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ETHICS:
BEYOND RIGHT AND WRONG

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ETHICS: BEYOND RIGHT AND WRONG

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for California Insurance Professionals

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CHAPTER 1: UNDERSTANDING YOUR ETHICS

Although the purpose of this course is to promote contemplation about ethics in connection to your insurance career, it might be important for us to take a step back and consider what the term "ethics" means by itself. You can probably come up with your own suitable definition, such as "a moral compass that helps people determine right from wrong" or maybe "a set of rules or standards that determine how members of society should treat one another."

In his book "How Good People Make Tough Choices," ethicist Rushworth M. Kidder referenced a quote from English judge John Fletcher Moulton, who claimed that manners were essentially a type of "obedience to the unenforceable." As Kidder noted, we can easily substitute the word "ethics" in place of "manners" and argue that ethics include the way we act when no one else is watching and the way we act when we have a real choice in how to act or how to behave. Although ethics and laws might be intertwined, our obedience to laws tends to be based on a desire to avoid punishment, whereas our obedience to ethics tends to be based more on a desire to follow our conscience and uphold our principles.

Who Cares About Ethics?

If we agree that being ethical involves more than just following the law and avoiding punishment, we are left to ponder the benefits or lack thereof of living an outwardly ethical life. Since making ethical choices can sometimes be a torturous process, why should we bother doing the allegedly "right thing" at all? Or to be a bit more blunt and direct about it, why should you take courses that ask you to meditate on your personal ethics and whether you are applying them appropriately when conducting your daily business?

Simply put, good ethics can help you build your business. The more outwardly ethical you are to your existing clients and the more trust you can build with them, the longer they are likely to remain in business with you. Similarly, the more your existing clients believe in your expertise and professionalism, the more likely they are to refer their friends and family members to you.

A solid record of ethical behavior might also provide some protection for you during difficult times. In instances where your business is struggling to compete on the basis of price, your reputation might attract at least a few consumers who would otherwise opt for one of your lower-cost competitors. Or in a more serious scenario, a clear history of proper behavior might lessen the fallout if you ever find yourself accused of an error, an omission or a regulatory violation.

If you stay in the insurance industry long enough, your degree of professionalism is likely to be noted by colleagues who might play a major role in keeping your clients satisfied. Consider, for instance, an underwriter with a large stack of insurance applications on her desk. In addition to reviewing relevant information about each applicant, she might note the insurance agent associated with the paperwork and ask herself, "Does this agent do his or her work in a careful and thorough manner?," "Does this agent understand the types of risks that my company prefers?," and "Can I trust this agent to give me honest and complete answers to any of my questions?" By building trustworthy relationships with others and showing good professional judgment, you might make it possible for applicants who are considered "borderline risks" to secure insurance in a reasonable amount of time and at a truly fair price.

Finally, your consistent attention to ethics can play a small part in improving the insurance community's reputation. When pollsters such as Gallup have asked the public to rank various professions based on their level of perceived trustworthiness, insurance salespeople have tended to appear near the bottom of the list. Although we might question whether the public's perception of insurance producers is even remotely fair, we shouldn't deny that such opinions make it harder for us to do our jobs. Unless people understand how much we care about helping them, they will view our recommendations to purchase a particular product or our suggestion to sit down and review the appropriateness of their existing coverage with tremendous skepticism and will wonder if our advice is based purely on our own self-interest. Meanwhile, unless carriers find the right balance between denying illegitimate insurance claims and providing significant financial relief to crisis-stricken policyholders, the general population will continue to view insurance as a purely profit-driven business that deserves no help in stopping preventable cases of consumer-driven fraud.

Getting the average person to see us and our industry as human beings and not as negative stereotypes won't happen overnight. But maintaining an obvious devotion to ethics can get us off to a good start.

Common Views on Ethics

Systems for determining right from wrong are numerous enough to fill the philosophy-focused curriculums at several major universities. We'll briefly mention three of the most common ethical systems or philosophies that continue to be studied and debated.

In general terms, "utilitarianism" is a brand of philosophy that asks, "What are the consequences for society as a whole?" Utilitarianism is commonly concerned with outcomes that produce the greatest amount of positive consequences for the greatest number of people. Concerns about how a minority of people will be impacted by those outcomes receive less attention under this ethical system.

"Kantianism" is a brand of philosophy that essentially asks, "What do the rules say about this situation?" Those rules might be written (such as in the form of a law) or might be communicated verbally from person to person and generation to generation. A fairly strict interpretation of Kantianism would claim that breaking a rule, regardless of the circumstance, is unethical, whereas abiding by a rule, regardless of the circumstance, is ethical.

Under the "Golden Rule," our views on what is right or wrong are determined by the question, "How would I want to be treated in this situation?" You may have also heard the Golden Rule as, "Do unto others as you would have them do unto you." The Golden Rule dates all the way back to the time of Confucius and has been incorporated into practically all of the major world religions. Its emphasis is on empathy and compassion.

You probably assume that you favor one of these value systems over the others. However, in practice, you are more likely to alternate between one or another depending on the specifics of the scenario and the people who are involved. As you read through some of the case studies found later in this course, consider taking a step back from them and analyzing how your personal code of ethics actually operates. For example, do you find yourself constantly thinking about rules in a manner similar to Kantianism? Are you typically putting more weight on the Golden Rule? Are your ethics as strict or as flexible as you've always assumed?

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Shaping Our Ethics

If you notice yourself shifting from one ethical system to another when making decisions, the cause might relate to the fact that our ethics are shaped by so many different sources. Laws can influence our sense of right and wrong and seem to fit neatly into Kantianism's emphasis on rules. Our faith and our family can shape our ethics, too, but tend to do so in ways that emphasize a combination of rules and a call for empathy and kindness toward other human beings.

