

ACTUARIAL BOARD FOR  
COUNSELING AND DISCIPLINE

# annual report 2015



AMERICAN ACADEMY of ACTUARIES

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# Chairperson's LETTER

The Selection Committee appointed Deborah Rosenberg to the Actuarial Board for Counseling and Discipline (ABCD) for a three-year term beginning in 2016, replacing retiring member John Purple. John served on the ABCD for six years with experience, expertise, and enthusiasm. The committee also reappointed Rick Block and Jan Carstens as members for a second three-year term.

The committee also reappointed me as chairperson, with Rick Block and Jan Carsten serving as vice chairpersons.

The ABCD conducted its regular activities in 2015 along with several procedural improvements and outreach initiatives.

## Regular Activities

The ABCD handled 125 cases, comprised of 96 Requests for Guidance (RFGs) and 29 inquiries. It provided guidance in response to the 96 RFGs and closed 15 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 (see page 3). The 96 RFGs mark another record high. This level of activity demonstrates the increasing desire to seek guidance on actuarial standards of practice and the Code of Professional Conduct.

RFGs make up a large portion of the ABCD's activities. The most common RFG is between a requestor and an individual ABCD member. The guidance is most often developed by listening to the requestor's issues; asking questions to elicit more background, issues, and facts; and providing an additional perspective. Requestors usually come to a conclusion on their own by the conclusion of the discussion. A summary of the types of issues raised in RFGs is included in this report (see page 4). Individual RFGs are kept confidential.

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 are subject to investigation and a hearing, the ABCD conducts the hearing, deliberates, and dismisses, counsels, or recommends level of discipline to the Subject Actuary's organization(s). The ABCD does not impose discipline. It recommends discipline to the five U.S.-based organizations when it thinks appropriate. A description of the issues alleged in the 2015 complaints is included in this report (see page 1).

## Procedural Improvements

The ABCD worked on the following items during 2015:

- Revisions to the investigator handbook;
- Improving the content of our post-hearing findings and recommendations letters to include comprehensive discussion of facts and circumstances leading to the recommendations; and
- Reviewing our procedures for continual improvement, including timeliness of the process.

## Outreach

With regard to outreach and communications:

- An ABCD member participates on the Council on Professionalism;
- A member coordinates requests for ABCD members to make presentations in various forums;
- On a rotating basis, ABCD members write timely and thought-provoking "Up To Code" articles in *Contingencies* magazine; and
- Various ABCD members presented at 18 formal meetings and webinars in 2015.

If you, as a member of an actuarial organization, have any specific questions about the activities of the ABCD, please contact one of our members.

*Janet Fagan*  
2015 Chairperson  
March 2016

# Summary OF ALLEGED VIOLATIONS

There were 29 inquiries in process with the ABCD during 2015, based on either complaints or adverse information. Fifteen of these inquiries were disposed of during 2015. 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 fall. 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	ABCD Disposition in 2015					Active on 12/31/15			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2015	Initiated in 2015	Total	
<b>Precept 1:</b> Failure to act with integrity	1	2	6		9	3	5	8	17
Failure to perform services with competence		1	2		3	2	5	7	10
Calculation or data errors		1	1		2	2	2	4	6
Other errors in work		1	1		2	1	9	10	12
Failure to uphold reputation of actuarial profession	1	2	6		9	4	8	12	21
<b>Precept 2:</b> Performing work when not qualified			1		1		2	2	3
<b>Precept 3:</b> Work fails to satisfy an ASOP		2	5		7	3	8	11	18
Use of unreasonable assumptions			1		1	1		1	2
<b>Precept 4:</b> Inadequate actuarial communication			1		1	2	2	4	5
<b>Precept 5:</b> Failure to identify Principal, capacity									
<b>Precept 6:</b> Failure to disclose									
<b>Precept 7:</b> Conflict of Interest							1	1	1
<b>Precept 8:</b> Failure to take reasonable steps to prevent misuse of work product			1		1	1	1	2	3
<b>Precept 9:</b> Disclosure of confidential information							1	1	1
<b>Precept 10:</b> Failure to cooperate with other actuary			2		2		1	1	3
<b>Precept 11:</b> Improper advertising		2			2				2
<b>Precept 12:</b> Improper use of designation									
<b>Precept 13:</b> Failure to report violation			1		1				1
<b>Precept 14:</b> Failure to respond completely, honestly, and promptly to the ABCD	1				1	1		1	2

