was paying his scheduled premiums for the number of years illustrated, the insurance company quietly reduced its interest rates or dividends to lower but more realistic levels. About the time the policyholder was expecting to stop making premium payments and let the policy pay for itself as represented, the company or agent would come back to the policyholder with a "revised" illustration showing the need for many more years of premium payments. The policyholder having budgeted to stop making payments for the life insurance, was then presented with a shocking and financially threatening dilemma: 1) either continue making expensive premium payments for many more years, or 2) risk having the insurance policy lapse for non-payment.

### **Changes Cause Problems**

Beginning in the early 1980's, a radical change began, primarily due to three events occurring simultaneously:

1. A significant reduction in mortality charges, due to advancement in medical technology.
2. Significant advancement in electronic technology – advent of low-cost personal computers.
3. A significant economic change resulting in double-digit market interest rates.

These three events, coupled with consumer demand, helped produce a product called Universal Life -- an unbundled, interest sensitive, whole life policy with a high degree of flexibility.

Insurance was viewed more as an investment product consisting of "mortality" and "side funds". Illustrations began to change and use historically high double-digit interest rates as the basis for projected values. As interest rates began to fall in the late 80's, projected values did not hold up to reality. Many policy owners received notices that premiums would have to be increased or death benefits reduced to keep policies in force. Policy owners became angry, and many accused agents and companies of unethical behavior.

It cannot be overemphasized that illustrations are mere projections based on current interest rates, current mortality charges and other expenses. These conditions are not contractual obligations. Agents who have competed on the basis of high interest returns will produce projections that are unrealistic. This blatant misuse of illustrations has led to policy owner confusion and dissatisfaction. Agents, companies, and the insurance industry have suffered tarnished reputations.

The results have been fierce disciplinary actions backed by a series of heavy fines on some insurance companies by state regulators. Some examples of illustration abuse are as follows:

- Falling prey to the allure of high interest returns.
- Use of "assumed" interest rates in competitive situations.
- The sales technique of "Vanishing Premiums".
- Heavy emphasis on accumulated values versus death benefits.
- Poor emphasis of contractual guaranteed values and the potential problems that could exist in the future.

Remember, the policy owner does not necessarily see the illustrations as hypothetical. Policy owner dissatisfaction has resulted in increased demands by state regulators for heavy regulations regarding illustrations. Some insurance departments are considering the elimination of current assumptions, and only allowing illustrations based on guaranteed values. The parameters of an illustration under these proposals would be strictly monitored. They have also suggested that disclosure of past performance will be all that is permissible.

### **Understanding the Hypothetical**

Many companies provide guidelines regarding interest rates to be used in product illustrations. The agent is advised to stay within the company guidelines to avoid policy owner dissatisfaction. Policy owners should be aware that current illustrations are a snapshot of how a policy might work if the current rates remained unchanged. To help with this awareness, illustrations should have three distinct columns:

1. Guaranteed Values.
2. Current Return Values.
3. Current Return Minus 1%.

This type of diligence will reward the agent with greater policy owner understanding of how interest rates and dividend scales can affect cash values and premiums.

Illustrations are rarely valid for policy comparisons. They are designed to show how a particular product of a particular company works. There are too many inconsistent variables from one company to another to allow for valid comparison. Policy selection should be made on knowledge of the product and analysis of assumptions underlying each policy. Policy provisions, company financial condition, and quality of service are valid considerations. Illustrations only, can be a dangerous criterion for policy selection without additional considerations.

### **Transparency and Self-Policing**

The vanishing premium concept has been particularly damaging to the public perception of insurance industry ethics. This concept is based on the premise that premiums may be discontinued after a certain number of years through the use of cash value or dividends. It was used as a marketing tool extensively in the 1980's. Projections of vanishing premiums (typically in six to eight years) were based on high interest rates in effect at that time. Many policy owners did not understand that a continuation of high interest rate was

necessary to fulfill illustrated projections. When interest rates fell, policy owners charged that no one explained the fact that the illustrated "vanish" was not guaranteed. This disappointment can be avoided with proper disclosure of illustrated concepts and the effect of changing interest rates. Good ethics and business practice dictates that illustrations show both guaranteed and non-guaranteed values with the difference clearly explained to the policy owner. Any illustrations showing non-guaranteed values may be incorrect after the first year. The agent should be thoroughly informed about "assumptions" and "hypothetical" and the effect of fluctuating interest rates and mortality charges. This additional risk should be communicated to the policy owner in written as well as verbal form.

There are many types of new generation policies which require due care and full disclosure. These include Blended Policies (permanent and term), Adjustable Policies, First-to-Die Policies, and Second-to-Die Policies. When two or more lives are insured under the same contract, particular care should be taken to explain to the policy owners that the death benefit is paid on the death of only one of the insureds.

Falling interest can create a climate where actual performance falls short of illustrated projections. Very often, policy owners do not understand the difference between hypothetical projections and contractual guarantees. This can lead to policy owner dissatisfaction, complaints and potential litigation. Increased policy owner complaints lead to adverse insurance department rulings, state regulations, fines and lawsuits against companies and agents. This affects the public perception of ethical conduct of the entire insurance industry. The solution lies in ethical business practices, particularly concerning policy owner understanding of illustrations. Self-policing through education, discretion and common sense will lead to field practices of a high ethical standard. It is important to remember that the policy owner will retain that information they see as most beneficial. As a professional community, our watch words are, tell the policy owner the truth.

Replacement of a contract of life insurance means any transaction which includes a:

- Rescinded, lapsed or surrendered policy.
- Charge to paid-up insurance, continued as extended term insurance or placed under automatic premium loan.
- Change in any manner to effect a reduction of benefits.
- Change so that cash values in excess of 50% are released.
- Policy subjected to substantial borrowing of cash value, but does not include the purchase of an additional life insurance contract.

The agent should not, when it could be detrimental to the interest of the policy owner, replace an existing contract of life, health, disability and annuity contracts with a new insurance contract. Every reasonable effort should be made to maintain the existing contract in force.

