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PUBLISHER’S NOTE

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CHAPTER I

WORKPLACE ETHICS

No matter what line of business we are in the subject of ethics is important to both management and agents.

It is especially critical to those handling insurance products that in some facet deal with the financial, stocks and bonds industry. It is critical that we keep in mind what is right and what is wrong.

A recent survey of a cross section of 650 adults revealed that rank-in-file workers hold the same opinions on what is right or wrong as the executives polled.

The survey demonstrates that both labor and management believe that conducting business ethically is the right thing to do, as well as, agreeing on how to do it.

Both senior management and workers closely agree that unethical behavior, although not illegal, is grounds for termination.

Behaviors considered serious ethics violations by management

include:

1. Supervisor access to employee health records
2. Using resumes to discriminate

3. Personal credit checks on employees
4. Making misleading promises to employees or contractors

Behaviors considered serious ethics violations by employees

included:

1. Using E-mail to harass co-workers
2. Use of drugs at work
3. Use of alcohol at work
4. Circulating pornography by E-mail
5. Falsifying experience on a resume
6. Revealing confidential information
7. Making misleading statements or promises to customers and clients

Because insurance companies and agents are in a position of trust ethical behavior is paramount to perpetuating the industry and profession of each agent.

Both the insurer and the agent have an obligation to each other to be truthful and honest with each other through their agency relationship. In some cases the agency relationship continues and a level of honesty and proper representation is required with the client.

State laws further enforce this requirement of honesty and proper representation through the various state Departments of Insurance.

What is legal is not always ethical and what is unethical is not always a violation of state or federal laws.

The insurance industry is a business of trust

and although most consumers feel they trust their agent, another survey, shows that the average consumer does not have the same concept of other agents or the industry as a whole.

Paramount in the survey was the fact that more than 50% of the consumers rated put trust and ethics at the top of the list in needs and professional qualification at the bottom of the list of the 9 topics surveyed.

The survey revealed the following order:

1. Trust and ethics
2. Advice and results
3. Expertise
4. Performance history of agent
5. Availability of the agent
6. Acquaintance or relative
7. Experience
8. Reputation
9. Professional qualification

Over the years the insurance industry has earned the trust of the consumer and perhaps more information and public exposure of the history of the industry would serve well to strengthen the publics' perception of the industry.

During the great depression and the years that followed although many individuals lost savings as bank and savings and loans closed their doors, the insurance industry remained solvent and in many cases became a source of funds for individuals.

Through the built up assets of life insurance policies individuals were able to borrow money to carry them through these very difficult times.

Because the industry is made up in a great percentage by independent agents work place ethics is critical to creating sound ethical behavior by agents as they deal with customers and clients. These behaviors must come from within the agent and must be reflexive in nature in order to avoid a dereliction of this responsibility when faced with everyday work demands.

Having to meet either employer work quotas, personally set quotas, or to satisfy a personal need to be the "best" must never stand in the way of meeting the clients needs and the need to paint an impeccable image of the insurance profession.

Although individuals in every profession are there to serve the needs of supporting themselves or their families, because insurance agents are licensed, and through this, put in a position of trust. their needs of self preservation must be put aside, and the interest of the client must always be put first.

Ethical conduct can easily be violated, by selling someone more insurance than they need, in order to earn more commission. Or perhaps sell someone a higher commissioned product, even though another policy would serve their needs better. Although not necessarily illegal both these actions would be unethical, not consistent with meeting the clients needs and perhaps to a knowledgeable observer be a source of mistrust of the insurance professional and the industry.

Because insurance is a product that requires a most skilled individual to interpret its benefits, an agent's knowledge and recommendations are held to a high level of accountability.

The average consumer has, neither, the skill or ability to interpret the information in a policy accurately or realize the additional options that may be available to him or her in order to properly meet the needs of their situation. An insurance agent plays a vital role in the decision making process and this trust should never be violated.

Selling insurance must be a " win, win" situation for all parties involved in the transaction.

An agent can look at a situation as a one time sale and try to maximize his or her gain from that transaction without regard for the client's needs or look at it from the point of view that it is the beginning of a long lasting professional relationship.

And from that point of view will earn the agent many more transactions, future referrals and commissions. The later can only be accomplished through professional conduct and ethical behavior.

ETHICAL PRINCIPLES TO MOLD OUR LIVES

Ethical standards outlined by various groups and insurance associations set the standard for ethical behavior within the industry. In many cases these organizations were in place before even state licensing bodies and as such actually set the pace for legislation that now govern the industry in many states.

Organizations that have such ethical standards in place include:

1. The National Association of Life Underwriters
2. National Association of Fraternal Insurance Counselors (NAFIC)
3. Code of Ethics of the Million Dollar Round Table (MDRT)
4. The American College
5. The American Society of Chartered Life Underwriters(CLU)
6. The American Society of Chartered Financial Consultants(CHFU)
7. General Agents and Management Association (GAMA)
8. Independent Insurance Agents of America
9. American Institute for Chartered Property and Casualty Underwriters

The National Association of Life Underwriters

prescribes to a belief that all members have a combination of professional duty to the client and company and to maintain a balance between these two as to avoid conflict that might be injuries to either. As a result of this belief they subscribe to a commitment of responsibility that requires:

1. To hold the insurance profession in high esteem and strive to enhance its prestige.
2. To fulfill the needs of their clients to the best of their ability.
3. To maintain the confidence of their clients.
4. To render exemplary service to their clients and beneficiaries.
5. To adhere to professional standards of conduct in helping their clients.
6. To protect their insurable obligations and attain their financial security objectives.
7. To present accurately and honestly all facts essential to their client's decisions.

8. To perfect their skills and increase their knowledge through continuing education.
9. To conduct business in such a way that by example will help to raise the standards of life underwriters.
10. To keep informed with respect to applicable laws and regulations and observe them in the practice of their profession.
11. To cooperate with others whose services are constructively related to meeting the needs of their clients.

The National Association of Fraternal Insurance Counselors

requires that its sales personnel adhere to a position of utmost professional standards to their clients and at the same time maintain a position of trust and loyalty to their society. The highest ethical standards is required of all its members.

Its members must:

1. Hold the life insurance profession in high esteem and constantly strive to advance the prestige of legal reserve Fraternal Life Insurance.
2. Improve their ability and improve their knowledge through regular study and encourage other underwriters to do likewise.
3. Respect their client's confidence and hold in trust any personal information.
4. Present accurately and completely all of the facts essential to have their client's make informed decisions and to always place his or her interests and welfare above any personal consideration.
5. Refuse any person or persons any part of their commissions or earnings as an inducement to purchase life insurance.

6. Submit complete and accurate applications for memberships and insurance on only those persons whom are believed to have the proper moral and medical requirements that conform to the Society's underwriting rules.
7. Cooperate with all fellow associates in all insurance organizations in furthering the best interests of the Institution of Life Insurance.

The MDRT

head-quartered in Park Ridge, Illinois, represents an organization whose members are comprised of individuals who must reach a certain production and persistency objectives.

Its members must:

1. Always place the best interests of their clients above their own direct or indirect interests.
2. Maintain the highest standards of professional competence and give the best possible advice to clients by seeking to maintain and improve professional knowledge, skills, and competence.
3. Hold in the strictest confidence, and consider as privileged, all business and personal information pertaining to their clients' affairs.
4. Make full and adequate disclosure of all facts necessary to enable their clients to make informed decisions.
5. Maintain personal conduct, which will reflect favorably on the life insurance industry and the MDRT.
6. Determine that any replacement of a life insurance or financial product must be beneficial for the client.
7. Abide by and conform to all provisions of the laws and regulations in the jurisdictions in which they do business.

The American College

a fully accredited institution of higher learning, offers courses to life insurance agents across the country. These courses lead to the coveted designations of Chartered Life Underwriters (CLU) and Chartered Financial Consultants (ChFC). The American College Code of Ethics is made up of a professional pledge and eight Cannons.

The Eight Cannons consist of the following paraphrased promises:

1. Honor and dignity in the conduct of business.
2. Avoid practices that would bring dishonor to the profession.
3. Publicize accomplishments only in manners that enhance the integrity of the profession.
4. Maintain professional competence through continuing education.
5. Strive toward a career of distinguished professional service.
6. Support the institution and organization that strive for professionalism within the industry.
7. Assist others in the industry striving for professionalism.
8. Comply with all laws and regulations.

