DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3675
WEB ADDRESS: *http://www.cba.ca.gov*

CALIFORNIA BOARD OF ACCOUNTANCY (CBA) PUBLIC MEETING NOTICE FOR THE COMMITTEE ON PROFESSIONAL CONDUCT (CPC), ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE (EPOC), AND CBA MEETINGS

DATE: Wednesday, September 22, 2010

COMMITTEE MEETING (EPOC)
TIME: 9:30 a.m. to 11:30 a.m.

COMMITTEE MEETING (CPC)
TIME: 11:00 a.m., or upon adjournment of the EPOC meeting

CBA MEETING
TIME: 1:30 p.m. to 5:00 p.m.

DATE: Thursday, September 23, 2010

CBA MEETING
TIME: 9:00 a.m. to 5:00 p.m.

PLACE: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone: (916) 263-3680

Enclosed for your information is a copy of the agendas for the EPOC, CPC, and CBA meetings on September 22-23, 2010. For further information regarding these meetings, please contact:

Veronica Daniel, Board Relations Analyst
(916) 561-1716, or vdaniel@cba.ca.gov
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

An electronic copy of this notice can be found at http://www.dca.ca.gov/cba/calendar.shtml

The next CBA meeting is scheduled for November 17-18, 2010 in Sacramento, CA.

The meeting is accessible to the physically disabled. A person who needs a disability -related accommodation or modification in order to participate in the meeting may make a request by contacting Veronica Daniel at (916) 561 -1718, or email vdaniel@cba.ca.gov, or send a written request to the Board Office at 2000 Evergreen Street, Ste. 250, Sacramento, CA 95815. Providing your request is at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

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DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

CBA MEETING
AGENDA

Wednesday, September 22, 2010
1:30 p.m. – 5:00 p.m.

Thursday, September 23, 2010
9:00 a.m. – 5:00 p.m.

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone: (916) 263-3680

September 22, 2010

I. Roll Call and Call to Order **(Manuel Ramirez)**.

1:30-2:30

II. Report of the President **(Manuel Ramirez)**.

A. Update on California Research Bureau (CRB) Study **(Patti Bowers)**.

B. Update on Peer Review Implementation **(Dominic Franzella)**.

C. Resolution for Retiring Enforcement Advisory Committee (EAC) Chair, Harish Khanna.

D. Introduction of Newly Assigned DCA Legal Counsel for the CBA.

E. Introduction of Newly Assigned Deputy Attorney General for the CBA.

F. Discussion on International Delivery of the Uniform CPA Examination (iExam) **(Ken Bishop, NASBA)**.

2:30-4:30
TIME CERTAIN

III. Petitions, Stipulations, and Proposed Decisions [Closed Session Government Code Section 11126(c)(3)] Petition Hearings are Public Before the CBA with a Subsequent Closed Session.

A. Ernest E. Dow & Co., An Accountancy Corp. – Stipulated Settlement.

B. Dennis A. Ito – Stipulated Settlement.

C. Stuart Gladstein and Gladstein CPA – Stipulated Settlement.

D. David Greenberg – Petition for Reinstatement of Revoked Certificate.

4:30-4:40 IV. Report of the Vice President **(Sally Anderson)**.

A. EAC Appointment.

B. Peer Review Oversight Committee (PROC) Appointment.

4:40-5:00 V. Report of the Secretary/Treasurer **(Marshal Oldman)**.

A. Discussion of Governor's Budget.

B. FY 2009/2010 Year-End Financial Report.

C. DCA Legal Opinion Regarding Loans to General Fund **(Gary Duke/Spencer Walker)**.

VI. Public Comments.

September 23, 2010 VII. Roll Call and Call to Order **(Manuel Ramirez)**.

9:00-11:30 VIII. Report of the Executive Officer **(Patti Bowers)**.

A. Update on 2010/2012 CBA Communications and Outreach Plan **(Lauren Hersh)**.

B. Update on October 27, 2010 CBA Working Conference **(Dan Rich)**.

C. Educational Presentation – Sunset Review Process **(Matthew Stanley)**.

D. CBA 2010 Sunset Review Report **(Vincent Johnston)**.

E. Consideration of Posting Accusations on the CBA's Web site **(Rafael Ixta)**.

F. DCA Director's Report **(Bill Young)**.

1. Governor's Directive Regarding the Hiring Freeze.

2. Budget Presentation Update.

3. Posting Accusations/Disciplinary Decisions.

G. Discussion on Obtaining an Exemption to the Webcasting Requirement **(Matthew Stanley)**.

H. Update on Current Projects List (Written Report Only).

11:30-12:00 IX. Report of the Licensing Chief **(Deanne Pearce)**.

A. Report on Licensing Division Activity.

B. Discussion on CBA's Use of the Accountancy Licensee Database (ALD).

12:00-12:30 X. Report of the Enforcement Chief **(Rafael Ixta)**.

A. Report on Status of Enforcement Matters.

1. Enforcement Case Activity and Status Report.

2. Aging Inventory Report.

3. Report on Citations and Fines.

4. Reportable Events Report.

12:30-1:30 **LUNCH**

XI. Committee and Task Force Reports.

1:30-2:00 A. Report of the Enforcement Program Oversight Committee (EPOC) **(Herschel Elkins, Chair)**.

1. Report of the September 22, 2010 EPOC Meeting.

2. Consideration of Proposed Revisions to Disciplinary Guidelines.

a. Identification of New/Amended Statutes and Regulations Enacted Since Approval of Proposed Revisions at the May 15 and July 24, 2009 CBA Meetings.

b. Proposed Optional Condition of Probation – Prohibition from Accepting New Clients.

3. Investigative Process – Does the CBA have a Major Case Program?

4. Review of Mediation Guidelines.

5. Consideration of Delegating to the Executive Officer the Authority to Approve and Sign Default Decisions, Proposed Decisions, and Specified Stipulated Settlements.

2:00-2:45

B. Report of the Committee on Professional Conduct (CPC) **(Leslie LaManna, Chair)**.

1. Report of the July 28, 2010 CPC Meeting.

   a. Consideration of Regulatory Language for Section 1.5 – Delegation of Certain Functions.

   b. Discussion on a Retired Option for CPA/PA License.

   c. Qualifications Committee (QC) Recommendation Regarding Defining Supervision in CBA Regulations Sections 12 and 12.5.

   d. QC Recommendation Regarding Further Defining General Accounting Experience in CBA Regulation Section 12.

2. Report of the September 22, 2010 CPC Meeting.

   a. Consideration of Regulatory Language for Section 48.3 – Peer Review Provider Reporting Responsibilities.

   b. Continued Consideration of Retired Status for CPA/PA Licensure.

2:45-3:00

C. Report of the Legislative Committee (LC) **(Michelle Brough, Chair)**.

1. Report of the July 28, 2010 LC Meeting.

   a. Update on Bills on Which the CBA Has Taken a Position (AB 797, AB 1215, AB 1659, AB 1787, AB 1899, AB 1993, AB 2091, AB 2130, AB 2466, AB 2494, AB 2537, AB 2603, AB 2652, AB 2738, SB 389, SB 691, SB 942, SB 1111, SB 1171, SB 1490, SB 1491).

3:00-3:30

D. Report of the Accounting Education Committee (AEC) **(Ruben Davila)**.

1. Report of the June 23, 2010 AEC Meeting.

2. Report of the September 3, 2010 AEC Meeting.

3:30-4:00 E. Report of the Ethics Curriculum Committee (ECC) **(Don Driftmier)**.

1. Update on ECC Appointments (Written Report Only).

2. Report of the September 21, 2010 ECC Meeting.

3. Tentative Staff Developed ECC Timeline of Activities.

F. Report of the Peer Review Oversight Committee (PROC) **(Nancy Corrigan, Chair)**.

1. No Report.

G. Report of the EAC **(Harish Khanna, Chair)**.

1. No Report.

4:00-4:15 H. Report of the QC **(Fausto Hinojosa, Chair)**.

1. Report of the July 29, 2010 QC Meeting.

4:15-4:20 XII. Adoption of Minutes

A. Draft Minutes of the April 21, 2010 QC Meeting.

B. Draft Minutes of the May 12, 2010 EPOC Meeting.

C. Draft Minutes of the June 23, 2010 AEC Meeting.

D. Draft Minutes of the July 28, 2010 CBA Meeting.

E. Draft Minutes of the July 28, 2010 CPC Meeting.

F. Draft Minutes of the July 28, 2010 LC Meeting.

4:20-4:50 XIII. Other Business.

A. American Institute of Certified Public Accountants (AICPA).

1. Update on AICPA State Board Committee **(Donald Driftmier)**.

2. AICPA Peer Review Program Exposure Draft, June 1 **(Paul Fisher)**.

B. National Association of State Boards of Accountancy (NASBA).

1. Update on NASBA Committees.

a. Accountancy Licensee Database Task Force **(Patti Bowers/Sally Anderson)**.

b. Board Relevance & Effectiveness Committee **(Marshal Oldman)**.

c. Compliance Assurance Committee **(Robert Petersen)**.

d. Education Committee **(Leslie LaManna)**.

e. Global Strategies Committee **(Rudy Bermúdez/Angela Chi)**.

f. Uniform Accountancy Act Committee (UAA) **(Donald Driftmier)**.

g. UAA Mobility Implementation **(David Swartz)**.

2. NASBA Regional Director's Focus Questions **(Dan Rich)**.

3. NASBA Exposure Draft – Semi-Autonomy for State Boards **(Dan Rich)**.

C. Participation on National Committees **(Veronica Daniel)**.

4:50-5:00 XIV. Closing Business.

A. CBA Member Comments.

B. Comments from Professional Societies.

C. Public Comments.

D. Agenda Items for Future CBA Meetings.

E. Press Release Focus **(Lauren Hersh)**.

1. Recent Press Releases.

XV. Adjournment.

Please note: Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the CBA President and may be taken out of order. In accordance with the Bagley-Keene Open Meetings Act, all meetings of the CBA are open to the public. Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the CBA prior to the CBA taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the CBA, but the CBA President may, at his or her discretion, apportion available time among those who wish to speak.

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CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
COMMITTEE ON PROFESSIONAL CONDUCT (CPC)

CPC Meeting
Agenda

Wednesday, September 22, 2010
11:00 a.m. or
Upon conclusion of EPOC

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone: (916) 263-3680

(CBA members who are not members of the CPC may be attending the meeting.)

I. Draft Minutes of the July 28, 2010, CPC Meeting **(Leslie LaManna, Chair)**.

II. Consideration of Regulatory Language for Section 48.3 – Peer Review Provider Reporting Responsibilities **(Matthew Stanley)**.

III. Continued Consideration of Retired Status for CPA/PA Licensure **(Dominic Franzella)**.

IV. Comments from Members of the Public.

V. Agenda Items for Next Meeting.

VI. Adjournment.

Action may be taken on any item on the agenda.

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Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the CBA prior to the CBA taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the CBA. Individuals may appear before the CBA to discuss items not on the agenda; however, the CBA can take no official action on these items at the time of the same meeting. (Government Code sec. 11125.7(a).)

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CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE (EPOC)

EPOC Meeting
Agenda

Wednesday, September 22, 2010
9:30 a.m. to 11:30 a.m.

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone: (916) 263-3680

(CBA members who are not members of the EPOC may be attending the meeting.)

I. Call to Order **(Herschel Elkins)**.

II. Consideration of Proposed Revisions to the Disciplinary Guidelines **(Paul Fisher)**.

   A. Identification of New/Amended Statutes and Regulations Enacted Since Approval of Proposed Revisions at the May 15 and July 24, 2009 CBA Meetings.

   B. Proposed Optional Condition of Probation – Prohibition from Accepting New Clients.

III. Investigative Process – Does the CBA have a Major Case Program? **(Rafael Ixta)**.

IV. Review of Mediation Guidelines **(Kathy Tejada)**.

V. Consideration of Delegating to the Executive Officer the Authority to Approve and Sign Default Decisions, Proposed Decisions, and Specified Stipulated Settlements **(Rafael Ixta).**

VI. Public Comments.

VII. Agenda Items and Meeting Dates for Future EPOC Meetings.

VIII. Adjournment.

Action may be taken on any item on the agenda.

In accordance with the Bagley-Keene Open Meetings Act, all meetings of the Board are open to the public.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can take no official action on these items at the time of the same meeting. (Government Code sec. 11125.7(a).)

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item II.B.
September 22-23, 2010

To : CBA Members

Date : August 26, 2010

Telephone : (916) 561-4310
Facsimile : (916) 263-3672
E-mail : dfranzella@cba.ca.gov

From : Dominic Franzella, Manager
Renewal/Continuing Competency & Client Services Units

Subject : Update on Peer Review Implementation

In an effort to continue to supply updates on peer review implementation activities, staff have provided this memorandum highlighting key topics where actions have occurred since the July California Board of Accountancy (CBA) meeting – specifically, regulations and the Peer Review Oversight Committee (PROC).

Regulations

As staff noted at the July meeting, the rulemaking package that will make the peer review emergency regulations permanent and the rulemaking package that deals with the remaining peer review regulations for which the CBA did not have emergency authority to adopt, are pending Department of Finance (Finance) review. As Finance has no set timeframe requirements to review the fiscal/economic impact statement included in a rulemaking package, staff have no update on when to expect approval/disapproval from Finance. Staff, however, continue to follow-up on the rulemaking packages.

This delay presents a real possibility that the CBA will have to request a second, and final, 90-day extension from the Office of Administrative Law on the peer review emergency regulations set to expire on September 28, 2010. Since the CBA delegated authority to the Executive Officer to seek a second 90-day extension should the need arise, staff have already begun discussion on the necessary steps to request a second 90-day extension. If one is required, the process will need to begin prior to the upcoming September CBA meeting. At the meeting, staff will inform members regarding the need for the 90-day extension.

PROC

At the July meeting, the CBA appointed six of the seven members to the PROC. Staff have begun preparation on an agenda, which will be reviewed by PROC Chair, Nancy Corrigan, in anticipation of holding the inaugural meeting some time in October.

Again, staff will continue to inform members regarding the activities and progress of peer review implementation.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

Board Agenda Item II.F.
Septembe r 22-23, 2010

To : CBA Members

Date : September 9, 2010
Telephone : (916) 561- 1711
Facsimile : (916) 263- 3674
E-mail : pbowers@cba.ca.gov

From : Patti Bowers
Executive Officer

Subject : Discussion on International Delivery of the Uniform CPA Examination (iExam)

At the July 24, 2009 California Board of Accountancy (CBA) meeting, members discussed international delivery of the Uniform CPA Examination (iExam). Ken L. Bishop, Senior Vice President and Chief Operating Officer of the National Association of State Boards of Accountancy (NASBA), and Craig N. Mills, Vice President of the American Institute of Certified Public Accountants (AICPA), chronicled the evolution of the idea and presented their implementation model.

For the September 2009 meeting, staff prepared an agenda item that provided additional background related to the current testing process, an overview of the NASBA and AICPA implementation plan for iExam, and issues identified by staff for members' consideration, such as the California Social Security Number requirement, verification of licensure experience for foreign applicants, and workload associated with implementing iExam (**Attachment 1**). Following the September meeting, a letter was sent to NASBA that communicated the CBA members' concerns related to iExam (**Attachment 2**).

At the request of CBA Member Petersen at the July 2010 meeting, staff contacted Mr. Bishop to obtain a status update on the iExam project. Following two e-mail communications (**Attachment 3**), a letter was sent to Mr. Bishop requesting clarification on several topics related to iExam and requesting a representative from NASBA to provide an update and answer any further questions members may have regarding the project (**Attachment 4**).

Mr. Bishop has accepted the invitation to attend the September 2010 CBA meeting and hopes to provide an update on iExam and respond to any questions members may have. Provided for your reference is the iExam handout prepared by NASBA and the AICPA that was distributed at the July 2009 CBA meeting (**Attachment 5**).

State of California
Department of Consumer Affairs

Attachment 1

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

Memorandum

Board Agenda Item IX.C.
September 24-25, 2009

To : Board Members

Date : September 10, 2009

Telephone : (916) 561-4310
Facsimile : (916) 263-3676
E-mail : dpearce@cba.ca.gov

From : Deanne Pearce, Acting Chief
Licensing Division

Subject : Discussion of the Presentation Related to International Delivery of the Uniform CPA Examination from the July 2009 Board Meeting

At the July 24, 2009 California Board of Accountancy (Board) meeting, the Board discussed the international administration of the Uniform CPA Examination (CPA exam). Ken L. Bishop, Senior Vice President of the National Association of State Boards of Accountancy (NASBA), and Craig N. Mills, Vice President of the American Institute of Certified Public Accountants (AICPA), chronicled the evolution of the idea and presented their implementation model.

Background

Currently, the CPA exam is administered only at authorized Prometric testing centers in the United States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands. California candidates are allowed to sit for the CPA exam at any Prometric testing center.

California is one of only 11 states that does not have residency requirements to sit for the CPA exam. Further, California has one of the largest populations of international candidates. International candidates are required to travel to one of the above-listed locations in order to sit for the CPA exam. It should be noted that Prometric offers examination services in over 160 countries in 7,500 locations.

Approximately four years ago, at the request of several state boards of accountancy, NASBA began researching the possibility of allowing candidates in international locations to sit for the CPA exam in their home countries. At that time, a committee comprised of volunteers from NASBA, AICPA and Prometric was created to determine feasibility. The initial rationale for allowing international candidates to sit in their home country was merely a matter of convenience for the candidate. At that time, the risks associated with delivering the exam internationally outweighed the need for providing convenience.

In the past four years, the global economy has changed dramatically. Many organizations have a nexus to international locations which require CPAs to be

stationed on the ground worldwide to accommodate those business relationships. What was considered a matter of convenience four years ago has developed into a necessity and, therefore, changed the impetus for moving forward with the proposal for the international delivery of the CPA exam.

NASBA/AICPA's Plan

The committee of NASBA, AICPA and Prometric has designed an implementation plan that is designed to benefit domestic candidates and increase the influence of the U.S. CPA designation throughout the world.

Key elements of the plan are:

- Eligibility based on state requirements.
- Candidates still apply through state boards.
- Candidates sign "informed consent," including a commitment to obtain licensure and adhere to certain security policies, prior to being approved to sit for the exam.
- Outreach to employers concerning the advantages of licensure.
- Centralized database of all international licensees and their license status.
- Candidates commit to a code of ethics, a system of discipline, CPE and lifelong learning.
- Candidates agree that all information, including license status and disciplinary actions, can be provided to NASBA and AICPA.
- Scores "archived" or made inactive if license is not achieved or maintained.
- Uniform passing letter for all participating states.
- States authorize NASBA and AICPA to cancel scores of questionable validity.
- Candidate agrees to jurisdiction of state and/or binding arbitration of disputes.
- Security measures, including shorter testing windows, doubling the number of available test questions, and segregating questions used on domestic versus international exams.

Possible benefits of the international delivery of the CPA exam include:

- Potential reduction in cost of the domestic program.
- Improvement to AICPA and NASBA infrastructure.
- Increased public protection of the CPA designation.
- Growth of the influence of the U.S. CPA designation internationally.
- Licensure allows candidates to access the U.S. profession as a community and a resource.

It is expected that the state-based licensure process will drive increased licensure rates, resulting in reduced fees for domestic candidates. Further, it is in the interest of the U.S. CPA and the American public for the U.S. CPA designation to be one of the most influential in the world. The public will benefit from more candidates

becoming licensed and committing to lifelong learning and a system of discipline. Further, fewer candidates who pass the exam will hold themselves out as a CPA without a license.

Board Concerns

The Board questioned how having California licensed CPAs in foreign countries would benefit the consumers of California. NASBA responded that in some countries there is no designation or certificate to demonstrate competency in areas such as preparing financial reports. The only way for these individuals to demonstrate that they have mastered these skills is to pass the CPA exam. This benefits Californians by increasing the quality of financial statements and reports used by California business and industry, but prepared in foreign countries.

The Board expressed concerns about enforcement activities in foreign countries. NASBA responded that the likelihood of increased enforcement would be minimal. The majority of international licensees would not be signing audits, but rather working in business and industry. Therefore, the majority of enforcement would be compliance with licensure requirements.

NASBA clarified that licensing international candidates would not give them practice privileges in their home countries. However, it would allow U.S. companies that have engagements in foreign countries that are incidental to U.S. engagements to utilize U.S. CPAs on the ground in those countries. In these instances, the state where that CPA is licensed would have jurisdiction against that engagement.

Additional Topics to Consider

- **U.S. Social Security Number Requirement**

  Pursuant to section 30(a) of the California Business and Professions Code, "Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance of the license require that the licensee provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all others."

  This provision of law prohibits California from issuing a license to an individual who does not possess a U.S. Social Security Number. According to the Social Security Administration, to apply for a Social Security number to work in the United States, an applicant must show current immigration documents with work authorization. Therefore, this Board would be prohibited from issuing a license to an individual who is unable to provide a U.S. Social Security Number.

- **Verification of experience**

Pursuant to Section 11.5(c) of the Board of Accountancy Regulations, "The applicant who is applying with public accounting experience obtained outside the United States and its territories must present work papers substantiating

that such experience meets the requirements of Rule 11.5(a) and generally accepted auditing standards."

This provision of law requires that all applicants with foreign work experience appear at a Qualifications Committee Meeting held four times a year in California. It is assumed that all international candidates would be subject to this requirement.

- **Workload**
  The Board's Examination Unit expects to experience an initial increase in workload developing procedures for the program. Once the program is in place, it is anticipated that additional workload, such as collecting fees, would be handled by NASBA. An ongoing increase in workload may be experienced if the number of international candidates increases based on their ability to sit for the exam in their home countries.

Conclusion

NASBA is currently presenting the implementation plan to all of the eligible state boards as boards are not required to participate in the program. However, NASBA is hopeful that all eligible states will participate at least temporarily to determine if the program meets their needs. Of course, the more states that participate, the more cost effective the program will be overall. States that choose to move forward with the program can anticipate implementation in limited countries in 2010.

Upon direction from the Board, staff will work with NASBA to gather any additional information necessary to evaluate and move forward with this proposal.

Should the Board not support the international delivery of the Uniform CPA Examination, staff can prepare a letter detailing why the Board has decided not to participate in the program.

I will be available at the meeting to answer any questions you may have.

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

CBA
CALIFORNIA BOARD OF ACCOUNTANCY

DEPARTMENT OF CONSUMER AFFAIRS
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October 29, 2009

Ken L. Bishop, Senior Vice President
National Association of State Boards of Accountancy
150 Fourth Ave. North, Ste. 700
Nashville, TN 37219-2417

Dear Mr. Bishop:

On behalf of the California Board of Accountancy (CBA), I would like to thank you and Mr. Craig Mills for attending the CBA July 24, 2009, meeting and presenting information on the international delivery of the Uniform CPA Examination (CPA Exam).

At the CBA's September 2009 meeting, the topic was further discussed and the CBA members expressed substantial concerns. One of the concerns expressed related to the condition that candidates will have to agree to become licensed after passing the CPA exam. Section 30(a) of the California Business and Professions Code requires applicants to provide their Social Security number at the time of initial licensure. Therefore, foreign applicants seeking to test in their home countries as a California candidate would be unable to fulfill the commitment to obtain licensure in California unless they could obtain a United States Social Security number.

As new information becomes available the CBA will continue its consideration regarding the international delivery of the Uniform CPA Exam.

Should you have any questions regarding this issue, please contact me at (916) 561-1718 or via e-mail at pbowers@cba.ca.gov.

Sincerely,

Patti Bowers
Executive Officer

c: Craig N. Mills, Vice President, American Institute of Certified Public Accountants

Liza Walker

From: Ken Bishop [kbishop@nasba.org]
Sent: Monday, August 16, 2010 2:28 PM
To: Liza Walker
Subject: Re: International Delivery of the CPA Examination

Liza,
There has been some additional movement in that the contract between AICPA and NASBA was signed on Friday in NY. See bullets below.

- Contract signed with AICPA on August 13. Term mirrors the domestic contract through 2024.
- Prometric negotiation continue with contract expected before the end of August.
- Pilot delivery in mid-2011 in Japan and several middle-eastern countries.
- Development of the modified Gateway system to include international demographic and security information is moving.
- Business plan/pricing model will be revisited considering the terms of the approved contract.
- All eleven (non-residency) states' boards, that have the vast majority of international candidates, have been visited.
- Site visits to Japan testing sites have been conducted.

Once the Prometric contract is signed, we will develop a more definitive time-line for implementation.

Ken L. Bishop
Senior Vice President & COO,
National Association of State Boards of Accountancy (NASBA)
(615) 312-3755

From: "Liza Walker" <lwalker@cba.ca.gov>
To: "Ken Bishop" <kbishop@nasba.org>
Sent: Thursday, August 12, 2010 7:41:16 PM
Subject: FW: International Delivery of the CPA Examination

Dear Mr. Bishop:

I am following up on an e-mail I sent last week requesting additional information related to the international delivery of the Uniform CPA Examination. Per my e-mail below, I have been asked to provide Board members an update at the September 2010 Board meeting on any updates as to the status/progression of the international delivery of the exam.

I did receive your e-mail dated August 4th, but I am hoping that you can provide more detail so that I may be able to draft a memo for the Board. Again, any information that you can provide is appreciated.

Sincerely,

Liza Walker, Manager
Examination and Practice Privilege Units

California Board of Accountancy

2000 Evergreen Street, Suite 250
Sacramento, CA 95815
(916) 561-1754
(916) 263-3676 (fax)
Π Please consider the environment before printing this email.

-----Original Message-----
From: Liza Walker [mailto:lwalker@cba.ca.gov]
Sent: Friday, August 06, 2010 2:49 PM
To: 'Ken Bishop'
Subject: RE: International Delivery of the CPA Examination

Dear Mr. Bishop:

A Board member has asked that staff provide an update on the international delivery of the CPA examination at our Board meeting in September. Is there some additional information you can provide? The Board deliberated on the issue in September 2009 but there has not been much discussion since. Again, any information that you can provide is greatly appreciated.

Sincerely,

Liza Walker, Manager
Examination and Practice Privilege Units

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
(916) 561-1754
(916) 263-3676 (fax)
Π Please consider the environment before printing this email.

-----Original Message-----
From: Ken Bishop [mailto:kbishop@nasba.org]
Sent: Wednesday, August 04, 2010 4:48 AM
To: lwalker@cba.ca.gov
Subject: RE: International Delivery of the CPA Examination

Liza, We are still in contract negotiation and development processes, but we believe we are very close to agreement. Our most aggressive forecast is Mid-2011 launch. We will announce when appropriate.

Ken

Sent from my Android phone using TouchDown (www.nitrodesk.com)

-----Original Message-----

From: Liza Walker [lwalker@cba.ca.gov]
Received: 8/3/10 7:44 PM
To: kbishop@nasba.org
Subject: International Delivery of the CPA Examination

Dear Mr. Bishop:

My name is Liza Walker. I am the manager over the Examination Unit at the California Board of Accountancy.

I am hoping that you can provide me with an update on the status of the international delivery of the CPA Examination or forward my e-mail to the appropriate person for response. Any information that you can provide is appreciated.

Sincerely,

Liza Walker, Manager

Examination and Practice Privilege Units

California Board of Accountancy

2000 Evergreen Street, Suite 250

Sacramento, CA 95815

(916) 561-1754

(916) 263-3676 (fax)

P Please consider the environment before printing this email.

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
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SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3675
WEB ADDRESS: *http://www.cba.ca.gov*

August 19, 2010

Ken L. Bishop, Senior Vice President and Chief Operating Officer
National Association of State Boards of Accountancy
150 Fourth Ave., North, Ste. 700
Nashville, TN 37219-2417

RE: International Delivery of the Uniform CPA Examination

Dear Mr. Bishop:

The California Board of Accountancy (CBA) would like to thank you for your recent communication to CBA staff providing additional information regarding the status of the International Delivery of the Uniform CPA Examination (iExam).

The CBA will be discussing the iExam at the upcoming September 22-23, 2010 CBA meeting. During the meeting, we are seeking additional information on the following topics:

- What is the expected role of each state board of accountancy?
- Is each state board required to participate in this program?
- Is this merely an expansion of testing center locations?
- What specific security measures are in place to protect the examination?
- Will the CBA's contract with NASBA need amending as a result of iExam?
- Will iExam require a surcharge, similar to that imposed for Guam candidates?

We would appreciate having a representative from the National Association of State Boards of Accountancy attend the September 22-23, 2010 CBA meeting to personally address the members and provide an update to the above items, in addition to addressing any further questions the members may have.

CBA staff will be providing a copy of your presentation from July 2009 to the CBA members and will also share the specifics contained in your recent email communication.

Please provide a response regarding your availability to attend the September 22-23, 2010 CBA meeting as soon as possible, but no later than September 8, 2010, in order that we can meet notice requirements for the meeting.

If you have any questions, or would like to speak further about this request, please feel free to contact me at (916) 561-1711 or via e-mail at pbowers@cba.ca.gov.

Sincerely,

Patti Bowers
Executive Officer

c: Manuel Ramirez, CPA, CBA President
CBA Members

International Administration of the Uniform CPA Examination

Ken L. Bishop, Senior Vice President, NASBA
Craig N. Mills, Vice President, AICPA

How Did This Get Started?

- Some states requested NASBA to explore international administration to better serve their international candidates
- NASBA formed a committee to investigate
- The Committee was expanded to be a joint NASBA-AICPA committee
- The committee realized that there were additional reasons to consider international administration

Concept Is the Domestic Process

- State-based licensure
- Candidates apply through state boards
- No designation contingency
- Expected increased volume could lower cost of domestic administrations
- Compensating controls for unique international conditions

Organizing Principle

- The international accounting space is crowded and many accounting credentials are seeking influence
- Over time, international accounting influence will be concentrated in a small number of designations
- It is in the interest of the US CPA and the American public for the US CPA to be one of the influential designations

Benefits to all states

- Potential reduction in cost of the domestic program
- Improvements to AICPA and NASBA infrastructure
- Better protection of the public interest –
  - Fewer unlicensed candidates who pass the Exam holding out as a CPA without a license
  - Licensees commit to a code of ethics and a system of discipline
  - Candidates commit to CPE and lifelong learning
- Growth of the influence of the US CPA throughout the world
- Licensure allows candidates to access the US profession as a community and a resource

Concept

- Position CPA to be one of a small number of influential designations internationally
- Leverage current demand for CPA Exam internationally
- Base eligibility on state requirements
- Use the state-based licensure process to drive increased licensure rates
  - Market and communicate value to candidates and employers
  - Candidates sign "informed consent", including commitment to obtain license
  - Central database of all international licensees
  - Scores "archived" or made inactive if license not achieved or maintained
- Better Protect the Public Interest
  - Reduce inappropriate use of term CPA by requiring licensure
  - On-going commitment to CPE, ethics and discipline

Informed Consent

- Testing at international locations is a privilege; In order to take advantage of the privilege:
  - Candidates will have to agree to certain conditions, including agreeing to become licensed after passing the Exam, and abide by certain security policies.
  - States that wish to participate will add process steps that will allow their candidates to access international centers.

Key Elements - Candidate Informed Consent

- Obtain and retain license within 3 years.
  - Scores "archived" if not met
  - State discretion to reinstate
- Not to use CPA in any form not approved by the state
- Agrees to provide all requested information and agrees data can be provided to NASBA and AICPA
- Agrees that license status and disciplinary actions can be provided to NASBA and AICPA
- Participating states authorize AICPA and NASBA to cancel scores of questionable validity (e.g. suspected security breach)
- Agrees to jurisdiction of state and/or binding arbitration of disputes

Key Elements for States

- Uniform passing letter
- Candidate informed consent
- Data collected from candidates under informed consent provided to NASBA and AICPA
- License status in central database
- Grant AICPA and NASBA the authority to cancel scores of questionable validity

Business Planning Conclusions

- Business model appears viable
- Demand appears to be real
- Program can be initiated with limited investment
- Preliminary financial analysis indicates cost to candidate will be lower than current expense to test

Important Issues

- Effectiveness of state enforcement
- Quality of CPE obtained internationally
- Equivalency of education
- Verification of experience
- Procedures to improve licensure and renewal rates

Implementation Issue: Value of Licensure for Candidates & Employers

- Passing the Exam does not equal licensure
- Rapidly changing standards require continuing education
- Trusted professional – integrity and commitment
- Value of professional affiliation to both the individual and the employer

Thank You!

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item IV.A.
September 22-23, 2010

To : CBA Members

Date : September 8, 2010

Telephone : (916) 561-1718
Facsimile : (916) 263-3674

From : Sally Anderson
Vice President

Subject : Enforcement Advisory Committee (EAC) Appointment

I am pleased to present for the CBA's approval the following recommendation for appointment on the EAC. This recommendation was made on the advice of and in consultation with the committee vice chair, who carefully reviewed and considered the needs of this committee and the skills and talents of existing and prospective committee members. My thanks to Vice Chair Cheryl Gerhardt for her hard work and diligence in making this recommendation.

Ms. Gerhardt recommends, with my concurrence, the appointment of Mr. Joseph Buniva to the EAC.

Attachment

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item IV.B.
September 22-23, 2010

To : CBA Members

Date : August 31, 2010

Telephone : (916) 561-1718
Facsimile : (916) 263-3674

From : Sally Anderson, Vice President

Subject : Peer Review Oversight Committee (PROC) Appointment

At the July 28, 2010 CBA meeting, it was requested that further due diligence be completed on PROC candidate Robert A. Lee. The following recommendation is the result of a follow up interview with Mr. Lee, in addition to considering the needs of this committee and the skills and talents of existing committee members.

I am pleased to present for the CBA's consideration the recommendation of appointment of Robert A. Lee to the PROC.

Attachment

CALIFORNIA BOARD OF ACCOUNTANCY
FISCAL YEAR 2009/10
Year End Financial Report
(for period of 7/1/09 through 6/30/10)

	FY 2009/10 Received/Expended 7/01/09 - 6/30/10 (12 months) [7]	FY 2008/09 Received/Expended 7/01/08 - 6/30/09 (12 months) [7]	% Change FY 2009/10 to FY 2008/09 (A:B)	FY 2009/10 Annual Governor's Budget 7/01/09 - 6/30/10 (12 months)	FY 2009/10 Receipts/Expenditures Over/Under Budget (D:A)
RECEIPTS					
Revenues:					
Renewals [1]	8,457,550	8,238,710	2.7%	8,212,900	3.0%
Examination Fees	2,943,056	2,795,383	5.3%	2,697,645	9.1%
Licensing Fees	958,750	923,094	3.9%	851,800	12.6%
Practice Privilege Fees	176,650	186,700	-5.4%	194,550	-9.2%
Miscellaneous [2]	53,881	60,787	-11.4%	68,720	-21.6%
Monetary Sanctions [3]	0	0	NA	0	NA
Penalties and Fines	17,140	34,838	-50.8%	15,167	13.0%
Total Revenues	12,607,027	12,239,512	3.0%	12,040,782	4.7%
Interest	96,365	371,591	-74.1%	179,000	-46.2%
TOTAL NET RECEIPTS	**12,703,392**	**12,611,103**	**0.7%**	**12,219,782**	**4.0%**
EXPENDITURES:					
Personal Services:					
Salaries & Wages	3,596,969	3,880,104	-7.3%	3,575,655	0.6%
Benefits	1,364,204	1,404,406	-2.9%	1,615,492	-15.6%
Total Personal Services:	**4,961,173**	**5,284,510**	**-6.1%**	**5,191,147**	**-4.4%**
Operating Expenses:					
Fingerprints	21,475	20,400	5.3%	185,000	-88.4%
General Expense	160,910	211,512	-23.9%	151,009	6.6%
Printing	109,959	111,779	-1.6%	271,826	-59.5%
Communications	45,455	51,210	-11.2%	110,833	-59.0%
Postage	261,579	150,322	74.0%	225,719	15.9%
Travel: In State	127,866	145,771	-12.3%	149,062	-14.2%
Travel: Out of State	1,443	0	NA	2,236	-35.5%
Training	12,762	17,381	-26.6%	83,684	-84.7%
Facilities Operations	568,509	595,760	-4.6%	706,818	-19.6%
Utilities	0	0	NA	0	NA
Consultant & Professional Services Int	0	0	NA	3,708	-100.0%
Consultant & Professional Services Ex	206,393	215,598	-4.3%	1,431,363	-85.6%
Departmental Services	1,089,326	1,171,705	-7.0%	1,170,097	-6.9%
Consolidated Data Center	52,709	30,000	75.7%	41,148	28.1%
Data Processing	37,969	47,879	-20.7%	79,479	NA
Central Administrative Services	399,360	443,562	-10.0%	400,436	-0.3%
Exams	132,006	141,350	-6.6%	44,452	NA
Enforcement	541,583	499,969	8.3%	1,713,551	-68.4%
Minor Equipment	106,874	74,637	43.2%	50,000	113.7%
Major Equipment	0	42,943	-100.0%	24,000	-100.0%
State Controller Operations	8,000	4,000	100.0%	0	NA
Total Operating Expenses:	**3,884,178**	**3,975,778**	**-2.3%**	**6,844,421**	**-43.3%**
TOTAL EXPENDITURES	**8,845,351**	**9,260,288**	**-4.5%**	**12,035,568**	**-26.5%**
Less Reimbursements	93,017	74,447	24.9%	296,000	-68.6%
Less Cost Recovery	108,934	402,501	-72.9%	0	0.0%
TOTAL NET EXPENDITURES	**8,643,400**	**8,783,340**	**-1.6%**	**11,739,568**	**-26.4%**
RECEIPTS IN EXCESS OF EXPENSES	4,059,992	3,827,763		480,214	
BEGINNING RESERVES JULY 1 [4]	15,693,000	25,865,000		15,693,000	
Total Resources	19,752,992	29,692,763		16,173,214	
GENERAL FUND LOAN 2008 [5]		**-14,000,000**			
PROJECTED ENDING RESERVES	19,752,992	15,692,763	25.9%	16,173,214	
GENERAL FUND LOAN 2002 [5]	(6,000,000)				
GENERAL FUND LOAN 2003 [5]	(270,000)				
GENERAL FUND LOAN 2008 [5]	(14,000,000)				
MONTHS IN RESERVE (MIR) [6]	**19.7**	**14.8**		**16.1**	

Footnotes:

[1] Includes biennial renewals, delinquent and prior year renewals, and initial license

[2] Includes miscellaneous services to the public, dishonored check fees, certification fees, duplicate licenses, name change over/short fees, suspended revenue, prior year adjustments, and unclaimed checks.

[3] Enforcement monetary sanctions received as components of stipulated settlements and disciplinary orders approved by the CBA These orders bring to a conclusion any accusations that had previously been filed by the Executive Officer, and are separa from fines or citations.

[4] FY 2009/10 beginning reserve amount was taken from Analysis of Fund Condition statement, prepared by the Departmen of Consumer Affairs (DCA) Budget Office on March 14, 2010

[5] Funds borrowed per California Government Code Section 16320, which indicates that the Budget Act is the authority for these loan The "terms and conditions" of the loans, per the Budget Act are: "The transfer made by this item is a loan to the General Fund This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer." (Estimated at 2.78% for 2008, 2.64% for 2002, and 1.64% for 2003 loan). "It is the intent of the Legislature that repayment be made so as to ensure that the programs supported by this fund are not adversely affected by the loan through a reduction in service or an increase in fees."

[6] Calculation: expenditure authority for FY 2009/10 ($12,035,568) divided by twelve months equals monthly expenditur authority ($1,002,964). Total ending reserves divided by monthly authority equals "Months in Reserve" (MIF

[7] Received/Expended amounts through June 30, 2010 for FY 2009/10 and June 30, 2009 for FY 2008/09 includ encumbrances, and are from DCA Budget Reports.

NOTE: Board Financial Reports are prepared quarterly (October, January, April, and August) and included in Board Meeting materials These reports provide an overview of receipts, expenditures, and the status of the Accountancy Fund Reserv

CALIFORNIA BOARD OF ACCOUNTANCY
FISCAL YEAR 2009/10
YEAR END FINANCIAL REPORT
(for period of 7/01/09 through 6/30/10)

DISCUSSION AND ANALYSIS OF FINANCIAL REPORT

BUDGET

The Governor's Proposed Budget for FY 2010/11 was submitted to the Legislature in January 2010. These documents have been made public and can be viewed at the Department of Finance's Web site - www.ebudget.ca.gov. The latest version of the budget includes a $10 million loan to the General Fund from the Accountancy Fund Reserve (Reserve) that will be repaid at the end of FY 2011/12. At the time of this report, the Governor had not yet approved or signed the FY 2010/11 budget; however, the California Board of Accountancy's (CBA) portion of the budget is expected to remain unchanged.

Two Executive Orders (EO) were issued in FY 2009/10 with the intention of preserving cash flow and saving money. On January 8, 2010, the Governor issued EO S-01-01 ordering all State Agencies to achieve and maintain an extra 5 percent salary savings for FY 2010/11. On July 28, 2010, the Governor issued EO S-12-10, implementing a 3-day per month furlough beginning August 1, 2010. The furlough program is to end when the FY 2010/11 budget is in place and the Department of Finance (DOF) determines that there is sufficient cash for the State to meet its obligations.

REVENUES/TOTAL RECEIPTS

During FY 2009/10, the CBA collected $12.7 million in total receipts, with exam and renewal fees making up the majority of the revenue.

Exam revenues reflect a 5 percent increase from last fiscal year. It is believed that the increase in the number of applications received over the past two years can be partly attributed to the upcoming changes to the Uniform CPA examination. Effective January 1, 2011, the new exam changes will reflect substantially revised updates to content, exam structure, time allocations, scoring weights, and functionality. New question types and at least six task-based simulations will be part of the challenging content found in the new examination structure. The table below reflects the exam revenue increases for the past three fiscal years:

FY 2009/10	FY 2008/09	FY 2007/08
$2,943,056	$2,795,527	$2,423,804

Licensing and Renewal revenues for FY 2009/10 reflected an increase of approximately 3 percent. A total of 3,687 individual licensing applications were received as compared to 3,536 in FY 2008/09. This increase has remained consistent year to year and is a basis for forecasting future revenues for these categories.

Penalty assessment fees reflect a 50.8 percent reduction from the previous fiscal year. In FY 2008/09, the CBA imposed a $20,000 administrative penalty on a single licensee. This assessment, when combined with other penalty revenues for FY 2008/09 more than doubled the yearly revenue for this line item. These assessments are not common and cannot be anticipated.

Interest income decreased compared to last fiscal year. Interest rates are not predictable and follow market rates. Also interest is not reflected on the $14 million borrowed from the Accountancy Fund in FY 2008/09, though interest will be computed and paid when the loan amount is repaid. Cost recovery revenue is down about 73 percent from last year. These reimbursements for investigative costs vary and are not consistent year to year. Additionally, payments made by the licensee will vary depending on the payment plan.

EXPENDITURES

The financial report indicates a 6 percent drop in personal services compared to last fiscal year. It is important to note that this decrease does not exactly match the 13.85 percent salary reductions for all staff due to the furloughs. Many staff received annual raises (merit salary adjustments). Additionally, many benefits are fixed and are not salary dependent. The CBA also hired 3 new seasonal clerks and increased the usage of its exam proctors in order to continue providing a high level of service to our stakeholders.

Notable expenditure categories are detailed below:

- The CBA reduced general expenses and In-State travel by 19 percent. This is a direct result of CBA staff looking for ways to reduce waste and negotiating lower preferred rates at hotels.

- Departmental Services and Central Administrative Services were down 7.8 percent due mainly to the on-going furloughs throughout the fiscal year.

- Expenditures for the Consolidated Data Center (formerly Teale) reflect a 75 percent increase from last fiscal year resulting from increased departmental distributed multi-year contract costs by the Office of Information Services (OIS). The OIS writes the contracts and generates bills for all clients such as the CBA. In addition, the CBA IT unit advised that the OIS offered all clients an additional data line upgrade not included in the FY 2009/10 contract. The CBA consequently upgraded its T1 data line to a faster 25Mb line reflecting an additional $11,000 one-time billing over the $41,000 budgeted amount.

- Enforcement expenditures reflect an 8 percent increase resulting from increased use of subject matter experts in CBA investigations.

- Postal expenditures increased due to mass mailings by the Renewals Unit for the AEC and ECC committees, and Peer Review and Continuing Education regulation change notifications sent to CBA stakeholders.

RESERVES

The CBA ended the fiscal year with 19.7 months in reserve. The $10 million loan to the General Fund in FY 2010/11 will reduce the Reserve, and beginning in FY 2011/12, the CBA will be implementing a temporary renewal fee reduction to further reduce the Reserve. Even with the loan to the General Fund and fee reductions, the Reserve is expected to remain at or above the 9-month mandated levels over the next few years. The CBA will be closely monitoring future revenue and expenditure levels to

determine if fee reductions will need to be extended past FY 2014/15.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item V.C.
September 22-23, 2010

To : CBA Members

Date : September 9, 2010

Telephone : (916) 561-1711
Facsimile : (916) 263-3678
E-mail : pbowers@cba.ca.gov

From : Patti Bowers
Executive Officer

Subject : DCA Legal Opinion Regarding Loans to General Fund

Attached for your consideration is the Department of Consumer Affairs' (DCA) legal opinion that was requested by the California Board of Accountancy (CBA) at its July 28, 2010 meeting. The opinion answers the question posed by the CBA relative to the legality of the proposed budget's borrowing $10 million from the Accountancy Fund, to be repaid on June 30, 2012.

DCA legal counsel will be at the September 22-23, 2010 CBA meeting to answer any questions you might have.

Attachment

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
DIVISION OF LEGAL AFFAIRS
1625 N. Market Blvd., Suite S-309, Sacramento, CA 95834
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MEMORANDUM

DATE	September 7, 2010
TO	MEMBERS OF THE CALIFORNIA BOARD OF ACCOUNTANCY via PATTI BOWERS Executive Officer California Board of Accountancy
SUBJECT	Proposed Transfer of Money from Accountancy Fund to General Fund Business and Professions Code section 5134(f)

At the July 28th , 2010 meeting of the California Board of Accountancy (hereinafter, "CBA" or "Board"), I was requested to provide an analysis and opinion regarding whether the proposed transfer of funds from the Accountancy Fund to the General Fund as provided in the proposed fiscal year (FY) budget of 2010-2011 (AB 1609) meets existing legal requirements.

Question Presented

Is the requirement in Business and Professions Code section 5134(f) that the Board maintain a contingent fund reserve balance equal to nine months of estimated annual authorized expenditures violated by the proposed FY 2010-2011 budget that transfers $10 million dollars, as a "loan," to be repaid by June 30, 2012, from the Accountancy Fund to the General Fund?

Short Answer

The requirement under Business and Profession Code section 5134(f) that the CBA maintain a contingent fund reserve balance equal to nine months of the estimated annual authorized expenditures is not violated under the terms of the proposed FY 2010-2011 Budget.

Analysis

The CBA is a "special fund" agency and operates exclusively on funding from the Accountancy Fund, a continuing special fund established for the sole use of the Board under section 5133 of the Business and Professions Code. The statute provides that "[a]ll money in the Accountancy Fund is hereby appropriated to the State Board of Accountancy to carry out the provisions of this chapter." Chapter 1 of Division 3 of the Business and Professions Code regulates the practice of public accountancy. As such, the statutory purpose of the special fund is to fund the CBA in a manner sufficient to carry out the provisions of the California Accountancy Act (Act).

The primary sources of revenue to the Accountancy Fund are license application, license, and license renewal fees. These fees amount to more than $10 million in annual revenue and along with other fees, penalties and moneys collected by the Board, must be remitted to the State Treasury to the credit of the Accountancy Fund. (Bus.& Prof. Code § 5132.) Each year, the state's budget approval process requires the Legislature and Governor to appropriate money from the Accountancy Fund to cover the Board's annual operating expenses.

Business and Professions Code section 5134 provides the Board authority, within limits, to fix and determine its fees. In relevant part, subdivision (f) of section 5134 specifically requires the to Board to "fix the biennial renewal fee so that ... the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures." This requires the Board to lower or increase biennial renewal fees as appropriate to maintain the statutorily mandated reserve level. Consequently, the Board must set its renewal fees in regulation in such a manner so that the Board maintains a nine month reserve.

In recent years, the Board has maintained a very healthy reserve. (See attachment, Analysis of Fund Condition) During FY 2005-06, the Board's reserve approximated 26 months and reached as high as 35 months in FY 2007-08. During FY 2009-10, the prior fiscal year, the reserve dropped to 18.8 months. There are several reasons for the Board having such large reserves that include personnel savings and the inability to recruit a sufficient number Investigative Certified Public Accountants. Also, the Board has often overestimated its actual expenditures for future fiscal years.

The excessive reserve level in the Accountancy Fund has become problematic. Because the Board has maintained such a large reserve, it recently has proposed regulations to reduce its fees. Business and Professions Code section 128.5 actually requires Department of Consumer Affairs agencies that have unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years to reduce license or other fees in such an amount so that the unencumbered funds are less than the operating budget for the following two fiscal years. The Board's proposed regulation will reduce fees beginning July 1, 2011. Even

with the anticipated fee reductions, however, the Board will continue to maintain a healthy reserve of more than nine-months and less than twenty-four months.

As of the date of this memorandum, the Legislature and Governor have not agreed upon a State budget. Currently AB 1609 (Blumenfield) is the legislative vehicle for the proposed state budget. In its most recently amended form, if enacted, the Budget would transfer money from the Accountancy Fund to the General Fund. In relevant part, section 2, provides the following:

```
"           *     *     *
1110-011-0704--For transfer by the
Controller, upon order of the Director of
Finance, from the Accountancy Fund,
Professions and Vocations Fund to the
General Fund............................. (10,000,000)
      Provisions:
      1.     The amount transferred in this
             item is a loan to the General
             Fund and shall be repaid by
             June 30, 2012. Repayment shall
             be made so as to ensure that
             the programs supported by the
             Accountancy Fund, Professions
             and Vocations Fund are not
             adversely affected by the
             loan. This loan shall be
             repaid with interest
             calculated at the rate earned
             by the Pooled Money Investment
             Account at the time of the
             transfer.

            *     *     *     "
```

Unlike so called "loan transfers" that were undertaken in prior years, this loan has a set repayment date and by its own terms must be paid back to the Accountancy Fund by June 30, 2012, the last day of FY 2011-12. Since the $10 million, with interest, would be repaid no later than the end of the fiscal year, it would be accounted as revenue for the 2011-12 fiscal year. According to the most recent budget projections, that takes into account the proposed fee reduction beginning in July 2011 and the proposed loan transfer of $10 million in FY 2010-2011, the Board will continue to maintain a fund reserve greater than 9 months for the next several years. (See attached 0704 California Board of Accountancy, Analysis of Fund Condition.) As a practical matter, at this point in time, there is no conflict between the proposed budgetary transfer and Business and Professions Code section 5134.

In interpreting the statutory provision in question, we may rely upon several principles of statutory construction. "In construing a statute, a court's objective is to ascertain and effectuate the underlying legislative intent." (*Moore v. California State Board of Accountancy* (1992) 2 Cal.4th 999, 1012.) In determining legislative intent, we look first to the language of the statute, giving effect to its "plain meaning." (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208-209.) In addition, various sections of all codes must be read together and harmonized if possible. (*Channell v. Superior Court of Sacramento County* (1964) 226 Cal. App.2d 246; *Rupley v. Johnson* (1953) 120 Cal.App.2d 548; *In Re Thrasher's Guardianship* (1951) 105 Cal.App.2d 768.) As such, the codes are to be regarded as blending into each other and constituting but a single statute. (*Pesce v. Department of Alcoholic Beverage Control* (1958) 51 Cal.2d 310.) Consequently, the codes must be construed to give effect to all provisions, if reasonably possible. (*Pareses v. California State Board of Prison Directors* (1929) 208 Cal. 353; *People v. Pryal* (App.1914) 25 Cal.App. 779.) Also, it must be presumed that the Legislature, when enacting this statute, was aware of existing related laws and intended to maintain a consistent body of rules. (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1055-1056, 93 Cal.Rptr.3d 457.) Consequently, Business and Professions section 5134 must be read together and harmonized with the relevant enacted budget provisions. According to the most recent budgetary projections, there is no conflict between the Accountancy Act and the proposed language of AB 1609.

Issues still remain if the Accountancy Fund were to fall below the statutorily mandated nine month reserve. The provision in the proposed FY 2010-11 budget concerning the loan repayment only provides that "[r]epayment shall be made so as to ensure that the programs supported by the Accountancy Fund, Professions and Vocations Fund are not adversely affected by the loan."[1] This provision is consistent with Government Code section 16310 that authorizes the Governor to "order the Controller to direct the transfer of all or any part of the moneys not needed in other funds or accounts to the General Fund" in situations "[w]hen the General Fund...is or will be exhausted." Special funds, like the Accountancy Fund, are included among the funds from which money may be transferred under Government Code section 16310.

Some may argue that any budgetary transfer directed by the FY 2010-11 proposed budget that allows the Accountancy Fund to fall below an estimated the nine month reserve would violate Business and Professions Code section 5134. However, the requirement to maintain a nine month reserve is more directed to the Board's obligation to determine the biennial licensing fees to be charged to licensees. This provision does not specify that the Accountancy Fund always maintain a nine month reserve, but rather that the Board shall fix the renewal fees in such a manner so that the reserve balance in the Board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. (Bus.& Prof. Code 5134(f).) "Any **increase** in the renewal fee shall be made by regulation upon a determination by the board that additional moneys

[1] See AB 1609, sec. 2, item 1110-011-0704.

are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur." (Ibid., emphasis added.) The statute essentially limits the Board from increasing renewal fees in a manner that would create a reserve greater than, approximately, nine months. The proposed temporary loan to the General Fund is not a result of Board action regarding the determination of license renewal fees; rather, it would be the result of legislative action. Consequently, budget item number 1110-011-0704 in the proposed FY 2010-11 budget bill would not violate Business and Professions Code section 5134(f). Insofar as the budget bill and Government Code section 16310 requires repayment of any loans to be made to ensure that the programs supported by the Accountancy Fund are not adversely affected by the loan, CBA's programs are not adversely affected if the fund reserve falls below nine months. There are still adequate reserves to maintain program operations so long as the Accountancy Fund has an approximate reserve of at least two to four months.[2]

If the Board's reserve were to fall below the nine month requirement specified in section 5134 of the Business and Professions Code, the Board may appeal and argue to the Department of Finance that the loan made to General Fund is adversely affecting its programs since the law requires the Board to determine renewal fees in order to maintain a nine month reserve. The Department of Finance could accelerate the loan repayment in order for the Board to maintain its nine month reserve. However, in the alternative, the Department of Finance may ignore or refuse the Board's request for repayment to maintain the nine month reserve since current budget projections show that the Board has sufficient reserves to maintain existing program operations.

In California, it is unconstitutional for special funds to be permanently transferred for a General Fund purpose. (*Daugherty v. Riley* (1934) 1 Cal. 2d 298, 34 P.2d 1005) The California Supreme Court, in *Daugherty v. Riley*, stated:

> That these special funds are raised for regulatory purposes and are set apart for the exclusive use of the state departments and agencies for which they are imposed and collected cannot be doubted. That these funds may not be permanently diverted from their specific purposes and to such an extent as to render the department or agency unable to function is likewise clear. This is especially true in the present case where the legislature has established elaborate governmental machinery the effective operation of which is essential to the transaction of business depending on its proper functioning. It would appear to be self- evident that the legislature may not on the one hand set up a department to authorize, regulate and supervise business transactions large and

[2] Most licensing programs within the Department of Consumer Affairs do not specify fund reserve levels. However, there are exceptions: The Medical Board's statutes require the Medical Board to set fees in a manner that maintains the Contingent Fund at a reserve level equal to two to four months' operating expenditures. (Bus.&Prof. Code § 2435(d) and (h).) The Respiratory Care Board is mandated to maintain a six month reserve. (Bus.&Prof. Code § 3775(d). The Veterinary Board is required to maintain a reserve of no less than three month but no more than ten months. (Bus.&Prof. Code § 4905.) The Contractors' State License Board specifies a reserve not to exceed six months. (Bus.&Prof. Code § 7138.1.) The Pharmacy Board is required to maintain a reserve of twelve months. (Bus.&Prof. Code § 4400(p).) Only the Pharmacy Board's mandated reserve level is greater than the Accountancy Fund reserve.

> small, imposing fees upon those affected for the purpose of carrying out the purposes of the law, and on the other hand permanently divert the funds thus raised and constituting the life blood of the department to a general fund or other general tax purpose.

However, the right of the legislature and governor to temporarily loan or transfer money from one fund or department to another; the right to borrow money temporarily from one fund for use in another has been sustained by our courts and is codified in Government Code section 16310. Under this section, a transfer from a special fund to the General Fund may only be made when the general fund is or will be exhausted and only when the money is not needed in the special fund and the transfer will not interfere with the object for which the special fund was created. (See Op.Leg.Counsel, 1967 A.J. 5333.) In the 1990s, there where several challenges to the state's diversion of money from agency special funds of the Department of Consumer Affairs during FYs 1991-1994. Three of the cases resulted in settlement in which the state, over time, repaid the amounts previously transferred to the General Fund. (*Malibu Video Systems, et al. v. Kathleen Brown, et al.*, No. BC082830 (Los Angeles County Superior Court), *Abramovitz, et al. v. Wilson, et al.*, No. BC120571 (Los Angeles County Superior Court), and *Hathaway, et al. v. Wilson, et al.,* No. BC137792 (Los Angeles County Superior Court).)

The California Medical Association (CMA) challenged the FY 1993-1994 Budget Act transfer of $2.6 million in physician licensing fees from the Medical Board's Contingent Fund to the General Fund. On February 22, 1994, the Sacramento County Superior Court issued an order favorable to California Medical Association (CMA) in *CMA v. Hayes*, Case No. 374372 (Sacramento Superior Court). Ruling in favor of CMA on two separate constitutional grounds, the court granted CMA's petition and directed the state to return all Medical Board funds transferred under the unconstitutional provisions. The court found that the transfer of funds required by the Budget Act is a "special law" which violates the state constitution because it requires physicians to pay more in general taxes than other similarly situated persons. Also, the court held that because the Budget Act transfer language purports to amend the Medical Practice Act (which restricts the use of physician licensing fees for consumer protection activities by the Medical Board and expressly prohibits the transfer of those fees to the General Fund), the Budget Act language violates the single subject rule of the state constitution. The Department of Finance (DOF) subsequently decided not to appeal the superior court's ruling and subsequently returned $2.6 million to the Medical Board. Since the CMA case, there have been no Appellate or California Supreme Court decisions on the aforementioned issues.

Currently, the CMA is challenging the FY 2008-09 transfer of $6 million from the Medical Board Contingent Fund to the General Fund. (*CMA v. Schwarzenegger, Chang, Endsley and Genest,* Case No. 09-509896 (San Francisco County Superior Court).) Although the CMA was unsuccessful at the trial court level, the matter is currently being appealed to the First Appellate District Court, Division One. (*CMA v. Schwarzenegger*

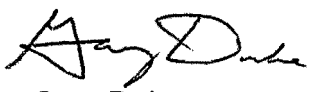
et al. (2010) App. No. A128172.) The CMA completed its opening brief on July 28, 2010. This case will be the first appellate case on the issues concerning the transfer of special funds from the Department of Consumers Affairs' accounts to the General Fund. How this case is determined will have implications for all future "transfers" or loans from special funds to the General Funds. However, the facts in the current CMA case are significantly distinguishable from the proposed FY 2010-11 transfer from the Accountancy Fund to the General Fund. First, Bus.& Prof. Code section 2445 specifically prohibits any surplus of the Contingent Fund of the Medical Board to be deposited in or transferred to the General Fund. The Accountancy Act does not specifically prohibit transfers to the General Fund. The transfer or loan made from the Medical Board's Contingent Fund has no specified or concrete timetable for repayment. The proposed transfer from the Accountancy Fund has an actual repayment date of June 30, 2012. Also, pursuant to Business and Profession Code section 2435 (h), the Medical Board is required to "seek to maintain a reserve in the Contingent Fund in an amount not less than two nor more than four months operating expenditures." In contrast, the Accountancy Fund requires a nine month reserve. The aforementioned distinctions provide a good argument for insisting that the transfer from the Contingent Fund of the Medical Board is not really a loan, particularly since there is no repayment timetable scheduled. The proposed transfer from the Accountancy Fund more clearly appears to be a loan, and as such, it meets existing constitutional requirements.

Since the issues concerning the validity of the budgetary transfers are currently in litigation, it would be best to await the appellate court in the CMA case before taking any action. Politically, it may be more appropriate for an industry association to contest any transfer of funds from a special fund account to the General Fund. Such an entity would have standing to contest the budget measure. It would be extremely difficult for the CBA to challenge a budgetary measure. The Governor exercises the ultimate control over state agencies and departments through the appointment and removal power of appointed public officials. (Gov. Code § 12801.) Also, the budgetary process starts and ends with the Governor. (Cal. Const., Art.IV, § 12.) The Department of Finance prepares the Governor's budget and each state agency must submit to it a proposed budget for the fiscal year. (Gove. Code § 13320.) Until the enactment of the annual fiscal budget act, the Department of Finance may revise, alter or amend the budget of any state agency (Gov. Code § 13322.) After the Legislature has approved the final budget bill, the Governor has the power to veto, eliminate or reduce any item of appropriation for any agency program or service (Cal. Const., Art. IV, § 10, subds. (a), (e).) Any challenge to the Governor's policy or authority would probably not be welcome. There also remains an issue as to how the CBA would finance any legal challenge.

I trust this is responsive to your inquiry. Please feel free to call me at (916) 574-8220 if you have any questions regarding this opinion.

Sincerely,

DOREATHEA JOHNSON
Deputy Director, Legal Affairs



By: Gary Duke
Senior Staff Counsel

attachment

0704 - California Board of Accountancy
Analysis of Fund Condition

Prepared 8/4/10

(Dollars in Thousands)

NOTE: $20.270 Million General Fund Repayment Outstanding as of 7/1/09

2010-11 Governor's Budget +1B

w/ Proposed $10 million GF Loan and Fee Decrease Regulation

	ACTUAL 2005-06	ACTUAL 2006-07	ACTUAL 2007-08	ACTUAL 2008-09	ACTUAL 2009-10	Governor's Budget BY 2010-11	BY + 1 2011-12
BEGINNING BALANCE	$ 12,033	$ 15,957	$ 20,548	$ 25,653	$ 15,693	$ 19,550	$ 10,323
Prior Year Adjustment	$ 126	$ 354	$ 59	$ 212	$ -	$ -	$ -
Adjusted Beginning Balance	$ 12,159	$ 16,311	$ 20,607	$ 25,865	$ 15,693	$ 19,550	$ 10,323
REVENUES AND TRANSFERS							
Revenues:							
125600 Other regulatory fees	$ 62	$ 62	$ 56	$ 55	$ 66	$ 98	$ 98
125700 Other regulatory licenses and permits	$ 3,416	$ 3,585	$ 4,194	$ 4,604	$ 4,819	$ 5,020	$ 5,020
Initial fee decrease							$ (242)
125800 Renewal fees	$ 6,544	$ 6,743	$ 6,933	$ 7,246	$ 7,426	$ 7,647	$ 7,647
Renewal fee decrease							$ (2,921)
125900 Delinquent fees	$ 282	$ 296	$ 291	$ 294	$ 290	$ 293	$ 293
Delinquent fee decrease							$ (116)
141200 Sales of documents	$ -	$ -	$ -	$ -	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 509	$ 903	$ 934	$ 372	$ 96	$ 186	$ 74
160400 Sale of fixed assets	$ -	$ -	$ -	$ -	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ 2	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3
161400 Miscellaneous revenues	$ 1	$ 1	$ 5	$ 2	$ 1	$ 1	$ 1
164300 Penalty Assessments	$ 12	$ 17	$ 1,017	$ 35	$ 1	$ 1	$ 1
Totals, Revenues	$ 10,828	$ 11,610	$ 13,433	$ 12,611	$ 12,702	$ 13,250	$ 9,859
Transfers from Other Funds							
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)	$ -	$ -	$ -	$ -	$ -	$ -	$ -
F00001 GF loan repay	$ -	$ -	$ -	$ -	$ -	$ -	$ 10,000
Transfers to Other Funds							
T00001 GF loan per Item 1120-011-0704, BA of 2002	$ -	$ -	$ -	$ -	$ -	$ -	$ -
T00001 GF loan per Item 1120-011-0704, BA of 2003	$ -	$ -	$ -	$ -	$ -	$ -	$ -
T00001 GF loan per item, BA of 2008	$ -	$ -	$ -	(14,000)	$ -	$ -	$ -
T00001 Proposed GF Loan	$ -	$ -	$ -	$ -	$ -	$ (10,000)	$ -
Totals, Revenues and Transfers	$ 10,828	$ 11,610	$ 13,433	$ (1,389)	$ 12,702	$ 3,250	$ 19,859
Totals, Resources	$ 22,987	$ 27,921	$ 34,040	$ 24,476	$ 28,395	$ 22,800	$ 30,181
EXPENDITURES							
Disbursements:							
0840 State Controller (State Operations)				$ 4	$ 8	$ 20	
1110 Program Expenditures (State Operations)	$ 7,025	$ 7,367	$ 8,380	$ 8,779	$ 8,837	$ 12,450	$ 12,699
2010-11 BCPs - Program							
Cal-Licensing System BCP 1B							$ 4
8880 Financial Information System for California (State Operations)						$ 7	
Total Disbursements	$ 7,030	$ 7,373	$ 8,387	$ 8,783	$ 8,845	$ 12,477	$ 12,703
FUND BALANCE							
Reserve for economic uncertainties	$ 15,957	$ 20,548	$ 25,653	$ 15,693	$ 19,550	$ 10,323	$ 17,478
Months in Reserve	26.0	29.4	35.0	21.3	18.8	9.8	16.2

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2011-12

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item VIII.A
September 22-23, 2010

To : CBA Members

Date: September 9, 2010
Telephone : (916) 561- 1789
Facsimile : (916) 263- 3675
E-mail : lhersh@cba.ca.gov

From : Lauren Hersh
Information & Planning Manager

Subject : Update on 2010-2012 CBA Communications and Outreach Plan

As requested by the CBA at the March meeting, staff will be providing regular updates regarding the communications and outreach activities which have taken place since the last CBA meeting.

Staff Outreach Committee

- The staff Communications & Outreach Committee has been renamed the Outreach Committee (OC) for ease of reference, and will be referred to as such in future communications. The OC leadership is presently accepting applications from staff in hopes of further expanding membership and outreach capabilities.

- As indicated at the May CBA meeting, the OC has identified a focus for the coming months included in the Communications & Outreach Calendar, with June yet to be determined. Each outreach focus was chosen as a result of research; for instance, outreach to students is designed to precede the annual spike in exam applications, outreach to seniors was selected during Consumer Protection Month, when the opportunities to piggyback onto DCA's senior outreach activities would be greatest. An updated calendar has been provided here as an attachment. **(Attachment 1)**

- The OC has been focusing on social media to enhance the CBA's outreach to stakeholders, including appropriate use of Facebook, Twitter, LinkedIn and other online communication channels. The Committee made its initial presentation to the staff Executive Leadership in July, and is currently waiting issuance of DCA's forthcoming guidelines regarding use of social media by boards and bureaus. Staff expect to begin with a CBA rollout on Facebook and Twitter shortly thereafter. The OC was able to secure the user names "California Board of Accountancy" for Facebook and "CBANews" for both the Facebook and Twitter accounts. **(Attachment 2)**

- OC members have also been tasked with preparations to launch the Ambassador Program. At this writing, the PowerPoint presentation modules, which may be reconfigured and customized, are in final review. An email list of contacts at colleges/universities has been created, and a draft flyer and email to those educational institutions has been prepared. September and October have been designated as Licensing Applicant Awareness months, and staff is presently seeking presentation opportunities. CBA members who wish to make themselves available for such engagements should please see me or Deanne Pearce.

Radio advertising

- Following numerous issues in securing completed and approved contracts, staff determined that by replicating the successful contract which enabled the CBA to advertise in Sacramento to support peer review legislation in 2009, the CBA would be better able to secure the radio advertising necessary to educate consumers and licensees about the role of the CBA, mandatory peer review and drive listeners to the CBA Web site. Contracts with radio stations were submitted to DCA in June, and executed in July, with stations in Los Angeles, Sacramento, San Diego and San Francisco airing the announcements through the month of August. Because KXJZ Sacramento mistakenly aired the tag lines we ran last year until August 12, they will run the appropriate tag lines through September 19 at no additional cost.

- The taglines for all stations are limited to approximately 40 words and read: “Programming is supported by the California Board of Accountancy, helping protect California consumers by ensuring only qualified licensees practice public accountancy. More about California's new mandatory peer review law is online at C B A dot C A dot gov.”

- In order to avoid further contract difficulties in obtaining needed advertising services in the future, staff plans to put forth a Request For Proposal to secure a multi-year contract for comprehensive advertising and public relations services from qualified advertising agencies, much as Contractors State License Board and Bureau of Automotive Repair have done. Since the CBA is constrained from entering into such contracts during the current state budget crisis, staff expects to pursue this avenue after a new state budget is in place.

UPDATE

- The draft of the Fall edition of UPDATE has been approved and at this writing is still on schedule for September printing and September 30 mail out.

- At present, the Department of General Services has indicated that the Office of State Publishing will continue to process printing orders. This decision

could change should the budget stalemate continue.

- This Fall edition will include a new feature highlighting CBA member profiles. This first installment will include all CBA members, replicating what is on the CBA Website. Beginning with the winter edition, the Member Profile page will include profiles of new members only.

E-News

- E-News now has 1638 subscribers, and staff are beginning to field occasional phone calls from readers responding to content. The table below indicates the number of subscribers by areas of interest, with many subscribers choosing more than one area of interest. The subscription list continues to grow slowly, but steadily. Staff hopes to increase E-News exposure through use of social media in the future.

E-News Statistics
August 25, 2010

List Name	External	Internal	Total
California Licensee	2000	30	2030
Consumer Interest	1007	37	1044
Examination Applicant	404	27	431
Licensing Applicant	513	28	541
Out-of-State Licensee	421	27	448
Statutory/Regulatory	1702	37	1739
CBA Meeting Information	204	14	218
Total Subscribers	1638	44	1682

- In June, staff utilized E-News for the first time to advertise the continuous testing for ICPAs in the Enforcement Division, and E-News is being considered as a channel to reach licensees.

Press Releases

Six press releases were issued between the July CBA meeting and August 31, including notification of enforcement actions. Further discussion of press releases is provided in Agenda Item XIV.E.1. If the enforcement action has a statewide interest or impact, or is deemed newsworthy by virtue of the circumstances or monetary impact of the case, a news release is also issued.

Brochures

2010 Communications & Outreach Plan
September 9, 2010

The Consumer Assistance Booklet has been updated and posted on the CBA Web site. A complete revise is planned for later this year.

Staff are available to answer any questions CBA members may have regarding this update.

JANUARY 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 ▪Peer Review webpage press release ▪Monitor CBA in news*	5 Tax Tips links for Consumers added to Website	6	7	8 Furlough	9
10	11 Pre-CBA meeting press release	12 E-News release re: pre-CBA meeting press release	13 Enforcement release re:Murray ISO	14	15 Furlough	16
17	18	19	20 CBA meeting webcast	21 CBA meeting webcast	22 Furlough	23
24	25	26 E-News Alert re:QC meeting notice	27 QC meeting	28 EAC meeting	29	30
31						

Notes:
*monitoring news a daily activity necessary to assess outcomes
Calendar events will be updated throughout the year
Activities: Tax Tips links for Consumers added to CBA Web site

January Focus: Tax Tips for Consumers

FEBRUARY 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5 Furlough	6
7	8	9 New CBA language and link added to BOE Web site	10	11	12 Furlough	13
14	15	16	17 CBA E-News link added to CalCPA's Web site	18	19 Furlough	20
21	22	23	24	25 Enforcement action press release	26 E-News release re: Enforcement action	27
28						

Notes:
E-News Alerts are sent throughout the month
Activities: CBA Web link added to BOE Web site on 2/9; E-News subscription link aded to CalCPA Web site 2/17

February Focus: How to Select a CPA

MARCH 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Posting of Practice Privilege Regulations	2	3	4	5 Furlough	6
7	8 ·Consumer Protection Day at DCA ·Peer Review Brochure added to CBA Web site	9	10	11	12 Furlough	13
14	15 Pre-CBA meeting press release	16 E-News Alert re: pre-CBA meeting press release	17	18	19 Furlough	20
21	22 ·Messages promoting E-News ·Customer Service Survey to be added to outgoing email	23	24 E-News alert re: CBA meeting	25 CBA meeting webcast	26 CBA meeting webcast	27
28	29 Post-meeting press release	30 E-News Alert re: post-meeting press release	31			

Notes:
E-News Alerts sent throughout the month
Activities: CBA Outreach @ Consumer Protection Day, DCA 3/8

March Focus: Consumer Protection Month/Senior Outreach

APRIL 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2 Furlough	3
4	5 Press Release & E-News Alert Enforcement Action	6	7	8	9 Furlough	10
11	12	13	14	15	16 Furlough	17
18	19	20 E-News Alert re: QC meeting notice	21 QC meeting	22	23	24
25	26 Statewide traffic sponsorships anticipated to begin	27 Post link to sponsorship audio file to CBA Web site	28 ▪Enforcement action press release ▪E-News alert re:Enforcement actions	29	30	

Notes:
E-News alerts sent throughout the month

April Focus: Prospective Licensees-Exam Awareness

MAY 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 Pre-CBA meeting press release	4 E-News Alert re: pre-meeting press release	5 E-News alert re: EAC meeting	6 EAC meeting	7 Furlough	8
9	10	11 E-News alert re: CBA meetings	12 CBA meeting Webcast	13 CBA meeting Webcast	14 Furlough	15
16	17 Post-CBA meeting press release	18 E-News alert re: post-CBA meeting press release	19	20 Press release & E-News Alert: CBA Seeks Legal Clarification re: Web Posting	21 Furlough	22
23	24	25 Outreach Committee	26	27 ▪UPDATE posted on CBA Web site ▪E-News alert	28 UPDATE mailout	29
30	31					

Notes:
E-News alerts sent throughout the month

May Focus: Exam Awareness

JUNE 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4 Furlough	5
6	7	8 Outreach Committee meeting	9	10	11 Furlough	12
13	14	15	16 Enforcement action press release	17 E-News Alert re:Enforcement action press release	18 Furlough	19
20	21	22 AEC press release	23 AEC Webcast	24 Outreach Committee meeting	25	26
27	28	29	30			

Notes:
E-News Alerts sent throughout the month

June Focus:TBD

JULY 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 *Post Peer Review reporting form on Web site	2 E-News alert re: Peer Review reporting form posting	3
4	5	6 Peer Review notification press release	7	8 Outreach Committee meeting	9	10
11	12	13	14	15	16	17
18	19 Pre-CBA meeting press release	20 E-News Alert re: pre-CBA meeting press release	21	22 Outreach Committee meeting	23	24
25	26	27 E-News alert re CBA meeting	28 CBA meeting Webcast	29 ▪Post-meeting press release ▪E-News Alert re: post-meeting press release	30	31

Notes:
*Peer Review notification and reporting form to be sent to licensee #01-33 (Approximately 28,000)
Related Activities: July 1, 2, 6
E-News Alerts sent throughout the month

July Focus: Peer Review

AUGUST 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5 EAC meeting	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30 Enforcement action press release	31 AEC pre-meeting press advisory				

Notes:
E-News Alerts sent throughout the month

August Focus: Peer Review

SEPTEMBER 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3 E-News Alert re: Enforcement action press release	4
5	6	7 UPDATE posted to Web	8 E-News re: UPDATE	9	10	11
12	13	14	15	16	17	18
19	20 Pre-CBA meeting press release	21 E-News Alert re: Pre-CBA meeting press release	22 CBA Meeting Webcast	23 CBA Meeting Webcast	24	25
26	27 Post-CBA meeting press release	28 E-News Alert re: Post-CBA meeting press release	29	30 UPDATE mailout		

Notes:
E-News Alerts sent throughout the month

September Focus: Licensing Applicant

OCTOBER 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 *E-News alert	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18 Pre-CBA conference press release	19 E-News alert re:QC meeting	20 QC meeting	21	22	23
24	25 Enforcement action press release	26 E-News Alert re: ▪Enforcement action press release ▪CBA conference notice	27 CBA Working Conference	28	29	30
31						

Notes:
E-News Alerts sent throughout the month

October Focus:Licensing Applicant

NOVEMBER 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Post-CBA conference press release	2 E-News Alert re: Post CBA conference press release	3	4	5	6
7	8 Pre-meeting press release	9 E-News re: pre-meeting press release	10	11	12	13
14	15	16	17 E-News alert re: CBA meetings	18 CBA meeting Webcast	19 CBA meeting Webcast	20
21	22 Post-meeting press release	23 E-News re: post-meeting press release	24	25	26	27
28	29	30				

Notes:
E-News Alerts sent throughout the month

November Focus: Social Media Kickoff

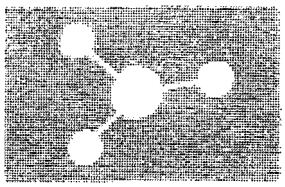
DECEMBER 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20 Enforcement action press release	21 E-News Alert re: Enforcement action press release	22	23	24	25
26	27	28	29	30	31	

Notes:
E-News Alerts sent throughout the month

December Focus:Social Media Kickoff

Attachment 2



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Description

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The **California Board of Accountancy** is a government agency that regulates the practice of accountancy in California.

History

The California Board of Accountancy (CBA) was established in 1901 in San Francisco. All the records were destroyed in the 1906 San Francisco earthquake and fire, including all the documents of the first 65 licensees. The secretary-treasurer of the CBA was able to reconstruct the records by corresponding with each of the licensees.

In 1929, the CBA became part of the Department of Professional and Vocational Standards. In 1971 it was moved to the California Department of Consumer Affairs and subsequently moved to Sacramento.

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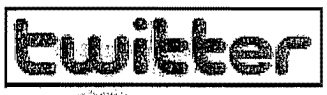

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State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item VIII.B.
September 22-23, 2010

To : CBA Members

Date : September 7, 2010

Telephone : (916) 561-1716
Facsimile : (916) 263-3674
E-mail : vddaniel@cba.ca.gov

From : Veronica Daniel
Executive Analyst

Subject : Update on October 27, 2010 CBA Working Conference

The October 27, 2010 CBA Working Conference is fast approaching. Attached is the current DRAFT agenda for review. The conference was originally scheduled to take place in Southern California, however, due to the budget impasse it is being relocated to take place in Northern California, at the Department of Consumer Affairs' headquarters in Sacramento.

Executive staff met with the facilitator for this event to discuss the CBA's objectives and expectations for the conference. CBA staff are highly confident that the facilitator will successfully meet the needs as set forth by the CBA.

If you have any questions or concerns, please contact me at the telephone number or email address listed above.

Attachment

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
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FACSIMILE: (916) 263-3675
WEB ADDRESS: *http://www.cba.ca.gov*

Attachment

DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

CBA WORKING CONFERENCE
AGENDA

DRAFT AS OF
9-9-10

Wednesday, October 27, 2010
10:00 a.m. – 5:00 p.m.

Department of Consumer Affairs
Hearing Room
1625 N. Market Blvd.
Sacramento, CA 95834

10:00-10:30 I. Welcome, Introductions, Overview.

10:30-11:00 II. Action Items – October 2008 CBA Retreat.

11:00-11:45 III. The Governor's Budget.

A. High Level Overview **(Nick Ng)**.

B. What the CBA Can/Cannot Do With Its Budget **(Bill Young)**.

C. Role of Department of Finance (DOF) in Developing, Administering, and Controlling the Governor's Budget **(DOF Rep)**.

11:45-12:15 IV. DCA Legal Presentation – Litigation Against CBA Members **(Spencer Walker)**.

12:15-1:15 **LUNCH**

V. Accountancy Without Borders.

1:15-1:25 A. The Accountancy Act in 2005 **(CBA Staff)**.

1:25-1:35 B. Practice Privilege; SB 1543 (2004) & AB 1868 (2006) **(Liza Walker)**.

1. CBA Actions.

1:35-1:45 C. Mobility Legislation; AB 2473 (2008) **(Matthew Stanley)**.

1. CBA Actions.

1:45-1:55 D. Mobility for California CPAs; SB 819 (2009) **(Ed Howard)**.

1. CBA Actions.

1:55-2:05 E. NASBA's Concept of Mobility and Other States' Practice **(Ken Bishop)**.

2:05-2:15 F. Who, What, Where, and When; Accountancy Licensee Database **(Sandra Davidson)**.

2:15-2:25 G. California Research Bureau – Accountancy Project **(Toby Ewing, tentative)**

2:25-4:15 H. Open Discussion of Issues.

4:15-4:30 VI. Identify Agenda Items for Future CBA Meetings.

4:30-4:45 VII. CBA Annual Report.

4:45-5:00 IX. Closing Comments.

X. Adjournment.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item VIII.C.
September 22-23, 2010

To : CBA Members

Date : August 26, 2010

Telephone : (916) 561-1792
Facsimile : (916) 263-3678
E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Educational Presentation – Sunset Review Process

History of Sunset Review

The sunset review process was created by the Legislature in 1994 to assist the Legislature with its oversight responsibilities. The Joint Legislative Sunset Review Committee was established in 1995 and tasked with reviewing all consumer-related boards every four years to determine whether each board has demonstrated a public need for the continued existence of that board. The California Board of Accountancy (CBA) was among the first group of boards to be reviewed in 1995. The CBA's second sunset review was in 2000, and its last sunset review occurred in 2003.

In 2004, the name of the committee reviewing consumer related boards' activities was changed to the Joint Committee on Boards, Commissions, and Consumer Protection. The last reports issued by this committee were from 2006. Since that time, the sunset review process has been dormant as the Legislature has not appointed any members to the "sunset review committee."

In 2009, the CBA was informed that the Legislature would resume the sunset review process. The CBA submitted its Sunset Review Report in September, but the Legislature decided to not hold hearings. In March of 2010, the CBA was again directed to submit a Sunset Review Report by October 1, 2010. Hearings are being scheduled for this November.

The Sunset Review Process

The sunset review process begins with the Sunset Review Report. It is, typically, due to the Legislature 22 months prior to the board's sunset date. Assuming the board needs at least six months to a year to prepare the report, and that a board is reviewed every four years, a typical board can spend three out of every four years involved in some phase of the process.

The report is statutorily required to contain the following information:

1. A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.
2. The board's enforcement priorities, complaint and enforcement data, budget expenditures with average and median costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.
3. The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.
4. The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, relevancy and validity of the licensing examination, and passage rate and areas of examination.
5. The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

Once the report is finalized and submitted to the Legislature, the sunset review committee schedules hearings for the review of the board. Those hearings are designed to receive input from the Director of DCA, the board involved, the public, and the regulated industry. In the hearing, the burden is on the board to demonstrate a “compelling public need” for the continued existence of the board and that its licensing function is the least restrictive it can be, in respect to its regulations, consistent with its mission.

At the hearing, the Executive Officer makes the case for the board. However, it is desirable that the President of the board accompany the Executive Officer to represent the board at the hearings as well. Typically, the board President makes an opening statement followed by the Executive Officer who then takes any questions from committee members.

At this point in the process, the sunset review committee is required to evaluate and determine whether there is a public need for the continued existence of the board. It must on the following eleven factors.

1. The necessity of the board to the public health, safety and welfare.
2. If any of the original reasons for establishing the board have changed.
3. Whether conditions have changed which would lead to a change in the degree of regulation.
4. If existing statutes and regulations are the least restrictive consistent with the public interest.
5. Whether the board operates in the public interest.

6. If the board performs its duties effectively and efficiently.
7. Whether the composition of the board is in the public interest and if the board encourages public participation outside of the industry it regulates.
8. The economic impact of the board's laws and regulations.
9. Whether the board's enforcement is adequate to protect the public and if its enforcement actions are in the public interest or are self-serving to the profession being regulated.
10. The scope of practice for the profession and whether entry requirements encourage affirmative action.
11. Whether any administrative or statutory changes are needed to enhance consumer protection.

After its analysis, the sunset review committee prepares a report of its findings and preliminary recommendations that is submitted to DCA. Within 90 days of receiving the committee's report, DCA must respond to the report's findings and make its own recommendations back to the committee. The committee then votes on final recommendations.

These final recommendations become a part of a Final Report that is available to the public. This report includes the final recommendations of the DCA and the committee and whether the board should be continued, reestablished or terminated. It also includes whether the board's functions should be revised. If appropriate, the report can also include proposed legislation to carry out the committee's final recommendations.

Consequences of Failing a Sunset Review

Should a board be terminated, current law provides that the board and its Executive Officer position cease to exist, and that the functions of the board be taken over by the DCA. The functional reality is that the board becomes a bureau and the Executive Officer is replaced by a bureau chief.

State of California
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California Board of Accountancy
2000 Evergreen Street, Suite 250
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M e m o r a n d u m

CBA Agenda Item VIII.D.
September 22-23, 2010

To : CBA Members

Date : September 2, 2010

Telephone : (916) 561-4344
Facsimile : (916) 263-3678

From : Vincent Johnston, Analyst

Subject : Consideration of the Draft 2010 Sunset Review Report

Staff brought to the CBA in July 2009 a Sunset Review Report, which was submitted to the Legislature on September 1, 2009. However, sunset review hearings were not held, due to a desire by the Legislature to reform the Sunset Review Process. As the 2009 report is now out-dated, in early in 2010 CBA staff received a request for an updated Sunset Review Report, with guidelines for its completion. Attached is an updated report for approval by the CBA.

The Draft 2010 Sunset Review Report is broken down into two parts. Part One is a description of the current CBA licensure and enforcement programs. Part Two is a narrative describing past issues raised by the Joint Legislative Sunset Review Committee (JLSRC) and how they were addressed, and current issues identified by the CBA for consideration by the Senate Business, Professions, and Economic Development Committee.

The CBA may choose to accept the report as drafted, or direct staff to make additional edits as necessary prior to submission of the report to the Legislature. Due to the short timeframe between the September CBA meeting and the October 1, 2010 deadline for submission, please bring any edits to the September 2010 meeting. Staff will then incorporate those changes into the report, and provide CBA leadership with a final draft of the 2010 Sunset Review Report by September 29, 2010 for approval. The Report will be submitted to the Senate Business, Professions, and Economic Development Committee on October 1, 2010.

Staff will be available at the meeting to answer any questions.

Attachment

The California Board of Accountancy

DRAFT
2010 Sunset Review Report

Presented to the California Legislature

Senate Business, Professions, and
Economic Development Committee

Prepared in compliance with
Senate Bill 1543
Chapter 921, Statute 2004
October 1, 2010

CALIFORNIA BOARD OF
ACCOUNTANCY

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References

- *2008 Report on Peer Review*, prepared in compliance with Business and Professions Code Section 5076
  http://www.dca.ca.gov/cba/publications/peer review2008.pdf

- A Manual of Disciplinary Guidelines and Model Disciplinary Orders
  http://www.dca.ca.gov/cba/publications.dispman.pdf

- CBA's 2010-2010 Strategic Plan
  http://www.dca.ca.gov/cba/publications/stratpln2010-2012.pdf

INTRODUCTION

The contents of this report are the outcome of seven years of substantial effort toward satisfying and implementing the mandates which resulted from the California Board of Accountancy's (CBA) third sunset review in 2003. As directed by the Senate Business, Professions and Economic Development Committee, the CBA's *2010 Sunset Review Report* provides overviews of the Licensure and Enforcement Programs, discusses budget issues, and furnishes detailed statistics relative to the CBA's outreach and regulatory responsibilities.

This report is comprised of two sections, Part 1: Background Information and Overview of the Current Regulatory Program; and Part 2: CBA's Response to Issues Identified by and Former Recommendations Made by the Joint Legislative Sunset Review Committee (JLSRC).

Part 1 provides background information describing the function and history of the CBA, including its regulatory responsibilities, and discusses the CBA's composition. Major changes to the CBA (through legislation, new regulations, and program improvements) are described, and detailed tables depict licensing statistics, fee information, revenue and expenditures by program area, and a comparison of revenues, expenditures, and reserves.

Major segments within Part 1 are *Licensure Requirements*, including Uniform CPA Examination passage statistics in California; and *Enforcement Activity*, containing discussion and tables displaying complaint activity, disciplinary action data, and time frames for closing investigations. Part 1 also provides information concerning the CBA's Practice Privilege program, and a comprehensive section detailing enforcement expenditures and cost recovery.

Part 2 of the report discusses six issues related to recommendations made by the JLSRC, with respect to the CBA 2003 Sunset Review Report. Major categories include the CBA's ability to fine large firms, the implementation of a peer review requirement in California, and new licensing requirements enacted in 2002.

PART I

California Board of Accountancy

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BOARD AND PROFESSION

HISTORY OF THE CBA

From its inception in 1901, the California Board of Accountancy (CBA) has, by statute, been charged with regulating the practice of accountancy. The original law prohibited anyone from falsely claiming to be a certified accountant, a mandate which exists today.

The standards for licensure have always been high. The first accountants certified by the CBA in 1901 were required to sit for a written examination, including questions on Theory of Accounts, Practical Accounting, Auditing, and Commerce Law, and attain a passage rate of at least 70 percent for each section. Applicants were required to provide a notarized affidavit certifying at least three years accounting experience, at least two years of which must have been in the office of a Certified Public Accountant (CPA) performing actual accounting work. In addition, each applicant was required to submit three references testifying to his character, in the form of a "Certificate of Moral Character." Today's mandate that each CBA licensee pass an ethics course finds its antecedent in the CBA's original requirement of this certificate.

In 1929, the Legislature placed the CBA within the Department of Professional and Vocational Standards. In 1945, the Accountancy Act was substantially revised. In 1971, the Legislature located the CBA within the newly-created Department of Consumer Affairs.

FUNCTION OF THE CBA

The CBA's legal mandate is to regulate the accounting profession for the public interest. The CBA establishes and maintains qualification and conduct standards for entry into the accounting profession, primarily through its authority to license. The CBA's enabling act (the Accountancy Act) is found at Section 5000 *et seq.* of the Business and Professions Code, and the CBA's regulations appear in Title 16, Division 1 of the California Code of Regulations (CBA Regulations).

The CBA has the authority to license and discipline not only individuals but also firms. As accounting practitioners, the Certified Public Accountant and the Public Accountant (PA) are proprietors, partners, shareholders, and staff employees of public accounting firms.

They provide professional services to individuals, private and public companies, financial institutions, nonprofit organizations, and local, state, and federal government entities. CPAs and PAs also are employed in business and industry, in government, and in academia.

The CBA performs its consumer protection mission for many stakeholders, including:

- Consumers of accounting services who require audits, reviews, and compilations of financial statements, tax preparation, financial planning, business advice and management consultation, and a wide variety of related tasks.

- Lenders, shareholders, investors, and small and large companies that rely on the integrity of audited financial information.

- Governmental bodies, donors, and trustees of not-for-profit agencies that require audited financial information or assistance with internal accounting controls.

- Regulatory bodies such as the Securities and Exchange Commission, the Public Company Accounting Oversight Board, the Public Utilities Commission, and federal and state banking regulators; local, state, and federal taxing authorities.

- Retirement systems, pension plans, and stock exchanges.

Current law stipulates that the CBA consist of 15 members, seven of whom must be CPAs, and eight of whom shall be public members who shall not be licensees of the CBA or registered by the CBA. The Governor appoints four of the public members and the seven licensee members. In appointing the seven licensees, the Governor must appoint members representing a cross-section of the accounting profession with at least two members representing small public accounting firms. A small public accounting firm is defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy. The Senate Rules Committee and the Speaker of the Assembly each appoint two public members. Each member is appointed for a term of four years and holds office until they are reappointed, a successor is appointed, or until one year has elapsed since the expiration of the term for which they were appointed, whichever occurs first. The current CBA members are:

	Table 1.1 CBA Officers and Members
CBA Member, Appointing Power	**Date Appointed/Term Expiration,** Term Number
Manuel Ramirez, CPA, President Appointed by the Governor	**May 3, 2007/November 26, 2010** 1st Term
Sally Anderson, CPA, Vice-President Appointed by the Governor	**May 3, 2007/January 1, 2011** 1st Term
Marshal Oldman, Esq., Secretary/Treasurer Appointed by the Governor	**March 1, 2007/January 1, 2010** 1st Term
Rudy Bermúdez Appointed by the Speaker of the Assembly	**September 24, 2007/January 1, 2011** 1st Term
Diana Bell Appointed by the Senate Rules Committee	**September 4, 2009/January 1, 2011** 1st Term
Michelle R. Brough, Esq. Appointed by the Governor	**November 24, 2008/November 26, 2012** 1st Term
Angela Chi, CPA Appointed by the Governor	**March 16, 2006/November 26, 2009** 1st Term
Donald A. Driftmier, CPA Appointed by the Governor	**May 19, 2004/November 26, 2011** 2nd Term
Herschel T. Elkins, Esq. Appointed by the Senate Rules Committee	**September 19, 2008/January 1, 2012** 1st Term
Louise Kirkbride Appointed by the Governor	**March 18, 2008/January 1, 2011** 1st Term
Leslie LaManna, CPA Appointed by the Governor	**January 12, 2007/January 1, 2012** 2nd Term
Robert Petersen, CPA, Appointed by the Governor	**March 13, 2006/November 26, 2009** 1st Term
David L. Swartz, CPA Appointed by the Governor	**May 17, 2004/November 26, 2011** 2nd Term
Lenora Taylor, Esq. Appointed by the Governor	**May 3, 2007/November 26, 2010** 1st Term
Andrea Valdez, Esq. Appointed by the Speaker of the Assembly	**September 30, 2009/January 1, 2013** 1st Term

The CBA has eight committees, five of which are statutory, and three are standing. The five statutory committees include the long standing Enforcement Advisory Committee (EAC), and the Qualifications Committee (QC). Three brand new committees were established by statute in January 2010, including the Accounting Education Committee (AEC), the Ethics Curriculum Committee (ECC), and the Peer Review Oversight Committee (PROC). The three standing committees are comprised solely of CBA members, and include the Committee on Professional Conduct (CPC), the Enforcement Program Oversight Committee (EPOC), and the Legislative Committee (LC).

The Enforcement Advisory Committee assists the CBA in an advisory capacity by providing technical expertise and assistance with investigations. The committee is authorized to report its findings from any investigation or investigative hearing but is not authorized to initiate any disciplinary action against a licensee. This committee is limited by statute to a membership of 13 licensees and meets four to five times a year, generally for one-day meetings, alternating between a northern and southern California city.

The Qualifications Committee assists the CBA in its licensure activities by reviewing the experience of applicants for licensure and making recommendations to the CBA. This responsibility includes initiating and conducting work paper reviews, with the applicant or the employer present, to verify that the responses provided are reflective of the requisite experience for licensure. This committee is limited by statute to a membership of 16 licensees who have extensive knowledge and experience in the preparation of audit and review reports. The committee meets four to five times a year, generally for one-day meetings, alternating between a northern and southern California city.

The Accounting Education Committee is a temporary committee established to advise the CBA on accounting study in order to enhance the competence of students as practitioners and promote consumer protection. The statute did not establish the number of committee members for the AEC, however, the CBA has established the AEC composition at eight. The AEC held its first meeting on April 8, 2010, and will sunset on January 1, 2012.

The Ethics Curriculum Committee is a temporary committee established to recommend to the CBA ethics study guidelines consistent with national and international ethical standards that are in the best interest of the investing and consuming public and the profession. The ECC will also issue two reports to the CBA on Accounting Ethics Course requirement regulations during and after the regulatory process. The reports will pertain to the effectiveness of the new requirements, whether they will implement the ECC's recommendations. The ECC will sunset no later than January 1, 2014, and is limited to eleven members appointed by various stakeholders.

The Peer Review Oversight Committee will assist the CBA in the oversight of the newly established Peer Review Program. The purpose of the PROC is to engender confidence in the California Peer Review Program by performing oversight of the program and providing recommendations to the CBA on the effectiveness and continued use of the program. The committee is limited by regulation to a membership of seven licensees.

The Committee on Professional Conduct is comprised of seven CBA members, and generally meets before CBA meetings. It assists the CBA in consideration of issues relating to professional conduct. Tasks include:

- Considering and developing recommendations on issues that apply to the practice of public accountancy and affect consumers.
- Considering, formulating, and proposing policies and procedures related to emerging and unresolved issues.
- Reviewing selected exposure drafts and developing recommendations to present to the CBA.

The Enforcement Program Oversight Committee is comprised of seven CBA members, and meets on a tri-annual basis, or as necessary. It assists the CBA in the consideration of issues relating to the CBA Enforcement Program by:

- Reviewing policy issues related to the Enforcement Program.
- Overseeing the program's compliance with CBA policies by performing periodic internal audits.

The Legislative Committee is comprised of seven CBA members, and generally meets before the CBA meeting. It assists the CBA by:

- Reviewing, recommending, and advancing legislation relating to the practice of public accountancy.
- Coordinating the need for and use of CBA members to testify before the Legislature.

