

Are You a Rule Follower?

ARE YOU A RULE FOLLOWER OR A RULE BREAKER? If you assume that rules are generally reasonable, you're probably happy to follow them. I believe that actuaries are generally rule followers (which is a good thing) but that we should think harder about the reasonableness of the rules we follow, especially in a world where others are rule breakers. We need to ask ourselves more often than we do whether the rules are reasonable. In particular, we should pose the following questions:

- What's the rule?
- Whose rule is it?
- What's the rule's purpose?
- Is there a compelling reason to break the rule?
- What are the consequences of breaking it?

Most people have an inherent bias for or against rules. Everyone knows people who have a strong inclination to follow whatever rules have been set up. Everyone also knows people whose tendency is to ignore rules.

In my experience, most actuaries fall into the first category. This is based partly on observing fellow actuaries during my 30 years in the profession, partly from my 15 years regulating life and health insurance in Minnesota, and partly from my six years serving on the Actuarial Board for Counseling and Discipline (ABCD).

Most people with whom I talk agree with my conclusion. A friend who's a retired actuary recently told me that he's come to realize that most other people don't respect rules the way he does. He's disappointed by that realization. A co-worker who reviews actuarial memorandums but isn't an actuary says, "Actuaries can't lie." My husband, who retired as an actuary nine years ago, is a splendid youth softball coach.

One reason for his success: he knows the rulebook by heart.

Our integrity and knowledge make us respected professionals. Sometimes, however, we're so narrowly focused on complying with the rules that we don't realize that the rules themselves aren't reasonable. We need to evaluate each rule by asking ourselves the above questions—and use our judgment in following it.

Here are some situations from my experience that require actuaries to ask questions and analyze a situation, rather than blindly following the rules.

What's the Rule?

We sometimes read the Code of Professional Conduct, an Actuarial Standard of Practice (ASOP), or a statute once or twice and then rely on memory. Each

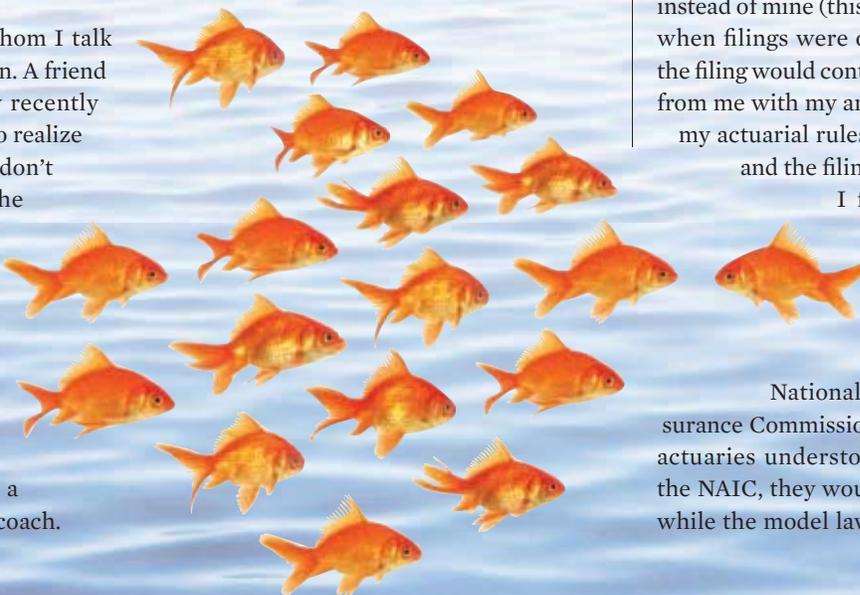
new situation requires a rereading of the rule so as to better apply it to the new situation. I've had many discussions with company actuaries who are certain that a state statute says one thing, but when we look at the actual wording it says something else.

Whose Rule Is It?

Many supervisors have a rule: "Do whatever I tell you to do." In the 1980s, I talked to an actuary who had followed the company president's orders to reduce health insurance reserves to a level much lower than was reasonable. The actuary later restated the reserves and lost his job. In this case, following orders led to violating the code and the standards. In retrospect, he regretted his decision to follow orders.

