

ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE

annual report

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Chairperson's LETTER

At the beginning of 2014, the Selection Committee reappointed Janet Fagan, Nancy Behrens, and Kathy Riley to the Actuarial Board for Counseling and Discipline (ABCD) for their second terms; Janet Fagan was reappointed as vice chairperson. For 2015, the Selection Committee appointed John Stokesbury to replace an outgoing pension member. It also appointed Janet Fagan to serve as chairperson, assisted by Rick Block and Jan Carstens as the two vice chairpersons.

The ABCD conducted its regular activities in 2014 and also continued progress on several procedural improvements and outreach initiatives.

With regard to regular activities in 2014, the ABCD handled 137 cases, comprised of 90 Requests For Guidance (RFGs) and 47 inquiries. It provided guidance in response to the 90 RFGs and closed 37 inquiry cases. A chart showing the number of cases handled by the ABCD since its inception in 1992, including inquiry cases and RFGs, is included in this report. The 90 RFGs mark a record high; this increase in activity demonstrates that actuaries are overcoming any perceived reluctance to contact the ABCD regarding Actuarial Standards of Practice and the Code of Professional Conduct.

RFGs are a significant portion of the ABCD caseload. The most common RFG is between a requestor and an individual ABCD member. The guidance often consists of listening to the requestor's issues, asking questions to elicit more facts and identify more issues, and perhaps providing a different perspective. Requestors usually come to a conclusion themselves at the end of the discussion. A summary of the types of issues raised in RFGs is included in this report. Individual RFGs are kept confidential and have not resulted in the ABCD initiating an inquiry on its own.

Inquiries are complaints submitted for ABCD consideration. Not all complaints lead to an investigation, and not all investigations result in a hearing. For complaints that result in an investigation followed by a hearing, the ABCD conducts the hearing, deliberates, and either dismisses, counsels, or recommends a level of discipline to the Subject Actuary's organization(s). The ABCD does not administer discipline, but recommends discipline to the Subject Actuary's respective actuarial organizations. A description of the issues alleged in complaints that the ABCD considered in 2014 is included in this report.

With regard to procedural improvement initiatives, the ABCD worked on the following items during 2014:

- Revisions to our Rules of Procedure became effective January 1, 2014, reflecting comments we received during the exposure period in 2013;
- Significant revisions to the Investigator's Handbook, ensuring that future investigations will be conducted in a timely, consistent, and efficient manner;
- Minor revisions to our Discipline Guidelines to reflect "shades of gray" in some material violations of the Code; and
- Modestly reducing our caseload, from 12 at the beginning of the year to 10 currently, despite receiving 35 new complaints. Note almost all of the complaints received in 2014 were related to pension practice, though there are two factors that influenced this potentially skewed result. As a former pension actuary, I hope this uptick is a statistical anomaly and not a trend.

The ABCD has continued prior efforts at improving communicating with the actuarial membership:

- An ABCD member continues to coordinate and solicit requests for ABCD members to make presentations in various actuarial forums;
- On a rotating basis, ABCD members write timely and thought-provoking "Up to Code" articles in *Contingencies*; and
- Various ABCD members presented at approximately 10 formal meetings, and spoke at several webinars in 2014.

I close this letter with a quote from last year's letter. "Actuaries have a well-deserved reputation for integrity and expertise, and the discipline process is one tool that helps maintain that reputation." I thank all of my ABCD colleagues for their support and assistance during 2014. I will miss the camaraderie that resulted from making tough decisions together, while maintaining mutual respect during many disagreements. I am certain the members of the ABCD will continue to perform the necessary, but often unpleasant, task of helping to maintain the profession's reputation for integrity and expertise.

Robert J. Rietz

2014 ABCD Chairperson

March 2015

Summary OF ALLEGED VIOLATIONS

There were 47 inquiries in process with the ABCD during 2014, based on either complaints or adverse information. Thirty-seven of these inquiries were disposed of during 2014. While detailed information cannot be released about any of these inquiries, the table below provides a summary of the major issue areas into which the alleged violations of the Code of Professional Conduct fell. Note that some inquiries involve multiple issues. Note also that an ABCD disposition of discipline means the ABCD recommended discipline to the appropriate organization(s).

Major Issue Alleged	Disposed in 2014					Active on 12/31/14	TOTAL CASES
	Discipline	Counsel	Dismiss	Mediate	Total		
Precept 1: Failure to act with integrity	2	4	11		17	4	21
Failure to perform services with competence	3	1	1		5	4	9
Calculation or data errors	2		1		3	5	8
Other errors in work	3	1	1		5	3	8
Failure to uphold reputation of Actuarial profession	3	1	3		7	1	8
Precept 2: Performing work when not qualified	2	1	7		10		10
Precept 3: Work fails to satisfy an ASOP	2		14		16	3	19
Use of unreasonable assumptions	1		2		3	1	4
Precept 4: Inadequate actuarial communication	1		8		9	2	11
Precept 5: Failure to identify Principal, capacity							
Precept 6: Failure to disclose							
Precept 7: Conflict of Interest							
Precept 8: Failure to take reasonable steps to prevent misuse of work product							
Precept 9: Disclosure of confidential information							
Precept 10: Failure to cooperate with other actuary			4		4	2	6
Precept 11: Improper advertising						1	1
Precept 12: Improper use of designation	2				2		2
Precept 13: Failure to report violation							
Precept 14: Failure to respond completely, honestly, and promptly to the ABCD							

