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ETHICAL DILEMMAS FOR INSURANCE PROFESSIONALS

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CHAPTER 1: WHY BOTHER WITH ETHICS?

This course makes the assumption that you, an experienced insurance professional, probably don't need to be lectured about what's right and what's wrong. You've known the basics of good and bad since childhood, and no continuing education course is likely to have a major impact on your concept of morality or turn a "bad" person into a "good" person.

However, good-intentioned adults can still benefit from some time and space to contemplate why they believe what they believe, how they make ethics-related decisions and how the basic lessons of right and wrong can be applied in specific business scenarios. Many of us are likely to discover that the truly hard choices in life aren't clear ones between something that is obviously wrong and something that is obviously right (for example, stealing money from a client vs. keeping the client's money safe). Rather they are the cases in which we notice two or more legitimate choices that could be made, all of them having merit but none of them likely to fully please everyone.

With this in mind, perhaps it's appropriate to consider a definition of "ethics." Definitions for this term are numerous enough to fill their own book and could include statements like, "the direction of your moral compass," "how you treat the people who you don't know" and "how you conduct yourself when no one is watching." For our purposes here, let's be guided by a paraphrased, three-pronged definition from former insurance professor and columnist Peter R. Kensicki, who proposed the following theories:

- Moral decisions involve deciding whether an act is right or wrong.
- Legal decisions involve determining whether an act is legal or illegal.
- Ethical decisions involve choosing between two or more right AND legal options.

Viewing ethics in this proposed way can be helpful to licensed insurance producers because it acknowledges that we are, of course, expected to treat people with kindness, compassion, honesty and skill but are also required to follow laws and rules set by federal and state governments. Our instincts to help a consumer or a colleague must be reexamined if our assistance might violate our legal obligations.

The Need for Ethics in Business

Strong cases can be made for acting ethically in order to increase business. Consider the successes you've had in your insurance career thus far and whether they would really be possible if you hadn't shown respect, humility and other positive and seemingly selfless traits to your customers, colleagues or even your competitors.

Building Our Business With Ethics

For most insurance producers, the most common source of new business opportunities will be referrals. By putting yourself in a position to be recommended by your current customers to their friends, their family and their business associates, you help yourself stand out from the thousands of other alleged insurance experts in your community. Your workday will also be more efficient because you'll be allowed to spend less time following cold leads and contacting strangers for business and more time helping people via legitimate, thoughtful sales.

Whether we realize it or not, each referral comes with a built-in level of trust that we should honor and appreciate. Because the referred person trusts the individual who sent him or her to us, that prospect feels a bit more comfortable talking to us about insurance needs than to one of our competitors. Because the referred person is more likely to trust us by extension of our relationship with the person's friend, family member, etc., we are more likely to get honest answers from the referred party about his or her needs, goals and everything else related to the person's insurance situation. The built-in trust allows the referred prospect to let his or her guard down just enough to focus on the possible insurance transaction at hand rather than remaining tight-lipped and wondering about our motives. Less time is wasted, and more time is spent doing important, profitable work. But of course, those positives associated with dealing with a referral are only possible if we treat our existing clientele in an outwardly ethical way.

Protecting Our Business With Ethics

None of us will have a career completely free of struggle. Sometimes, but hopefully not too often, we will need to lean on our reputation during tough times and have confidence that our track record of good service will ultimately keep us afloat.

If we've laid the groundwork properly and maintain a bit of luck, some clients will remain loyal to us even as we notice heavy competition for them from a new and aggressive competitor. Similarly, if we have done our best to position ourselves as ethical insurance professionals, we will increase our chances of being forgiven for an occasional and admittedly inevitable work-related mistake, assuming, of course, that we quickly own up to our errors and work hard to fix them.

Due to our status as imperfect human beings, we must assume that mistakes will happen. We may misplace an important document. Or maybe we lose sight of an important deadline related to a client's coverage. Or perhaps we have a bad day, aren't as smooth in a sales presentation as usual and inadvertently mischaracterize how an insurance product works to a customer who buys it and then has a bad claims experience due largely to our poor setting of expectations.

No matter the specifics of our mistakes, maybe our strong ethical behavior with the impacted party will allow us to keep that important relationship intact. Or at the very least, perhaps our good behavior from the past will produce enough mercy within the harmed person to at least not make him or her take serious action against us, such as by contacting a regulator or involving us in a costly, time-consuming lawsuit.

Improving Workplace Relationships With Ethics

Our relationships with customers and clients can sometimes be influenced, directly or otherwise, by the quality of our relationships with other insurance professionals. Whether the other professionals are underwriters in a back office at an insurance carrier or a claims adjuster out in the field after a natural disaster, those peoples' decisions can make insurance consumers either very satisfied or very unhappy with us.

Consider, for example, the relationship that can exist between an insurance salesperson and an insurance underwriter. Although direct communication between salespeople and underwriters is more common in certain lines of insurance than others (more likely in property and casualty, less likely in life insurance), good underwriters will acknowledge that what they do is both a science and an art and that their decisions are driven not only by numbers but also by carefully considered instincts. In those scenarios in which an underwriter must decide whether to issue a policy for a borderline risky applicant or perhaps whether to order an inspection that will slow the transaction down, trust in the producer who is associated with the application can, in fact, be one of the deciding factors. In these cases, underwriters might ask themselves the following questions:

- Am I familiar with this producer and his or her work?
- Is this producer's work typically accurate and usually as complete as possible?
- Does this producer have a reputation of knowing our underwriting guidelines?
- Is this producer quick to respond when we have questions or need clarification?

Certainly, an insurance producer should not attempt to pressure or incentivize underwriters or claims adjusters in order to receive special treatment for themselves or their clients. However, workplace ethics should involve a goal of making hard-working people's jobs a bit easier (where possible) rather than more difficult.

Helping Our Industry With Ethics

When we treat the public with honesty, professionalism and respect, we increase the likelihood of them reaching out openly to members of the insurance community and becoming more forthcoming with us in subsequent transactions.

As much as we might believe that our insurance customers are personally happy with us, we should recognize that most people have a negative opinion of our industry as a whole. For example, a 2016 Gallup poll gave respondents a list of roughly 30 professions and asked whether people in those professions tend to have high ethical standards. Nurses, pharmacists, doctors, engineers and dentists scored highest in the poll, whereas insurance salespeople were tied for third from the bottom (along with advertising practitioners), only scoring better than car salespeople and members of Congress.

Such discouraging numbers aren't the fault of a single insurance professional (let alone the licensed producer who is reading this course material). Nor are they likely to be reversed by a single act. However, we likely do ourselves a disservice if we fail to acknowledge the data and refuse to admit that people have an unpleasant idea of who the stereotypical insurance salesperson might be. Perhaps that stereotype brings to mind someone who is overly aggressive in sales, never knows when to listen rather than talk, flings business cards left and right and is focused almost robotically on just making a deal.

By keeping that stereotype in mind and doing everything reasonably within our power to act against it, we can make the public more likely to listen to our important messages about risk and, perhaps, make our clients and prospects more willing to accept our recommendations. Those recommendations might be as complex as adding a series of nearly iron-clad endorsements to a business owner's unique insurance portfolio. Or they might be as simple as suggesting that a young person with a small life insurance policy meet with us on a yearly basis to assess the death benefit's continued suitability.

CHAPTER 2: APPLYING ETHICS TO BUSINESS

Some common life lessons, such as "Tell the truth" and "Treat others the way you'd want to be treated," seem so simple on their own terms yet can become much more complicated in the real world, particularly when an insurance producer must balance ethical obligations to consumers along with ethical obligations to insurance companies (and even a few ethical obligations to ourselves and our families). Let's spend some time exploring how those admirable teachings might become less clear in difficult business situations.

Tell the Truth, the Whole Truth and Nothing But the Truth?

