

Ethics Training for Producers

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Disclaimer

The information in this presentation is intended to provide a general overview of the issues contained herein and is not intended, nor should it be construed, to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.

Ethical Considerations

- Governmental Ethics
- Producers
- Attorneys
- Adjusters
- Company Personnel

Governmental Ethics

“When a man assumes a public trust, he should consider himself as public property.”

Thomas Jefferson, 1743-1826

Governmental Ethics

- Most States have laws which govern the behavior of public employees. The laws address employee interaction with third parties. This can include contractors, insurance companies as well as the general public.
- These laws generally address lobbying and to a certain extent the public employees' ability of participate in the political process.

Purpose of Governmental Ethics Laws

Louisiana

“It is essential to the proper operation of democratic government that elected officials and public employees be independent and impartial; that governmental decisions and policy be made in the proper channel of the governmental structure; that public office and employment not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired when a conflict exists between the private interests of an elected official or a public employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and that it establish appropriate ethical standards with respect to the conduct of elected officials and public employees without creating unnecessary barriers to public service. It is the purpose of this Chapter to implement these policies and objectives.”

Who is Governed by State Ethics Laws?

- Public Employees
- Elected and Appointed Officials
- State Board Members
- Family members of designated persons
- Third Parties contracting with the State
- Lobbyists

Governmental Ethics

- Gifts and Incentives
- Food and Drink Restrictions
- Travel Related Matters
- Outside Employment
- Conflict of Interest
- Other Considerations
- Disciplinary Actions

Gifts and Incentives

- Most states have limitation on the acceptance of gifts by government employees. Some states prohibit any gift from a “prohibited source” while other states allow the acceptance of gifts in limited situations.
- Gifts are generally defined as anything of monetary value accepted by the person or on that person’s behalf.

Gifts and Incentives

Louisiana

- No public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person who has or is seeking a contractual, business, or financial relationship with the public servant's agency.

Exceptions to Gift Prohibition

- Dollar Amount: Some states allow the acceptance of gifts valued at a nominal amount such as \$25.00 or less with an aggregate total. – Louisiana does not.
- Promotional items having no resale value.
- Gifts accepted on behalf of the state that become state property.
- Flowers or a donation in connection with death if the value does not exceed \$100.

Food and Drink Restrictions

Louisiana

No person from whom a public servant or public employee is prohibited from receiving a thing of economic value shall give to such a public servant or public employee any food, drink, or refreshment the total value of which exceeds fifty dollars for a single event at which food, drink, or refreshment is given. The total value of the food, drink, or refreshment given to a public servant or public employee at any single event shall not exceed fifty dollars regardless of the number of persons subject to the provisions of this Subsection giving food, drink, or refreshment to the public servant or public employee at the single event.

Exceptions to Food and Drink Rule

- Food or drink consumed at a gathering of a national or regional organization or a meeting of a statewide organization of government officials or employees to which at least 10 individuals associated with the organization are invited.
- Public servant of a post secondary institution in an event held for fundraising from private individuals for the benefit of the institution.

Louisiana Travel Exception

- Necessary expenses
 - A public servant may receive payment or reimbursement for necessary expenses if he, in his official capacity, actively participates in an educational or professional development seminar or conference. For example by giving a speech or presentation or running a workshop.
 - Necessary expenses are limited to:
 - Travel (coach or economy class)
 - Lodging (standard cost of room for the nights before, of, and immediately following the event)
 - Admission
- Expense payments also do not include payment of expenses for family members or other guests. Must file ethics form within 60 days after acceptance.

Must have agency approval. Must be invited by a civic, non-profit or political organization.

Outside Employment

- Generally Prohibited
 - If the outside employment is with a person who does or is seeking to do business with the employee's agency
 - If the employee's agency regulates the entity
 - If the employee or his family has an economic interest which may be affected by the performance or non performance of the employee's official duties
 - If the outside employment is related to official duties
 - If there is an appearance of impropriety.
 - In several states, any outside employment must be approved by agency prior to accepting

Other Considerations

- Undue Influence
- Abuse of Office
- Nepotism
- Post-Employment Issues

Disciplinary Actions

- Actions which can be taken for a violation of state ethics rules vary from censure to prison terms.
- They can include:
 - Fines
 - Forfeiture of the gift or payments received
 - Removal or suspension from employment
 - Demotion
 - Prison