The current committee members are:

Table 1.2
CBA and Committee Member Roster

CBA Members AEC
Ramirez, Manuel, CPA, President
Anderson, Sally, CPA, Vice Pres.
Oldman, Marshal, Esq., Sec/Tres.
Bell, Diana
Bermudez, Rudy
Brough, Michele R., Esq.
Chi, Angela, CPA
Driftmier, Donald A., CPA
Elkins, Hershel T., Esq.
Kirkbride, Louise
LaManna, Leslie, CPA
Petersen, Robert A., CPA
Swartz, David L., CPA
Taylor, Lenora, Esq.
Valdez, Andrea L., Esq.

CPC
LaManna, Leslie, Chair
Anderson, Sally
Brough, Michele
Elkins, Hershel
Kirkbride, Louise
Oldman, Marshal
Swartz, David L.

EPOC
Elkins, Hershel T., Chair
Bell, Diana
Brough, Michele R.,
Kirkbride, Louise
Petersen, Robert A.
Taylor, Lenora
Valdez, Andrea L.

LC
Brough, Michele R., Chair
Andersen, Sally
Bell, Diana L.
Bermudez, Rudy
Chi, Angela
Taylor, Lenora
Valdez, Andrea

____ EAC
Davila, Ruben A., Chair
Anderson, Sherry
Chavis, Betty
Dalton, Thomas M.
Driftmier, Donald A.
Moore, Michael L.
Pieroni, Gary
Seyedin, Sara
Yuan, Xiaoli "Charlie"

ECC
Cornejo, Dave
Driftmier, Donald A.
Freixes, Gonzalo
McBride, Gary
Mikkelsen, Jon
Mintz, Steven M.
Pieroni, Gary
Ueltzen, Michael
Yetman, Robert
TBA by Asm. Speaker
TBA by Sen. Rules Committee

PROC
Allanson, Katherine
Bong, Gary J.
Corrigan, Nancy J.
T. Ki Lam
McCoy, Sherry L.
Sadat, Seid
Vacant

Woy

____
Khanna, Harish, Chair
Gerhardt, Cheryl, Vice Chair
Beranek, Richard E.
Caine, Gary S.
Caras, Mary Rose
Lee, Robert A.
Petray, James P.
Rider, James
Sadat, Seid M.
Schwarz, Michael J.
Thielen, Arthur J.
Vacant
Vacant

CBA Liaison:
Petersen, Robert A. (North)
Swartz, David L., (South)

QC
Hinojosa, Fausto, Chair
Eckley, Maurice Jr., Vice Chair
Aguila, Carlos
Bong, Gary
Cates, Brian
Haas, Michael
Hales, Bobbie
Hester, Charles
Lee, Alan
Mapes, Kris
Moore-Hudnall, Cassandra
O'Krent, Gary H.
Ruehl, Robert
Shenouda, Ash W.
Smith, Jeremy
ce, James

CBA Liaison:
Chi, Angela (North)
Oldman, Marshal (South)

CBA COMMITTEES
CPC- Committee on Professional Conduct
EPOC- Enforcement Program Oversight Committee
LC- Legislative Committee

STATUTORY COMMITTEES
AEC- Accounting Education Committee
EAC- Enforcement Advisory Committee
ECC- Ethics Curriculum Committee
PROC- Peer Review Oversight Committee
QC- Qualifications Committee

WHO THE CBA REGULATES

The Accountancy Act is a combination of practice and title acts. Code Section 5051 defines the practice of public accountancy and specifies that accounting is the process of recording, classifying, reporting, and interpreting the financial data of an individual or an organization. In California, the accounting profession's licensed practitioners are the CPA and the PA. Only persons who are licensed can legally be called a Certified Public Accountant or a Public Accountant.

A CPA is a person who has met the requirements of California state law, including education, examination, and experience requirements, and has been issued a license to practice public accountancy by the CBA. As of June 30, 2010, 80,126 individuals held CPA licenses and 5,198 accountancy firms were licensed in California.

In California, shortly after World War II, the PA license was awarded to individuals who demonstrated experience in public accounting and possessed a specified educational background. As of June 30, 2010, 180 individuals held PA licenses. The last PA license was issued in 1968 and, as these particular licenses expire, California eventually will no longer have licensees with this designation.

CPAs and PAs provide a range of accounting, compilation, review, audit, tax, financial planning, and management consulting services. In California, only a CPA or PA with the authorization to sign reports on attest engagements can perform attestation services, including audits and reviews (per Section 5051). The attest is a formal statement by an independent accountant, as to whether financial statements fairly represent financial position and operating results. Concerning compilations, only a licensee can issue a compilation report under the professional standards for CPAs. Section 5051 states that a person shall be deemed to be engaged in the practice of public accountancy if he or she "…offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review, of financial transactions and accounting records."

CHANGES TO THE CBA SINCE THE LAST SUNSET REVIEW

There have been a number of significant changes to the CBA's regulatory program since the last sunset review. The primary objective of legislation, rulemaking, and other initiatives has been to enhance the CBA's ability to accomplish its consumer protection mission in a cost effective manner. These initiatives include:

- Significantly reducing the backlog of licensing applications by augmenting Initial Licensing Unit staffing in FY 2007/08. Initial Licensing Unit staff now routinely meet their performance measure goal of processing completed applications within 30 days of receipt.

- Employed a number of strategies to address the CBA's continued difficulty in recruiting and retaining Investigative CPA staff, including:

  - Reorganizing the Enforcement Division to include Investigative Analysts. The analysts perform non-technical investigations that do not require a CPA license, including practice without permit, Continuing Education deficiencies, and practice with an expired license.

  - Providing continuous civil service testing for the Investigative CPA classification.

  - Re-classifying the Enforcement Chief position to that of a Career Executive Assignment, thereby expanding the available candidate pool.

  - Working with the Department of Personnel Administration to create a Pay Differential for the Investigative CPA series.

- Increasing transparency of all CBA activities. In 2009 the CBA began posting notice of all accusations to the CBA Web site in a single location, providing a live webcast of all CBA meetings, and posting the materials and minutes of all CBA meetings on the CBA Web site. In 2009 the CBA also debuted the E-News program, which allows any interested parties to sign up for e-mail notification of CBA news and events.

- CBA sponsorship of Assembly Bill (AB) 138, which requires an accountancy firm performing accounting and auditing services to undergo a peer review every three years as a condition of license renewal.

- Reinstating the CE Audit Program in June 2009 to ensure that licensees are complying with the CE requirements set forth in the Accountancy Act and CBA Regulations. The audits provide the CBA with an opportunity to remind licensees of the CE reporting requirements and hopefully lessen the number of license renewal deficiencies received in the future.

- The establishment of computer based testing for the Uniform CPA Examination, which decreased the application processing time, and the delay applicants experienced in receiving their scores.

- Modifying CBA licensure requirements to ensure California CPAs remains substantially equivalent according to the National Association of State Board of Accountancy. The CBA previously had three "pathways" to licensure. In accordance with SB 136 of 2004, on January 1, 2010 Pathway 0 was eliminated. Because of the recent signing of SB 819 in 2009, effective January 1, 2014 Pathway 1 will become inoperative, and all applicants for licensure will be required to fulfill the 150 hour education requirement.

- The creation of the Practice Privilege Program, which allows out of state licensees to practice in California, as long as they notify the CBA and meet requirements.

- The update of the CBA Strategic Plan, which included a change to the official mission and vision of the CBA, and changes to the goals necessary to achieve that mission. A copy of the 2010-2012 Strategic Plan is available on the CBA Web site, at http://www.dca.ca.gov/cba/publications/stratpln2010-2012.pdf

- The institution of the Ethics Education and Licensing Frequency Task Force, which was charged with the update and revision of the CBA's Professional Conduct and Ethics rules and requirements.

- The CBA was instrumental in the creation of the National Association of State Boards of Accountancy (NASBA) Accountant Licensee Database(ALD). The database became operational in early 2010, and by the middle of 2010 CBA staff began utilizing the database to ensure that CPAs applying for licensure from another state are actually licensed, and do not have any pending enforcement action in another state.

Legislative Changes Impacting the CBA:

- **SB 136 of 2004**

  In 2004, Senate Bill (SB) 136 by Senator Figueroa (Chapter 909) implemented certain changes recommended by the Joint Legislative Sunset Review Committee pertaining to examinations, and included a number of provisions directly affecting the CBA. SB 136 extended the sunset date of Pathway 0 for licensure from January 1, 2006 to January 1, 2010. It gave candidates who fail the Uniform CPA Examination the right to re-examine under the provisions of existing law and regulations adopted by the CBA, and repealed the January 1, 2006 sunset date on the law providing for re-examination.

- **SB 1543 of 2004**

  In 2004, SB 1543 by Senator Figueroa (Chapter 921) extended the sunset date of the CBA to January 1, 2012. Further, SB 1543 added §5025.2 to the Business and Professions Code to require the Department of Finance to authorize up to $2 million in additional expenditures for the CBA's enforcement and litigation activities. It also added the Practice Privileges article, commencing with §5096, to the Accountancy Act.

- **SB 229 of 2005**

  In 2005, SB 229 by Senator Figueroa (Chapter 658) implemented certain changes recommended by the Joint Committee on Boards, Commissions and Consumer Protection and had a provision which allowed an individual practitioner or public accounting firm holding a valid permit to practice in another state to provide specified tax-related services for Californians without a California license or a practice privilege, as long as they notify the CBA and meet the requirements.

- **AB 1868 of 2006**

  In 2006, AB 1868 by Assembly Member Bermudez (Chapter 458) extended the sunset date of the Practice Privilege Program to January 1, 2011. It also allowed a practice privilege holder to practice in California, and sign the name of his or her firm even if the firm is not registered in California. Lastly, it authorized foreign accountants to engage in temporary and incidental practice related to engagements in the foreign country, regulated by the foreign country, and performed under the accounting or auditing standards of that country.

- **SB 503 of 2006**

  In 2006, SB 503 by Senator Figueroa (Chapter 447) eliminated the requirement that fees charged for examinations, renewals, certificates, firm registration, and practice privilege be directly related to the actual administrative costs. It also extended the peer review reporting requirement to September 1, 2011.

- **AB 117 of 2009**

  AB 117 requires that a CPA who has a license in an inactive status, must include the word "inactive" immediately following the CPA designation.

- **AB 138 of 2009**

  AB 138 established the CBA's mandatory peer review program. It also created the Peer Review Oversight Committee to advise the CBA on peer review matters.

- **AB 1005 of 2009**

  AB 1005 requires the CBA to webcast all CBA meeting live over the Internet. It also requires that the minutes of CBA meetings be posted to the Web site once they have been finalized. Finally, it requires that notice of accusations be posted on the Web site along with related information.

- **SB 819 of 2009**

  The CBA currently has two pathways to Certified Public Accountant licensure:

  - Pathway 1 requires a baccalaureate degree and two years of experience.

  - Pathway 2 requires a baccalaureate degree, a total of 150 semester units of education, and one year of experience.

  SB 819 makes Pathway 1 inoperative as of January 1, 2014. It also requires that the 150 semester units of education required by Pathway 2 include 10 semester units of ethics study and 20 additional semester units of accounting study.

To facilitate the educational changes, SB 819 created the following committees:

- The Advisory Committee on Accounting Ethics Curriculum, referred to as the Ethics Curriculum Committee(ECC), which, within the jurisdiction of the CBA, is to be composed of 11 members. The committee is required to recommend guidelines for the ethics study requirement to the CBA by January 1, 2012.

- The Accounting Education Advisory Committee, referred to as the Accounting Education Committee(AEC), whose members are appointed by the CBA and must be experts in accounting education. The committee has been tasked with recommending to the CBA accounting study guidelines consisting of 20 semester units to be included as a part of the education necessary for licensure as a CPA.

The law also requires the CBA to adopt the ECC recommendations by January 31, 2013, and requires the CBA to adopt guidelines for the accounting study requirement by January 1, 2012.

Finally, SB 819 deleted the sunset date for the California Practice Privilege program.

Regulatory Changes Impacting the CBA

- **Regulations Filed on April 14, 2005**

  Required that a client's permission to disclose confidential information be in writing and provided that, in the event confidential client information may be disclosed to persons or entities outside of the United States, the licensee inform the client in writing and obtain the client's written permission.

- **Regulations Filed on December 12, 2005**

  Added Article 4 to the CBA Regulations to implement the Practice Privilege Program.

- **Regulations Filed on July 11, 2007**

  Made the CBA's audit documentation requirements more consistent with the requirements of the Public Company Accounting Oversight Board (PCAOB) and the American Institute of Certified Public Accountants (AICPA) Auditing Standards Board. Specified the requirements that Group Internet-Based Programs must meet to be accepted as qualifying continuing education, and indicated how credit for these programs would be granted. Indicated that dishonesty or fraud of any kind, or any act or crime posing a risk to the safety or welfare of a client, co-worker, or other person encountered by the licensee in his or her professional capacity is substantially related to the qualifications, functions, or duties of a CPA.

- **Regulations Filed on February 15, 2008**

  Extended the operative period of the practice privilege "safe harbor" provisions in compliance with a statutory mandate. Updated and improved the CBA's citation and fine regulations by permitting the issuance of citations for a violation of a term or condition of probation, deleting a cumbersome schedule of fine amounts, and making the maximum fine amounts consistent with the maximum amounts authorized by statute.

- **Regulations Filed on September 19, 2008**

  Identified specific subject matter areas for which the CBA requires 48 hours of continuing education (CE) when an applicant's qualifying experience was obtained five or more years prior to application for CPA licensure. Identified specific subject matter areas that met CE requirements in cases where a licensee's experience is not current. Ensured that licensees converting from inactive to active status are no longer required to complete certain CE courses more frequently than licensees with an active license.

- **Emergency Regulations Filed on December 18, 2009**

  Established the parameters of the CBA's mandatory Peer Review Program.

- **Regulations Filed on December 18, 2009**

  Made changes to the CE requirements to require an ethics course every two years. Created a new course to cover the Accountancy Act and CBA Regulations to be taken every six years. Requires at least 20 of the 80 CE hours required for biennial renewal to be taken each year. Made other changes to requirements for licensees whose license is in a status other than active.

- **Regulations Filed on January 6, 2010**

  Clarified and defined "attest services" and "attest report" as an audit, a review of financial statements, or an examination of prospective financial information, but excluded the issuance of compiled financial statements.

- **Regulations Filed on February 18, 2010**

  Clarified that an attest client or prospective attest client must be notified about the ownership composition of an accountancy firm if none of the licensee owners are authorized to sign reports on attest engagements.

Regulations in Progress

- **Certificate of Compliance for Peer Review Emergency Regulations**

  Will make the CBA's emergency peer review regulations permanent.

- **Peer Review Oversight Committee**

  Will establish the qualifications and duties of the Peer Review Oversight Committee and will establish an adjudication procedure for peer review programs which are denied CBA approval.

- **Continuing Education: Exemptions and Extensions**

  Will add Article 6-Peer Review to the list of required course content for CBA approved regulatory review courses.

- **Fees**

  Will reduce the fees for renewal and initial licensure for four years at which time the fees will return to current levels unless a determination is made by the CBA that some other fee level is appropriate.

Budget Change Proposals, FY 2005/06

- **Enforcement Program**

  The CBA received two Investigative CPA positions to bolster consumer protection activities, focused on addressing accounting regulatory reforms and a workload backlog of open consumer complaints that had evolved over a two-year period.

- **Practice Privilege Program**

  The CBA received two positions to implement SB 1543, which extended a "Practice Privilege" to out-of-state licensees whose principal places of business are not within California. The Practice Privilege Program requires that practice privilege holders notify the CBA of their intent to practice in California, and provide the CBA with information used to ensure that the individuals applying for practice privilege meet the requirements stipulated in California law.

Budget Change Proposals, FY 2007/08

- **Enforcement Program**

  The CBA received three positions in the Enforcement Program to enhance consumer protection through increased investigative and support staff functions.

- **Licensing Program**

  The CBA received six positions in the Initial Licensing Unit to address an increased number of CPA license applications, reduce the existing licensure application backlog, and reduce the time it took for an applicant to receive a CPA license.

- **Renewal & Continuing Competency Program**

  The CBA received two positions to reinstate the Continuing Education Verification program and to review and approve prospective Professional Conduct and Ethics course providers. This function ensures that licensees meet prescribed coursework intended to maintain their currency of knowledge related to the practice of public accountancy.

- **Practice Privilege Program**

  The CBA received three limited term positions in the Practice Privilege Program to address the unexpectedly large influx of practice privilege notifications submitted from out-of-state CPAs desiring to practice public accountancy in California. The additional staffing enabled the CBA to properly carry out all mandated practice privilege requirements, as specified in SB 1543, and allowed the CBA to achieve reasonable timeframes for processing notifications and responding to consumer and out-of-state licensee requests for information and assistance.

- **Administration Division**

  The CBA received three positions to assist with administrative functions. The new positions included an augmentation to the information services section, and a cashier and mail room clerk to assist with a growing number of license applicants and Practice Privilege holders.

Budget Change Proposals, FY 2010/11

- **Enforcement Division**

  The CBA received two positions in the Enforcement Division to work with the Peer Review Oversight Committee and process sub-standard peer review reports.

- **Licensing Division**

  The CBA received two limited term positions in the Licensing Division to assist with the creation and implementation of the new licensure requirements resulting from changes made by SB 819. The positions are limited to three years, and will expire in FY 2013/14.

MAJOR STUDIES CONDUCTED BY THE CBA

Beginning in spring 2007 and continuing into 2008, the CBA reexamined the institution of a mandatory peer review requirement for California-licensed accounting firms. This continued a nearly decade-long look of mandatory peer review by the CBA. After extensive research and consideration, which included all recommendations outlined in the CBA's *2005 Peer Review Report* (submitted to the Legislature in August 2005), the CBA concluded that implementation of a peer review program would result in substantial benefits by consumers and the profession.

In fall 2008, the CBA submitted to the Legislature its *2008 Peer Review Report* (available at http://www.dca.ca.gov/cba/publications/peer_review2008.pdf) which outlined the history of the CBA's consideration of peer review, a review of policy issues considered by the CBA at the meetings, and a discussion on the need for peer review. The submission of the 2008 report came three years ahead of schedule as was required by Business and Professions Code 5076.

As the result of extensive consideration of peer review, the CBA elected to sponsor legislation – AB 138 (Hayashi) – which became law January 1, 2010, and implemented a mandatory peer review program for California. AB 138 requires firms, including sole proprietorships, providing audit, attest, or compilation (accounting and auditing) services to undergo a systematic review to ensure that work performed conforms to professional standards. Peer review is required for these firms every three years as a condition for license renewal.

ABOUT THE LICENSEES

The CBA is unique among California boards and bureaus in that it licenses not only accountants but accounting firms (corporations and partnerships). As will be discussed in the licensing section, California CPAs are required to obtain a baccalaureate degree or higher, including specific accounting and business courses, and a minimum of 12 months general accounting experience to be licensed. California accounting firms must register with the CBA prior to operating as such. The Public Accountant designation was granted shortly after World War II to certain individuals, and is no longer conferred. As these individuals cease practicing, there will no longer be a PA designation in California. California Practice Privilege is the vehicle the CBA utilizes to allow CPAs practicing in other states to practice in California.

As of June 30, 2010 there are 80,126 licensed CPAs in California. Table 1.3 provides licensing data for the past four years:

	Table 1.3 Licensing Data			
	FY 2006/07	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**
CALIFORNIA CPAs				
Total Licensed	71,801	74,500	76,800	80,126
Applications Received	2,855	3,182	3,516	3,677
Applications Denied	0	0	0	0
Licenses Issued				
Pathway 0	106	139	81	88
Pathway 1	835	1,167	918	1,043
Pathway 2	1,647	2,645	2,419	2,638
Total	2,588	3,951	3,418	3,769
Renewals Issued	31,176	32,320	34,007	34,112
Statement of Issues Filed	0	1	0	1
Statement of Issues Withdrawn	0	0	0	0
Licenses Denied	0	0	0	1
OTHER LICENSURE CATEGORIES				
Licensees (By Type)				
Public Accountant	247	218	194	180
Partnership	1,416	1,437	1,461	1,506
Corporation	3,303	3,418	3,546	3,692
Practice Privilege Holder	2,878	3,024	2,622	2,403
Total	7,844	8,097	7,815	7,781
Licenses Issued (By Type)				
Public Accountant[1]	0	0	0	0
Partnership	117	103	82	109
Corporation	194	211	215	227
Practice Privilege Holder	2,878	3,024	2,622	2,403
Total	3,189	3,338	2,919	2,739
Renewals Issued (By Type)				
Public Accountant	73	51	50	30
Partnership	582	588	562	482
Corporation	1,316	1,386	1,380	1,217
Practice Privilege Holder[2]	N/A	N/A	N/A	N/A
Total	1,971	2,025	1,992	1,729

[1] PA licenses are no longer issued
[2] Practice Privileges are granted on a yearly basis, there is no renewal.

BUDGET AND STAFF

CURRENT FEE SCHEDULE AND RANGE

The CBA is required by Business and Professions Code Section 5134(a) through (e), to charge and collect a fee from each applicant for the Uniform CPA Examination, for issuing the license of Certified Public Accountant, and for registration of a CPA partnership or corporation.

Section 5134(f) also requires that the reserve balance in the CBA's contingent fund, exclusive of examination and licensing related revenues, shall be equal to approximately nine months of annual authorized expenditures as a result of initial permit and biennial renewal revenues. To this end, the CBA has adjusted initial permit fees and biennial renewal fees four times since April 1995. The last adjustment being in July 2000, raised the renewal fee back from $50 back to the April 1995 fee level of $200.

Table 2.1
Current Fee Schedule

	Current Fee	Statutory Limit
Application Fee	$250	$250
Exam Fee	$50/$100[1] $75/$6	00
Initial Permit Fee	$100/$200[2] $125/$	250
Firm Registration	$200	$250
Firm Initial Permit	$150	$250
Biennial Renewal	$200	$250
Delinquent Biennial Renewal	$100	$125
Practice Privilege	$50/$100[3] $100/$	125
Certification $25		$25

[1] $100 initial application fee, $50 per repeat application
[2] License renewal occurs on a biennial cycle based upon the licensee's birth month and year. If the licensee is first licensed in a year that they would have to renew in the next calendar year, the licensee only pays one half the Initial Permit Fee
[3] Practice Privilege Holders who would like the authority to sign attest agreements pay a higher fee.

REVENUE AND EXPENDITURE HISTORY

The original Accountancy Act provided that "…the expenses of examination, issuance of certificates, and conducting the offices of the CBA must be paid from the current receipts, and no portion thereof shall ever be paid from the State Treasury." Today, 109 years later, the CBA fixes the fees in accordance with the provisions and limits of Section 5134 of the California Accountancy Act.

The collection of various fees underpins the CBA's ability to operate its Examination, Licensure, Enforcement, Renewal/Continuing Competency, and Practice Privilege Programs. The CBA also receives revenue through its Citation and Fine Program, in which citations and appropriate fine ranges are defined in regulations. All monies received by the CBA from any source and for any purpose must be accounted for and reported monthly to the State Controller. The monies must be remitted to the State Treasury to the credit of the Accountancy Fund.

	Table 2.2 Revenue and Expenditure History/Projections					
	ACTUAL PROJECT				ED	
REVENUES	**FY 2006/07**	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**	**FY 2010/11**	**FY 2011/12**
Licensing Fees						
Initial Licensing	$742,750	$67,400	$979,200	$1,012,950	*	*
Uniform CPA Exam	$2,050,994	$2,243,804	$2,795,527	$2,943,056	*	*
Renewal Fees	$7,608,784	$7,963,847	$8,182,460	$8,403,350	*	*
Practice Privilege	$221,300	$214,100	$186,700	$176,650	*	*
Miscellaneous						
Citations/Fines/ Penalties	$16,900	$1,017,000[1]	$34,838	$17,140	N/A[3]	N/A[3]
Other[2]	$65,866	$62,912	$60,787	$53,882	$64,045	$64,382
Interest	$903,454	$933,511	$371,591	$96,365	$221,944	$147,121
TOTALS	**$11,610,048**	**$13,432,574**	**$12,611,103**	**$12,703,393**	**$12,852,528**	**$9,596,053**

EXPENDITURES	**FY 2006/07**	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**	**FY 2010/11**	**FY 2011/12**
Personnel Services	$4,480,439	$5,080,222	$5,284,510	$4,961,172	$5,111,432	$5,124,242
Operating Expenses	$3,183,409	$3,786,692	$3,967,353	$3,876,177	$3,911,863	$4,016,630
(-) Reimbursements	$296,579	$487,807	$476,948	$201,951	$56,082	$65,091
(-) Distributed Costs						
TOTALS	**$7,373,269**	**$8,388,107**	**$8,783,340**	**$8,643,398**	**$9,079,377**	**$9,205,963**

[1] Includes a $1 million penalty from a single major case
[2] Includes: Misc. services to the public, certification fees, duplicate licenses, name changes, etc.
[3] These vary too much year over year to provide an accurate projection

*<<Editor's Note: These numbers are being computed, and are not available at the time of mailing. They will be completed before submission to the Legislature>>

EXPENDITURES BY PROGRAM COMPONENT

The majority of the programs that the CBA administers have been in existence for many years. As such, there is a certain degree of "maturity" to the programs, and they are not subject to unstable expenditure patterns sometimes evidenced in recently established programs such as Practice Privilege and Client Services. Enforcement-related efforts generally represent 40-45% of the CBA's total budgeted expenditure authority, and the CBA believes that this is an appropriate amount to dedicate to these activities.

The CBA does not believe any discrepancies exist in the current dispersion of budgeted expenditure authority between its programs, or in the funds allocated to administrative operations. The current allocation of available resources is reasonable in terms of allowing the CBA to meet the many varied commitments underlying its mission: "to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards."

	Table 2.3 Expenditures by Program Component				
BUDGETED EXPENDITURES BY PROGRAM COMPONENT	**FY 2006/07**	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**	**Average % budgeted by program in FY 2009/10**
Enforcement	$4,489,699	$4,867,490	$4,985,374	$4,970,946	41.3%
Licensing	$3,359,861	$4,482,483	$4,601,549	$4,234,804	35.2%
Administration	$2,599,558	$3,059,219	$3,126,976	$2,829,819	23.5%
TOTALS	**$10,449,118**	**$12,409,217**	**$12,713,899**	**$12,035,569**	

FUND CONDITION

Section 5134(f) of the Accountancy Act mandates that the CBA maintain a nine-month reserve of funds to cover "anticipated" administrative operating expenditures. The reserve is not discretionary in nature; it is essential in order to fund CBA operations in temporary instances in which expenditures exceed revenues or budgeted amounts.

As stated previously, approximately 40-45% of the CBA's budget each year is allocated to Enforcement related functions. Most of the unspent funds in any given year are due to unused investigative resources such as external consulting, administrative hearing and expert witness fees, and Attorney General costs. All of these expenditures are unpredictable and the prosecution costs can be quite large when they do arise. Since the CBA cannot spend more than what is budgeted for that fiscal year, staff must "anticipate" or prudently "project" these expenditures to cover any unforeseen or unpredictable enforcement actions.

Unspent monies revert back to the Accountancy Fund Reserve (Reserve) causing a rise in the Months in Reserve (MIR). Continued excesses in the reserves resulted in adjustments to initial permit fees and biennial renewal fees four times since April 1995 in order to reduce the Reserve. The CBA's effort to "control" the reserve level in the Accountancy Fund have been only marginally effective as Enforcement Program budget levels frequently result in unanticipated savings which, in turn, add to the MIR.

A reduction in fees was considered by members of the CBA for FY 2009/10. However, a weakening economy and difficulties in enacting a State budget in FY 2008/09 resulted in a CBA loan to the state's General Fund in the amount of $14,000,000. This large transfer resulted in a significant drop in the MIR bringing the CBA closer to the mandated nine months of reserve.

After further analysis of projected Accountancy Fund Reserve levels earlier this year the CBA determined the need to reduce renewal fees from $200 to $120. Pending approval of a regulation package, the fee reduction will begin in FY 2011/12.

Table 2.4
Analysis of Fund Condition

	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11 (Projected)	FY 2011/12 (Projected)	FY 2012/13 (Projected)
Reserves, July 1	$20,607,000	$25,865,000	$15,693,000	$19,753,000	$10,525,000	$17,681,000
Revenues	$13,433,000	$12,611,000	$12,703,000	$13,249,000	$9,860,000	$9,929,000
Transfers to Other Funds	$0	-$14,000,000	$0	-$10,000,000	$10,000,000	$0
Total Rev. & Transfers	$13,433,000	($1,389,000)	$12,703,000	$3,249,000	$19,860,000	$9,929,000
Total Resources	$34,040,000	$24,476,000	$28,396,000	$23,002,000	$30,384,000	$27,610,000
Total Expenditures	$8,387,000	$8,783,000	$8,643,000	$12,477,000	$12,703,000	$12,966,000
Total Unreimbursed Loans to General Fund	($6,270,000)	($20,270,000)	($20,270,000)	($30,270,000)	($20,270,000)	($20,270,000)
Reserve, June 30	$25,653,000	$15,693,000	$19,753,000	$10,525,000	$17,681,000	$14,644,000
MONTHS IN RESERVE	24.8	16.0	19.0	9.9	16.4	13.2

LICENSURE REQUIREMENTS

EDUCATION REQUIREMENTS FOR EXAMINATION

Applicants for a CPA license are required to pass the Uniform CPA Examination developed by the American Institute of Certified Public Accountants (AICPA). The AICPA is a professional organization of CPAs consisting of members in public practice, industry, government, and academia. The AICPA's Board of Examiners write and grade the examination, however the CBA contracts with the National Association of State Boards of Accountancy (NASBA) to administer the exam. In addition to delivering the examination, NASBA is responsible for ensuring the Uniform CPA Examination's continuing validity, reliability, and security. NASBA also collects fees related to the administration of the exam, and provides special accommodations to candidates with disabilities.

The Uniform CPA Examination is a four-part, computerized exam, which tests auditing and accounting knowledge areas and skills that are necessary for entry into the profession and are essential for practice as a CPA. Each candidate must pass all four sections of the examination prior to applying for licensure in any state. The four sections provide broad coverage of the skills and technical knowledge CPAs require in various areas of practice. The following briefly describes each section:

- The Business Environment and Concepts (BEC) section assesses candidates' knowledge of a CPA's professional responsibilities and the legal implications of business transactions, particularly as they relate to accounting and auditing.

- The Auditing and Attestation (AUD) section covers knowledge of generally accepted auditing standards and procedures and the skills needed to apply them in auditing and other attestation engagements.

- The Regulation (REG) section evaluates knowledge of principles and procedures for federal income, estate, and gift taxation, managerial accounting, and accounting for governmental and not-for-profit organizations.

- The Financial Accounting and Reporting (FAR) section appraises knowledge of generally accepted accounting principles for business enterprises, including financial accounting concepts and standards and their application in public accounting engagements.

In 2004, the Computer Based Testing (CBT) format replaced the paper and pencil examination. Application final filing dates were eliminated, allowing candidates who have met all of the educational requirements to apply throughout the year.

The CBA's Examination Unit is responsible for processing applications to sit for the Uniform CPA Examination, including the review of official transcripts and foreign credential evaluations to ensure that examination candidates meet the educational qualifications pursuant to Section 5081 of the Business and Professions Code. The process for qualifying a candidate to sit for the Uniform CPA Examination takes approximately 30 calendar days, which represents a zero backlog for this program.

To qualify to take the Uniform CPA Examination, all applicants must meet the following minimum educational requirements:

- A baccalaureate or higher degree from a degree-granting college or university accredited by a United States regional institutional accrediting agency or a national accrediting agency.

- 24 semester units of accounting subjects, including accounting, financial reporting, auditing, financial statement analysis, external or internal reporting, and taxation.

- 24 semester units of business-related subjects, including business administration, computer science/information systems, business communications, economics, business law, finance, business management, marketing, business-related law courses (offered by accredited law schools), mathematics, and statistics.

Degree conferral and all courses related to meeting the CPA Examination educational requirements must be completed prior to submission of the applications and documented on official transcripts or foreign credentials evaluation reports. Applicants must arrange for all official documents detailing completion of all educational requirements to be submitted directly to the CBA from the educational institution or CBA-approved foreign credentials evaluation service. Once an application is received, staff review the transcripts and/or foreign credentials evaluation reports to determine whether the educational requirements have been met.

Examination candidates passing an exam section with a score of 75 or higher, receive and retain credit for each section passed for a period of 18 months from the date earned. When a candidate has credit status for all four sections of the examination at the same time, the candidate has passed the Uniform CPA Examination.

Validation of the Uniform CPA Examination is conducted by the AICPA and, is a continuous process which includes:

- Periodic practice analysis.

- Question writing by content experts.

- Review and evaluation by independent content experts, testing specialists, and a professional editor.

- Annual evaluation of content specifications.

- Statistical analysis of examination results.

- Annual independent review by NASBA through its CPA Examination Review CBA.

- Evaluation and research studies of examination issues.

The last completed full-scale practice analysis of CPAs in public accountancy was done in 2008.

	Table 3.1 Uniform Certified Public Accountant Examination			
	NATION-WIDE CALIF		ORNIA ONLY	
YEARS	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
2006	69,259 43.75 10,157			43.84
2007	77,236 47.33 11,505			45.93
2008	85,391 48.63 12,864			47.16
2009	93,245 49.10 14,216			47.38
Information is not available from NASBA in FY format, so data is shown by calendar year				

EDUCATION AND EXPERIENCE REQUIREMENTS FOR LICENSURE

Upon passing the Uniform CPA Examination, completion of any additional education needed and obtaining the required experience, a candidate may apply for CPA licensure with the State of California. Until December 31, 2009 there were three pathways for licensure in California, Pathway 0, 1, and 2.

Pathway 0 (Section 5083)

Applicants applying for licensure under Pathway 0 were required to meet one of five educational requirements to qualify to sit for the Uniform CPA Examination. Depending upon the education, each applicant was required to complete 24, 36 or 48 months of experience that included attest experience. As with Pathways 1 and 2, all experience must have been performed in accordance with applicable professional standards and under the supervision of a licensee holding a valid license to practice public accountancy.

Effective January 1, 2010, Pathway 0 was repealed. If an applicant did not apply and qualify for licensure by that date, the candidate must satisfy increased education requirements and apply for licensure under Pathway 1 or Pathway 2.

Pathway 1 (Section 5092), Pathway 2 (Section 5093)

Applicants applying for licensure under Pathway 1 or Pathway 2 shall present satisfactory evidence that they have completed a Baccalaureate or higher degree and a core course requirement of 24 semester units of business-related subjects and 24 semester units of accounting subjects.

Additionally, Pathway 1 applicants are required to have 24 months of general accounting experience, while Pathway 2 candidates are required to have 12 months of general accounting experience, and present satisfactory evidence that they have completed at least 150 semester units of education.

General Accounting Experience Requirement

All experience must be performed in accordance with applicable professional standards. Applicants must meet the requirements for "active" license status when they are approved for initial licensure. Therefore, it is required that the applicant have current knowledge of the practice of public accountancy. This knowledge is demonstrated by completion of the Uniform CPA Exam and/or license experience within the past five years.

General accounting experience includes providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. General accounting experience obtained in public accounting must be performed under the supervision of an individual who holds a valid active license, or comparable authority to practice public accountancy in any state or country. General accounting experience obtained in non-public accounting must be performed under the supervision of an individual holding a valid active license to practice public accountancy in the United States or its territories. The person supervising the experience must verify, on the *Certificate of General Experience*, that the applicant satisfied the general accounting experience.

Attest Experience Requirement

In addition to the general accounting experience requirements described above, CBA Regulation Section 12.5 requires that an applicant seeking licensure with the authorization to sign reports on attest engagements must obtain a minimum of 500 hours of attest experience and demonstrate an understanding of the requirements in performing the attest function, as it relates to financial statements. Experience must include all of the following activities:

1. Planning of the audit, including selection of the procedures to be performed.

2. Applying a variety of auditing procedures and techniques to the usual and customary financial transactions included in financial statements.

3. Preparing working papers in connection with the various elements of 1 and 2 above.

4. Preparing written explanations and comments on the work performed and its findings.

5. Preparing and reporting on full disclosure financial statements.

Fingerprint Requirements for Licensure Applicants

Pursuant to Section 144 of the B&P Code, applicants for a California CPA license are required to furnish their fingerprints for purposes of conducting a criminal history record check with the Department of Justice (DOJ) and the Federal Bureau of Investigation. Fingerprinting provides the CBA with vital information upon which to base licensing decisions. Once applicant fingerprints are submitted to the DOJ, the CBA receives subsequent criminal conviction information on the applicant or licensee.

In mid 2008, the CBA began work with the National Association of State Boards of Accountancy(NASBA) on the development of a national database to house licensing information for all 55 jurisdictions. CBA Vice President Sally Anderson and Executive Officer Patti Bowers serve on NASBA's Accountancy Licensee Database(ALD) committee, and were instrumental in the development and implementation of the project. The database is a centralized location that state boards of accountancy can go to review licensure and enforcement information for applicants. In the near future, consumers will have access to the database, and be able to verify that a CPA is licensed and in good standing prior to utilizing their services.

In early 2010, the CBA began transmitting California licensee information to the ALD and by mid 2010 began utilizing the ALD system as one way to verify licensure status and enforcement actions for applicants applying for licensure in California. This is one tool to ensure out-of-state licensees are not seeking licensure in California to avoid discipline in another state. There are presently 30 jurisdictions transmitting information to the ALD. As the system is still being developed, the CBA continues to utilize other methods to verify licensure status and enforcement actions of its licensure applicants. Once ALD becomes fully operational, the CBA will incorporate other ways to utilize its many functions to further streamline processing internally and to assist applicants with reducing the amount of license verification documents that accompany their application.

FIRM REGISTRATION

Accountancy firms must register with the CBA in order to offer accounting services in California. The CBA registers General and Limited Liability Partnerships, and Corporations. The timeframe for the initial licensure of firms is 30 days, and there is no backlog.

General or Limited Liability Partnership

A partnership may register with the CBA, providing the following requirements are met:

- At least one partner must be a CPA/PA licensed to practice in this state, or be an applicant for CPA licensure.
- Each partner practicing in California must hold a valid permit to practice in this state, or be an applicant for CPA licensure.
- Each partner not practicing in this state must be a CPA with a license in good standing from another state, or be a non-licensee owner as permitted by Business and Professions Code Section 5079.
- Each resident manager in charge of an office, must hold a valid permit to practice in this state, or shall have applied for CPA licensure.

Corporation

A corporation may register with the CBA providing the following requirements are met:

- Each director, shareholder, and officer of an accountancy corporation shall be a licensed person or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices or may be a non-licensee owner as permitted by B&P Code Section 5079.

- At least one shareholder must be a CPA/PA licensed to practice in this state, or be an applicant for CPA licensure.
- The corporation must comply with all relevant Corporations Code sections.
- The corporation must maintain adequate insurance to provide security for claims, or the shareholders must execute either a written agreement to be jointly and severally liable for payment of claims arising out of the rendering of or failure to render professional services.[1]
- Articles of incorporation have been filed with the Secretary of State.

Fictitious Name Permits

A sole proprietor who wishes to practice public accountancy using a fictitious name shall register and be approved by the CBA before practicing and holding out to the public. Licensees intending to operate using a fictitious name must meet the requirements established in Section 5060 of the Accountancy Act and Section 67 and 75.5 of the CBA Regulations. Licensees are also advised to review B&P Code Section 17500 concerning false and misleading advertising and B&P Code Sections 17900 – 17930 specifying general requirements for fictitious business names.

INITIAL LICENSURE APPLICATION PROCESSING

Provided in Table 3.2 are the average processing time frames for both examination and licensure applications. The processing time frames for examination applications has been steady over the past three fiscal years. Although there has been an overall increase in the volume of applications, continual streamlining of processes, automating internal functions, and educating applicants on how to submit completed applications has resulted in processing time frames below the CBA's performance measure of 30 days.

Initial licensure application processing time frames decreased significantly beginning in FY 2008/09. This is a result of an augmentation of six staff to the Initial Licensing Unit. The processing time frames since this augmentation has been well below the CBA's performance measure of 30 days.

Table 3.2
Average Processing Time frames

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Average number of days from receipt of a first-time application to approval to take the Uniform CPA Examination	10*	26	27	26
Average number of days to process a completed licensure application	104	87	26	22

* The CBA began collecting processing time frames in May 2007. Therefore, this number only includes the months of May and June 2007.

[1] Adequate is defined in Article 11 section 75.5(a)(1) of the CBA Regulations as: Insurance for each claim in an amount equal to at least $100,000 per licensee, provided that the maximum amount for each claim shall not be required to exceed $1,000,000, and that the minimum amount guaranteed for all claims during any one calendar year shall be at least an amount equal to $250,000 per licensee, provided that the maximum amount shall not be required to exceed $3,000,000.

RENEWALS AND CONTINUING EDUCATION/COMPETENCY REQUIREMENTS

The CBA presently requires CPAs, PAs, Accountancy Corporations, and Accountancy Partnerships, to renew biennially. The CPA and PA licenses expire every other year at midnight on the last day of a licensee's birth month. The year of expiration is based upon the licensee's birth year. If a licensee was born in an even year, the license expires each even year; if the licensee was born in an odd year, the license expires each odd year. To maintain a valid license, a CPA or PA is required to complete the license renewal application and have it postmarked, along with the renewal fee, by midnight on the license expiration date.

The license renewal cycle for Corporations and Partnerships is based on the month and year the CBA originally approved the Corporation or Partnership application. If approved in an even year, the registration will expire each even year on the last day of the month in which it was originally approved. If approved in an odd year, the registration will expire each odd year on the last day of the month in which it was originally approved.

At the time of license renewal, a CPA or PA who chooses to maintain a license in an active status must certify to the completion of 80 hours of CE in the two-year period immediately preceding his/her license expiration, including the completion of all required subject matter. For a course or program to qualify as CE, it must be a formal program of learning which contributes directly to the professional competence of a licensee in public practice. Licensees must complete a minimum of 40 of the 80-hour requirement in a technical subject matter. Courses that qualify as technical subject matter include auditing and accounting, computer and information technology, consulting, detecting and/or reporting of fraud in financial statements, financial planning, ethics, and taxation. Additionally, a licensee must complete a CBA-approved Regulatory Review course every six years as a condition of active licensure. The CBA approved Regulator Review course provides information on the provisions of the Accountancy Act, CBA Regulations, as well as an overview of historic and recent disciplinary actions taken by the CBA, highlighting the misconduct which led to licensees being disciplined.

A licensee who plans, directs, approves, or performs a substantial portion of the work on an audit, review, compilation or attestation service of a non-governmental agency must complete 24 of the 80 hours in courses focusing on auditing and accounting (A&A). Similarly, a licensee who plans, directs, approves, or performs a substantial portion of the work on an audit, review, compilation or attestation service of a governmental agency must complete 24 of the 80 hours in courses focusing on governmental auditing. A licensee required to fulfill the A&A or governmental auditing requirement must also complete eight hours of CE in subject matter specifically related to the detection and/or reporting of fraud in financial statements.

A licensee who no longer intends to practice public accountancy but who wishes to maintain his/her license may renew as inactive without completing any CE. To renew as inactive, the licensee must submit the license renewal application and fee to the CBA prior to the license expiration date. A licensee with a license in an inactive status may not practice public accountancy in California. A licensee may convert his/her license from an inactive to an active status prior to the next renewal date by submitting a status conversion form and completing 80 hours of CE in the appropriate subject matter.

Continuing Education Worksheet Review:

As reported in the CBA's 2003 Sunset Review Report, due to budget and staffing constraints, the CBA directed staff to discontinue review of the renewal applications and CE reporting worksheets submitted by licensees. The CBA submitted a Budget Change Proposal for FY 2007/08 requesting staff positions to reinstate the worksheet review and audit processes. The CBA received 2 analyst positions for the Renewal Unit which allowed the CBA, in June 2008, to resume 100 percent review of the license renewal applications and CE reporting worksheets to ensure licensees remain in compliance with the requirements set forth in the Accountancy Act and CBA Regulations.

The table below provides statistics on the CBA's CE worksheet review process, including the number of deficiencies identified and compliance responses received since resuming 100 percent worksheet review. The majority of deficiencies identified in FY 2009/10 fell into the following six categories; approximately 18% were incomplete renewal applications, 16% were a shortage of ethics CE hours, 12% were due to multiple errors, 11% were failure to submit the renewal application, 10% were a shortage of Fraud CE hours, and 8% were a shortage of CBA approved Professional Conduct and Ethics or Regulatory Review course hours.

Table 3.3
CE Worksheet Review

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
CPA/PA Applications Reviewed	N/A	2,714	[1] 30,849	29,914
Deficient Applications Identified	N/A	143	2,118	1,536
Compliance Responses Received (Including Requests for Inactive Status)	N/A	30	2,054	1,098
Enforcement Referrals	N/A	0	37	10
Outstanding Deficiencies (Including Abandonment)	N/A	0	27	428

[1]Worksheet review was reinstated June 1, 2008.

Continuing Education Audit

In June 2009, the CBA reinstated the CE Audit Program to ensure that licensees are complying with the CE requirements set forth in the Accountancy Act and CBA Regulations. The audits provide the CBA with an opportunity to remind licensees of the CE reporting requirements and hopefully lessen the number of license renewal deficiencies received in the future. Licensees are randomly pre-selected and notified of the audit by mail approximately 90 days prior to their license expiration date.

At the time of license renewal, licensees renewing in an active status must submit certificates of completion, or equivalent documentation, for a minimum of 80 hours of CE. The certificates of completion will be reconciled against the CE reporting worksheet and license renewal application to verify the licensee completed the minimum amount and

appropriate type of courses during the license renewal period. Licensees will be required to remedy any deficiencies or discrepancies prior to their license being renewed.

Implemented Changes to Continuing Education Regulations

Effective August 2007, the CBA Regulations were modified to allow licensees to claim CE credit for Group Internet-Based Program (webcast) courses. The CBA defined a webcast course as a program that enables a licensee to participate from a computer in an interactive course presented by a live instructor at a distant location. The addition of webcast courses as an acceptable format for CE providers has allowed licensees greater flexibility in fulfilling the 80-hour CE requirement.

In order to qualify as acceptable CE, the webcast course must be taught by a live instructor and include a feature that allows participants to send questions and/or comments directly to the instructor and receive answers during the program. Additionally, the course provider must monitor attendance throughout the program by using attendance-monitoring devices such as polling, questions, or surveys. The program must include a minimum of two monitoring events each half-hour, at least one of which occurs at an irregular interval. The course provider must also have a written policy to address rescheduling and the granting of partial credit in the event of a technology failure.

Newly Enacted Continuing Education Regulations

In March 2008, the CBA established the Ethics Education and Licensing Frequency Task Force (Task Force), comprised of both CBA and non-CBA members, and tasked them with examining the CBA's Professional Conduct and Ethics (PC&E) course requirement and the two-year license renewal period. After careful consideration, the Task Force determined the current two-year license renewal period was satisfactory; however, the PC&E course requirement was found to be out-dated and in need of modification. At the recommendation of the Task Force, the CBA directed staff to draft proposed amendments to Title 16, Division 1, Article 12 of the California Code of Regulations.

On January 1, 2010 newly enacted regulatory amendments require that all licensees renewing a license in an active status complete the following: four hours of ethics education each license renewal period; a two-hour regulatory review course every six years covering the Accountancy Act, CBA Regulations and CBA enforcement actions; and a minimum of 20 hours of CE annually, with a minimum of 12 hours in technical subject matter, each year of the two-year license renewal period as part of the 80-hour CE requirement. Additionally, all licensees renewing or converting a license from an inactive to an active status must complete a minimum of 20 hours of CE, with a minimum of 12 hours in technical subject matter, in the one-year period immediately preceding the date of license renewal or status conversion.

COMITY/RECIPROCITY WITH OTHER STATES

Under the authority of the Accountancy Act, the CBA regulates the practice of public accountancy, ensuring that only qualified practitioners are permitted to practice and that appropriate standards of professional competency and practice are enforced. SB 1543, Chapter 921, Statutes of 2004, extended a "Practice Privilege" to certain qualified individuals whose principal places of business are not within California, thereby allowing these individuals to practice public accountancy in California although their licenses, certificates, or permits to practice public accountancy are issued by other states or jurisdictions.

Prior to implementation of the practice privilege provisions, out-of-state public accountants were allowed to temporarily practice public accountancy in California without notifying the CBA, provided the practice was incident to his or her regular practice in another state. This practice was deemed "temporary and incidental." The term was subject to various interpretations among the nation's accounting profession, and it is believed the option was used more broadly in California than the CBA intended. This broad interpretation, combined with the fact that practitioners were not required to notify the CBA of their "temporary and incidental" practice, led to a significant concern regarding the CBA's ability to protect California consumers who use the services of practitioners not licensed or registered by the CBA.

To address this concern, SB 1543 was passed in September 2004 replacing the "temporary and incidental" practice with a requirement that qualified licensees notify the CBA of their intentions to practice in California. This legislation requires out-of-state licensees to submit a notification to the CBA with their license and other accounting profession related information. This requirement is known as California Practice Privilege and became effective January 1, 2006.

Requirements of California Practice Privilege

To be eligible for California Practice Privilege, an out-of-state licensee must meet one of the following requirements:

- Possess a valid and active license, certificate, or permit from a state deemed by the CBA as substantially equivalent; **or**

- Possess individual education, examination, and experience qualifications that have been determined by the CBA to be substantially equivalent; **or**

- Have continually practiced public accountancy as a CPA under a current, valid license issued by any state for four of the last 10 years.

In order to practice under California Practice Privilege, out-of-state licensees are required to submit the CBA's Notification Form, which is available for submission on-line or via hardcopy. Practice rights under the California Practice Privilege are automatic upon submission of the Notification Form; unless specific disqualifying conditions exist that require prior CBA approval. The fee for California Practice Privilege is due within 30 days of submission of the Notification Form. The privilege is valid for a maximum of one year

from the date of submission of the form, at which time the holder can either let the privilege expire or resubmit a new Notification Form.

An out-of-state licensee may not practice under a California Practice Privilege without prior approval of the CBA if the individual has, or acquires at any time during the term of the California Practice Privilege, a disqualifying condition. Examples of disqualifying conditions are:

- Conviction of a crime other than a minor traffic violation.
- Revocation, suspension, denial, surrender, placement on probationary status, or other sanctioned or limited license or other authority to practice a profession issued by a state, federal, or local agency or court or the Public Company Accounting Oversight Board (PCAOB) except for the following occurrences:
    - An action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses.
    - The revocation of a license solely because of the failure to complete continuing education or failure to renew.
- Pendency of any investigation, inquiry, or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving professional conduct.
- Failure to respond to the satisfaction of the CBA to a request for information from the CBA regarding a matter related to a current or prior California Practice Privilege.
- Any judgment or arbitration award in an amount greater that $30,000 entered against him or her in a civil matter involving the professional conduct of the individual.

An out-of-state licensee must report to the CBA any disqualifying conditions. The CBA reviews the reported information and notifies the individual in writing of its decision regarding the issuance of the practice privilege.

An out-of-state licensee can obtain a California Practice Privilege either with the authorization to sign a report on an attest engagement or without that authorization. To sign a report on an attest engagement under a California Practice Privilege, the holder must have completed a minimum of 500 hours of experience in attest services as required of California licensure applicants requesting licensure with the authority to sign attest reports.

Consumer Protection Elements of California Practice Privilege

There are two key consumer protection elements of the California Practice Privilege provisions.

- The CBA is authorized to take immediate action against anyone who runs afoul of the notification requirements or applicable laws: specifically, the CBA may suspend, without notice or hearing, an individual's practice privilege pursuant to Section 5096.4 of the Accountancy Act, Administrative Suspension of a Practice Privilege. A California Practice Privilege can be administratively suspended for the following reasons:

  - Conducting a disciplinary investigation, proceeding, or inquiry concerning representations made in the notice.

  - An individual's competence or qualifications to practice under the California Practice Privilege.

  - Non-paym ent of the Notification fee.

  - Non-response to a CBA inquiry.

- The California Practice Privilege is subject to denial or discipline for any violation of the practice privilege provisions, as well as for any act that would be cause for discipline against a California licensee, such as a violation of the Accountancy Act or CBA Regulations.

To ensure that these key consumer protection elements are effective, the CBA established a verification of qualifications procedure. To date staff have issued 53 Administrative Suspension Orders to California practice privilege holders not qualified to practice under the Practice Privilege Program.

ENFORCEMENT ACTIVITY

The CBA recognizes its significant responsibilities in the area of consumer protection. Within its Enforcement Program, workload is prioritized to maximize consumer protection and mitigate consumer harm. Cases with the potential for ongoing consumer harm receive the highest priority and urgent attention. The options of interim suspension orders or Penal Code Section 23 suspensions are utilized whenever appropriate to diminish potential consumer losses.

The CBA has historically used licensed CPAs to investigate complaints. These resources have been effective but difficult to recruit and retain as state salaries have not kept parity with compensation available elsewhere. To augment its licensed investigators, the CBA has expanded its Enforcement Program resources to utilize analysts to conduct investigations of non-technical matters. The expanded use of analytical staff has proven effective and allows the CPA investigators to concentrate on those cases that require the expertise and knowledge they possess.

The CBA's Enforcement Program receives complaints from consumers of accounting services, members of the accounting profession, professional societies, law enforcement agencies, other government agencies, and internal referrals from CBA committees and other programs. While historically consumers and internal referrals have been the main origin of complaints, licensees also have been a significant source, most often reporting unlicensed activity. CBA members and staff also regularly monitor the news media for information regarding licensees that may suggest violations of the Accountancy Act.

The CBA requests that complaints be submitted in writing. A detailed complaint form is posted on the CBA Web site and is available in both Adobe Acrobat and an interactive version, or a paper copy is available upon request to the CBA office. This form provides information about filing a complaint as well as explaining the CBA's statutory authority to act and the process that is followed when a complaint is filed. In lieu of the complaint form, complainants may also submit a simple letter identifying the name of the licensee who is the subject of the complaint and explaining the issues of concern.

As Table 4.1 shows, the number of complaints filed with the CBA has been increasing. The increase is first evident in FY 2007/08 due to the CBA's proactive efforts to identify potential continuing education and practice without permit violations. In FY 2008/09 a greater increase can be identified, again due to the CBA's proactive measures to investigate unlicensed activities and several special projects that were undertaken during this time period. The CBA utilizes various resources including contact with the Secretary of State's Office to identify accounting firms that have filed with that agency, and yet have failed to register with the CBA. The CBA will continue to employ these pro-active efforts using its non-technical investigative staff.

	Table 4.1 Complaint Activity			
	FY 2006/07	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**
Complaints Received by Source				
Public	415 478	469		459
Licensee/Professional Groups	15	8	21	14
Governmental Agencies	12 17	17		13
Other[1]	75 128	368		219
Total Complaints Received and Opened	517	631	875	705
Complaints Received by Type				
Contractual	0 1	0		0
Competence/Negligence	49 93	93		84
Unprofessional Conduct	114 131	117		107
Fraud 4		8	19	8
Health & Safety	0	0	0	0
Unlicensed Activity	195 171	418		162
Criminal Convictions	0 0	0		75
Personal Conduct	1 8	2		2
Non-Jurisdictional	44 22	14		10
Productivity 3		12	2	3
Other	107 185	210		254

[1] Includes internal referrals from various CBA divisions, other DCA boards and bureaus, proactive efforts undertaken by the CBA and information received from other sources that do not fit in any of listed categories.

The CBA's Enforcement Program processes all complaints received. The complainant is notified within five days that the CBA has received the complaint. Within ten days, the complaint is processed through "intake" in which one of the CBA's investigative staff reviews the complaint for jurisdiction, complexity, and availability of basic factual materials. At this point, the following actions may be taken:

- The complaint is assigned to an Investigative CPA or investigative analyst. Further contact with either the licensee or the complainant may be required to obtain additional information in order to continue the investigation.

- A complaint may be closed because the CBA lacks jurisdiction in the issues alleged, such as instances of fee or civil disputes or the lack of accountant/client relationship.

Cases are prioritized during complaint intake, with the highest priority assigned to cases in which it is believed consumer harm is ongoing, and therefore, the promptness of the investigation is paramount.

Gross negligence, unprofessional conduct, and practice without a valid license are the most frequent types of complaints against licensees. Competence and conduct issues are immediately referred for formal investigation to an Investigative CPA and cases that involve administrative violations, convictions, or sanctions by other agencies are referred

for investigation by an investigative analyst. Violations that are confirmed may result in citations with fines, mandated continuing professional education or, in the instance of more substantive violations, formal accusation.

The following table reflects Enforcement Compliance Actions that have taken place during the last four fiscal years. Cease and desist warning letters show a sharp increase in FY 2008/09, compared to other years. This increase was again the result of the CBA's proactive efforts in the area of unlicensed activity that was mentioned earlier. When a cease and desist letter is sent, the respondent is given 30 days to resolve the matter. If compliance is obtained, the complaint is closed. Failure of the respondent to resolve the complaint could result in the matter proceeding to additional investigation and possible formal discipline.

Table 4.2
Compliance Actions

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Continuing Education Mandated	14	19	23	12
Cease & Desist/Warning Un-Licensed	74 65		151 61	
Cease & Desist/Warning Licensed	0 11		163 56	
Referred for Informal Hearing	43	23	35	18
Compel Examination[1]	0 0		0 0	
Public Letter of Reprimand[1]	0 0		0 0	
Referred for Diversion[2]	0 0		0 0	
Total Compliance Actions	131 118		372 147	

[1]The CBA does not utilize these compliance actions
[2]The CBA does not have a diversion program

As shown in Table 4.3, the average number of formal accusations filed and disciplinary actions taken during this reporting period show slight fluctuations over the four year period. These fluctuations can be attributed largely to the investigative staff changes within the Enforcement Program. During FY 2009/10 the Enforcement Program experienced significant staff turnover. Three of the five ICPAs and both the Supervising ICPA and the Enforcement Chief left the CBA. This, coupled with the creation and staffing of three analysts in the non-technical unit, created a "knowledge gap." It can take from 1-2 years to master the skills necessary to be proficient and productive in this type of position.

The majority of disciplinary actions continue to pertain to gross negligence and conduct issues. Regardless of the nature of the violation, nearly 70 percent of all disciplinary actions are resolved through stipulated settlement. Approximately 13 percent are heard by an administrative law judge and the remaining represent default actions due to the respondent's failure to request a hearing, object, or otherwise contest the accusation.

The CBA considers settlement in all types of cases, however, because the majority of disciplinary actions involve gross negligence and conduct issues, these are the types of cases most frequently settled. When considering settlement in a disciplinary case, it is

the CBA's policy to discuss and consider all options in all types of cases during the disciplinary stage.

From FY 2006/07 to FY 2009/10, a total of 102 cases resulted in stipulated settlements. In those 102 cases the following results were attained:

- 13 percent: Revocation.
- 12 percent: Voluntary surrender with discipline pending.
- 35 percent: Revocation stayed with suspension and probation.
- 35 percent: Revocation stayed with probation.
- 5 percent: License probation only.

The final results from stipulated settlements are often very similar to the results that would be accomplished should a matter proceed to a formal hearing with the Office of Administrative Hearings. However, the costs involved in settling a case prior to the hearing process are substantially less. Settlement results in saving both time and money.

Table 4.3
Disciplinary Actions

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
AG Office Activity				
Accusations Filed	42	33	29	27
Accusations Withdrawn or Dismissed	4 0 3			0
Statement of Issues	0 1 0			1
Total AG Office Activity	**46 34 32**			**28**
Disciplinary Actions				
Revocation	16 17 10			13
Voluntary Surrender	4 1 2			4
Suspension Only	0 0 0			0
Revocation Stayed with Suspension and Probation	14 11 10			5
Revocation Stayed with Probation	10	11	9	11
License Denied	0 0 0			1
Interim Suspension Order(s)	0	0	0	1
Other	1 0 0			0
Total Disciplinary Actions[1]	**45 40 31**			**35**
Forms of Discipline				
Stipulated Settlements	29 27 24			22
Proposed Decisions	5 5 2			8
Default Decisions	11 8 5			5
Total Forms of Discipline	**45**	**40**	**31**	**35**

[1] Total Disciplinary Actions are measured by Total Number of Respondents.

Beginning in FY 2010/11 and as part of the CBA's efforts towards greater transparency, the CBA will begin reporting statistical information related to violations of probation. This information will provide the number of licensees that are involved in subsequent disciplinary actions during the time they are on probation and give the CPA insight on how

to better educate and minimize repeat offenses. Table 4.4 illustrates formal discipline rendered for probation violations for the past four years.

Table 4.4 Probation Violations				
	FY 2006/07	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**
Suspension or Probation	0	1	0	0
Revocation or Surrender	2 0 1	1		

Business and Professions Code Section 5063 requires licensees to self-report certain actions such as felony convictions, any crime related to the practice of public accountancy, and the cancellation, suspension, or revocation of the right to practice as a CPA or PA by another state, foreign country, and/or any government body or agency. Section 5063 was expanded effective January 1, 2003, to also require licensees to self-report civil action settlements and judgments over $30,000, investigations by the Securities and Exchange Commission or the Public Company Accounting Oversight Board (PCAOB), and their involvement in issuing reports on restated financial statements concerning Governmental Agencies, Non-Profit charitable trusts that are required to file an amended tax return, and SEC registrants that file California tax returns.

Table 4.5 represents licensee complaints received, closed, and referred for investigation by Investigative CPA staff or investigative analysts, accusations filed, and disciplinary actions for the four-year reporting period. It should be noted that a complaint typically is not opened, investigated, and either closed or referred for disciplinary action in the same fiscal year. Further, an accusation may be filed in one fiscal year with the resulting disciplinary action occurring in a subsequent fiscal year.

As each complaint is opened, it goes through a preliminary review to determine the CBA's jurisdiction and evidentiary support. As provided in Table 4.5 for FYs 2006/07, 2007/08, and 2008/09, approximately 17 percent of all complaints opened are referred for investigation, and approximately 44 percent of the complaints referred for investigation proceed to accusation. A comparison of disciplinary actions made in relation to licensee complaints received shows that approximately eight percent of complaints against a licensee result in disciplinary action, a figure consistent with statistics reported during the previous review.

Beginning in FY 2009/10 there was a significant spike in formal investigations opened from previous years. This spike is the result of an internal change made by the DCA that defines an investigation as opened immediately following the initial review. In prior years, initial reviews allowed for an abeyance period for investigative staff to collect information on complaints that were lacking evidentiary documentation or other information to support the allegations. A large percentage of complaints were closed during the "abeyance" period and the time was not considered investigative time. Removal of this "abeyance" period and identifying the complaint as an investigation following the initial review accurately reflects the time period during which the complaint is under investigation.

	Table 4.5 Licensee Complaint Outcomes			
	FY 2006/07	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**
Complaints Opened[1]	341 473		612	561
Complaints Closed by Type:				
Competence/Negligence	57	81	85	86
Unprofessional Conduct	130	132	120	105
Fraud	7	6	10	13
Non-Jurisdictional	41	22	15	10
Criminal Charges/Convictions	0	0	0	63
Other	110	155	223	257
Unlicensed Practice	14	12	167	28
Total Complaints Closed:	359 408		620	562
Formal Investigation Opened	90 80		70	333
Formal Investigation Closed	95 64		88	243
Accusation Filed	42 33		29	27
Disciplinary Action[2]	45 40		31	35

[1] It is atypical for a complaint to be opened, investigated, and either closed or referred for disciplinary action in the same fiscal year.
[2] Based on total number of respondents

CASE AGING DATA

As mentioned earlier, cases are not typically opened, investigated, and prosecuted in the same fiscal year. However, for purposes of obtaining the most accurate data, Table 4.6 was compiled based on closed disciplinary cases for each of the fiscal years shown. Each of the separate phases of the investigation was extracted to come up with a true average. As shown, the Average Days to Process, Investigate, and Prosecute Licensed Cases has decreased by almost 100 days for the four years depicted. The average number of days ranged from a high of 777 days in FY 2006/07 to a low of 680 days in FY 2009/10.

The statistics for *Investigations* reflect the average number of days from assignment for investigation to completion of a final investigative report. As illustrated in the table, the average number of days for Investigations has decreased by over 100 days for the years depicted. The average number of days ranged from a high of 357 days in FY 2006/07 to a low of 232 days in FY 2009/10. It should be noted however, that in any given year, large complex investigations will impact the date range and the average number of days it takes to complete the investigation cycle.

The calculation for *Pre-Accusation* is the average number of days from referral of a case to the Attorney General's Office to the filing of an accusation. As depicted in Table 4.6, the average number of days of Pre-Accusation has remained relatively constant. The average number of days ranged from a high of 179 days in FY 2006/07 to a low of 152 days in FY 2009/10. This illustrates the quality and thorough factual development of investigations by CBA investigative staff.

The calculation for *Post-Accusation* is the average number of days from the filing of the accusation to a final disposition date. Final dispositions can include, but are not limited to, license revocation, probation, suspension, surrender of the license, and withdrawal of the accusation. Stipulated settlements generally are negotiated with the respondents and their attorneys by the CBA's Enforcement Chief, in consultation with a Deputy Attorney

General (DAG). Stipulated settlements are subsequently presented to the CBA for action. In cases moving to the administrative hearing process, the CBA utilizes Administrative Law Judges (ALJ) to preside over hearings and render proposed decisions. As shown in Table 4.6, the average number of days of Post-Accusation has increased by over 50 days during this period. The average number of days ranged from a high of 296 days in FY 2009/10 to a low of 241 days in FY 2006/07.

Table 4.6
Average Days to Process, Investigate
And Prosecute Licensed Cases

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Investigations 357		272	285	232
Pre-Accusation[1] 179		157	136	152
Post-Accusation[2] 241		255	269	296
Total Average Days[3]	777	684	690	680

[1] From referral to the Attorney General's Office to filing of formal charges.
[2] From formal charges filed to conclusion of disciplinary case.
[3] From date the complaint was received to date of the final disposition of the disciplinary case.

For Table 4.7, the calculation for *Amount of Time for ICPA to Complete Investigation* is based upon the number of days from assignment of a case for investigation to completion of a final investigative report. The calculation for *Amount of Time for AG to Complete Case After Referral* is based upon the number of days from referral of a case to the Attorney General's Office to a final disposition date. In this table, the information provided demonstrates that the majority of the investigations closed are in the six-months to two-year time period.

The table shows that 90 percent of the cases closed during the last four years have been processed in less than two years. This is an improvement over the previous review period in which only 76 percent of cases were closed in less than two years. Again, the CBA's reengineering efforts have been significant in effecting more efficient case processing times.

As a matter of course, cases referred to the Attorney General's Office take from five to eleven months for the CBA to receive a completed accusation from the DAG. During this period, the progress of the DAG is closely monitored by enforcement staff. Once the draft accusation is received from the DAG, reviews and modifications may add additional time. Infrequently, supplementary investigations may be required prior to the completion of the accusation in order to acquire more detail to support the case.

	Table 4.7 Licensed and Unlicensed Investigation Timeframes				
	FY 2006/07	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**	**Average % Cases Closed**
	Amount of Time for ICPA to Complete Investigation				
Less than 90 Days	18	15	12	111	29%
90-180 Days	16	13	22	60	21%
180-365 Days	25	21	21	60	24%
1-2 Years	28	18	25	36	20%
2-3 Years	8	4	10	9	6%
Over 3 Years	0	0	0	4	<1%
Total Investigations Closed	95 71		90	280	100%
	Amount of Time for AG to Complete Case After Referral				
0-1 Year	26	19	17	15	55%
1-2 Years	15	16	11	7	35%
2-3 Years	5	0	3	0	5%
3-4 Years	2	2	0	3	5%
Over 4 Years	0	0	0	0	0
Total Cases Closed[1]	48 37		31	25	100%
Disciplinary Cases Pending	24 31		36	40	
[1]Includes Withdrawn Cases					

CITE AND FINE PROGRAM

Business and Professions Code Sections 125.9 and 5010 provides authority for the CBA to establish by regulation a system to issue licensees a citation which may contain an order of abatement or order to pay an administrative fine. The CBA may order any licensee to pay an administrative fine as part of any disciplinary proceeding.

The issuance of citations and fines is an essential enforcement tool used by enforcement staff. Citations are primarily issued to licensees determined to be in violation of practicing without a valid permit or other administrative violations that may include continuing education deficiencies or unregistered firm names. Citations are an effective means to sanction a licensee for violations that do not rise to the level of formal discipline.

On March 16, 2008, the CBA amended the CBA Regulations Section 95.2 to assess fine amounts of not less than $100 or more than $5000 for each investigation. The amendment provided the CBA latitude to impose fine amounts based upon mitigating or aggravating factors and removed the requirement to impose specific fine amounts associated with a particular violation.

Table 4.8 reflects citations and fines issued for the previous four-year period.

	Table 4.8 Citations and Fines			
	FY 2006/07	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**
Total Citations	23	21	17	14
Total Citations With Fines	23	21	17	14
Amount Assessed	$31,300	$42,000	$31,550	$27,150
Reduced, Withdrawn, Dismissed	$6,650	$3,000	$2,000	$17,200
Amount Collected	$16,900	$17,000	$14,838	$13,970

RESULTS OF COMPLAINANT SATISFACTION SURVEY

To obtain a benchmark for the level of satisfaction with the CBA Enforcement Division, CBA staff created a survey to poll all individuals who filed a complaint that was closed in the past four fiscal years. Because the timeframe was so large, all complainants were included in the survey sample, with the only exception being internal complaint referrals. A letter was mailed to each complainant inviting them to take the survey online, or to contact the CBA office for assistance completing the survey if needed.

Unfortunately, the response rate to the survey was extremely low, less than twelve percent. With a response rate of less than twelve percent on a population size of approximately 1200, the statistical accuracy of the survey is 95%, +/- 20%[2]. The margin of error for a sample this size is too large to accurately interpret the numbers. As such, there is some question as to the validity of the data as reflected in Table 4.9.

Further compounding the validity of the data is the reporting timeframe. The responses in Table 4.9 are for cases that were closed in a given fiscal year, but the majority of complaints are not opened, investigated, and closed in a year. There is a possibility that a significant number of complaints reflected in FY 2006/07 and FY2007/08 were received at an earlier date. This is evidenced by the large number of respondents who contacted the CBA to inquire against whom and when they filed a complaint.

[2] http://www.greatbrook.com/survey_accuracy.pdf

	Table 4.9 Consumer Satisfaction Survey Results			
	FY 2006/07	**FY 2007/08**	**FY 2008/09**	**FY 2009/10**
# Surveys Mailed: **# Surveys Returned:** **% of Surveys Returned:**	**274** **32** **12%**	**295** **26** **9%**	**307** **33** **11%**	**323** **41** **13%**
1. Were you satisfied with knowing where to file a complaint and whom to contact?	78% 80%		91%	73%
2. When you initially contacted the CBA, were you satisfied with the way you were treated and how your complaint was handled?	59% 54%		58%	56%
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the CBA would take?	47% 50%		39%	39%
4. Were you satisfied with the way the CBA kept you informed about the status of your complaint?	55% 46%		47%	51%
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	48% 46%		55%	40%
6. Were you satisfied with the final outcome of your case?	43% 33%		29%	25%
7. Were you satisfied with the overall service provided by the CBA?	**50% 35**	**%**	**39%**	**30%**

* Boards under review may conduct a consumer satisfaction survey to determine the public's views on certain case handling parameters. A sample list of questions have been provided. You may use more or fewer questions. Boards may take a random sampling of closed complaints and disciplinary actions for a four year period. Consumers who filed complaints should be asked to review the questions and respond to a 5-point grading scale (i.e., 5, 4, 3 =satisfied to 1, 2 =dissatisfied). The percent of satisfaction for each of the past four years would be provided in the appropriate columns.

Recognizing the potential inaccuracy in the survey data due to the low response rate, a telephone survey was initiated to corroborate or disprove the results. CBA staff focused on complaints from FY 2009/10, and began contacting complainants via telephone, believing these individuals would have the most current opinion of the Enforcement Division, and may provide the best feedback. The CBA also modified the survey that was provided over the telephone. In order to garner more responses, and to ensure the brevity of the survey, respondents were simply asked if they were satisfied with the service received. (Since the data is reflected in the percent of respondents that were satisfied, this will have no bearing on the data reflected from the survey.)

The telephone survey also omitted question number, "6) Were you satisfied with the final outcome of your case?" The question was deleted for two reasons. First, the survey was designed to measure the satisfaction rate with the service that was provided by the CBA Enforcement Division. As the outcome of the complaint is often outside of the control of the CBA Enforcement Division, this did not seem to be an appropriate question for this survey. Second, it quickly became apparent that if the CBA did not revoke the licensee's permit to practice, and refund the fee charged, the complainant was often not "satisfied".

Table 4.10 reflects the response from the follow-up telephone survey. With a 29% response rate, the telephone survey is accurate to approximately 15%.

	Table 4.10 Consumer Satisfaction Survey Results
	FY 2009/10
# Complainants Called: **# Complainants Unable to Reach[1]:** **# Surveys Completed:** **% of Surveys Returned:**	**100** **21** **23** **29%**
1. Were you satisfied with knowing where to file a complaint?	78%
2. When you initially contacted the CBA, were you satisfied with the way you were treated and how your complaint was handled?	83%
3. Were you satisfied with the information you were provided regarding the CBAs process for handling your complaint?	68%
4. Were you satisfied with the way the CBA kept you informed about the status of your complaint?	68%
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	70%
6. Were you satisfied with the customer service provided by the staff at the CBA?	**78%**
[1]Includes hang-ups, deceased, and incorrect phone number	

In the future, it may be possible to increase the response rate by surveying complainants more quickly after a case is closed. The DCA recently created a survey that is mailed to all complainants when their case is closed, and the CBA is participating in this survey. It is anticipated the CBA will have a much larger and more trustworthy data set in the future.

ENFORCEMENT EXPENDITURES AND COST RECOVERY

AVERAGE COSTS FOR DISCIPLINARY CASES

As reflected in Table 5.1, the average aggregate cost for closed investigations and prosecution of cases has remained fairly constant over the last four years. Cases involving gross negligence in audit engagements or defalcations from clients or employers require the collection of much evidence and, accordingly, these cases are more costly to investigate and prosecute. As noted earlier in this document, the CBA's reengineered intake process has allowed only those substantive technical matters that warrant a formal investigation with Investigative CPA staff to move forward. Cases that involve administrative violations, such as continuing education deficiencies, practice without a valid permit and unregistered firm names are typically citation and fine matters and do not result in formal discipline. This process change has reduced the volume of non-technical cases referred for formal investigation by ICPAs, thereby allowing the assigned ICPA to concentrate on the more egregious matters.

In past years, it was not uncommon for the CBA to experience difficulty in the prosecution of major cases. Litigation expenses of these matters were extremely costly and required major changes in order to address the problem. In FY 1999/00 the CBA augmented its fiscal year spending authority through the complex deficiency request process. In order to avoid potential delays in prosecuting cases, the CBA secured authority under statute (Business and Professions Code Section 5025.2) starting in 2004 to increase its annual enforcement and litigation expenditure authority by $2,000,000 when necessary for public protection. Since that time, the CBA has experienced minimal difficulty in investigating and prosecuting these high profile matters.

Table 5.1
Investigation Costs

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
	Average Cost for Closed Investigations			
Cost of Investigative CPA & DOI $118,9	49	$88,021	$121,389	$399,309
Number of Cases Closed	95	64	81	243
Average Cost Per Case	$1,252	$1,375	$1,498	$1,643
Cost of Prosecution	$359,468	$733,127	$220,655	$257,351
Cost of Hearings	$16,299	$26,010	$19,859	$12,449
Number of Cases Referred	40	37	27	26
Average Cost Per Case	$9,394	$20,517	$8,907	$10,377
Total Average Cost per Disciplinary Case	**$10,646**	**$21,892**[1]	**$10,405**	**$12,020**

NOTES:
[1] The Cost of Prosecution for FY 2007/08 includes $423,191 for a single major case. If this amount was not included, the Average Cost per Disciplinary Case would be reduced from $21,892 to $10,454.

COST RECOVERY EFFORTS

The CBA's general practice has been, and continues to be, the pursuit of cost recovery where appropriate. All accusations include a plea for awarding costs. In the cases in which cost recovery is ordered but not collected due to a revocation of the license, it is the CBA's policy to require reimbursement of all reasonable costs for violations in which action was taken, should the respondent petition the CBA for reinstatement of the license.

Table 5.2 depicts actual cost recovery in relation to case expenditures. *Potential Cost Recovery Cases* excludes Default Decisions and Stipulations to Revocation. In these instances if the respondent attempts to Petition for Reinstatement, cost recovery efforts will be made. *Total Enforcement Expenditures* are the costs incurred in pursuing the *Potential Cost Recovery Cases* to conclusion. *Cases Recovery Ordered* are those cases which actual costs were ordered or part of the final decision. Actual Cost Recovery Dollars is the total amount collected regardless of the fiscal year the recovery was ordered.

Table 5.2
Cost Recovery Information

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Potential Cost Recovery Cases	28	25	19	17
Total Enforcement Expenditures on Potential Cost Recovery Cases	$327,800	$677,012	$241,379	$199,413
Cases Recovery Ordered	23	24	18	12
Amount of Cost Recovery Ordered	$188,263	$539,315	$164,281	$113,835
Actual Cost Recovery Dollars	**$270,353**	**$474,902**	**$378,546**	**$101,321**

[1]There were 6 revocation/default cases in FY 2009/10. These cases and dollar amounts were not included in either the **Potential or Actual Cost Recovery Cases**. In the event the licensee attempts to reinstate the revoked certificate, cost recovery efforts will be made. The additional 8 cases that were included in the 20 Potential Cost Recovery Cases included several Voluntary Surrender cases and several cases that Stipulated to Revocation. In these instances cost recovery was not ordered however, if the Respondent attempts to Petition for Reinstatement, costs recovery efforts will be made.

RESTITUTION PROVIDED TO CONSUMERS

The CBA's practice is to pursue restitution to consumers on a case-by-case basis, a procedure that has been in place during all prior sunset review periods. The CBA's general policy is that restitution is appropriate when financial harm is identifiable and measurable. Restitution could be ordered in the proposed decision of an ALJ but is more likely to be the product of matters resolved via stipulated settlement.

During the current reporting period, no restitution was made directly by the CBA. However, on the more egregious licensees disciplined, it is not unusual for the licensees to be prosecuted criminally. In these instances, consumer restitution was sought in the criminal prosecution to the fullest extent possible.

ADMINISTRATIVE PENALTIES/MONETARY SANCTIONS

In September 2004, Business and Professions Code Section 5116 became operative, which allows the CBA to order any licensee or applicant for licensure or examination to pay an administrative penalty as part of any disciplinary proceeding. Any licensee who violates any provision of this chapter may be assessed an administrative penalty of not more than five thousand dollars ($5,000) for the first violation and not more than ten thousand dollars ($10,000) for each subsequent violation. In addition, any licensee who violates subdivision (a), (c), (i), (j), or (k) of Section 5100 may be assessed an administrative penalty of not more than one million dollars ($1,000,000) for the first violation and not more than five million dollars ($5,000,000) for any subsequent violation. Administrative penalties may be assessed in conjunction with other disciplinary / enforcement action.

Table 6.1 depicts the *Administrative Penalties/Monetary Sanctions* imposed for the past four-year periods. In FY 2007/08, a $1,000,000 administrative penalty was imposed on a large accounting firm.

Table 6.1
Administrative Penalties/Monetary Sanctions

	FY 2006/07	FY 2007/08	FY 2008/09	FY 2009/10
Amount Ordered	0	$1,020,000	$1,000	$0
Amount Collected	0	$1,000,000	$20,000	$1,000

COMPLAINT DISCLOSURE POLICY

It is the CBA's intent to provide consumers with all information to which they are entitled under the California Public Records Act (CPRA). The table below denotes CBA enforcement related information that is available to consumers under the CPRA.

Consistent with the CPRA, information regarding open or closed complaints and investigations will not be released to the public. If the CBA's investigation substantiates a violation and the CBA takes action by issuing a citation or filing an accusation, the citation or accusation and resulting disciplinary action are matters of public record.

The expanded use of the CBA Web site in recent years has allowed for faster and more efficient consumer access to public documents. The CBA now posts notice of all formal accusations on its Web site with information regarding how to request copies of the charging document. In addition, once disciplinary action against a licensee is final, the CBA provides a summary of the allegations with a link to download a copy of the accusation and final decision.

Table 7.1
Complaint Disclosure Policy

	YES	NO	N/A
Complaint Filed	X		
Citation	X		
Fine	X		
Letter of Reprimand			X
Pending Investigation		X	
Investigation Completed		X	
Arbitration Decision			X
Referred to AG: Pre-Accusation		X	
Referred to AG: Post-Accusation	X		
Settlement Decision	X		
Disciplinary Action Taken	X		
Civil Judgment		X	
Malpractice Decision			X
Criminal Violation:			
Felony		X	
Misdemeanor		X	

CONSUMER OUTREACH, EDUCATION, AND USE OF THE INTERNET

One of the largest areas of emphasis for the CBA in recent years has been Public Affairs and Outreach. This concentration is evident in the creation of the new CBA 2010-2012 Strategic Plan, which contains a goal to provide and maintain effective and timely outreach to all CBA stakeholders.

The CBA is working to achieve that goal through the creation and implementation of its 2010-2012 Communications and Outreach Plan (Plan). The Plan identifies CBA's stakeholders and outlines the goals of the communication efforts to reach and inform each group. These high-level strategies and goals are intended to provide guidance in planning and measuring results of the current and future communications efforts.

In concert with these objectives, the CBA created an Outreach Committee comprised of CBA staff to provide input and resources from across divisions and programs. The Outreach Committee provides the oversight to ensure that planning and executing communications and outreach efforts will be integrated with the goals of the Plan.

The CBA maintains a comprehensive Web site, www.cba.ca.gov, which is updated daily. In May 2009, the CBA acted to make the full text of final enforcement decisions, including the accusation, available to the public via the license look-up feature available on its Web site. A consumer may look up a licensee by name and/or license number, and is provided with all information relevant to the final decision. Individuals without internet access may telephone the CBA to check on the status of a licensee or firm. The CBA also added a customer service survey to its Web site in order to obtain feedback from consumers, licensees, and applicants, and provide helpful input. The survey is a regularly referenced tool to assist in being more responsive to the public, and to ensure the highest level of customer service.

The CBA has worked diligently to facilitate online business with consumers and licensees. Along with the "license lookup" feature, the CBA Web site offers consumers an online complaint form, pamphlets on how to choose a CPA, how to choose a CPA over the internet, and information about the CBA in general.

Examination applicants often utilize the CBA Web site to access the Examination Handbooks, to apply for the Uniform CPA Examination, and to monitor their Client Accounts for examination results.

CPA licensees visit the CBA Web site to review the Continuing Education requirements, the CBA disciplinary guidelines, and to access various forms. Information technology staff are currently working on an online address change form, and it is anticipated the program will be functional within the next six months. The CBA does not currently offer online license renewals for licensees, however it is anticipated that the DCA *BreEZe* program will bring that functionality to the CBA Web site.

In accordance with AB 1005, all CBA meetings are now webcast live on the CBA Web site, and are stored for future viewing. The CBA also posts the approved minutes from each meeting. Further, in order to reduce copying and postage costs and to improve

accessibility of CBA meeting materials, all meeting materials are now available electronically on the Web site for interested parties to download as necessary.

One of the biggest additions to the Web site was the creation of the E-News service. Visitors to the CBA Web site are encouraged to sign up for an E-News subscription, and are e-mailed a link to any important Web site updates or changes. Thanks to the pervasiveness of "New Media," (social networking, blogs, etc.) staff have discovered that CBA's E-News is being "tweeted" by several Twitter users. The Twitter profiles indicate a variety of "tweeters," from individuals in the finance world to CPA Examination applicants. The use of Twitter is a good example of CBA's message "reach" exceeding our initial efforts. As of June 30, 2010 the CBA had approximately 1600 E-News subscribers.

Since the Fall of 1986 the CBA has published a newsletter called *Update.* The *Update* is utilized as a tool to inform licensees of regulation changes, enforcement actions, and other current events at the CBA. In order to increase contact with the licensee public, the CBA has recently increased production from a bi-annual to tri-annual publication.

In order to keep news organizations, and subsequently consumers, appraised of the activities of the CBA, staff has significantly increased the issuance of press releases during FY 2009/10. In FY 2009/10, the CBA issued 25 press releases, up from 12 in FY 2008/09.

In the 2003 Sunset Review Report, there was also a concern raised that tax preparers were outsourcing tax preparations to other countries without the knowledge of the consumer. The CBA sought to address this concern via SB 1543, which added Section 5063.3 to the Accountancy Act. It reads: “In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the licensee shall inform the client in writing and obtain the client's written permission for the disclosure.”

CONCLUSION

This report has been developed to not only meet all statutory reporting requirements reflected in Business & Professions Code Section 473, related to the sunset review process, but to present sufficient information to provide the Legislature with a clear picture of the major program areas within the California Board of Accountancy. The report details legislative, regulatory, programmatic, and administrative changes that have occurred since the CBA's last sunset review report in 2003. It also addresses all issues identified by the Legislature during the last review, as well as the Legislature's recommendations to the CBA.

The CBA would like to conclude this report with a brief discussion of the most significant challenge facing its programs: continued efficacy of its enforcement efforts due to a lack of specialized investigative staffing. As indicated multiple times in this report, due to pay inequities it is becoming increasingly difficult to hire competent CPAs to fill the CBA's vacant Investigative CPA positions. CBA management has reorganized the Enforcement Division to utilize analytical personnel to perform non-technical investigative work; however these staff lack the expertise to review CPA work papers to determine conformance to professional standards. In order to maintain the current level of consumer protection, the CBA is increasingly forced to utilize the services of outside consultants to perform work paper reviews, at a much greater expense to the CBA.

In spite of all the CBA's efforts to mitigate the loss of its technical Investigative CPA staff through the use of alternative enforcement personnel and hiring procedures,

it is clear that there is no alternative that matches the efficiency and effectiveness of in-house Investigative CPAs. It is readily apparent the practice of public accountancy is sufficiently complex that investigator must possess the technical knowledge and maintain a proficiency in accounting principals to be an effective investigator.

The California Board of Accountancy remains committed to its statutory mandate of consumer protection, and looks forward to working with the Legislature in the future to strengthen its programs, as needed, to ensure consumer protection continues unabated.

Any questions related to the California Board of Accountancy 2010 Sunset Review Report should be addressed to the CBA's Executive Office at (916) 562-1718.

PART II

California Board of Accountancy

CBA'S RESPONSE TO ISSUES IDENTIFIED AT PRIOR SUNSET REVIEW, AND NEW ISSUES TO BE PRESENTED

PREVIOUS ISSUE 1: Large Firm Enforcement

The Board continues to encounter problems associated with the policing and disciplining of accountants who work for large public accounting firms and in investigating and prosecuting these types of cases.

Summary of Board Response:

The principal difficulty regarding the investigation and subsequent prosecution of many large accounting firms stemmed from a lack of budget expenditure authority. This was remedied by Senator Figueroa, via SB 1543 of 2004 (Chapter 921). SB 1543 required the Department of Finance to authorize up to $2 million in additional expenditures for the CBA's enforcement and litigation activities.

Discussion:

The CBA is unique in California insofar as it regulates both individuals and firms. The largest firms, known as the "Big Four", are not only some of the largest firms in this state and the United States, but in the entire world. In addition to the Big Four, a significant group of mid-size firms also exist. In their global efforts, the Big Four and mid-size firms may employ CPAs licensed by the 55 U.S. jurisdictions, as well as individuals licensed by other countries. Oversight of large firms, including individuals employed by those firms, presents considerable challenges in budgeting and funding for the extensive, ever-fluctuating investigative and legal resources required to pursue large matters. These barriers are compounded by a cumbersome state contracting process, the necessary acquisition and retention of outside legal resources and technical accounting expertise, lengthy legal procedural timelines, and the consumption of significant internal staff time in meeting all of the requirements of the state's administrative processes and procedures.

Confirming and proving an "audit failure" by a large firm is a rigorous undertaking, and investigations of complex audit engagements can consume several years and cost the CBA millions of dollars. With the chaptering of SB 1543, the majority of the budgetary constraints that the enforcement program once faced have been lifted. However, to meet the challenges of pursuing large matters, the CBA needs ready access to technical consultants on complex accounting issues, and outside legal counsel, as well as a technically proficient staff of Investigative Certified Public Accountants (ICPA)s.

Given the complex technical accounting issues that arise in large firm cases, it is critical that the CBA retain on staff a number of ICPAs who are skilled in both accounting and the nuances of enforcement. Currently, due to pay inequities with the private sector, the Enforcement Program encounters great difficulty attracting and retaining qualified ICPA staff. The CBA is currently working with the Department of Personnel Administration in an effort to address the pay inequities in the civil service classification, and thereby address the class' recruitment and retention issues.

PREVIOUS ISSUE 2: Additional Fining Authority

The Board needs to be granted additional fining authority to deal with violations of the Accountancy Act by larger accounting firms since the current options only provide a fine of not more than $5,000, or for the suspension and/or revocation of the firm's license.

Summary of Board Response:

The CBA was granted increased fining authority with the chaptering of SB 1543. Subsequent to obtaining the increased fining authority, the CBA's Enforcement Program has seen fit to use said authority on a few occasions.

Discussion:

In the former disciplinary structure, no action existed between probation and license suspension/revocations. This structure created challenges when it came to disciplining large firms. Because a single "Big Four" accounting firm can employee thousands of CPAs, and possess a vast client base, revocation, or even suspension, of the firms permit to practice significantly impacts a large number of employees and clients, most of whom have no connection with the violation. The additional fining authority obtained by the CBA helped to address this challenge and provided the CBA with greater flexibility to impose appropriate disciplinary sanctions.

With the addition of B&P Code Section 5116.2, the CBA now employs a two-tiered fining structure. The first tier provides for fines of up to $5,000 for the first violation, and up to $10,000 for subsequent violations. These fines can be imposed on individuals or firms for any violation of the Accountancy Act. The second tier provides for significantly larger fines for violations such as criminal convictions, fraud, gross negligence, fiscal dishonesty, and embezzlement. For these violations, individuals can be fined up to $50,000 for the first violation, and up to $100,000 for repeated violations. Firms can be fined up to $1 million for the first violation, and up to $5 million for subsequent violations. To ensure that fines are assessed in a judicious manner focused on consumer protection, the CBA has adopted regulation that provides criteria for assessing fines, including the extent of consumer harm, and the severity of the violation.

PREVIOUS ISSUE 3: Deletion of Pathway 0 and its Impact on Candidates for Licensure

Substantial changes were made to the licensing requirements on January 1, 2002, including the creation of two new pathways to licensure. There is an indication that a significant number of applicants may be negatively impacted by provisions that prevent them from transitioning to the new requirements and by other changes regarding qualifications for licensure that will change as of December 31, 2005.

Summary of Board Response:

Senate Bill 136 of 2004, chapter 909, extended the sunset date of Pathway 0 from January 1, 2006 to January 1, 2010. It gave CPA candidates who fail the examination the right to re-examine under the provisions of existing law and regulations adopted by the CBA, and repealed the January 1, 2006 sunset date on the law providing for re-examination.

Discussion:

The statutory changes that became effective on January 1, 2002, resulted in significant changes to the education, examination, and experience requirements for licensure as a CPA. Most significantly, California began allowing options for obtaining a CPA license without satisfying an attest experience requirement. Prior to January 1, 2002, the only pathway to licensure (referred to as Pathway 0) required attest experience. With the elimination of Pathway 0 on January 1, 2010, California applicants can now choose from two pathway options for licensure (Pathway 1, and 2). Pathway 1 requires a Baccalaureate degree with a stipulated amount of coursework in accounting and business subjects, and 2 years experience. Pathway 2 requires a total of 150 semester units, including a Baccalaureate degree, and one year of experience. Both pathways to licensure include an option to obtain the authority to sign reports on attest engagements. Pathway 2 is considered consistent with the Uniform Accountancy Act and requirements of many other states.

While the new pathways (Pathway 1 and 2) provided applicants various options for becoming California licensees, there was a concern with applicants meeting all the examination, education and experience requirements to qualify for licensure before the current Pathway 0 was to be eliminated. It was intended by the legislature that few if any applicants be negatively impacted by the transition to the new licensing requirements. Extending the deadline for elimination of Pathway 0 by four more years (January 1, 2010) and permitting Pathway 0 applicants to demonstrate qualifying education when applying for licensure helped ensure that most if not all applicants have had a substantial opportunity to meet the qualifying examination, experience and education requirements to become licensed as a CPA in California.

To further ease any potential negative impact on applicants, the CBA, in anticipation of the January 1, 2010 sunset date, mailed letters to all pending applicants who had previously applied for licensure under Pathway 0 advising them of the impending elimination and outlining the deficiencies needed to complete the application process. In addition, Frequently Asked Questions (FAQs) regarding the elimination of Pathway 0 were posted to CBA's Web site and included in the Winter 2009 issue of *UPDATE.*

PREVIOUS ISSUE 4: Peer Review

It does not appear at this time that the Board should implement a mandatory peer review program in California for accountants.

Summary of Board Response:

In 2005 the CBA issued the *2005 Peer Review Report.* In it, the CBA's Peer Review Task Force recommended delaying the implementation of Peer Review, and recommended reconsidering the issue at a later date. In 2008, the CBA again considered mandatory peer review, and after meetings with the public and various CPA groups, the CBA decided to sponsor Assembly Bill (AB) 138 (Chapter 312, Statutes of 2009), which, on January 1, 2010, implemented a mandatory peer review program in California.

Discussion:

The CBA has examined and considered peer review as a front-line topic since 2000. As noted in the *2003 Sunset Review Report*, the CBA organized a Peer Review Task Force that held public meetings between 2002 and 2003, concluding with an interim peer review report that was folded into the *2003 Sunset Review Report*. The interim peer review report requested additional time to evaluate peer review, and an extension of time to submit a final peer review report in 2005.

Continuing in 2004, and completing in the middle of 2005, the CBA's Peer Review Task Force resumed work on peer review. At the conclusion of the Peer Review Task Force's meetings, the CBA issued its *2005 Peer Review Report*. This report supplemented the 2003 interim report and provided updated information and analysis pertinent to whether peer review should be mandated in California. The 2005 report concluded with a recommendation to delay implementing mandatory peer review and offered several recommendations related to future CBA consideration of peer review.

Between May 2007 and September 2008 the CBA began reexamining the merits of implementing a mandatory peer review program in California and reviewing recommendations outlined in the *2005 Peer Review Report*. During this time the CBA held several public meetings in an effort to pursue potential legislative action in the 2009-10 legislative session. Over the course of these meetings, the CBA evaluated issues that included, among others, participation, program oversight, and program administration. These meetings resulted in the issuance of the CBA's *2008 Peer Review Report* (available at http://www.dca.ca.gov/cba/publications/peer_review2008.pdf). This report outlines the history of the CBA's consideration of peer review, a review of policy issues considered by the CBA during these meetings, and a discussion on the need for mandatory peer review.

As the result of extensive consideration of peer review, the CBA elected to sponsor legislation – AB 138 (Chapter 312, Statutes of 2009) – which, on January 1, 2010, implemented a mandatory peer review program for California. AB 138 requires firms providing audit, attest, or compilation (accounting and auditing) services to undergo a systematic review (peer review) to ensure that work performed conforms to professional standards. Peer review is required for these firms every three years as a condition for license renewal.

The CBA established a phase-in period for undergoing and reporting peer review information. Firms with a license number ending in 01-33 must report peer review-related information no later than July 1, 2011; firms with a license number ending in 34-66 must report peer review-related information no later than July 1, 2012; and firms with a license number ending in 67-00 must report peer review-related information no later than July 1, 2013. Firms receiving a substandard peer review report (in essence a failed grade) will be required to submit the report directly to the CBA. These reports will be reviewed by the CBA's Enforcement Division to determine if CBA action is appropriate.

Peer reviews will be performed by CPAs knowledgeable in generally accepted accounting principles and generally accepted auditing standards. The CBA will use outside organizations, such as the American Institute of Certified Public Accountants Peer Review Program, to assist in the administration of peer reviews. Firms will be required to enroll in a CBA-recognized peer review provider's program, which will work with firms to: select peer reviewers with a currency of knowledge of the professional standards related to the type of practice to be reviewed, review and accept peer review reports, and ensure timely completion of the peer review process. The Firm pays the Peer Reviewer for their services directly, thus ensuring no further administrative costs to the CBA or the licensee.

To ensure the effectiveness of mandatory peer review, AB 138 requires the CBA to establish a Peer Review Oversight Committee (PROC), the purpose of which will be to engender confidence in the peer review program from consumers and the profession. The PROC is authorized to request any information and materials deemed necessary to ensure that peer reviews are administered in accordance with the standards established by the CBA in regulation. The PROC will use these materials when performing peer review program provider site visits and participating in peer review program provider's peer review report acceptance meetings. At its July 2010 meeting, the CBA appointed six of the seven members to the PROC. The CBA anticipates that the PROC will hold its first public meeting in September/October.

The CBA believes that a mandatory peer review program will have significant benefits to the California accounting profession. First, improving the services provided by California-licensed firms. Firms going through the rigor of peer review will be better equipped to perform quality accounting and auditing engagements. In an ever-changing financial climate and with constant updates to generally accepted accounting principles and auditing standards, it is imperative that work products provided to consumers adhere to adopted professional standards. Firms preparing for and undergoing a peer review can refine and improve internal systems to ensure work products meet professional standards, as well as develop and refine the technical skills of their employees.