As we move into our careers, our ethics can undergo subtle changes based on guidance from professional organizations. For example, many insurance-focused professional organizations have their own codes of ethics. These codes can and often do ask members to follow rules that go beyond the various insurance laws or rules that have been implemented by state or federal governments. If you are a member of this type of organization, consider taking a few minutes to locate and review the organization's code of ethics so that you can maintain compliance with them and remain in good standing with your fellow members. Depending on the professional organization, a formal code of ethics might require that you consider the following issues even if state laws don't directly address them:

- Your duty to disclose how much you will be paid as part of an insurance transaction (and whether payment will be in the form of a commission or a flat fee).
- The need to complete courses with an emphasis on certain topics that are important to the organization.
- The level of respect you should project in regard to your competitors.
- Your obligation to report suspected code violations to the organization's disciplinary board.

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CHAPTER 2: APPLYING OUR PRINCIPLES AS PRODUCERS

Regardless of who or what shaped our ethics, there are common lessons about right and wrong that we've all been taught. For instance, we've all been taught to be honest, to treat others with respect and to avoid acting with too much self-interest.

Since the vast majority of us have already been taught these lessons, an ethics course like this is unlikely to turn an allegedly "bad" person into a better human being. But it might help you recognize instances in your professional life in which those very personal lessons about honesty, compassion and other virtues can be more specifically applied.

While you read the rest of this course, try to think of your ethics as a muscle. In order to keep a muscle strong and resilient, you must engage in at least a bit of periodic exercise. The case studies that you will examine later in this material are intended to serve as exercise for the ethics-related muscles that you already possess. The point of the exercises isn't necessarily to instill the "right" answers in you. (In fact, you might find that many of the case studies ask questions that have several "right" answers.) Instead, the examples presented here should give you some extra practice in processing ethical dilemmas and should make your personal set of principles clearer to you.

Unfortunately, many of our most important ethics-related decisions have to be made in the heat of the moment and often cannot be reversed. By meditating on the scenarios featured in this course and exercising your ethics as a muscle in other ways, you might find that you are capable of making quicker decisions without sacrificing any devotion to your values.

Staying Truthful With Clients

You've almost certainly heard that "honesty is the best policy." It should probably go without saying that lying to a consumer about the benefits or drawbacks of an insurance product is inappropriate. But is there a difference between saying something that is untrue and being completely quiet about a potentially important issue? Is it your duty to merely avoid telling lies, or are you required to go a step further and actively disclose all material facts to your clients, whether you're asked about them or not?

Consider this scenario:

- You are competing hard for a new account that could take your agency to the next level. You know that securing this business will greatly impress your boss and translate to advancement in your career. You also know that this prospect is more likely to be swayed by price than by anything else you might be able to provide. You are ready to send a quote to the prospect and believe it is probably at least as low as the price being quoted by your closest competitor. However, you arrived at the quote by doing some creative math and applying certain discounts that are unlikely to remain in place beyond the initial policy period. You are fairly sure that your competition is calculating its quote in a similar fashion and is unlikely to mention the high probability of an eventual price increase to the prospect.

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

- To whom do you owe the most loyalty? Your boss? The prospect? Yourself?
- If you present the low quote to the prospect, must you be completely honest and disclose the fact that the low price is likely to be temporary?

- Does your competition's behavior make you more or less likely to tell the full truth?
- When is it worth your time to educate a prospect about how insurance really works (including how rates and premiums are calculated)? Is it ever appropriate to avoid this type of educational opportunity?

Treating Everyone Equally

Unless there are legitimate actuarial reasons for treating applicants or policyholders differently, ethical insurance producers generally attempt to provide the same level of quality service to all of their prospects and all of their clients. But what does this attempt at nondiscrimination really mean within a business context? Does it merely mean that we should avoid treating people differently on the basis of such insignificant factors as race, religion and ethnicity? Or might it mean something more and mean that we should do our best to treat our smaller clients with as much care and attention as our larger ones?

Consider this scenario:

- You work as a commercial lines insurance broker and are approaching a 10-year business anniversary with your most important client. This client has stuck with you during difficult times even though some of your competitors have tried to lure the client away with promises of savings. You want to express your gratitude and decide to write a "thank you" note, but you still don't feel like you're doing enough. You revise the note by saying you will be making a donation in the client's name to his or her favorite charity. You feel good about showing your gratitude and helping a good cause. But did you do anything wrong?

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

- Does your state have any rules or restrictions on "rebating" (providing goods or services that aren't specified in the policy or insurance contract)?
- Even if rebating is allowed in your state, are there negative consequences for the insurance industry as a whole if agents and brokers engage in it?
- If you make this offer to your favorite client, do you have an ethical duty to extend the same offer to other clients?
- If you have reservations about making this type of offer to a client, are there other, more appropriate ways of showing your appreciation?

Demonstrating Your Competence

Despite inevitable frustrations related to our jobs, most of us probably want to believe that what we do has value and that there are correct and incorrect ways to conduct our business. Even though most consumers won't recognize how having pride in our profession can trickle down in a positive way to them, it often gives us a personal incentive to become more educated about our industry and, therefore, more adept at solving consumers' insurance problems.

A bit of networking can go a long way in terms of improving our competence and expanding our insurance knowledge. Producers who work almost exclusively in a sales capacity might benefit from stepping outside of their comfort zone every once in a while and inviting an underwriter, claims adjuster or compliance officer out to lunch. In the middle of enjoying the other person's company, the producer can learn a lot by asking the other person questions like, "What can I and the rest of my department do in order to make your

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job easier?" Conversely, the producer can educate the other person by explaining some of the hurdles that sales professionals often face when dealing with other divisions within an insurance organization. The more you know about how each piece of an organization works, the easier it will be to set clear expectations for clients when they ask about the status of an application or a claim.

Standing Up For Yourself

Whether the pressure comes from a consumer who has some control over our commission or a boss who has control over our employment, saying "no" to people who want us to engage in unethical behavior requires an admirable amount of courage. If the pressure is coming from an employer, we may need to consider the sad and stressful possibility that we should be working for a different company. After all, if a supervisor insists on having you do something that offends your principles, what are the odds that the same supervisor will support you during a professional crisis? Unfortunately in this scenario, the only person who is likely to be looking out for your long-term interests and your ability to maintain a positive relationship with your local insurance regulators is you.

