

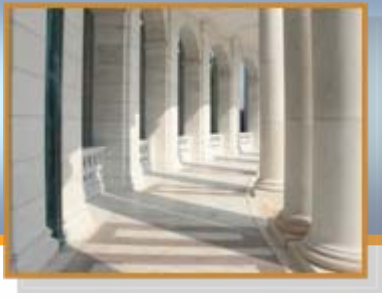


# The Best of “Up To Code”

**Webcast – October 21, 2010**

Sponsored by the Academy’s Council on  
Professionalism and co-sponsored by the ASPPA,  
CAS, CCA, and SOA

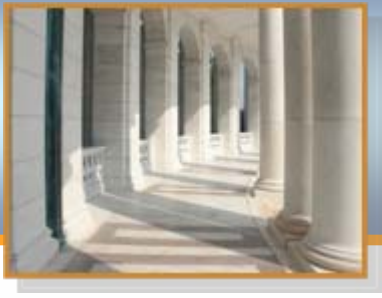




# Presenters

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Academy Assistant General Counsel & Professionalism Staff Liaison

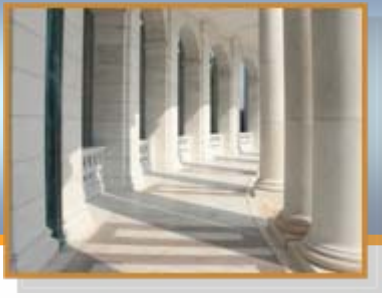




# Disclaimer

The statements and opinions expressed herein are solely those of the panelists and do not constitute official statements or positions of the Academy or the Actuarial Board for Counseling and Discipline.





# Agenda

- ABCD Background
- Best of Up To Code
- Questions and Answers





# ABCD Background

- The ABCD was established in 1991 to provide a single body in the United States to:
- **Investigate** actuaries' compliance with the Code of Professional Conduct (including compliance with the qualification standards and actuarial standards of practice);
- **Counsel** actuaries in good professional practice;
- **Mediate** disputes between actuaries and others.





# ABCD Background

- The ABCD is comprised of nine persons representing a range of actuarial practice areas selected by the Council of U.S. Presidents.
- Each ABCD member is appointed to a three-year term, with terms staggered such that one-third of the board may be appointed each year.
- No board member is permitted to serve more than two consecutive terms.
- Article X of the Academy Bylaws describes the ABCD process.

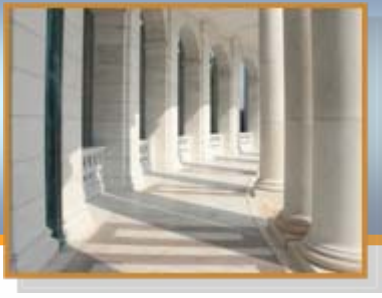




# ABCD Background

- **The ABCD does not discipline actuaries.**
- At most, it recommends that the subject actuary's membership organization(s) consider discipline, if applicable, and each organization decides independently whether to act.





# Best of Up To Code

- Requesting Guidance From The ABCD....







# Requesting Guidance From the ABCD

- A primary function of the ABCD is to respond to requests for guidance from members of its participating organizations: the American Academy of Actuaries, the American Society of Pension Professionals & Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries.





# Requesting Guidance From the ABCD

- ABCD members represent experience in four traditional practice areas – health, life, pension, and property/casualty – and in diverse types of businesses and government entities.
- While ABCD deals primarily with ethical or conduct issues, they will also assist with practice and methods questions.





# Requesting Guidance From the ABCD

- ABCD guidance is confidential.
- After providing guidance ABCD members write a memorandum articulating the issues and the guidance provided and circulate the same to the rest of the ABCD, although the memorandum, as with the advice, remains confidential
- Occasionally the ABCD publishes information in a general form about guidance provided but without any specific reference to the individual requesting the guidance (unless the individual grants permission for same).

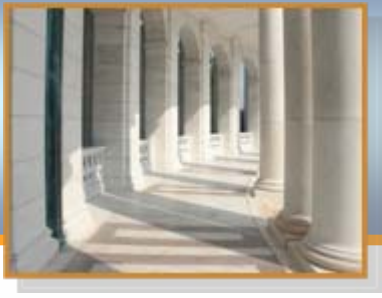




# Requesting Guidance From the ABCD

- Members of the profession can contact the ABCD members for guidance in any number of ways such as calling the ABCD office at (202) 223-8196; emailing the ABCD at [guidance@abcdboard.org](mailto:guidance@abcdboard.org); mail a letter to the ABCD at 1850 M Street NW, Suite 300, Washington, D.C. 20036; or call, email or write directly to an individual ABCD member.
- When a letter or email is sent to the ABCD office, it is forwarded on to an appropriate member of the ABCD for review and response.