To start, let's examine our presumed duty to tell the truth to insurance buyers. Without thinking too hard about it, this duty might be exemplified by not making promises that our products can't keep. It might mean making important disclosures about costs and exclusions. And it might mean acknowledging to ourselves and others that there is no such thing as an absolutely perfect insurance product and no such thing as an absolutely perfect insurance company. A product will always have exclusions and costs associated with it and will almost certainly have dollar limits on benefits. Similarly, at the company level, there will always be a balance between the organization's breadth of product options, its pricing, the knowledge of its salespeople and its approaches to claims handling and customer service. We shouldn't feel ashamed for disclosing all the positives of a product or its parent company, as long as we have also been careful to mention those possible drawbacks.

But is this approach really so easy or totally practical? Consider the following scenario:

- The Smiths visit an insurance agent and tell him they want to be protected while their new home is under construction this winter. Their agent is a captive agent and can only sell insurance from one company. They say to the agent, "We're insurance illiterates, and we don't know what we're doing!" The agent says, "I'll get you the best coverage available from my company. In fact, I bought the same policy when I was building my house. You can sleep at night knowing you'll be adequately protected. Just be aware that it doesn't cover a few things like floods and earthquake damage." The Smiths follow the agent's advice and purchase the recommended coverage. During construction, a major snowstorm causes the Smiths' roof to collapse. Losses are not covered by their policy, and the agent is sued. In court, the agent says his company always excludes collapse caused by snowstorms for buildings under construction and that the Smiths would've known about the exclusion if they'd read their policy. However, he admits that most of his competitors sell policies and/or endorsements that would've insured against this type of loss. Did the agent do anything wrong?

Of course, the agent in our story did something wrong, but let's look deeper into the story and see if we can give him a small, partial benefit of the doubt.

As a captive agent, the agent can only sell insurance from one carrier. Therefore, advising the Smiths to go elsewhere might have technically violated a contractual agreement between the agent and the company. However, some captive agents in this situation have found that sending a prospect to an appropriate competitor in an effort to truly address the prospect's needs can actually benefit all parties. Even if the agent's carrier loses business on this one occasion, the prospect who received an honest referral to a competitor might remember the agent's professionalism, appreciate the transparency and come back to that agent when other insurance purchases must be made. By letting go of a customer carefully in the short term, the agent and the parent company might actually gain a loyal customer in the long term.

Alternatively, perhaps the captive agent could have projected honesty to the prospect while still maintaining the expected company loyalty. We might all agree that the agent had an obligation to disclose that his company's products didn't cover collapse during construction, but would it have been acceptable to frame the disclosure in a company-friendly way by saying something like, "Our products don't cover an important risk that might arise during the winter, but that allows us to offer the lowest price to cost-conscious homeowners"?

Insurance sales professionals have an ethical (and in some cases) legal obligation to disclose all material facts related to an insurance product. But are there cases in which there can be some debate regarding whether a particular fact is truly a material fact? When meeting with an impatient prospect who is only willing to give you a few minutes of his or her time, are you forced to make quick decisions about what to disclose and what can't be addressed in such a quick conversation? And shouldn't consumers share some responsibility for reading their policies and educating themselves about what they've purchased?

Yet we must face the reality that buyers are highly unlikely to read their policies, other than perhaps to check that the appropriate address and coverage amounts are listed on the declarations page. And in our specific case study presented here, we must be mindful of the facts and the couple's upfront admission that they know nothing about insurance and don't feel confident in their judgment. If there ever was a time for an agent to comfortably spend significant time going through all the coverages and exclusions in an effort to educate a buyer, this might be it.

Our special knowledge about insurance might put some nervous buyers at ease. At the same time, however, we need to be careful with our power to soothe our prospects in an attempt to reduce their worries. Providing overly broad reassurances, such as, "You can sleep at night knowing you'll be adequately protected," doesn't serve the public well because it disregards all the intricacies of a product's terms, conditions and exclusions. Rather than making these types of emotion-focused statements, our desire to provide calming answers to a buyer's questions about a product should always be tied to the policy language, including what is really covered and what really isn't.

Do You Really Treat Everyone the Same?

Next, let's examine our assumed responsibility to treat the insurance-buying public equally with regard to our attention and offerings of services. Our first instinct might be that we already abide by this principle consistently and that we are equally professional to everyone without playing favorites. But in the real business world, it's probably impossible to not prioritize some customers over others on occasion.

When this occurs, are we simply doing something wrong? Or are there ways to place one buyer above another and still justify it as an ethical choice? Consider the following scenario:

- You're a health insurance professional specializing in group benefits. With a few minutes to spare before a very long meeting, you decide to check your voicemail and are alerted to two messages. The earliest message is from a business owner who has no experience with insurance. You can tell she's in a panic about some administrative paperwork related to her group's health plan. You're fairly certain that her "problem" isn't really a problem at all and that she just needs some reassurance. However, you know it will take some time to explain things and calm her down. The more recent voicemail is from one of your firm's most important clients. He, too, doesn't seem to have a major problem that should really require immediate attention. But this client has constantly made it clear that his time is extremely valuable. You can tell by the tone of his voice that he expects you to personally resolve his issue as soon as possible. Your meeting will last the rest of the day, and you only have time to return one of the calls. What do you do?

Many readers will automatically react by claiming they'd find some way to return both calls, such as by missing their meeting or by staying late. But for the purpose of the exercise, let's force ourselves to make a choice and ask ourselves how we arrived at it.

If you choose to return the first person's call, your ethics-based decision might focus on the fear heard in the person's voice and your compassionate desire to alleviate it as soon as possible. Another reason to speak to the first person might be that this is a new customer who is still learning to trust you and therefore deserves a sign of your attention in order to strengthen the relationship. Or maybe you do it because you simply believe in the unwritten rule of "first come, first served" and will return her call because she was essentially at the front of the line.

A few brave readers might admit, albeit silently, that they'd return the call from the second client, who is much more demanding and who likely has a much bigger influence on a salesperson's professional success. Even if you might personally want to dismiss the second caller and help the first, you might have a supervisor who overrules you.

Modern technology might provide a reasonable solution by allowing you to call the supposedly more important client but also send a quick text message or email to the first caller, letting her know not to worry, that you care about her concerns and that you will ultimately be in touch to address her problem during the next business day as soon as possible.

If nothing else, this scenario offers a reason for all of us to review our outgoing voicemail messages and determine whether what we say on them actually sets reasonable, achievable expectations for anyone who calls, including big clients and small ones.

Do You Stand Up For Yourself?

Let's not forget that, in addition to having ethical obligations to the public, our peers and our supervisors, we also have ethical obligations to ourselves. Despite not being able to be entirely thin-skinned and dismiss every difficult person we encounter, we all must have limits to prevent ourselves from unreasonable intimidation, bullying and unhealthy influences. In other words, we must have a threshold beyond which we will be willing to stick up for ourselves and say, "No."

But can't this obligation to ourselves create tremendous stress, particularly if the person causing problems has a direct impact on our ability to earn a living? Consider the following scenario, which, believe it or not, is based on actual events:

- You work for a financial services firm as a sales manager. Your new supervisor tells you about a popular sales seminar called "Annuity Boot Camp" and insists that you and your team attend. At the seminar, you're surprised to hear the speakers make the following recommendations:
    - "There are real answers, and then there are answers for senior citizens. Oversimplify the information to move the sale forward."

- "Seniors struggle making their own decisions. Make up a scary problem and then act like your product is the only solution."
- "Talk in technical terms about Medicare, Medicaid and estate taxes. The more you can get people to worry about losing their assets, the more money you'll make."

You can understand how the various presenters' techniques might work. You also know that you have a team of producers who depend on you for experienced, ethical leadership. What do you tell your team members who have attended the seminar with you? What do you tell your boss upon returning to the office?

To avoid creating panic among our team, we may want to huddle together, solicit immediate feedback from the group, advise them that they should be proud of working for an ethical company that doesn't engage in such self-interested tactics, and tell everyone that you will talk with your supervisor about some concerns.