Second, mandatory peer review will help to increase consumer confidence, which is paramount to a healthy economy, both on a state and national level. In part, this is achieved when consumers feel that firms providing accounting and auditing services do so in accordance with the highest level of professional standards. By requiring peer review, the CBA demonstrates its commitment to enhance the quality of services provided by CPAs and accounting firms, which, in turn, contributes to the public's increased trust in the accounting profession.

Finally, and most importantly, peer review will provide increased consumer protection. Firms meeting minimum professional standards, but that could benefit from increased

education and training, will be required to complete specified remedial or corrective actions, such as continuing education. Firms determined not to have met minimum professional standards will receive substandard reports, which as noted earlier, require submission of the reports to the CBA to determine if CBA action is appropriate.

PREVIOUS ISSUE 5: Outsourcing Tax Returns Over the Internet

Accounting firms are currently outsourcing tax preparation, as well as other accounting and financing information, to other countries and it is unclear what security and disclosure requirements are currently required to assure clients that they are informed about the outsourcing of their confidential financial information and that their financial data is protected.

Summary of Board Response:

Senate Bill 1543 of 2004 added Section 5063.3 to the Accountancy Act. It added the following language: In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the licensee shall inform the client in writing and obtain the client's written permission for the disclosure.

Discussion:

A number of companies solicit independent CPAs, large and small CPA firms and tax preparers to have tax returns prepared overseas. The typical outsourcing agreement involves the use of overseas workers who log on to secure servers based in the United States and retrieve scanned tax documents to complete. Formerly, in California there was a chance that the consumer was not aware of this practice since it was unclear whether CPAs or tax preparers had to disclose by whom the returns were completed. On March 9, 2004 the Senate Business and Professions Committee and the Senate Select Committee on International Trade Policy and State Legislation, both chaired by former Senator Liz Figueroa, held a hearing on the outsourcing of jobs, state contracts, medical, and financial information. According to witnesses who testified regarding the outsourcing of tax returns, general concern was expressed about whether consumers were being properly informed about having their tax information sent overseas. Senator Figueroa subsequently authored SB 1543, in order to mandate that the consumer be informed that their tax information may be sent to another country.

PREVIOUS ISSUE 6: Practice Privilege

Currently, CPAs from other states are allowed to practice in California on a very limited temporary basis, but the Board is unaware of when and the extent to which these CPAs may be performing accountancy work in this State. Also, because of the recent changes in the federal law related to partner rotation, it is anticipated that more CPAs may be required to practice on California on a temporary basis.

This issue was not part of the JLSRC's original recommendations with respect to the CBA's 2003 Sunset Review Report, but arose during the Sunset Review Hearings, and was included in the Final Recommendations for the California Board of Accountancy.

Summary of Board Response:

Acting upon the recommendation of the Joint Committee, the CBA has implemented a Practice Privilege Program in California. Complete discussion of the program, including its sunrise and sunset dates, may be found beginning on page 30 of this 2010 Sunset Review Report.

NEW ISSUE 1: Enforcement Staffing

The CBA works diligently to maintain investigative staffing in its Enforcement Program and actively recruits to fill Investigative CPA positions as vacancies materialize. However, these efforts frequently result in limited success, largely due to the non-competitive compensation package for Investigative CPAs compared to what CPAs can make in private practice, as well as the limited geographic dispersion of the CBA investigative staff. It is an ongoing challenge to adequately staff the Enforcement Division with investigative resources, and the problem is magnified in light of the Department of Consumer Affairs' agenda to reduce investigation processing times.

Discussion:

As discussed previously in this report, the CBA has historically used licensed CPAs to investigate complaints and maintain a high level of consumer protection. These resources have been effective but difficult to recruit and retain as Investigative CPA salaries have not kept parity with compensation available in other civil service classifications and in the private sector. To ensure continued efficacy of CBA enforcement efforts in light of recruitment difficulties tied to the Investigative CPA classification, numerous strategies have been employed over the past few years including:

- Reorganized the Enforcement Program to enable analytical staff to perform non-technical investigations, thereby allowing the Investigative CPAs to concentrate on cases that require their expertise and knowledge.
- Provided continuous civil service examination process for the Investigative CPA classification to reach a larger pool of potential employees.
- Worked with the Department of Personnel Administration to make the total Investigative CPA compensation package more competitive by creating a "recruitment and retention" pay differential.
- Entered into high-cost contracts with CPAs in private practice to assist in investigations.

Still, at the heart of this agency's ability to quickly and efficiently investigate most complaints is a core of seven Investigative CPA positions…and at present, four of those positions are vacant.

The difficulty the CBA has experienced in recruiting for vacant Investigative CPA positions has been well documented in numerous communications with the Department of Consumer Affairs (DCA) and Department of Personnel Administration (DPA) over the past eight years. Since 2002, the CBA has worked with the DCA in a myriad of ways to eliminate the barriers that stand in the way of effective recruitment into this classification.

In response to these efforts, in June 2007 the DCA and the DPA crafted Pay Differential 347, "Certified Public Accountant Retention Bonus" for the Investigative CPA classification. At the time Pay Differential was created, the CBA was informed that changes to the Investigative CPA base compensation would have to be completed through the collective bargaining process, and that the Pay Differential would serve as a stop-gap measure to assist the CBA in recruiting and retaining Investigative CPAs. Essentially, the Pay Differential was thought to be a temporary solution until such time as the underlying pay inequities could be addressed through collective bargaining.

However, in attempting to employ Pay Differential 347 as a recruitment tool, the CBA has become aware of a few problems. Principally, the Pay Differential does not count as base salary, and as such is not counted toward PERS retirement. Secondly, it is difficult for the CBA to advertise, and prospective applicants to understand, a bonus program comprised of two pages of verbiage such as: *"Upon recommendation by the appointing authority, employees in the Investigative Certified Public Accountant classification who have been at the maximum of the salary rate for twelve (12) consecutive qualifying pay periods are eligible for an annual payment of 15% of their current annual base salary payable thirty (30) days following the completion of every twelve (12) consecutive qualifying pay periods up to twenty-four (24) consecutive qualifying pay periods."* Consequently, the CBA has come to believe that for recruitment purposes, simply posting a monthly pay rate on recruitment flyers and advertisements would likely attract a significantly larger group of potential employees than posting information about a pay differential that candidates do not qualify for until they have been employed for a number of years.

In July 2010 the CBA communicated to the DCA its desire that the DPA address the issue of Investigative CPA pay inequity during the collective bargaining process. The CBA is hopeful that the DPA and Service Employees International Union local 1000 will come to an agreement that is beneficial to all parties, thereby enabling the CBA to adequately staff its Enforcement Program and regulate the CBA's 85,000 licensees in order to protect the citizens of California.

NEW ISSUE 2: Creating a Retired License Status

The Accountancy Act does not offer a license status for retirees. Over the past several years, the CBA has received inquiries from licensees requesting a retired license status option, as opposed to "inactive", "delinquent", or "surrendered".

Discussion:

Presently, licensees who wish to retire and no longer renew their license have only two choices available. Licensees may either allow their license to expire and eventually cancel, or they may voluntarily surrender their license. The primary complaint from licensees regarding these options is the negative connotation associated with "cancelled" or "surrendered". Neither of these options indicate that the licensee has elected to retire, but suggest the licensee was subject to some form of discipline. Licensees who have practiced for many years are proud of their service to the profession and believe a "delinquent", "canceled", or "surrendered" status is undignified.

The CBA hosts a Customer Satisfaction Survey on its Web site. Licensees have provided specific comments regarding a retired status, such as:

- Surprised to find out the board does not have a category called retired rather than showing the member as a deadbeat for non payment of membership dues.
- It is not reasonable to require full fees for retirees. Failure to pay fees for a retiree should not result in a "delinquent" status.
- I don't want my file to indicate my certificate was cancelled, but that it is retired.
- I am unhappy I have to pay the same fee as active. There should be a retirement status.

Currently, if a licensee elects not to renew and allow the license to expire, the license status will reflect “delinquent” on the CBA Web site License Look-Up.[3] It will remain delinquent until five years from the license expiration date after which it will reflect “canceled.” Licensees choosing to voluntarily surrender their license must submit a written request to the CBA, and prior to processing the request, staff verifies with the Enforcement Division that the license has not been suspended or revoked, and that there are no pending disciplinary actions or complaints. If a licensee chooses to voluntarily surrender the license, the license status will reflect “surrendered” on the CBA License Look-up.

Between January 1994 and December 1998, the CBA offered a retired option to licensees. This option allowed licensees to request a retired seal that would be affixed to their wall certificate. By requesting a retired seal, licensees were in fact voluntarily allowing their licensees to expire, but were afforded the ability to use the designation “Retired Certified Public Accountant” or “Retired Public Accountant.”

Licensees were no longer allowed to practice public accountancy, but could continue to perform bookkeeping, tax, financial planning, or management consulting as described in Section 5051 (f) through (i) of the Accountancy Act, since these functions did not require individuals to maintain a CPA/PA license. Retired licensees intending to render tax preparation services were required to either register with the Internal Revenue Service as an enrolled agent, or register with the Tax Preparer Program.[4]

The issuance of a retired seal did not affect the status of the license. After the CBA issued a retired seal, licensees simultaneously held a retired seal and an expired license. As with all expired licenses, for a five-year period licensees could reinstate their license to an active or inactive status by paying all applicable license renewal fees, and fulfilling all continuing education (CE) requirements should the license be reinstated to an active status. After the five-year period had elapsed, the license was canceled, though

[3] The CBA Web site License Look-up is a tool consumer and licensees can access to verify the status of a license. License Look-up was established in May 2000. License Look-up did not exist when the retired option was originally offered.

[4] The Tax Preparers Program was regulated by the Department of Consumer Affairs, until the Tax Preparer Program was sunseted in 1997, after which tax preparers were no longer regulated by a state agency. Tax preparers were then required to maintain a bond, complete continuing education and register with the California Tax Education Council.

licensees could continue to display the wall certificate with a retired seal and hold out as a retired licensee.

In 1996 the CBA became aware that some licensees were attempting to avoid disciplinary action by requesting a retired seal while a disciplinary matter or citation was pending. This was a cause for significant concern as the CBA had no legal mechanism to deny or delay the issuance of a retired seal to a licensee with a pending disciplinary matter. Additionally, licensees with revoked licenses were permitted to continue to display their certificate with the retired seal. This appeared inconsistent with the CBA's intent to provide the seal as a positive acknowledgement of licensees' years of service in the profession.

Based on these concerns, the CBA sponsored legislation to eliminate the retired option for licensees, and on January 1, 1999, Business and Professions (B&P) Code Section 5070.1 was repealed. Since that time the CBA has not issued retired seals or permitted licensees to use the designation "Retired Certified Public Accountant" or "Retired Public Accountant." Subsequent amendments to the B&P Code allow a retiring CPA/PA to continue to display the wall certificate, provided the license was not suspended or revoked, and retired licensees may use the CPA or PA designation in a social context, with or without the word "retired." Retirees, however, may not use the CPA or PA designation or perform any activity defined as the practice of public accountancy.

In light of the concerns raised by licensees, in July of this year the CBA began reconsidering a retired license status. The CBA believes that by building on past experience it is possible to create a retired status that is beneficial to all stakeholders. By crafting legislation that allows for a retired status, while still providing a legal mechanism for the CBA to deny a retired status based upon enforcement action, a compromise is possible between the licensees requesting a retired status, and the ability to protect California consumers from CPAs trying to avoid enforcement action.

NEW ISSUE 3: Sunset of the California Peer Review Program

Pursuant to B&P Code Section 5076(o), the California Peer Review Program will sunset on January 1, 2014. B&P Code Section 5076 also requires the CBA to submit a report to the Legislature and Governor on January 1, 2013 detailing the impact of peer review on small business, and the benefit to consumers that utilize those small business services.

Discussion:

The current Peer Review Program will sunset on January 1, 2014. Deleting the sunset date of the Peer Review Program would help protect California consumers because the program is instrumental to the CBA mission to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards. The Peer Review Program is designed to determine whether California firms are following professional standards.

The elimination of the program is troublesome for three reasons:

- In the event a CPA firm receives a substandard peer review report, there will be no way to ensure the corrective actions issued by the CBA recognized peer review provider were effective. If the sunset date were to remain, the firm may not be subject to peer review again.

- Continuing competency is an ongoing process. The Peer Review Program in an instrumental cog in that process, by acting as a check to CPA firms that are already in practice.

- Each CPA firm will only be peer reviewed once, it will be impossible for the CBA to establish and monitor any trend data on peer review passage rates. Any data that is received would not be replicable, and therefore of questionable value.

A healthy Peer Review Program is beneficial to all that are involved. There is an inherent benefit to the licensee firms, as they increase technical knowledge and learn where their areas of weakness are. The program also provides a benefit to the California consumer, as it engenders confidence that the CPA firm they have chosen to perform their audit or attest engagement has been reviewed by another, non-affiliated firm. It is also important to add that 42 other states currently have a Peer Review Program, and most find it to be an invaluable tool to ensure licensee competence.

On January 1, 2013 the CBA must submit to the Legislature and Governor a report outlining the impact of peer review on small business. Due to the highly specific nature of the report, the CBA anticipates that it will take one to two years to gather the necessary data. Unfortunately due to the CBA Regulation staggered reporting requirement, the CBA will have to base its report on information from less than half of the firms subject to peer review reporting requirements. The data returned from such a small sample size may not be indicative of the results should the report be crafted from the entire population. The Legislature and Governor would receive a report with much more reliable data if the due date were extended from January 1, 2013 to January 1, 2016.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item VIII.E.
September 22-23, 2010

To : CBA Members

Date : September 15, 2010

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From : Patti Bowers
Executive Officer

Subject : Consideration of Posting Accusations on the CBA's Web Site

On September 14, 2010, the California Board of Accountancy (CBA) received a copy of a legal opinion (**Attachment 1 w/ cover letter**) solicited by the California Society of CPAs (CalCPA) regarding the posting of accusations on the CBA's Web site. The conclusion of CalCPA's legal opinion is in direct contrast to the legal opinion issued by the Department of Consumer Affairs (DCA) on June 24, 2010 (**Attachment 2**) as well as the DCA legal opinion issued on June 10, 2010, that was distributed in the meeting materials for the September 2010 CBA meeting.

Both of the attached legal opinions answer roughly the same question, which is, "Does Section 5103.5 of the Business and Professions (B&P) Code allow for or prohibit the posting of accusations on the CBA's Web site?" DCA's opinion is that it is allowed; while CalCPA's opinion says that it is prohibited. Additionally, CalCPA's legal opinion also determined that the Director of DCA does not have the authority to post accusations against CPAs on DCA's Web site either.

As the CBA deliberates the issue of posting accusations under this agenda item, it may first want to determine, not whether it should post accusations, but whether it is legal for it to do so. If the CBA determines that it is not legal for it to post accusations, a majority of the remaining portions of this agenda item might not be germane.

The detailed arguments are presented for the CBA to review in Attachments 1 and 2 to this memo, but the following are the summary answers.

> DCA Legal Opinion- "Business and Professions Code section 5103.5 does not limit the CBA's authority to publish a copy of an accusation directly accessible to the public on its website so long as it also complies with the exact requirements of Business and Professions Code section 5103.5."
>
> CalCPA Legal Opinion- "Business and Professions Code §5103.5 does <u>not</u> authorize the California Board of Accountancy to directly post accusations leveled against licensed public accountants on its website. Section 5103.5 only authorizes the Board of Accountancy

> to post notice of accusations on its Internet website. Posting formal accusations on the Board of Accountancy's Internet website would be contrary to the express terms of Section 5103.5."

The CBA is encouraged to review both opinions in full as it is expected that this may be a topic of considerable discussion at its September meeting. Representatives from DCA Legal Affairs will be present at the meeting to answer any questions you may have.

Attachments

1201 "K" Street, Ste. 1000
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www.calcpa.org

September 14, 2010

Attachment 1

Hon. Bill Leonard
Secretary
State and Consumer Services Agency
915 Capitol Mall, Suite 200
Sacramento, CA 95814-2719

Re: **Opinion Concerning Authority of Board of Accountancy and Department of Consumer Affairs to Post Accusations against Licensees**

Dear Secretary Leonard:

As you are aware, the Board of Accountancy ("Board") was recently considering the question of whether it has the authority to post accusations made against licensees on the Board's web site. Subsequent to that discussion by the Board, the Department of Consumer Affairs provided a legal opinion which concluded the Board does in fact have the authority to do so. Shortly thereafter, the Director of the Department of Consumer Affairs ("Department") took action to post pending accusations against licensed certified public accountants on the Department's website.

The California Society of Certified Public Accountants does not believe that either the Board or the Director possesses such authority. Hence, we chose to seek our own opinion from our outside counsel, Nielsen Merksamer LLP. Attached you will find that opinion. The opinion confirms our initial position that no such authority exists.

We are providing this opinion to you because we believe that the analysis prepared by the Department is incorrect and further, that the action taken by the Director was inconsistent with both the law and the policy adopted by the Legislature when it passed AB 1005 of 2009.

Therefore, we are requesting that the Department remove the accusations from its website, and that neither the Board nor the Department post accusations in the future.

Of course, we would be pleased to meet with you, the Director, and the President of the Board to discuss this issue further.

Best regards,

BRUCE C. ALLEN, Director,
Government Relations

cc: Hon. Manual Ramirez, President, State Board of Accountancy
Hon. Fred Aguiar, Deputy Chief of Staff, Office of the Governor
Hon. Mary Hayashi, Chair Assembly Business & Professions Committee
Hon. Marty Block; Hon. Fionna Ma; Hon. Roger Niello, California State Assembly
Hon. Gloria Negrete McLeod, Chair Senate Business Professions & Economic Development Comm.
Brian Stiger, Director Department of Consumer Affairs

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September 8, 2010

CONFIDENTIAL & PRIVILEGED
ATTORNEY-CLIENT COMMUNICATION

TO: California Society of Certified Public Accountants

FROM: Nielsen, Merksamer, Parrinello, Mueller & Naylor LLP

RE: Business and Professions Code § 5103.5

- QUESTIONS:

  1. You have asked whether California Business and Professions Code § 5103.5 gives the California Board of Accountancy the authority to directly post accusations leveled against certified public accountants on its Internet website.

  2. You have asked whether the Director of Consumer Affairs has independent authority to post accusations leveled against certified public accountants on the Department of Consumer Affairs' Internet website.

- CONCLUSIONS:

  1. Business and Professions Code § 5103.5 does not authorize the California Board of Accountancy to directly post accusations leveled against licensed public accountants on its Internet website. Section 5103.5 only authorizes the Board of Accountancy to post notice of accusations on its Internet website. Posting formal accusations on the Board of Accountancy's Internet website would be contrary to the express terms of Section 5103.5.

  2. The Director of Consumer Affairs does not possess the authority to post accusations against licensed public accountants on the Department's Internet website. Taking that step would exceed the Director's statutory authority and

conflict with the Legislature's clear intent with respect to posting accusations against accountants on the Internet.

- ANALYSIS:

1. Business & Professions Code § 5103.5 does not Authorize the California Board of Accountancy to Directly Post Accusations Leveled Against Licensed Public Accountants on its Internet Website. Doing so Would Violate the Clear Language of Section 5103.5 and the Relevant Legislative History.

Section 5103.5 was added to the Business and Professions Code (hereinafter "Bus. & Prof.") by Stats. 2009, ch. 378, § 3 (AB 1005). In its entirety, Section 5103.5 reads:

> (a) The *board shall post on its Internet Web site*, in an easily marked and identifiable location, *notice* of all formal accusations. The *notice* of any formal accusation shall contain a link to where a person *may request and have sent to him or her a copy of the formal accusation*, and the basis for the accusation and alleged violations filed by the board against a licensee.
>
> (b) The link to where a person *may request and have sent to him or her a copy of the formal accusation* shall be clearly and conspicuously located on the *same Internet Web site page on which the notice is posted* and shall authorize a person to request and receive the information described in subdivision (a) by regular mail or electronic mail.
>
> (c) The board shall develop a statement that informs any person *requesting a copy of a formal accusation* and any person receiving a copy of a formal accusation that any allegations contained in the accusation are not a final determination of wrongdoing and are subject to adjudication and final review by the board pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This statement shall be provided to a person requesting and receiving a copy of a formal accusation in a manner to be determined by the board. (Emphasis added.)

The statute is clear and unambiguous. First, what is authorized by Section 5103.5 is clear on its face. The statute authorizes the Board of Accountancy (hereinafter "Board") to post *notice* of any formal accusation. It further requires that the *notice* contain a link to where a person *may request and have sent to them* a copy of the formal

accusation. The link where a person may *request* a copy of the formal accusation must also be located on the same Internet webpage on which *notice* of the accusation is posted. "[I]t is well established that when statutory language is clear and unambiguous there is no need for construction and courts should not indulge in it. This principle is but a recognition that courts must follow the language used and give to it its plain meaning, whatever may be thought of the wisdom, expediency, or policy of the act..." (*Cal. Sch. Employees Ass'n v. Oroville Union High Sch. Dist.* (1990) 220 Cal.App.3d 289, 293-94, citing *In re Waters of Long Valley Creek System* (1979) 25 Cal.3d 339, 348.) "If the language is clear, the statute's plain meaning generally controls." (*People v. Sisuphan* (2010) 181 Cal.App.4th 800, 806, citing *People v. Dieck* (2009) 46 Cal.4th 934, 940.) "If the statute's text evinces an unmistakable plain meaning, we need go no further." (*Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 508.)

Here, Section 5103.5 could not be clearer with respect to what it authorizes the Board to post on its Internet website (notice of accusations and a link where people may request actual copies of the formal accusation) and what it does not (the actual accusation—which would make posting the notice and request link utterly pointless). There is no way to read Section 5013.5 to authorize the Board to post the actual accusations on its Internet website without torturing the unambiguous words of the statute.

A statute should not be interpreted to render some of its words surplusage. Second, a fundamental rule of statutory interpretation is that constructions which render certain words surplusage should be avoided. "It is an established rule of statutory construction that we must presume that every word, phrase and provision used in a statute was intended to have some meaning and to perform some useful office, and *a construction making some words surplusage is to be avoided...courts must avoid interpreting a statute in a way that will make some of its words surplusage.*" (*Roland v. Super. Ct.* (2004) 124 Cal.App.4th 154, 164, emphasis added.[1]) Notice of an accusation

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[1] See also *Sisuphan, supra,* 181 Cal.App.4th at 806 ("[T]he court considers the words of the statute in the context of the statutory framework, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose, and avoiding a construction that renders some words surplusage."); *Cal. Sch. Employees Ass'n, supra,* 220 Cal.App.3d at 293-94 ("[I]t is presumed that every word, phrase and provision used in a statute was intended to have some meaning and to

and the actual accusation itself are mutually exclusive. The actual accusation itself is not notice of that accusation—it is *the* accusation. On the other hand, a notice of an accusation is not the actual accusation, it is only an announcement that an actual accusation has been lodged. As noted above, posting the actual accusations online would render completely meaningless Section 5103.5's requirement that *notice* of accusations along with a link where copies of formal accusations may be *requested* shall be posted online. What would be the purpose of posting *notice* of an accusation if the accusation itself is published online? Likewise, what would be the purpose of providing the opportunity to *request* a copy of an accusation when the accusation itself is readily available? Whatever may be thought of the wisdom, expediency, or policy of Section 5103.5 is not relevant. (*Cal. Sch. Employees Ass'n, supra,* 220 Cal.App.3d at 293-94.) What is relevant is that any attempt to construe Section 5103.5 as authorizing the Board to post actual accusations online would render multiple parts of that code section surplusage—exactly what is forbidden.

Expressio unius est exclusio alterius. Third, a universal maxim of statutory construction is that courts may not add words to a statute that do not exist. "[T]he expression of certain things in a statute necessarily involves exclusion of other things not expressed." (*City of Alhambra v. County of Los Angeles* (2010) 186 Cal.App.4th 537, 554.) "[U]nder the rule of statutory construction, *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another." (*Kirby v. Immoos Fire Protection, Inc.* (2010) 186 Cal.App.4th 1361, 1368.) "[T]he maxim *expressio unius exclusio alterius est*, (*sic*) under which the enumeration of things to which a statute applies is presumed to exclude things not mentioned." (*O'Grady v. Super. Ct.* (2006) 139 Cal.App.4th 1423, 1443.) "There is generally an inference that omissions are intentional.

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perform some useful office, and a construction making some words surplusage is to be avoided."); *Dept. of General Services v. Super. Ct.* (1978) 85 Cal.App.3d 273, 281 ("Statutes are to be construed so as to avoid surplusage, with the presumption that every word, phrase and provision was intended to have some meaning and perform some useful office."); and *Van Nuis v. Los Angeles Soap Co.* (1973) 36 Cal.App.3d 222, 228-29 ("It will be presumed that every word, phrase and provision used in a statute was intended to have some meaning and to perform some useful office, and a construction making some words surplusage is to be avoided.").

This rule is based on logic and common sense." (Sutherland, *Statutes and Statutory Construction* (7th ed. 2007) vol. 2A, § 47.25, p. 430-31.)

Section 5103.5 expresses in precise terms what information relative to accusations against accountants may be posted on the Board's Internet website: (1) notice of such accusations, and (2) a link to where the public may request a copy of an actual accusation. By including two specific items in Section 5103.5 that may be posted on the Board's Internet website, the Legislature clearly signaled that it was fully aware of how to include, and exclude, particular items that would be authorized by Section 5103.5 to be posted online. (See Sutherland, *supra*, noting that omissions are presumed intentional.) Section 5103.5 enumerates two things that may be posted on the Board's website. That necessarily involves exclusion of other things not expressed (*City of Alhambra*), excludes other things (*Kirby*), and creates a presumption that things not mentioned are excluded (*O'Grady*). Reading Section 5103.5 as authorizing the Board to post actual accusations on its Internet website would impermissibly add words to the statute that do not exist. That others might prefer a policy which authorizes the Board to post the actual accusations on its website is beside the point. That was not the policy adopted by the Legislature.

Although the language of Section 5103.5 is clear, the legislative history further demonstrates that the Legislature considered, and then rejected, authorizing the Board to post actual accusations on its Internet website.[2] Fourth and perhaps most important, a review of Section 5103.5's legislative history demonstrates that interpreting Section 5103.5 as permitting the Board to post actual accusations online would be completely anathema to its legislative intent. "The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent." (*SJP Limited Partnership*

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[2] When statutory language is clear and unambiguous, as is the case with Section 5103.5, there is generally no need to resort to legislative history: "Words used in a statute should be given the meaning they bear in ordinary use. If the language is clear and unambiguous there is no need for construction, *nor is it necessary to resort to indicia of the intent of the Legislature*." (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 316, emphasis added.) However, should any doubt or disagreement remain over the import of Section 5103.5, reference to its legislative history appears to conclusively settle the issue regarding its scope and impact.

v. City of Los Angeles (2006) 136 Cal.App.4th 511, 517.) "As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose." (*American Nurses Assn. v. O'Connell* (2010) 185 Cal.App.4th 393, 405; *People v. Hernandez* (2009) 177 Cal.App.4th 1182, 1188; *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147; *People v. Ringo* (2005) 134 Cal.App.4th 870, 883; *People v. Garrett* (2003) 92 Cal.App.4th 1417, 1422; *Desert Healthcare Dist. v. PacifiCare FHP, Inc.* (2001) 94 Cal.App.4th 781, 788.) "Our fundamental task in statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." (*Communications Relay Corp. v. County of Los Angeles* (2005) 130 Cal.App.4th 162, 166.) "In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." (*City of San Jose v. International Assn. of Firefighters, Local 230* (2009) 178 Cal.App.4th 408, 424.) "The fundamental rule of statutory construction is that the court should ascertain the legislative intent so as to effectuate the purpose of the law." (*County of Fresno v. Clovis Unified Sch. Dist.* (1988) 204 Cal.App.3d 417, 426.)

A brief review of AB 1005's legislative history unquestionably indicates that the Legislature considered the idea of authorizing the formal accusations to be posted online, rejected that proposal, and instead decided to only authorize notice of accusations to be made available on the Board's Internet website. As introduced on February 27, 2009, section 3 of AB 1005 added Bus. & Prof. Code § 5103.5 to state:

> 5103.5. The board shall post on its Internet Web site *notice* of all formal accusations filed by the board against a licensee. (Emphasis added.)

Then on April 20, 2009 AB 1005 was amended to require the actual accusation against an accountant to be posted on the Board's website. Section 3 of the April 20, 2009 version of AB 1005 reads as follows:

> ~~5103.5. The board shall post on its Internet Web site notice of all formal accusations filed by the board against a licensee.~~
> *5103.5. The board shall post on its Internet Web site, in an easily marked and identifiable location, <u>all formal accusations</u>, including the basis for the accusation and alleged violations filed by the board against a licensee.*
> (Underscoring added, strikeouts and italics in original.)

As noted in the April 27, 2009 Assembly Committee on Business and Professions analysis of the April 20 version of AB 1005, the bill "require[d] the California Board of Accountancy to publish on its website *documents related to pending disciplinary accusations*."[3] (Emphasis added.) However, the April 27, 2009 committee analysis also noted opposition to the amendments to Bus. & Prof. Code § 5103.5, indicating that the California Society of Certified Public Accountants expressed that the organization was

> concerned that posting the accusations will have irreparable impact on the ability of the CPA to make a living even if the allegations contained in the accusation are dismissed. This is not an unprecedented occurrence as in the last decade at least 9 accusations did not result in discipline and in uncounted instances the allegations were modified in some way. To tarnish the reputations of CPAs who have not been afforded due process is unconscionable and serves no valid consumer protection purpose. (Assem. Com. on Bus. & Prof., Rep. on AB 1005 (2009-10 Reg. Sess.) as amended April 20, 2009.)

Tellingly, the next amended version of AB 1005 did away with the authorization to post actual accusations online and reverted to the initial version of Bus. & Prof. § 5103.5 which only permitted *notice* of accusations to be posted to the Board's Internet website. As amended on April 30, 2009, section 3 of AB 1005 stated:

> 5103.5. The board shall post on its Internet Web site, in an easily marked and identifiable location, *notice of* all formal accusations. *The notice of any formal accusation shall contain a link to where a consumer can request and have sent to him or her a copy of the formal accusation*, including the basis for the accusation and alleged violations filed by the board against a licensee. (Emphasis in original.)

AB 1005 was amended again on July 8 and on July 16 before it was enrolled on September 9, 2009 and signed by the Governor on October 10, 2009. However, never again was Section 5103.5 amended to authorize the Board to post the actual accusations against accountants on its Internet website. All subsequent versions, including the version signed into law, adhered to the framework of only permitting *notice* of such accusations to be posted online.

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[3] http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1001-1050/ab_1005_cfa_20090427_100001_asm_comm.html. (Accessed Aug. 27, 2010.)

As explained above, the "fundamental task" of statutory interpretation is to "determine the Legislature's intent," "ascertain and effectuate the legislative intent," and "ascertain the intent of the lawmakers so as to effectuate the purpose of the law." There is no way to reconcile that duty with a finding that Section 5103.5 authorizes the Board to post the actual accusations on its Internet website. The legislation was born as only authorizing posting notices of accusations, grew to authorize posting of actual accusations, and then after opposition to that approach, matured into a final form that explicitly rejected posting the *actual* accusations in favor of posting only *notice* of accusations and a link where the actual accusations could be *requested*. A clearer and more express manifestation of legislative intent is difficult to imagine. AB 1005 started with option #1 (posting notice), temporarily contemplated option #2 (posting accusations), and then rejected option #2 in favor of option #1 in the version of the bill that was ultimately adopted into law. Any interpretation of Section 5103.5 that elevates option #2 would be in direct opposition to AB 1005's express legislative intent.

The Department of Consumer Affairs/Division of Legal Affairs opinion is based on a flawed analysis. The Department of Consumer Affairs' Division of Legal Affairs issued a memorandum (hereinafter "DCA opinion"), dated June 24, 2010, which concluded that Section 5103.5 does not in fact prohibit the Board from posting actual accusations online as long as the Board "complies with the exact requirements" of Section 5103.5. (DCA Op., at p. 1.) That conclusion is based on a flawed analysis.

First, the DCA opinion is internally inconsistent and leads to an illogical result. Citing *Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 484-85, the DCA opinion states that "<u>The language employed in section 5103.5 is not ambiguous or subject to different interpretations</u>. Consequently, if the statutory language is unambiguous, we presume the Legislature meant what it said and the plain meaning of the statute governs." (DCA Op., at p. 5, underscoring added.) Furthermore, citing *People v. Belleci* (1979) 23 Cal.3d 879; *People v. Haney* (1984) 156 Cal.App.3d 109; and *San Mateo Co. v. Booth* (1982) Cal.App.3d 388, the DCA opinion concedes that "<u>If the language is clear and unambiguous, then it is not necessary to engage in further construction</u>; it merely applies the statute as expressed." (DCA Op., at p. 3, underscoring added.) However, the DCA opinion starts out by stating that "<u>it is necessary to employ the rules of statutory construction</u> to further understand the statutory requirements or limitations." (DCA Op., at p. 2, underscoring added.) As a result, the DCA opinion

violates the very rules of statutory construction that it seeks to rely upon. The DCA opinion states that (1) the language employed in Section 5103.5 is "not ambiguous or subject to different interpretations," and (2) when language is clear and unambiguous it is not necessary to engage in further construction, but (3) despite the fact that the language is clear and statutory construction is not to be applied to clear, unambiguous language, it is necessary to employ statutory construction. Abiding by the very rules it references, the DCA opinion should have recognized that, since the language is clear and unambiguous there is no need to resort to statutory construction—and that doing so could only lead to tortured, biased, and/or inconsistent results.[4]

Second, the DCA opinion's reliance on, and reference to, the Public Records Act (Gov. Code § 6250 et seq.) is misplaced. First, the DCA opinion incorrectly assumes that Bus. & Prof. Code § 5103.5 and the Public Records Act (hereinafter "PRA") "must be read together and harmonized" because Section 5103.5 involves the process for disclosing certain documents; i.e., accusations against licensed accountants—and that this in some way means that online publication of formal accusations is authorized by Section 5103.5. (DCA Op., at p. 4.) However, only statutes that are actually in potential conflict generally need to be harmonized. "[W]here possible, courts harmonize *potentially*

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[4] Additionally, the statement in the DCA opinion that Section 5103.5 "contains no language that restricts or otherwise limits the [Board's] *inherent authority* to provide access to public records, including accusations" (emphasis added) is apparently based on the false proposition that the Board in fact possesses *inherent authority*. (DCA Op., at p. 3-4.) As a statutorily-created body, the Board possesses no *inherent authority*—it must have express statutory authority to act. Without express legislative authority to post formal accusations on its Internet website, the Board has no *inherent authority* to fall back on that could even arguably permit it to do so on its own. "The fundamental principle governing the exercise of authority by administrative agencies is that they are of *limited jurisdiction* and have *only* such powers as are *expressly conferred by statute* or may be reasonably implied to carry out *express authority*." (*35 Ops.Cal.Atty.Gen.* 85, 86, emphasis added.) "[T]he [state agency] may exercise only such additional powers as are necessary for the due and efficient administration of the powers *expressly granted* or as may be fairly implied from the *granted powers*. Since the [state agency] was created by and derives its powers from the Legislature, *it does not have rights which are superior to the legislative will*." (*Calif. Toll Bridge Auth. v. Kuchel* (1952) 40 Cal.2d 43, 53, emphasis added.)

conflicting statutes." (*Strother v. Calif. Coastal Com.* (2009) 173 Cal.App.4th 873, 876, emphasis added.) "The fundamental test as to whether statutes are in conflict with each other is the legislative intent. If it appears that the statutes were designed for different purposes, they are not irreconcilable, and may stand together." (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 594 n. 10; *People v. Lustman* (1970) 13 Cal.App.3d 278, 288; *Rudman v. Super. Ct.* (1973) 36 Cal.App.3d 22, 27; *People v. Ross* (1972) 25 Cal.App.3d 190, 193-94.) The PRA deals generically with the disclosure of government documents. Section 5103.5 deals solely with the disclosure of one very specific type of document—formal accusations against licensed accountants. There is nothing in Section 5103.5 itself or in the legislative history of AB 1005 that suggests a conflict between the PRA and Section 5103.5. Without an actual or potential conflict, harmonization should not be undertaken just for harmonization's sake.

Furthermore, even assuming arguendo that a conflict did exist, the proper way to resolve it would be for the later enacted, more specific Section 5103.5 to control over the PRA in the limited area of accusations against accountants. "[L]ater enacted statutes ordinarily control over previously enacted statutes." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 908; *In re Michael G.* (1988) 44 Cal.3d 283, 293.) "[A] later enacted provision will usually control over an earlier enacted provision." (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1188.) "A specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates." (*Woods v. Young* (1991) 53 Cal.3d 315, 325; *People v. Tanner* (1979) 24 Cal.3d 514, 521.) "[T]he general principle of statutory construction [is] that a specific provision relating to a particular subject prevails over a general provision on that subject." (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 587.) "[A] more specific statute controls over a more general one..." (*Lake v. Reed* (1997) 16 Cal.4th 448, 464; *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 992.) "[T]he more specific statute controls over the more general." (*Prudential Reinsurance Co. v. Super. Ct.* (1992) 3 Cal.4th 1118, 1148.) "[I]t is well established that a specific provision prevails over a general one relating to the same subject." (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 942.) Section 5103.5, enacted in 2009, came later in time than the PRA, enacted in 1968. Section 5103.5, applying only to the disclosure of accountant accusations, is far more specific that the PRA, which applies to general governmental

disclosures. Any conflicting authorizations between the two must be resolved in favor of Section 5103.5.

In addition, the DCA opinion makes at least two other erroneous observations about the PRA. First, the DCA opinion ignores the fact that the PRA is actually very sensitive to privacy concerns. The DCA opinion states that pursuant to the PRA, "there is a strong public policy favoring the disclosure of public records…the Legislature has declared that access to public records is a 'fundamental and necessary right'." (DCA Op., at p. 4.) That may be a true statement, but it only tells half the story. The PRA was never intended to run roughshod over important individual privacy concerns. "[A] narrower but no less important interest [of the PRA] is the privacy of individuals whose personal affairs are recorded in government files." (*Rogers v. Super. Ct.* (1993) 19 Cal.App.4th 469, 476; *CBS v. Block* (1986) 42 Cal.3d 646, 651.) "In the formulation of a statutory policy governing disclosure of citizen complaints, public concern extends to the alleged wrongdoer as well as the alleged victim. Many a reputation has been lost, many a life damaged, by unfounded accusations of wrongdoing. The public has an ethical interest in protecting private reputations against notoriety emanating from 'crank' or malicious accusations."[5] (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653.)

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[5] Moreover, although access to public records may be a 'necessary and fundamental right,' the DCA opinion gives no consideration to important constitutional privacy rights. Cal. Const., art. I, § 1 guarantees all Californians a right of privacy. Although that right is not absolute, California courts have consistently held that one of the "mischiefs" that Article I, § 1 seeks to remedy is "the lack of a reasonable check on the accuracy of existing records." (*White v. Davis* (1975) 13 Cal.3d 757, 775; *Richards v. Super. Ct.* (1978) 86 Cal.App.3d 265, 273; *Mullaney v. Woods* (1979) 97 Cal.App.3d 710, 721 n. 12; and *Stackler v. Dept. of Motor Vehicles* (1980) 105 Cal.App.3d 240, 247.) That "mischief" is certainly a possibility in the instant case, where the information merely concerns *accusations* of misconduct, and Section 5103.5(c) itself recognizes that such accusations "are not a final determination of wrongdoing." The fact that the Legislature may legitimately determine that, under certain conditions, the need for public disclosure outweighs any countervailing privacy interest (see Bus. & Prof. Code § 2027, requiring online posting of accusations against physicians and surgeons) does not give the Board the right to make such a determination on its own.

Second, the DCA opinion incorrectly asserts that "formal accusations are not explicitly identified as exempt from disclosure under the PRA." That is simply not the case. *Black Panther Party v. Kehoe, supra,* 42 Cal.App.3d at 650-55 held that the Department of Consumer Affairs has discretion to exempt from disclosure records of complaints pursuant to Gov. Code § 6254(f)—which states that records of complaints compiled for licensing purposes may be exempted.

Stated succinctly, there is no way to read Section 5103.5, whether in isolation or in conjunction with the PRA, in a manner that would provide authorization to the Board to post formal accusations against licensed accountants on its Internet website. To the contrary, posting formal accusations against licensed accountants on the Board's Internet website would violate the express terms of Section 5103.5, frustrate the clear legislative intent expressed in AB 1005, and run in opposition to long-settled rules of statutory interpretation.

2. Without an express grant of legislative authority to post accusations online, the Director of Consumer Affairs cannot exercise powers over the accounting profession that have been expressly denied to the Board of Accountancy.

The Board of Accountancy, not the Director of Consumer Affairs[6] (alternatively "Director"), is the administrative body directly charged with regulation and control of the practice of accountancy in California. "The State Board of Accountancy, [is] the public

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[6] Like the Board of Accountancy, the office of Director of Consumer Affairs is a statutorily-created position. (See Bus. & Prof. Code § 150.) Also similar to the Board, the Director of Consumer Affairs lacks any inherent authority and must have express statutory authority to act. "Administrative agencies only have the power conferred upon them by statute and *an act in excess of these powers is void.*" (*Rich Vision Centers, Inc. v. Bd. of Medical Examiners* (1983) 144 Cal.3d 110, 114; *Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4th 626, 635. Emphasis added) "In the grants of powers and in the regulation of the mode of exercise, there is an implied negative; an implication that no other than the expressly granted power passes by the grant; that it is to be exercised only in the prescribed mode." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196.) "An administrative agency must act within the powers conferred upon it by law and may not act in excess of those powers." (*American Federation of Labor v. Unemp. Insurance Appeals Bd.* (1996) 13 Cal.4th 1017, 1042.)

agency charged with administering the regulatory scheme governing the profession of public accountancy in California (Bus. & Prof. Code § 5000 et seq., commonly known as the Accountancy Act)." (*Moore v. Calif. State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1003.) The Board, whose members are independently appointed by the Governor and the Legislature,[7] also predates the Director of Consumer Affairs by several decades. "California's first entry into the regulation of the [accountancy] profession came in 1901, when the Legislature established a five-member State Board of Accountancy, and vested in it the power to examine applicants, and grant certificates of qualification to practice public accountancy. (Stats. 1901, ch. 213, p. 645.)" (*Moore, supra,* 2 Cal.4th at 1010.) On the other hand, the precursor to the Director of Consumer Affairs, the Director of Professional and Vocational Standards, was not created until 1937.[8] (*62 Ops.Cal.Atty.Gen.* (1979) 258, 262.) Furthermore, the independence and autonomy of the boards comprising the Department of Consumer Affairs is well-documented. As stated by the Attorney General, "the Director of the Department of Consumer Affairs has *general* authority over the boards and bureaus comprising the Department of Consumer Affairs which he controls, *but that does not dilute the ability of each of the component boards and bureaus to function independently* in fulfilling its statutory charge…[the Director has] *limited authority* with respect to formulating their policies." (*63 Ops.Cal.Atty.Gen.* (1980) 777, 792, emphasis added.) This point has been recognized by the courts as well:

> Each of the boards comprising the department *exists as a separate unit*, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board. Bus. & Prof. Code § 109 further provides in part that "[t]he decisions of any of the boards comprising the department with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, *are not subject to review by the director*, but are final within the limits provided by this code which are applicable to the particular board." (*People ex rel. Lockyer*

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7 Bus. & Prof. Code § 5000.

8 Stats. 1937, ch. 399, p. 1233.

> *v. Super. Ct.* (2004) 122 Cal.App.4th 1060, 1079, citing Bus. & Prof. Code §§ 108 and 109; emphasis added.)

In addition to those cited in *People ex rel. Lockyer*, other statutory provisions in the Bus. & Prof. Code make clear the primacy of the various boards in regulating professional conduct. This point is summed up in Bus. & Prof. Code § 101.6, which states

> The *boards*, bureaus, and commissions in the department *are established for the purpose of ensuring* that those private businesses and *professions* deemed to engage in activities which have potential impact upon the public health, safety, and welfare *are adequately regulated* in order to protect the people of California.
>
> To this end, they *establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate* upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, *or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances* by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public *and institute disciplinary action against persons licensed or registered under the provisions of this code* when such action is warranted. In addition, *they conduct periodic checks of licensees*, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code. (Emphasis added.)

With respect to the statutes governing the accounting profession, the authority granted to the Board of Accountancy is nearly plenary. Bus. & Prof. Code § 5103(a) gives the Board of Accountancy, "*[n]otwithstanding any other provision of law*," the power to "inquire into *any* alleged violation" of the accounting profession. (Emphasis added.) Further, the Board is empowered to prescribe, amend, or repeal rules of professional conduct;[9] prescribe rules for continuing education;[10] issue permits to practice public

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[9] Bus. & Prof. § 5018.

[10] Bus. & Prof. § 5027.

accountancy;[11] deny accountancy practice privileges;[12] revoke, suspend, or refuse to renew any permit, certificate, or license;[13] issue subpoenas;[14] report to the Legislature;[15] deny examination applications;[16] order the payment of administrative penalties;[17] and petition the courts for injunctions,[18] among other powers. The Board is also financially independent from the Director. All money in the Accountancy Fund is appropriated to the Board—not to the Director.[19]

As explained above in Question #1, the Legislature recently considered authorizing the agency directly responsible for the regulation of the accounting profession—the Board—to post formal accusations against accountants on its Internet website. The Legislature ultimately decided to deny that authority to the Board in favor of permitting the Board to simply post notice of such accusations. To assume that the Director, with more limited and indirect authority over the accounting profession, somehow nonetheless wields a power that has been explicitly denied to the Board would turn the statutory scheme on its head. Regardless of what precise powers the Director may or may not possess in relation to the accounting profession, or any profession regulated by a board within the Department of Consumer Affairs (hereinafter

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11 Bus. & Prof. § 5070.

12 Bus. & Prof. § 5096.2.

13 Bus. & Prof. §§ 5050.2, 5100, 5101.

14 Bus. & Prof. § 5108.

15 Bus. & Prof. § 5109.5.

16 Bus. & Prof. § 5110, 5112.

17 Bus. & Prof. § 5116.

18 Bus. & Prof. § 5122.

19 Bus. & Prof. § 5133.

"Department"), at the very most they can be no greater than those held by the Board of Accountancy absent an explicit legislative grant of authority to the contrary—which is not the case here.

The inevitability of this conclusion is confirmed by similar statutory structures. For example, Gov. Code § 13978 gives the Secretary of Business, Housing, and Transportation far greater authority over the sub-agencies and departments within the Business, Transportation, and Housing Agency than the State and Consumer Services Secretary or the Director of Consumer Affairs possess over their respective sub-departments and boards. Gov. Code § 13978 states that

> The secretary has the power of general supervision over, and is directly responsible to the Governor for, the operations of each department, office, and unit within the agency. The secretary may issue such orders as the secretary deems appropriate to exercise any power or jurisdiction, *or to assume or discharge any responsibility, or to carry out or effect any of the purposes vested by law in any department in the agency.* (Emphasis added.)

Even though Section 13978 gives the Secretary of Business, Housing, and Transportation far greater authority than that held by the Director of Consumer Affairs, it still limits the Secretary's authority to those that are statutorily granted to the subordinate agencies. Section 13978 authorizes the Secretary to assume, discharge, or carry out responsibilities *vested by law in any department in the agency*—it does not authorize the Secretary to assume, discharge, or carry out any authority *in excess of* those vested in any department in the agency. Even if the Director of Consumer Affairs had similar broad authority to that granted in Gov. Code § 13978 (which he does not), posting formal accusations on the Department's Internet website would exceed that authority because he would be usurping a power that the Legislature consciously withheld from the Board of Accountancy. Administrative authority cannot be recognized if it would, as in this case, conflict with other statutory directives. (*American Federation of Labor v. Unemp. Insurance Appeals Bd.* (1996) 13 Cal.4th 1017, *87 Ops.Cal.Atty.Gen.* (2004) 102, 107.) Here, the Legislature has withheld the power to post formal accusations against accountants on the Internet. Any action that contravenes that position, expressly denied to the agency

principally charged with regulating the accounting profession, whether such action is undertaken by the Board or the Director, cannot withstand scrutiny.[20]

Any prior general authority granted to the Director must yield to the recent, explicit requirements of Section 5103.5. As stated by the Attorney General, above, the Legislature has granted the Director a degree of *general* authority over the boards and commissions that make up the Department of Consumer Affairs—albeit not to the point where the independence of the various boards and bureaus is diluted.[21] (*63 Ops.Cal.Atty.Gen., supra,* at 792.) However, the recent enactment of Section 5103.5 established *specific* rules and requirements for the posting of information about accusations against licensed accountants on the Internet. Longstanding and well-settled rules of statutory interpretation compel that the generic powers granted to the Director must yield to the specialized command of Section 5103.5. As is the case vis-à-vis the Public Records Act, the newer, more precise restrictions contained in Section 5103.5

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[20] Although not directly dealing with the accounting profession, it is worth noting that just this year the Legislature declined to give the Director authority to post health professional accusations online. Section 40 Senate Bill 1111 (Negrete McCloud) contained an expression of legislative intent that the Department should create an electronic system where healing arts license information and "enforcement cases" against healing arts professionals could be tracked and updated. The bill failed in the Senate Business, Professions, and Economic Development Committee on April 22, 2010. (http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1101-1150/sb_1111_vote_20100422_000006_sen_comm.html.) To date, there has been no evidence of legislative support for authorizing the Director and/or the Department to post accusations against licensed professionals on the Internet.

[21] It is noteworthy that while the Director has been granted a degree of general authority over the boards within the Department, the Legislature has provided the Director with very little independent authority over professional licensees that are regulated by the various boards. Bus. & Prof. Code § 310(d) authorizes the Director to investigate "matters affecting the interests of consumers," but that generic grant of authority appears to be limited somewhat by Bus. & Prof. Code §§ 153 and 155(c), which only authorize the Director to investigate the "work of the several *boards* in his department" and to request the Division of Investigation to investigate "any officer or employee *of a board*." (Emphasis added.)

would control over any general grants of authority to the Director. "[L]ater enacted statutes ordinarily control over previously enacted statutes." (*Sherwin-Williams Co., supra,* 4 Cal.4th at 908; *In re Michael G., supra,* 44 Cal.3d at 293.) "[A] later enacted provision will usually control over an earlier enacted provision." (*Howard Jarvis Taxpayers Assn., supra,* 106 Cal.App.4th at 1188.) "A specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates." (*Woods, supra,* 53 Cal.3d at 325; *Tanner, supra,* 24 Cal.3d at 521.) "[T]he general principle of statutory construction [is] that a specific provision relating to a particular subject prevails over a general provision on that subject." (*Cumero, supra,* 49 Cal.3d at 587.) "[A] more specific statute controls over a more general one..." (*Reed, supra,* 16 Cal.4th at 464; *Murillo, supra,* 17 Cal.4th at 992.) "[T]he more specific statute controls over the more general." (*Prudential Reinsurance Co., supra,* 3 Cal.4th at 1148.) "[I]t is well established that a specific provision prevails over a general one relating to the same subject." (*Pacific Lumber Co., supra,* 37 Cal.4th at 942.)

Assuming arguendo that the Director did possess the implied authority to post formal accusations against accountants on the Internet prior to the enactment of Section 5103.5—which is not at all certain, to say the least—that authority would be deliberately limited by the recent adoption of Section 5103.5's precise, explicit directives with respect to posting formal accusations against accountants on the Internet. This is not to say that Section 5103.5 necessarily diminishes the Director's preexisting authorities, whatever they may be, in any other respect. However, on the specific issue of posting formal accusations against accountants on the Internet, Section 5103.5 has carved out a precise exception to any and all other general rules on the subject that neither the Board nor the Director may ignore.

Posting formal accusations against accountants on the Department's Internet website by the Director would violate the express legislative intent of AB 1005. On a related but no less important point, as painstakingly described under Question #1, the Legislature recently considered the issue of posting accusations against accountants on the Internet when in enacted AB 1005 (Stats. 2009, ch. 378, § 3). The Legislature initially only sought to post *notice* of such accusations on the Internet, then contemplated requiring the *actual* accusations to be posted on the Board's Internet website, and finally settled on the original policy of only authorizing *notice* of accusations to be posted online. Although that legislative bill was directed at the Board and not the Director, the

legislative intent could not be clearer—the Legislature considered and then rejected the idea of posting actual accusations on the Internet in favor of only posting notice of accusations online. The thrust of AB 1005 and Section 5103.5 is obviously directed much more towards *what* type of information should be posted on the Internet than on *who* should be posting information on the Internet. Given that fact, the posting of accusations by the Director would be no less of an affront to the express legislative will found in Section 5103.5 than if the Board itself attempted to do so.

We hope this memorandum answers your question. If you have any additional questions, please feel free to contact us at your convenience.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item VIII.E.
September 22-23, 2010

To : CBA Members

Date : September 14, 2010

Telephone : (916) 561-1792
Facsimile : (916) 263-3678
E-mail : mstanley@cba.ca.gov

From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Consideration of Posting Accusations on the CBA's Web Site.

On January 1, 2010, AB 1005 of 2009 became law. The portion of the law that is most familiar to CBA members is the part that instituted Webcasting of CBA meetings. However, there were other parts of this law that also dealt with transparency issues such as the posting of the CBA's minutes and providing notice of filed accusations (see relevant portion of the law in **Attachment 1**).

AB 1005 was introduced only one month following the CBA's first discussion of posting accusations at its January 2009 meeting at which the CBA decided to not post accusations. Due to some objectionable legislative intent language, the CBA took an Oppose position on AB 1005 at its March 2009 meeting.

Staff was contacted by the author's office to determine if a compromise would be possible to eliminate the CBA's opposition. The result was the final version of AB 1005, requiring the posting of notice of accusations (rather than the full accusation, which was in an early version of the bill), which was Supported by the CBA. When this portion of the law was discussed, staff and the author's office agreed that supplying the accusation upon request would satisfy the full requirement of Section 5103.5(a).

When implementing this law, staff consulted with DCA Legal Counsel and was informed that supplying the accusation upon request would fulfill the requirement, and staff implemented the new law with an eye to this interpretation. Yesterday, however, DCA Legal Counsel reconsidered its interpretation and is now stating that the "basis for the accusation and alleged violations filed by the board against a licensee" must be posted on the CBA's Web site.

The original interpretation was based on the view that "a person may request and have sent" two things, the formal accusation and the basis for the accusation. The reconsidered interpretation is that "the notice of any formal accusation shall contain" two things, the link to where a person can request the formal accusation and the basis for the accusation.

Barring other direction from the CBA, staff will begin implementing this revised interpretation in October.

Attachment

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA AGENDA ITEM VIII.E.
SEPTEMBER 22-23, 2010

To : CBA Members

Date : September 14, 2010
Telephone : (916) 561-1731
Facsimile : (916) 263-3673
E-mail : msantaga@cba.ca.gov

From : Rafael Ixta
Chief, Enforcement Division

Subject : **CONSIDERATION OF POSTING ACCUSATIONS ON THE CBA's WEB SITE**

Background

The issue of posting accusations on the California Board of Accountancy Web site has been under consideration by the CBA since January 2009.

A summary of CBA discussions and related information regarding this issue is attached for your reference. (See **Attachment 1**)

Issues

The summary of CBA discussions indicates that there are two issues to consider regarding the posting of accusations documents.

1. Due process prior to the filing of an accusation.

2. Should accusations filed by the CBA be posted on the CBA Web site?

To assist you, attached are two separate discussion papers prepared by staff that provide information and options for consideration. (See **Attachments 2 and 3**)

Additional considerations

Attached is a letter received from the Institute of Chartered Accountants (See **Attachment 1L**). The letter is being provided so that it may be considered in deliberation of this topic.

As you deliberate these issues, please keep in mind that if implemented, some of the proposed options regarding due process will have an impact on investigative timelines and costs. In addition, implementation may not be immediate if statute or regulation changes are necessary.

RI:mls

Past CBA Discussions and Historical Information –
Posting Accusations on CBA Web Site

August 2001 – The California Board of Accountancy (CBA) begins to post "Accusation filed" in License Look up on the CBA Web site. Consumers are required to contact CBA for a copy of the accusation.

November 4, 2008 – Department of Consumer Affairs (DCA) Director Carrie Lopez directs all DCA health-related boards and bureaus to publish all pending accusations on their Web sites in their entirety. The intent was to allow for greater transparency and consistency in the interest of consumer protection. (See **Attachment 1A**)

January 16, 2009 CBA Meeting – CBA members discuss whether or not accusation documents should be posted on the CBA Web site.

CBA members express concern about withdrawn accusations removed from the CBA Web site, yet still available due to Internet search engines that have the ability to "cache" information.

CBA members decide to continue with current policy to post "Accusation filed" in License Look Up and provide a copy of the accusation document upon request.

CBA members also requested that the entire accusation and decision be posted once the decision becomes final.

January 28, 2009 – Orange County Register publishes an article regarding the CBA's decision not to post accusation documents on the CBA Web site. (See **Attachment 1B**)

May 14-15, 2009 CBA Meeting – Dave Hansen, of CBA's Information Technology Division, presents information on Internet "caching" and the three available methods for preventing a web crawler from accessing and caching CBA Web site information.

The CBA members requested that CBA staff conduct a "Web Crawler Test" to better understand Internet "caching."

January 20-21, 2010 CBA Meeting – CBA members review "Web Crawler Test" results. CBA President Ramirez was concerned that the second largest engine, Yahoo!, was omitted from the trial and that only two search engines were tested.

In lieu of further testing, the CBA members requested that staff provide stated policies from each of the top ten key search engines.

March 25-26, 2010 CBA Meeting – CBA members reconsider posting accusations on the CBA Web site.

Some of the CBA members are concerned about due process because there is no hearing where a licensee may provide a defense before an accusation is filed.

The CBA members did not approve the motion to post complete accusations on the CBA Web site.

It was noted by the Deputy Attorney General Liaison, Scott Harris, that the CBA members may refer to California Business and Professions Code Section 5000.1 (see **Attachment 1C**) that provides that when weighing the consumer interest and any other interest, the protection of the public shall be paramount.

April 7, 2010 – Orange County Register publishes an article regarding CBA and posting accusations. (See **Attachment 1D**)

April 13, 2010 – DCA Director Brian Stiger issues memo to CBA Executive Officer Patti Bowers stating that it was DCA's intent to post accusations on the DCA Web site shortly after the accusation has been filed and served. CBA is directed to transmit an electronic PDF copy within five days of service of such accusation. (See **Attachment 1E**)

April 26, 2010 CBA Meeting – With the issuance of Mr. Stiger's memo, CBA holds special meeting to reconsider its position on the posting of accusations.

Suggestions to satisfy CBA members' concerns about damage to a CPA's reputation before the allegations charged in the accusation are final include: 1) requiring a mandatory investigative hearing to allow the accused an opportunity to defend himself or herself and 2) placing a watermark on accusation documents to clarify the accusation is pending.

The CBA members approved the motion to reconsider the posting of accusation documents at a future meeting. The matter was placed on the Committee for Professional Conduct (CPC) and CBA agendas for May 12, 2010.

May 12, 2010 – Memo from DCA Legal in response to the question: Does a licensing agency violate a licensee's right to due process if it makes a copy of an accusation directly accessible to the public on its Web site prior to adjudication of the matter initiated by the accusation?

DCA Legal Answer: A Licensing agency does not violate a licensee's right to due process by making a copy of an accusation directly accessible to the public on its Web site prior to adjudication of the underlying case. The accusation is the charging document that provides the required due process notice to the licensee.

(See **Attachment 1F**)

May 12, 2010 CPC Meeting - The CPC members considered posting accusations on the CBA Web site and options for addressing concerns regarding posting accusations on the CBA Web site.

DCA Staff Counsel stated that there is no due process violation when a board posts accusation documents on a web site. In addition, accusations are public documents; therefore, there is no privacy issue.

DCA Legal Counsel and Mr. Elkins expressed concern that Section 5103.5 (See **Attachment 1C**) may not allow the CBA to post accusations on its Web site. The CBA staff will obtain clarification.

The CPC would like to discuss watermarking the accusation when posted and the options for an investigative hearing or prefiling conference.

May 13, 2010 CBA Meeting – Mr. Stiger stated he would obtain a legal opinion from DCA legal counsel to ensure the CBA has appropriate legal authority to post accusation documents.

Discussion of options for addressing concerns regarding posting accusations on the CBA's Web site was deferred.

May 21, 2010 – DCA Director Stiger memo to DCA Executive Officers and Bureau Chiefs directs DCA boards and bureaus to post all filed accusations (currently filed and filed in the future) in their entirety on their respective Web sites. (See **Attachment 1G**)

June 1, 2010 – Letter to Director Stiger from CBA President Ramirez regarding Section 5103.5 and CBA members' continued concern about due process issues because of the licensee's inability to request a hearing to provide evidence prior to an accusation being filed. President Ramirez requested that DCA legal office provide a legal opinion to address the following issues.

- Section 5103.5 and does it prevent CBA from posting complete accusations on its Web site?
- Using the "investigative hearing" prior to filing the accusation to alleviate due process concerns.
- Privacy concerns and if the proposed "investigative hearing" would or would not alleviate privacy concerns.

(See **Attachment 1H**)

June 10, 2010 – DCA Legal Opinion (See **Attachment 1I**)

- Section 5103.5 does not preclude CBA from posting accusation documents on its Web site.

The legal opinion does not address the other issues from President Ramirez's June 1, 2010 letter.

June 24, 2010 – EO Patti Bowers' letter to Director Stiger requesting clarification on:

- Legality of offering an investigative hearing to licensees.
- Licensees' right to privacy regarding posting accusations prior to a hearing and whether the proposed optional investigative hearing would address such privacy concerns.

Letter also advises that the CBA will discuss posting accusations at its September 2010 meeting. Until the CBA members discuss this matter, the CBA will not be able to comply with the Director's mandate to post accusations on the CBA's Web site by August 18. (See **Attachment 1J**)

July 10, 2010 – Email response to June 24, 2010 letter from Director Stiger. The Director requests that the CBA continue to provide DCA with copies of all accusations and that DCA will begin posting accusations on the DCA Web site in August. (See **Attachment 1K**)

August 18, 2010 – DCA begins posting CBA accusation documents on DCA Web site.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY · ARNOLD SCHWARZENEGGER, GOVERNOR
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08 NOV 12 AM 10:
BOARD OF PHARMACY

MEMORANDUM

DATE	November 4, 2008
TO	Executive Officers and Bureau Chief Cc;Board Chairs
FROM	Carrie Lopez Director
SUBJECT	Enforcement and Public Disclosures

Over the last several weeks, my office has been in contact with you concerning a number of enforcement and public disclosure issues impacting DCA's health-related regulatory entities.

This memo memorializes those communications and sets forth my expectations as Director of the Department of Consumer Affairs.

Fingerprinting of Existing Licensees

As Director, I have determined that fingerprinting is an important background and monitoring tool that allows the Department and its regulatory entities to be made aware of criminal activity committed by any of its licensees. There is clear public benefit to the implementation of such a program.

I am hereby directing that all health boards under the Department implement a plan for securing fingerprints from all its licensees irrespective of when they were first licensed. All plans shall ensure that fingerprints will be obtained in a time equal to, or shorter than, the renewal period for each licensing category.

As you know, by obtaining licensee fingerprints, our programs have the ability to obtain subsequent arrest information from the Department of Justice and are better positioned to take enforcement actions against those who pose a significant risk to the public.

It is the Department's position that this change can be accomplished through the regulatory process. The Board of Registered Nursing recently adopted emergency regulations to implement such a program. The regulations are subject to Office of Administrative Law approval, and we expect them to be approved in November.

ATTACHMENT 1A

We will keep you apprised of the status of these regulations as they may serve as a guide for your regulatory entity.

The Department will also be seeking statutory affirmation of this authority in an effort to remove any ambiguity that may exist and will support administrative or budgetary requests necessary to accommodate your collection of fingerprints from your licensee population.

Licensing Renewal Forms

In order to provide an additional level of assurance, each health-related board/bureau shall include on its renewal form a requirement that each applicant disclose any criminal convictions or disciplinary action taken by another government agency within or outside the state.

While fingerprints should allow each program to receive information from DOJ concerning any arrests or convictions, a non responsible or untruthful answer can provide an additional basis to take appropriate disciplinary action.

This change is ministerial and regulations are not necessary to implement any needed form modifications.

The Department's Office of Information Services will facilitate the form modifications necessary and the change is expected in approximately one week's time.

Publication of Accusations on Board's Websites

While many entities currently post accusations on their website, many only include summaries or require consumers to contact them directly to obtain copies. As Director, I have determined that greater transparency and consistency are in the interest of consumer protection.

Effective immediately, I am directing all health related entities to publish all pending accusations on their websites in their entirety. Furthermore, from this point forward, any new accusation shall also be placed in its entirety on the board or bureau's website. To the extent that board requires equipment or assistance in making these documents available to the public, the Office of Information Services is available to provide assistance.

Interim Suspension Orders

The Department also wishes to emphasize the availability an desirability of pursuing interim suspension orders when the public's health and safety will be compromised by the continued practice of a licensee.

The Office of Legal Affairs will be distributing a copy of this policy to each of you within the next seven days and will provide examples of offenses that should be considered threatening to the health and safety of the public.

The Office stands ready to assist each of you in facilitating and/or coordinating any request for a suspension order with the Attorney General's Office.

Review of Pending Investigations/Accusations

I am hereby directing that each board review each of its active investigations and/or pending accusations to determine if more aggressive action is needed to ensure the

public's protection. Such action could involve prioritizing investigations with the Division of Investigations; securing timely administrative hearing dates with the Office of Administrative Hearings; or immediate action by the Attorney General's Office to secure an interim licensing suspension. Both the Executive Office and the Office of Legal Affairs stands ready to assist if needed.

Thank you in advance for your support.

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OC WATCHDOG

Your tax dollars at work

State's accounting watchdog opts to keep public in the dark

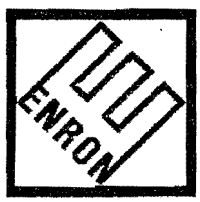
January 28th, 2009, 3:00 am · 7 Comments · posted by BRIAN JOSEPH, Sacramento Correspondent

Recommend 0 Share

If there's one thing we've learned from **Enron, Bernard Madoff** and other big financial scandals of the past decade, it's that we can't blindly trust accountants.

In case after case, accountants endorsed financial schemes that proved to be failures or frauds. The accountants' mistakes, however justified or understandable, cost investors millions.

So you'd think that the state board regulating accountants would do everything it could to inform Californians of problems in the industry. But it's not.

This month, the **Board of Accountancy** rejected a proposal to post detailed descriptions of 

wrongdoing accusations against accountants on its Web site.

Currently, the board posts superficial summaries of the accusations — the name of the accountant and the general nature of the complaint. (Example: "Accusation No. AC-2005-20 includes charges that Mr. Carroll failed to comply with GAAS and GAAP in discharging his responsibilities as KPMG's co-engagement partner on the audits and reviews of Gemstar during the period June 30, 2000, through March 31, 2002.")

Gregory Newington, chief of the board's enforcement division, and the **Department of Consumer Affairs**, which oversees the board, both thought that posting the actual accusations, versus summaries, would help consumers by giving them more information. The federal **Securities and Exchange Commission** already does something similar.

Board members, however, rejected the idea as harmful to the reputations of accused accountants.

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ATTACHMENT 1B

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"I would just be very concerned about the chilling effect this would have on a lot of our licensees," board member **Stuart Waldman** said during the board's debate of the proposal.
The board calls itself an independent regulator of the accounting profession in California, but most of its members could have reasons to favor the industry. Seven of the 15 board members are accountants themselves while another two have received thousands of dollars in campaign contributions from accountants.
"The potential conflicts are a concern to me," said Orange County State Sen. **Lou Correa**, who co-sponsored legislation in 2002 that requires that a majority of the accountancy board to be public, or non-accountant, members. "But the bigger concern is the transparency of their policies. ... I'm disappointed they're not posting this stuff."
Among the public members on the Board of Accountancy are **Rudy Bermudez**, a parole agent and former Orange County assemblyman representing the Buena Park area, who received more than **$37,000** in contributions from accountants, and Waldman, a former Assembly candidate, who received more than **$10,000**.
"People want to ensure due process. ... We should not try somebody online or on the Internet or in the press until we've determined their guilt," Bermudez said, in describing his opposition to positing the full accusations. As for his campaign contributions, he said, "It's not germane to the issue."
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case closed says:
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CALIFORNIA BUSINESS AND PROFESSIONS CODE

Section 5000.1 Public Protection Priority

Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Section 5103.5 Notice of Formal Accusations

(a) The board shall post on its Internet Web site, in an easily marked and identifiable location, notice of all formal accusations. The notice of any formal accusation shall contain a link to where a person may request and have sent to him or her a copy of the formal accusation, and the basis for the accusation and alleged violations filed by the board against a licensee.

(b) The link to where a person may request and have sent to him or her a copy of the formal accusation shall be clearly and conspicuously located on the same Internet Web site page on which the notice is posted and shall authorize a person to request and receive the information described in subdivision (a) by regular mail or electronic mail.

(c) The board shall develop a statement that informs any person requesting a copy of a formal accusation and any person receiving a copy of a formal accusation that any allegations contained in the accusation are not a final determination of wrongdoing and are subject to adjudication and final review by the board pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This statement shall be provided to a person requesting and receiving a copy of a formal accusation in a manner to be determined by the board.

ATTACHMENT 1C

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OC WATCHDOG

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State accounting board votes to keep public in the dark — again

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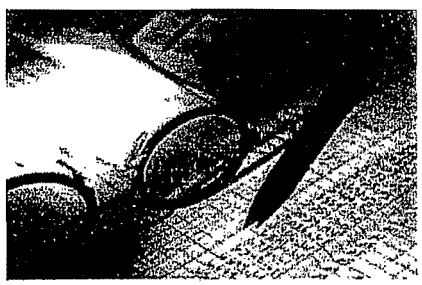

"Transparency" is the buzzword in government these days and everybody, it seems, wants a piece of the action.

Last month, U.S. Reps. **Darrell Issa**, R-CA, and **Mike Quigley**, D-IL, announced they were forming the bipartisan **Congressional Transparency caucus** "to promote a greater culture of transparency and openness in government." Not too long ago, **Gov. Arnold Schwarzenegger** launched the Reporting Transparency in Government Web site, which posts the travel expenses and economic interest statements of California's top officials. And **President Obama**, of course, "has committed to making his administration the most open and transparent in history."

In this day and age, it's almost unheard for a politician or a bureaucrat to strongly argue, in public, for *less* disclosure. But that's exactly what the folks at the **California Board of Accountancy** did at their recent meeting in San Jose.

More than a year ago, **The Watchdog** told you that the 15-member board, which regulates the licensing and discipline of certified public accountants in California, had rejected a proposal to post on its Web site detailed descriptions of official accusations filed against accountants. Official accusations aren't wild allegations — the claims are reviewed by staff in the **California Attorney General's office** before being filed, and for years, the board has posted superficial summaries of the filings online. Those summaries include the name of the accountant and the general complaint, in order to warn consumers of potential wrongdoing.

Any consumer can get a copy of a detailed accusation by calling or e-mailing the board, so the proposal last year to post them *in full* seemed like a logical step for the accountancy board, especially considering that other consumer protection boards, like the **Medical Board of California**, already post similar documents on their Web sites.

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ATTACHMENT 1D

Watchdog hits terrible twos

ERNST & YOUNG

At the time, however, accountancy board members said they were worried that posting detailed accusations would harm the reputations of wrongly-accused accountants. Board members specifically said they were concerned that accountants who had had their accusations withdrawn would continued to be be haunted by the original filings because the information would remain stored on the Internet in Web crawlers like those used by **Google** and other search engines.

On March 26, after a subsequent review that revealed such problems could be avoided, the board reconsidered posting detailed descriptions of accusations on its Web site. The discussion came just days after a report by a **Lehman Brothers** examiner revealed how the bank and its accountants at **Ernst & Young** used, in the words of the **New York Times**, "accounting sleight of hand to conceal the bad investments that led to (the bank's) undoing."

Three board members opened the short but heated debate by vigorously arguing for posting the accusations for the sake of transparency and public protection.

"I feel very strongly that documents supporting an accusation should be listed," said **Robert Peterson**, an accountant for a small accounting firm. "I think it's informative to the public. ... I think for the protection of the public, the posting of the accusations, with proper notice that they have yet to be adjudicated, is an appropriate way to go."

"I concur with Bob's statement," said **Lenora Taylor**, one of the board's so-called public members, who is on the board in order to offer the non-accountant or public's perspective, to regulating the industry. "I'll also (say), the reason, (to) my understanding of the rationale behind our vote previously on not posting the accusations, was because of the fear of if we actually dismiss the accusation how long it would stay on the Internet. And we had the discussion at the last meeting about how we can take precautions that that would not occur. So if that is not the issue anymore, I am not even sure why — What is the remaining issue of why would not post these accusations? If I'm the public, I would want to know."

Louise Kirkbride, another public member, urged the board to put together a mock-up of what the posted accusations would look like and said, "I think when we make it harder for people to see it, we protect the licensee, not the public. And in this case, there is only one bad actor, and that is the licensee against whom an accusation has been filed."

Kirbride's statement about protecting the licensee instead of the public was important because the board's stated mission is "To protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards."

The mission statement says nothing about protecting accountants — only consumers.

The rest of the board, however, was not swayed by Kirkbride and her colleagues' arguments. Instead, they sided with Jonathan Ross, a lobbyist representing the major

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accounting firms of KPMG, PricewaterhouseCooper and Ernst & Young, who said, "We see a balance, of course, between public protection and then protecting the licensee (accountant) against the damage that would come from an accusation that has been filed misleadingly or has been proven to be unfounded once they have their hearing."

Board member **David Schwartz**, an accountant with a public accounting firm, said it was unfair to single out accused accountants as the only "bad actors." He said people going after accountants are bad actors, too.

"As far as bad actors, I think there's some bad actors who could be plaintiffs, and not just licensees," he said. "The fact that it's on the Internet, these things take up a lot of time to adjudicate ... it's still out there for people to see that there may be a false accusation filed. And I just don't think that the public is harmed. Somebody is really interested they can get this information."

Board member **Michelle Brough**, who is also a public member, said accountants were owed "due process." She said she was concerned posting accusations would lead to "fishing expeditions." If people want to know more about an accusation filed against an accountant, they should have to call or e-mail the board, she said.

"Taking that extra step and calling will make sure the people who really have a viable concern or an interest, they'll take that extra step," she said.

And that was basically the entire discussion. Peterson made a motion to post the accusations on the Web site, but it failed when only he, Kirkbride and Taylor voted for it. In almost complete opposition to a national and statewide movement towards more government transparency, the state Board of Accountancy reaffirmed its stance of keeping the public in the dark.

Click here to see the debate and the vote. The discussion starts about one hour and two minutes into the March 26 Webcast. It only lasts about **15 minutes**.

What do you think? Vote in our poll here.

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MEMORANDUM

DATE	April 13, 2010
TO	**PATTI BOWERS** **Executive Officer** **Board of Accountancy**
FROM	Brian J. Stiger **BRIAN J. STIGER, Director** **Department of Consumer Affairs**
SUBJECT	**Posting of Pending Accusations**

In furtherance of the Department of Consumer Affairs' purpose and mission to protect and promote the interests of consumers and to further ensure that consumers have all relevant public information regarding the status of every license issued by the Board of Accountancy (Board), DCA must have certain information relative to disciplinary actions filed by the Board.

It is the Department's intent to file pending accusations on its web site, shortly after such accusations have been filed and served. To ensure that the Department has the most relevant information, and to ensure that the posting of such information is timely achieved, pursuant to my authority as the Director of the Department, as set forth in Business and Professions Code Sections 110, 153, and 310 (i), I am directing you to provide copies of all pending accusations as well as any amendments that are subsequently filed to the Department, by transmitting an electronic PDF copy to Vicki Kinman at Vicki_Kinman@dca.ca.gov, within 5 days of service of such accusations.

Should you have any questions, please contact Doreathea Johnson, Deputy Director of Legal Affairs and Chief Counsel. She may be reached at 916-574-8250.

cc: Manuel J. Ramirez, President
Board of Accountancy

ATTACHMENT 1E

STATE OF CALIFORNIA
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DIVISION OF LEGAL AFFAIRS
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MEMORANDUM

DATE: May 12, 2010

TO: Brian Stiger, Director

FROM: Department of Consumer Affairs
Legal Affairs Division

SUBJECT: Licensing Agency Authority to Post Accusations to Departmental Websites Prior to Adjudication

This is in response to your request for an opinion regarding whether the various boards and bureaus within the Department of Consumer Affairs may post Accusations to their websites prior to adjudication of the underlying case. Concerns were raised that such posting might violate a licensee's due process rights.

Question Presented

Does a licensing agency violate a licensee's right to due process if it makes a copy of an Accusation directly accessible to the public on its website prior to adjudication of the matter initiated by the Accusation?

Short Answer

A licensing agency does not violate a licensee's right to due process by making a copy of an Accusation directly accessible to the public on its website prior to adjudication of the underlying case. The Accusation is the charging document that provides the required due process notice to the licensee.

Analysis

I.

The purpose of disciplinary proceedings against a license is protection of the public. (See Business and Professions Code Section 101.6.) The Administrative Procedure Act (APA) is the process that governs the initiation and prosecution of disciplinary proceedings against a license. It contains due process protections for the holder of a license. "Due process" is a constitutional right that, distilled to its essence, requires

notice and an opportunity to be heard before action is taken. The courts "often have recognized that an individual, having obtained the license required to engage in a particular profession or vocation, has a 'fundamental vested right' to continue in that activity. A licensee, having obtained such a fundamental vested right, is entitled to certain procedural protections greater than those accorded an applicant." (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 788-789.)

A disciplinary action against a licensee is initiated by the filing of an Accusation. That is the name of the charging document. Government Code Section 11503 sets out the requirements for what constitutes adequate notice: "The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules."

Thus, the Accusation provides the licensee with the "notice" component of the due process requirement. If the charges are not sufficiently specific to enable the licensee to prepare his defense, the courts will find a violation of the licensee's right to due process. *Smith v. State Board of Pharmacy* (1995) 43 Cal.Rptr.2d 532, 538-539, 37 Cal.App.4th 229, 241-241.

The second component of due process is the opportunity to respond to the charges. The APA sets out that process in great detail (Gov. Code Section 11400 et seq.) The burden of proof in a professional license disciplinary action is clear and convincing evidence to reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

II.

The California Public Records Act (CPRA) requires the disclosure by a state agency of public records, with certain exceptions. The purpose of the CPRA is to increase freedom of information by giving members of the public access to information in the possession of public agencies. (See *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425.) This purpose is evident from the CPRA's very first provision, in which the Legislature declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code Section 6250.) To implement this purpose, the CPRA provides that "public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided." (Gov. Code § 6253, subd. (a).)

A "state agency" is "every state office, officer, department, division, bureau, board, and commission" except those provided for in specified articles of the California Constitution. (Govt. Code Section 6262(f)) Licensing boards within the Department of Consumer

Affairs are not included in those articles of the California Constitution. A "public record" includes "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristic." (Gov. Code § 6252, subd. (e).)

The Legislature has consistently expanded the public's access to records maintained by state agencies. For example, Government Code Section 6253.1 requires a public agency to assist a member of the public to identify records and information that are responsive to the request or the purpose of the request, to describe the information technology and physical location in which the records exist, and to provide suggestions for overcoming any practical basis for denying access to the records or information sought. Government Code Section 6253.9 requires a public agency to make information maintained in an electronic format available to a member of the public in any electronic format in which it holds the information, and limits the cost of duplication of electronic records.

The right of access to public records under the CPRA is not absolute. In enacting the CPRA, the Legislature, although recognizing this right, also expressly declared that it was "mindful of the right of individuals to privacy." (Gov. Code § 6250.) Thus, the express policy declaration at the beginning of the Act "bespeaks legislative concern for individual privacy as well as disclosure." (*Black Panther Party v. Kehoe* (1974) 42 Cal. App.3d 645, 652.) The Legislature could have chosen to include charging documents within the list of public records exempt from disclosure but it did not do so.

Government Code Section 6254 contains a list of public records that are exempt from disclosure. While Government Code Section 6254, subdivision (f), exempts from disclosure records of complaints (made against licensees), Accusations are not explicitly shielded from public view, and there is no provision in law similar to that enjoyed by California peace officers. Thus, the Accusation is a public record subject to disclosure even prior to adjudication of the underlying matter.

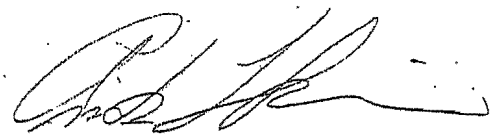
There is a line of federal cases holding that the states are restricted in their actions concerning records of private citizens and public employees. These cases deal with situations in which the individual has no chance to refute the allegations and in some cases does not even know that the allegations are contained in a file or disseminated. (see *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123 (1951);*Paul v. Davis*, 424 U.S. 693, 701 (1976); *Dishnow v. School District*, 77 F.3d 194, 199 (7th Cir. 1996); (*Olivieri v Rodriquez*, 845 F.2d 1216 (3rd Cir. 1988); certiorari denied on February 23, 1998 (No. 97-927.)

Conclusion

Under the CPRA, a state agency must make available to the public upon request a copy of any public record that is not exempt from disclosure. An Accusation is a public record that is not exempt from disclosure. Due process is required before removing a licensee's "fundamental vested right" to his or her license. The disclosure of the charging document that initiates the disciplinary action does not remove or suspend or limit a licensee's ability to continue to practice while the matter is being adjudicated. In fact, that document provides the very first component of compliance with due process—notice of the charges. The CPRA requires disclosure and the method of disclosure does not affect the conclusion expressed above.

We trust that the foregoing is of assistance.

DOREATHEA JOHNSON
Deputy Director
Legal Affairs Division



By: ANITA L. SCURI
Supervising Senior Staff Counsel

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MEMORANDUM

DATE	May 21, 2010
TO	Executive Officers and Bureau Chiefs
FROM	Brian J. Stiger Director
SUBJECT	**Web Site Posting of Accusations and Disciplinary Actions**

Background

On November 4, 2008, Carrie Lopez, Former Director, instructed the healing arts boards to post filed accusations, which are public records, on their respective websites. Providing consumers with immediate access to these formal charging documents enables them to make informed decisions when choosing the services of a licensed professional.

While many entities in the Department post filed accusations on their website, others only post summaries or require consumers to contact them directly to obtain copies. Some boards and bureaus have statutes to require the posting of certain information on the Internet; however, there is no statute that prohibits the posting of the actual filed accusation document on a board or bureau's website.

Accordingly, I have determined that greater transparency and consistency in disclosing public documents relating to the enforcement actions of boards and bureaus furthers the Department's consumer protection efforts. Therefore, to achieve this transparency the Department's goal is to have all boards and bureaus post filed accusations and disciplinary decisions on the licensee's profile.

Action Required

Effective immediately, I am exercising my authority to protect the interests of consumers by directing each board and bureau that is not expressly prohibited by statute to post all filed accusations, in their entirety, on their respective websites. Furthermore, from this date forward, any new filed accusations served and disciplinary decisions adopted shall also be posted on the board's or bureau's website in its entirety.

Boards and bureaus that currently have the CAS public disclosure program shall use that capability to post filed accusations and disciplinary decisions on the licensee's profile.

ATTACHMENT 1G

The Office of Information Services will work with the remaining boards and bureaus to enable them to post filed accusations and disciplinary actions via the CAS public disclosure program or other means as necessary.

To the extent a board or bureau requires assistance making these documents available to the public; the Department is available to provide that assistance. If your board or bureau requires assistance to comply with this directive, please contact Paul Riches, Deputy Director of Enforcement and Compliance (916) 574-8214.

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
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SACRAMENTO, CA 95815-3832
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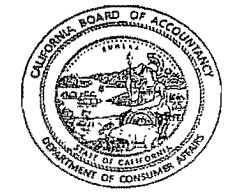


June 1, 2010

Department of Consumer Affairs
Brian Stiger, Director
1625 N. Market Blvd., Suite S-308
Sacramento, CA 95834

Dear Director Stiger:

Thank you once again for your attendance at the California Board of Accountancy's (CBA) May meeting in Pasadena. I was surprised that neither of our legal advisors had made us aware of the statute which was just passed last year and which created such a specific, restrictive posting requirement. I would like to request that we jointly address this, as well as the other legal concerns raised during our last meeting, in writing, prior to the next CBA meeting in order to avoid any additional misunderstandings.

Specifically, there was some discussion as to whether the legislative intent of §5103.5 was to prevent the CBA from posting entire accusations on its Web site. We understand that issue will be addressed in the legal opinion which the Department of Consumer Affairs (DCA) Legal Office is preparing; however, you should note that we have already received testimony by Ms. Scurri at our last meeting that it was restrictive. If the need for a legislative change is indicated by the opinion to allow the CBA to post the full accusation, the CBA would like to know whether the DCA will sponsor such a bill? Additionally, would the DCA seek legislation to clarify that all boards have the authority to post full accusations rather than just the CBA?

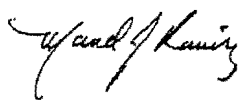
Second, the legal opinion provided by Ms. Anita Scurri at the May meeting indicated that there is no due process issue in posting accusations on the internet. Some members of the CBA continue to believe that there are constitutional due process issues due to a licensee's inability to request a hearing to provide evidence prior to an accusation being posted.

The CBA discussed utilizing the "investigative hearing" to alleviate those remaining due process concerns. Would you please direct the DCA Legal Office to address in its legal opinion, the legality of offering an investigative hearing to licensees? The Attorney General's representative to the CBA expressed some concerns about the process and indicated he would prefer a "conference" prior to the investigative hearing. Some CBA members expressed concern that a "conference" would not be as effective as an investigative hearing as it would only be with an enforcement officer, not a true opportunity to provide a rebuttal to an accusation, before a panel.

Finally, privacy issues have been raised for licensees in posting accusations prior to a hearing. Could you please speak to this issue and whether the proposed optional investigative hearing would or would not alleviate such privacy concerns?

Thank you for taking the time to address the CBA's concerns in this matter. We would like to have your written response prior to the July 28 CBA meeting in order that CBA members have sufficient time to review it. If you require additional time, we would be pleased to accommodate such a request by placing this matter on the September agenda. I'd like to thank you again for your personal involvement with the issues of the CBA. We look forward to continuing to work together for the consumers of California.

Sincerely,



Manuel Ramirez, CPA
President

c: Members, California Board of Accountancy
Patti Bowers, Executive Officer

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	June 10, 2010
TO	**BRIAN J. STIGER** **Director**
FROM	Dorea Johnson **DOREATHEA JOHNSON** **Deputy Director, Legal Affairs** **Department of Consumer Affairs**
SUBJECT	**California Board of Accountancy's Authority to Post Accusations to its Website Prior to Adjudication**

You previously requested an opinion as to whether or not the boards and bureaus within the Department of Consumer Affairs (DCA) may post Accusations to their websites prior to adjudication of the underlying case. We concluded in our May 12, 2010 opinion that accusations are public records, not exempt from disclosure; and licensing agencies may post them onto their Internet websites. You have now requested an opinion as to whether recently enacted Business and Professions Code Section 5103.5 prohibits the California Board of Accountancy (CBA or board) from posting accusations on its website.

Question Presented

Whether Business and Professions Code Section[1] 5103.5 prohibits the CBA from posting accusations, which are public records, on the board's internet website?

Short Answer

State agencies generally have inherent authority to post public records on their websites. An Accusation is a public record. Under the California Public Records Act (CPRA), Gov. Code Section 6250 et. seq., all public records are subject to disclosure unless the Legislature has expressly provided to the contrary. Accusations are not

[1] All section references are to the Business and Professions Code unless otherwise specified.

exempt from disclosure under Section 5103.5 or the CPRA. In addition, Section 5103.5 does not prohibit disclosure of accusations; nor does it prohibit the posting of accusations on the CBA website. Since the CPRA provides that state agencies may adopt requirements that allow for faster and more efficient access to public records than provided by the CPRA, in the absence of language prohibiting the posting of accusations, the CBA may post accusations to its internet website as a faster, more efficient means of access. Accordingly, such postings are not in violation of Section 5103.5.

Section 5103.5 mandates that the board post a notice of all formal accusations on its website. In addition, this provision requires the "notice" to contain a link to where a person may request and receive copies of formal accusations and the basis for the accusation and alleged violations. The statute does not limit the board, with respect to the means by which it provides access to the information. By stating what must be posted by the board to inform the public that accusations have been filed against licensees and advising the public of one way they can obtain information regarding the accusations as well as a copy of the accusation, the statute establishes the minimum requirements that must be followed by the board in providing access to members of the public, to these public documents. In enacting Section 5103.5, the Legislature did not preclude the CBA from adopting more efficient methods to allow for faster or greater access to the actual accusation.

The Legislature is presumed to have knowledge of the California Public Records Act, as well as other related statutes in existence at the time it enacted Section 5103.5. Consequently, we find that Section 5103.5's requirement that the board post a notice of all accusations, with a link to where a member of the public can obtain information about the accusation or a copy of the accusation does not preclude the board from placing a copy of the actual accusation on its website. An interpretation that allows the CBA to act to establish more efficient and faster ways to provide access to public documents is consistent with the California Public Records Act, which provides that public agencies can establish efficient, faster access to public records. This construction not only more broadly protects the interests of the public but also effectuates the legislative intent and purpose of the statute. Moreover, a statutory construction to the contrary would lead to a determination that a public agency could not post a public document that is not exempt from disclosure, on its website, if it chose to do so. We believe that such an interpretation would lead to unreasonable consequences and clearly contrary to the Legislature's apparent intent and purpose. Had the Legislature intended to preclude the actual accusation from being posted on the board's website; it would have clearly placed this restriction in the statute. It did not.

The Legislature's expressed intent in enacting Section 5103.5 was to provide greater transparency and access to accusation documents, and posting the accusation on the CBA website would achieve this intent; a construction that would prohibit the posting of the accusation on to the CBA website, in light of such expressed legislative intent,

would neither promote the public policy favoring the disclosure of public records, nor effectuate the intent of the enactment. In short, it would lead to unreasonable and unintended consequences. Accordingly, in the absence of language either exempting the accusations from disclosure or prohibiting the board from posting the accusations on the CBA website, the board may act to effect greater and faster access to the accusations by voting to post such accusations onto its internet website. Such conduct is consistent with the authority granted to all state agencies pursuant to CPRA Section 6253 (e).

Analysis

Section 5103.5 of the Business and Professions Code (added by statutes of 2009, chapter 378, Section 3, [AB 1005], effective January 1, 2010) requires the board to post a notice of all accusations on its website, and a link to where members of the public can obtain a copy of the actual accusation and information as to the basis of the accusation and alleged violations. The question is whether this statute prohibits the board from posting the actual accusations, which are public documents, on to the CBA website.

A. Fundamental Rules of Statutory Construction

It is our responsibility to ascertain the intent of the lawmakers so as to effectuate the purposes of the statute at issue. Thus, in interpreting Section 5103.5, we are constrained to apply fundamental rules of statutory construction to the statutory language. This principle is a keystone to statutory construction. *Costco v Workers' Compensation Appeals Board* (2007) 59 Cal. Rptr. 3d 611, 615; 151 Cal App. 4th 152, 154. In determining legislative intent, one must look first to the language of the statute, giving effect to its plain meaning. The construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences must be followed. *Chaffee v San Francisco Library Commission et al.*, (2004) 9 Cal. Rptr. 3d 336, 340; 115 Cal. App.4th 467, 468. In effecting the foregoing rule, the *Chaffee Court*, citing *Clean Air Constituency v. California State Air Resources Board.*, (1974), further stated, "[W]e must read every statute, with reference to the entire scheme of law of which it is a part so that the whole may be harmonized and retain effectiveness".

Another well settled rule of statutory construction is that when the language of the statute is clear and unambiguous, there is no need for construction, but if language is susceptible to more than one reasonable interpretation, various extrinsic aids, including objects to be achieved by statute, legislative history, public policy and the statutory scheme, of which the statute is a part. Moreover, statutory language that appears unambiguous on its face may be shown to have latent ambiguity; if so, court may turn to customary rules of statutory construction or legislative history for guidance. *Muller v.*

Automobile Club of Southern California, (1998) 71 Cal. Rptr. 2nd 573, 61 Cal. App. 4th 431.
The words however, must be read in context, considering the nature and purpose of the statutory scheme. In applying the preceding rule, the courts have consistently held that when the words are clear and unambiguous, there is no need for statutory construction or to resort to other indicia of legislative intent or legislative history. When the statute is clear, plain and unambiguous on its face, so that taken by itself, it is fairly susceptible to only one construction, that construction must be given to it and any inquiry into purposes, background or legislative history of the statute is foreclosed. In short, if there is no ambiguity in the language, we presume that the Legislature meant what it said and the plain meaning of the statute governs. *City of Long Beach v. California Citizens for Neighborhood Empowerment* (2003) 3 Cal. Rptr.3d 473, 111 Cal.App.45th. 302. It is important to note that even if the language is clear and unambiguous, it should not be given literal meaning if doing so would result in absurd consequences. *People v. Catelli*, 278 Cal. Rptr.452, 227, Cal. App.3d 1434, review denied. Thus, the plain meaning of the statute will not prevail; if doing so would thwart the legislative intent or if read in harmony with existing law, would lead to unreasonable results.

Section 5103.5 states the following:

> "(a) The board shall post on its Internet Web site, in an easily marked and identifiable location, notice of all formal accusations. The notice of any formal accusation shall contain a link to where a person may request and have sent to him or her a copy of the formal accusation, and the basis for the accusation and alleged violations filed by the board against a licensee.
>
> (b) The link to where a person may request and have sent to him or her a copy of the formal accusation shall be clearly and conspicuously located on the same Internet Web site page on which the notice is posted and shall authorize a person to request and receive the information described in subdivision (a) by regular mail or electronic mail.
>
> (c) The board shall develop a statement that informs any person requesting a copy of a formal accusation and any person receiving a copy of a formal accusation that any allegations contained in the accusation are not a final determination of wrongdoing and are subject to adjudication and final review by the board pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This statement shall be provided to a person requesting and receiving a copy of a formal accusation in a manner to be determined by the board." (Emphasis added.)

In construing Section 5103.5, in light of the aforementioned rules of statutory construction, we must first look at the plain language of the statute to ascertain its meaning. Section 5103.5, subdivisions (a) and (b) place requirements on the board with respect to posting accusations on its website. Subdivision (a) states that the board shall post a Notice of all formal Accusations on its website. This subdivision further states that the Notice shall contain a link, to where a person may request a copy of the formal accusations and the basis for the accusation and alleged violations filed by the board, be sent to him or her. The statute does not provide a definition of any of the terms used; therefore, the terms should be construed in accordance with their ordinary, contemporary common meaning. To determine the plain meaning of a term, undefined by statute, it is permissible to resort to a dictionary. Here, the phrase, "the board shall post a Notice" is undefined. However, the plain and ordinary meaning of the term "post" is to bring to the notice or attention of the public by affixing to a post or wall, or putting up in some public place. The plain meaning of the term "notice" as set forth in Webster's Dictionary, is 'a written printed announcement". In statutory language, the word, "shall" is ordinarily construed as mandatory. *Albernathy Valley Inc. v. County of Solano* (2009) 92 Cal App 3d 452, 172 Cal App. 4th 796. Thus, reading Section 5103.5 (a), applying the plain and usual meaning to the terms therein, this subdivision may reasonably be construed to mean that the board is required to place a printed announcement on its website page, of all formal accusations. This subdivision further states, in clear and unambiguous language, that the notice shall contain a link, as to where a person may request a copy of the formal accusation and the basis for the accusation and alleged violations filed by the board, be sent to him or to her. The plain meaning of the term "link", as used in this context, means "a direct access from one marked place to another". In combining the definitions of the terms used in the relevant phrases, the plain meaning of Section 5103.5, subdivision (a) is that the board is required to place a printed announcement on its website to all formal accusations and a link, e.g., direct access, to another site to where a member of the public can get a copy of the accusation and the basis for the accusation and alleged violations filed by the board. We believe that there is no need to further construe subsection (a), as the wording is clear and unambiguous and can be reasonably be interpreted in only one way. There is nothing in the language of subdivision (a) that prohibits the board from posting the accusations on its website.