# Best of Up To Code

- Moving From Discipline to Guidance....





# Moving From Discipline to Guidance

- The Investigator has a unique role in the ABCD process.
- Before a case is sent out for investigation, it has already undergone an initial screening by the ABCD, which considers the original complaint and notifies the subject actuary to solicit his or her response.
- When a case is passed to the investigator, care is taken to ensure that the subject actuary and investigator have no prior relationship that could bias the investigation.





# Moving From Discipline to Guidance

- The Investigator routinely contacts the subject actuary, the complainant, and other parties that might be identified by the parties as having relevant information.
- The process may take several months.
- Investigators are reminded to be open-minded and fair when investigating and to just present the facts in their written report, and leave the “judging” to the ABCD.





# Moving From Discipline to Guidance

- While some of the ABCD's time is spent reviewing an investigative report, the ABCD spends the majority of its time addressing requests for guidance, which typically come from an actuary looking for the best way to handle a particular situation or issue in order to remain compliant with the Code of Professional Conduct.
- Occasionally, actuaries will request and receive guidance from the entire ABCD rather than just one person on the Board that has expertise in a particular area of practice.



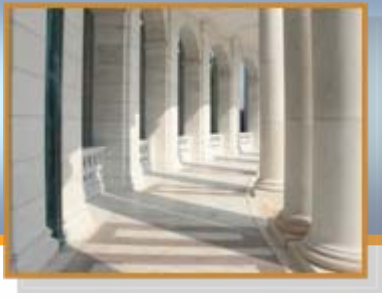




# Moving From Discipline to Guidance

- The ABCD also provides counseling which can take several forms and may occur before or after an investigation.
- The ABCD may provide counseling where it believes the subject actuary's actions were not material violations of the Code requiring discipline but that the actuary should receive some counseling.





# Best of Up To Code

- An Ounce of Prevention....





## An Ounce of Prevention

- Actuaries are well advised to take precautions to reduce the likelihood of having a claim brought to the ABCD or worse, to a court of law.
- Review the assignment for potential conflicts of interest.

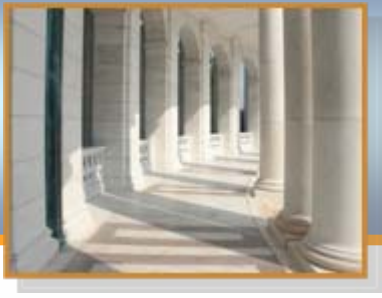




# An Ounce of Prevention

- Review significant details of the assignment with principal.
- Assess background, reputation, and motives of the parties involved.
- Determine your competency (qualifications) and ability to perform the assignment.

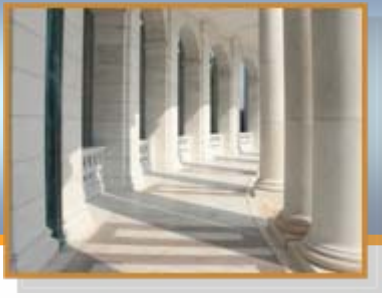




# An Ounce of Prevention

- Prepare detailed proposal, engagement letter, or memorandum of understanding.
- Obtain an indemnification agreement if appropriate under the circumstances.
- Consult an attorney if appropriate.





# Best of Up To Code

- The Rules Are Your Friend....





# The Rules Are Your Friend

- Actuarial rules include the Code of Professional Conduct, the Actuarial Standards of Practice, and the U.S. Qualification Standards.
- It is not expected that you commit all the rules to memory.
- Precept 3 of the Code for example requires actuaries to follow the applicable actuarial standards of practice, which in the United States are promulgated by the Actuarial Standards Board.





# The Rules Are Your Friend

- For example, consult with the Applicability Guidelines, which were recently revised and available at <http://www.actuary.org/pdf/prof/guide.pdf>) for information on useful ASOPs in certain practices.







# The Rules Are Your Friend

- The actuary should be familiar with the ASOPs and know where to find them when determining how to proceed in unfamiliar situations.
- The standards provide guidance on commonly used procedures and deviation from the standards if necessary.