The more challenging aspect of the scenario is, of course, how to handle the supervisor. If the supervisor is new and unfamiliar with how the seminar's tactics might impact the company's relationships with consumers, the conversation is likely to be less scary and should be focused on some tactful education about what you do and why you think the seminar's recommendations aren't valid. If, on the other hand, the supervisor is fully aware of what the suggested sales pitches are intended to accomplish, the honest and hard next step for us might unfortunately involve polishing off our resume and thinking about new employment.

Supervisors who demand that their workers engage in unethical behavior are unlikely to protect those workers when faced with a regulatory complaint. Never forget that the only person who can truly protect your ability to make a living is you.

What Kind of Boss Are You?

The same logic and need for self-protection might apply in cases where we are in a supervisory role and notice a subordinate doing something terribly inappropriate. In those cases, how much mercy and compassion are we required to exhibit? How firm and cold might we need to be in our correcting of the situation so that the bad behavior doesn't cause serious harm to us and our business? Consider the following scenario:

- You run a mid-sized life insurance agency and are ready to congratulate your newest employee on his first sale. While approaching his desk, you notice he has the client's application in front of him and is forging the client's signature. When you confront him, he casually says he forgot to get the applicant's signature in one spot. He didn't want to inconvenience you or the client by admitting the mistake or asking for another signature. Instead, he informed another employee, who said it wasn't a big deal. How do you respond?

We can debate whether this action by a new employee should be dismissed as a "rookie mistake" or a terrible judgment call worthy of a firing. However, maybe our even bigger concern relates to the unacceptable culture at the very workplace where we are supposed to lead. If, in fact, a more experienced employee advised the new person that forgery was "no big deal," our next steps might include a company meeting where we make proper procedures clear to everyone in a forceful manner. And though we might not all agree about whether the new employee should lose his job over the forgery, perhaps we are closer to all agreeing that if anyone deserves to lose a job, it should first be the allegedly experienced person who gave the terrible advice.

Handling Difficult Conversations at the Workplace

If we are worried about whether a difficult conversation might escalate between us and someone else at the workplace, a few strategies can be employed to increase our chances of a positive outcome:

- Maintain a low-key tone that doesn't make it seem as though you are morally or ethically superior to the other person.
- Have a conversation in a one-on-one setting in order to prevent public embarrassment for either party.
- Attempt to communicate some positives about the situation, the person or his or her goals before making any negative comments.
- Use non-accusatory language rather than personalizing your concerns, and talk about your observations and feelings rather than voicing assumptions about the other person's motives.

CHAPTER 3: MANAGING CARRIER RELATIONSHIPS

We all have ethical duties that are owed to insurance companies. This goes for those of us who are acting as agents of those companies and those of us who are acting more in a brokering capacity and working for the consumer. Whenever you're bringing two parties together as part of an insurance transaction, you're expected to be doing it only in good faith.

Disclosure to Carriers

Earlier in this course, we mentioned telling the truth. When we discuss ethics in business, we tend to think of honesty as something that is owed to consumers. We're taught that if you're misleading someone into making a purchase, you're unethical or a bad person. But the core values that were mentioned in the previous chapter—such as honesty—should also be practiced when we interact with insurance companies. Consider the following scenario:

- You're doing a life insurance presentation in front of a middle-aged man at his home. He has filled out an application and has indicated that he doesn't smoke. However, the home has a faint odor of cigarettes. You ask the man whether he lives with anyone else, and he says he lives alone. How should you handle the situation?

Some producers who have been confronted with this situation have found that mentioning the discrepancy in a tactful way can help reduce application fraud. For example, after being verbally reminded in a non-accusatory manner that inaccuracies on an application could lead to a policy being rescinded, the applicant might ask to review the application again and claim to have made a mistake.

Of course, not all applicants will be so quick to reconsider their actions. If they aren't, the producer might want to at least make a note of the discrepancy somewhere in the documents that will be submitted to the insurance company. This allows the producer to accept some responsibility for his or her actions but also leaves the door open for a potential sale if the matter is simply a major misunderstanding.

Given our proposed scenario, you might reason that misrepresentations regarding an applicant's smoking habits will be caught anyway by a medical test. This is a fair point, particularly in many life insurance transactions, where paramedical exams are relatively common. However, does the likelihood of a medical test release the producer from his or her responsibilities? Don't forget that insurance producers, along with claims adjusters, underwriters and others, have a responsibility to speak out about potential insurance fraud and that the producer is more likely than anyone else at the carrier to have an understanding of an applicant's character.

What about disclosure related not to an application but to knowledge of a loss? Does that change our duties to inform a carrier of potentially important information? Consider the following scenario:

- Your best friend, who is also one of your property insurance customers, has had a lot of bad luck. His roof was damaged in a hailstorm a year ago, and his house was burglarized last summer. Now an electrical problem has caused a small fire in his kitchen. He estimates that the amount of fire damage will be only slightly higher than his policy's deductible. Your friend says he doesn't want to report the fire because it might cause him to be non-renewed at the end of his policy term. You agree that non-renewal is likely. But you believe the carrier would want to know this information. What do you do?

Many producers who have been presented with this scenario admit to not feeling an obligation to inform the carrier. Perhaps their reasoning is based on a combination of not wanting to start telling consumers when and when not to file claims, as well as a sense that unreported losses like this one (or fender benders in auto insurance) occur on a regular basis and are already somehow factored into the price of insurance.

But let's assume a slightly paranoid stance for a moment and imagine what might happen if the problem that caused the small kitchen fire eventually returns and causes an even bigger loss. In that case, the agent in our story has hurt the carrier via nondisclosure and could seriously damage his or her relationship with the company if the nondisclosure is ever revealed. Suppose, when questioned about the bigger fire, our friend turns on us and says he was told by us not to mention the earlier problem. Hopefully, we will never be in such a situation, but it's worth considering our rationalizations for not disclosing everything to carriers and whether those rationalizations are appropriate.

Company Loyalty

Most of us probably have confidence in the products we sell. But what if we are required to sell something we don't fully believe in? Depending on our contractual relationship with an insurance carrier, we might be required to sell those products anyway, even if they aren't always what's best for a buyer.

Yet how can we ignore our ethical obligation to focus on a person's needs rather than being overly influenced by corporate pressure to sell, sell, sell? Consider the following scenario:

- You work for a large property and casualty insurance carrier that requires its agencies to satisfy a small annual sales quota related to life insurance products. This is the first year in which the quota is being enforced, and practically all the agencies that you help oversee have met this modest requirement. However, one agency that brings in more than $2 million in annual premiums hasn't come close to hitting the quota. You call the agency owner, who tells you she thinks your life insurance products are bad and that she's decided to focus instead on bringing in even more property and casualty business. You know these life insurance products are complicated and more expensive than what your competitors are offering. What do you tell the owner?

Before making a final decision, our first action should probably be to question the owner about her position. If we're lucky, she might merely be resistant to change and be capable of being won over to selling our life insurance products with more training about their best features. If, on the other hand, she has done her homework and truly believes selling our life insurance products is wrong for her customers, our situation becomes much harder. We don't want to force someone to do something that is against his or her principles, yet we do have an obligation to our company to enforce its rules.

Some producers might feel comfortable pairing the agency owner with another agent who is much more excited about selling the products and allowing the two of them to share credit for any life insurance sales so that the principled agent isn't punished. But since the world isn't always as big as we believe it to be, what might we do if word of our concession gets around to other agents who begrudgingly sold these life insurance products and didn't get similar treatment? Presumably, if we believe everyone on our team should be treated with basic equality, can we grant an exception to one agent without also at least considering the same exception for everyone else?

Handling Money

Some of the most serious ethical violations committed by producers against insurance companies involve improper money management.

Many states consider insurance licensees to have “fiduciary” relationships, either with the insurance companies they represent or with the consumer who hires them. Being in a fiduciary relationship essentially means that a producer is being put in a heightened position of trust. In the event of wrongdoing or negligence, a producer with fiduciary status will be held to stricter standards and is likely to be penalized more severely than someone without fiduciary status.