Where it appears that, due to a change in circumstances, an existing contract of insurance should be amended or changed; the agent should ensure that the policy owner is fully informed of any values, credits, or privileges in the existing contract which can be transferred to an amended or changed contract of insurance.

## **Service**

One study indicated that during the average insured lifetime he or she will purchase insurance from at least six different agents. Is part of the reason because of poor or lackluster service?

The insurance industry employs and contracts nearly two million people. It is quite evident that insurance is an intricate and essential service in our society. It is a field upon which our society depends more and more for financial protection. Life and health insurance purchases continue to increase each year. Property and casualty insurance is a part of every mortgage contract, auto ownership, and business coverage. Life insurance in force at the end of 1993 was nearly \$11 trillion. On a daily basis a large group of people will die, enter retirement, experience a cash emergency, or have a physical asset damaged or destroyed. This is the real world -- it affects everyone! These are critical times. The agent's insurance company, the agent, and the policy sold, stand between the client and financial disaster.

## **Value Added**

The insurance agent must be the "value added" benefit for the insured as well as the insurance company. In the decade of high tech mega information highway, the agent has to be the interpreting guide and the analyst for the general public to solve financial problems with an insurance purchase. The agent must also become the motivator, leading a prospect to action.

People like to do business with people they trust. Trust is built on ethical behavior. When potential prospects and existing policy owners find an agent with high ethical standards, they tend to do more business with the agent -- therefore becoming a client. In perhaps no other industry is the element of trust more important.

Charging fees for service is common practice in most occupational groups; however, Texas has an exception for insurance agents. Group I licensed agents are not allowed to charge fees for service unless they are properly licensed as a Certified Insurance Counselor (CIC). Property and casualty licensed agents are also allowed to charge fees for certain services.

## **Service Essentials**

The service to a policy owner/client is not only qualitative, but also quantitative. Periodic contact is essential, but can take various forms:

- Daily phone contact with the same policy owner would not only be extremely expensive and cumbersome, but also non productive and obnoxious. Most policy owners tend to accept three to six months intervals as a good basis for agent contact. This could be in the form of telephone calls, letters, informative announcements, as well as birthday and Christmas cards. Many agents use Thanksgiving cards as an alternative to the more commonplace Christmas card mailing.
- Annual reviews are extremely important with many policy owners, simply because their needs change. This is particularly obvious with business clients.

- It is definitely recommended that the agent staff her/his office with people able to handle day to day service needs, such as change of beneficiary designations, bank draft changes, policy amendments or endorsements, etc. If the agent elects to refer all of these tasks to the respective insurance company home office, it would significantly reduce the "value added" benefit that serve the policy owner. It would also enhance the likelihood of future replacement from another insurance agent -- who specializes in service.

Generally speaking, policy owners want convenience and immediate response. An agent, who refers policy owner service duties directly to the insurance company, is missing tremendous future sales opportunities, alienating themselves from building the trusted relationship necessary to maintain a strong business practice, and presenting themselves in less than an exemplary fashion.

## **Underwriting**

Perhaps no other area pertaining to compliance and ethics deserves as much attention as agent underwriting. When any type of claim occurs, the insurance application becomes the basis for a claim dispute, denial or acceptance. An agent, who compromises part of the underwriting process with false or misleading information, as it pertains to the prospective insured, is creating potential wealth for litigating attorneys.

### **Part of the Contract**

The agent must always remember that an underwritten application becomes part of any insurance contract. It is critical that all questions be answered completely and honestly. Too often it is tempting for an agent to "trim" ten or twenty pounds off a rather overweight insured or help them grow one or two inches, in order to assure a standard issue from the respective insurance company. Asking a potential policy owner to discard a lit cigarette during the application process may create non-smoker discounts, but in all likelihood would initiate a claim denial. Insurance companies have challenged fraudulent non-smoker rated policies through the court system, and won. It is also naive for the agent to believe that a two-year incontestability clause will exempt him/her or the insured from blatant, fraudulent underwriting. Insurance companies may pay a claim, but they can and do pursue legal action against the insured's estate.

The agent should make every effort to provide the insurance company with all accurate information pertaining to the prospective insured. Cover letters should be submitted with the application to provide details of unusual or extensive medical history or information; unusual business uses of insurance; foreign travel and residence; unusual financial situations; unusual beneficiary and ownership arrangements to clarify the insurable interest; unusual occupational duties; and any case discussions with an underwriter prior to the application submission.

Many insurance agents order medical examinations, attending physician statements, and financial information through third party sources, and upon receipt forward these items to the insurance company. This is not an illegal practice, but it may be against the company's practice. Since underwriting information is highly confidential, both the originals and photocopies of financial statements, attending physician statements,

hospital abstracts and other confidential records that have been obtained by agency personnel require safeguarding.

### **Protect Confidentiality**

To comply with state and federal privacy laws, and to control and protect confidential information provided to the company by applicants, guidelines need to be followed to insure the strictest handling of these documents. Examples to follow are:

- Access to files containing confidential material must be restricted to employees who have legitimate "need to know" in order to perform their assigned duties.
- Confidential information stored in personal files, should be retained only as long as there is legitimate need.
- Some companies absolutely forbid the acquisition and retention of medical examinations, attending physician statements, hospital abstracts or other medical histories.
- It is up to the agent to know what the insurance company's practices are.

Since the application is such an integral part of the insurance contract, care should be utilized in presenting all information to the insurance company in a professional manner. One of the most consistent complaints with insurance company underwriters is illegible applications. Not only does this impair the underwriting process, but it could be grounds for significant dispute during the processing of a claim.

Generally, changes or alterations to the application must be initialed by the insured/applicant. This is specifically important in changes in plan, face amount, owner, beneficiary, medical or financial representations and dates. Some companies are more lenient and allow amendment signatures at the contract delivery.