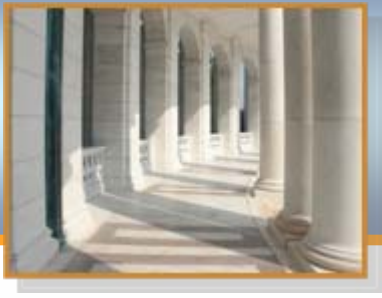




# The Rules Are Your Friend

- It is important to know the ASOPs that relate to your field of practice and apply them, for example, a pension actuary should be familiar, at a minimum, with ASOPs 4, 6, 27, 32, 35 and 44, while a property/casualty actuary should be familiar with ASOPs 13, 20, 29, 30, 36, 39, and 43.
- For questions on interpreting the ASOPs the ABCD is a helpful source whether in the form of a request for guidance or otherwise.





# Best of Up To Code

- Precept 13 – A Snitch In Time....

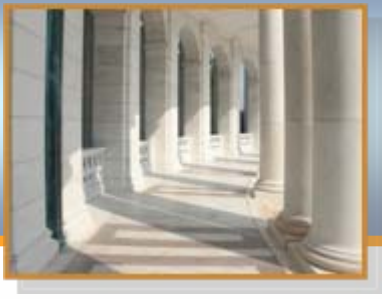




## Precept 13 – A Snitch In Time

- Precept 13 of the Code of Professional Conduct states that “[a]n Actuary with knowledge of an apparent, unresolved, material violation of the Code by another Actuary should consider discussing the situation with the other Actuary and attempt to resolve the apparent violation. If such discussion is not attempted or is not successful the Actuary shall disclose such violation to the [ABCD], except where the disclosure would be contrary to Law or would divulge Confidential Information.”





## Precept 13 – A Snitch In Time

- Many actuaries find Precept 13 distasteful and often refer to it as the “snitch rule.”
- The fact that the U.S. actuarial profession is primarily self-regulating makes this Precept very important.
- Without self-regulation, actuaries run the risk that outside authorities will take over.

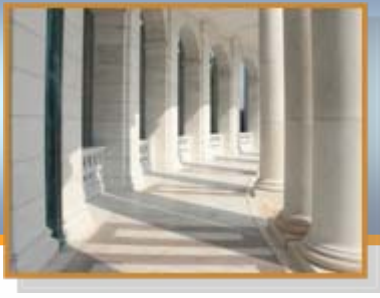




## Precept 13 – A Snitch In Time

- Another issue that actuaries have with Precept 13 is their concern over reporting an actuary and risking legal action by the potential subject actuary.
- To address this concern, the ABCD has clarified that an actuary can contact the ABCD and remain anonymous however the ABCD cannot act on any information the anonymous referrer has provided unless that information can also be gleaned from publicly available sources.

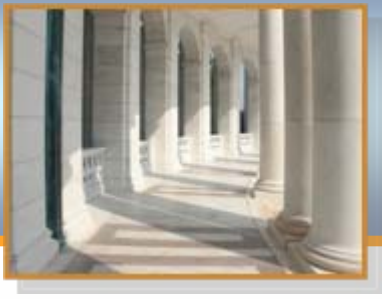




## Precept 13 – A Snitch In Time

- Of course, actuaries should note that a possibility exists that a court of competent jurisdiction will force the ABCD to divulge names of referrers but so far this has not been the case.



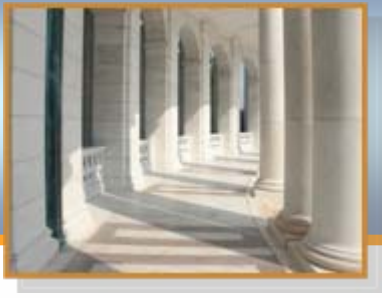


## Precept 13 – A Snitch In Time

- Actuaries often wrestle with what the term “resolved” means in the context of Precept 13.
- There are many examples that may be used to explain when resolution occurs.
- Ultimately, an actuary must use his or her professional judgment to determine if a violation has been resolved. If unresolved, it must be reported to the ABCD.
- What about cases of moral turpitude (conduct that’s contrary to accepted rules of morality, i.e., fraud)?







# Best of Up To Code

- We Need To Do Better ....

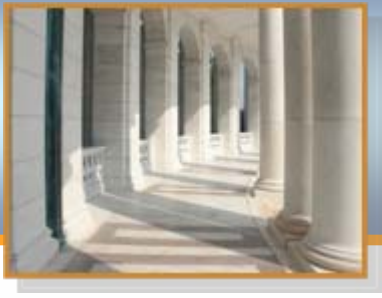




## We Need To Do Better

- Most cases that come before the ABCD involve inadequate work product.
- A number of aspects that occur with sufficient frequency are as follows in the next slides in this presentation.





