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Professional Responsibility and Standard

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Summary: Do you know where your professional responsibilities begin and end regarding your duty to your employer, clients, the public, and the profession? How do the various types of standards—qualification standards, Actuarial Standards of Practice (ASP), and the Code of Conduct—fit together? How are these standards applicable to the daily practice of all actuaries? Using case studies, representatives of the Actuarial Standard Board (ASB), the Actuarial Board for Counseling and Discipline (ABCD), the Academy's Committee on Qualifications, and the Academy's Committee on Professional Responsibility will discuss examples of how an actuary can run afoul of actuarial standards, and what happens when he or she does.

Mr. Allan W. Ryan: I'm a director with Deloitte & Touche LLP in the New Jersey office. I'm chairperson of the AAA Committee on Professional Responsibility. The charge of this committee is to help increase awareness of the importance of standards of practice, including the code of conduct and qualification standards. When I use the term "standards" generally, I mean all of these things. The other panelists have similar or related roles in professionalism. We have quite a distinguished panel. Dick Robertson probably doesn't need much of an introduction. Notably, Dick was President of the Society of Actuaries (SOA)

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just about ten years ago, 1985–86. He is currently executive vice president at Lincoln National in Fort Wayne, where he is responsible for corporate actuarial, risk control, asset/liability management and so forth. Dick is currently chairperson of the ASB, and it is in that capacity that he's with us.

Henry Knowlton, also has had a long and distinguished career. Henry had his own firm which merged with Tillinghast in 1974, and prior to that, he spent some time in industry. During his tenure at Tillinghast he was involved in both life and employee benefit issues, and one of his responsibilities was as professional standards officer, setting policy within Tillinghast for adherence to and awareness of professional standards. Henry became a member of the ABCD in 1994, and the chairperson in 1996.

Finally, Bob Likins is vice president and actuary with Prudential in the individual insurance area. Bob also has been very active in Society and Academy affairs and his link to professionalism is that he is currently chairperson of the AAA Committee on Qualifications, which recently issued a revised exposure draft of the Qualifications Standards. I think this was an extensive and fine effort. It clarifies the existing document, and I think this is a big step and hopefully it will generate a great deal discussion, too. The comment period ended October 10, 1996.

By the way, I also want to introduce Lauren Bloom. Lauren is an unofficial member of the panel, and I think many of you know her. Lauren is the General Counsel for the AAA, and she has helped us greatly in putting this discussion together and in developing the case study.

We're going to discuss a case study. It is concise and straightforward, and it deals with an issue that is becoming very important and is something that no one is completely sure of because we don't have too much experience with it yet, namely the life illustration standard (*ASP No. 24*) and the model regulation that goes with it. Although this session was intended as an introductory session, I think it will be good for people who have already been very heavily involved with and thought a great deal about the standard and regulation. Each of the panelists will give their comments, from their point of view, and that hopefully will stimulate a little more discussion. The following is the case study:

> The Case of the Illustration Actuary
> Ginger Peechey, ASA, MAAA, works as the junior actuary for Ubetcha Life Insurance Company, a mid-sized company domiciled and writing life insurance in the State of Uncertainty. Ginger has been employed by Ubetcha Life since 1991, when she first completed her Associateship exams.

Ginger reports directly to Hartley Werkin, FSA, MAAA, Ubetcha Life's senior actuary. Hartley has been with Ubetcha Life for almost 30 years and devotes most of his professional time to nonactuarial managerial functions. He is also an avid tennis and golf player and has been known to be absent from the office days at a time socializing and taking practice putts with Ubetcha Life's president, Sonny Inherited. Consequently, Ginger performs almost all of the actuarial work for the company's required filings, and Hartley usually signs any required filings after reviewing Ginger's work. Although Ginger suspects that Hartley often skips rather quickly over the review, she has never felt comfortable asking him about it and has simply redoubled her efforts to be sure her work product is accurate and complete.

In June 1996, the Insurance Department of the State of Uncertainty adopted the NAIC's model illustration regulation for all sales illustrations used in the State of Uncertainty. The new regulation has an effective date of January 1, 1997 and requires illustrations with actuarial certifications to be filed on or before November 1, 1996. On October 10, 1996, Hartley informed Ginger that Sonny Inherited had told him, over a game of golf, that he was to sign the actuarial certifications for all of Ubetcha Life's insurance policies. When Ginger asked Hartley if he was qualified to make the certifications, Hartley replied, "Of course I am! After all I'm the senior actuary for the company, right? Besides, I don't need to worry about understanding this stuff. That's what I have you for." When Ginger pointed out to Hartley that although she had worked on life insurance pricing and dividends, she had never worked on sales illustrations before, Hartley became angry and told her, "Well, you'd better figure out how to do it, or else you'd better find another place to work." He then told her not to come back to his office until she had a set of complete sales illustrations certifications for him to sign.

Ginger contacted Ubetcha Life's accountant, Sy Slickly and asked for the interest history on the assets underlying Litelife, Ubetcha's most popular product. When the interest data arrived, Ginger thought it looked unduly optimistic, but Sy assured her by telephone that it was accurate and simply reflected astute investment policies. Ginger concluded that she could probably rely on Sy's representations, and that, in any event, she didn't have time to check further, given the short time she had to complete the actuarial work on the illustrations.

