

18861 -  
2008

## A PRAGMATIC WALK

ANONYMOUS CASE HISTORIES |  
[HTTPS://WWW.CFP.NET/APPS/CERTIFICANTS/ACH\\_SEARCH.ASP](https://www.cfp.net/apps/certificants/ach_search.asp)

### ISSUE PRESENTED

Whether CFP® Certificant (Respondent) violated CFP Board's Standards of Professional Conduct when he inaccurately completed a health insurance application for a client (Client), leading to a rescission of the Client's coverage and Respondent's violation of a state statutory provision.

### PREAMBLE NOTES

Summary of a decision following the November 2008 hearings of the Disciplinary and Ethics Commission (Commission) of CFP Board of Standards (CFP Board). The conduct at issue in this case occurred prior to Jan 1, 2009. The Rules in effect at that time under the Code of Ethics and Professional Responsibility (Code of Ethics) were Rules 101 through 705.

### FINDINGS OF FACT: ABBREVIATED

January 2005: Respondent received a health insurance application ("Application") from the Client with missing height and weight information. Respondent filled in the information for the Client.

October 2005, the health insurance company ("Company") learned that Respondent was being treated for conditions she had not disclosed on the Application, and canceled the Client's coverage. The Client filed a complaint with the state Attorney General's Office ("AG") against the Company objecting to the rescission of her health insurance coverage.

November 2005: the AG asked the Company to reinstate the Client's health insurance coverage. The Company informed the AG that the Client had lied on the Application. The AG forwarded the case to the SID, which opened an investigation. The SID held a hearing and made findings that Respondent appealed in state court.

April 2006: Respondent submitted a CFP® Renewal Application in which he disclosed his involvement in a 2006 state insurance department ("SID") investigation.

July 2007: Respondent and the state Commissioner of Insurance signed a Stipulation and Order from the state court. According to the Stipulation and Order, Respondent admitted to the following: 1. In January 2005, Respondent completed, on behalf of the Client, a health insurance application. Respondent, having asked the Client if anything had changed, but without specifically asking her for her current height and weight, filled in the Client's height and weight on the application and misstated the Client's weight; and 2. Respondent's conduct violated a state statutory provision. Respondent stated on the application that the Client's weight was 140 pounds. The Client's actual weigh was 215 pounds. Respondent later filed a request with another insurance company to place the client's coverage. In connection with that request, Respondent sent a letter to the insurance company explaining that when the Client gave him the Application with a blank height and weight portion, he transcribed this information from an application she had completed the previous year.

## **PROBABLE CURRENT CODE, RULES, OR PRACTICE STANDARDS VIOLATED**

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## **IF YOU WERE A COMMISSIONER, WHAT DISCIPLINARY ACTION WOULD YOU RECOMMEND?**

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19399 -  
2008

## A PRAGMATIC WALK

ANONYMOUS CASE HISTORIES |

[HTTPS://WWW.CFP.NET/APPS/CERTIFICANTS/ACH\\_SEARCH.ASP](https://www.cfp.net/apps/certificants/ach_search.asp)

### ISSUE PRESENTED

Whether a CFP® certificant violated CFP Board's *Standards of Professional Conduct* when he solicited financial professionals through an e-mail that contained unprofessional language.

### PREAMBLE NOTES

This is a summary of a decision issued following the March 2008 hearings of the Disciplinary and Ethics Commission ("Commission") of Certified Financial Planner Board of Standards, Inc. ("CFP Board"). The conduct at issue in this case occurred prior to January 1, 2009. The Rules in effect at that time under the Code of Ethics and Professional Responsibility ("Code of Ethics") were Rules 101 through 705.

### FINDINGS OF FACT: ABBREVIATED

Respondent founded a company ("Company") to assist financial professionals to enhance their technical competency and to expand their client base.

In August 2006, CFP Board received a forwarded e-mail from the Company. The e-mail solicited advisors and other financial professionals with the following lines: 1. "What to say to a qualified prospect so that he dumps his other advisor like rotten goods"; 2. "Drip marketing that acts like acid to dissolve the relationship with their current advisor"; 3. "Stop talking to poor people. Find the wealthy retirees and learn to make them your clients"; and 4. "It's so easy to take business from other advisors when you know the few secrets of competitive marketing."