# We Need To Do Better

- Changing circumstances
- Inadequate actuarial knowledge
- Undue reliance on subordinates

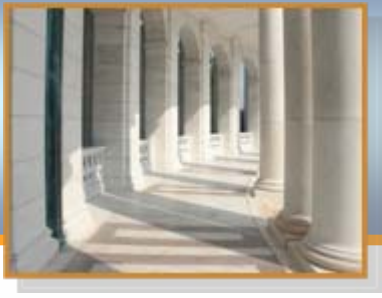




# We Need To Do Better

- Inadequate communication with Client.
- Failure to meet commitments.
- Carelessness or sloppiness.
- Other examples





# We Need To Do Better

- Remember – actuaries need to follow Precept 13 of the Code when they encounter unsatisfactory professional performance.
- The profession is not doing an actuary a favor when it ignores his or her inadequate performance.





# Best of Up To Code

- I'm An International Actuary....





# I'm An International Actuary

- The U.S. Code of Professional Conduct isn't limited in scope to U.S. practice, but rather is designed to apply wherever the actuary renders actuarial services.
- In particular, Precept 2 of the Code requires actuaries to observe applicable qualification standards for the jurisdiction in which the actuary renders actuarial services.
- Similarly, Precept 3 of the Code requires actuaries to observe applicable standards of practice for the jurisdiction in which the actuary renders actuarial services.





# I'm An International Actuary

- An actuary must therefore determine in which jurisdiction he or she renders actuarial services to determine whether he or she is truly an “international” actuary.
- Incorrect: believing that an actuary’s physical presence dictates where she or he renders actuarial services.
- Instead, more appropriate to look at the intended destination of the actuarial work product.







# I'm An International Actuary

- The intended destination may be determined by looking at a variety of facts and circumstances such as (not limited to):
  - domicile of the actuary's principal;
  - domicile of the intended user of the work product (principal or regulator);





# I'm An International Actuary

(continued)

- expectations of the intended user;
- location where the work was intended to be used;
- jurisdiction whose laws and standards the actuary referred to in completing the work product;
- stated purpose of the work product.

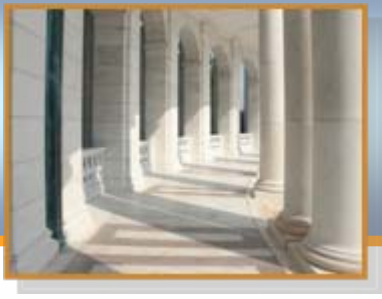




# I'm An International Actuary

- Remember, the Code requires compliance with:
- Code of professional conduct adopted by recognized actuarial organizations (e.g., IAA full member organizations).
- Applicable actuarial standards of practice.
- Applicable qualification requirements (which may include continuing education).





# I'm An International Actuary

- U.S. – Canada Cross Border Discipline Agreement.

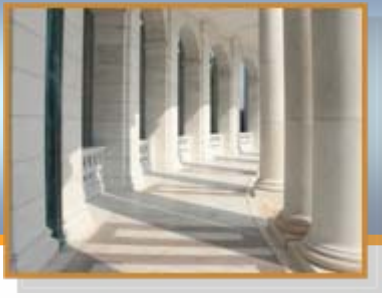




# Best of Up To Code

- Regulator as a Resource....





## Regulator as a Resource

- The mission of state regulators is to ensure consumer protection through oversight of company solvency and compliance with applicable state laws and regulations.
- Regulating the insurance industry in a fair and efficient manner that promotes competition and financially sound insurance markets is a goal for regulators.





## Regulator as a Resource

- The relationship between companies and regulators can lead to improved adherence to professional standards of practice and improved laws and regulations.
- A good professional working relationship between the company actuary and regulator can result in consistently good quality of work and compliance by the actuary.





## Regulator as a Resource

- Over the course of their work, regulatory actuaries see a lot of actuarial opinions and rate filings which affords them the unique opportunity to compare a broad spectrum of submissions of varying quality.
- This results in their understanding over time of what constitutes acceptable work product that meets the requirements of state regulations and ASOPs.







# Regulator as a Resource

- Thus, a regulator can assist in:
  1. Assisting an actuary to produce good quality actuarial work in compliance with ASOPs and regulations;
  2. Providing advise on what constitutes acceptable work product based on their vast review of various opinions;
  3. Resolving potential violations of the Code which an actuary is obligated to do under Precept 13; and
  4. Providing actuaries with the most current information on changes to statutes or regulations that may affect the actuary's submission.





## Additional Resource

- For more on the articles discussed during today's presentation, and for other articles please see:
- <http://www.abcdboard.org/publications/code.asp>





# QUESTIONS?