In determining whether or not subdivision (b) prohibits the board from posting accusations on its website, we must look at the language and construe the plain meaning of the phrase "the link... 'shall authorize a person' to request and receive the information described in subdivision (a) by regular mail or electronic mail", to determine whether it can be interpreted to preclude the board from providing the public with another method of accessing accusations. Again, there is no definition of the phrase within the statute; therefore, we must apply the common definition of the terms used in the phrase. The plain meaning of the term, 'authorize" is "to give a right or authority to

act". Where, as in this instance, the statutory language does not define the phrase "a person", the courts have held that when the word "person" is used in a legislative act, natural person will be intended. Applying the usual and customary definitions of the terms used in subsection (b) of Section 5103.5, we believe that this subdivision could be interpreted to mean that the link, to where the person may request the information, must be on the same page as the notice; and must advise the public that it is permissible to request and receive copies of the accusation and the basis for the accusation and alleged violations by regular or electronic mail. This subdivision, through clear and unambiguous language, gives direction to members of the public as to one method by which the public can receive the information described in subdivision (a) of Section 5103.5. Again, as with subdivision (a), subdivision (b) does not proscribe the board's actions with respect to posting accusations. It does not prohibit the board from taking additional measures to provide greater access to the information referred to in subdivision (a). It simply directs the board to place the link on the same website page as the notice and to make sure that the link is clearly located on that page. This subdivision further advises the public of at least two ways by which they can access the information described in subdivision (a). Accordingly, subdivision (b) can reasonably interpreted to mean that the Legislature has prescribed two means by which the information can be requested by the public but not the "exclusive" or "only" means by which the information can be requested. Consequently, the language used in subdivision (b) is not limiting. If the Legislature had intended to restrict the board with respect to providing access to public documents, it would have clearly expressed this intent by including restrictive language in the statute. A court cannot insert or omit words to cause the meaning of a statute to conform to a presumed intent that is not expressed *American Civil Rights Foundation v. Berkeley Unified School* District (2009). 90 Cal Rptr. 3d 789, 172 Cal. App.4th 207, review denied. It is presumed that in enacting Section 5103.5, the Legislature meant what it said and the plain meaning governs.

We believe, therefore, that in enacting Sections 5103.5, (a) and (b), the Legislature intended to effectuate the purpose of the statute, which, as expressed in the legislative history, was "to increase public access and transparency as it relates to the regulatory practices for the accounting practice in California...". In light of this, we think that the only reasonable interpretation of Section 5103.5 (a) and (b) is that these provisions set forth the minimum requirements that must be followed by the board in providing access to accusations filed by the board against its licensees, and information relative to the accusations filed. Moreover, the statutory language, which we believe is clear and unambiguous, is absent of any prohibitive language that would prevent the board from establishing methods to provide greater and faster access to the actual accusation document.

If we were to assume, arguendo, that the absence of statutory language in the statute under consideration, specifically permitting the board to adopt a method that would

provide greater transparency and faster access to the accusations, including but not limited to posting the accusations on the website, could be interpreted to mean that the board lacked authority to post the accusations, an ambiguity would exist. While we hold to the conclusion that no such ambiguity exists, if it did, we would have to consider various extrinsic aids to help us ascertain the Legislature's intent, including legislative history, public policy, settled rules of statutory construction and ...the legislative scheme encompassing the statute in question. *People v. Connor* (2004) 9 Cal.Rptr.3d. 521 Cal. 115 Cal App.4th 679. In such circumstances, we select the interpretation that comports most closely with the apparent intent of the legislature, with a view toward promoting, rather than defeating the general purpose of the statute and avoiding an interpretation that would lead to absurd consequences. *People v. Conner,* (2004) Ibid., *People v Walker* (2002) 128 Cal. Rptr. 2d 75, 29 Cal. 4th 577.

B. Statutory Scheme

In enacting new statutes, it is presumed that the Legislature is aware of existing related laws and intends to maintain a consistent body of rules. *In Re James H.* (2007) 65 Cal Rptr. 3d 410. It is the court's duty, when interpreting statutes to adopt, if possible, a construction which avoids apparent conflicts between different statutory provisions, even if the provisions appear in different codes. *People v. Kennedy* (2001) 110 Cal. Rptr. 2d 203, 91 Cal. App. 4th 288. Section 5103.5 must therefore be read in harmony with those existing statutes that affect the disclosure of information. In construing the meaning of the statute, one must keep the nature and obvious purpose of the statue in mind and take into consideration those public policies that are relative to accessing public documents.

The California Public Records Act, Government Code Section 6250, et. seq. (CPRA), Business and Professionals Code Section 5000.1 and the statute at issue, which relates to accessing accusations, and are public records, are part of the statutory scheme related to the disclosure of public records and effecting consumer protection through transparency. Thus, the above provisions of law must be read and harmonized together so as to give effect to every section. In harmonizing the aforementioned laws, Section 5103.5 must be interpreted in a way that will neither render the previously enacted laws in conflict nor in a manner that will result in absurd or unintended consequences. Put another way, when interpreting an ambiguous statute, consideration must be given to the consequences that will flow from a particular interpretation. In this regard it is presumed that the Legislature intended reasonable results consistent with its express purpose, not absurd consequences. *California School Employees Assn v Governing Board of South Orange County Commission College District* (2004) 21 Cal. Rptr. 3d 451.

Accordingly, we look to the entire statutory scheme to determine whether Section 5103.5 prohibits the CBA from posting accusations. A statute directed at the protection

of the public health and safety should be broadly construed on order to promote that salutary purpose. *Wilson v. County of Santa Clara* (1977) 68 Cal. App.3d 7884.

1. ***By Exercising its Disciplinary Function, Evinced by Filing Accusations Against Licensees, CBA Effectuates Consumer Protection.***

Posting accusations on the CBA website, effectuates consumer protection by providing immediate access to pending administrative actions against licensees to members of the public.

Section 5000.1 states the following:

> "Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory and **disciplinary functions**. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." *(emphasis added)*

The purpose of disciplinary proceedings against a license is protection of the public. (See Business and Professions Code Section 101.6. The Administrative Procedure Act (APA) is the process that governs the initiation and prosecution of disciplinary proceedings against a license. A disciplinary action against a licensee is initiated by the filing of an Accusation. Posting accusations on the CBA website promotes consumer protection by providing immediate access to relevant information regarding pending administrative action against licensees. Such action is not only consistent with Section 5000.1, but also in harmony with the CPRA.

2. ***Accusations Filed by the CBA Against and Served on the Licensees are Public Records***

Disclosing accusations by posting them on the CBA website is not in violation of Section 5103.5 and is consistent with the authority provided by the California Public Records Act. As previously stated, it is presumed that the Legislature was aware of existing laws that are relative to Section 5103.5 at the time the section was enacted. Therefore, Section 5103.5 must be harmonized with those existing laws so as to make sense of the entire statutory scheme. Gov. Code § 6252 (e) defines 'public records' as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The definition of public record is necessarily broad and intended to cover every conceivable kind of record that is involved in the governmental process. It is undisputed that an accusation, a document that is prepared by the board to advise the licensee of the disciplinary action taken by the board against licensees, is a public

document created by a public agency in conducting public business. The purpose of the California Public Records Act (CPRA) was enacted for the explicit purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies. (See *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425. *Los Angeles Unified School District v Superior Court* (2007) 60 Cal Rptr. 3d 445, 151 Cal. App. 4th 759.

CPRA's purpose is evident from the very first provision, in which the Legislature, mindful of the right of individuals to privacy and and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code Section 6250.) The Act further provides for the inspection of public records maintained by state and local agencies and was enacted to give the public access to information in possession of public agencies in furtherance of the notion that government should be accountable for its actions and, in order to verify accountability, individual must have access to governmental files. *BRV, Inc. v. Superior Court* (2006) 49 Cal. Rptr.3d 519, 143 Cal App 4th 743, modified on denial of rehearing, review denied. To implement this purpose, the CPRA provides that "public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided." (Gov. Code Section 6253, subdivision (a))

A "state agency" is "every state office, officer, department, division, bureau, board, and commission" except those provided for in specified articles of the California Constitution. (Gov. Code Section 6262 (f)). Licensing boards within the Department of Consumer Affairs are not included in those articles of the California Constitution. Accordingly, CBA is a state agency, subject to the CPRA. As such, the accusation, created by the CBA, filed with the Office of Administrative Hearings and served on the licensee, is a public record, containing information relative to the conduct of a licensee which resulted in disciplinary action taken against the licensee by the CBA.

The CPRA embodies a strong policy in favor of disclosure of public records. Government Code Section 6254 sets forth a list of public records that are exempt from disclosure. While Government Code Section 6254 (f), exempts from disclosure, records of complaints (made by a third party against licensees), accusations are not complaints and are not identified as an 'exempt' document within this provision; and therefore, are not shielded from the public's view.

Thus, like any other public record, the accusation is subject to disclosure, even prior to adjudication of the underlying matter, unless statutorily excluded. We again note that Section 5103.5 does not prescribe all of the methods by which accusations may be disclosed. It merely sets forth the least that the board is obligated to do, in posting accusations. We submit that one manner by which the CBA may allow disclosure of accusations includes posting it directly on its website. Posting the accusation on the

CBA website will provide for 'instant' access to public records at a significantly reduced cost to the agency and to the public. At the very least, allowing the accusations to be posted onto the board' internet website will reduce employee response time. Gov. Code Section 6253 (e), which states the following in pertinent part, supports an interpretation that the board has authority to post the accusations on its website:

> "Except as otherwise prohibited by law a state or local agency may adopt requirements for itself that allow for faster, more efficient or greater access to records than prescribed by the minimum standards set forth in this chapter". (e.g. the CPRA).

The above section was enacted prior to the enactment of Section 5103.5; therefore, one can assume that the Legislature was aware of its existence when it enacted Section 5103.5. In reading the two provisions together and giving effect to the words in both so as not to crate a conflict, it is evident that the CBA has the inherent right to take action that will allow faster, more efficient access to accusations, which are non exempt, public records. Without a doubt, allowing the board to post the accusation directly onto the website enables the public faster and more efficient access to those records. This is clearly consistent with the Legislative intent of Section 5103.5, thereby effectuating the legislative purpose of the enactment. Accordingly, interpreting Section 5103 in a manner that permits the board to post the accusations on its website, allows the agency to provide efficient and greater access to pubic records and is fully consonant with the CPRA.

The aforementioned related statutes further support the position that Section 5103.5, when read in harmony with existing law, does not prohibit the board from posting accusations on its internet website.

Although legislative history can often help interpret an ambiguous statute, it cannot change the plain meaning of clear language. *In Re Steele,* (2004) 10 Cal Rptr. 3d 290, 32 Cal. 4th 792. In view of the fact that we believe that the meaning of the statute is clear on its face, we find it unnecessary to resort to the legislative history to construe the statute. However, we look at the legislative history to ensure that the interpretation does not lead to unintended consequences.

C. Legislative History

Section 5103.5 was enacted by Statutes of 2009, Chapter 378 (AB 1005). As AB 1005 was being considered by the Legislature, it underwent several amendments. It was initially amended on April 20, 2009 to add section 5103.5. As initially proposed it read:

> "5103.5. The board *shall post* on its Internet Web site, in an easily marked and identifiable location, *all formal accusations, including the basis for the accusation and*

> *alleged violations* filed by the board against the licensee." (Emphasis added)

On April 30, 2009, AB 1005 was amended again to modify section 5103.5 to read:

> "5103.5 The board shall post on its Internet website, in an easily marked and identifiable location, ***notice of*** all formal accusations. ***The notice of any formal accusation shall contain a link to where a consumer can request and have sent to him or her a copy of the formal accusation***, including the basis for the accusation and alleged violation filed by the board against the licensee." (Emphasis added to show April 30 amendments)

A review of the legislative history for AB 1005, reveals that, as originally proposed in the April 20th amendments to the bill, Section 5103.5 required the CBA to post on its Internet website "all formal accusations." Under this version, it is clear that the CBA would have been required to post accusations on its website.

However, the bill was amended on April 30, 2009 to require that the CBA post a "*notice* of all formal accusations" and that the notice include a link to where a consumer can request a copy of the accusation and information as to the basis for the accusation and alleged violations. The April 30th amendment removed the CBA's obligation to post the accusation and replaced it with an *obligation* to post a notice of all formal accusations and a link to where a consumer could request and have a copy of the accusation sent, including the basis for the accusation and alleged violation filed by the board against the licensee. While this amendment removed the board's **obligation** to post the accusations on its website, the history does not reflect whether or not the Legislature intended to prohibit the board from taking action to post Accusations, if the board decided that posting the accusations directly onto the website would affect greater and faster disclosure of the accusations to members of the public.

The Senate Committee analysis reflects that the legislation's purpose is to increase public access and transparency as it relates to the regulatory practices for the accounting profession in California. The analysis further states that the opponent to an earlier version of the bill, the California Society of Certified public Accountants, opposed the bill because of its concern that the posting of the accusations will have irreparable impact on the ability of the accountants to make a living, even if the allegations were dismissed. The amendments of July 16, 2009 appear to address these concerns. This amendment added subdivision (c) which requires the board to develop a statement that informs any person requesting a copy of a formal accusation and any person receiving a copy of a formal accusation that any allegations contained in the accusation are not a final determination of wrongdoing and are subject to adjudication and final review by the board pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In addition, while the analysis states that the accusations are public records, the history makes no mention of exempting the accusations from disclosure or prohibiting the board from posting them onto its website.

The Legislature is presumed to have been aware of preexisting statutes that govern the disclosure of public documents and the inherent right of the board to post accusations as a means of granting greater access. In light of the stated purpose of the enactment, construing the statute in a manner that does not prohibit the posting of accusations on the CBA's website., acknowledges the Legislature's awareness of existing statutes that promote access to public documents as well as the board's inherent authority to establish rules that would allow greater and faster access to public records, such as the accusations. Moreover, construing this statute to mean that it does not preclude the board from posting accusations is most consistent with the apparent legislative intent and most likely to promote, rather than defeat the legislative purpose of providing greater access and will avoid absurd consequences. A construction precluding the CBA from posting the accusation on its website would violate the principles of statutory construction that courts do not construe statutory provisions so as to render them superfluous; that statutes are to be read in harmony with other similar laws and are to be given a reasonable and common sense construction that will harmonize with other laws. As previously stated, had the Legislature intended to prohibit the posting of accusations, it would have clearly expressed this intent in the language of the statute. It did not. The statute simply sets forth what the board is obligated to post onto its website. While the CBA is not obligated to post the accusations, it may, if it chooses to, post the accusations on its website.

Conclusion

State agencies have inherent authority to post public records onto their websites. An Accusation is a public record. Under the CPRA, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary. The CPRA does not exempt accusations from disclosure nor does Section 5103.5 prohibit the disclosure or posting of accusations. Since the CPRA provides that state agencies may adopt requirements that will allow for faster and more efficient access to records than provided by the CPRA, in the absence of language prohibiting the posting of Accusations, the CBA may post accusations to its internet website as a faster, more efficient means of accessing these documents. Such posting is not in violation of Section 5103.5.

We trust that the foregoing is of assistance.

DEPARTMENT OF CONSUMER AFFAIRS
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June 24, 2010

Department of Consumer Affairs
Brian Stiger, Director
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Sacramento, CA 95834

Dear Director Stiger:

The California Board of Accountancy (CBA) has received a copy of the legal opinion prepared by the Department of Consumer Affairs (DCA) Legal Office, dated June 10, 2010, regarding the CBA's authority to post accusations on its Web site. Thank you for facilitating the timely issuance of this document.

After consulting with CBA President Manuel Ramirez, there are still some questions to which the CBA would like answers prior to deliberating this item again. As outlined in President Ramirez's June 1 letter to you (see attached), the CBA requests that you direct the DCA Legal Office to provide a legal opinion regarding the following issues:

- The legality of offering an investigative hearing to licensees, in addition to our current protocol of requiring it at the CBA's discretion, and whether it would be legal to have the Attorney General's Office represented at the hearing.

- Licensees rights to privacy with regard to posting accusations prior to a hearing, and whether the proposed optional investigative hearing would address such privacy concerns.

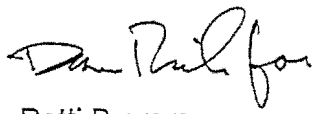
In order to provide time for the DCA Legal Office to research and prepare this opinion, the CBA will be postponing discussion of this matter until its September meeting.

Additionally, I am aware of your memo of May 21, 2010 directing all boards and bureaus to post accusations on their respective Web sites, as well as the email that was sent out from Alex Glaros on June 22 giving an August 18 deadline by which compliance with your memo must be met.

Unfortunately, until the CBA has had a chance to fully discuss this issue, the CBA will not be able to comply with your directive. The CBA will continue to provide the DCA with copies of accusations as they are filed which the DCA is, of course, free to post on its own. We only request that if you post them online, you allow the CBA to watermark the allegations with verbiage to the effect of "This is not a disciplinary action or final decision of the board."

Thank you for your time in addressing these matters that are of such concern to consumers, licensees, and the CBA.

Sincerely,



Patti Bowers
Executive Officer

Attachment

c: Members, California Board of Accountancy

Patti

Patti Bowers
Executive Officer
California Board of Accountancy

Office: (916) 561-1711
Mobile: (916) 956-8743

Brian Stiger
Stiger@d To: "drich@cba.ca.gov" <drich@cba.ca.gov>,
ca.ca.gov> "BoardMembers@BOARDOFACCOUNTANCY.cba.ca.gov"
<BoardMembers@cba.ca.gov>
cc: "patti@cba-email1.cba.ca.gov" <patti@cba.ca.gov>, Kimberly
07/10/2010 Kirchmeyer Kirchmeyer@dca.ca.gov>, Doreathea
Johnson
10:59 AM <Doreathea.Johnson@dca.ca.gov>
Subject: RE: Posting Accusations Letter to Director Stiger

Rich:

In response to your letter dated June 24, 2010, the Department of Consumer Affairs (DCA) has provided a legal opinion that addressed the concerns raised by the California Board of Accountancy (CAB) relating to the posting of accusations on the its web site. From DCA's perspective, the additional concerns raised in your letter attempts to unnecessarily delay the CBA from complying with my directive regarding the posting of accusations on CBA's web site by August 18, 2010.

The suggestion that CBA should resume its former practice of utilizing "investigative investigations" is unacceptable and would result in further allegations against CBA that the fox is once again guarding the henhouse. I urge the board to review all of the legislative history associated with the ill-conceived concept of "investigative hearings" including the Joint Legislative Sunset Review Committee 2001 Sunset Review Report.

With respect to the right to privacy issue, all DCA agencies either post or are in the process of posting accusations on their web sites. There is no privacy interest that prohibits CBA from posting accusations, which are public documents. Further, there is no reason why CBA's licensees would or should have any more privacy interests than any other profession regulated by DCA.

CBA's reluctance to comply with my directive to post accusations on its web site is troubling to say the least. Please continue to provide DCA with copies of all accusations filed by the CBA and any additional updates to prior filings as you deem necessary as we will begin posting on our web site in August.

Regards,

-Brian

ATTACHMENT 1K

THE INSTITUTE OF CHARTERED ACCOUNTANTS
IN ENGLAND AND WALES

31 August 2010

RECEIVED
10 SEP -2 PM 12:56
CALIFORNIA BOARD OF ACCOUNTANCY

Manuel J Ramirez
President
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento
California 95815-3832
USA

Dear Mr Ramirez

PUBLICATION OF ACCUSATIONS AGAINST CPAs

I understand that the Department of Consumer Affairs has asked the California Board of Accountancy to consider posting accusations against CPA's prior to a hearing. Although I have no direct interest in CPA disciplinary processes, I thought it might be of use to you to offer a few observations based on experience in the United Kingdom.

The Institute of Chartered Accountants in England and Wales (ICAEW) operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

Although employed by ICAEW I would stress that the comments set out below are my personal views.

ICAEW does not publish accusations against its members. It does publish disciplinary orders made and it also holds its Disciplinary Committee (DC) hearings in public. However, by the time a case against a member comes before the DC, it will have been investigated by ICAEW staff and considered by the Investigation Committee, so that it will have been considered that the individual involved at least has a case to answer.

While I am not directly involved in disciplinary policy, my take on this process is that we are seeking to balance two important requirements:

1. Every regulator that seeks to act in the public interest needs to consider not only the output of its actions, but be prepared to demonstrate, amongst other things, that its process is designed to produce a public interest outcome.
2. It is fundamental to the legal systems of many countries, including the UK and US, that people are held to be innocent until proven guilty, as without this it would be difficult to defend against vexatious allegations that can damage reputation even when without substance.

These are at least as important to professionals as others: professionals by their nature are tasked with upholding higher standards than others and should be accountable for that, but also stand to lose much – possibly their livelihoods, through unwarranted tarnishing of their reputation.

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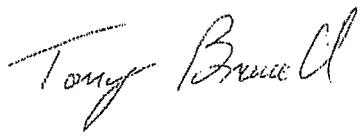
ATTACHMENT 1L

It is important, therefore, to be transparent at an appropriate point, but that point should take account of the need, so far as possible, to guard against giving publicity to damaging assertions that have no substance.

Yours sincerely



Tony Bromell
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ICAEW

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ISSUE 1 – DUE PROCESS PRIOR TO FILING AN ACCUSATION

Overview of Current Enforcement Process

Complaint Intake
A complaint is filed, and the person who filed the complaint is notified that the CBA received the complaint. The complaint is then reviewed in an initial screening process, which includes establishing jurisdiction and prioritization of the complaint. If it is determined that the complaint lacks merit, the complaint is closed, and the complainant is sent written notification providing the reasons for CBA's determination. The licensee is not contacted or informed of the complaint. If the complaint is accepted by the CBA, it is then assigned to an investigative staff member.

Investigative Process
The investigative staff investigate complaints based on substantial and tangible facts relating to specific violation(s) of CBA's laws and regulations. As part of the investigative process, the licensee is contacted, in writing, to advise that a complaint has been filed, is provided details of the complaint, and is provided information on the enforcement process (See **Attachment 2A**). At that time, the investigator may request specific documents from the licensee, as well as request a written response to provide any additional information the licensee deems appropriate. Once the investigator completes the investigation, a report is prepared for review by Enforcement Management to insure that proper procedures were followed, all of the issues of the complaint have been addressed, and the conclusion is supported by the facts and evidence.

The majority of the investigations are closed without formal disciplinary action. The licensee and complainant are notified in writing of the CBA's decision to close the investigation.

In some instances, the investigator will recommend to Enforcement Management to continue the investigation and schedule the licensee for an investigative hearing.

Investigative Hearings
The purpose of an investigative hearing (IH) is to gather additional evidence and provide the licensee the opportunity to present his or her position on the matter under investigation.

Licensees are notified in writing (See **Attachment 2B**) that they has been scheduled for an IH.

The statutory authority to conduct IHs (California Business and Professions Code Section 5103 – See **Attachment 2C**) is unique to the CBA with respect to other DCA boards and bureaus. The statute authorizes the CBA, through its Executive Officer, to conduct investigative hearings to obtain information and evidence on matters involving the conduct of licensees and alleged violations of the California Accountancy Act.

Members of the Enforcement Advisory Committee (EAC) assist at the IHs and make recommendations to the Enforcement Chief regarding further action.

IHs are typically recorded by a certified court reporter. Attendees at an IH consist of the licensee, EAC members, a Deputy Attorney General, and a CBA staff investigator or consultant. In addition, the licensee may have legal representation present at the IH. The Enforcement Chief, the Supervising Investigative CPA, and/or EAC Chair also may attend.

At the conclusion of the IH process, the licensee is notified in writing of CBA's findings. (See **Attachment 2D**)

Typically, the following types of complaints do not require an investigative hearing:

- Complaints involving administrative violations (e.g. continuing education deficiencies);
- Criminal convictions;
- Discipline by another government agency; or
- Instances where the licensee does not cooperate with the investigation.

Complaints Referred to the Attorney General's Office

Complaints (with or without the IH process) where the CBA believes that clear and convincing evidence confirms violation(s) of the California Accountancy Act are referred to the Attorney General's Office with the request for the preparation of an accusation. Typically, the licensee is notified that the matter is being forwarded to the Attorney General for legal review. (See **Attachment 2E**)

Upon receipt, the Office of the Attorney General reviews and verifies that there is a good faith belief that the burden of proof of clear and convincing evidence can be met with the supporting documentation submitted by the CBA. If the Attorney General's Office does not believe that the burden of proof has been met, it has the right to decline to prosecute a matter, request additional investigation, and participate in the investigation if necessary.

Pre-Filing Accusation Conference

The licensee may be offered an opportunity to review the draft accusation and comment on its factual content prior to the filing of the accusation. The intent of the pre-filing accusation conference is to provide a mutual understanding and agreement between the licensee, CBA, and the Attorney General's Office of the facts surrounding the investigation and to provide an opportunity to outline what options (administrative hearing or settlement) are available to the licensee once the accusation is filed. (See **Attachment 2F)**

CALIFORNIA BOARD OF ACCOUNTANCY

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
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Attachment 1

Business and Professions Code

5103.5. (a) The board shall post on its Internet Web site, in an easily marked and identifiable location, notice of all formal accusations. The notice of any formal accusation shall contain a link to where a person may request and have sent to him or her a copy of the formal accusation, and the basis for the accusation and alleged violations filed by the board against a licensee.

Options for Consideration
Should CBA members wish to address concerns regarding due process, the following options may be considered. These options can be considered as either "stand alone" or in any combination.

Option 1
Maintain Status Quo, including the following:

- Discretionary scheduling of IHs.
- Discretionary scheduling of pre-filing conferences.
- Licensee initiated participation in the mediation process (See EPOC Agenda Item XI.A.4.)

(Attachments 2A, 2B, 2D, 2E, and 2F are letters presently sent to licensees during an investigation informing them of the investigative process.)

Option 2
Implement a new letter allowing licensees to request an IH prior to referring the matter to the Attorney General's Office for the preparation of an accusation. (See **Attachment 2G**)

Option 2A
Modify the investigative letter to inform licensees that they may request an IH. (See **Attachment 2H, Page 3**)

Option 3
Explore pursuing legislation that would require a mandatory IH before an accusation is filed.

Other Consideration
Should the CBA select an option that requires legislation or regulatory approval, staff will present propose language at the November CBA meeting.

ISSUE 2 – SHOULD ACCUSATIONS FILED BY THE CBA BE POSTED ON THE CBA WEB SITE?

Pursuant to California Business and Professions Code Section 5103.5 (see **Attachment 1C**), the CBA maintains a listing of filed accusations on the CBA's Web site. The accusation document itself is not currently displayed, and in order for the consumer to obtain copies of accusations, the consumer is directed to contact the CBA to request a copy.

The CBA Web site also clarifies to consumers that the charges in the accusation are allegations, and allegations are not a final determination of wrongdoing and are subject to adjudication and final review by the CBA.

DCA has been promoting greater transparency and consistency in disclosing public documents to consumers. On May 21, 2010, DCA Director Brian Stiger directed all DCA Boards and Bureaus to post all filed accusations on their respective Web sites. DCA then, on August 18, 2010, began posting pending CBA accusations on the DCA Web site.

Options for Consideration

Option 1
Do not post accusation documents on the CBA Web site. DCA will continue to post the accusation documents.

Option 2
Post accusation documents on the CBA Web site after the accusation has been filed and served.

Option 3
Post accusations on the CBA Web site with a watermark (**Attachment 3A**) identifying the document as "PENDING ADJUDICATION," "THIS IS NOT A DISCIPLINARY ACTION OR FINAL DECISION OF THE BOARD," or "PENDING ACCUSATION."

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
DIVISION OF LEGAL AFFAIRS
1625 N. Market Blvd., Suite S-309, Sacramento, CA 95834
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Attachment 2

MEMORANDUM

DATE	June 24, 2010
TO	MEMBERS OF THE CALIFORNIA BOARD OF ACCOUNTANCY via PATTI BOWERS Executive Officer California Board of Accountancy
SUBJECT	Posting of Accusations on the CBA Website Business and Professions Code section 5103.5

At the May 13th, 2010 meeting of the California Board of Accountancy (CBA) I provided an unqualified opinion that there is evidence of legislative intent to limit public access to formal accusations filed and served by the CBA. However, upon further research, I have concluded that the informal opinion that I furnished at the meeting was inaccurate.

This memorandum is intended to provide a more careful and reasoned opinion regarding whether the CBA is limited or otherwise restricted from posting accusations on its website due to specificity of procedures delineated in recently enacted Business and Professions Code section 5103.5 that provides public access to records concerning formal accusations against CBA licensees.

Question Presented

Does Business and Profession Code section 5103.5 limit the CBA's authority to publish a copy of an accusation directly accessible to the public on its website?

Short Answer

Business and Profession Code section 5103.5 does not limit the CBA's authority to publish a copy of an accusation directly accessible to the public on its website so long as it also complies with the exact requirements of Business and Professions Code section 5103.5.

Analysis

This question poses a question of statutory interpretation and construction of recently enacted Business and Profession Code section 5103.5. (2009 Stats. Ch. 378 3 (AB 1005), effective January 1, 2010.)[1]

Business and Professions Code section 5103.5 provides the following:

> (a) The board shall post on its Internet Web site, in an easily marked and identifiable location, notice of all formal accusations. The notice of any formal accusation shall contain a link to where a person may request and have sent to him or her a copy of the formal accusation, and the basis for the accusation and alleged violations filed by the board against a licensee.
>
> (b) The link to where a person may request and have sent to him or her a copy of the formal accusation shall be clearly and conspicuously located on the same Internet Web site page on which the notice is posted and shall authorize a person to request and receive the information described in subdivision (a) by regular mail or electronic mail.
>
> (c) The board shall develop a statement that informs any person requesting a copy of a formal accusation and any person receiving a copy of a formal accusation that any allegations contained in the accusation are not a final determination of wrongdoing and are subject to adjudication and final review by the board pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This statement shall be provided to a person requesting and receiving a copy of a formal accusation in a manner to be determined by the board.

The exact text and language of section 5103.5 clearly delineates a process by which the CBA is to provide public access to its accusation documents. The mere fact that the statute provides such a procedure acknowledges that such documents are public records subject to disclosure. Nevertheless, an issue remains as to whether section 5103.5 is the exclusive method by which the CBA may provide accusations to the public via its own internet website. Consequently, it is necessary to employ rules of statutory construction to further understand the statutory requirements or limitations.

---

[1] Unless specified otherwise, all statutory references are to the Business and Professions Code.

General Rules of Statutory Construction

In interpreting the statutory provision in question, we may rely upon several principles of statutory construction. "In construing a statute, a court's objective is to ascertain and effectuate the underlying legislative intent." (*Moore v. California State Board of Accountancy* (1992) 2 Cal.4th 999, 1012.) In determining legislative intent, we look first to the language of the statute, giving effect to its "plain meaning." (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208-209.) In addition, various sections of all codes must be read together and harmonized if possible. (*Channell v. Superior Court of Sacramento County* (1964) 226 Cal. App.2d 246; *Rupley v. Johnson* (1953) 120 Cal.App.2d 548; *In Re Thrasher's Guardianship* (1951) 105 Cal.App.2d 768.) As such, the codes are to be regarded as blending into each other and constituting but a single statute. (*Pesce v. Department of Alcoholic Beverage Control* (1958) 51 Cal.2d 310.) Consequently, the codes must be construed to give effect to all provisions, if reasonably possible. (*Pareses v. California State Board of Prison Directors* (1929) 208 Cal. 353; *People v. Pryal* (App.1914) 25 Cal.App. 779.)

The applicable rules of statutory construction may also be summarized as follows: In construing a statute, the primary goal is to find and give effect to the legislative intent or purpose in enacting the statute. (*People v. Caudillo* (1978) 21 Cal.3d 562, 576, 146 Cal.Rptr. 589; *County of San Mateo v. Booth* (1982) 135 Cal.App.3d 388, 396, 185 Cal.Rptr. 349.) The words and language of the statute are the primary source of legislative intent. It is necessary to first look to the language of the statute to ascertain legislative intent, giving effect to the usual, ordinary import of the language. If the language is clear and unambiguous then it is not necessary to engage in further construction; it merely applies the statute as expressed. (*People v. Belleci* (1979) 24 Cal.3d 879, 884, 157 Cal.Rptr. 503; *People v. Haney* (1984) 156 Cal.App.3d 109, 115, 202 Cal.Rptr. 579; *County of San Mateo v. Booth, supra,* 135 Cal.App.3d at p. 396, 185 Cal.Rptr. 349.) "Statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers-one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity." (*Bush v. Bright* (1968) 264 Cal.App.2d 788, 792, 71 Cal.Rptr.123.) If the plain meaning of the words in the statute is ambiguous, other rules of statutory construction must be used to interpret the legislative intent.

Under the aforementioned rules of statutory construction, the text and language used in section 5103.5 must first be examined under the "plain meaning" rule and read together and harmonized with other statutes to give effect to all provisions. The specific text of section 5103.5(a) uses plain language that mandates the CBA to "post on its Internet Web site, in an easily marked and identifiable location, notice of all formal accusations. The notice of any formal accusation shall contain a link to where a person may request and have sent to him or her a copy of the formal accusation, and the basis for the accusation and alleged violations filed by the board against a licensee." The statute on its face contains no language that restricts or otherwise limits the CBA inherent authority

to provide access to its public records, including accusations.[2] Section 5103.5 simply requires the CBA to post notice of all its formal accusations and provide a means where a person may request a copy that may be received either by regular mail or electronic mail. The statute is silent as to whether the CBA may furnish a copy of its formal accusations by some other means.

The disclosure of public records is governed by the California Public Records Act. (Gov. Code § 6250 et seq.) Under the Act, the CBA is required to furnish copies of its public records upon request. (Gov. Code § 6253) The Act does not specify the means or manner by which a request is made. Consequently, the CBA is required to affirmatively provide a copy of a formal accusation to anyone who requests the record. The request may be transmitted by methods, including regular mail, electronic mail or even by telephone. The fact that section 5103.5 provides one specific method by which the CBA provides access its formal accusations does not limit its authority to publish this information by some other additional means.

It must be presumed that the Legislature, when enacting this statute, was aware of existing related laws and intended to maintain a consistent body of rules. (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1055-1056, 93 Cal.Rptr.3d 457.) Consequently, Business and Professions section 5103.5 must be read together and harmonized with the California Public Records Act because the statute directly involves how certain public records are made accessible to the general public.

California Public Records Act (CPRA)

Under the California Public Records Act there is a strong public policy favoring the disclosure of public records. (Gov. Code §§ 6250, 6252,subds.(a),(b); *Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467, 92 Cal.Rptr.2d 862.) The Legislature has declared that access to public records is a "fundamental and necessary right." (Gov. Code § 6250.) Under the CPRA, state agencies are free to exceed that act's minimum standards and adopt requirements that ***"allow for faster, more efficient, or greater access to records...."*** (Gov. Code § 6253, subd. (e), emphasis added.) The right of access to public records is not absolute. For instance, Government Code section 6254 provides a list of records that are exempt from public disclosure. However, formal accusations are not explicitly identified as exempt from disclosure under the CPRA.

---

[2] There is no doubt that formal Accusations filed by the CBA are public records. AB1005 added Bus. & Prof. Code § 5103.5 and was enacted in 2009, effective January 1, 2010. The legislative history, including all committee reports and analysis, of AB 1005 acknowledge that formal Accusations filed and served are public records. (See http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_1005&sess=CUR&house=B&author=block.)

The State has committed itself to the use of new technologies to increase public access to public records. In creating the Department of Information Technology (DOIT) in 1999, the Legislature declared information technology to be an "indispensable tool of modern government" and committed itself to taking advantage of improving technology. (Gov.Code, § 11700, repealed 2003.) The director of that department is required to develop plans which include public access to public records by way of new telecommunications technologies. (Gov.Code, § 11713, subd.(d), repealed 2003.) Although the DOIT related statutes were repealed in 2003 due to a sunset provision in its enabling act, its functions and policies have continued through the Office of the Chief Information Officer (OCIC) which continues to strive to provide greater state governmental transparency and public access to public records. (See California Information Technology Strategic Plan, 2nd Edition: A Roadmap for Transformation, January 15, 2010.)

"The Internet is 'a unique and wholly new medium of worldwide human communication.' " (*Reno v. American Civil Liberties Union* (1997) 521 U.S. 844, 850, 117 S.Ct. 2329, 138 L.Ed.2d 874, fn. omitted.) "It enables people to communicate with one another with unprecedented speed and efficiency and is rapidly revolutionizing how people share and receive information...." (*Blumenthal v. Drudge* (D.D.C.1998) 992 F.Supp. 44, 48.) The internet is not a physical or tangible entity. Instead, it is a giant network which interconnects countless smaller groups of linked computer networks. It is a vast, decentralized collection of documents containing text, visual images, and audio clips designed to be accessible from every internet site in the world. As such, it has no territorial boundaries. (*Ibid.*)

The posting of accusations on a DCA or CBA website does not violate or contravene the mandatory procedures provided in Business and Professions Code section 5103.5. Instead, it simply permits the DCA and CBA to respond much the same as it would to a telephone caller seeking to learn about a licensee's background. This is the duty and obligation that the CBA has under the CPRA. The use of the internet to search out a licensed certified public accountant license history and examine his or her public record of discipline is likely to be easier and faster than use of the telephone, but it is fundamentally no different. The information exchange takes place between computer systems, but still passes over phone lines. CBA licensees can't reasonably expect that the methods available for gaining access to their public records would remain frozen and unaffected by new technologies.

Legislative Intent

The language employed in section 5103.5 is not ambiguous or subject to different interpretations. Consequently, if the statutory language is unambiguous, 'we presume the Legislature meant what it said, and the plain meaning of the statute governs.' [Citation.]" (*Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 484-485, 17 Cal.Rptr.3d 88.) Nevertheless, for sake of argument, let

us assume that some will claim the statute to be ambiguous insofar that it is subject to an interpretation that the CBA is only permitted to post "notice of all formal accusations" on its website. If statutory language is ambiguous or reasonably susceptible to more than one interpretation, it may be necessary to examine the context in which the language appears and adopt the construction that best harmonizes the statute internally and with related statutes. This may include consideration of a variety of extrinsic aids, including the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. (*Pacific Sunwear of California, Inc. v. Olaes Enterprises, Inc.* (2008) 167 Cal.App.4th 466, 474, 84 Cal.Rptr.3d 182.) " 'We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.' [Citation.]" (*Realmuto v. Gagnard* (2003) 110 Cal.App.4th 193, 199, 1 Cal.Rptr.3d 569.)

In attempting to determine the legislative intent, the court must consider the purpose, object, and policy underlying the enactment. (*Sun, Ltd. v. Casey,* (1979) 96 Cal.App.3d 38, 41,157 Cal.Rptr. 576.) Legislative records may be looked at to determine legislative intent and it will be presumed that the Legislature adopted proposed legislation with the intent and meaning expressed in committee reports. (*Southland Mechanical Construction Co. v. Nixen* (1981)119 Cal.App.3d 417, 427, 173 Cal.Rptr. 917.)

Looking at the legislative history of AB 1005, it is apparent that the statute as initially introduced on February 27th, 2009, required the CBA to post on its website only "notice of all formal accusations." On April 20th, 2009, the bill was amended to require the posting of all formal accusations on its website. It was amended again on April 30th, 2009, to include language that is similar to what ultimately became the chaptered bill. The legislative history, including all committee reports and analysis, of AB 1005 acknowledge that formal accusations filed and served are public records. The history demonstrates that all concerned parties and political stakeholders struggled with language that best served the public by specifying a means by which anyone can access formal accusations through the CBA website. There appears to have been no support or legislative intent that the procedures delineated in AB 1005 are the exclusive or sole means by which these public records are available. An interpretation that the CBA only disclose on its website limited information regarding pending accusations is inconsistent with the law that makes accusations public documents. Such an interpretation is also inconsistent with Government Code section 6253,subds.(a) and (b) which provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect obtain a copy of any public record.

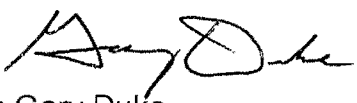
Many statutes, if not most, are the product of compromise between opposing groups. A compromise is quite likely not to embody a single consistent purpose. It should not be assumed that a statute's apparent purpose is not its real purpose. But where the lines of compromise are discernible, a regulatory agency's duty is to implement the law not the purposes of one group of legislators, but the compromise itself. The political compromises involved in the enactment of AB 1005 simply resulted in the legislature requiring the CBA to provide the public with a means of access to its formal accusations. The law does not mandate that this method of providing access to such records is the sole means of delivery but rather that the CBA must at least comply with the provisions of section 5103.5. An interpretation that section 5103.5 restricts access to public records on the internet simply because it specifies one procedure for obtaining a copy of the CBA formal accusation is inconsistent and in contravention of the CPRA. Such a construction of the statute leads to an absurd result of making public records more difficult to access.

In summary, Business and Profession Code section 5103.5 must be read in concert with the CPRA and the statutes must be harmonized together. The enactment of AB 1005 does not limit the CBA's authority to publish a copy of an accusation directly accessible to the public on its website so long as the exact requirements of Business and Professions Code section 5103.5 are also met.

Please feel free to call me at (916) 574-8220 if you have any questions regarding this opinion.

Sincerely,

DOREATHEA JOHNSON
Deputy Director, Legal Affairs



By: Gary Duke
Senior Staff Counsel

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item VIII.G.
September 22-23, 2010

To : CBA Members

Date : August 31, 2010

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From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Discussion on Obtaining an Exemption to the Webcasting Requirement

History

On January 1, 2010, the California Board of Accountancy (CBA) was required by the Legislature to begin live broadcasting over the Internet of its meetings via either an audio or video feed. The law is found in Business and Professions Code Section 5017.5 which states, in part, that the CBA must broadcast "each of its board meetings that are open and public." Under the Bagley-Keene Open Meeting Act, that would apply to any meeting of the majority of CBA members, including the CBA's working conference in October.

Discussion

It has been suggested that the CBA members discuss obtaining an exemption to this Webcasting requirement in cases where no action is expected to be taken on any items. This exemption would have to be obtained through the legislative process. Possible legislative language can be found in **Attachment 1**. If such legislation were pursued and signed into law next year, it would not be in effect until January 1, 2012.

Things to Consider

The CBA may wish to consider the following points as it discusses this issue.

- What was the Legislature's intent in mandating the Webcasting of CBA meetings?

  The Webcasting requirement was a part of AB 1005 of 2009 which was a bill that mandated additional levels of transparency for the CBA. In addition to the Webcasting, it also required that the CBA post the recordings and minutes of its meetings for three years. It also called for the CBA to post notice of accusations once they had been filed. The CBA may wish to examine whether this transparency desired by the Legislature was meant for just decisions made by the CBA or for the deliberations leading to the decisions as well.

- What will be the level of opposition to the bill?

  It has been suggested that this language may be a part of an omnibus bill in the next session. However, omnibus legislation is typically restricted to non-controversial matters. It is anticipated that this proposal will have opposition, perhaps severe opposition.

- What other legislative items does the CBA intend on pursuing in the next session?

  Some bills do not do well when introduced with other bills. Staff have been told by one of the legislative consultants that the CBA needs to carefully consider what bills it introduces. He cautioned that certain unpopular bills can be “radioactive;” in other words killing good bills as they head to their own demise due to their extreme unpopularity. A good bill can easily die due to its association, real or perceived, with a “radioactive” bill. While this may be unfair, it is, unfortunately, how the Legislature operates at times. It is possible that this language could be seen as “radioactive” by the Legislature.

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Attachment 1

5017.5. (a) The board shall provide a live audio or video broadcast, on its Internet Web site, of each of its board meetings that are open and public except as provided for in Section 5017.6.

(b) (1) If technical failure prevents the board from providing a live broadcast as specified in subdivision (a), that failure shall not constitute a violation of this section if the board exercised reasonable diligence in providing a live broadcast.

(2) Failure to provide a live broadcast of its board meetings due to technical failure shall not prohibit the board from meeting and taking actions.

(c) The recording of the live audio or video broadcast shall remain on the Internet Web site for at least three years. Providing a link on the Internet Web site to the recording of the live audio or video broadcast shall satisfy this requirement.

5017.6 (a) Section 5017.5 shall not apply to board meetings that are open and public in which the board is not expected to vote on any items on its agenda prepared pursuant to Government Code Section 11125 or vote on any items not on the agenda pursuant to Government Code Section 11125.3.

(b) If an open and public meeting is not broadcast on the board's Internet Web site pursuant to subdivision (a), the board shall not vote on any matter at that meeting.

CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST

DIVISION: Administration

DATE: May 3, 2010

CBA Agenda Item VIII.H.
September 22-23, 2010

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
~~Fee Reduction Project Outline~~	~~6/1/2010~~	~~7/9/2010~~	~~Ng~~	COMPLETE
2010 Business Continuity Plan	8/3/2010	9/30/2010	Ng	
Delegation of Authority Regulations	9/1/2010	9/30/2010	Stanley	Awaiting Board Approval
PROC Regulations	12/4/2009	12/4/2010	Stanley	DOF Review
Peer Review Certificate of Compliance	12/4/2009	12/4/2010	Stanley	DOF Review
Revise Consumer Assistance Booklet	3/30/2010	12/31/2010 ~~8/27/2010~~ ~~4/30/2010~~	Hersh	Interim edits finalized. Re-write in progress.
Coordinate the scheduling of phase 2 of CBA's space expansion	6/7/2007	1/1/2011 ~~6/1/2010~~ ~~12/31/2009~~	Ng	Facility remodel complete. Awaiting DCA submittal of modular equipment purchase order. Will not take place until budget is signed for FY 10-11
CE Cleanup Regulations	3/26/2010	3/26/2011	Stanley	Surnaming final package
Fee Regulations	5/28/2010	5/28/2011	Stanley	Preparing Final Statement of Reasons
PR Provider Requirements and Regulations	9/1/2010	9/30/2011	Stanley	Awaiting Board Approval
Perform Peer Review education and outreach	7/1/2008	Ongoing ~~10/31/2009~~	Hersh	Radio Outreach in major CA cities through 8/27/2010
Delegation of Authority from DCA for personnel tasks	10/29/2008	TBD ~~6/1/2010~~ ~~TBD~~	Ng	Received approval as HRIS "Super User". Still awaiting SPB approval to access cert lists.
Implement new online e-procurement/contract process	1/1/2009	TBD	Ng	Delayed by DCA

CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST

DIVISION: Administration IT

DATE: September 1, 2010

CBA Agenda Item VIII.H
September 22-23, 2010

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Peer Review Reporting System Enhancement	9/1/2010	9/30/2010	Hansen Taylor	Add survey form to current online peer review reporting form.
Develop a Continuing Education Database	9/1/2008	10/1/2010 ~~7/1/2010~~ ~~1/1/2010~~	Hansen	Integrated with Peer Review Reporting System. 85% complete, some final details need to be worked on.
Online Address Change Form	9/15/2010	11/30/2010	Hansen Taylor	Allow licensees to use CBA website to update addresses.
Document Imaging Project (IT Management)	7/1/2008	2/1/2012 ~~4/30/2011~~	Andres	DCA project under development
E-Mail Client Standardization and Migration Project	1/2/2009	TBD ~~1/30/2009~~	Hansen	On hold. Affected by Executive Order/AB2408. State CIO contracting for CA shared e-mail system.
Migrate Initial Licensing Unit's Master Tracking Data	11/4/2008	TBD ~~5/30/2009~~	Taylor	Scope of project has changed in light of DCA BreEZe system.
Practice Privilege Program Enhancements	11/10/2008	TBD ~~6/30/2009~~	Hansen	Delayed due to other priorities
CBA Exam System Redesign	TBD	TBD	Hansen Taylor	
Review and Combine Office Databases	TBD	TBD	Taylor	

CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST

DIVISION: Enforcement

DATE: May 3, 2010

CBA Agenda Item VIII.H
September 22-23, 2010

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Scanned enforcement documents - confirm accuracy/completeness	11/1/2008	9/13/2010 ~~7/31/2010~~ ~~4/30/2010~~ ~~1/30/2010~~	Nunally	Scanning is complete effected 8/23/2010; information reported to Rosella Lyons.
Review and update Disciplinary Guidelines	1/1/2009	9/30/2010 ~~5/30/2010~~ ~~2/28/2010~~	Santaga	Pending final approval of CBA members. Scheduled as topic at Sept. 2010 Meeting.
Update process manuals and guidelines	12/1/2008	11/30/2010 ~~9/30/2010~~ ~~4/30/2010~~ ~~11/30/2009~~	Santaga	Extension of time to 11/30/2010.
Enforcement Program Audit	9/1/2010	11/30/2010	Ixta	All Enforcement related Policies and Procedures, flowcharts of processes and training documentation were provided to DCA's Internal Audit Office on August 31, 2010. DCA will review the information provided and will contact Enforcement for next steps.

CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST

DIVISION: Executive

DATE: May 3, 2010

CBA Agenda Item VIII.H
September 22-23, 2010

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Develop a report of CBA's performance measures for CBA consideration	11/5/2008	9/23/2010 ~~9/25/2009~~	Bowers	Agenda Item for Nov. 2010 CBA Meeting
Annual Report	2/1/2010	9/30/2010 ~~7/31/2010~~	Vincent	In Surname at Executive Office Level. Agenda Item for October Working Conference.
Sunset Review Report	3/10/2010	10/1/2010	Vincent	Agenda Item for Sept. 2010 CBA Meeting
Develop CBA Succession Plan	5/1/2010	12/31/2010	Bowers/Rich	Agenda Item for Nov. 2010 CBA Meeting
Knowledge Management Program	12/17/2009	1/11/2011	Vincent	In process, delayed due to other priorities
Identify solution for resolving enforcement program staffing needs	10/24/2008	TBD	Bowers	Actively working with DCA on this issue.
Paperless Meeting materials for CBA members	2/3/2010	TBD ~~7/1/2010~~	Veronica	On hold due to equipment needs (laptops) and ordering restrictions due to budget.

CALIFORNIA BOARD OF ACCOUNTANCY
CURRENT PROJECTS LIST

DIVISION: Licensing

DATE: May 3, 2010

CBA Agenda Item VIII.H
September 22-23, 2010

PROJECT TITLE/DESCRIPTION	START DATE	ESTIMATED FINISH DATE	UNIT/STAFF ASSIGNED	STATUS/COMMENTS
Develop draft language for the 20 units of accounting study recommended by the Accounting Education Committee at the June 23, 2010 meeting.	7/1/2010	8/31/2010		Language is drafted, it will be reviewed during the AEC meeting on 9/3/2010. Anticipate presenting draft language to CBA in November 2010.
Begin preliminary work on the Ethics Curriculum Committee's inaugural meeting.	6/1/2010	8/31/2010		Agenda and meeting materials finalized. Inaugural meeting to be held on September 21, 2010.
Develolp subpoena processing manual, policy & procedures, and conduct a training class for staff.	5/15/2008	9/30/2010 ~~8/31/2010~~ ~~3/31/2010~~ ~~1/31/2010~~		
Review and possibly revise the current process for issuing CPA licenses.	7/1/2010	11/20/2010 ~~10/31/2010~~		Project outline developed. November 1, 2010 is the anticipated start date for the new process.
Work with the DCA to implement an option to allow licensees to pay their license renewal via credit card.	3/1/2010	12/31/2010		CBA to be included with the next group of boards to be folded into the Credit Card Program. Meeting with OIS in early December.
Update and create informational materials for firms, including a handbook, updating Web site and partnership/corporation applications, and including Peer Review information where necessary.	12/21/2009	1/1/2011 ~~8/31/2010~~ ~~7/31/2010~~ ~~3/31/2010~~		Project outline developed. Estimated completion date, including legal review and posting on the Internet is 1/1/11

California Board of Accountancy
Licensing Division Activity
May 1, 2010 through August 31, 2010

Examination Unit

CPA Exam Applications and Medical Accommodations Received	May 2010	June 2010	July 2010	August 2010
First-time Sitter	642	1,337	868	767
Repeat Sitter	1,121	2,161	1504	1155
Medical Accommodation	12	18	14	7

Average Number of Days to Process a Completed Exam Application	May 2010	June 2010	July 2010	August 2010
First-time Sitter	25	23	36	41
Repeat Sitter	6	6	7	6

Appeals	May 2010		June 2010		July 2010		August 2010	
	Approved	Denied	Approved	Denied	Approved	Denied	Approved	Denied
Management-Level Appeals	15	5	26	0	13	6	15	2
Board-Level Appeals	0	0	0	0	0	0	0	0

Highlights

- The California Board of Accountancy (CBA) has received the first "wave" of score reports for the July/August 2010 testing window, and Examination Unit staff are working to post the scores and release them to the candidates. The CBA received a total of 6,097 scores for the first wave for the July/August testing window.

- Processing time frames for first-time applicants currently exceeds 30 days due to the extraordinarily high number of applications received in June – staff received 1,337 first-time applications during June, which represented a 54 percent increase compared to the number of applications received in June 2009. It is believed the influx in the number of applications might be in response to the upcoming changes to the Uniform CPA Examination, being referred to as CBT-e. Staff are actively seeking ways to address the increase in time frames, including redirecting staff from other units within the CBA. In addition, a notice was posted to the CBA Web site and candidate online account advising that processing time frames are currently beyond the typical 30 days.

California Board of Accountancy
Licensing Division Activity
May 1, 2010 through August 31, 2010

Examination Unit

Highlights

- Presently, the Examination Unit has an Office Technician vacancy; however, due to the Governor's August 31, 2010 Executive Order, all hiring of staff has been placed on hold indefinitely.

California Board of Accountancy
Licensing Division Activity
May 1, 2010 through August 31, 2010

Initial Licensing Unit

Applications Received	May 2010	June 2010	July 2010	August 2010
CPA	263	367	306	299
Partnership	4	5	6	3
Corporation	17	16	18	10
Fictitious Name Permit (Registration)	15	9	5	9

Processing Time Frames (Average Number of Days to Process a Completed Application)	May 2010	June 2010	July 2010	August 2010
CPA	10	13	19	19
Partnership	6	12	10	12
Corporation	6	12	10	12
Fictitious Name Permit (Registration)	6	12	10	12

Applicants Licensed Under	May 2010	June 2010	July 2010	August 2010
Pathway 0	10	5	2	3
Pathway 1A	45	32	30	32
Pathway 1G	50	37	37	40
Pathway 2A	92	82	96	84
Pathway 2G	164	106	104	146

California Board of Accountancy
Licensing Division Activity
May 1, 2010 through August 31, 2010

Initial Licensing Unit				
	May 2010	June 2010	July 2010	August 2010
Requests Received	90	83	102	95
Processing Time Frame (Average Number of Days)	13	17	17	20

Highlights

- The Initial Licensing Unit continues to maintain a zero backlog and reduced processing time frames.

California Board of Accountancy
Licensing Division Activity
May 1, 2010 through August 31, 2010

Renewal and Continuing Competency Unit

Licenses Renewed	May 2010	June 2010	July 2010	August 2010
CPA	2,621	3,045	2,919	3,112
PA	4	2	4	4
Partnership	18	66	44	44
Corporation	33	180	110	89

Continuing Education Worksheet Review	May 2010	June 2010	July 2010	August 2010
CPA/PA Applications Reviewed	2,847	3,138	1,448	2,219
Deficient Applications Identified	153	229	341	514
Compliance Responses Received (Including Requests for Inactive Status)	121	93	74	24
Enforcement Referrals	0	0	0	0
Outstanding Deficiencies (Including Abandonment)	32	135	267	490

Highlights

- Staff continue to review Regulatory Review course submissions and have approved a total of nine courses. Licensees now have greater flexibility in fulfilling this new requirement as courses are available in self-study, live, and webcast formats. Presently, an additional three courses are pending either an initial or second review.

- In July, Sean Clark, Office Technician in the Renewal Unit, was promoted to a Staff Services Analyst position in the Enforcement Division.

- Presently, the Renewal Unit has an Office Technician vacancy; however, due to the Governor's August 31, 2010 Executive Order, all hiring of staff has been placed on hold indefinitely.

Renewal and Continuing Competency Unit

Highlights

- On July 1, 2010, a peer review notification letter was mailed to approximately 28,000 licensees with a license number ending in 01-33. Additionally, a dedicated peer review telephone line and e-mail box were created. The Renewal Unit, with assistance from members of other units, has the primary responsibility for responding to peer review inquiries received. As of August 25, 2010, staff have responded to 222 e-mails and 3,951 telephone calls received on these dedicated lines.

California Board of Accountancy
Licensing Division Activity
May 1, 2010 through August 31, 2010

Practice Privilege Unit

Notifications Received	May 2010	June 2010	July 2010	August 2010
Hardcopy	38	25	23	14
Electronic	96	107	66	89

Disqualifying Conditions Received	May 2010	June 2010	July 2010	August 2010
Approved	2	1	2	1
Denied	0	0	0	0
Pending	1	2	0	0

Practice Privilege Suspension Orders	May 2010	June 2010	July 2010	August 2010
Notice of Intent to Suspend	0	1	11	0
Administrative Suspension Order	0	0	0	0

Highlights

- Presently, the Practice Privile ge Unit has a Coordinator vacancy; howev er, due to the Governor's August 31, 2010 Executive Order, all hiring of staff has been placed on hold indefinitely.
- In the month of July, the 11 Notice of Intents were sent to Practice Privilege holders due to nonpayment of the Notification Fee.

Client Services Unit

Special Projects

- CSU is coordinating a project designed to provide consistent and effective information regarding Accountancy Firm licensure and renewal. The project will look to update existing forms/applications and information available on the CBA Web site, while also developing a new Accountancy Firm Handbook.

State of California
Department of Consumer Affairs

M e m o r a n d u m

California Board of Accountancy
2000 Evergreen Street, Suite 250
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CBA Agenda Item IX.B.
September 22-23, 2010

To : CBA Members

Date : September 7, 2010
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From : Deanne Pearce, Chief
Licensing Division

Subject : Discussion on CBA's Use of the Accountancy Licensee Database (ALD)

The purpose of this memorandum is to provide California Board of Accountancy (CBA) members with the following:

- A brief overview of the Accountancy Licensee Database
- Information contained in ALD
- CBA's transmission of information to ALD
- How ALD is utilized by CBA staff
- How CBA's use of ALD could change in the future

What is ALD?
The ALD is a central repository of license and enforcement information from participating state boards of accountancy which is hosted by the National Association of State Boards of Accountancy (NASBA). The ALD was launched on August 31, 2005 and presently includes license information from 30 jurisdictions.

The concept behind the ALD was to have a central location of licensee information for state boards and consumers to facilitate communication among boards, aid in enforcement efforts, and assist in substantial equivalency.

There are two phases of implementation for the ALD. The first phase, which was already rolled out, provides access strictly to state boards. The second phase of the project will include providing access to other government agencies and consumers.

Information Contained in the ALD
The ALD has the following licensure fields, which can be populated by the various state boards:

- License/Certificate Number
- Type of License
- Registration Number
- License/Certificate Status
- Issue Date
- License Expiration Date
- Was Certificate issued as result of exam?
- Years Licensed

The ALD has an area for enforcement information that contains the following fields, which can be populated by the various state boards:

- Violation Date
- Violation Type
- Status of Disciplinary Action
- Action Begin Date
- Action End Date
- Description of Violation

In addition, the database has the capacity to include information regarding education, examination, and employment.

CBA's Transmission of Information to the ALD
In early 2010, California began participating in the ALD and implemented a process to transmit California licensee information on a weekly basis. The following information is transmitted by California to NASBA's ALD:

- Birthdate
- Address
- License Number
- Issue Date
- Expiration Date
- Disciplinary Date

According to the information provided by NASBA, the frequency in which state boards transmit information to NASBA varies. Approximately 11 states provide its information daily, 7 weekly, 2 monthly, 2 quarterly, and 8 have only provided information once.

Utilization of the ALD by CBA Staff
CBA staff is using the ALD in a variety of ways to assist in both the licensure, practice privilege, and enforcement processes.

Initial Licensure
When initial licensure applications are submitted by applicants, staff access the ALD to verify the information provided on the application regarding their licensure status in other jurisdictions. The ALD also provides limited information regarding any disciplinary action that the applicant may have had in another jurisdiction. Further, staff can access ALD to verify the licensure status for out-of-state supervisors who have signed the certificate of experience on behalf of the applicant.

Practice Privilege
For the CBA's Practice Privilege Unit, the ALD is utilized to verify self-certified licensure information provided on the notification form by Practice Privilege holders. This is done to further ensure consumer protection by verifying that the practice privilege requirements were met in order to practice public accountancy in California.

Enforcement
Upon receipt of a complaint, the CBA's Enforcement Division staff access the ALD to determine if the respondent is licensed in other jurisdictions and whether there has been any disciplinary action taken against their license. In addition, Enforcement Division staff will verify the same information for petitioners applying to reinstate their revoked license.

How will its use change in the future?
Representatives from NASBA indicate they are researching a way to connect the ALD to NASBA's Gateway system. The Gateway system contains applicant and score information for the Uniform CPA Examination. If successful, this would allow participating state boards a "query only" feature to review examination scores for applicants, which may eliminate the need to have applicants supply this information at time of initial licensure.

If all jurisdictions begin transmitting information to the ALD and the frequency of the transmission provides the most up-to-date information available, the ALD could become the sole source of licensure and enforcement information on applicants and out-of-state supervisors. If this were to occur, the CBA application review process might be significantly streamlined. Until that time, staff will continue to either access individual state board Web sites, contact various board of accountancy offices, or require the applicant to provide any necessary licensure verification information with their application.

A representative from NASBA will be in attendance at the CBA's working conference scheduled for October 27, 2010 to provide further information on the ALD. CBA staff is looking forward to the presentation and the sharing of ideas on how other jurisdictions use the ALD and how the CBA can increase its use of the ALD.

CALIFORNIA BOARD OF ACCOUNTANCY
ENFORCEMENT CASE ACTIVITY AND STATUS REPORT
January 1, 2010 - July 31, 2010

	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10
COMPLAINTS							
Received	58	54	58	55	32	39	58
Closed without Assignment for Investigation	18	40	32	31	8	11	7
Assigned for Investigation	22	21	40	30	25	40	49
Average Days to Close or Assign for Investigation	17	18	19	10	8	9	3
Pending	40	33	19	13	12	0	2
Average Age of Pending Complaints			18 days	12 days	26 days	0 days	5 days
Convictions/Arrest Reports							
Received	19	4	7	14	16	12	13
Closed	18	4	4	12	14	8	10
Assigned for Investigation	0	0	3	2	3	4	3
Average Days to Close/Assign for Investigation	1	1	1	2	3	2	2
Pending	1	1	1	1	0	0	0
Average Age of Pending Convictions/Arrest							
INVESTIGATIONS							
Initial Assignment for Investigation	22	21	43	32	28	44	52
Investigations Closed	28	23	22	23	19	31	32
Average Days to Close	143	148	191	90	67	221	47
Investigations Pending	146	144	165	174	183	196	216
Average Age of Pending Investigation			189 days	199 days	215 days	201 days	203 days

CALIFORNIA BOARD OF ACCOUNTANCY
ENFORCEMENT CASE ACTIVITY AND STATUS REPORT
January 1, 2010 - July 31, 2010

	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	
ENFORCEMENT ACTIONS								
AG CASES								
AG Cases Initiated	3	3	7	1	2	7	0	
AG Cases Opened in Error	0	0	0	0	1	0	0	
AG Cases Pending	32	33	40	41	37	35	35	
Petitions for Reinstatement Pending						5	2	
SOIs Filed	0	0	0	0	0	0	0	
Accusations Filed	2	2	2	0	2	2	1	
Disciplinary Orders								
Proposed Decisions / Default Decisions Effective	1	0	0	0	0	0	0	
Stipulations Effective	0	2	0	0	5	4	0	
Average Days to Complete Proposed Decisions/Default Decisions/Stipulations	296	721	0	0	986	736	0	
Petitioners								
Petitions for Reinstatement Resolved						0	2	
Citations								
Final Citations	4	1	2	0	0	0	1	
Average Days to Complete	247	220	185	0	0	0	435	2

[1] **Average Days to Complete Proposed Decisions/Default Decisions/Stipulations is based on the number of days from Reciept of complaint to the effective date of Disciplinary Order.**

2 The 435 days that it took to close the citation and fine in July 2010 was the result of delays caused by the licensee in resolving the citation. The original complaint was opened in March 2008 and a citation was issued in November 2008. The licensee appealed the citation and based on CBA review, a modification was completed and the fine amount was reduced. The licensee was not satisfied with the outcome and requested the matter be set for hearing with the OAH. As the hearing date drew near, the licensee decided to withdraw his appeal and the citation was paid and closed.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

Memorandum

CBA AGENDA X.A.2.
September 22-23, 2010

To : CBA Members

Date : September 7, 2010

Telephone : (916) 561-1731
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From : Rafael Ixta
Chief, Enforcement Division

Subject : **REPORT ON STATUS OF ENFORCEMENT MATTERS – Aging Inventory Report**

As discussed at the July 28, 2010 CBA meeting, I stated that distributing the Major Case Summary Report was problematic since the report contained inaccurate information and case information was being discussed in public meetings. As a result of the discussion on major cases, CBA members requested EPOC to determine whether the CBA has a Major Case Program. The issue paper prepared for EPOC, concluded that the Major Case Program was formally discontinued in 2002. The Major Case Summary Report should have been discontinued at that time.

For this meeting, CBA staff have replaced the Major Case Summary Report with a new report that provides case aging data on all pending matters, as opposed to only on major cases. Attached is the Aging Inventory Report as of July 31, 2010.

Attachment

CALIFORNIA BOARD OF ACCOUNTANCY
ENFORCEMENT CASE AGING REPORT
AS OF JULY 31, 2010

INVESTIGATIONS AGING	< 6 mos	6-12mos	12-18 mos	18-24 mos	> 24 mos	TOTAL
All Cases	124	52	27	11	2	216
Average Age of Pending Investigation						203 days

CASES ASSIGNED TO AG'S OFFICE	< 6 mos	6-12mos	12-18 mos	18-24 mos	> 24 mos	TOTAL	Licensed Total	Unlicensed Total
Pre Accusation	13	1		0	1	15	14	1
Post Accusation	8	9		3	0	20	19	1
Petition for Reinstatement	2					2		2
TOTAL AG CASES	23	10	0	3	1	37	33	4

CALIFORNIA BOARD OF ACCOUNTANCY
CITATION ACTIVITY
FOR THE PERIOD 7/1/10 THRU 8/24/2010

VIOLATION ANALYSIS

RULE	AMOUNT	AVERAGE FINE FINES	TOTAL ISSUED	TOTAL $FINES ASSESSED	APPEALS RECEIVED
	ACCOUNTANCY RULES AND REGULATIONS				
3	NOTIFICATION OF CHANGE OF ADDRESS				
52	RESPONSE TO BOARD INQUIRY				
54.1	DISCLOSURE OF CONFIDENTIAL INFORMATION				
57	INCOMPATIBLE OCCUPATIONS/CONFLICT OF INTEREST				
58	COMPLIANCE WITH STANDARDS				
63	ADVERTISING				
67	FICTITIOUS NAME APPROVAL				
68	RECORD RETENTION				
80	INACTIVE LICENSE STATUS				
87	CE BASIC REQUIREMENTS				
87(a)	CE COMPLETED IN 2-YEAR PERIOD				
87(b)	CONTINUING EDUCATION RULES (Ethics)				
87 (c)	CONTINUING EDUCATION RULES (Gov't.)				
87(d)	CONTINUING EDUCATION (A&A)				
87.6	RECORDS REVIEW CONTINUING EDUCATION REQUIREMENTS				
87.7	CE IN ACCT ACT, REGS AND RULES OF CONDUCT				
89	CONTROL AND REPORTING CE				
89(b)	CONTROL AND REPORTING - REGULATORY REVIEW COURSE				
89(c)	CONTROL AND REPORTING - MAINTAIN RECORDS				
89.1	REPORTS				
90	EXCEPTIONS AND EXTENSIONS				
	BUSINESS AND PROFESSIONS CODE SECTION				
5037	OWNERSHIP OF ACCOUNTANTS' WORKPAPERS				
5050	PRACTICE WITHOUT A VALID PERMIT	$1,000	1	$1,000	
5055	TITLE OF CPA				
5056	TITLE OF PUBLIC ACCOUNTANT				
5058	USE OF CONFUSING TITLES OR DESIGNATIONS				
5060	NAME OF FIRM				
5061	COMMISSIONS				
5062	REPORT CONFORMING TO PROFESSIONAL STANDARDS				
5063	REPORTABLE EVENTS				
5072	REQ FOR REGISTRATION AS CPA PARTNERSHIP				
5079	NON LICENSEE OWNERSHIP - FIRM				
5100	DISCIPLINE IN GENERAL				
5100C	DISCIPLINE IN GENERAL (GROSS NEGLIGENCE)				
5100G	DISCIPLINE IN GENERAL (WILLFUL VIOLATION)				
5100H	DISCIPLINE IN GENERAL (SUSPENSION/GOV'T BODY)				
5100I	DISCIPLINE IN GENERAL (FISCAL DISHONESTY)				
5100K	DISCIPLINE IN GENERAL (EMBEZZLEMENT, THEFT)				
5151	APPLICATION FOR REGISTRATION AS CORP				
5152	CORPORATION ANNUAL REPORT FILING				
5154	DIRECTORS SHAREHOLDERS MUST BE LICENSED				
5156	UNPROFESSIONAL CONDUCT				
TOTALS			1	$1,000	0

RECONCILIATION OF FINES OUTSTANDING 7/1/10 - 8/24/10

Balance at 7/1/10	$42,182 *
Fines Assessed 7/1/10 - 8/24/10	$1,000
Previous Paid Off - Reinstated - Revoked License	$0
Appeal Adjustments 7/1/10 - 8/24/10	
	$0
Withdrawn Violations (0 violations, 0 cases)	$0
Modified Violations ()	$0
Remain As Issued Violations ()	$0
Uncollectible Violations (0 violations, 0 cases)	
Collections 7/1/10 - 8/24/10	($1,000)
Fines Outstanding at 8/24/10	**$42,182**

COMPOSITION OF FINES OUTSTANDING

Fine Added to License Renew Fee/B & P 125.9 (27 violations, 16 cases)	$35,112
AG Referral (Citation Appealed/Non Compliance) (0 violations, 0 case)	$0
Issued/Pending Receipt of Fine (8 violations, 4 cases)	$6,250
Installment Payments (1 violation(s), 1 case)	$820
Appeal Request Pending Review (0 violations, 0 case)	$0
Stipulation/Decision Pending Compliance (0)	$0
Total Fines Outstanding at 8/24/10	**$42,182**

* The last Citation and Fine Report submitted to the CBA was for the period ended June 28, 2010. This report reflected a beginning balance of $48,162 and a total Fines Outstanding of $44,142. For the end of the 2009/10 FY, a final Report was completed on June 30, 2010 which reflects fines outstanding of $42,182. *($1,960, was collected during the period from June 28, 2010 - June 30, 2010.)*

CALIFORNIA BOARD OF ACCOUNTANCY
REPORTABLE EVENTS RECEIVED
07/01/10 – 08/31/10

Felony Conviction – 5063(a)(1)(A)	1
Criminal Conviction – 5063(a)(1)(B)	0
Criminal Conviction – 5063(a)(1)(C)	0
Cancellation, Revocation, Suspension of Right to Practice by Other State or Foreign Country – 5063(a)(2)	0
Cancellation, Revocation, Suspension of Right to Practice before any governmental body or agency – 5063(a)(3)	0
Restatements – 5063(b)(1) • Governmental – 3 • Non Profit – 2 • SEC Registrant – 5	10
Civil Action Settlement – 5063(b)(2)	1
Civil Action Arbitration Award – 5063(b)(2)	0
SEC Investigation – 5063(b)(3)	0
Wells Submission – 5063(b)(4)	1
PCAOB Investigation – 5063(b)(5)	2
Civil Action Judgement – 5063(c)(1)(2)(3)(4)(5)	0
Reporting by Courts – 5063.1	0
Reporting by Insurers – 5063.2	5
TOTAL REPORTABLE EVENTS RECEIVED 07/01/10 TO 08/31/10	**20**

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

EPOC AGENDA ITEM II.A.
SEPTEMBER 22, 2010

CBA AGENDA ITEM XI.A.2.a.
SEPTEMBER 22-23, 2010

To : Herschel Elkins, EPOC Chair
EPOC Members
CBA Members

Date : September 14, 2010

Telephone : (916) 561-1725
Facsimile : (916) 263-3673
E-mail : pfisher@cba.ca.gov

From : Paul Fisher
Supervising Investigative CPA

Subject : **CONSIDERATION OF PROPOSED REVISIONS TO THE DISCIPLINARY GUIDELINES - INDENTIFICATION OF NEW/AMENDED STATUTES AND REGULATIONS SINCE APPROVAL OF PROPOSED REVISIONS AT THE MAY 15 AND JULY 24, 2009 CBA MEETINGS.**

Background

The current *Manual of Disciplinary Guidelines and Model Disciplinary Orders, 6th Edition, 2005*, was adopted by the California Board of Accountancy (CBA) on January 21, 2005.

The *Disciplinary Guidelines* are incorporated by reference in California Code of Regulations, Section 98, which provides that a penalty in a disciplinary decision may not be based on a guideline unless the guideline has been adopted in regulation by the Board.

At the May 2009 and July 2009 EPOC and CBA meetings, the CBA Board members considered and approved proposed revisions to the current *Disciplinary Guidelines, 6th Edition*, to reflect statute and regulation changes enacted since 2005. However, because of ongoing discussion of one issue, the CBA has not moved forward to amend Section 98 to incorporate the updated *Disciplinary Guidelines*.

Additional revisions

Since the CBA Board last approved revisions to the current *Disciplinary Guidelines* at the July 24, 2009 CBA Board meeting, there have been additional changes in the Accountancy Act that need to be reflected in the Guidelines. The changes that need to be addressed are the following.

- Statutes and regulations enacted/amended since July 2009.
- Update optional conditions of probation to reflect changes in continuing education requirements regarding ethics and regulatory review.
- Revise optional condition of probation, approved at the May 15, 2009 Board meeting, regarding peer review.
- The title of the *Disciplinary Guidelines* needs to be updated to show 2010 instead of 2009.

Attachments

To assist you in your consideration of the above, attached are the following.

- **Attachment 1** – Overview of statutes amended/added since May 2009 and proposed revisions to the *Disciplinary Guidelines*. (The overview provides an explanation of the statutes and proposed revisions.)
- **Attachment 2** – Overview of regulations amended/added since May 2009 and proposed revisions to the *Disciplinary Guidelines*. (The overview provides an explanation of the statutes and proposed revisions.)
- **Attachment 3** – Overview of miscellaneous proposed revisions.
- **Attachment 4** – *Manual of Disciplinary Guidelines and Model Disciplinary Orders, 7th Edition, 2010* – The proposed additions since July 2009 are presented in an underline/strikeout format.
- **Attachment 5** – California Code of Regulations, Title 16, Division 1, Article 13, Section 98, Disciplinary Guidelines.

Action requested

It is requested that the EPOC consider the proposed revisions to the *Disciplinary Guidelines*.

It is further requested that the EPOC make the following recommendations to the CBA:

- Adopt the proposed revisions to the *Disciplinary Guidelines* presented at this meeting.
- Proceed with the process to amend Section 98 of the California Code of Regulations to incorporate the *Manual of Disciplinary Guidelines and Model Disciplinary Orders, 7th Edition, 2010,* by reference.

PF:mls

OVERVIEW OF AMENDED/ADDED CALIFORNIA BUSINESS AND PROFESSIONS CODE STATUTES AND PROPOSED REVISIONS TO THE DISCIPLINARY GUIDELINES 2010

Section 5058.2:	**Inactive Designation** (Please see attached statute.) **Added effective January 1, 2010**
COMMENTS: Section 5058.2 requires the holder of an inactive license, when using the title "certified public accountant," the CPA designation, or any other reference that would suggest that the person is licensed by the CBA on correspondence, Internet Web sites, business cards, nameplates or name plaques, to place the term "inactive" immediately after that designation.	
STAFF RECOMMENDATION: Add Section 5058.2 to the Disciplinary Guidelines. See Attachment 4, Page 18.	

Section 5076(a)(f):	**Peer Review** (Please see attached statute.) **Amended effective January 1, 2010**
COMMENTS: Mandatory peer review was implemented on January 1, 2010. Section 5076(a) requires firms to have a peer review report of its accounting and auditing practice accepted by a CBA-recognized peer review program no less frequently than every three years. Section 5076(f) requires a firm issued a substandard peer review report to submit a copy of the report to the CBA. The time period for submission is established in regulation.	
STAFF RECOMMENDATION: Add Sections 5076(a) and (f) to the Disciplinary Guidelines. See Attachment 4, Page 22-23.	

Internal Revenue Service and recognized as an enrolled agent may use the abbreviation "E.A."

HISTORY: Added Stats 1945 ch 1353 Section 2 as Section 5065; renumbered Stats 1959 ch 310 Section 42; amended Stats 1979 ch 25 Section 1.

5058.1 Titles in Conjunction with Certified Public Accountant or Public Accountant

A person or firm may not use any title or designation in connection with the designation "certified public accountant" or "public accountant" that is false or misleading.

The board may adopt regulations covering the use of titles or designations.

HISTORY: Added Stats 1998 ch 878 Section 35.

5058.2 Inactive Designation

The holder of an inactive license issued by the board pursuant to Section 462, when lawfully using the title "certified public accountant," the CPA designation, or any other reference that would suggest that the person is licensed by the board on materials such as correspondence, Internet Web sites, business cards, nameplates, or name plaques, shall place the term "inactive" immediately after that designation.

HISTORY: Added Stats 2009 ch 409 Section 2.

5076. Peer Review

(a) In order to renew its registration, a firm, as defined in Section 5035.1, shall have a peer review report of its accounting and auditing practice accepted by a board-recognized peer review program no less frequently than every three years.

(b) For purposes of this article, the following definitions apply:

(1) "Peer review" means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a firm by an individual who has a valid and current license, certificate, or permit to practice public accountancy from this state or another state and is unaffiliated with the firm being reviewed, and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) "Accounting and auditing practice" includes any services that are performed using professional standards defined by the board in regulations.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section, including, but not limited to, regulations specifying the requirements for board recognition of a peer review program, standards for administering a peer review, extensions of time for fulfilling the peer review requirement, exclusions from the peer review program, and document submission.

(d) The board shall adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to establish policies, guidelines, and procedures as outlined in subdivision (c). The adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations, and shall be replaced in accordance with the Administrative Procedure Act.

(e) Nothing in this section shall prohibit the board from initiating an investigation and imposing discipline against a firm or licensee, either as the result of a complaint that alleges violations of statutes, rules, or regulations, or from information contained in a peer review report received by the board.

(f) A firm issued a substandard peer review report, as defined by the board in regulation, shall submit a copy of that report to the board. The board shall establish in regulation the time period that a firm must submit the report to the board. This period shall not exceed 60 days from the time the report is accepted by a board-recognized peer review program provider to the date the report is submitted to the board.

(g) (1) A board-recognized peer review program provider shall file a copy with the board of all substandard peer review reports issued to California-licensed firms. The board shall establish in regulation the time period that a board-recognized peer review program provider shall file the report with the board. This period shall not

exceed 60 days from the time the report is accepted by a board-recognized peer review program provider to the date the report is filed with the board. These reports may be filed with the board electronically.

(2) Nothing in this subdivision shall require a board-recognized peer review program provider, when administering peer reviews in another state, to violate the laws of that state.

(h) The board shall, by January 1, 2010, define a substandard peer review report in regulation.

(i) Any requirements imposed by a board-recognized peer review program on a firm in conjunction with the completion of a peer review shall be separate from, and in addition to, any action by the board pursuant to this section.

(j) Any report of a substandard peer review submitted to the board in conjunction with this section shall be collected for investigatory purposes.

(k) Nothing in this section affects the discovery or admissibility of evidence in a civil or criminal action.

(l) Nothing in this section requires any firm to become a member of any professional organization.

(m) A peer reviewer shall not disclose information concerning licensees or their clients obtained during a peer review, unless specifically authorized pursuant to this section, Section 5076.1, or regulations prescribed by the board.

(n) By January 1, 2013, the board shall provide the Legislature and Governor with a report regarding the peer review requirements of this section that includes, without limitation:

(1) The extent to which mandatory peer review of small firms or sole practitioners that prepare nondisclosure compiled financial statements on an other comprehensive basis of accounting enhances consumer protection.

(2) The impact of peer review required by this section on small firms and sole practitioners that prepare nondisclosure complied financial statements on an other comprehensive basis of accounting.

(3) The impact of peer review required by this section on small businesses, nonprofit corporations, and other entities that utilize small firms or sole practitioners for the purposes of nondisclosure compiled financial statements prepared on an other comprehensive basis of accounting.

(o) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

HISTORY: Added Stats 2001 ch 704 Section 2, ch 718 Section 5. Amended Stats 2002 ch 231 Section 10; Stats 2004 ch 921 Section 8; amended Stats 2006, ch 447, Section 1; Amended Stats 2009 ch 312 Section 2.

5076.1. Peer Review Oversight Committee

(a) The board shall appoint a peer review oversight committee of certified public accountants of this state who maintain a license in good standing and who are

OVERVIEW OF AMENDED/ADDED CALIFORNIA CODE OF REGULATIONS AND PROPOSED REVISIONS TO DISCIPLINARY GUIDELINES 2010

Section 40(a)(b)(c): Peer Review – Enrollment and Participation (Please see attached regulation.)
Effective January 1, 2010

COMMENTS:
California Business and Professions Code Section 5076 provides the general requirements for firms to have a peer review report of its accounting and auditing practice accepted by a CBA-recognized peer review program no less frequently than every three years.

Section 40(a)(b)(c) was enacted to implement Section 5076 and set up specific time frames for firms to have a peer review report accepted by a CBA-recognized peer review program.

STAFF RECOMMENDATION:
Add Section 40(a)(b)(c) to the Disciplinary Guidelines. See Attachment 4, Page 41.

Section 41: Peer Review – Firm Responsibilities (Please see attached regulation.)
Effective January 1, 2010

COMMENTS:
Section 41 relates to peer review and was enacted to clarify that firms shall cooperate with the CBA-recognized peer review program provider and take and complete any remedial or corrective actions prescribed by the peer review program provider.

STAFF RECOMMENDATION:
Add Section 41 to the Disciplinary Guidelines. See Attachment 4, Page 41.

Section 43: Peer Review – Extensions (Please see attached regulation.)
Effective January 1, 2010

COMMENTS:
Section 43 relates to peer review. Section 43(a) requires firms to submit requests for an extension of time to have a peer review report accepted by a CBA-recognized peer review program to the peer review program with which the firm is enrolled for consideration and approval or denial.

Section 43(b) requires that if the extension extends past the firm's reporting date, the firm shall notify the CBA and provide proof of the extension. The firm shall also report the results of the peer review to the CBA.

STAFF RECOMMENDATION:
Add Section 43 to the Disciplinary Guidelines. See Attachment 4, Page 41-42.

Section 44:	**Peer Review – Notification of Expulsion** (Please see attached regulation.) **Effective January 1, 2010**
COMMENTS: Section 44 was enacted to specify the requirements of the Peer Review statute, B&P Code Section 5076. Section 44 requires a firm that is expelled by a Board-recognized peer review program to notify the CBA in writing within 30 days, and provide the name of the peer review program and reason for expulsion.	
STAFF RECOMMENDATION: Add Section 44 to the Disciplinary Guidelines. See Attachment 4, Page 42.	

Section 45:	**Peer Review – Reporting to Board** (Please see attached regulation.) **Effective January 1, 2010**
COMMENTS: Section 45 was enacted to implement the Peer Review statute, B&P Code Section 5076. Section 45(a) requires firms that receive a "pass" peer review rating report to the CBA on the *Peer Review Reporting Form*. Subsections 45(b) and(c) specify the dates and time frames for reporting peer review results to the CBA.	
STAFF RECOMMENDATION: Add Section 45 to the Disciplinary Guidelines. See Attachment 4, Page 42	

Section 46(a)(b):	**Peer Review – Document Submission Requirements** (Please see attached.) **Effective January 1, 2010**
COMMENTS: Section 46 was enacted to specify requirements for Peer Review, B&P Code Section 5076. Subsection 46(a) specifies the documents a firm that receives a substandard peer review rating is required to submit to the CBA within 45 days after the report is accepted by the CBA-recognized peer review program provider. Subsection 46(b)(1) specifies the documents a firm that receives a "pass" peer review rating report is required to submit upon request by the CBA. Subsection 46(b)(2) specifies the documents a firm that receives a "pass with deficiencies" peer review rating report is required to submit upon request by the CBA.	
STAFF RECOMMENDATION: Add Section 46(a)(b) to the Disciplinary Guidelines. See Attachment 4, Page 43.	

Section 81(a):	**Continuing Education Rules - Continuing Education Requirement for Renewing an Expired License** (Please see attached regulation.) **Effective January 1, 2010**
COMMENTS: Section 81(a) specifies the continuing education requirements and time frame for completion in order to renew a "delinquent," "lapsed," or "late renewing" license to an active status.	
STAFF RECOMMENDATION: Add Section 81(a) to the Disciplinary Guidelines. See Attachment 4, Page 55-56.	

Section 87.7:	**Continuing Education Rules - Continuing Education in the Accountancy Act, Board Regulations, and Other Rules of Professional Conduct** **Effective January 1, 1997**
COMMENTS: Section 87.7 required licensees to complete CBA-approved Professional Conduct and Ethics (PC&E) continuing education once every six years for license renewal. Due to changes in the continuing education requirements regarding ethics, effective January 1, 2010, PC&E courses are no longer being approved to fulfill the ethics continuing education requirement.	
STAFF RECOMMENDATION: Delete Section 87.7 from the Disciplinary Guidelines. See Attachment 4, Page 57.	

Section 87.8:	**Regulatory Review Course** (Please see attached regulation.) **Effective January 1, 2010**
COMMENTS: Section 87.8 requires licensees to complete a CBA-approved continuing education course on the provisions of the California Accountancy Act and the California Board of Accountancy regulations specific to the practice of public accountancy in California and emphasizing the provisions applicable to current practice situations. The course must be completed once every six years for license renewal.	
STAFF RECOMMENDATION: Add Section 87.8 to the Disciplinary Guidelines. See Attachment 4, Page 57.	

Section 89:	**Continuing Education Rules - Control and Reporting** (Please see attached.) **Amendment Effective January 1, 2010**
COMMENTS: California Business and Professions Code Section 5027(g) requires the CBA to prescribe, in regulation, a system of control and compliance reporting for continuing education. Section 89 sets forth the requirements for reporting and retaining information concerning courses or programs claimed as qualifying continuing education. Section 89(b) was amended, effective January 1, 2010, to reflect changes in continuing education requirements regarding regulatory review under Section 87.8.	
STAFF RECOMMENDATION: The amendments do not require revisions to the Disciplinary Guidelines. See Attachment 4, Page 57.	

CALIFORNIA CODE OF REGULATIONS
Title 16. Professional and Vocational Regulations
DIVISION 1. Board of Accountancy Regulations
ARTICLE 6. PEER REVIEW
(Sections 39 – 48.6)

39. Definitions.

(a) Accounting and Auditing Practice: Any services that are performed using the following professional standards: Statements on Auditing Standards (SASs), Statements on Standards for Accounting and Review Services (SSARS), Statements on Standards on Attestation Engagements (SSAEs), Government Auditing Standards, and audits of non-Security Exchange Commission (SEC) issuers performed pursuant to the standards of the Public Company Accounting Oversight Board (PCAOB).
(b) Peer Review Report: A report issued to the peer reviewed firm which documents the findings and conclusions reached by a qualified peer reviewer and issued in accordance with Section 48(b) of this Article.
(c) Pass Peer Review Report: A report issued to the peer reviewed firm in accordance with either Section 48(b)(1)(A) or 48(b)(2)(A) of this Article.
(d) Pass With Deficiencies Peer Review Report: A report issued to the peer reviewed firm in accordance with either Section 48(b)(1)(B) or 48(b)(2)(B) of this Article.
(e) Substandard Peer Review Report: A report issued to the peer reviewed firm under either Section 48(b)(1)(C) or 48(b)(2)(C) of this Article.
(f) Peer Reviewer: A certified public accountant holding a valid and active license to practice public accounting in good standing issued by this state or some other state who (1) maintains a currency of knowledge in professional standards governing accounting and auditing engagements, (2) meets the qualifications of Section 48(c) of this Article, and (3) is unaffiliated with the firm being reviewed.
(g) Peer Review Team: One or more individuals who collectively conduct a peer review, at least one of whom is a qualified peer reviewer.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New article 6 (sections 39-48.6) and section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day. For prior history of article 6, section 39, see Register 62, No. 11.

40. Enrollment and Participation.

(a) Commencing with the operative date prescribed by Section 45(b), a firm operating or maintaining an accounting and auditing practice shall have a peer review report accepted by a Board-recognized peer review program within 36 months prior to its first reporting date and have a peer review report accepted by a Board-recognized peer review program once every three years in order to renew its license.

(b) Each firm licensed after the operative date of this Article that performs services in an accounting and auditing practice shall have a peer review report accepted by a Board-recognized peer review program within 18 months of the completion of the services.

(c) Should a firm begin performing services as defined in Section 39(a) of this Article after the operative date prescribed by Section 45(b), the firm shall have a peer review report accepted by a Board-recognized peer review program within 18 months of the completion of the services.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

41. Firm Responsibilities.

A firm shall cooperate with the Board-recognized peer review program provider with which the firm is enrolled to arrange, schedule, and complete a peer review, in addition to taking and completing any remedial or corrective actions prescribed by the Board-recognized peer review program provider.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

42. Exclusions.

(a) The following shall be excluded from the peer review requirement:

(1) Any of a firm's engagements subject to inspection by the Public Company Accounting Oversight Board as part of its inspection program.

(2) Firms, which as their highest level of work, perform only compilations where no report is issued in accordance with the provisions of the Statements on Standards for Accounting and Review Services (SSARS).

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

43. Extensions.

(a) Should an extension of time be needed to have a peer review report accepted by a Board-recognized peer review program such request shall be submitted to the Board-recognized peer review program with which the firm is enrolled for consideration and approval or denial.
(b) If the extension granted extends past the firm's reporting date, the firm shall notify the Board of the extension and provide proof of the extension. The firm shall report the results of the peer review to the Board on form PR-1 (01/10), as referenced in Section 45, within 45 days of the peer review report being accepted by a Board-recognized peer review program.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

44. Notification of Expulsion.

A firm that is expelled by a Board-recognized peer review program shall notify the Board in writing within 30 days and provide the name of the Board-recognized peer review program and reason(s) given to the firm by the peer review program for the expulsion.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:

1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

45. Reporting to the Board.

(a) Based on the dates identified in subsection (b), a firm shall report to the Board on Form PR-1 (1/10) the date the peer review report was accepted by a Board-recognized peer review program and the results of the peer review.

(b) The operative date of existing California-licensed firms to begin reporting peer review results shall be based on a firm's license number according to the following schedule: for license numbers ending with 01-33 the reporting date is no later than July 1, 2011; for license numbers ending with 34-66 the reporting date is no later than July 1, 2012; for license numbers ending with 67-00 the reporting date is no later than July 1, 2013.

(c) A firm licensed after the operative date of this Article that performs accounting and auditing services or a firm not previously required to undergo a peer review shall have a peer review report accepted by a Board-recognized peer review program no later than 18-months after the completion of the services as required by Section 40. Upon the acceptance of the peer review report, the firm shall report to the Board on Form PR-1 (1/10) the date the peer review report was accepted by a Board-recognized peer review program and the results of the peer review.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

46. Document Submission Requirements.

(a) A firm receiving a peer review report issued under Section 48(b)(1)(C) or (b)(2)(C) shall submit a copy of the peer review report to the Board including any materials documenting the prescription of remedial or corrective actions imposed by a Board-recognized peer review program provider within 45 days of the peer review report being accepted by a Board-recognized peer review program provider. A firm shall also submit to the Board, within the same 45-day reporting period, any materials, if available, documenting completion of any or all of the prescribed remedial or corrective actions.

(b) Upon request by the Board, a firm shall submit to the Board all requested documents related to the peer review including:

(1) If the firm received a peer review report issued under Section 48(b)(1)(A) or (b)(2)(A) it shall submit the copy of the peer review report including materials documenting the acceptance of the report.

(2) If the firm received a peer review report issued under Section 48(b)(1)(B) or (b)(2)(B) it shall submit the copy of peer review report including any materials documenting the prescription of remedial or corrective actions imposed by a Board-recognized peer review program provider. In addition, a firm shall also submit any materials, if available, documenting completion of any or all of the prescribed remedial or corrective actions.

(c) Any documents required for submission as part of this section may be submitted electronically.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

48. Minimum Requirements for a Peer Review Program.

For a peer review program provider to receive Board recognition and be authorized to administer peer reviews in California, the peer review program provider must submit evidence to the satisfaction of the Board that the peer review program is comprised of a set of standards for performing, reporting on, and administering peer reviews. A peer review program must include the following components:

(a) Peer Review Types

A peer review program must have a minimum of two types of peer reviews that include the following:

(1) For firms performing engagements under the Statements on Auditing Standards (SASs), Government Auditing Standards, examinations of prospective financial statements under the Statements on Standards on Attestation Engagements (SSAEs), or audits of non-Security Exchange Commission (SEC) issuers performed pursuant to the standards of the Public Company Accounting Oversight Board (PCAOB), the firm must undergo a peer review designed to test the firm's system of quality control. The scope of the peer review shall be such that it provides a peer reviewer with a reasonable assurance that a firm's system of quality control was designed in accordance with professional standards and was complied with by the firm's personnel.

(2) For firms only performing engagements under the Statements on Standards for Accounting and Review Services (SSARS) or under Statements on Standards on Attestation Engagements (SSAEs) not encompassed in review performed under subsection (a)(1), the firm must undergo a peer review designed to test a cross-section of a firm's engagements to assess whether the engagements were performed in conformity with the applicable professional standards.

(b) Peer Review Report Issuance

(1) For firms undergoing peer reviews pursuant to subsection (a)(1), one of the following three types of peer review reports shall be issued:

(A) A peer review report indicating that a peer reviewer or peer review team concluded that a firm's system of quality control was suitably designed and complied with by the firm's personnel, which provides the firm with reasonable assurance of performing and reporting on engagements in conformity with applicable professional standards.

(B) A peer review report indicating that a peer reviewer or peer review team concluded that a firm's system of quality control was suitably designed and complied with by the firm's personnel with the exception of a certain deficiency or deficiencies that are described in the report. The deficiencies are such that the firm's design of or compliance with its system could create a situation in which the firm would have less than reasonable assurance of performing and/or reporting on engagements in conformity with applicable professional standards.

(C) A peer review report indicating that a peer reviewer or peer review team concluded that a firm's system of quality control is not suitably designed or complied with by the firm's personnel, and thus, does not provide the firm with reasonable assurance of performing and reporting on engagements in conformity with applicable professional standards.

(2) For firms undergoing peer reviews pursuant to subsection (a)(2), one of the following three types of peer review reports shall be issued:

(A) A peer review report indicating that a peer reviewer or peer review team concluded that there was no evidence which would cause the peer reviewer to believe that the engagements performed by the firm were not performed in conformity with applicable professional standards.

(B) A peer review report indicating that a peer reviewer or peer review team concluded that, with the exception of a certain deficiency or deficiencies, nothing would cause the peer reviewer to believe that the engagements performed by the firm and submitted for review were not performed in conformity with applicable professional standards. The deficiencies identified were such that the peer reviewer concluded they were material to the understanding of the report or financial statements or represented omission of critical procedures required by applicable professional standards.

(C) A peer review report indicating that a peer reviewer or peer review team concluded that the engagements reviewed were not performed and/or reported on in conformity with applicable professional standards. In issuing such report, the peer reviewer shall assess both the significance of the deficiencies identified and the pervasiveness of the deficiencies.

(c) Peer Reviewer Qualifications

A peer review program must include minimum qualifications for an individual to qualify as a peer reviewer and perform peer reviews in accordance with the program's peer review standards. The qualifications shall, at a minimum, include the following:

(1) Have a valid and active license in good standing to practice public accounting issued by this state or other state.

(2) Be actively involved and practicing at a supervisory level in a firm's accounting and auditing practice.

(3) Maintain a currency of knowledge of the professional standards related to accounting and auditing, including those expressly related to the type or kind of practice to be reviewed.

(4) Provide the Board-recognized peer review program provider with his/her qualifications to be a reviewer, including recent industry experience.

(5) Be associated with a firm that has received a peer review report issued in accordance with subsection (b)(1)(A) or (b)(2)(A) of this section as part of the firm's last peer review.

(d) Planning and Performing Peer Reviews

A peer review program must include minimum guidelines and/or standards for planning and performing peer reviews commensurate with the type of peer review being performed including, but not limited to, the following:

(1) For peer reviews performed in accordance with subsection (a)(1) of this section, a peer review program's guidelines and/or standards must include the following:

(A) Ensuring that prior to performing a peer review, a peer reviewer or a peer review team takes adequate steps in planning a peer review to include the following: (i) obtain the results of a firm's prior peer review (if applicable), (ii) obtain sufficient understanding of the nature and extent of a firm's accounting and auditing practice, (iii) obtain a sufficient understanding of a firm's system of quality control and the manner in which the system is monitored by a firm, and (iv) select a representative cross-section of a firm's engagements.

(B) In performing a peer review, the peer reviewer or peer review team must test the reviewed engagements while assessing the adequacy of and compliance with a firm's system of quality control. The peer review is intended to provide the peer reviewer or peer review team with reasonable basis for expressing an opinion as to whether a firm's system of quality control is suitably designed and complied with by a firm's personnel such that the firm has reasonable assurance of performing and reporting on engagements in conformity with applicable professional standards.

