In Answer to Your Many Questions

EDITOR'S NOTE: Mike Toothman just completed six years of service to the profession as a member of the Actuarial Board for Counseling and Discipline (ABCD). In October 2008 and June 2009, he was a panelist on Academy-sponsored webcasts on the Code of Professional Conduct. In October 2009, he was also a panelist on an Academy-sponsored webcast on Precept 13. At each webcast, there were more questions than the panelists had time to answer. Here, Toothman answers some of them. While the answers are his and not official positions of the ABCD, the information they provide may be useful.

Who is considered a principal? Is it solely the individuals within the entity that hired or employed you to perform an actuarial service, or is it broader?

Principal is defined within the code as a client or employer of the actuary. If you are retained (or employed) by ABC Corp. to perform actuarial services and you report to Mary Smith in that capacity, your principal isn't just Mary Smith but also ABC Corp.

Mike Toothman

The code's conflict-of-interest section (Precept 7) is written in a very demanding manner. Almost any circumstance is a potential conflict in someone's view. Can any member of a large consulting firm ever comply with such a requirement?

Precept 7 is very important. Potential or perceived conflicts of interest arise frequently, especially for a consultant in a large firm. However, it's been my experience that issues don't arise out of a majority of circumstances. When an issue does arise, Precept 7 provides excellent direction. The first step is to be sure that you believe that you can act fairly. If you can't, you should simply decline the assignment. If you believe you can act fairly, then you should disclose the potential conflict to the involved parties and obtain their agreement that you may proceed with the assignment. I spent 18 years of my career as a consultant within large firms. It's certainly true that the ability to handle potential conflicts of interest is much more complex within a large firm. The firm must have established a good system to help its consultants identify potential conflicts, and it must also have a well-defined process for clearing those conflicts. With those in place, managing conflicts in a manner consistent with the code isn't overwhelming.

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What does Precept 7 mean when it asks us to obtain express agreement from a principal? Could this be an oral agreement, perhaps with a confirming note written by the actuary?

Absolutely! Particularly in cases where the concern was the possibility of a perceived conflict and I felt that no true conflict existed, I have often handled things via a telephone call. A confirming note to the client is evidence that you've had that conversation, and it gives an opportunity to respond if the client didn't hear your conversation quite as you described it.

My designation as an enrolled actuary (EA) has expired, and I have no intention to practice. Do I need to take my certificate from the Joint Board for the Enrollment of Actuaries off my wall?

Technically, the EA designation doesn't fall within Precept 12, since that precept is limited to titles and designations of a recognized actuarial organization (RAO) as that term is defined within the code, and the joint board doesn't fit within the definition of an RAO. Viewing the question more broadly, it's clear that you can't hold yourself out to be an enrolled actuary when your certificate has expired. If your office is ever visited by clients, colleagues, or others who might see your certificate on the wall and believe that you are actively enrolled, then you ought to remove it.

I've run into situations where a former member of the Academy and the Society of Actuaries has continued to use the designation on reports that have been filed with external entities, e.g., insurance departments. Is there any procedure for handling this?

To begin with, you might choose to first speak (as appropriate) to this person and suggest that he or she might be in violation of the code. You could also report

him or her to the appropriate insurance department and possibly also notify the appropriate actuarial task force committee at the National Association of Insurance Commissioners. If he or she is still a credentialed actuary elsewhere, you could notify the appropriate disciplinary body (which for all U.S. actuarial organizations is the ABCD). If he or she is a member of the Canadian Institute of Actuaries, you could notify that organization (or in the case of work performed in the U.S., the ABCD). If the individual no longer holds any actuarial designations, the profession's disciplinary system has no jurisdiction over the situation. But you might still report him or her to the ABCD, which would keep the complaint on record in case the individual ever applied for a reinstatement of membership. Finally, you could notify the affected actuarial organization, which might take steps to have the individual cease and desist using the designation.

What's the difference between a difference of opinion, for instance regarding lapse rate assumptions, and a material violation?

As this question recognizes, two actuaries can have a difference of opinion without either one being in violation of the code. It's up to you to make a judgment as to whether the assumption is so outrageous or unsupportable that you believe it rises to the level of a violation of the code. Usually, a discussion with the other actuary will help you to reach a decision. If the other actuary can explain and defend the assumption, you may be able to recognize it as valid even if your judgment would be different. All actuarial work involves uncertainty. It would be a rare situation within actuarial practice if there was only one valid assumption. However, not all assumptions—or procedures—are reasonable in a given situation. If, after discussing the matter, you still believe the other actuary's assumption to be unreasonable and material, then you should follow Precept 13.

Does actuarial rate-filing support fall under the definition of "work product" in Precept 4? Must we provide our contact information?

The particular facts of any given situation may change the answer to a question like this one. Generally, however, I would think the answer to this question is yes. Technically, one could narrowly read Precept 4 as stating that an actuarial communication is something that is issued by an actuary. I would expect that most actuarial rate-filing support would fall within that definition, though I certainly could imagine situations where that might not be the case. Still, I believe that generally the ABCD would follow the spirit of this precept and determine that if an actuary has produced the rate-filing support, it's within the scope of Precept 4. Besides, providing your contact info is just good business practice.

Is the name of the person who reports an apparent violation to the ABCD disclosed to the subject actuary?

If you file a complaint, that complaint is forwarded—with the complainant identified—to the actuary who is the subject of the complaint. You can report public information to the ABCD and either request anonymity or omit your name and address. The ABCD may choose to initiate an inquiry based upon the information you provided. In that case, the actuary will have a chance to respond to the information with an explanation of what occurred, but you would not be identified since you didn't file a complaint. See the ABCD's Rules of Procedure (at www.abcdboard.org) if you would like more details. Note that the rules provide for anonymous complaints, but the ABCD really can't do anything with those unless the complainant has provided public documents sufficient for the board to open its own inquiry. □

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