If unacceptable pressures are coming from an applicant or client, you have a few other options and questions to answer. Consider this scenario:

- You're an insurance broker for a combative business owner. The owner is a long-time "problem customer" who is always uncooperative when you ask him for information. He says things like, "Why do you need to know things about my payroll? It's none of your business! Can't you just use your best guess and get this moving?" This time, the owner's comments are particularly personal and insulting. He has questioned your competency and called you a "typical insurance person, just caring about yourself and making money." The client has important coverage up for renewal in the next few weeks, and you're the only one who understands this account. You are tired of taking his abuse, but you still want to be professional. What do you do?

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

- Does your answer depend on whether you are running your own insurance business or are working for someone else?
- Would you respond differently depending on whether you are a new producer with few clients vs. an experienced producer with several clients?
- If you refuse to help the client anymore, is it appropriate to refer the client to one of your colleagues?
- Are you comfortable with the consequences for the client if you refuse to help him anymore and don't refer him to someone else?
- Are there steps you could've taken earlier in your relationship that would've prevented this problem from growing?
- Is it fair (to the client and yourself) to continue working with the client but only within certain limits?
- What is the likely cause of the client's hostility, and does it have anything to do with you?

CHAPTER 3: BUILDING ETHICAL RELATIONSHIPS WITH INSURANCE BUSINESSES

Without trivializing the importance of fairness toward consumers, licensed producers shouldn't forget about the various ethical duties they owe to the insurance agencies and carriers that they work with. Those duties tend to relate to disclosure of material facts about applicants and policyholders, the careful handling of premiums, and the upholding of any employment agreements between the individual producer and an insurance business. While reminding ourselves of those duties, we might also wonder whether those duties have limits and whether the companies we work for are being just as ethical toward us.

Consider this scenario:

- You have recently begun work as a captive agent for a major property and casualty firm that specializes in auto insurance. Your own auto insurance is from a different carrier and is up for renewal. You want to be loyal to your new company, but you also have concerns about buying from the same company you work for. For example, what if a claim isn't handled as expected, and things get awkward? Also, might you risk losing some privacy about your driving record or credit history? And what if a potential customer asks you where your own auto insurance is from?

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

- Do you owe any loyalty to the agent who issued your current auto insurance?
- If there is no way for anyone at your new company to know where your insurance is from, do you still feel obligated to switch?
- If you are uncomfortable about switching and choose not to, is it appropriate to disclose the reasons for your decision? Is it okay to lie if asked?
- If you and other drivers in your household are all covered by the same policy, how much involvement should those other drivers have in the decision to change carriers? Should your loyalty and respect for them outweigh your loyalty to your company in this case?

Insurance producers who act as agents are supposed to represent the insurance company and are thereby obligated to disclose relevant information that they learn from applicants or policyholders. Similarly, if an applicant or policyholder gives information to an insurance agent, the information is generally treated as if it were given directly to the insurance company. In other words, depending on state law, notice to the agent is considered notice to the carrier.

But with agents being made aware of so much information via their interactions with the public, is it ever practical, appropriate and ethical for an agent to withhold information from an insurer?

Consider this scenario:

- While giving a life insurance presentation at someone's home, you detect a strong odor of cigarette smoke. The applicant is sitting across from you and has indicated in writing that he doesn't smoke. You don't want to believe that the applicant is lying to you, so you consider other reasonable explanations. You ask if someone else lives at the home, but the applicant says he lives alone.

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

- Is it appropriate to dig deeper into the situation and ask more questions? If so, which questions would you ask?
- If you assume that the applicant is lying to you, should you raise the issue with the applicant?
- If you assume that the applicant is lying to you but don’t raise the issue with him, what steps (if any) should you take after leaving the home? For example, should you note the situation in your records and share them with an underwriter? Is it acceptable to leave the situation alone and have faith that a paramedical exam will reveal the truth?
- If you assume that the applicant is lying to you, does this instance of dishonesty hint at other unethical behavior that he might commit in the future? Might this be a “problem customer” who should be let go as soon as possible?

Honoring Your Contract

Insurance producers are often asked by agencies and insurance carriers to sign non-compete agreements. These agreements limit the kinds of work that a producer can do if he or she ever leaves a current employer. For example, a non-compete agreement might say that a producer cannot do any of the following within one to five years after the end of his or her employment:

- Approach the agency’s or carrier’s clients with the intent of doing business with them.
- Sell insurance within a particular geographic area.
- Sell a particular type of insurance.
- Recruit former colleagues to work at the producer’s new place of employment.

Legal experts have debated the legality of these agreements and generally agree that an agreement that imposes an unreasonable burden on a person’s ability to earn a living is unenforceable. However, determining what is, in fact, an unreasonable burden is often unclear and might not be easily determined without the help of an experienced attorney or a ruling from a court. With this in mind, producers who are asked to sign this type of agreement might want to consult legal counsel before putting pen to paper.

If you run your own business and employ other producers, you might be faced with the decision of whether to require the signing of non-compete agreements and, perhaps, whether violations of those agreements should be countered with legal action.

Consider this scenario:

- You run an agency and have decided you must replace a struggling producer due to poor performance. The producer has been with you for two years after abandoning a successful career as a carpenter. You know the producer has a big family and a spouse with health problems, but you need to let the person go in order to stop losing money. The producer signed a one-year non-compete agreement with your agency. Three months after the producer’s dismissal, you get a voicemail message from an important client. The client says she’s moving her business to a new agency owned by the dismissed producer. Before calling the

client back, you think about the one-year agreement. Do you inquire about a potential breach of contract, or do you leave it alone?

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

- Does it matter that the producer didn’t leave your agency by choice?
- Does it matter that he was successful as a carpenter and, therefore, seems capable of going back to that career.
- Assuming you employ other producers, are you concerned about how your response will be interpreted by them and whether they will lose respect for you?
- If you choose to call the client, is there anything to lose or gain by mentioning the producer’s violation of the non-compete agreement?
- Is it ever appropriate to violate a signed agreement?
- Would you consider an alternative to legal action against the producer, such as an offer to rescind the agreement in exchange for financial compensation?

