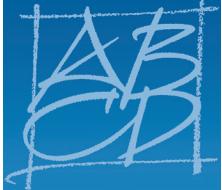


ACTUARIAL BOARD FOR
COUNSELING AND DISCIPLINE

annual report



2018



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Chairperson's LETTER

The Actuarial Board for Counseling and Discipline (ABCD) conducted its regular activities in 2018 and also embarked on several procedural improvements and outreach initiatives.

With regard to regular activities in 2018, the ABCD handled 148 cases, 109 requests for guidance (RFGs), and 39 inquiries. It received 13 inquiries and closed 22 inquiry cases. Of the closed inquiry cases, 13 were dismissed, seven resulted in counseling, and two were resolved with a recommendation for discipline. 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.

"Cases" refers to the combination of RFGs and inquiries.

RFGs are supportive communications between requesters and the ABCD. The most common RFG is between a requester and an individual ABCD member. The ABCD member provides a professionalism ear to the issue posed by the requester. Individual RFGs are kept confidential. Occasionally, a written request is submitted to the whole ABCD with the intention of disseminating guidance to the profession broadly. This type of RFG and the ABCD response are carefully vetted. Both the RFG and the ABCD response are published so to advance professionalism of all actuaries.

Inquiries are complaints submitted for ABCD consideration. Not all complaints lead to an investigation and/or result in a hearing. When appropriate, the ABCD provides mediation services to help resolve the professionalism issues. For complaints that are subject

to investigation and a hearing, the ABCD conducts the hearing, deliberates, and either dismisses, counsels, or recommends a level of discipline to the subject actuary's organization(s). The ABCD does not administer discipline.

At the conclusion of 2018, ABCD member Janet Carstens and I completed six years of service on the board, leaving three vacancies coming into 2019. My experience being a member has been at times rewarding and at times gut-wrenching. It is a very heavy burden knowing an actuary's future lies in the hands of the ABCD. Just as cases involved serious consequences, it was uplifting to help actuaries better understand their professional responsibilities.

The ABCD is necessary to show all stakeholders that our Code of Professional Conduct and actuarial standards of practice are more than just words.

I leave the ABCD knowing that our replacements will serve you well. They are Ken Kent, Mary D. Miller, and Alice F. Rosenblatt.

David F. Ogden replaces me as the new chairperson. The vice chairpersons will be Deborah M. Rosenberg and John T. Stokesbury. I am confident they, along with Staff Attorney Brian Jackson, will successfully guide the ABCD.

Richard A. Block, Chairperson

2018 ABCD Chairperson

MARCH 2019

Summary OF ALLEGED VIOLATIONS

There were 39 inquiries in process with the ABCD during 2018, based on either complaints or adverse information. Twenty-two of these were disposed of during 2018. 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 2018					Active on 12/31/18			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2018	Initiated in 2018	Total	
Precept 1: Failure to act with integrity	1	4	2		7	7	9	16	23
Failure to perform services with competence	1		1		2	7	9	16	18
Calculation or data errors	1		1		2	1	1	2	4
Other errors in work	1				1	5	2	7	8
Failure to uphold reputation of actuarial profession	1	4	1		6	5	3	8	14
Precept 2: Performing work when not qualified						2		2	2
Precept 3: Work fails to satisfy an ASOP		4	5		9	15	14	29	38
Use of unreasonable assumptions		4	2		6	6	3	9	15
Precept 4: Inadequate actuarial communication	1	4	5		10	11	2	13	23
Precept 5: Failure to identify principal, capacity							1	1	1
Precept 6: Failure to disclose									
Precept 7: Conflict of interest									
Precept 8: Failure to take reasonable steps to prevent misuse of work product			2		2		4	4	6
Precept 9: Disclosure of confidential information									
Precept 10: Failure to cooperate with other actuary			1		1		1	1	2
Precept 11: Improper advertising		3			3	1		1	4
Precept 12: Improper use of designation									
Precept 13: Failure to report violation						1		1	1
Precept 14: Failure to respond completely, honestly, and promptly to the ABCD									