In communications with CFP Board, Respondent acknowledged that he is the founder and president of the Company. He stated that as head of the Company, he accepted responsibility for all written communications, including the e-mail, but that he did not compose or review the email. Respondent informed CFP Board that he instituted in-house review procedures to ensure the incident would not be repeated.

Respondent was scheduled to appear telephonically at his hearing but did not appear at his hearing.

**PROBABLE CURRENT CODE, RULES, OR PRACTICE  
STANDARDS VIOLATED**

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**IF YOU WERE A COMMISSIONER, WHAT  
DISCIPLINARY ACTION WOULD YOU  
RECOMMEND?**

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24706 -  
2012

## A PRAGMATIC WALK

ANONYMOUS CASE HISTORIES |

[HTTPS://WWW.CFP.NET/APPS/CERTIFICANTS/ACH\\_SEARCH.ASP](https://www.cfp.net/apps/certificants/ach_search.asp)

### ISSUE PRESENTED

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he failed to: 1) communicate with Husband and Wife appropriately regarding conflicts with representing both after he became aware of their potential divorce; and 2) appropriately respond to Wife’s inquiries and subsequent check processing by failing to inform her that Husband refused to consent to the sale of investments to cover a large check.

### PREAMBLE NOTES

This is a summary of a decision issued following the June 2012 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the Rules of Conduct were Rules 1.1 through 6.5.

### FINDINGS OF FACT: ABBREVIATED

Respondent first entered into a financial planning engagement with Husband and Wife in June 2007. According to Respondent, he prepared a detailed asset allocation and retirement analysis using Naviplan financial planning software. Respondent stated that he recommended the clients establish several accounts. One of the accounts was a joint account with check-writing capabilities for both clients, to address short and moderate term income needs and cash management. The second account contained a deferred variable annuity for long-term growth and income needs. He recommended and all three parties agreed that it was strategically advantageous to name Husband as owner and annuitant for greater income in the event of annuitization. Wife was named beneficiary of the variable annuity.

According to Wife she never knew there was a separation of ownership of the couple’s assets into two separate accounts. Wife stated that Respondent always addressed her and Husband as the owners of both accounts. According to Wife, she consulted an attorney in October 2009 for the purpose of obtaining a divorce. Wife informed the attorney that all funds invested with Respondent were held jointly in both her and Husband’s name. The attorney advised Wife to withdraw half of the funds immediately to prevent Husband from taking more than his fair share of the couple’s funds. Attorney informed Wife that a judge would eventually decide the amount each party would be awarded in the divorce proceedings.

Pursuant to Wife’s attorney’s advice, she contacted Respondent via telephone in October 2009 and asked him to tell her the total amount of money in her and Husband’s account. She was shocked when Respondent told her the total amount in the account was \$400,000. Wife asked Respondent how the account balance could be so low, and he replied that she had asked about the joint account. Wife asked Respondent if there was another account and Respondent told her there was another account with \$700,000, but it was in Husband’s name only. Wife told Respondent that she had no idea that her name was not on the account and Respondent replied, “Well, you are the beneficiary.”

Wife contacted her attorney to inform him of the conversation with Respondent and he advised her to withdraw almost all the funds in the joint account because the second account with the majority of the couples’ assets was in Husband’s name only. Wife called Respondent on October 2, 2009 and asked how long it would take to clear a very large check she was writing on the joint account. Respondent’s only question to Wife was regarding where to deposit the proceeds. Wife ordered Respondent to deposit the funds in a local bank. Respondent told her that the check would clear by the following Monday. Respondent did not tell Wife that there were margin restrictions on the account. On October 7, 2009, Respondent called Wife to tell her that the \$390,000 check had been returned to the joint account because there were insufficient funds to cover the amount of the check...

## **PROBABLE CURRENT CODE, RULES, OR PRACTICE STANDARDS VIOLATED**

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### **IF YOU WERE A COMMISSIONER, WHAT DISCIPLINARY ACTION WOULD YOU RECOMMEND?**

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2013

## A PRAGMATIC WALK

ANONYMOUS CASE HISTORIES |

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### ISSUE PRESENTED

Whether a CFP® professional (“Respondent”) violated CFP Board’s Standards of Professional Conduct when he concentrated clients’ assets in private placements.

