Ethics for Actuaries
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Mistakes Happen

The Relationship between Failure and Success
Self-Preservation and Infalliblity

“Sometimes you’re wrong and I’m right…. Sometimes I’m right and you’re wrong”

Instinct may cause you to:
• Deny the mistake
• Make excuses
• Ignore potential consequences

“Learn from the mistakes of others. You can’t live long enough to make them all yourself.”
- Eleanor Roosevelt

College Admissions Scandal

• A criminal conspiracy to influence undergraduate admissions decisions at several top American universities
• At least 31 people are alleged to have been part of the conspiracy, a number of whom have pled guilty or agreed to plead guilty.
• Thirty-three parents of college applicants are accused of paying more than $25 million between 2011 and 2018 to William Rick Singer, organizer of the scheme, who used part of the money to fraudulently inflate entrance exam test scores and bribe college officials.
• Among the accused parents are prominent businesspeople and well-known actors.
College Admissions Scandal

• Who was harmed by this scandal?

• Why did those involved think it was ok?

• Did they assume they would get away with it?

Discussion 1

• It Could Happen to Me Actuaries, Inc. has been providing actuarial services to the Startup LLC Defined Benefit Plan for a number of years.
• It is one of a few clients that they have with Shady TPA
• With only a few employees, the plan was established as a standalone traditional Defined Benefit Plan with a safe harbor benefit formula and top-heavy provided by the DB Plan.
• The company rapidly expanded in 2015 and a combined plan redesign was implemented to fit the changing demographic

Discussion 1

• Startup LLC has asked for a projection for the 2019 Plan Year
• When looking at the valuation, It Could Happen to Me Actuaries, Inc. notices that the plan document still provides the Top Heavy minimum in the DB plan
• Shady TPA is responsible for maintaining the plan document and amendments
• Top Heavy has been provided in the Profit Sharing plan since 2015 when the Profit Sharing plan was adopted and the benefit formulas were changed
Discussion 1

• What should It Could Happen to Me Actuaries, Inc. do next?

• What if Shady TPA is not cooperative?

• Should the actuary contact the client directly?

Circular 230 10.22(b) Reliance on others.
Except as modified by §§10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

POLL #1

How careful are you with your client communication?
A. Very careful: I thoroughly cover all details and disclosures in my communication with clients.
B. Somewhat careful: I highlight the important information but avoid unnecessary details and technical terminology
C. Not careful: Most clients don't understand the details or read the information so I typically don't provide any additional communication
Discussion 2

• You are the actuary at Top TPA Inc.
• Top TPA Inc. has provided services to a large 401k plan for over 20 years
• The demographic is ideal and the owners are looking to maximize their retirement benefits
• After providing a combined plan proposal, the client decides to implement a Cash Balance Plan for 2018
• The Documents are signed timely and employee notices are issued in October of 2018

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Discussion 2

• It’s March of 2019 and you follow up for census data as you have not heard from the client since October
• The client informs you they had to deal with a recent lawsuit and do not have the funds to contribute to the Cash Balance Plan
• They have decided they do not want to implement the plan for 2018

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Discussion 2

• What options do you have?
• What are your responsibilities to the plan and to your firm?
• Should you have provided more disclosures in your proposal?
• How could you prevent this in the future?

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Discussion 2

• IRS Circular 230: Best practices for tax advisors
  (a) Best practices.
    (1) Communicating clearly with the client regarding the terms of the engagement...
    (2) Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law to the relevant facts, and arriving at a conclusions supported by the law and the facts.

Discussion 2

• IRS Circular 230: 10.34 Standards with respect to tax returns and documents, affidavits and other papers.
  (c) Advising clients on potential penalties -
    (1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to-
      (i) A position taken on a tax return if –
      (ii) Any document, affidavit or other paper submitted to the IRS

Discussion 3

• You work with Barclay TPA on 50 DB/CB plans.
• Barclay sends you the annual request information for each plan and you complete the annual administration.
• Barclay sends the census for the client, Smiley, Inc., for 2018 and Dr. Smiley and spouse both have comp that is unchanged from the prior year but only 300 hours.
Discussion 3

• The hours for the employees are the same.
• Dr. Smiley is the only dentist on staff
• Barclay also states that the client is looking for a smaller contribution for 2018 if possible.

Discussion 3

• You have no direct contact with Dr. Smiley, and Barclay is adamant that the hours have been reported correctly.
• How do you proceed?
• Does your decision change if the Dr. Smiley is your client?

Discussion 3

• ARA Code of Conduct
  10. Professional Integrity
  A Member shall perform Professional Services, and shall take reasonable steps to ensure that Professional Services rendered under the Member’s supervision are performed, with honesty, integrity, skill and care. A Member has an obligation to observe standards of professional conduct in the course of providing advice, recommendations and other services performed for a Principal.
Facebook Data Scandal

• In early 2018, Cambridge Analytica harvested the personal data of 87 million Facebook profiles without consent
• Information was used for political advertising purposes
• This became a turning point in the public understanding of personal data and calls for tighter regulation of tech companies’ use of personal data

Facebook Data Scandal

• How can you control your work product?
• How can you protect the confidential information that you have?
• How do you know what you don’t know?
  - Review the codes, etc. for changes
  - Review the qualification standards
  - Utilize peer resources

Recognition and Accountability

“We didn’t take a broad enough view of our responsibility, and that was a big mistake. And it was my mistake. And I’m sorry. I started Facebook, I run it, and I’m responsible for what happens here.”