Ginger completed the draft certifications and gave them to Hartley on October 23. Her certification for Litelife included the following caveat: "The interest assumption for this product is based up on a history of successful investing. Similar returns are not guaranteed for the future." Her certification made no mention of relying on the accounting department for accuracy of the investment data. When Hartley saw the caveat, he challenged Ginger, saying, "Litelife is our best seller—you don't want to scare the customer away." Ginger insisted on retaining the caveat, and Hartley relented, saying, "Okay, fine, if that's what you want, we can add it. Just let me look these over, and I'll get back to you with any changes."

On October 30, when Ginger had received no comments from Hartley on the certifications, she asked him about them. He replied that he had made "a few minor edits," then signed and filed them. Ginger asked to get copies of the final certifications for her records; Hartley promised to provide them, but failed to do so.

Ginger's concern about the final certification increased when she got a call from Ima Squealer, a friend at BiggerNBetter Life, which is also located in the State of Uncertainty and is Ubetcha Life's major competitor. BiggerNBetter had gotten a copy of Ubetcha's filing, and Ima called Ginger to ask about it. Her main questions was, "Where did you get those interest rates and how can you justify them?" Ginger agreed that interest rates were a bit on the aggressive side, but told Ima that they came straight from the accounting department and she was sure they were okay. Ima pointedly asked Ginger if someone had fiddled with the rates, but all Ginger could do is repeat that, while they might appear optimistic, she believed the interest rates were supportable.

While Ginger tried to put on a good front for Ima, she was quite worried about the filing and so she waited for a day when Hartley would be out of the office and went through his files. She discovered that he had deleted her caveat from the final LiteLife certification, and that the illustration had been filed with the Department of Insurance. She also found a copy of the memo from Sy Slickly to Sonny Inherited that said, "Per your instructions, I've beefed up the investment return rates for LiteLife, which should persuade Actuarial to boost the interest assumption. Hartley is on the board and should be able to take care of any problems with Ginger. Let me know if you need anything else."

> At this point, Ginger believed that her work may have been based on inaccurate investment data, and that Hartley may have been involved in a deliberate effort to overstate LiteLife's earning potential. She also knows that the LiteLife illustration certification has been filed without what she considers to be a critical caveat, and that Hartley did not tell her that the caveat had been omitted. However, she knows that Hartley, not she, is the signing actuary.

Now Bob Likins will describe what he sees for both Ginger and Hartley from the viewpoint of qualifications.

Mr. Robert B. Likins: As Allan was saying, I'm the chairperson of the Academy's Committee on Qualifications, and I always appreciate an opportunity to be at a session like this, because the Committee on Qualifications has a somewhat lower profile than the ASB or the ABCD.

Table 1 is an attempt to put the three legs of professionalism's stool in perspective. The qualifications standards are in the second column to the left; these mean that you have to be qualified to do the work. In the middle are Actuarial Standards of Practice, which guide us on how to do the work. Then, on the far right, the ABCD says that, if by chance you fall off track, you can be counseled and get advice. The ABCD may also make recommendations for discipline.

TABLE 1
PROFESSIONALISM

Professional and Ethical Standards with which an Actuary Must Comply Code of Professional Conduct				
General Subject	**Qualifications (Education & Experience) to Do Work**		**How to Do Work**	**Advice/Guidance/ Discipline**
Specific Guidance	Code of Professional Conduct	General & Specific Qualification Standards for Public Statements of Actuarial Opinion	Actuarial Standards of Practice	Counseling and Discipline on Qualifications and Actuarial Standards
Provider	AAA Board of Directors	AAA Committee on Qualifications	Actuarial Standards Board	Actuarial Board for Counseling and Discipline

The case study relates to the qualifications standards. The case study talks about Ginger Peechey and who she is and what she has done, as well as her boss, Hartley Werkin, his work and how he may or may not be qualified.

The first subject I'd like to discuss is what are the qualification standards that we all must meet as members of a professional actuarial body? In Table 2 there are really

three levels of qualification. First, the Code of Professional Conduct which is published in the yearbooks of the various actuarial organizations is of particular interest. I'm going to re-word precept three of the Code: Don't do work you're not qualified to do, or, only do work that you are qualified to do.

There are not a great deal of specific directions to determine your qualification. It is really a matter of the actuary's judgment as to whether he or she is qualified to do the work. That's what precept three says, and all of us have to adhere to precept three whenever we do actuarial work. There aren't any distinctions among the different kinds of assignments you are given as there are for the qualification standards for making public statements of actuarial opinion. The two standards include the general qualification standard and the specific qualification standard. The general qualification standard always applies to any public statement of actuarial opinion. The specific standard applies only in three situations, namely the actuarial opinions for one of the three annual statement blanks: life and health, casualty, and the hospital statements. These qualification standards were issued, in current form, in 1993. As Allan pointed out, a new exposure draft was released on June 5, 1996, and the comment period just expired in May 1997. We've received a good number of comments.

There are three levels of qualification to consider. Let's consider the first level of qualification as it relates to Ginger and Hartley. It says, don't do the work unless you're qualified to do it. Ginger Peechey has to meet this qualification standard to do the basic work that she's going to do for Hartley. Hartley also has to be qualified to sign the statement. Ginger is qualified because she has done work relating to pricing and dividends. She is not being asked to sign the opinion, and she appears qualified to do the supporting work. Hartley, over the years, has probably done enough of this kind of work, and he's probably qualified. You don't have to do the work day in and day out, and he should be providing some oversight and review of Ginger's work, although there's a question of whether he really is. If he concluded on his own, or somebody else concluded that he really wasn't reviewing Ginger's work to any significant extent, then we might say that there would be a question about whether he was qualified.