### PREAMBLE NOTES

This is a summary of a decision issued following the March 2013 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred before and after January 1, 2009. The Rules in effect for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board’s Code of Ethics and Professional Responsibility (“Code of Ethics”). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s Rules of Conduct.

### FINDINGS OF FACT: ABBREVIATED

2011 FINRA Arbitration In August 2005, Client X and Client Y received a letter from Respondent soliciting them to attend a free dinner seminar presented by Respondent. Both Clients attended the seminar and then met with Respondent in his office. Shortly thereafter, both Clients completed a “Confidential Personal Financial Planning Guide.” In the Guide, Client X and Client Y indicated that were 70 years old and derived their income from social security, pensions, and a rental property.

In October 2005, Client X and Client Y completed a new account form, listing their net worth excluding their home as approximately \$690,000. When selecting their investment objectives, Client X and Client Y checked every box but aggressive growth. They listed their time horizon as less than five years and current liquid assets as approximately \$300,000.

In October 2005, Respondent sold both Clients partnership interests in an oil company for approximately \$25,000. Respondent did not develop or present Client X and Client Y with a financial plan. In November 2005, Respondent sold both Clients partnership interests in a real estate company for approximately \$50,000. In May 2008, Respondent sold the Clients partnership interests in an energy company for approximately \$20,000. According to Client X and Client Y’s Statement of Claim, Respondent sold their approximately \$690,000 worth of partnership interests or other alternative investments from 2005 through 2010.

In May 2010, Client X signed a memorandum entitled “Over concentration of illiquid and non-traditional assets” and acknowledged approving his reinvestment of funds in Firm 1 investments and in the energy company. The record did not reflect that Respondent sold Client X and Client Y anything other than partnership interests or alternative investments. In March 2011, Client X and Client Y filed for arbitration against Respondent alleging that Respondent sold them unsuitable private placements. In June 2011, Respondent filed his Answer and alleged that he informed the clients of the risk associated with the products.

In March 2012, the parties entered into a settlement agreement wherein Respondent and his firm agreed to pay Client X and Client Y approximately \$235,000

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## **IF YOU WERE A COMMISSIONER, WHAT DISCIPLINARY ACTION WOULD YOU RECOMMEND?**

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## A PRAGMATIC WALK

ANONYMOUS CASE HISTORIES |

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### ISSUE PRESENTED

Whether a CFP® professional (“Respondent”) violated CFP Board’s Standards of Professional Conduct when he: 1) relied on a non-guaranteed 12% gross rate of return in a Variable Universal Life (“VUL”) Insurance policy illustration to determine how long the product would remain in force; 2) recommended that his client purchase a VUL with a limited no lapse period when the client’s goal was life insurance paid up for life; and 3) told a client that a VUL would almost triple her money.

### PREAMBLE NOTES

This is a summary of a decision issued following the June 2013 hearings of the Disciplinary and Ethics Commission (“Commission”) of CFP Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the Rules of Conduct were Rules 1.1 through 6.5.

### FINDINGS OF FACT: ABBREVIATED

October 2009, Respondent met with LE, a 77-year-old widow who had questions regarding an existing approximately \$27,000 insurance policy. LE wanted a life insurance policy that would last until she turned 100, if possible. An account statement from October 2009, indicated that Respondent managed approximately \$200,000 of LE’s assets. The assets were in IRA’s and trusts and allocated in equities. At the bottom of the statement, Respondent indicated that LE had assets at other companies. Respondent did not indicate the value or investment type of LE’s other assets. Respondent recommended that LE purchase a VUL policy from WRL. LE indicated that she had both a net worth excluding her primary residence and investable/liquid assets between approximately \$100,001 and \$500,000. LE’s stated objectives were capital appreciation and speculation with a moderate risk tolerance and a long-term time horizon. The application also indicated that 100% of LE’s assets were in mutual funds.