Let us now review both the CLU and ChFU imperatives, their comments and our observations.

COMPETENTLY ADVISE AND SERVE THE CLIENT

Both organizations require that their members provide both advice and service, which are in the best interest of the client.

Because insurance agents, real estate agents and other professionals have a knowledge about their product which is above the knowledge of their average

Client, these professionals must take care to avoid using this knowledge to the detriment of their client. In other words they are in a position of trust that cannot be violated in order to serve their own interest.

In a conflict of interest situation the client's needs must be met ahead of an agent's own needs.

The agent must make a full and concentrated effort to both explore and ascertain through that information the needs of the client.

Consideration and courtesy must be undertaken in referring to other professionals who might also be serving the client. In other words don't knock the competition whether it be to get the sale or discredit them.

An agent must give due regard the principal and agent relationship that exists between himself or herself and the companies they represent.

AGENT TO CLIENT CONFIDENTIAL RELATIONSHIP

The relationship between the client and agent is that of a confidential nature and all such information should be kept within that scope.

Because, in order to properly serve the client, the agent must sometimes inquire into areas that might require the strictest of confidence, the agent must keep this information confidential and use it only for the purpose it was intended, unless released of this obligation by the client.

CONTINUING EDUCATION REQUIREMENT

Members of these organizations must maintain and enhance their professional skills and knowledge.

This enhancement can be formal or informal and must, not only include personal education, but also include knowledge of changing laws and legislation to properly inform clients.

ENHANCEMENT OF PUBLIC REGARD FOR PROFESSIONAL DESIGNATIONS

A member must obey all laws governing his or her business or professional activities. Business activities are defined as non-personal activities carried on outside the life insurance community. Professional activities are defined as non-personal activities carried on within the life insurance community.

Through the placement of the guide within the Code, an ethical obligation is created for a member to obey all laws applicable the agent's business or professional activities.

A member must avoid activity that detracts from the integrity and professionalism of the CLU and ChFC designation or other professional designations.

Personal, business and professional activities are encompassed within the scope of the Guide.

Things or actions that might be interpreted of a violation of the Guide include:

1. Failure to obey a law unrelated to the member's business or professional activity.
2. A member harming the reputation of another practitioner.
3. A member unfairly competing with another practitioner.
4. A member performing activity that might discredit his or her own reputation.

5. A member discrediting life underwriting as a profession, the institution of life insurance, or the American Society of CLU & ChFC.
6. A member advertising the designations of the CLU or ChFC or American Society in an undignified manner or in a manner prohibited by the By-laws.

Members of the organization are encouraged to encourage others to obtain the designation.

Members cannot use the CLU & ChFC designation in a false or misleading manner. That is, members alone can use the designations and no advertising shall promote an entire organization as having the designation when in reality the designation is individually bestowed.

The General Agents and Managers Association (GAMA)

of The National Association of Life Underwriters codifies the ethical principles that general agents and agency managers should strive to maintain.

The organization encourages its members to practice the "Golden Rule" by:

1. Using the best available techniques to select and place under contract only agents and managers that will enhance the professionalism of the profession.
2. Creating a sales organization made up of full time agents.
3. Providing adequate training and supervision to render proper service and advice to their clients.
4. Encourage all associates to pursue additional and continuous education.
5. Encouraging all agents and contractors to participate and support the activities of the local Association of Life Underwriters.

6. Presenting fairly and honestly all facts regarding the agency to prospective agents or managers.
7. Encouraging any prospective agent or manager to discuss their situation with their present manager before making a decision.
8. Taking a leadership role in the advocacy of the Life products as the best benefit to its policy owners.

INDEPENDENT INSURANCE AGENTS OF AMERICA

is the nation's oldest and largest independent agent association. It is a highly regarded consumer advocacy organization and a powerful force within the insurance industry. The Independent Insurance Agents of America makes its presence known both with the media and on Capitol Hill. The association was founded in 1896 by a small group of local fire agents and now has grown to represent over 300,000 agents and their employees.

As it now confronts its second century of existence, the Independent Insurance Agents of America has expanded its activities to address the many challenges and opportunities that agents today have to face. Through its federation of 51 state associations, as well as its headquarters and Capital Hill offices, the association provides advocacy, business tools and media visibility to its members.

The Independent Insurance Agents of America represents more than half of all the independent insurance agencies in the country. Its members range from small rural agencies selling personal lines to large commercial brokers handling major national accounts

Independent Insurance Agents of America strive to serve the public by promises to:

1. Serve the public through the honorable occupation of insurance.
2. Provide the full measure of service required of an independent agent.

3. Recommend the best coverage to meet the needs of the client.
4. Provide the public with a better understanding of insurance.
5. Work with national, state and local authorities to heighten safety and reduce loss in a community.
6. Recognize civic, charitable, and philanthropic movements which contribute to the public good of the community.

Independent Insurance Agents of American strive to serve the companies they serve by:

1. Respecting the authority vested in them by the companies they serve.
2. Using care in the selection of risks submitted.
3. Expecting the same from the companies served as is rendered to them.

To fellow members, Independent Insurance Agents of America pledge:

1. Friendly relations with other agencies, fair and honorable competition.
2. Strict observance of insurance laws.
3. Betterment of the insurance business.
4. Encourage others to subscribe to the same high standards.

The American Institute for Chartered Property and Casualty Underwriters (CPCU) is an independent, nonprofit organization offering educational programs and professional certifications to people in all segments of the property and liability insurance business. To help them provide professional service to the public, the organization responds to the educational needs of people in insurance and risk management.

The American Institute for Chartered Property and Casualty Underwriters offers an online counseling system to help individuals inventory their personal background and interests and makes suggestions for appropriate programs of study.

The American Institute for Chartered Property and Casualty Underwriters makes available online classes for the busy insurance professional who cannot find time for traditional classes.

The American Institute for CPCU, through its Canons and rules endeavors to maintain a high degree of professionalism and ethical conduct for its membership.

1. CPCU members should at all times place the public interest over their own and should encourage non member agents to do the same.
2. Members should maintain and improve their knowledge, skills and competence.
3. Members should obey all laws and regulations and avoid conduct that would cause unjust harm to others.
4. Should be diligent in performing their occupational duties.
5. Should assist in maintaining and raising professional standards.
6. Should strive to maintain dignified and honorable relationships with others.

7. Should strive in assisting to improve the public understanding of insurance and risk management.
8. Honor the integrity and respect the limitations placed upon the designation .
9. Always assist in maintaining the integrity of the Code of Professional Ethics.

Although summarized in the above narratives, the specific codes, canons and preambles may be obtained through each individual organization.

These organizations can be contacted at their headquarters:

- The National Association of Life Underwriters (NALU) is located in Washington D.C.
- The National Association of Fraternal Organizations (NAFIC) is headquartered in Sheboygan, Wisconsin.
- The Million Dollar Round Table (MDRT) is located in Park Ridge, Illinois.
- The American College, The American Society of Chartered Life Underwriters (CLU) and The American Society of Chartered Financial Consultants (ChFC) are located in Bryn Mawr, Pennsylvania.
- The General Agents And Managers Association (GAMA) is located in Washington D.C.
- Independent Insurance Agents of America is located in Alexandria, Virginia.
- American Institute for Chartered Property and Casualty Underwriters (CPCU)

- Is located in Malvern, Pennsylvania.

EXPAND YOUR ETHICAL KNOWLEDGE

ADMINISTRATIVE ACTION results when a legal or ethical violation (of an unlawful nature) occurs and a Commissioner or Director takes an action against a practitioner of a regulated profession over whom the official has jurisdiction.

Such actions include investigations, hearings, censures, cease-and-desists orders, suspensions, revocations, monetary restitution, fines and referral to other agencies for criminal prosecution.

An AGENT is different than a salesperson in that an agent is regulated by a licensing body, assumes the responsibility of representing someone else, called a Principal, and in such representation must put the principal's needs ahead of her or his own need.

