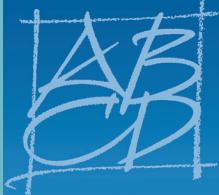


ACTUARIAL BOARD FOR  
COUNSELING AND DISCIPLINE

# annual report 2016



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# Chairperson's LETTER

**D**uring 2016, the Selection Committee appointed David Driscoll to the Actuarial Board for Counseling and Discipline (ABCD), filling an unexpired term on the board vacated by Kathy Riley, who resigned to join the Actuarial Standards Board. At the beginning of 2017, the Selection Committee appointed Driscoll, John Tierney and Godfrey Perrott as members for three-year terms. Tierney and Perrott are replacing retiring members Janet Fagan and Nancy Behrens, both of whom served for six years as members and leaders of the ABCD.

The Selection Committee also appointed Rick Block as chairperson, with Deborah Rosenberg and David Ogden serving as vice chairpersons.

The ABCD conducted its regular activities in 2016 along with several procedural improvements and outreach initiatives.

With regard to regular activities in 2016, the ABCD handled 141 cases, comprised of 108 requests for guidance (RFGs) and 33 inquiries. It provided guidance in response to the 108 RFGs and closed 14 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 108 RFGs mark another record high. This level of activity demonstrates the increasing desire to seek guidance on 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 end of the discussion. A summary of the types of issues raised in RFGs is included in this report. Individual RFGs are kept confidential. 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 2016 complaints is included in this report.

With regard to procedural improvements, the ABCD worked on the following items during 2016:

- 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.
- A member coordinates requests for ABCD members to make presentations in various forums.
- The ABCD website has been upgraded to provide a more user-friendly experience, including information about guidance, requests for speakers, and the ABCD complaint process.
- On a rotating basis, ABCD members write timely and thought-provoking "Up To Code" articles in *Contingencies* magazine.

Various ABCD members presented at nine formal meetings and webinars in 2016.

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.

*Janet Fagan*  
2016 Chairperson  
March 2017

# Summary OF ALLEGED VIOLATIONS

There were 33 inquiries in process with the ABCD during 2016, based on either complaints or adverse information. Fourteen of these were disposed of during 2016. 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 2016 |         |         |         |       | Active on 12/31/16    |                   |       | TOTAL |
|---|--------------------------|---------|---------|---------|-------|-----------------------|-------------------|-------|-------|
|   | Discipline               | Counsel | Dismiss | Mediate | Total | Initiated before 2016 | Initiated in 2016 | Total |       |
| <b>Precept 1:</b><br>Failure to act with integrity                                      | 1                        |         | 7       |         | 8     | 4                     | 6                 | 10    | 18    |
| Failure to perform services with competence   | 1                        |         | 7       |         | 8     | 1                     | 8                 | 9     | 17    |
| Calculation or data errors  |                          |         | 2       |         | 2     | 2                     | 4                 | 6     | 8     |
| Other errors in work  |                          |         |         |         |       | 3                     | 6                 | 9     | 9     |
| Failure to uphold reputation of actuarial profession                                    | 1                        |         | 5       |         | 6     | 3                     | 4                 | 7     | 13    |
| <b>Precept 2:</b><br>Performing work when not qualified                                 |                          | 1       | 1       |         | 2     | 2                     |                   | 2     | 4     |
| <b>Precept 3:</b><br>Work fails to satisfy an ASOP                                      | 1                        |         | 7       |         | 8     | 2                     | 12                | 14    | 22    |
| Use of unreasonable assumptions   |                          |         |         |         |       | 2                     | 6                 | 8     | 8     |
| <b>Precept 4:</b><br>Inadequate actuarial communication                                 | 2                        |         | 5       |         | 7     | 1                     | 9                 | 10    | 17    |
| <b>Precept 5:</b><br>Failure to identify principal, capacity                            |                          |         |         |         |       |                       |                   |       |       |
| <b>Precept 6:</b><br>Failure to disclose  |                          |         |         |         |       |                       |                   |       |       |
| <b>Precept 7:</b><br>Conflict of interest   |                          |         |         |         |       |                       |                   |       |       |
| <b>Precept 8:</b><br>Failure to take reasonable steps to prevent misuse of work product | 1                        |         |         |         | 1     | 1                     | 2                 | 3     | 4     |
| <b>Precept 9:</b><br>Disclosure of confidential information                             |                          |         | 1       |         | 1     |                       |                   |       | 1     |
| <b>Precept 10:</b><br>Failure to cooperate with other actuary                           | 1                        |         | 1       |         | 2     |                       | 2                 | 2     | 4     |
| <b>Precept 11:</b><br>Improper advertising  |                          |         |         |         |       |                       |                   |       |       |
| <b>Precept 12:</b><br>Improper use of designation                                       |                          |         |         |         |       |                       |                   |       |       |
| <b>Precept 13:</b><br>Failure to report violation                                       |                          |         |         |         |       |                       |                   |       |       |
| <b>Precept 14:</b><br>Failure to respond completely, honestly, and promptly to the ABCD | 2                        |         |         |         | 2     |                       |                   |       | 2     |