Producers and Brokers



Insurance Agents

- Solicit insurance transactions and help place risks on behalf of an insurance company
 - Deliver policies
 - Collect premiums
- Can bind the insurer to the extent of the agent's authority
- Are fiduciaries of the insurer

Independent Agents

- Independent producers represent several insurance companies
 - This poses difficulties in determining which business to send to each company
 - Independent agent may renew a policy with a different insurer if the policyholder approves
- Independent producers may be required to place a certain amount of business with each insurer
 - Creates further conflicts

Insurance Brokers

- Solicit insurance transactions as well, but work on behalf of a prospective insured
 - Insurance brokers solicit insurance transactions as well, but work on behalf of a prospective insured
 - They legally represent insureds
- Often hired to obtain insurance for difficult to place risks

Excess/Surplus Lines Brokers

- Excess/Surplus Lines brokers are brokers that place excess or surplus lines insurance risks
 - These risks are often difficult to write
- These brokers must ensure that the insurers they work with are permitted to write excess lines policies in their jurisdiction
- The Nonadmitted and Reinsurance Reform Act (NRRA) simplified tax collection for excess brokers

Producers vs. Brokers

- The difference between a producer and a broker can sometimes become blurred
 - Some brokers are also agents for an insurer
 - Some states issue the same type of license, a producer license, to both agents and brokers
- Simply put, a person is a producer when he or she acts on behalf of an insurer, and a person is a broker when he or she acts on behalf of an insured

Licensing

- All states require that producers and brokers be licensed before transacting insurance
- The criteria to obtain a license varies from state to state
 - Most have continuing education requirements
- The purpose of licensing is to ensure that producers are knowledgeable and aware of the ethical issues they will face in doing business

Producer Responsibilities

- Producers are primarily responsible to the insurer
 - Must help the insurer place appropriate risks
- Brokers are primarily responsible to the insured
 - Must help the insured obtain coverage appropriate to the insured's needs
- All producers owe duties to the insurer, the policyholder, their profession, their licensing states, and to the public at large

Brokers as Producers

- Brokers are producers of their clients – prospective insureds
 - Thus, brokers owe duties primarily to clients
- However, brokers owe some duties to insurers, including:
 - Complete and accurate disclosure on insurance applications
 - Due diligence
 - Integrity

Responsibilities to the Insurer

- Producers are fiduciaries of the insurer
- The legal relationship is established by the written contract, which both parties negotiate and sign
- Producers must diligently execute their duties, including:
 - Inspecting risks
 - Binding the insurer by agreement with the prospective insured
 - Collecting premiums

Fiduciary Duties

- Fiduciaries are those in a position of trust and responsibility towards a principal
 - Agents are thus fiduciaries of their insurer
- Producers owe a duty of loyalty to their insurer, and must:
 - Always act in the best interests of the insurer
 - Put the interests of the insurer before their own
- Examples:
 - Utmost care
 - Disclose all relevant facts
 - Due diligence
 - Premium Handling
 - Issue Binders

Responsibilities to the Policyholder

- Brokers are fiduciaries of the policyholder
- Brokers should aid the insured by obtaining a policy that meets the needs of the insured
 - This means the broker must accurately identify the needs of his or her clients
- The duties of brokers include:
 - Confidentiality
 - Loyalty
 - Diligent undertaking of policy applications

Responsibilities to the Profession

- The temptation to use unfair tactics against competitors is strong
 - Misrepresenting the competence or integrity of other producers must be resisted
 - It is also dishonest for a producer to misrepresent his or her own experience
- Unfair tactics reflect poorly on the producer profession and the industry as a whole

Responsibilities to the State

- Both the federal and state governments regulate the insurance industry, but the states are the primary regulator
 - The federal government regulates areas such as anti-trust and labor
- Ethics and professional responsibility are regulated by the states
- There is variation between the states of the nuances of what is permitted
 - For example, some states use the term “marketing practices” and others use “unfair trade practices” to refer to aspects of producer ethics

Responsibilities to the Federal Government?

