

ACTUARIAL BOARD FOR  
COUNSELING AND DISCIPLINE

# annual report 2021



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# Chairperson's LETTER

**A**long with the rest of the world, the Actuarial Board for Counseling and Discipline (ABCD) attempted to resume normal operations in 2021, helped by the release of COVID-19 vaccines and hindered to some degree by the emergence of new variants of the novel coronavirus. We resumed partial in-person gathering with our June meeting in Chicago. Some members and subject actuaries opted to participate virtually in that meeting and in our two subsequent meetings in Washington and San Diego.

The ABCD handled 188 cases—116 requests for guidance (RFGs) and 72 inquiries—in 2021. We received 49 new inquiries, and there were 23 pending from 2020 and prior years. During the year, the ABCD closed 63 inquiries: 44 were dismissed, 12 were dismissed with guidance, four were resolved via counseling, and three resulted in recommendations for public 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.

2021 was the sixth year in a row that the number of RFGs exceeded 100, with the total for the year (116) coming close to the record 127 requests handled in 2020. The members of the ABCD are pleased to see continued high use of the RFG process by practicing actuaries, as it suggests there has been significant growth over the years in awareness of the importance of adherence to the Code of Professional Conduct and actuarial standards of practice. In many cases, those requesting guidance have already thought carefully and intelligently about the matters they raise with us but understandably wish to discuss the issues with a neutral party before proceeding. A summary of the types of issues raised in RFGs is included in this report. It is important to note that in its 30-year history the ABCD has never initiated an inquiry based on an RFG, which should offer further assurance to actuaries of the non-threatening nature of the RFG process.

Debbie Rosenberg and Alice Rosenblatt concluded their terms of service on the ABCD at the end of 2021. Ken Kent departed the ABCD in November when he assumed the office of president-elect of the American Academy of

Actuaries. I thank Debbie, Alice, and Ken for their service and for the valuable insights they brought to the work of the ABCD. Special thanks are owed to Debbie and Alice for their service as vice chairpersons of the ABCD. Service on the ABCD involves significantly more time and effort than many other opportunities for volunteer service in the actuarial profession, but it can also be significantly more rewarding. There is little question that individual members of the ABCD make a real difference in the work of the board during their terms of service, and certainly that is true of Debbie, Alice, and Ken.

The Selection Committee appointed Shawna Ackerman, April Choi, and Tammy Dixon as new ABCD members beginning January 1. We are pleased that the committee selected members with such impressive credentials and experience in the areas of practice they represent, and we look forward to their involvement in our work as we begin 2022.

The Selection Committee also appointed continuing members Al Beer and John Schubert to succeed Debbie and Alice as vice chairpersons. I greatly appreciate their willingness to serve in this capacity, and I look forward to collaborating with them and with ABCD counsel Ed Lee to guide the work of the ABCD in 2022.

Various ABCD members presented at about 20 formal meetings and webinars in 2021. In addition to making such presentations, the ABCD continues the following long-standing outreach and communications efforts:

- An ABCD member serves as a liaison to (and member of) the Academy's Actuarial Professionalism Liaison Committee;
- On a rotating basis, ABCD members write timely and thought-provoking "Up To Code" articles in *Contingencies*; and
- An ABCD member participates in the three NAIC national meetings that are held each year.

David L. Driscoll  
2021 ABCD Chairperson  
February 1, 2022

# Summary OF ALLEGED VIOLATIONS

There were 72 inquiries in process with the ABCD during 2021, based on either complaints or adverse information. Sixty-three of these were disposed of during 2021. 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 2021					Active on 12/31/21			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2021	Initiated in 2021	Total	
<b>Precept 1:</b> Failure to act with integrity	1	2	32		35	4	2	6	41
Failure to perform services with competence	2	3	27		32	1		1	33
Failure to uphold the reputation of the actuarial profession	2	4	35		41	5	2	7	48
<b>Precept 2:</b> Performing work when not qualified		1	3		4				4
<b>Precept 3:</b> Work fails to satisfy an ASOP(s)	1	2	15		18	1		1	19
<b>Precept 4:</b> Inadequate actuarial communication	1	1	11		13	1		1	14
<b>Precept 5:</b> Failure to identify principal, capacity of service									
<b>Precept 6:</b> Failure to disclose direct & indirect material compensation			9		9				9
<b>Precept 7:</b> Conflict of interest violation			9		9	1		1	10
<b>Precept 8:</b> Failure to take reasonable steps to prevent misuse of work product			10		10	1		1	11
<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			12		12			12	8
<b>Precept 11:</b> False or misleading advertising			9		9	1		1	10
<b>Precept 12:</b> Improper use of title and designation			1		1			1	
<b>Precept 13:</b> Failure to report apparent, unresolved material violation			11		11	2		2	13
<b>Precept 14:</b> Failure to respond promptly, truthfully, & fully to the ABCD									