Let me go to the second level of qualification. There is a very clear definition in the standard, and in the new exposure draft, of a public statement of actuarial opinion. It does not necessarily revolve around communicating findings to the public. Rather, it is defined by the following: is it called for by a law or regulation? Is it called for by an Actuarial Standard of Practice or by pronouncement of one of the specified accounting organizations? In this case study, the opinion required from the illustration actuary is a public statement of actuarial opinion because it is called for by an Actuarial Standard of Practice, specifically *ASP No. 24*. Before accepting

an appointment as an illustration actuary, the actuary should determine that he or she is qualified as described in the Qualification Standards for Public Statements of Actuarial Opinion. It is very clear in the ASP that to be an illustration actuary you must be qualified, and this includes meeting the general qualification standard.

TABLE 2
QUALIFICATION STANDARDS
UBETCHA LIFE INSURANCE COMPANY

	Ginger Peechey, ASA, MAAA	**Hartley Werkin, FSA, MAAA**
Qualification Standards	**Must Qualification Standard Be Met to Do the Illustration Work?**	
1. Code of Professional Conduct, Precept #3: Only do work you are qualified to do.	1. Must be qualified to do this work.	1. Must be qualified to do this work.
2. General Qualification Standard for Public Statements of Actuarial Opinion (PSAOs)	2. Not needed for nonsigner.	2. Needed for signer.
3. Specific Qualification Standard or PSAOs	3. Not needed for this work.	3. Not needed for this PSAO.
Qualification Standards to Be Met By Each Person	**Qualification Standard Met?**	
1. Code of Professional Conduct, Precept #3.	Qualified	Probably qualified based on work over his career
2. General Qualification Standard for PSAOs.		
• Basic Education		
—General Actuarial Mathematics	Yes, ASA	Yes, FSA
—Applicable economic, regulatory, and legal environment	Possibly not; exams beyond ASA unknown	Yes, FSA
—Identification, evaluation, and management of risk	Possibly	Yes, FSA
• Continuing Education	No use of Alternative Education Provision noted	
—Have it?	Possibly not, unknown	Probably not
—Documented?	Possibly not, unknown	Probably not
• Experience	Yes	Possibly, depending upon his involvement
3. Specific Qualification Standard for PSAOs.	Not applicable	Not applicable

The third level of qualification, which relates to the specific qualification standard, does not apply here because it is not one of the three specific annual statement reserve opinions.

As we look at whether Ginger, even though she doesn't have to meet the general qualification standard, or Hartley, who does have to meet it, in fact would meet this standard, there are three things to consider: One, do they have the basic education they need? Two, do they have the continuing education? Three, do they have the experience?

With regard to the basic education, I would say that Hartley does qualify because he is a Fellow of the Society of Actuaries (FSA). There is some question in my mind as to whether Ginger would meet the basic education requirement. We don't know whether she has gone beyond the ASA exams.

Second is the requirement for continuing education. The case doesn't explicitly tell us if they have continuing education. They not only must have the continuing education, but they must also document it. You have to have 24 hours of continuing education in a two-year period; that's, on average, 12 hours per year or 24 hours for the last two years. You don't have to use any particular form to document it, but you are supposed to document it. It's not likely that the people you're going to give this opinion to are going to request documentation. What is more likely to happen based on the little experience I've had in this area, is that somebody may challenge you. Some other actuary may challenge you, or your employer may challenge you if things go badly. Then your credentials may come into play and if you haven't documented your continuing education, I'd say you're at risk.

The third requirement is that you have recent and relevant experience. I certainly think that Ginger has recent and relevant experience through her pricing and dividend work. There is some question in my mind whether Hartley has recent and relevant experience. If he reviews Ginger's work, that would be fine, assuming he is really doing it. If he is really just playing golf most of the time and just signing without looking and thinking about it and questioning the work, then he may not have recent and relevant experience. Given that he has done work in this or related areas sometime in the past, he wouldn't have to actually do all the work along the way, but he would have to be somewhat involved. Oversight is a legitimate kind of involvement, if it is really being done.

A question was raised from the floor: if you had never done any of that kind of original work yourself, would simply reviewing it be adequate to satisfy the recent and relevant experience requirement? This is a difficult question and involves a lot of judgment. You may not have done specific work in a previous assignment, but you might have vigorously reviewed and supervised the work of other actuaries, and could claim to have experience in an area. If you had never done the specific work and never really paid that much attention, and your review was superficial, I

would say there's a real question about whether you have any experience in the area. I know in some companies people are vigorous questioners of the kind of work that they review. They dig into it, request documentation, and they want to know what's gone on. I think you could gain experience that way.

Mr. Richard S. Robertson: As Bob indicates, the standard that is at issue is *ASP No. 24*, compliance with the NAIC life insurance illustration model regulation. This standard was developed as part of the joint effort of people within the NAIC who were concerned with the development of the model regulation pertaining to illustrations. There was a very carefully designated division of responsibility between those responsible for developing the regulation and the standard; that is, which requirement governs what?

