

Don't Regret Having Filed a Complaint

IN YOUR WORK AS AN ACTUARY, it's quite possible that at some point you'll discover an apparent unresolved material violation of the Code of Professional Conduct. Members of any of the five North American actuarial organizations that have adopted the code are required to follow it—even when they aren't providing actuarial services. (When you read the code, you find that some precepts apply only when providing actuarial services and others apply at any time in the life of a member actuary.)

In my work over the past 14 years as a regulator for the state of Minnesota, I've identified quite a number of actuarial statements of opinion that appeared to violate the code in some way. (Because most regulators look at hundreds of actuarial opinions every year, that's simply part of the job.) For those violations that appeared to be material and that weren't resolved, I've filed complaints with the Actuarial Board for Counseling and Discipline (ABCD). Although each complaint that I made still seems appropriate, over the years I've made fewer complaints because I've become much better at persuading actuaries to take steps to resolve apparent violations.

As a member of the ABCD, I've heard from several people who are dissatisfied with the outcomes of complaints that they made to the ABCD. This bothers

me, especially since these individuals probably are representative of many others. I will try to describe some of the sources of this dissatisfaction and, in the process, identify ways for achieving a satisfactory outcome while complying with all of our obligations under Precept 13 of the code.

Making a complaint takes too much time and effort.

The first step is to request guidance from the ABCD's legal counsel or from any member of the ABCD. We can explain the process and can also give feedback about the materiality of the issue that you have identified.

The second step is usually an attempt to resolve the issue. This doesn't have to take much time. If you discuss the issue briefly with the other actuary and don't get cooperation, you don't have to argue with him or her. You can just state that you disagree with his or her view and that you are obliged by Precept 13 to report the apparent material violation of the code to the ABCD. If the actuary agrees to resolve the issue, it's his or her responsibility to do so, and you have no obligation to help or give advice. Your only obligation is to determine whether you believe the actuary has indeed resolved the issue.

When making a complaint, you don't have to investigate the violation

by tracking down relevant documents that you don't already have. If you can provide sufficient evidence to determine that an investigation is needed, then the ABCD's investigator, who is a qualified actuary in the field for which the work was done, will request relevant documents from the actuary who did the work. The investigator also will obtain copies of relevant documents that are in the public domain or are otherwise available.

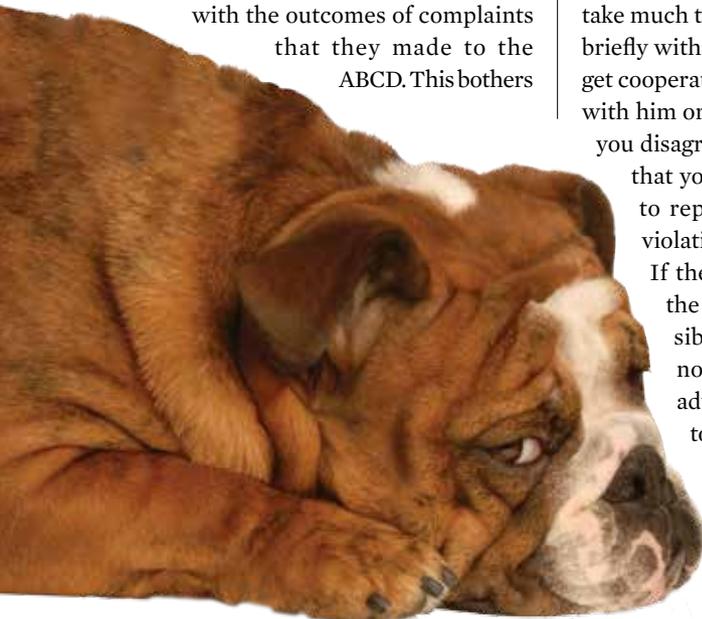
You don't have to list every possible violation, as you would in a lawsuit. If there's enough evidence to indicate a possible material violation, the ABCD can identify additional violations, if any, after reviewing the investigator's report.

However, keep in mind that ABCD chairpersons who initially review each complaint may not be familiar with the background or circumstances involved and may not understand why you believe that a violation has occurred. It's often helpful to provide background information and an explanation justifying your belief that the violation is material. Similarly, if you don't attempt to resolve the violation as described in Precept 13, it's helpful to explain why it wasn't appropriate to do so in this case.

Making a complaint could also make an enemy.

