

Mercy or Justice

THE ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE (ABCD) was created in 1991, effective Jan. 1, 1992, through the addition of Article X to the Bylaws of the American Academy of Actuaries. The ABCD has now completed 15 full years of operation, and a review of its operations seems timely.



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| Dismissed | 157 |
| Dismissed with Guidance | 58 |
| Counseled | 43 |
| Mediated | 11 |
| Recommended Private Reprimand | 2 |
| Recommended Public Discipline | 14 |
| Responded to Requests for Guidance | 394 |
| Total | 679 |

The overwhelming number of cases completed by the ABCD involved confidentially responding to requests for guidance; those cases and the cases that were mediated aren't addressed in any detail here. This article describes the investigative process and presents a comparison of the 258 cases that were resolved without an ABCD recommendation that the membership organization impose discipline, with the 16 cases that resulted in an ABCD recommendation for either private reprimand or public discipline (public reprimand, suspension from membership, or expulsion from membership). The ABCD's rules of confidentiality prevent any discussion of the details of any of the cases.

The ABCD derives its authority from the five U.S.-based actuarial organizations: the American Academy of Actuaries, the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries. It investigates complaints of actuaries' alleged violations of the Code of Professional Conduct (Code) and, where deemed appropriate, counsels the actuaries in appropriate professional practice or recommends disciplinary action by the actuaries' membership organizations. It also mediates disputes between actuaries and others and responds to actuaries' requests for guidance on professionalism issues.

Many of the ABCD's cases are dismissed at the earliest stages of the process. After the ABCD receives a complaint, that complaint is sent to the actuary against whom the complaint was made and the ABCD asks the actuary to provide it with sufficient information to allow it to make a decision about the seriousness and/or validity of the complaint.

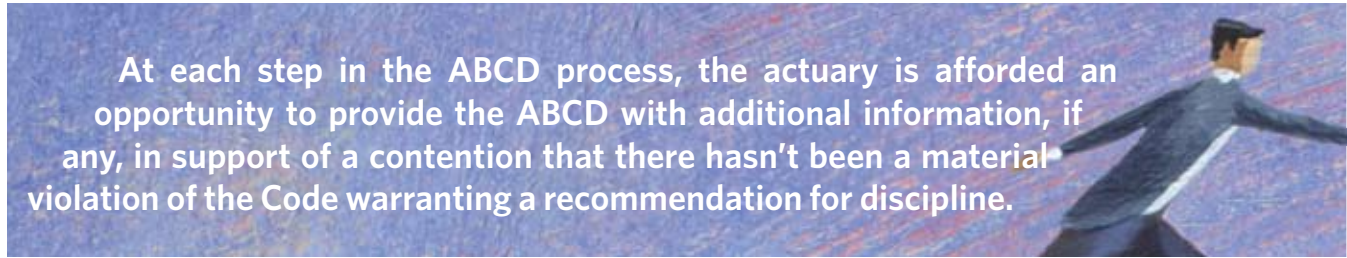
During its years of operation, the ABCD has completed 679 cases. The distribution of how those 679 cases were handled is as follows:

Often the actuary demonstrates to the ABCD that there wasn't a material violation of the Code but simply a misunderstanding between the complainant and the actuary. At each step in the ABCD process, the actuary is afforded an opportunity to provide the ABCD with additional information, if any, in support of a contention that there hasn't been a material violation of the Code warranting a recommendation for discipline.

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After the actuary has provided the ABCD with information regarding the complaint, the chair and two vice chairs evaluate the case. They dismiss the complaint if the evidence indicates there was no material violation. However, if it appears that there was a possible material violation of the

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Code, the chair and the two vice chairs of the ABCD will appoint an investigator. The investigator conducts an investigation and prepares a report. A copy of the investigative report is provided to the actuary, who then has an opportunity to challenge any of the investigator's findings and to submit additional supporting information.

