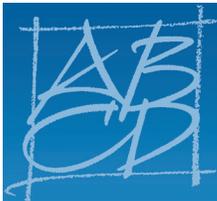


ACTUARIAL BOARD FOR  
COUNSELING AND DISCIPLINE

annual  
 report  
2020



AMERICAN ACADEMY of ACTUARIES

*Objective. Independent. Effective.™*

© 2021 AMERICAN ACADEMY OF ACTUARIES.

ALL RIGHTS RESERVED.

**ACTUARY.ORG**

**ABCDBOARD.ORG**

# Chairperson's LETTER

The Actuarial Board for Counseling and Discipline (ABCD) conducted its regular activities in 2020, as well as procedural improvements and outreach activities.

In 2020, the ABCD handled 174 cases: 127 requests for guidance (RFG) and 47 inquiries. We received 33 inquiries and there were 14 pending from 2019 and prior. The ABCD closed 24 inquiries: 19 were dismissed, two were dismissed with guidance, two resulted in counseling, and one was recommended 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.

There was a record 127 RFGs in 2020, the fifth year in a row when that number exceeded 100. While RFGs can be challenging, ABCD members greatly prefer talking to someone before an issue escalates. Most of the requesters know what they should do but want to be able to discuss it with a neutral party. A summary of the types of issues raised in RFGs is included in this report. To date, the ABCD has not initiated an inquiry based on an RFG.

An RFG is usually between an individual ABCD member and the requester. It is informal and confidential guidance. The ABCD member asks questions to understand the background and usually helps the requestor work through what they need to do. In some cases, the general subject matter of an RFG is used for education: either in a written article or in a presentation. Occasionally, a written request for guidance is submitted to the entire ABCD with the intent to provide formal guidance to the profession. 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 not all investigations result in a hearing. For complaints that are subject to investigation and a hearing, the ABCD conducts the hearing, deliberates, and dismisses, counsels, or recommends a level of discipline to the Subject Actuary's organization(s). The ABCD does not impose discipline. A description of the issues alleged in the 2020 complaints is included in this report.

John Stokesbury, Allan Ryan and I finished our second three-year term on the ABCD. I thank John and Allan for their service. Serving on the ABCD is challenging, interesting, at times disheartening, and at other times uplifting. Most complaints result in counseling with the subject actuary responding well to the counseling. A few do not and the cases that are recommended for discipline are always troubling.

The Selection Committee appointed William Hines, Richard Kutikoff, and John Schubert as new ABCD members.

David Driscoll replaces me as the new chairperson. The vice chairs will be Deborah Rosenberg and Alice Rosenblatt. I am confident these chairs, along with counsel, Ed Lee, will successfully guide the ABCD.

Various ABCD members presented at approximately 13 formal meetings and webinars in 2020.

Regarding outreach and communications:

- An ABCD member participates on the Council on Professionalism;
- A member coordinates requests for ABCD members to make presentations in various forums;
- On a rotating basis, ABCD members write timely and thought provoking "Up To Code" articles in Contingencies; and
- An ABCD member participates at the three NAIC meetings throughout the year.

As I finish my final year on the ABCD, I want to thank my fellow board members for their dedication and commitment. I am confident in the ABCD's continued recognition as a key component of the U.S. actuarial community's ability to regulate itself effectively and earn public trust.