During this process of developing the standard, there was a faction within the NAIC that was concerned over whether the actuary could be relied upon to exercise professional judgment in something as sensitive and competitive as assumptions for insurance illustrations. Many people within this faction wanted the NAIC to either specify the assumptions that were made, or at least give very specific guidance as to what latitude the actuary might have in choosing those assumptions. We were able to persuade them that our standards and professionalism, and our professional conduct, would provide the necessary discipline to have a solid enough foundation that they need not be that specific in the regulation and could rely on the actuary's professional judgment. To the extent we see situations like this develop, it's going to undermine that degree of credibility that we, as a profession, have. It's very important that this not be treated lightly, and, of course, we don't.

In what way did the actuaries involved follow or not follow the standard that is before them? First, Ms. Peechey got off to a fairly good start. The standard says that the earned interest rate underlying the discipline current scale should be based on the insurer's recent historical experience. She quite properly asked for information as to what the insurer's recent historical experience was, and began to gather the information necessary to do her job. Unfortunately, she got off the track. When the information came back, she was told to what extent she could rely on the work that the accountant had done. While an actuary may rely on data supplied by another person, in doing so, the actuary should disclose such reliance for the certification. The standard also says the accuracy and comprehensiveness of data supplied by others are the responsibility of those who supply the data; however, the actuary should, where practicable, review the data for reasonableness and consistency. Clearly, she failed to disclose the reliance in the draft of the certification she presented to her supervisor. While it's not entirely clear, it is probable that she did not give sufficient review to the reasonableness and consistency of the information,

although she clearly had some reservations over whether the data was, indeed, reasonable or consistent.

Now, turning to Mr. Werkin. It appeared to me that he probably didn't even take the trouble to read the ASP and that he took his responsibilities in signing this certification very lightly—far more lightly than the people at the NAIC, or those of us who were involved in the development of the standard, expected professionals to take it. As evidence, he did not even follow the procedure that is described in the standard for the appointment of an illustration actuary. Bob cited the qualification part of Section 5.2, but that paragraph also goes on to say that the appointment should be in writing. Mr. Werkin also failed in many other respects to follow what is required in the standard. Apparently, he was able to justify in some way, not only taking the recent historical experience as the basis for the interest assumption, but apparently participating in a process of enhancing that experience, no doubt, based on his optimism of the skill and resources of the investment staff of the company. In fact, he was probably sufficiently concerned that he made sure that his assistant was not aware that this enhancement had taken place. This kind of conduct goes beyond failing to comply with the Standard; it gets into the area of the Code of Professional Conduct.

Furthermore, Mr. Werkin not only failed to follow the requirements as to disclosure with respect to reliance, but he also failed to review the data for reasonableness and consistency. Or perhaps he did and failed to act on what he had done. In general, it's quite clear that he had no particular desire to either understand or follow what is said in the standard. At this point, it is appropriate to turn the issue over to the ABCD representative on our panel.

Mr. Henry K. Knowlton: I've been asked to predict what the ABCD would do. This illustration standard is somewhat unique in that it could probably be labeled as the 1996 Complete Employment Act for the ABCD. It's the only standard that I know of where the employer of a company actuary may have a real interest in having his or her actuary turn in an actuary of another company. That’s what makes it almost unique in that respect.

Let's talk about Ginger Peechey first. Ginger is sort of between a rock and a hard place. Hartley Werkin has given her good advice. He suggested one of her options was to find another job. With what's gone on, would you really want to stick around and work for Hartley?

Option 2: in the Code of Professional Conduct, in precept 14, an actuary with knowledge of an apparent, unresolved material violation of the Code shall disclose such violation to the appropriate counseling and discipline body of the profession,

except where disclosure would divulge confidential information or be contrary to law. That means that if Ginger thinks that Hartley has violated the Code, she's responsible to turn him in.

One of the options in the annotations is that she could discuss this with Hartley and try to encourage him to withdraw his certification and fly right. I'm not sure she would have had very much luck in that. If she doesn't think she would, she could conceivably whisper in her friend's ear and encourage her to turn in Hartley because it's clear that she suspects something is going on. If Ginger did this she would run afoul of precept ten, dealing with revealing confidential information to another person. It's a slippery slope. Probably the best advice and the advice Lauren has probably given to actuaries from time to time, is to find another job and then blow the whistle. As a practical matter, there hardly seems to be much else left for her to do. I doubt that if this came to the attention of the ABCD that the ABCD would do more than counsel Ginger with respect to her failure to disclose reliance. That's not a horrible thing to do, and it would probably end at that.

Hartley Werkin is another matter. The ABCD has never had a case that's quite this black and white. Now, I don't suspect we'll ever get one unless somebody is very careless, leaves a job, and his successor finds the type of files that are akin to the Watergate tapes. He seems to have violated precept one, acting without honesty and upholding the integrity of the profession. He seems to have violated precept two, which relates to doing work with integrity, skill, and care. Bob's already talked about how he has possibly violated precept three on qualifications. We don't really know, but I, like Dick, had the impression that he hadn't opened the Standard, or looked at it, but had just relied on Ginger's work. We may be wrong, but it appears he hasn't followed precept four of the Code. Precept five, relating to disclosure, requires him to give credit to Ginger, who did all the work, so someone getting the certification would know they could ask her questions and not just him. In this case, we'd also cite precept 16, which is abiding by the Code of Professional Conduct, since he failed five of the first five precepts.