CHAPTER 4: SELLING THE "RIGHT" WAY

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 or your company is, 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 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 someone needs 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 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 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 that 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 on social media networks 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 online:

- 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 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.

CHAPTER 5: UNFAIR CLAIMS PRACTICES

Completing an honest application and paying the first premium are only the beginning of the relationship between an insurance company and a new customer. Both parties, in accordance with the policy language, become tied to a contractual agreement, with the policyholder having the contractual obligation to pay premiums and with the insurer having the contractual obligation to cover the losses specified in the policy.

When a policyholder suffers a loss, the insurance company is supposed to follow the terms of the contractual agreement and should not attempt to engage the consumer in a new round of negotiation. In the event that a carrier fails to follow the terms of the policy, the consumer has the right to initiate legal action.

In addition to a lawsuit, the consumer's response to a seemingly inappropriate insurance settlement might include the filing of a complaint with state regulators. If the state's insurance department believes that the insurer's conduct is inappropriate and is part of a pattern of bad behavior, regulators might fine the carrier thousands of dollars for engaging in "unfair claims settlement practices."

Although a specific list of unfair claims settlement practices will differ from state to state, activities that are likely to raise ethical (if not legal) concerns are listed below, along with some hypothetical examples:

- **Denying a claim without conducting an appropriate investigation:** Following a combination of an earthquake and a fire at his home, Joe files a property insurance claim. Joe has coverage for fire losses but not earthquake losses. Instead of sending an adjuster to determine how much each peril contributed to the damage, his insurance company denies his entire claim outright.
- **Failing to settle a claim when the insurer's liability is reasonably clear:** Wayne and Mary are involved in a car accident in separate vehicles. Although Wayne freely admits the accident was his fault, his insurance company delays compensating Mary for her losses and instructs its legal team to find a loophole in the policy so it can deny all claims.
- **Intentionally offering to settle for an amount below what the claimant actually deserves:** Laurie's home was broken into by robbers, who stole most of her personal possessions. She has kept good records of what she owned and was sure to purchase coverage that was in line with what her belongings were actually worth. However, her insurance company views the settlement process as a negotiation and decides to offer her a much smaller amount. (This practice is sometimes referred to as "lowballing.")
- **Withholding money for a covered portion of a claim while disputing the rest of a claim:** Sarah's home was damaged by a hurricane. She and her insurer agree that at least a portion of her losses are covered. Coverage of her other losses are in dispute and depend on the wording of a flood exclusion. Rather than at least give her the money for the uncontested portion of her losses, her insurer decides to give her nothing until the flood-related dispute has been settled.
- **Requiring a deadline for providing proof of loss that isn't stated within the insurance policy:** Ben was listed as a beneficiary on his father's life insurance policy. The policy wasn't discovered until nine months after the father's death. Although the policy lists no deadline for providing proof of a death, the insurance

company denies Ben's claim and says he should've provided a death certificate within six months of his father's passing.

- **Refusing to pay a claim because other sources of compensation may be possible:** George slips on a neighbor's steps and hurts his back. His health insurance company refuses to pay his medical bills because it holds the neighbor responsible for the accident. George's insurance policy makes no mention of this kind of situation, yet his insurer tells him he has no choice but to sue his neighbor.
- **Failing to make claimants aware of statutes of limitations:** Roberta has been fighting with her health insurance company over unpaid doctor bills for nearly two years. After those two years, she will not be allowed to take legal action against the insurer. The insurance company knows her deadline is approaching but doesn't disclose it in a timely manner. The deadline passes, and Roberta is left without the ability to have the matter settled in court.
- **Reducing or eliminating policy benefits in order to facilitate a quicker settlement:** Jean's home requires major repairs after a fire. The amount offered by the insurer won't be enough to restore the home to its prior condition. In order to convince Jean to accept this amount, the insurance company stops paying for the apartment where she and her family are temporarily residing.

Most of us would probably agree that we should abide by the contracts that we sign. Similarly, many of us are probably in agreement that we should attempt to have compassion for others. However, some claims-related disputes can test our belief in these two matters of principle. We may want to honor certain claims as a matter of empathy and fairness yet ultimately conclude that paying those claims would technically be in conflict with the carefully worded coverage forms used by an insurance carrier.

Consider this scenario:

- A husband and wife are both named as "the insured" on a homeowners insurance policy. The policy specifically excludes "intentional acts of damage to the property that are committed by the insured." The husband and wife are in the middle of a messy separation. The wife still lives at the insured home, but the husband has moved into a nearby apartment. One day, the wife arrives home to find the husband vandalizing the garage door with spray paint. The wife contacts her insurance company and expects the damage to be covered by her policy. However, the insurance company says the damage was done intentionally by an insured and refuses to pay.

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

- Should the insurer be compassionate and pay the claim?
- Should the insurer stick to the language of the policy and deny the claim?
- Should the likely cost of the damage (which might not be large enough to satisfy a deductible) factor into your decision?
- Why do you think the exclusion mentioned in the scenario was included in the policy in the first place? Was it intended to exclude this specific kind of situation, or was it intended mainly as a fraud deterrent? Regardless, should the original reason for the exclusion factor into your decision?

Some insurance agents believe claims are mainly an issue for the insurance carrier and not a major concern for sales professionals. Those agents should keep in mind that even though they might not think of themselves as claims experts, they are the ones who usually have the closest relationship with consumers. Therefore, whether they like it or not, they are often the first ones who the claimant will call if a problem arises.

The impact of producer involvement in the claims process was quantified in a survey conducted in 2012 by J.D. Power and Associates. According to the survey, policyholders who have a negative claims experience are nine times more likely to switch insurance companies. The same survey found that greater involvement from agents translated to greater levels of satisfaction among claimants.