In my 15 years with the Commerce Department in Minnesota, I've worked for seven different commissioners. One former commissioner ordered me to approve a rate filing that I'd recommended be disapproved. His rationale was that he had the authority to approve or disapprove filings and the power to order the filing's approval. I agreed with his understanding of his authority but stated that his signature had to go on the filing instead of mine (this was in the old days when filings were on paper), and that the filing would contain a memorandum from me with my analysis. In that case, my actuarial rules trumped his rules and the filing was disapproved.

I frequently receive actuarial memorandums that demonstrate compliance with a model law of the National Association of Insurance Commissioners (NAIC). If the actuaries understood the function of the NAIC, they would understand that while the model laws are guidance for



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the states, there's no requirement for companies to comply with them.

What's the Rule's Purpose?

Actuaries sometimes insert statements in their memorandums that are arguably false, such as that small employer group rates are "actuarially sound" or that a rate filing complies with all state laws. When challenged, these actuaries reply that they're required by law to make these statements. A better understanding of the requirements would lead the actuary to put clarifying language in the memorandum, such as that the rates are actuarially sound except as the law requires them to be unprofitable or that a rate filing complies with certain listed state laws.

Often actuaries are surprised when I tell them that some laws aren't enforced. For example, Minnesota law requires that all rates be filed and approved before being used. The purpose of this law is to protect consumers. If an insurer reduces its rates, however, the state is unlikely to impose penalties for not having filed the rate reduction before reducing the rates unless the rate reduction resulted in damages to consumers or insolvency to the company.

On the other hand, actuaries sometimes follow the letter of the law but ignore its clear purpose. I've reviewed annual statements of actuarial opinion on a company's reserves that followed

the instructions to the letter, except for a footnote on an inside page that indicated the reserves had been reduced by the value of a very questionable asset. The actuary undermined the rules with his attempted sleight of hand.

As evidence that other regulatory actuaries have had similar experiences, the instructions for the health blank actuarial opinion recently were revised to require any deviation from the standard language be noted in a box on the first page of the opinion.

Is There a Compelling Reason to Break It?

Two states, Kentucky and Maryland, recently issued bulletins detailing circumstances in which the commissioner of insurance will rescind the state requirement that policy forms be filed before being used. Those circumstances relate to compliance with the federal Patient Protection and Affordable Care Act, which requires liberalization of benefits in major medical policies. The purpose of prior approval—to ensure that policies comply with state law—has been overruled by a desire to provide expeditiously a liberalization of benefits.

Another example would be if an actuary acts as a whistle-blower on unethical activities that he or she becomes aware of in the course of providing actuarial services. Actuaries are required to comply with Precept 9 of the code,

which reads: "An actuary shall not disclose to another party any confidential information unless authorized to do so by the principal or required to do so by law." I can imagine a situation, however, in which an actuary should disclose confidential information if there's a significant danger to the public in not disclosing it. In fact, Precept 1 of the code may require disclosure in order to "fulfill the profession's responsibility to the public." This is a situation in which one rule trumps another.

What Are the Consequences of Breaking It?

Although there are some circumstances in which rules shouldn't be followed, it's always important to evaluate the consequences of our actions. When I broke the "follow your supervisor's orders" rule in the case of the long-ago rate filing, the consequences appeared to me to be mostly favorable. It set a precedent that professional standards trumped that rule and fulfilled the intent of the law requiring actuarial justification for rate increases. There was a personal risk of losing my job or becoming known as a troublemaker, but I was willing to take that risk in the interest of protecting the public.

Every actuary faces situations now and again that require vetting optional courses of action through our code. An additional resource is the confidential guidance service that the ABCD offers to members of the profession. An ABCD member will help you identify the components of our code and standards that you need to consider. Deviations, if you consider them to be appropriate, also can be identified and addressed. Before I was a member of the ABCD, I requested guidance several times. Each time, I found the experience to be extremely valuable. □

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CONTINUING EDUCATION

Are you keeping track of your CE? Studying this article probably counts toward "other activities" on professionalism topics!

Most actuaries who are members of one or more of the five U.S.-based actuarial organizations must comply with the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States. Section 2.2.2 of these standards requires us "to complete and document at least thirty (30) hours each calendar year of relevant continuing education of which at least three (3) hours must be on professionalism topics and at least six (6) hours must be 'organized activities.' Section 2.2.7 goes on to describe "other activities" (not "organized activities") and says they "include, but are not limited to, reading actuarial literature, statutes, or regulations; reading other books, papers, or articles on relevant technical or professional topics...."