## Some of the issues alleged:

- Providing actuarial services despite failing to meet continuing education requirements / performing work when not qualified
- Providing actuarial communications that were unclear, incomplete, or potentially misleading
- Failing to take reasonable steps to ensure that actuarial services are not used to mislead other parties
- Issuing actuarial reports that failed to identify methods, procedures, assumptions, and data with sufficient clarity
- Use of unreasonable assumptions that conflict with or ignore experience
- Use of improper methodologies; carelessness in calculations
- Failing to understand and consider applicable law
- Failing to provide actuarial services with honesty, integrity, and competence
- Failing to identify the actuary responsible for an actuarial communication
- Miscalculating projected savings for a retirement system
- Failing to use appropriate assumptions and methods when valuing claim liabilities
- Improperly seeking payment for services that were not provided
- Failing to cooperate with successor actuary in the principal's interest after receiving a reasonable request for relevant information
- Selection of unreasonable mortality rates, withdrawal rates, and disability rates in an actuarial valuation of a pension trust
- Colluding with client's spouse to produce a fraudulent actuarial valuation of spouse's retirement plan
- Material misrepresentations when communicating with the Department of Insurance
- Failing to report an apparent material violation of the Code of Professional Conduct
- Use of a rating methodology that did not fully disclose the nature of the rate increases sought in individual health insurance premium rate filings
- Discussing differences among actuaries in a manner that lacked objectivity, courtesy, and respect
- Systematic understatement of plan benefits due to failure to reflect a valuable benefit under the terms of the plan
- Failing to produce timely cash flow testing projections
- Knowingly or negligently certifying false information sent to a state Department of Insurance
- Performing actuarial services that the actuary knew involved a conflict of interest that impaired the actuary's ability to act fairly
- Failure to appropriately review data supplied by others for reasonableness and consistency / failure to reconcile information provided for analysis with principal's financial records
- Disreputable participation in suspicious and/or illegal transactions
- Engaging in professional conduct involving dishonesty, deceit, and misrepresentation
- Actuary knew or should have known that principal had understated loss reserves for years

# 2016

## Cases\* Considered During 2016

|                        |                       | Pending From 2015 and Earlier | Received in 2016* | TOTAL      |
|------------------------|-----------------------|-------------------------------|-------------------|------------|
| Type of Case           | Conduct               | 3                             | 3                 | <b>6</b>   |
|                        | Practice              | 9                             | 9                 | <b>18</b>  |
|                        | Conduct & Practice    | 2                             | 7                 | <b>9</b>   |
|                        | Requests for Guidance | -                             | 108               | <b>108</b> |
|                        | Total                 | 14                            | 127               | <b>141</b> |
| Cases by Practice Area | Casualty              | 3                             | 3                 | <b>6</b>   |
|                        | Health                | 3                             | 0                 | <b>3</b>   |
|                        | Life                  | 0                             | 4                 | <b>4</b>   |
|                        | Pension               | 8                             | 12                | <b>20</b>  |
|                        | Total                 | 14                            | 19                | <b>33</b>  |

\* Including requests for guidance

## Cases Closed

### Action by Individual ABCD Members

Replied to Requests for Guidance

108

### Disposition by Chairperson and Vice Chairpersons

Dismissed  
Dismissed With Guidance

8

1

### Disposition by Whole ABCD

#### After Investigation

Counseled  
Dismissed  
Recommended Discipline (Expulsion)