I don't know what would happen to Mr. Werkin. I'm sure it would be more than counseling. Let me make one thing clear. The ABCD does not impose discipline. It is a fact-finding body that reviews cases and recommends action to the disciplinary committees of the various actuarial bodies. We have no authority to impose any discipline at all. If there's any recommendation for public reprimand, suspension or expulsion, the final decision does not rest with us. We don't have that kind of authority. The ABCD also wouldn't be counseling. I suspect if we got anything nearly as bad as this, it would be somewhere between suspension and expulsion, but I can't speak for what the disciplinary bodies of the various

organizations would do. If there was, indeed, fiddling with the numbers and deliberate collusion to make illustrations look good, that's blatant.

Mr. Ryan: I hope this has given you a little bit of an idea of how qualification standards, actuarial standards of practice, and the Code of Conduct, all fit together. I think this case, as the panelists all pointed out, is clear cut. One point I want to comment on is that Ginger originally put a caveat in her opinion that stated that while the interest assumption for this product is based upon a history of successful investing, similar returns are not guaranteed for the future. I'm not sure what that means, but I think the fact that Hartley Werkin took it out is clearly wrong. You don't do that kind of revision without informing the person who did the initial work. But whether the caveat was in or out, I don't think it would make any difference.

Mr. Robertson: Well, Allan, let me challenge your assertion. The one thing that Werkin did that I thought he might have some justification for, was removing that statement. That was neither called for nor required in the certification.

Mr. Ryan: I agree, and it doesn't add anything. He should have told her, though, if he was taking it out.

Mr. Robertson: Yes, I don't disagree with that. Ginger probably put that in partly to communicate her lack of comfort with the interest assumption. It doesn't satisfy the requirement that she exercise proper review of the data and disclose the reliance. I think it's a good disclosure. I think it is useful to have there, but it is not required and it is not improper that it be removed from the certification when it's made.

Mr. Likins: I view Hartley Werkin as the person who really has most of the responsibility because he is going to make a public statement of actuarial opinion. Ginger is supporting that effort, but Ginger is not making the public statement of actuarial opinion. Most of the fault goes to Hartley for what he does. If Hartley, in the end, said, “Ginger, things are moving a little too fast. We changed our mind. You sign it,” then, all the requirements should apply to Ginger.

Mr. Gary Corbett: We must be careful that we're not making assumptions about interest rates. All she's checking is whether data were historically accurate. It's a matter of fact, really, whether they had experienced those interest rates. I think she should have done some checking to see, as a matter of fact, whether they had expressed those rates.

Mr. Robertson: For the record, we might point out that Gary Corbett was my predecessor as chairman of the ASB and, in particular, his name was on this document when the standard was promulgated.

There's one other part of the documentation that I should have gotten into but did not. That is that section 6.3 of the standard requires that the illustration actuary maintain documentation that supports the actuarial certification with respect to the construction of the disciplined current scales to include a description of and rationale for the interest rate assumption and the method used to allocate credits to the policies. It appears from the substance that she did not have that information at any point in time and was not in a position to meet this documentation requirement. The information, apparently, was in the possession of the accountants, and she needed to get that and get that into her documentation. The point is certainly well taken.

From the Floor: If Ginger has a problem, how would you react if Ginger, as she hands in her report, tells the board of directors of the situation, thus relieving herself of the burden. How would that meet or not meet requirements?

Mr. Knowlton: I don't think it addresses precept 14 of the Code, unless, by doing so, she forces a withdrawal of his certification. She has then solved the problem in a different way, but not the way that the Code of Conduct suggests.

Mr. Likins: Let me add one other comment. What if Hartley Werkin decides not to include his Member of the American Academy of Actuaries (MAAA) or FSA designations as part of his signature? There are cases where people make public statements of actuarial opinion, and leave off the professional designation. You can't just leave your credentials off and think that you don't need to be qualified. If you're a member of a professional actuarial body in North America, and they all have essentially the same Code of Conduct, you have to comply with the qualification standards. You can't just forget about your credentials.

Mr. Ryan: I want to add that the Code of Conduct says that the form of the signature does not affect the actuary's responsibility.

Ms. Lauren M. Bloom: Now there is a possible collateral problem which Ginger may have under precept nine of the Code. Precept nine says that the actuary has a responsibility to avoid having his/her work used to either violate or evade the law. If she thinks that her work product is being used by her supervisor or others in the company to violate or evade the requirements of state insurance regulations, going to the corporate auditor might be one way to solve that problem.

From the Floor: A memo showing that we're cooking the interest rates would be regarded as a confidential document, and if it were obtained surreptitiously, would the ABCD possibly not consider it? I mean someone may violate the Code of Professional Conduct in getting that document.

Mr. Knowlton: Fortunately, we've never faced that question. I don't know how the ABCD would react. Certainly, if we had a complaint that this happened without the document being attached, and later found it through an investigation, then it's clear. Of course, the danger is that can disappear from the files in the meantime, which is most likely what would happen.

From the Floor: What if she had simply responded to Ima's criticism by saying, "You better report my supervisor." Then she would not be releasing any confidential information.

Mr. Knowlton: She could do that; that's an option. It makes it sort of a blind complaint because the actuary making the complaint, Ima, doesn't have any hard evidence that anything was wrong. She just suspects it. In a society as litigious as ours, it's fairly dangerous to do this sort of thing if you don't have more than just general suspicion.

Mr. Ryan: Lauren, do you want to comment from a legal point of view? Is there any example of someone who has gone in and obtained material surreptitiously, so to speak.