(2) For peer reviews performed in accordance with subsection (a)(2) of this section, a peer review program's guidelines and/or standards must include the following:

(A) Ensuring that prior to performing a peer review, a peer reviewer or peer review team select a representative cross-section of a firm's accounting and auditing engagements to include at a minimum one engagement for each partner, shareholder, owner, principal, or licensee authorized to issue reports.

(B) In performing a peer review, the peer reviewer or peer review team shall review the selected engagements to determine if the engagements were performed in conformity with the applicable professional standards.

(3) Nothing in a peer review program provider's guidelines and/or standards shall prohibit a peer reviewer or peer review team from disclosing pertinent peer review-related information regarding a firm to a subsequent peer reviewer.

(e) Peer Review Program Plan of Administration and Accepting Peer Review Reports

(1) The administration plan shall clearly outline the manner in which the peer review program provider intends on administering peer reviews and must, at a minimum, include the following:

(A) Identify a peer review committee, and if necessary subcommittees, and employ knowledgeable staff for the operation of the review program as needed.

(B) Establish and perform procedures for ensuring that reviews are performed and reported on in accordance with the program's established standards for performing and reporting on peer reviews.

(C) Establish a program to communicate to firms participating in the peer review program the latest developments in peer review standards and the most common findings in peer reviews conducted by the Board-recognized peer review program provider.

(D) Establish and document procedures for an adjudication process designed to resolve any disagreement(s) which may arise out of the performance of a peer review, and resolve matters which may lead to the dismissal of a firm from the provider's peer review program.

(E) Establish guidelines for prescribing remedial or corrective actions designed to assure correction of the deficiencies identified in a firm's peer review report.

(F) Establish guidelines for monitoring the prescribed remedial and corrective actions to determine compliance by the reviewed firm.

(G) Establish and document procedures for ensuring adequate peer reviewers to perform peer reviews. This shall include ensuring a breadth of knowledge related to industry experience.

(H) Establish and document procedures to ensure the qualifications of peer reviewers and to evaluate a peer reviewer's performance on peer reviews.

(I) Establish a training program or training programs designed to maintain or increase a peer reviewer's currency of knowledge related to performing and reporting on peer reviews.

(J) Establish and document procedures to ensure that a firm requiring a peer review selects a peer reviewer with similar practice experience and industry knowledge, and peer reviewer is performing a peer review for a firm with which the reviewer has similar practice experience and industry knowledge.

(K) Require the maintenance of records of peer reviews conducted under the program. Such records shall include, at a minimum, written records of all firms enrolled in the peer review program and documents required for submission under Section 46, with these documents to be retained until the completion of a firm's subsequent peer review.

(L) Provide to the Board's Peer Review Oversight Committee access to all materials and documents required for the administration of peer reviews.

(2) As required by subsection (e)(1)(A) of this section, the peer review program provider shall establish a peer review committee to assist in the review and acceptance of peer review reports. The peer review program provider's committee shall:

(A) Meet regularly to consider and accept peer review reports.

(B) Assist the peer review program provider in resolving instances in which there is a lack of cooperation and agreement between the committee and peer reviewer or reviewed firm in accordance with the peer review program's adjudication process.

(C) Make a final determination on a peer review report pursuant to subdivision (b).
(f) The peer review committee established by the peer review program provider shall comply with the following in relation to the composition of the committee:
(1) All committee members must meet the peer reviewer qualification requirements established in Section 48(c).
(2) In determining the size of the committee, consideration shall be given to the requirement for broad industry experience, and the likelihood that some members will need to recuse themselves from some reviews as a result of the member's close association to the firm or having performed the review.
(3) No committee member may concurrently serve as a member of the Board.
(4) A committee member may not participate in any discussion or have any vote with respect to a reviewed firm when the member lacks independence as defined by California Code of Regulations Section 65 or has a conflict of interest. Examples of conflicts of interest include, but are not limited to:
(A) the member's firm has performed the most recent peer review of the reviewed firm's accounting and auditing practice.
(B) the member served on the review team which performed the current or the immediately preceding review of the firm.
(C) the member believes he/she cannot be impartial or objective.
(5) Each member of the committee shall comply with all confidentiality requirements. The peer review program provider shall annually require its committee members to sign a statement acknowledging their appointments and the responsibilities and obligations of their appointments.

NOTE: Authority Cited: Section 5010s and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

HISTORY:
1. New section filed 12-10-2009 as an emergency; operative 1-1-2010 (Register 2009, No. 50). A Certificate of Compliance must be transmitted to OAL by 6-30-2010 or emergency language will be repealed by operation of law on the following day.

48.1. Board-Recognition of the American Institute of Certified Public Accountants, Inc. Peer Review Program.

The American Institute of Certified Public Accountants, Inc. Peer Review Program is hereby recognized as meeting the minimum peer review program requirements as outlined in Section 48 of this Article and is authorized to administer peer reviews in California. If in the future the Board deems the American Institute of Certified Public Accountants, Inc. Peer Review Program to no longer meet the minimum qualifications specified in Section 48 of this Article, the Board shall rescind its recognition pursuant to Section 48.5 of this Article.

NOTE: Authority cited: Sections 5010 and 5076, Business and Professions Code. Reference: Section 5076, Business and Professions Code.

Section 81. Continuing Education Requirements for Renewing an Expired License.

(a) As a condition for renewing a license in an active status, a licensee renewing an expired license shall adhere to the basic requirements described in Section 87 in the two-year period immediately preceding the date on which the licensee applies for license renewal. No carryover of continuing education is permitted from one license renewal period to another.

(b) For the purpose of this section, the following definitions shall apply:

(1) Date of license renewal shall mean the date the license application, including the applicable renewal and delinquency fee, is postmarked on the envelope.

(2) "Expired" license shall mean delinquent, lapsed or a late renewal that is postmarked after the licensee's last or most recent license expiration date up to five years.

NOTE: Authority cited: Section 5010 and 5027, Business and Professions Code. Reference: Sections 5026, 5027, 5028, and 5051, Business and Professions Code.

HISTORY:

1. New section filed 12-18-2009; operative 1-1-2010 pursuant to Government Code section 11343.4 (Register 2009, No. 51).

87. Basic Requirements.

(a) 80 Hours.

As a condition for renewing a license in an active status, a licensee shall complete at least 80 hours of qualifying continuing education as described in Section 88 in the two-year period immediately preceding license expiration, and meet the reporting requirements described in Section 89(a). A licensee engaged in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code is required to hold a license in an active status. No carryover of continuing education is permitted from one license renewal period to another.

(1) A licensee renewing a license in an active status after December 31, 2011, shall complete a minimum of 20 hours in each year of the two-year license renewal period, with a minimum of 12 hours of the required 20 hours in subject areas as described in Section 88(a)(1).

(b) Ethics Continuing Education Requirement

A licensee renewing a license in an active status after December 31, 2009 shall complete four hours of the 80 hours of continuing education required pursuant to subsection (a) in course subject matter specified pertaining to the following: a review of nationally recognized codes of conduct emphasizing how the codes relate to professional responsibilities; case-based instruction focusing on real-life situational learning; ethical dilemmas facing the accounting profession; or business ethics, ethical

(h) Licensees may claim continuing education credit earned from completing a Board-approved course designed in fulfillment of this section for the Ethics Continuing Education Requirement described in Section 87(b) and/or for the Regulatory Review Requirement described in Section 87.8 provided the course is completed prior to January 1, 2011 and reported to the Board prior to January 1, 2012.

(i) Board-approved course providers may continue to offer the course, described in section 87.7(a) until December 31, 2010 for licensees to receive continuing education credit in fulfillment of the Ethics Continuing Education Requirement described in Section 87(b) and/or for the Regulatory Review Requirement described in Section 87.8.

(j) After January 1, 2010, the Board will no longer approve courses specific to this requirement.

NOTE: Authority cited: Sections 5010 and 5027, Business and Professions Code. Reference: Section 5027, Business and Professions Code.

HISTORY:

1. New section operative January 1, 1997.
2. Amendment of section heading and subsections (c)(1), (c)(4) an (c)(5) and new subsections (f)-(g)(4) filed 5-9-2000, operative 6-8-2000 (Register 2000, No. 19).
3. Amendment filed 12-18-2009; operative 1-1-2010 pursuant to Government Code section 11343.4 (Register 2009, No. 51).

Section 87.8. Regulatory Review Course

(a) In order to renew a license in an active status after December 31, 2009, a licensee shall, within the six years preceding the license expiration date, complete a continuing education course on the provisions of the California Accountancy Act and the California Board of Accountancy Regulations specific to the practice of public accountancy in California emphasizing the provisions applicable to current practice situations. The course also will include an overview of historic and recent disciplinary actions taken by the Board, highlighting the misconduct which led to licensees being disciplined. The course shall be a minimum of two hours, and a licensee shall select from a list of Board-approved courses. The two hours can be counted towards the 80 hours required pursuant to Section 87.

(b) A licensee shall report completion of the Regulatory Review course at the time of renewal. A licensee, licensed prior to the implementation of Section 87.8, shall maintain their existing reporting date used for the professional conduct and ethics requirement to report the completion of the Regulatory Review course.

NOTE: Authority Cited: Section 5010 and 5027, Business and professions Code. Reference: Section 5027, Business and Professions Code.

88(a)(1), those components specific to Section 87(b) must be a minimum of one 50-minute class hour.

(3) Require a passing score on a test given at the conclusion of the course.

(3) Any self-study program or component designed pursuant to Section 87(b) shall require a 90 percent passing score on a test given at the conclusion of the course. Should a program be comprised of multiple subject areas as described in Section 88(a)(1), those components specific to Section 87(b) shall require a 90 percent passing score on a test given at the conclusion of the component specific to Section 87(b) or at the conclusion of the course.

(4) Meet the provider requirements for self-study under Section 88.1(c).

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Sections 5026 and 5027, Business and Professions Code.

HISTORY:

1. New section filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).
2. Amendment of subsection (b) and new subsections (c)-(c)(3) filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).
3. Amendment filed 7-11-2007; operative 8-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 28).
4. Amendment filed 12-18-2009; operative 1-1-2010 pursuant to Government Code section 11343.4 (Register 2009, No. 51).

89. Control and Reporting.

(a) Upon renewal, a licensee who is required, pursuant to Section 87, to obtain continuing education must provide a written statement, signed under penalty of perjury, certifying that the requisite number of continuing education hours has been obtained. The licensee shall disclose the following information concerning courses or programs claimed as qualifying continuing education:

(1) Course title or description

(2) Date of completion

(3) Name of school, firm or organization providing the course or program

(4) Method of study, i.e., whether course or program is self-study, live presentation or Group Internet-Based Program (Webcast)

(5) Numbers of hours earned.

(b) If credit is claimed for completing the two hour regulatory review course specified in Section 87.8, a licensee shall obtain and retain for six years after renewal of his/her license, a certificate of completion or its equivalent disclosing the following information:

(1) Name of licensee

(2) Course title

(3) Board-issued approval number for the professional conduct and ethics course completed by the licensee
(4) School, firm or organization providing the course
(5) Date of completion
(6) Verification by a program provider representative, such as a signature or seal.
(c) If continuing education credit for attending a continuing education course is claimed, the licensee shall obtain and retain for four years after renewal a certificate of completion or its equivalent disclosing the following information:
(1) Name of licensee in attendance
(2) School, firm or organization conducting course
(3) Location of course attended
(4) Title of course or description of content
(5) Dates of attendance except when the licensee attended a course for academic credit given by a college, university, or other institution of higher learning accredited by an association recognized by the Secretary of the United States Department of Education, in which case the applicant may provide evidence of a grade of pass or "credit" to satisfy this requirement.
(6) Number of hours of actual attendance except when the licensee attended a course for academic credit given by a college, university, or other institution of higher learning accredited by an association recognized by the Secretary of the United States Department of Education, in which case the applicant may provide evidence of a grade of pass or "credit" to satisfy this requirement
(7) Verification by a program provider representative, such as a signature or seal.
(d) If continuing education credit is claimed for completing a self-study course, the licensee shall obtain and retain for four years after renewal a certificate of completion or its equivalent disclosing the following information:
(1) Name of licensee taking the course
(2) School, firm, or organization providing the course
(3) Title of course or description of contents
(4) Date of completion
(5) Number of hours of continued education credit granted for completing the course.
(e) If credit as an instructor, discussion leader, or speaker is claimed, the licensee shall retain for four years after renewal the following information:
(1) School, firm or organization providing course
(2) Location of course presented
(3) Title of the course or description of content
(4) Course outline
(5) Dates and evidence of presentation
(6) Number of hours of actual preparation time and presentation time.
(f) If credit is claimed for writing continuing education instructional materials, the following information shall be maintained for four years after renewal:
(1) Name of the course provider or publisher
(2) Title of the course and a description of the instructional materials
(3) Date of completion of the instructional materials or publication date

(4) A copy of the instructional materials
(5) Hours claimed.
(g) If credit for published articles and books is claimed, the following information shall be maintained for four years after renewal:
(1) Name and address of publisher
(2) Title of publication
(3) Brief description
(4) Date(s) of publication
(5) Copy of publication
(6) Hours claimed.
(h) If credit for writing questions for the Uniform CPA Examination is claimed, the licensee shall obtain and retain for four years after renewal a letter or other statement from the American Institute of Certified Public Accountants documenting the licensee's participation and the number of hours of continuing education credit the licensee has received.
(i) The Board will solicit and verify such information on a test basis. If a licensee is found to have a deficiency, the licensee shall be so notified. Upon request, the licensee may be granted a reasonable period of time in which to correct the deficiency.
(j) A licensee who is determined by the Board at renewal not to have completed the required number of hours of qualifying continuing education shall be required to make up any deficiency. A licensee who is required to make up a deficiency shall be ineligible for active status license renewal or conversion to active status pursuant to Section 87.1 until such time as documentation to support the required hours of continuing education for license renewal has been submitted and approved by the Board.
(k) A licensee's willful making of any false or misleading statement, in writing, regarding his/her continuing education shall constitute cause for disciplinary action pursuant to section 5100(g) of the Accountancy Act.

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Section 5027, Business and Professions Code.

HISTORY:
1. Amendment filed 12-24-75; effective thirtieth day thereafter (Register 75, No. 52).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment of subsections (a) and (b) and new subsections (c) and (d) filed 12-10-90; operative 1-9-91 (Register 91, No. 3).
4. Amendment filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
5. New subsection (f) and subsection relettering filed 3-28-96; operative 7-1-96 (register 96, No. 13).
6. Editorial correction of subsection (a) (Register 97, No. 25).
7. Amendment of subsection (f) filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).
8. Amendment filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).

OVERVIEW OF MISCELLANEOUS PROPOSED REVISIONS TO THE DISCIPLINARY GUIDELINES 2010

CBA vs Board
COMMENTS The use of "Board" throughout the *Disciplinary Guidelines* has been replaced with "CBA" to reflect the California Board of Accountancy brand.

Enforcement Advisory Committee
COMMENTS: "Enforcement Advisory Committee" has replaced the former "Administrative Committee." (See Attachment 4, Pages 1 and 60.)

Cost Recovery
COMMENTS: Information regarding the 2005 statute changes in California Business and Professions Code Section 5107 regarding cost recovery has been deleted. (See Attachment 4, Page 3).

Ethics – Optional Condition of Probation
COMMENTS: At the July 23-24, 2009 CBA meeting, the CBA approved revisions to Optional Condition of Probation No. 20 to reflect changes in the continuing education requirements regarding ethics. (Section 87.7 was repealed and Section 87(b) was enacted.) The title "Ethics Courses/Exam" for the repealed Section 87.7 has been replaced with the newly enacted Section 87(b) title "Ethics Continuing Education" under the CONDITIONS OF PROBATION throughout the *Disciplinary Guidelines*. (See Attachment 4, Page 67.)

Regulatory Review – Optional Condition of Probation
COMMENTS: At the July 23-24, 2009 CBA meeting, the CBA approved the addition of an Optional Condition of Probation reflecting changes in the continuing education requirements regarding regulatory review under California Code of Regulations, Section 87.8. This Optional Condition of Probation has been added, as appropriate, as a CONDITION OF PROBATION throughout the *Disciplinary Guidelines*. (See Attachment 4, Page 68.)

Peer Review – Optional Condition of Probation
COMMENTS: Mandatory peer review became effective January 1, 2010 under California Business and Professions Code Section 5076. In anticipation of implementation of this statute, the CBA Board approved the language adding peer review as an Optional Condition of Probation at its May 14-15, 2009 CBA meeting. Revisions to the approved Optional Condition of Probation language are proposed to coincide with the requirements of Section 5076 and California Code of Regulations, Sections 39, 40, 41, 42, 43, 45, and 46. (The proposed revisions are shown in Attachment 4, Page 68.)

Peer Review – Optional Condition of Probation
COMMENTS: Peer review has been added as an Optional Condition of Probation for the following violations: • California Business and Professions Code Section 5062 (Attachment 4, Pages 19-20) • California Business and Professions Code Section 5097 (Attachment 4, Page 27) • California Business and Professions Code Section 5100(c) (Attachment 4, Pages 29-30) • California Business and Professions Code Section 5100(e) (Attachment 4, Pages 30-31) • California Code of Regulations, Section 65 (Attachment 4, Page 50) • California Code of Regulations, Sections 68.2, 68.3, 68.4, and 68.5 (Attachment 4, Pages 51-53)

(Please see attached statutes and regulations.)

5062. Report Conforming to Professional Standards

A licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements.

HISTORY: Added Stats 1990 ch 1393 Section 1.3.

5062.2. Restrictions on Accepting Employment with an Audit Client

A licensee shall not accept employment with a publicly traded corporation or its affiliate within 12 months of the date of issuance of a financial statement report if both of the following criteria are met:

(a) The licensee has participated in an audit engagement for the corporation and held responsibility, with respect to the audit engagement, requiring the licensee to exercise significant judgment in the audit process. Responsibilities meeting the requirements of this subdivision include, but are not limited to, positions, however titled, where the licensee was the person in charge of the fieldwork, up through positions where the licensee was a partner on the engagement.

(b) The employment would permit the licensee to exercise significant authority over accounting or financial reporting, including authority over the controls related to those functions.

HISTORY: Added Stats 2002 ch 232 Section 1.

5063. Reportable Events

(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

(1) The conviction of the licensee of any of the following:

(A) A felony.

(B) Any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant or to acts or activities in the course and scope of the practice of public accountancy.

(C) Any crime involving theft, embezzlement, misappropriation of funds or property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

ARTICLE 5.5

AUDIT DOCUMENTATION

5097. Audit Documentation Requirements

(a) Audit documentation shall be a licensee's records of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in an audit engagement. Audit documentation shall include, but is not limited to, programs, analyses, memoranda, letters of confirmation and representation, copies or abstracts of company documents, and schedules or commentaries prepared or obtained by the licensee.

(b) Audit documentation shall contain sufficient documentation to enable a reviewer with relevant knowledge and experience, having no previous connection with the audit engagement, to understand the nature, timing, extent, and results of the auditing or other procedures performed, evidence obtained, and conclusions reached, and to determine the identity of the persons who performed and reviewed the work.

(c) Failure of the audit documentation to document the procedures applied, tests performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a presumption that the procedures were not applied, tests were not performed, information was not obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable presumption affecting the burden of proof relative to those portions of the audit that are not documented as required in subdivision (b). The burden may be met by a preponderance of the evidence.

(d) Audit documentation shall be maintained by a licensee for the longer of the following:

(1) The minimum period of retention provided in subdivision (e).

(2) A period sufficient to satisfy professional standards and to comply with applicable laws and regulations.

(e) Audit documentation shall be maintained for a minimum of seven years which shall be extended during the pendency of any board investigation, disciplinary action, or legal action involving the licensee or the licensee's firm. The board may adopt regulations to establish a different retention period for specific categories of audit documentation where the board finds that the nature of the documentation warrants it.

(f) Licensees shall maintain a written documentation retention and destruction policy that shall set forth the licensee's practices and procedures complying with this article.

History: Added Stats 2002 ch 230 Section 2.

ARTICLE 6
DISCIPLINARY PROCEEDINGS

5100. Discipline in General

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) Violation of Section 5097.

(f) Violation of Section 5120.

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities

and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

(m) Unlawfully engaging in the practice of public accountancy in another state.

HISTORY: Added Stats 1945 ch 1353 Section 2; amended Stats 1947 ch 502 Section 1; Stats 1949 ch 1528 Section 3; Stats 1955 ch 1803 Section 9; Stats 1959 ch 310 Section 68; Stats 1963 ch 366 Section 1; Stats 1978 ch 1161 Section 287; Stats 1988 ch 728 sec 2; Stats 1990 ch 301 Section 1; Stats 1992 ch 1289 Section 41; Stats 2002 ch 230 Section 4, ch 231 Section 13; Stats 2004 ch 921 Section 12.

5101. Discipline of Partnership

After notice and hearing the board shall revoke the registration and permit to practice of a partnership if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration. After notice and hearing the board may revoke, suspend or refuse to renew the permit to practice of a partnership or may censure the holder of such permit for any of the causes enumerated in Section 5100 and for the following additional causes:

(a) The revocation or suspension of the certificate or registration or the revocation or suspension of or refusal to renew the permit to practice of any partner.

(b) The cancellation, revocation or suspension of certificate or other authority to practice or refusal to renew the certificate or other authority of the partnership of any partner thereof to practice public accountancy in any other state.

HISTORY: Added Stats 1945 ch 1353 Section 2; amended Stats 1947 ch 502 Section 2.

5102. Powers and Proceedings

The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

HISTORY: Added Stats 1947 ch 502 Section 5; amended Stats 1959 ch 310 Section 69.

typewriting, printing, photocopying, photographing, computer, data, or any other letters, words, pictures, sounds, or symbols or combinations thereof.

(b) Licensees shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(c) Licensees shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

NOTE: Authority Cited: Section 5010 and 5018, Business and Professions Code.
Reference: Section 5018 and 5037, Business and Professions Code.

HISTORY:
1. New section filed 2-26-96; operative 3-27-96 (Register 96, No 9).

68.2 Identification of Audit Documentation.

(a) To provide for the identification of audit documentation, audit documentation shall include an index or guide to the audit documentation which identifies the components of the audit documentation.

(b) In addition to the requirements of Business and Professions Code Section 5097(b), audit documentation shall provide the date the document or working paper was completed by the preparer(s) and any reviewer(s), and shall include the identity of the preparer(s) and any reviewer(s).

(c) Audit documentation shall include both the report date and the date of issuance of the report.

NOTE: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code.
Reference: Sections 5097 and 5098, Business and Professions Code.

HISTORY:
1. New section filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4). For prior history, see Register 2000, No. 19.

68.3 Retention Period for Audit Documentation.

(a) The retention period mandated by Business and Professions Code Section 5097 shall be measured from the report date.

(b) If audit documentation is required to be kept for longer than seven years because of a pending Board investigation or disciplinary action, audit documentation shall not be

destroyed until the licensee has been notified in writing by the Board of the closure of a Board investigation or disciplinary proceeding.

(c) Any documents required to be maintained by Business and Professions Code Section 5097 or these regulations shall be maintained in accessible form.

(d) Audit documentation shall be retained whether or not the documentation supports the auditor's final conclusions. All audit documentation regarding any significant matter related to the audit shall be retained whether or not the documentation contains information or data inconsistent with the auditor's final conclusions. Significance of a matter shall be determined based on an objective analysis of the facts and circumstances. Audit documentation to be retained shall also include all documentation of consultations on, or resolutions of, any differences of opinion regarding the exercise of professional judgment.

NOTE: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code. Reference: Sections 5097 and 5098, Business and Professions Code.

HISTORY:

1. New section filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).
2. Amendment to subsection (a) filed 7-11-2007; operative 8-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 28).

68.4. Changes in Audit Documentation After Issuance of the Report.

(a) Changes in audit documentation include any addition, removal, deletion, substitution, or editing of audit documentation, including, but not limited to, physical or electronic additions to any audit documentation file or preexisting audit documentation, occurring after the date of issuance of the audit report which is supported in whole or in part by the audit documentation.

(b) Except as provided in subsection (c), in addition to any other documentation required by professional standards, any changes in audit documentation shall provide the identity of the person(s) making the change, and identity of any person(s) approving the change, the date of the change, and the reason for the change if the reason is other than the assembling of pre-existing documents. The documentation which is changed shall contain sufficient detail to enable a reviewer with relevant knowledge and experience, having no previous connection with the audit engagement, to understand the nature, timing, reason for, and extent of the change.

(c) During a 60-day period after the date of issuance of the audit report, documents may be added to the file for the assemblage and documentation of work previously performed. Nothing in this subsection authorizes the deferral of audit procedures required to be performed prior to the date of issuance of the report.

NOTE: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code. Reference: Sections 5097 and 5098, Business and Professions Code.

HISTORY:
1. New Section filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).
2. Amendment to section heading and section filed 7-11-2007; operative 8-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 28).

68.5. Audit Documentation Retention and Destruction Policy.

(a) Licensees shall maintain, and document compliance with, a written Audit Documentation Retention and Destruction Policy which provides for the preservation of audit documentation for the full time period required by Business and Professions Code Section 5097. The policy and documentation of compliance shall be available to the Board upon request.

(b) This policy shall provide for the authorized custody, security, access, retention, and destruction of the documentation. This policy shall, at a minimum, include the following:

(1) procedures for the maintenance of back-up copies of electronic audit documentation at secure locations,

(2) procedures for maintaining audit documentation,

(3) procedures for approving any changes to audit documentation,

(4) procedures for approving the destruction of documentation when no longer required to be maintained by Business and Professions Code Section 5097.

(c) The procedure required by subsection (b)(4) shall provide for identifying the persons, by name or position, authorized to approve the destruction of audit documentation. In the alternative, the procedure required by subsection (b)(4) may be self-executing once the retention period has expired.

NOTE: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code. Reference: Sections 5097 and 5098, Business and Professions Code.

HISTORY:
1. New Section filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).

69. Certification of Applicant's Experience.

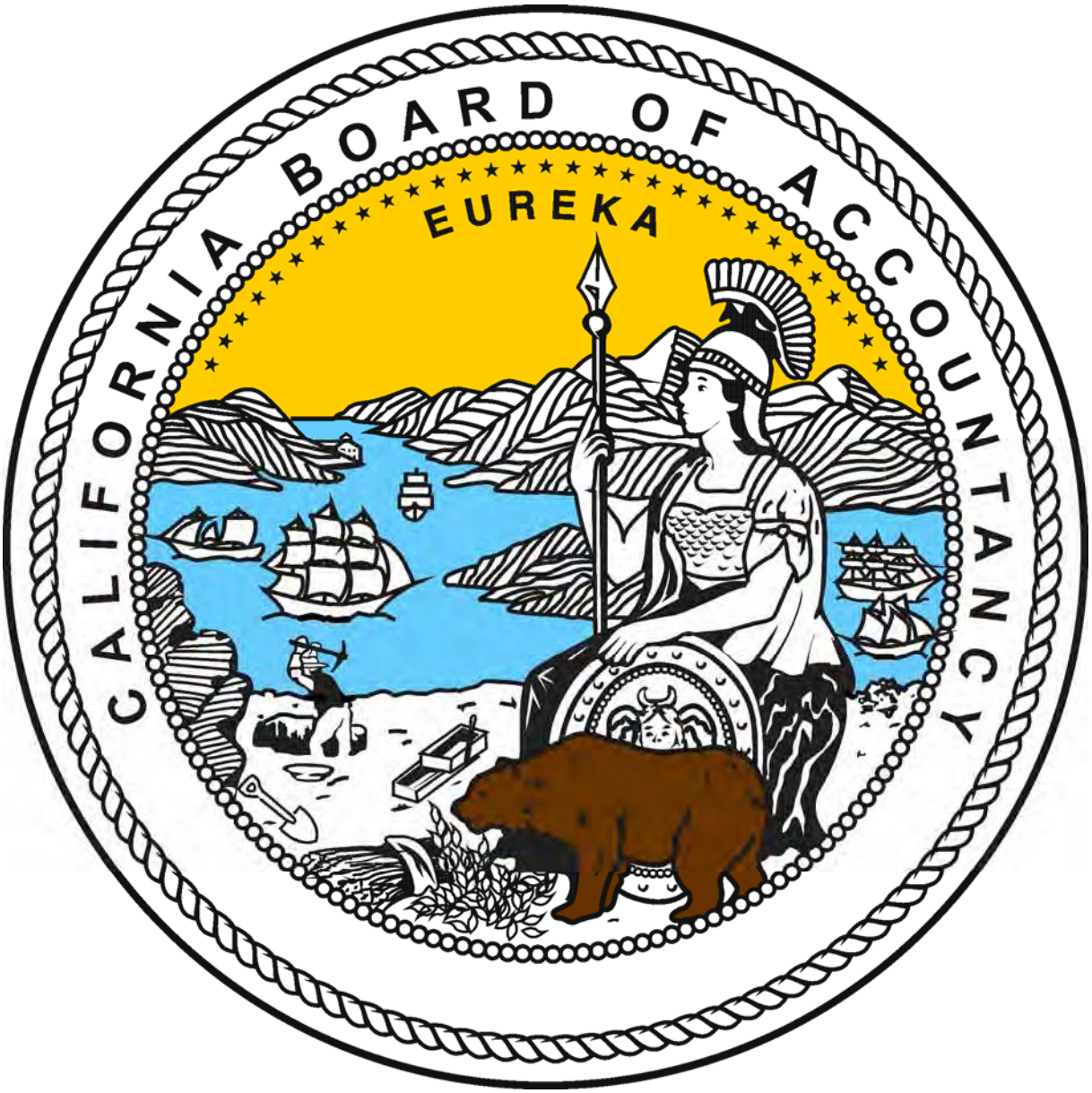
(a) Any licensee who shall have been requested by an applicant to prepare and submit to the board certification of the applicant's experience and shall have refused to prepare and submit said certification shall, when requested by the board, explain in writing, or, when so requested by the board, explain in person, the basis for refusal to complete and submit said certification.

(b) Any licensee who shall have signed a certification of experience shall, when requested by the board, explain in writing, or, when so requested by the board, explain

ATTACHMENT 4

A MANUAL OF DISCIPLINARY GUIDELINES AND MODEL DISCIPLINARY ORDERS

7th Edition ~~2009~~2010



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California Board of Accountancy

DISCIPLINARY GUIDELINES AND MODEL DISCIPLINARY ORDERS

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DISCIPLINARY GUIDELINES
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MODEL DISCIPLINARY ORDERS

I. INTRODUCTION

The California Board of Accountancy (the "~~Board~~*CBA*") licenses the practice of accountancy in the State of California and may revoke, suspend, or refuse to renew any permit or certificate for violation of applicable statutes or regulations. The ~~Board~~ *CBA* examines applicants, sets education requirements, and may deny licensure and the authority to practice under practice privilege (California Business and Professions Code Section 5096 et seq.). The ~~Board~~ *CBA* may, by regulation, prescribe, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and competency in the profession.

The ~~Board~~*CBA*, through its Enforcement Division, assisted by its statutorily established ~~Administrative~~ *Enforcement Advisory* Committee, receives and investigates complaints; initiates and conducts investigations or hearings, with or without the filing of a complaint; and obtains information and evidence relating to any matter involving the conduct of California Public Accountants and Certified Public Accountants as well as any alleged violation of the California Accountancy Act. The California Accountancy Act and the regulations of the California Board of Accountancy provide the basis for ~~Board~~ *CBA* disciplinary action. (See California Business and Professions Codes Sections 5000 et seq., and Title16 California Code of Regulations Sections 1 through 99.1.)

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy in California, or the voluntary surrender of a license by a licensee shall not deprive the ~~Board~~ *CBA* of the authority to proceed with an investigation, action, or disciplinary proceeding against the licensee or to render a decision suspending or revoking the license. (See California Business and Professions Code Section 5109.)

These disciplinary guidelines, designed for the use of Administrative Law Judges, attorneys, ~~Board~~ *CBA* licensees, and others involved in the ~~Board's~~ *CBA's* disciplinary process, are revised from time to time. The guidelines cover model disciplinary orders, including factors to be considered in aggravation and mitigation; standard probationary terms; and guidelines for specific offenses. The guidelines for specific offenses are referenced to the statutory and regulatory provisions violated.

These disciplinary guidelines set forth recommended discipline for the violation of current statutes and regulations; includes a provision for community service; and provides additional guidance regarding disciplinary and model orders. This revised edition was adopted by the ~~Board~~ *CBA* on ~~January 21, 2005~~*NEW DATE OF ADOPTION*.

The ~~Board~~ *CBA* recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein.

II. GENERAL CONSIDERATIONS

The ~~Board~~ *CBA* requests that **Proposed Decisions** following administrative hearings include the following:

a. Specific code sections violated with their definitions.

b. Clear description of the violation.

c. Respondent's explanation of the violation if he or she is present at the hearing.

d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate (See factors set forth below/Section 99.1).

e. When suspension or probation is recommended, the ~~Board~~ *CBA* requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure therefrom is clearly set forth in the findings and supported by the evidence.

If the respondent fails to appear for the scheduled hearing, such action shall result in a **default decision** to revoke license.

When the ~~Board~~*CBA*, at a **reinstatement hearing**, denies a petitioner's request for reinstatement, the ~~Board~~ *CBA* requests that the Administrative Law Judge provide technical assistance in formulating language clearly setting forth the reasons for denial. Such a **statement** should include, for example, a statement on rehabilitation, including suggestions for further approaches by petitioner to demonstrate rehabilitation, where appropriate.

f. **Reimbursement to the ~~Board~~ *CBA* for costs of investigation and prosecution as warranted by Business and Professions Code Section 5107.**

The ~~Board~~ *CBA* will consider **stipulated settlements** to promote cost effectiveness and to expedite disciplinary decisions if such agreements achieve its disciplinary objectives. Deputy Attorneys General should inquire as to respondent's interest in stipulated settlement promptly after receipt of a notice of defense. If stipulated settlement appears unlikely, the case should be set for hearing.

The ~~Board's~~ *CBA's* policy is that all disciplinary actions will be published.

It is also the ~~Board's~~ *CBA's* policy that matters resolved by stipulation include **cost recovery**.

The ~~Board's~~ *CBA's* Executive Officer is authorized by statute to request an Administrative Law Judge, as part of any proposed decision in a disciplinary proceeding, to order the recovery of reasonable costs of investigation and prosecution (California Business and Professions Code Section 5107). ~~For costs incurred prior to January 1, 2005, costs may be recovered only for specific violations, as specified in the statute prior to its amendment effective January 1, 2005. For costs incurred January 1, 2005 and after, statute changes allow for cost recovery for **all**~~

~~violations, regardless of when the violation(s) occurred.~~ This statute does not preclude the ~~Board~~ *CBA* from seeking recovery of costs through stipulations; thus, it does not change the ~~Board's~~ *CBA's* policy of requesting and recovering costs where appropriate in stipulated settlements. Restitution to victims and/or administrative penalties should not be reasons to reduce, eliminate, or stay full recovery of all reasonable costs of investigation and prosecution.

In stipulated decisions involving **revocation** (no revocation stayed), the order will generally include the requirement that respondent must reimburse the ~~Board~~ *CBA* for all reasonable costs of investigation and prosecution prior to or upon reinstatement of respondent's revoked certificate under Section 5115 of the California Business and Professions Code.

The period of **probation** is generally three years. During the probation period, licensees are required to appear in person at interviews/meetings as directed by the ~~Board~~ *CBA* or its designated representatives to report on probation compliance.

Where an actual **suspension** is imposed, the order shall include the requirement that respondent engage in no activities for which certification is required (see model disciplinary orders). In addition, the respondent shall relinquish the certificate in question to the ~~Board~~ *CBA* and shall notify clients regarding the suspended status of the certificate, if directed to do so by the ~~Board~~*CBA*.

III. EVIDENCE IN AGGRAVATION OF PENALTY

The following are among aggravating circumstances to be considered by Administrative Law Judges in providing for penalties in proposed decisions:

1. Evidence that the violation was knowingly committed and/or was premeditated.

2. Licensee has a history of prior discipline, particularly where the prior discipline is for the same or similar type of conduct.

3. Licensee's actions resulted in financial damage to his or her clients or other consumers. The amount of loss may be an additional aggravating factor.

4. Violation of ~~Board~~ *CBA* probation.

5. Failure to comply with a final citation order.

6. Failure to comply with a notice to appear before the ~~Board~~ *CBA* or its designated representatives.

7. Failure to comply with continuing education requirements as ordered by the ~~Board~~ *CBA* or its designated representatives pursuant to Section 87.5.

8. Evidence that the licensee has not cooperated with the ~~Board's~~ *CBA's* investigation.

9. Misappropriation of entrusted funds or other breach of fiduciary responsibility.

10. Duration of violation(s).

11. Evidence that the licensee knew or should have known that his or her actions could harm his or her clients or other consumers.

12. Evidence that the licensee took advantage of his or her client for personal gain, especially if the licensee was able to take advantage due to the ignorance, age, or lack of sophistication of the client.

IV. EVIDENCE IN MITIGATION OF PENALTY

The following are among mitigating circumstances that may be taken into account by Administrative Law Judges in providing for penalties in proposed decisions:

1. The licensee has cooperated with the California Board of Accountancy's investigation, other law enforcement or regulatory agencies, and/or the injured parties.

2. The passage of considerable time since an act of professional misconduct occurred with no evidence of recurrence or evidence of any other professional misconduct.

3. Convincing proof of rehabilitation, including the factors in Section 99.1 as well as other relevant considerations.

4. Demonstration of remorse by the licensee.

5. Recognition by licensee of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

6. Violation was corrected without monetary losses to consumers and/or restitution was made in full.

7. If violation involved multiple licensees, the relative degree of culpability of the subject licensee should be considered.

V. REHABI LITATION CRITERIA

The ~~Board's~~ *CBA's* rehabilitation criteria, set forth in Section 99.1, are as follows:

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 5115 of the California Business and Professions Code, the ~~Board~~*CBA*, in evaluating the rehabilitation of the applicant and his or her present eligibility for a certificate or permit, will consider the following criteria:

1. Nature and severity of the act(s) or offense(s);

2. Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration that could also be considered as grounds for denial, suspension, or revocation;

3. The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2);

4. The extent to which the applicant or respondent has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or respondent;

5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code;

6. Evidence, if any, of rehabilitation submitted by the applicant or respondent.

VI. ADMINISTRATIVE PENALTIES

California Business and Professions Code Section 5116 et seq. allow the ~~Board~~ *CBA* to order any licensee or applicant for licensure or examination to pay an administrative penalty as part of any disciplinary proceeding. In matters that go through the administrative hearing process, the ~~Board's~~ *CBA's* Executive Officer may request an Administrative Law Judge to impose an administrative penalty as part of any proposed decision.

The administrative penalty assessed shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including but not limited to, license revocation, license suspension, denial of the application for licensure, or denial of admission to the licensing examination. When probation is ordered, an administrative penalty may be included as a condition of probation.

For any violation, with the exception of violation of subdivisions (a), (c), (i), (j), or (k) of Section 5100, any licensee may be assessed an administrative penalty of not more than $5,000 for the first violation and not more than $10,000 for each subsequent violation.

For violation of subdivisions (a), (c), (i), (j), or (k) of Section 5100, licensed firms may be assessed an administrative penalty of not more than $1,000,000 for the first violation and not more than $5,000,000 for any subsequent violation. The administrative penalty that may be assessed an individual licensee who violates these sections is limited to not more than $50,000 for the first violation and not more than $100,000 for any subsequent violation.

Administrative penalties may be assessed under one or more violations; however, the total administrative penalty shall not exceed the amount of the highest administrative penalty allowed.

The term "violation" used in Sections 5116.1, 5116.2, and 5116.3 is intended to include the total violations in the disciplinary proceeding. Accordingly, "first violation" refers to the respondent's first disciplinary action and "subsequent violations" refers to any subsequent disciplinary actions.

Cost recovery ordered under California Business and Professions Code Section 5107 should not be a reason to reduce or eliminate the amount of administrative fines.

The following criteria should be considered in assessing administrative penalties.

1. Nature and extent of actual and potential consumer harm.

2. Nature and extent of actual and potential harm to clients.

3. Nature and severity of the violation.

4. The role of the person in the violation.

5. The person's attitude toward his or her commission of the violations.

6. Recognitio n of wrongdoing.

7. Person's history of violations.

8. Nature and extent of cooperation with the ~~Board's~~ *CBA's* investigation.

9. The person's ability to pay the administrative penalty.

10. The level of administrative penalty necessary to deter future violations.

11. Nature and extent to which the person has taken corrective action to ensure the violation will not recur.

12. Nature and extent of restitution to consumers harmed by violations.

13. The violations involve sanctions by other government agencies or other regulatory licensing bodies, i.e. Internal Revenue Service, Securities and Exchange Commission, and Public Company Accounting Oversight Board.

14. Other aggravating or mitigating factors.

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VII. DISCIPLINARY GUIDELINES

The offenses and penalties are listed chronologically by statute number in the Business and Professions Code and by regulation number in Title 16 of the California Code of Regulations. The number in brackets following each condition of probation refers to the model disciplinary order so numbered (See **Model Disciplinary Orders**). The probation terms listed under "if warranted" for each violation are to be considered, and imposed, if facts and circumstances warrant.

CALIFORNIA ACCOUNTANCY ACT:
BUSINESS AND PROFESSIONS CODE, DIVISION 3, CHAPTER 1

ARTICLE 2

Section 5037(a) OWNERSHIP OF ACCOUNTANTS' WORKPAPERS

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed, [1,2,4] 3 years probation

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~*Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
~~5~~*6*. Continuing Education Courses [25]
~~6.~~*7* Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 54.1)

Section 5037(b)(1)(2) RETURN OF CLIENT DOCUMENTS

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]

3. Restitution [16]
4. Restricted Practice [17]
5. Engagement Letters [18]
6. ~~Ethics Course/Exam~~*Ethics Continuing Education* [20]
7. *Regulatory Review Course [21]*
~~7~~*8*. Continuing Education Courses [25]
~~8~~*9*. Community Service – Free Services [29]
~~9~~*10*Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~10~~*11*.Conditions as appropriate relating to physical or mental disability or condition [31-36]

(Reference Section 68)

ARTICLE 3

Section 5050(a) PRACTICE WITHOUT PERMIT; TEMPORARY PRACTICE

Except as provided for in Section 5050(b) and (c), Section 5054, and Section 5096.12, applies to respondent who practices for a time without a valid license to practice or to respondent who practices without obtaining a practice privilege.

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

<u>CONDITIONS OF PROBATION</u>:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. Ethics Course/Exam *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~*5*. Continuing Education Courses [25]
~~5~~*6*. Active License Status [26]
~~6~~*7*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5050(b) PRACTICE WITHOUT PERMIT; TEMPORARY PRACTICE; OUT-OF-STATE LICENSEE
Applies to non-California CPAs or firms temporarily practicing in California that solicit California clients, imply they are licensed in California, or engage in development, implementation, or marketing of abusive tax avoidance transactions.

Minimum Penalty - Correction of Violation
Maximum Penalty - Revoke authorization to practice

Section 5050(c) **PRACTICE WITHOUT PERMIT; TEMPORARY PRACTICE; FOREIGN ACCOUNTANTS**

Applies to respondents licensed in a foreign country who are temporarily practicing in California and hold out as California licensees.

Minimum Penalty - Correction of Violation
Maximum Penalty - Revoke authorization to practice

Section 5054 **PREPARATION OF TAX RETURNS BY INDIVIDUALS AND FIRMS OUTSIDE THE STATE**

Minimum Penalty - Correction of Violation
Maximum Penalty - Revoke authorization to practice

Section 5055 **TITLE OF CERTIFIED PUBLIC ACCOUNTANT/**
Section 5056 **TITLE OF PUBLIC ACCOUNTANT**

(Applies to respondent who assumes or uses the title certified public accountant, CPA, public accountant, or PA without having an appropriate permit to practice.)

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~*Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~5. Continuing Education Courses [25]
~~5~~6. Active License Status [26]
~~6~~7. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5058 **USE OF CONFUSING TITLES OR DESIGNATIONS PROHIBITED**

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed with actual suspension [1-4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted: 1. Suspension [3] with/without stay [4]

2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education*[20]
4. *Regulatory Review Course [21]*
~~4~~5. Continuing Education Courses [25]
~~5~~6. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 2)

Section 5058.1 TITLES IN CONJUNCTION WITH CERTIFIED PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTANT

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed with actual suspension [1-4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~*Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~5. Continuing Education Courses [25]
~~5~~6. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5058.2 INACTIVE DESIGNATION

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 3 years probation [1-2,4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted: 1. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 3.5

Section 5060 NAME OF FIRM

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed with actual suspension [1-4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~5. Continuing Education Courses [25]
~~5~~6. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5072)

Section 5061 COMMISSIONS

Minimum Penalty - Continuing Education [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. Engagement Letters [18]
6. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
7. *Regulatory Review Course [21]*
~~7~~8. Continuing Education Courses [25]
~~8~~9. Community Service – Free Services [29]
~~9~~10 Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5062 REPORT CONFORMING TO PROFESSIONAL STANDARDS

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]
3. Continuing Education Courses [25]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. Engagement Letters [18]
6. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
7. *Regulatory Review Course [21]*
8. *Peer Review [22]*
~~7~~*9*. CPA Exam [23]
~~8~~*10*. Samples - Audits, Review or Compilation [27]
~~9~~*11*.Community Service – Free Services [29]
~~10~~*12*.Notice to Clients [31]
~~11~~*13*.Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5100(j))

Section 5062.2 RESTRICTIONS ON ACCEPTING EMPLOYMENT WITH AN AUDIT CLIENT

Minimum Penalty - Revocation stayed, 30 day suspension, 3 years probation [1-4]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Community Service – Free Services [29]
~~3~~*4*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5063 REPORTABLE EVENTS

Minimum Penalty - Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:

1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*

~~5~~*6*. Continuing Education Courses [25]
~~6~~*7*. Samples – Audit, Review or Compilation [27]
~~7~~*8*. Prohibition from Handling Funds [28]
~~8~~*9*. Community Service – Free Services [29]
~~9~~*10*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~10~~*11*. Conditions as appropriate relating to physical or mental disability or condition [31-36]

(Reference Sections 59, 60, 61)

Section 5063.3 CONFIDENTIAL INFORMATION DISCLOSURE

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed; 90 day suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:

Required: 1. 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:

1. Suspension [3]
2. Supervised Practice [15]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*

~~4~~*5*. Continuing Education Courses [25]
~~5~~*6*. Notice to Clients [31]
~~6~~*7*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 4

Section 5070.7 FAILURE TO RENEW WITHIN FIVE YEARS

Minimum Penalty - Certificate canceled immediately and returned to the ~~Board~~*CBA*
Maximum Penalty - CPA Exam [23]

Section 5072(a) REQUIREMENTS FOR REGISTRATION AS A PARTNERSHIP
Applies to licensee(s) in a partnership who practices for a time without partnership license (Section 5073) and subsequently renews, or to a partnership in practice without a license.

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation of partnership/individual licenses [1-2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~*5*. Continuing Education Courses [25]
~~5~~*6*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(See also section on **Unlicensed Activities.**)

Section 5073(d) PARTNERSHIP APPLICATIONS (ADMISSION OR WITHDRAWAL OF PARTNER)

Minimum Penalty - Continuing Education Course [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5076(a) PEER REVIEW

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:
1. *If revocation stayed [4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Suspension [3] with/without stay [4]*
2. *Supervised Practice [15]*
3. *Restricted Practice [17]*
4. *Ethics Continuing Education [20]*
5. *Regulatory Review Course [21]*
6. *Continuing Education Courses [25]*
7. *Sample – Audit, Review or Compilation [27]*
8. *Notification to Clients/Cessation of Practice [31]*
9. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

(Reference Sections 40, 41, 43)

Section 5076(f) PEER REVIEW – DOCUMENT SUBMISSION REQUIREMENT

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required:
1. *If revocation stayed [4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Suspension [3] with/without stay [4]*
2. *Supervised Practice [15]*
3. *Restricted Practice [17]*
4. *Ethics Continuing Education [20]*
5. *Regulatory Review Course [21]*
6. *Peer Review [22]*
7. *Continuing Education Courses [25]*
8. *Sample – Audit, Review or Compilation [27]*
9. *Notification to Clients/Cessation of Practice [31]*
10. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

(Reference Section 46)

Section 5078 OFFICES NOT UNDER PERSONAL MANAGEMENT OF CERTIFIED PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTANT; SUPERVISION

Minimum Penalty - Continuing education [25] and/or require CPA or PA to develop standards for supervision, and implement a practice plan; permit practice investigation within 3 months to insure compliance [10]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required:
1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
~~5~~*6*. Continuing Education Courses [25]
~~6~~*7*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5079(a)(b)(d) NONLICENSEE OWNERSHIP OF FIRMS

Minimum Penalty - Continuing Education [25] for California licensee partners or for licensee shareholders of corporation
Maximum Penalty - Revocation of partnership or corporate registration and individual licenses

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed, 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~5. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 51.1)

ARTICLE 5

Section 5081(a) REQUIREMENTS FOR ADMISSION TO CERTIFIED PUBLIC ACCOUNTANT EXAMINATION (ACTS DENYING ADMISSION TO EXAM)

Minimum Penalty - Probationary conditions on initial license (if not yet licensed) or revocation, stayed with probation (if already licensed); reference appropriate subsection of Section 5100 for applicable provisions
Maximum Penalty - Denial of admission to examination or revocation of license if issued

(Reference relevant section for discipline based upon nature of act.)

Section 5081(b)(c) REQUIREMENTS FOR ADMISSION TO CERTIFIED PUBLIC ACCOUNTANT EXAMINATION

Minimum/Maximum Penalty - Denial of admission to examination, or revocation of license if issued.

Section 5088 INTERIM PRACTICE RIGHTS: OUT OF STATE CPA

Minimum/Maximum Penalty - If ~~Board~~ *CBA* rejects application, cease practice immediately. If practice continues, see provisions on **Unlicensed Activities**.

Section 5095(a) MINIMUM NUMBER OF ATTEST SERVICES HOURS; ATTEST EXPERIENCE

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4.~~*5* CPA Exam [23]
5. Continuing Education Courses [25]
6. Active License Status [26]
7. Notification to Clients/Cessation of Practice [31]
8. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 5.1

Section 5096(e)(3) PRACTICE PRIVILEGE – PRACTICE FROM OFFICE IN THIS STATE

Minimum Penalty - Revocation stayed [1-2, 4]; 3 years probation
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION
Required:
1. If revocation stayed [4], probation 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5096(e)(5) PRACTICE PRIVILEGE – COOPERATE WITH BOARD INQUIRY

Minimum Penalty - Administrative Suspension pursuant to Section 5096.4; or ~~Board~~ *CBA* approval required before commencing practice under future practice privilege
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION

Required:
1. If revocation stayed [4], probation 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5096(g)(1) PRACTICE PRIVILEGE – DISQUALIFYING CONDITIONS

Minimum Penalty - Revocation stayed [1-2, 4]; 3 years probation
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION

Required:
1. If revocation stayed [4], probation 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5096.5 PRACTICE PRIVILEGE – SIGN ATTEST REPORTS

Minimum Penalty - Revocation stayed [1-2, 4]; 3 years probation
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION

Required:
1. If revocation stayed [4], probation 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5096.12(a) PRACTICE PRIVILEGE – LIMITED FIRM PRACTICE

(Applies to an out-of-state firm practicing through a practice privilege holder.)

Minimum Penalty - Revocation stayed [1-2, 4]; 3 years probation
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION

Required:
1. If revocation stayed [4], probation 3 to 5 years
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education [20]*
3. *Regulatory Review Course [21]*
4. ~~3~~. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5096.13 FIRM INFORMATION

Minimum Penalty - Correction of Violation
Maximum Penalty - Revoke authorization to practice

ARTICLE 5.5

Section 5097 AUDIT DOCUMENTATION

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. Library Reference Material [19]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
7. *Peer Review [22]*
8. CPA Exam [23]
9. ~~7.~~ Continuing Education Courses [25]
10. ~~8.~~ Samples - Audits, Review or Compilation [27]
11. ~~9.~~ Community Service – Free Services [29]
12. ~~10.~~ Notice to Clients [31]
13. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Sections 68.2, 68.3, 68.4, 68.5)

ARTICLE 6

Section 5100 DISCIPLINE IN GENERAL, (including but not limited to that set forth in Subsections (a) through (l) of this Section)

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Optional conditions which relate to underlying facts and circumstances; reference conditions listed in 5100 (a)-(j)
3. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5100(a) CONVICTION OF ANY CRIME SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS AND DUTIES OF A CPA/PA

FOR FELONY CONVICTIONS OR SEVERAL MISDEMEANOR CONVICTIONS:
Minimum Penalty - Revocation stayed. Actual suspension from practice 120 days. Three years probation [1-4]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
~~6~~*7*. CPA Exam [23] or Enrolled Agents Exam [24]
~~7~~*8*. Continuing Education Courses [25]
~~8~~*9*. Samples - Audit, Compilation or Review [27]
~~9~~*10*. Prohibition from Handling Funds [28]
~~10~~*11*. Community Service – Free Services [29]
~~11~~*12*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

~~12~~*13*.Conditions as appropriate relating to physical or mental disability or condition [31-36]

IN THE CASE OF A <u>SINGLE</u> <u>MISDEMEANOR</u> VIOLATION, TAILOR PROBATION TO CIRCUMSTANCES; ADJUSTING THE REQUIRED CONDITIONS ACCORDINGLY AND CHOOSING APPROPRIATE WARRANTED CONDITIONS FROM THE ABOVE LIST.

Section 5100(b) FRAUD OR DECEIT IN OBTAINING LICENSE/PERMIT/REGISTRATION

Minimum Penalty - Revocation stayed with 180 days actual suspension and 3 years probation (if license was issued). Cannot apply for license for 12 months (if not yet licensed), and, if application is subsequently approved, conditional license with probation for 3 years.
Maximum Penalty - Revocation or application denied. [1-2]

<u>CONDITIONS OF PROBATION</u>:
Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted: 1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. Regulatory Review Course [21]
~~2~~*3*. Continuing Education Courses [25]
~~3~~*4*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5100(c) DISHONESTY, FRAUD, GROSS NEGLIGENCE, OR REPEATED ACTS OF NEGLIGENCE IN THE PRACTICE OF PUBLIC ACCOUNTANCY OR THE PERFORMANCE OF BOOKKEEPING

Minimum Penalty - Revocation stayed [1-2, 4], 3 years probation
Maximum Penalty - Revocation [1-2]

<u>CONDITIONS OF PROBATION</u>:
Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Standard Conditions of Probation [5-14]

If warranted: 1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. Regulatory Review Course [21]
6. Peer Review [22]
~~5~~*7*. CPA Exam [23]
~~6~~*8*. Continuing Education Courses [25]
~~7~~*9*. Samples - Audit, Review or Compilation [27]

~~8~~*10*. Prohibition from Handling Funds [28]
~~9~~*11*. Community Service – Free Services [29]
~~10~~*12*. Notification to Clients [31]
~~11~~*13*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~12~~*14*. Conditions as appropriate relating to physical or mental disability or condition [31-36]

Section 5100(d) CANCELLATION, REVOCATION OR SUSPENSION BY ANY OTHER STATE OR FOREIGN COUNTRY

Minimum Penalty - Revocation stayed [1,2, 4], probation 3 years
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Standard Conditions of Probation [5-14]

If warranted (include those related to underlying offense(s)):
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. Regulatory Review Course [21]
~~6~~*7*. CPA Exam [23] or Enrolled Agents Exam [24]
~~7~~*8*. Continuing Education Courses [25]
~~8~~*9*. Samples - Audit, Review or Compilation [27]
~~9~~*10*. Prohibition from Handling Funds [28]
~~10~~*11*. Community Service – Free Services [29]
~~11~~*12*. Notice to Clients [31]
~~12~~*13*. Conditions as appropriate relating to physical or mental disability or condition [31-36]

Section 5100(e) VIOLATION OF PROVISIONS OF SECTION 5097

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]
3. Continuing Education Courses [25]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
~~3.~~ 3. Restricted Practice [17]

4. Library Reference Material [19]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
7. *Peer Review [22]*

~~6~~*8*. CPA Exam [23]
~~7~~*9*. Samples - Audits, Review or Compilation [27]
~~8~~*10*. Community Service – Free Services [29]
~~9~~*11*. Notice to Clients [31]
~~10~~*12*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5100(f) VIOLATIONS OF PROVISIONS OF SECTION 5120

Section 5120 states "Any person who violates any of the provisions of Article 3 (commencing with Section 5050) is guilty of a misdemeanor, punishable by imprisonment for not more than six months, or by a fine of not more than one thousand dollars, or both." Whenever the ~~Board~~ *CBA* has reason to believe that any person is liable for punishment under this article, the ~~Board~~*CBA*, or its designated representatives, may certify the facts to the appropriate enforcement officer of the city or county where the alleged violation had taken place and the officer may cause appropriate proceedings to be brought.

Violations of Article 3 include:

5050 and 5051	PRACTICE WITHOUT PERMIT/" PUBLIC ACCOUNTANCY" DEFINED
5055 and 5056	TITLE OF CERTIFIED PUBLIC ACCOUNTANT/ PUBLIC ACCOUNTANT
5058	USE OF CONFUSING TITLES OR DESIGNATIONS PROHIBITED
5060	NAME OF FIRM
5061	COMMISSIONS
5062	REPORT CONFORMING TO PROFESSIONAL STANDARDS

Minimum/Maximum Penalty - See specific statute/regulation violated for recommended penalty

Section 5100(g) WILLFUL VIOLATION OF THE ACCOUNTANCY ACT, OR A RULE OR REGULATION PROMULGATED BY THE BOARD

Minimum/Maximum Penalty - See specific statute or regulation violated for recommended penalty

Section 5100(h) SUSPENSION OR REVOCATION OF THE RIGHT TO PRACTICE BEFORE ANY GOVERNMENTAL BODY OR AGENCY

Minimum Penalty - Revocation stayed [1-2, 4], 3 years probation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted (include those related to underlying offense(s)):

1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*

~~6~~*7*. CPA Exam [23] or Enrolled Agents Exam [24]
~~7~~*8*. Continuing Education Courses [25]
~~8~~*9*. Samples - Audit, Review or Compilation [27]
~~9~~*10*. Prohibition from Handling Funds [28]
~~10~~*11*. Community Service – Free Services [29]
~~11~~*12*. Notice to Clients [31]
~~12~~*13*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~13~~*14*. Conditions as appropriate relating to physical or mental disability or condition [31-36]

Section 5100(i) FISCAL DISHONESTY OR BREACH OF FIDUCIARY RESPONSIBILITY OF ANY KIND

Minimum Penalty - Revocation stayed, 30 day suspension, 3 years probation [1-4]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:

1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*

~~5~~*6*. CPA Exam [23] or Enrolled Agents Exam [24]
~~6~~*7*. Continuing Education Courses [25]
~~7~~*8*. Prohibition from Handling Funds [28]
~~8~~*9*. Community Service – Free Services [29]
~~9~~*10*. Notice to Clients [31]
~~10~~*11*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~11~~*12*. Conditions as appropriate relating to physical or mental disability or condition [31-36]

Section 5100(j) **KNOWING PREPARATION, PUBLICATION OR DISSEMINATION OF FALSE, FRAUDULENT, OR MATERIALLY MISLEADING FINANCIAL STATEMENTS, REPORTS, OR INFORMATION**

Minimum Penalty - Revocation stayed, 60 days suspension, 3 years probation [1-4]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:
1. If revocation stayed [4], 3 to 5 years probation
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
~~6~~*7*. CPA Exam [23] or Enrolled Agents Exam [24]
~~7~~*8*. Continuing Education Courses [25]
~~8~~*9*. Samples - Audit, Review or Compilation [27]
~~9~~*10*. Community Service – Free Services [29]
~~10~~*11*. Notice to Clients [31]
~~11~~*12*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~12~~*13*. Conditions as appropriate relating to physical or mental disability or condition [31-36]

Section 5100(k) **EMBEZZLEMENT, THEFT, MISAPPROPRIATION OF FUNDS OR PROPERTY, OR OBTAINING MONEY, PROPERTY OR OTHER VALUABLE CONSIDERATION BY FRAUDULENT MEANS OR FALSE PRETENSES**

Minimum Penalty - Revocation stayed, 90 day suspension, 3 years probation [1-4]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:
1. If revocation stayed [4], probation of 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [5-14]

If warranted:
1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
~~5~~*6*. CPA Exam [23] or Enrolled Agents Exam [24]
~~6~~*7*. Continuing Education Courses [25]

~~7~~*8*. Prohibition from Handling Funds [28]
~~8~~*9*. Notice to Clients [31]
~~9~~*10*.Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~10~~*11*.Conditions as appropriate relating to physical or mental disability or condition [31-36]

Section 5100(l) DISCIPLINE, PENALTY, OR SANCTION BY THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OR SECURITIES AND EXCHANGE COMMISSION

Minimum Penalty - Revocation stayed [1-2, 4], 3 years probation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted (include those related to underlying offense(s)):
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. Regulatory Review Course [21]
~~6~~*7*. CPA Exam [23] or Enrolled Agents Exam [24]
~~7~~*8*. Continuing Education Courses [25]
~~8~~*9*. Samples - Audit, Review or Compilation [24]
~~9~~*10*.Prohibition from Handling Funds [28]
~~10~~*11*.Community Service – Free Services [29]
~~11~~*12*.Notice to Clients [31]
~~12~~*13*.Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~13~~*14*.Conditions as appropriate relating to physical or mental disability or condition [31-36]

Section 5100(m) UNLAWFULLY ENGAGING IN PRACTICE OF PUBLIC ACCOUNTANCY IN ANOTHER STATE

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted: 1. Suspension [3] with/without stay [4]

2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
5. Continuing Education Courses [25]
6. Active License Status [26]
7. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5101 DISCIPLINE OF PARTNERSHIP

Minimum Penalty - Probation; require CPA or PA partners to develop standards for supervision, and implement a practice plan; permit practice investigation within 3 months to ensure compliance [10]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5104 RELINQUISHMENT OF CERTIFICATE OR PERMIT

Minimum/Maximum Penalty - Revocation [1-2]

Section 5105 DELINQUENCY IN PAYMENT OF RENEWAL FEE

Minimum Penalty - Relinquish certificate [30] which will be reissued under Section 5070.6 guidelines (payment of renewal and delinquency fees and compliance with continuing education guidelines)
Maximum Penalty - Revocation [1-2]

Section 5110(a) ACTS CONSTITUTING CAUSE FOR BOARD'S DENIAL OF EXAM APPLICATION OR ADMISSION, VOIDANCE OF GRADES, OR DENIAL OF LICENSE APPLICATION OR REGISTRATION

Minimum/Maximum Penalty - Denial of admission to examination, or revocation of license if issued.

If warranted:
1. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 7

Sections 5120/5121 VIOLATIONS AS MISDEMEANOR/EVIDENCE OF VIOLATION

See Section 5100(f) and section on **Unlicensed Activities**.

ARTICLE 9

Section 5152 CORPORATION REPORTS

Minimum Penalty - Continuing Education for officers of corporation [25]
Maximum Penalty - Suspend corporate accountancy registration and/or individual licenses for 90 days [3]

Section 5152.1 ACCOUNTANCY CORPORATION RENEWAL OF PERMIT TO PRACTICE

Minimum Penalty - Continuing Education for officers of corporation [25]
Maximum Penalty - Suspend corporate accountancy registration and/or individual licenses for 90 days [3]

Section 5154 DIRECTORS, SHAREHOLDERS, AND OFFICERS MUST BE LICENSED

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation of corporate registration [1-2] and discipline of individual licenses

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
3. *Regulatory Review Course [21]*
~~3~~4. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5155 DISQUALIFIED SHAREHOLDER NONPARTICIPATION

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation of individual and corporate license [1-2]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
3. *Regulatory Review Course [21]*
~~3~~*4*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Section 5156 UNPROFESSIONAL CONDUCT (ACCOUNTANCY CORPORATION)

Minimum Penalty - Continuing Education Courses [25] for licensee directors, shareholders, and/or officers of corporation
Maximum Penalty - Revocation of individual and corporate licenses [1-2]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20] for licensee directors, shareholders and/or officers
3. *Regulatory Review Course [21] for licensee directors, shareholders and/or officers*
~~3~~*4*. Community Service – Free Services [29]
~~4~~*5*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Note: An accountancy corporation is bound by the same regulations as individual respondents. See specific statute or regulation violated for recommended penalty.

Section 5158 PRACTICE OF PUBLIC ACCOUNTANCY; MANAGEMENT (ACCOUNTANCY CORPORATION)

Minimum Penalty - Continuing Education. Require CPA or PA to develop management plan; permit practice investigation within 3 months to ensure compliance with management requirement and plan [10,23]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]

6. *Regulatory Review Course [21]*
~~6~~7. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
~~7~~8. Conditions as appropriate relating to physical or mental disability or condition [31-36]

CALIFORNIA BOARD OF ACCOUNTANCY
REGULATIONS
TITLE 16 CALIFORNIA CODE OF REGULATIONS

ARTICLE 1: GENERAL

SECTION 3 NOTIFICATION OF CHANGE OF ADDRESS

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - 90 day Suspension [3]

SECTION 5 OBSERVANCE OF RULES

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2, 4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Continuing Education Courses [25]
~~3~~*4*. Samples - Audit, Review or Compilation [27]
~~4~~*5*. Community Service – Free Services [29]
~~5~~*6*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

Note: Reference the specific regulation for appropriate discipline.

ARTICLE 2: EXAMINATIONS

SECTION 8.2 REQUIREMENTS FOR ISSUANCE OF THE AUTHORIZATION TO TEST

Minimum Penalty - Probationary conditions on initial license (if not yet licensed) or revocation, stayed with probation (if already licensed); reference appropriate subsection of Section 5100 for applicable provisions

Maximum Penalty - Denial of admission to examination or revocation of license if issued; Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 4: PRACTICE PRIVILEGE

Section 32 BOARD APPROVAL REQUIRED

Minimum Penalty - Revocation stayed [1-2, 4]; 3 years probation
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION

Required:
1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education [20]*
3. *Regulatory Review Course [21]*
4. ~~3~~. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

[Reference Section 5096(g)]

SECTION 33(a) CHANGES TO INFORMATION ON NOTIFICATION

Minimum Penalty - Correction of Violation
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION

Required:
1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education [20]*
3. *Regulatory Review Course [21]*
4. ~~3~~. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 35 CONTINUING EDUCATION REQUIREMENTS

Minimum Penalty - Correction of Violation
Maximum Penalty - Revoke Practice Privilege [1-2]

CONDITIONS OF PROBATION

Required:
1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education [20]*
3. *Regulatory Review Course [21]*

~~3~~4. Continuing Education Courses [25]
~~4~~5. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 6: PEER REVIEW

SECTION 40(a)(b)(c) ENROLLMENT AND PARTICIPATION

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

Required:
1. *If revocation stayed [4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Suspension [3] with/without stay [4]*
2. *Supervised Practice [15]*
3. *Restricted Practice [17]*
4. *Ethics Continuing Education [20]*
5. *Regulatory Review Course [21]*
6. *Peer Review [22]*
7. *Continuing Education Courses [25]*
8. *Sample – Audit, Review or Compilation [27]*
9. *Notification to Clients/Cessation of Practice [31]*
10. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

(Reference Section 5076(a))

SECTION 41 FIRM RESPONSIBILITIES

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

Required:
1. *If revocation stayed [4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Ethics Continuing Education [20]*
2. *Regulatory Review Course [21]*
3. *Continuing Education Courses [25]*
4. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

(Reference Section 5076(a))

SECTION 43 EXTENSIONS

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed with actual suspension [1-4]

Required:
1. *If revocation stayed [4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Ethics Continuing Education [20]*
2. *Regulatory Review Course [21]*
3. *Continuing Education Courses [25]*
4. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

SECTION 44 NOTIFICATION OF EXPULSION

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

Required:
1. *If revocation stayed [4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Suspension [3] with/without stay [4]*
2. *Supervised Practice [15]*
3. *Restricted Practice [17]*
4. *Ethics Continuing Education [20]*
5. *Regulatory Review Course [21]*
6. *Continuing Education Courses [25]*
7. *Sample – Audit, Review or Compilation [27]*
8. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*
9. *Conditions as appropriate relating to physical or mental disability or condition [31-36]*

SECTION 45 REPORTING TO BOARD

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required:
1. *If revocation stayed [1-2,4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Ethics Continuing Education [20]*
2. *Regulatory Review Course [21]*
3. *Continuing Education Courses [25]*
4. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

(Reference Section 5076(a)

SECTION 46(a) ***DOCUMENT SUBMISSION REQUIREMENTS***
(Applies to firms that receive a substandard peer review rating.)

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required:
1. *If revocation stayed [1-2,4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Ethics Continuing Education [20]*
2. *Regulatory Review Course [21]*
3. *Continuing Education Courses [25]*
4. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

(Reference Section 5076(f))

SECTION 46(b) ***DOCUMENT SUBMISSION REQUIREMENTS***
(Applies to firms that receive a "pass" or "pass with deficiencies" peer review rating.)

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required:
1. *If revocation stayed [1-2,4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Ethics Continuing Education [20]*
2. *Regulatory Review Course [21]*
3. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

ARTICLE 9: RULES OF PROFESSIONAL CONDUCT

SECTION 50 CLIENT NOTIFICATION

Minimum Penalty – Correction of Violation
Maximum Penalty – Revocation stayed, suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Examination~~ *Ethics Continuing Education* [20]
3. *Regulatory Review Course [21]*
4. ~~3~~*4*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 51 FIRMS WITH NONLICENSEE OWNERS

Minimum Penalty – Correction of Violation
Maximum Penalty – Revocation stayed, suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Examination~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~5. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 51.1 NOTIFICATION OF NON-LICENSEE OWNERSHIP

Minimum Penalty - Continuing Education [25] for California licensee partners or for licensee shareholders of corporation
Maximum Penalty - Revocation of partnership or corporate registration and individual licenses

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed, 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
3. *Regulatory Review Course [21]*
~~3~~4. Administrative Penalty not to maximum set forth in Section 5116 [32]

(Reference Section 5079)

SECTION 52 RESPONSE TO BOARD INQUIRY

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~3. Continuing Education Courses [25]
~~3~~4. Community Service – Free Services [~~27~~29]
~~4~~5. Administrative Penalty not to exceed maximum set forth in

Section 5116 [32]

SECTION 53 DISCRIMINATION PROHIBITED

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed, 3 years probation [1-2,4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Continuing Education Courses [25]
~~3~~*4*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 54.1 DISCLOSURE OF CONFIDENTIAL INFORMATION PROHIBITED

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation stayed; 90 day suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:
Required: 1. 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3]
2. Supervised Practice [15]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~*5*. Continuing Education Courses [25]
~~5~~*6*. Notice to Clients [31]
~~6~~*7*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5037)

SECTION 54.2 RECIPIENTS OF CONFIDENTIAL INFORMATION

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed, [1-2, 4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Supervised Practice [15]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]

3. *Regulatory Review Course [21]*
~~3~~*4*. Continuing Education Courses [25]
~~4~~*5*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 56 COMMISSIONS – BASIC DISCLOSURE REQUIREMENT

Minimum Penalty – Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty – Revocation [1-2]

CONDITIONS OF PROBATION
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
~~6~~*7*. Continuing Education Courses [25]
~~7~~*8*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 56.1 COMMISSIONS – PROFESSIONAL SERVICES PROVIDED TO CLIENT

Minimum Penalty – Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty – Revocation [1-2]

CONDITIONS OF PROBATION
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
~~6~~*7*. Continuing Education Courses [25]
~~7~~*8*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 57 INCOMPATIBLE OCCUPATIONS AND CONFLICT OF INTEREST

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
~~6~~7. Continuing Education Courses [25]
~~7~~8. Prohibition from Handling Funds [28]
~~8~~9. Community Service – Free Services [29]
~~9~~10. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 58 COMPLIANCE WITH STANDARDS

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
7. *Peer Review [22]*
~~6~~8. CPA Exam [23]
~~7~~9. Continuing Education Courses [25]
~~8~~10. Samples - Audit, Review or Compilation [27]
~~9~~11. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 59 REPORTING OF RESTATEMENTS

Minimum Penalty - Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
~~5~~*6*. Continuing Education Courses [25]
~~6.~~*7.* Community Service – Free Services [29]
~~7~~*8*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5063)

SECTION 60 REPORTING OF INVESTIGATIONS BY THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Minimum Penalty - Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
~~5~~*6*. Continuing Education Courses [25]
~~6~~*7*. Community Service – Free Services [29]
~~7~~*8*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5063)

SECTION 61 THE REPORTING OF SETTLEMENTS, ARBITRATION AWARDS, AND JUDGMENTS

Minimum Penalty - Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
~~6.~~*7.* Continuing Education Courses [25]
7. Community Service – Free Services [29]
8. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5063)

SECTION 62 CONTINGENT FEES

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. Engagement Letters [18]
6. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
7. *Regulatory Review Course [21]*
~~7~~*8*. Continuing Education Courses [25]
~~8~~*9*. Community Service – Free Services [29]
~~9~~*10*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 63 ADVERTISING

Minimum Penalty - Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
3. *Regulatory Review Course [21]*
~~3~~*4*. Community Service – Free Services [29]

~~4~~*5*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 65 INDEPENDENCE

Minimum Penalty - Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:
1. If revocation stayed [1-2,4], probation of 3 to 5 years
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. Engagement Letters [18]
6. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
7. *Regulatory Review Course [21]*
8. *Peer Review [22]*

~~7~~*9*. CPA Exam [23]
~~8~~*10*. Samples - Audit, Review or Compilation [27]
~~9~~*11*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 67 APPROVAL OF USE OF FICTITIOUS NAME

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 90 day suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:

Required:
1. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*

~~2~~*3*. Community Service – Free Services [29]
~~3~~*4*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 68 RETENTION OF CLIENT'S RECORDS

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:
1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:

1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restitution [16]
4. Restricted Practice [17]
5. Engagement Letters [18]
6. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
7. *Regulatory Review Course [21]*
8. Continuing Education Courses [25]
9. Community Service – Free Services [29]
10. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
11. Conditions as appropriate relating to physical or mental disability or condition [31-36]

(Reference Section 5037)

SECTION 68.1 WORKING PAPERS DEFINED; RETENTION

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:

1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:

1. Suspension [3] with/without stay [4]
2. Restitution [16]
3. Restricted Practice [17]
4. Engagement Letters [18]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
7. Continuing Education Courses [25]
8. Community Service – Free Services [29]
9. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]
10. Conditions as appropriate relating to physical or mental disability or condition [31-36]

SECTION 68.2 COMPONENTS OF AUDIT DOCUMENTATION

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:

1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]
3. Continuing Education Courses [25]

If warranted:

1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
6. *Peer Review [22]*
7. ~~5~~CPA Exam [23]
8. ~~6~~Samples - Audits, Review or Compilation [27]
9. ~~7~~Community Service – Free Services [29]
10. ~~8~~. Notice to Clients [31]
11. ~~9~~. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5097)

SECTION 68.3 RETENTION PERIOD FOR AUDIT DOCUMENTATION

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:

1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]
3. Continuing Education Courses [25]

If warranted:

1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. Library Reference Material [19]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
7. *Peer Review [22]*
8. ~~6~~CPA Exam [24]
9. ~~7~~Samples - Audits, Review or Compilation [27]
10. ~~8~~. Community Service – Free Services [29]
11. ~~9~~. Notice to Clients [31]
12. ~~10~~Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5097)

SECTION 68.4 CHANGES IN AUDIT DOCUMENTATION AFTER ISSUANCE OF REPORT

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:

1. If revocation stayed [4], 3 years probation

2. Standard Conditions of Probation [5-14]
3. Continuing Education Courses [25]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. Library Reference Material [19]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
7. *Peer Review [22]*
~~6~~*8*. CPA Exam [23]
~~7~~*9*. Samples - Audits, Review or Compilation [27]
~~8~~*10*. Community Service – Free Services [29]
~~9~~*11*. Notice to Clients [31]
~~10~~*12*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5097)

SECTION 68.5 AUDIT DOCUMENTATION RETENTION AND DESTRUCTION POLICY

Minimum Penalty - Continuing Education Courses [25]
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:

Required:
1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]
3. Continuing Education Courses [25]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. Library Reference Material [19]
5. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
6. *Regulatory Review Course [21]*
7. *Peer Review [22]*
~~6~~*8*. CPA Exam [23]
~~7~~*9*. Samples - Audits, Review or Compilation [27]
~~8~~*10*. Community Service – Free Services [29]
~~9.~~*11*Notice to Clients [31]
~~10.~~*12*Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

(Reference Section 5097)

SECTION 69 CERTIFICATION OF APPLICANT'S EXPERIENCE

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2,4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4 Regulatory Review Course [21]
~~4~~*5*. Community Service – Free Services [29]
~~5~~*6*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 11: ACCOUNTANCY CORPORATION RULES

SECTION 75.8 SECURITY FOR CLAIMS AGAINST AN ACCOUNTANCY CORPORATION

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Standard Conditions of Probation [5-14]

If warranted:
1. Supervised Practice [15]
2. Restitution [16]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. Regulatory Review Course [21]
~~5~~*6*. Continuing Education Courses [25]
~~6~~*7*. Samples - Audit, Review or Compilation [27]
~~7~~*8*. Prohibition from Handling Funds [28]
~~8~~*9*. Community Service – Free Services [29]
~~9~~*10*. Notification to Clients [31]
~~10~~*11*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 75.9 SHARES: OWNERSHIP AND TRANSFER

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 90 day suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~5. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 75.11(b) CERTIFICATION OF REGISTRATION; CONTINUING VALIDITY; NOTIFICATION OF NAME AND ADDRESS CHANGES

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 90 day suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Restricted Practice [17]
3. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
4. *Regulatory Review Course [21]*
~~4~~5. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 12: CONTINUING EDUCATION RULES

SECTION 81(a) CONTINUING EDUCATION REQUIREMENTS FOR RENEWING AN EXPIRED LICENSE

Minimum Penalty – Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty – Revocation [1-2]

CONDITIONS OF PROBATION
Required:
1. *If revocation stayed [4], 3 years probation*
2. *Standard Conditions of Probation [5-14]*

If warranted:
1. *Suspension [3] with/without stay [4]*
2. *Supervised Practice [15]*
3. *Restricted Practice [17]*

4. *Ethics Continuing Education [20]*
5. *Regulatory Review Course [21]*
6. *Continuing Education Courses [25]*
7. *Samples – Audit, Review or Compilation [27]*
8. *Administrative Penalty not to exceed maximum set forth in Section 5116 [32]*

SECTION 87 BASIC REQUIREMENTS (Continuing Education)

Minimum Penalty – Correction of Violation and/or Continuing Education Courses [25]
Maximum Penalty – Revocation [1-2]

CONDITIONS OF PROBATION
Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
~~5~~*6*. Continuing Education Courses [25]
~~6~~*7*. Samples – Audit, Review or Compilation [27]
~~7~~*8*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 87.5 ADDITIONAL CONTINUING EDUCATION REQUIREMENTS

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 3 years probation [1-2,4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Continuing Education Courses [25]
~~3~~*4*. Active License Status [26]
~~4~~*5*. Samples - Audit, Review or Compilation [27]
~~5~~*6*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 87.6 RECORDS REVIEW CONTINUING EDUCATION REQUIREMENTS

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 3 years probation [1-2,4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted: 1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. Regulatory Review Course [21]
~~2~~*3*. Continuing Education Courses [25]
~~3~~*4*. Samples - Audit, Review or Compilation [27]
~~4~~*5*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

~~**SECTION 87.7(a) CONTINUING EDUCATION IN THE ACCOUNTANCY ACT, BOARD RULES, AND OTHER RULES OF PROFESSIONAL CONDUCT**~~

~~Minimum Penalty - Correction of Violation~~
~~Maximum Penalty - Revocation stayed, 3 years probation [1 –2, 4]~~

~~CONDITIONS OF PROBATION~~
~~Required: 1. Standard Conditions of Probation [5-14]~~
~~2. Ethics Course/Exam [20]~~

~~If warranted: 1. Continuing Education Courses [23]~~
~~2. Administrative Penalty not to exceed maximum set forth in Section 5116 [30]~~

SECTION 87.8 REGULATORY REVIEW COURSE

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 3 years probation [1-2,4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted: 1. Ethics Continuing Education [20]
2. Continuing Education Courses [25]
3. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 89 CONTROL AND REPORTING

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation [1-2]

CONDITIONS OF PROBATION:
Required: 1. If revocation stayed [1-2, 4], 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Continuing Education Courses [25]
~~3~~*4*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 89.1 REPORTS

Minimum Penalty - Correction of Violation
Maximum Penalty - Revocation stayed, 3 years probation [1-2,4]

CONDITIONS OF PROBATION:
Required: 1. Standard Conditions of Probation [5-14]

If warranted:
1. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
2. *Regulatory Review Course [21]*
~~2~~*3*. Continuing Education Courses [25]
~~3~~*4*. Samples - Audit, Review or Compilation [27]
~~4~~*5*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

SECTION 90 EXCEPTIONS AND EXTENSIONS

Minimum Penalty – Continuing Education [25]
Maximum Penalty – Revocation [1-2]

CONDITIONS OF PROBATION
Required: 1. If revocation stayed [4] 3 years probation
2. Standard Conditions of Probation [5-14]

If warranted:
1. Suspension [3] with/without stay [4]
2. Supervised Practice [15]
3. Restricted Practice [17]
4. ~~Ethics Course/Exam~~ *Ethics Continuing Education* [20]
5. *Regulatory Review Course [21]*
~~5~~*6*. Continuing Education Courses [25]
~~6~~*7*. Samples – Audit, Review or Compilation [27]
~~7~~*8*. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

ARTICLE 12.5: CITATIONS AND FINES

SECTION 95.4 FAILURE TO COMPLY WITH CITATION

Minimum Penalty - Compliance with Citation Abatement Order and/or Fine as issued
Maximum Penalty - Revocation stayed, 3 years probation [1-2,4]

CONDITIONS OF PROBATION:

Required:
1. Standard Conditions of Probation [5-14]
2. Restitution [16]
3. Compliance with Citation Abatement Order and/or Fine

If warranted:
1. Administrative Penalty not to exceed maximum set forth in Section 5116 [32]

VIOLATION OF PROBATION

Minimum penalty - Citation and Fine (13)
Maximum penalty - Vacate stay order and impose penalty that was previously stayed; and/or revoke, separately and severally, for violation of probation and/or for any additional offenses. [1-4]

California Code of Regulations Section 95 provides the authority for the Executive Officer to issue citations and fines from $100 to $5000 to a licensee for violation of a term or condition contained in a decision placing that licensee on probation.

The maximum penalty is appropriate for repeated **similar** offenses, or for probation violations indicating a cavalier or recalcitrant attitude. If the probation violation is due in part to the commission of additional offense(s), additional penalties shall be imposed according to the nature of the offense; and the probation violation shall be considered as an aggravating factor in imposing a penalty for those offenses.

UNLICENSED ACTIVITIES

If any unlicensed individual or firm violates, or is suspected of violating, any of the following Business and Professions Code sections, the matter may be referred to the Division of Investigation and if the allegation is confirmed, to the District Attorney or other appropriate law enforcement officer for prosecution.

Section 5050	**Section 5058**
Section 5051	**Section 5071**
Section 5055	**Section 5072**
Section 5056	**Section 5088**

~~Board~~ *California Code of Regulations* Section 95.6 also provides the authority for the Executive Officer to issue citations and fines from $100 to $~~2500~~ *5000* and an order of abatement against any person defined in Business and Professions Code Section 5035 who is acting in the capacity of a licensee under the jurisdiction of the ~~Board~~*CBA*.

Section 5120 provides that any person who violates any provisions of Article 3 is guilty of a misdemeanor and can be imprisoned for not more than 6 months or assessed a fine of not more than $1,000 or both. Injunctions may be requested (see Section 5122 immediately following).

INJUNCTIONS

Section 5122 provides that "Whenever in the judgment of the ~~Board~~ *CBA* (or with its approval, in the judgment of the ~~Administrative~~ *Enforcement Advisory* Committee), any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the ~~Board~~ *CBA* may make application to the appropriate court for

an order enjoining the acts or practices, and upon showing by the ~~Board~~ *CBA* that the person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order that may be appropriate shall be granted by the court." This section applies to licensees and unlicensed persons.

California Board of Accountancy

Index to Model Disciplinary Orders and Conditions of Probation

(Refer to page 9 for **Index to Disciplinary Guidelines**)

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VIII. MODEL DISCIPLINARY ORDERS

1. **Revocation** - Single Cause:

   _____License No._____issued
   (Ex: Certified Public Accountant) (Ex: 00000)

   to respondent_____is revoked.
   (Name)

2. **Revocation - Multiple Causes:**

   _____License No._____issued to respondent_____is revoked pursuant to Determination(s) of Issues_____separately and for all of them.

3. **Suspension:**

   _____License No._____issued to respondent_____is suspended for . During the period of suspension the respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

4. **Standard Stay Order:**

   However,_____(revocation/suspension)_____ is stayed and respondent is placed on probation for____years upon the following terms and conditions:

STANDARD CONDITIONS OF PROBATION
(TO BE INCLUDED IN ALL CASES OF PROBATION)

5. **Obey All Laws**
   Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

6. **Cost Reimbursement**
   Respondent shall reimburse the ~~Board~~ *CBA* $_____for its investigation and prosecution costs. The payment shall be made within __ days/months of the date the ~~Board's~~ *CBA's* decision is final.

   Option: The payment shall be made as follows: _____[specify either prior to the resumption of practice or in quarterly payments (due with quarterly written reports), the final payment being due one year before probation is scheduled to terminate].

7. **Submit Written Reports**
   Respondent shall submit, within 10 days of completion of the quarter, written reports to the ~~Board~~ *CBA* on a form obtained from the ~~Board~~*CBA*. The respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the ~~Board~~ *CBA* or its representatives.

8. **Personal Appearances**
   Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the ~~Board~~ *CBA* or its designated representatives, provided such notification is accomplished in a timely manner.

9. **Comply With Probation**
   Respondent shall fully comply with the terms and conditions of the probation imposed by the ~~Board~~ *CBA* and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the respondent's compliance with probation terms and conditions.

10. **Practice Investigation**
    Respondent shall be subject to, and shall permit, a practice investigation of the respondent's professional practice. Such a practice investigation shall be conducted by representatives of the ~~Board~~*CBA*, provided notification of such review is accomplished in a timely manner.

11. **Comply With Citations**
    Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

12. **Tolling of Probation for Out-of-State Residence/Practice**
In the event respondent should leave California to reside or practice outside this state, respondent must notify the ~~Board~~ *CBA* in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the ~~Board~~ *CBA* costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the ~~Board~~*CBA*.

13. **Violation of Probation**
If respondent violates probation in any respect, the ~~Board~~*CBA*, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the ~~Board~~ *CBA* shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

The ~~Board's~~ *CBA's* Executive Officer may issue a citation under California Code of Regulations, Section 95, to a licensee for a violation of a term or condition contained in a decision placing that licensee on probation.

14. **Completion of Probation**
Upon successful completion of probation, respondent's license will be fully restored.

OPTIONAL CONDITIONS OF PROBATION
(To Be Included In Cases Where Appropriate)

15. **Supervised Practice**
Within thirty days of the effective date of this decision, respondent shall submit to the ~~Board~~ *CBA* or its designee for its prior approval a plan of practice that shall be monitored by another CPA or PA who provides periodic reports to the ~~Board~~ *CBA* or its designee. Respondent shall pay all costs for such monitoring.

16. **Restitution**
Respondent shall make restitution to _____ in the amount of $_____ and shall provide the ~~Board~~ *CBA* with a written release from _____ attesting that full restitution has been paid. Restitution shall be completed before the termination of probation.

17. **Restricted Practice**
Respondent shall be prohibited from _____(performing certain types of engagements such as audits, reviews, compilations, or attestation engagements, etc.), and/or from practice in_____ (certain specialty areas, i.e. bookkeeping, write-up, tax, auditing, etc.).

18. **Engagement Letters**
Respondent shall use engagement letters with each engagement accepted during probation and shall provide copies of same to the ~~Board~~ *CBA* or its designee upon request.

19. **Library Reference Materials**
Respondent shall have immediate access to, shall use, and shall maintain published materials and/or checklists that are consistent with the practice. Such materials and checklists shall be produced on-site for review by the ~~Board~~ *CBA* or its designee upon reasonable notice.

20. **Ethics Continuing Education**
Respondent shall complete four hours of continuing education in course subject matter pertaining to the following: a review of nationally recognized codes of conduct emphasizing how the codes relate to professional responsibilities; case-based instruction focusing on real-life situational learning; ethical dilemmas facing the accounting profession; or business ethics, ethical sensitivity, and consumer expectations (within a given period of time or prior to resumption of practice). Courses must be a minimum of one hour as described in California Code of Regulations Section 88.2, (Courses will be passed prior to resumption of practice where license has been suspended or where otherwise appropriate.)

If respondent fails to complete said courses within the time period provided, respondent shall so notify the ~~Board~~ *CBA* and shall cease practice until respondent completes said courses, has submitted proof of same to the ~~Board~~*CBA*, and has been notified by the ~~Board~~ *CBA* that he or she may resume practice. Failure to complete the required courses

no later than 100 days prior to the termination of probation shall constitute a violation of probation.

21. **Regulatory Review Course**
Respondent shall complete a ~~Board~~*CBA*-approved course on the provisions of the California Accountancy Act and the California Board of Accountancy Regulations specific to the practice of public accountancy in California emphasizing the provisions applicable to current practice situations (within a given period of time or prior to resumption of practice). The course also will include an overview of historic and recent disciplinary actions taken by the ~~Board~~*CBA*, highlighting the misconduct which led to licensees being disciplined. The course shall be (a minimum of two hours) hours.

If respondent fails to complete said courses within the time period provided, respondent shall so notify the ~~Board~~ *CBA* and shall cease practice until respondent completes said courses, has submitted proof of same to the ~~Board~~*CBA*, and has been notified by the ~~Board~~ *CBA* that he or she may resume practice. Failure to complete the required courses no later than 100 days prior to the termination of probation shall constitute a violation of probation.

22. **Peer Review**
During the period of probation, all audit, review, and compilation reports and work papers shall be subject to peer review by a ~~certified peer reviewer~~ *Board-recognized peer review program provider pursuant to California Business and Professions Code Section 5076 and California Code of Regulations, Title 16, Division 1, Article 6,* at respondent's expense. ~~The review shall evaluate the respondent's and his/her firm's system of quality control, including its organizational structure, the policies and procedures established by the firm, and the firm's compliance with its quality control system as determined on the basis of a review of selected engagements.~~ The specific engagements to be reviewed shall be at the discretion of the peer reviewer. *The peer review shall be completed within a period of time designated and specified in writing by the CBA or its designee, which time frame shall be incorporated as a condition of this probation.*

~~Upon completion of the peer review, respondent shall submit a copy of the report with the reviewer's conclusions and findings to the Board.~~
Within 45 days of the peer review report being accepted by a Board-recognized peer review program provider, respondent shall submit to the CBA a copy of the peer review report, including any materials documenting the prescription of remedial or corrective actions imposed by the Board-recognized peer review program provider. Respondent shall also submit, if available, any materials documenting completion of any or all of the prescribed remedial or corrective actions.

23. **CPA Exam**
Respondent shall take and pass the (section) of the CPA examination (within a given period of time - e.g., within 180 days of the effective date of the decision or within 180 days of completion of educational program, etc. or prior to the resumption of practice). (Exam will be passed prior to resumption of practice where license has been suspended or where otherwise appropriate.)

If respondent fails to pass said examination within the time period provided or within two attempts, respondent shall so notify the ~~Board~~ *CBA* and shall cease practice until respondent takes and successfully passes said exam, has submitted proof of same to the ~~Board~~*CBA*, and has been notified by the ~~Board~~ *CBA* that he or she may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation.

24. **Enrolled Agents Exam**
Respondent shall take and pass the enrolled agents exam (within a given period of time or prior to the resumption of practice). (Exam will be passed prior to resumption of practice where license has been suspended or where otherwise appropriate.)

If respondent fails to pass said examination within the time period provided or within two attempts, respondent shall so notify the ~~Board~~ *CBA* and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the ~~Board~~*CBA*, and has been notified by the ~~Board~~ *CBA* that he or she may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation.

25. **Continuing Education Courses**
Respondent shall complete and provide proper documentation of (specified) professional education courses within (a designated time). This (shall be/shall not be) in addition to continuing education requirements for relicensing.

OR
Respondent shall complete professional education courses as specified by the ~~Board~~ *CBA* or its designee at the time of respondent's first probation appearance. The professional education courses shall be completed within a period of time designated and specified in writing by the ~~Board~~ *CBA* or its designee, which time frame shall be incorporated as a condition of this probation. This (shall be/shall not be) in addition to continuing education requirements for relicensing.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than 100 days prior to the termination of probation shall constitute a violation of probation.

26. **Active License Status**
Respondent shall at all times maintain an active license status with the ~~Board~~*CBA*, including during any period of suspension. If the license is expired at the time the ~~Board's~~ *CBA's* decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

27. **Samples - Audit, Review or Compilation**
During the period of probation, if the respondent undertakes an audit, review or compilation engagement, the respondent shall submit to the ~~Board~~ *CBA* as an attachment to the required quarterly report a listing of the same. The ~~Board~~ *CBA* or its designee may select one or more from each category and the resulting report and financial statement and all related working papers must be submitted to the ~~Board~~ *CBA* or its designee upon request.

28. **Prohibition from Handling Funds**
During the period of probation the respondent shall engage in no activities which require receiving or disbursing funds for or on behalf of any other person, company, partnership, association, corporation, or other business entity.

29. **Community Service - Free Services**
Respondent shall participate in a community service program as directed by the ~~Board~~ *CBA* or its designee in which respondent provides free professional services on a regular basis to a community or charitable facility or agency, amounting to a minimum of hours. Such services to begin no later than __ days after respondent is notified of the program and to be completed no later than _____. Respondent shall submit proof of compliance with this requirement to the ~~Board~~*CBA*. Respondent is entirely responsible for his or her performance in the program and the ~~Board~~ *CBA* assumes neither express nor implied responsibility for respondent's performance nor for the product or services rendered.

30. **Relinquish Certificate**
Respondent shall relinquish and shall forward or deliver the certificate or permit to practice to the ~~Board~~ *CBA* office within 10 days of the effective date of this decision and order.

31. **Notification to Clients/Cessation of Practice**
In orders that provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the California Board of Accountancy or its designee regarding notification to, and management of, clients.

32. **Administrative Penalty**
Respondent shall pay to the ~~Board~~ *CBA* an administrative penalty in the amount of $_____ for violation of Section(s) _____ of the California Accountancy Act. The payment shall be made within __days/months of the date the ~~Board's~~ *CBA's* decision is final.

33. **Medical Treatment**
Respondent shall undergo and continue treatment by a licensed physician of respondent's choice and approved by the ~~Board~~ *CBA* or its designee until the treating physician certifies in writing in a report to the ~~Board~~ *CBA* or its designee that treatment is no longer necessary. Respondent shall have the treating physician submit reports to the ~~Board~~ *CBA* at intervals determined by the ~~Board~~ *CBA* or its designee. Respondent is responsible for costs of treatment and reports.

(Optional)

Respondent shall not engage in practice until notified by the ~~Board~~ *CBA* of its determination that respondent is physically fit to practice.

34. **Psychotherapist**
Respondent shall undergo and continue treatment by a licensed psychotherapist of respondent's choice and approved by the ~~Board~~ *CBA* or its designee until the treating psychotherapist certifies in writing in a report to the ~~Board~~ *CBA* or its designee that treatment is no longer necessary. Respondent shall have the treating psychotherapist

submit reports to the ~~Board~~ *CBA* at intervals determined by the ~~Board~~ *CBA* or its designee. Respondent is responsible for costs of treatment and reports.

(Optional)

Respondent shall not engage in practice until notified by the ~~Board~~ *CBA* of its determination that respondent is mentally fit to practice.

35. **Rehabilitation Program/Chemical Dependence**
Respondent shall successfully complete or shall have successfully completed a rehabilitation program for chemical dependence that the ~~Board~~ *CBA* or its designee approves and shall have reports submitted by the program. If a program was not successfully completed prior to the period of probation, the respondent, within a reasonable period of time as determined by the ~~Board~~ *CBA* or its designee but not exceeding 90 days of the effective date of the decision, shall be enrolled in a program. In addition, respondent must attend support groups, (e.g. Narcotics Anonymous, Alcoholic Anonymous etc.), as directed by the ~~Board~~ *CBA* or its designee. Respondent is responsible for all costs of such a program.

36. **Drugs - Abstain From Use**
Respondent shall completely abstain from the personal use of all psychotropic drugs, including alcohol, in any form except when the same are lawfully prescribed.

37. **Drugs - Screening**
Respondent shall participate or shall have participated in a drug screening program acceptable to the ~~Board~~ *CBA* and shall have reports submitted by the program. Respondent is responsible for all costs associated with said screening and reporting.