- The federal government has exerted increased influence on insurance regulation since the 2008 financial crisis
 - The 2010 Dodd-Frank Act established the Federal Insurance Office (“FIO”)
 - FIO monitors U.S. insurance regulation
- The National Association of Registered Agents and Brokers (“NARAB”) is an entity that would provide for multi-state producer licenses
 - Congress has yet to enact a statute creating NARAB

Responsibilities to the Public

- Primary responsibility is the maintenance of a positive image of the insurance industry
 - Maintain professional integrity
 - Deal fairly and promptly with members of the public
 - Provide full and truthful information to prospective insureds
- Producers should maintain their integrity at all times
 - Negative stories are likely to be amplified as they circulate through the public in the news or by word of mouth, but positive stories are likely to be ignored

Adjuster

- Definition of Adjuster
- Standards of Conduct

Compensation

- Compensation is a major duty principals owe their agents
 - Each party owes duties to the other, but both also expect to profit from the relationship
- Compensation is usually in the form of commissions
 - May vary by line, and whether the policy is new business or a renewal
- Some insurers award lower commissions for renewals
 - This creates an incentive for producers to place that business with a different carrier rather than renew
 - The agent should only do what is in the interest of his or her principal

Indemnity

- The principal must indemnify its agents for costs incurred from claims arising from the course of the agent's fulfilling his or her duties to the principal
 - This is part of the principal's agreement to be bound by the agent's actions
- However, the principal can recover costs from an agent that breaches his or her contract
 - Occurs when an agent breaches a duty

Conflict of Interest

- Conflict of interest is any situation in which a person has an actual, potential, or perceived interest that may
 - Influence the performance of their duties and responsibilities toward their agency.
 - Compromise or appear to compromise their professional judgment or integrity in performing their official duties.
 - Prevent a person from rendering unbiased and fair services to their agency and from acting in the best interest of their company.

Conflict of Interest

- Most conflicts of interest concerns are covered by the State governmental laws which were discussed earlier.
- Most departments require that you avoid transactions which involve an insurance company under the supervision and regulation of the department. (This does not include purchase of insurance for personal use or involving a personal insurance dispute.)
- Also avoid such transactions with agents, producers or others which the department regulates.

Reconciling Conflicts

- Producers may find it difficult to reconcile the competing interests of prospective insureds and insurers
- The best way to solve this problem is to act in the interest of the insurer
 - The insurer can best serve its customers if it is fully aware of all relevant facts when underwriting risks

Handling Client Information and Funds



Confidentiality

- Insurance producers necessarily obtain access to large amounts of a client's personal information
 - It would often be harmful to the client if this information was made public
- Producers must take appropriate measures to safeguard client information
 - Information should not be released without the client's permission

Confidentiality

- State and federal laws mandate that certain practices be observed to safeguard customers' personal information
 - Federal laws:
 - Fair Credit Reporting Act
 - Gramm Leach Bliley
 - Health Insurance Portability and Accountability Act (“HIPAA”)
 - These federal laws often mandate that the states adopt standards
- If personal information is lost or stolen, the entity must usually notify state authorities and affected individuals

Confidentiality vs. Disclosure

- The producer's duty of confidentiality is made complicated by the fact that he or she must fully disclose to the insurer of all material facts concerning the client's application
- Thus, the producer must fully inform the client of all information that the insurer will consider
 - The client will then be better able to make decisions regarding coverage

Premium Handling

- There are two methods of paying the insurer for an insurance policy:
 - The insured directly pays premium to the insurer
 - The insured pays the agent or broker, who in turn forwards the premium to the insurer
- Producers must ensure that all laws are complied with when handling premium
 - Fidelity bonds

Commingling Funds

- Proper premium handling is part of a producer's fiduciary duties to an insurer
 - Part of this duty is the prohibition on commingling funds
- Producers cannot commingle premiums held for the insurer with other business or personal funds
- Premiums should be kept in a separate trust account

Unfair Trade Practices

- Unfair trade practices refers to any acts that are deceptive or unfair with regards to the issuance of insurance policies, or the settlement of claims
 - Producers sometimes violate unfair trade practices acts when soliciting prospective policyholders or when explaining coverage
- The NAIC developed the Unfair Trade Practices Model Law, which has been substantially adopted in a majority of the states
 - The Model Law prohibits unfair trade practices

Unfair Trade Practices

- NAIC definition, in part:
 - Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:
 - Misrepresents the benefits, advantages, conditions or terms of any policy
 - Uses any name or title of any policy or class of policies misrepresenting the true nature thereof
 - Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy

Twisting

- Twisting is the act of convincing a policyholder to drop one policy and buy a new one, with no real benefit to the policyholder
 - Some misrepresentation is usually involved to convince the policyholder to make the change
 - Unscrupulous agents may engage in this practice to earn a commission
- Twisting is illegal in most jurisdictions
 - It is a breach of the duty to fully disclose