Summary of the issues alleged:

- Professional Integrity: failure to act with integrity; failure to perform services with competence; failure to maintain continuing education requirements; calculation or data errors; performing work when not qualified; inadequate actuarial communication; failure to disclose sufficient information so that another actuary qualified in the same practice area can provide an opinion on the reasonableness of the work product
- Failure to cooperate with successor actuary; failure to cooperate with former Principal
- Signing NAIC property/casualty statement of opinion without necessary qualifications
- Disreputable participation in suspicious and/or illegal transactions
- Inadequate support for trend assumptions; inadequate evidence of tests for reasonableness of information on which the actuary relied; no evidence of qualified peer review
- Intentionally or recklessly making false or misleading statements while advertising actuarial services
- Intentionally or recklessly certifying false information in various IRS and PBGC forms and a defined benefit pension plan valuation report
- Wrongful use of a Recognized Actuarial Organization membership title and designation
- Advising client in a manner that violated the terms of a defined benefit pension plan and IRS regulations
- Disclaimers and limitations for reliance included in a public health filing, which is contrary to the purpose of a public health filing
- Inadequate actuarial communication: failure to communicate assumptions, methods, or data source used to reach conclusions
- Expert testimony related to a rate filing that failed to appropriately reflect trend and other key assumptions
- Failure to adequately value gainsharing provisions in public pension plans; failure to disclose that the gainsharing benefit was not valued
- Sending salacious and/or inappropriate emails of a harassing nature to other actuaries
- Health insurance filing did not meet applicable state standards
- Lack of qualification in the Health practice area to render a GASB 45 actuarial opinion
- Failing to take reasonable steps to ensure that public pension actuarial services are not used to mislead other parties
- Selection of unreasonable mortality rates, withdrawal rates, and disability rates in an actuarial valuation of a public pension plan trust

2014

Cases* Considered During 2014

	Pending From 2013 and Earlier	Received in 2014*	TOTAL
Type of Case			
Conduct	7	7	14
Practice	4	24	28
Conduct & Practice	1	4	5
Requests for Guidance	0	90	90
Total	12	125	137

Cases By Practice Area			
Casualty	4	3	7
Health	1	1	2
Life	0	1	1
Pension	7	30	37
Total	12	35	47

* Including requests for guidance

Cases Closed

Action by Individual ABCD Members

Replied to requests for guidance 90

Disposition by Chairperson and Vice Chairpersons

Dismissed 19

Dismissed with Guidance 5

Disposition by Whole ABCD After Investigation

Dismissed 5

Counseled 4

Recommended Suspension 4

Total Cases Closed

(including requests for guidance)

127

SINCE 1992

Since its inception in 1992, the ABCD has completed its cases as follows:

Dispositions	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Dismissed	12	24	9	11	8	11	13	10	5	20	16	7
Dismissed with Guidance	6	10	3	-	5	1	5	2	8	5	4	2
Counseled	-	2	8	1	6	2	5	-	2	3	2	4
Mediated	3	1	1	-	-	-	-	1	-	4	-	1
Recommended Private Reprimand	-	-	-	-	-	-	-	-	1	1	-	-
Recommended Public Discipline	-	1	2	-	3	-	1	-	3	-	-	1
Request for Guidance	8	8	8	10	28	31	22	31	36	21	47	30
Total	29	46	31	22	50	45	46	44	55	54	70	45

Dispositions	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	TOTAL
Dismissed	5	5	1	5	11	29	16	9	48	10	19	304
Dismissed with Guidance	2	4	1	-	1	5	1	2	1	2	10	80
Counseled	1	4	3	1	2	-	-	-	2	8	4	60
Mediated	-	-	-	1	-	-	-	-	-	-	-	12
Recommended Private Reprimand	-	-	-	-	1	-	2	-	1	-	-	6
Recommended Public Discipline	-	2	1	1	3	2	3	2	4	2	4	35
Request for Guidance	46	37	31	35	48	46	55	55	62	82	90	867
Total	54	52	37	43	66	82	77	68	118	104	127	1364

2014 Summary OF REQUESTS FOR GUIDANCE-RFGs

The ABCD members responded to 90 requests for guidance (RFGs) during 2014. While detailed information cannot be released about any of these RFGs, the tables below provide summaries by practice area, by precepts of the Code of Professional Conduct, and by the major issues involved in these request. Note that many RFGs involve multiple issues.