ASSUMPTIONS

are factors used to illustrate values in insurance policies. It is important to understand the assumptions, understand that they are not always guaranteed to re-occur, and must be presented within a realistic scope in order to avoid ethical misrepresentation.

AUTHORITY

is the power granted an agent to perform acts on behalf of the principle such as in the case of an agent's ability to bind a policy or other power granted by either the insurer or the insured in an agency relationship.

BAITH-AND-SWITCH

is the unethical, deceptive, and illegal act of inducing a consumer to a service or product which the salesperson has no intention or does not have the ability to deliver. The inducement is a method to get the consumer in the door in order to sell him or her another product.

BUYER'S GUIDE

is a standardized disclosure to help the consumer understand the product. Various professions are regulated to give these guides as a consumer protection action. In the insurance field many states require agents provide Buyer's Guide at some point during the sales process, especially in the areas of life or annuity products. Many insurers provide their agents with standardized Buyer's Guides to be used with their clients as an effective method of disclosure even-though not required by law in their state.

CHURNING

is the unethical practice of inducing a client to replace an existing policy for a new policy even though the additional change is not to the benefit of the client. Churning is often motivated to earn commissions or obtain quotas.

CIVIL LIABILITY

is the liability for monetary damages as a result of a lawsuit brought by a private party in a civil court. Insurance is often used, Individuals and corporations often use insurance to cover such exposure. Civil liability include actual damages to restore the injured party and sometimes punitive damages designed to set an example for others who might be tempted to repeat such behavior. Court costs and attorney's fees are also often part of the award.

CODE OF ETHICS

is a formal set of rules or statements of policy set by professional organizations that are made part of the standards for acceptance of membership. Because ethical standards set by organizations often existed before state licensing, often these standards have been used by state regulators as guides to set the pace for legislation for a profession.

COGNOSCEAT EMPTOR

is the opposite of buyer be-ware. Today's consumer oriented protectionism requires that proper disclosure be made to consumers so that they are "fully informed" before making a decision. An insurance agent is both ethically and legally obligated to provide both adequate and full disclosure.

COMMISSION

takes on a different meaning when dealing with a profession. Although in its original interpretation, commission refers to money paid as compensation for the sale of a product or service. Under an agency relationship, such as the one that occurs in the sale of real estate and insurance, commission is also paid for advice; and therefore, can never be put ahead of the needs of the client.

CONFLICT OF INTEREST

arises when an individual's self interest competes with the interest of a client or principal. Because under certain situations both in the real estate and insurance professions, as well as, other professions, situations arise within that profession that cause inherent conflict, than the practitioner must put aside her or his self interest and act strictly to the benefit of the client.

CONTINUING EDUCATION

is a mandatory requirement of most states for license renewal and membership requirements of some professional organizations. Continuing Education is a means of maintaining up to date knowledge of legal and product changes in order to best serve clients and maintain professionalism within an industry.

CRIMINAL PENALTIES

include public service, fines and jail term. Criminal penalties are imposed upon successful prosecution for an offense in a criminal court trial.

DEGREE OF CARE

is the extent of legal duty owed by one person to another. In the case of an insurance agent this degree of care is maximized through the agency relation with the client or principle.

DOCTRINE OF REASONABLE EXPECTATION

is a legal concept that basically states that an insurance policy will be treated as if it includes certain coverage, if an average person would reasonably expect it to include such coverage, regardless of what the policy provides.

DUAL AGENCY

is a situation created when an agent represents two clients in the same transaction who have competing interests. Dual Agency is legal in most states under outlined procedures and full disclosure to all parties.

EMPLOYEE DISHONESTY COVERAGE FORM

is a coverage that is excluded under standard crime form, but can be covered under a Commercial Crime form.

ERRORS AND OMISSIONS INSURANCE

is professional liability insurance for insurance agents and real estate agents covering liability for mistakes an agent makes in the practice of his or her profession. Errors and Omissions insurance does not cover fraudulent acts on the part of the agent.

ESTOPPEL

is the principle that if one intentionally or unintentionally creates the impression that a certain fact exists, and an innocent party relies on that impression and is injured as a result, the guilty party may be legally prohibited from asserting that the fact does not exist.

EXCLUSIVE AGENT

is one that is contractually obligated to a single insurer, often times referred to as a captive agent. Violation of this contractual agreement is both an ethical and legal violation.

EXCLUSIVE REPRESENTATION

is the provision of an agency contract that requires an agent to give a specific company a right of first refusal on any business submitted.

FIDUCIARY

is a term used to describe an individual who is entrusted with certain responsibilities of trust. In an agency relationship an agent has certain fiduciary

responsibilities to his or her client. Among those responsibilities include the handling of client funds and the maintaining of confidential information.

FIELD UNDERWRITER

is the role an agent plays as a representative of the insurance company in gathering complete and accurate information regarding the risk and accurately transmitting that information to the company.

FRAUD

occurs when an individual intentionally uses deception in order to induce another party to part with something of value or to give up a legal right to their detriment.

MISREPRESENTATION

is an inaccurate statement of fact or an omission of a material fact. Misrepresentations are either unintentional or intentional. Unintentional misrepresentations usually result in administrative and civil penalties. Intentional misrepresentations can result in criminal prosecution as fraud.

MORAL HAZARD

is a loss situation created by an individual for the purpose of collecting the insurance. The collaboration by an insurance agent in either eliminating or altering information at minimum would be considered unethical and most likely a fraud.

MORALE HAZARD

is the tendency of an individual to contribute to loss through his or her own irresponsible actions.

MULTIPLE COMPANY REPRESENTATION

is a contractual arrangement that permits an agent to represent more than one company at the same time and chose which company will receive his or her policies at any given time. Multiple company representation can result in ethical

issues if an agent in choosing which company to place business with does not take into account the best interest of the client.

NEEDS SELLING

is a basic requirement in determining the amount and type of insurance required of a client in order for that product to be of benefit to an insured.

NEGLIGENCE

is not taking the reasonable proper steps to protect others from unreasonable chances of harm.

PRINCIPAL

is that individual or entity on whose behalf an agent must act. A Principal to Agent relationship is the core of an agency relationship.

PUNITIVE DAMAGES

are awards made to plaintiffs in excess of damages for the purpose of setting an example to others.

REBATING

is the practice of paying a party to the transaction part of an agent's commission as an inducement to purchase the insurance policy. Rebating is illegal in most states or strictly regulated with proper disclosure in the States that permits such activity.

REPLACEMENT

is the practice involving the use of funds from one policy either from an existing policy or the termination of a policy in order to purchase other insurance. Ethical issues arise, only if, the use of funds to purchase the new policy is not in the best interest of the client, or is motivated strictly by the agent's need for commission.

STATUTE OF LIMITATION

is a provision in the law that requires that certain types of suits be brought to action within a specified period of time from the occurrence.

TWISTING

is the illegal practice of convincing a client to switch policies with no benefit or to the detriment of the client. It is a violation of the agency relationship with the client that requires that the needs of the client be primary to the needs of the agent. Twisting occurs either to meet an agent's self-imposed or company established production goals or for reasons of commission.

UNFAIR DISCRIMINATION

is the practice of applying different standards to insureds that have the same risk loss. The practice is both unethical and illegal.

VICARIOUS LIABILITY

is incurred by either a business or an individual as the result of the actions of others for whom they are responsible, such as family members or employees.

Many of these key words and concepts apply to the area of ethics. A thorough comprehension of these words and concepts will help you reach a better understanding of the ethical issues that face us each day in the exercising of the insurance profession.