Thereafter, the ABCD as a whole reviews the case. If appropriate, it votes to dismiss or to counsel. If there is an indication of a possible material violation of the Code, however, the ABCD will schedule a fact-finding hearing. At that hearing, the actuary has a right to be present, have counsel, question the investigator, and present evidence. It isn't until after the hearing that the ABCD decides, after a thorough review of all the available information, whether a recommendation for discipline is warranted.

The ABCD process, conducted in confidence to preserve the reputation of the actuary, provides the actuary against whom a complaint has been filed with several opportunities to tell his or her side of the story and to present as much information (including statements from witnesses, if appropriate) as is necessary for the ABCD to make an informed decision. The ABCD Rules of Procedure are available on the ABCD website at www.abcdboard.org. Your comments on these rules are always welcome. The ABCD periodically reviews its rules for ways to improve the process. Input from the actuarial profession is always encouraged.

Most of the cases the ABCD considers are the result of a complaint against an actuary. Occasionally, the ABCD initiates an inquiry on its own without a complaint, based on publicly available information indicating that an actuary apparently has materially violated the Code in such a way that discipline may be warranted. These publicly available sources are generally newspaper articles or court decisions.

The actuarial profession has an important responsibility in ensuring the effectiveness of the ABCD process. Since most of the ABCD cases are the result of a complaint, the actuarial profession must recognize and act appropriately upon the obligations imposed upon it by Precept 13 of the Code, which reads as follows:

Precept 13. An Actuary with knowledge of an apparent, unresolved, material violation of the Code by another Actuary should consider discussing the situation with the Actuary and attempt to resolve the apparent violation. If such discussion is not attempted or is not successful, the Actuary shall disclose such violation to the appropriate counseling and discipline body of the profession, except where the disclosure would be contrary to Law or would divulge Confidential information.

Annotation 13-1. A violation of the Code is deemed to be material if it is important or affects the outcome of a situation, as opposed to a violation that is trivial, does not affect the outcome, or is one merely of form.

Annotation 13-2. An Actuary is not expected to discuss an apparent, unresolved, material violation of the Code with the other Actuary if either Actuary is prohibited by Law from doing so or is acting in an adversarial environment involving the other Actuary.

The ABCD works to improve the practice of the actuarial profession in compliance with the Code of Professional Conduct and the Actuarial Standards of Practice. The ABCD can best fulfill its role only with the cooperation of actuaries and their compliance with their obligations pursuant to Precept 13 of the Code. On a number of occasions, the ABCD has heard non-specific complaints that there are actuaries whose practice may be in material violation of the Code. The profession must recognize its obligation to report actuar-

ies who engage in inappropriate practice so the ABCD can fulfill its responsibility to help actuaries improve those practices and, in appropriate instances, recommend sanctions against actuaries whose conduct materially violates the Code.

At first blush, the number of cases the ABCD has completed by recommending discipline to the actuaries' membership organizations may seem relatively low. On average, about one case per year, or slightly less than 6 percent of its total complaints, ends with a recommendation for discipline by the ABCD.

By contrast, almost 37 percent of the complaints completed by the ABCD ended in the actuary receiving confidential guidance or counseling. Neither of those outcomes is discipline. In the cases where the ABCD provided guidance or counseling, it found a need for the actuary to improve practice (often business practices or procedures) in order to avoid repeating the circumstances that precipitated the complaint.

The ABCD believes that the resolution of its cases to date has resulted in the appropriate administration of justice, recommending that disciplinary action be taken against actuaries who truly deserve it and encouraging actuaries to engage in appropriate practices without unduly penalizing them for minor mistakes and/or oversights.

Some members of the actuarial profession have suggested that the ABCD has been excessively lenient and that more actuaries should be publicly disciplined to preserve the profession's good reputation. Other members of the profession feel that the ABCD has not been lenient enough and that it has come down too hard on some actuaries in the interests of administering justice.

Does the ABCD administer justice appropriately? Is it too lenient or too severe? Let us know your thoughts in a letter to the editor.