Ms. Bloom: It probably wouldn't help. Ginger is, from a legal perspective, potentially involved in a deliberate fraud on the public and in breach of the regulations. In a situation like that, I think the first thing Ginger needs to do is get herself an attorney, because she is party to something that, I think, is a problem under the law. The other thing I want to comment on is Ima's phone call and its potential antitrust implications. As Henry said earlier, this regulation is unusual and it creates an incentive for one company's actuary to complain against another. I think it's important to point out that the ABCD is there, not for anticompetitive purposes, but to encourage professional behavior. If Ima makes that call, it's important that she makes it for legitimate reasons, like furthering the integrity of the profession, and not simply to get her competitor in trouble.

Mr. Robertson: Can I ask you to talk a little more about that? Here is a competitor's pricing actuary calling the pricing actuary of Ubetcha Life, and asking about the basis for Ubetcha's pricing!

Ms. Bloom: It certainly would bother me. If I were BiggerNBetter Life's attorney, I would have a long, quiet talk with Ima. I think, and this is part of the reason we built this into the case study, that even a professional with the best intentions can get into serious legal trouble. In the five years I've worked with the Academy, I've discovered that actuaries love to talk to one another, and they tend to operate under the premise that if two opinions are good, three are better. The problem is that when you have those kinds of talks with your peers, you need to be very careful to do so in a manner that is consistent with the requirements of the antitrust laws. As Dick points out, you have the pricing actuary from Ubetcha Life's biggest competitor calling, saying, "Justify your prices; I dare you," which is an invitation to conspiracy. You're not attorneys, so don't try to practice as attorneys; instead spend a little time with your corporate attorney to understand what your obligations are under the antitrust laws. That way, you won't find yourself in a situation like this. Also, if you ever get one of those calls, you will know how to respond.

From the Floor: I wonder if the panel could comment a little bit more on reliance. It seems to me that from a practical point of view, it's a little hard to understand. On one end of the spectrum is documenting anything I got from anybody else, and having a 500-page long certification. On the other end of the spectrum, we have a prohibition against relying on others except in very specific cases. My practical question is: suppose you're using data that your department does not maintain, but that is in the basic records of your company? For example there's expense data, which the comptroller's department maintains as a normal part of business, and which your department has access to. What kind of flexibility is there, especially if you're using a standard report that your company has readily available?

Mr. Robertson: The provision that I read in ASP No. 24 is actually an abbreviation or a summary of a more detailed discussion of reliance that is in ASP No. 23, which pertains to data quality. No. 23 says, as does No. 24, that the actuary may rely on data supplied by others. In doing so, the actuary should disclose such reliance; furthermore, it talks about the actuary's responsibility for reviewing the data for reasonableness and consistency. It then goes into more depth as to what that review should consist of, and what the actuary should do if there are problems, or if the actuary suspects there may be problems with the data.

In terms of talking about the responsibilities of the two actuaries in the case study, it would have been quite appropriate to have a more lengthy discussion of those responsibilities as outlined in ASP No. 23. Both actuaries should have read and fully understood the implications of ASP No. 23 and No. 24, as well as all the other standards that may have relevance with respect to their work. The valuation standard (*ASP No. 22*) has some additional issues of reliance that, in some respects may well be more specific and impose additional requirements on the actuary.

That's because, particularly in this case, if it's a company that has several different kinds of business and where the responsibilities may be diffused throughout the organization, the valuation actuary may well have to delegate the valuation work to actuaries that are specialists in the certain class of business being valued. That imposes some additional concerns about the type of responsibility the valuation actuary is taking for the work that is being performed by others. I know that we spent a great deal of time in developing that standard, being clear as to what is expected of a valuation actuary under those circumstances. As such, it gives guidance that is considerably more involved and does impose some additional requirements on the actuary beyond the general requirements of ASP No. 23.

Mr. Jack M. Turnquist: Didn't part of this come from the Model Regulation? Doesn't it say that the valuation actuary cannot state reliance?

Mr. Ryan: In the opinion you cannot state reliance. I think that's right.

From the Floor: Mr. Robertson mentioned expressing reliance on the person who did the work. To what extent is it important to state reliance on someone who is working for you?

Mr. Knowlton: I don't think you're necessarily stating reliance. You're just informing the reader that this opinion that you've entered into was based on work done by a couple of people, as in this case. I'm assuming that Hartley did essentially nothing, and that, basically, the work was Ginger's. I think he should've told the world the work was Ginger's. In the normal course of events, if somebody else does the work, but you have reviewed it to the extent that you are willing to claim the work as yours, it strikes me that you don't have to express any reliance. Do you feel differently than that, Lauren?

Ms. Bloom: Precept five of the Code calls for the actuary to indicate, when communicating professional findings, the extent to which the actuary or other sources are available to provide supplementary information and explanation. That is there because, as Henry said, there are going to be instances where the signing actuary is not the person who did most of the work. It has that annotation there; it says, I'm the signing actuary but, if you have any questions, call Ginger and she can answer them for you.

From the Floor: When Mr. Likins was speaking about experience, he qualified that as being recent and relevant experience, which can be somewhat objective, of course. It seems to me, though, the minimum level of experience has to be defined as familiarity with and understanding of, the applicable standard of practice, and compliance with the Code of Conduct itself.

Mr. Ryan: That's a good point. Does that mean if people are unaware of the standards, they can't say they're qualified to do the work?