David F. Ogden  
2020 ABCD Chairperson  
FEBRUARY 2021

# Summary OF ALLEGED VIOLATIONS

There were 47 inquiries in process with the ABCD during 2020, based on either complaints or adverse information. Twenty-four of these were disposed of during 2020. 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 2020					Active on 12/31/20			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2020	Initiated in 2020	Total	
<b>Precept 1:</b> Failure to act with integrity			17		17	1	12	13	30
Failure to perform services with competence		2	12		14	4	10	14	28
Failure to uphold the reputation of the actuarial profession	1	1	4		6	4	9	13	19
<b>Precept 2:</b> Performing work when not qualified			1		1	1	2	3	4
<b>Precept 3:</b> Work fails to satisfy an ASOP(s)		2	8		10	3	3	6	16
<b>Precept 4:</b> Inadequate actuarial communication		1	4		5	2	1	3	8
<b>Precept 5:</b> Failure to identify principal, capacity of service									
<b>Precept 6:</b> Failure to disclose direct & indirect material compensation									
<b>Precept 7:</b> Conflict of interest violation			2		2		1	1	3
<b>Precept 8:</b> Failure to take reasonable steps to prevent misuse of work product			4		4	1	1	2	6
<b>Precept 9:</b> Disclosure of confidential information									
<b>Precept 10:</b> Failure to perform services with courtesy & professional respect & cooperate with others in principal's interest			5		5		3	3	8
<b>Precept 11:</b> False or misleading advertising						1		1	1
<b>Precept 12:</b> Improper use of title and designation									
<b>Precept 13:</b> Failure to report apparent, unresolved material violation			2		2		4	4	6
<b>Precept 14:</b> Failure to respond promptly, truthfully, & fully to the ABCD									

## In 2020, Some of the Material Violations Alleged:

- Failing to report actuaries whose actions appear to have materially violated the Code of Professional Conduct
- Failing to provide actuarial services with skill and care
- Performing actuarial services while not in compliance with applicable qualification standards
- Knowingly and willfully increasing medical claim costs in violation of a state's law
- Advising actuarial employees to disregard standards of practice and focus predominantly on financial outcomes when selecting assumptions over utilizing best estimates
- Providing actuarial services to a principal when the actuary had reason to believe such services could be used to violate or evade federal law
- Failing to promptly notify board of directors and state insurance commissioner after discovery of previous certification error
- Using unreasonable, overly optimistic assumptions and setting unrealistic reserve estimates
- Not performing actuarial services with courtesy and professional respect and not cooperating with other actuaries in the principal's interest
- Submitting and certifying fraudulent medical claim costs
- Deviating from ASOPs without providing notice or justification for the deviations
- Failing to provide former principal's plan documents to new third-party plan administrator
- Filing unsubstantiated, malicious complaints with the ABCD
- Seeking clients' objectives without regard to satisfying applicable laws, regulations, and actuarial standards of practice
- Knowingly using unreasonable assumptions to benefit clients
- Failing to take reasonable steps to ensure actuarial services were not used to mislead other parties
- Failure to utilize appropriate asset valuation methodology when valuing pension plan assets
- Failure to disclose pension plan amendments in a valuation report
- Incorrectly interpreting and using data, regulations, and calculations to benefit a client
- Utilizing loss development factors that were overly optimistic, inherently unreasonable, and not supported by data
- Engaging in conduct that reflected adversely on the actuarial profession
- Securities violation
- Felony arrest
- Failure to document work appropriately and to identify data, assumptions, and methods
- Failing to state relevant actuarial assumptions and to disclose limitations on an analysis
- Misrepresenting methods and assumptions used to develop premiums
- Failing to prepare pension Forms 5500 and Schedules SB with skill and care and in compliance with ASOP No. 41
- Violating federal regulations when setting premiums for health insurance company

# 2020

## Inquiries Considered During 2020

		Pending from 2019	Received in 2020	TOTAL
<b>Type of Inquiry</b>	Conduct	2	11	<b>13</b>
	Practice	8	6	<b>14</b>
	Conduct & Practice	4	16	<b>20</b>
<b>Total</b>		<b>14</b>	<b>33</b>	<b>47</b>
<b>Inquiries by Practice Area</b>	Casualty	1	2	<b>3</b>
	Health	1	5	<b>6</b>
	Life	2	15	<b>17</b>
	Pension	10	11	<b>21</b>
<b>Total</b>		<b>14</b>	<b>33</b>	<b>47</b>