Traditionally, insurance agents have owed fiduciary duties to insurance companies, and insurance brokers have owed fiduciary duties to consumers. This traditional way of viewing insurance relationships has been modified or even abandoned in many jurisdictions. For example, unlike California, some states don’t make a distinction between agents and brokers in their insurance laws. Meanwhile, some states have decided to restrict the kinds of situations in which an agent or broker is considered to have fiduciary status.

But even where fiduciary status and its accompanying duties have been limited, a producer might still be considered a fiduciary in regard to handling money. If collected premiums don’t go to their intended recipient or aren’t used for their intended purpose, the producer in charge of transferring them will have some serious questions to answer.

One example of unethical money management would be commingling of funds. Commingling occurs when you take money that’s intended for one party or one purpose and mix it in with money that’s intended for a different purpose. Commingling is discouraged—and often illegal—because it makes it easier for accountholders to pay their own bills with other people’s dollars.

Not all businesses engaging in commingling have theft in mind. Some simply don’t have the patience for accounting and believe keeping all their money in a single account makes life simpler for them. But commingling is a problem because it makes it significantly harder to keep track of which dollars belong to whom. If multiple members of the organization have access to the single account, it also makes it easier for a devious person to get away with making inappropriate withdrawals. Plus, if people keep all funds in one general operating account and end up having to declare bankruptcy, money belonging to someone else can become inaccessible to its rightful owner.

If you are collecting premiums from consumers, you probably need to put them in a carefully maintained “premium fund trust account.” Each state is likely to have its own rules about where these accounts must be established, what types of funds can be deposited into them and how and when withdrawals are to be made. In general, these accounts are intended only as a holding place for money that will ultimately either be transferred to an insurer or refunded to a consumer. Because the money in them belongs to someone else, the accounts can’t be tied to risky investments.

CHAPTER 4: ETHICAL SALES

An ethical approach to selling insurance is likely to require a carefully self-monitored combination of disclosure, analytical skills and professionalism. Your success depends on your ability to explain complex products, determine how they apply to a prospect's goals and convince people that you, out of all insurance professionals, are the right person to buy from. Your chances of nurturing a positive relationship with a new client start upon your very first interaction with the person and continue as you learn more important information about the person's needs.

Before turning to the specifics of a particular product that might be worth purchasing, you have an obligation to clarify some basic facts for any prospect who you encounter. These basics include, but aren't necessarily limited to, the following items:

- Who you are.
- What you're selling.
- Which company or insurance entity you represent.

As a first step toward being clear about this information, think about what's printed on your business cards and email signatures. If you include any titles under your name that are meant to suggest a heightened level of insurance-related expertise, were they earned through successful completion of special courses or exams? If not, what is your rationale for including them? Although many people earn insurance designations in order to attract more business, unearned titles that are included for the sole purpose of luring new customers might confuse and ultimately alienate the very people you are hoping to attract.

If you have pride in your role as an insurance professional, you should have no problem clearly informing prospects that what you are selling is, indeed, a type of insurance rather than a mysterious-sounding financial tool. In the senior market, it is fairly common for producers to invite prospects to free seminars with the promise of a free meal and some tips about how to plan responsibly for retirement. In fact, many of these seminars are introductory sales presentations about annuities, yet the word "annuity" is often absent from the seminar organizer's advertising. Does the organizer leave out the word "annuity" because of a belief that recipients won't understand the term? Or is the lack of clarity an intentional form of deception, done under the assumption that less people will attend if they know an insurance product (such as annuity) will be discussed? Even if you engage in this type of advertising for what you believe are valid, well-intentioned reasons, it might be worth considering how others—including your audience and regulators—are likely to perceive it.

Being clear about the companies or other insurance entities that you represent can be particularly important in the senior market because of the link between various senior-focused products and federal programs such as Medicare and Social Security. As much as producers in this market might feel the need to emphasize the gaps in federal programs and the ways in which insurance can help fill those holes, your clients and prospects should never be allowed to think that you and your company are, in fact, affiliated with the state or federal government unless such affiliations are true.

Unfortunately, widespread misunderstandings about health insurance laws and government benefits have made it easy for scam artists to trick vulnerable citizens. For example, soon after passage of the Affordable Care Act in 2010, insurance regulators were already warning the public about real cases in which licensed producers falsely claimed to be from the government and conned people into purchasing bogus coverage.

Such sad cases of deception help explain why states and federal departments tend to be very strict regarding the use of their names and their logos in advertising by private companies.

Disclosing Material Facts

Based on our own experiences when shopping for complex and relatively expensive products, we probably believe that consumers have a right to be informed of all material facts related to what we sell. But putting this belief into practice can be a challenge because the meaning of a “material fact” can differ from person to person, product to product and transaction to transaction. When deciding what must be disclosed to a potential purchaser, ask yourself, “What pieces of information are likely to have an impact on this person’s decision to buy or not buy what I’m selling?”

More often than not, your answer will at least include the items on the following list:

- Price.
- Dollar limits.
- Major exclusions.
- Waiting periods or deductibles.
- Tax penalties or surrender charges (for insurance products with a cash value).
- Other issues that the applicant clearly cares about (based on your conversations with the person and your investigation of the person’s stated goals).

Many insurance policies include a “free-look period,” which allows a policyholder a set number of days (such as 10 or 30) to review an insurance contract after a purchase and cancel the coverage in return for a full refund of paid premiums. Although free-look periods are often mandated by law as a form of consumer protection, they should not be used as an excuse to avoid disclosure of material facts in advertising or in conversations with prospects. Since most insurance customers lack the time and the interest to actually read their policies, your role in educating your clients about the specifics of their insurance portfolio is immensely important.

Producers who advertise their products and services on social media platforms should be mindful of the ways in which these platforms can directly and indirectly put limits on the ability to disclose all required information. For example, some social media sites force users to keep all of their communications below a certain length. Other social networks might not have rules about the length of posts, but producers might instinctively compose short items online because of the internet community’s emphasis on shorthand communication.

Your commitment to disclosing material facts might be more obvious if you hold yourself to strict and consistent standards in all of your marketing campaigns, no matter if they are done via the mail, the phone or any corner of the internet. If a particular platform doesn’t allow you to make the kinds of disclosures that would be important to your audience, you might want to reevaluate your advertising plans.

Watching Your Language

If you spend most of your day talking about insurance, it’s very easy for the occasional vague word or unclear phrase to come out of your mouth. If you catch this happening to you, it might be appropriate to pause for a moment and then reframe the word or phrase so that your audience understands the content of your message. Since the average person knows so much less about insurance than a licensed producer, we might forget how easy it is for a consumer to misinterpret our language and how hard it can be for someone to put insurance information within the proper context.

Here are some words that, while not necessarily inappropriate, might deserve some clarification:

- "Unlimited." (A health insurance product might have an "unlimited" benefit cap but might limit the insured's choices in regard to networks of doctors.)
- "Comprehensive." (A product might be fairly "comprehensive" compared to similar products in the market but is still likely to have some important exclusions.)
- "Generous." (Who is to say what is "generous" and what isn't?)
- "All." (Insurance policies are complex legal documents. Words like "all" are often misleading because one broadly worded portion of a policy is often subject to exclusions found in another portion of the policy.)
- "Guaranteed." (This term can be particularly dangerous in regard to interest-sensitive life insurance policies. Whereas there might be a "guarantee" associated with a death benefit, there might not actually be a guarantee associated with cash values or dividends.)

Coping With Competitors

In an ideal world, you will have an extreme amount of confidence in your products and services and won't need to waste much time worrying about what your competitors are up to. Keeping quiet about other producers and other insurance companies in front of your clients can be both a sign of professionalism and a risk management tool that reduces your chances of making a libelous or slanderous statement. But, of course, we don't really live in that ideal world where everyone plays fairly.

