



# 2021 HEALTH MEETING

June 14–16, 2021



# Actuarial Professionalism: Judge & Jury

June 16, 2021

## Moderator:

Jackie Lee, FSA, MAAA (Lewis & Ellis, Inc.)

## Presenters:

Robert Eaton, FSA, MAAA (Milliman)

Craig Kalman, FSA, MAAA (GEHA)

Kathryn Qin, FSA, MAAA (Blue Shield of CA)

# SOA Antitrust Compliance Guidelines

Active participation in the Society of Actuaries is an important aspect of membership. While the positive contributions of professional societies and associations are well-recognized and encouraged, association activities are vulnerable to close antitrust scrutiny. By their very nature, associations bring together industry competitors and other market participants. The United States antitrust laws aim to protect consumers by preserving the free economy and prohibiting anti-competitive business practices; they promote competition. There are both state and federal antitrust laws, although state antitrust laws closely follow federal law. The Sherman Act, is the primary U.S. antitrust law pertaining to association activities. The Sherman Act prohibits every contract, combination or conspiracy that places an unreasonable restraint on trade. There are, however, some activities that are illegal under all circumstances, such as price fixing, market allocation and collusive bidding.

There is no safe harbor under the antitrust law for professional association activities. Therefore, association meeting participants should refrain from discussing any activity that could potentially be construed as having an anti-competitive effect. Discussions relating to product or service pricing, market allocations, membership restrictions, product standardization or other conditions on trade could arguably be perceived as a restraint on trade and may expose the SOA and its members to antitrust enforcement procedures.

While participating in all SOA in person meetings, webinars, teleconferences or side discussions, you should avoid discussing competitively sensitive information with competitors and follow these guidelines:

- **Do not** discuss prices for services or products or anything else that might affect prices
- **Do not** discuss what you or other entities plan to do in a particular geographic or product markets or with particular customers.
- **Do not** speak on behalf of the SOA or any of its committees unless specifically authorized to do so.
- **Do** leave a meeting where any anticompetitive pricing or market allocation discussion occurs.
- **Do** alert SOA staff and/or legal counsel to any concerning discussions
- **Do** consult with legal counsel before raising any matter or making a statement that may involve competitively sensitive information.

Adherence to these guidelines involves not only avoidance of antitrust violations, but avoidance of behavior which might be so construed. These guidelines only provide an overview of prohibited activities. SOA legal counsel reviews meeting agenda and materials as deemed appropriate and any discussion that departs from the formal agenda should be scrutinized carefully. Antitrust compliance is everyone's responsibility; however, please seek legal counsel if you have any questions or concerns.

# Presentation Disclaimer

*Presentations are intended for educational purposes only and do not replace independent professional judgment. Statements of fact and opinions expressed are those of the participants individually and, unless expressly stated to the contrary, are not the opinion or position of the Society of Actuaries, its cosponsors or its committees. The Society of Actuaries does not endorse or approve, and assumes no responsibility for, the content, accuracy or completeness of the information presented. Attendees should note that the sessions are audio-recorded and may be published in various media, including print, audio and video formats without further notice.*

# Mock Trial

 We won't stick too closely to courtroom protocol.

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 Not intended to imply that these cases are matters that should be taken up in a court of law. In fact, most should not.

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 YOU are the jury! Verdicts via live polling.

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 We're going to have some fun. We are showing off the acting careers that we should have pursued instead of being actuaries.

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 Value from this session comes from YOUR participation. Please actively use the chat box.

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 Sit back and enjoy our session!

# Test Poll: Which of the following is notable about June 16?

- It's National Bourbon Day
- George Washington appointed commander-in-chief of the Continental Army
- Film "Grease" opens, starring John Travolta and Olivia Newton-John
- Jack Nicklaus wins his first major golf title by 3 strokes in an 18-hole playoff with Arnold Palmer

# Test Poll: Which of the following is notable about June 16?

- It's National Bourbon Day (June 14)
- George Washington appointed commander-in-chief of the Continental Army (June 15)
- Film "Grease" opens, starring John Travolta and Olivia Newton-John (June 16)
- Jack Nicklaus wins his first major golf title by 3 strokes in an 18-hole playoff with Arnold Palmer (June 17)

# Case #1: (UN) Friendly Assumption Setting

# Exhibit A

“Well, maybe I don’t need your money. Wait, wait, I said maybe!” “We were on a break!” “See? He’s, her lobster.” “Joey doesn’t share food!” “Hi, I’m Chandler. I make jokes when I’m uncomfortable.” “I wish I could, but I don’t want to.” Other random actuarial information to look like this is from a real rate filing.