Document 2nd residence; unusual financial situations; unusual beneficiary and ownership arrangements to clarify the insurable interest; unusual occupational duties; and any case discussions with an underwriter prior to the application submission. Many insurance agents order medical examinations, attending physician statements, and financial information through third party sources, and upon receipt forward these items to the insurance company. This is not an illegal practice, but it may be against the insurance company's practice. Since underwriting information is highly confidential, both the originals and photocopies of financial statements, attending physician statements, hospital abstracts and other confidential records that have been obtained by agency personnel require safeguarding.

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The National Association of Insurance Commissioners has a Model Privacy Act that requires any applicant/insured to be notified of any adverse action taken in regard to their application. This Act allows an insured the right to know the details of the personal information about themselves in the company files, and has the right to request an insurance company to amend, delete, and correct such information.

## **Litmus Test**

Labeling a decision as an "ethical decision" may disguise the fact that almost every decision holds some ethical issue or impact. Perhaps a better approach would be to develop an ability to judge the ethical implications. What role do ethics play in this decision? How does one recognize an ethical situation or problem? What are the warning signs that this may be a tougher decision with deeper issues and wider impact? Here are some guidelines. Not all apply every time, but they should raise understanding and improve the decision-making process.

Do I put a monetary value on this decision? Would I make this decision differently if cost were not a factor? Am I putting a monetary value on my ethics?

Do words such as right, fairness, truth, perception, values, or principles appear in my reasoning when I am making my decision?

- Do I feel as if I need to search through a standard policies and procedures or contact a legal representative for help with my decision?
- Do questions of fair treatment arise?
- Do my personal goals or values conflict with my professional ones?
- Could this decision generate strong feelings or other controversy?
- What does my heart tell me? Do I ponder this decision on the way home?
- Do I offer myself excuses such as everybody does it, or no one will find out, or I did it for "The Company"?
- Does this decision really need to be made by someone else? Did I inherit it because someone else doesn't want to make it?

- How am I going to feel tomorrow if I do this?

If an individual faces a tough decision and feels as if some guidance is needed, sometimes there is no place else to turn. One must have an internal compass, a value system for guidance. That is why an ethical standard is important for everyone in the insurance industry.

## V. CONSUMER PROTECTION

### The Public's Well Being

Since the 1970's the states have enacted or promulgated an array of consumer protection laws and regulations. All regions were subjected to this trend. Market, regulatory, and legal forces have combined with societal perceptions to continually transform the way in which the insurance industry is viewed. Every agent needs to be aware of the impact of consumer protection on his or her job. Whether dealing with a business owner, an employee, a dependent; whether of substantial wealth or of modest means, all of these people have rights under state law when filing an insurance claim. Consumer protection includes watching out for the public's well being, as well as seeing that all claims are settled fairly. This section will help the reader gain knowledge of consumer protection. This material may be used by any insurance professional as a means of acquiring a perspective on the issues involved in consumer protection.

The first piece of legislation passed in the consumer protection area was the Federal Trade Commission Act of 1914. Its self-stated basic purpose is:

"Unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce are declared unlawful."

A result of the consumer movement that followed is regulation and litigation. Insurers in general and adjusters in particular are thrown into the spotlight. After a loss has occurred, the consumer, often in an agitated emotional state, and looks to the insurer to be made whole again. If this cannot be done under terms of the insurance contract, no amount of explanation can assuage the hurt caused by the economic gap and financial hardship. The policy becomes a red flag to the consumer's raging bull, leaving legions of lawyers and other "consumer advocates" to bridge the economic gap on the insured's behalf. Proper documentation and knowledge of legal procedure are basic for protection of the insurance professional and, ultimately, the insured public he or she serves.

One of the oldest principles of doing business was expressed during the days of the Roman Empire in the Latin phrase "*Caveat emptor*" or "Let the buyer beware." In other words, it was up to the purchaser of goods or services to make sure of getting what he or she paid for.

Governments did take some part in regulating commerce, even in early times, by controlling coinage, supervising weights and measures, and issuing charters and licenses. Businessmen cooperated in such procedures and did some regulating on their own, as in the case of the medieval guilds. But generally in pre-industrial times the relationship between buyer and seller was based on the "*caveat emptor*" principle.

With the coming of the industrial revolution in the 19th century and the development of complex urban societies, buyers became more and more removed from sellers and correspondingly less able to bargain with them. A demand arose for regulation to protect consumers from error or fraud on the part of producers, which under the industrial system had the potential for adversely affecting millions of people. Around the turn of the century in the United States, muckraking books exposed abuses in the meatpacking and other industries, and government agencies for consumer protection began to be set up. The process was expanded by the Depression, the growth of industry after World War II, and the Great Society programs of the 1960's.

As the movement now known as consumerism gained strength, in fact, so many regulations were put into effect that some critics claimed the correct term for the situation might be "*Caveat venditor*" or "Let the seller beware." Deceptive trade practices now to a large extent are not only unethical and poor business policy but also illegal, with stated penalties enforceable if an unhappy buyer calls on the proper government agency for help and is able to prove his case.

## **Overview of Consumer Protection**

Numerous state and local government agencies protect, promote, and serve the interests of consumers. The agencies are comprised of numerous entities (bureaus, programs, boards, committees, commissions, offices, and task forces) that license a large portion of the state workforce in sundry occupations and professions. These entities establish minimum qualifications and levels of competency for licensure; license, register, or certify practitioners; investigate complaints; and discipline violators.

The department of consumer affairs can be set up differently from state to state. Websites for city, county, state, and territorial government consumer protection offices can be easily accessed on line. The consumer affairs department also administers the consumer affairs legislation (consumer information, education, complaints, and advocacy), arbitration, things like auto warranty dispute resolution, and dispute resolution programs. It helps carry out small claims legislation by publishing materials for those who administer and use small claims courts, and by training small claims advisors and attorneys who serve these jurisdictions.

Other state agencies that serve consumers include real estate (licensing of real estate brokers and sales agents), the corporations regulators (licensing of personal finance companies, and a new service dedicated to combat investment fraud on the internet), and the department/division of insurance (licensing and conduct of insurance companies). Consumers are also assisted by a variety of state and local law enforcement agencies that enforce the state's laws on false and deceptive advertising, unfair and deceptive trade practices, unfair competition, and other laws. These agencies include the Attorney General, the District Attorneys of most counties, and in some cases City Attorneys county consumer affairs departments.