Consider this scenario:

- You have invested a great deal of effort into a new prospect and are on your way to a meeting where you expect to finally win her business. When you arrive, the prospect apologizes and says she has decided to go with one of your competitors. You have a long history of losing business to this competitor, whom you believe is very quick to sign up new business but very slow to provide good service. Without being prompted to do so, the prospect reveals that she got a "great deal" from your competitor and tells you about "promises" that the competitor allegedly made. Based on the prospect's words, it's clear to you that something is wrong. She either has a clear misunderstanding of how her desired insurance product really works or was given bad information by your competitor in order to close the deal. Now, you're not only annoyed that you lost this business but also fearful that the prospect has made a very serious and potentially harmful mistake.

Now, carefully consider all of the following questions, keeping in mind that there might be more than one "right" answer:

- How is the prospect likely to respond if you imply that the competitor's offer is too good to be true?
- Since you can't prove what really happened between the prospect and your competitor, is it wise to take no action at all?

- What might happen if you were to say nothing about your suspicions to the prospect but raise the issue in a private phone call with the competitor?
- How would you respond if a competitor contacted you and raised concerns about your own business practices?
- If you believe you need more information about the situation in order to proceed, how can you obtain it while also being mindful of privacy concerns?
- If this were the first time that you'd suspected the competitor of unprofessionalism or bad behavior, would you be more inclined to ignore the situation?

High-Pressure Scare Tactics

Fear plays a central role in insurance. In most cases, in fact, it is the very thing that gets people to purchase insurance in the first place. We purchase life insurance because we worry about the impact our death might have on our loved ones. We purchase property insurance because we worry about fires destroying our home and all of our belongings. We purchase health insurance because we worry about getting into a serious accident or being diagnosed with a serious illness.

Fear, in and of itself, can be a positive motivator because it can force us to find solutions to problems that we'd otherwise prefer to ignore. You might even argue that part of your duty as an insurance professional involves instilling a healthy dose of fear into your clients and making them confront the very real risks that exist in today's complicated world.

But at what point do we risk crossing the line between providing people with a healthy dose of reality and scaring them in cruelly manipulative ways? Consider this scenario:

- A middle-class married couple meet with a life insurance salesperson. They agree that term life insurance should be purchased for each spouse so that if either one dies, the surviving spouse and their two young children will be able to maintain their standard of living. The salesperson is willing to help them obtain their requested type of insurance but also asks them whether they would be interested in buying life insurance on their children. The couple declines, but the salesperson continues to pursue the possibility with them. "The right policy can help them save for college," he says. "Plus, you never know. They might be healthy now, but if one of your kids is ever diagnosed with a serious illness, they might never be eligible for good coverage later on. So now would be a great time to buy some." Again, the couple expresses no interest, and the salesperson makes another attempt to persuade them. "You have two kids. If an accident were to happen, have the two of you thought about how you would pay for two funerals at the same time? I'm not trying to scare you. I just want to make sure that we're addressing all possible scenarios."

Now, carefully consider all of the following questions, keeping in mind that there might be more than one "right" answer:

- Was it appropriate for the salesperson to bring up the issue of life insurance on the children at all?
- Was it appropriate for the salesperson to pursue the issue in any way after the couple first expressed no interest in it?
- Was it appropriate to mention the possibility of the children becoming seriously ill or disabled?

- Was it appropriate to mention the possibility of the children dying?
- Does your opinion of the salesperson change if you knew that life insurance on the children would've netted him a large commission? What about a small one?

Focusing on Suitability

One seemingly obvious but not always easy step toward maintaining good relationships with clients is to give them what they need. If you have been in the insurance business for practically any length of time, you probably have noticed that what people need is not always the same as what they ask for. Although consumers need to make the final, ultimate decisions about what to buy, your ethical (and, in some cases, legal) responsibilities include making the appropriate disclosures about requested products and taking the time to understand each person's unique situation.

Even if a prospect seems to have a clear goal regarding his or her financial future, that person might not be capable of articulating it in insurance-specific terms. For a simple example, consider a prospect who claims to want a life insurance policy for short-term needs but then says he wants to achieve that goal by purchasing a variable life insurance policy. In that case, your instincts should lead you to ask more questions and provide some basic education about the differences between term life insurance and the various types of permanent coverage, including variable life insurance. In short, the best way to help people get what they really need is to know your customers.

In order to increase the likelihood of pairing their clients with truly suitable products, many insurance professionals use a checklist of questions that are asked to each and every person before a transaction or recommendation is made. If you've worked in insurance for a long time, this checklist might be a matter of second nature to you and might be committed to memory. If you have less experience or are at all concerned that you will forget to ask an important question, you might rely on a printed copy that you keep in front of you at each of your appointments.

Though your exact checklist will depend on the type of business you're in, here are some basic issues that are worth considering as part of determining suitability for certain insurance products:

- For variable life insurance or variable annuities:
    - Age.
    - Investment objectives.
    - Financial situation.
    - Tax status.

  Note that there might be additional factors that must be considered and documented in accordance with state laws. Also, since variable products are generally considered to be securities, producers selling these products should research their suitability obligations from the Financial Industry Regulatory Authority (FINRA).
- For any type of annuity (fixed, variable or indexed):
    - Age.
    - Income.
    - Financial situation.

    - Financial objectives.
    - Purpose of the annuity.
    - Existing assets.
    - Liquidity needs.
    - Liquid net worth.
    - Tax status.
    - Risk tolerance.

  Particularly over the past decade, insurance regulators have been concerned about types of annuities that are difficult to understand or that jeopardize senior citizens' financial stability through steep surrender charges and market risks. As annuities become more complicated and more customized to meet the demand of niche audiences, careful explanations of these products takes on even greater importance.

- For long-term care insurance:
    - Applicant's ability to afford coverage.
    - Goals and needs with respect to long-term care.
    - Values, benefits and costs of other applicable insurance.

  Affordability of long-term care insurance should be measured not only by current pricing and a prospect's current financial status but also by potential changes that could make coverage more expensive in later years. Despite the benefits of long-term care insurance for many people, insurers have struggled to price this product appropriately. Contrary to initial industry expectations, the amount of people who purchased some of the comparatively generous policies in the early days of the LTC market and cancelled their coverage before ever making a claim turned out to be fairly low. Then, due to shaky worldwide economic conditions in the early 21st century, LTC insurance carriers were unable to earn strong financial returns by investing their collected premiums. These and other factors caused many insurers to leave the LTC market entirely. Meanwhile, many of the companies that chose to stay in the market had little choice but to raise prices for new and even many existing policyholders. Therefore, if you are in a position to help someone choose a long-term care insurance carrier, you may want to conduct research regarding each carrier's financial stability and history of rate increases.

Suitability and Social Media

We touched on the topic of social media in regard to making necessary disclosures. This relatively new method of online marketing also deserves a mention in our discussion of suitability.

If a producer uses a social networking website in order to attract and communicate with a broad range of followers, any posts that a producer puts out on the social networking site should be written in ways that don't confuse readers into believing that a specific recommendation is being made.

Consider a producer who has 1,000 followers on a social media network and who posts a message to everyone that says, "Call me today to learn how universal life insurance can satisfy all of your estate planning needs." While it is certainly possible that some among the 1,000 followers are, indeed, good candidates for universal life insurance, the producer's post has the potential to mislead the rest of those followers and make them believe that universal life is a one-size-fits-all product.

Concerns about disclosure and suitability are at least partially responsible for the manner in which many of today's major insurance carriers conduct their social media marketing campaigns. Instead of emphasizing the benefits of specific products and using sales-heavy language, most carriers use social media to educate the general public about risk and to engage current and potential policyholders in fun, light-hearted conversations. For example, instead of posting about how everyone should purchase auto insurance from them, carriers might use social media to pass along car maintenance tips to drivers. Instead of pushing followers to make changes to their homeowners insurance, a property insurance carrier might offer advice about what to do before and after a storm so damage can be minimized and claims can be paid quickly. Independent agencies might have more freedom to get personal on social media, which might involve posting about the local little-league team that the agency has sponsored or providing fun facts about the producers and office personnel who work there. Regardless of the specifics of a social media campaign, the emphasis tends to be on the subtle building of personal relationships rather than on selling.

