

Moving from Discipline to Guidance

FOR MOST OF HIS ACTUARIAL CAREER, Paul Fleischacker's impression of the activities of the Actuarial Board for Counseling and Discipline (ABCD) was simplistic—and fairly typical.

"I think I was like most actuaries who think of the ABCD as primarily a disciplinary group, rather than as a group of experts who can give guidance when you have questions on compliance issues," Fleischacker says.

Despite his work on the Actuarial Standards Board (where he served as a member of the health committee since 1997 and as chair of that committee from 2005 to 2009), it wasn't until he was tapped to become an investigator for the ABCD in 2003 that Fleischacker became, he says, more cognizant of all that the ABCD offers to the actuarial community.

Actuarial Gumshoe

Fleischacker's inauguration into the workings of the ABCD came on the heels of his retirement from full-time actuarial work. He joined a cadre of investigators, with expertise in each of the practice areas, who were recruited as part of an effort to expedite the ABCD's completion of investigations.

"When I agreed to become an investigator, they sent me a ton of material to read on the role and responsibilities of investigators, the rules of procedure for the ABCD, that sort of thing," Fleischacker recalls. The process, he

discovered, is very thorough.

Before a case is sent out for investigation, it has already undergone an initial screening by the ABCD, which considers the original complaint and notifies the subject actuary to solicit his or her response. Some cases are dismissed at this point if the ABCD finds there was apparently no material violation. When a case is passed along for investigation, care is taken to ensure that the investigator and the subject actuary have no work or other prior relationship that could bias the investigation.

"The difficulty is, when you've worked 30 to 35 years in the profession, you know quite a few of the practitioners in your area," Fleischacker says, adding that this is one of the reasons the ABCD maintains a large pool of volunteer investigators. In the five years that Fleischacker spent on the investigative team, he was involved in only a few investigations. But that didn't mean he wasn't very busy.

"The cases I investigated were fairly complicated," Fleischacker recalls. "I always arranged to go and have face-to-face time with the subject actuary, even though such meetings weren't required procedures, and then follow up as necessary with phone and

e-mail." Fleischacker also contacted the complainant and identified other parties on either side of the issue who might have information relevant to his investigation, a process that usually took several months.

After gathering

his information, Fleischacker would write up his findings. The first draft of his report always went to the ABCD's staff attorney, Tom Griffin, who, along with a board member, would review it and make suggestions about areas that might need more investigation or substantiation. Griffin was also diligent, Fleischacker says, about cautioning him when any element of his report seemed to veer into a judgment on the case.

"I'll admit it's a difficult line to walk, but the one thing you don't want to do as an investigator is judge," Fleischacker explains. "We are cautioned from Day One to be open-minded and fair-minded. You just present the facts as you see them. It's up to the ABCD to do the judging."

At the same time, Fleischacker says, investigators can't help but be affected by the process.

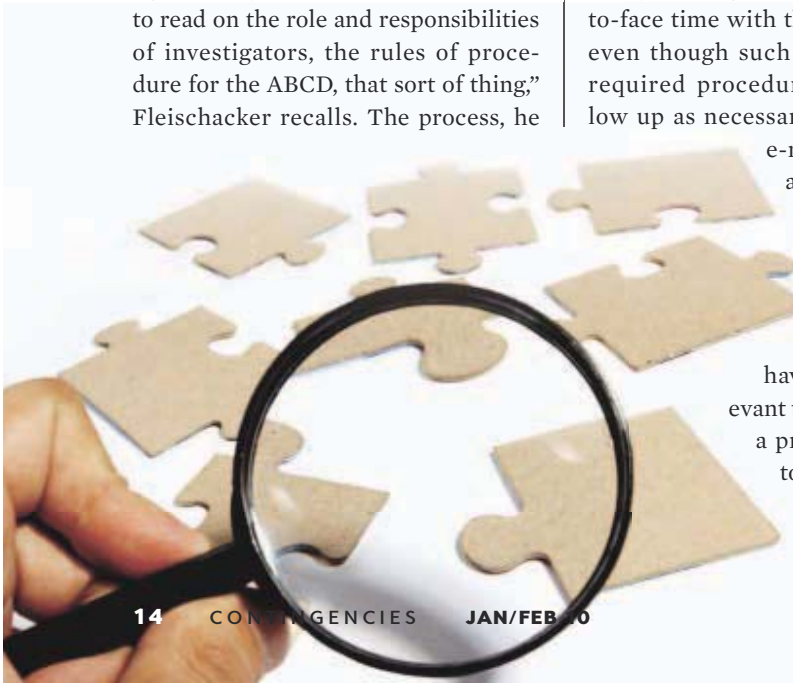
"For me, it was tough all the way through, from beginning the investigation through the hearing. But the hearings, from an emotional standpoint, were the most intense and stressful," Fleischacker says.

At the hearing, the investigator is called in to present his report to the ABCD. The subject actuary is usually present at the hearing and is given the opportunity to question the investigator directly about his or her findings.

"I have a certain amount of empathy for the subject actuary. These are often people who, for whatever reason, got into a situation that may have resulted in a violation of the code or violations of the ASOPs and code. But outside of that situation, they are darn good practicing actuaries," Fleischacker says.

Guidance and Discipline

Once an investigation is completed, the investigator is informed of the outcome of the board's deliberations but given no details. "You are always curious, as an investigator, as to what happens and why," Fleischacker admits.



It's also important to remember, Fleischacker adds, that while the ABCD may make a decision for some form of discipline, it can't enforce it. Such conclusions by the board are sent to the member organizations to which the subject actuary belongs, and it is up to those bodies to impose any disciplinary action.

While his knowledge of the ABCD expanded greatly during his tour as an investigator, Fleischacker says there were still aspects of the ABCD's doings that he didn't fully appreciate until he became a member of the board last year.

"My focus had been purely on investigations," Fleischacker admits. "Since getting on the board, I have gained a greater appreciation for all that the board is involved in and all that they do."

Fleischacker was surprised to discover, for instance, that the board spends much of its time handling requests for guidance (RFGs). RFGs typically come

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from an actuary looking for the best way to handle a particular situation or issue and remain in compliance with the code. RFGs are handled directly by a member of the ABCD who has expertise in that area, usually by phone calls and e-mails with the actuary requesting guidance. Occasionally, actuaries request—and will receive—guidance from the entire board.

The ABCD also provides counseling, which can take many forms. "Before or after an investigation, the board may find that subject actuary's actions weren't material violations requiring discipline, but that the actuary should

be counseled," Fleischacker explains. That counseling can come from individual members of the board (the ABCD is composed of two to three actuaries from each area of actuarial practice) or from outside actuaries chosen for that purpose by the ABCD. Counseling is occasionally included with other forms of discipline when the board has concluded that the subject actuary has committed a material violation of the code.

Seeing the time and energy that members of the ABCD invest in the process has been an eye-opener, says Fleischacker. "I'm very impressed with other members of the board. They are committed to the process, committed to giving due process."

As for himself?

"I feel I am giving back to the profession in a way that's sometimes difficult but significant and very important for the profession," Fleischacker says. □

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Offices in the UK, Ireland, USA, Switzerland, India, Hong Kong, China and Australia

New York

48 Wall St, 11th Fl
NY, 10005
Tel: +1 212 918 4754
Contact: Steve Young
s.young@darwinrhodes.us

www.darwinrhodes.us

Chicago

222 South Riverside Plaza, 11th Fl
Chicago, IL, 60606
Tel: +1 312 239 1380
Contact: Laura Santoro
l.santoro@darwinrhodes.us

www.darwinrhodes.com