38. **Biological Fluid Testing**
Respondent, at any time during the period of probation, shall fully cooperate with the ~~Board~~ *CBA* or its designee in its supervision and investigation of compliance with the terms and conditions of probation, and shall, when requested, submit to such tests and samples as the ~~Board~~ *CBA* or its designee may require for the detection of alcohol, narcotics, hypnotic, dangerous drugs, or controlled substances. Respondent is responsible for all costs associated with this investigation and testing.

Conditions 33-38 shall be used when evidence indicates respondent may have physical or mental ailment(s) or conditions(s) which contributed to the violation or when the same are alleged by respondent to be a contributing factor to the violation(s).

ATTACHMENT 5

CALIFORNIA CODE OF REGULATIONS
TITLE 16. Professional and Vocational Regulations
DIVISION 1. Board of Accountancy Regulations

ARTICLE 13. DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATES, PERMITS, OR LICENSES

(Sections 98 - 99.1)

98. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (6th edition, 2005) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating facts; the age of the case; evidentiary problems.

NOTE: Authority cited: Sections 5010, 5018 and 5116, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 5018, 5100 and 5116-5116.6, Business and Professions Code; and Section 11425.50(e), Government Code.

HISTORY:
1. New section filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).
2. Amendment of section and NOTE filed 5-3-2001; operative 7-1-2001 (Register 2001, No. 18).
3. Amendment filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).
4. Amendment of section and Note filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

98.1 Mediation Guidelines.

The guidelines, entitled "California Board of Accountancy Mediation Guidelines" (July 17, 1998), which are hereby incorporated by reference, constitute the Board's guidelines for determining whether an enforcement matter under Article 6 of the Accountancy Act is appropriate for referral to mediation and for the procedures and the form of the mediation process.

State of California
Department of Consumer Affairs

California Board of Accountancy
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M e m o r a n d u m

EPOC AGENDA ITEM II.B.
September 22, 2010

CBA AGENDA ITEM XI. A.2.b.
September 22-23, 2010

To : Herschel Elkins, Chair, EPOC
EPOC Members
CBA Members

Date : September 8, 2010

Telephone : (916) 561-1725
Facsimile : (916) 263-3673
E-mail : pfisher@cba.ca.gov

From : Paul Fisher
Supervising Investigative CPA

Subject : **PROPOSED OPTIONAL CONDITION OF PROBATION - PROHIBITION FROM ACCEPTING NEW CLIENTS**

Attachment	Attached is a discussion paper prepared by CBA staff that provides information, alternatives, and comments regarding the proposed optional condition regarding the prohibition from accepting new clients.
Action requested	This matter has been scheduled for discussion at the September 22-23, 2010 CBA meeting.

mls

DISCUSSION OF
PROPOSED OPTIONAL CONDITION OF PROBATION –
PROHIBITION FROM ACCEPTING NEW CLIENTS

The California Board of Accountancy (CBA) *Manual of Disciplinary Guidelines and Model Disciplinary Orders (Disciplinary Guidelines)* provides recommended discipline for violation of current statutes and regulations. The *Disciplinary Guidelines* also includes model orders, as well as language for standard and optional conditions of probation.

Administrative Law Judges, attorneys, CBA licensees, CBA staff, and the California CBA Members use the *Guidelines* as a reference in the disciplinary process.

The *Disciplinary Guidelines* is included by reference in the California Code of Regulations, Section 98. The regulation states that the CBA shall consider the *Disciplinary Guidelines* in reaching a decision on a disciplinary action; however, the facts of a particular case may warrant deviation from the guidelines.

The issue of adding an optional condition of probation to the *Disciplinary Guidelines* that would prohibit a licensee from accepting new clients for a period of time was suggested by CBA President Ramirez at the May 14, 2009 EPOC meeting.

CBA staff provided the following draft language for consideration at the July 23, 2009 EPOC meeting.

> Respondent shall be prohibited from accepting new clients (type of engagement may be specified i.e. audit or tax engagement) for a period of (one to three years) or until _____ (a specific condition is fulfilled i.e. peer review is completed with satisfactory or better results or 80 hours of continuing professional education is completed in the area of accounting and auditing).

This proposed language was intended to be broad enough to allow for the condition to be tailored to address the specific violation and also provide for imposing the condition for a specified period of time that may be for the entire period of probation or until some remedial efforts take place to allow for removing the condition.

The EPOC discussed the proposed language. There were suggestions to clarify that the prohibition could be imposed on a specific type of industry, for example audits in oil and gas. There were also suggestions to add language to clarify that this condition be used rarely in “extreme” or “egregious” circumstances or for “recurring” violations where “systemic” issues exist.

During discussion, suggested modifications to the proposed language resulted with the following:

Respondent shall be prohibited from accepting new clients (type of specified engagement i.e. audit or tax engagement and/or type of industry i.e. financial institution) for a period of (one to three years) or until _____ (a specific condition is fulfilled i.e. peer review is completed with a "pass rating" or 80 hours of continuing professional education is completed in the area of accounting and auditing).

The EPOC members were unable to reach agreement on whether or not this optional condition should be added to the *Disciplinary Guidelines* and referred the matter to the full CBA for discussion at its July 24, 2009 meeting. After brief review, the CBA deferred this matter to the September 25, 2009 meeting for additional discussion. The CBA then deferred discussion to the January 20-21, 2010 meeting. This matter has now been referred back to the EPOC for consideration.

ISSUE FOR CONSIDERATION

The issue before the EPOC is: Should an optional condition of probation that prohibits a licensee from accepting new clients be added to the CBA's *Manual of Disciplinary Guidelines and Model Disciplinary Orders*?

COMMENTS FROM THE JULY 23, 2009 EPOC MEETING

To assist the EPOC members in their discussion, provided below is a summary of some of the comments/recommendations from the July 23, 2009 EPOC discussion.

Mr. Petersen:

- This proposed condition provides another arrow in the CBA's quiver to discipline licensees.
- What does the public think when they see our *Disciplinary Guidelines* and see us putting the same firm on probation multiple times. This will help to address those attitudes that the CBA does not have a lot of teeth in its discipline capabilities.

Mr. Ramirez:

- It was not my intention to create an overbroad penalty when this type of prohibition was first suggested. I would not want to leave the impression to future CBA members and CBA staff that this condition was created to allow the CBA to bar a licensee from practicing in an entire area, such as all audit work. It is appropriate to focus on the infrastructure that is causing the licensee problems.
- The intention was to create an appropriate tool to be used when a licensee has already gone through the normal penalties in a first discipline, and as a result in a subsequent violation, the CBA can impose discipline that will have a greater impact. It tells the licensee to stop selling and focus on the quality of service and care with its current clients.
- This type of condition is the last chance for a licensee to get his or her act together before being permanently restricted from providing certain types of engagements.

Ms. Chi:

- To tell a firm it cannot accept new clients is a profit issue. The next time the firm will hire people with more integrity and also monitor their people more closely. I think that it is the CBA's responsibility to the public.

Ms. LaManna:

- With medium or small firms, this type of condition punishes the entire firm for one bad apple.

Ms. Brough:

- Limiting someone from taking new clients is prohibitive and punitive. In these economic times, it is a concern that prohibiting a firm from accepting new clients, perhaps in addition to the loss of current clients, may drive the licensee out of business.

Mr. Bermudez:

- This type of penalty is technically a death penalty. It will stifle any type of viability for a company or sole practitioner to survive.
- It is a concern that this condition will be too liberally used in the future without any type of definition for its use.
- By placing this condition into the *Disciplinary Guidelines*, it may be used as a negotiation tool to exact greater sanctions in a stipulated settlement.

Mr. Robinson, former representative for E&Y, DT, PWC, KPMG, and GT:

- This type of sanction has been imposed only once and that was by the Securities and Exchange Commission in a particularly egregious case. It was reasonable when applied nationally, but for the CBA to set a precedent by taking one particular case that was decided by the SEC and then try to apply it on a state basis is a great concern.
- It will be difficult to define new clients and determine where a client is engaged, especially for firms that operate across state lines.
- If the CBA is looking to address systemic problems, which means in states other than just California, the SEC should be addressing the problem.
- It is a concern that future CBA members may not impose this proposed condition as rarely as the current CBA members intend.

Ms. Tindel, CSCPA:

- This type of condition does not seem to serve the CBA's consumer protection vision by saying that the licensee's services are adequate for existing clients but not for new clients.

Mr. Newington, former CBA Enforcement Chief:

- There currently is a much stronger and broader optional condition of probation in the *Disciplinary Guidelines*. This condition prohibits a licensee from doing certain types of engagements, and it does not limit the prohibition to new clients only. In the past, in almost every instance where it has been used, this condition has been imposed as a part of a stipulated settlement.

- Variations on the type of discipline imposed can be achieved through settlement.
- The CBA already has the flexibility to impose this type of discipline through stipulation when appropriate.
- It would be difficult to define "new clients" because there are many considerations, such as California or non California, which would make it cumbersome to come up with a definition.

Below are options for consideration in determining whether or not to add new client prohibition as an optional condition of probation in the CBA's *Disciplinary Guidelines*.

Option 1
Maintain the status quo and do not include a prohibition from accepting new clients as an optional condition of probation.

Advantages
- The current *Disciplinary Guidelines* allows the flexibility to impose this type of discipline in stipulated settlements.

Disadvantages
- The *Disciplinary Guidelines* is used by Administrative Law Judges and others in the disciplinary process. The current *Disciplinary Guidelines* does not specifically suggest that an optional condition to prohibit new clients is possible.

Option 2
Add the following language, from the July 23, 2009 EPOC meeting, as an optional condition of probation.

> **Respondent shall be prohibited from accepting new clients (type of specified engagement i.e. audit or tax engagement and/or type of industry i.e. financial institution) for a period of (one to three years) or until _____ (a specific condition is fulfilled i.e. peer review is completed with a "pass rating" or 80 hours of continuing professional education is completed in the area of accounting and auditing).**

Advantages
- This proposed condition is another means for the CBA to impose discipline.
- The licensee is able to focus on the quality of services being provided to current clients.
- By allowing the prohibition to be imposed on a specified type of industry, the licensee still has the ability to obtain new clients in the areas that the licensee is competent.
- Including this prohibition will clarify to Administrative Law Judges and others involved in the discipline process that this type of optional condition of probation may be imposed.

Disadvantages
- This condition may not provide for maximum consumer protection in that it allows a licensee to continue to service current clients in an area where the licensee is deficient.

- Defining “new client” will be difficult, particularly for licensees that operate across state lines. Issues such as whether the client is a California or non California client, and where the client is engaged must be considered.
- Future CBA members may impose this condition more liberally than the CBA intends.

Option 3

Add the following language, which includes a clarification on the intent for limited use, as an optional condition of probation.

> **This condition is to be imposed only for egregious and/or recurring violations where systemic problems exist.**
>
> **Respondent shall be prohibited from accepting new clients (type of specified engagement i.e. audit or tax engagement and/or type of industry i.e. financial institution) for a period of (one to three years) or until _____ (a specific condition is fulfilled i.e. peer review is completed with a “pass rating” or 80 hours of continuing professional education is completed in the area of accounting and auditing).**

Advantages

In addition to the advantages listed in Option 2,

- The introductory language indicates that this condition should not be imposed indiscriminately.

Disadvantages

In addition to the first three disadvantages listed in Option 2:

- To require that the violation be “egregious” or “recurring” to impose this condition may impact settlement negotiations on other cases where the CBA wants to impose the more prohibitive condition that restricts a licensee from performing certain types of engagements, such as all audits or to impose revocation.
- Setting prerequisites such “egregious,” “recurring,” or “systemic” may limit the application of this condition, as well as others.
- CBA may face legal challenges on the definition of “egregious,” “recurring,” and or “systemic” when this condition is imposed on a licensee.
- With respect to systemic problems, many licensees operate across state lines. In that regard, there is some belief that the SEC, not an individual state board, should address this type of problem.

CLOSING COMMENTS

Because California Code of Regulations, Section 98, allows the CBA to deviate from the *Disciplinary Guidelines* if the facts of a particular case warrant such a deviation, the CBA currently has the tools to impose a variety of discipline, including discipline that would prohibit a licensee from accepting new clients.

State of California
Department of Consumer Affairs

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M e m o r a n d u m

EPOC AGENDA ITEM III.
September 22, 2010

CBA AGENDA ITEM XI.A.3.
September 22-23, 2010

To : Herschel Elkins, Chair, EPOC
EPOC Members
CBA Members

Date : September 14, 2010

Telephone : (916) 561-1731
Facsimile : (916) 263-3673
E-mail : rixta@cba. ca.gov

From : Rafael Ixta
Chief, Enforcement Division

Subject : **Investigative Process - Does the CBA have a Major Case Program?**

Background

The California Board of Accountancy (CBA) Members requested information on the Major Case Program, specifically, "Does the CBA have a Major Case Program?"

History

- In 1987, the CBA implemented the Major Case Program to investigate and prosecute licensed accounting firms and individuals responsible for performing grossly negligent accounting and auditing services in cases where broad financial harm to consumers was evident.

- The Major Case Advisory Committee (MCAC), consisting of the Executive Officer, Enforcement Chief, AC (currently EAC – Enforcement Advisory Committee) Chair, AC Vice Chair, an AC member, Deputy Attorney General, and a Major Case Board Liaison, was established to periodically review the progress of major cases.

- In 1993, the Enforcement Division implemented the Major Case Summary Report to be presented at the CBA meetings as part of the Enforcement Division case aging reports.

- In 1995, the CBA adopted Major Case Procedures to be included as part of the Enforcement Policy Manual.

- In February 1996, the Joint Legislative Sunset Review Committee of the California Legislature issued a report stating that the CBA maintained a two-tiered disciplinary process which included a very complex and costly major case program. The report noted the following.

- The numerous steps followed to investigate and prosecute a "major case," and the frequent use of outside counsel and outside investigators could amount to substantial costs for the CBA.
- CBA's use of outside resources risks the potential of leaks and misuse of confidential information.
- It could be argued that the costs of these particular cases may influence the CBA to settle or not pursue other disciplinary cases.

The Joint Legislative Sunset Review Committee recommended that the CBA conduct a cost-benefit analysis and a reengineering study of the major case program, and that the CBA assure that confidentiality is maintained in the investigation and prosecution of "major cases."

- In May 1997, the CBA adopted the policy that the role of the Major Case Liaison is to assure that the policies of the CBA are being carried out and CBA resources are being properly expended.

  In discussions leading up to adoption of this policy, it was noted that no other Department of Consumer Affairs Board has Board members who participate in the prosecutorial side of cases or who validate the judgment of the Executive Officer. In addition, one of the most important functions of a Board member is voting, and this function is taken away when a CBA members acts as a liaison to a major case.

- The October 2000 Sunset Review Report discussed the changes the CBA's Enforcement Division implemented in response to the concerns raised by the JLSRC's 1996 report. The CBA eliminated the major case process as a separate program and standardized the investigative procedures for all cases. However, the CBA continued the practice of assigning a CBA member liaison for cases that involve a significant expenditure of CBA resources.

- In 2002, the CBA approved revisions to the Enforcement Policy Manual, including revisions to clarify that although investigations involving complex accounting issues may require additional resources and outside consultants and counsel, these investigations are not handled under a separate program. (There is not a separate program for "major case" investigations.) As a result, the Major Case Program, including the MCAC and CBA Member Liaisons (Major Case Liaisons), are no longer a part of CBA Enforcement investigations.

Conclusion

In conclusion, the Major Case Program was formally discontinued in 2002. The CBA uses the same investigative process for all cases; however, the CBA does recognize that there are differences in the levels of complexity in matters investigated.

For those cases of greater complexity, the CBA has the ability to employ investigative consultants to serve as technical experts and outside legal counsel to serve as co-counsel with the Attorney General's Office. The Chief of Enforcement monitors the costs and performance for these outside resources.

CBA staff continued to prepare and distribute the Major Case Summary Report as a means to keep the CBA members aware of the status of its complex cases. Based on the research performed in preparing in this paper, it appears that CBA staff should have discontinued issuing a separate Major Case Summary Report in 2002. Accordingly, a new report that provides case aging data on all pending complaints, as opposed to only major cases, will be presented at the CBA meetings.

Attachments

Attachment 1	Excerpt from the 1995 Sunset Review Report regarding major cases.
Attachment 2	CBA Major Case Liaison policy adopted in 1997.
Attachment 3	Excerpt from the February 1996 Joint Legislative Sunset Review Committee Report.
Attachment 4	Excerpt from October 2000 CBA Sunset Review Report.
Attachment 5	Excerpt from March 23, 2002 CBA Minutes adopting revisions to the Enforcement Policy Manual.
Attachment 6	Excerpt from Enforcement Policy Manual showing August 2001 revisions in underline/strikeout format.
Attachment 7	Excerpt from the 2002 CBA Enforcement Policy Manual regarding the use of outside consultants and outside legal counsel.

Upon completion of an investigation, the investigator prepares a report of the investigation for review and approval by the Supervising Investigative CPA. Currently, the time required to complete regular case investigations is approximately nine months. The re-engineering of the enforcement procedures and processes which is underway should substantially reduce that time frame.

Once the investigator completes the investigative report and it is reviewed and approved by the Supervising Investigative CPA, the written report and the file are reviewed by a minimum of two Administrative Committee members, who must concur on a recommendation for closure or further action. During fiscal year 1994-95, 318 investigative files were referred to the AC for review. The time required for review by the AC and implementation of the recommended action is approximately five months. Again, the re-engineering process is being applied to this cycle to minimize the number and type of files that require Administrative Committee review.

An investigative tool unique to the Board is the authority of the Administrative Committee to hold investigative hearings. The Administrative Committee Investigative Hearing (ACIH) is used to hold interviews with licensees to collect facts and information pertaining to a case investigation. The Administrative Committee generally employs this method after the Investigative CPAs have completed their investigative reports, but prior to the Administrative Committee making its own recommendation on whether a matter should be forwarded to the Attorney General's Office for the preparation of an accusation. The ACIH may be informal (taken without a court reporter) or formal (taken under oath with a court reporter taking all testimony for the record). Formal ACIHs are usually scheduled if the matter is likely to proceed to an accusation. Investigative hearings provide accurate evidentiary records and are used to evaluate a case's appropriateness for accusation and to solicit the licensee's explanation of events. During the fiscal year 1994-95, the AC conducted 71 ACIHs and referred 36 cases to the Attorney General for preparation of accusations.

Process - Major Case Investigations

The Major Case Program was implemented in 1987 to investigate and prosecute those licensed accounting firms and individuals responsible for performing grossly negligent accounting and auditing services in industries where broad financial harm to consumers and investors was evident (such as audits of failed savings and loan institutions). Examples of the successes of this program follow:

- December 1989 - In an enforcement action involving a large national accounting firm and its audit of Technical Equities (TEC), the Board imposed discipline that included probation, added continuing professional education, and prohibition from doing audits for two firm partners. The Board also received reimbursement of its costs in the amount of $975,000. In the Technical Equities matter, the auditors were alleged to have committed gross negligence by wrongfully relying on representations of TEC management, and failing to adequately staff and manage the audit.

- April 1991 - The Board of Accountancy dealt with a former international accounting firm relative to its audit of Lincoln Savings and Loan. The auditors were alleged to have agreed to the improper recognition of $62 million in profits on real estate transactions. The Board imposed discipline that required added quality controls for the firm, probation and prohibition from participation in audits for a firm partner and reimbursement to the Board of its costs in the amount of $1.5 million.

- July 1992 - The Board imposed discipline on a large national accounting firm's auditors relative to its audit of Bretcourt Financial Inc. The negotiated discipline was the result of the Board of Accountancy's accusation that the auditors were grossly negligent in performing the audits of BFI based on their failure to review the partnership agreements. Approximately $24 million in partnership funds were improperly diverted to individuals and affiliates, in violation of those agreements. Terms of the discipline included restriction from participation in audits, license suspension, continuing education, and community service.

- August 1994 - The Board of Accountancy imposed discipline on an international accounting firm relative to the accounting firm's audits of Lincoln Savings and Loan Association and its parent company, American Continental Corporation, as well as A & B Loan Company and related entities and Grand Wilshire Leasing. Alleged audit deficiencies included failure to disclose information relative to significant related party transactions, improperly recognized gains, and failure to adequately evaluate collectability of receivables. Terms included full reimbursement of costs of $1,357,500, restriction on acceptance of new finance company audit clients for 30 days, suspension of a firm partner, added firm quality control features, and 10,000 hours of community service.

- November 1994 - With respect to Budget Furniture Rentals, the Board concluded its disciplinary action with five licensees who had been involved with either the audits or financial forecasts. Two partners and a manager of a national accounting firm engaged to perform the audits of Budget Furniture Rentals were

charged with gross negligence for having inappropriately accepted the aggregate overstatement of pre-tax income of $23 million over a five-year period. An additional two partners of a large local firm were charged with gross negligence in relation to financial forecasts used to promote sales of interests in the entity. Discipline imposed included 2,250 hours of community service and $260,000 in cost reimbursement to the Board.

The process for investigation of a major case follows:

Process Steps	Elapsed Time
Case identified/issues assessed/assigned MC program	1 - 3 months
Consultant investigation/report/Major Case Advisory Committee (MCAC) review (Stage 1)	3 - 24 months
Outside counsel investigation/MCAC review decision	3 - 12 months

Due to the complexity of major cases, the average time from case opening to decision to file accusation is 30 months.

See Exhibit I:4:G for a flowchart of the major case investigation process.

Due to the complexity and magnitude of major case investigations, the Board generally utilizes contract investigative consultants (experts) to investigate major case matters. The contract investigative consultants who perform these investigations have a proven track record for extensive technical expertise and have actual experience working for large firms at management or partner levels.

The Board has adopted formal qualifications criteria for the investigative consultants who are contracted in its Major Case Program and has established an available pool of such experts. These experts are required to meet performance standards that are incrementally established for the duration of the contracts. There is careful, thoughtful scrutiny of these performance measures throughout each phase of the investigation and prosecution. At the conclusion of each case for which they are under contract, the consultant's performance is formally evaluated.

The Board also has adopted the practice of utilizing outside counsel to expedite the investigation and prosecution of major cases. This was necessary because the Board

and the Attorney General had determined in early major case matters that the complexity and magnitude of the legal representation required for these cases was more than the Attorney General's Office could supply.

In adopting the practice of utilizing outside counsel, the Board was cognizant that a national problem existed in controlling legal costs. Accordingly, the Board implemented detailed policies that require accountability from those who provide services as outside counsel. Private law firms are required to complete detailed plans and budgets as part of the contracting process and provide even more detailed interim (90 day) budgets and performance measures during the course of the engagement. Private law firms are also required to issue monthly detailed billings that delineate where hours have been expended. This detailed accountability is requested as well from the Attorney General's Office, which serves in a co-counsel capacity, and from expert consultants. These accountability measures have proven very effective in controlling the costs of counsels.

The Board's Major Case Program provides for the investigation of approximately 10 extremely complex and highly technical cases each year. Major case activities are tracked by Board staff who provide quarterly reports to the Board. One support staff is committed full-time to the oversight and tracking of the costs and timeliness of the investigation and prosecution of major cases.

Enforcement of Unlicensed Activity

The activities that constitute the practice of public accountancy are defined in detail in Section 5051.

To protect consumers, the Board does take action to prevent persons from illegally practicing public accounting unless they are appropriately licensed. The Board has four primary tools to take action against unlicensed activity. These include:

- Cease and desist orders.
- Criminal citation and referral to the local District Attorney for prosecution.
- Citation with a fine of up to $2,500.
- Disconnection of the telephone via order of the Public Utilities Commission.

The Board staff investigates complaints that deal with unlicensed activity by contacting the party involved, determining the existence, if any, of violations, and issuing a cease and desist letter where appropriate. For the majority of cases these steps achieve

determined by the Board upon recommendation of the AC and Enforcement staff.

5. Delegate responsibility for administrative violations to the Enforcement Program (with some exceptions, such as violations of Section 5100(g) which involve suspension by another authority). Staff Investigative CPAs should handle these complaints, prepare reports, and make recommendations to the Chief of Enforcement and the Executive Officer. Any issues identified by staff during the course of the investigation can be discussed with the appropriate AC member knowledgeable in the practice area.

6. Delegate responsibility for investigating competency issues to the AC and staff Investigative CPAs with sufficient education and experience. The AC should continue to review files and conduct Administrative Committee Investigative Hearings. Lower grade level cases can be handled entirely by staff unless the licensee disagrees with the staff's findings. The higher grade level cases (i.e., above a set grade cut-off), will continue to require two AC members to recommend closure of a case.

7. Delegate primary responsibility for monitoring probationers to staff. If a violation is suspected, the case may be referred to the AC for review where appropriate.

8. Perform internal audits, at the direction of the Board, to randomly test case files involving both areas (administrative and competency violations) to ensure appropriate grading and consistency of standards.

9. Eliminate the use of Technical Review Panelists as investigators and hire an investigative CPA to be based in Southern California to handle investigative matters. Technical Review Panelists will continue to be available to assist staff on an as-needed basis.

10. Continue the Major Case Program as it is currently operating. Continue the Major Case Advisory Committee (MCAC). At a minimum, the Major Case Advisory Committee consists of the AC Chair, the AC Vice Chair, the Executive Officer, the Chief of Enforcement, and a third AC member appointed by the Chair and Vice Chair. At a minimum, each case shall be assigned a lead consultant, and a Liaison Deputy Attorney General as legal counsel who, for that case, are members of the MCAC. A Board liaison when assigned shall also be a member of the MCAC.

ATTACHMENT 2

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY

BOARD POLICY MANUAL

POLICY NUMBER:	ADOPTION DATE:	PROGRAM AREA:	PAGE:
ENF B97 01	May 9, 1997	Enforcement	1 of 5
MINUTES PAGE NUMBER:	TOPIC (TITLE):		
7773	Major Case Liaisons		
SUPERCEDES POLICY ON PAGE:	REFERENCE ITEMS:		
	Major Case Program Board Liaison Roles and Responsibilities		

POLICY STATEMENT

The Major Case Liaisons provides a means of assuring that policies of the Board are being carried out and that Board resources are being properly expended. Attached are Board adopted guidelines for the liaison position.

BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3862
(916) 263-3680

DEPARTMENT OF CONSUMER AFFAIRS

STATE BOARD OF ACCOUNTANCY

MINUTES OF MAY 9, 1997 BOARD MEETING

FINAL

Miyako (Radisson) Hotel
1625 Post Street
San Francisco, CA 94115

I. Call to Order

President Robert Shackleton called the meeting to order at 9:00 a.m. at the Miyako Radisson Hotel in San Francisco, and immediately turned the meeting over to Administrative Law Judge Stewart Judson to take up the Petitions for Reinstatement of revoked CPA licenses under the Board's agenda items XII. A, B, & C.

Board Members	May 9, 1997
Robert J. Shackleton, President	9:00 a.m. to 5:45 p.m.
Diane Rubin, Vice President	9:00 a.m. to 5:45 p.m.
"Mik" Mikkelsen, Secretary-Treasurer	9:00 a.m. to 5:45 p.m.
Robert Badham	9:00 a.m. to 5:45 p.m.
Christina Chen	9:00 a.m. to 5:45 p.m.
E. Eileen Duddy	9:00 a.m. to 5:45 p.m.
Walter Finch	9:00 a.m. to 5:45 p.m.
Avedick B. Poladian	9:00 a.m. to 5:45 p.m.
Baxter Rice	Absent
Michael Schneider	9:00 a.m. to 5:45 p.m.
Joseph Tambe	9:00 a.m. to 5:45 p.m.

G. Enforcement Program Oversight Committee (EPOC)

1. Minutes of the October 28, 1996 EPOC Meeting

The minutes of the October 28, 1996 EPOC meeting were adopted on the Consent Agenda. (See agenda item XIII. C.)

2. Report of the April 17, 1997 EPOC Meeting

Mr. **Poladian** reported that the Committee considered the following items.

3. Report on *Agreed Upon Procedures* Engagement

Mr. Poladian reported that, as referred to at the March 22, 1997 Board meeting, the Board had engaged an auditor to review closed cases and test various areas of the Board's Enforcement Program. Mr. Poladian said he had since reviewed the testing methodology used and that it covered a very extensive scope. He advised that the conclusions of the auditor were very positive. There were some suggestions, which were discussed with Ms. Sigmann, but basically there was a strong commendation for the work of the enforcement staff. He concluded that the Board would use the final report and recommendations to focus on areas for improvement.

4. Reconsideration of Policy Re: Major Case Liaisons

Mr. Poladian reported that the EPOC discussed Major Case Liaisons and their roles in major cases. The EPOC agreed that there is still a need for this role and adopted a statement of the roles and responsibilities of the Major Case Liaisons. Mr. Poladian noted that the committee began by first identifying the three principal stages of the major case as:

Stage 1 - Informal Investigation – which begins with the preliminary analysis of a matter to confirm its proper inclusion as a major case. If proper inclusion is confirmed, Stage 1 continues with the selection of a qualified Special Consultant. A contract between the Board and consultant is prepared and executed, and the consultant performs an informal investigation and drafts a preliminary report to conclude whether a violation occurred.

Stage 1 concludes with a review of the merits of the case by the Major Case Advisory Committee (MCAC) and a recommendation to the Executive Officer (EO) to proceed or close the case. Board liaisons are generally appointed at this point to assist the MCAC.

Stage 2 – Formal Investigation – Begins when the EO decides to dedicate legal resources to pursue prosecution on a case. Referral to the Attorney

General's Office and possible assignment to outside counsel occur at this stage. When determined appropriate, drafting and review of the accusation will occur at this stage. Stage 2 concludes with an updated review of case merits by the MCAC and a recommendation to the EO to file an accusation or close the case.

Stage 3 – Accusation – Begins with the filing of an accusation and concludes when settlement is achieved, adjudication (including appeal) is completed, or accusation is withdrawn.

Mr. Poladian noted that paramount in importance in selecting a Major Case Liaison is ensuring that there is not a conflict of interest. During the process the Board member can bring to the table the policies of the Board, as well as review the major expenditures for the case. Mr. Poladian reiterated that the EPOC believed that this is an important role and one that the Board ought to continue. He asked that the Board adopt the Committee's recommendation.

It was moved by Mr. Finch, seconded by Mr. Badham, and unanimously carried to adopt the recommendation of the EPOC (see Attachment ~~9~~). 10

VIII. Recommendations of CPA Qualifications Committee

A. Licensure Applications for Board Action

1. Issuance

2. Grades Acceptance

3. Out-of-State

Ms. Caratan provided three additions to the lists, as follows:

Add to the Issuance Approved List: Harry Cox and Tina M. Heimerdinger.

Add to the Issuance Deferred List: David Hauser

It was moved by Mr. Badham, seconded by Mr. Finch, and unanimously carried to approve the lists noted above as submitted and with the above-noted additions.

State of California

ATTACHMENT 10
BOARD AGENDA 1
MAY 9-10, 1997

Memorandum

To : Board Members

Date : April 28, 1997

Telephone : (916) 263 – 3960

From : **Department of Consumer Affairs - Board of Accountancy**

Dick Poladian
Chair, Enforcement Program Oversight Committee

Subject : **MAJOR CASE PROGRAM - BOARD LIAISON**

At the April 17, 1997, Enforcement Program Oversight Committee (EPOC) meeting, the Committee discussed the position of Board member liaison for major cases.

The Committee also reviewed the attached "Major Case Program Board Liaison Role and Responsibilities." The intent of this document is to provide direction to the liaisons in performing their duties and to provide information to new Board members. It includes information on the major case investigative process, the selection of the Board Member Liaisons, and the role and responsibilities of the liaisons.

The majority of the EPOC recognized that the liaison provides a means of assuring that policies of the Board are being carried out and that Board resources are being properly expended. Accordingly, the EPOC recommends that the Board continue the position of Board liaison to major cases and that the attached be adopted by the Board as guidelines for the liaison position.

GPN:mls

Attachment

cc: Carol Sigmann, Executive Officer

msword/docs/michele/epoc/boardmemoliaison.doc

MAJOR CASE PROGRAM
BOARD LIAISON
ROLE AND RESPONSIBILITIES

Complaints against licensees involving complex accounting issues and/or significant consumer harm are assigned to the Major Case Program for investigation. Due to their complexity, major cases usually require substantial investigative time and often involve additional investigative resources.

In general, the three stages of a major case investigation are:

Stage 1: Informal Investigation
Begins with the preliminary analysis of a matter to confirm its proper inclusion as a major case. If proper inclusion is confirmed, Stage 1 continues with selection of a qualified Special Consultant. A contract between the Board and consultant is prepared and executed, and the consultant performs an informal investigation and drafts a preliminary report to conclude whether a violation occurred.

Stage 1 concludes with a review of the case merits by the Major Case Advisory Committee (MCAC) and a recommendation to the Executive Officer (EO) to proceed or close the case. Board liaisons are generally appointed at this point to assist the MCAC.

Stage 2: Formal Investigation
Begins when the EO decides to dedicate resources to pursue prosecution on a case. Referral to the Attorney General's Office and possible assignment to outside counsel occur at this stage. When determined appropriate, drafting and review of the accusation will occur at this stage. Stage 2 concludes with an updated review of case merits by the MCAC and a recommendation to the EO to file an accusation or close the case.

Stage 3: Accusation
Begins with the filing of an accusation. Concludes when settlement is achieved, adjudication (including appeal) is completed, or accusation is withdrawn.

Selection of the Board Member Liaison

The decision to dedicate resources to pursue prosecution on a major case is made by the Board's Executive Officer. If, at the closure of the informal investigation and just prior to the beginning of Stage 2 of the investigation, a case appears to have evidence of violations, the Chief of Enforcement notifies the EO of the need for a Board Member Liaison for the major case. (However, the Chief may notify the Executive Officer of the need for a liaison earlier in the investigation if the case is of a particularly sensitive nature.) At the request of the EO, the Board President selects the liaison.

The criteria for selection of a Board Member Liaison to a major case includes:

- knowledge of the Board's enforcement policies and guidelines;
- Board member's absence of conflict related to the case; and
- availability of the Board member.

Upon assignment to a major case, the liaison will be briefed on the status of the case and its primary issues by the Chief of Enforcement. The liaison will be also be invited to participate in future Major Case Advisory Committee deliberations on the case. The other members of the MCAC are the Executive Officer, Chief of Enforcement, Administrative Committee Chair, Administrative Committee Vice Chair (MCP), another Administrative Committee member selected by the other two Administrative Committee members, and Deputy Attorney General.

Role and Responsibilities of the Major Case Liaison

The function of the Board Member Liaison to a major case is to provide advisory consultation to the Executive Officer and the MCAC. The liaison must be knowledgeable of Board policies, in particular, enforcement policies and guidelines.

The liaison will not participate in the investigation of a major case itself. Rather, the liaison will participate in MCAC meetings, when appropriate, to review the progress of the case and provide assurance that Board policies are being followed and that the case is being handled efficiently and cost effectively.

If the liaison determines that there is a problem with the way a major case is being handled, the liaison should so advise the Executive Officer. If the liaison's concerns are not resolved, he or she should discuss the issues with the Board's Departmental counsel. In those extreme situations where counsel believes the differences of opinion between the EO, MCAC, and Board liaison are significant or will place the Board at risk, the issues should be discussed with the Board President.

The liaison must conduct his or her own behavior to avoid any conflict of interest or the appearance of any lack of impartiality. The liaison should contact the Board's Departmental counsel, who acts as steward for the appropriate behavior of all members of the MCAC, to immediately resolve any potential conflict of interest with himself or herself, or any member of the MCAC, and the case.

The Board Member Liaison will not discuss a major case with other Board members, except as specifically noted above. The liaison should excuse himself or herself from Board deliberations, except as approved by the parties involved in matters of stipulation, on any disciplinary matter in which he or she acted as liaison. Further, the liaison may not vote on the case to which he or she was assigned.

ATTACHMENT 3

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE FINDINGS AND RECOMMENDATIONS

Review and Evaluation of the Board of Accountancy

Report to the
Department of Consumer Affairs

FEBRUARY 1996

continuing education. [Section 5022 of the Business and Professions Code states that the AC shall only make "recommendations" and forward its report to the board for action on any matter on which it is authorized to act.]

- The BPR project found that there are certain tasks and processes used by the staff which cause significant delays in intake, assignment and investigation of cases, but there is no indication that the study reviewed time delays or actions taken by the AC. It did seem to indicate, however, that there was a high ratio of support staff to CPA investigative staff (possibly because of the need to provide support to the 17 member AC), and recommended that investigative staff be more fully utilized (or increased).

- The BPR project also discovered other procedures and policies (or lack thereof) which cause significant delays to occur in the assignment and investigation of cases, and cause inconsistencies to occur in the way cases are processed among investigative staff.

- It seems obvious from the comments of CPIL and the BRP project, that the board, and the volunteer CPAs on its Administrative Committee, are too involved in the day-to-day operation of the enforcement program by administrative and investigative staff. The board has created an "elaborate [enforcement] process unlike that of any other DCA board." The Administrative Committee should be phased out and additional professional investigative staff should be hired to receive, review and manage consumer complaints against licensees.

Disciplinary Action

1. *The board maintains a two-tiered disciplinary process. The "Major Case Program" is an extremely complex and costly process.*

- The board began a "Major Case Program" in 1987, to investigate and prosecute those licensed accounting firms and individuals who performed grossly negligent accounting and/or auditing services in industries where broad financial harm to consumers and investors was evident (such as audits of failed savings and loan institutions). The board has adopted the practice of contracting with investigative consultants (experts) to investigate major case matters, and utilizing outside counsel to expedite the investigation and prosecution of these types of cases. The program provides for the investigation of approximately 10 cases each year.

- This program has been criticized as being overly complex, including 3-stages and 14 steps to investigate and prosecute a "major case," and the frequent use of outside counsel and outside investigators (as opposed to staff investigators and the Attorney General's Office) can amount to substantial costs for the board. It has been argued that the costs of these particular cases may be influencing the board's decisions to settle (or not pursue) other disciplinary cases. Also, because staff investigators and the Attorney General's Office are not used, the board risks the potential of leaks and misuse of confidential information. (A lawsuit was filed against the board in 1994, when Arthur Anderson, a CPA firm against whom the board was proceeding in a disciplinary matter, filed a lawsuit against the board alleging misconduct and contending that the board leaked confidential information to private attorneys involved in a class action against Anderson.)

- The "Major Case Program" needs to be analyzed more closely. It is difficult to determine the successes (or failures) of this program. Although several cases were outlined by the board, there has been no cost-benefit analysis performed on this particular program. Neither did the BPR project provide any evaluation of the activities or processes of this program, nor develop any baseline performance measures.

2. *Considering the number of licensees, number of complaints and investigations by the board, there has been little action taken against licensees over the past four years for incompetence or other violations of the licensing act.*

- A total of 139 accusations have been filed by the board over the past four years (on average, about 35 filed per year). Of those, 53 resulted in revocation of the license, 12 resulted in a voluntary surrender of the license, 50 ended up with suspension and probation, 53 resulted in probation, and one ended up in an "other" category. (The total of these disciplinary actions is higher because of cases carried over from one year to the next.) A total of 97 accusations filed for the past four years were completed by the Attorney General within one year, 49 were completed in two years, 13 were completed within three years, and 6 went beyond three years.

3. *The board does make some use of its restitution authority.*

- Restitution to consumers is an optional condition of probation within the board's "Disciplinary Guidelines" and, where appropriate, may be ordered by the board by either stipulated settlement or proposed decision. From 1990-1994, the board has ordered $68,600 in restitution to the consumer.

ATTACHMENT 4

CALIFORNIA BOARD OF ACCOUNTANCY

SUNSET REVIEW REPORT

OCTOBER 2000

Submitted to the Joint Legislative Sunset Review Committee
of the California Legislature

Prepared in compliance with Senate Bill 2036
(Chapter 908, Statutes of 1994)

- The AC investigative hearing process is extremely valuable in sorting out the facts in complex enforcement cases which involve large volumes of documents and a variety of technical issues.

Issue 24:
Does the Board still continue with its "Major Case" Program, and is a Board member still appointed to act as a liaison with the staff on major case investigations? Has the Board conducted any cost-benefit analysis or reengineering study of this program, or possibly developed baseline performance measures for this program?

Summary of Board Response:

The Board no longer maintains a separate "Major Case" Program, but it does continue the practice of assigning a single Board member to serve as a liaison for cases that involve a significant expenditure of Board resources. The major case component has been reengineered in concert with other segments of the Enforcement Program. Performance measures are applied to these cases.

Discussion:

The JLSRC's February 1996 Report stated that the Board maintained a two-tired disciplinary process which included a very complex major case program. In response to these concerns and the recommendations resulting from the reengineering process, the Board no longer maintains a separate major case program and now utilizes the same investigative procedures for all cases.

As discussed in Issue 22, the Board has reengineered its Enforcement Program including the major case component, and it has implemented appropriate performance measures. For those cases of greater complexity and requiring extensive resource expenditures, additional monitoring controls have been established. In addition, in these complex cases, the Board continues its practice of assigning a Board member as a liaison whose responsibility is to monitor the development of the investigation and confirm Board policies are followed.

During the current sunset review, the Board thoroughly considered the Board liaison issue at its March 1999 and January 2000 Sunset Review Committee meetings and its March 2000 Board meeting. The Board noted that when a decision or stipulated settlement comes before the Board for a vote, the liaison must abstain from serving in a judicial capacity. After considerable discussion, it was concluded that this disadvantage is outweighed by the benefits provided by the liaison's oversight which helps ensure the efficient application of Board resources in complex enforcement cases.

State of California Department of Consumer Affairs

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ATTACHMENT 5

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY

FINAL

MINUTES OF THE March 23, 2002 BOARD MEETING

Sheraton Gateway Hotel
6101 West Century Boulevard
Los Angeles, CA 90045
Telephone: (310) 642-1111
Facsimile: (310) 410-1852

I. Call to Order.

President Navid Sharafatian called the meeting to order at 9:12 a.m. on Saturday, March 23, 2002, at the Sheraton Gateway Hotel in Los Angeles. The Board convened into closed session at 9:13 a.m. to consider Agenda Items IX.A – C. The Board reconvened into open session at 9:33 a.m.

Board Members	March 23, 2002
Navid Sharafatian, President	9:12 a.m. to 3:05 p.m.
Wendy Perez, Vice President	9:12 a.m. to 3:05 p.m.
Joseph Tseng, Secretary-Treasurer	Absent
Richard Charney	9:12 a.m. to 3:05 p.m.
Charles Drott	9:12 a.m. to 3:05 p.m.
Donna McCluskey	9:12 a.m. to 3:05 p.m.
Michael Schneider	9:12 a.m. to 3:05 p.m.
Ian Thomas	9:12 a.m. to 3:05 p.m.
Stuart Waldman	Absent

Staff and Legal Counsel

Mary Crocker, Assistant Executive Officer
Patti Franz, Manager, Licensing Program
Aronna Granick, Legislative Analyst
Robert Miller, Legal Counsel

Mr. Gage indicated that when SB 133 and AB 585 were passed, it was not the Legislature's intent to be exclusionary to individual students or schools. Mr. Gage believed the Board should move ahead as soon as possible to resolve this issue.

It was moved by Ms. McCluskey, seconded by Mr. Thomas and carried to propose a statute change that would modify the requirements with regard to qualifying education under Pathway 1 to include degree-granting nationally accredited schools. Mr. Schneider was opposed.

VII. Committee and Task Force Reports.

A. Administrative Committee (AC).

1. Report on Status of Enforcement Cases.

a. Activity and Status Reports.

Mr. Newington reported that there are currently 145 cases in the open licensed category which has increased approximately 50 percent from the beginning of the fiscal year. Mr. Newington noted that the Board recently received approval to fill the Investigative CPA position that has been vacant for nearly two years.

b. Major Case Summary.

Mr. Newington indicated that there were two open cases. The first matter has recently been before the Board and will be back after a briefing in the near future. The second case is currently in the early stages of investigation. Mr. Newington noted that one case was recently closed due to insufficient evidence of violation.

c. Report on Citations and Fines.

Mr. Newington reported that 19 citations have been issued for a total of approximately $17,000. Mr. Newington noted that the current outstanding balance was approximately $25,000 with about half of that balance tied to the renewal process requiring those individuals to pay their citations before they can renew their licenses.

2. Enforcement Policy Manual.

Mr. Falkenhagen reported that it has been six years since the manual's inception and some of the significant revisions focused on the advisory nature of the Administrative Committee. These changes include clarifying that the major case process is not a separate

process from licensed investigations and general revisions to clarify and update procedures and statutes. A question was raised as to whether the modifications to the manual represented a change to the Board's policy related to alternative dispute resolution and mediation. Staff responded that mediation guidelines have since been referenced in regulation and there has been no change to the Board's past position.

It was moved by Ms. McCluskey, seconded by Mr. Thomas, and unanimously carried to adopt the revised Enforcement Policy Manual.

B. CPA Qualifications Committee (QC).

No report.

C. Renewal and Continuing Competency Program.

No report.

D. Report Quality Monitoring Committee (RQMC).

1. Proposed Resolution for a Non-Continuing Committee Member.

Ms. Franz indicated that on behalf of Mr. Feinstein she was putting forth a resolution for the Board's consideration honoring RQMC member Bill Woodward's years of service on the committee.

It was moved by Ms. McCluskey, seconded by Mr. Thomas, and unanimously carried to adopt the resolution.

E. Committee on Professional Conduct (CPC).

1. Minutes of the January 25, 2002, CPC Meeting.

The minutes of the January 25, 2002, CPC meeting were adopted on the Consent Agenda. (See Agenda Item X.B.)

2. Report on the March 22, 2002, CPC Meeting.

Ms. Perez reported that the CPC met the previous day with a full agenda and discussed the issues below. The CPC also had on its agenda discussions related to commissions and non-licensee ownership. These agenda items were deferred until the next CPC meeting.

3. Revised Language for Communicating with Consumers Regarding Law Changes Specific to Attest Experience.

~~2.3.1.4Major Case Program Investigative Procedures Overview~~

~~Philosophy~~

~~Investigative cases involving complex accounting issues and/or significant consumer harm require special handling and often require additional investigative resources.~~

~~Policy Statement~~

~~Complaints against licensees that involve complex accounting issues and/or significant consumer harm will be assigned to the Major Case Program for investigation. Generally, major cases require substantial investigative time. (Refer to the Board's separate procedures document: Procedures for Major Case Investigations [Attachment A] for additional discussion relative to the conduct of Major Case Investigations.)~~

~~Purpose~~

~~To ensure that adequate attention and resources are devoted to the investigation of major cases which have a significant impact on the public.~~

~~Guidelines – Overview of Process for Handling Major Case Investigations~~

- ~~The three general stages of a major case investigation are:~~

  - ~~Stage 1 – Preliminary Investigation~~
    ~~Assignment of the case to the Major Case Program through receipt of the Major Case Consultant's preliminary report which concludes whether a violation occurred.~~

  - ~~Stage 2 – Investigation~~
    ~~Begins when the Executive Officer decides to dedicate resources to pursue prosecution on a case. Referral to the Attorney General's Office and possible assignment to outside counsel occur at this state. Drafting and review of the accusation also occur at this state. Beginning with this stage of the investigation, requests by the licensee(s) to resolve issues through mediation may be considered by the Executive Officer.~~

  - ~~Stage 3 – Accusation~~
    ~~Begins with filing of an accusation. Concludes when settlement is achieved, adjudication (including appeal) is completed, or accusation is withdrawn.~~

- ~~At the end of the first stage, the Major Case Advisory Committee (MCAC) shall recommend whether to pursue the case.~~

- ~~The decision to pursue prosecution on the case shall be made by the Executive Officer.~~

- ~~The decision to employ mediation, the timing of its initiation, and determination to terminate mediation are in the sound discretion of the Executive Officer.~~

- ~~Board members will be informed by the Executive Officer and the Chair of the Administrative Committee about major cases and shall receive copies of accusations when filed.~~

~~Guidelines – Major Case Reporting Lines/Responsibilities~~

- ~~**Board:** Provides policy direction and is informed about the Major Case Program by the Executive Officer.~~

- ~~**Executive Officer:** Has responsibility for all operational functions of the Board including final decisions on whether to proceed on major case investigations, to utilize mediation, and to file accusations. The Executive Officer will consult with other as warranted.~~

- ~~**Chief of Enforcement:** Has direct responsibility for the Major Case Program including participating in the decision to assign cases to the Major Case Program and supervising case development, consultants, Deputy Attorneys General, and outside legal counsel.~~

- ~~**Administrative Committee Vice-Chair:** Participates in making the decision to assign cases to the Major Case Program and in the selection of consultants and outside legal counsel. Also acts as advisor throughout the duration of a major case.~~

- ~~**Major Case Consultant:** Functions on a fee for service basis or as a part-time employee and is assigned to a specific case. Performs evaluations, makes conclusions, and testifies as to any violations found during the investigation of complaints filed against accounting firms for alleged violations of the Accountancy Act. Reports to the MCAC and takes day to day direction from the Chief of Enforcement but may also take direction from the Deputy Attorney General during Stage 2 of the investigation. It is anticipated that a major case consultant will serve as an expert witness on a major case.~~

- ~~**Major Case Expert Witness:** Primary function is to provide testimony at hearings or court trials. Activities are coordinated by the Chief of Enforcement, but may take direction from the Deputy Attorney General or outside co-counsel assigned to the case.~~

- ~~**Deputy Attorney General:** During Stage 1 of an investigation, the Deputy Attorney General provides assistance in accessing evidence and witnesses. The Deputy Attorney General may also be requested to provide legal guidance on a matter during Stage 1. Requests for assistance from a Deputy Attorney General shall be made through and be coordinated by the Chief of Enforcement. When a case is advanced to Stage 2, the Deputy Attorney General is responsible for preparing the case for accusation and hearing including the supervision of further investigation via technical consultants and any work performed by outside legal counsel. The Deputy Attorney General, with outside legal counsel, if involved, has responsibility to prepare prior to incurring costs an estimate of time and cost required (Attorney General, outside legal counsel, experts, etc.) necessary to pursue a case through accusation and an estimate of costs should a case go to hearing and trial.~~

- ~~**Board Member Liaison:** The Board liaison is generally appointed when a major case is being considered for Stage 2 investigation. On unusually sensitive matters, the Executive Officer may request a Board liaison be appointed during Stage 1. The Board liaison's function is to provide advisory consultation to the Executive Officer and the Major Case Advisory Committee. If no Board member is available for the liaison function, the Executive Officer shall proceed in the decision process but may seek advisory consultation from others as deemed necessary. The Board liaison is precluded from voting on a case should it subsequently come before the Board.~~

- ~~**Major Case Advisory Committee (MCAC):** Consists of the Executive Officer, Chief of Enforcement, Administrative Committee Chair, Administrative Committee Vice-Chair, and another Administrative Committee member selected by the Administrative Committee Chair and Administrative Committee Vice-Chair, Board liaison, and Deputy Attorney General. The MCAC shall periodically review the progress of major case investigations and provide recommendations to the Executive Officer on which cases to advance in the investigative process and which cases to close.~~

2.3.3.3 Use of ~~Major Case~~Investigative Consultants

~~Philosophy~~
~~The Board recognizes the unpredictable workload involved with major case investigations. Additional resources may be necessary to complete complex or unique investigations of major cases. The use of consultants allows the Board to avail itself to a broader range of talent and the technical expertise necessary for expeditious and successful investigations.~~

Policy Statement
The Board will maintain a pool of ~~highly~~ qualified licensees to serve as ~~special~~ investigative consultants. ~~on major cases investigations as needed. (Refer to the Board's separate procedures document Procedures for Major Case Investigations for additional discussion relative to the conduct of major case investigations.)~~

~~Purpose~~
~~Consultants will provide technical expertise to the Board and are selected by matching consultant skills with the needs of each case. The use of consultants will provide the additional resources necessary to complete investigations of complicated cases.~~

Conflict of Interest
~~A major case~~An investigative consultant is prohibited from working on any case where it is determined that he or she has a conflict of interest. Committee members should not be utilized in paid positions (e.g. ~~Major Case~~Investigative Consultant or Expert Witness) ($100 per day per diem excluded).

Guidelines – Recruitment and Selection of ~~Major Case~~ Investigative Consultants

- Recruitment of ~~major case~~investigative consultants with the requisite experience and skills shall be the responsibility of the Chief of Enforcement in consultation with the Administrative Committee Chair and Vice Chair, and with the approval of the Executive Officer. ~~Résumés are screened by the Chief of Enforcement, the Executive Officer/Board Representative, Administrative Committee Vice-Chair, and the Administrative Committee Chair. Interviews shall be conducted by a selection panel to include, but is not limited to, the Chief of Enforcement, Executive Officer/Board Representative, Administrative Committee Vice-Chair, and Administrative Committee Chair. Final selection decisions shall be rendered by a vote of the panel.~~

- ~~Minimum qualifications include: possess a valid California CPA license, at least ten years experience working as a Certified Public Accountant, at least 5 years employment with a firm auditing publicly traded entities, and at least 3 years as a~~

~~manager or higher dealing with complex accounting and auditing issues and publicly traded companies.~~

Guidelines – Role of ~~the Major Case~~ Investigative Consultant

- ~~Major case~~Investigative consultants serve as technical experts for the Board in ~~the conduct of major case~~complex or unique investigations. ~~Major case~~ Investigative consultants may serve on a fee-for-service basis or as part-time employees of the Board.

- Responsibilities assigned to ~~major case~~investigative consultants may include performing evaluations, making conclusions, preparing reports, and/or testifying as to any violations found during the investigation of complaints filed against ~~major accounting firms~~licensees for alleged violations of the ~~Accountancy~~ Act.

- ~~Major case~~Investigative consultants report to ~~the MCAC and take day-to-day direction from~~ the Chief of Enforcement but may also take direction from the Deputy Attorney General ~~during the formal stages of investigation~~.

Guidelines – Evaluation of Consultants

- The Chief of Enforcement will evaluate ~~Individual~~ individual consultant performance~~s is evaluated by the Chief of Enforcement~~ from time to time and/or upon completion of each case and ~~reported to the~~ report the evaluation to the ~~MCAC~~ Executive Officer.

- The ~~Enforcement~~ Chief of Enforcement ~~in consultation~~ with the approval of the Executive Officer ~~and Administrative Committee Vice-Chair~~ has the authority to discontinue ~~a major case~~ an investigative consultant's services at any time.

~~2.3.3.4Use of Expert Witnesses~~

~~Philosophy~~
~~The Board recognizes the need to employ professionals with specialized expertise to serve as expert witnesses on cases.~~

~~Policy Statement~~
~~The Board will maintain a pool of qualified professionals to serve as expert witnesses on cases.~~

~~Purpose~~
~~Expert witnesses provide the technical expertise necessary for the Board to resolve disciplinary cases.~~

~~Conflict of Interest~~
~~An expert witness is prohibited from working on any case where it is determined that he or she has a conflict of interest. Committee members should not be utilized in paid positions (e.g. special consultant or expert witness) ($100 per day per diem excluded).~~

~~Guidelines – Recruitment and Selection of Expert Witnesses~~

- ~~Recruitment and selection of expert witnesses shall be the responsibility of the Chief of Enforcement. The Chief of Enforcement will may consult with appropriate parties (such as the Administrative Committee Chair and Deputy Attorney General) prior to selection.~~

~~Guidelines – Role of the Expert Witness~~

- ~~Expert witnesses serve as technical experts for the Board on a fee for service basis.~~

- ~~Expert witness activities are coordinated by the Chief of Enforcement. The expert witness may take further direction from the Deputy Attorney General.~~

~~Guidelines – Evaluation of Expert Witnesses~~

- ~~—~~
- ~~The Chief of Enforcement shall evaluate the expert witness's performance upon completion of services.~~

~~2.3.3.5~~2.3.3.4 Use of Outside Legal Counsel

~~Philosophy~~
~~The Board employs outside legal counsel to assist with selected investigations, disciplinary actions, and court actions.~~

Policy Statement
~~To~~ The Board may employ outside legal counsel as necessary for complaint investigations and prosecution ~~and to assist the Board from time to time. (Refer to the Board's separate procedures document Procedures for Major Case Investigations for additional discussion relative to the conduct of major case investigations.)~~

~~Purpose~~
~~The use of outside legal counsel will provide the legal resources necessary for the Board to conduct investigations, to prosecute disciplinary actions, and to discharge its duties.~~

Guidelines – Recruitment and Selection of Outside Legal Counsel

- Recruitment of outside legal counsel ~~shall~~ will be the ~~joint~~ responsibility of the Chief of Enforcement with the approval of the Executive Officer~~, Chief of Enforcement, and Administrative Committee Chair~~. Outside legal counsel will be selected from a list of approved firms provided by the Board. Exception to this requirement will require approval from the Board President.

- Interviews shall be conducted by the Executive Officer and the Chief of Enforcement.

- The Executive Officer shall recommend to the Attorney General selection of outside counsel and use of Attorney General resources in the investigation and prosecution of ~~major case program matters~~complex or unique investigations. Final selection decisions shall be the responsibility of the Executive Officer.

- Outside legal counsel serves on a contract for services basis.

- The outside legal counsel is supervised by the Chief of Enforcement who reports to the Executive Officer.

Guidelines – Planning for Time and Cost Estimates of Outside Legal Counsel

- Outside legal counsel shall adhere to the "Guidelines for Professional Services" when planning for time and cost estimates.

Guidelines – Evaluation of Outside Legal Counsel

- The Chief of Enforcement with the approval of the Executive Officer has the authority to discontinue outside legal counsel's services at any time.
- The Chief of Enforcement shall evaluate individual performance of outside legal counsel upon completion of services.

ATTACHMENT A

California State Board of Accountancy

Enforcement Program

Procedures for Major Case Investigations

Revised 8/98

FORWARD

The Enforcement Program Procedures for Major Case Investigations was first adopted by the Board of Accountancy on January 20, 1995. These procedures are updated and revised as required. The revision date appears on the bottom right-hand side of each page.

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A. Identification, Referral and Opening of Major Case

1. Potential major cases may be identified through various sources such as the news media and referrals from other regulatory agencies. Cases may be referred to the Major Case Program by Board members, Administrative Committee members, Board staff, other affiliates of the Board of Accountancy, or other individuals or agencies.

2. Information regarding the case is submitted to the Chief of Enforcement for review. The Chief of Enforcement then notifies the Executive Officer of the referral and forwards the information to an Investigative CPA or to of a Special Consultant to perform a scoping analysis.

3. The Investigative CPA or Special Consultant performs a preliminary analysis of the matter to confirm that it meets the criteria to be opened as a Major Case including:

   - the case involves complex accounting/audit issues; and/or
   - the case resulted in significant consumer harm.

4. a. The Investigative CPA or Special Consultant reports his/her preliminary analysis to the Administrative Committee Vice-Chair and Chief of Enforcement. The Administrative Committee Vice-Chair and Chief of Enforcement discuss the case and together decide whether to authorize opening the case under the Major Case Program.

   b. If the case does not meet the Major Case criteria, or if the Administrative Committee Vice-Chair and Chief of Enforcement do not authorize the opening, the case may be referred to the Enforcement Unit for investigation as a non-major case. If the case is recommended to be closed, the Chief of Enforcement completes a case control sheet to document the reason for recommending closure, reports to the Executive Officer and transfers the file to the Administrative Committee for review.

STAGE ONE

B. Preliminary Analysis and Selection of Consultant

1. Once the case has been opened, the Investigative CPA or Special Consultant makes the necessary contacts to obtain information to gain an overview and evaluate the case.

2. After preliminary analysis the case, the Investigative CPA or Special Consultant reports the observations to the Chief of Enforcement and the Administrative Committee Vice-Chair. The criteria for determining whether to continue with the investigation as a Major Case include:

   - evidence that the case involves complex accounting/audit issues; and/or
   - evidence that the case resulted in significant consumer harm.

a. If the case does not meet the criteria, the Chief of Enforcement, after consultation with the Administrative Committee Vice-Chair either recommends closure or investigation as a non-major case.

b. If the case meets the criteria to continue as a major case investigation, the Chief of Enforcement compares the qualifications of the Consultant pool with the needs of the case to identify a qualified Consultant for the case. The criteria for selection include:

   - experience and expertise of the Consultant;
   - geographic location;
   - availability; and
   - Consultant's absence of conflict of interest related to case.

3. The Chief of Enforcement prepares a request to contract with the Consultant selected and an estimate of resources required. The request and estimate are submitted to the Administrative Committee Vice-Chair for initial review and subsequently to the Executive Officer for final review.

4. The Executive Officer, after discussion with the Chief of Enforcement, approves or disapproves the request.

5. Upon approval, the Chief of Enforcement sends an appointment letter to the Consultant with an estimate of hours required for the investigation and target dates for completion of key tasks.

C. Informal Investigation of Major Case

1. The Consultant or Investigative CPA meets with the Chief of Enforcement to gain an overview of the case and to discuss strategies for the investigation. The investigative strategy will be discussed with and approved by the Chief of Enforcement.

2. The Chief of Enforcement requests assignment of a Deputy Attorney General to work on the case. (A Deputy Attorney General may be brought in during the scoping phase of the investigation if legal counsel is needed.) Generally, one of the Board's Liaison Deputy Attorneys General is selected to serve as the Deputy Attorney General for a Major Case. However, if a conflict of interest or lack of availability prevents a Liaison Deputy Attorney General from serving on the case, another Deputy Attorney General will be requested based on the following criteria:

   - qualifications;
   - geographic location;
   - availability; and
   - Deputy Attorney General's absence of conflict of interest related to case.

3. The Deputy Attorney General may meet with the Special Consultant to provide advice on investigative strategies.

4. The Deputy Attorney General provides advice to the Special Consultant during preparation of the investigative report. The Special Consultant completes the investigative report and submits it to the Deputy Attorney General.

5. The Deputy Attorney General prepares an estimate of the costs to pursue prosecution on the case and distributes copies of the investigative report to the members of the Major Case Advisory Committee (MCAC). Where warranted, additional technical review may be secured from members of the AC.

6. The following individuals generally participate in MCAC meetings:

   - Executive Officer;
   - Chief of Enforcement;
   - Administrative Committee Chair;
   - Administrative Committee Vice-Chair,;
   - Board Member Liaison;
   - Third Administrative Committee member who is selected by the Administrative Committee Chair and Administrative Committee Vice-Chair;
   - Board's Liaison Deputy Attorney General;

D. Selection of a Board Member Liaison for a Major Case

The decision to dedicate resources to pursue prosecution on a major case is made by the Board's Executive Officer.

1. If, at the closure of the informal investigation and just prior to the beginning of Stage 2 of the investigation, a case appears to have evidence of violations, the Chief of Enforcement notifies the Executive Officer of the need for a Board Member Liaison for the major case. (However, the Chief may notify the Executive Officer of the need for a liaison earlier in the investigation if the case is of a particularly sensitive nature.)

2. At the request of the Executive Officer, the Board President selects the liaison.

3. The criteria for selection of a Board Member Liaison to a major case include:

   - availability of the Board member;
   - Board member's absence of conflict of interest related to the case; and
   - knowledge of the Board's enforcement policies and guidelines.

   Upon assignment to a major case, the liaison will be briefed on the status of the case and its primary issues by the Chief of Enforcement. The liaison will also be invited to participate in future Major Case Advisory Committee deliberations on the case.

E. Role and Responsibilities of the Major Case Liaison

The function of the Board Member Liaison to a major case is to provide advisory consultation to the Executive Officer and the Major Case Advisory Committee. The liaison must be knowledgeable of Board policies, in particular, enforcement policies and guidelines.

The liaison will not participate in the investigation of a major case itself. Rather, the liaison will participate in MCAC meetings, when appropriate, to review the progress of the case and provide assurance that Board policies are being followed and that the case is being handled efficiently and cost effectively.

If the liaison determines that there is a problem with the way a major case is being handled, the liaison should so advise the Executive Officer. If the liaison's concerns are not resolved, he or she should discuss the issues with the Board's Departmental counsel. In those extreme situations where counsel believes the differences of opinion between the EO, MCAC, and Board liaison are significant or will place the Board at risk, the issues should be discussed with the Board President.

The liaison must conduct his or her own behavior to avoid any conflict of interest or the appearance of any lack of impartiality. The liaison should contact the Board's Departmental counsel, who acts as steward for the appropriate behavior of all members of the MCAC, to immediately resolve any potential conflict of interest with himself or herself, or any member of the MCAC, and the case.

The Board Member Liaison will not discuss a major case with other Board members, except as specifically noted above. The liaison should excuse himself or herself from Board deliberations, except as approved by the parties involved in matters of stipulation, on any disciplinary matter in which he or she acted as liaison. Further, the liaison may not vote on the case to which he or she was assigned.

F. Decision to Prosecute or Close the Case

1. The Chief of Enforcement schedules meetings of the MCAC as necessary to consider the status of major case program matters.

2. The MCAC meets to discuss both the merits and estimated costs of the case.

3. The recommendations from the MCAC are reported to the Administrative Committee by the Administrative Committee Vice-Chair. If the Administrative Committee members do not concur with the recommendation of the MCAC, their concerns are presented to the MCAC members for further consideration. The Executive Officer makes the final decision as to whether to close the case, conduct additional investigation or pursue prosecution.

STAGE TWO

G. Selection of Outside Counsel *(if necessary)*

1. The Chief of Enforcement will maintain information on law firms interested in and qualified to serve as Outside Counsel.

2. The Executive Officer selects a law firm to recommend for the case and forwards the law firm's proposal to the assigned Deputy Attorney General.

3. Outside counsel, Board Liaison, Deputy Attorney General, Administrative Committee Members, staff, consultants, etc., are prohibited from working on any case where it is determined that he or she has a conflict of interest.

4. The Deputy Attorney General assigned to the case submits a request for authorization to use Outside Counsel and the law firm's proposal to the Attorney General.

5. The Executive Officer submits the selected law firm's proposal to the Department of Consumer Affairs and the Department of General Services for contract preparation and processing. Copies of the approved contract are forwarded to the Board Office and the law firm.

H. Stage Two Investigation

1. Stage Two investigations will be directed by the Chief of Enforcement. If outside counsel has been engaged, they will be supervised by the Chief of Enforcement.

2. Beginning with this stage of the investigation, requests by the licensee(s) to resolve issues through mediation may be considered.

3. At the conclusion of the Stage Two investigation, the MCAC will convene to review findings and recommend closure, additional review or filing of an accusation.

4. The recommendations from the MCAC are reported to the Administrative Committee by the Administrative Committee Vice-Chair. If the Administrative Committee members do not concur with the recommendations of the MCAC, their concerns are presented to the MCAC members for further consideration. The Executive Officer makes the final decision as to whether to close the case, conduct additional investigation or pursue prosecution.

I. Preparing the Accusation

1. The Chief of Enforcement leads the proceedings of the case in developing the accusation. If outside counsel has been engaged, they will take direction from the Chief of Enforcement during these proceedings. The Deputy Attorney General reports directly to the Chief of Enforcement during the proceedings. The assigned Deputy Attorney General is responsible for regularly communicating to the Chief of Enforcement the status of assigned Major Cases.

3. The Chief of Enforcement is responsible for disseminating key information regarding the status of Stage Two activities to the MCAC members.

4. The MCAC meets (in person or by telephone) to discuss the allegations, whether to draft an accusation or seek settlement before an actual accusation is prepared, and, if prepared, discuss the draft accusation. During this meeting, the MCAC also develops a draft proposal on potential disciplinary measures based on the allegations in the accusation.

5. If the MCAC requests revisions to the accusation, the Deputy Attorney General revises the document accordingly and submits the final accusation document to the Executive Officer.

STAGE THREE

J. Filing, Response to the Accusation, and Board Action

1. The Executive Officer signs the accusation and forwards it to the Attorney General's Office to be served. The Executive Officer provides copies of the accusation to the Board members when filed.

2. The licensee may respond to the accusation by filing a Notice of Defense and requesting settlement. The Board favors settlement of disciplinary matters where possible. Matters which cannot be settled will proceed to administrative hearing.

3. If the licensee does not file a Notice of Defense, the Deputy Attorney General prepares a default decision revoking the license for presentation and adoption by the Board. Enforcement staff carry out the administrative tasks to revoke the license and the case is closed.

K. Settlement Proceedings

1. The licensee may indicate a willingness to pursue settlement on the case prior to issuance of the accusation, or the licensee can file a Notice of Defense requesting settlement after being served with the accusation. The MCAC convenes to establish settlement guidelines for legal counsel to use during negotiations. The guidelines must be clearly stated, but must allow legal counsel the latitude to negotiate within specified parameters. All available settlement vehicles should be considered.

2. The Chief of Enforcement shall assign the Deputy Attorney General and Outside Counsel to discuss settlement with the licensee's attorneys. The Deputy Attorney General is responsible for apprising the Executive Officer and Chief of Enforcement of all settlement discussions.

3. The Chief of Enforcement is responsible for disseminating information regarding the settlement discussions to the MCAC members.

4. The Deputy Attorney General prepares the settlement document and submits it to the Chief of Enforcement for review and consultation with the Executive Officer.

5. The Chief of Enforcement reviews the settlement document and distributes copies to the MCAC members for review and comment.

6. Any changes to the settlement document suggested by MCAC members must be submitted to the Chief of Enforcement within 10 days of receipt of the document.

7. Once the document is approved by the Executive Officer, the Executive Officer presents the document to the Board for a decision on adoption.

8. The Board votes on whether to adopt the settlement as the decision of the Board.

   a. If the Board adopts the settlement, the matter is final and discipline is imposed in accordance with the stipulation. Once final settlement terms have been met, the case is closed.

   b. If the Board rejects the settlement, the matter proceeds to administrative hearing. (Refer to procedures in Section K--Hearing Process.)

L. Hearing Process

1. The Deputy Attorney General requests that the Office of Administrative Hearings set the matter for hearing. The Board office is notified of the hearing date.

2. The Deputy Attorney General and Outside Counsel (if engaged) will represent the Executive Officer at the hearing. The Administrative Law Judge presides over the hearing and renders a proposed decision at the conclusion of the hearing. The Executive Officer is notified of the Administrative Law Judge's proposed decision.

3. The proposed decision is presented to the Board for adoption or non-adoption.

4. The Board votes on whether to adopt the Administrative Law Judge's proposed decision as the decision of the Board.

   a. If the Board adopts the decision, it becomes the final order of the Board. Discipline is imposed in accordance with the order unless stayed by the court.

   b. If the Board does not adopt the decision, it may return the matter to the Administrative Law Judge for further hearing or elect to decide the matter itself on the basis of administrative record.

   c. If the Board elects to decide the matter itself, the Executive Officer requests written briefings from the Deputy Attorney General and licensee regarding the

case. When transcripts and briefings are received, the Executive Officer presents the documents to the Board. The Board reviews the documents and issues a final decision on the case. The Board may hire separate outside counsel to advise Board members relative to the case being reviewed. Enforcement staff carry out the administrative tasks related to the decision and the case is closed. (Note: discipline implementation may be deferred or modified by action of the Superior Court.)

2.3.3.3: Use of Investigative Consultants

ATTACHMENT 7

Policy Statement
The Board will maintain a pool of qualified licensees to serve as investigative consultants.

Conflict of Interest
An investigative consultant is prohibited from working on any case where it is determined that he or she has a conflict of interest. Committee members should not be utilized in paid positions (e.g. Investigative Consultant or Expert Witness) ($100 per day per diem excluded).

Guidelines – Recruitment and Selection of Investigative Consultants

- Recruitment of investigative consultants with the requisite experience and skills is the responsibility of the Chief of Enforcement in consultation with the Administrative Committee Chair and Vice Chair, and with the approval of the Executive Officer.

Guidelines – Role of Investigative Consultant

- Investigative consultants serve as technical experts for the Board in complex or unique investigations. Investigative consultants may serve on a fee-for-service basis or as part-time employees of the Board.

- Responsibilities assigned to investigative consultants may include performing evaluations, making conclusions, preparing reports, and/or testifying as to any violations found during the investigation of complaints filed against licensees for alleged violations of the Accountancy Act.

- Investigative consultants report to the Chief of Enforcement but may also take direction from the Deputy Attorney General.

Guidelines – Evaluation of Consultants

- The Chief of Enforcement will evaluate individual consultant performance from time to time and/or upon completion of each case and report the evaluation to the Executive Officer.

- The Chief of Enforcement with the approval of the Executive Officer has the authority to discontinue an investigative consultant's services at any time.

2.3.3.4: Use of Outside Legal Counsel

Policy Statement
The Board may employ outside legal counsel as necessary for complaint investigation and prosecution.

Guidelines – Recruitment and Selection of Outside Legal Counsel

- The use of outside legal counsel is subject to the approval of the Attorney General.
- Recruitment of outside legal counsel will be the responsibility of the Chief of Enforcement with the approval of the Executive Officer.
- Interviews shall be conducted by the Executive Officer and the Chief of Enforcement.
- The Executive Officer shall recommend to the Attorney General selection of outside counsel and use of Attorney General resources in the investigation and prosecution of complex or unique investigations. Final selection decisions shall be the responsibility of the Executive Officer.
- Outside legal counsel serves on a contract for services basis.
- The outside legal counsel is supervised by the Chief of Enforcement who reports to the Executive Officer. The Chief of Enforcement will obtain time and cost estimates from outside counsel and monitor performance to those estimates.

Guidelines – Evaluation of Outside Legal Counsel

- The Chief of Enforcement will evaluate the performance of outside legal counsel upon completion of services
- The Chief of Enforcement with the approval of the Executive Officer has the authority to discontinue outside legal counsel's services at any time.

State of California
Department of Consumer Affairs

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M e m o r a n d u m

EPOC AGENDA ITEM III.
SEPTEMBER 22, 2010

CBA AGENDA ITEM XI.A.4.
SEPTEMBER 22-23, 2010

To : Herschel Elkins, Chair, EPOC
EPOC Members

Date : September 15, 2010

Telephone : (916) 561-1734
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From : Kathy Tejada
Manager, Enforcement Division

Subject : **REVIEW OF MEDIATION GUIDELINES**

Introduction

At the May 12, 2010 EPOC meeting, the EPOC members identified mediation in the enforcement process as one of the issues for review and consideration at a future EPOC meeting.

Background

On July 1, 1997, California Government Code Sections 11420.10, 11420.20, and 11420.30 regarding Alternative Dispute Resolution (ADR) were added to the Administrative Procedure Act (APA). The ADR statutes provide that an agency, with the consent of all parties, may refer a dispute that is subject to an adjudicative proceeding for resolution through mediation, binding arbitration, or non-binding arbitration.

A licensee under investigation is first advised of the ADR process in *The Investigative Process*, an attachment that is included with Enforcement's initial contact letter to the licensee. The ADR specifically describes mediation as an available tool for dispute resolution.

Definitions

Mediation – a voluntary process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. The objective is to help disputing parties reach a mutually acceptable written agreement. Decision making authority rests with the parties.

Arbitration – an adjudicative process in which an arbitrator issues a decision on the merits after a hearing. The arbitrator's decision may be binding or non-binding. In non-binding arbitration, any party may reject the decision, and the parties resume the same status as before arbitration.

ADR in the CBA enforcement process

When ADR was enacted, the CBA considered the concept of using ADR in the enforcement process and determined that mediation could provide a means of resolving cases more efficiently and less expensively. (The CBA did not embrace the implementation of arbitration because this process would take the decision making authority out of the CBA's hands and place it in the hands of the arbitrator.)

Mediation Guidelines

To implement mediation into the CBA enforcement process, the CBA drafted mediation guidelines to formalize that the CBA embraces the use of mediation, when appropriate, to resolve cases efficiently and effectively.

The California Board of Accountancy's *Mediation Guidelines* were adopted on July 17, 1998 and were incorporated by reference in the California Code of Regulations, Title 16, Division 1, Section 98.1, on February 17, 2000.

The CBA has posted on its Web site the *Mediation Guidelines* for easy access and is also available by mail upon request. The topic of mediation is further described in *The Investigative Process*, an attachment included with an initial contact letter to a licensee under investigation. Both the *Mediation Guidelines* and *The Investigative Process* inform the licensee about mediation and how to initiate mediation with a request to the CBA.

Timing of Mediation

The *Mediation Guidelines* does not make any distinction of whether mediation should take place before or after an accusation has been filed; however, mediation is generally not appropriate until after the pre-filing conference where the licensee has had the opportunity to review the charges.

Post-accusation mediation is governed under the Administrative Procedure Act (California Government Code, Title 2, Division 3, Section 11420.10, 11420.20, and 11420.30).

Use of Mediation

To date, the CBA has not utilized formal mediation. Licensees under investigation have not requested mediation and CBA has not initiated mediation out of concern that CBA could be characterized as extorting a settlement, especially if done prior to filing an accusation.

Attachments For your reference, attached are the following:

Attachment 1
CBA Mediation Guidelines.

Attachment 2
California Code of Regulations, Title 16, Division 1, Section 98.1.

Attachment 3
California Government Code, Title 2, Division 3, Section 11415.60.

Attachment 4
California Evidence Code Sections 703.5 and 1126.

Attachment 5
Alternative Dispute Resolution Statutes: California Government Code, Title 2, Division 3, Sections 11420.10, 11420.20, and 11420.30.

Attachment 6
Office of Administrative Hearings Alternative Dispute Resolution Regulations: California Code of Regulations, Title 1, Division 2, Chapter 3, Sections 1206 and 1212 to 1230.

Attachment 7
The Investigative Process.

Attachment 8
Excerpt regarding Mediation from the *Enforcement Policy Manual.*

KT:mls

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Mediation Guidelines

(Adopted by the California Board of Accountancy July 17, 1998)

PREAMBLE

The California Board of Accountancy, through its Enforcement Division, investigates matters involving the conduct of Certified Public Accountants and Public Accountants in connection with alleged violations of the California Accountancy Act. It is the Board's objective, in carrying out its mission of public protection, to continuously improve the enforcement process to ensure prompt investigation and appropriate resolution of these matters.

The Board has embraced and employed alternative dispute resolution as one means of resolving its enforcement cases when appropriate. The Board has determined that alternative dispute resolution in the form of mediation is an additional effective tool in the enforcement process. The Board strongly endorses the use of mediation when appropriate in the enforcement process.

Mediation proceedings could result in a variety of outcomes or recommendations, including case closure; narrowing of issues through stipulation of facts; termination of the mediation without agreement; or proposed stipulated settlement. Mediation will not result in a report of findings from the mediator.

Further, mediation will not result in the imposition by the mediator of binding resolution on the parties. Stipulated settlements, and the pleadings upon which they are based, are public documents on file with the Board as provided by law.

Care is necessary in the use of mediation to avoid the perception that Board staff or counsel may be attempting to force a particular outcome or result. Similarly, the perception of favoritism or of the exclusively private settlement of public issues must be avoided. Educational materials outlining the Board's processes will be augmented to provide information on the mediation process. These materials are routinely provided to licensees at various stages of an investigation.

ATTACHMENT 1

MEDIATION

Mediation is a voluntary process whereby the Board and a licensee of the Board can attempt to resolve a dispute with the assistance of a neutral facilitator. This process is available to the Executive Officer to expedite the resolution of enforcement cases and consistent with the public interest, will be used in his or her sound discretion.

USE OF MEDIATION

Mediation may be utilized in situations where it would appear the issues in an enforcement matter could be resolved quickly, efficiently, and/or less expensively by the use of mediation. The decision to employ mediation, the timing of its initiation, and determination to discontinue mediation are in the sound discretion of the Executive Officer.

Mediation is generally not appropriate prior to a pre-filing conference. The Executive Officer shall consult with legal counsel in evaluating whether to exercise his or her discretion to use mediation in a particular case. Mediation is not appropriate if its use would jeopardize the public interest or only serve to delay the matter.

INITIATION OF MEDIATION

The request for mediation should generally come from the licensee, particularly if a pleading is not on file; however, mediation is not a right of the licensee. Mediation will be employed only in the sound discretion of the Executive Officer, and the Executive Officer shall determine the appropriate point in the enforcement process to employ mediation.

QUALIFICATIONS AND SELECTION OF MEDIATOR

The parties shall agree upon the choice of the mediator. The mediator shall adhere to the accepted standards of integrity, impartiality, and professional competence required of mediators.

The Office of Administrative Hearings (OAH) is the only agency through which the Board may contract with a mediator. OAH has a panel of administrative law judges and pro tem judges trained and available as mediators. Unless otherwise agreed by the parties, OAH will provide, upon request, a list of qualified mediators and their respective experience and qualifications. If the parties mutually agree upon a mediator from a source other than the OAH list, a copy of the resume of the agreed-upon mediator shall be forwarded to OAH for its consideration as an addition to the pool of OAH mediators.

The most critical desired skill is that of a proven facilitator. Although OAH has mediators available and experienced in complex business issues, such experience is not necessarily required for successful mediation.

COST OF MEDIATION

Compensation of the mediator and any other associated costs shall be shared equally by the licensee(s) and the Board; however, the Board may assume a proportionately larger responsibility for the costs of mediation when the Executive Officer determines that mediation is in the best interest of the parties and the licensee demonstrates, to the Executive Officer's satisfaction, financial hardship and an inability to share in or contribute to the costs. An agreement regarding compensation and costs shall be reached between the mediator, the licensee(s), and the Executive Officer or Board designee prior to the commencement of mediation and shall be memorialized in writing.

DATE, TIME, AND PLACE OF MEDIATION

In consultation with the licensee(s) and the Executive Officer, the mediator shall fix the date, time, and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the mediator. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by stipulation of the parties. In the event the matter is an adjudicative proceeding subject to the provisions of the Administrative Procedure Act, any agreements affecting timelines are subject to review and approval of the Office of Administrative Hearings or the Administrative Law Judge assigned the case.

ATTENDANCE AT MEDIATION

All involved parties shall attend the mediation session(s), which shall be non-public. A party other than a natural person (e.g., a corporate or governmental entity or association) satisfies this attendance requirement by designating and sending a representative familiar with the facts of the case, who can effectively represent the licensee(s), negotiate and exercise decision-making authority on their behalf, and bind them to an outcome to be proposed to the Board for its consideration.

The Board shall be represented by the Executive Officer or Board designee who has the authority to negotiate a stipulated settlement consistent with the Board's Disciplinary Guidelines. The Executive Officer or Board designee shall be empowered to effectively recommend settlement of the matter to the Board, consistent with the provisions of Government Code Section 11415.60.

Any party to the mediation may have the assistance of an attorney or other representative at the cost of that party. Other persons may attend only with the

permission of the licensee(s) and the Executive Officer or Board designee and with the consent of the mediator.

MEDIATION STATEMENTS

The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The licensee(s) and the Board Executive Officer or Board designee should expect that the mediator will request a pre-mediation statement outlining facts, issues, and perspectives in advance of the mediation session. At a time established by the mediator, such statements shall be exchanged by the licensee and the Executive Officer or Board designee unless they agree otherwise. Likewise, other information may be exchanged upon the agreement of the parties.

AUTHORITY OF MEDIATOR

The mediator is authorized to conduct joint and separate meetings with the licensee(s) and the Executive Officer or Board designee and to make oral recommendations for resolution. The mediator does not have the authority to impose any orders or resolutions on the parties. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the licensee(s) and the Executive Officer or Board designee agree and assume the expense of obtaining such advice.

AGREEMENTS

Mediators shall not issue a report of findings. If mediation concludes with a written proposed stipulated settlement signed by the parties, the Board shall review and either approve or disapprove the proposed settlement. In accordance with Government Code Section 11415.60(b), a settlement may not be made before issuance of the agency pleading. The Board's decision approving a settlement, and the settlement, shall be publicly filed. Any proposed stipulated settlement resulting from a mediation proceeding shall be binding upon the licensee(s) thereto; and the Executive Officer or Board designee shall be bound to present the proposal to the Board unless a material change in facts or law unknown to the Executive Officer or Board designee at the time of the agreement subsequently becomes known prior to Board action on the proposal.

TERMINATION OF MEDIATION

Mediation is an entirely voluntary process. The Executive Officer, the licensee(s), or the mediator may terminate the mediation process at any time. The Executive Officer shall continually evaluate the decision to use mediation as it relates to consistency with the public interest.

If the Executive Officer, the licensee(s), or the mediator terminates the mediation, or if mediation ends without a resolution of the matter, the parties shall proceed as if mediation had not taken place.

CONFIDENTIALITY

Confidentiality shall be governed by Government Code Section 11420.30, and Evidence Code Sections 703.5 and 1126.

Mediation shall be confidential. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to the Board or any other regulatory authority, documentary or other information that the Board or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

The requirements that Board pleadings and decisions, including stipulated settlements related thereto, be publicly filed with the Board are not affected by this provision.

CALIFORNIA CODE OF REGULATIONS
TITLE 16. Professional and Vocational Regulations
DIVISION 1. Board of Accountancy Regulations

ARTICLE 13. DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATES, PERMITS, OR LICENSES

(Sections 98 - 99.1)

98. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (6th edition, 2005) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating facts; the age of the case; evidentiary problems.

NOTE: Authority cited: Sections 5010, 5018 and 5116, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 5018, 5100 and 5116-5116.6, Business and Professions Code; and Section 11425.50(e), Government Code.

HISTORY:
1. New section filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).
2. Amendment of section and NOTE filed 5-3-2001; operative 7-1-2001 (Register 2001, No. 18).
3. Amendment filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).
4. Amendment of section and Note filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

98.1 Mediation Guidelines.

The guidelines, entitled "California Board of Accountancy Mediation Guidelines" (July 17, 1998), which are hereby incorporated by reference, constitute the Board's guidelines for determining whether an enforcement matter under Article 6 of the Accountancy Act is appropriate for referral to mediation and for the procedures and the form of the mediation process.

ATTACHMENT 2

§ 11415.50. Procedure for decision for which adjudicative proceeding not required

(a) An agency may provide any appropriate procedure for a decision for which an adjudicative proceeding is not required.

(b) An adjudicative proceeding is not required for informal factfinding or an informal investigatory hearing, or a decision to initiate or not to initiate an investigation, prosecution, or other proceeding before the agency, another agency, or a court, whether in response to an application for an agency decision or otherwise.

HISTORY:
Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

LAW REVISION COMMISSION COMMENTS:
(1995) Subdivision (a) of Section 11415.50 is subject to statutory specification of the applicable procedure for decisions not governed by this chapter. See Section 11415.20 (conflicting or inconsistent statute controls).

Subdivision (b) is drawn in part from 1981 Model State APA 4-101(a). The provision lists situations in which an agency may issue a decision without first conducting an adjudicative proceeding. For example, a law enforcement officer may, without first conducting an adjudicative proceeding, issue a "ticket" that will lead to a proceeding before an agency or court. Likewise, an agency may commence an adjudicative proceeding without first conducting a proceeding to decide whether to issue the pleading. Nothing in this subdivision implies that this chapter applies in a proceeding in which a hearing is not statutorily or constitutionally required. Section 11410.10 (application to constitutionally and statutorily required hearings).

Nothing in this section excuses compliance with this chapter in an agency decision for which an evidentiary hearing may be statutorily or constitutionally required. See Section 11410.10 (application to constitutionally and statutorily required hearings). A hearing may be statutorily or constitutionally required for a decision that an occupational license should be granted, revoked, suspended, limited, or conditioned. See, e.g., Bus. & Prof. Code §§ 485 (denial of license), 2555 (suspension, revocation, or probation of medical license); Suckow v. Alderson, 182 Cal. 247, 187 P. 965 (1920) (occupational license a vested property right that cannot be impaired without affording licensee an opportunity for a hearing).

§ 11415.60. Decision by settlement

(a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.

(b) A settlement may be made before or after issuance of an agency pleading, except that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

(c) A settlement is subject to any necessary agency approval. An agency head may delegate the power to approve a settlement. The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.

HISTORY:
Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997. Amended Stats 1996 ch 390 § 7 (SB 794), effective August 19, 1996, operative July 1, 1997.

LAW REVISION COMMISSION COMMENTS:
(1995) Subdivision (a) of Section 11415.60 codifies the rule in Rich Vision Centers, Inc. v. Board of Medical Examiners, 144 Cal. App. 3d 110, 192 Cal. Rptr. 455 (1983).

Subdivision (a) is analogous to Section 11420.30 (confidentiality of communications in alternative dispute resolution). The parties are, of course, free to make a stipulation concerning confidentiality of offers of compromise or settlement that goes beyond or otherwise varies the protection of this section.

Section 11415.60 is subject to a specific statute to the contrary governing the matter. Section 11415.20 (conflicting or inconsistent statute controls). Subdivision (c) recognizes that some other statutes provide for agency approval of a settlement. See, e.g., Govt Code § 18681

ATTACHMENT 3

(authority of State Personnel Board to approve settlements), Lab. Code § 98.2(d) (approval in labor standards enforcement), 5001 (approval of workers' compensation settlement), Pub. Res. Code § 6107 (approval by Governor of settlement by State Lands Commission), Rev. & Tax. Code §§ 7093.5, 9271, 19442, 30459.1, 32471, 40211, 41171, 43522, 45867, 50156.11, 55332 (approval of tax settlements).

(1996) Section 11415.60 is amended to protect conduct and statements made in settlement negotiations from admissibility, parallel to the protection provided in Section 1152 of the Evidence Code. This provision supplements the existing protection from admissibility of evidence of an offer of compromise or settlement (as opposed to evidence of conduct or statements made in settlement negotiations).

CALIFORNIA EVIDENCE CODE

703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

1126. Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

ATTACHMENT 4

Alternative Dispute Resolution Authorizing Statutes

Government Code, Title 2, Division 3, Part 1, Article 5

§ 11420.10. Mediation or arbitration

(a) An agency, with the consent of all the parties, may refer a dispute that is the subject of an adjudicative proceeding for resolution by any of the following means:
(1) Mediation by a neutral mediator.
(2) Binding arbitration by a neutral arbitrator. An award in a binding arbitration is subject to judicial review in the manner provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.
(3) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after the arbitrator delivers the award to the agency head a party requests that the agency conduct a de novo adjudicative proceeding. If the decision in the de novo proceeding is not more favorable to the party electing the de novo proceeding, the party shall pay the costs and fees specified in Section 1141.21 of the Code of Civil Procedure insofar as applicable in the adjudicative proceeding.
(b) If another statute requires mediation or arbitration in an adjudicative proceeding, that statute prevails over this section.
(c) This section does not apply in an adjudicative proceeding to the extent an agency by regulation provides that this section is not applicable in a proceeding of the agency.

HISTORY:
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.
Law Revision Commission Comments:
1995_The introductory portion of subdivision (a) of § 11420.10 makes clear that alternative dispute resolution is not mandatory, but may only be used if all parties consent. The relative cost of alternative dispute resolution is a factor an agency should consider in determining whether to refer a dispute for alternative resolution proceedings.
Under subdivision (a)(1), the mediator may use any mediation technique.
Subdivision (a)(2) authorizes delegation of the agency's authority to decide, with the consent of all parties.
Subdivision (a)(3) parallels the procedure applicable in judicial arbitration. See Code Civ. Proc. 1141.20-1141.21. The costs and fees specified in § 1141.21 for a civil proceeding may not all be applicable in an adjudicative proceeding, but subdivision (a)(3) requires such costs and fees to be assessed to the extent they are applicable. Subdivision (b) recognizes that some statutes require alternative dispute resolution techniques.
If there is no statute requiring the agency to use mediation or arbitration, this section applies unless the agency makes it inapplicable by regulation under subdivision (c).

§ 11420.20. Model regulations for alternative dispute resolution

(a) The Office of Administrative Hearings shall adopt and promulgate model regulations for alternative dispute resolution under this article. The model regulations govern alternative dispute resolution by an agency under this article,

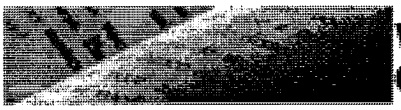
except to the extent the agency by regulation provides inconsistent rules or provides that the model regulations are not applicable in a proceeding of the agency.
(b) The model regulations shall include provisions for selection and compensation of a mediator or arbitrator, qualifications of a mediator or arbitrator, and confidentiality of the mediation or arbitration proceeding.

HISTORY:
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.
Law Revision Commission Comments:
1995_Section 11420.20 provides for regulations to govern the detail of alternative dispute resolution proceedings. In addition to the matters listed in subdivision (b), the regulations may address other issues such as cost allocation, discovery, and enforcement and review of alternative dispute resolutions.
This section does not require each agency to adopt regulations. The model regulations developed by the Office of Administrative Hearings will automatically govern mediation or arbitration for an agency, unless the agency provides otherwise. The agency may choose to preclude mediation or arbitration altogether. Section 11420.10 (ADR authorized).
The Office of Administrative Hearings could maintain a roster of neutral mediators and arbitrators who are available for alternative dispute settlement in all administrative agencies.

§ 11420.30. Protection of communications

Notwithstanding any other provision of law, a communication made in alternative dispute resolution under this article is protected to the following extent:
(a) Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation under this article is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subdivision does not limit the admissibility of evidence if all parties to the proceedings consent.
(b) No reference to nonbinding arbitration proceedings, a decision of the arbitrator that is rejected by a party's request for a de novo adjudicative proceeding, the evidence produced, or any other aspect of the arbitration may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.
(c) No mediator or arbitrator is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the alternative dispute resolution.
(d) Evidence otherwise admissible outside of alternative dispute resolution under this article is not inadmissible or protected from disclosure solely by reason of its introduction or use in alternative dispute resolution under this article.

HISTORY:
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.
Law Revision Commission Comments:
1995_The policy of Section 11420.30 is not to restrict access to information but to encourage dispute resolution.
Subdivision (a) is analogous to Evidence Code Section 1152.5(a) (mediation). Subdivision (b) is drawn from Code of Civil Procedure Section 1141.25 (arbitration) and California Rules of Court 1616(c) (arbitration). Subdivision (b) protects confidentiality of a proposed decision in nonbinding arbitration that is rejected by a party; it does not protect a decision accepted by the parties in a nonbinding arbitration, nor does it protect an award in a binding arbitration. See also Section 11425.20 (open hearings).
Subdivision (c) is drawn from Evidence Code Section 703.5.
Subdivision (d) is drawn from Evidence Code Section 1152.5(a)(6).



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1 CA ADC § 1206
§ 1206. Referral to ADR.

Term
1 CCR § 1206

Cal. Admin. Code tit. 1, § 1206

Barclays Official California Code of Regulations Currentness
Title 1. General Provisions
Division 2. Office of Administrative Hearings
Chapter 3. Agency Alternatives to Formal Hearings -Alternative Dispute Resolution
Article 1. General Provisions
§ 1206. Referral to ADR.

(a) Request by Party Other Than Agency. Any party, other than the Agency, interested in resolving a dispute may request ADR by applying to an Agency's Executive Officer, Director, or Agency designee. The application shall contain:

(1) an election to mediate, to arbitrate, or to use either or both procedures; and

(2) the names, addresses, telephone and fax numbers or other appropriate electronic communication addresses or numbers of all parties to the dispute and those who represent them, if known.

Filing an application constitutes consent to Agency referral of the dispute to ADR. Filing an application shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to the dispute, except as provided below.

(b) Request by Agency. Any Agency may refer a matter to ADR with the written consent of each party to the dispute.

(c) Agency Review of Application. Within ten working days of the receipt of an application from a party requesting ADR, the Executive Officer, Director, or designee of the Agency shall review the application to determine if the dispute is suitable for ADR. If it is determined that the dispute is suitable for ADR, the Agency shall notify each party and shall file a request for ADR with the OAH. If the Agency determines that the dispute is not suitable for ADR, the Agency shall notify each party.

(d) Lack of Consent Not Reported. A lack of consent by any party or party's representative to one or more ADR processes shall not be reported to any judge, hearing officer or presiding officer to whom the matter is assigned.

(e) Filing with the OAH. The OAH may establish filing fees or other necessary fees to cover administrative costs. The filing of a request for ADR with the OAH shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to a dispute unless each party agrees otherwise in writing.

Note: Authority cited: Section 11420.20, Government Code. Reference: Sections 11420.10, 11420.20 and 11420.30, Government Code.

HISTORY

ATTACHMENT 6

1. New section filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).

1 CCR § 1206, **1 CA ADC § 1206**

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§ 1212. Mediation; Definition

Mediation refers to a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

§ 1214. Initiation of Mediation

Any party to a dispute may initiate mediation by filing a request for mediation as specified in Section 1206.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

§ 1216. Appointment of Mediator

The parties may agree on a mediator to assist them in the resolution of their dispute. On occasion, parties may not be able to agree on a mediator. In such a situation, each party may select 5 names either from the résumés on file with the OAH or from another source. If a mediator is chosen from another source, the party selecting that mediator shall provide OAH with a résumé of that mediator. Of the names submitted to the OAH by the parties, a complete list shall be compiled and sent to the parties by the OAH. Each party may strike 3 names and return the list to the OAH within 10 calendar days. If the OAH has not received notice within this period to strike names, the OAH will assume that all names are equally acceptable. On the next working day after the 10-day period, or as soon thereafter as is practicable, the OAH will choose a mediator at random from the remaining list of names. The OAH will then notify the chosen mediator and the parties of the mediator's selection. The chosen mediator shall be sent an acceptance form to sign and return, in which the mediator must agree to abide by the applicable statutes and regulations, as described in Regulation section 1208. The acceptance form shall also state that the mediator foresees no difficulty in completing the mediation according to the schedule set out in these regulations. If, at any time before the end of the 10-day period, the parties agree on a mediator and notify the OAH in writing, that agreed-upon mediator shall be appointed.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1218. Cost of Mediation

Compensation of the mediator and any other associated costs shall be the responsibility of the parties to the mediation. An agreement regarding compensation and costs shall be reached between the mediator and the parties before the mediation is commenced and shall be memorialized in writing.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1220. Date, Time and Place of Mediation

In consultation with the parties, the mediator shall fix the date, time and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the mediator. Mediation shall be completed within 60 days of the appointment of the mediator. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by stipulation of the parties.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1222. Attendance at Mediation

All involved parties shall attend the mediation session(s). A party other than a natural person (*e.g.*, a corporate or governmental entity or association) satisfies this attendance requirement by sending a representative familiar with the facts of the case, and that person shall have authority to negotiate and to effectively recommend settlement to the governmental or corporate entity involved. Any party to the mediation may have the assistance of an attorney or other representative. Other persons may attend only with the permission of all parties and with the consent of the mediator.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1224. Statements Before Mediation

The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The parties should expect that the mediator will request a premediation statement outlining facts, issues, and perspectives in advance of the mediation session. At the discretion of the mediator, such statements or other information may be mutually exchanged by the parties.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1226. Confidentiality

Confidentiality shall be governed by Government Code Section 11420.30, and Evidence Code Sections 703.5, 1152.5, and 1152.6.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 703.5, 1152.5, 1152.6 Evidence Code; Section 11420.30, Government Code.

