

ACTUARIAL BOARD FOR
COUNSELING AND DISCIPLINE

annual report 2022



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Chairperson's LETTER

To borrow a phrase from an early-20th-century U.S. president to whom history has been less than kind, for the Actuarial Board for Counseling and Discipline (ABCD), the year 2022 was marked by something of a “return to normalcy.” Given the wide-ranging and ever-changing set of issues it must consider, “normalcy” is, at best, a relative term when applied to the activity of the ABCD. Nonetheless, it is notable that 2022 was the first year since 2019 in which we were able to conduct all of our quarterly meetings in person, and we chose to do so in four of the most agreeable cities in the country: Seattle, Boston, Minneapolis, and Savannah. As well, the number of inquiries received and closed were below the unusually high levels of 2021, which was a positive development on multiple levels.

Specifically, the ABCD handled 118 cases in 2022—96 requests for guidance (RFGs) and 22 inquiries. We received 13 new inquiries, and there were nine pending from 2021 and prior years. During the year, the ABCD closed 14 inquiries: four were dismissed, six were dismissed with guidance, two were resolved via counseling, and two 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.

The 96 requests for guidance received in 2022 represented a decrease from the numbers received in 2021 (116) and 2020 (127). Despite this decline, the ABCD members perceive that the long-term rate of growth in requests for guidance since the ABCD was established in 1992 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 in some depth about the matters they raise with us but understandably wish to discuss the issues with a neutral, well-informed party before proceeding. A summary of the types of issues raised in RFGs is included in this report. It remains true that the ABCD has never initiated an inquiry based on an RFG, which should offer further assurance to actuaries of the non-threatening, confidential nature of the RFG process.

Godfrey Perrott and I reached the end of our second three-year terms of on the ABCD—and thus the end of our terms of service on the Board—at the end of 2022. The Selection Committee appointed David Kausch and Cande Olsen, two actuaries with extensive experience in both actuarial practice and the development of professional standards, to replace us as ABCD members effective January 1, 2023. I am extremely pleased that the committee selected two new members with such impressive credentials and experience in the areas of practice they represent. The ABCD is indebted to Godfrey for his six years of service on the Board, and I hope that he continues to bring the benefit of his many decades of experience in professionalism matters to other volunteer activities in the years to come.

The Selection Committee also appointed continuing member John Schubert, who had been serving as vice chairperson, to succeed me as ABCD chairperson. An experienced actuary who has served in leadership roles in multiple actuarial organizations, John is widely known and held in high esteem in the actuarial profession. The Selection Committee clearly chose the continuing member best qualified to serve as ABCD chairperson to assume that role. Al Beer has graciously agreed to continue to serve as vice chairperson, and William Hines, whom it has been my privilege to know for over 30 years, will join Al as the other vice chairperson of the ABCD. I greatly appreciate the willingness of John, Al, and William to serve in these capacities. They will be ably assisted by ABCD Counsel Ed Lee in guiding the work of the ABCD in 2023 and beyond.

Various ABCD members presented at approximately 12 formal meetings and webinars in 2022. 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 Council on Professionalism and Education;
- 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
2022 ABCD Chairperson
February 1, 2023

Summary OF ALLEGED VIOLATIONS

There were 22 inquiries in process with the ABCD during 2022, based on either complaints or adverse information. Fourteen of these were disposed of during 2022. 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 2022					Active on 12/31/22			TOTAL
	Discipline	Counsel	Dismiss	Mediate	Total	Initiated before 2022	Initiated in 2022	Total	
Precept 1: Failure to act with integrity	2	2	6		10	3	1	4	14
Failure to perform services with competence	1	1	3		5	1	1	2	7
Failure to uphold the reputation of the actuarial profession	2	2	10		14	5	1	6	20
Precept 2: Performing work when not qualified		1			1				1
Precept 3: Work fails to satisfy an ASOP(s)		1			1				1
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									
Precept 9: Disclosure of confidential information		1			1		1	1	2
Precept 10: Failure to perform services with courtesy & professional respect & cooperate with others in principal's interest	1		1		2		1	1	3
Precept 11: False or misleading advertising									
Precept 12: Improper use of title and designation									
Precept 13: Failure to report apparent, unresolved material violation						2		2	2
Precept 14: Failure to respond promptly, truthfully, & fully to the ABCD									

In 2022, Some of the Material Violations Alleged:

- Engaging in conduct that reflected adversely on the actuarial profession.
- Improperly disclosing confidential client information to a friend.
- Violation of an actuarial organization's membership rules.
- Failing to perform actuarial services with skill and care by consistently underestimating the ultimate losses due to the selection of overly optimistic assumptions.
- Not satisfying applicable standards of practice by not considering the sensitivity of the unpaid claim estimates to reasonable alternative assumptions, as described in section 3.6.2 of ASOP No. 43, *Property/Casualty Unpaid Claim Estimates*.
- Unauthorized use of another actuary's signature.
- Leveling false accusations against a group of actuaries.
- Illegal use of insider information to conduct stock trades.
- Breach of intellectual and ethical standards.
- Failing to file client forms in a timely manner and promptly responding to client inquiries and requests.
- Posting offensive statements on LinkedIn.
- Failing to provide expert witness services with skill and care.
- Failing to report actuaries whose actions appear to have materially violated the Code of Professional Conduct in accordance with Precept 13.
- Performing actuarial services while not in compliance with applicable qualification standards.
- Intentionally damaging the reputation of another actuary.
- Failing to perform actuarial services with courtesy and professional respect and failing 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.
- Filing unsubstantiated, malicious complaints with the ABCD.
- Failing to provide an actuarial valuation report in compliance with ASOP No. 41.

2022

Inquiries Considered During 2022

		Pending from 2021	Received in 2022	TOTAL
Type of Inquiry	Conduct	6	6	12
	Practice			
	Conduct & Practice	3	7	10
	Total	9	13	22
Inquiries by Practice Area	Casualty	2	7	9
	Health	4	1	5
	Life	2	1	3
	Pension	1	4	5
	Total	9	13	22

Inquiries Closed

Disposition by Chairperson and Vice Chairpersons

Dismissed	4
Dismissed With Guidance	5

Disposition by Whole ABCD

Dismissed	
Dismissed With Guidance	1
Counseled	2
Recommendation for Discipline	2

Total Inquiries Closed: 14

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

Dispositions	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	TOTAL
Dismissed	11	29	16	9	48	10	19	11	9	9	6	12	19	44	4	418
Dismissed With Guidance	1	5	1	2	1	2	10	–	1	2	7	1	2	12	6	111
Counseled	2	–	–	–	2	8	4	3	2	1	7	5	2	4	2	86
Mediated	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	12
Recommended Private Reprimand	1	–	2	–	1	–	–	–	–	–	–	–	1	–	–	7
Recommended Public Discipline	3	2	3	2	4	2	4	1	2	3	2	2	–	3	2	50
Request for Guidance	48	46	55	55	62	82	90	96	108	104	109	104	127	116	96	1,727
Total	66	82	77	68	118	104	127	111	122	119	131	124	151	179	110	2,411

2022 **Summary** OF REQUESTS FOR GUIDANCE—RFGs

ABCD members responded to 96 Requests for Guidance during 2022. 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	16
Health	32
Life	19
Property & Casualty	29
Total	96

	No. of RFGs		No. of RFGs
Precept 1	51	Precept 8	3
Precept 2	35	Precept 9	3
Precept 3	21	Precept 10	7
Precept 4	11	Precept 11	1
Precept 5		Precept 12	1
Precept 6	1	Precept 13	20
Precept 7	4	Precept 14	

Major Issues Include

Professional Integrity/Skill and Care/Reputation of the Profession

- Actuarial profession's duty to the public.
- Precept 1's application to conduct that falls below criminal, illegal conduct.
- Whether the Code of Professional Conduct ("Code") applies to former members of U.S.-based actuarial organizations.
- Prior to resigning from an employer, an actuary's duty to complete work for a principal in accordance with Precept 1.
- Evaluating steps to take when actuary believes his company is not considering adequate reserves.
- Whether to file an amended actuarial opinion after discovery of an overstatement of reserves.
- Discussing whether a filing error is material under the Code.
- Using the Code as a guide when an actuary is directed to price a product with high commissions and that results in a low loss ratio.
- Whether an actuary who was the subject of an ABCD investigation has an obligation to divulge that information to a prospective client.
- Discussing the Code's potential application to derogatory comments directed toward other actuaries on a listserv, or comments posted on a website or LinkedIn.
- If contesting a non-compete agreement may violate the Code.
- Examining whether an act reflects adversely on the actuarial profession.
- Application of Precept 1 to acts committed outside of the U.S.
- Reviewing Precepts that may be applicable when changing jobs to a competitor firm.
- Using the Code as a guide when there is considerable disagreement among co-workers on actuarial assumptions.
- Responding to management when directed to opine on a line of business the actuary is not qualified to review.
- 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.
- Considerations when resigning as an appointed actuary.
- Addressing management when directed to use a modeling tool with known deficiencies.
- Discussing whether volunteer services qualify as actuarial services subject to the Code.

