

Actuarial Board
for Counseling
and Discipline

Annual Summary of Activities



2023

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ACTUARIES.

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Chairperson's Letter

The Actuarial Board for Counseling and Discipline (“ABCD”) conducted its regular activities in 2023 and embarked on initiatives that were aimed at further advancing professionalism.

Regarding regular activities in 2023, the ABCD handled 141 cases, which included 119 requests for guidance (“RFGs”) and 22 inquiries. It received 14 new inquiry complaints and closed 16 inquiry cases. Of the closed inquiry cases, 11 were dismissed, three were dismissed with guidance, one resulted in counseling, and one was resolved with a recommendation for discipline. A chart showing the number of cases handled by the ABCD, including inquiry cases and RFGs, since its inception in 1992 is included in this report.

RFGs are supportive communications between requesters and the ABCD. 2023’s 119 RFGs were the second most handled in a year by 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 and then offers guidance. 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 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 can provide 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.

Regarding other initiatives, the ABCD conducted 24 presentations, both virtually and in person, for actuarial organizations and firms in all major regions of the U.S. As has become custom, the ABCD ended 2023 with its well-received, year-end “Tales From the Dark Side” webinar. The ABCD also provided a survey to the leadership and disciplinary panel members of the five U.S.-based actuarial organizations; the survey sought and produced constructive feedback on ways the ABCD could improve its work product and increase its public profile as a catalyst in furthering actuarial professionalism. Finally, the ABCD members continued to draft timely articles in the Academy’s *Contingencies* magazine, which can be accessed from this link: <https://www.abcdboard.org/resources/code/>.

John J. Schubert
2023 ABCD Chairperson

Summary of Alleged Violations

There were 22 inquiries in process with the ABCD during 2023, based on either complaints or adverse information. Sixteen of these were disposed of during 2023. 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 2023					Active on 12/31/23			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2023	Initiated in 2023	Total	
Precept 1: Failure to act with integrity		1	5		6		2	2	8
Failure to perform services with competence		1	3		4		5	5	9
Failure to uphold the reputation of the actuarial profession	1	1	12		14	1	5	6	20
Precept 2: Performing work when not qualified							1	1	1
Precept 3: Work fails to satisfy an ASOP(s)			2		2		1	1	3
Precept 4: Inadequate actuarial communication									
Precept 5: Failure to identify principal, capacity of service									
Precept 6: Failure to disclose direct & indirect material compensation									
Precept 7: Conflict of interest violation									
Precept 8: Failure to take reasonable steps to prevent misuse of work product			1		1				1
Precept 9: Disclosure of confidential information			1		1				1
Precept 10: Failure to perform services with courtesy & professional respect & cooperate with others in principal's interest			2		2				2
Precept 11: False or misleading advertising						1		1	1
Precept 12: Improper use of title and designation			1		1				1
Precept 13: Failure to report apparent, unresolved material violation			3		3				3
Precept 14: Failure to respond promptly, truthfully, & fully to the ABCD									

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Some of the Material Violations Alleged:

- Failing to report actuaries whose actions appear to have materially violated the Code of Professional Conduct in accordance with Precept 13.
- Engaging in conduct that reflected adversely on the actuarial profession.
- Fraudulently increasing claims cost averages for therapies to charge excessive copay amounts to customers.
- Committing numerous errors, omissions, and inaccuracies by an appointed actuary.
- Violating Precept 10 by failing and refusing to cooperate with and deliver client files to a successor actuary.
- Authoring an article that reflects adversely on the actuarial profession.
- Falsely advertising membership in actuarial organizations.
- Recklessly divulging confidential client information to another client.
- Lying to a client that a plan termination was filed.
- Perpetrating workplace harassment.
- Violating ASOP No. 41 by failing to properly divulge a change in an asset valuation method.
- Providing actuarial services when not qualified to do so.
- Failing to act with skill and care when evaluating the reserves for a short-term care line of business.
- Submitted a misleading, incomplete, or false statement of actuarial opinion in response to a request for proposal by a prospective client.
- Failing to act with skill and care when determining reserves, resulting in the insolvency of a health insurance company.
- Failing to perform actuarial services with skill and care by consistently underestimating the ultimate losses due to the selection of overly optimistic assumptions.
- Failing to file client forms in a timely manner and to respond to client inquiries and requests.
- Completing and submitting Schedule SBs when not qualified to do so.
- Failing to perform actuarial services with courtesy and professional respect and to cooperate with other actuaries in the principal's interest.
- Seeking clients' objectives without regard to satisfying applicable laws, regulations, and actuarial standards of practice.
- Failing to take reasonable steps to ensure actuarial services were not used to mislead other parties.
- Failing to provide an actuarial valuation report in compliance with ASOP No. 41.