## Cases Closed

### Disposition by Chairperson and Vice Chairpersons

Dismissed	18
Dismissed With Guidance	2

### Disposition by Whole ABCD

Dismissed	1
Counseled	2
Recommended for Discipline	1

**Total Inquiries Closed: 24**

# 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	2006
Dismissed	12	24	9	11	8	11	13	10	5	20	16	7	5	5	1
Dismissed With Guidance	6	10	3	–	5	1	5	2	8	5	4	2	2	4	1
Counseled	–	2	8	1	6	2	5	–	2	3	2	4	1	4	3
Mediated	3	1	1	–	–	–	–	1	–	4	–	1	–	–	–
Recommended Private Reprimand	–	–	–	–	–	–	–	–	1	1	–	–	–	–	–
Recommended Public Discipline	–	1	2	–	3	–	1	–	3	–	–	1	–	2	1
Request for Guidance	8	8	8	10	28	31	22	31	36	21	47	30	46	37	31
<b>Total</b>	<b>29</b>	<b>46</b>	<b>31</b>	<b>22</b>	<b>50</b>	<b>45</b>	<b>46</b>	<b>44</b>	<b>55</b>	<b>54</b>	<b>69</b>	<b>45</b>	<b>54</b>	<b>52</b>	<b>37</b>

Dispositions	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	TOTAL
Dismissed	5	11	29	16	9	48	10	19	11	9	9	6	12	19	<b>370</b>
Dismissed With Guidance	–	1	5	1	2	1	2	10	–	1	2	7	1	2	<b>93</b>
Counseled	1	2	–	–	–	2	8	4	3	2	1	7	5	2	<b>80</b>
Mediated	1	–	–	–	–	–	–	–	–	–	–	–	–	–	<b>12</b>
Recommended Private Reprimand	–	1	–	2	–	1	–	–	–	–	–	–	–	1	<b>7</b>
Recommended Public Discipline	1	3	2	3	2	4	2	4	1	2	3	2	2	–	<b>45</b>
Request for Guidance	35	48	46	55	55	62	82	90	96	108	104	109	104	127	<b>1,515</b>
<b>Total</b>	<b>43</b>	<b>66</b>	<b>82</b>	<b>77</b>	<b>68</b>	<b>118</b>	<b>104</b>	<b>127</b>	<b>111</b>	<b>122</b>	<b>119</b>	<b>131</b>	<b>124</b>	<b>151</b>	<b>2,122</b>

# 2020 Summary OF REQUESTS FOR GUIDANCE-RFGs

The ABCD members responded to 127 requests for guidance during 2020. 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 (the Code), and by the major issues involved in these requests. Note that many RFGs involve multiple issues.

	No. of RFGs
<b>Practice Area</b>	
Pension	28
Health	40
Life	31
Property & Casualty	28
<b>Total</b>	<b>127</b>

	No. of RFGs		No. of RFGs
Precept 1	64	Precept 8	19
Precept 2	34	Precept 9	5
Precept 3	39	Precept 10	13
Precept 4	13	Precept 11	
Precept 5	6	Precept 12	2
Precept 6	6	Precept 13	16
Precept 7	13	Precept 14	

## Major Issues Include

### Professional Integrity/Skill and Care/Reputation of the Profession

- Responding to management when directed to opine on a line of business the actuary is not qualified to review
- Responding to pressure from principals to select unreasonable assumptions
- Non-actuarial acts that may materially violate Precept 1 of the Code
- Exercising professionalism and cooperation with others when providing actuarial services in a principal's interest
- Statements of actuarial opinion that blend elements of two or more areas of actuarial practice
- Examining whether actuary had duty to include provision for COVID-19 in a Statement of Actuarial Opinion (SAO) when there is uncertainty on future exposure and liabilities
- Use of an addendum to supplement an SAO when principal's business situation changes
- Steps to consider when resigning as an appointed actuary
- Addressing management when directed to use a modeling tool with known deficiencies
- Factors to consider before accepting an assignment where the actuary's compensation is contingent on achieving a certain outcome

- Evaluating level of responsibility an actuary may have in ensuring the quality of work-product produced by a prior actuary
- Discussing whether volunteer services qualify as actuarial services subject to the Code
- Reviewing corrective steps an actuary can take after discovering that a lapsed actuarial designation was inadvertently used in an SAO
- Reviewing obligation an appointed actuary may have in disclosing concerns about company's financial strength to a state Department of Insurance
- Addressing overbilling by another actuary with management