Clearly, claims are a significant influence on the insurance industry's relationship with the public. Since a negative claims experience can jeopardize your standing with a client, you might want to take advantage of any situation in which you can learn more about how claims are managed by a particular carrier. If you know any claims professionals, consider pulling them aside and asking what you can do to make their jobs easier. Then, upon getting an answer, provide feedback to them regarding how claims departments can help sales professionals manage expectations with consumers. The more you know about the process, the more you will be able to educate your clients.

CHAPTER 6: INSURANCE DISCRIMINATION

For most people in our increasingly diverse society, the word "discrimination" tends to bring uncomfortably negative images to mind. Some of those images—protesters clashing with local authorities during the Civil Rights movement, or signs for racially segregated public accommodations in the Jim-Crow-era South—are familiar to us from the historical record. Others—such as that of the veteran female receptionist who is curiously passed over for promotions by male bosses—aren't as graphic and tend to come to our attention through the anecdotes of friends and family or from our own personal experiences. In part to avoid seeing those unpleasant pictures, we might try to convince ourselves that discrimination is either a thing of the past or at least something that would never be tolerated in our own line of work.

However, discrimination can be a fascinatingly complicated subject for insurance professionals. This is particularly possible if we detach the social connotations from the word and focus purely on its basic definition. Discrimination, at its most elementary level, occurs whenever two or more people are evaluated individually and treated in different ways on the basis of that evaluation. If we keep this emotionally neutral definition in mind, we may notice that discrimination is not only common but central to the operation of our industry.

To demonstrate this point, think of the line of insurance in which you have the greatest amount of expertise. Is this insurance made available to some applicants but not others? Is this insurance offered at the same price to everyone? Even if the insurance is offered as part of a guaranteed-issue group plan in which all participants contribute the same amount of premiums, are there differences in pricing from group to group? Unless the insurance is offered to all interested applicants at exactly the same price, some form of discrimination is technically taking place.

Often, arguments that are seemingly about whether discrimination exists are really about whether a particular kind of discrimination is ethical and fair. At least in regard to insurance practices, state regulators have already participated in those arguments and arrived at some clear conclusions for us. For example, insurance commissioners across the United States have generally determined that discriminating against consumers on the direct basis of race, religion or national origin is inappropriate and have made this discrimination illegal. (This is a contrast with many other countries—even developed areas like Western Europe—where insurers sometimes apply different rates to foreigners and non-foreigners.)

While some of the prohibitions against insurance discrimination might seem obvious, perceptions of fairness continue to evolve. Traditionally, insurers and their customers have agreed that discrimination is justified when it is based entirely on a person's risk potential and is backed up by sound actuarial data. But as the underwriting process has become more complex, even insurers with data on their side have had a harder time making their case. Consider the U.S. auto insurance market, where credit history—and not driving history—might have the biggest impact on a driver's auto insurance premiums. Even as the numbers consistently link the likelihood of auto insurance claims to a person's bill-paying activities, many motorists believe, for various reasons, that credit-based insurance decisions are unfairly discriminatory.

At times, the arguments concerning discrimination are about whether a person's risk profile should matter at all. The passage of the Affordable Care Act in 2010 provoked heated debate regarding the best way to cover the uninsured. But while verbal battles were waged about mandates and the law's rollout, more Americans seemed to come away

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with the belief that all people—even the very sick—should have access to affordable, high-quality health insurance.

For the purpose of our discussion here, we will focus on some of the more traditional forms of alleged insurance discrimination, specifically those related to race and the issue of "redlining."

Racial Issues in Insurance

Race-related issues in insurance date all the way back to the pre-Civil War era, when insurers viewed slaves as property and insured them as such for their white owners. After the war but prior to the Civil Rights movement, insurance companies commonly relied on loss-related data to charge different amounts depending on whether a consumer was white or black.

Race-based pricing was especially common in life insurance and was practiced with regulators' blessings due to the significant disparities in life expectancies between minorities and non-minorities. As reported by the Wall Street Journal, for example, white Americans were on pace to live roughly seven years longer than black Americans in 1955. Statistics like that were at least partially responsible for African Americans being charged sometimes as much as one-third more than other customers.

The significant differences in price didn't always mean that life insurers weren't interested in marketing themselves to black communities. However, when those communities were targeted, companies and their agents tended to emphasize non-traditional products. Instead of stressing usual forms of life insurance with significant death benefits, insurance salespersons went door to door and peddled small burial policies that covered final expenses in exchange for weekly or monthly payments of a few dollars. Even in these instances of targeted sales, race-based mortality tables were used to price the products.

In some cases, the risk-related data that was used decades ago by insurers hasn't changed much. Racial disparities still exist in regard to the quality of health care received by minorities vs. non-minorities, and according to 2008 figures from the Centers for Disease Control, white Americans continue to have longer life expectancies than African Americans. But regulators and the general public have been reinterpreting those numbers ever since the days of the Civil Rights movement. To many observers, those numbers should be ignored because they are more likely the result of economic factors (such as higher poverty rates among minorities) rather than being directly related to race. Even among those who don't fully accept this poverty-linked hypothesis, the use of race-related data to offer or price insurance seems contrary to their morals. For these reasons and more, direct forms of racial discrimination in insurance have been made illegal by state or federal laws in practically all cases.

For sellers of burial insurance, the changes in laws and in societal views put an end to race-based pricing in the issuance of new policies. But many policyholders who had purchased coverage prior to the ban continued to pay the same monthly or weekly installments for decades. According to a report by the state of Florida, 29 U.S. life insurers had not corrected race-based pricing models for pre-existing policyholders by the year 2000. Several class-action suits have been settled in the years since the report.

Despite the ban on direct racial discrimination, some sociologists and civil rights activists are convinced that racial minorities are still not always treated fairly by insurers. As evidence, they often cite the results of "matched-pair" studies. In a matched-pair study, individuals inquire about insurance (usually from property and casualty agents) and take

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note of their treatment. Individuals who are part of the study will have the same risk profile but will be members of different racial groups.

