Moral Turpitude

THE CURRENT CODE OF PROFESSIONAL CONDUCT was released to the members of the five U.S.-based actuarial organizations on Jan. 1, 2001. In the covering memorandum, the Joint Committee on the Code of Conduct referenced comments received during the exposure process. One such comment was on the term "moral turpitude."

As stated in the memorandum: "One commenter on Precept 1 suggested adding an annotation dealing with 'moral turpitude'; the Joint Committee believes that Annotation 1-4, as revised, is sufficient to address the commenter's concerns."

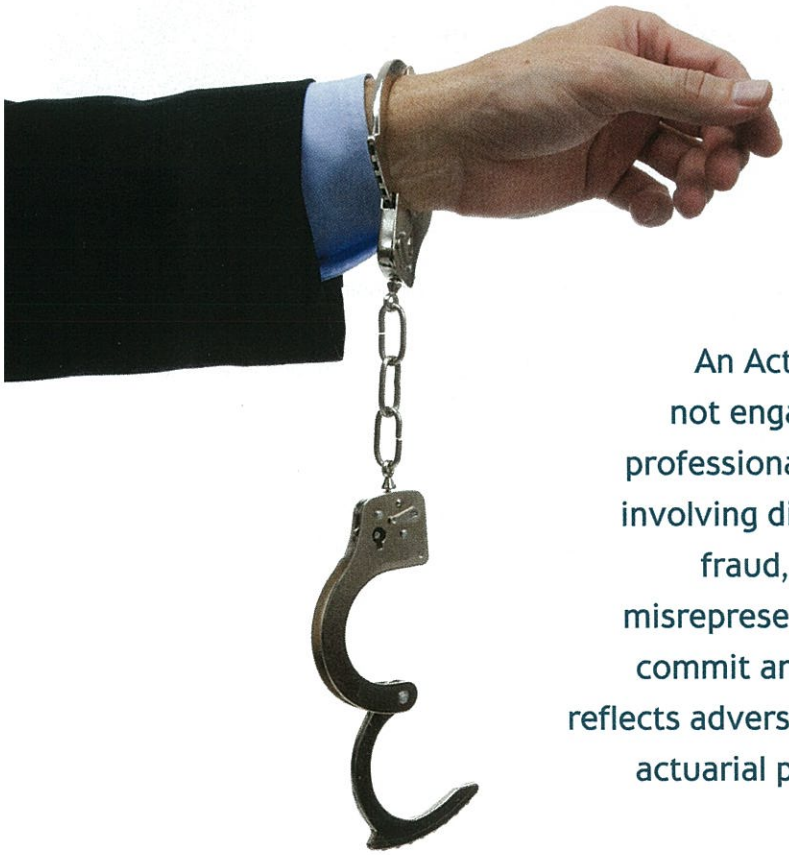
The current Code of Professional Conduct has 14 precepts. Most of the precepts have annotations, which are designed to provide commentary or to act as a critical or explanatory note.

Precept 1 reads:

> An Actuary shall act honestly, with integrity and competence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession.

Annotation 1-4 reads:

> An Actuary shall not engage in any professional conduct involving dishonesty, fraud, deceit, or misrepresentation or commit any act that reflects adversely on the actuarial profession.



An Actuary shall not engage in any professional conduct involving dishonesty, fraud, deceit, or misrepresentation or commit any act that reflects adversely on the actuarial profession.

So, what does the term moral turpitude mean, and how is it handled by the Code of Professional Conduct? One dictionary defines turpitude as baseness, depravity, or evil intent. But there does not seem to be a standard definition. Moral turpitude is cited most often in U.S. legal documents in the area of immigration law when foreign applicants for permanent residence in the United States certify that they have not been found guilty of any acts of moral turpitude.

It's assumed that everyone knows what the term means, but even within some legal immigration documents, the definitions can have subtle differences.

You'll Know It When You See It

I'm reminded of the famous remark by U.S. Supreme Court Justice Potter Stewart in a 1964 concurring opinion in which he was trying to define the term "obscenity" and stated:

> "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [hard-core pornography]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it." (*Jacobellis v. Ohio*)

It's likely that each of us also knows if a particular act is one that is encompassed by the term moral turpitude. But not everyone agrees that a particular set of facts warrants such a designation.

Let's start with a set of facts for which we'll most likely agree on a conclusion. If an individual, acting as senior manager for an insurance company, demonstrated a lack of honesty and integrity that resulted in the company going into receivership, this would be considered a failure to fulfill a responsibility to the public. If that individual were to be an actuary, and the dishonesty occurred in the course of providing actuarial services, the

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first clause of Annotation 1–4 would apply and a recommendation of expulsion from the profession would be warranted.

But let's look at other possibilities. What about crimes that lead to conviction and imprisonment, in which the perpetrator is identified as an actuary but no actuarial services were being provided?

For example, think of a crime involving evil intent but concerned with property—arson, say, or robbery. Should Annotation 1–4 apply? If a crime involves mail fraud, perjury, or willful tax evasion, should there be the same result? If a crime involves offenses against individuals, such as murder, child molestation, or rape, should there be the same result?

Is the result different if an individual isn't publicly identified as being an actuary? Do the individual's neighbors and friends know about his or her professional credentials? If so, is this question even relevant?

Complicating Factors

We frequently hear about "slippery slopes." In these cases, you start out with a clear position on some set of facts but eventually migrate to a set of facts where it is clear that an alternative answer is the preferred response. If it is clear that an actuary convicted of child molestation should be expelled, where did we cross a line that would say a lower penalty would be justified—conviction for manslaughter, conviction of perjury, conviction for driving under the influence? (In passing, I note some recent employment law cases in which individuals have been terminated 30 or 40 years after lying on employment applications. This is an example of enforcing an absolute standard.)

Now let's add the complexity of when the act involved occurred. If it was recent and the individual is still incarcerated, presumably we might all still be in our comfort zone of accepting expulsion under the Code of Professional Conduct. But what if the act occurred 10, 20, or 30 years ago and only recently was made public? Is the result the same whether or not the individual is currently incarcerated or under the supervision of a court?

Is the current wording of Precept 1, particularly Annotation 1–4, sufficient to handle the variety of incidents that may come before the profession's counseling and disciplinary bodies? The 2001 Joint Committee believed the current wording was "sufficient." What are your views?

Should we leave the current language alone and let the circumstances of each situation be evaluated as it comes up for consideration, trusting that the reviewing authorities will make appropriate decisions? Or should we clarify the language to identify all situations that are to be encompassed within the purview of the precept?

For example, should the precept apply only when actuarial services (as defined in the Code of Professional Conduct) are involved? Does the subject actuary have to be identified publicly as an actuary to have the precept apply? Should there be a statute of limitations that would limit the time that action could be contemplated?

It remains likely that each of you will still know what the right answers are to these questions, even though we may reach different conclusions. Perhaps the answer actually is found in the last phrase of Annotation 1-4, where it states, "An Actuary shall not .... commit any act that reflects adversely on the actuarial profession." The committing of "any act" (whether publicized or not or even whether it is known by the actuarial community) is the actual violation. □

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