§ 1228. Agreements

Agreements resolving the mediated dispute shall be written, signed, and dated by the parties or an authorized representative of the party or parties.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1230. Termination of Mediation

Any party or the Neutral may terminate the mediation at any time by written notice to the mediator and other parties. If any party or the Neutral terminates the mediation, or if mediation does not result in resolution, the parties shall resume the same status as before mediation and shall proceed as if mediation had not taken place.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

Article 3. Arbitration

§ 1232. Arbitration; Definition; General Rules

(a) Arbitration under these regulations is an adjudicative process in which an arbitrator or panel of arbitrators issues a decision on the merits after a hearing. Except as set forth herein, arbitrations are governed by the Administrative Procedure Act (commencing with Government Code Section 11370), Part I, Division 3, Title 2 of the Government Code.

(b) Before the arbitration the parties shall agree that the decision by the arbitrator(s) is binding or non-binding upon the parties. If the parties select non-binding arbitration, any party may reject the non-binding decision. If a party

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CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

THE INVESTIGATIVE PROCESS

The California Board of Accountancy (CBA), has prepared this information sheet to assist you in obtaining a general understanding of the CBA's investigative and disciplinary process in typical complaint matters. This document is intended to provide you with general information only and it does not supersede applicable statutes, regulations, or CBA procedures. The process may differ in some respects in your specific case.

By statute the CBA, through its Executive Officer, has the authority to receive and investigate complaints and to initiate and conduct investigations and hearings, with or without the filing of a complaint, and to obtain information and evidence relating to any matter involving the conduct of licensees or alleged violation of the Accountancy Act by licensees (California Business and Professions Code Section 5103).

The CBA and its representatives are committed to treating all licensees fairly, professionally, promptly, and courteously throughout the investigative process. In addition to this information sheet, the CBA staff is available by telephone to answer questions you may have about the investigative process. However, the CBA members, their representatives, and CBA staff cannot provide you with legal advice or act as your legal representative. You should consider consulting legal counsel, at your own expense, to advise you on your rights and to determine whether you would benefit from legal representation.

The CBA's investigative files are confidential under the Public Records Act (California Government Code Section 6254(f)). This means that the information generally is not available to the public. However, there are a variety of circumstances in which all or part of the investigation may become public or be provided to a government agency or a private litigant that has a legitimate interest in obtaining the material. Examples include information subpoenaed by private litigants or obtained through discovery or offered as evidence at a disciplinary hearing. Information also may be disclosed to potential witnesses, experts, attorneys, or others in furtherance of the investigation.

ATTACHMENT 7

CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

PARTICIPANTS IN THE INVESTIGATIVE PROCESS

During an investigation, you may be contacted by one or more of the following persons:

- CBA Enforcement Analyst
- CBA Investigative CPA
- Investigative CPA Consultant
- DCA Division of Investigation Investigator
- Enforcement Advisory Committee Member
- Investigative Hearing Panel Member
- Deputy Attorney General or other CBA Legal Counsel

In most investigations, a CBA Investigative CPA or a CBA Enforcement Analyst will be the first person to contact you. This person generally is investigating a complaint, which has been filed against you or your firm, and is assigned to gather information, evidence, and documents regarding the complaint from all parties involved. The investigator usually will prepare a written report, which is reviewed by the Chief of Enforcement and may be forwarded to the Enforcement Advisory Committee (EAC) for review.

During quarterly meetings of the EAC, members are assigned files to review. The files, which contain the original allegations, correspondence, investigative reports and any evidence gathered, are reviewed by EAC members. The members can make any of the following recommendations:

- Closure of the complaint file.
- Further investigation.
- An investigative hearing be conducted (Discussed on page 3).
- The licensee be required to take prescribed Continuing Professional Education (California Code of Regulations Section 87.5).
- Referral for issuance of citation and fine (California Code of Regulations Section 95).
- Referral to the Attorney General's Office for preparation of an accusation/petition to revoke, or suspend the licensee's license.

CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

INVESTIGATIVE HEARINGS (IH)

The CBA, through its Executive Officer and with the assistance of CBA enforcement staff and the EAC, conducts investigative hearings (IH) (California Business and Professions Code Section 5103). The purpose of these hearings is both to gather evidence and to provide licensees an opportunity to present their position on matters under investigation. The hearings may be recorded by a certified court reporter. In some cases, there may be multiple IHs as necessary to discover the facts.

You may have your attorney in attendance at an IH where you are the witness. The IH can result in any of the recommendations for disposition discussed previously.

The IH panel will generally consist of at least two EAC members, and an Enforcement Analyst, Investigative CPA, or Consultant. Additionally, the Chief of Enforcement, a Deputy Attorney General, the Chair of the EAC, or CBA liaisons may also attend the IH.

ALTERNATIVE DISPUTE RESOLUTION

The CBA has determined alternative dispute resolution in the form of mediation as an additional effective tool in the enforcement process. Mediation is a voluntary process whereby the CBA and a licensee can attempt to resolve a dispute with the assistance of a neutral facilitator.

Mediation may be used in situations where it would appear the issues in an enforcement matter could be resolved quickly, efficiently, and/or less expensively. You may request mediation at any stage of the enforcement process; however, mediation is generally not appropriate prior to a pre-filing conference. Mediation is not a right of the licensee. The use of mediation and the timing of its initiation shall be at the sole discretion of the Executive Officer. The CBA's *Mediation Guidelines* provide detailed information regarding the mediation process.

Although the mediator does not have authority to impose any orders or resolution upon the parties, mediation proceedings could result in a variety of outcomes or recommendations, including:

- Closure of the complaint file.
- Narrowing of the issues through stipulation of facts.
- Termination of the mediation without agreement.
- Proposed stipulated settlement.

CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

THE PRE-ACCUSATION REVIEW/CONFERENCE

Before an accusation is filed, unless public safety requires immediate action, you may be offered an opportunity to review a draft accusation and comment on its factual content. The accusation will be available for review only at a scheduled pre-filing review conference. No copies will be released to you until the actual filing of the accusation.

THE ACCUSATION AND HEARING PROCESS

After notice and hearing, the CBA may revoke, suspend, or otherwise discipline a licensee for unprofessional conduct in violation of the Accountancy Act. Unprofessional conduct (California Business and Professions Code Section 5100) covers a variety of violations including, but not limited to:

- Gross negligence or repeated negligent acts in the practice of public accountancy,
- Criminal conviction for conduct substantially related to the practice of public accountancy,
- Discipline by another state or federal agency,
- Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses, dissemination of false or materially misleading financial statements, breach of fiduciary duty to a client and any violation of any other provision of the Accountancy Act or CBA Regulations.

Formal disciplinary proceedings are initiated by the filing of an accusation, which is served upon the licensee at his address of record on file with the CBA. The licensee has an opportunity to file a notice of defense and to request a hearing on the charges before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings. The licensee has rights similar to those at a civil trial, including the right to subpoena relevant documents and witnesses and to cross-examine witnesses. After hearing the evidence, the ALJ makes a proposed decision in writing, which is forwarded to the CBA for its review. The CBA has several options, including adopting the proposed decision, sending the matter back to the ALJ for further hearing, or deciding the matter itself based on the record. A final decision of the CBA imposing discipline on a licensee is reviewable in the Superior Court by writ of mandate.

BOARD OF ACCOUNTANCY
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SETTLEMENT

Settlement generally is available at all stages of the investigative and disciplinary process. The terms of settlement may change as the matter proceeds through the disciplinary process. You, or your attorney, may contact the Chief of Enforcement to discuss resolution of the complaint at any time before the matter is referred to the Attorney General's Office for representation. When the matter has been referred to the Attorney General's Office, the assigned Deputy Attorney General should be the point of contact. All settlements are subject to approval by the CBA.

Further, in most cases, the CBA is entitled by law to recover the reasonable costs of its investigation and prosecution of a successful disciplinary action (including attorneys' fees) up to the date of trial (California Business and Professions Code Section 5107). The CBA also customarily will require that the licensee pay costs, as part of a stipulated settlement. However, those costs may be lower when settlement occurs early in the disciplinary process. Finally, while early settlement is favored, the CBA will not settle a matter until it is satisfied that it has a full understanding of the facts. A licensee who wishes to dispose of a matter should cooperate fully with investigators so that the facts can be discovered as expeditiously and economically as possible.

2.3.2: ENFORCEMENT GUIDELINES

2.3.2.1: Board Actions Affecting Licensure/License Status

Policy Statement
After providing notice and an opportunity for a hearing, the Board may:

- Discipline a licensee for violation of the Accountancy Act or terms of a disciplinary order;
- Deny licensure to persons who are unqualified or unfit for licensure; and
- Deny admittance to the licensing examination to persons who are unqualified or unfit to take the exam.

Actions are initiated against licensees by the filing of an accusation or petition to revoke probation and against unlicensed persons by the filing of a statement of issues. Proceedings initiated by these filings are governed by the California Administrative Procedure Act, commencing with Government Code Section 11370.

Accusation/Petition to Revoke Probation Disciplinary Action (Licensees)

Authority/Criteria
The authority to file an accusation is contained in California Business and Professions Code, Division 3, Chapter 1, Article 6, Section 5100.

Guidelines
Generally, an ACIH is conducted prior to referral to the Attorney General's Office for disciplinary action. In some cases it may be impractical or unwarranted to conduct an ACIH.

- With or without an ACIH, a draft accusation is prepared and is generally made available for review to the licensee during a pre-accusation filing communication or conference. The licensee then has an opportunity to comment as to the factual accuracy of the document.

Discipline Administered
Default: If the licensee does not file a timely Notice of Defense in response to the accusation, a default decision for license revocation is prepared and proposed to the Board for adoption.

Stipulated Settlement: If the licensee files a timely Notice of Defense, the Deputy Attorney General, under the direction of the Chief of Enforcement, may negotiate a stipulated agreement with the licensee. The Chief of Enforcement shall consult with the Executive Officer during settlement proceedings. The Chief of Enforcement may

also consult with the Chair or members of the Administrative Committee. The proposed stipulated agreement is presented to the Board for adoption as its decision in the case.

Mediation:The licensee may also request to resolve the matter through mediation; however, mediation is not a right of the licensee. The decision to employ mediation is in the sound discretion of the Executive Officer. If mediation concludes with a written proposed stipulated settlement signed by the parties, the stipulated settlement shall be presented to the Board for approval unless a material change in facts or law unknown to the Executive Officer or Board designee at the time of the agreement subsequently becomes known prior to Board action on the proposal.

Administrative Hearing: If the licensee files a timely Notice of Defense requesting a hearing at the Office of Administrative Hearings, the matter is set for hearing under the Administrative Procedure Act. The Investigative CPA provides assistance, including testimony, if necessary at the hearing. At the conclusion of the hearing, a proposed decision prepared by the Administrative Law Judge is presented to the Board for its consideration. The Board may adopt, modify, or non-adopt the proposed decision.

Disciplinary sanctions include probation, suspension, and/or revocation.

Appeal Process
Board decisions may be appealed through mechanisms provided in the Administrative Procedure Act and in the California Code of Civil Procedure. The Board generally loses its authority to execute an Order of Reconsideration on the effective date of the decision. A Petition for Writ of Mandate may be filed in Superior Court by the respondent as provided in California Code of Civil Procedure, Section 1094.5, (generally within 30 days of the effective date of the decision).

Temporary Restraining Order/Interim Suspension Order
In appropriate circumstances, the Executive Officer may seek to accelerate the suspension or revocation of a licensee's practice rights through use of a Temporary Restraining Order (TRO) (California Business and Professions Code, Division 1, Chapter 1, Section 125.8), Interim Suspension Order (ISO) (California Business and Professions Code, Division 1.5, Chapter 3, Section 494), or other legal processes.

Public Information
Filed Accusations and Petitions to Revoke Probation, and the resulting disciplinary decisions of the Board, (including settlement agreements), are public information.

Monitoring Performed
Board orders resulting in probation and/or suspension are monitored by Board staff, including possible follow-up investigation to ensure that the licensee is complying with the order. Other disciplinary terms are monitored in accordance with instructions of the Chief of Enforcement.

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Mediation Guidelines

(Adopted by the California Board of Accountancy July 17, 1998)

PREAMBLE

The California Board of Accountancy, through its Enforcement Division, investigates matters involving the conduct of Certified Public Accountants and Public Accountants in connection with alleged violations of the California Accountancy Act. It is the Board's objective, in carrying out its mission of public protection, to continuously improve the enforcement process to ensure prompt investigation and appropriate resolution of these matters.

The Board has embraced and employed alternative dispute resolution as one means of resolving its enforcement cases when appropriate. The Board has determined that alternative dispute resolution in the form of mediation is an additional effective tool in the enforcement process. The Board strongly endorses the use of mediation when appropriate in the enforcement process.

Mediation proceedings could result in a variety of outcomes or recommendations, including case closure; narrowing of issues through stipulation of facts; termination of the mediation without agreement; or proposed stipulated settlement. Mediation will not result in a report of findings from the mediator.

Further, mediation will not result in the imposition by the mediator of binding resolution on the parties. Stipulated settlements, and the pleadings upon which they are based, are public documents on file with the Board as provided by law.

Care is necessary in the use of mediation to avoid the perception that Board staff or counsel may be attempting to force a particular outcome or result. Similarly, the perception of favoritism or of the exclusively private settlement of public issues must be avoided. Educational materials outlining the Board's processes will be augmented to provide information on the mediation process. These materials are routinely provided to licensees at various stages of an investigation.

ATTACHMENT 1

MEDIATION

Mediation is a voluntary process whereby the Board and a licensee of the Board can attempt to resolve a dispute with the assistance of a neutral facilitator. This process is available to the Executive Officer to expedite the resolution of enforcement cases and consistent with the public interest, will be used in his or her sound discretion.

USE OF MEDIATION

Mediation may be utilized in situations where it would appear the issues in an enforcement matter could be resolved quickly, efficiently, and/or less expensively by the use of mediation. The decision to employ mediation, the timing of its initiation, and determination to discontinue mediation are in the sound discretion of the Executive Officer.

Mediation is generally not appropriate prior to a pre-filing conference. The Executive Officer shall consult with legal counsel in evaluating whether to exercise his or her discretion to use mediation in a particular case. Mediation is not appropriate if its use would jeopardize the public interest or only serve to delay the matter.

INITIATION OF MEDIATION

The request for mediation should generally come from the licensee, particularly if a pleading is not on file; however, mediation is not a right of the licensee. Mediation will be employed only in the sound discretion of the Executive Officer, and the Executive Officer shall determine the appropriate point in the enforcement process to employ mediation.

QUALIFICATIONS AND SELECTION OF MEDIATOR

The parties shall agree upon the choice of the mediator. The mediator shall adhere to the accepted standards of integrity, impartiality, and professional competence required of mediators.

The Office of Administrative Hearings (OAH) is the only agency through which the Board may contract with a mediator. OAH has a panel of administrative law judges and pro tem judges trained and available as mediators. Unless otherwise agreed by the parties, OAH will provide, upon request, a list of qualified mediators and their respective experience and qualifications. If the parties mutually agree upon a mediator from a source other than the OAH list, a copy of the resume of the agreed-upon mediator shall be forwarded to OAH for its consideration as an addition to the pool of OAH mediators.

The most critical desired skill is that of a proven facilitator. Although OAH has mediators available and experienced in complex business issues, such experience is not necessarily required for successful mediation.

COST OF MEDIATION

Compensation of the mediator and any other associated costs shall be shared equally by the licensee(s) and the Board; however, the Board may assume a proportionately larger responsibility for the costs of mediation when the Executive Officer determines that mediation is in the best interest of the parties and the licensee demonstrates, to the Executive Officer's satisfaction, financial hardship and an inability to share in or contribute to the costs. An agreement regarding compensation and costs shall be reached between the mediator, the licensee(s), and the Executive Officer or Board designee prior to the commencement of mediation and shall be memorialized in writing.

DATE, TIME, AND PLACE OF MEDIATION

In consultation with the licensee(s) and the Executive Officer, the mediator shall fix the date, time, and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the mediator. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by stipulation of the parties. In the event the matter is an adjudicative proceeding subject to the provisions of the Administrative Procedure Act, any agreements affecting timelines are subject to review and approval of the Office of Administrative Hearings or the Administrative Law Judge assigned the case.

ATTENDANCE AT MEDIATION

All involved parties shall attend the mediation session(s), which shall be non-public. A party other than a natural person (e.g., a corporate or governmental entity or association) satisfies this attendance requirement by designating and sending a representative familiar with the facts of the case, who can effectively represent the licensee(s), negotiate and exercise decision-making authority on their behalf, and bind them to an outcome to be proposed to the Board for its consideration.

The Board shall be represented by the Executive Officer or Board designee who has the authority to negotiate a stipulated settlement consistent with the Board's Disciplinary Guidelines. The Executive Officer or Board designee shall be empowered to effectively recommend settlement of the matter to the Board, consistent with the provisions of Government Code Section 11415.60.

Any party to the mediation may have the assistance of an attorney or other representative at the cost of that party. Other persons may attend only with the

permission of the licensee(s) and the Executive Officer or Board designee and with the consent of the mediator.

MEDIATION STATEMENTS

The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The licensee(s) and the Board Executive Officer or Board designee should expect that the mediator will request a pre-mediation statement outlining facts, issues, and perspectives in advance of the mediation session. At a time established by the mediator, such statements shall be exchanged by the licensee and the Executive Officer or Board designee unless they agree otherwise. Likewise, other information may be exchanged upon the agreement of the parties.

AUTHORITY OF MEDIATOR

The mediator is authorized to conduct joint and separate meetings with the licensee(s) and the Executive Officer or Board designee and to make oral recommendations for resolution. The mediator does not have the authority to impose any orders or resolutions on the parties. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the licensee(s) and the Executive Officer or Board designee agree and assume the expense of obtaining such advice.

AGREEMENTS

Mediators shall not issue a report of findings. If mediation concludes with a written proposed stipulated settlement signed by the parties, the Board shall review and either approve or disapprove the proposed settlement. In accordance with Government Code Section 11415.60(b), a settlement may not be made before issuance of the agency pleading. The Board's decision approving a settlement, and the settlement, shall be publicly filed. Any proposed stipulated settlement resulting from a mediation proceeding shall be binding upon the licensee(s) thereto; and the Executive Officer or Board designee shall be bound to present the proposal to the Board unless a material change in facts or law unknown to the Executive Officer or Board designee at the time of the agreement subsequently becomes known prior to Board action on the proposal.

TERMINATION OF MEDIATION

Mediation is an entirely voluntary process. The Executive Officer, the licensee(s), or the mediator may terminate the mediation process at any time. The Executive Officer shall continually evaluate the decision to use mediation as it relates to consistency with the public interest.

If the Executive Officer, the licensee(s), or the mediator terminates the mediation, or if mediation ends without a resolution of the matter, the parties shall proceed as if mediation had not taken place.

CONFIDENTIALITY

Confidentiality shall be governed by Government Code Section 11420.30, and Evidence Code Sections 703.5 and 1126.

Mediation shall be confidential. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to the Board or any other regulatory authority, documentary or other information that the Board or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

The requirements that Board pleadings and decisions, including stipulated settlements related thereto, be publicly filed with the Board are not affected by this provision.

CALIFORNIA CODE OF REGULATIONS
TITLE 16. Professional and Vocational Regulations
DIVISION 1. Board of Accountancy Regulations

ARTICLE 13. DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATES, PERMITS, OR LICENSES

(Sections 98 - 99.1)

98. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (6th edition, 2005) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating facts; the age of the case; evidentiary problems.

NOTE: Authority cited: Sections 5010, 5018 and 5116, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 5018, 5100 and 5116-5116.6, Business and Professions Code; and Section 11425.50(e), Government Code.

HISTORY:
1. New section filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).
2. Amendment of section and NOTE filed 5-3-2001; operative 7-1-2001 (Register 2001, No. 18).
3. Amendment filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).
4. Amendment of section and Note filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

98.1 Mediation Guidelines.

The guidelines, entitled "California Board of Accountancy Mediation Guidelines" (July 17, 1998), which are hereby incorporated by reference, constitute the Board's guidelines for determining whether an enforcement matter under Article 6 of the Accountancy Act is appropriate for referral to mediation and for the procedures and the form of the mediation process.

ATTACHMENT 2

§ 11415.50. Procedure for decision for which adjudicative proceeding not required

(a) An agency may provide any appropriate procedure for a decision for which an adjudicative proceeding is not required.

(b) An adjudicative proceeding is not required for informal factfinding or an informal investigatory hearing, or a decision to initiate or not to initiate an investigation, prosecution, or other proceeding before the agency, another agency, or a court, whether in response to an application for an agency decision or otherwise.

HISTORY:
Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

LAW REVISION COMMISSION COMMENTS:
(1995) Subdivision (a) of Section 11415.50 is subject to statutory specification of the applicable procedure for decisions not governed by this chapter. See Section 11415.20 (conflicting or inconsistent statute controls).

Subdivision (b) is drawn in part from 1981 Model State APA 4-101(a). The provision lists situations in which an agency may issue a decision without first conducting an adjudicative proceeding. For example, a law enforcement officer may, without first conducting an adjudicative proceeding, issue a "ticket" that will lead to a proceeding before an agency or court. Likewise, an agency may commence an adjudicative proceeding without first conducting a proceeding to decide whether to issue the pleading. Nothing in this subdivision implies that this chapter applies in a proceeding in which a hearing is not statutorily or constitutionally required. Section 11410.10 (application to constitutionally and statutorily required hearings).

Nothing in this section excuses compliance with this chapter in an agency decision for which an evidentiary hearing may be statutorily or constitutionally required. See Section 11410.10 (application to constitutionally and statutorily required hearings). A hearing may be statutorily or constitutionally required for a decision that an occupational license should be granted, revoked, suspended, limited, or conditioned. See, e.g., Bus. & Prof. Code §§ 485 (denial of license), 2555 (suspension, revocation, or probation of medical license); Suckow v. Alderson, 182 Cal. 247, 187 P. 965 (1920) (occupational license a vested property right that cannot be impaired without affording licensee an opportunity for a hearing).

§ 11415.60. Decision by settlement

(a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.

(b) A settlement may be made before or after issuance of an agency pleading, except that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

(c) A settlement is subject to any necessary agency approval. An agency head may delegate the power to approve a settlement. The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.

HISTORY:
Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997. Amended Stats 1996 ch 390 § 7 (SB 794), effective August 19, 1996, operative July 1, 1997.

LAW REVISION COMMISSION COMMENTS:
(1995) Subdivision (a) of Section 11415.60 codifies the rule in Rich Vision Centers, Inc. v. Board of Medical Examiners, 144 Cal. App. 3d 110, 192 Cal. Rptr. 455 (1983).

Subdivision (a) is analogous to Section 11420.30 (confidentiality of communications in alternative dispute resolution). The parties are, of course, free to make a stipulation concerning confidentiality of offers of compromise or settlement that goes beyond or otherwise varies the protection of this section.

Section 11415.60 is subject to a specific statute to the contrary governing the matter. Section 11415.20 (conflicting or inconsistent statute controls). Subdivision (c) recognizes that some other statutes provide for agency approval of a settlement. See, e.g., Govt Code § 18681

ATTACHMENT 3

(authority of State Personnel Board to approve settlements), Lab. Code § 98.2(d) (approval in labor standards enforcement), 5001 (approval of workers' compensation settlement), Pub. Res. Code § 6107 (approval by Governor of settlement by State Lands Commission), Rev. & Tax. Code §§ 7093.5, 9271, 19442, 30459.1, 32471, 40211, 41171, 43522, 45867, 50156.11, 55332 (approval of tax settlements).

(1996) Section 11415.60 is amended to protect conduct and statements made in settlement negotiations from admissibility, parallel to the protection provided in Section 1152 of the Evidence Code. This provision supplements the existing protection from admissibility of evidence of an offer of compromise or settlement (as opposed to evidence of conduct or statements made in settlement negotiations).

CALIFORNIA EVIDENCE CODE

703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

1126. Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

ATTACHMENT 4

Alternative Dispute Resolution Authorizing Statutes

Government Code, Title 2, Division 3, Part 1, Article 5

§ 11420.10. Mediation or arbitration

(a) An agency, with the consent of all the parties, may refer a dispute that is the subject of an adjudicative proceeding for resolution by any of the following means:
(1) Mediation by a neutral mediator.
(2) Binding arbitration by a neutral arbitrator. An award in a binding arbitration is subject to judicial review in the manner provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.
(3) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after the arbitrator delivers the award to the agency head a party requests that the agency conduct a de novo adjudicative proceeding. If the decision in the de novo proceeding is not more favorable to the party electing the de novo proceeding, the party shall pay the costs and fees specified in Section 1141.21 of the Code of Civil Procedure insofar as applicable in the adjudicative proceeding.
(b) If another statute requires mediation or arbitration in an adjudicative proceeding, that statute prevails over this section.
(c) This section does not apply in an adjudicative proceeding to the extent an agency by regulation provides that this section is not applicable in a proceeding of the agency.

HISTORY:
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.
Law Revision Commission Comments:
1995_The introductory portion of subdivision (a) of § 11420.10 makes clear that alternative dispute resolution is not mandatory, but may only be used if all parties consent. The relative cost of alternative dispute resolution is a factor an agency should consider in determining whether to refer a dispute for alternative resolution proceedings.
Under subdivision (a)(1), the mediator may use any mediation technique.
Subdivision (a)(2) authorizes delegation of the agency's authority to decide, with the consent of all parties.
Subdivision (a)(3) parallels the procedure applicable in judicial arbitration. See Code Civ. Proc. 1141.20-1141.21. The costs and fees specified in § 1141.21 for a civil proceeding may not all be applicable in an adjudicative proceeding, but subdivision (a)(3) requires such costs and fees to be assessed to the extent they are applicable. Subdivision (b) recognizes that some statutes require alternative dispute resolution techniques.
If there is no statute requiring the agency to use mediation or arbitration, this section applies unless the agency makes it inapplicable by regulation under subdivision (c).

§ 11420.20. Model regulations for alternative dispute resolution

(a) The Office of Administrative Hearings shall adopt and promulgate model regulations for alternative dispute resolution under this article. The model regulations govern alternative dispute resolution by an agency under this article,

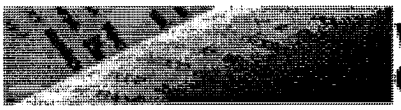
except to the extent the agency by regulation provides inconsistent rules or provides that the model regulations are not applicable in a proceeding of the agency.
(b) The model regulations shall include provisions for selection and compensation of a mediator or arbitrator, qualifications of a mediator or arbitrator, and confidentiality of the mediation or arbitration proceeding.

HISTORY:
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.
Law Revision Commission Comments:
1995_Section 11420.20 provides for regulations to govern the detail of alternative dispute resolution proceedings. In addition to the matters listed in subdivision (b), the regulations may address other issues such as cost allocation, discovery, and enforcement and review of alternative dispute resolutions.
This section does not require each agency to adopt regulations. The model regulations developed by the Office of Administrative Hearings will automatically govern mediation or arbitration for an agency, unless the agency provides otherwise. The agency may choose to preclude mediation or arbitration altogether. Section 11420.10 (ADR authorized).
The Office of Administrative Hearings could maintain a roster of neutral mediators and arbitrators who are available for alternative dispute settlement in all administrative agencies.

§ 11420.30. Protection of communications

Notwithstanding any other provision of law, a communication made in alternative dispute resolution under this article is protected to the following extent:
(a) Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation under this article is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subdivision does not limit the admissibility of evidence if all parties to the proceedings consent.
(b) No reference to nonbinding arbitration proceedings, a decision of the arbitrator that is rejected by a party's request for a de novo adjudicative proceeding, the evidence produced, or any other aspect of the arbitration may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.
(c) No mediator or arbitrator is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the alternative dispute resolution.
(d) Evidence otherwise admissible outside of alternative dispute resolution under this article is not inadmissible or protected from disclosure solely by reason of its introduction or use in alternative dispute resolution under this article.

HISTORY:
Added Stats 1995 ch 938 §21 (SB 523), operative July 1, 1997.
Law Revision Commission Comments:
1995_The policy of Section 11420.30 is not to restrict access to information but to encourage dispute resolution.
Subdivision (a) is analogous to Evidence Code Section 1152.5(a) (mediation). Subdivision (b) is drawn from Code of Civil Procedure Section 1141.25 (arbitration) and California Rules of Court 1616(c) (arbitration). Subdivision (b) protects confidentiality of a proposed decision in nonbinding arbitration that is rejected by a party; it does not protect a decision accepted by the parties in a nonbinding arbitration, nor does it protect an award in a binding arbitration. See also Section 11425.20 (open hearings).
Subdivision (c) is drawn from Evidence Code Section 703.5.
Subdivision (d) is drawn from Evidence Code Section 1152.5(a)(6).



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1 CA ADC § 1206
§ 1206. Referral to ADR.

Term
1 CCR § 1206

Cal. Admin. Code tit. 1, § 1206

Barclays Official California Code of Regulations Currentness
Title 1. General Provisions
Division 2. Office of Administrative Hearings
Chapter 3. Agency Alternatives to Formal Hearings -Alternative Dispute Resolution
Article 1. General Provisions
§ 1206. Referral to ADR.

(a) Request by Party Other Than Agency. Any party, other than the Agency, interested in resolving a dispute may request ADR by applying to an Agency's Executive Officer, Director, or Agency designee. The application shall contain:

(1) an election to mediate, to arbitrate, or to use either or both procedures; and

(2) the names, addresses, telephone and fax numbers or other appropriate electronic communication addresses or numbers of all parties to the dispute and those who represent them, if known.

Filing an application constitutes consent to Agency referral of the dispute to ADR. Filing an application shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to the dispute, except as provided below.

(b) Request by Agency. Any Agency may refer a matter to ADR with the written consent of each party to the dispute.

(c) Agency Review of Application. Within ten working days of the receipt of an application from a party requesting ADR, the Executive Officer, Director, or designee of the Agency shall review the application to determine if the dispute is suitable for ADR. If it is determined that the dispute is suitable for ADR, the Agency shall notify each party and shall file a request for ADR with the OAH. If the Agency determines that the dispute is not suitable for ADR, the Agency shall notify each party.

(d) Lack of Consent Not Reported. A lack of consent by any party or party's representative to one or more ADR processes shall not be reported to any judge, hearing officer or presiding officer to whom the matter is assigned.

(e) Filing with the OAH. The OAH may establish filing fees or other necessary fees to cover administrative costs. The filing of a request for ADR with the OAH shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to a dispute unless each party agrees otherwise in writing.

Note: Authority cited: Section 11420.20, Government Code. Reference: Sections 11420.10, 11420.20 and 11420.30, Government Code.

HISTORY

ATTACHMENT 6

1. New section filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).

1 CCR § 1206, **1 CA ADC § 1206**

This database is current through 8/13/10 Register 2010, No. 33

END OF DOCUMENT

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§ 1212. Mediation; Definition

Mediation refers to a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

§ 1214. Initiation of Mediation

Any party to a dispute may initiate mediation by filing a request for mediation as specified in Section 1206.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

§ 1216. Appointment of Mediator

The parties may agree on a mediator to assist them in the resolution of their dispute. On occasion, parties may not be able to agree on a mediator. In such a situation, each party may select 5 names either from the résumés on file with the OAH or from another source. If a mediator is chosen from another source, the party selecting that mediator shall provide OAH with a résumé of that mediator. Of the names submitted to the OAH by the parties, a complete list shall be compiled and sent to the parties by the OAH. Each party may strike 3 names and return the list to the OAH within 10 calendar days. If the OAH has not received notice within this period to strike names, the OAH will assume that all names are equally acceptable. On the next working day after the 10-day period, or as soon thereafter as is practicable, the OAH will choose a mediator at random from the remaining list of names. The OAH will then notify the chosen mediator and the parties of the mediator's selection. The chosen mediator shall be sent an acceptance form to sign and return, in which the mediator must agree to abide by the applicable statutes and regulations, as described in Regulation section 1208. The acceptance form shall also state that the mediator foresees no difficulty in completing the mediation according to the schedule set out in these regulations. If, at any time before the end of the 10-day period, the parties agree on a mediator and notify the OAH in writing, that agreed-upon mediator shall be appointed.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1218. Cost of Mediation

Compensation of the mediator and any other associated costs shall be the responsibility of the parties to the mediation. An agreement regarding compensation and costs shall be reached between the mediator and the parties before the mediation is commenced and shall be memorialized in writing.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1220. Date, Time and Place of Mediation

In consultation with the parties, the mediator shall fix the date, time and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the mediator. Mediation shall be completed within 60 days of the appointment of the mediator. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by stipulation of the parties.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1222. Attendance at Mediation

All involved parties shall attend the mediation session(s). A party other than a natural person (*e.g.*, a corporate or governmental entity or association) satisfies this attendance requirement by sending a representative familiar with the facts of the case, and that person shall have authority to negotiate and to effectively recommend settlement to the governmental or corporate entity involved. Any party to the mediation may have the assistance of an attorney or other representative. Other persons may attend only with the permission of all parties and with the consent of the mediator.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1224. Statements Before Mediation

The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The parties should expect that the mediator will request a premediation statement outlining facts, issues, and perspectives in advance of the mediation session. At the discretion of the mediator, such statements or other information may be mutually exchanged by the parties.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1226. Confidentiality

Confidentiality shall be governed by Government Code Section 11420.30, and Evidence Code Sections 703.5, 1152.5, and 1152.6.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 703.5, 1152.5, 1152.6 Evidence Code; Section 11420.30, Government Code.

§ 1228. Agreements

Agreements resolving the mediated dispute shall be written, signed, and dated by the parties or an authorized representative of the party or parties.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Section 11420.20, Government Code.

§ 1230. Termination of Mediation

Any party or the Neutral may terminate the mediation at any time by written notice to the mediator and other parties. If any party or the Neutral terminates the mediation, or if mediation does not result in resolution, the parties shall resume the same status as before mediation and shall proceed as if mediation had not taken place.

AUTHORITY: Section 11420.20, Government Code.
REFERENCE: Sections 11420.10 and 11420.20, Government Code.

Article 3. Arbitration

§ 1232. Arbitration; Definition; General Rules

(a) Arbitration under these regulations is an adjudicative process in which an arbitrator or panel of arbitrators issues a decision on the merits after a hearing. Except as set forth herein, arbitrations are governed by the Administrative Procedure Act (commencing with Government Code Section 11370), Part I, Division 3, Title 2 of the Government Code.

(b) Before the arbitration the parties shall agree that the decision by the arbitrator(s) is binding or non-binding upon the parties. If the parties select non-binding arbitration, any party may reject the non-binding decision. If a party

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CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

THE INVESTIGATIVE PROCESS

The California Board of Accountancy (CBA), has prepared this information sheet to assist you in obtaining a general understanding of the CBA's investigative and disciplinary process in typical complaint matters. This document is intended to provide you with general information only and it does not supersede applicable statutes, regulations, or CBA procedures. The process may differ in some respects in your specific case.

By statute the CBA, through its Executive Officer, has the authority to receive and investigate complaints and to initiate and conduct investigations and hearings, with or without the filing of a complaint, and to obtain information and evidence relating to any matter involving the conduct of licensees or alleged violation of the Accountancy Act by licensees (California Business and Professions Code Section 5103).

The CBA and its representatives are committed to treating all licensees fairly, professionally, promptly, and courteously throughout the investigative process. In addition to this information sheet, the CBA staff is available by telephone to answer questions you may have about the investigative process. However, the CBA members, their representatives, and CBA staff cannot provide you with legal advice or act as your legal representative. You should consider consulting legal counsel, at your own expense, to advise you on your rights and to determine whether you would benefit from legal representation.

The CBA's investigative files are confidential under the Public Records Act (California Government Code Section 6254(f)). This means that the information generally is not available to the public. However, there are a variety of circumstances in which all or part of the investigation may become public or be provided to a government agency or a private litigant that has a legitimate interest in obtaining the material. Examples include information subpoenaed by private litigants or obtained through discovery or offered as evidence at a disciplinary hearing. Information also may be disclosed to potential witnesses, experts, attorneys, or others in furtherance of the investigation.

ATTACHMENT 7

CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

PARTICIPANTS IN THE INVESTIGATIVE PROCESS

During an investigation, you may be contacted by one or more of the following persons:

- CBA Enforcement Analyst
- CBA Investigative CPA
- Investigative CPA Consultant
- DCA Division of Investigation Investigator
- Enforcement Advisory Committee Member
- Investigative Hearing Panel Member
- Deputy Attorney General or other CBA Legal Counsel

In most investigations, a CBA Investigative CPA or a CBA Enforcement Analyst will be the first person to contact you. This person generally is investigating a complaint, which has been filed against you or your firm, and is assigned to gather information, evidence, and documents regarding the complaint from all parties involved. The investigator usually will prepare a written report, which is reviewed by the Chief of Enforcement and may be forwarded to the Enforcement Advisory Committee (EAC) for review.

During quarterly meetings of the EAC, members are assigned files to review. The files, which contain the original allegations, correspondence, investigative reports and any evidence gathered, are reviewed by EAC members. The members can make any of the following recommendations:

- Closure of the complaint file.
- Further investigation.
- An investigative hearing be conducted (Discussed on page 3).
- The licensee be required to take prescribed Continuing Professional Education (California Code of Regulations Section 87.5).
- Referral for issuance of citation and fine (California Code of Regulations Section 95).
- Referral to the Attorney General's Office for preparation of an accusation/petition to revoke, or suspend the licensee's license.

CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

INVESTIGATIVE HEARINGS (IH)

The CBA, through its Executive Officer and with the assistance of CBA enforcement staff and the EAC, conducts investigative hearings (IH) (California Business and Professions Code Section 5103). The purpose of these hearings is both to gather evidence and to provide licensees an opportunity to present their position on matters under investigation. The hearings may be recorded by a certified court reporter. In some cases, there may be multiple IHs as necessary to discover the facts.

You may have your attorney in attendance at an IH where you are the witness. The IH can result in any of the recommendations for disposition discussed previously.

The IH panel will generally consist of at least two EAC members, and an Enforcement Analyst, Investigative CPA, or Consultant. Additionally, the Chief of Enforcement, a Deputy Attorney General, the Chair of the EAC, or CBA liaisons may also attend the IH.

ALTERNATIVE DISPUTE RESOLUTION

The CBA has determined alternative dispute resolution in the form of mediation as an additional effective tool in the enforcement process. Mediation is a voluntary process whereby the CBA and a licensee can attempt to resolve a dispute with the assistance of a neutral facilitator.

Mediation may be used in situations where it would appear the issues in an enforcement matter could be resolved quickly, efficiently, and/or less expensively. You may request mediation at any stage of the enforcement process; however, mediation is generally not appropriate prior to a pre-filing conference. Mediation is not a right of the licensee. The use of mediation and the timing of its initiation shall be at the sole discretion of the Executive Officer. The CBA's *Mediation Guidelines* provide detailed information regarding the mediation process.

Although the mediator does not have authority to impose any orders or resolution upon the parties, mediation proceedings could result in a variety of outcomes or recommendations, including:

- Closure of the complaint file.
- Narrowing of the issues through stipulation of facts.
- Termination of the mediation without agreement.
- Proposed stipulated settlement.

CALIFORNIA BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

THE PRE-ACCUSATION REVIEW/CONFERENCE

Before an accusation is filed, unless public safety requires immediate action, you may be offered an opportunity to review a draft accusation and comment on its factual content. The accusation will be available for review only at a scheduled pre-filing review conference. No copies will be released to you until the actual filing of the accusation.

THE ACCUSATION AND HEARING PROCESS

After notice and hearing, the CBA may revoke, suspend, or otherwise discipline a licensee for unprofessional conduct in violation of the Accountancy Act. Unprofessional conduct (California Business and Professions Code Section 5100) covers a variety of violations including, but not limited to:

- Gross negligence or repeated negligent acts in the practice of public accountancy,
- Criminal conviction for conduct substantially related to the practice of public accountancy,
- Discipline by another state or federal agency,
- Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses, dissemination of false or materially misleading financial statements, breach of fiduciary duty to a client and any violation of any other provision of the Accountancy Act or CBA Regulations.

Formal disciplinary proceedings are initiated by the filing of an accusation, which is served upon the licensee at his address of record on file with the CBA. The licensee has an opportunity to file a notice of defense and to request a hearing on the charges before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings. The licensee has rights similar to those at a civil trial, including the right to subpoena relevant documents and witnesses and to cross-examine witnesses. After hearing the evidence, the ALJ makes a proposed decision in writing, which is forwarded to the CBA for its review. The CBA has several options, including adopting the proposed decision, sending the matter back to the ALJ for further hearing, or deciding the matter itself based on the record. A final decision of the CBA imposing discipline on a licensee is reviewable in the Superior Court by writ of mandate.

BOARD OF ACCOUNTANCY
LICENSEE INFORMATION

SETTLEMENT

Settlement generally is available at all stages of the investigative and disciplinary process. The terms of settlement may change as the matter proceeds through the disciplinary process. You, or your attorney, may contact the Chief of Enforcement to discuss resolution of the complaint at any time before the matter is referred to the Attorney General's Office for representation. When the matter has been referred to the Attorney General's Office, the assigned Deputy Attorney General should be the point of contact. All settlements are subject to approval by the CBA.

Further, in most cases, the CBA is entitled by law to recover the reasonable costs of its investigation and prosecution of a successful disciplinary action (including attorneys' fees) up to the date of trial (California Business and Professions Code Section 5107). The CBA also customarily will require that the licensee pay costs, as part of a stipulated settlement. However, those costs may be lower when settlement occurs early in the disciplinary process. Finally, while early settlement is favored, the CBA will not settle a matter until it is satisfied that it has a full understanding of the facts. A licensee who wishes to dispose of a matter should cooperate fully with investigators so that the facts can be discovered as expeditiously and economically as possible.

2.3.2: ENFORCEMENT GUIDELINES

2.3.2.1: Board Actions Affecting Licensure/License Status

Policy Statement
After providing notice and an opportunity for a hearing, the Board may:

- Discipline a licensee for violation of the Accountancy Act or terms of a disciplinary order;
- Deny licensure to persons who are unqualified or unfit for licensure; and
- Deny admittance to the licensing examination to persons who are unqualified or unfit to take the exam.

Actions are initiated against licensees by the filing of an accusation or petition to revoke probation and against unlicensed persons by the filing of a statement of issues. Proceedings initiated by these filings are governed by the California Administrative Procedure Act, commencing with Government Code Section 11370.

Accusation/Petition to Revoke Probation Disciplinary Action (Licensees)

Authority/Criteria
The authority to file an accusation is contained in California Business and Professions Code, Division 3, Chapter 1, Article 6, Section 5100.

Guidelines
Generally, an ACIH is conducted prior to referral to the Attorney General's Office for disciplinary action. In some cases it may be impractical or unwarranted to conduct an ACIH.

- With or without an ACIH, a draft accusation is prepared and is generally made available for review to the licensee during a pre-accusation filing communication or conference. The licensee then has an opportunity to comment as to the factual accuracy of the document.

Discipline Administered
Default: If the licensee does not file a timely Notice of Defense in response to the accusation, a default decision for license revocation is prepared and proposed to the Board for adoption.

Stipulated Settlement: If the licensee files a timely Notice of Defense, the Deputy Attorney General, under the direction of the Chief of Enforcement, may negotiate a stipulated agreement with the licensee. The Chief of Enforcement shall consult with the Executive Officer during settlement proceedings. The Chief of Enforcement may

also consult with the Chair or members of the Administrative Committee. The proposed stipulated agreement is presented to the Board for adoption as its decision in the case.

Mediation:The licensee may also request to resolve the matter through mediation; however, mediation is not a right of the licensee. The decision to employ mediation is in the sound discretion of the Executive Officer. If mediation concludes with a written proposed stipulated settlement signed by the parties, the stipulated settlement shall be presented to the Board for approval unless a material change in facts or law unknown to the Executive Officer or Board designee at the time of the agreement subsequently becomes known prior to Board action on the proposal.

Administrative Hearing: If the licensee files a timely Notice of Defense requesting a hearing at the Office of Administrative Hearings, the matter is set for hearing under the Administrative Procedure Act. The Investigative CPA provides assistance, including testimony, if necessary at the hearing. At the conclusion of the hearing, a proposed decision prepared by the Administrative Law Judge is presented to the Board for its consideration. The Board may adopt, modify, or non-adopt the proposed decision.

Disciplinary sanctions include probation, suspension, and/or revocation.

Appeal Process
Board decisions may be appealed through mechanisms provided in the Administrative Procedure Act and in the California Code of Civil Procedure. The Board generally loses its authority to execute an Order of Reconsideration on the effective date of the decision. A Petition for Writ of Mandate may be filed in Superior Court by the respondent as provided in California Code of Civil Procedure, Section 1094.5, (generally within 30 days of the effective date of the decision).

Temporary Restraining Order/Interim Suspension Order
In appropriate circumstances, the Executive Officer may seek to accelerate the suspension or revocation of a licensee's practice rights through use of a Temporary Restraining Order (TRO) (California Business and Professions Code, Division 1, Chapter 1, Section 125.8), Interim Suspension Order (ISO) (California Business and Professions Code, Division 1.5, Chapter 3, Section 494), or other legal processes.

Public Information
Filed Accusations and Petitions to Revoke Probation, and the resulting disciplinary decisions of the Board, (including settlement agreements), are public information.

Monitoring Performed
Board orders resulting in probation and/or suspension are monitored by Board staff, including possible follow-up investigation to ensure that the licensee is complying with the order. Other disciplinary terms are monitored in accordance with instructions of the Chief of Enforcement.

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M e m o r a n d u m

EPOC AGENDA ITEM V.
September 22, 2010

CBA AGENDA ITEM XI.A.5.
September 22-23, 2010

To : Herschel Elkins, Chair, EPOC
EPOC Members
Board Members

Date : September 15, 2010

Telephone : (916) 561-1731
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From : Rafael Ixta
Chief, Enforcement Division

Subject : **CONSIDERATION OF DELEGATING TO THE EXECUTIVE OFFICER THE AUTHORITY TO APPROVE AND SIGN DEFAULT DECISIONS, PROPOSED DECISIONS, AND SPECIFIED STIPULATED SETTLEMENTS**

Attachment

Attachment 1 is an issue paper prepared by CBA staff that provides information, alternatives, and comments regarding delegating to the Executive Officer the authority to approve and sign default decisions, proposed decisions, and specified stipulated settlements.

Action requested

This matter has been scheduled for action at the CBA meeting on September 22-23, 2010. It is requested that the EPOC members review the attached and discuss this issue in order to present a recommendation at the CBA meeting.

RI:mls

ATTACHMENT 1

CONSIDERATION OF DELEGATING TO THE EXECUTIVE OFFICER THE AUTHORITY TO APPROVE AND SIGN DEFAULT DECISIONS, PROPOSED DECISIONS, AND SPECIFIED STIPULATED SETTLEMENTS

In January 2010, the Department of Consumer Affairs (DCA) launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul and improve the enforcement process for the DCA healing arts boards. The CPEI is designed to address the following three specific areas to enable the boards to investigate and prosecute consumer complaints in a timely manner:

- Administr ative Improvements
- Staffing and IT Resources
- Leg islative Changes

As part of the legislative changes, DCA sought legislation for the healing arts boards to streamline the enforcement process. Senate Bill 1111, sponsored by DCA and authored by Senator Negrete McLeod, proposed a number of changes that addressed workload and reduced costs. Although this bill failed to get the necessary votes to pass it out of the Senate Committee on Business, Professions, and Economic Development, DCA is still in full support of the CPEI and is seeking to administratively implement, as appropriate, many of the provisions contained in SB 1111.

At the May 12, 2010 EPOC and California Board of Accountancy (CBA) meetings, DCA Director Brian Stiger suggested that the CBA consider delegating to the Executive Officer (EO) the authority to adopt default decisions and proposed stipulated settlements where the licensee has agreed to revocation or surrender of the license. This delegation of authority was one of the provisions proposed in SB 1111.

This procedure would be a change to the CBA's current disciplinary process. Under the current process, the Executive Officer acting in her official capacity, signs the accusation as the complainant; however, it is the CBA members who deliberate and make a decision on every CBA disciplinary action.

Because California Business and Professions Code Section 5015.6 (**Attachment 2**) authorizes the CBA members to delegate duties to the Executive Officer, this delegation of authority could be achieved without the necessity of any statute changes.

CBA staff surveyed 25 other DCA boards regarding delegating to the EO the authority to adopt disciplinary decisions. Of the eight boards that responded, only one has delegated authority to the EO to adopt decisions for the board. For this board, the authority to sign decisions applies to Default Decisions only.

For reference, below is an explanation of the types of disciplinary decisions the CBA members act on.

Proposed Decision
Following a hearing, the administrative law judge drafts a proposed decision recommending an outcome based on the facts and the board's disciplinary guidelines. At its discretion, the board may impose a lesser penalty than that in the proposed decision. If the board desires to increase a proposed penalty; however, it must vote to reject/non-adopt the proposed decision, read the transcript of the hearing and review all exhibits prior to acting on the case.

Default Decision
If an accusation mailed to the last known address is returned by the post office as unclaimed, or if a respondent fails to file a Notice of Defense or fails to appear at the hearing, the respondent is considered in default. The penalty in a case resolved by default is generally revocation of the license. A default decision can be set aside and the case set for hearing if the respondent requests the decision be vacated or reconsideration before the effective date of the decision and the board grants the request or motion.

Stipulated Decision
At any time during the disciplinary process, the parties to the matter (the Executive Officer and the respondent) can agree to a disposition of the case. With the Executive Officer's consent, the Deputy Attorney General will negotiate a stipulated decision (also referred to as a stipulated agreement) based on the board's disciplinary guidelines. The board may adopt the stipulated decision as proposed, may counter-offer and recommend other provisions, or may reject the agreement. If the respondent declines to accept a proposed counter-offer, the case continues to hearing.

Options for Consideration

Option 1
Delegate the authority to the EO to approve and sign only default decisions on behalf of the CBA, and/or

Option 2
Delegate the authority to the EO to approve and sign stipulated settlements for revocation or surrender on behalf of the CBA, and/or

Option 3
Delegate the authority to the EO to approve and sign proposed decisions for revocation on behalf of the CBA.

Option 4
Maintain the status quo where the CBA members deliberate and act on every disciplinary action taken by the CBA.

COMMENTS
Options 1, 2, and/or 3 promote consumer protection by providing a means for the CBA to more speedily process disciplinary actions and remove from practice those licensees who should not be practicing public accountancy. Cycle time to process disciplinary actions could be reduced, possibly by as much as 60 days, because these decisions would not have to be held pending action at the next regularly scheduled CBA meeting.

On the other hand, the CBA members would be removed from the disciplinary process for certain disciplinary actions and would not have the opportunity to discuss the disciplinary actions in closed session before the decision is final. Further, although licensees would not lose their right to appeal a decision through reconsideration or judicial review, it may appear that decisions adopted by the EO lack independence because the EO also approves accusations.

If the CBA members select Option 1, 2, and/or 3, the CBA may require, as part of its delegation of authority to the EO, that the EO provide a summary report to the CBA on any actions adopted by the EO under the delegation of authority.

ATTACHMENT 2

Section 5015.6. Executive Officer; Powers and Duties

The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

State of California
Department of Consumer Affairs

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M e m o r a n d u m

CBA Agenda Item XI.B.1.a.
September 22-23, 2010

To : CBA Members
CPC Members

Date : June 22, 2010

Telephone : (916) 561-1792
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From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Consideration of Regulatory Language for Section 1.5 – Delegation of Certain Functions

Last year, the California Board of Accountancy (CBA) approved regulatory language to delegate certain functions to its Executive Officer. After making some changes suggested by counsel and incorporating other changes made by the CBA to Patti Bowers' written delegation of authority, staff are returning with updated regulatory language for the CBA's consideration.

Most boards overseen by the Department of Consumer Affairs (DCA) have this delegation of authority in regulation. Currently, the CBA delegates this authority to the person appointed to the Executive Officer position as opposed to delegating authority to the position itself. By placing the delegation into regulation, the CBA delegates this authority to the Executive Officer position rather than the individual holding the position.

The reason for this regulation is to provide explicit authority for the CBA's Executive Officer to exercise discretion on behalf of the CBA in dealing with administrative and ministerial matters. As has been noted, most other boards within DCA have a similar type of regulation granting specific authority to their respective Executive Officers in handling enforcement matters. Having a regulation delegating specific authority to the Executive Officer will prevent any legal challenges regarding the authority of the CBA's Executive Officer. Further, this regulation will allow the Executive Officer to act upon, and deny when appropriate, requests for regulations on matters for which the CBA has already established policy.

Attached for your consideration is proposed regulatory language to establish a delegation of authority to the Executive Officer (**see Attachment 1**).

If the draft language is approved by the CBA, staff will prepare the necessary documents to begin the rulemaking process.

Attachment

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Attachment 1

PROPOSED REGULATORY LANGUAGE

Section 1.5- Delegation of Certain Functions.

(a) The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent, and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum, set and calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11400 through 11529 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the executive officer, or in the absence thereof, the assistant executive officer.

(b) The executive officer is specifically delegated authority to agree to and accept any stipulated settlement on behalf of the Board that provides for an interim suspension order, suspending the license of a certified public accountant, public accountant or firm, pending the conclusion of a criminal action and administrative hearing concerning the licensee.

(c) The power, discretion and duties conferred by law upon the Board to receive and respond to a petition requesting the adoption, amendment, or repeal of a regulation as provided under Section 11340.7 of the Government Code are hereby delegated to and conferred upon the executive officer.

(d) Nothing herein prohibits the executive officer from delegating his/her authority provided in this section to subordinates as provided in Section 18572 of the Government Code.

Note: Authority cited: Sections 5010 and 5015.6, Business and Professions Code. Reference: Sections 5015.6, Business and Professions Code; and Sections 11400-11529 and 18572, Government Code.

State of California
Department of Consumer Affairs

M e m o r a n d u m

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

CBA Agenda Item XI.B.1.b.
September 23, 2010

To : CPC Members
CBA Members Telephone

Date : September 7, 2010
: (916) 561-1740
Facsimile : (916) 263-3676
E-mail : dpearce@cba.ca.gov

From : Deanne Pearce, Chief
Licensing Division

Subject : Discussion on a Retired Option for CPA/PA License.

At the July 2010 California Board of Accountancy (CBA) Committee on Professional Conduct (CPC) meeting, staff provided CPC members with the attached issue paper regarding retired options for certified public accountant (CPA) and public accountant (PA) licenses. By the conclusion of the meeting, CPC members came to a general consensus that offering a retired license option seemed reasonable, and requested staff provide additional information at the September 2010 CPC meeting.

The issue paper regarding the retired license option was scheduled to be considered by the CBA at the July 28, 2010 meeting, but was deferred due to time constraints.

The additional information requested by the CPC will be discussed under **CBA Agenda Item XI.B.2.b**.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CPC Agenda Item III
July 28, 2010

CBA Agenda Item X.A.3.
July 28, 2010

To : CPC Members
CBA Members

Date : July 14, 2010

Telephone : (916) 561-4310
Facsimile : (916) 263-3672
E-mail : dfranzella@cba.ca.gov

From : Dominic Franzella, Manager
Renewal/Continuing Competency & Client Services Units

Subject : Discussion on a Retired Option for CPA/PA License

Attached for members review is an issue paper to determine whether a retired option should be made available to licensees. The paper provides a background history on the retired status previously offered by the California Board of Accountancy (CBA), retired options used by other various organizations, present CBA options available for a retiring licensee, two staff-developed proposals for a retired option, and topics for consideration.

Staff would like to pose the below two questions to members as they begin to review the attached issue paper.

1. Does instituting a retired option create any consumer protection issues?

   In creating a retired option, it is paramount that any proposal selected ensures consumers are aware of the limitations placed on retired licensees, and that it is clear when a licensee is in fact retired.

2. Should licensees who have practiced public accountancy for an extended period of time receive acknowledgement for their years of service to the profession by allowing a retired option?

   As noted in the attached issue paper, many licensees are dissatisfied that the CBA does not presently offer a retired option, and believe it is unfair to require them to pay a full license renewal fee in order to avoid having their license canceled considering their many years of service to the profession.

These questions will hopefully provide a context and framework for reviewing the issue paper and assist members in considering the two staff-developed proposals for a retired option.

I will be available at the meeting to any questions you may have regarding this matter.

Attachment

CALIFORNIA BOARD OF ACCOUNTANCY

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
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CPC AGENDA ITEM III **CBA AGENDA ITEM X.A.3.**
July 28, 2010 **July 28, 2010**

DISCUSSION ON A RETIRED OPTION FOR CPA/PA LICENSE

INTRODUCTION

The purpose of this issue paper is to determine if a retired option should be made available to Certified Public Accountants (CPAs) and Public Accountants (PAs). Over the past several years, the California Board of Accountancy (CBA) has received inquiries from licensees, including through the Customer Satisfaction Survey, requesting a retired status option due to dissatisfaction with a "canceled" or "delinquent" status or, alternatively having to pay the same fee as required for an active or inactive license renewal. Staff have routinely informed licensees that the CBA does not have a retired status and if they no longer wished to maintain their license two options were available. First to allow the license to expire and eventually cancel; or two, elect to voluntarily surrender their license. Licensees have continually indicated a dissatisfaction with these options. Therefore, staff wish to gauge members interest in pursuing a retired option for CPAs and PAs.

BACKGROUND/HISTORY

Between January 1994 through December 1998, the CBA offered a retired option to licensees. This option allowed licensees to request a retired seal that would be affixed to their wall certificate. By requesting a retired seal, licensees were in fact voluntarily allowing their licensees to expire, but were afforded the ability to use the designation "Retired Certified Public Accountant" or "Retired Public Accountant."

Licensees were no longer allowed to practice public accountancy, but could continue to perform bookkeeping, tax, financial planning, or management consulting as described in Section 5051 (f) through (i) of the Accountancy Act, since these functions did not require individuals to maintain a CPA/PA license. Retired licensees intending to render tax preparation services were required to either register with the Internal Revenue Service as an enrolled agent or register with the Tax Preparer Program.[1]

The issuance of a retired seal did not affect the status of the license. After the CBA issued a retired seal, licensees simultaneously held a retired seal and an expired

[1] The Tax Preparers Program was regulated by the Department of Consumer Affairs. When the Tax Preparer Program was sunseted in 1997, tax preparers were no longer regulated by a state agency. Tax preparers were then required to maintain a bond, complete continuing education and register with the California Tax Education Council.

license. As with all expired licensees, for a five-year period, licensees could reinstate their license to an active or inactive status by paying all applicable license renewal fes, including a delinquency fee, and fulfilling all continuing education (CE) requirements should the licensee select an active status. After the five-year period had elapsed since the license expired, the license was cancelled, however, licensees could continue to display the wall certificate with a retired seal and hold out as a retired licensee.

In 1996 CBA staff expressed concern that some licensees were attempting to avoid disciplinary action by requesting a retired seal while a disciplinary matter or citation was pending because the CBA had no legal mechanism to deny or delay the issuance of a retired seal to a licensee with a pending disciplinary matter. Additionally, licensees with a revoked license were permitted to continue to display their certificate with the retired seal. This appeared inconsistent with the CBA's intent to provide the seal as a positive acknowledgement of licensees' years of service in the profession.

Based on these concerns, the CBA again sponsored legislation, this time to repeal B&P Code Section 5070.1, thus eliminating a retired option for licensees. On January 1, 1999, Section 5070.1 was repealed, and the CBA no longer issued retired seals or permitted licensees to use the designation "Retired Certified Public Accountant" or "Retired Public Accountant." Subsequently, B&P Code Section 120 was amended to allow a retiring CPA/PA to continue to display the wall certificate provided the license was not suspended or revoked. Retirees could use the CPA or PA designation in a social context, with or without the word "retired." Retirees, however, could not use the CPA or PA designation and perform, or offer to perform, any activity defined as the practice of public accountancy in Section 5051 of the Accountancy Act.

DEPARTMENT OF CONSUMER AFFAIRS BOARDS WITH RETIRED STATUS

Staff researched other boards within the Department of Consumer Affairs (DCA) to determine if any had a retired option and the approach each used. The following DCA boards presently offer a retired option to their licensees: Board of Pharmacy, California Architects Board, Board for Professional Engineers and Land Surveyors, Medical Board of California, Board of Registered Nursing, Dental Board of California, and Board of Podiatric Medicine.

Most of the boards require a one-time initial application and retired license fee, which varies from $35 to $200. With the exception of two boards, most of the boards do not require a license renewal. The Board of Podiatric Medicine requires retired licensees to submit a renewal application indicating retired status but waives the renewal fee. The Dental Board requires licensees to submit a biennial license renewal application and pay a reduced license renewal fee option. A majority of the boards permit licensees to use their titles provided they display the term "retired" either before or after the title.

All boards were consistent in requiring the following qualifying conditions be met to obtain a retired license: (1) the individual held a license that was current and capable of being renewed; (2) held a license that had not been suspended, revoked, or otherwise

disciplined, or subject to pending discipline. Once these conditions were met, a retired licensee was exempt from CE requirements (with the exception of Dental Board's retired active license status option) and could not engage in activity that required a license.

In addition to the above qualifying conditions required by all boards, some boards maintain qualifying conditions specific to their board. Five of the boards had either minimum age or years of service required to qualify for retired status. One board required the licensees to reach the age of retirement under the federal Social Security Act, while three boards required licensees be licensed for at least 20 years, and one board required a minimum of five years of licensure in California and a minimum of 20 years within the United States or its territories.

The Dental Board is unique in that it offers a retired active license status and a retired inactive license status. The Dental Board offers a reduced fee program with qualifying conditions to licensees wishing to retire. A retired active license status allows the licensee to continue to offer dental services provided 50 hours of CE (including applicable mandatory courses) are completed every two years and the reduced license renewal fee is paid. A licensee selecting a retired inactive license is prohibited from offering dental services but is exempt from the CE requirement. To maintain a retired inactive license, licensees must pay the reduced renewal fee and renew every two years.

Staff's research found that all boards allowed retired licensees to reactivate a retired license to active status provided certain conditions were met. Individuals were either required to complete all license renewal requirements, pass the examination required for initial licensure, complete a minimum amount of CE, and/or pay past renewal and delinquent fees. Individuals who had a cancelled license had to apply as a new applicant.

OTHER STATE BOARDS OF ACCOUNTANCY AND PROFESSIONAL ORGANIZATIONS

Staff researched other state boards of accountancy to get a better understanding on how they address retired status. Staff found approximately 20 state boards of accountancy offer a retired status to their licensees. Nearly half of these states have a minimum age requirement of 55 years or older as a required condition with nearly all prohibiting practice rights. Three states allow retired CPAs to perform volunteer accounting related services provided no compensation is received. Most states allow the use of the CPA designation as long as "retired" appears before or after the title.

Most of the states require either an initial application and fee or the submission of a renewal application and fee for a retired status. The initial and/or renewal fees varied anywhere from $10 to $200. For example, Tennessee requires a renewal application and fee of $120 fee for individuals over 55 and requires a renewal application but no fee for individuals over 70 years of age. Oklahoma requires a $50 annual registration fee

for all licensees but reduces the fee to $25 once the individual turns 65 years of age. Finally, South Dakota only requires a $10 annual fee if the individual is at least 55 years of age. There were only a few states that did not require renewal of a retired license.

A majority of these states allow retired licensees to restore a retired status to active status provided certain conditions are met. Individuals are either required to complete current renewal requirements, complete a minimum amount of CE within a specified time frame or subject matter, and/or submit the required application and pay required fees. Colorado, for example, requires 80 hours of CE be completed solely in their "Code A" subject matter which basically mirrors California's technical subject matter requirements.[2] One state that differed drastically from others as it relates to reactivating a retired status is South Carolina. South Carolina requires individuals to reapply as a new candidate and retake the CPA exam.

Staff also reviewed membership options offered by the American Institute of Certified Public Accountants (AICPA) and California Society of Certified Public Accountants (CalCPA). AICPA members qualify for a retired membership if they are 62 years of age or older and working fewer than 20 hours a week with annual membership dues set at $100. Membership is complimentary after a member has paid 40 consecutive years of dues. CalCPA offers retired CPA members a retired membership with annual membership dues set at $100.

PRESENT OPTIONS AVAILABLE TO LICENSEES

Presently, there are only two options available to licensees wishing to retire. Licensees may either allow their license to expire and eventually cancel or they may voluntarily surrender their license. The primary complaint from licensees regarding these options is the negative license status connotation. Neither of these options indicate that the licensee has elected to retire. Licensees who have practiced for many years are very proud of their profession and believe a delinquent, canceled or surrendered status is undignified.

Comments from the Customer Satisfaction Survey have included remarks such as:

- Surprised to find out the board does not have a category called retired rather than showing the member as a deadbeat for non payment of membership dues.
- It is not reasonable to require full fees for retirees. Failure to pay fees for a retiree should not result in a "delinquent" status.
- I don't want my file to indicate my certificate was cancelled, but that it is retired.
- I am unhappy I have to pay the same fee as active. There should be a retirement status.

[2] Technical subject matter includes accounting and auditing, computer and information technology (excluding word processing), consulting, fraud, financial planning, ethics, taxation, and specialized industry courses that enhance public accounting skills and knowledge.

Presently, if a licensee elects not to renew and allow the license to expire, the license status will reflect "delinquent" on the CBA Web site License Look-Up.[3] It will remain delinquent until five years from the license expiration date after which it will reflect "canceled." **Attachment A** provides a sample print screen of an expired delinquent license including the delinquent definition. **Attachment B** provides a sample print screen of a canceled license including the canceled definition.

Licensees choosing to voluntarily surrender their license must submit a written request to the CBA. Prior to processing the request, staff verifies with the Enforcement Division that the license has not been suspended or revoked, and that there are no pending disciplinary actions or complaints. If a licensee chooses to voluntarily surrender the license, the license status will reflect "surrendered" on the CBA License Look-up. **Attachment C** provides a sample print screen of a license showing surrendered and its definition.

For a licensee with an expired license status wishing to return their license to a current renewable status, there is a separate procedure for a delinquent status and one for a canceled status. For a license that is delinquent, the licensee must submit a license renewal application, pay past renewal and delinquent fees, and if renewing active, complete present CE requirements. For a license that has been canceled, the individual must reapply for licensure as a new applicant which requires that they file the appropriate application and fees, submit new fingerprints, and meet present CE requirements before a new license number is issued.

The procedure to reinstate a surrendered license to an active license status is much more involved. Retired licensees must file a petition for reinstatement, submit new fingerprints, and appear before or provide a written report to the CBA for consideration and action. In addition, a petition may only be considered by the CBA after a period of not less than one year has elapsed from the effective date of surrender, or from the date of the denial of a similar petition, unless a longer period, not to exceed three years, is specified in a decision of the CBA.

RETIRED OPTIONS

Staff have identified two proposals for consideration regarding a retired option: (1) to require that licensees biennially renew while retired and (2) immediately cancel the license upon approving a licensees request for retired. Both proposals could require the licensee to meet certain qualifying conditions, file an application, and possibly pay a fee. Licensees would have no practice rights in public accountancy under either option.

A renewable retired option would require a licensee to initially meet qualifying conditions (see second bullet under Topics for Consideration), renew every two years, and pay a possible reduced fee or no fee, The CBA Web site License Look-up would reflect

[3] The CBA Web site License Look-up is a tool consumer and licensees can access to verify the status of a license. License Look-up was established in May 2000. License Look-up did not exist when the retired status seal was originally offered.

"retired." A retired license not renewed for five years from the license expiration date would be cancelled. Upon cancellation, License Look-up would then change the status to "canceled." An expired license under this option could be reactivated to an active status either through the status conversion process or at the time of license renewal provided the necessary CE is met.

The process for a non-renewable/canceled retired option could require the filing of a one-time application and possible fee and meeting any qualifying conditions. The license would immediately be canceled upon submission and processing of the application, however, the license status would reflect "retired." A retired license under this option could not be renewed, restored, or reinstated. An individual wishing to practice public accountancy would have to reapply as a new applicant and meet the current licensure requirements.

TOPICS FOR CONSIDERATION

To this point the paper has provided CBA members with information to assist them in deliberating the concept of a retired option for licensees. The following topics are designed to address issues and facilitate discussion as to whether a retired option should be implemented.

- Determine whether to offer a renewable retired option, a non-renewable retired option, or continue with present options.

  A renewable retired option and a non-renewable retired option could both require the filing of an application, paying a possible fee, and meeting qualifying conditions. There are two distinct differences between the two options. A renewable retired option would require renewal every two years and allow the retired licensee the option of reactivating the license to an active license status. A non-renewable retired option would require a one-time application and possible fee, cancel the license immediately upon submission and processing of the application, and the individual would have to reapply as a new applicant to practice public accountancy.

  If the CBA elected not to provide for a renewable retired or non-renewable retired option, the present options of expired/canceled and voluntary surrender would remain.

- Should specific qualifying conditions be established for a renewable retired/non-renewable retired option?

  The following are a few eligibility conditions that could be required for a renewable retired/non-renewable retired option: minimum age requirements, years of licensure, physical disability, hold a license that is either current or eligible for renewal and has not been suspended, revoked, or otherwise disciplined, or subject to pending discipline or have a pending complaint.

When considering qualifying conditions and problems which existed with the previous retired program, staff would advise that qualifying conditions need not be mutually exclusive to just one condition.

- Should a retired licensee be required to use a retired CPA designation?

  Presently, licensees holding an inactive license status are allowed to use the CPA designation provided "inactive" is used either before or after the title. CBA members may wish to consider requiring retired licensees to use a "retired" CPA designation much in the same manner as allowed for an inactive license status.

- Impact to Accountancy Fund

  CBA members may wish to consider whether a reduced fee or any fee should be required with the submission of the application for a retired license. Any elimination or reduction of fees could impact revenue but to what extent is unclear at this point. Factors that could weigh on the impact could be any age limitations, years of licensure, requiring a renewal or a one-time application.

- If licensees are allowed to restore an expired license under the renewable retired option, what would be the requirements?

  If licensees are allowed to restore an expired license under the renewable retired option to an active license status, qualifying conditions and procedures would need to be established. Qualifying conditions could mirror the requirements for status conversion and/or license renewal or there could be a minimum CE requirement. Other areas to consider would be the filing of an application and paying any renewal and delinquent fees.

If CBA members proceed with pursuing a retired option, staff will need direction on all of the above topics in order to provide proposed statutory language to the CBA at subsequent meetings. As members deliberate on the value of instituting a retired option for licensees, staff would like to note that it would take approximately 2½ years to fully implement a retired option. The first year would address getting necessary legislation in place, while the remaining time would focus on adding/amending the needed regulations and implementing the retired option.

CONCLUSION

As noted above, any implementation of a retired option will require legislation. Should the CBA wish to pursue a retired option during the upcoming legislative year, language would be brought to the September Committee on Professional Conduct (CPC) and CBA meetings. If this language, including any necessary revisions, is approved by the CPC and CBA, staff would bring the final language to the Legislative Committee in November for possible recommendation to the CBA.

ATTACHMENT A

California Board of Accountancy - Welcome - Mozilla Firefox

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CALIFORNIA BOARD OF ACCOUNTANCY

Licensee Name:	ARTHUR JAMES SMITH
License Type:	Certified Public Accountant
License Number:	99592
License Status:	DELINQUENT Definition
Experience Completed:	A Definition
Expiration Date:	January 31, 2010
Issue Date:	January 25, 2008
Address:	1205 TWELVE PINES CIR
City:	SANDY
State:	UT
Zip:	84094
County:	OUT OF STATE
Disciplinary Actions/License Restrictions:	No

No records returned

License Holders: - Mozilla Firefox

http://www2.dca.ca.gov/pls/wllpub/Wllqryna$

Status Definition

A license is delinquent if not renewed by its expiration date.

Done

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ATTACHMENT B

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CALIFORNIA BOARD OF ACCOUNTANCY

Licensee Name:	BARY GENE JONES
License Type:	Certified Public Accountant
License Number:	26310
License Status:	CANCELED Definition
Experience Completed:	A Definition
Expiration Date:	March 31, 1985
Issue Date:	June 16, 1978
Address:	P.O. BOX 275
City:	WENDOVER
State:	UT
Zip:	84083
County:	OUT OF STATE
Disciplinary Actions/License Restrictions:	No

No records returned

License Holders: - Mozilla Firefox

http://www2.dca.ca.gov/pls/wllpub/Wllqryna$

Status Definition

A license is canceled if not renewed within five years following its expiration date. A licensee with a canceled license may reapply as a new applicant and meet the current requirements for approval. Upon approval, a new CPA license number is issued.

Done

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ATTACHMENT C

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CALIFORNIA BOARD OF ACCOUNTANCY

Licensee Name:	EDMOND G THIEDE
License Type:	Certified Public Accountant
License Number:	8332
License Status:	SURRENDERED Definition
Experience Completed:	A Definition
Expiration Date:	May 31, 2006
Issue Date:	Licensed prior to 1989
Address:	709 LAS BARRANCAS DR
City:	DANVILLE
State:	CA
Zip:	94526
County:	CONTRA COSTA
Disciplinary Actions/License Restrictions:	No

No records returned

License Holders: - Mozilla Firefox

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Status Definition

The licensee has surrendered the license. The individual, partnership, or corporation is no longer licensed. The Board, however, may impose discipline against a surrendered license in certain circumstances. Surrender also may require certain conditions be met should the former licensee ever choose to reapply for licensure.

Done

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State of California
Department of Consumer Affairs

M e m o r a n d u m

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

CBA Agenda Item XI.B.1.c.
September 22-23, 2010

To : CBA Members

Date : August 25, 2010
Telephone : (916) 561-1740
Facsimile : (916) 263-3676
E-mail : dpearce@cba.ca.gov

From : Deanne Pearce, Chief
Licensing Division

Subject : Qualifications Committee (QC) Recommendation Regarding Defining Supervision in CBA Regulation Sections 12 and 12.5.

At the direction of the California Board of Accountancy (CBA), the QC was requested to discuss and provide a recommendation to the CBA regarding whether to define supervision in Section 12 and 12.5 of the CBA's Regulations. At the July 28, 2010 CBA meeting, Fausto Hinojosa, QC Chair provided the QC's recommendation to the CPC **(Attachment 1)**.

The CPC deliberated the QC's recommendation to adopt a definition of supervision and determined that the proposed definition would provide clarity that would be beneficial to applicants, supervisors and staff.

The CPC's recommendation to proceed with the rulemaking process to incorporate the recommendations made by the QC was originally due to be considered by the CBA at the July 28, 2010 meeting but was deferred due to time constraints.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CPC Agenda Item IV. July 28, 2010
CBA Agenda Item X.A.4. July 28, 2010

To : CBA Members
Committee on Professional Conduct Members

Date : July 7, 2010
Telephone : (916) 561-1741
Facsimile : (916) 263-3676
Email : dpearce@cba.ca.gov

From : Fausto Hinojosa, Qualifications Committee Chair
Deanne Pearce, Licensing Chief

Subject : Qualifications Committee (QC) Recommendation Regarding Defining Supervision in CBA Regulation Sections 12 and 12.5

At the direction of the CBA, the QC was requested to discuss and provide a recommendation to the CBA regarding whether to define supervision in Section 12 and 12.5 of the CBA's Regulations. At the January 27, 2010 QC meeting, staff presented an issue paper **(Attachment 1)** that provided information on current issues related to supervision, background on CBA supervision requirements, supervision requirements as defined by the Uniform Accountancy Act (UAA), and other states' supervision requirements.

Staff also presented a proposed definition of supervision for Section 12 and 12.5 of the CBA Regulations. After reviewing the proposed definition the QC requested that staff include additional language to Section 12(a) specifying this definition of supervision would only apply to supervision provided in private industry and governmental accounting due to the limited number of licensed Certified Public Accountants available to provide supervision. In addition, the QC recommended staff make other minor edits for consistency with terminology.

The amended language was brought before the QC at its April 21, 2010 meeting. After deliberating, the QC adopted the language originally proposed at the January 27, 2010 meeting, which omitted any direct reference to supervision in private industry and governmental accounting, therefore, requiring the same type of supervision be obtained in private industry, governmental accounting and public accounting.

The proposed language would require that qualifying experience be reviewed and evaluated by the supervisor on a routine and recurring basis and that the supervisor have authority and oversight over the applicant. The proposed language also incorporates the form numbers for the Certificates of Experience, both attest and general, as well as other changes to ensure consistency.

Attached for your review and consideration are Sections 12 and 12.5 (**Attachment 2**) of the CBA Regulations incorporating proposed changes adopted at the April 21, 2010 QC meeting.

Also provided for your reference are the statutory provisions Sections 5092 and 5093 of the Business and Professions Code **(Attachment 3)**.

The QC recommends that the CBA consider and adopt the proposed regulatory language to define supervision.

Ms. Pearce and I will be available at the meeting to respond to any questions members may have regarding the above recommendations.

Attachments

State of California
Department of Consumer Affairs

Attachment 1

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

QC Meeting Agenda Item III.C.
January 27, 2010

To : Qualifications Committee Members

Date : December 29, 2009

Telephone : (916) 561- 1739
Facsimile : (916) 263- 3676
E-mail : kmccutchen@cba.ca.gov

From : Kris McCutchen, Manager
Licensing Division

Subject : Consideration of Defining Supervision in Sections 12 and 12.5 of the California Accountancy Regulations

At the September 2009 California Board of Accountancy (CBA) meeting, CBA members were presented an issue paper on defining supervision in the California Board of Accountancy Regulations. The CBA determined that the Qualifications Committee (QC) should deliberate on this issue prior to bringing it before the CBA for further consideration and discussion.

To assist QC members in their deliberations regarding this matter, staff have provided information on current issues related to supervision, background on CBA supervision requirements, supervision requirements as defined by the Uniform Accountancy Act (UAA), and other states' supervision requirements. Also provided are options for QC consideration.

Attachments

CALIFORNIA BOARD OF ACCOUNTANCY

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Consideration of Defining Supervision as Referenced in Sections 12 and 12.5 of the California Accountancy Regulations

CURRENT ISSUES

The issue of whether or not to further define "supervision" in regulation has been considered many times over the years, and a summary of these discussions are captured in the "Background" portion of this paper.

The lack of a clear definition of supervision has been problematic. Below are examples of issues and unanswered questions that are faced by applicants, licensee supervisors, and California Board of Accountancy (CBA) staff.

Applicants

- Can a Certified Public Accountant (CPA) be considered a supervisor if that person reviews **only** the final work product but none of the schedules or other underlying documents used in the preparation of the final work product?

- Is it acceptable for a licensee working in a neighboring unit or satellite office, who reviews a portion of the applicant's work to complete and submit a Certificate of Experience, even though the CPA neither reviews the work on a regular on-going basis, nor provides any direct input into the applicant's work?

- Since there is no clear definition of the level of interaction required in order to qualify as a supervisor, can **any** licensee staff member who serves in a supervisory capacity complete and submit the Certificate of Experience on the applicant's behalf?

Supervisors

- The licensee, though believing he or she did not "supervise" the applicant, feels pressured by the applicant to sign the Certificate of Experience.

- There is a lack of consistency in the level of supervision provided from one applicant to another.

- Does the supervisor have to be located in the same office as the applicant?

CBA

- Since no clear definition of supervision exists, CBA staff are unable to provide guidance to inquiries from applicants and licensee supervisors about the type of supervision the CBA requires supervisors to provide, or applicants to receive.

- Lack of clear guidance leads to excessive CBA staff time spent on numerous communications to and from applicants and licensees.

CALIFORNIA SUPERVISION REQUIREMENTS

Prior to 2002, Section 5083 (Pathway 0) **(Attachment 1)** of the California Accountancy Act required all applicants who obtained their work experience in private industry or government to obtain that attest experience under the "direct" supervision of a CPA. The requirements for work experience obtained in public accounting allowed the supervising CPA to be licensed in any state or country. However, work experience obtained in private industry or government had to be supervised by a CPA licensed in a state. There was an expectation that the licensee supervisor had direct personal knowledge of the applicant's work product, reviewed the work providing input, and was, therefore, in a position to provide the CBA with a Certificate of Experience on behalf of the applicant. In some instances, the applicant's direct supervisor was not a licensee, but the supervisor's supervisor was a licensee who also reviewed the work, and completed the Certificate of Experience on the applicant's behalf.

When Sections 5092 and 5093 (Pathway 1 and Pathway 2, respectively) **(Attachments 2 & 3)** of the California Accountancy Act were enacted in 2002, the supervision requirements for licensure changed and applicants applying under the new pathways were no longer required to have "direct" supervision of work experience by a CPA. Although the CBA maintains an expectation that the licensee supervisor has personal knowledge of the applicant's work product, reviews the work and provides input, without a clear definition of the level of supervision that is required in order to certify an applicant's work experience, staff have consistently been unable to provide clear guidance or direction regarding supervision to applicants and their employers.

Also impacting this discussion is the fact that applicants seeking licensure with the authorization to sign attest reports, and those that are not, are bound by the same statutory and regulatory supervision mandates. However, completely different experience forms and "certifications" from supervisors are required.

Applicants requesting licensure with the authorization to sign attest reports are required to obtain qualifying experience that allows the licensee supervisor to certify that the applicant has obtained attest experience in a variety of areas. The licensee supervisor will submit to the CBA a *Certificate of Attest Experience*, **(Attachments 4 & 5)** offering an opinion on whether or not the applicant demonstrated his/her ability to understand the requirements of planning and conducting a financial statement audit or perform other attest services with minimum supervision that results in an opinion on full disclosure financial statements.

Applicants requesting licensure with general accounting experience are only required to have the licensee supervisor submit a *Certificate of General Experience* **(Attachments 6 & 7)**, which simply certifies that the applicant performed general accounting experience during a specific period of time. No opinion is offered as to whether or not the applicant has demonstrated his/her ability to perform general accounting services.

BACKGROUND

January 2003 Committee on Professional Conduct (CPC) and CBA Meetings

The issue of defining supervision was discussed by the CPC and CBA relating specifically to supervision of general accounting experience verified by an external auditor. Based upon the CPC's recommendation, which included attest experience as well as general accounting experience, the CBA voted to not permit verification of an applicant's work experience by the employer's external CPA (outside auditor). Draft regulatory language was scheduled for consideration at the March 2003 CPC and CBA meetings.

March 2003 CPC and CBA Meetings

The CPC reviewed draft revised language to CBA Regulations Sections 12 and 12.5. The language not only incorporated the January 2003 policy decision of the CPC and the CBA to prohibit an external CPA from verifying experience for an employee of a client, it also included a definition of supervision. The language stated in part,

> "**To supervise an applicant's experience, the supervisor must directly oversee and inspect the applicant's performance of the services described in subsection (b). This must include personal communication between the supervisor and the applicant regarding the applicant's performance of the services described in subsection (b).**"

In addition to providing a definition of supervision, this language could provide useful guidance to applicants, licensees, and CBA staff.

During its deliberations on the proposed language, the CPC further revised Sections 12 and 12.5 by inserting the word "**ongoing**" after "personal" in the definition of supervision. The newly revised language stated,

> "**To supervise an applicant's experience, the supervisor must directly oversee and inspect the applicant's performance of the services described in subsection (b). This must include personal, <u>ongoing</u> communication between the supervisor and the applicant regarding the applicant's performance of the services described in subsection (b).**"

Following CBA consideration and deliberations, the revised amendments to Sections 12 and 12.5 were adopted. It was anticipated that a regulation hearing would occur at the July 2003 CBA meeting.

July 2003 CBA Meeting

A public hearing was held to consider the proposed amendments to Sections 12 and 12.5, among other sections of the California Code of Regulations. Following the public hearing, the CBA adopted the proposed amendments to Sections 12 and 12.5, as reflected in the March 2003 CPC and CBA meetings above.

Based on comments received regarding clarifying changes to other regulations being heard, all of the proposed revised regulations were re-noticed for a 15-day period.

October 2003 CPA Qualifications Committee (QC) Meeting

Subsequent to the regulation hearing, Mr. Paul Koreneff, QC Chair, raised concerns regarding the proposed language to amend Sections 12 and 12.5 related to the definition of supervision and who would be authorized to verify a licensure applicant's experience. Specifically, he believed the proposed language would require each CPA supervising an engagement to submit a Certificate of Experience on behalf of the applicant, which could require multiple Certificates of Experience, thus lengthening the licensing process.

November 2003 CBA Meeting

Mr. Koreneff, in his QC report to the CBA, reported the concerns discussed by the QC, specifically that the proposed regulatory language could cause serious delays for future applicants in satisfying the experience requirements, and that requiring "direct supervision" could in many instances take a substantially longer period of time in order for an applicant to comply with the CBA's experience requirements for CPA licensure. The CBA directed the QC to further explore the issue and bring back a proposal to the CPC as to potential solutions to this problem so that it could be determined if the CBA would need to readdress this issue.

January 2004 QC Meeting

At the direction of the CBA, the QC again reviewed the proposed revisions to Sections 12 and 12.5, centering its attention on the phrase "**directly oversee**" in the proposed definition and the meaning of "**ongoing communication**". It was thought that these two issues may be problematic as public accounting firms and government agencies have quality control systems in place for the licensure process, with licensed personnel who have control and decision-making responsibilities, ensuring applicants are adequately supervised and demonstrate their knowledge and understanding of professional standards. However, work experience obtained in private industry may not parallel those quality control systems.

Discussions also raised the concern that the definition of supervision, as proposed in the pending regulation, could require a substantially longer time period for an applicant who obtains work experience in public accounting or government to satisfy the experience requirements for licensure. Further, the QC concluded the exact meaning of "**directly oversee**" should be further clarified because the proposed wording might cause substantial delays to applicants qualifying for licensure.

Consequently, the QC suggested that further consideration was needed to make a recommendation regarding work experience obtained in private industry.

February 2004 CPC Meeting

The QC communicated its consensus to the CPC that public accounting firms and government agencies had quality control and decision-making roles over all engagements ensuring that applicants are adequately supervised, while work experience obtained in private industry may not parallel the quality controls of public and governmental agencies. The QC provided newly revised regulatory language to the CPC that broadened the role of the supervisor; however, due to the late revision and the complexity of the issue, there was insufficient time during the meeting to consider adopting regulatory language. The issue was deferred to the May 2004 CBA/CPC meeting.

April 2004 QC Meeting

Additional concerns were raised by QC members regarding whether or not work experience obtained in private industry and government was sufficiently regulated to ensure that applicants with this type of experience had adequate supervision.

May 2004 CPC and CBA Meetings

In response to concerns raised by the QC at the February 2004 CPC meeting, an amendment to Sections 12 and 12.5 was presented to the CPC that would broaden the role of the supervisor. The amendment was to language originally adopted by the CBA in July 2003, relating to work experience obtained in private industry and government, which defined supervision as "**directly oversee and inspect**" and "**personal ongoing communication**". The QC's new recommended language stated that the supervisor must have "**control and decision-making responsibility over the applicant's performance of services**".

The new language that the QC recommended to the CPC, which would apply to work experience obtained in public, private industry, and government, stated

> "**In order to meet the experience requirement of Section 5092 or 5093 of the Business and Professions Code, experience must be supervised by a person holding a valid license or comparable authority to practice public accounting as specified in subdivision (d) of Section 5092 or subdivision (d) of Section 5093, who has control and decision-making responsibility over the applicant's performance of the services described in subsection (d) of Section 5092 or 5093.**"

At the CBA meeting, Ms. Nancy Corrigan, QC Chair (predecessor to former QC Chair Paul Koreneff), raised additional concerns regarding the proposed language. Ms. Corrigan noted that the recommendation to adopt the proposed language was subject to the QC looking further into the issue of whether government agencies and private businesses have adequate control systems in place to ensure that applicants obtain qualifying experience and receive adequate supervision. She suggested that perhaps the definition of supervision needs to be more stringent for government and private industry than for public accounting.

Although the CPC approved the amendments recommended by the QC, the CBA decided to not adopt a definition of supervision at that time. It was suggested that this issue be added to the list of items to be addressed by staff as time permits without being given special priority. It was also decided that it would be left to staff discretion regarding when time and resources would permit reopening this issue for further study by the QC.

January 2009 CBA Meeting

A licensing applicant appeared before the CBA to request that the CBA require an actively licensed CPA, whom the licensing applicant believed to be their supervisor, to complete and submit a *Certificate of General Experience* on their behalf. The applicant provided the CBA with documentation and information that they believed substantiated the claim that the CPA served in a supervisory capacity. The applicant had previously appeared before the QC where it was recommended there was not enough evidence to show that the CPA acted in a supervisory capacity that would qualify them to certify the applicants work experience.

UNIFORM ACCOUNTANCY ACT AND OTHER STATES' REQUIREMENTS

Under the Uniform Accountancy Act (UAA), an applicant for initial licensure must complete one year of experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills all of which must be verified by a licensee, meeting requirements prescribed by a board. This experience is acceptable if it is gained through employment in government, industry, academia or public practice. Before an applicant may obtain a certificate, the applicant must obtain actual experience; however, that experience can be obtained in any area of employment involving the use of accounting or business skills. The experience may be supervised by a non-licensee but must be verified by a licensee.

During a review of other states' requirements for supervision, staff found that several other states have very similar supervision requirements to California and provide no definition of supervision. Some states have adopted language that requires "direct" supervision, but in most cases, the board does not further define "direct." Staff found several states that clearly define supervision and have provided examples of the language **(Attachment 8).**

ISSUES FOR CONSIDERATION

When deliberating the issue of defining supervision, members may want to consider the following issues:

1) What is acceptable interaction to substantiate a supervisory relationship? Would it need to be face to face or could the interaction be facilitated through electronic means (telephone, internet, etc.)?

2) What, if any, would be the minimum frequency of interaction between the applicant and the supervisor? For example, daily, weekly, monthly?

3) Should the QC consider different definitions for the different work environments? For example, a different definition of supervision depending on whether the work is performed in public accounting, private industry, or government?

4) Should there be different supervision requirements for those seeking licensure with the authority to sign attest reports versus those applicants applying for licensure with general accounting experience?

5) Could a licensee working in a neighboring unit or satellite office who reviews any portion of the applicant's work be considered a supervisor?

OPTIONS FOR CONSIDERATION

The QC may wish to consider the following options when determining what to recommend to the CBA regarding whether to adopt a definition for supervision in regulation.

1) The QC could recommend that the CBA adopt the proposed language **(Attachment 9)** and provide general instructions that the CPA supervisor should use their best judgment, using the regulation as a guideline, in determining if they are qualified to sign the Certificate of Experience Form.

2) The QC could provide guidance to staff on how supervision should be defined. Staff would then work with legal counsel to draft language for consideration at the April 2010 QC meeting.

3) The QC could recommend to the CBA to maintain status quo, not adopting a definition of supervision, but providing guidance to staff regarding those items identified under **Issues for Consideration**. Should the QC consider this option, the information provided to applicants and supervisors regarding what constitutes a supervisory relationship would be considered "guidance" and could not be enforced, as it would not be in either regulation or statute. This option may address those questions received by staff and resolve confusion for applicants and licensees. At the direction of the CBA, the QC could reconsider this in the future should the issue continue.

Staff will be available at the QC meeting to answer any questions members may have.

ATTACHMENT 2

Section 12. General Experience Required Under Business and Professions Code Sections 5092 and 5093.

(a) In order to meet the experience requirement of Section 5092 or Section 5093 of the Business and Professions Code, experience must be supervised by a person holding a valid license or comparable authority to practice public accounting as specified in subdivision (d) of Section 5092 or subdivision (d) of Section 5093. Supervised experience means that the applicant's supervisor shall have reviewed and evaluated the applicant's qualifying work, pursuant to subsection (b) on a routine and recurring basis and shall have authority and oversight over the applicant.

(1) Experience shall be verified by the person supervising the experience and by a second person with a higher level of responsibility in the public accounting firm, private industry company, or governmental agency. If the experience is obtained in public accounting, the second person signing the verification shall be an owner of the public accounting firm holding a valid license or comparable authority to practice public accounting. If the ~~person supervising the experience is also an owner of the public accounting firm~~ owner of the public accounting firm or private industry company signing the verification is also the person supervising the experience, no second signature is required. ~~If the experience is obtained at a private business no second signature is required if the person supervising the experience is also an owner of the private business.~~

(2) Experience may not be supervised by a licensee who provides public accounting services to the applicant's employer.

(3) (A) All verifications shall be submitted to the Board on Form 11A-29 (8/10) for public accounting experience or Form 11A-29A (8/10) for private industry and governmental accounting experience, which are hereby incorporated by reference, and shall be signed under penalty of perjury.

(B) If the applicant is unable to obtain the verifications required in subsection (a)(3)(A), the Board may approve other forms of verification if they contain the information as required in subsection (a)(3)(A).

(b) The experience required by Section 5092 or 5093 involves providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. Qualifying experience may be gained through employment in public ~~practice~~ accounting, private industry, or government. Experience acquired in academia is not qualifying.

(c) The experience required by Sections 5092 or 5093 of the Business and Professions Code may be obtained in full-time or part-time employment provided the total experience completed by the applicant is the equivalent of at least two years of full-time employment for an applicant qualifying under Section 5092 or at least one year of full-time employment for an applicant qualifying under Section 5093. In evaluating an applicant's experience, 170 hours of part-time employment shall be considered equivalent to one month of full-time employment.

(d) An applicant who is applying under Section 5092 or Section 5093 of the Business and Professions Code with experience obtained five (5) or more years prior to application may be required to obtain 48 hours of continuing education which shall include general accounting, and other comprehensive basis of accounting; and to submit the certificates of completion to the Board.

Section 12.5. Attest Experience Under Business and Professions Code Section 5095.

(a) To be authorized to sign reports on attest engagements pursuant to Business and Professions Code Section 5095, an applicant for a California Certified Public Accountant license pursuant to Business and Professions Code Sections 5087, 5092, or 5093 or holder of an unexpired California Certified Public Accountant license issued pursuant to Business and Professions Code Sections 5087, 5092, or 5093 shall show to the satisfaction of the Board that he or she meets the requirements of this section and Business and Professions Code Section 5095.

(1) Some or all of the experience required by Section 5095 and this section may be completed prior to issuance of the California Certified Public Accountant license. Any experience that would be qualifying for purposes of Section 5095 and this section may also serve as qualifying experience for purposes of Sections ~~5083,~~ 5092~~,~~ or 5093. To be qualifying for purposes of Section 5095 and this section, any experience obtained after issuance of the California Certified Public Accountant license must be obtained while the license is held in active status.
(2) A holder of an active California Certified Public Accountant license may commence signing reports on attest engagements upon receipt of notification from the Board that he or she has met the requirements of this section and Business and Professions Code Section 5095. A holder of an inactive California Certified Public Accountant license may apply under this section, but must convert the license to active status before commencing to sign reports on attest engagements.
(3) An applicant for the California Certified Public Accountant license who has met the requirements of this section and Business and Professions Code Section 5095 may commence signing reports on attest engagements upon license issuance.

(b) In order to meet the attest experience requirements of Section 5095 an applicant for or holder of a California Certified Public Accountant license shall show to the satisfaction of the Board that the applicant has completed a minimum of 500 hours of attest experience.

This experience shall include all of the following:
(1) Experience in the planning of the audit including the selection of the procedures to be performed.
(2) Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions included in financial statements.
(3) Experience in the preparation of working papers in connection with the various elements of (1) and (2) above.
(4) Experience in the preparation of written explanations and comments on the work performed and its findings.
(5) Experience in the preparation of and reporting on full disclosure financial statements.

(c) Qualifying experience may be gained through employment in public accounting, private industry, or government. Experience acquired in academia is not qualifying.

~~(c)~~ (d) In order to be qualifying, experience obtained pursuant to Section 5095 of the Business and Professions Code must be supervised by a person holding a valid license or comparable authority to provide attest services as specified in subdivision (b) of Business and Professions Code Section 5095. Supervised experience means that the applicant's supervisor shall have

reviewed and evaluated the applicant's qualifying work, pursuant to subsection (b) on a routine and recurring basis and shall have authority and oversight over the applicant.