Multiple matched-pair studies have at least hinted at the presence of racial discrimination at some property and casualty insurance businesses. When leaving messages at these businesses, white callers have sometimes been more likely to have their calls returned. Similarly, individuals posing as insurance applicants have sometimes noted differences in their ability to obtain an insurance quote depending on their race.

On the other hand, critics of those studies have noted the usually small sample sizes of the data and have occasionally posed questions about the potential for political bias among the groups that conduct the research.

Redlining

Several decades ago, it wasn't uncommon for maps at real estate and lending offices to be marked with red lines, indicating where business was not to be done. Very often, the marked areas were low-income communities where large amounts of racial minorities lived. By marking those areas and refusing to do business in them, companies were ultimately accused of sidestepping the requirements of various civil rights laws that prohibited discrimination on the basis of race. This practice is known as "redlining."

Alleged redlining has often been a problem in communities where rioting has occurred. After race-related riots in the late 1960s prompted a departure by insurers out of some urban areas, the federal government made reinsurance available to carriers in any state that instituted plans for covering property in seemingly high-risk areas. Though this kind of financial protection for insurance companies is now offered primarily by reinsurers in the private market, the original mechanism for serving high-risk applicants —known as a FAIR plan—still can be found in practically all states.

Decades later, following riots that resulted after alleged police brutality against African-American man Rodney King, businesses in the South Central portion of Los Angeles struggled to reopen due, at least in part, to the unavailability of affordable property and casualty insurance.

Defining Redlining

Discussions about the prevalence of redlining can be stressful because there are many opinions regarding what the term actually means. The debate about terminology relates both to the intent of insurers' actions in certain communities and to the impact—regardless of intent—that those actions have on residents.

To some, redlining only occurs when an insurer flatly refuses to insure properties (or provide other kinds of coverage) in a particular geographic area. To others, it can also include cases where insurance is technically available in all areas but is viewed as prohibitively expensive in certain neighborhoods.

In either of those cases, some people have an even stricter definition and argue that redlining only occurs when the reason why an insurer won't offer affordable coverage in a neighborhood is based on the types of people living there. Conversely, others argue that redlining can occur even if the insurer claims to only be basing its business decisions on environmental risk factors and not specifically on the race, ethnicity or other personal characteristics of the typical resident.

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Location and Risk

From many insurers' perspectives, several risk-related reasons exist for pricing and offering property and casualty insurance differently in certain areas. When questioned about business practices that treat urban areas (particularly the dense inner city) less favorably than other communities, insurers tend to cite the following rationales:

- Some urban areas tend to have higher crime rates, including for theft and arson.
- Some urban areas have a disproportionate amount of vacant buildings, which could lead to vandalism or other kinds of damage.
- Some urban areas have an especially high amount of older buildings, which might be in disrepair or have lower market values.
- Urban areas have many properties that are close to one another, which can multiply the impact of a fire, tornado or natural catastrophe.
- For auto insurers, urban areas have more traffic, which could result in more accidents.

Of course, rural areas present their own set of risks. For example, rural homes are likely to be far away from emergency services, and local roads might make it more difficult for police or fire departments to reach the site of an accident.

Redlining and State Regulation

In general, states have frowned on insurers that have attempted to completely avoid doing business in certain communities. This has been the case even when racial or ethnic factors have been absent from the conversation. For an example, consider property insurers that have been spooked by natural disasters in coastal areas, such as parts of Florida. Many of those insurers have learned that if they don't want to provide coverage at all for properties in certain high-risk neighborhoods, they must take the same position toward the rest of the state and will be required to exit the entire market.

Less uniformity exists nationwide regarding the pricing (as opposed to availability) of insurance based on geographic location. Whereas most states allow for some form of territorial rating that makes insurance cost different amounts based on an applicant's location (usually by ZIP code), some put significant limits on those practices. For example, voters in California approved a measure that requires auto insurance rates to be based primarily on a person's driving history and minimizes the impact of a vehicle's usual location.

Where territorial rating practices are permitted, civil rights organizations sometimes raise concerns about how the differences in pricing are impacting minority communities. Depending on the circumstances, they might pose the following questions to insurers, courts or regulators:

- Does territorial rating give insurance companies an opportunity to discriminate intentionally against minorities?
- If territorial rating ends up having a disproportionate but unintentional impact on minorities, should it be allowed?
- Does territorial rating allow insurers to make overly broad judgments about applicants rather than forcing them to look at each applicant's individual risk profile?

Redlining Disclosure Requirements

Groups and individuals who are especially concerned about redlining are typically in favor of laws that would require insurers to report various pieces of data to insurance regulators. The data might include information about an insurer's market share in various communities as well as the race or ethnicity of each applicant and how the applicant's request for insurance was handled.

This kind of requirement already exists at the federal level for mortgage professionals. Under the Home Mortgage Disclosure Act (HMDA), lenders must send specific kinds of information (including the race and ethnicity of loan applicants and whether a loan was approved or denied) to federal agencies, but the law does not extend to the insurance community. Similar insurance-related laws have been proposed at the federal level for decades but have failed to gain much traction.

States have taken different approaches to the issue. Some require race and ZIP-code level reporting to their insurance department. Some require that this data be gathered but only sent to regulators upon request. In other parts of the country, no such reporting is required at all.

Rather than believing that HMDA-like reporting would help prove a lack of discrimination in their business practices, insurance companies have generally opposed these types of requirements. Commonly stated reasons for their opposition appear below:

- Insurers that are shown to be less prominent in minority neighborhoods might be sued even if they had no intention of discriminating against minority groups.
- Applicants who are asked about their race or ethnicity for the purpose of data collection might object and worry about how the information will be used.
- Requiring agents to obtain information about race or ethnicity increases the chances of unethical agents being influenced by the information.
- If information about an insurer's market share in certain neighborhoods is reported and becomes public, competitors might benefit unfairly from the disclosure.
- Insurance regulation has generally been left to the individual states. Federally mandated reporting would conflict with this tradition.

