

ACTUARIAL BOARD FOR
COUNSELING AND DISCIPLINE

annual report 2017



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Chairperson's LETTER

During 2017, the Selection Committee reappointed Deborah Rosenberg, Allan Ryan, and John Stokesbury for second terms on the Actuarial Board for Counseling and Discipline (ABCD). In addition, the Selection Committee reappointed Deborah Rosenberg and David Ogden for second terms as vice chairpersons. The committee reappointed Rick Block for a second term as the ABCD's chairperson.

The members of the ABCD are Richard Block, Janet Carstens, David Driscoll, David Ogden, Godfrey Perrott, Allan Ryan, Deborah Rosenberg, John Stokesbury, and John Tierney. The ABCD is ably assisted by its counsel, Brian L. Jackson.

The ABCD conducted its regular activities in 2017 along with several procedural improvements and outreach initiatives.

With regard to regular activities in 2017, the ABCD handled 145 cases, comprised of 104 requests for guidance (RFGs) and 41 inquiries. It provided guidance in response to the 104 RFGs and closed 15 inquiry cases. 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. The number of RFGs is a little lower than the record 108 RFGs handled in 2016. Still, we believe this level of activity demonstrates the desire of the actuarial community to seek greater understanding of the actuarial standards of practice and the Code of Professional Conduct.

RFGs make up a large portion of the ABCD activities. The most common RFG is between a requestor and an individual ABCD member. The guidance is most often based on listening to the requestor's issues; asking questions to elicit more background, issues, and facts; and providing an additional perspective. Requestors usually come to a conclusion on their own by the conclusion of the discussion. A summary of the types of issues raised in RFGs is included in this report. Individual RFGs are kept confidential. To date, the ABCD has not initiated an inquiry based on an RFG.

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 2017 complaints is included in this report.

With regard to procedural improvements, the ABCD worked on the following items during 2017:

- Improving the content of our post-hearing findings and recommendations letters to include comprehensive discussion of facts and circumstances leading to the recommendations.
- Reviewing our procedures for continuous improvement, including timeliness of the process.

With regard to outreach and communications:

- An ABCD member participates on the Committee on Professionalism as well as attending NAIC meetings.
- 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* magazine.

Various ABCD members presented at approximately 10 formal meetings and webinars in 2017.

All members of the ABCD understand the importance of maintaining confidentiality regarding the facts and circumstances involved in any matter considered by the ABCD. However, the ABCD Rules of Procedure require the ABCD to update complainants on the progress and outcome of matters under consideration. This balance between transparency and confidentiality is constantly under review by the ABCD.

If you, as a member of an actuarial organization, have any specific questions about the activities of the ABCD, please contact one of our members.

Richard A. Block
2017 Chairperson
MARCH 2018

Summary OF ALLEGED VIOLATIONS

There were 41 inquiries in process with the ABCD during 2017, based on either complaints or adverse information. Fifteen of these were disposed of during 2017. 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 2017					Active on 12/31/17			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2017	Initiated in 2017	Total	
Precept 1: Failure to act with integrity	3		6		9	2	7	9	18
Failure to perform services with competence		1	5		6	3	9	12	18
Calculation or data errors			2		2	2	5	7	9
Other errors in work		1	3		4	4	6	10	14
Failure to uphold reputation of actuarial profession	3		2		5	3	3	6	11
Precept 2: Performing work when not qualified						2	1	3	3
Precept 3: Work fails to satisfy an ASOP		1	6		7	3	14	17	24
Use of unreasonable assumptions						2	7	9	9
Precept 4: Inadequate actuarial communication			3		3	1	10	11	14
Precept 5: Failure to identify principal, capacity									
Precept 6: Failure to disclose									
Precept 7: Conflict of interest									
Precept 8: Failure to take reasonable steps to prevent misuse of work product						1	3	4	4
Precept 9: Disclosure of confidential information	1				1				1
Precept 10: Failure to cooperate with other actuary									
Precept 11: Improper advertising									
Precept 12: Improper use of designation									
Precept 13: Failure to report violation									
Precept 14: Failure to respond completely, honestly, and promptly to the ABCD									

Some of the issues alleged:

- Material errors when valuing the obligations and liabilities of pension benefit plans for funding, compliance, and accounting purposes
- Failure to report an apparent material violation of the Code of Professional Conduct
- Material misrepresentations when communicating with the Department of Insurance
- Systematic understatement of plan benefits due to failure to reflect a valuable benefit under the terms of the plan
- Failure to comply with ASOP Nos. 27 and 41 when selecting and/or disclosing discount rates
- Issuing actuarial reports that failed to identify methods, procedures, assumptions, and data with sufficient clarity
- Failure to produce timely cash flow testing projections
- Use of unreasonable assumptions that conflict with or ignore experience
- Failure to perform services with competence/use of improper methodologies; carelessness in calculations
- Use of assumptions not disclosed in valuation report
- Improperly seeking payment for services that were not provided
- Failing to properly determine employer contribution rate for pension plan
- Unreasonable reliance on faulty cash flow testing models
- Failure to maintain continuing education requirements
- Failure to use appropriate tests of reasonableness
- Failure to document appropriately/failure to disclose limitations of actuary's analysis
- Failure to appropriately identify data, assumptions, and methods as prescribed
- Failure to appropriately review data supplied by others for reasonableness and consistency/failure to reconcile information provided for analysis with principal's financial records
- Failing to understand and consider applicable law
- Failure to engage in significant and ongoing communication with intended users regarding information required to complete the work
- Failure to properly measure retiree group benefits obligations/failure to properly determine retiree group benefits plan costs or contributions
- Failure to provide promised actuarial services in a timely manner/failure to respond to reasonable requests from clients
- Use of a rating methodology that did not fully disclose the nature of the rate increases sought in individual health insurance premium rate filings
- Disreputable participation in suspicious and/or illegal transactions
- Inadequate support for trend assumptions in a health insurance rate filing; inadequate evidence of tests for reasonableness of information on which the actuary relied
- Knowingly or negligently certifying false information in various IRS forms and a defined benefit plan valuation report
- Advising client in a manner that that violated the terms of a defined benefit plan and IRS regulations
- Inadequate actuarial communication: failure to communicate assumptions, methods, or data source used to reach conclusions
- Failure to take reasonable steps to ensure that pension actuarial services are not used to mislead other parties
- Selection of unreasonable mortality rates
- Engaging in dishonest and/or disreputable behavior/failure to act with integrity
- Failing to use appropriate assumptions and methods when valuing claim liabilities

2017

Cases* Considered During 2017

		Pending From 2016 and Earlier	Received in 2017*	TOTAL
Type of Case	Conduct	4	0	4
	Practice	8	16	24
	Conduct & Practice	7	6	13
	Requests for Guidance	-	104	104
Total		19	126	145
Cases by Practice Area	Casualty	0	5	5
	Health	1	5	6
	Life	4	2	6
	Pension	14	10	24
Total		19	22	41

* Including requests for guidance

Cases Closed

Action by Individual ABCD Members
Replied to Requests for Guidance 104

Disposition by Chairperson and Vice Chairpersons
Dismissed 9
Dismissed With Guidance 1

Disposition by Whole ABCD After Investigation
Counseled 1
Dismissed With Guidance 1
Recommended Discipline 3

Total Cases Closed 119
(including requests for guidance)

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

Dispositions	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	TOTAL
Dismissed	5	1	5	11	29	16	9	48	10	19	11	9	9	333
Dismissed With Guidance	4	1	-	1	5	1	2	1	2	10	-	1	2	83
Counseled	4	3	1	2	-	-	-	2	8	4	3	2	1	66
Mediated	-	-	1	-	-	-	-	-	-	-	-	-	-	12
Recommended Private Reprimand	-	-	-	1	-	2	-	1	-	-	-	-	-	6
Recommended Public Discipline	2	1	1	3	2	3	2	4	2	4	1	2	3	41
Request for Guidance	37	31	35	48	46	55	55	62	82	90	96	108	104	1,175
Total	52	37	43	66	82	77	68	118	104	127	111	122	119	1,716

2017 Summary OF REQUESTS FOR GUIDANCE-RFGS

The ABCD members responded to 104 requests for guidance during 2017. 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.