## Some of the issues alleged:

- Intentionally or recklessly issuing an oral actuarial communication that was false, unclear, incomplete, and potentially misleading
- Failure to cooperate with successor actuary; failure to cooperate with former Principal
- Identity fraud
- Failure to communicate either assumptions or methods used to reach conclusions
- Sending inappropriate, unprofessional, and threatening email
- Failing to take reasonable steps to ensure 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 pension trust
- Engaging in advertising or business solicitation activities that are false or misleading
- Failure to ensure that Actuarial Communications are clear, appropriate, and satisfy applicable standards of practice
- Health insurance filing did not meet applicable state standards
- Obstructing a federal grand jury investigation
- Inadequate support for trend assumptions in a health insurance rate filing; inadequate evidence of tests for reasonableness of information on which the actuary relied; and no evidence of qualified peer review
- Disreputable participation in suspicious and/or illegal transactions
- 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
- Expert testimony related to a rate filing that failed to appropriately reflect trend and other key assumptions
- Failing to report an apparent material violation of the Code of Professional Conduct
- Knowledge of material error in valuation software but failing to correct it because of cost
- Submitting an actuarial valuation that the actuary knew contained material errors
- Actuary's failure to sign valuation reports, thereby not identifying him- or herself as the actuary responsible for the work
- Disclosing confidential information without authorization
- Discussing differences among actuaries in a manner that lacked objectivity, courtesy, and respect
- Filing false tax returns
- Performing Actuarial Services that the actuary knew would be used to mislead other parties and/or evade the law
- Engaging in professional conduct involving dishonesty, deceit, and misrepresentation
- Knowingly performing Actuarial Services involving a conflict of interest that impaired the actuary's ability to act fairly
- Knowingly or negligently certifying false information sent to a state Department of Insurance

# 2015

## Cases\* Considered During 2015

		Pending From 2014 and Earlier	Received in 2015*	TOTAL
<b>Type of Case</b>	Conduct	4	5	9
	Practice	5	6	11
	Conduct & Practice	1	8	9
	Requests for Guidance	0	96	96
<b>Total</b>		10	115	125
<b>Cases by Practice Area</b>	Casualty	2	4	6
	Health	1	4	5
	Life	1	3	4
	Pension	6	8	14
<b>Total</b>		10	19	29

\* Including requests for guidance

## Cases Closed

<b>Action by Individual ABCD Members</b>	
Replied to requests for guidance	96
<b>Disposition by Chairperson and Vice Chairpersons</b>	
Dismissed	11
<b>Disposition by Whole ABCD After Investigation</b>	
Counseled	3
<b>Recommended Discipline (Expulsion)</b>	1
<b>Total Cases Closed</b>	<b>111</b>
(including requests for guidance)	

# 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
<b>Total</b>	<b>29</b>	<b>46</b>	<b>31</b>	<b>22</b>	<b>50</b>	<b>45</b>	<b>46</b>	<b>44</b>	<b>55</b>	<b>54</b>	<b>69</b>	<b>45</b>

Dispositions	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	TOTAL
Dismissed	5	5	1	5	11	29	16	9	48	10	19	11	315
Dismissed With Guidance	2	4	1	–	1	5	1	2	1	2	10	–	80
Counseled	1	4	3	1	2	–	–	–	2	8	4	3	63
Mediated	–	–	–	1	1	–	–	–	–	–	–	–	12
Recommended Private Reprimand	–	–	–	–	1	–	2	–	1	–	–	–	6
Recommended Public Discipline	–	2	1	1	3	2	3	2	4	2	4	1	36
Request for Guidance	46	37	31	35	48	46	55	55	62	82	90	96	963
<b>Total</b>	<b>54</b>	<b>52</b>	<b>37</b>	<b>43</b>	<b>66</b>	<b>82</b>	<b>77</b>	<b>68</b>	<b>118</b>	<b>104</b>	<b>127</b>	<b>111</b>	<b>1,475</b>

# 2015 Summary OF REQUESTS FOR GUIDANCE-RFGs

The ABCD members responded to 96 requests for guidance (RFGs) during 2015. 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
<b>Practice Area</b>	
General	5
Property & Casualty	23
Health	22
Life	19
Pension	27
<b>Total</b>	<b>96</b>

