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Why Individuals Commit Professional Misconduct

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Understanding why registrants engage in professional misconduct can assist regulators develop more effective risk management strategies. An article in the California Management Review by William S. Harvey and others provide some insights.

Entitled [Why Individuals Commit Professional Misconduct and What Leaders Can do to Prevent It](#), the article describes research in an analogous context. It involved detailed interviews with 70 white-collar inmates in a United States Federal Prison.

Most starkly, the authors reject the concept that greed and hubris adequately explain the cause of the behaviour. Misconduct is not a reflection of bad apples, but rather of bad barrels and bad cellars. "That is, we reverse the meme 'It's the people, stupid' to 'It's the system, stupid.'"

The authors say:

While research into macro-level drivers provides a retrospective explanation of individual conduct, it does not help in prospectively

identifying the specific experiences, circumstances, and triggers that predispose some individuals to make rotten decisions and commit professional misconduct. Nor do we really understand the intersection between individual, organizational, and industry factors in explaining why individuals commit professional misconduct. We need to better understand why individuals engage in misconduct, the structural opportunities that allow them to do so, and their subsequent rationalization for misconduct before making recommendations for how we can prevent misconduct. Hence, we ask the broad question of why individuals commit professional misconduct.

At the individual level, the authors note that "flawed intuition" involves a "consistent pattern of instinctive, muddled logic". For example, prioritizing the needs of clients (beyond what a client requests or expects) results in the rationalization that the rules are just suggestions.

However, the authors believe that this flawed intuition is facilitated by both the offender's organizations (e.g., employers) and their industries (e.g., professions).

"At the organizational level, we found that issues of cultural norms, weak signals, and perverse incentives help to explain individual behaviors." Cultural norms would include expectations about reaching targets and achieving outcomes. Weak signals might involve mounting pressure with minimal support. Perverse incentives include handsome rewards for performance while minimizing accountability and ethical decision making.

At the industry level, mounting regulatory expectations has the contradictory impact of causing individuals to block out the "noise". Similarly, business decisions and ethical compliance are conflated; a business decision that advances the interests of the organization and helps the client must be ethically acceptable. An example given was a physician who thought they were doing their moral duty by treating patients for chronic pain with opioids, resulting in federal charges for overprescribing.

There was a sense of flawed logic that somehow his mission to support patients with chronic pain, however important that was in fulfilling his duties as a doctor, could insulate him from the full force of the law....

The flawed intuition is often based on "fear of failure, burden of custodianship, ego and denial, and inability to cope" that can so easily infect dedicated professionals. These four triggers often intersect, enabling professional misconduct.

In terms of preventing misconduct the authors suggest that, given the above mechanisms:

The uncomfortable reality is that the threat and reality of public vilification and tougher punishments, which are short-term and medium-term responses, are not effective at preventing professional misconduct.

Solutions will be complex and multifactorial.

Second, the authors found that "individuals make flawed decisions and undertake actions that are consistent rather than contrary to their prior behaviors." This is often combined with "a lack of personal reflection and/or feedback from others". A culture of "pushing boundaries" does not help. Thus, measures that encourage individuals to consider feedback and promptly rectify undesired behaviours can prevent serious misconduct down the road. For regulators this might involve proportionate remedial responses to complaints, peer quality assurance initiatives, as well as formative training components and CPD that explicitly discuss the issue.

The authors conclude with several practical recommendations. These include providing support for individuals, especially for their health and well-being, and particularly in times of stress.

For organizations, control mechanisms are unlikely to be effective because professionals value autonomy. Rather, organizations should "[c]onstitute peer-led and cross-team communities to shape desired conduct from within professional ranks, to mediate isolated thinking, and embed lateral accountability for desired conduct." Also, through these peer-led communities, organizations should re-orient incentives that are at odds with sound professional judgment.

For industries (or regulators), the authors propose:

- Reflect on any excessive regulation that risks making the ability for

organizations to operate too complex, expensive, and unwieldy, meaning individuals find themselves seeking pragmatic work-arounds to the regulation

- Work with industry partners and use modern forms of digital communication tools to send and reinforce clear expectations of behavior at speed and scale
- Engage with all the different stakeholders at multiple levels from senior organizational leaders, professionals, industry bodies, and service users, to address the root causes of and solutions to professional misconduct
- Look at ways to support organizations and individuals so that they feel enabled to make the right choices rather than [feel] constrained by mandates

On the second last bullet point, one illustration experienced by a member of our firm stands out. During the bar admission course, the message conveyed by instructors to not steal trust funds was easy to ignore, because after all, we were all honest. However, during one class, a disbarred lawyer spoke about how personal pressures accumulated to the point where he rationalized making a brief loan to himself from trust funds. Of course, he was never able to repay the money. Instead, he borrowed more. This story from a peer was effectively communicated and may have prevented one or two in the classroom from falling into the same trap.

Once regulators waded through the dense and academic language of the article, some valuable insights can be gained.

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