	No. of RFGs
Practice Area	
General	4
Pension	30
Health	19
Life	17
Property & Casualty	20
Total	90

	No. of RFGs		No. of RFGs
Precept		Precept	
1	35	8	11
2	24	9	1
3	28	10	12
4	18	11	11
5	0	12	11
6	4	13	23
7	4	14	0

Major Issues

Qualification Issues

- How can I become qualified?
- How can I do a job that involves more than one area of expertise?
- Qualification to provide peer review
- Whether successor actuary is qualified
- Qualification standards and requirements for issuing various types of actuarial communications
- Qualification requirements for performing actuarial work in certain practice areas and in new practice areas
- When should I refuse an assignment?
- How much can I rely on my staff?

Communication Questions

- Electronic & oral actuarial communications
- Need to communicate reliance on data supplied by others and work completed by others
- Protecting actuarial communications from misuse
- Timing of Appointed Actuary retirement
- Learning of inaccurate or incomplete data after report is completed
- Responsibility to ensure actuarial document is clear and presented fairly
- Rendering statement of actuarial opinion when some of the work is performed by others not under your control

- Responsibility to communicate methods, procedures, assumptions, data, and other information
- Whether a peer reviewing actuary's statement constitutes an actuarial opinion
- Need to communicate information required to complete the work
- Use and disclosure of assumptions prescribed by a non-actuary regulator
- Use of aggressive trend assumptions prescribed by supervisor
- Information to be included in various types of actuarial communications
- Reviewing and reporting on work of others
- Types of communication subject to the Code of Professional Conduct and actuarial standards of practice
- Actuary's professional responsibility/obligation related to the discovery of an error
- Appropriate testing and use of data in actuarial opinions
- How do I caveat an opinion for data problems?
- Whether new data and subsequent developments would make a material difference in actuarial opinion
- Definition of "Statement of Actuarial Opinion" when applied to specific scenarios
- Disclosure requirements when completing an assignment with inadequate data

Professional Integrity / Skill and Care

- Finding mentors and/or peer reviewers
- Misleading or false advertising of professional services
- Public disclosure of an ABCD complaint
- Working with a client who the actuary believes has violated the law
- Complying with P/C annual statement instructions
- Responsibility to report emerging poor experience to the state Department of Insurance
- Appropriateness of certain actuarial funding methods
- Requirements for reporting resignation of Appointed Actuary
- Principal's misuse of work product to manage earnings
- When is a failure to reveal known information dishonest?
- Must a mistake be corrected if the impact was immaterial?
- How can I ensure compliance with legal requirements?
- What should I do when others may act dishonestly?
- Issues related to co-signing an SAO prepared by another actuary
- Actuary's professional requirements and guidelines when disagreeing with a regulator / best way to approach and settle disagreement with a regulator
- Appointed Actuary's role and obligations
- Reasonableness of assumptions

Conflicts of Interest

- What constitutes a conflict of interest?
- Conflict of interest disclosures
- Conflict between opportunities for personal financial gain and proper performance of one's responsibilities
- Conflicts of interest involving a business or financial relationship with a Principal that may influence or appear to influence ability to perform responsibilities
- Conflict of interest when performing volunteer work

Precept 13 Issues

- Discussing a possible violation with the other actuary and the Principal
- What are my obligations for reporting potential material violations of the Code?
- What constitutes potential material violations of the Code of Professional Conduct? / concerns regarding quality and accuracy of work product prepared by other actuaries

- How to file a complaint / how to file an anonymous ABCD complaint
- When is a possible material violation considered resolved?
- Precept 13 obligation vs. confidentiality obligations
- How do I determine the materiality or illegality of actions?
- What constitutes a "conduct" violation in Precept 1?
- Obligation to report to state regulators an apparent miscalculation of reserves by another actuary

Cooperation with Successor Actuaries and/or former client

- Former actuary letter to Department of Insurance after change of Appointed Actuary
- Redoing the work of a prior actuary
- Attaining information from prior actuary
- Cooperation requirements and payment of fees
- How much cooperation with a successor actuary is necessary?
- Must I turn over proprietary data, models, and software to a successor actuary?
- Cooperation in an adversarial or competitive situation
- Potential misuse or misinterpretation of information by successor actuary

Control of Work Product

- Potential misuse of work product
- Dealing with a client's possible illegal act
- Correcting a prior inadvertent error
- Issues associated with developing and selling actuarial software

Miscellaneous

- Use of the term "Personal Actuary" as a business identifier
- Dispute with regulator over completeness of work product
- Disagreement with regulator over adequacy of a premium deficiency reserve
- Transparency at workers' compensation rating bureaus
- How much documentation of my work should I save?
- Client failed to disclose to his employees relative values of all available forms of payment provided under a qualified preretirement survivor annuity plan

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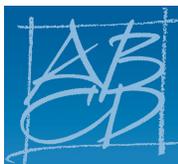


Standing: Allan W. Ryan, John M. Purple,
Kathleen A. Riley, Rick Block, Nancy Behrens,
Dave Ogden; Seated: Vice-Chairperson
Janet Fagan, Chairperson Robert J. Rietz,
Vice-Chairperson Jan Carstens



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