THINGS TO REVIEW

1. Ethics is an important issue for both agents and management.
2. Ethic is an especially important issue to agents dealing in financial products.
3. In a recent poll shows that rank-in-file workers and executives hold the same opinion of what is right or wrong.
4. Management and workers agree that unethical behavior is grounds for dismissal.
5. Behaviors considered ethics violations by management include unauthorized access by supervisors to employee health records, and personal credit reports; using resumes to discriminate and misleading or false promises by employers.
6. Behaviors considered ethical violations by employees include the use of e-mail to harass co-workers or to access pornography, use of drugs or alcohol, falsifying a resume, revealing confidential information, making misleading statements to customers and clients.
7. Being in a position of trust mandates that companies and agents act ethically for the benefit of the perpetuation of the industry.
8. The agency relationship requires that an agent be truthful and honest to both insurers and clients.
9. Departments of Insurance enforce unethical behavior that violates state law.
10. What is legal is not always ethical and what is unethical is not always illegal.
11. Surveys show that most clients trust their agents but do not trust agents as a whole.
12. In a recent survey trust and ethics were number one on the list of consumers.
13. In the same survey professional qualification was number nine on the list (lowest ranking).
14. More information and public exposure of the insurance industry will serve to strengthen the public's perception of the industry.
15. During the depression of 1929 the insurance industry remained solvent and was a source of funds for individuals.

16. Ethical behaviors must become reflexive within an agent to avoid dereliction when faced with everyday work demands.
17. Having to meet everyday work quotas can cause an individual to be pressured into unethical behavior.
18. Licensing and the agency relationship requires that an agent put the client's need ahead of the agent's personal needs.
19. Because insurance is a product requiring skilled interpretation by an agent, an agent's knowledge and recommendations are held to a high level of accountability.
20. The average consumer has, neither, the skill or ability to interpret the information in a policy, therefore the agent plays a vital role in the decision making process.
21. Selling insurance must be a win-win situation for all involved in the transaction.
22. Referrals come only through professional and ethical conduct.
23. Ethical standards outlined by various industry organizations and associations set the standards for ethical behaviors.
24. Industry associations and organizations set the pace for ethical conduct even before state licensing bodies were created.
25. The National Association of Life Underwriters prescribes to a belief that all members have a combination of professional duty to the client and company.
26. The National Association of Fraternal Insurance Counselors requires its sales personnel to adhere to a position of utmost professional standards to their clients and maintain a position of loyalty and trust to their society.
27. The Million Dollar Round Table (MDRT) requires that agents put the interest of their clients first by professional competence, confidentiality, disclosure, ethical conduct, and adherence to the laws of their jurisdictions.
28. The American College of CLU and ChFC prescribes in its canon that agents work with honor, dignity, integrity, competence, service, professionalism, and in compliance with applicable laws.
29. Don't knock the competition, comment only on your company and your products.
30. Professional designations must not be used if not earned or in a misleading way.

31. The General Agents and Managers Association (GAMA) codifies the ethical principles that general agents and agency managers should strive to maintain.
32. GAMA encourages its members to practice the "Golden Rule" by placing under contract managers that will enhance professionalism, employ full time agents, provide training, encourage continuing education, be honest with prospective agents, and take an advocacy role in relation to their products.
33. Independent Insurance Agents of America is the nation's oldest and largest independent agent association.
34. The Independent Insurance Agents of America was founded in 1896 and represents over 300,000 agents and their employees.
35. The Independent Insurance Agents of America provides advocacy, business tools, and media visibility to its members.
36. The Independent Insurance Agents of America represents more than half of all the independent insurance agencies in the country.
37. The Independent Insurance agents of America strive to serve the public by being a part of the insurance profession, provide full service to the public, recommend the best product for the client, provide the public with a better understanding of insurance, work with state and local authorities to reduce loss in a community, and recognize organizations that contribute to the good of the community.
38. The Independent Insurance Agents of America serve their companies by respecting the authority vested in them, careful selection of risks submitted, expecting the same from the companies they serve.
39. Independent Insurance Agents of America pledge to fellow members friendly and honorable relations, observance of insurance laws, betterment of the insurance business, and encourage high standards from all.
40. The American Institute for Chartered Property and Casualty Underwriters (CPCU) is an independent non profit organization offering educational programs and professional certifications to individuals in the property and liability insurance business.

CHAPTER II

ETHICS AND THE LAW

ETHICS A CONCERN FOR ALL

Although not unethical activities are illegal, all illegal activities are unethical. Crossing the line of illegal activities is one that is approached with much caution, but crossing the line of ethics often times is gray and individuals attempt to justify their actions in the name of supporting their families, meeting their personal goals, or meeting their company's quotas.

Unethical activities are not only of concern for those that commit them, but should also be of concern to fellow workers, managers and employers.

Agent's behaviors are a reflection on the entire industry and whether agents are members of organizations that promote ethics and high standards for the industry or not members of such organizations, every agent, manager or employer should serve as a watch dog to preserve the integrity of the profession.

Trust is a primary factor that consumers consider in purchasing their insurance products. Which agent they use or what products they purchase are greatly effected by their perception of the agent or company.

UNLICENSED PRACTICE

The sale of insurance is regulated by both the state and federal government and requires a license in most jurisdictions. Licensing is left to state authorities with the exception of variable products. Variable products are considered securities and agents must meet certain federally regulated rules and regulations. Agents must be licensed in their home states, as well as, any other state in which they sell insurance. Continuing education is required to renew licenses and in most jurisdictions meeting the continuing education requirement of an agent's home state often time satisfies the requirements for renewal in the additional states he or she may hold a license.

Agents in most states must be licensed for each specific line of insurance that they market. Selling insurance without a license is illegal and failure to complete the continuing education requirement in a timely fashion as to invalidate the license for a period of time also causes an unlicensed practice issue during the time of non-renewal.

Selling a line of insurance for which an agent is not licensed is illegal and unethical and could result in harm to the unsuspecting client.

Ethical standards set by insurance organizations often times existed prior to licensing being a requirement in some states. Thus these standards often served as guides for legislation in some states.

It is critical that managers and employers are aware of licensing laws and continuing education requirements and make sure that their agents and contractors are properly licensed. With the advent of continuing education many companies employ a continuing education coordinator to insure the uninterrupted licensing of their agents.

ILLEGAL REBATING

Rebating is the process of refunding some of the agent's commission to the insured. Rebating is illegal in the greatest amount of states and strictly regulated where permitted. Rebating raises the legal and ethical issue of discrimination. Because the larger the policy the larger the commission, the discrimination issue arises when rebates are made on larger commissioned items versus lower commissioned items. Some companies have established a policy of not permitting rebates even though they are legal in their state.

Where permitted the following is an example of rebating regulations:

1. The rebate must be available to all insureds in the same actuarial class.
2. The rebate must be in accordance with rebating schedule filed by the agent with the insurer issuing the policy in which the rebate applies.
3. The rebating schedule must be uniformly applied in that all insureds who purchase the same policy through the agent for the same amount of insurance receive the same percentage rebate.
4. Rebates must not be given to an insured with respect to a policy purchased from an insurer that prohibits its agents from rebating.
5. The rebate schedule must prominently be displayed in public view in the agent's place of business and a copy be made available to insureds on request at no charge.
6. The age, sex,, place of residence, race, nationality, ethnic origin, marital status, or occupation of the insured or location of the risk is not utilized in determining the percentage of the rebate or whether a rebate is available.
7. The agent must maintain a copy of all rebate schedules for the most recent five years and their effective dates.
8. No rebate shall be withheld or limited in amount based on factors that are unfairly discriminatory.
9. No rebate will be given that is not reflected on the rebate schedule.
10. No rebate shall be refused or granted based on the purchase or failure of the insured or applicant to purchase collateral business.

Rebating has become an issue of controversy in many professions and interestingly enough the view points and resolutions are surprisingly different.

BAITING AND SWITCHING

This is a process wherein a price or product is advertised and that cannot be delivered, but is used to lure the client in the door and then later on switched to an available product or price that is higher.

Baiting and switching occurs in the insurance field by quoting or advertising a lower rate to get the customer in the door and then upon delivery of the policy saying a rate change has occurred and increasing the premium. Or perhaps quoting a rate on a policy with less endorsements than the customer requires and once written adding the endorsements at an additional premium.

Both practices are unethical, illegal, and a detriment to the insurance profession. These tactics undermine trust of the industry and create a deception that makes it more difficult for abiding agents gain public trust.

COMMINGLING OF PREMIUMS

State laws require agents to deposit in separate accounts funds belonging to others. Premiums, when not directly delivered to the insurer, must be deposited in a separate trust account by the agent, for the benefit of the parties, until delivery is required. Records must be adequately maintained in order to segregate one transaction from another and funds must never be deposited in an agent's personal account. Violation of this procedure constitutes a serious breach of fiduciary obligations.