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Inquiries Considered During 2023

		Pending from 2022	Received in 2023	TOTAL
Type of Inquiry	Conduct	4	6	10
	Practice		4	4
	Conduct & Practice	4	4	8
Total		8	14	22
Inquiries by Practice Area	Casualty	1	6	7
	Health	4	3	7
	Life	2	2	4
	Pension	1	3	4
Total		8	14	22

Inquiries Closed

Disposition by Chairperson and Vice Chairpersons

Dismissed	11
Dismissed With Guidance	3

Disposition by Whole ABCD

Dismissed	
Dismissed With Guidance	
Counseled	1
Recommendation for Discipline	1

Total Inquiries Closed: 16

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	2007	2008
Dismissed	12	24	9	11	8	11	13	10	5	20	16	7	5	5	1	5	11
Dismissed With Guidance	6	10	3	-	5	1	5	2	8	5	4	2	2	4	1	-	1
Counseled	-	2	8	1	6	2	5	-	2	3	2	4	1	4	3	1	2
Mediated	3	1	1	-	-	-	-	1	-	4	-	1	-	-	-	1	-
Recommended Private Reprimand	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	1
Recommended Public Discipline	-	1	2	-	3	-	1	-	3	-	-	1	-	2	1	1	3
Request for Guidance	8	8	8	10	28	31	22	31	36	21	47	30	46	37	31	35	48
Total	29	46	31	22	50	45	46	44	55	54	69	45	54	52	37	43	66

Dispositions	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL
Dismissed	29	16	9	48	10	19	11	9	9	6	12	19	44	4	11	429
Dismissed With Guidance	5	1	2	1	2	10	-	1	2	7	1	2	12	6	3	114
Counseled	-	-	-	2	8	4	3	2	1	7	5	2	4	2	1	87
Mediated	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12
Recommended Private Reprimand	-	2	-	1	-	-	-	-	-	-	-	1	-	-	-	7
Recommended Public Discipline	2	3	2	4	2	4	1	2	3	2	2	-	3	2	1	51
Request for Guidance	46	55	55	62	82	90	96	108	104	109	104	127	116	96	119	1,846
Total	82	77	68	118	104	127	111	122	119	131	124	151	179	110	135	2,546

2023 Summary of Request for Guidance—RFGs

ABCD members responded to 119 Requests for Guidance during 2023. 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
Practice Area	
Pension	24
Health	36
Life	31
Property & Casualty	28
Total	119

	No. of RFGs		No. of RFGs
Precept 1	69	Precept 8	11
Precept 2	44	Precept 9	1
Precept 3	37	Precept 10	15
Precept 4	11	Precept 11	2
Precept 5	–	Precept 12	1
Precept 6	1	Precept 13	31
Precept 7	8	Precept 14	–

Major Issues Include:

Professional Integrity/Skill and Care/Reputation of the Profession

- Actuary's duty to the public and actuarial profession.
- Actuary's responsibilities when terminating a client.
- Reviewing Precepts 1 and 13 when confronted with a potential violation of tax laws by another actuary.
- Actuary's obligations under the Code when misuse of a nonprofit's funds is discovered.
- Determining next steps when an actuary discovers that a competitor has made an error in a rate filing.
- How to handle overly conservative reserve requirements when actuary's company is on verge of insolvency.
- Discussion of an actuary's legal rights and the Code's obligations on the actuarial profession.
- Evaluating whether third-party administrative services qualify as "actuarial services" as defined in the Code.
- Using the Code as a guide when a client does not declare income on a pension distribution.
- Whether the Code applies to actuarial students.
- Reviewing the Code where, during an audit, the actuary believes the auditor is unreasonable.
- Using the Code as a guide when an actuary is considering a part-time analytics job.
- Obligations of a retiring appointed actuary.
- What to do when it appears an annuity product contains a misleading design/illustration.
- Reviewing the Code when a non-pension actuary is considering accepting a position on a municipality's pension board.
- How to handle a situation where an actuary is directed by management to sign off on a corporate report that the actuary believes is incorrect.
- Whether private comments on social media platform could subject an actuary to a complaint.
- How to handle improper actuarial valuations made by a prior actuary.
- How to handle a client's request that may violate federal pension regulations.
- Reviewing the Code when an actuary is considering running for an elected position on a city's Board of Finance.
- Reasonableness of using industry factors in determining ultimate loss estimates.
- Code considerations when an actuary is selling insurance products.
- Examining professionalism responsibilities when an actuary works with non-actuaries on projects.
- Discussing issues when reviewing an unqualified annual opinion on reserves that fails to address negative scenarios.
- Review of the Code when a principal asks an actuary to evade legal requirements.
- Providing actuarial services to U.S.-based clients while the actuary lives overseas.
- Examining the Code when there are differing opinions between an actuary and regulator on the sufficiency of an actuarial opinion memorandum.
- Prior to resigning from an employer, an actuary's duty to complete work for a principal in accordance with Precept 1.
- Discussing whether a filing error is material under the Code.
- Application of Precept 1 to acts committed outside of the U.S.

Qualifications

- Review of the U.S. Qualification Standards ("USQS") for a newly credentialed ACAS who wants to carry forward continuing education ("CE") hours to the following year.
- Reviewing USQS "organized" CE requirements for a retiring actuary.
- How to address a potential violation by an actuary who falsely attested CE attendance.
- Evaluating the three years of required actuarial experience in a particular subject area for signing a Statement of Actuarial Opinion ("SAO").
- Using the Code as guidance when an actuary is considering taking a part-time advisory position.
- Examining whether an actuary can issue a specific NAIC SAO for a new line of business.
- Discussing the "look in the mirror" test when determining whether one's education and experience satisfies general or specific qualification requirements.
- Updating CE certification on an actuarial organization's website directory.
- Reviewing the Code's applicability when an actuary is drafting a book on a non-actuarial topic.
- Whether a P&C actuary can opine on an NAIC health blank.

- Reviewing the USQS to determine whether an actuary is qualified to opine in a different practice area.
- Whether an actuary is qualified under USQS to sign a general SAO.
- Discussing next steps when it appears another actuary was not qualified to sign a general SAO.
- Reviewing the USQS when a retired actuary is considering returning to actuarial profession.
- Whether Academy membership is required to file a SAO with a state's Department of Insurance ("DOI").
- Regulator's concerns about the validity of an actuary's certification.
- Whether attending Life & Health Qualification Seminar can satisfy basic education requirements.
- Meeting qualification standards to be an appointed actuary.
- Issuing SAOs in more than one area of actuarial practice.
- Discussion of "organized activities" for CE.
- Review of qualification standards for new, emerging areas of practice.
- Obtaining the necessary qualifications to sign an NAIC Annual Statement.
- Whether an actuary is qualified to be a certifying actuary on a Medicare bid.
- Whether general business skills CE could count toward the 15 hours CE requirement under Section 3 of the USQS.
- Meeting qualification standards for signing NAIC Life, Accident & Health Statement.
- Reviewing qualifications before a U.S.-based actuary provides actuarial services in another country.
- Review of USQS Section 2 "Statements of Actuarial Opinion Issued by More Than One Actuary."
- Propriety of using an online quote application from a competitor's website.

