

ACTUARIAL BOARD FOR
COUNSELING AND DISCIPLINE

annual report



2019



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Chairperson's LETTER

The Actuarial Board for Counseling and Discipline (ABCD) conducted its regular activities in 2019, as well as continuing procedural improvements and outreach activities.

In 2019, the ABCD handled 138 cases: 104 requests for guidance (RFG) and 34 inquiries. We received 17 new inquiries and there were 17 pending from 2018 and prior. The ABCD closed 20 inquiries: 12 were dismissed, one was dismissed with guidance, five resulted in counseling, and two were recommended for discipline. A table showing the number of cases handled by the ABCD since its inception in 1992, including inquiry cases and RFGs, is included in this report.

2019 was the fourth year in a row that the number of RFGs exceeded 100; for six consecutive years the number of RFGs have exceeded 90. We believe that RFGs are very valuable in that they are preventive in nature, hopefully helping with a potential situation. 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 requestor. It is informal guidance that is confidential. 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 the level of discipline to the subject actuary's organization(s). The ABCD does not impose discipline. A description of the issues alleged in the 2019 complaints is included in this report.

For 2020, the Selection Committee reappointed David Driscoll and Godfrey Perrott as members for each's second three-year term. Al Beer was appointed to a three-year term, replacing retiring Mary D. Miller.

The Selection Committee also reappointed David Ogden as chairperson, with Deborah Rosenberg and John Stokesbury serving as vice chairpersons. Ed Lee was hired as the new ABCD counsel in 2019, replacing Brian Jackson, who became general counsel and director of professionalism for the Academy.

Various ABCD members presented at 13 formal meetings and webinars in 2019.

Regarding outreach and communications:

- An ABCD member participates on the Council on Professionalism;
- An ABCD 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 commence 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
2019 ABCD Chairperson
FEBRUARY 2020

Summary OF ALLEGED VIOLATIONS

There were 34 inquiries in process with the ABCD during 2019, based on either complaints or adverse information. Twenty of these were disposed of during 2019. 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 2019					Active on 12/31/19			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2019	Initiated in 2019	Total	
Precept 1: Failure to act with integrity	1	2	10		13		3	3	16
Failure to perform services with competence		3	10		13	7	5	12	25
Failure to uphold the reputation of the actuarial profession	2	4	12		18	2	6	8	26
Precept 2: Performing work when not qualified		1	1		2	2		2	4
Precept 3: Work fails to satisfy an ASOP(s)	1	4	10		15	6	3	9	24
Precept 4: Inadequate actuarial communication	1	1	2		4	3	1	4	8
Precept 5: Failure to identify principal, capacity of service			1		1		1	1	2
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	2	1	3	4
Precept 9: Disclosure of confidential information									
Precept 10: Failure to perform services with courtesy & professional respect & cooperate with others in principal's interest			1		1		1	1	2
Precept 11: False or misleading advertising			1		1	1		1	2
Precept 12: Improper use of title and designation									
Precept 13: Failure to report apparent, unresolved material violation									
Precept 14: Failure to respond promptly, truthfully, & fully to the ABCD									

2019 Some of the Material Violations Alleged:

- Improperly directing the recording of unreasonably favorable actuarial central estimates for a commercial business segment
- Falsely presenting oneself as the appointed actuary to company's new management
- Undermining another actuary's work to management in violation of Precepts 4, 5, and 10
- Knowingly using unreasonable assumptions to benefit clients
- Unwanted and inappropriate touching / sexual attention
- Obtaining actuarial credentials under false pretenses by committing identity fraud
- Seeking clients' objectives without regard to satisfying applicable laws, regulations, and actuarial standards of practice
- Performing actuarial services while not in compliance with applicable qualification standards
- Preparing actuarial valuations for retiree medical benefit programs without recognizing aging factors in either the development of current per capita costs or in the projection of future per capita costs
- Using unreasonable, overly optimistic assumptions and setting unrealistic reserve estimates
- Relying, without proper review, on a faulty ceded reinsurance model
- Exhorting actuaries of multiemployer plans to disregard standards of practice and focus predominantly on financial outcomes in selecting assumptions over utilizing best estimates
- Allowing actuarial services to be used by captive insurance promoter whose policies violated federal laws
- Failing to provide actuarially sound estimates of expected loss and non-excessive premiums for a captive insurance client
- Misrepresenting methods and assumptions used to develop premiums
- Failure to use appropriate actuarial methodology when estimating unpaid claims
- Failure to document work appropriately and to identify data, assumptions, and methods
- Failing to state relevant actuarial assumptions and disclose limitations on the analysis
- Failing to set appropriate asset adequacy reserves prior to company's insolvency
- Failing to prepare pension Forms 5500 and Schedules SB with skill and care and in compliance with ASOP No. 41
- Violating federal health care regulations when providing actuarial services to health insurance company in the setting of premiums
- Failing to take reasonable steps to ensure actuarial services were not used to mislead other parties
- Preparing OPEB plan actuarial valuations that were not in compliance with ASOPs No. 6 and No. 35
- Failure to utilize appropriate asset valuation methodology when valuing pension plan assets
- Failure to disclose justifications for selected assumptions in accordance with ASOPs No. 27 and No. 35
- Failure to disclose pension plan amendments in a valuation report
- Despite repeated requests, failing to provide former principal's plan documents to new third-party administrator
- Failing to promptly notify board of directors and state insurance commissioner after discovery of previous certification error
- Arrest for felony