ALTERING APPLICATIONS

For whatever reason altering information on an application is a serious breach of fiduciary. Sometimes agent's are tempted to alter information in order to get the policy underwritten or perhaps put the applicant in a different premium class. The agent must remember that he has a legal and ethical obligation to both the insured and the insurer and this breach can result in harm to one, the other, or both.

LEDGER SELLING

Ledger selling is making sales based primarily on the figures shown in policy illustrations. In life insurance contracts the death benefits are the primary purpose of the contract and in addition to that the life benefits are a "bonus" item.

When insurance is sold to emphasize the living benefits portion of the contract illustrations are used to give examples of the potential return. An unethical agent will emphasize the illustrations with such emphasis as to create a picture of such "guaranteed return" when in actuality they are illustrations.

It is critical that agents do not overstep their ethical bounds and point out that they are merely illustrations to depict examples, and that, the actual returns can be significantly different.

Because the following elements are part of assumptions and illustrations used, to ethically stay on tract it is recommended that agents properly explain and have a clear understanding of the following:

1. Dividend distribution of the divisible surpluses
2. Interest rate changes and the indexes that they are pegged to
3. Methods of crediting returns
4. Current experience perimeters used
5. Mortality charges
6. Expense charges

NAIC MODEL REGULATION ON ILLUSTRATIONS

The NAIC model regulation on illustrations sets standards for using illustrations and requires certain disclosures. It applies to all individual and group life insurance plans except variable life, individual and group annuities, credit life insurance policies with no illustrated death benefits over \$10,000.

Under the regulation, insurers must decide whether or not they wish to use illustrations to market a given policy. If so, any illustration must be provided no later than the policy delivery. If not delivered by policy delivery date, the use of illustrations is prohibited.

All illustrations must:

1. Identify the insurer, the producer, the insured, the underwriting classification, the type of policy, the initial death benefit, and any option selected for applying non-guaranteed elements such as dividends.
2. Be complete, accurate, clearly labeled, and presented in a truthful manner.
3. Use an "illustrated scale" for non-guaranteed elements that is not more favorable than:
 - a. the currently payable scale or
 - b. s "disciplined current" scale certified by an actuary as being reasonably based on actual recent historical experience.

4. Include both a narrative explanation and a numeric summary that shows values at policy years 5, 10, 20 and at age 70 on three different bases;
 - a. policy guarantees
 - b. the illustrated scale, and
 - c. midway between the guarantees and the illustrated scale
5. Insurers must keep a copy of an illustration for an issued policy for three years after the policy is terminated.

CONFLICTS OF INTEREST

Conflicts of interest arise in many different shapes and forms. Some conflicts are inherent with a profession, some arise without malicious intention, and still others are malicious and perpetrated.

For whatever reason conflict of interest situations are reason for concern, special handling or potential for civil and criminal liability.

A conflict of interest occurs when an individual representing another individual as a fiduciary encounters a competing interest between the other individual and themselves in a specific situation.

In the case of an insurance agent the inherent conflict arises between his or her need for commission and the client's need for insurance.

The fact that an agent makes more money on a larger policy or a product paying more commission than another, cannot be a consideration in making a recommendation to a client.

Because the agent has specialized knowledge that exceeds the client's knowledge, and because the client relies on that knowledge to make a decision, the agent must make a decision to serve the needs of the client first and his or her needs second. To do anything less than this would cause a conflict of interest situation and a breach of ethical standards.

Additionally, with the factor that an agent is licensed, the agent is put in a position of trust and to violate this trust would be cause for punitive action.

AGENT ACCOUNTABILITY

The law holds an agent accountable to clients in the areas of:

1. Needs Selling to the interest of the client.
2. Competence in advising the client.
3. Confidentiality to information provided.
4. Disclosure of all pertinent information to the client.
5. Service to the client on an on going basis.

The law holds an agent accountable to companies in the areas of:

1. Handling Premiums
2. Field Underwriting
3. Avoiding Liability
4. Company Representation either Exclusive or Non-exclusive

AGENT ACCOUNTABILITY TO PRINCIPALS AS CLIENTS

NEEDS SELLING

involves the agent taking due care to carefully analyze the situation of the client in order to make the proper recommendations for insurance products. This process often involves obtaining confidential information, which must be used to the client's best interest. Violating this trust is a serious ethical and legal violation.

An agent must never be tempted by the need for money and thus sell a higher commissioned product when it is not to the best need of the client.

COMPETENCE

is another element of accountability for an insurance agent. As a professional, consumers look to insurance agents as having the skill and knowledge to give them proper information so that they can make an informed decision. Since this decision is based upon information provided by the insurance agent, the theory of reliance comes into place. That is, the "client" has relied on the information and therefore any decision made as a result of misinformation creates a liability for the agent.

Representing to have competence that one does not possess is a breach of ethical standards and if serious enough is also a violation of the law.

Joining professional organizations that make education a part of the requirement of membership and that sponsor and promote on going education

is a step in the right direction for the prudent agent. Continuing education, as mandated by most states, becomes another critical element in the journey to skill and competence. Insurance agents are not merely “salespeople”, they are skilled professionals that help individuals plan the road maps of life in the area of financial protection for the clients they serve and their families. Insurance is a product not only to avoid catastrophe during life but also to protect loved ones after ones death. An insurance agent has both an ethical and legal obligation to be informed enough to serve his or her clients in a manner of competence that they can rely on.

CONFIDENTIALITY

In working with clients, CONFIDENTIALITY becomes another critical element. To properly serve a client’s needs an agent must delve in personal areas in order to properly inform the client. The confidential information must be retained only to serve the client. The information should only be used to properly inform the client and for underwriting purposes.

DISCLOSURE

is another aspect of the agent’s role. An agent must be sure to provide clients with all the pertinent facts regarding the product being presented. Disclosure not only encompasses the delivery of all the pertinent facts, but also, to omit partial or aspects of information also violates this credo.

Agents must also be sure to disclose any conflicts of interest and obtain the clients permission to proceed under that understanding.

The Life Insurance field has an even greater need for proper disclosure due to the sensitive nature of some of the life based financial products.

Strict disclosure adherence by agents and companies will deter further governmentally required disclosures and regulations in the field of life insurance products.

STANDARDIZATION OF DISCLOSURES

through membership organizations will much help the consumer best understand and compare like products.

Proper and standardized disclosures help alleviate agent liability by having an outlined schedule of disclosure items and facts, thus leaving less chance of forgetting something of importance.

Failure to disclose, whether intentional or unintentional still creates a reliance situation for the client and the possibility of a decision that is not accurate and possibly injuries to the client.

It is also important that an agent be aware of required disclosures both under federal and state laws.

CRITICAL AREAS OF DISCLOSURE

Disclosures are especially critical in the areas of:

1. The use of policy illustrations
2. Replacement of existing policies
3. Conflict of interest situations
4. Life insurance as a "living benefit"
5. Life insurance as an investment vehicle
6. Life insurance as a retirement vehicle
7. Life insurance as a tax-advantaged investment
8. Potential adverse tax situations
9. Life insurance as a modified endowment
10. Life insurance to create tax free income
11. Variable life insurance products
12. All available ratings

Because an agent has an ethical obligation to disclose all, when disclosing a company's rating it is imperative the agent disclose not only the best rating, but if aware, the ratings of all five rating firms.

Together with this type of disclosure it is important that the client understand that each of the rating firms have different methods of arriving at their conclusion and how this can effect the client's analysis of the situation.

Additionally these ratings are not uniform from one company to another. And, although, AAA is first and A+ is fifth at Standard & Poor's, an A+ rating is first at Weiss Research.

Because of this lack of uniformity, it is important that an agent disclose what the ratings mean as defined by each rating company.

To not disclose this information could cause a client to make a wrong decision based on the incomplete information provided by the agent. This failure on the part of the agent is certainly unethical and possibly fraudulent.

The five rating companies are:

1. A.M. Best Company
2. Weiss Research
3. Standard & Poor's

4. Moody's Investors Service
5. Duff & Phelps

Not all rating companies rate one-hundred percent of the insurance companies. Some rating companies also only rate a percentage of the insurance companies. This information is also important for a client to know in order to make an informed decision.