Some of the issues alleged:

- Failing to amend a retirement benefit formula in a defined benefit plan
- Actuarial reports failed to accurately reflect the plan provisions in a defined benefit plan
- Failing to clearly identify actuary responsible for actuarial communication
- Failing to appropriately identify principal(s) when issuing an actuarial communication
- Failing to take reasonable steps to ensure actuarial services are not used to mislead other parties
- Failing to correct or clarify an actuarial report after being notified that the report contained material errors
- Use of unreasonable assumptions that conflict with or ignore experience
- Actuarial reports were not actuarially sound
- Making false and/or misleading statements about a competitor
- Unwanted and inappropriate touching/sexual attention
- Use of assumptions not disclosed in actuarial communication
- Disreputable participation in suspicious and/or illegal transactions
- Use of non-credentialed subordinates to issue statements of actuarial opinion
- Failure to provide promised actuarial services in a timely manner / failure to respond to reasonable requests from clients
- Issuing actuarial reports that failed to identify methods, procedures, assumptions, and data with sufficient clarity
- Failure to perform services with competence / use of improper methodologies; carelessness in calculations
- Engaging in dishonest and/or disreputable behavior / failure to act with integrity
- Selection of unreasonable mortality rates
- Advising client in a manner that violated the terms of a defined benefit plan and IRS regulations
- Material errors when valuing the obligations and liabilities of pension benefit plans
- Failure to report an apparent material violation of the Code of Professional Conduct
- Systematic understatement of plan benefits due to failure to reflect a valuable benefit under the terms of the plan
- Failure to perform services with competence / use of improper methodologies; carelessness in calculations
- Making disparaging statements about another actuary
- Failure to engage in significant and ongoing communication with intended users regarding information required to complete the work
- Discussing differences among actuaries in a manner that lacked objectivity, courtesy, and respect
- Improper application of aging factors when valuing retiree medical benefits
- Failure to use and document methodology for estimating unpaid claims
- False or misleading representation of products or services in marketing, advertising, or sales efforts

2018

Cases Considered During 2018

		Pending From 2017 and Earlier	Received in 2018*	TOTAL
Type of Case				
Type of Case	Conduct	2	6	8
	Practice	18	7	25
	Conduct & Practice	6	0	6
Total		26	13	39
Cases by Practice Area	Casualty	5	1	6
	Health	4	5	9
	Life	1	4	5
	Pension	16	3	19
Total		26	13	39

Cases Closed

Disposition by Chairperson and Vice Chairpersons

Dismissed	6
Dismissed With Guidance	7

Disposition by Whole ABCD After Investigation

Counseled	7
Recommended Discipline	2

Total Cases Closed

22

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	2004	2005
Dismissed	12	24	9	11	8	11	13	10	5	20	16	7	5	5
Dismissed With Guidance	6	10	3	–	5	1	5	2	8	5	4	2	2	4
Counseled	–	2	8	1	6	2	5	–	2	3	2	4	1	4
Mediated	3	1	1	–	–	–	–	1	–	4	–	1	–	–
Recommended Private Reprimand	–	–	–	–	–	–	–	–	1	1	–	–	–	–
Recommended Public Discipline	–	1	2	–	3	–	1	–	3	–	–	1	–	2
Request for Guidance	8	8	8	10	28	31	22	31	36	21	47	30	46	37
Total	29	46	31	22	50	45	46	44	55	54	69	45	54	52

Dispositions	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	TOTAL
Dismissed	1	5	11	29	16	9	48	10	19	11	9	9	6	339
Dismissed With Guidance	1	–	1	5	1	2	1	2	10	–	1	2	7	90
Counseled	3	1	2	–	–	–	2	8	4	3	2	1	7	73
Mediated	–	1	–	–	–	–	–	–	–	–	–	–	–	12
Recommended Private Reprimand	–	–	1	–	2	–	1	–	–	–	–	–	–	6
Recommended Public Discipline	1	1	3	2	3	2	4	2	4	1	2	3	2	43
Request for Guidance	31	35	48	46	55	55	62	82	90	96	108	104	109	1,284
Total	37	43	66	82	77	68	118	104	127	111	122	119	131	1,847

2018 Summary OF REQUESTS FOR GUIDANCE-RFGS

The ABCD members responded to 109 requests for guidance during 2018. 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.

