

## Comments on Changing the Disciplinary Process

**AT THE END OF OUR ARTICLE** detailing proposals under consideration by the Council of U.S. Presidents (CUSP) to reform the disciplinary process (“Your Comments, Please: Changing the Disciplinary Process,” May/June 2010 *Contingencies*), Roger Hayne and I invited readers to respond. A dozen *Contingencies* readers took us up on our offer, sending thoughtful, often detailed replies.

You were asked to consider and comment on six questions. Some of the 12 who wrote offered point-by-point responses to one, more, or all of the questions. Others provided more general comments. Because of the length of the responses, I must limit myself to summarizing them. But rest assured, CUSP reviewed all the responses in their entirety as part of a process that is expected to lead to a vote later this year by all five U.S.-based actuarial organizations to amend their respective bylaws to institute discipline reforms effective for 2012.

If you are interested in reading the original article, go to [www.contingen-ciesonline.com/contingen-ciesonline/20100506#pg18](http://www.contingen-ciesonline.com/contingen-ciesonline/20100506#pg18)

**Balancing Disclosure and Privacy**  
*Does the current actuarial discipline process appropriately balance the need to observe due process and protect a subject actuary who might be falsely accused with the need to protect the public? If not, which protection should take priority over the other?*

One writer stated that the Actuarial Board for Counseling and Discipline (ABCD) should participate directly in litigation discovery. Another called the current process a kangaroo court and recommended eliminating all disciplinary actions in lieu of counseling only.

Given how long it takes for a case to be resolved, an actuary shouldn’t be allowed to game the system, one respondent wrote. This could have a negative effect on the public, the writer added, explaining that in rare instances the ABCD might need—at an early stage—to

publicize the case if the disclosed activity is determined to be a violation of the Code of Professional Conduct with a potential adverse effect on the public.

In a related vein, another respondent opined that the discipline process is overly concerned with protecting the actuary. This is reflected in the extreme level of secrecy surrounding the process, the respondent wrote, a level of secrecy that can continue even after a subject actuary has been found to be in breach of the code.

### Suspending Discipline Pending the Outcome of Litigation

*The ABCD process focuses on potential material violations of the Code of Professional Conduct, while criminal and civil proceedings focus on violation of the law or commission of a tort. Under what circumstances, if any, should the disciplinary process be suspended pending the outcome of legal proceedings? If such circumstances exist, should the suspension continue while the subject actuary appeals a verdict?*

Respondents to this question definitely held mixed opinions. These ranged from not suspending the disciplinary process under any circumstances to suspending the disciplinary process when the litigation is related to actuarial practice. On the side of not suspending the process, opinions included moving forward until a court orders otherwise or unless the subject actuary is willing to temporarily suspend his/her membership in the actuarial organization(s). On the other side of the issue, one writer held that the disciplinary process should be suspended during litigation that is not related to actuarial practice.

### High-Profile Cases

*Suppose the subject actuary has been convicted of fraud or another felony in a high-profile (nationally publicized) case. Should the public know, after a high-profile conviction, if he or she is involved in ABCD disciplinary proceedings? If so, how would you define “high profile”? Should the ABCD keep its proceedings confidential in a high-profile case until it has made its recommendation to the membership organization or beyond that point (i.e., until all membership organization appeals have been exhausted)?*

Most of those who responded were in favor of informing the public regarding high-profile (public) cases. Four stated that the public should be informed that a case is being investigated or that the disciplinary process is being suspended while the subject is in litigation. Respondents also generally endorsed informing the public after a subject actuary has been convicted in court, but only if it relates to the disciplinary action being considered by the ABCD.

### The Current Discipline Process

*How should the level of discipline be determined?*

Two respondents argued for creating penalty guidelines; one also recommended that such guidelines be made public. Two others stated that any such guidelines should fit the infraction/violation in question. And two others cautioned that the actuarial organizations should not be permitted to reduce more serious penalties recommended by the ABCD.

### Tombstones

*How much detail should the membership organization publish about cases involving public discipline (public reprimand, suspension, or expulsion)?*

On this question, two respondents endorsed the level of information currently provided while one stated that more information could be provided if

requested for a valid reason. Four others, however, said the information provided should be detailed enough so that members can gain a full understanding of the issue and learn from it.

### **(Inter)Disciplinary Proposal**

*Does it appear that the proposed process is more efficient and more apt to result in uniform discipline across the profession? What are the potential downsides to this proposed process?*

Nearly half of all respondents agreed that uniformity of process is a good objective. A more efficient process would resolve cases faster, one wrote in assessing the need and goals for reform. But before effecting change, reformers should focus first on the transparency of the process, another stated. Once that challenge is resolved, efficiency and uniformity can be addressed.

One writer questioned whether the actuarial organizations are making changes prematurely. Two others recommended a period of study of other professional organizations, such as doctors (AMA), lawyers (ABA), and accountants (AICPA), with an eye to ensuring development of a comprehensive proposal.

Another argued that the ABCD should not appoint disciplinary panels because it represents a conflict of interest. It would be better, this respondent wrote, for each actuarial organization to have its own disciplinary panel and appeal panel and that the chairpersons of those panels would be members of a professionwide disciplinary review board and appeal review board).

### **Other Comments**

Some of those who responded to the questions took the opportunity to speak to other issues, as well. One writer wondered whether Roger and I overstated the capabilities of ABCD since the relatively small number of cases that the ABCD handles, coupled with term limits, means



that board members don't have sufficient knowledge of history and precedent to be effective. The disciplinary committees of the respective U.S. actuarial organizations, on the other hand, have more experience and are therefore more capable of passing judgment.

Another respondent argued that the disciplinary committee(s) should be permitted only to accept or reject the penalty recommended by the ABCD. The ABCD should present the case

directly to the disciplinary committee(s) and the committee(s) should not be permitted to hear new evidence.

While one writer suggested that it would be good to harmonize the disciplinary process with the Joint Board for Enrolled Actuaries, another questioned whether the proposal to reform the disciplinary process across the five U.S.-based actuarial organizations violates antitrust rules. Having one body handle all actuarial discipline, this individual wrote, would eliminate the antitrust risk. □

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## **Statement of Position on the Disciplinary Process of the U.S. Actuarial Profession**

**The Council of U.S. Presidents (CUSP) adopted the following statement on the disciplinary process at its Oct. 1, 2010, meeting.**

The undersigned leaders of the U.S. actuarial profession comprising the Council of U.S. Presidents (CUSP) affirm the continued importance of acting in the public interest as articulated in a 2007 Statement of Position issued by the North American Actuarial Council.

We believe that the public interest is being served by the U.S. actuarial profession maintaining a uniform Code of Conduct and a common set of Standards of Practice. We also believe that the public interest would be better served if uniformity were achieved in the procedures for disciplining actuaries who are found to have violated the Code of Conduct.

Currently, each of the five U.S.-based actuarial associations has its own procedures for disciplining its members following receipt of discipline recommendations from the Actuarial Board for Counseling and Discipline (ABCD). We find problematic the potential (sometimes realized) of disparate outcomes in the same case. We also note that the process is burdensome for an actuary subject to discipline charges, and results in the inefficient use of volunteer and paid resources.

After careful consideration and consultation with our Boards and the ABCD, we recommend a joint discipline process. This will be a major step toward achieving greater uniformity and consistency while preserving and respecting each organization's governance framework, including the power to expel or suspend its members. This recommendation calls for ongoing review of the disciplinary process by the leadership.