Standards of Practice

- Applying ASOP No. 55, *Capital Adequacy Assessment*, to financial benchmark studies.
- Using the Code as a guide when confronted with technical questions not covered by ASOPs.
- Application of ASOP No. 56, *Modeling*, to pension software sales.
- Using ASOP No. 41, *Actuarial Communications*, as a guide when a client requests an actuarial communication that does not address data anomalies.

- Whether ASOP No. 2, *Nonguaranteed Elements for Life Insurance and Annuity Products*, applies to group annuity products.
- Disclosures that are required by the ASOPs for opinions and memoranda.
- Application of ASOP No. 4, *Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*, on reasonable cost methodology.
- Application of ASOP No. 45, *The Use of Health Status Based Risk Adjustment Methodologies*, to health risk scores developed by IBM Watson.
- Application of ASOP No. 4, *Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*, on Actuarially Determined Contributions.
- Application of ASOP No. 4, *Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*, on Low-Default Obligation Measures.
- Complying with ASOP No. 49, *Medicaid Managed Care Capitation Rate Development and Certification*, when rates are inadequate.

Communication Questions

- Issuing a qualified actuarial opinion after discovering an error.
- Providing actuarial reports that comply with ASOP No. 41 when there is a change in asset valuation methodology.
- Whether stating one's actuarial credentials during a presentation qualifies the presentation as an actuarial communication.
- Addressing a pension valuation report that fails to include required disclosures under Application of ASOP No. 4, *Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*.

Conflict of Interest

- Reviewing Precept 7 when an actuary is considering taking a part-time advisory position with a consulting firm that also services the actuary's current clients.
- Discussing Precept 7 before taking a part-time actuarial consulting position.
- Applicability of Precept 7 within a large insurance company.
- Analysis of Precept 7 when providing actuarial services during a joint venture.

Control of Work Product

- Reviewing the Code when there is serious disagreement with a principal on the sufficiency of reserves.
- How to handle a situation where the principal is providing assumptions to obtain a particular favorable result.
- Actuary's role and responsibilities with respect to work performed with non-actuaries.
- Considerations when issuing an SAO intended to be used after the actuary leaves a firm's employment.
- Properly documenting an actuary's work when there are serious disagreements with a principal.
- Discussion of Precept 8's "take reasonable steps" requirement to ensure that actuarial services will not be used to mislead other parties.
- Examining whether an article for an actuarial publication qualifies as an SAO.

Courtesy and Cooperation

- Review of Precept 10's purpose and requirements.
- Precept 10's application to non-compete agreements.
- Professionalism expectations when taking over an assignment from another actuary.
- Complying with Precept 10 when a client refuses to pay monies owed to an actuarial firm.

Duty to Report

- Whether an actuary is required to contact another actuary before filing a complaint with the ABCD.
- Whether a violation of an Internal Revenue Code regulation should be reported to the ABCD.
- Discussing whether an issue was "unresolved" and "material" under Precept 13.
- Actuary's obligations under Precept 13 to report a potential material violation of the Code to the ABCD.
- How confidential information impacts an actuary's duty to report under Precept 13.
- Whether an actuary is required to file a complaint with the ABCD after filing a complaint with a state DOI.
- Whether to file a complaint for questionable assumptions used in a pension plan.

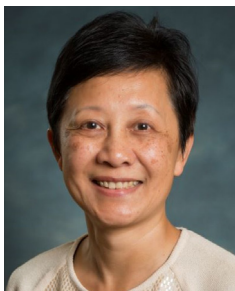
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Actuarial Board for Counseling and Discipline
1850 M Street NW, Suite 300
Washington, DC 20036
abcdboard.org



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