Since most insurance advertising regulations were written prior to the widespread popularity of social media, the specific requirements for producers who market themselves online aren't always clear. Even if your state has not specifically addressed acceptable types of conduct on social media, here are some basic tips that can help you maintain a good ethical reputation:

- When discussing a specific type of insurance, reserve some space for any important disclosures.
- Think before you type. Don't risk making controversial statements as a result of anger or carelessness.
- Plan ahead so that you can discuss any ethical or legal concerns about your online advertising campaign with an attorney, compliance officer, supervisor or carrier.
- Treat online communications as seriously as hard-copy communications. If you have a system in place that involves careful proofreading and editing of items sent through the mail, use the same process for anything posted online.
- Keep your social media posts general and educational rather than product-specific.

Handling Web Rage

Despite its many positives, the internet also provides a forum where misplaced anger can be vented and used to harm people's reputations. Think back to the comments section of a typical online article and recall how many of those comments were negative, spiteful and needlessly hurtful. Putting yourself online as a businessperson, while generally advisable, can open you up to those same risks of unexpected incivility.

If negative comments about your business appear online, no matter their level of fairness, how much should you engage with the person who wrote them? Consider the following scenario:

- Upon logging into one of your agency's social media accounts, you notice that a customer has posted an embarrassingly negative comment about your level of service. You believe encouraging an open dialogue on social media is important

> to staying in touch with clients, but you're truly shocked by the person's negative review. You're also worried that the comments will harm your reputation among any online visitors. What do you do?

In a heated moment, we might frantically type a reply for all the world to see and refute the person's negative comments. But we can't give in to the urge to escalate the confrontation, particularly when the fight can be seen publicly by other online visitors. Nor do we want to take the other extreme and completely ignore the situation, thereby sending a message to the online community that we really don't care about our customers' problems or criticisms.

Arguably the best route is somewhere down the middle of engagement and disengagement. For example, a comment left in the public forum such as, "I'm sorry you had a negative experience. Please call me, and we'll try to resolve your concerns," can showcase your professionalism without making the situation worse.

CHAPTER 5: TIPS FOR ETHICAL INSURANCE PROFESSIONALS

We've addressed unethical behavior and some of the consequences for consumers. But let's assume you're a very ethical person and always try to treat people well. What are some precautions you can take to avoid making a mistake or being accused of wrongdoing? The next few sections contain some simple pointers for you.

Analyzing Needs

To keep the consumer satisfied, you'll want to ensure that the products presented to a potential purchaser are suitable. When you meet with a new customer, you should conduct a needs analysis in order to determine the suitability of specific products. To perform a proper needs analysis, you must ask several questions and listen carefully to the answers.

Helpful questions might include:

- What are your needs and goals?
- What kinds of property do you currently own?
- What do you do for a living?
- Do you own your own business?
- Do you have a family?

In spite of the important information that can be learned from those questions, you should consider alerting the consumer that the answers won't have an impact on their eligibility for insurance (as long as that's the case). Depending on the kind of insurance and the state where you do business, certain factors (such as marital status) cannot be used to charge someone more or to limit a product's availability.

The needs analysis is important because no two people are exactly alike. Even in a broader context, what you'd sell to a senior citizen is probably going to be different from what you'd sell to an 18-year-old. Similarly, what you'd sell to the 18-year-old is probably going to be different from what you'd sell to a 40-year old.

If you're working with a senior citizen, the main insurance concerns might be estate planning and paying for health care. An 18-year old might need renters insurance if he or she has an apartment. Auto insurance would be needed, too, if the person has a car.

At 40, there might be a bunch of things that are needed because 40-year olds are more likely to have dependents. Life, disability and homeowners insurance are all legitimate possibilities. So is extra liability insurance if the person has significant assets or has a pool or a trampoline in the backyard. The 40-year-old might also have a business, which opens up the door to a variety of commercial products. The list of possibilities could go on and on.

Assisting Elderly Customers

You'll want to use special care when working with clients who are elderly or disabled because there might be physical or mental impairments that can create a communication problem. The person might not be able to hear you or speak clearly. In situations like this, you might find it helpful to have one of the person's trusted family members in the room. But even then, you'll want to get a sense that the family member isn't the one making the decisions. Unfortunately, some caregivers don't always have people's best interests at heart and will engage in coercion.

Maintaining Documentation

No matter who you meet with or speak to, it's important to take and keep good notes. Taking detailed notes about all of your interactions with the public can decrease the likelihood of disagreements regarding what was said or not said in conversation or what kinds of financial advice were or were not provided. If you and an angry consumer continue to dispute the facts of a particular meeting or conversation, your notes can help defend you in the event of a regulatory complaint.

However, good note-taking shouldn't be an activity that is done only on occasion. In order to aid your credibility and for your notes to serve as an adequate piece of evidence, you may need to show that you take detailed notes in all similar circumstances.

The notes you take about client interactions should be contemporaneous rather than after the fact. The quicker you are to document something, the better chance you'll have at remembering all of the important details.

Some agents keep handwritten notes in client files. Others keep a continuous record in a computer software program. In either case, some sales professionals find it helpful to send an email to clients containing a summary of a conversation's key points. In addition to the summary, the email might ask the recipient, "Do you agree that this is what we discussed?" The client can then respond and clarify points where necessary.

In order to maintain a clear picture of your relationship with clients, and to protect yourself, here are some documents that you might keep in an organized, readily accessible fashion:

- Copies of completed applications.
- Copies of any written correspondence with clients.
- Copies of any written correspondence with insurance carriers.
- Notes from meetings.
- Notes from phone calls.
- Notes regarding all attempts to contact clients (for example, a note that you left a voice mail regarding an upcoming policy renewal).
- Notes regarding the timing of various mailings to clients or prospects.

A Note-Taking Case Study

In order to underline the importance of notes, let's go through an extended scenario, which was developed with the help of a former securities regulator. At the end of our story, you should also be able to see how consumer complaints of practically any kind can complicate matters for licensees.

Our story begins with a concerned daughter who has gone through her elderly mother's paperwork. After noting some suspicious documents, she discovers that her mother recently canceled a decades-old life insurance policy and bought a new one. Since the annual premiums were the same for both policies, the daughter is unsure why the replacement took place. After talking with her mother, she convinces herself that a slick life insurance agent tricked her mother into switching insurance for no good reason.

The daughter contacts her state's insurance department and is told to send copies of any relevant documentation to the local regulators. With her mother's consent, she sends copies of the new policy and the canceled policy, along with notes that the daughter took when the old policy was issued.

Upon receiving the documentation from the daughter, state regulators are able to identify the agent who sold the new life insurance policy and note that the agent has already had two similar complaints filed against him. Concerned that the latest complaint might represent a pattern, state regulators assign an investigator to the case.

At this point, the assigned investigator is concerned not only about the actions of the agent who sold a policy to the mother but also about the overall business practices at the agent's place of employment. In order to determine whether there is misconduct at the agency level, or perhaps a failure to supervise, the investigator writes to the agency's compliance officer and demands that all of the agency's records be readied for a visit. Because of the complaints against this one agent, ALL of the business's records (those related to the specific agent and those unrelated to him) will be subjected to scrutiny.

In response to the request by the investigator, managers at the agency start covering their tracks. They identify records proving that all agents have undergone ethics training, and they reprimand the agent in writing. Unfortunately for the agent, the agency managers are more concerned about protecting themselves than about protecting him.