The basic purposes of a Deceptive Trade Practices Act (DTPA) and/or Consumer Protection Act are often expressed like this- "to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection."

## **Responding to Consumer Needs**

Consumer protection is usually addressed several places in state law. In the Insurance Code, a Life and Annuity Consumer Protection Fund can be set up and dedicated for protection of consumers of life insurance and annuity products in the state. This includes educating, responding to consumer inquiries, and investigating and prosecuting financial abuse by insurance licensees or those in the business of providing insurance.

In several instances a committee is set up as an arm of the state legislature. It is composed of members from both houses of the legislature. The committee is charged with review of the various boards and committees created by legislative mandate to serve the public good. It evaluates and determines whether a board or regulatory program has demonstrated a public need for continued existence. This does not mean that various other entities created by the state must refrain from actively protecting the interest of consumers. As noted above, the Insurance Department takes an active role in protecting the insurance-buying public. The same is true, for example, of the traveling public. A travel restitution fund can be created in order to protect purchasers of air or sea transportation or travel services. The Public Utilities Commission often has a Consumer Protection and Safety Division to protect, inspect and evaluate public transportation and utility systems.

## **Consumer Protection Law**

Although most businesses operate in a fair and legal manner, thousands of citizens lose money every year due to unscrupulous business practices and consumer fraud. There are a variety of state and federal laws protecting consumers from unscrupulous business practices. When making any sort of commercial transaction, it is important for consumers to be aware and informed of any rights they may have. Consumers are granted rights under consumer protection provisions and there are a number of points to keep in mind when making any commercial transaction.

A consumer with a product or service complaint should first contact the person or company who sold him or her an item or performed a service. Complaints usually can be resolved at this level. If not, call or write the consumer complaint department at the company's headquarters. Whenever filing a complaint, remember to maintain records of any correspondence, persons spoken to, dates and times, and do not send any original documents. State departments of consumer affairs publish a number of helpful pamphlets on a variety of consumer protection issues. The pamphlets are generally available on line.

Another consumer resource is the local Better Business Bureau (BBB). BBBs are non-profit organizations, sponsored by local businesses, meant to promote good relations between consumers and businesses. Though BBBs have no legal authority, they may contact businesses involved in disputes and offer some form of arbitration to settle the matters. Check the white pages of the phone book for the nearest office.

## **Deceptive Trade Practices and Business**

The law in each state addresses unfair competition, which means any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by the Business and Professions Code. People or

companies that engage in unfair competition can be enjoined to cease such behavior by the courts. Individuals who have been harmed can seek remedy in the courts. Action for injunction can also be sought by the State Attorney General as well as District Attorneys, County Counsels or City Attorneys. Civil penalties apply to those found violating unfair competition/deceptive trade statutes. Additional sanctions apply if the consumer is a senior citizen or disabled. The Code generally follows the National Model Act of deceptive trade practices if not in word, then in spirit. The general contents of the National Model Act follow.

**Prohibited Practices Under the Act-** The "false, misleading, and deceptive business practices" prohibited by the act include but are not limited to:

- ♦ Causing confusion or misunderstanding about the source, certification, sponsorship, or approval of goods or services.
- ♦ Causing confusion or misunderstanding about association, connection, or affiliation with or certification by another.
- ♦ Using deceptive representations about geographic origins of goods or services.
- ♦ Representing goods as new that are used, secondhand, reclaimed, reconditioned, or deteriorated.
- ♦ Representing goods or services as being of a particular grade, quality, or standard, or goods as being of a particular style or model, if they are of another.
- ♦ Using false or misleading representation of facts to disparage the goods, services, or business of another.
- ♦ Advertising goods or services and not intending to sell them as advertised.
- ♦ Advertising goods or services without intending to supply a public demand that reasonably could be expected, without stating a limitation of quantity in the advertising.
- ♦ Making false or misleading statements about the amount, existence of, or reasons for price reductions.
- ♦ Representing that obligations, rights, or remedies are conferred by or involved in an agreement which it does not have or which are illegal.
- ♦ Making false or misleading statements of fact knowingly about the need for repair service, parts, or replacement.
- ♦ Misrepresenting authority of an agent, salesman, or representative to negotiate final terms of a consumer transaction.
- ♦ Basing repair charges for an item in whole or part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed without separating the charges for the work and the charge for the warranty or guaranty.
- ♦ Resetting, disconnecting, or turning back the odometer of a motor vehicle to reduce the number of miles shown on the odometer gauge.
- ♦ Fraudulently advertising a sale by representation that a person is going out of business.
- ♦ Using a chain referral plan in the sale or offer to sell goods or anything of value, promising future consideration to the buyer for furnishing the seller with the names of other prospective buyers.
- ♦ Misrepresenting the rights or remedies provided by a warranty or guarantee.
- ♦ Selling or offering to sell a right of participation in a multi-level distributorship, either directly or in association with the sale of goods or services, promising a rebate or payment to individuals conditioned on their recommending or securing additional individuals for positions in the sales operation and not exclusively in relation to proceeds from the retail sale of goods.

- ♦Representing that work or services were performed on or parts replaced in goods when they were not.
- ♦Filing suit for payment of money on a contract signed by a defendant for goods, services, loans, or extensions of credit for personal, family, household, or agricultural use in any county but the one in which the defendant is living at the time of the suit or the one in which he signed the contract.
- ♦Inducing a consumer into a transaction by failure to disclose information, which would have caused the consumer not to enter the transaction.
- ♦Using the term "corporation" or "incorporated" or using an abbreviation for such terms in the name of an unincorporated business entity.

Agents should be familiar with certain definitions common to deceptive trade practice actions;

**Goods-** These are defined as tangible chattels or real property purchased for lease or use.

**Services-** Refers to work, labor or services purchased or leased for purchase including services furnished in connection with the sale or repair of goods.