Insurers that don't want greater regulation but are still concerned about risks in certain neighborhoods might want to consider proactive ways in which they can protect their bottom line while still serving all communities. For example, some commentators have suggested education campaigns that are meant to make property owners more aware of how they can reduce their insurance premiums with the help of burglar alarms, smoke detectors and other loss-prevention tools. Similarly, rather than evaluating applicants on a broad ZIP-code level or by the age of a dwelling, underwriting departments might consider ways in which properties can be evaluated on more of a case-by-case basis. For instance, property insurers might consider being open to the idea of offering cheaper insurance to the owners of an otherwise old building that has been either retrofitted to withstand disasters or rewired to reduce fires.

CHAPTER 7: PRIVACY PROTECTION

Your insurance career puts you in a position to learn several pieces of sensitive information about consumers. For example, by asking questions or by reviewing information on applications, you might learn private facts about someone's health, finances or business endeavors. Of course, our ethics should intuitively instruct us to only disclose such information when it is necessary to do our jobs. And in the event that our instincts tell us that a certain case of disclosure is unlikely to result in harm, we must still be aware of federal and state privacy rules, which might make the disclosure illegal.

Privacy Protection Under HIPAA

Most of us are already somewhat familiar with the Health Insurance Portability and Accountability Act (HIPAA). This federal law is one of the most significant pieces of privacy legislation in the United States.

HIPAA's original intent was to prohibit certain forms of discrimination in group health plans and to reduce health care costs by encouraging a movement away from hard-copy medical records and toward electronic filing systems. However, the government understood that electronic sharing of medical information (regardless of potential cost savings) would make many patients nervous. So in order to reduce privacy-related fears from consumers, HIPAA called on federal agencies to create a collection of restrictions on health information. Those restrictions are found in what are called the "Privacy Rule" and the "Safeguards Rule," each of which were issued by the U.S. Department of Health and Human Services. The Privacy Rule dictates how medical information can be shared. The Safeguards Rule dictates how that information must be stored, safeguarded and protected even if no sharing is intended.

Under HIPAA, health insurance producers are considered "business associates." A business associate is someone who either receives protected health information from or collects protected health information for a health care provider, health insurance plan or health care clearinghouse. As business associates, health insurance producers are required to sign a special "business associate agreement" before collecting or accessing any protected health information in their work with insurance companies. The agreement should spell out what a producer can and cannot do with collected information, as well as the safeguards that the producer must employ to keep the information safe. Be aware that the restrictions within a business associate agreement can be even more stringent than the restrictions found in HIPAA, the Privacy Rule or the Safeguards Rule. In other words, even if an activity seems legal under HIPAA, an insurance company can prohibit that activity as part of business associate agreements with its producers.

Privacy Protection Around the Office

Sometimes privacy violations occur unintentionally because we lose sight of our surroundings and the circumstances of a situation.

Consider this scenario:

- You work as a health insurance broker and are five minutes away from leaving the office after a very long and stressful day. Before you can get your coat on, your phone rings. It's one of your clients, who has a question about his coverage. You politely answer the question but still can't get him to hang up the phone. Instead, he runs through a long list of health problems that he's currently experiencing. Since this extra information doesn't relate to his original question, you're surprised that the client is getting so personal with you. In fact, some of the details are making

you queasy. After being stuck in the conversation for another 10 minutes, you decide to be a bit more forceful and say, “Well, it’s been nice hearing from you. Unfortunately, we need to close the office right now. But feel free to call back if there’s something else I can help you with.” This gets the client off the phone, but you’re still annoyed. You turn to the co-worker sitting next to you and say, “Oh my goodness! You would not believe the things he was talking about. He had one question, but then he went off on a rant about all of these disgusting problems he’s been having.”

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

- Is it natural and, in fact, healthy to occasionally complain about clients with your colleagues?
- If you ever discuss clients with anyone, how do you identify them (if at all) in the conversation?
- Do you have workplace procedures in place to encourage necessary communication with colleagues while also ensuring that particularly sensitive information is only accessible on a need-to-know basis?
- If you supervise other producers or any office workers, do you believe your staff has the same commitment to privacy as you? If not, how can you promote and enforce professional behavior at your office?

CHAPTER 8: CONSUMER FRAUD

We've spent a lot of time in this course contemplating some of the unethical activities that an insurance producer might engage in. But of course, not all of the unethical conduct in the insurance business is committed by insiders. If we have been in the insurance field long enough, we've probably encountered some consumers who are attempting to do bad things, such as commit fraud against an insurance company.

It's easy for insurance sales agents to say that stopping fraud is someone else's job and leave the task of fraud detection to a claims department. But passing all the responsibility for fraud prevention to someone else might not be the most ethical option. Keep in mind that no matter if you are representing an insurance company or a consumer in a transaction, you have an ethical obligation to only bring parties together in good faith. If you suspect that one of those parties is trying to deceive the other, you are not doing your duty.

Leaving fraud detection to others is also impractical and inefficient. Since agents are the insurance professionals who tend to have the most direct contact with the public, they might notice behaviors or be sensitive to certain warning signs that others—including claims adjusters—might miss. At the very least, an agent with a long-term relationship with a client is in a better position than practically everyone else at an insurance company to judge the client's character.

However, in order to maintain positive relationships and stay within the boundaries of their job duties, producers should not be expected to independently police their clients. Although you may have an ethical obligation to remain observant and report suspicious behavior, your actions should not be so forceful that they inadvertently discourage policyholders from filing legitimate insurance claims.

What's the Matter With Fraud?

The insurance industry has sometimes had a hard time convincing the public that fraud is a real problem. One way to heighten awareness of fraud and encourage more public engagement is to emphasize how fraud committed against insurance companies can detrimentally impact the average person.

Whether they realize it or not, consumers pay a price for insurance fraud. Money lost by an insurance company as a result of a scam can trickle down to the consumer in the form of higher premiums and stricter policy exclusions. Like any other business, an insurance company that is losing money will ultimately need to tighten its belt in ways that impact customers.