The average medical costs were \$500 PMPM for 2019, \$450 for 2020, and are projected to stay at \$450 through 2022. The Year over Year actual trend was -10% from 2019 to 2020 and projected to be 0% from 2020 to 2022.

More here to pretend like this is real. “Could I be wearing any more clothes?” “It tastes like feet!” “What’s not to like? Custard: good. Jam: good. Meat: good!” “This is all a moo point.” “How you doin’?” “Oh. My. God.” “Okay, you have to stop the Q-Tip when there’s resistance.”

# ASOP 8

- 3.4 Assumptions—The actuary should determine which assumptions are necessary for the filing and select appropriate assumptions. Assumptions the actuary should consider selecting include, but are not limited to, the following:
- 3.4.1 Premium Levels and Future Rate Changes—The actuary should consider current premium levels and expectations for future rate changes.
  - 3.4.2 Projections of Covered Lives—The actuary should consider the impact of future changes in the underlying covered population on the projected claims. These changes may include, but are not limited to, changes in demographics, risk profile, or family composition.
  - 3.4.3 Levels and Trends in Morbidity, Mortality, and Lapsation—The actuary should consider current levels of and historic trends in morbidity, mortality, and lapsation rates.
  - 3.4.4 Non-Benefit Expenses, Including but Not Limited to Administrative Expenses, Commissions, Broker Fees, and Taxes—The actuary should use appropriate methods and assumptions for calculating the non-benefit expenses component of premium rates. Possible methods include, but are not limited to, the use of a target loss ratio or the estimation of expenses appropriately attributed to the health benefit on a percentage of premium or fixed-dollar basis. When estimating the latter amounts, the actuary should consider the **health plan entity's** own experience, reasonably anticipated internal or external future events, inflation, and business plans. The actuary may also consider relevant external studies. The actuary should consider the reasonableness of the non-benefit expense component of premium rates relative to projected expenses.

# ASOP 8

- 3.12 Reasonableness of Assumptions—The actuary should review the assumptions employed in the filing for reasonableness. The assumptions should be reasonable in the aggregate and for each assumption individually. The support for reasonableness should be determined based on the actuary’s professional judgment, using relevant information available to the actuary. This information may include, but is not limited to, business plans; past experience of the **health plan entity** or the health benefit coverage; and any relevant industry, government, or academic studies that are generally known and reasonably available to the actuary. The actuary should make a reasonable effort to become familiar with such studies.

The **filing actuary** may rely upon others to provide assumptions for developing the regulatory filing. However, the **filing actuary** should review the assumptions for reasonableness. The **filing actuary** should use any such assumption only if the actuary believes it is reasonable, unless it is prescribed by applicable law. The **filing actuary** should disclose any such reliance in accordance with ASOP No. 41, *Actuarial Communications*.

# Exhibit B

“Well, maybe I don’t need your money. Wait, wait, I said maybe!” “We were on a break!” “See? He’s, her lobster.” “Joey doesn’t share food!” “Hi, I’m Chandler. I make jokes when I’m uncomfortable.” “I wish I could, but I don’t want to.” Other random actuarial information to look like this is from a real rate filing.

In 2020, the Company saw healthcare cost reductions of -10% due to COVID. We expect that the 2020 healthcare cost levels to continue into 2021 and 2022 at COVID-depressed levels, therefore used 0% trend. There are significant uncertainties in the trend setting. The Actuary consulted other sources in rendering this assumption.

More here to pretend like this is real. “Could I be wearing any more clothes?” “It tastes like feet!” “What’s not to like? Custard: good. Jam: good. Meat: good!” “This is all a moo point.” “How you doin’?” “Oh. My. God.” “Okay, you have to stop the Q-Tip when there’s resistance.”

# ASOP 41

- 3.2 Actuarial Report—The actuary should complete an actuarial report if the actuary intends the actuarial findings to be relied upon by any intended user. The actuary should consider the needs of the intended user in communicating the actuarial findings in the actuarial report.

An actuarial report may comprise one or several documents. The report may be in several different formats (such as formal documents produced on word processing, presentation or publishing software, e-mail, paper, or web sites). Where an actuarial report for a specific intended user comprises multiple documents, the actuary should communicate which documents comprise the report.

In the actuarial report, the actuary should state the actuarial findings, and identify the methods, procedures, assumptions, and data used by the actuary with sufficient clarity

that another actuary qualified in the same practice area could make an objective appraisal of the reasonableness of the actuary's work as presented in the actuarial report.

