

## A Look at Transparency

What does transparency in the actuarial disciplinary process mean to you? This concept has been widely discussed in the past couple of years in connection with a proposal of the Council of U.S. Presidents (CUSP) to change the discipline process. Most people agree that transparency is desirable. But the devil is in the details, and those details all have potential consequences.

Difficulties with transparency begin with its definition. Transparency and confidentiality can be viewed as the opposite ends of an information spectrum. Today's discipline process is highly confidential for valid reasons, such as ensuring that an actuary's reputation is not damaged while he or she is involved in the discipline process (particularly given the possibility that a case eventually may be dismissed). The Actuarial Board for Counseling and Discipline (ABCD) can neither confirm nor deny that a complaint has been filed against a particular actuary, even if someone else publicizes his or her complaint against that actuary. The ABCD cannot even disclose that a complaint has been dismissed against an actuary whose case has been publicized in some manner. Confidentiality ceases only at the conclusion of the discipline process, when an actuarial organization publicly disciplines one of its members by publishing a notice describing the circumstances of the violation and the nature of the discipline.

Total transparency would be the complete opposite of today's confidentiality requirements, and could have obvious undesirable consequences, such as damaging the reputation of an actuary who is

the subject of a frivolous complaint. Increased transparency, however, could have several beneficial results, including further protecting the public from the work or actions of an incompetent actuary and alerting other actuaries to the type of actions that can result in discipline. Less confidentiality or more transparency than is incorporated in the current process would fall in between the two endpoints of this information spectrum.

### Defining Transparency

Rather than a single definition, transparency covers a multitude of topics. It can mean publishing the name of the "subject actuary" at some point in the discipline process. But at what point? Transparency can mean publishing the primary facts of a discipline case—but not the subject actuary's name—before the case is completed. Too many facts, however, could identify the subject actuary, and too few facts would provide little guidance to other actuaries. Increased transparency might cause some complainants to be reluctant to file a complaint,

particularly if the complainant's identity is to be disclosed.

Transparency also could entail publishing information on requests for guidance. Providing guidance is one of the ABCD's primary functions. Any actuary can contact the ABCD—or an individual member of the ABCD—on a confidential basis and receive guidance on a situation of professional concern. Guidance from an individual member of the ABCD reflects his or her own opinion, and not the opinion of the ABCD itself. ABCD members who receive requests for guidance write a summary of the request and their response and circulate it to all other members of the ABCD.

Increased transparency could present difficulties in this process. How much detail of an individual request for guidance should be published? Again, too much detail might reveal the name of the requester. Too little detail would provide little guidance to other actuaries. And there is the concern that any publication of individual requests for guidance actually might deter actuaries from requesting guidance for fear of being revealed—thus defeating one of the purposes of offering confidential guidance.

Members of the ABCD have presented sessions on this topic at recent Conference of Consulting Actuaries and Enrolled Actuaries Meetings. In those presentations, discipline cases were broken down into six major phases:

1. After a complaint has been filed, but before an investigator has been appointed;



2. During the investigation, but before the investigator has filed a final report;
3. After the investigator's final report, but before the ABCD has decided whether to proceed to a hearing;
4. After the ABCD votes to conduct a hearing, but before the hearing;
5. After the subject actuary's hearing, but before discipline is imposed by his or her membership organization(s);
6. After discipline is imposed by the subject actuary's membership organization(s).

As part of their presentations, members of the ABCD outlined the details of a fictional discipline case. Session attendees were asked to form groups and discuss when transparency appropriately might be introduced in the discipline process for that imaginary case. Each group reported its recommendation and the reasons for it.

Given the perceived support for transparency, it was surprising that almost every group at both meetings reaffirmed current confidentiality practices. That is, the subject actuary should remain unidentified until the discipline process concluded with some form of public discipline. The most common rationale for this position was that earlier identification of the subject actuary could affect his or her reputation adversely, potentially hampering his or her livelihood.

### Moving the Needle

One of these fictional cases provided a surprising result. The hypothetical situation involved a high-profile arrest in which national media identified the suspect as an actuary. This imaginary scenario did not involve actuarial services, but the circumstances of the arrest clearly indicated that the actuary violated the Code of Professional Conduct. Precept 1 of the Code of Professional Conduct and Annotation 1-4 require an actuary to act with honesty and integrity and prohibit an actuary from actions that adversely affect the reputation of the actuarial profession.

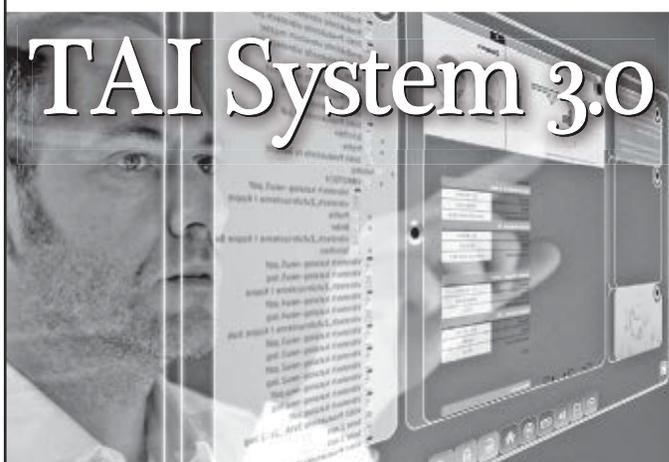
Session attendees at the Enrolled Actuaries Meeting agreed that the actuary had violated the Code of Professional Conduct, but also agreed that transparency should not be introduced earlier in the discipline process—even in cases in which the actuary was named in national media. While many attendees suggested that the discipline process be shortened in cases of obvious violations of the Code of Professional Conduct, none would identify which particular step to eliminate.

If CUSP's proposed revision to the discipline process is adopted, then future discipline panels will need rules of procedure to establish a new administrative due process, confidentiality requirements, and the subject actuary's rights and responsibilities. These new rules would be analogous to the ABCD's current rules of procedure but would reflect the amended discipline process.

These rules also could move the information needle along the confidentiality/transparency spectrum from its current position. I urge you to contact the presidents and presidents-elect of your respective actuarial membership organizations and give them your opinion as to where that needle should rest. □

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