Ethics and Contemporary Issues In Insurance

Sponsored and Presented By:
The CPCU Society’s Ethics Committee

John R. DiForte, CPCU
Pat Jeremy, CPCU
Karen Miller, CPCU
Introduction

How would you describe an “ETHICAL” person?
ETHICS vs. MORALS
Ethics vs. Morals

• The difference between ethics and morals can seem somewhat arbitrary to many, but there is a basic, albeit subtle difference. Morals define personal character, while ethics stress a social system in which those morals are applied.

• In other words, ethics points to the standards or codes of behavior expected by the group to which the individual belongs. This could be national ethics, social ethics, company ethics, professional ethics, or even family ethics.

• So, while a person’s moral code is usually unchanging, the ethics he or she practices can be other dependent.
ETHICS

ABSOLUTE

OR

RELATIVE
Notable Quotes on Ethics

As Shakespeare once said...

“There is nothing either good or bad, but thinking makes it so.”

Albert Einstein

“Relativity applies to physics, not ethics”
ETHICS AND STRATEGIES IN CLAIMS SETTLEMENT
Dispute Resolution Strategies

Do we...

• Deny culpability
• Shift blame to someone else
• Admit nothing

Or, do we...

• Disclose the error
• Express empathy
• Provide emotional support where necessary
• After due diligence proves that a mistake has been made, apologize

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Sun Tzu: “The Art of War”

And what he teaches us about contemporary claims resolution

When evenly matched, you fight
Sun Tzu: “The Art of War”

And what he teaches us about contemporary claims resolution

When faced with overwhelming odds, withdraw
Sun Tzu: “The Art of War”

And what he teaches us about contemporary claims resolution

When your force is superior, you devastate
Medical Malpractice Scenario
A 75-year-old man enters the hospital with a number of health complications. He suddenly dies, and the family has his body picked up from the hospital and prepared for burial with no questions asked. The man was in poor health, and his family had no reason to suspect that anything occurring in the hospital precipitated his death.
Medical Malpractice Scenario

As part of the hospital protocol, the staff performs a thorough investigation.

The investigation finds that a medication administered to the man in error caused his death.
The family believed the man had died of natural causes and had no reason to believe otherwise.

This resulted in a moment of truth for the hospital administration, causing them to deal with the ethical touchstone.
Medical Malpractice Scenario

Discuss the ethical dilemmas presented by this case
Medical Malpractice Scenario

Anger – not greed – is what drives most customers to file lawsuits.
Medical Malpractice Scenario

"Defense litigation expenses often dwarf settlement costs."
Expressions of Empathy

“I am sorry”

“I apologize”
“I would never introduce a doctor’s apology in court. It is my job to make a doctor look bad in front of a jury, and telling the jury that the doctor apologized and tried to do the right thing kills my case.”

*President, South Carolina Trial Lawyers Assoc.*
“We never sue the nice, contrite doctors. Their patients never call our offices. But the doctors who are poor communicators and abandon their patients get sued all the time. Their patients come to our offices looking for answers…”

David Patton, JD, partner in medical malpractice firm
WHAT ACTUALLY HAPPENED?
What actually happened:

The administration advised the family that a medical error resulted in the man’s death. They were advised to retain counsel for the purpose of satisfactory resolution of the matter. The hospital administration and the attending doctors apologized, admitted fault, explained what happened and discussed compensation.

The case was quickly resolved to the satisfaction of all parties.
Ethical Issues in Life Insurance

Scenario:

Viatical Settlements: Legal vs. Ethical
A “viatical” or “life settlement” is a life insurance policy owned by investor-beneficiaries on the lives of unrelated individuals. Investors make substantial payments to an insured-individual, usually terminally ill, to purchase that person’s life insurance policies, and then continue to pay any remaining premiums and collect the death benefit once the insured individual dies.
A young man discovers that he is terminally ill. His life expectancy is probably less than five years. He has a wife and three small children. His illness now requires experimental treatments, which do not guarantee that he will survive and are not covered by his health insurance plan.
The man has a $1,000,000 life insurance policy that he purchased over six years ago and is no longer contestable for any reason. He is offered a viatical settlement in an amount that will cover the experimental treatments but leave his heirs without the life insurance proceeds.
Life Insurance Scenario