Rebating

- Rebating is the practice of offering some valuable inducement in order to encourage a person to purchase insurance coverage
 - It may be a payment from the producer's commission, or other gift of something of value
- It is illegal in most states, and in some states it is a crime
 - Producers are usually barred from receiving a commission if they offer a rebate to a policyholder

Redlining

- Redlining is the practice of refusing to write homeowners or renters insurance based solely on the geographical location of the property
 - Redlining usually results in discrimination against people living in minority neighborhoods
- Redlining may also include other practices that have the effect of limiting access to insurance in these areas
 - Producers may be complicit in some of these practices, such as consistently failing to return calls to individuals in minority neighborhoods
- These practices are illegal under the federal Fair Housing Act

Professional Organizations' Code of Ethics

- Most professional organizations have ethical guidelines or codes to govern the activities of their members.
- The failure of members to adhere to these Codes or guidelines can result in sanctions up to and including termination from the organization.
 - Chartered Property Casualty Underwriters (CPCU)
 - State Bar Associations (ABA)
 - American Institute of CPAs (AICPA)

Professional Organizations' Code of Ethics

Chartered Property Casualty Underwriters (CPCU)

- CANON 1
 - Insurance professionals should endeavor to place the public interest above their own.
- Rules of Professional Conduct
 - R1.1: A CPCU should avoid even the appearance of impropriety when performing his or her professional duties and should act in a manner that ultimately will best serve his or her own professional interests. However, potential conflicts of interest may arise, or may appear to arise, because many CPCUs simultaneously must balance multiple professional interests with their personal interests and the best interests of the general public. The ethical obligation to place the public interest above personal interests or financial gain extends to every CPCU, regardless of whether the CPCU's occupational position requires direct contact with actual or prospective insurance consumers. This does not imply that insurance purchasers should be given preferential treatment over insurance claimants because the needs and best interests of insurance purchasers are in fact served only when all insurance claimants, including third-party liability claimants, are accorded prompt, equitable, and otherwise fair treatment.

Professional Organizations' Code of Ethics

American Bar Association (ABA)

- Maintaining the Integrity of the Profession
- Rule 8.4 Misconduct
- It is professional misconduct for a lawyer to:
 - (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (d) engage in conduct that is prejudicial to the administration of justice;
 - (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
 - (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Professional Organizations' Code of Ethics

American Institute of CPAs (AICPA)

- Preamble
 - These Principles of the Code of Professional Conduct of the American Institute of Certified Public Accountants express the profession's recognition of its responsibilities to the public, to clients, and to colleagues. They guide members in the performance of their professional responsibilities and express the basic tenets of ethical and professional conduct. The Principles call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage.
- Sample Rule
 - 01 Rule 102—Integrity and objectivity
 - In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

Professional Organizations' Code of Conduct

Disciplinary Actions

- CPCU- Reprimand to Revocation of Designation
- State Bar- Admonition to Disbarment
- AICPA- Suspend, Expel, or Lesser Sanctions as decided by the Board

Other Ethical Concerns

- Social Media
- Record Retention
- Corporate Governance
- Whistleblower
- Third party contractors

Social Media

- Social media has become a major marketing technique for insurance entities
- Insurers will often be liable for social media content produced by their agents
 - This is due to the agency relationship
- Agents must take care that their social media content does not violate unfair trade practices or other laws
 - The agency contract should provide guidance for agents' use of social media on behalf of the insurer

Record Retention

- Most states require maintenance of records of advertisements disseminated to the public
- Maintenance of records of social media content is more complicated than maintenance of traditional advertisements (TV, radio, print, etc.)
 - It is unclear whether just an initial post must be retained, or whether the initial post and all responses must be retained
 - Users of social media may have to retain content posted by third parties

Record Retention

- Producers should always maintain their integrity through following high ethical standards
 - It is the right thing to do, and failure to behave ethically can lead to legal liability
- Maintaining integrity helps producers in the long run
 - Insurers and clients seek out producers with good reputations

Conclusion

“Insurance is an industry affected with the public interest.” La R.S. 22:2

Most states recognize that fairness, integrity, and trust are integral parts of the Insurance industry.

Conclusion

“Without trust, insurance cannot perform its proper function as a risk management device for companies and individuals. No industry depends more on trust, and this trust comes from a series of events in which ethical values are demonstrated.”

Dr. Norman Baglini, former chairman and chief executive officer of the American Institute for CPCU, the Insurance Institute of America, and the Institute for Applied Ethics, 1998