**Consumer-** This means an individual, partnership, corporation, or governmental entity that seeks or acquires by purchase or lease any goods or services.

**Unconscionable action or course of action-** This is an act or practice which, to a person's detriment, does one or both of the following. 1.) It takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree 2.) It results in a gross disparity between the value received and consideration paid in a transaction involving transfer of consideration.

**Consumer Lack of Knowledge-**This concept under consumer protection law has been interpreted as meaning "taking advantage of the consumer's lack of knowledge to a grossly unfair degree." A statement such as this should be a warning to insurance professionals. They have superior knowledge of the terms, conditions and settlement procedures involved in the insurance contract. They are acting in their capacities as principal when dealing with a consumer who is held to a much lower duty of care. Under the Deceptive Trade Practices Act, the consumer has been held to have a duty of care of being ignorant, unthinking, and credulous.

## **Trust- The Basis of Insurance**

A bedrock principle of the insurance industry is trust – particularly between an agent and his or her clients. It is important that an agent avoid anything that will erode that trust. A dynamic of the insurance industry is the remarkable growth of the industry and the change that has resulted from technology. Many of the regulatory issues that come about are largely a function of that growth and change. The future of the business lies in the trust customers and the public have in it;

- Honesty (full disclosure)
- Fairness (to all involved)
- Avoidance of conflicts of interest
- Promise keeping
- Responsibility

Acting in accordance with these values results in integrity and builds a reputation of trustworthiness. Obstructions to ethical decision making include the following;

- Pressure to make the numbers
- Time Pressure
- Misaligned priorities
- Short Term orientation (Failure to consider long term implications)
- Underestimating the risk of getting caught
- Rationalization

With insurance, the element of trust is critical. The purchase of a home, automobile, computer system, or even a washing machine is a big expense for a consumer. There is a great deal more at stake with a life insurance policy. The insured and his or her family members can suffer financially if the agent and his company fail to deliver on their promises. Unlike a house or auto, a life insurance policy is not a tangible product. Insureds cannot tour the home or kick the tires. When an agent delivers a policy to the insured, they should spend time going over premium, terms, and conditions of the policy. Afterwards, most people simply place the documents in a safe, a drawer, file cabinet, or safety deposit box until there's a problem. With an intangible product like a life insurance policy, clients are buying the trust and security that comes from a company's promise to "be there" if and when the need arises.

## **VI. AGENCY AND ETHICS**

Agency is a three-legged stool with a relationship between the agent, client, and broker (insurer). There is great potential for cross talk, "he said-she said", and general miscommunication in such an arrangement. For their own protection, protocols must be established and adhered to whenever an insurance professional is in an agency system.

### **Authorization to Act**

A relationship between two persons by which one of them is authorized to act on behalf of the other is called an agency. The person authorized to act is the agent. The person for whom he acts is the principal. Authorized acts of the agent bind the principal and create legal rights and duties for him with respect to third persons. In the legal sense the term "agency" applies to contractual or commercial dealings between two parties through the medium of another.

Changes in the legal position of the principal which may be produced by acts of an agent include the creation of contract rights and obligations, the existence of tort duties, and the transfer of title to property.

Without agency a business person could make transactions only by directly and personally participating in them or by closing contracts himself. Through the use of agents, he can enter into thousands of transactions in the time it would take him to make one in person. A corporation, which is a legal entity, could not do business at all without acting through its agents, officers, and employees. The agency concept is a necessity for modern business.

The basic principle of the law of agency is that the authorized act of the agent is the act of the principal. This is expressed in the Latin maxim "Qui facit per alium, facit per se," literally meaning that he who acts through another acts himself.

The most common method of creating an agency relationship is by contract or agreement, requiring a manifestation of consent by both the principal and the agent. Agency, however, may result from an order given by one person to another to act on his behalf with or without a promise of consideration. The element of consideration is not essential in the relationship of principal and agent. A statute may create an agency known as agency by operation of law. The non-resident motorist statute is such an agency. In most states the secretary of state is appointed as the agent of a non-resident motorist while on the highways of that state for service in case of an action arising out of that operation.

Agency by estoppel exists when a person, who by his conduct gives another person apparent authority to act on his behalf, and reasonably induces a third person to rely on dealing with that person as an agent.

Ratification can affirm the act of a purported agent or the unauthorized act of an agent, giving the commission of the act the same effect as if it were originally authorized.

## **Legality of Agency**

In most cases whatever an individual may do personally he may do through an agent. There is an exception for acts so personal that their performance may not be delegated, such as personal services under contract.

Whatever a person may not legally do himself; he cannot legally authorize another to do for him. He cannot legally authorize another person to commit an illegal act or crime on his behalf. Any such agreement would be void. All parties planning or participating in the commission of a crime or unlawful act are held to be principals. Legally, war terminates commerce and trade between the belligerents. A citizen of a warring country cannot appoint or act through an agent in an enemy country.

## **Capacity**

The capacity of an individual to act through an agent depends on the capacity of the principal to do the act himself. As contracts entered into by infants or insane persons are voidable, so appointments of agents by infants or insane persons are voidable. The incapacity of an agent to bind himself by contract as an agent, does not disqualify him from making a contract that is binding on his principal. An infant or insane person as an agent may make a contract with a third party which is valid between that party and the principal, even though the contract between the principal and agent may be voidable or void.

A person who has an interest adverse to that of the principal may not act as his agent. The Statute of Frauds prohibits a party to a contract from executing a note or memorandum as agent for the other party.



The relationship between master and servant is not one of agency. The servant does not have the right to enter contracts on behalf of the master unless there is a separate agency relationship. An independent contractor may or may not be an agent. The relationship depends on the nature of the work performed or services rendered and the extent of the control exercised over the contractor.

## **Kinds of Agents**

An agent is one who has been given express or implied authority to act on behalf of the principal. An ostensible agent is one to whom the principal has given no authority but by conduct has induced others to reasonably believe that he has the authority for acting.