What are the man’s ethical dilemmas?
Life Insurance Scenario

- What is the legality of viatical settlements?
- How is the life insurance industry affected by viatical settlements?
  - When life insurance premiums are calculated, they factor in a lapse ratio. How do viaticals affect the solvency of life insurance companies?
  - Do viatical settlements create an ethical dilemma for the industry?
Life Insurance Scenario

Viaticals are purchased by investors in a primary market and then pooled and securitized by a secondary market.

Is it ethical to bet on the mortality of others?
Ethics and Social Media
Scenario
You are an agent in a large Independent Insurance Agency located in a suburban area of a large city. Some of your many personal lines clients have invited you to become a “friend” on their Facebook pages. You eagerly accept each invitation because this is an opportunity to make personal contact with your clients in a speedy and efficient manner. You also have the opportunity to better assess your clients’ needs.
You notice on a client’s Facebook page that the client has just added a new child to the family. You may wish to send the family a “congratulations on your new baby” card – and discuss their life insurance needs with them.
BUT, what if you discover on a long-time insured’s Facebook page that your client was convicted of a DUI one year ago and is now celebrating his 1st anniversary of being clean and sober? What are your ethical dilemmas?
1. The experience period required for auto policies is 36 months. The motor vehicle report will reflect activity for 39 months, with the exception of a DUI, which remains on the MVR for 7 years.

Do you have an ethical obligation to notify the insurance company underwriter of this information? Keep in mind that there may be a contractual obligation through the Agency Agreement (or through the common law principles of agency) with the insurer and the regulatory promulgations about fraud, misrepresentation and concealment.
2. Do you have an ethical obligation to your client to keep this information private if the information gathered was obtained from a “Friends Only” (private) setting on Facebook? What if your client’s Facebook privacy settings are on “Everyone” (public)?
Ethics and Social Media Scenario

3. What possible issues of intentional torts could we face if the information posted is about a third party?
4. Is it ethical to warn the client to remove this information from their Facebook page instead of reporting it to the company?
5. Would the fact that you are a broker as opposed to an agent alter your ethical obligations in any of the above questions?
Ethics and Claims Handling
Scenario
The insured has a brand new Lexus, less than 12 months old. He gets a dent in the hood. It’s covered by his auto policy. The body shop has the hood off of the car when the staff adjuster from the insurance company comes to inspect the damage.
The adjuster tells the body shop that they can “bang out the dent” and repaint the hood. The body shop owner has a different idea. He feels that the dent is big enough that it will not “bang out to a smooth finish.” He wants a new hood for the insured. He does not want the insured to think he got a shoddy job.
After much “discussion,” the adjuster acquiesces, and to be certain that the hood is not to be reused, he proceeds to jump on the hood while it is on the ground.

He does this a few times, and the hood damages the Mercedes parked next to it. *I guess the adjuster did not want the body shop to re-use the hood.*
The adjuster is forced to call the company’s claims manager, who then visits the body shop owner. The claims manager tells the body shop owner to fix the Mercedes and add the labor to the bill for the Lexus. The body shop owner says, “No way, that’s dishonest. You have to pay for the damage to the Mercedes.”
Ethics and Claims Handling Scenario

What ethical issues are involved in this discussion?
Was the adjuster right in destroying the hood?
What are the pros and cons of the claims manager’s decision to add the Mercedes’ bill to the Lexus’ bill?
Was the damage a result of the process of adjusting, and should this be paid by the claim’s loss adjustment expense or by the insurance company’s GL policy?
How does the doctrine of “Respondeat superior” apply? (principle responsible for its agents)
Ethics and Claims Handling Scenario

If it is found that the additional loss is part of the adjusting process, should the Lexus owner be charged for the damage as additional points of surcharge? Should the agent’s loss ratio reflect the additional damage?
IN CONCLUSION

The ETHICAL thing is simply doing the right thing.
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