	No. of RFGs
Practice Area	
General	4
Pension	28
Health	35
Life	13
Property & Casualty	24
Total	104

	No. of RFGs		No. of RFGs
Precept 1	45	Precept 8	15
Precept 2	22	Precept 9	2
Precept 3	39	Precept 10	14
Precept 4	16	Precept 11	2
Precept 5	0	Precept 12	1
Precept 6	0	Precept 13	11
Precept 7	6	Precept 14	0

Major Issues

Integrity / Skill and Care / Communication

- Statements of actuarial opinion that blend elements of two or more areas of actuarial practice
- Assumptions based on a prescriptive process prescribed by state law
- Potentially misleading marketing/promotional material
- Actuarial involvement in a-rate filings
- Performing actuarial services related to the Affordable Care Act
- Change in appointed actuary
- Disclosing assumptions set by other parties when those assumptions materially deviate from assumptions the actuary would use
- Peer review and signatory responsibilities
- Communication and disclosure requirements when actuary is concerned that a loss portfolio transfer transaction was improperly booked
- Actuary has reason to believe his/her actuarial services will be used to evade the law
- Are written formulaic benefit calculations actuarial communications?
- Whether certain opinions and/or communications should be considered statements of actuarial opinion
- What standards should I be aware of when testifying before a state congress?
- Taking reasonable steps to ensure that an actuary's actuarial services are not used to mislead other parties
- Are fee quotes actuarial communications?
- Are sales illustrations statements of actuarial opinion?
- Assessing the transfer of risk in a reinsurance arrangement
- Independence of appointed actuary
- Writing on pension topics when not qualified as a pension actuary
- Is actuary obligated to assist a former client with a financial audit?
- Medicaid rate development
- Disclosing or documenting information the client may have considered when selecting an assumption
- Cooperating in the principal's interest after termination
- Calculations of funded status prepared by non-actuary investment consultant with input from the actuary

- Consulting internationally
- Significant omission of participant data from plan valuations prepared by predecessor actuary
- Disclosures required in OPEB valuation reports under GASB 75
- Obligation to provide services to a client who has engaged a new actuary
- Issues related to assuming responsibility for a prior actuary's work
- Meeting specific qualification standards to issue NAIC SAOs/When do specific qualification standards apply?
- Ratemaking/underwriting disclosures
- Assuming responsibility for cash balance plans that appear to violate IRS guidance
- International qualification requirements
- ASOP No. 41 disclosure and documentation requirements
- Taking reasonable steps to avoid misuse of work when providing actuarial calculations in contested divorce proceeding
- Materiality of data error in work product
- ASOP compliance when assumptions are prescribed by the state
- Cooperation between former and succeeding actuary
- Certifying rates in an anti-selection spiral
- Measuring retiree group benefits obligations and determining retiree group benefits plan costs or contributions
- Redaction of certifying actuary's name in ACA health rate filing
- Marketing in a non-actuarial profession
- Mortality tables for individual annuity valuation
- Is actuarial student qualified to perform cost-sharing reduction (CSR) reconciliation
- Client balks at actuarial calculations that would result in lower premiums in captive insurance arrangement

- Long-term disability reserves
- Client directs actuary to remain silent on the reasonableness of a prescribed assumption that is significantly higher than actuary's best estimate
- When do I have to revise or reissue and incorrect actuarial report?
- Data quality issues related to census data used in pension valuations

Qualifications

- Appropriate background and relevant experience to provide various actuarial services
- Qualifications to perform a valuation of a nontraditional benefit
- Can I serve as an expert pension witness in court when my CE is not up to date?
- Meeting specific qualification standards to issue NAIC SAOs/When do specific qualification standards apply?

Conflict of Interest

- Is it a conflict of interest to provide a technical review of a competitor's reserve model?
- Potential conflict of interest relating to stock ownership
- Disclosing and resolving potential conflicts of interest

Precept 13

- Whether an actuary's work materially violated the Code
- Is this a material violation of the Code?
- Should I discuss this potential Code violation with the actuary in question?
- What are my Precept 13 obligations?
- How to report potential Code violations to the ABCD

2017 ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE



The 2017 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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