# ASOP 41

- 3.4.3 Reliance on Other Sources for Data and Other Information—An actuary who makes an actuarial communication assumes responsibility for it, except to the extent the actuary disclaims responsibility by stating reliance on other sources. Reliance on other sources for data and other information means making use of those sources without assuming responsibility for them. An actuarial communication making use of any such reliance should define the extent of reliance, for example by stating whether or not checks as to reasonableness have been applied. An actuary may rely upon other sources for information, except where limited or prohibited by applicable standards of practice or law or regulation. Further guidance on when such reliance is appropriate, and what the actuary's responsibilities are when such reliance is stated, is found in ASOP No.23, *Data Quality*.

# ASOP 23

- 3.2 Selection of Data—In undertaking an analysis, the actuary should determine what **data** to use. The actuary should take into account the scope of the assignment and the intended use of the analysis being performed to determine the nature of the **data** needed and the number of alternative **data** sets or **data** sources, if any, to be considered. **The actuary should do the following:**
- a. consider the **data elements** that are desired and possible alternative **data elements**; and
  - b. **select the **data** for the analysis with consideration of the following:**
    1. **whether the **data** constitute **appropriate data**, including whether the **data** are sufficiently current;**
    2. whether the **data** are reasonable with particular attention to internal consistency;
    3. whether the **data** are reasonable given relevant external information that is readily available and known to the actuary;
    4. **the degree to which the **data** are **sufficient**;**
    5. any known significant limitations of the **data**;
    6. the availability of additional or alternative **data** and the benefit to be gained from such additional or alternative **data**, balanced against how practical it is to collect and compile such additional or alternative **data**; and
    7. sampling methods, if used to collect the **data**.

# Exhibit C – Commercial Filing

“Well, maybe I don’t need your money. Wait, wait, I said maybe!” “We were on a break!” “See? He’s, her lobster.” “Joey doesn’t share food!” “Hi, I’m Chandler. I make jokes when I’m uncomfortable.” “I wish I could, but I don’t want to.” Other random actuarial information to look like this is from a real rate filing.

In 2020, the Company saw healthcare cost reductions of -10% due to COVID. The trend for the 2020 to 2022 period is projected to be +15%, on the basis of an internal study of the foregone and deferred procedures during 2020, and the likely rebound in 2021 and 2022.

More here to pretend like this is real. “Could I be wearing any more clothes?” “It tastes like feet!” “What’s not to like? Custard: good. Jam: good. Meat: good!” “This is all a moo point.” “How you doin’?” “Oh. My. God.” “Okay, you have to stop the Q-Tip when there’s resistance.”

# ASOP 8

- 3.12 Reasonableness of Assumptions—The actuary should review the assumptions employed in the filing for reasonableness. The assumptions should be reasonable in the aggregate and for each assumption individually. The support for reasonableness should be determined based on the actuary’s professional judgment, using relevant information available to the actuary. This information may include, but is not limited to, business plans; past experience of the **health plan entity** or the health benefit coverage; and any relevant industry, government, or academic studies that are generally known and reasonably available to the actuary. The actuary should make a reasonable effort to become familiar with such studies.

# Verdict: Was Mr. Bing guilty of setting unreasonable assumptions?

- Totally Guilty
- Partially Guilty
- Not Guilty

# Did Mr. Bing satisfy the documentation requirements seen in ASOP 41?

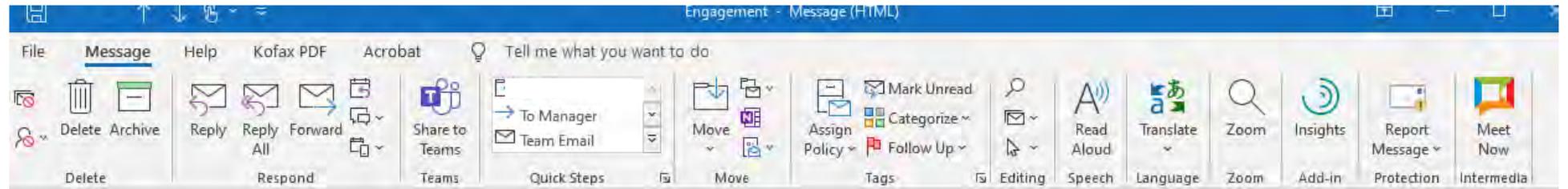
- Absolutely
- Maybe
- Nope

# Did Mr. Bing violate ASOP 8?

- Absolutely
- Maybe
- Nope

# Case #2: Petey R vs. Deborah

# Email



## Engagement

From: Petey R  
To: Deborah



1/10/2018

Retention Policy: 5 Year Retention for Email (5 years)

Expires: 6/9/2026

Deborah – thank you for agreeing to support my company Monoline on our decision to raise LTC premium rates, and to serve as our expert witness in our court case brought by a disgruntled policyholder.

We know that you are the right expert for this case, and that you will serve our interests well.

