

Precept 13—A Snitch in Time

JOHN WAS FINISHING attendance at a continuing education session. It had been a long session covering complex new material. John knew he needed credit for the session to stay current with qualification requirements. More important, he knew that if he mastered the material being presented he would increase his competence as a practicing actuary. Nevertheless, maintaining concentration for the entire session had been difficult, and John was glad it was over.

As John waited in line to turn in his attendance card, he saw something disturbing. Robert, an actuary whom John recognized, came into the room, joined the line, and turned in an attendance card. The disturbing part was that John had seen Robert come into the meeting room at the beginning of the session, pick up an attendance card, and then leave. He left before the moderator had even finished introducing the presenter. It appears clear that Robert was claiming credit for a long and demanding continuing education session he hadn't attended.

John is mindful of Precept 13 of the Code of Professional Conduct. This precept says that an actuary who believes another actuary has materially violated the Code of Conduct should consider discussing the issue with the other actuary and attempt to resolve the problem. If such discussion doesn't occur, or if it occurs but the problem isn't resolved, the actuary who has identified the problem must report the matter to the appropriate counseling and discipline body, which in the United States is the Actuarial Board for Counseling and Discipline (ABCD). Here, John believes Robert has violated Precept 1. This precept requires, among other things, that an actuary must act honestly and with integrity.

Many actuaries find Precept 13 distasteful. It's often referred to as the "snitch rule." There's an important reason that the code includes Precept 13. To a great extent, our profession is self-regulating. Most of us would prefer to keep it that way. However, our self-regulation takes place without benefit of a police force. This makes Precept 13 a critical tool. Without Precept 13, we suffer a big loss in our ability to identify and correct unsatisfactory performance. As distasteful as the snitch rule might be, it plays a vital role in our ability to effectively regulate our profession. Without effective self-regulation, we run the risk that outside authorities will take over. To a limited extent, this takeover has already occurred in the pension field.

Some actuaries see another problem with Precept 13.



They're concerned over contacting the ABCD and risking exposure to legal action by the referred actuary. The referred actuary might feel more offended than offending. To handle this problem, the ABCD has clarified its rules on anonymity. An actuary can now contact the ABCD and remain anonymous. The only downside is that the ABCD cannot act on any information the anonymous referrer has provided unless that information can also be gleaned from publicly available sources. This preserves the right of the referred actuary to know the source of information not available from other sources. An outside possibility does exist that a court of law will force the ABCD to divulge names of referrers, but this appears unlikely.

John concludes that whether or not he finds it distasteful, he must confront Robert. The confrontation leaves Robert embarrassed and apologetic. He offers to retrieve and destroy his attendance card. He assures John that "this

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will never happen again.” John watches as Robert retrieves and tears up his card.

John decides the matter has been resolved, and takes no further action.

This leads to the question of whether within the meaning of Precept 13 and its annotations a matter has been resolved. Suppose Robert decides cheating on professional education requirements is OK if you’re not caught. Or, if caught, it’s OK if you just promise not to do it again. It’s like a bank robber who’s caught but avoids punishment by promising to give back the money. John’s discussion with Robert has accomplished little.

John must use judgment to decide whether the violation has been resolved or not. If not, he is obliged by Precept 13 to report the violation.

Some observers have suggested that if a code violation involves moral turpitude, resolution isn’t possible without a refer-

ral to the ABCD. In this context, moral turpitude means conduct that’s contrary to accepted rules of morality. Neither the Joint Committee on the Code of Professional Conduct nor the ABCD has taken a position on this question. However, a practitioner can’t be faulted for concluding that, if moral turpitude appears to be involved, an apparent violation isn’t resolvable without referral to the ABCD.

Consider a very different case. Susan has just become a successor actuary for a pension plan formerly handled by Jane. In reviewing Jane’s assumptions, Susan concludes that they’re all reasonable except the retirement assumption. Early retirement benefits are heavily subsidized, and employees have consistently retired early. Nevertheless, Jane has assumed that retirement occurs at normal retirement age. Susan runs a series of valuations using retirement assumptions she considers reasonable. She

concludes that use of the inappropriate retirement assumption has consistently and severely understated costs.

Susan questions Jane. Jane argues that the assumed retirement age is reasonable because it’s the same as the plan-specified normal retirement age. Susan concludes that Jane has violated Precept 1 (skill and care), Precept 3 (practice standards), and, possibly, Precept 2 (education and experience).

As it happens, the plan is so overfunded that the inappropriate assumption and a more appropriate one would both result in a zero current contribution requirement. Susan believes moral turpitude is not an issue. Jane really thought she had been using acceptable assumptions. After a discussion, Jane agrees that Susan was right. Jane has adjusted her thinking on assumptions. Susan is comfortable that Jane is sincere.

Meanwhile, the plan sponsor has learned of the issue and is angry. The sponsor claims to have made business spending decisions on the assumption that contributions to the pension plan would be unnecessary for some time to come. A more appropriate retirement assumption will considerably shorten the period before contributions again become necessary.

The sponsor decides not to sue Jane or Jane’s firm. A suit would require a calculation of damages. The client’s attorney advises that it would be difficult to measure damages due solely to business spending decisions based on Jane’s calculations.

Susan is at a loss as to what resolution would be appropriate for purposes of Precept 13. She finally decides the case fits the “no harm, no foul” category. She decides no further steps are necessary to “resolve” the issue and that she is not obliged to report the violation. Neither the Joint Committee nor the ABCD has taken a position that would make Susan’s conclusion inappropriate.

It can be difficult to apply the provision of Precept 13 regarding a resolution of the apparent violation. More significantly, Precept 13 exists and must be taken seriously. It’s important not as a snitch rule but as a rule designed to help preserve the status of the actuarial profession as a self-regulating body. ●

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