Another classification of agents is as general or special. A general agent is employed to transact all business of his principal or all business of a particular kind. A special agent is employed to act for his principal only in a specific transaction or for a particular purpose. A special agent does not have entire control over a particular business but only the authority to perform certain acts.

A subagent can be employed by an agent with the knowledge and consent of the principal. The subagent can assist the agent in transacting the affairs of the principal, not as a mere servant of the agent but with authority to bind the principal. He has a fiduciary relationship with the principal as does the agent.

## **Fiduciary Duties**

A duty arising out of a position of trust and confidence is called a fiduciary duty. An agent has fiduciary obligations to his principal. Other examples of fiduciary obligations include the duty owed by a trustee to the beneficiary of the trust, by an officer or director of a corporation to that corporation and its shareholders, or by a lawyer to his client. A fiduciary duty exists in every relationship where one person is induced to put his trust and confidence in another. The fiduciary duty is one of good faith and utmost loyalty.

In the fiduciary relationship the agent must act solely in the interest of his principal. He must not act in his own interest or in the interest of a third party. He may not take a position in conflict with his principal's interest. He may not enter into any transaction in which he has a personal interest unless the principal consents and has full knowledge of all the facts. Full disclosure is required by the agent to his principal at all times. He cannot compete with his principal or act on behalf of a competitor. He cannot act for persons whose interest's conflict with those of the principal. He may not buy from himself. An agent employed to sell may not become the purchaser nor act as agent for the purchaser. His loyalty must be undivided.

An agent cannot use information obtained during the agency for his own benefit and contrary to the interest of his principal. If before the expiration of his employer's lease on a property he secretly obtains a lease for his own benefit, he may be forced to transfer it to his principal.

The agent is entitled to receive the agreed salary or commission, or if the amount was not fixed by agreement, a reasonable compensation. He is not allowed to make a secret profit out of the matter involved in the agency.

If a broker knows his principal will accept \$75,000 for a piece of property with an asking price of \$80,000, and the broker tells a prospective buyer he will try to get the seller to take \$75,000 on condition the buyer pays the broker a secret \$2,500, the fiduciary duty has been violated. The broker can be required to pay the secret \$2,500 to the seller and also forfeit his right to a legal commission.

### **Other Duties of Agent**

An agent owes his principal other duties in addition to his fiduciary obligations. He is expected to act with reasonable care and skill in the performance of his work. He is to conduct himself with propriety in order not to bring disrepute on the principal or his business. He is to avoid conduct which would make friendly association with the principal impossible. He is to use reasonable efforts to give the principal information on the affairs entrusted to the agent that is relevant and which he knows the principal would wish to have. He must maintain and provide to the principal a true account of money or other items the agent has received or paid out on behalf of the principal.

There are times when the agent cannot communicate with the principal. Also, the principal has given no specific instructions. The agent must refrain from binding actions which are expensive, speculative in nature and uncertain in attaining the principal's objectives. All reasonable instructions and directions of the principal must be obeyed by the agent. He must follow the directions of the principal even though the terms of employment do not prescribe such directions. The agent does not have to follow directions that violate a privilege of the agent to protect his own or another's interest. The agent must refrain from acting as agent after termination of his authority.

### **Principal's Duties to Agent**

In addition to whatever specific duties may be set out in a contract arrangement between principal and agent, the principal is under contractual duty to refrain from unreasonably interference of the agent's work. Simply by contracting to employ an agent, a principal does not promise to provide him with an opportunity to work, but such a promise may be implied by the nature of the employment or by the circumstances under which the agreement was made.

A principal who has reasonable knowledge of possible physical harm or monetary loss in the performance of the agent's duties is duty bound to inform the agent of such risks.

It is the principal's duty to maintain and render to the agent a true account of money or other things due the agent. He also has a duty to conduct himself in such a way as not to harm the reputation of the agent.

**Reimbursement-** Authorized payments made by the agent on behalf of the principal, and expenses incurred by or resulting from authorized acts of the agent, are to be reimbursed by the principal. The principal is under a duty to pay the fair value for the agent's services rendered if the agency agreement does not specify a definite amount or rate of compensation.

**Commission Advances-** Courts have held that unless there is an express or implied agreement otherwise, a salesperson is not required to pay back any excess of advances over commissions. One decision called an arrangement with a salesperson "a joint enterprise in which the employee furnished his time and ability and the employer furnished the money necessary to enable the employee to devote himself thereto. Both expected the adventure to produce a fund (the earned commissions) from which each would be fully compensated.

The agent expects compensation for his time and labor, and the principal expects a return on his money. The advances are therefore not regarded as loans to the employee but as speculations in a common enterprise. Without a promise to repay contained in the agreement under which the advances were made, a promise to advance money for a particular purpose in the furtherance of the principal's business does not import an expectation of its return personally by the person to whom the money was advanced.

### **Liability to Third Persons**

An agent can cause his principal to become bound to third persons. Since the principal can manifest his will through an agent, the acts or omissions of the agent impose liability on the principal. The agent has the power to subject his principal to either contract or tort liability. Power is defined as the ability of a person to produce a change in legal relations. Whether power is used rightly or wrongly it results in the creation of new rights and new duties. A principal is liable to third persons on contracts made by his agent when the agent is acting within the scope of his actual or apparent authority. The principal is not liable in contract for the unauthorized acts of an agent. To be binding on the principal, the actions of the agent must be strictly within the limits of the authority given to him by the principal.

**Express and Implied Authority-** Express authority is granted the agent in spoken or written words of the principal directing the agent to do something specific. Implied authority is based on the consent of the principal manifested to the agent. Implied authority is not given through expression or explicit words but is inferred from the principal's conduct and consent.

Implied authority includes authority to use all reasonable means to accomplish a particular task assigned to the agent. The agent employed to manage an apartment building for a commission has the implied authority to pay utilities, hire a porter, and pay for repairs. These acts may be reasonably inferred as necessary to proper management of the building.