Always treat others with courtesy and respect. If feasible, give the other actuary the opportunity to respond to the issue and resolve it before you notify the ABCD. Explain your obligation to make a complaint if the issue isn't resolved. Don't impugn the other actuary's motives or expertise, and don't personalize the issue. Just stick to the facts.

If you have a public document that provides evidence of a possible material violation of the code, you can make a request for an inquiry without revealing your name to the other actuary. However,



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in a case where the evidence isn't public (for example, if it involves an item such as your observations), the ABCD will need to communicate your name to the other actuary along with a copy of your complaint in order to proceed with an inquiry. If your submission contains no independent evidence (such as a filed report or news article) and you withhold your name from the other actuary, the ABCD may have to forgo an inquiry.

Before making a complaint, you can suggest that the other actuary request guidance from a member of the ABCD about the issue, in order to move the discussion to an objective third party and depersonalize the issue. The other actuary may resolve the issue as a result of the discussion. But keep in mind that you will not know what he or she said by way of explanation. If the issue isn't reasonably resolved, you should go ahead and make a complaint.

Don't react defensively if the other actuary makes accusations about your motives or expertise. Those accusations aren't relevant. If you're concerned that the other actuary will complain about your behavior, you can contact the ABCD to get another opinion about your own compliance with the code.

There may be instances when you follow all of the above advice and still make an enemy. While your professional obligation to follow the code may have this result, at least you will have taken appropriate steps to ensure that the other actuary understands your position.

Making a complaint will result in a lawsuit against me.

It's an unfortunate fact that litigation is common in our society. It can cost you valuable time and money to defend. However, I'm not aware of any case in which a lawsuit was filed solely because the defendant made a complaint to the ABCD. The possibility of a frivolous lawsuit shouldn't deter you from complying with your obligations under the code.

Making a complaint will result in a retaliatory complaint against me.

Similarly, you can't prevent a frivolous complaint to the ABCD. The chairpersons are obligated to evaluate every complaint. However, your response to a frivolous complaint is likely to be brief and easy to write. Also, such complaints are usually dismissed quickly, based on the information provided by both parties, without the need for an investigation or a hearing.

I don't know why my complaint resulted in dismissal or counseling, rather than a recommendation of discipline.

The ABCD is governed by Article X of the Academy's bylaws. Section 9 of that article states,

Confidentiality. Except as otherwise provided in these Bylaws, all proceedings under this Article shall be kept confidential by the ABCD, its staff, investigators, and advisers. This requirement as to confidentiality shall not preclude the ABCD from:

- A.** Advising complainants and subject actuaries about the progress and outcome of matters under consideration;
- B.** Reviewing previously closed files as they may relate, in any manner, to the consideration of a new matter before it;
- C.** Accepting a bona fide waiver of confidentiality from a subject actuary and disclosing information pursuant to that waiver that would otherwise be kept confidential under this section, subject to such terms and conditions as the ABCD deems necessary to protect the confidentiality rights of other parties and the integrity of the ABCD process.

Based on this requirement, the ABCD is very limited in its ability to disclose information about its proceedings. (The bylaws don't define "proceeding," but the dictionary calls it "a particular action or course or manner of action.")

However, it's important to note that

both the investigator and the subject of the investigation receive information following an investigation.

If discipline is recommended to the organizations of which the subject actuary is a member, then those organizations' discipline committees are given the recommendation and all of the information considered by the ABCD, including a transcript of the hearing. Under current rules, the ABCD always holds a hearing before it sends a recommendation for discipline to actuarial organizations.

The ABCD communicates periodically with the complainant about the progress of the case and will notify him or her of the final disposition when the case has been completed.

How can I learn more about the ABCD and the ways in which it operates?

Recognizing the value of a wide discussion of ethical issues within the profession, the ABCD spends quite a bit of time providing case studies of violations of the code. These fictional cases are carefully designed to present the issues while avoiding specifics from particular cases. Usually the cases contain features from several different past complaints. Some of the cases are given in presentations to actuarial organizations, some appear in this column and some have appeared in other articles by members of the ABCD and are listed on the ABCD's website, www.abcdboard.org.

It's our hope that you will take advantage of the ABCD's outreach to members of the actuarial profession. And please don't hesitate to contact us for specific case guidance. □

JULIA T. PHILIPS is a life and health regulator for the state of Minnesota, chairperson of the *Contingencies* editorial board and a member of the ABCD. She is an Academy member and a fellow of the Society of Actuaries.