

Resolved . . . or Not?

BY BILL FALK

IMAGINE THIS SCENARIO: Jill replaces Jack as the enrolled actuary for a well water-drilling company's pension plan. Unable to closely reproduce Jack's valuation results for the previous year and after reviewing his information, Jill becomes convinced there was a significant error in calculations, resulting in the overstatement of the minimum required and maximum deductible contribution limits. Jill and Jack talk. He reviews his calculations and finds the error that caused the problem. After correction, the company's already completed contribution still satisfies the minimum and is still deductible. But the company could have contributed less than it did. Jack reports the error to the company, sends a revised actuarial report, and uses the corrected results in preparing the Schedule B for that year. One question remains. Should Jill report Jack's error to the ABCD?

Or imagine this: Dick is attending an actuarial meeting. At one of the sessions, he is seated at the back of the room and happens to notice Jane, whom he knows, slip into the room 15 minutes before the session ends. Dick catches up to Jane as she is leaving the room and sees her drop a continuing education attendance slip into the box. Dick asks Jane whether she thinks she should receive CE credit for a session she attended only briefly. Jane retrieves her attendance slip and leaves the room. Dick is left to ponder whether he should tell anyone about Jane's attempt to get undeserved credit.

Precept 13 of the Code of Professional Conduct states that "An Actuary with knowledge of an apparent, unresolved, material violation of the Code by another Actuary should consider discussing the situation with the other Actuary and attempt to resolve the apparent violation. If such discussion is not attempted or is unsuccessful, the Actuary shall disclose the violation to the appropriate counseling and discipline body of the professions . . ."

The two situations outlined earlier raise several questions. Were these apparent violations of the Code material, and were they resolved? Who decides? And how does an individual judge whether or not a material violation is resolved?

The obvious answer to the second question is that any actuary subject to Precept 13's reporting requirement who becomes aware of an apparent violation needs to decide whether it is material and whether it has been resolved.

The answer to the third question is more subjective. If an apparent violation doesn't feel resolved, it probably isn't.

Some types of apparent violations may be easier to resolve than others. Most violations that involve an error in an actuarial calculation or assumption are likely resolved if the error is corrected. Alternatively, the actuary who is seen to have made an error may be able to argue convincingly that the situation involves a difference in judgment or interpretation. But a violation can also be the symptom of a larger failure to use due skill and care. In that case, merely correcting one instance of error may not be sufficient.

Apparent violations involving the integrity or honesty of an actuary are likely to be more difficult to resolve. If the act was the

result of carelessness or ignorance, discussion with the individual may resolve the issue. If not, it is unlikely that the violation can really be resolved. It should be referred to the ABCD if it appears to be material.

Let's return to the first example. Jill discovers an error in her predecessor's work, an apparent violation of Annotation 1-1. Jack acknowledges the error immediately and corrects it. Is this apparent violation resolved? Probably. If Jill is satisfied with the correction, then she should consider the violation resolved unless she believes it to be a product of collusion or that it represents a pattern of carelessness that can be applied to all of Jack's actuarial services.

What about the second example? Certainly, Jane retrieved her CE slip and will no longer receive undeserved CE credit. However, the act of attempting to get the credit appears to be a violation of Precept 1's requirement to "act honestly, with integrity, and in a manner to . . . uphold the reputation of the actuarial profession." Her action would be considered by most to be dishonest. Dishonesty by an actuary, regardless of venue, can certainly have a deleterious effect on the reputation of the profession. Should Dick consider the issue resolved once Jane retrieves her atten-

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dance slip? The fact that Jane rescinded her action doesn't eliminate its dishonest nature. Is the apparent violation material?

Realistically, without evidence to the contrary, most would consider Jane's action to be an isolated incident that was not material once it was corrected. However, if Dick believes that Jane's action represents a pattern of such behavior (making it more likely to be a material breach of the Code), he probably should not consider the matter resolved without further discussion with Jane. He might also want to report the pattern as an apparent violation to the ABCD.

What if a third actuary disagrees with Jill or Dick's judgment that the violation was resolved or not material? That actuary should probably report the violation to the ABCD. Should the actuary also report Jill or Dick? My view is no, unless it is clear that Jill or Dick is collaborating to cover up the violation. If an actuary who observes a violation decides in good faith that the violation has been resolved, I would be disappointed if others tried to turn that decision into a violation. In fact, it may not be possible to know for sure whether either Jill or Dick contacted the ABCD, since complaints can be made on a confidential basis.

Remember, when in doubt about reporting an apparent violation, you can always ask the ABCD for guidance before making your decision. The phone lines (202-223-8196) are open.

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