## In 2021, Some of the Material Violations Alleged:

- Improperly disclosing confidential client information
- Engaging in professional conduct that involved dishonesty and fraud
- Engaging in an act that reflected adversely on the actuarial profession
- Failing to report actuaries whose actions appear to have materially violated the Code of Professional Conduct in accordance with Precept 13
- Failing to provide actuarial services with skill and care
- Performing actuarial services while not in compliance with applicable qualification standards
- Using unreasonable, overly optimistic assumptions and setting unrealistic reserve estimates
- Not citing sources of data and not stating that data were reviewed for reasonableness and consistency in accordance with ASOP 23
- Using assumptions for loss development factors and initial expected loss ratios that were biased toward underestimation in violation of ASOP 43
- Failing to meet ASOP 43 disclosure requirements when developing unpaid claim estimates
- Negligently damaging the reputation of another actuary
- Fraudulently selling life insurance policies
- Advising actuarial employees to disregard standards of practice and predominantly focusing 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 may be used to violate or evade federal law
- Failing to perform actuarial services with courtesy and professional respect and failing to cooperate with other actuaries in the principal's interest
- Submitting and certifying fraudulent medical claim costs
- Deviating from ASOPs without providing appropriate statements with respect to the nature, rationale, and effect of such deviations
- Seeking clients' objectives without regard to satisfying applicable laws, regulations, and actuarial standards of practice
- Knowing use of unreasonable assumptions to benefit clients
- Failing to take reasonable steps to ensure actuarial services were not used to mislead other parties
- Failure to utilize an appropriate asset valuation methodology when valuing pension plan assets
- Failure to disclose pension plan amendments in a valuation report
- Securities violation
- Felony arrest
- Violating federal regulations when setting premiums for health insurance company
- Failure to appropriately document work and identify data, assumptions, and methods
- Failing to state relevant actuarial assumptions and disclose limitations on an analysis
- Failing to prepare pension Forms 5500 and Schedules SB with skill and care and in compliance with ASOP 41
- Incorrectly interpreting and using data, regulations, and calculations to benefit a client
- Filing unsubstantiated, malicious complaints with the ABCD
- Providing actuarial services in a manner that failed to uphold the reputation of the actuarial profession
- Misappropriating company funds
- Advocating the use of inappropriate cost-sharing reduction load factors in the ACA individual market
- Using threatening language against another actuary
- Failing to satisfy GASB reporting requirements
- Improper use of a membership title and designation in violation of Precept 12
- Failing to provide notice of a risk of excess asset buildup to the plan sponsor
- Failing to provide an actuarial valuation report in compliance with ASOP 41
- Using unreasonable actuarial assumptions and methods while providing actuarial services for a pension plan
- Failing to follow generally accepted accounting principles while providing actuarial services for a pension plan

# 2021

## Inquiries Considered During 2021

		Pending from 2020	Received in 2021	TOTAL
Type of Inquiry	Conduct	7	30	37
	Practice	5	3	8
	Conduct & Practice	11	16	27
	Total	23	49	72
Inquiries by Practice Area	Casualty	2	28	30
	Health	5	6	11
	Life	5	3	8
	Pension	11	12	23
Total		23	49	72

## Inquiries Closed

### Disposition by Chairperson and Vice Chairpersons

Dismissed	41
Dismissed With Guidance	8

### Disposition by Whole ABCD

Dismissed	3
Dismissed with Guidance	4
Counseled	4
Recommendation for Discipline	3

Total Inquiries Closed:

63

# 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	2021	TOTAL
Dismissed	5	11	29	16	9	48	10	19	11	9	9	6	12	19	44	414
Dismissed With Guidance	–	1	5	1	2	1	2	10	–	1	2	7	1	2	12	105
Counseled	1	2	–	–	–	2	8	4	3	2	1	7	5	2	4	84
Mediated	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	12
Recommended Private Reprimand	–	1	–	2	–	1	–	–	–	–	–	–	–	1	–	7
Recommended Public Discipline	1	3	2	3	2	4	2	4	1	2	3	2	2	–	3	48
Request for Guidance	35	48	46	55	55	62	82	90	96	108	104	109	104	127	116	1,631
<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>179</b>	<b>2,301</b>

# 2021 **Summary** OF REQUESTS FOR GUIDANCE—RFGs

ABCD members responded to 116 Requests for Guidance during 2021. 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	25
Health	28
Life	25
Property & Casualty	38
<b>Total</b>	<b>116</b>

	No. of RFGs		No. of RFGs
Precept 1	59	Precept 8	8
Precept 2	39	Precept 9	7
Precept 3	30	Precept 10	7
Precept 4	4	Precept 11	
Precept 5	4	Precept 12	3
Precept 6	1	Precept 13	31
Precept 7	6	Precept 14	