An agent has apparent authority through manifestation by the principal to the third person with whom the agent is dealing. Smith writes Jones a letter authorizing Jones to sell Smith's car. Smith sends a copy of the letter to White, a prospective purchaser. Smith then writes a second letter to Jones revoking the agency agreement but does not send a copy of the second letter to White. Jones at this point has no actual authority to sell the car but as far as White is concerned, Jones continues to have apparent authority, since White has not been informed of the revocation of the agency.

The agents responsibilities are to the;  
Policyholder

Insurer  
Regulator  
Public

Responsibility is a two-way street. The insurance agent has a responsibility to explain the policies but the insured also has the responsibility to take the time necessary to understand this explanation. If there is no responsibility placed on the insured, the agent is left in the position of protecting the consumer from his own bad choices (a trial attorney's dream land). In a market economy consumers must take responsibility for their choices (provided business is conducted legally and ethically), and the education necessary to make those choices.

## **Fiduciary Relationships**

A fiduciary is a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking; one who holds a position of confidence. The State of Texas has stated that insurance companies owe "fiduciary-like" duties to their policyholders. The reasoning is that since insurance companies have such a superior bargaining position over the general insuring public, and issue policies on a take-it-or-leave-it basis (adhesion contracts), they should be held to act as a fiduciary when dealing with policyholders. However, many courts do not see it that way. Courts have different views of this most basic issue--the relationship between insurance company, agent and policyholder;

- The relationship of confidence and trust which exists between the insurance company and the policyholder is not a fiduciary one, and the insurance company has the right to protect its own interest along with that of the policyholder (State Farm Mut. Auto Insurance Co., v. Floyd, 366 S.E. 2d 93, 235 Va. 136 Va, 1988).
- The insurance company duty is analogous to that of fiduciary (James v. Aetna Life & Cas. Co., 326 N.W. 2d 114, 109 Wis 2d 363)
- The insurance agent owes a fiduciary duty to the insurance company, and acts not for the policyholder, but for the insurance company (Weinisch v. Sawyer & Allstate Insurance Co., 587 A. 2d 615 NJ, 1991).
- A fiduciary relationship exists between an automobile insurance company and its policyholders (Gibson v. Government Employees Insurance Co., 208 Cal. Rptr. 511, 162 CA 3d 441).
- Under Mississippi law there is no fiduciary relationship or duty between the insurance company and the policyholder (pertaining to property insurance), only a contractual relationship exists (Gorman v. Southeastern Fidelity Insurance Co., 621 F. Supp. 33, aff. 775 F. 2d 655).
- Louisiana law, an insurance broker has a fiduciary responsibility to the policyholder as well as to the insurance company (Offshore Production Contractors, Inc. v. Republic Underwriters Insurance Co., 910 F. 2d 224)
- The automobile policy created an obligation between the policyholder and the insurance company to deal with each other in good faith, but there was no trust or fiduciary relationship by either party (Miller v. Lumbermens Mutual Cas. Co., 488 So. 2d 273, writ denied 493 So. 2d 637).

Insureds whose coverage does not apply to a particular loss will often sue their agent or broker for failure to obtain the coverages they needed.

To make their case, the insureds will invariably try to hold the agent or broker to a higher duty of care than he or she ordinarily has under the law. Specifically, they will attempt to prove that a fiduciary relationship exists between the parties. If they succeed, the case becomes easier for them to win.

A fiduciary duty is the highest standard of care imposed at either equity or law. A fiduciary is expected to be extremely loyal to the person to whom he or she owes the duty. The fiduciary must not put personal interests before the duty and must not profit from the relationship, unless the principal consents. The fiduciary relationship is characterized by good faith, loyalty and trust. Fiduciary relationships include those between a trustee and beneficiary, a director and company, a lawyer and client, and a doctor and patient.

To establish a fiduciary duty owed by an insurance agent or broker, the party claiming breach must show evidence of some special trust or confidence placed in the broker or agent by the insured and recognized by the agent, preferably in writing. The prudent agent or broker will make clear that the relationship with the insured is a business relationship.

The agent who successfully defended the following suit protected himself by clearly communicating with the insureds.

The lesson to be drawn from this discussion is to always communicate and document contacts with clients. The agent who maintains a paper trail and record of customer interactions avoids confusion, misunderstanding, and (possibly) litigation.

## **Commingling**

The term comingling, when used in a legal context, is a breach of trust in which a fiduciary mixes funds that he holds in the care of a client with his own funds, making it difficult to determine which funds belong to the fiduciary and which belong to the client. This raises particular concerns where the funds are invested, and gains or losses from the investments must be allocated. In such circumstances, the law usually presumes that any gains run to the client and any losses run to the fiduciary that is guilty of comingling.

The problem of comingling is of particular concern in the legal profession. Attorneys are strictly prohibited from comingling their client's funds with their own, and such activity is grounds for disbarment in virtually every jurisdiction, because of the ease of embezzlement and the difficulty of detection. Similar rules apply for licensed real estate brokers handling earnest money and other professionals who hold deposits as agents for clients *in absentia*.

If insurance agents are not fiduciaries, it would seem acceptable for agents to be allowed to commingle their funds with client funds. Such is not the case. No matter what state you reside, comingling business funds and personal funds is against insurance law. Agents need a business account for the premiums that may be collected. Often, premiums made payable to and forwarded to the insurer by the agent.

## **Client Relationships**

With the insurance transaction, the arrangement with the customer not only includes the advantages, and benefits of the product, but also the agent's best efforts and assurance that the product meets the customer's needs. As they do with their doctor, lawyer,

accountant, or any other licensed professional, policy holders depend on the agent's specialized knowledge and skills. Agents have a duty to the insureds he or she services. This duty, however broad, requires agents to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith in every transaction. Agents must at all time act in a manner which they believe to be in the best interests of the client.

Ethical trouble begins when an agent views life insurance selling solely from the standpoint of personal gain or self-interest. Insurance professionals need to make sure they are providing a benefit to the client in return for a commission. The agent's main concern should always be to serve the customer's best interests. That service commitment often leads to long-standing business and a referral potential that works in favor of the agent. If a transaction would not serve the customer's best interests, it is not in the agent's best interest. That is part of the concept of placing the customer's best interests ahead of the agent's interests. It is an ethical standard that holds true for every business.