Agents must not only disclose all the facts to their clients, but also have an ethical obligation to make sure the client understands all of the facts.

In recent time RBC Ratios (Risk Based Capital Ratios) have been developed as a regulatory tool to monitor if a company has a sufficient line of capital, regardless of a company's line of business, to satisfy the state's insurance regulatory department. When a company's RBC ratio goes below a certain level, the state insurance director begins to take a specified course of action.

In states where this is in use, using RBC ratios for marketing purposes is unethical and a violation of the law.

The law is very specific to state, " The making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, or pamphlet, letter, or poster, or over radio or television station, or in any other way, an advertisement, announcement, or statement, containing, an assertion, representation, or statement with regard to the RBC levels of an insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited."

The prohibition does not apply to third parties, that is someone outside the insurance business, such as a newspaper.

The last area of disclosures that must be discussed is the area of commissions. Both the real estate fields and mortgage brokering fields, as well, as other fields where agents serve clients under a trust relationship, disclosures of commission has become mandatory in most states and the federal government wherever its jurisdiction prevails. It is felt that since there is an inherent conflict between the commissions earned and the products recommended, that disclosure at the very least is an ethical issue.

Some insurance brokers have taken the position of disclosure, as an ethical obligation, regardless of the state mandates. The future of state mandated disclosures in the area of commission currently are a matter of controversy in most states and require a watchful eye.

In summary proper disclosures:

1. Build agent trust.
2. Build trust of the industry.
3. Minimizes future misunderstandings.
4. Avoids future conflicts.
5. Makes the client responsible for the purchase decision.
6. Minimizes the agent's liability.
7. Strengthens the business relationship between the agent and the client.
8. Results in more earnings for agents through the trust built with clients.
9. Deter more government regulation of the industry.
10. Drive unethical agents from the profession.

Through all of this agents must be sure to properly explain documents without crossing the line of practicing law. Although that line is not well defined in the insurance field going beyond explaining the text could be practicing law and create a liability for the agent. An agent must not give advice as to the legal ramifications of a particular situation. It is best to refer clients to their accountants on tax ramifications beyond what is spelled out in the policy and to their attorney for matters concerning legal interpretations.

On Going Service

The final responsibility agents have to their clients is ON GOING SERVICE. Service before, during and after the sale is both an ethical and business requirement for an agent.

Service before the sale begins with the needs analysis, the outlining of the policies that best meet the clients financial needs within his or her affordability range and thorough disclosures of what the policies have to offer. Together with this disclosures of any potential conflict of interest or dual agency relationship.

Service during the sale should encompass an accurate application, quick submission of the application, proper deposit and or delivery of trust [premiums] funds, keeping the client informed during the process and timely delivery of the policy.

Service after the sale should include a periodic review of the client's financial position and a needs analysis of potential insurance that would benefit either the client or his or her family. Client's should be kept informed of changes in laws that might necessitate modifications of existing policies, or company rating changes that might adversely affect a client.

Clients should receive service in the area claims with both honesty and ethical considerations.

Servicing the client after the sale also includes an agent's need to be constantly informed through continuing education and other seminars and industry related presentations.

AGENT ACCOUNTABILITY TO THE COMPANIES THEY REPRESENT

As agents for companies and employers, the insurance professional has certain obligations to fulfill as a fiduciary. Like the client principal to agent relationship, the insurer principal to agent relationship carries with it certain responsibilities. These responsibilities include:

1. Acting in a fiduciary capacity
2. Handling of premiums
3. Field underwriting
4. Care in avoiding liability
5. Exclusivity if required
6. Avoiding conflict of interest

ACTING AS A FIDUCIARY

IN A PRINCIPAL AGENT RELATIONSHIP THE AGENT ACTS AS A LEGAL REPRESENTATIVE OF THE PRINCIPAL, AND AS SUCH, BINDS THE PRINCIPAL AS IF THEY WERE THE ACTIONS OF THE PRINCIPLE. THE AGENT HAS A LEGAL AND FIDUCIARY OBLIGATION TO DEAL WITH MATTERS IN A MANNER THAT DOES NOT JEOPARDIZES THE PRINCIPAL.

A fiduciary is a position of trust and must be handled with honesty and integrity. The agent must never put his or her need ahead of the principals needs.

HANDLING OF PREMIUMS

When an agent is acting as a representative of the insurer, delivering of premiums to the agent is the same as delivering them to the company. The agent has a fiduciary duty to turn over all funds given to him or her as specified in the agency agreement. Premiums collected from the insured parties are usually held in PREMIUM FUNDS TRUST ACCOUNTS for no more than 90 days or other date specified in the agent's contract with the insurer. Funds held by agents are required to be held in these special trust accounts by most States. In submitting funds from these accounts to the insurer it is most commonly permitted for agents or brokers to retain their portion of commissions earned prior to submitting the premiums to the insurer.

FIELD UNDERWRITING

An agent is obligated to fully disclose all information he or she has that may affect the insurer and the decision to accept the risk or rate of premium charged. Full disclosure is critical during the application process and at the time of a claim should a claim arise. It is the agent's obligation to the insurer to make sure that all questions on the application are answered truthfully and nothing is omitted or distorted. To induce the insurer to enter into a risk that is not sound is both unethical and in conflict with the agent's fiduciary obligation to the insurer.

CARE IN AVOIDING LIABILITY

An agent has the duty to carry out his or her actions with care and skill because an agent represents the company to the public and must act in a manner that does not bring bad light on the image of the company. It is important that the agent represent the principal to the highest competency. If an agent should encounter a consumer demand that he or she is not skilled to handle, he or she should refer the client to another source whom is competent to handle the matter. It is only in this fashion that an agent can avoid creating liability to the principal due to incompetence.

EXCLUSIVITY IF REQUIRED

An agent must at all times act in the principal's best interest, not his or her own interests of personal gain. An agent unless authorized to do so cannot represent more than the interest of one principal. Often independent agents and brokers represent the interest of more than one insurer. This is proper and ethical as long as there is full knowledge and consent of all the parties. An agent must stay within the confines and conditions of his or her agency contract with the principal. An agent cannot receive personal financial gain other than that specified in his or her agency agreement.

AVOIDING CONFLICT OF INTEREST

An insurance agent cannot serve two principals at the same time. An agent has the ethical duty to make full disclosure to an insurer in regard to any other related service he or she provides and receives compensation. An agent must act in all transactions as to avoid any potential conflict of interest between him or herself, the insured or the insurer. An agent has an obligation to the insurer to represent the product in a skillful and honest manner. Should there be any misrepresentation wherein the insured makes a decision based on misrepresentation, intentional or otherwise, the agent would be liable for losses to either the insurer or the insured or both.

Replacing an existing policy for another can create a scenario for potential conflict of interest if the replacement is not to the benefit of the principals involved in the transaction.

If the agent replaces a policy simply to make a commission this is a breach of the fiduciary obligation to the principal whether it be the insured or the insurer.

Collecting both fees and commissions could result in both an unethical and illegal act on the part of the agent.

When an agent acts as a consultant, for a fee, to the insured and acts as an agent, for commission or salary, for the insurer, an inherent conflict exists that could lead to administrative sanctions by the State's Director of Insurance.

Because of this inherent conflict, in many states, agents are prohibited from charging fees and collecting commissions in the same transaction.

Some states permit the collecting of both a fee and commission in the same transaction, provided specific requirements are met.

These requirements usually include:

1. Full disclosure to all parties
2. Agent must put all self interest aside
3. Agent must act in an advisory capacity to the insured
4. Agent must provide a service beyond just a simple recommendation to buy a policy

THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

The NAIC is the organization of insurance regulators from 50 states, the District of Columbia and the four U.S. territories. The NAIC provides a forum for the development of uniform policy when uniformity is appropriate. The NAIC has offices in Kansas City, New York and Washington, D.C.

NAIC STATEMENT OF INTENT

In their statement of intent the NAIC outlines the future of insurance regulations.

The primary goal of the organization is to protect insurance consumers proactively and aggressively by efficient, market oriented regulation of the business of insurance.