Sincerely,

Petey R  
SVP  
Monoline Insurance, Inc

# Email

ARE YOU KIDDING ME?!?!?

From: Petey R  
To: Deborah

Retention Policy 5 Year Retention for Email (5 years) Expires 6/9/2026 4/16/2018

Deborah,

By refusing to report our opposition's malpractice, or whatever you actuaries call it, you are ruining Monoline's chances in this case, and may cause Monoline financial harm. I understand you would like an opportunity to talk with the opposing expert to consult with him on his methods and assumptions, but we simply don't have the time; the trial is 2 days away. I'm only asking you to write down what you believe to be true. Write this into your report as I've paid you to do.

Sincerely,

Petey R  
SVP  
Monoline Insurance, Inc

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**From:** Petey R  
**Sent:** Monday, January 10, 2018  
**To:** Deborah  
**Subject:** Engagement

Deborah – thank you for agreeing to support my company Monoline on our decision to raise LTC premium rates, and to serve as our expert witness in our court case brought by a disgruntled policyholder.

We know that you are the right expert for this case, and that you will serve our interests well.

Sincerely,

Petey R  
SVP  
Monoline Insurance, Inc

# Exhibit A

## **Actuarial Code of Professional Conduct**

PRECEPT 10. An Actuary shall perform Actuarial Services with courtesy and professional respect and shall cooperate with others in the Principal's interest.

ANNOTATION 10-1. Differences of opinion among actuaries may arise, particularly in choices of assumptions and methods. Discussions of such differences between an Actuary and another actuary, or in observations made by an Actuary to a Principal on the work of another actuary, should be conducted objectively and with courtesy and respect.

# Exhibit B

## **Actuarial Code of Professional Conduct**

### PRECEPT 1

An Actuary shall act honestly, with integrity and competence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession

# Verdict: Is Deborah guilty of not assisting her client who paid her for services?

- Guilty:
  - Petey deserves to have his paid consultant represent him to the best of her ability within the time frame given.
- Not Guilty:
  - Deborah proceeded according to actuarial precepts and proceeded down an accepted path to resolve her issue but was constrained by time.

# Discussion questions

- What factors (time, relationships, etc) would have changed the verdict?
- How far does Doug's obligation of courtesy and respect extend?

# Case #3: The State of Decay vs. Lord Varys



## Communications and Disclosure

**PRECEPT 6.** An Actuary shall make appropriate and timely disclosure to a present or prospective Principal of the sources of all direct and indirect material compensation that the Actuary or the Actuary's firm has received, or may receive, from another party in relation to an assignment for which the Actuary has provided, or will provide, Actuarial Services for that Principal. The disclosure of sources of material compensation that the Actuary's firm has received, or may receive, is limited to those sources known to, or reasonably ascertainable by, the Actuary.

**ANNOTATION 6-1.** An Actuary who is not financially and organizationally independent concerning any matter related to the performance of Actuarial Services should disclose to the Principal any pertinent relationship that is not apparent.

**ANNOTATION 6-2.** An Actuary employed by a firm that operates in multiple locations is subject to the requirement of disclosure of sources of compensation that the Actuary's firm may receive in relation to Actuarial Services with respect to a specific assignment for that Principal, regardless of the location in which such compensation is received.



# Conflict of Interest

**PRECEPT 7.** An Actuary shall not knowingly perform Actuarial Services involving an actual or potential conflict of interest unless:

- A** the Actuary's ability to act fairly is unimpaired;
- B** there has been disclosure of the conflict to all present and known prospective Principals whose interests would be affected by the conflict; and
- C** all such Principals have expressly agreed to the performance of the Actuarial Services by the Actuary.



Verdict: Is Lord Varys guilty and did NOT follow the Code of Professional Conduct concerning conflicts of interest and receiving material compensation.

- Guilty
- Not Guilty
- Those names were too confusing.

# If you were the actuary in a conflict which repeats annually, would you:

- Decline the work
- Accept the work with an open-ended waiver
- Accept the work with a one-year waiver that would have to be renewed annually
- Don't know, it depends on the situation and the clients involved.

You are a consulting actuary. You are asked to assist Company A with the purchase of Company B. Are these situations conflicts? (Choose all that apply)

- You do all actuarial work for both A and B
- You do valuation work for A and you do pricing work for B
- You do pricing work for A and you do valuation work for B
- You do valuation work for A and your co-worker is the actuarial auditor for B
- You do valuation work for A and you previously did valuation work for B, but you were replaced 3 years ago by another actuary.

A hand holding a white star with a checkmark inside, set against a background of a city skyline at night and a network of glowing nodes.

Complete the  
Session Evaluation  
and Claim Your  
CPD Credits Below