Referrals and repeat sales are the building blocks of the most successful agents (not necessarily the largest producers). These agents receive a benefit from establishing a relationship of trust and ethical behavior with their clients. Success in the insurance industry is made easier by the insurance professional remaining on an even ethical keel. Being ethical means sometimes being at risk of losing a sale to a competitor who is more attuned to filling an order book. It may be hard to do when a competing agent is not acting in the customer's best interest, but ethical behavior does have its reward.

Insurance professionals sell a product, but the insurance industry is a service oriented business. The primary benefit of an insurance policy is not immediate and there is nothing tangible to show for the money one spends on it. The tangible benefit comes in the form of a payment, making the insured whole again after a loss. Still, insurance is more than just a tangible benefit; it is a sense of security, given to the insured and his or her family in the knowledge that they are protected against loss- sometimes catastrophic loss. Part of an agent's obligation to service is to educate customers that the relatively-low expense of insurance premiums is worth it.

Once emotion is removed from the sale, the insurance business is unquestionably a business of service. It takes a great deal of both time and effort, to assure the client that the insurance agent truly has their best interest at heart. Insurance buyers often complain that, while they receive a great deal of attention from insurance agents who are trying to make a sale, they feel essentially abandoned after the sale is made. It is unfortunate that some agents forget about the service aspects of the relationship. Experienced agents follow up with the client during the policy period. Clients who allow their policy to lapse often do so because they feel abandoned or by getting 'picked off' by a lower price (and lower benefit). Client's needs should be reviewed on a regular basis. Life is an on-going process. Clients get married and divorced, have children, move, and change jobs. These changes generate needs for new or different products. An agent's job is to be mindful of these changes. That is a part of maintaining client relationships.

## **Skill and Competency**

Simply stated, a skill is something you can do and competency is how well you do it. Agents are expected to have (or gain) the training, skill and competency to apply the modalities and tasks of the insurance to the mission of finding and servicing the needs of the insurance-buying public. Those characteristics are composed of the knowledge and skills needed to perform a job effectively. Competency can be described as an individual's actual performance in a particular situation. Competency describes how well that individual integrates knowledge, skill, attitudes and behavior in delivering work results according to expectations

Insurance agents are members of a profession dedicated to furnishing professional skills and service to the public. Whenever problems arise which might result in detriment to the agent or clients, the abilities of the agent can be called into question as part of a legal action. To avoid unwanted results in such situations, agents must strive to maintain the highest standards of training, ability and capability.

Insurance is a big industry and an agent is but one person. By profiling competencies, agent's efforts can be channeled within a pre-defined framework that supports the organization's objectives. Also, management will be able to direct learning and knowledge acquisition in a targeted approach to overcome skill and competency gaps for a more productive workplace.

Competencies will also help organizations to focus on the characteristics their agents must possess for their personal growth and success. With a set of competency goals in mind, this provides a clear roadmap to measure agent performance and to align performance with business strategies.

## **Insurance Sales Issues**

People who sell insurance product face the dilemma of putting customer needs ahead of their commission-driven business model. Where there is no sale, there is no revenue. The intricate nature of insurance products causes the public to be dependent on the knowledge and advice of the person selling the insurance product. The insurance professional's loyalty may be with the insurer, but there is an implicit duty owed to the customer as well.

## **Needs Selling**

Needs selling is the focus on the needs of an individual purchaser, not on what the agent wants to sell. Traditionally agents are armed with a product and told to go sell it. Needs selling is based on the idea of putting the customer's needs first. The goal being to determine the client's needs and then to solve that need with an appropriate product. Common sense suggests that total needs selling is the way to go. In practice that is not the case. It is time-consuming, considered intrusive, and frequently takes the prospect's attention away from buying another policy to trying to deal with the myriad of issues that a "total needs" analysis tends to raise. Agents must not let the need to sell product override or replace the clients need for the insurance.

## **Public Perception of Insurance Industry**

A problem for the insurance industry is guilt by association; all big business is dumped into the same category, particularly businesses entrusted with the public's money. Insurers are tarred with the real and perceived sins of others. The public is also bombarded with media information about situations that refuse to go away. The mold issue in Texas and the claims controversies that follow every hurricane. New issues are heaped atop past problems that refuse to die. Advocates of a cure-all government are on a mission to prove that the government can cure all forms of risk.

This demonstrates the prevalence of the dangerous but widespread social assumption that all risk can be avoided by insurance. Indeed at a domestic level there is a belief that consumers are entitled to insurance, albeit at a price. Increasingly insurance is viewed not as a commercial transaction, but as a form of middle class welfarism under which a more than minimally wealthy lifestyle can be protected by insurances. This approach to insurance may lead to booming sales of highly profitable products in the short to medium term. However, in the long term there are real dangers in a widespread view that insurance is a panacea for risk.

As the industry grapples with image issues, it will also have to deal with negative public perceptions about its job performance. The public receives getting conflicting messages about the industry and its work force in bad economic times as in good. It all comes down to the agent the impression he or she makes on the public. There is no substitute for the consumer's confidence. Agents must focus on the customer and present credible, valuable information about product. That way, the public sees firsthand that honest agents are the backbone of the industry.

## **Summary**

These guiding principles can be used to help us make decisions every day. Every agent should be able to make decisions based on his or her internal ethical and spiritual code. As the public face of the insurance industry, agents must make ethical commitments without concern for what others think, without being attached to the outcome, and supporting others in this area. When right decisions are made with the help of ethical and spiritual guides, criticism will arise from all corners. If the agent rethinks and second-guesses in the face of criticism, he or she may find themselves moving to a less ethical outcome. Good and truth usually stand the test of time and may not always be immediately apparent. Taking an ethical stand will always be scrutinized and criticized by someone. An ethical and spiritual path in business, as in life is an individual one. Ethical choices may not be popular- ethical decisions are not reached by consensus but by conviction.