### Qualifications

- Evaluation of U.S. Qualifications Standards and Precept 2 in determining whether actuary can sign particular National Association of Insurance Commissioners SAOs
- Examining steps an FSA can take to become the appointed actuary for a P&C company
- Whether committee work for actuarial organizations can satisfy continuing education (CE) requirements
- Evaluating whether a retired actuary has met General Qualification Standards
- Discussing whether actuary is qualified to submit a rate filing related to COVID-19
- Whether actuary's experience satisfies Specific Qualification Standards

- Maintaining accurate CE records in compliance with the U.S. Qualification Standards
- Steps to take to properly record missing or lost CE records
- Use of peer groups as resources in areas where actuary, though qualified under U.S. Qualification Standards, is inexperienced
- “Look in the Mirror Test” as a tool in determining if one is qualified to issue opinions in nontraditional areas of actuarial practice
- Examining whether CE for another profession can satisfy actuarial CE requirements

### Standards of Practice

- Assistance in interpreting actuarial standards of practice (ASOPs)
- Issuing revised actuarial reports when informed of a data error
- Determining if client letter with rate guidance qualifies as an SAO under ASOP No. 41
- Reviewing definitions under ASOPs
- Utilizing ASOPs 2Nos. 7 and 41 when client insists actuary use an unreasonable discount rate in a pension analysis
- Relying on ASOP No. 41 guidance when directed to use aggressive assumptions by management
- Examining ASOP No. 56 when deciding on use of peer review
- Importance of clear communications on caveats and assumptions when providing COVID-19 cost estimates
- Clarification of ASOP No. 53 as it relates to nonprofit associations
- Review of ASOP No. 41 guidance when contending with overly optimistic forecast assumptions

### Communication Questions

- Definition of “Actuarial Communication” when applied to specific scenarios
- Required disclosures and documentation in SAOs
- Disclosing reliance on other sources of data
- Reviewing obligation to disclose a correction of immaterial fact in a Centers for Medicare and Medicaid Services rate filing
- Ensuring that an actuarial communication is not used to mislead others

### Conflict of Interest

- Reviewing Precept 7 requirements before performing actuarial services for another principal
- What constitutes a conflict of interest?
- Discussing and resolving potential conflicts of interest with another actuary
- Conflict of interest between personal financial gain and proper performance of one’s responsibilities

### Precept 13

- Requirements for reporting potential material violations of the Code
- Whether a complainant can remain anonymous
- Discussing if comments made by an actuary on a public internet forum should be reported to the ABCD
- How an actuary could respond to another actuary’s questions about work product and allegation of a possible Code violation
- Determining whether a potential violation is a “material violation” under the Code
- Whether to report an actuary who uses an unauthorized actuarial designation
- When a potential material violation is considered resolved
- Navigating Precept 13 when reviewing work product covered by a nondisclosure agreement
- Approaching another actuary to discuss possible material violation of the Code
- How confidential information impacts an actuary’s duty to report under Precept 13

### Control of Work Product

- Actuary’s role and responsibilities with respect to work performed with non-actuaries
- Reviewing Precept 8 when transferring plan valuation data to a successor actuary
- Duty and scope of confidentiality when dealing with an outside regulator
- Steps to consider by an actuary whose actuarial work product was fraudulently obtained by a non-actuary
- Use of revised SAO to correct scrivener’s error in previously submitted SAO to state agency
- Importance of clear instructions on reports to prevent edits that may violate ASOP No. 41

## 2020 ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE



Dave Ogden, *Chairperson*



Albert Beer



David Driscoll



Ken Kent



Godfrey Perrott



Deborah Rosenberg  
*Vice Chairperson*



Alice Rosenblatt



Allan Ryan



John Stokesbury  
*Vice Chairperson*



AMERICAN ACADEMY of ACTUARIES  
*Objective. Independent. Effective.™*



Actuarial Board for Counseling and Discipline  
1850 M Street NW, Suite 300  
Washington, DC 20036  
[abcdboard.org](http://abcdboard.org)