2019

Cases Considered During 2019

		Pending from 2018	Received in 2019	TOTAL
Type of Inquiry	Conduct	3	1	4
	Practice	13	2	15
	Conduct & Practice	1	14	15
	Total	17	17	34
Inquiries by Practice Area	Casualty	5	8	13
	Health	2	1	3
	Life	2	4	6
	Pension	8	4	12
	Total	17	17	34

Cases Closed

Disposition by Chairperson and Vice Chairpersons

Dismissed	9
Dismissed With Guidance	1

Disposition by Whole ABCD

Dismissed	3
Counseled	5
Recommended for Discipline	2

Total Inquiries Closed:

20

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

Dispositions	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	TOTAL
Dismissed	1	5	11	29	16	9	48	10	19	11	9	9	6	12	351
Dismissed With Guidance	1	—	1	5	1	2	1	2	10	—	1	2	7	1	91
Counseled	3	1	2	—	—	—	2	8	4	3	2	1	7	5	78
Mediated	—	1	—	—	—	—	—	—	—	—	—	—	—	—	12
Recommended Private Reprimand	—	—	1	—	2	—	1	—	—	—	—	—	—	—	6
Recommended Public Discipline	1	1	3	2	3	2	4	2	4	1	2	3	2	2	45
Request for Guidance	31	35	48	46	55	55	62	82	90	96	108	104	109	104	1,388
Total	37	43	66	82	77	68	118	104	127	111	122	119	131	124	1,971

2019 Summary OF REQUESTS FOR GUIDANCE-RFGS

The ABCD members responded to 104 requests for guidance during 2019. 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 requests. Note that many RFGs involve multiple issues.

Practice Area	No. of RFGs
General	7
Pension	19
Health	33
Life	18
Property & Casualty	27
Total	104

	No. of RFGs		No. of RFGs
Precept 1	50	Precept 8	9
Precept 2	31	Precept 9	9
Precept 3	33	Precept 10	5
Precept 4	13	Precept 11	4
Precept 5	2	Precept 12	3
Precept 6	1	Precept 13	12
Precept 7	7	Precept 14	–

Major Issues Include

Professional Integrity / Skill and Care

- Responding to pressure from principals and/or management to select unreasonable assumptions
- How to address management's concerns about premium deficiency reserve
- Definition of "Statement of Actuarial Opinion" when applied to specific scenarios
- Statements of actuarial opinion that blend elements of two or more areas of actuarial practice
- Use of an addendum to supplement an SAO when principal's business situation changes
- Use of price or fee schedule in solicitation mailings
- Potential level of responsibility an actuary may have to ensure the quality of work product produced by prior actuary
- Appropriateness of listing actuarial designations in published articles
- Examining the scope and definition of "Actuarial Services" in the Code of Professional Conduct as it applies to internal company memos
- Professionally handling disagreements with other actuaries
- Issues when non-actuaries use "Actuary" in job title

Qualifications

- Evaluation of U.S. Qualification Standards and Precept 2 in determining whether actuary can sign particular SAOs
- Obligations an actuary, who is returning to actuarial practice, has under U.S. Qualification Standards
- Actuary with general health experience rendering actuarial opinion on dental plans
- Use of committee work for actuarial organizations to satisfy CE requirements
- Retired actuaries signing SAOs
- 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 whether one is qualified to issue opinions in nontraditional areas of actuarial practice

Standards of Practice

- Assistance in interpreting ASOPs
- How Precept 3 applies in the absence of clearly applicable ASOPs
- Clarification of ASOP No. 53 as it relates to non-profit associations
- Review of ASOP No. 41 when contending with overly optimistic forecast assumptions
- Reviewing ASOP No. 23's definition of "Appropriate Data"

Communication Questions

- Effective, appropriate, and required communications with parent company
- Definition of "Actuarial Communication" when applied to specific scenarios
- Required disclosures and documentation in statements of actuarial opinion
- Disclosing reliance on other sources of data
- Ensuring that an actuarial communication is not used to mislead others