Mr. Likins: In this case, Hartley Werkin, to comply with the Code of Conduct, as it relates to qualification, would have to be familiar with precept three of the Code, and familiar also with ASP No. 24, and the state's illustration regulation, which presumably is close to the Model Regulation.

Ms. Bloom: As a member of the Academy you get the full set of all the standards, including the Code of Conduct, the Qualification Standards, all the ASPs, and the updated exposure drafts as they come out. You don't have to own your own set. Even if you are not a member of the Academy, you need to have access to them. If you don't read them and you don't follow them, you can get in trouble with your profession and you can be found guilty of malpractice. When you go back to your offices, look for the gray binders, and make sure that the set that you have is complete. If it is not and you're missing a couple of booklets, call the Academy office and we will send them to you free of charge. Nonmembers can also obtain the standards from the Academy, because the Academy knows it's very important for every member of the profession to have a complete set of standards at their disposal so that they can use them as they work.

Mr. Ryan: And one of your jobs is to scare people a little bit, right?

Ms. Bloom: Absolutely.

Mr. Ryan: One comment I want to make, too, is that just because you're not a member of the Academy does not mean you're not bound by the standards. As long as you are a member of any of the organizations that has adopted the Code of Conduct, including the Society of Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the American Society of Pension Actuaries, you're just as bound by the standards as an Academy member.

Ms. Bloom: Also, if you're a member of the Canadian Institute of Actuaries (CIA), the standards of practice and the qualification standards apply in the U.S. The Rules of Conduct for the CIA are almost identical to the Code of Professional Conduct.

From the Floor: I'd like to know if we can discuss precept three, which dictates you do only the work you are qualified to do. I suspect that quite a few actuaries, particularly young actuaries, are asked to do things, or are given project work to do, and the actuary giving them the work is considering that opportunity for them to grow and learn. That creates a great deal of potential for difficulty.

Mr. Likins: I have often thought about that because it's one of the things that closely relates to the rest of the qualification standards for making public statements of actuarial opinion. They are much more detailed as to what you have to do to be qualified. It would clearly be inappropriate to cut off all learning at the lower levels. Let's assume a person who is an actuarial student or an ASA rotates into my area of responsibility, and this person hasn't had experience in this kind of assignment before. It's incumbent on me to work closely with this person. Where do you draw the line when somebody says, this is my work product and gives it to the boss and the boss says, "I'll accept this because this is your work product and you're an actuary?" You have to be careful about that. Even being an FSA does not automatically qualify you to do anything. You do have this experience requirement, but, the experience requirement isn't intended to prevent you from getting any experience because you're not qualified to do anything. The experience requirement says you need to work with the people that know something. Not all of them they may be actuaries. How does somebody move around in a company? It just has to be done with care in the early going.

Mr. Robertson: Let's look at this particular case, and assume, for the moment, the depth of Ginger's qualifications is not entirely clear. It sounds like she's actually pretty well qualified in this area. Let's suppose for the moment that she's not well-qualified and for the first time getting into the pricing area. The key there is that her actuarial supervisor, in this case Hartley, has the responsibility for supplying the knowledge, experience, and judgment with respect to the work product that Ginger is not prepared to do. It is his responsibility to exercise review of what she is doing, and to be sure that she has done all that is appropriate, and to take into consideration her inexperience.

From the Floor: What would happen to the company or what would happen to the individual in this case study?

Ms. Bloom: Since the actuarial standard and Model Regulation have become effective, I've received many panicky phone calls from members of the profession saying, "What's my liability under this thing?" I usually give the standard, legal answer, "I don't know." I can guess; I can estimate; I can try to predict, but I don't know. I can't guarantee you that you're liable, and I can't guarantee you that you're not. Generally, in this country, I don't ever try to guarantee against liability. The right under the regulation to sue the actuary hasn't been applied yet in the courts. It's hard to say exactly what could happen to a company or to an actuary who is involved in a certification that is in breach of the regulation, particularly in an instance like this where you have documentary evidence out there that suggests deliberate fraud. My sense is that the potential for liability is very high. The signing actuary is at risk in ways that other members of the company's executive staff may

not be because the signing actuary is making a certification based on which policyholders may argue that they were lied to. This regulation is unusual in that it creates a direct connection between your work product and the policyholders that doesn't tend to exist in other settings. The policyholders and their attorneys will have you called to their attention in ways that they haven't in other work that actuaries have done in the past. We don't know whether you're going to see the kind of massive class actions suits that the securities laws have generated against accounting firms. If you work in this area, please be very cautious. As actuaries, the law doesn't expect you to be perfect, but it does expect you to exercise due diligence and reasonable care. A critical element of that is knowing your obligations under the illustration standard and fulfilling them.

Mr. Robertson: Several companies are being sued under class actions based on allegations of misleading illustrations. If the plaintiff's attorney can find, as they would, that the company not only may not have been able to meet the illustrations, but has in it's files evidence that it has violated state insurance law with respect to those illustrations, it seems to me the company will be in a terrible spot.

Ms. Bloom: Absolutely. I think the difference is that with the new regulation, the actuarial certification may lead the plaintiff's attorney to think of the actuary as a potential defendant a little faster than might otherwise be the case.

Mr. Robertson: What about criminal law? In the case study, the company has violated the insurance code, and the actuaries, at least one of the actuaries, is clearly aiding and abetting that.