## Major Issues Include

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

- Reviewing Precepts that may be applicable when changing jobs to a competitor firm
- Using the Code of Professional Conduct (“Code”) as a guide when there is considerable disagreement among co-workers on actuarial assumptions
- Responding to management when directed to opine on a new line of business the actuary is not qualified to review
- Actuary’s professional obligation under the Code when a client receives potentially illegal advice from a non-actuary consultant
- Reviewing professional obligations under Precept 1 when directed by management to accept unreasonable assumptions
- Whether Precept 1 is applicable to conduct unrelated to the provision of actuarial services
- Exercising professionalism and cooperation with other actuaries when providing actuarial services in a principal’s interest
- Statements of Actuarial Opinion (SAO) that blend elements of two or more areas of actuarial practice
- Examining whether an actuary had a duty to include provision for COVID-19 in an SAO when there is uncertainty on future exposure and liabilities
- Use of an addendum to supplement an SAO when a principal’s business situation changes
- Considerations when resigning as an appointed actuary
- Addressing management when directed to use a modeling tool with known deficiencies

- Evaluating the 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 has been inadvertently listed in an SAO

### Qualifications

- Differences between General and Specific Qualification Standards
- Reviewing the actuarial qualifications of a new hire
- Evaluation of the U.S. Qualifications Standards (USQS) and Precept 2 in determining whether an actuary can sign a National Association of Insurance Commissioners (NAIC) SAO
- Discussion of how the USQS apply to an emerging area of practice
- Approaching another actuary to verify his/her qualification to sign an NAIC Annual Statement
- Whether an actuary has the requisite experience requirement to be an appointed actuary
- Discussing if a Principle-Based Reserving qualified actuary needs to satisfy Specific Qualification Standards
- Whether committee work for actuarial organizations can satisfy Continuing Education (CE) requirements
- Evaluating whether a retired actuary has met General Qualification Standards
- Discussing whether an actuary is qualified to submit a rate filing related to COVID-19



- Reviewing whether an actuary's experience satisfies Specific Qualification Standards
- Maintaining accurate CE records in compliance with the USQS
- Whether an FSA can sign a casualty SAO
- "Look in the Mirror Test" as a tool in determining if one is qualified to issue an opinion
- Specific Qualification Standards applicability to VM-31 PBR report

### Standards of Practice

- Assistance in interpreting Actuarial Standards of Practice (ASOPs)
- Issuing a revised actuarial report when informed of a data error
- Reviewing ASOPs 8 and 41 when issuing an SAO that may conflict with a new insurance law
- Reviewing definitions under ASOPs
- Utilizing ASOPs 27 and 41 when a client insists the actuary use an unreasonable discount rate in a pension analysis
- Relying on ASOP 41 guidance when directed to use aggressive assumptions by management
- Examining ASOP 36 disclosure guidance when issuing a qualified reserve opinion
- Importance of clear communications on caveats and assumptions when providing COVID-19 cost estimates
- Providing an estimate of a premium deficiency reserve in accordance with ASOP 53
- Review of ASOP 5 in the calculation of incurred but not reported (IBNR) claims
- Analyzing ASOP 28 to determine if a qualified opinion is necessary

### Communication Questions

- Providing actuarial reports that comply with ASOP 41
- Review of ASOP 41 guidance when contending with overly optimistic forecast assumptions or when asked by management to attest to another actuary's work
- Actuary's responsibility to provide sufficient information so the intended user can understand the methodology utilized
- Properly disclosing potential, considerable litigation loss risk in an actuarial opinion
- Definition of "Actuarial Communication" when applied to specific scenarios
- Properly documenting concerns about a client's financial strength and exposure when issuing an SAO
- Disclosing reliance on other sources of data
- Reviewing an obligation to disclose a correction of immaterial fact in a Centers for Medicare and Medicaid 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
- Reviewing the Code when considering a side-consulting job while still employed by an actuarial firm
- 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

- How confidential information impacts an actuary's duty to report under Precept 13
- Requirements for reporting potential material violations of the Code
- Whether a complainant can remain anonymous
- Discussing if statements or actions made by an actuary 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

### Control of Work Product

- Actuary's role and responsibilities with respect to work performed with non-actuaries
- Application of Precept 8 to an internal company actuarial report
- Discussion of Precept 8's "take reasonable steps" requirement to ensure actuarial services are not used to mislead other parties
- Duty and scope of confidentiality when dealing with an outside regulator
- Responding to an auditor's actuaries who recommend a different methodology prior to the completion of a loss reserve study
- 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 41

## 2021 ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE



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*Chairperson*



Albert Beer



William Hines



Ken Kent



Richard Kutikoff



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