Practice Area	No. of RFGs
General	11
Pension	24
Health	32
Life	15
Property & Casualty	27
Total	109

	No. of RFGs		No. of RFGs
Precept 1	48	Precept 8	8
Precept 2	27	Precept 9	6
Precept 3	40	Precept 10	8
Precept 4	17	Precept 11	2
Precept 5	1	Precept 12	0
Precept 6	0	Precept 13	11
Precept 7	7	Precept 14	0

Major Issues

Integrity / Skill and Care / Communication

- Certifying long-term care rates when developing actuary is no longer at company
- Required disclosures and documentation in statements of actuarial opinion
- Definition of “Statement of Actuarial Opinion” or “Actuarial Communication” when applied to specific scenarios
- Statements of actuarial opinion that blend elements of two or more areas of actuarial practice
- Effective, appropriate, and required communication with parent company
- Issuing a qualified reserve opinion
- Material difference of opinion on held reserves
- Reserve opinion reconciliation
- Responding to pressure from principals and/or management to select inappropriate assumptions / Pressure from principal to use less-than-appropriate methodology
- False or misleading representation of products or services in marketing, advertising, or sales efforts
- Obligation to report principal’s improper actions
- Statutory reserving for indeterminate premium term

- Documenting and disclosing assumptions prescribed by law or others
- Disagreement with regulator over methodology
- International qualification requirements
- Cooperation between former and succeeding actuary
- Can an appointed actuary serve as a member of the principal’s board of directors?
- Catastrophe modeling—communicating limitations
- Pricing model validation
- Medicaid Managed Care regulations—actuarial soundness
- Making disparaging, false, or misleading statements about a competitor
- Whether to pursue the ASA or CERA designation
- Data issues related to the termination of small defined benefit plans
- Affordable Care Act risk adjustment changes
- Does ASOP No. 41 apply to actuaries practicing outside of the United States?
- Use of non-credentialed subordinates to issue statements of actuarial opinion
- Does ASOP No. 6 cover all forms of health insurance, or just medical?

- Long-term disability reserves
- Reporting pharmacy data to CMS
- Signing and submitting government forms for qualified pension plans
- What to provide an auditor
- Public statement by one actuary that another actuary materially violated the Code of Professional Conduct
- Unreasonable assumptions and methods in the work of an actuary serving an opposing party in litigation
- ASOP No. 23, appropriate data
- Concern for the independence of an appointed actuary
- Do I have to be qualified to provide expert witness actuarial services in an arbitration?
- Taking reasonable steps to avoid misuse of actuarial services
- Measuring retiree group benefits obligations and determining retiree group benefits plan costs or contributions
- Issues related to assuming responsibility for a prior actuary's work

Qualifications

- Meeting specific qualification standards to issue NAIC SAOs / When do specific qualification standards apply?
- Appropriate background and relevant experience to provide various actuarial services
- Qualification required for self-funded reserve opinion
- Continuing education component of the U.S. Qualification Standards

Conflict of Interest

- How do I determine whether there is a conflict of interest?
- Disclosing and resolving potential conflicts of interest
- Conflict of interest between opportunities for personal financial gain and proper performance of one's responsibilities

Precept 13

- Should I file a complaint? How do I file a complaint?
- When should I discuss a possible violation with the other actuary?
- When is a possible violation considered resolved?
- How can I determine the materiality or illegality of actions?

2018 ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE



The 2018 members of the Actuarial Board for Counseling and Discipline
BACK: Godfrey Perrott, Janet M. Carstens, John T. Stokesbury, John P. Tierney,
David L. Driscoll, Allan W. Ryan
FRONT: Deborah M. Rosenberg, Vice Chairperson; Richard A. Block, Chairperson;
David F. Ogden, Vice Chairperson



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