



Continuing Education & Reducing Professional Liability Claims, Property Casualty 360, by Louie Castoria

Review the benefits of ethics courses as well as the pillars of ethical professional behavior.

By Louie Castoria | December 15, 2021

Continuing education (CE) courses are required for most licensed professionals. One might think errors and omissions claims would be an endangered species, but, alas, they're thriving. Online fee-based classes are readily available and have been especially popular during the two years of pandemic restrictions. Many law firms and vendors offer accredited CE courses free of charge as a form of business development. So why are so many professionals being sued?

One answer is obvious: even the best professionals sometimes make mistakes. On each person's path, there's at least one banana peel. As chairman emeritus of the Insurance Educational Association and a CE presenter on professional ethics for more than thirty years, I'm a big fan of CE. I'm sure many errors have been avoided through regular, mandatory training on evolving practice standards, new technologies and reminders of the rules that govern each profession. Still, something's missing: ethics. In teaching ethics, I'm always amazed by how many professional liability cases arise from ethical lapses rather than banana peels.

I hear the reader saying, "I have to take hours of ethics every year! How can ethics be missing from CE programs?" The answer is found in how we define "ethics."

CE ethics requirements

Many states prescribe regular doses of CE. California, for example, requires insurance agent and broker licensees to complete 24 CE hours during each two-year license term, including three hours of ethics CE training. The exact topics are not specified. Lawyers have three-year cycles for CE with 25 hours each cycle, three of which must be in ethics. Online courses tend to focus on revised rules of professional conduct, with topics such as "not counseling or assisting a client with violation of any law," prohibiting harassment and discrimination and not beginning sexual relations with clients. Real estate brokers need 45 hours of CE per four-year license renewal, including three on ethics. Ethics courses include material and latent defects, broker compensation, disclosure of personal interest, and staying within your expertise. Even Congress has ethics training. All new House Members, officers, and employees must receive ethics training within 60 days of their start date. Current House officers and employees must also complete annual ethics training by the end of every calendar year. The House ethics topics are gifts, travel, campaigns and financial disclosure.

These lists of topics are far from exhaustive, and all are important to proper conduct and professional credibility. They teach how not to cross the foul lines. They don't teach why not to cross them — the difference between right and wrong.

When should ethical subjects, as distinct from skills training, be taught? By the time people have CE requirements they are set in their ways. The programs are largely skill-based updates, advances in technology, or financial incentives/fines. These are important topics, but do not substitute for genuine ethical education. Some CE programs teach no form of ethics or limit discussions of ethics to disciplinary consequences, a "scared straight" approach.

Becoming ethical

In a 2017 article, "18 Reasons the U.S. Education System is Failing," published by The Edvocate, the absence of ethics training is not among the 18 indictments. This may be because teachers in public school systems keep religious dogma out of the classroom, or feel ethics are best taught in the home. But religion has no patent on ethics, and ethics can be taught without reference to a deity.

According to Angela Ostwalt, MSW, "Between the ages of 2 and 5, many children start to show morally-based behaviors and beliefs." This is probably no surprise to most parents. Children gradually move away from their center-of-the-universe phase and learn that there is more fun in group activities, which naturally develop empathy for others and teamwork. "Play nice in the sandbox, Sally," is a lesson some adults never learned or later forgot.

Lawrence Kohlberg, PsyD, described three stages of moral development, that is, learning to tell right from wrong with each stage having subparts. Dr. Kohlberg saw moral development as a lifelong journey, one that some people do not complete. In the first stage, morality is

a reaction to reward or punishment based on behavior. Telling a toddler, "The stove is hot, don't touch it," may not be as teachable a moment as accidentally touching the stove. Ouch!

In the second stage of ethical development, people usually follow the rules, not just because they are rules, but because following them builds good relationships and a healthy community. Even if others are acting unethically, an ethical person will usually follow the rules. In this stage empathy for others becomes possible and, one hopes, routine.

In the third stage, people determine what is moral based on a set of values or beliefs. While still abiding by rules in general, values-based people don't automatically accept a rule, they put it to a litmus test: whether they can follow it while being true to their values.

Third-stage ethics are tricky. Does a person's strongly held belief that the Earth is flat make a long, around-the-world cruise out of the question?

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