Meanwhile, the daughter has hired legal counsel and has announced that she and her mother plan to sue the agent for damages. Since his managers don't seem willing to support him, the agent decides to hire his own attorney. Luckily for him, the agent has made a habit of keeping detailed notes during all of his client interactions and of all company meetings. Through those notes, he is able to show not only that replacing the life insurance policy had a tangible benefit for the mother but also that his managers emphasized the money-making potential of life insurance replacements to all agents in the organization. Based on the various headaches caused by the entire experience and lack of support, the agent determines that he will be happier working someplace else.

We could take this scenario even further, but the story's two key points should already be clear to you:

- Regulatory complaints, even those in which no wrongdoing actually occurred, can be a big problem and should be avoided when possible.
- Maintaining detailed notes is an essential element of risk management for insurance professionals.

Keeping Yourself Informed

The evolution of the insurance industry doesn't stop once you pass your licensing exams. In order to serve the public well and remain on good terms with insurance regulators, sales professionals must take some initiative and keep up with what's happening around them.

While employees at large insurers might receive comprehensive training and frequent regulatory updates from a compliance department, licensees who work either alone or at small agencies must work a bit harder to remain up to date. Let's look at a few simple tasks that can help you keep up with important changes.

Looking Online

As part of keeping up with changes in state requirements, you might consider checking the website of your state's insurance department on a regular basis. Most departments will post important updates online, and some have completely stopped sending important news by regular mail. State websites are also likely to contain links to relevant insurance laws and administrative rules.

Regular Reading

Trade publications can help inactive licensees keep track of important trends in the insurance community. Many respected insurance publications offer free online newsletters that are delivered on a monthly, weekly or even daily basis. Others might be included as part of your membership in an insurance trade organization.

Reviewing Company Guidelines

Active licensees should periodically review any company handbooks or agency agreements that they receive as part of their employment with various agencies and insurance carriers. In many cases, the licensee will be representing an insurance company as part of a transaction and must conduct business in a manner prescribed by the company. It's possible that a company handbook or agency contract will put restrictions on a licensee's conduct that are more strict than local laws or state rules.

If you are in a supervisory position and do not have a handbook, you might want to consider creating one. Having sets of procedures all in writing and all in one place can make it easier for your subordinates to respond to problems. Of course, you will want to ensure that workers who receive the handbook actually read it.

CHAPTER 6: PRIVACY CONCERNS

Our jobs make it inevitable that we will become aware of sensitive information about our prospects and customers. We might be told about a lifetime of health conditions, or the state of someone's personal finances or maybe, if we work in commercial lines of insurance, the yet-to-be-finalized details of a major business deal. No matter the specifics or reason for learning these details, it's of course considered common courtesy, not to mention ethical, to keep the information largely to ourselves and only disclose it on a need-to-know basis.

Yet it isn't always easy to keep everything quiet. And even if we personally practice excellent discretion with respect to privacy, we almost certainly have been in situations where other people—perhaps even other insurance professionals who should've known better—were too loose-lipped.

Are we truly capable of upholding our ethical (and in some cases legal) responsibility to keep all this information private in every case? Consider the following scenario:

- At the end of a hectic Friday afternoon, you're taking the elevator down several floors to your office's parking lot with two of your co-workers. On the way down, the elevator stops and allows a stranger from a lower floor to board. After the stranger boards, one of your co-workers turns to the other and starts venting about a difficult life insurance application he's been dealing with. He mentions the applicant by last name and makes a small joke about a potentially embarrassing health condition that has complicated the applicant's ability to obtain affordable coverage. Your two colleagues giggle at the joke for a second and then turn their heads to the floor. You estimate there are 10 more seconds left before you, your co-workers and the stranger will reach the parking lot. What do you do?

Unfortunately, even though we did not engage in the joking, the stranger is likely to remember us as being part of the group who did. And although the stranger almost certainly has no personal connection to the applicant being joked about, the stranger might be able to determine which company we work for and will forever have a story to tell about our firm to people who are already angry at our profession.

Office politics might unfortunately have tremendous influence on our actions, even if we know that what was done was wrong. In all likelihood, our actions will be different if the people who made the joke are our direct subordinates vs. people who we technically outrank but don't directly supervise vs. people who are on the same level as us on the corporate hierarchy vs. people who might actually outrank us.

Many of us with little to no power at the organization might feel most comfortable just letting the moment pass and doing nothing about it. If we have more power or at least a strong relationship with the workers involved, we won't want to sour the relationship over a mere 10 seconds of sophomoric behavior. If we proceed, we will likely want to do so upon careful reflection about the appropriate time and place to discuss the matter. Some tips about handling difficult conversations can be found earlier in this course.

Privacy obligations can become even more personally important (but also even more difficult to manage) when information involves friends and family. Can we really keep certain things from the caring people who we love and who are closest to us? Consider the following scenario:

- You're surprised to find your brother-in-law waiting quietly at your office. He says he needs to talk to you about the life insurance plan that you put together for him

> and his family three years ago. Based on recent conversations with your sister, you know your brother-in-law has been mysteriously sick lately. You ask him how he's been feeling, and he discloses that he just came from the doctor and has been diagnosed with a terminal illness. He makes two requests: First, that you review his life insurance thoroughly and confirm that the appropriate beneficiaries and settlement options are already in place. Second, that absolutely no one else be told about his condition. You don't think you can ethically keep this secret from your sister. But your brother-in-law reminds you of your professional and legal obligation to only disclose his health information with his consent. What do you do?

Although federal HIPAA regulations might not apply to life insurance transactions like this one, laws in many states are likely to require that life insurance agents keep clients' health information confidential. If our intent, above all else, is to observe the law, we probably must obey our brother-in-law's wishes and risk destroying our relationship with our sister by keeping medical information from her. However, nothing prevents us from trying to convince our brother-in-law to change his mind or from making it clear to him that, even though we must obey his wishes, he might be the one engaging in unethical behavior by putting us in such an impossible situation.

CHAPTER 7: DEALING WITH DIFFICULT CLAIMS

Fair payment of claims is an insurer's contractual obligation to its policyholders. The policyholder is required to be honest on the application, pay premiums and abide by terms and conditions stipulated in the policy. In turn, the insurer is expected to provide benefits as stipulated in that policy rather than attempt to renegotiate a deal after an insured loss.

But should the policy language be the sole factor when determining whether to pay a claim? Are there cases in which the ethical thing to do is to either ignore the policy language or at least stretch it a bit? Consider the following scenario:

- After two months in the hospital, an elderly woman has moved into a nursing home with the intention of it being her permanent residence. Meanwhile, her children are taking care of her house and making sure that the property insurance premiums continue to be paid. Her policy says it will cover "the dwelling on the residence premises shown on the declarations page." The policy further defines "residence premises" as "the dwelling where you reside." The woman hopes to sell her home to pay for her care. But three days after she moves into the nursing home, a fire destroys her house. The company reviews the definition of "residence premises" and says it only needs to cover "the dwelling where you reside." Therefore, since the woman moved out of her private residence and into the nursing home three days before the fire, the insurer denies her entire claim. Did the insurer make the right decision?

Let's assume, for the sake of this case, that the insurance company had the legal right to deny the claim. In that context, perhaps the short duration between the move and the fire becomes an important factor. Given the stress involved with moving from independent-living situations to nursing homes, it might not be reasonable to expect someone—let alone the average person with minimal insurance knowledge—to foresee an insurance gap and proactively do something about it in just in a few days. But had the woman gone 60 days or more without contacting an insurance agent and inquiring about her coverage, would your position on this issue change much?

Regardless, situations like this provoked attention from insurance trade groups, who worried about how these kinds of claim denials influence the public's general opinion of our industry. Thanks to lobbying from those groups, including the Independent Insurance Agents and Brokers of America, mew endorsements have been written for standard homeowners policy forms, with the intent of eliminating these kinds of unfortunate situations. If you sell homeowners insurance, you might want to review your carriers' products to see if they include this added protection.