Fueled by enhanced technology and globalization, especially in the area of insurance in the financial marketplace, insurance regulators are committed to modernize insurance regulations to meet the realities of an increasingly dynamic and internationally competitive financial service market.

The NAIC is committed to work cooperatively with governors, state legislators, federal officials, consumers, companies, agents and other interested parties in order to facilitate and enhance this new evolving marketplace.

AMENDMENTS TO STATE LAWS

Working with governors and state legislators, the NAIC has undertaken a thorough review of respective state laws to determine needed regulatory or statutory changes to achieve functional regulation as outlined by the Gramm-Leach-Bliley Act.

STREAMLINED LICENSING OF PRODUCERS

The NAIC is committed to uniformity in producer licensing and the creation of uniform licensing standards. As a necessary interim step, the NAIC has adopted the Producer Licensing Model Act for consideration by state legislatures. The Act provides specific multi-state reciprocity provisions to comply with the requirements of the Gramm-Leach-Bliley Act. Seeing reciprocity as only a short range solution, the NAIC has empowered the Insurance Regulatory Information Network to develop recommendations for a streamlined national producer licensing process that will reduce the cost and complexity of regulatory compliance related to the current multi-state process.

According to the NAIC, the model act creates uniformity in agent licensing procedures, defines the exceptions to licensing; simplifies the licensing process; promotes the Insurance Regulatory Network and Producer DataBase; creates reciprocity while preserving states' rights; eliminates the regulation of business relationships through key commission-sharing provisions; and eliminates retaliatory fees.

EXAMINATIONS AND REVIEWS OF NATIONAL COMPANIES

NAIC is in the process of refining their risk-based approach to examining the insurance operations of financial holding companies to place greater emphasis on a company's unique risk exposures and how it manages those risks.

NAIC is committed to enhance communication and coordination among all functional regulators, and is reviewing the role of NAIC resources in supporting such communication and coordination.

NAIC is committed to pursue development of a group wide approach to regulating insurer groups and enhancing coordination among states. As part of this initiative, consolidated financial statements for the insurance operations of groups will be considered for analysis.

SHARING REGULATORY INFORMATION

The NAIC actively encourages the execution of information sharing agreements between individual states and key federal functional regulators. The NAIC is working to develop a comprehensive agreement for the sharing of information among states.

“SPEED TO MARKET” COMMITMENT

Working with governors and legislators, NAIC is working on the development and implementation of a system of deference to the state of domicile using one-step filing for products issued on a multi state basis, where appropriate. NAIC will develop and implement state-based uniform standards for policy form and rate filings for appropriate product lines. As part of this process NAIC intends to develop an e-repository for filings, a system for tracking data, and a state certification process.

REGULATORY RE-ENGINEERING

Because most states are implementing laws to re-engineer their commercial lines regulatory functions, NAIC is doing likewise. Understanding that selling products to purchasers with insurance knowledge is different than selling a product to the average consumer, NAIC will continue to explore avenues to reduce unnecessary regulatory requirements.

MARKET CONDUCT REFORM

NAIC recognizes that market conduct is an essential regulatory tool and that its importance to regulators, producers and consumers will increase as “Speed to Market” reforms are implemented. NAIC is examining the current focus, structure and implementation of market conduct programs in various states to identify the issues and concerns. This examination will help NAIC determine the merits of voluntary uniform national standards as a basis for market conduct examinations

and enforcement actions. In pursuing this evaluation, NAIC has vowed to keep in mind the need for flexibility to allow local treatment of conditions produced by local markets.

E-COMMERCE THAT PROTECTS THE CONSUMER

NAIC feels that the insurance buying public and industry must be allowed to benefit from the broad range of opportunities that e-commerce offers everyone. As a result, NAIC has adopted the recommendations of the Electronic Commerce and Regulation Working Group and endorsed the Uniform Electronic Commerce and Regulation Working Group and endorsed the Uniform Electronic Transactions Act for consideration and enactment in each of the states.

POLICIES REGARDING NATIONAL INSURANCE COMPANIES

To promote uniformity within a state based system, NAIC encourages all states to join the Accelerated Licensure Evaluation and Review Techniques (ALERT) program. Through ALERT, states can take advantage of an expansion application process which allows streamlined admissions for those companies already admitted in one ALERT state simply through the filing of an expansion application in another ALERT state. The expansion application process introduces elements of reciprocal reliance on the more detailed work of the state originally reviewing the complete application.

As more uniformity comes to the insurance industry, insurance professionals will be better able to deal with ethical issues. Employing sound ethics principles permits insurance producers to serve both the insurer and the client without creating a conflict of interest.

AREAS OF CONFLICT-DISCLOSING FEES AND CHARGES

The failure by salespeople to fully disclose and explain fees and surrender charges to their clients has played a major role in the tainted perception of investing in annuities.

It is imperative that, as sellers of annuities, insurance agents consistently and honestly monitor their sales practices to ensure that they apply the highest ethical standards.

1. ***OBTAIN ACCURATE CUSTOMER INFORMATION*** - Customer's occupation, marital status, age, number of dependents, risk tolerance, tax status, net worth, prior investment experience, other investments, savings and annual income. It is only by having

accurate information in these areas and understanding the customer's needs that an agent can make the proper decision in discussing the proper annuity for this client.

2. **DISCLOSE ALL FEES** - Agents should take care to disclose and explain all fees involved with an annuity. Fees may include surrender charges, IRS penalties, administrative charges, state and local government premium taxes. Customers should be informed of how much of the purchase payment or premium is allocated to cover administrative costs and sales commissions.
3. **PROVIDE THE CUSTOMER WITH A PROSPECTUS** - Be aware of the information provided in the prospectus and be prepared to discuss it with your customer. Be careful that you understand it and are painting an accurate picture for your customer.
4. **KNOW YOUR PRODUCTS** - You must be well versed on the products that you are presenting to your customer. Discuss the pros and cons of each product. Be aware of the death benefits, fees, expenses, withdrawal criteria, and tax ramifications.
5. **DETERMINE YOUR CUSTOMER'S INVESTMENT NEEDS** - Due to penalties involved with surrender charges and tax penalties resulting from withdrawals prior to the appropriate age and time, make sure your customer has the appropriate time required to make this type of an investment.
6. **DISCLOSE - DISCLOSE - DISCLOSE** - Disclose fully the tax deferred accrual features of other tax-qualified retirement plans. Since Individual Retirement Accounts and 401(k) retirement plans offer tax-deferral at no cost, investors who do not already take full advantage of these accounts should be made aware of the options. Additionally, if a salesperson recommends the purchase of a variable annuity as part of any tax qualified retirement account, the customer should be made aware that the tax deferred accrual feature of the annuity is no longer necessary.
7. **MONITOR YOUR AGENTS** - If you are the owner of agency monitor the files of your agents and watch for signs of possible unethical behavior. Is there an unusually high rate of variable annuity replacements or rollovers? Is the agent guilty of possible lack of full disclosure?

Annuities offer many advantages to customers of the proper age and investment profile. However, they are a complex investing tool, and can be a cause for confusion to even a sophisticated investor. We have a responsibility to evaluate our clients' needs and to provide them with accurate, full disclosure and explanation regarding their annuity investments.