In November 2009, LE also completed a WRL Individual Life Insurance Application. LE indicated that she had an approximately \$450,000 net worth and a \$40,000 annual gross income. The application indicated that LE was going to fund the new policy through a 1035 exchange of the approximately \$27,000 in her existing insurance policy and the addition of \$9,000. In March 2010, WRL issued the VUL policy to LE with an approximately \$28,000 initial premium and a planned additional premium of \$9,000. In March 2010, LE sent a check to WRL to add approximately \$5,000 to the VUL. Respondent presented LE with an illustration of the VUL dated March 2010. The illustration used a hypothetical gross rate of return of 12.00% and indicated that an initial premium of approximately \$33,000 and a premium of \$3,500 in year two would fund that policy through LE’s 100th birthday. The illustration also stated that, at a 0.00% gross rate of return and guaranteed charges, the policy would lapse in year seven. The VUL annual statement indicated that the no lapse date was March 2015, five years after LE purchased the policy. In May 2011, LE filed a complaint with WRL. In the letter she stated that she received a premium notice for \$9,000 while she believed she had an insurance policy paid up for her lifetime. LE stated that Respondent misled her into believing that she would not have to pay future premiums for lifetime coverage.

Respondent stated in his January 2013 letter to CFP Board that LE was a client for over 30 years. Respondent advised LE on her investment in mutual funds, health plans, and life insurance. Based on LE’s age, the length and breadth of the relationship; LE had a reasonable belief that Respondent was providing her with comprehensive financial planning services. Respondent involved investment planning by managing LE’s IRA and trust accounts. Respondent involved retirement planning by considering LE’s retirement income needs. Respondent involved estate planning by discussing with, and ultimately selling, LE a VUL for its death benefit. Respondent also helped LE with Medicare Part D. Therefore, Respondent involved multiple financial planning subject areas in his relationship with the client. Respondent had LE complete multiple applications and had data gathering from 30 years of working with LE. Therefore, Respondent engaged in comprehensive data gathering. Respondent’s recommendations and management covered approximately half of the client’s net worth. Respondent’s recommendation of the VUL was designed to last the duration of the client’s life. Therefore, Respondent’s recommendations spanned the breadth and depth of the client’s financial life. Based on these four factors, the client had a reasonable belief that Respondent was providing her with financial planning services

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### **IF YOU WERE A COMMISSIONER, WHAT DISCIPLINARY ACTION WOULD YOU RECOMMEND?**

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## A PRAGMATIC WALK

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### ISSUE PRESENTED

Whether a CFP® professional (“Respondent”) violated CFP Board’s Standards of Professional Conduct when he instructed his sales assistant to complete an on-line continuing education program on his behalf.

### PREAMBLE NOTES

This is a summary of a Settlement Agreement entered into at the October 2014 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred both prior to and after January 1, 2009. The rules in effect for conduct occurring prior to January 1, 2009 were Rules 101 through 706 of CFP Board’s Code of Ethics. The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s Rules of Conduct.

### FINDINGS OF FACT: ABBREVIATED

According to Respondent’s January 2014 statement to CFP Board, he was discharged from his firm in October 2012 for providing his Sales Assistant with his online ID to allow the Sales Assistant to complete an online CFP Board continuing education course.

Respondent stated that his firm had questioned him several days before his discharge, and he admitted that he allowed his Sales Assistant to take the CE for him in June or July 2012. Respondent admitted that he had a lapse in judgment in allowing his Sales Assistant to take the course for him. He stated that at that time he was servicing more than 800 clients in a very demanding environment.

Respondent stated that this situation began when he received an email from an online vendor who offered CFP Board CE credits. Respondent then asked his Sales Assistant to research whether this vendor’s site was a valid site for completing CFP Board CE credit. When the Sales Assistant indicated that the vendor was legitimate, Respondent permitted his Sales Assistant to take some CE credits for his CFP® certification renewal. Respondent’s firm discharged him.

In his February 2014 response, Respondent stated that he permitted his Sales Assistant to take a CE course for him on only one occasion. Respondent also confirmed that his Sales Assistant was not compensated in any way for taking Respondent’s course. Respondent added that his firm discovered that his Sales Assistant took the CE course for him through the Sales Assistant’s reporting of these events to the firm.

Respondent could not explain what company policy he violated as his firm did not refer to or inform him of any specific company policy violation that led to his termination. In his July 2014 response, Respondent provided more details on the CE course that his Sales Assistant completed for him. According to Respondent, the course at issue was an estate planning course. Respondent confirmed it was only one course and his Sales Assistant took the course in June 2012. Respondent received 28 CE credits from CFP Board for the Sales Assistant’s completion of the course.

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