Ms. Bloom: Maybe they are if the documentation proves to be decisive. There is a great deal in the fact pattern you just don't know about. The other thing is that an actuary who wants to engage in fraud probably isn't going to be stopped by the Code or professional standards. Certainly an actuary who is being cautious about negligence liability, which is to say, inadvertent error, is going to want to be very careful under the Code of Professional Conduct.

From the Floor: Assume Ginger has decided to leave her job, and while being interviewed, is asked why do you want to switch jobs? She has her own considerations to think about: her current employer, her potential new employer, and all the issues related to this situation. What advice would you give her on whether she should disclose why she wants to leave? Would it be up to her discretion as to what to disclose, and at such time that she has the job how might that change?

Mr. Knowlton: I don't think she can disclose much about the specific incident to her prospective employer. She could say, "There are some things that have happened with my boss that make me uncomfortable, but I'm not at liberty to say what they are, specifically." It seems to me that is about as far as she should go. Even after she leaves the employment of Hartley, she still can't necessarily talk about this case, though, but as Lauren says, actuaries are prone to talk. Word will probably get out. She still has a responsibility, even though she has left the job, with respect to precept 14 because she has knowledge of material violation of the Code. Does that answer your question?

Mr. Robertson: Can we be more specific about that? Suppose she takes the high road that's available to her and resigns from the company. After having resigned from the company, she surely has a responsibility now, since it was obviously not available to her by talking to people within the company, to rectify the situation by approaching the ABCD.

Mr. Knowlton: Yes, that is correct. I believe she clearly has that responsibility.

Mr. Ryan: I'd like to bring in one other concept, peer review. A subcommittee of the Committee on Professional Responsibility has developed a white paper on peer review, which will be released shortly to the entire Academy membership. This document is not a standard of practice, but rather a discussion paper intended to provoke thought. I know some companies, to varying degrees, have formal peer review, although other professions have developed it to a much greater extent. In this case, how would peer review have helped, or could it have helped at all? Perhaps what Hartley did could be peer reviewed, if it were done properly. To have independent peer review would have been very difficult given the situation in this company. It doesn't sound like Ginger had many allies.

From the Floor: Because of the reference to competitive situations, it would be very difficult to develop any degree of professional peer review that is independent.

Mr. Ryan: Right. Even within the same company.

From the Floor: Can I go one step further with respect to my question. We have identified that Ginger has the responsibility to approach the ABCD in respect to this situation. Suppose she doesn't. Has she, by not approaching the ABCD breached the rules of professional conduct?

Mr. Knowlton: Yes, clearly, precept 14.

From the Floor: That has been specifically stated with respect to the Canadian Institute, rather boldly to the chagrin of many Canadian actuaries. I think it has not been made overtly clear in the Code with the U.S.-based organizations, and I'm pleased to hear the statement made.

From the Floor: We haven't had any discussion at all about the actuarial profession's duty to the public. Does Ginger have any responsibility to go to the insurance department?

Mr. Knowlton: From a professional point of view, I don't think she does. I think she has a responsibility to go to the ABCD. However, from a legal point of view, since by not doing so she could be viewed as participating in a fraud, she certainly should. Lauren also suggested earlier that Ginger seek legal counsel.

From the Floor: I think Ginger also has some internal company code of conduct issues that she has to be concerned about. For any of you on the panel, what are your thoughts in terms of her obligation to go to the board of directors or the company's auditor?

Mr. Robertson: I work for a large company. Were something like this going on in our company, and if I didn't feel I could discuss it with the president of the company, I would go to either the general counsel or the internal auditor, or both, and maybe go to the audit committee of the board. However, our company is organized to make that possible and to encourage people to do that. In our case study, I strongly suspect that the president has the board in his pocket, and that Ginger going to the chairman of the audit committee, if there is an audit committee, is probably the first step in a career change for her, which may actually be appropriate. It may be that once the career options are lined up, that might be the proper course of action.

From the Floor: I would agree with that. I also would think the board of directors has some legal responsibility, no matter how much they're in the pocket of the president.

Mr. Robertson: I think it would depend a great deal on the way that company's government is actually managed. As the final step of trying to fulfill her responsibilities, probably after she has resigned, Ginger may find it very appropriate to talk to the right people. Again, her attorney has to tell her what she can and cannot do.

Mr. Knowlton: Although this case study doesn't explicitly say it, if the president controls the company and the board, we can see that one of the morals of life is that

being on a board of directors can be dangerous. If you are on a board where the chief executive officer (CEO) controls everything, I think you've put yourself in a pretty dangerous position.

From the Floor: Can Sonny Inherited bail everybody out by actually crediting high interest rates for say a year, and then come up with revised illustrations later on?

Mr. Knowlton: No. It must be a reasonable expectation.

Mr. Likins: The law and the standard are quite specific. You base the interest not on what you are paying but on what your recent historical experience is. A company can't suddenly pay 12% interest and say we're going to use 12% in our illustrations; that's not going to solve any problem, an it is not going to be getting at the issue the regulators have in mind.

From the Floor: Suppose Ginger leaves her job and goes to the ABCD, and the company complains she's out for vengeance, which might be accurate. What are you going to do then?

Mr. Knowlton: I think if we have a complaint like this we'd have to take it seriously, at least to the point of assigning somebody to investigate it. If you sent another actuary into the company to investigate a case like this and found that you were dealing with interest rates that were insupportable by a significant margin, you would certainly think that Ginger's complaint had a lot of validity and carry the case farther.