Conflict of Interest

- What constitutes a conflict of interest?
- Disclosing and resolving potential conflicts of interest
- Conflict of interest between personal financial gain and proper performance of one's responsibilities
- Considerations when conducting a pension analysis for both parties in a divorce proceeding

Precept 13

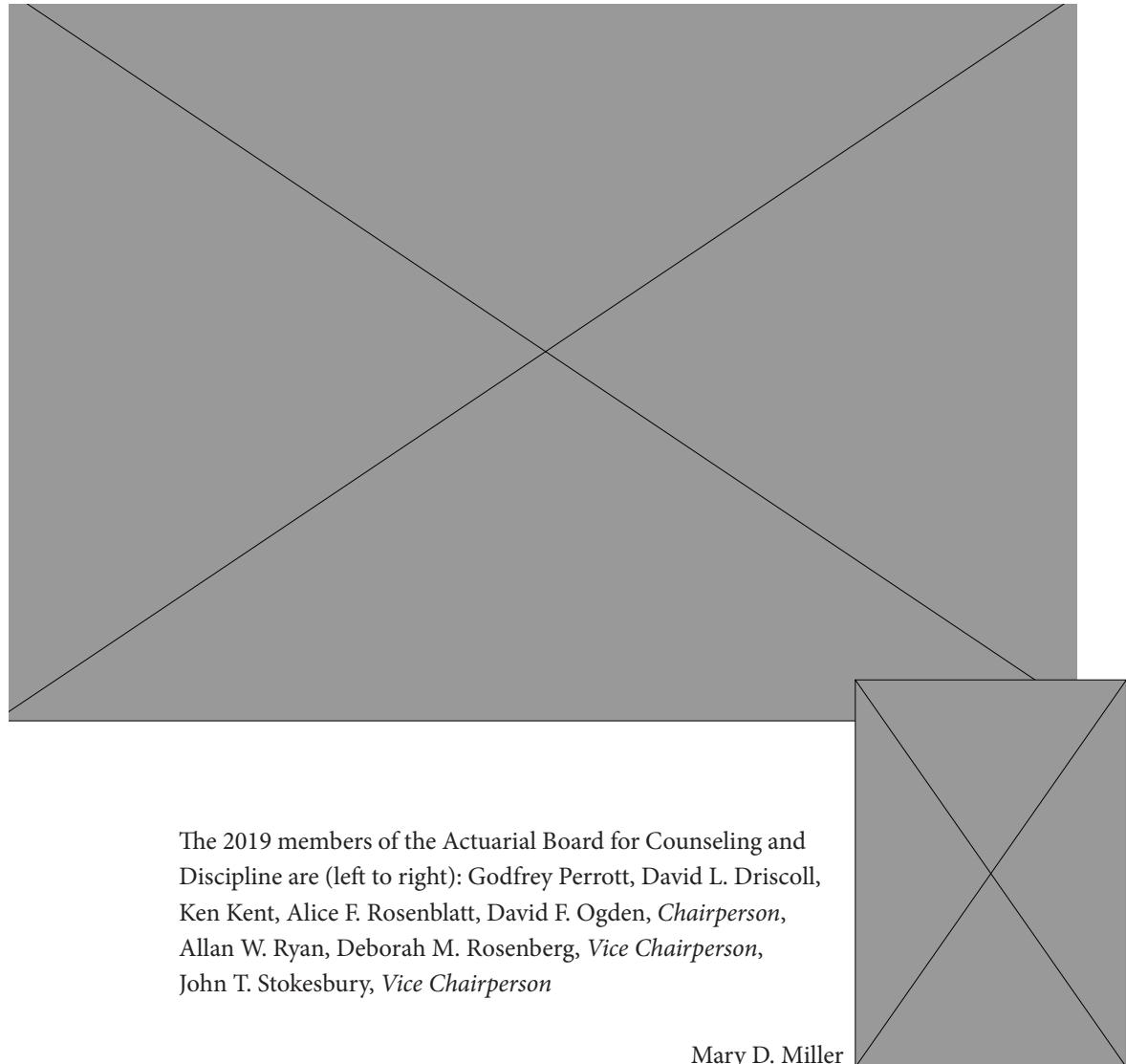
- Requirements for reporting potential material violations of the Code of Professional Conduct
- Determining whether a potential violation is a "material violation" under the Code of Professional Conduct
- How to file a complaint
- When a potential material violation is considered resolved
- Navigating Precept 13 when reviewing work product covered by a non-disclosure agreement
- Approaching another actuary to discuss possible violation of the Code of Professional Conduct
- 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
- Potential misuse of work product
- 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



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