2

1

2

### Total Cases Closed

122

(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        |
| <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> |

| Dispositions                  | 2005      | 2006      | 2007      | 2008      | 2009      | 2010      | 2011      | 2012       | 2013       | 2014       | 2015       | 2016       | TOTAL        |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|------------|------------|------------|--------------|
| Dismissed                     | 5         | 1         | 5         | 11        | 29        | 16        | 9         | 48         | 10         | 19         | 11         | 9          | <b>324</b>   |
| Dismissed With Guidance       | 4         | 1         | -         | 1         | 5         | 1         | 2         | 1          | 2          | 10         | -          | 1          | <b>81</b>    |
| Counseled                     | 4         | 3         | 1         | 2         | -         | -         | -         | 2          | 8          | 4          | 3          | 2          | <b>65</b>    |
| Mediated                      | -         | -         | 1         | -         | -         | -         | -         | -          | -          | -          | -          | -          | <b>12</b>    |
| Recommended Private Reprimand | -         | -         | -         | 1         | -         | 2         | -         | 1          | -          | -          | -          | -          | <b>6</b>     |
| Recommended Public Discipline | 2         | 1         | 1         | 3         | 2         | 3         | 2         | 4          | 2          | 4          | 1          | 2          | <b>38</b>    |
| Request for Guidance          | 37        | 31        | 35        | 48        | 46        | 55        | 55        | 62         | 82         | 90         | 96         | 108        | <b>1,071</b> |
| <b>Total</b>                  | <b>52</b> | <b>37</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>1,597</b> |

# 2016 Summary of Requests for Guidance-RFGs

The ABCD members responded to 108 requests for guidance during 2016. 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             | 6           |
| Pension             | 26          |
| Health              | 25          |
| Life                | 23          |
| Property & Casualty | 28          |
| <b>Total</b>        | <b>108</b>  |

|           | No. of RFGs |            | No. of RFGs |
|-----------|-------------|------------|-------------|
| Precept 1 | 42          | Precept 8  | 4           |
| Precept 2 | 23          | Precept 9  | 2           |
| Precept 3 | 41          | Precept 10 | 6           |
| Precept 4 | 15          | Precept 11 | 0           |
| Precept 5 | 0           | Precept 12 | 2           |
| Precept 6 | 0           | Precept 13 | 9           |
| Precept 7 | 5           | Precept 14 | 1           |

## Major Issues

### Professional Integrity / Skill and Care/Communication

- Use of lifetime beneficiary costs to determine whether to cover certain services
- Assistance in interpreting NAIC Health Insurance Reserves Model Regulation
- Can I set up a premium deficiency reserve before the contract period begins?
- Expert witness testimony: advocating for client vs. misleading testimony
- When are pro bono actuarial communications considered Statements of Actuarial Opinion (SAOs)?
- Board of Directors appoint actuary after NAIC deadline for such appointment
- Does actuary have reason to believe that his/her actuarial services might be used to evade the law?
- What is the standard for retaining work papers and documents at the conclusion of an assignment?
- Calculating premium deficiency reserves for a start-up company
- Disclosing changes in economic and demographic assumptions pursuant to ASOP No. 27 and ASOP No. 35

- Medicare Advantage rates in retiree valuations
- Loss reserve for prospective events / reserves and solvency
- ASOP No. 41 disclosure and documentation requirements
- Regulator objection to rate filing
- Cooperation between consulting actuary and chief actuary in a client relationship
- SAOs that blend elements of two or more areas of actuarial practice
- Effective communication with boss who is not an actuary
- Local actuarial standards conflict with U.S. standards of practice
- Selecting assumptions for an actuarial valuation of retirement plan benefits in a domestic relations action when the QDRO is ambiguous
- ASOP No. 20—Discounting
- Can an actuarial certification be signed by multiple actuaries?
- Taking reasonable steps to ensure that actuarial services are not used to mislead other parties

- Pro bono actuarial services and their application to the ASOPs and U.S. Qualification Standards
- Replacing a former actuary
- Disclosing or documenting information the client may have considered when selecting an assumption

### **Qualification**

- Appropriate background and relevant experience to provide various actuarial services.
- Meeting specific qualification standards to issue NAIC SAOs; when do specific qualification standards apply?
- Life actuary's qualification to assist a client interested in starting an auto extended warranty insurance company
- Pension actuary's qualification to issue SAOs for health liabilities
- Appropriate organized continuing education credits
- Supervision under a qualified actuary
- Do U.S. Qualification Standards apply to work performed outside of the United States?

### **Conflict of Interest**

- Is it a conflict of interest when the Appointed Actuary and the CEO are same person?
- Is it a conflict of interest to acquire a small equity interest in client's company?
- Is it improper for an actuary to have a life and health license to sell health insurance products?
- Does a consulting actuary have a conflict of interest when advising a plan sponsor to de-risk?

### **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

## 2016 ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE



The 2016 members of the Actuarial Board for Counseling and Discipline (from left): Allan Ryan, Debbie Rosenberg, Jan Carstens (vice chairperson), Nancy Behrens, Janet Fagan (chairperson), John Stokesbury, Rick Block (vice chairperson), and Dave Ogden. Not pictured: David Driscoll.



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