INSTITUTES PROMOTING ETHICAL STANDARDS

1. The ***INSURANCE INSTITUTE FOR APPLIED ETHICS*** was established in 1995 to heighten awareness of the ethical implications involved in making business decisions and to promote ethical behavior among parties to the insurance contract. The Institute identifies and funds practical, applied, ethics-related research projects and publishes the findings. It funds ethics-related materials and activities that are part of Ethics awareness Month. It sponsors or co-sponsors seminars and workshops to educate practitioners and the public on the role of ethics in the insurance transaction. The Institute has its base of operation in Malvern, Pennsylvania.
2. ***THE INSURANCE RESEARCH COUNCIL*** (IRC) was founded in 1977 as an independent, nonprofit research organization. It provides timely and reliable information based on extensive data collection and analysis relating to public policy matters that effect insurers, customers, and general public. Throughout its history, the IRC has undertaken a range of empirical studies to assist the public and insurers in reaching sound decisions on regulatory and legislative issues. The IRC does not advocate public policy, nor does it directly attempt to influence specific legislative initiatives or engage in lobbying. IRC research publications and database products are widely distributed to policy makers and research organizations. The IRC became a division of the American Institute for CPCU on September 1, 1998.
3. ***THE CENTER FOR THE MANAGEMENT OF RISK MANAGEMENT EDUCATION*** is a newly formed organization that is developing new courses, products, and educational services to extend and enhance the study of risk management. CARME is in the process of establishing alliances with several organizations to develop specialized and applied curricula. The objectives of CARME are to develop programs in risk financing and international risk management in partnership with professional associations and universities around the world..
4. ***THE CENTER FOR EDUCATIONAL INNOVATIONS*** develops new educational products and services apart from designation-based programs. The center is responsible creating customized courses for organizations,, assistance in earning a bachelor's or associate's degree, a publications database, focus topical courses, multimedia products, and diagnostic and prescriptive educational systems.
5. ***THE INSTITUTE FOR GLOBAL INSURANCE EDUCATION*** was founded January 1, 1997. On this date the Insurance Institute of Canada,

the Chartered Insurance Institute of the United Kingdom, and the Insurance Institute of America signed an agreement to establish the Institute for Global Insurance Education. The purpose of this organization is to coordinate requests to assist in offering risk management and insurance courses around the world, especially in developing countries. In addition, the Institute will provide a forum for members to discuss educational issues with global implications.

The Institute for Global Insurance Education has accepted seven insurance organizations as affiliate members: the Australian Insurance Institute, the Insurance Institute of South Africa, the Insurance Institute of India, Fundacao Escola Nacional de Seguros, the Insurance Institute of New Zealand, the West African Insurance Institute, and Instituto Nacional de Seguros of Colombia.

6. ***THE DEVELOPMENT FUND*** was formally established in 1968 to provide funds to be used in developing new educational programs and revising existing texts. Many programs and courses have been introduced as a result of the financial support received from members of the Development Fund. Members now total more than 600 and include companies, agencies, brokerage houses, national associations, and educational foundations.

As one can readily see both ethical and continuing education materials are available through many sources. The issues are important enough that more than one organization is invested in expanding the professional conduct of insurance agents and agencies. Ethics is a theory but a practice. A practice that must be met with responsibility and understanding.

THINGS TO REVIEW

1. Not all unethical activities are illegal.
2. Unethical behavior is often time attempted to be justified in the name of supporting one's family or meeting production goals.
3. Unethical activities should be of concern to those that commit them, fellow workers, managers and employers.
4. Trust is the primary factor consumers consider in purchasing insurance products.
5. The sale of insurance is regulated by both state and federal government.
6. Licensing is usually left to state authorities.
7. Variable products are considered securities and agents must meet certain federally regulated rules and regulations.
8. Continuing education is a requirement of licensing renewals in most states.
9. Most states will accept continuing education credit from an agent's home state in order to renew their license in the additional state.
10. Agents in most states must be licensed for each specific line of insurance.
11. Selling insurance in a line in which the agent is unlicensed is unethical and illegal.
12. Ethics standards for the industry were established even before licensing bodies.
13. Rebating, where illegal, is the unethical and illegal process of rebating some of the agent's commission to the insured.
14. Rebating, where permitted, is strictly regulated by the state.
15. Where permitted, rebating must be available to all insureds in the same actuarial class.
16. Baiting and switching is the unethical and illegal practice wherein a price or product is advertised and cannot be delivered, and later on is switched to an available product or price that is higher.
17. State laws require agents to deposit in a separate account funds belonging to others.

18. Premiums, when not delivered directly to the insurer, must be deposited in a separate trust account by the agent.
19. Premium trust funds, deposited in an agent's personal account, is considered commingling and illegal.
20. For whatever reason altering information on an application is considered a serious breach of fiduciary.
21. Ledger selling is making sales based primarily on the figures shown in policy illustrations.
22. Illustrations are not a "guaranteed return."
23. The NAIC model regulation on illustrations sets standards for using illustrations and requires certain disclosures.
24. The NAIC model regulation applies to all individual and group life insurance plans except variable life and individual and group annuities, credit life insurance policies with no illustrated death benefits over \$10,000.
25. Conflict of interest occurs when an individual representing another individual as a fiduciary encounters a competing interest between the other individual and themselves in a specific situation.
26. Licensing, specialized knowledge and a client relationship puts an agent in a position of trust and to violate this trust would be both unethical and subject to punitive action by the state.
27. The law holds agents accountable to clients for needs selling, competence, confidentiality, disclosure and service.
28. The law holds an agent accountable to companies in the area of handling premiums, field underwriting, avoiding liability and exclusive or non-exclusive company representation.
29. Needs selling involves the agent taking due care to carefully analyze the situation or the client in order to make the proper recommendations for insurance products.
30. Competence is expected of agents by their clients in recognizing that the agent has adequate skills and knowledge to give them proper information so that they can make an informed decision.
31. The theory of reliance creates a liability for an agent when the information he or she has provided is used by a client to make a decision.

32. Confidential information obtained by an agent must only be used to serve the client, properly inform the client and for underwriting.
33. Disclosure encompasses the delivery of all pertinent facts to the client, as well as, making sure not to omit partial or aspects of information.
34. Proper and standardized disclosures help alleviate agent liability by having an outlined schedule of disclosure items and facts.
35. Failure to disclose whether intentional or unintentional can lead to serious problems for an agent.
36. Agents must not only disclose all of the facts to their clients, but also have an ethical obligation to make sure the client understands all of the facts.
37. RBC Ratios have been developed as a regulatory tool to monitor if a company has a sufficient line of capital, regardless of a company's line of business, to satisfy the state's insurance regulatory department.
38. Using RBC ratios for marketing purposes by industry individuals or companies is unethical and a violation of the law.
39. In the area of commissions, some insurance brokers have taken the position of disclosing their commissions to their clients as an ethical issue.
40. Agents must take care not to practice law and must not give advice as to the legal ramifications of a particular situation.
41. Agents should provide service to their clients before, during and after the sale.
42. Servicing a client after the sale also includes an agent's need to be constantly informed through continuing education and other seminars and industry related presentations.
43. Agents obligations to their companies include acting as a fiduciary, handling premiums, field underwriting, care in avoiding liability, exclusivity if required, and avoiding conflict of interest.
44. A fiduciary is a position of trust and must be handled with honesty and integrity. An agent must never put his or her need ahead of the principals needs.
45. When an agent is acting as a representative of the insurer, delivering of premiums to the agent is the same as delivering them to the company.
46. Premium trust funds are normally held for no more than 90 days.

47. An agent is obligated to fully disclose all information he or she has that may effect the insurer and the decision to accept the risk or rate of premium charged.
48. An agent is obligated to represent the principal to the highest competency.
49. An agent unless authorized to do so cannot represent more than the interest of one principal.
50. Replacing an existing policy for another can create a scenario for potential conflict of interest if the replacement is not to the benefit of the principals involved in the transaction.
51. Because of inherent conflicts, many states prohibit agents from charging fees and collecting commissions in the same transaction.
52. Where permitted, agents may collect fees and commissions with full disclosures to all parties and making sure that a service was provided beyond a simple recommendation to buy a policy.
53. The National Association of Insurance Commissioners is the organization of insurance regulators from 50 states, the District of Columbia and the four U.S. territories.
54. The primary goal of the NAIC is to protect insurance consumers proactively and aggressively by efficient, market oriented regulation of the business of insurance.
55. The NAIC is committed to uniformity in producer licensing and the creation of uniform licensing standards.
56. The NAIC actively encourages the execution of information sharing agreements between individual states and key federal functional regulators.
57. NAIC is working on the development of one-step filing for products issued on a multi state basis.
58. NAIC is exploring avenues to reduce unnecessary regulatory requirements relating to commercial lines of insurance.
59. NAIC, through a program called ALERT, promotes states to take advantage of an expansion application process which allows streamlined admissions for those companies already admitted in one ALERT state.
60. The failure of salespeople to fully disclose and explain fees and surrender charges has played a major role in the tainted perception of investing in annuities.

PUBLISHER'S NOTE

Important Notice

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