	No. of RFGs		No. of RFGs
Precept 1	32	Precept 8	9
Precept 2	21	Precept 9	2
Precept 3	22	Precept 10	5
Precept 4	12	Precept 11	0
Precept 5	0	Precept 12	1
Precept 6	0	Precept 13	9
Precept 7	4	Precept 14	0

## Major Issues

### Professional Integrity / Skill and Care

- Pressure from Principal to use less-than-appropriate methodology
- Providing an actuarial opinion for an entity that had not started operations
- Calculation of the risk corridor settlement for individual products governed by the Affordable Care Act
- Is Principal booking sufficient net reserves?
- Principal asked actuary to produce an actuarial certification based on falsified asset values
- When does providing advice to friends or family constitute the performance of actuarial services?
- Document retention: keeping client files/work product after retirement
- Actuary certification that defined benefit plan met minimum funding requirements based on client's written assertion that client made a timely contribution to the plan
- Signing a Schedule SB for actuarial work done for a separate TPA firm with which the actuary is not employed
- Appointed Actuary seeks to terminate employment with Company A, join Company B, and take his clients with him
- Resolving an apparent conflict between Statement of Statutory Accounting Principles No. 54 and the Health Reserve Guidance Manual when conducting Premium Deficiency Reserve testing
- Calculating Premium Deficiency Reserves for an unprofitable health insurance company when it is not possible to project when the company will return to profitability
- Actuary received unsolicited document containing competitor's business plans but has ethical concerns about viewing the document
- Appropriate actuarial assumptions for public pension plans
- Long-term care insurer wants to recoup past losses in a proposed rate increase for existing policies
- Successor actuary's responsibilities when assisting a plan sponsor in terminating a frozen defined benefit plan via PBGC's standard termination
- Application of ASOP No. 38 when working with various model scenarios
- Use of unadjusted premiums to establish initial per capita health care costs and in the projection of future benefit plan costs
- Preparation of Medicare Advantage bids for two related organizations

## Qualification

- Am I qualified to be an appointed actuary for health annual statement without the taking the Life and Health Qualification Seminar exam?
- Qualification to review rate filings for long-term care and Medicare Supplement policies / qualification to opine on LTC reserve analyses
- Appropriate background and relevant experience to provide various actuarial services
- U.S. Qualification Standards for issuing actuarial opinions
- Meeting the experience requirement under the direction of a qualified actuary
- Appropriate organized continuing education (CE) credits
- Do semi-retired actuaries have the same CE requirements as full-time practitioners?
- May time spent meeting an actuary's basic education requirement be applied to the actuary's CE credits?

## Communication

- Documenting revised actuarial reports
- Required disclosures in statements of actuarial opinion in support of statutory annual statements for property and casualty insurers
- Disclosure requirements under ASOP No. 4 when utilizing an output smoothing method to adjust the results of a contribution allocation procedure
- Definition of "Statement of Actuarial Opinion" or "Actuarial Communication" when applied to specific scenarios
- When does an actuary have to inform a Principal of an error in old work product?
- Reliance on work from others
- Disclosing actuary's actuarial concerns when Principal directs him to calculate benefit rates for employee COBRA payments using the past cost method
- Disclosure requirements when Principal directs use of actuarial assumptions that the actuary determines are unreasonable
- Disclosing reliance on other sources for data
- Ensuring that an actuarial communication is not used to mislead others

## Conflict of Interest

- Pursuing new employment that presents a potential conflict of interest with present engagement
- Being compensated for outside work while an employee
- Conflict of interest disclosures

## Control of work product

- Ensuring actuarial services are not misused by others
- Documenting actuary's disagreement with prescribed assumptions
- CFO misrepresents actuary's work when briefing board of directors

## Cooperation

- Former client requests all work papers from retiring actuary
- Responding to auditors in connection with financial statements
- Cooperation with regulators, successor actuaries, and Principals
- Obtaining information from prior actuary
- Cooperation requirements in a nonpayment-of-fees situation

## Precept 13

- Whether an actuary's work materially violated the Code
- Whether there was inappropriate use of proprietary software/models
- When is a possible violation considered resolved?
- Precept 13 obligations vs. confidentiality obligations

## 2015 ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE



The 2015 members of the Actuarial Board for Counseling and Discipline (from left): John M. Purple, David F. Ogden, Vice Chairperson Janet M. Carstens, Chairperson Janet L. Fagan, Kathleen A. Riley, Nancy A. Behrens, John T. Stokesbury, Vice Chairperson Richard A. Block, and Allan W. Ryan.



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