Insurance fraud can even result in physical harm to innocent people. For example, in states with no-fault auto insurance systems in place, it is fairly common for criminals to stage auto accidents in order to collect from their insurance companies. The intent might be for two cars to crash into each other, with both of the drivers, a few witnesses and even an attorney and police officer all sharing in the scam. But dangerous collisions such as this have occasionally gotten out of control and have resulted in the deaths of participants and innocent bystanders. In short, what was merely intended as a method of getting a few dollars out of an insurance company has sometimes resulted in the loss of life.

But just how big of a problem is insurance fraud? The truth is that we don't really know because we only learn about the instances in which criminals are sloppy and get caught. Still, this hasn't stopped a few trade organizations from putting together some estimates. The Coalition Against Insurance Fraud has said that insurance fraud amounts to roughly

$80 billion every year. The National Health Care Anti-Fraud Association has said that approximately $60 billion of health care fraud happens annually. In order to keep those estimates in perspective, consider the amount of insured losses from some of the most catastrophic events in U.S. history. Estimated insured losses from Hurricane Andrew ($26 billion), the 9/11 terrorist attacks ($38 billion) and Hurricane Katrina ($45 billion) created chaos in various sectors of insurance for years, and they are all smaller than the fraud estimates from the two groups.

Why People Commit Fraud

Before we can adequately combat insurance fraud, we must understand some of the reasons why people commit it in the first place. Some of the reasons are purely financial and relate to a person's greed or to concerns about personal debt.

Among insurance producers who help facilitate insurance fraud, the rationale for their behavior might relate to work-related pressures or feelings of professional stagnation. Suppose a producer is approached by a former colleague who has already had his or her license terminated for disciplinary reasons. The former colleague proposes an arrangement whereby the colleague will handle most of the work involved with pursuing prospects if the currently licensed producer agrees to sign all the appropriate paperwork and serve as a "front" for the operation. The former colleague proposes that any resulting commissions be split on a 50/50 basis.

Under the vast majority of circumstances, a licensed producer might hear the type of offer mentioned above and quickly dismiss it. But in an environment where the licensee feels unappreciated by his or her supervisors, gets passed over for a big promotion, or otherwise feels shortchanged by an employer, the proposal might produce a surprising amount of temptation.

A similar sense of entitlement is also common among consumers who commit fraud. A policyholder who has had no claims over the course of several years might wonder why the cost of his or her insurance keeps rising and ultimately believe that cheating the insurer is a fair way to reclaim some of those dollars. Or perhaps a policyholder has had a bad experience with an insurance claim and views fraud as a way to "get even" with an allegedly uncooperative carrier.

Why Do We Tolerate Fraud?

Even among people who don't engage in insurance fraud, plenty of them don't care much about it. In a survey conducted by the Coalition Against Insurance Fraud, less than one-third of respondents said there was absolutely no excuse for committing fraud. The vast majority of those surveyed said insurance fraud was either justified in some cases or that they were at least willing to tolerate it.

The public's ambivalence toward insurance fraud might relate to the fact that most financial crimes aren't especially exciting or as scary as other crimes, such as murders and burglaries. It's also possible that fraud is tolerated because it seems like such an impersonal violation. Even though it amounts to theft, the average person doesn't believe that he or she is the one losing anything. Instead, from the public's perspective, the theft victim is a large financial entity without a face.

Another likely reason why fraud is tolerated is that many consumers have a very negative opinion of the insurance industry. They might like the person who they call their "agent," but the carrier issuing their coverage provokes no sympathy from them. They might not

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directly advocate insurance fraud, but they don't become angered when they hear about it.

That kind of ambivalence from the public means that if you're an insurance professional who cares about the amount of fraud in your industry, you may need to be pro-active in regard to detection. You may need to be on alert for the "red flags" or warning signs of bad behavior and perhaps pass your suspicions along to someone who can do something about it.

Red Flags of Fraud

Some warning signs of potential fraud can pop up very early in a person's relationship with their insurance company. Something might seem strange on an application, or something that is said during an interview with a new prospect just might not sound right.

We will now briefly review some of the red flags that might occur during the early stages of an insurance transaction. Realize, though, that the existence of a single red flag doesn't necessarily mean fraud is taking place. Obviously, if you notice something strange, you'll want to view it within the context of everything else you know about the situation and apply your common sense. There might be several red flags showing up even though your gut and your instincts are telling you that nothing wrong is taking place. Conversely, your intuition might tell you that an ordinarily minor discrepancy merits further investigation because of other things you've learned or observed about a specific consumer.

Early potential signs of insurance fraud include the following:

- A new client wants to do business with you even though you seem like a very unlikely match for the person.
- An applicant is abnormally nervous and fidgety.
- The applicant has provided a suspicious phone number or address or has an odd outgoing voicemail message.
- The applicant has provided a suspicious form of identification (such as a picture ID that doesn't look like the person, or any ID that was issued within a few days prior to your meeting).
- The applicant is insistent on purchasing more insurance than necessary.
- The applicant wants to pay premiums in cash.
- The applicant has a suspicious credit history or a criminal background.
- The applicant refuses to leave your meeting or get off the phone with you until a policy is issued.
- The applicant becomes visibly angry when asked for reasonable types of personal information.

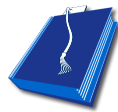
Besides using our basic observational skills, we have gotten to a point where we can utilize electronic tools to monitor and detect various types of consumer fraud. Some computer programs can evaluate information on applications for red flags. Industry-wide databases can be used to link people who have been claimants in a high number of loss scenarios. Even social media networks have become fraud detection tools, particularly among investigators of workers compensation cases.

Although we have more tools to detect fraud, those tools can raise some ethics-centered questions of their own. For example, in the event that an insurance company has the ability

to monitor a policyholder's activities or compile personal data in order to detect potential fraud, should those capabilities be limited in order to preserve adequate levels of privacy?

Conclusion

Paying attention to ethics can improve your reputation, keep you on good terms with regulators and even enhance the public's perception of what insurance professionals are really like. The more you review your personal positions on various ethical issues, the easier it will be to make good and quick decisions when dilemmas actually occur.



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