CHAPTER 8: MODERN ISSUES IN INSURANCE DISCRIMINATION

Insurance companies are prohibited from engaging in discriminatory underwriting, offering or pricing of coverage on the basis of race, religion, national origin and, in some jurisdictions, gender and sexual orientation.

But are there types of insurance discrimination that are less traditional and subtler in today's market? To what point can we justify not offering someone the same coverage at the same price without approaching unfairness? Consider the following scenario:

- You are a high-ranking underwriter at a relatively small property and casualty insurance carrier. Management is considering the implementation of policies that would promote "price optimization." In addition to considering each customer's level of risk, the carrier would use data and algorithms to determine whether a customer is more or less likely to shop around when presented with a renewal offer. Those customers who seem unlikely to shop around would be charged more for insurance. Conversely, those customers who seem more likely to shop around would be charged less. What's your reaction to this approach?

The practice proposed in the previous scenario might seem like a smart way of doing business by maximizing revenue. Yet before supporting it, we should consider our views on insurance discrimination and ponder which factors are acceptable to us when pricing insurance differently. If, like most of today's producers, you generally believe insurance pricing should be based on risk and that practically everything else should be a non-factor, you might have second thoughts about this idea. After all, customer loyalty, as far as we know, does not impact the likelihood that the customer will suffer an insured loss. You might also believe pricing insurance in this way is unethical because it penalizes the very customers who have stuck with you and rewards people who have been less committed to you.

Be aware that, at the time of this writing, pricing insurance in this manner was illegal in roughly half of the United States. In those places where it was allowed, regulators commonly argued it had the potential to increase competition. If this issue is of interest or concern for you, please consult the applicable laws and regulations in your state or speak with a qualified expert.

Consider yet another scenario about unconventional insurance discrimination that might become a hot topic in the not-too-distant future:

- You're attending a conference where a medical ethics professor is debating with a top-ranking life insurance executive. The subject is genetic discrimination in insurance. The life insurance exec is advocating for greater use of genetic information during the underwriting process. He claims the availability and pricing of life insurance should be based on health-related risk factors posed by each applicant, even if those risks haven't resulted in the applicant being diagnosed with an actual medical problem. He therefore has no problem considering the results of genetic tests when evaluating life insurance customers. Nor does he object to making certain types of genetic testing mandatory for anyone who wants coverage above a certain dollar amount. "Insurance pricing" he says, "should be all about risk. And your genetics are a huge risk factor." The professor says the use of genetic testing in insurance is unfair and could result in discrimination. She says being genetically susceptible to cancer, heart disease or other ailments doesn't guarantee that an applicant will develop those problems. She also worries that mandatory genetic testing might force people to learn things they don't want to

> know and might cause private information to fall into the wrong hands. Which side are you on?

This scenario can seem especially tricky because it forces our head to compete against our gut. The insurance executive's argument is packed with logic that is difficult to refute. Indeed, family history, DNA and genealogy have an impact on life expectancy even if they don't fully control our fate. Shouldn't insurance companies, in their attempt to price products as accurately as possible, have access to such valuable data?

On the other hand, something about the topic of genetics makes many of us squirm in discomfort and think, perhaps, about scary science fiction plots in which our DNA is used for evil rather than good or neutral purposes.

The federal Genetic Information Nondiscrimination Act prohibits discrimination on the basis of genetics in health insurance. The law also applies to various aspects of employment and group benefits. However, this specific law doesn't regulate the use of genetic information among life insurers in the individual market. At the time of this writing, roughly one-third of states had taken steps to outlaw genetic discrimination in life insurance. Details about how a particular state treats the issue might be available through the Human Genome Institute or, of course, a qualified local attorney.

CHAPTER 9: MONEY LAUNDERING IN INSURANCE

The past 20 years or so have seen an elevated concern among law enforcement regarding money laundering in insurance. Money laundering occurs when money obtained through or intended for illegal activity is moved through the economy so that it seems "clean" and becomes nearly impossible to trace.

There are three basic stages of money laundering, all of which can involve insurance in some way:

- Placement: In the placement stage, money obtained from or intended for illegal activity is introduced into the economy. For example, a criminal might arrive at a life insurance office with a briefcase full of cash and want to buy a single-premium life insurance policy with it.
- Layering: In the layering stage, money is moved from financial institution to financial institution for the sole purpose of creating a maze that law enforcement might get lost in. If there are financial penalties involved with moving the money around, those penalties are essentially written off by the criminal as the cost of doing business. The goal in this middle stage is purely to keep the money moving quickly. For an insurance-related example, consider a scenario in which a criminal has purchased an insurance product (such as permanent life insurance or an annuity) and cancels the contract abruptly even though the cancellation will result in major surrender charges. Then, the criminal might use the money to buy a financial product from a different company.
- Withdrawal: In the withdrawal stage, the money is taken out of the economy and used either for criminal activity or for the criminal's personal benefit. For example, a launderer might cancel an annuity or permanent life insurance product and pocket the cash surrender value without investing it elsewhere.

Money laundering became a major concern in insurance following the terrorist attacks of September 11, 2001. Although the terrorist group responsible for those attacks was headed by men with large personal wealth, those personal assets had been frozen by multiple governments, making the money difficult to use as a method of terrorism funding. According to a report by the federal government's 9/11 Commission, the group behind the attacks turned to money laundering in order to pay for its operations.

Much of the money laundering involved with 9/11 involved funneling money to and from bogus charitable organizations across the world, and there was no known link between the funding for the attacks and insurance. However, law enforcement was aware of cases in which dirty money had been funneled through insurance companies by other types of criminals, such as members of drug cartels, and wanted to get ahead of the game. Rather than wait for terrorist groups to figure out that insurance could be used to launder terrorism funds, the federal government chose to make awareness of potential money laundering a priority for carriers and producers.

Insurance companies that sell permanent life insurance, annuities or any other product with cash value are required to establish an anti-money laundering program. Among other things, the program is supposed to make producers aware of the warning signs of money laundering in insurance. Specifics of the plan will vary from carrier to carrier and will depend largely on the level of risk that is likely to exist for the given carrier. For example, a company that primarily sells cash-value life insurance products is likely to need a more elaborate anti-money laundering program than a company that is largely focused on property and casualty insurance and only sells a few annuities a year.

Some possible red flags of money laundering in insurance are listed here. Note, however, that the existence of a red flag is not necessarily a guarantee that criminal activity is occurring. Instead, it might merely be a signal that the situation should be evaluated more closely with help from colleagues and supervisors:

- A cash-value product is surrendered at great expense to the owner.
- An owner borrows the maximum amount possible from a cash-value product with policy-loan features.
- An applicant insists on paying large premiums with cash.
- The owner surrendering a cash-value product has no reasonable explanation for the surrender.
- Policy ownership is transferred without a reasonable explanation.
- An applicant is very interested in “free-look” periods that allow for a return of premiums after a policy cancellation but expresses little concern about other aspects of the product.
- A consumer is engaging in an irregularly high number of insurance transactions.
- Large purchases are made by people who seem unlikely to afford them (for example, a student buying large amounts of cash-value life insurance).
- The type of product purchased by someone is in conflict with a needs-based analysis conducted by an agent or broker.
- Owners, annuitants or beneficiaries of cash-value products seem unconnected to one another and lack an insurable interest in one another’s lives.
- A consumer asks whether certain transactions must be reported to the Internal Revenue Service.
- An applicant wants to purchase an interest-sensitive product but expresses no concern about the product’s performance.

Conclusion

Though people have the capacity to change, the odds are good that a person’s sense of right and wrong will be cemented at an early age. Reading about ethics is unlikely to turn a bad person into a good person.

But that doesn’t mean that our seemingly unchangeable principles can’t be applied in new ways. Through greater self-awareness, we might come to see how our favored values of honesty, compassion and courage can be demonstrated in a wider variety of situations. In many cases, we don’t need to learn new values in order to be more ethical. We merely need to find the time to pause during our hectic business days and remind ourselves more frequently of the values that are already important to us.