- Mark Zuckerberg
How do you “right” the “wrong”?

Discussion 4
John has a client with a solo defined benefit plan.
The plan sponsor, Rick, is a friend of John’s.
Rick invested a majority of the plan’s assets with We Promise Returns, Inc.

We Promise Returns, Inc. was discovered to be a fraudulent investment scheme and the plan assets were not recovered.
As a result, Rick has a large minimum required contribution that he cannot make.
If John assumes a later retirement age it will reduce the amount of the funding requirement.
Discussion 4

If you are John, what would you do?

What if John did not know Rick personally?

Discussion 4

- IRS Circular 230: 10.35 Competence.
  - (a) A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.

Discussion 5

Mr. Methodical received a new takeover case. Upon review of the 2017 Actuarial Report and Schedule SB, Mr. Methodical determines that the Individual Aggregate funding method was used rather than the PPA funding method. Mr. Methodical explains to the Plan Sponsor there are issues with the prior valuations and filings and they need to be redone. Without resolution and the Form 5500 deadline approaching, Mr. Methodical decides to file the Form 5500-SF but not a Schedule SB.
Discussion 5

What options does Mr. Methodical have?
Does Mr. Methodical have an obligation to report the prior actuary?
What if Mr. Methodical is subject to a confidentiality clause in his service agreement?
What if Mr. Methodical never received a signed copy of the service agreement?
Should Mr. Methodical be concerned about not signing the Schedule SB?

Actuarial Code of Professional Conduct
A member shall not disclose to another party any Confidential information obtained in rendering Professional Services for a Principal unless authorized to do so by the Principal or required to do so by Law

Commitment Bias
• Commitment bias is the tendency to be consistent with what we have already done or said we will do in the past.
• This can cause people to refuse to contradict themselves and be strong-willed in their initial opinions.
• Escalation of commitment is a human behavior pattern in which an individual or group facing increasingly negative outcomes from a decision, action, or investment nevertheless continues the behavior instead of altering course opinions.
Boeing Max Scandal

- Boeing was under pressure to keep up with their main competitor, their initial assessment was that creating a whole new plane was the only viable solution.
- Timing wise creating a whole new plane would have taken too long. They “reassessed” and decided to redesign or update the planes they already had.
- The planes that they already had weren’t suited for the changes. This was noted at each step of the implementation and every time an additional “band aid” was applied.

- By the time the planes were finished they had so many “band aids” that they were brand new planes.
- As they had “updated” an existing plane no new training was required for pilots who had already trained on the prior model.
- The problem was the plane did not handle like the prior model. It had idiosyncrasies that the prior model didn’t have. Pilots were not properly trained to fly the new planes.

- At each step during the creation of this plane there were people who knew that there were issues, but Boeing remained committed to the course.
- If you had implemented one of the “band aids” and saw the bigger issues accumulating what would you do?
- How much responsibility do the employees have for the final product?
Poll #2

Have you ever been put in a situation where your firm has brought on a client that you were uncomfortable taking on the work due to issues with the prior work?

Yes
No

Discussion 6

• Your boss, Mr. Smartguy, brings in a takeover. He did a prelim review of the information and assured the client that there were no issues and that your firm will proceed with the funding valuation
• You are assigned to match the accrued benefits calculated by the prior actuary and you cannot match the benefits for a few participants exactly
• You discuss with Mr. Smartguy and he says to go ahead and sign off using the prior actuary benefits regardless of your concerns

Discussion 6

• Clearly your firm, Smartguy Actuaries, Inc., has committed to work with the client without bringing any additional issues to their attention.
• What do you do?
• You decide to follow up with the prior actuary for more information in order to try to match benefits. You find that he only took over the plan a couple years ago and also couldn’t match benefits. What do you do?
• What are the potential consequences?
Discussion 7

Mr. Prudent, a firm owner and EA, has a major referral source Advisor, Mr. Money. Mr. Money has referred over $150,000 in annual recurring revenues to Mr. Prudent's firm.

Mr. Money brings a Cash Balance Prospect to Mr. Prudent. He reviews the data and it is clear, this prospect is unlikely to have future revenues consistent with this year.

Mr. Prudent discusses this with Mr. Money and Mr. Money advises him to create a Cash Balance Plan that the client can just terminate after this year.

What should Mr. Prudent do?
Can Mr. Prudent implement the plan?
Should Mr. Prudent consult with client directly?
Does Mr. Prudent need to remove himself from the case?

20 CFR 901.20 - Standards of performance of actuarial services
(b) Professional duty.
(1) An enrolled actuary shall perform actuarial services only in a manner that is fully in accordance with all of the duties and requirements for such persons under applicable law and consistent with relevant generally accepted standards for professional responsibility and ethics.
(2) An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes, or has reasonable grounds to believe, may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.
Discussion 8

• Picture an engineer with a small office. Only 2 staff, one receptionist out of college, and one staff member who’s been with her for 20 years.
• Plan is implemented early in 2018. The receptionist is short service, so a special entry date is used.

Following August – census data arrives… however there is a change – No more receptionist
Problem: Our test hinged on the receptionist
Initial year is still okay – potentially much higher contributions required next year

• What type of discussions should you have or have had with the client?
• What risks are there with this type of design?
Other topics to consider...

- You notice a mistake on last year’s Schedule SB that is inconsequential, what do you do?
- Prior actuary on a takeover plan is uncooperative, what are your options?
- What is your responsibility if you see another actuary being unethical? Does your answer change if you know them or if you work for them?