Qualifications

- Review of the U.S. Qualification Standards (USQS) to determine whether an ASA who passed the Life & Health Qualifications Seminar exam satisfied the basic education requirement to be an appointed actuary.
- Continuing education requirements after actuary is credentialed.
- Continuing education requirements while temporarily working outside of the actuarial profession.
- Evaluation of the USQS and Precept 2 in determining whether an ASA can sign a National Association of Insurance Commissioners (NAIC) SAO.
- Examining whether a life actuary is qualified to work on casualty matters.
- Satisfying continuing education requirements when returning to work after retirement.
- Reviewing whether a health care actuary can issue a SAO on pet insurance.
- Whether actuary was qualified to sign P&C SAO for U.S.-domiciled captives.
- Whether an actuary is qualified to be the appointed actuary for a life insurance company.

- Review of Precept 2 when an actuary believes an unqualified actuary completed an assignment.
- Examining USQS continuing education requirements to determine whether an actuary can issue both NAIC Life and A&H Statements.
- Approaching another actuary to verify his/her qualifications to sign an NAIC Annual Statement.
- Whether an actuary has the requisite experience requirement to be an appointed actuary.
- Discussing whether a principle-based reserving qualified actuary needs to satisfy Specific Qualification Standards.
- Whether committee work for actuarial organizations can satisfy continuing education (CE) requirements.
- Reviewing whether an actuary's experience satisfies Specific Qualification Standards.
- Whether a pension actuary is qualified to calculate a life annuity.
- "Look in the Mirror Test" as a tool in determining if one is qualified to issue an opinion.

Standards of Practice

- Evaluating when qualified reserve opinions are warranted.
- Assistance in interpreting actuarial standards of practice (ASOPs).
- Properly documenting actuarial work when working with non-credentialed actuaries.
- Issuing a revised actuarial report when informed of a data error.
- Reviewing ASOP No. 23 when an actuary has questions about the quality of data.
- ASOP No. 41 application to SAOs drafted by newly credential actuaries who do not have the three-year experience requirement.
- Review of the Code and ASOPs when regulator is presented with faulty calculations in a rate filing.
- Utilizing ASOPs Nos. 27 and 41 when a client insists the actuary use an unreasonable discount rate in a pension analysis.
- Relying on ASOP No. 41 guidance when directed to use aggressive assumptions by management.

- Examining ASOP No. 36 disclosure guidance when issuing a qualified reserve opinion.
- Examining ASOP No. 56 for modeling best practices.
- Discussing risk adjustment methodology used in a state's Medicaid plan.
- Importance of clear communications on caveats and assumptions when providing COVID-19 cost estimates.
- Analyzing ASOP No. 28 to determine whether a qualified opinion is necessary.

Communication Questions

- Providing actuarial reports that comply with ASOP No. 41.
- Review of ASOP No. 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.
- 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.
- Ensuring that an actuarial communication is not used to mislead others.

Conflict of Interest

- Reviewing Precept 7 requirements before performing actuarial services for two principals.
- 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

- Whether an actuary is required to contact another actuary before filing a complaint with the ABCD.
- Discussing if an actuary's misuse of job title is a material violation that falls under Precept 13.
- Whether resolved issues are required to be reported to the ABCD.
- How confidential information impacts an actuary's duty to report under Precept 13.
- Requirements for reporting an actuary for non-compliance with CE requirements.
- Whether a complainant can remain anonymous.
- Filing a complaint with the ABCD against a junior actuary for repeated poor work.
- 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.
- Whether to report an actuary who divulged confidential client information.
- 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.
- Properly documenting an actuary's work when there are serious disagreements with a principal's attorney.
- Using the Code as a guide when an actuary is directed to utilize data that may contain confidential client information.
- Discussion of Precept 8's "take reasonable steps" requirement to ensure actuarial services are not used to mislead other parties.
- Examining whether an article for an actuarial publication qualifies as a SAO.
- Use of revised SAO to correct scrivener's error in previously submitted SAO to a state agency.
- Importance of clear instructions on reports to prevent edits that may violate ASOP No. 41.

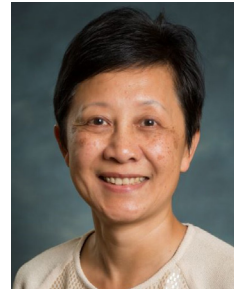
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