(1) Experience shall be verified by the ~~supervisor~~ person supervising the experience and by a second person with a higher level of responsibility in the public accounting firm, private industry company, or governmental agency. ~~The verification shall be signed by both persons under penalty of perjury.~~ If the experience is obtained in public accounting, the second person signing the verification shall be an owner of the public accounting firm holding a valid license or comparable authority to practice public accounting. If the owner of the public accounting firm or private industry company signing the verification is also the person supervising the experience, no second signature is required.

(2) Experience may not be supervised by a licensee who provides public accounting services to the applicant's employer.

(3) (A) All verifications shall be submitted to the Board on Form 11A-6A (8/10) for public accounting experience or on Form 11A-6 (8/10) for private industry and governmental accounting experience, which are hereby incorporated by reference, and shall be signed under penalty of perjury.

(B) If the applicant is unable to obtain the verifications required in subsection (c)(3)(A), the Board may approve other forms of verification if they contain the information as required in subsection (a)(3)(A).

~~(d)~~ (e) In order to demonstrate the completion of qualifying experience, an applicant for or holder of a California Certified Public Accountant license may be required to appear before the Qualifications Committee to present work papers, or other evidence, substantiating that his or her experience meets the requirements of Section 5095 of the Business and Professions Code and of subsection (b) of this section.

~~(e)~~ (f) The applicant who is applying with attest experience obtained outside the United States and its territories must present work papers substantiating that such experience meets the requirements of subsection (b) and generally accepted auditing standards. Alternatively, the applicant may acquire a minimum of 500 hours of United States experience which meets the requirements of Business and Professions Code Section 5095 and subsection (b).

~~(f)~~ (g) The applicant who is applying with experience obtained five (5) or more years prior to application may be required to obtain 48 hours of continuing education which shall include financial standards, auditing standards, compilation and review, and other comprehensive basis of accounting; and to submit the certificates of completion to the Board.

~~(g)~~ (h) The experience required by Sections ~~5095~~ 5092 or 5093 of the Business and Professions Code may be obtained in full-time or part-time employment provided the total experience completed by the applicant is the equivalent of at least two years of full-time employment for an applicant qualifying under Section 5092 or at least one year of full-time employment for an applicant qualifying under Section 5093. In evaluating an applicant's experience, 170 hours of part-time employment shall be considered equivalent to one month of full-time employment.

CALIFORNIA ACCOUNTANCY ACT
SECTION 5092
(PATHWAY 1)

(a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

CALIFORNIA ACCOUNTANCY ACT
SECTION 5093
(PATHWAY 2)

(a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(2) An applicant for issuance of the certified public accountant license under the provisions of this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be presented at the time of application for the certified public accountant license.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

State of California
Department of Consumer Affairs

M e m o r a n d u m

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

CBA Agenda Item XI.B.1.d.
September 22-23, 2010

To : CBA Members

Date : August 25, 2010
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From : Deanne Pearce, Chief
Licensing Division

Subject : Qualifications Committee (QC) Recommendation Regarding Further Defining General Accounting Experience in CBA Regulation Section 12.

The California Board of Accountancy (CBA) requested the QC to discuss and make a recommendation on whether to further define general accounting experience in Section 12 of the CBA Regulations.

Following an extensive discussion and input from all QC members, the QC adopted the following recommendations for further consideration by the CBA:

1. The QC recommends no change to Section 12 of the CBA Regulations because based on the current statutory language contained in Section 5092 and 5093, there is no effective way to further define general accounting experience.

2. The QC recommends that if the CBA wants to further define general accounting experience in regulation that it first consider a change to how general accounting experience is defined in statute. A statutory change may allow for further flexibility when defining it in regulation.

3. The QC recommends better disclosure and outreach to inform consumers of the limitations of Certified Public Accountants (CPA) licensed without the authorization to sign attest reports (general accounting experience).

At the July 28, 2010 CBA meeting, staff provided the QC's three recommendations to the CPC **(Attachment 1)**.

The CPC deliberated the QC's recommendations at its July 28, 2010 meeting and agreed to maintain the present language in Section 12 of the CBA Regulations. Ms. Bowers indicated the CBA Outreach Committee would take on the third recommendation of the QC, better disclosure and outreach to consumers regarding the practice limitations of licensees licensed with general accounting experience.

The CPC's recommendation to not pursue a regulatory change and instead increase outreach to consumers regarding the limitations of a CPA licensed without the authorization to sign attest reports was originally due to be considered by the CBA at the July 28, 2010 meeting but was deferred due to time constraints.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
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M e m o r a n d u m

CPC Agenda Item V. July 28, 2010 | CBA Agenda Item X.A.5. July 28, 2010

To : CBA Members
Committee on Professional Conduct Members

Date : July 7, 2010
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From : Fausto Hinojosa, Chair, Qualifications Committee
Deanne Pearce, Chief, Licensing Division

Subject : Qualifications Committee (QC) Recommendation Regarding Further Defining General Accounting Experience in CBA Regulation Section 12.

The CBA requested the QC to discuss and make a recommendation on whether to further define general accounting experience in Section 12 of the CBA Regulations. This request was made to address concerns raised by licensee supervisors, CBA members and QC members regarding whether or not certain experience obtained by applicants in public, government and non-public settings would qualify as general accounting experience.

For your reference, is the issue paper **(Attachment 1)** regarding general accounting experience which was presented by staff at the January 27, 2010 QC meeting. The QC members discussed various issues including the Uniform Accountancy Act and reviewed other state's general accounting experience requirements. Following discussions, the QC formed a subcommittee to further review and discuss whether general accounting experience should be further defined in Section 12 of the CBA Regulations.

At its April 21, 2010 meeting, the QC continued its discussions, which began with an overview of CBA members comments and suggestions regarding general accounting experience from the March 26, 2010 CBA meeting. The subcommittee then provided an oral presentation of its findings, which concluded with a recommendation to not further define general accounting experience.

One of the issues at the core of the QC's deliberations, and identified specifically by CBA members, was whether bookkeeping services should qualify as general accounting experience. Complicating the matter is how general accounting experience is defined in statute. Section 5092 of the Business and Professions Code uses the terms, "any type of service or advice…" and includes broad experience areas such as, "accounting, management advisory, and consulting skills". In addition, the way the statute is worded limits the CBA's ability to require experience be obtained in any one area.

Following an extensive discussion and input from all QC members, the QC adopted the following recommendations for further consideration by the CBA:

1. The QC recommends no change to Section 12 of the regulations because based on the current statutory language contained in Section 5092 and 5093, there is no effective way to further define general accounting experience.

2. The QC recommends that if the CBA wants to further define general accounting experience in regulation that it first consider a change to how general accounting experience is defined in statute. A statutory change may allow for further flexibility when defining it in regulation.

3. The QC recommends better disclosure and outreach to inform consumers of the limitations of Certified Public Accountants licensed without the authorization to sign attest reports (general experience).

Provided for your reference are Section 12 of the CBA Regulations (Attachment 1 to January 13, 2010 Issue Paper) and Business and Professions Code Sections 5092 and 5093 (Attachment 2 to January 13, 2010 Issue Paper).

Ms. Pearce and I will be available at the meeting to respond to any questions members may have regarding the above recommendations.

Attachments

State of California
Department of Consumer Affairs

Attachment 1

California Board of Accountancy
2000 Evergreen Street, Suite 250
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M e m o r a n d u m

QC Meeting Agenda Item III.B.
January 27, 2010

To : Qualifications Committee Members

Date : January 13, 2010

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From : Kris McCutchen, Manager
Licensing Division

Subject : Discussion Related to Further Defining General Accounting Experience in Section 12 of the California Accountancy Regulations

Concerns have recently been raised by licensee supervisors, California Board of Accountancy (CBA) members and Qualifications Committee (QC) members as to whether or not certain experience obtained by applicants in public, government and non-public settings should be considered general accounting experience.

Based upon the current issues, the CBA members requested that the QC discuss this issue at their January 2010 meeting and make a recommendation to the CBA at a future meeting as to whether or not general accounting experience should be further defined in Section 12 of the California Code of Regulations.

To assist QC members in their deliberations regarding this matter, staff have provided background information on the CBA's general accounting experience requirements, general accounting experience requirements as defined by the Uniform Accountancy Act (UAA), and other states' general accounting experience requirements. Also provided are options for QC consideration.

Attachments

CALIFORNIA BOARD OF ACCOUNTANCY

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Discussion Related to Further Defining General Accounting Experience in Section 12 of the California Accountancy Regulations

INTRODUCTION

Concerns have recently been raised by licensee supervisors, California Board of Accountancy (CBA) members and Qualifications Committee (QC) members as to whether or not certain experience obtained by applicants in public, government and non-public settings should be considered qualifying for satisfying the general accounting experience requirement for Certified Public Accountant (CPA) licensure.

Although supervisors are referred by staff to the CBA's laws and regulations, they are unable to obtain the clarification needed to determine what qualifies towards meeting the general accounting experience requirement and therefore are hesitant to sign the general accounting experience form on behalf of the applicant. The confusion seems to stem from language contained in Section 12 **(Attachment 1)** of the California Code of Regulations (CCR) which uses the term " the use of accounting."

Based upon the current issues, the CBA members requested that the QC discuss this issue at the January 2010 QC meeting and make a recommendation to the CBA at a future meeting as to whether or not general accounting experience should be further defined in Section 12 of the CCR.

CALIFORNIA GENERAL ACCOUNTING EXPERIENCE REQUIREMENTS

On January 1, 2002, the CBA implemented statutory and regulatory changes that provided the option of obtaining licensure in California as a CPA with general accounting experience pursuant to Sections 5092 and 5093 of the Business and Professions Code (B&P Code) **(Attachment 2)** and Section 12 of the CCR.

Following successful completion of the Uniform CPA Examination, candidates have two pathway options for licensure:

- Pathway 1, Section 5092 of the B&P Code, requires that an applicant have a baccalaureate degree, 24 semester units of accounting subjects, 24 semester units of business subjects, and a minimum of 24 months of general accounting experience.

- Pathway 2, Section 5093 of the B&P Code, requires that an applicant have a baccalaureate degree, 24 semester units of accounting subjects, 24 semester units of business subjects, and 150 total semester units of education, along with a minimum of 12 months of general accounting experience.

The experience required by Sections 5092 and 5093 involves providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, tax or consulting services performed in accordance with applicable professional standards. Individuals licensed with general accounting experience are not authorized to sign reports on attest engagements.

BACKGROUND – EXPERIENCE REQUIREMENT

Study Related to the Education and Experience Requirements for Licensure in California

Prior to January 2002, applicants for licensure were required to meet an attest experience requirement. Once licensed, CPAs were authorized to perform the full range of accounting services, including signing reports on attest engagements.

Developing the option of obtaining licensure with general accounting experience was influenced by a study[1] completed in 1999 to comprehensively assess the education and experience requirements for licensure to determine value and benefit to consumer protection. Although many findings came out of the study, of particular interest regarding California's experience requirement is the following excerpt:

> Survey findings suggest the general accounting experience requirement is appropriate. Licensees and hiring managers responding to the surveys indicated that two to three years of general accounting experience was necessary for professional competency.

Sunset Review Committee Recommendations

In 1998, the CBA instituted a Sunset Review Committee (SRC) to deal with the many issues for the Sunset Review Report due to the Legislature in fall of 2000. The main focus of the SRC was on the "3 Es" of the UAA: education, examination, and experience. The SRC strived to amend statutory and regulatory language related to California's examination and licensure requirements in order to qualify for substantial equivalency under the Uniform Accountancy Act (UAA). One such change was to the attest experience requirement. Under the UAA, attest experience is not a requirement for CPA licensure.

At its meeting on January 21, 2000, the CBA unanimously adopted the statutory and regulatory language related to the licensure requirements, specifically:

- Eliminate the attest experience requirement and require only one year of general accounting experience performed in accordance with professional standards and under the supervision of a licensee.

[1] Senate Bill (SB) 1077 directed the CBA to study the need for continuation of the attest experience requirement, among other requirements, and to provide a report to the Legislature at the next Sunset Review. Oriel J. Strickland, Ph.D. of California State University, Sacramento prepared a study for the CBA, *A Series of Studies Related to the Education and Experience Requirements for Licensure in California,* in the fall of 1997 which concluded in the spring of 1999.

Two bills were introduced subsequent to the CBA's Sunset Review Report – Senate Bill (SB) 133 and Assembly Bill (AB) 585. SB 133 was a spot bill introduced by Senator Figueroa on January 29, 2001, to implement outcomes from the Joint Legislative Sunset Review Committee (JLSRC) hearings and extend the existence of the CBA and identify a new sunset date upon successful completion of the review process.

AB 585 was introduced by Assembly Member Nation on February 21, 2001, and included the recommendations from the CBA's UAA Task Force and the SRC with regard to the examination and educational experience requirements for licensure. The language included the following amendment/inclusion:

- Elimination of the attest experience requirement for licensure and require only one year of general accounting experience.

May 2001 Committee on Professional Conduct (CPC) Meeting

At the May 18, 2001, CPC meeting, a compromise to the two bills was presented related to the proposed new licensure requirements adopted by the CBA in January 2000. The compromise was suggested by Senator Machado at the Senate Business and Professions Committee hearing to address the concerns of the various parties in the Sunset Review process.

The compromise created California's two pathways to licensure. The educational requirements in Pathway 1 are most similar to the educational requirements in place at the time of the proposed new requirements: a conferred baccalaureate degree and a two year general accounting experience requirement. Pathway 2 established consistency with the UAA requirements: 150 hours of education and one year of general accounting experience. Neither pathway required attest experience at the time of licensure unless the individual wants the authorization to sign attest reports. Applicants obtaining CPA licensure under either pathway with general accounting experience would be able to satisfy the attest experience requirement post-licensure, thereby qualifying to sign reports on attest engagements. Both bills were signed by the Governor on October 11, 2001, and became law on January 1, 2002.

The CBA adopted regulations to implement the new laws, however the regulations nearly mirror the statutory language as it relates to defining general accounting experience and does not provide additional clarification on the definition of "accounting."

UNIFORM ACOUNTANCY ACT AND OTHER STATES' REQUIREMENTS

Under the UAA, an applicant for initial licensure must complete one year of experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills all of which must be verified by a licensee, meeting requirements prescribed by a board. The UAA language is similar to that of the CBA's.

During a review of other state boards requirements for general accounting experience, staff found that most of the states have very similar requirements to California and the UAA and therefore, provide no further definition of general accounting experience. Staff found a few examples of other definitions that states use for general accounting experience **(Attachment 3).** In most cases, the language does not provide a clear definition of general accounting experience. The Washington Board of Accountancy does not provide a clear definition of general accounting experience in their laws and regulations, however they do provide a helpful resource to applicants that provides definitions of qualifying experience **(Attachment 4)**.

ISSUE FOR CONSIDERATION

Both the B&P Code Sections 5092 and 5093 and Section 12 of the CCR contain nearly the exact same language in regards to what qualifies as general accounting experience. The core text states:

"This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills."

The only difference between the language in the statute and the regulation is that in statute there is a reference to having completed these services "in accordance with applicable professional standards."

The CBA would need to pursue a regulatory change to further define the terms referenced in the general accounting experience requirement.

OPTIONS FOR CONSIDERATION

The QC may wish to consider the following options regarding the general accounting experience requirement.

1. The QC could provide guidance to staff on how general accounting experience should be further defined. Staff would then work with legal counsel to draft language for consideration at the April 2010 QC meeting. Following the QC's review and approval of proposed language, the QC would recommend the clarifying language to the CBA.

2. The QC could recommend to the CBA to maintain status quo, to not further define general accounting experience, but provide guidance to staff. Should the QC consider this option, the information regarding what constitutes general accounting experience would be considered "guidance" and could not be enforced, as it would not be in either regulation or statute. This option may address those questions received by staff and resolve confusion for applicants and licensees.

Staff will be available at the QC meeting to answer any questions members may have.

CALIFORNIA CODE OF REGULATIONS
SECTION 12

(a) In order to meet the experience requirement of Section 5092 or Section 5093 of the Business and Professions Code, experience must be supervised by a person holding a valid license or comparable authority to practice public accounting as specified in subdivision (d) of Section 5092 or subdivision (d) of Section 5093.

(1) Experience shall be verified by the person supervising the experience and by a second person with a higher level of responsibility in the firm or agency. If the experience is obtained in public accounting, the second person signing the verification shall be an owner of the firm holding a valid license or comparable authority to practice public accounting. If the person supervising the experience is also an owner of the public accounting firm, no second signature is required. If the experience is obtained at a private business, no second signature is required if the person supervising the experience is also an owner of the private business.

(2) Experience may not be supervised by a licensee who provides public accounting services to the applicant's employer.

(3) All verifications shall be signed under penalty of perjury.

(b) The experience required by Section 5092 or Section 5093 involves providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. Qualifying experience may be gained through employment in public practice, industry, or government. Experience acquired in academia is not qualifying.

(c) The experience required by Section 5092 or Section 5093 of the Business and Professions Code may be obtained in full-time or part-time employment provided the total experience completed by the applicant is the equivalent of at least two years of full time employment for an applicant qualifying under Section 5092 or at least one year of full time employment for an applicant qualifying under Section 5093. In evaluating an applicant's experience, 170 hours of part-time employment shall be considered equivalent to one month of full-time employment.

(d) An applicant who is applying under Section 5092 or Section 5093 of the Business and Professions Code with experience obtained five (5) or more years prior to application may be required to obtain 48 hours of continuing education which shall include general accounting, and other comprehensive basis of accounting; and to submit the certificates of completion to the Board.

CALIFORNIA ACCOUNTANCY ACT
SECTION 5092
(PATHWAY 1)

(a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

CALIFORNIA ACCOUNTANCY ACT
SECTION 5093
(PATHWAY 2)

(a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(2) An applicant for issuance of the certified public accountant license under the provisions of this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be presented at the time of application for the certified public accountant license.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

Examples of Other State's General Accounting Experience Requirement

Alabama

For qualifying experience in industry or business, the Applicant must have been employed by a person or entity in the performance of duties primarily involving the use of financial accounting and auditing skills; the installation of internal control systems; the use of management advisory, financial advisory, or consulting skills; or compliance with accounting aspects of tax or regulatory laws. For qualifying experience in government, the Applicant must have been employed by a government agency recognized by the Alabama Board as having the responsibility and organizational structure for performing auditing and accounting functions.

Georgia

Public accounting work shall mean the performance of any combination of services involving the use of accounting, auditing or attestation skills, one or more types of consulting services, the preparation of tax returns or the furnishing of advice on tax matters. The work must involve the application of appropriate technical and behavioral standards such as standards contained in the Code of Professional Conduct, GAAS, SSAE, SSARS, the Statement on Standards for Tax Services (AICPA), the Statements on Standards for Management Consulting Services (AICPA), International Financial Reporting Standards (IASB) or other such standards as designated by policy statements of the Board.

Hawaii

Applicant must have 1,500 chargeable hours in performance of audits involving generally accepted accounting principles and auditing standards earned while in public accounting practice.

Louisiana

Experience may consist of providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills. Such experience shall be of sufficient depth and quality and have been supervised by an active certificate holder or one from another state who has significant exposure to and review of the Applicant's work.

Maine

Applicant must have two years of acceptable experience and must include a minimum of 400 hours of experience in audit, review, or compilation procedures and a minimum of 200 hours of experience in at least one of the following: the provision of management advisory, financial advisory or consulting services, the

preparation of tax returns, or the furnishing of advice on tax matters. One year of experience consists of 2,080 hours of work experience. Experience must include the use of accounting or auditing skills including the issuance of reports on financial statements and at least one of the following: the provision of management advisory services, financial advisory services or consulting services, the preparation of tax returns, the furnishing of advice on tax matters or equivalent activities as determined by the Maine Board. Applicant must have experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records in accordance with Generally Accepted Accounting Principles; preparation of audit working papers covering the examination of the accounts usually found in accounting records; in the preparation of written explanations and comments on the findings of the examination and on the content of the accounting records; personal involvement in the preparation of audited financial statements in accordance with Generally Accepted Accounting Principles together with explanations and notes thereon and such as to acquaint the individual with the preparation of the compilation and review of financial statements in accordance with generally accepted professional standards such as Statements on Standards for Accounting and Review Services; and involvement in the planning process of an audit.

Mississippi

Acceptable experience includes the use of accounting or auditing skills that include but are not limited to the issuance of reports on financial statements, or one or more kinds of management advisory, financial advisory or consulting services or the preparation of tax returns or the furnishing of advice on tax matters or equivalent experience determined by the Mississippi Board.

Montana

Applicant must have at least one year (2,000 hours) of accounting experience, including 500 hours of attest oriented experience requiring application of generally accepted standard and issuance of reports requiring applications of generally accepted accounting principles; *or* two years (4,000 hours) of private, governmental or public accounting experience that is acceptable to the Montana State Board.

New Hampshire

The experience requirement shall consist of public accounting experience in providing one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, or the equivalent.

New Jersey

The experience includes evidence of intensive and diversified experience in auditing or accounting as determined by regulation of the New Jersey Board. (This has not been determined in regulation)

New York

Applicant must present evidence, satisfactory to the State Board, of experience using the skills and competencies of a professional accountant in the area(s) of accounting, tax, finance and/or management advisory services.

North Carolina

One year of experience *in the public practice of accountancy* under the direct supervision of an active licensed CPA *or* one year experience *in the field of accountancy* under the direct supervision of an active licensed CPA.

Oregon

Qualifying experience may be obtained in the following categories: attest or assurance experience; experience based on other professional standards; or industry, government and other experience.

Rhode Island

The applicant shall demonstrate to the Board that he or she has obtained a portfolio of experience consisting of providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills all of which was verified and supervised by a licensee, meeting the requirements of these regulations. Such portfolio of experience obtained in the following categories, or in any combination thereof, shall be acceptable:

Public practice. Experience may be gained through employment as a staff accountant of a firm of certified public accountants or a firm of public accountants where such experience is of a non-routine accounting nature that continually requires independent thought and judgment on important accounting matters. The work must involve application of appropriate technical and behavioral standards such as the standards contained in the Code of Professional Conduct, Generally Accepted Auditing Standards, Statements on Standards for Attestation

Engagements, Statements on Standards for Accounting and Review Services, the Statement on Standards for Tax Services, or the Statements on Standards for Management Consulting Services (the “Professional Standards”).

Government. Experience may be gained through employment with accounting agencies or groups within federal, state or municipal government where such experience is of a non-routine accounting nature that continually requires independent thought and judgment on important accounting matters. The applicant shall obtain experience in assessing the adequacy of the accounting agency or group’s internal controls by developing an understanding of the accounting agency or group’s transaction streams and information systems. Such experience will include obtaining an understanding of the areas and/or industries with which the applicant’s agency operates, including the operations of similar service providers.

Acceptable government work experience includes: This experience shall include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills all of which was verified and supervised by a licensee, meeting requirements prescribed by the Rhode Island State Board by rule.

Texas

At least two years of work experience under the supervision of a certified public accountant; or At least one year of work experience acceptable to the Texas Board, including experience providing a service or advice involving accounting, attest services, management or financial advisory or consulting services, tax services, or other services the Texas Board considers appropriate for an accountant. Applicable work experience is defined as non-routine accounting involving the use of independent judgment, applying entry level professional accounting knowledge to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance and control situations. Work experience must be gained in at least one of the following areas:
1. Attest and/or compilation services.
2.Preparation of financial statements and reports.
3.Preparation of tax returns and/or consultation on tax matters.
4.Consultation, design, and/or implementation of computer software when the consultation, design, and/or implementation imply the possession of accounting or auditing skills or expert knowledge in accounting or auditing.
5.Supervision of activities (2) and (3) above.
Work experience can be gained in the following categories:
1. Client practice of public accountancy
2. Industry
3. Government
4. Law firm

5. Education
6. Internship

Utah

Accounting experience means applying accounting and auditing skills and principles that are taught as part of the professional education.

Vermont

Such employment shall include practical public accounting experience, or the equivalent of such experience, of reasonable variety and importance and requiring independent thought and judgment. Public accounting experience shall consist of the application of United States generally accepted accounting principles (GAAP) and the application of one or more of the following:
generally accepted auditing standards (GAAS),
standards of accounting and review services (SSARS),
standards for accountants' services on prospective financial information, financial forecasts and projections, and
other services subject to comprehensive sets of generally accepted professional standards issued by an appropriate standard setting body which the Board determines is equivalent.
For non-Public Accounting experience, the Board shall consider whether:
the applicant performed work resulting in opinions on financial statements or in reports on financial analyses or accounts;
the applicant participated with an independent auditor who relied on the applicant's work, wholly or partially, in attesting to the entity's finances;
the applicant performed substantial financial work, compliance work, systems design, or tax accounting;
any limitations on scope, approach or work were imposed;
significant proportions of work consisted of field work as opposed to desk or office work;
there was exposure to two or more types of industries;
the work was of sufficient duration to permit meaningful involvement in the process; and
the applicant's accounting duties required fiduciary responsibilities, or does the applicant treat accounting related duties as a fiduciary to a third party.

Washington

Qualifying experience may be obtained through the practice of public accounting and/or employment in industry, academia, or government. Your experience may be obtained through one or more employers, with or without compensation, and may consist of a combination of full-time and part-time employment.
(1) Your experience must support the attainment of the competencies defined by subsection (2) of this section and (a) Cover a minimum twelve-month period (this

time period does not need to be consecutive); (b) Consist of a minimum of two thousand hours; (c) Be obtained through the use of accounting, attest, management advisory, financial advisory, tax, tax advisory or consulting skills; **Please Note: Although the Washington Board does not define accounting the Board does provide guidance to applicants. See attachment 4.**

Wisconsin

Experience that may be considered equivalent includes:
Experience in accounting in industry and government may be considered equivalent to public accounting when it requires high levels of knowledge, competence and judgment.
Experience in teaching accounting may be considered equivalent to public accounting when it is at an advanced and specialized level of accounting. Courses taught in areas other than accounting do not qualify as public accounting experience.
Experience in law may be considered equivalent to public accounting when it is at a level with responsibility for independent accounting decisions and requires high levels of accounting knowledge, competence and judgment.

Definitions of Qualifying Experience

A candidate's qualifying experience may be obtained through the practice of public accounting and/or paid or volunteer employment in industry, academia, or government. Experience must be obtained through the use of accounting, attest, management advisory, financial advisory, tax, tax advisory, or consulting skills. The Board provides the following definitions of these skill areas to assist you in classifying your experience. These definitions are not intended to be all-inclusive. The Board acknowledges that there are other types of experience that have not been specifically identified in these definitions but could be considered a part of the definition. The Board also recognizes that experience may not be clearly identified with only one skill area or that experience may have elements of more than one skill area. For example, experience with a client's accounting system may have exposed the candidate to both accounting and tax skill areas or experience in consulting may have exposed the candidate to both management advisory and consulting skill areas. Nevertheless, it is the candidate's responsibility to match the experience with the required skill area(s) in order to determine if a particular type of experience fits within a specific skill area. The definitions that the Board has provided are intended to help you match and classify your experience with a skill area.

Accounting

Accounting is the process of providing quantitative information about economic entities to aid users in making decisions concerning the allocation of economic resources. An economic entity means all types of business and includes churches, hospitals, charitable organizations, municipalities, governments and other organizations. Users of accounting information include individuals external and internal to the entity. External users are outside the business or other entities that need to decide whether to engage or continue to engage in some activity (for example, investing, granting credit, business partnerships, or procuring goods or services) with the entity. Internal users are inside the business or other entities that need to make decisions (planning, controlling, and problem solving) concerning the operations and activities of the entity. Providing information includes the series of activities leading up to and including communicating the information through a report or some other communication process. These activities include

- Bookkeeping activities including
    - Identifying the information that has an economic impact on the entity;
    - Measuring the information in quantitative terms, usually monetary;
    - Recording the information in the accounting system;
    - Retaining the information for future use, and
    - Communicating the information by means of an accounting system.
- Managing accounts payable or accounts receivable;
- Managing fixed asset accounts;
- Managing inventory accounts.

Issuing Reports on Financial Statements

Issuing reports on financial statements includes the examination of financial statements that are intended to present financial position (balance sheet and statement of retained earnings), results of operations (income statement), and statement of cash flows in conformity with generally accepted accounting principles accompanied by the expression of a competent opinion concerning the fairness of the presentation of those financial statements in accordance with generally accepted auditing standards. Issuing reports on financial statements also covers participating in performing an examination, an audit, a review, a compilation or an agreed-upon procedures report on subject matter, or an assertion about the subject matter that is the responsibility of another party. Attestation engagements concern examining, auditing reviewing, compiling or performing agreed upon procedures on a subject matter or an assertion about a subject matter and reporting on the results. The subject matter may take many forms, including historical or prospective performance or condition, physical characteristics, historical events, analyses, systems and processes, or behavior. Engagements can cover a broad range of financial or non-financial objectives and can be part of a financial statement audit or other type of audit. A CPA candidate's experience in issuing reports on financial statements also includes participation in preparing and/or advising on:

- Specified elements, accounts, or items of a financial statement;
- Interim financial information or segments of financial statements;
- Letters for underwriters and certain other requesting parties;
- Year-end audit. This may include assisting the client in calculating the amount of the income taxes owed, valuing stock options and other stock compensation arrangements under FAS 123, and drafting and typing up the financial statements.
- Review of interim (monthly, quarterly) financial statements.
- Compilation of financial statements.
- Valuations of derivatives at fair market value for accounting purposes.
- Assistance in preparation of and review of filings with the SEC, including initial public offerings.
- Underwriter comfort letters for SEC and non-SEC filings.
- Audit of Management's Discussion and Analysis in SEC filings.
- Agreed upon procedures engagement (the client and auditor agree to procedures the auditor is to perform with respect to tasks such as testing a royalty arrangement or compliance with a loan agreement, and the auditor then issues a report on his or her findings).
- Audit or review of financial forecasts or projections. This includes such documents included in offering memoranda.
- Providing advice on how to interpret new accounting pronouncements, including providing sample journal entries.
- Audits of financial statements of pension plan financial statements.
- Director examinations of financial institutions.
- CPA WebTrust - an engagement to review the security of a company's website that is conducting electronic commerce over the internet.

- Assisting international companies in conforming their financial reporting to U.S. financial reporting practices (GAAP conversions).
- Technical opinions on accounting matters to clients of other accounting firms.

Tax Preparation and Tax Advisory Service

Tax preparation includes federal, state, or local tax returns. Tax advisory service includes analyzing financial and tax problems, formulating solutions and making recommendations designed to provide advice on taxation for clients ranging from individuals to business. A tax advisor helps an entity translate personal and/or business goals into targeted action steps designed to maximize the entity's tax position. Tax planning helps clients understand the tax effects of each financial decision. Candidates' experience in tax preparation and tax advisory services may include participation in preparing and/or advising on:

- Federal and state individual income tax returns;
- Federal and state corporation tax returns;
- Tax consequences of acquiring existing businesses and business assets;
- Reorganization of corporations and partnerships;
- Estate tax planning;
- Individual and corporate tax planning (including federal, state, and local taxes);
- Tax ramifications of corporate and real estate transactions;
- Personal financial planning for individuals including client employees and executives;
- Income tax planning for executives including employee compensation and benefit plans;
- Investment planning;
- Tax efficiency of proposed gift and charitable contribution programs;
- Tax impact of income and deductions, contributions, major purchases and investments;
- Programs for planning for college;
- Retirement planning programs;
- Estate planning including preparation of wills, trusts, etc.;
- Representation of clients in tax negotiations and disputes with the IRS;
- Representation of clients in IRS, State, or local audit;
- Property tax assessments;
- Succession planning;
- Tax advice to executors and trustees;
- Tax credit reviews to determine maximum allowable credits (e.g., research and development credits);
- Trade and customs services - ensures compliance with trade laws and regulations while trying to avoid, reduce, or defer overall customs duties;
- Transfer pricing studies and evaluation, documentation, and modification of existing policies;
- Valuation services; and
- Value Added Tax (VAT) Services.

Management Advisory

Management advisory includes the assessment of the performance and the management of a program against objective criteria. It also includes an assessment of best practices and other information that is intended to improve program operations. Management may seek help in selecting new computer hardware and software or suggestions on how clients can improve their operations. For example, improvements in the design and installation of an accounting system, the electronic processing of accounting data, inventory control, or budgeting. A CPA candidate's experience in management advisory services may include participation in preparing and/or advising on:

- Ethics and Responsible Business Practices - a service that helps clients address the sources of internal wrongdoing and eliminate barriers to responsible business practices;
- Evaluation, design and implementation of:
    - Internal accounting and financial reporting controls;
    - Financial reporting policies and procedures; and
    - Effectiveness of an entity's internal control over compliance with specified requirements;
- Evaluation, design and implementation of management and business controls over various business functions such as management reporting systems, research and development, etc.;
- Business Fraud and Investigation Services - helps companies identify, manage and minimize integrity risks, such as suspected management or alleged employee fraud;
- Benchmarking of best practices including business and financial reporting practices.
- Reengineering of business processes including:
    - Manufacturing processes;
    - Research and development processes;
    - Review of spending levels (e.g., for general and administrative expenses).
    - Plant layout design;
- Review of manual processes that feed into computerized information systems; and
- Staff reduction programs.

Financial Advisory

Financial advising is concerned with the efficient use of assets including funds within the enterprise and raising of funds. This is a service which considers all the client's financial affairs and which develops a plan to achieve a client's financial objectives. It can include internal audit but also include investments such as life insurance, pensions, mutual funds/unit trusts. A CPA candidate's experience in financial advisory services may include participation in preparing and/or advising on:

- Internal audits including government internal auditors and internal audits in a company that is not related to financial statement preparation.
- An entity's compliance with requirements of specified laws, regulations, rules;
- Contracts, or grants; including final contract cost and reasonableness of proposed contract costs.
- Compliance with regulations relating to governmental financial assistance;
- Processing of transactions by service organizations;
- Prospective financial statements or pro forma financial information;
- Reliability of performance measures;
- Treasury management services including design, development and implementation of policies and procedures;
- Credit management services including design, development and implementation of credit policies and procedures;
- Design and structuring of financial instruments;
- Assisting investment banking firms with the design of financial instruments and financing transactions;
- Assistance with finding/identifying equity parties or financing parties;
- Identification and selection of banks;
- Assistance with or preparation of financing and loan applications;
- Loan review services;
- Financial markets and banking regulatory advisory service;
- Due diligence reviews;
- Lead advisor for private placements;
- Preparation of offering memorandums;
- Merger/acquisition candidate targeting;
- Merger transaction advice on:
    - Structuring of transactions;
    - Tax implementations;
    - Sourcing capital;
    - Preparation of pro forma financial statements and projections;
    - Reengineering acquired businesses;
    - Cost reduction and synergistic studies;
- Appraisal and valuation of targets assets, including receivables, inventories, property, plant and equipment, intangible assets and in-process research and development;
- In some foreign jurisdictions, the firms act as stock transfer agents; and
- "Turnaround" business advisors.

Consulting Services

Consulting services includes professional or expert advice to clients covering major consulting practice areas including but not limited to:

Marketing & Sales	Engineering
Human Resources	Manufacturing
Government	Safety
Finance	Environment
Health Care	Energy
Scientific	Telecommunications
Legal	

A CPA candidate's experience in consulting services for these, and other practice areas, may include participation in preparing and/or advising on:

- Selection of new hardware and software systems. This may include activities such as performing a "needs analysis," preparation of a request for proposals, and overseeing, assistance with, or performance of demonstrations;
- Implementation of new hardware and software systems. This may include:
    - Full on-site team to perform all implementation services;
    - Project administration of another consulting team;
    - Development of necessary manual and computer control systems;
    - Providing necessary computer programmers;
    - Software design and programming;
    - Ongoing support functions;
- Development of IT management and/or strategic plans;
- Development of IT disaster recovery and security plan;
- System security audits;
- Application controls consulting;
- Business continuity planning and information security services;
- Electronic commerce services;
- Evaluation and selection of telephone systems;
- Consulting on information technology issues;
- Designing and developing employee compensation programs including:
    - Stock option programs;
    - Retirement plans;
    - Executive compensation arrangements;
    - Deferred compensation and bonus arrangement;
- Evaluation of marketing and distribution channels;
- Development of marketing and distribution channel plans and consulting on the implementation of such plans;
- Corporate and commercial legal services to national and international companies worldwide;
- Assistance to law departments and general counsel to enhance and measure performance:

- Litigation support which would include:
    - Case management;
    - Expert accounting and financial reporting witnesses;
    - Damages experts and witnesses;
    - Environmental litigation experts;
    - Securities litigation experts;
    - Antitrust services;
    - Construction disputes;
    - Service of detailed data to provide cost-effective, proactive strategies and solutions to complex business disputes;
- Outsourcing of such client functions as information systems. This may include outsourcing management or the entire data processing and information systems group:
    - Internal audit function;
    - Tax department;
    - Office of the Chief Financial Officer;
    - Accounting department;
    - Human resource department;
    - Risk management function;
- Government Contract Consulting - helps companies understand and address business risks associated with negotiating, contracting with, and performing under contracts for the sale of goods or services with U.S. federal, state, local and foreign governments;
- Advise government entities that are privatizing on commercialization, restructuring, competition, changing organization attitudes, customer satisfaction and policy adjustment; provides other grant-aided work in emerging markets;
- Real Estate - provides advice about increasing the profitability of real estate assets through the acquisition, development, management and disposition of single assets or portfolios of properties. Services also include strategic planning, consolidation studies, surplus property planning, valuations, and outsourcing consulting;
- Services for middle-sized companies - includes cash management, payroll needs, business relocation services, and shareholder meetings;
- Insolvency/executor services - acting as receivers, liquidators, bankruptcy trustees, or advisors to debtor or creditor groups; and
- Specific services for health insurers and other health care organizations.

State of California
Department of Consumer Affairs

California Board of Accountancy
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Sacramento, CA 95815-3832

M e m o r a n d u m

CPC Agenda Item II.
September 22, 2010

CBA Agenda Item XI.B.2.a.
September 22-23, 2010

To : CBA Members
CPC Members

Date : August 23, 2010

Telephone : (916) 561-1792
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From : Matthew Stanley
Legislation & Regulation Analyst

Subject : Consideration of Regulatory Language for Section 48.3 – Peer Review Provider Reporting Responsibilities

On January 1, 2010, the California Board of Accountancy's (CBA) mandatory peer review law went into effect. The peer review reporting form went live on the CBA Web site on July 1, 2010. Using that form, firms have 45 days to report a substandard peer review. A CBA-recognized peer review provider is also to provide a copy of the substandard report as insurance that the CBA is made aware of all substandard reports. The law requires the CBA to establish in regulation the time period that a CBA-recognized peer review program provider has to file a copy of any substandard peer review reports issued to California-licensed firms. This time period is not to exceed 60 days from the time the report is accepted by the CBA-recognized peer review program provider. It further states that these reports may be filed electronically with the CBA.

Staff are proposing that the CBA amend Section 48.3 Title 16 of the California Code of Regulations to require CBA-recognized peer review program providers to file copies of any substandard peer review reports issued to California-licensed firms within 60 days of the report being accepted. The proposal would allow for the reports to be filed in writing or electronically and would make other clarifying, non-substantive changes.

The CBA may wish to consider a 45-day reporting period rather than the 60-day period proposed to coincide with the reporting period for the firm undergoing peer review. Staff would like to point out, however, that the required reporting by the provider was intended to serve as a backup to the self-reporting by firms.

Attached for your consideration is proposed regulatory language to establish a 60-day reporting period for CBA-recognized peer review providers (**Attachment 1**).

The draft language has been prepared and submitted to the Office of Administrative Law in order to meet a deadline to ensure that the CBA can hold a regulatory hearing on this matter at its November meeting. If the CBA wishes to make any changes to the proposal, this can be accomplished using a 15-day renotice following the hearing.

Attachment

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CALIFORNIA BOARD OF ACCOUNTANCY
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Attachment 1

PROPOSED REGULATORY LANGUAGE

48.3. Board-Recognized Peer Review Program Provider Reporting Responsibilities.

(a) Upon request of the Board or Peer Review Oversight Committee, a Board-recognized peer review program provider shall make available, at a minimum, the following:

(1) Standards, procedures, guidelines, training materials, and similar documents prepared for the use of reviewers and reviewed firms.

(2) Information concerning the extent to which the Board-recognized peer review program provider has reviewed the quality of reviewers' working papers in connection with the acceptance of reviews.

(3) Statistical data maintained by the Board-recognized peer review program provider related to its role in the administration of peer reviews.

(4) Information concerning the extent to which the Board-recognized peer review program provider has reviewed the qualifications of its reviewers.

(5) Sufficient documents to conduct sample reviews of peer reviews accepted by the Board-recognized peer review program provider. These may include, but are not limited to,~~;~~ the report; reviewer working papers prepared or reviewed by the Board-recognized peer review program's peer review committee in association with the acceptance of the review; and materials concerning the acceptance of the review, including, but not limited to, the imposition of required remedial or corrective actions;~~,~~ the monitoring procedures applied;~~,~~ and the results.

(b) A Board-recognized peer review program provider shall provide the Board, in writing or electronically, the name of any California-licensed firm expelled from the peer review program and provide the reason(s) for expulsion. The Board-recognized peer review program provider shall submit this information to the Board within 30 days of notifying the firm of its expulsion.

(1) Nothing in this subsection shall require a Board-recognized peer review program provider, when administering peer reviews in another state, to violate the laws of that state.

(c) A Board-recognized peer review program provider shall provide the Board, in writing or electronically, a copy of all substandard peer review reports issued to California-licensed firms within 60 days from the time the report is accepted by the Board-recognized peer review program provider.

NOTE: Authority cited: Sections 5010, 5076, and 5076.1, Business and Professions Code. Reference: Section 5076 and 5076.1, Business and Professions Code.

State of California
Department of Consumer Affairs

California Board of Accountancy
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M e m o r a n d u m

CPC Agenda Item III.
September 22, 2010

CBA Agenda Item XI.B.2.b.
September 22-23, 2010

To : CPC Members
CBA Members

Date : September 7, 2010

Telephone : (916) 561-4310
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From : Dominic Franzella, Manager
Renewal/Continuing Competency & Client Services Units

Subject : Continued Consideration of Retired Status for CPA/PA Licensure

At the July 2010 California Board of Accountancy (CBA) Committee on Professional Conduct (CPC) meeting, staff provided CPC members with an issue paper regarding retired options for certified public accountant (CPA) and public accountant (PA) licenses. By the conclusion of the meeting, members came to a general consensus that offering a renewable retired license option seemed reasonable.

As part of the discussions at the CPC meeting, CPC members inquired if establishing a retired option could be done simply via regulation. Staff queried legal counsel to determine the feasibility of establishing a retired option via regulation only, possibly by using Business and Profession (B&P) Code Section 462 (**Attachment 1**). B&P Code Section 462 allows Department of Consumer Affairs boards, bureaus, commissions, and programs to offer, by regulation, an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation. The only requirements that a licensee must comply with, pursuant to the statute, are not engage in any activity for which a license is required, renew the license during the same time period that an active license would be renewed, and pay a renewal fee.

According to legal counsel, given these limited requirements for an inactive status, should the CBA desire additional qualifications such as a minimum age, years of services, and/or no pending discipline, it would be unable to prescribe these via regulation because these qualifications would go beyond the scope of the statute. Thus, simply establishing a retired option via regulation using B&P Code Section 462 is not a viable option.

The statute that the CBA would need to enact to establish a retired status could be similar to B&P Code Section 462 and include language to the effect that the CBA has the authority to establish, by regulation, a system for a retired category of licensure for persons who: are not actively engaged in the practice of the public accountancy as defined in B&P Code Section 5051; hold a license that is current or

eligible for renewal and has not been suspended, revoked, or otherwise disciplined; are not subject to pending discipline or have a pending complaint; meet minimum qualifications; and pay fees as defined by the CBA in regulation.

In the following sections of this memorandum, staff outline areas that the CBA needs to address in order to establish a retired option. These include the minimum conditions for qualifying for a retired option, the fee to be charged (initial application and renewal, if applicable), whether to require retirees use a specified designation, and what requirements would need to be met to restore a retired license to an active status.

Minimum Conditions to Qualify for a Retired Option

If the intent of providing a retired license status is to acknowledge a licensee's years of service to the profession by affording an option other than expiration, and eventually cancellation, or voluntary surrender, it seems reasonable to require minimum qualifications designed to ensure the retired status option is used for its intended purpose. Staff have identified the below qualifications for member consideration.

- *No Enforcement Actions*
  It seems reasonable that licensees with pending disciplinary actions should not be eligible for a retired status until the matter has been resolved. Though B&P Code Section 5109 gives the CBA broad authority to proceed with disciplinary action regardless of license status, allowing a licensee known to have an accusation pending to change to a retired status is not in keeping with the intent of offering the retired status. This was an issue under the previous retired status because there was no legal mechanism for the CBA to deny or delay issuance of a retired seal and licensees were still permitted to display their wall certificate with the retired seal even if the license had subsequently been revoked.

- *Individuals with Disabilities*
  Should a minimum age and/or years in the profession be required (discussed in the next section), members may wish to consider waiving these requirements for licensees who meet the definition of disabled under the American's with Disabilities Act (ADA), when substantiated by a statement from a medical doctor.

  The ADA defines an individual with a disability as a person who "has a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment, or who is perceived by others as having such an impairment." At this time, staff are not aware of any boards or bureaus with modified requirements for licensees qualifying as disabled under

the rules of the ADA; however, the Idaho, Oklahoma, Tennessee, and Wyoming state boards waive the age requirement for licensees who are disabled.

- *Minimum Age*
  Members may wish to require the licensee to be of retirement age, which is usually considered sometime between the ages of 55 and 65. The youngest age at which an individual may apply for full retirement benefits under the federal Social Security Act is 62. Presently, only one DCA board requires a minimum age. The Dental Board requires licensees reach the age of retirement under the federal Social Security Act.

  Several state boards of accountancy place a specific minimum age requirement on obtaining a retired license. Alabama, Colorado, Mississippi, South Dakota, Tennessee, and Wyoming all require a minimum age of 55; Idaho, Nebraska, Nevada, and Texas all require a minimum age of 60; while Oklahoma and Arkansas require a minimum age of 65. A few other states also require a licensee reach retirement age but do not specify, in law, the specific age.

- *Minimum Years in the Profession*
  In keeping with the intent of the retired option it seems reasonable to require a minimum number of years in the profession. The minimum years of service could be between 15 and 20 years, which is similar to the Dental Board, Board of Pharmacy, and the Board for Professional Engineers and Land Surveyors all of which require a minimum of 20 years of licensure. The remaining boards that offer a retired status do not make such a specification. Members may also wish to consider if minimum years of practice in California should be required such as the five-year requirement set by the Board for Professional Engineers and Land Surveyors.

In considering the last two minimum qualifications, members may also wish to consider whether a licensee must meet both the minimum age and minimum years in the profession or whether the two requirements should be treated as mutually exclusive. This is an important consideration because the age at which individuals are becoming licensed has decreased over the past several years. Therefore, if the two requirements are treated as mutually exclusive a licensee who becomes licensed at the age of 25 would theoretically be able to request a retired license status at the age of 45, well below the average retirement age.

Application and Fees for a Retired License Status

If members choose to move forward with instituting a retired license status, an application and review process will need to be instituted. Members will also need to decided whether it is appropriate to charge an application fee and/or renewal fee.

If charged, the application fee would go toward the staff time required to review the application, research the licensee's electronic record and paper license file, verify no actions are pending with the Enforcement Division, and update the Consumer Affairs System. Working under the impression that the retired license will be a renewable license, staff have based the example application fee, renewal fee, and restoration fee below on a percentage of the present license renewal fees. Depending on how the final statutory and regulatory language is crafted, adjustments can be made regarding the pending license renewal fee reduction.

- Application Fee - $100 (50 percent of the present license renewal fee)
- Renewal Fee - $50 (25 percent of the present license renewal fee)
- Restoration Fee - $200 (equal to the present license renewal fee)

The idea of a restoration fee is new to the CBA as licensees are presently afforded the ability to convert an inactive license to an active status without paying any additional fees. Due to the fact that the retired status is intended to be finite, instituting a restoration fee may encourage licensees not yet fully committed to retirement to select the inactive option over the retired status.

Retired Designation

Members may wish to consider a specific designation requirement similar to that required of licensees holding a license in an inactive status. Considering that one of the main concerns with the previously available retired seal was the confusion it caused consumers in determining if a particular CPA was authorized to practice public accountancy, it may be prudent to require a licensee to place the term retired either before or after the CPA designation.

Requirements to Restore a Retired License to an Active Status

In order to allow licensees in a retired status to re-enter the practice of public accountancy restoration requirements must be established. The requirements could be as simple as fulfilling the present status conversion requirements outlined in Section 87.1 of the CBA Regulations (**Attachment 2**), which require the completion of 80 hours of continuing education (CE), including a regulatory review course if it has been six years or more since the licensee last completed a regulatory review course.

A second option that seems reasonable would be to require the licensee to fulfill the reissuance requirements outlined in Section 37 of the CBA Regulations (**Attachment 3**), which include the completion of 48 hours of continuing education and passage of the Professional Ethics for Certified Public Accountants (PETH) exam. The restoration requirements of other DCA boards are summarized below.

Architects Board	The license can be reinstated within five years by paying all accrued renewal and delinquency fees.
Dental Board	The licensee must pay the license renewal fee and complete 50 hours of CE.
Medical Board	The licensee must pay the license renewal fee and complete 50 hours of CE
Board of Pharmacy	The licensee must pass the exam required for initial licensure.
Board for Professional Engineers and Land Surveyors	The licensee must retake the professional exam required for initial licensure.

Keeping in mind that a retired license status is intended for a licensee who has made a conscious decision to permanently retire and not for a licensee who is looking for temporary relief from active or inactive license renewal requirements, the goal should be to make this a finite status to keep licensees from going in and out of a retired status.

If members reach agreement on key areas including renewability, use of the CPA designation, a range of fees to be charged, and enforcement-related restrictions staff could begin drafting proposed statutory language, which would likely include amendments to Section 5134 (Fees) and Section 5109 (Jurisdiction Over Expired, Cancelled, Forfeited, Suspended, or Surrendered License) of the B&P Code.

Depending on the outcome of CBA deliberations, staff will prepare language for review by the Legislative Committee and CBA at a future meeting.

BUSINESS AND PROFESSIONS CODE

DIVISION 1
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 7
LICENSEE

462. Inactive License

(a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following provisions: (1) The holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required. (2) An inactive license issued pursuant to this section shall be renewed during the same time period in which an active license is renewed. The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license. (3) The renewal fee for a license in an active status shall apply also for a renewal of a license in an inactive status, unless a lesser renewal fee is specified by the board. (4) In order for the holder of an inactive license issued pursuant to this section to restore his or her license to an active status, the holder of an inactive license shall comply with all the following: (A) Pay the renewal fee. (B) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.

(c) This section shall not apply to any healing arts board as specified in Section 701.

CALIFORNIA BOARD OF ACCOUNTANCY REGULATIONS

CALIFORNIA CODE OF REGULATIONS
TITLE 16. Professional and Vocational Regulations
DIVISION 1. Board of Accountancy Regulations

ARTICLE 12. CONTINUING EDUCATION RULES

87.1. Conversion to Active Status Prior to Renewal.

(a) A licensee who has renewed his/her license in an inactive status may convert the license to an active status prior to the next license expiration date by (1) completing 80 hours of continuing education credit as described in Section 88, to include the Ethics Continuing Education Requirement described in Section 87(b), within the 24-month period prior to converting to active status, of which a minimum of 20 hours shall be completed in the one-year period immediately preceding conversion to an active status, with a minimum of 12 hours in subject areas described in subsection (a)(1) of Section 88; (2) completing the regulatory review course described in Section 87.8 if more than six years have elapsed since the licensee last completed the course; (3) applying to the Board in writing requesting to convert the license to an active status; and (4) completing any continuing education that is required pursuant to subsection (j) of Section 89. The licensee may not practice public accounting until the application for conversion of the license to an active status has been approved.

(b) A licensee who, during the 24 months prior to converting his/her license to an active status, planned, directed, or conducted substantial portions of field work, or reported on financial or compliance audits of a governmental agency shall complete 24 hours of continuing education in governmental accounting and auditing as described in Section 87(c) as part of the 80 hours of continuing education required to convert his/her license to an active status under subsection (a). A licensee who meets the requirements of this subsection shall be deemed to have met the requirements of subsection (c).

(c) A licensee who, during the 24 months prior to converting his/her license to an active status, planned, directed, or performed substantial portions of the work or reported on an audit, review, compilation, or attestation service shall complete 24 hours of continuing education in accounting and auditing as described in Section 87(d) as part of the 80 hours of continuing education required ~~to~~ his/her license to an active status under subsection (a).

(d) A licensee who must complete continuing education pursuant to subsections (b) and/or (c) of this section shall also complete an additional eight hours of continuing education specifically related to the detection and/or reporting of fraud in financial statements as described in Section 87(e). This continuing education shall be part of the 80 hours of continuing education required by subsection (a), but shall not be part of the continuing education required by subsections (b) or (c).

(e) Once a license is converted to an active status, the licensee must complete 20 hours of continuing education as described in Section 88 for each full six month period from the date of license conversion to an active status to the next license expiration date in order to fulfill the continuing education requirement for license renewal. If the time period between the date of change to an active status and the next license

expiration date is less than six full months, no additional continuing education is required for license renewal.

(f) Once a license is converted to an active status, a licensee who engages in financial or compliance auditing of a governmental agency at any time between the date of license conversion to an active status and the next license expiration date shall complete six hours of governmental continuing education as part of each 20 hours of continuing education required under subsection (e). Continuing education in the areas of governmental accounting and auditing shall meet the requirements of Section 87(c). A licensee who meets the requirements of this subsection shall be deemed to have met the requirements of subsection (g).

(g) Once license is converted to an active status, a licensee who engages in audit, review, compilation, or attestation services at any time between the date of license conversion to an active status and the next license expiration date shall complete six hours of continuing education in accounting and auditing as part of each 20 hours of continuing education required under subsection (e). Continuing education in the areas of accounting and auditing shall meet the requirements of Section 87(d).

NOTE: Authority cited: Sections 5010 and 5027, Business and Professions Code. Reference: Section 5028, Business and Professions Code.

HISTORY:

1. New section filed 7-5-90; operative 7-26-90 (Register 90, No. 36).
2. Amendment of section heading and repealer of subsection (b) filed 6-23-93 as an emergency; operative 6-23-93 (Register 93, No. 26).
3. Certificate of Compliance as to 6-23-93 order transmitted to OAL 10-18-93 and filed 12-1-93 (Register 93, No. 49).
4. New opening paragraph, amendment of subsection (a) and new subsection (b) filed 10-6-94; operative 11-7-94 (Register 94, No. 40).
5. Change without regulatory effect amending subsection (b) filed 12-28-94 (Register 94, No. 52).
6. Amendment of section heading and section filed 3-28-96, operative 7-1-96 (Register 96, No. 13).
7. Amendment filed, operative January 1, 1997.
8. Amendment of first paragraph filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).
9. Amendment filed 6-17-98; operative 7-1-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 25).
10. Amendment files 5-9-2000; operative 6-8-200 (Register 2000, No. 19).
11. Change without regulatory effect amending subsection (a) files 7-12-2000 (Register 2000, No. 28).
12. New subsection (d), subsection relettering and amendment of newly designated subsections (f) and (g) filed 7-19-2004; operative 8-18-2004 (Register 2004, No. 30).
13. Amendment of subsections (a) and (d)-(g) filed 9-19-2008; operative 10-19-2008 (Register 2008, No. 38).
14. Amendment filed 12-18-2009; operative 1-1-2010 pursuant to Government Code section 11343.4 (Register 2009, No. 51).
1. h day thereafter (Register 83, No. 16).

CALIFORNIA CODE OF REGULATIONS
Title 16. Professional and Vocational Regulations
DIVISION 1. Board of Accountancy Regulations
ARTICLE 5. REGISTRATION

37. Reissuance.

A certified public accountant (CPA) whose certificate has been canceled by the operation of Business and Professions Code Section 5070.7 may apply for and obtain a new certificate if the applicant is otherwise qualified under the provisions of Section 5070.7 and the applicant meets the requirements of subsection (a) or (b) of this section. The reissued certificate will permit the CPA to perform the same services, as did the cancelled certificate except that a CPA whose cancelled certificate authorized signing reports on attest engagements may choose to be reissued a certificate that does not provide this authorization.

(a) Within three years preceding the date of application, the applicant has completed at least 48 hours of continuing education as specified in paragraphs (1) or (2) of this subsection and has submitted the certificates of completion for those courses to the Board:

(1) For an applicant whose reissued certificate will authorize signing reports on attest engagements, courses in the following subject areas are required: financial accounting standards, auditing standards, compilation and review, and other comprehensive basis of accounting.

(2) For an applicant whose reissued certificate will not authorize signing reports on attest engagements, courses in the following subject areas are required: general accounting, and other comprehensive basis of accounting.

(b) In lieu of meeting the requirements of subsection (a) of this section, the applicant may choose to retake and successfully complete the entire Uniform CPA examination.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.
Reference: Section 5070.7, Business and Professions Code.

HISTORY:
1. New section filed 6-19-90; operative 7-19-90 (Register 90, No. 33)
2. Amendment filed 6-12-2002; operative 6-12-2002 pursuant to Government Code Section 11343.4 (Register 2002, No. 24).
3. Amendment filed 9-19-2008; operative 10-19-2008 (Register 2008, No. 38).

State of California
Department of Consumer Affairs

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M e m o r a n d u m

CBA Agenda Item XI.C.1.a.
September 22-23, 2010

To : CBA Members
LC Members

Date : September 8, 2010

Telephone : (916) 561-1792
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From : Matthew Stanley, Legislation/Regulation Analyst

Subject : Update on Bills on Which the CBA has Taken a Position

The Legislative Committee (LC) was presented with the attached memorandum at its July, 2010 meeting. At that time, the LC took no action other than to recommend that the California Board of Accountancy (CBA) discontinue following bills that were already dead at that time. The LC took no action on remaining items in the memo indicating its desire that the CBA should maintain its positions on those bills.

On August 31, 2010, the Legislature completed its 2009-2010 legislative session. None of the bills that were still active were amended to an extent that would warrant a change in position other than SB 691 which was gutted and amended so as to be no longer relevant to the CBA; irregardless, it failed to pass.

With no significant changes in any of the bills being followed, staff recommend that the CBA not take any action on the following memo allowing the CBA's positions to remain in place. In an effort to conserve paper, the attachments for the July 6th memo have not been included in this package.

Attachment

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

To : CBA Members
LC Members

Date : July 6, 2010

Telephone : (916) 561-1792
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E-mail : mstanley@cba.ca.gov

From : Matthew Stanley, Legislation/Regulation Analyst

Subject : Update on Bills on Which the CBA has Taken a Position

The California Board of Accountancy (CBA) has taken positions on the following legislation. The comments provided below will outline any changes to the bills. Should the CBA wish to change its position on a bill based on amendments that have been made, it is entirely appropriate to do so. In this case, a letter would be sent informing the Legislature of the CBA's new position. As requested by the Legislative Committee, attached is a table outlining all of the bills currently being followed by the CBA (**Attachment 1**).

The following bills have not been amended or had a change in status since the CBA last reviewed them. Staff recommend that the CBA maintain its current positions on these bills.

AB 797- Accountants: discipline: Internet posting (Support)
AB 1215- Public Employees: furlough exemptions (Support)
AB 2537- Adjudications: presiding officers (Neutral)
SB 691- Substantial Equivalency (Neutral)
SB 1171- Sunset Review (Watch)
SB 1490- Omnibus: urgency (Support)
SB 1491- Omnibus (Support)

The following bills have failed to meet legislative deadlines and are dead for the year. Staff recommend that the CBA discontinue following these bills.

AB 1787- Regulations: narrative description (Support)
AB 2466- Regulations: legislative validation (Oppose)
AB 2603- Regulations: reductions (Oppose)
AB 2652- Regulations: legislative review (Watch)
SB 389- Fingerprinting (Support)
SB 942- Regulations: review process (Oppose)
SB 1111- Health boards: enforcement (Neutral)

The following bills have been amended, and the amendments are before the CBA for consideration. Staff are not recommending any changes in position with these amendments.

Bill Number: **AB 1659** CBA Position: **WATCH**
Author: Huber
Topic: Joint Sunset Review Committee.
Current Version: 6/2/2010 (**Attachment 2**)
Current Status: Senate Rules

What it did:
This bill would create a Joint Sunset Review Committee in the Legislature that would conduct a comprehensive analysis of every state agency to determine if it is necessary and cost effective.

Comments:
AB 1659 has been amended to add coauthors.

Bill Number: **AB 1899** CBA Position: **NEUTRAL**
Author: Eng
Topic: State agencies: information on Web site.
Current Version: 5/28/2010 (**Attachment 3**)
Current Status: Senate Appropriations

What it did:
AB 1899 would require a state agency to post any audits regarding its operations which are finalized after January 1, 2011 and contracts over $5,000 awarded on or after January 1, 2008 to the state's Reporting Transparency in Government Internet Web site within 15 days of finalization.

Comments:
The amendments would create the Reporting Transparency in Government Internet Web site. They also allow for a summary of contracts awarded between March 31, 2009 and January 1, 2011 to be posted instead of the entire document.

Bill Number: **AB 1993** CBA Position: **OPPOSE**
Author: Strickland
Topic: State Government reports: declarations.
Current Version: 5/20/2010 (**Attachment 4**)
Current Status: Senate Rules

What it did:
This bill requires any report submitted to the Legislature include a signed statement that the contents of the report are true, accurate and complete.

Comments:
The amendments were minor and would not change the impact of this bill on the CBA.

Bill Number: **AB 2091** CBA Position: **SUPPORT**
Author: Conway
Topic: Public Records: information security.
Current Version: 6/29/2010 (**Attachment 5**)
Current Status: Senate Floor

What it did:
AB 2091 would exempt records relating to information security and the investigatory or security files compiled by a public agency for information security purposes from release under the Public Records Act. This includes, but is not limited to, information security plans, risk assessments, evaluation reports, incident reports, and disaster recovery plans.

Comments:
The amendments would make this exemption only if, on the facts of the particular case, disclosure of those records would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency.

Bill Number: **AB 2130** CBA Position: **WATCH**
Author: Huber
Topic: Professions and vocations: sunset review.
Current Version: 6/22/2010 (**Attachment 6**)
Current Status: Senate Appropriations

What it did:
AB 2130 is a companion bill to AB 1659 which establishes the Joint Sunset Review Committee. AB 2130 replaces the Joint Committee on Boards, Commissions, and Consumer Protection (Joint Committee), which oversees the sunset process for the Department of Consumer Affairs related boards and commissions, with the Joint Sunset Review Committee that would be established by AB 1659. AB 2130 maintains the provision that a board which sunsets becomes a bureau and provides that AB 2130 does not go into effect unless AB 1659 also becomes law.

Comments:
The amendments would instead make "eligible agencies," as defined, subject to review by the Joint Sunset Review Committee. Initially specifies five agencies which would be subject to review and have a sunset date of December 2012. The CBA is not among them. Requires the Joint Sunset Review Committee to report on whether an agency should be terminated, or continued, or whether its functions should be revised or consolidated with those of another agency. The bill is unclear as to what would happen to a board if it were to sunset as the provisions for reversion to bureau status are removed by the amendments. Additionally, the author and the Senate are currently discussing how the DCA boards would be reviewed under this process. Currently, the intent is that the review of boards scheduled for sunset will now be the responsibility of the Senate and Assembly Business and Professions committees.

Bill Number: **AB 2494** CBA Position: **NEUTRAL**
Author: Blumenfield
Topic: Personal services contracts.
Current Version: 5/28/2010 (**Attachment 7**)
Current Status: Senate Appropriations

What it did:
AB 2494 would require a state agency to immediately discontinue a personal services contract disapproved by the State Personnel Board (SPB) unless ordered otherwise by SPB. It would also prohibit the agency from circumventing or disregarding SPB's action by entering another contract for the same or similar services or to continue the services that were the subject of the contract that was disapproved.

Comments:
The amendments simply added legislative findings and declarations which are similar to legislative intent language in that it is not codified. The original language that would be codified has not been amended.

Bill Number: **AB 2738** CBA Position: **SUPPORT**
Author: Niello
Topic: Regulations: agency statement of reasons.
Current Version: 5/28/2010 (**Attachment 8**)
Current Status: Senate Rules

What it did:
Current law requires that when agencies develop regulations which mandate the use of specific technologies or equipment or prescribe specific actions or procedures, they consider using performance standards as an alternative. AB 2738 would have deleted that requirement and instead require that the agency acknowledge in the Initial Statement of Reasons (ISR) that performance standards are the preferred alternative to mandating specific methods of compliance. It would additionally require the agency to justify, in the ISR, departing from that preference. Under AB 2738, the elements of a regulation that require the use of specific technologies, equipment, actions, or procedures, or other potentially proprietary compliance scheme, methodology, or process must be identified and described in the ISR.

Comments:
The amendments no longer delete the aforementioned requirement. The amendments also would require an agency to provide a detailed specification as to why certain technologies or equipment, or actions or procedures requiring the use of specific technologies or equipment, are necessary in order to meet the goals of the regulation.

Without Attachments

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item XI.E.1.
September 22-23, 2010

To : CBA Members

Date : August 26, 2010

Telephone : (916) 561-4310
Facsimile : (916) 263-3672
E-mail : dfranzella@cba.ca.gov

From : Dominic Franzella, Manager
Renewal/Continuing Competency & Clients Services Units

Subject : Update on ECC Appointments

As members are aware, the Ethics Curriculum Committee (ECC) is one of two new committees the Legislature established under the jurisdiction of the California Board of Accountancy (CBA) with its passage of Senate Bill (SB) 819. SB 819 tasks the ECC with defining the new 10 units of ethics education included as part of the additional 30 units of prescribed education for certified public accountant (CPA) licensure that will be required beginning January 1, 2014.

SB 819 specified in great detail the composition and appointing authorities for the ECC. Specifically, the ECC will be an 11-member committee with the CBA, Governor, CalPERS, Senate Rules Committee, and Assembly Speaker all having one appointment, and the California State University Board of Trustees, University of California's Regents, and the Board of Governors of the California Community Colleges all having two appointments.

At its March meeting, the CBA appointed Mr. Don Driftmier as its representative on the ECC, and at the May meeting selected Mr. Driftmier as ECC Chair. Staff is pleased to announce that the following appointments have been made to the committee:

- Governor Arnold Schwarzenegger
  - Michael Ueltzen, Partner, Ueltzen and Company
- CalP ERs
  - Mr. Dave Cornejo, Assistant Chief, Fiscal Services Division
- California State University Board of Trustees
  - Mr. Gray McBride, Department of Accounting and Finance at California State University, East Bay
  - Dr. Steven M. Mintz, Professor of Accounting as California Polytechnic State University

- University of California's Regents
  - Professor Robert Yetman, University of California, Davis
  - Associate Dean Gonzalo Freixes, University of California, Los Angeles

- Board of Governors of the California Community Colleges
  - Gary Perioni, Professor of Accounting, Diablo Valley College
  - Jon Mikkelsen, Business Instructor, Monterey Peninsula College

Staff is hopeful that the remaining appointing authorities will appoint members to the ECC shortly, and will continue to contact those appointing authorities to offer any assistance necessary.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
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M e m o r a n d u m

CBA Agenda Item XI.E.3.
September 22-23, 2010

To : CBA Members

Date : August 26, 2010

Telephone : (916) 561-4310
Facsimile : (916) 263-3672
E-mail : dfranzella@cba.ca.gov

From : Dominic Franzella, Manager
Renewal/Continuing Competency & Clients Services Units

Subject : Tentative Staff Developed ECC Timeline of Activities

Attached for members review is a tentative staff-developed timeline for the Ethics Curriculum Committee (ECC). It should be noted that the dates provided in the timeline are the latest date each item can be completed in order to meet the deadlines established by the Legislature in Senate Bill 819.

It is anticipated that this timeline will be modified based on discussion at the September 21, 2010 ECC meeting. An updated timeline will be provided to the California Board of Accountancy members at future meetings.

Attachment

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CALIFORNIA BOARD OF ACCOUNTANCY
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Attachment

CBA Agenda Item XI.E.3.
September 22-23, 2010

ETHICS CURRICULUM COMMITTEE
TIMELINE

DEVELOPED BY: Licensing Division

TASK	TASK NAME	START DATE	FINISH DATE	RESPONSIBLE PARTY	STATUS/COMMENTS	"X" WHEN COMPLETED
1.	**MEETINGS**					
1.1.	Inaugural Meeting	September 21, 2010	September 21, 2010	ECC	The meeting will cover administrative topics including the Bagley-Keene Open Meeting Act and travel, as well as a background on the CBA; present licensure requirements; the impact of SB 819; and the beginning discussions on a framework for the ethics study guidelines.	

ETHICS CURRICULUM COMMITTEE
TIMELINE

DEVELOPED BY: Licensing Division

TASK #	TASK NAME	ASSIGNED OR START DATE (1)	DUE DATE OR FINISH DATE (1)	RESPONSIBLE PARTY	% COMPLETED/STATUS/COMMENTS	"X" WHEN COMPLETED
1.2.	Quarterly Meetings	December 2010	May 2012	ECC	The ECC has until June 1, 2012 to issue the ethics study guidelines to the CBA. The CBA directed the ECC to meet **at a minimum** quarterly. The ECC may at its September 21, 2010 meeting elect to meet more often.	
2.	**REPORTS**					
2.1.	Develop ethics study guidelines for the new 10 units of ethics education	September 2010	May 2012	ECC		
2.2.	Submit ethics study guidelines to the CBA	June 1, 2012	June 1, 2012	ECC	Deadline to submit required by SB 819.	
2.3.	Issue report during public comment period on the regulations being promulgated by the CBA	November 2012	January 2013	ECC	It is presumed that the report will take the form of a letter and indicate whether the ECC believe the CBA-proposed regulations meet the ethics study guidelines.	

ETHICS CURRICULUM COMMITTEE
TIMELINE

DEVELOPED BY: Licensing Division

TASK #	TASK NAME	ASSIGNED OR START DATE (1)	DUE DATE OR FINISH DATE (1)	RESPONSIBLE PARTY	% COMPLETED/STATUS/COMMENTS	"X" WHEN COMPLETED
2.4.	Issue opinion on whether the final regulations implemented the ECC's recommendations	TBD	TBD	ECC	The opinion must be issued no later than 30 days "after the regulations are final." The legislation does not indicate to whom the ECC shall issue this opinion, nor does it provide a definitive definition on the term "after the regulations are final." At this time, staff believe the opinion will be issued to the Legislature. As for the term "after the regulations are final," this could be implied to mean upon final adoption of the regulatory text by the CBA, possibly once the regulations are approved by the Office of Administrative Law, or after the effective date of the regulations.	

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CBA Agenda Item XII.D.
September 22-23, 2010

DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

DRAFT
9/9/10

MINUTES OF THE
JULY 28, 2010
CBA MEETING

The Holiday Inn Express
2224 Auburn Blvd.
Sacramento, CA 95821
Telephone: (916) 923-1100
Facsimile: (916) 921-9900

Roll Call and Call to Order.

CBA President Manuel Ramirez called the meeting to order at 10:30 a.m. on Tuesday, July 28, 2010, and the meeting adjourned at 5:01 p.m.

CBA Members	July 28, 2010
Manuel Ramirez, President	10:30 a.m. to 5:01 p.m.
Sally Anderson, Vice President	10:30 a.m. to 3:36 p.m.
Marshal Oldman, Secretary-Treasurer	10:30 a.m. to 5:01 p.m.
Diana Bell	10:30 a.m. to 5:01 p.m.
Rudy Bermúdez	10:30 a.m. to 12:39 p.m.
Michelle Brough	10:30 a.m. to 5:01 p.m.
Angela Chi	10:30 a.m. to 5:01 p.m.
Donald Driftmier	10:30 a.m. to 5:01 p.m.
Herschel Elkins	10:30 a.m. to 5:01 p.m.
Louise Kirkbride	10:30 a.m. to 4:00 p.m.
Leslie LaManna	10:30 a.m. to 5:01 p.m.
Robert Petersen	10:30 a.m. to 5:01 p.m.
David Swartz	10:30 a.m. to 5:01 p.m.
Lenora Taylor	10:30 a.m. to 5:01 p.m.
Andrea Valdez	10:30 a.m. to 4:00 p.m.

Staff and Legal Counsel

Patti Bowers, Executive Officer
Dan Rich, Assistant Executive Officer

Rich Andres, Associate Information Systems Analyst
Steven Chi, Assistant Information Systems Analyst
Veronica Daniel, Executive Analyst
Gary Duke, Legal Counsel, Department of Consumer Affairs (DCA)
Paul Fisher, Supervising Investigative CPA
Dominic Franzella, Manager, Licensing Division
Cindi Fuller, Licensing Division Coordinator
Scott Harris, Deputy Attorney General, Department of Justice (DOJ)
Lauren Hersh, Information and Planning Officer
Rafael Ixta, Chief, Enforcement Division
Kris McCutchen, Manager, Licensing Division
Deanne Pearce, Chief, Licensing Division
Michele Santaga, Enforcement Analyst
Matthew Stanley, Legislation/Regulation Analyst
Kathy Tejada, Manager, Enforcement Division
Liza Walker, Manager, Licensing Division

Other Participants

Heather Coiner, Court Reporter
Erica Eisenlauer, Legislative & Policy Review Analyst, DCA
Cheryl Gerhardt, Vice Chair, Enforcement Advisory Committee
Julian Goldstein
Ed Howard, Center for Public Interest Law (CPIL)
Deidre Johnson, Administrative Law Judge (ALJ)
Doreathea Johnson, Legal Affairs Deputy Director, DCA
Carl Olson
Pilar Onate-Quintana, KP Public Affairs, Deloitte, E&Y, GT, KPMG, PWC
Joe Petito, The Accountants Coalition
Jonathan Ross, KP Public Affairs, Deloitte, E&Y, GT, KPMG, PWC
Hal Schultz, California Society of Certified Public Accountants (CalCPA)
Jeannie Tindel, CalCPA
Bill Young, Chief Deputy Director, DCA

I. Roll Call and Call to Order.

CBA President Ramirez called the meeting to order at 10:30 a.m. on July 28, 2010.

II. Report of the President.

A. Update on California Research Bureau Study.

There was no report for this item.

B. Peer Review Oversight Committee (PROC) Appointments.

Mr. Petersen stated that he reviewed the qualifications of the candidates and recommends further due diligence to be completed on Robert A. Lee. Mr. Petersen then requested for Mr. Lee's name to be withdrawn from the motion until such due diligence could be completed.

It was moved by Mr. Petersen, seconded by Ms. Brough and unanimously carried by those present to adopt the recommended appointments to the PROC, excluding Robert A. Lee.

C. Update on Peer Review Implementation.

Mr. Franzella provided an overview of the memorandum for this item **(see Attachment __)**.

Mr. Ramirez inquired if there was a list of frequently asked questions relating to peer review. Mr. Franzella stated there is a list available on the CBA Web site and that he would provide the CBA members with a copy.

Mr. Petersen stated that he recently attended a joint meeting of the American Institute of Certified Public Accountants (AICPA) Peer Review Oversight Group and the National Association of State Boards of Accountancy (NASBA), and it was his understanding that licensees may choose to have their peer reviews conducted by AICPA instead of CalCPA. Mr. Petersen further stated that NASBA is moving forward with establishing oversight of the AICPA's peer review activities.

D. Consideration of Modification to Executive Officer's Delegation of Authority.

Mr. Duke presented a modified delegation of authority in order to incorporate clarifying language as suggested by Mr. Harris at the May CBA meeting **(see Attachment __)**.

Ms. Pearce suggested including the title Public Accountants to cover all licensees.

It was moved by Mr. Petersen, seconded by Mr. Bermudez and unanimously carried by those present to adopt the modification to the Executive Officer's delegation of authority, incorporating the title Public Accountants.

III. Report of the Vice President.

There was no report for this item.

IV. Report of the Secretary/Treasurer.

A. Discussion of Governor's Budget.

Mr. Oldman provided an overview of this agenda item **(see Attachment __)**.

1. FY 2010/2011 $10 Million Accountancy Fund Loan to General Fund.

   Mr. Oldman stated that due to the $10 million loan to the general fund, the CBA reserve fund may drop below the statutory requirement of nine months.

   CBA members discussed this agenda item and the options for potential recourse in obtaining repayment of the loan, or attempting to block the loan.

   Mr. Young stated that if there are instances where these loans would result in inability for the organization to fund its business or if it triggers a fee increase, there would be an automatic trigger for loan repayment. Mr. Young stated that if this loan in fact reduces the CBA reserve fund to below the statutory requirement, the CBA would have a legal decision to make. Mr. Young recommended for the CBA to pursue a legal opinion from the DCA regarding this matter.

   CBA members inquired with Mr. Young regarding why the CBA was the only Board/Bureau targeted. Mr. Young stated the DCA was not privy to any budgetary discussions regarding this matter.

   Mr. Ramirez inquired if the DCA would assist the CBA in its efforts to move forward in preventing a statutory violation. Mr. Young stated that he would meet with the Department of Finance (DOF) to advise them of the issue. Mr. Young further stated that there is potential to run this matter by the legislative counsel.

   It was moved by Mr. Bermudez seconded by Mr. Driftmier and unanimously carried by those present to seek a legal opinion from the DCA by August 6, and to allow the CBA President and Vice President to meet with the DCA to determine an amicable solution to protect the CBA reserve fund. The motion also included direction for CBA staff to seek an opinion from the legislative counsel. Additionally, the CBA will meet on August 13, to review the outcome and discuss alternatives regarding this matter.

V. Report of the Executive Officer.

A. DCA Director's Report.

1. Update on Consumer Protection Enforcement Initiative (CPEI).

   Mr. Young stated the CPEI proposal seeks to accelerate the enforcement

processing time from an average of 36 months to within 12-18 months. Mr. Young stated the DCA has received legislative approval of $12.7 million for the 18 healing arts boards, contingent on the passing of the budget. Mr. Young further stated the DCA is working with Executive Officers in determining ways to assist the non-healing arts boards/bureaus with implementing a similar enforcement initiative proposal.

Mr. Driftmier stated that he hopes that the DCA does not lose focus on the CBA's issues regarding salary schedule upgrades for the ICPA series. Ms. Bowers stated that a written request was submitted to Director Stiger to ensure the ICPA classification is not lost in bargaining negotiations.

2. Licensing Processes Review.

   There was no report for this item.

B. Update on 2010/2012 CBA Communications and Outreach Plan.

Ms. Pearce provided an overview of the memorandum for this item **(see Attachment __)**.

Ms. Kirkbride suggested that research be completed to determine if there are areas of concern regarding the use of social media.

Ms. Chi inquired regarding media advertisements on Facebook and Twitter. Ms. Pearce stated the Outreach Committee is researching the concern regarding advertisements.

Ms. Bowers stated the DCA is working to provide legal guidance to Boards and Bureaus regarding the use of social media.

C. Update on October 27, 2010 CBA Working Conference.

Mr. Rich provided an overview of the memorandum for this item **(see Attachment __)**.

Ms. Anderson requested for the budget discussion to address why the CBA cannot hire enforcement staff at a salary level to attract qualified candidates.

Mr. Ramirez requested for there to be a discussion on legal action regarding loans to the general fund that have not been repaid and address process for repayment. Mr. Ramirez also requested for CBA members to be provided with information on the committees of national organizations.

Ms. Kirkbride expressed concern with NASBA taking the lead on the mobility discussion.

Mr. Petersen requested for a discussion regarding with residency requirements be placed on agenda for the September meeting.

Ms. Bell requested if a representative from DOF could be present for the budget discussion.

Mr. Bermudez stated it is a wonderful agenda and requested for CBA staff to provide information on how the bill he drafted impacted mobility.

CBA members discussed having a facilitator at the conference and requested that the facilitator be advised on the CBA's expectations for this event.

D. Educational Presentation – Mail Voting Process.

Mr. Ixta provided an overview of the memorandum for this item **(see Attachment __)**.

It was the consensus of CBA members that interactive discussion regarding enforcement matters is significant, and that the mail voting process is not ideal for CBA business.

E. Update on Current Projects List (Written Report Only).

Ms. Bowers presented a handout detailing the projects currently assigned to CBA staff **(see Attachment __)**.

VI. Report of the Licensing Chief.

A. Report on Licensing Division Activity.

Ms. Pearce provided an overview of the memorandum for this item **(see Attachment __)**.

VII. Report of the Enforcement Chief.

A. Report on Status of Enforcement Matters.

1. Enforcement Case Activity and Status Report.

Mr. Ixta provided an overview of the new Enforcement Case Activity and Status Report **(see Attachment __)**.

Mr. Ixta reported on staffing concerns within the Enforcement Division and stated that steps are being taken to address these concerns.

CBA members discussed the challenges the CBA is facing regarding furloughs, threats of minimum wage, staff travel restrictions, and travel

reimbursements.

Mr. Ramirez inquired if relocating upcoming meetings to take place in Northern California would assist staff. Ms. Bowers stated that CBA staff would look into the possibility of relocation.

Ms. Bowers stated that the budget related issues also apply to reimbursement to CBA members, and payments to consultant contracts. Ms. Bowers further stated that if consultants discontinue work it will impact the enforcement case matters and case aging.

Ms. Taylor inquired if there is a process to request an exemption to these budgetary restrictions. Mr. Young stated there is no process for exemption.

Mr. Ramirez inquired if DCA would provide support if the CBA decided to seek establishing a bill to implement an exemption. Mr. Young stated that he could not respond at this time.

Mr. Ramirez assigned the LC to discuss possibility of a legislative solution to address the budgetary issues and potentially seek an exemption for the CBA.

2. Major Case Summary.

Mr. Ixta stated the report was modified to provide more detailed information to CBA members regarding major cases.

Mr. Ramirez inquired regarding the status of the major case opened in December 2007. Mr. Ixta stated that this case had been referred to the Attorney General's Office.

Mr. Petersen stated there should be no difference in handling of negotiations between large and small cases and that the CBA should be applying the law equally. Mr. Harris stated that it is a major case and there may be complex issues surrounding the case. Mr. Harris further stated there should not be a difference, reality is level of complexity.

Mr. Ramirez assigned the EPOC to look into the matter of small vs. large enforcement cases.

Ms. Bowers stated that the enforcement report is being expanded to allow CBA members access to reviewing the details regarding all cases. Ms. Bowers stated the CBA took previous action to discontinue the major case program and handle all enforcement matters the same.

Mr. Ramirez suggested putting a footnote on the enforcement report to

alert members when the CBA is in a waiting position regarding an enforcement matter.

3. Report on Citations and Fines.

   There was no verbal report for this item.

4. Reportable Events Report.

   Mr. Petersen suggested looking into insurance as a mitigating factor and stated that should be built into the disciplinary process in some way. Mr. Ramirez assigned the CPC with this topic for discussion.

VIII. Regulations.

A. Regulation Hearing Regarding Section 70 – Fees.

Mr. Duke read the following script into the record **(see Attachment __)**.

Mr. Olson stated his opposition towards the CBA reducing its fees for licensure.

Mr. Duke adjourned the hearing at 1:40 p.m.

1. Consideration of Adoption of Proposed Section 70 – Fees.

   It was moved by Ms. LaManna, seconded by Ms. Taylor and carried by those present to adopt the proposed regulatory language with the technical revisions as recommended by staff, and to direct staff to complete all necessary rulemaking activities. Mr. Elkins abstained.

IX. Petitions, Stipulations, and Proposed Decisions [Closed Session Government Code Section 11126(c)(3)]. Petition Hearings are Public Before the Board with a Subsequent Closed Session.

A. William J. Mattila – Petition for Reinstatement of Revoked Certificate.

Mr. Mattila appeared before the CBA members to petition for reinstatement of his revoked certificate.

ALJ Deidre Johnson and the CBA members heard the petition and convened into executive closed session to deliberate the matter. ALJ Johnson will prepare the decision.

B. David Greenberg – Petition for Reinstatement of Revoked Certificate.

Mr. Greenberg appeared before the CBA members to petition for

reinstatement of his revoked certificate.

ALJ Deidre Johnson and the CBA members heard the petition and convened into executive closed session to deliberate the matter. It was determined that ALJ Johnson and the CBA members would reconvene the closed session deliberation at the September 22-23, 2010 CBA meeting.

C. Trudy Reed – Stipulated Settlement.

D. Erin Decker – Stipulated Settlement.

E. William F. Ying – Proposed Decision.

F. William R. Murray – Default Decision.

CBA members considered agenda items IX.C. – F. in closed session.

Mr. Ramirez stated that due to time constraints, the remaining items on agenda would be deferred to take place at the September CBA meeting, with the exception of agenda items X.C.3. and XII.A. – F.

X. Committee and Task Force Reports.

A. Report of the Committee on Professional Conduct (CPC).

1. Report of the July 28, 2010 CPC Meeting.

2. Consideration of Regulatory Language for Section 1.5 – Delegation of Certain Functions.

3. Discussion on a Retired Option for CPA/PA License.

4. Qualifications Committee (QC) Recommendation Regarding Defining Supervision in CBA Regulation Sections 12 and 12.5.

5. QC Recommendation Regarding Further Defining General Accounting Experience in CBA Regulation Section 12.

Due to time constraints, agenda items X.A. – A.4. were deferred to take place at the September 22-23, 2010 CBA meeting.

B. Report of the Enforcement Oversight Program Committee (EPOC).

No report.

C. Report of the Legislative Committee (LC).

1. Report of the July 28, 2010 LC Meeting.

2. Update on Bills on Which the CBA Has Taken a Position.

   Due to time constraints, agenda items X.C. – C.2. were deferred to take place at the September 22-23, 2010 CBA meeting.

3. SB 294 – Department of Consumer Affairs: Regulatory Boards.

   It was moved by Mr. Petersen, seconded by Ms. Brough and unanimously carried by those present to adopt the LC's recommendation to adopt a support position on SB 294.

D. Report of the Accounting Education Committee (AEC).

1. Report of the June 23, 2010 AEC Meeting.

   Due to time constraints, this agenda item was deferred to take place at the September 22-23, 2010 CBA meeting.

E. Report of the Enforcement Advisory Committee (EAC).

There was no report for this item.

F. Report of the Ethics Curriculum Committee (ECC).

1. Update on ECC Activities.

   Due to time constraints, this agenda item was deferred to take place at the September 22-23, 2010 CBA meeting.

G. Report of the QC.

There was no report for this item.

XI. Appeals – Personal/Written.

A. Personal Appeals.

None.

XII. Adoption of Minutes.

A. Draft Minutes of the April 26, 2010 CBA Meeting.

B. Draft Minutes of the May 12-13, 2010 CBA Meeting.

C. Draft Minutes of the May 12, 2010 EPOC Meeting.

D. Draft Minutes of the May 12, 2010 CPC Meeting.

E. Draft Minutes of the May 12, 2010 LC Meeting.

F. Draft Minutes of the April 8, 2010 AEC Meeting.

It was moved by Mr. Oldman, seconded by Ms. Anderson and carried by those present to approve agenda items XII. as a group, excluding agenda item XII.C. Mr. Swartz was temporarily absent.

Agenda item XII.C. was deferred to take place at a future CBA meeting.

XIII. Other Business.

A. American Institute of Certified Public Accountants (AICPA).

1. Update on AICPA State Board Committee.

B. National Association of State Boards of Accountancy (NASBA).

1. Update on NASBA Committees.

a. Accountancy Licensee Database Task Force.

b. Board Relevance and Effectiveness Committee.

c. Compliance Assurance Committee.

d. Education Committee.

e. Global Strategies Committee.

f. Uniform Accountancy Act Committee.

Due to time constraints, agenda items XIII.A. – B.1.f. were deferred to take place at the September 22-23, 2010 CBA meeting.

XIV. Closing Business.

A. CBA Member Comments.

B. Comments from Professional Societies.

C. Public Comments.

Mr. Goldstein commented that he was in favor of a retired status for licensure.

D. Agenda Items for Future CBA Meetings.

E. Press Release Focus.

1. Recent Press Releases.

Due to time constraints, this agenda item was deferred to take place at the September 22-23, 2010 CBA meeting.

XV. Adjournment.

President Ramirez adjourned the meeting at 5:01 p.m. on Tuesday, July 28, 2010.

Manuel Ramirez, President

Marshal Oldman, Secretary-Treasurer

Veronica Daniel, Executive Analyst, and Patti Bowers, Executive Officer, CBA, prepared the CBA meeting minutes. If you have any questions, please call (916) 561-1718.

State of California
Department of Consumer Affairs

California Board of Accountancy
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M e m o r a n d u m

CBA Agenda Item XIII.A.2.
September 22-23, 2010

To : CBA Members

Date: September 3, 2010
Telephone : (916) 561-1725
Facsimile : (916) 263-3673
E-mail: pfisher@cba.ca.gov

From : Paul Fisher
Supervising ICPA, Enforcement Division

Subject : AICPA Peer Review Program Exposure Draft, June 1, 2010

The July 2010 and August 2010 Executive Officer Monthly Reports both noted that on June 1, 2010, the AICPA issued an Exposure Draft titled "Proposed Revisions to the AICPA Standards for Performing and Reporting on Peer Reviews: Performing And Reporting On Peer Reviews Of Quality Control Materials (QCM) and Continuing Professional Education (CPE) Programs".

Staff took note of the Exposure Draft, but did not believe the topical matter warranted bringing the Exposure Draft to the CBA for comment as it appeared to be "standards-based" as opposed to regulatory in nature and deals with the peer reviews of CPE programs and quality control materials. The "thrust" of the issues covered in the Exposure Draft relate to these specific peer reviewers' qualifications and independence, and are summarized in three points outlined in the Explanatory Memorandum at the front of the Exposure Draft. The three major changes, as iterated on pages 6 – 8 of the Exposure Draft are as follows:

- "Revises and clarifies the guidance for those involved in the development and maintenance of QCM or CPE programs such that they are not permitted to serve on review teams to peer review firms that use those QCM or CPE programs (user firms)."

- "Removal of the requirements for providers to undergo triennial peer reviews of the system to develop and maintain QCM or CPE programs, and of the resultant materials."

- "Revises the procedures for performing a CPE program peer review for those providers that elect to undergo such a review."

However, further internal discussions have lead staff to conclude the topical matter of this Exposure Draft is such that it should be brought to CBA members attention to deliberate on whether, as a body, the CBA wants to "weigh in" on any changes to the AICPA Peer Review Program, which can be considered unique in that the entire program has basically been adopted into CBA Regulations. Further, the importance of bringing this Exposure Draft to the CBA is underscored by a specific request received recently from the AICPA that the CBA provide a "general comment" response to the Exposure Draft.

Staff has outlined below a number of options that members might consider with regards to this Peer Review Exposure Draft. Members may, of course, come up with other alternatives they wish to employ to address the issue.

1. Take no action. As indicated earlier, this Exposure Draft is "standards based" and the CBA has in the past indicated that it did not want to consider/comment on "standards based" exposure drafts. Further, the Exposure Draft was specifically being exposed to AICPA membership for response to the five specific questions noted on page 9 of the document.

2. Provide a general letter of comment as requested by Jim Brackens from the AICPA. Should the CBA choose this option, staff have generated a draft letter for members consideration that can be modified.

3. Refer the Exposure Draft to the CBA Peer Review Oversight Committee to develop a "general letter of comment", to be brought to the CBA for consideration at the November 2010 CBA meeting.

4. Refer the Exposure Draft to the CBA Peer Review Oversight Committee to respond to the five questions posed on page 9 of the Exposure Draft.

Given that the original comment period ended August 31st, staff has requested that the AICPA provide the CBA with an extension to provide comment on the Peer Review Exposure Draft. Though no such extension was forthcoming, it should be noted that the entire AICPA Peer Review Board is meeting on October 7th. In order for the Peer Review Board to consider the CBA comments, comments should be provided prior to this date. If this date cannot be met the CBA may still desire to go on record with respect to California's perspective regarding the issues contained in the document.

Attached to this memorandum is a copy of the AICPA Peer Review Exposure Draft, dated June 1, 2010 (Attachment I). Also attached is the letter referred to in option 2 above that staff has drafted for your consideration from President Ramirez to the AICPA providing "general comments" related to issues addressed in the Peer Review Exposure Draft (Attachment II).

Staff will be at the September 2010 CBA meeting to assist members in their deliberation of this agenda item, though response to the technical issues addressed in the Peer Review Exposure Draft are likely beyond the scope of knowledge that staff possess related to the AICPA Peer Review Program.

EXPOSURE DRAFT

PROPOSED REVISIONS TO THE AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS:

Performing and Reporting on Peer Reviews of Quality Control Materials (QCM) and Continuing Professional Education (CPE) Programs

June 1, 2010

Prepared by the AICPA Peer Review Board for comment from persons interested in the AICPA Peer Review Program

Comments should be received by August 31, 2010 and addressed to
LaShaun King, Technical Manager
AICPA Peer Review Program
American Institute of Certified Public Accountants
220 Leigh Farm Road, Durham, NC 27707-8110
or via the Internet to PR_expdraft@aicpa.org

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American Institute of CPAs
220 Leigh Farm Road
Durham, NC 27707-8110

June 1, 2010

This exposure draft has been approved for issuance by the AICPA Peer Review Board, and contains proposals for review and comment by the AICPA's membership and other interested parties regarding revisions to the *Standards for Performing and Reporting on Peer Reviews* and related *Interpretations*. Changes to the *Interpretations* are developed and discussed in open Board meetings and do not require exposure for public comment; however, changes to the applicable *Interpretations* have been included here for review and comment as they provide clarification of revisions within the *Standards* that are a part of this exposure draft.

Written comments or suggestions on any aspect of this exposure draft will be appreciated. To facilitate the Board's consideration, comments or suggestions should refer to the specific paragraphs and include supporting reasons for each comment or suggestion. Please limit your comments to those items presented in the exposure draft. Comments and responses should be sent to LaShaun King, Technical Manager, AICPA Peer Review Program, AICPA**,** 220 Leigh Farm Road, Durham, NC 27707-8110 and must be received by August 31, 2010. Electronic submissions of comments or suggestions in Microsoft Word should be sent to PR_expdraft@aicpa.org by August 31, 2010.

Written comments on the exposure draft will become part of the public record of the AICPA Peer Review Program and will be available for public inspection at the offices of the AICPA after August 31, 2010 for a period of one year.

The exposure draft includes an explanatory memorandum of the proposed revisions to the current *Standards* and *Interpretations*, explanations, background and other pertinent information, as well as marked excerpts from the current *Standards* and *Interpretations* to allow the reader to see all changes (i.e. items that are being deleted from the *Standards* are struck through, and new items are underlined).

A copy of this exposure draft and the current *Standards* (effective for peer reviews commencing on or after January 1, 2009) are also available on the AICPA Peer Review Web site at http://www.aicpa.org/InterestAreas/PeerReview/Pages/PeerReviewHome.aspx.

Sincerely,

Dan Hevia
Dan Hevia
Chair
AICPA Peer Review Board

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Explanatory Memorandum

Introduction

There has been growing public interest in the process used to evaluate quality control materials (QCM) and continuing professional education (CPE) programs. The AICPA Peer Review Board (PRB) delegated to the National Peer Review Committee (NPRC) the responsibility for the administration of QCM and CPE peer reviews. In response to the public interest, the NPRC formed the QCM and CPE Programs Task Force which, among other things, evaluates and determines the need for enhancements to the guidance related to QCM and CPE peer reviews, including relevant portions of the *Standards for Performing and Reporting on Peer Reviews* and related *Interpretations* (collectively ~~"~~*Standards"*).

Through feedback from various stakeholders, the task force identified necessary revisions to the *Standards* related to independence and scope considerations. The PRB's Standards Task Force agreed with the need to revise the *Standards*, and recommended this exposure draft to the PRB for consideration. The PRB has approved and issued this exposure draft to propose those revisions to the *Standards*. The proposed revisions contained in this exposure draft are limited to the issues raised herein.

This proposal:

1. Revises and clarifies the guidance for those involved in the development and maintenance of QCM or CPE programs such that they are not permitted to serve on review teams to peer review firms that use those QCM or CPE programs (*user firms*). This impacts firms that develop and maintain QCM or CPE programs (*provider firms*) as well as an association of CPA firms that develop and maintain QCM or CPE programs (*provider association*).

2. Removes the provision requiring providers to undergo a triennial peer review of the system to develop and maintain QCM or CPE programs, and the resultant materials. However, providers can still elect to undergo such a review voluntarily. This is applicable for provider firms as well as provider associations.

3. Revises the procedures for performing a CPE program peer review for those providers that elect to undergo such a review. There are no changes proposed to the procedures for performing a QCM peer review, although some clarifications to those procedures are included.

Explanation of Changes to Existing Standards

1. Revises and clarifies the guidance for those involved in the development and maintenance of QCM or CPE programs such that they are not permitted to serve on review teams to peer review firms that use those QCM or CPE programs (user firms).

   The PRB recognizes the significance of QCM and CPE program peer reviews, particularly those that are widely utilized by many CPA firms. Such materials usually encompass a large portion of firms' systems of quality control. The current *Standards* contain detailed guidance related to the performance of and reporting for QCM and CPE program peer reviews. That guidance discusses which types of providers are required to undergo peer reviews of their systems and materials or programs, how these types of reviews are performed and reported on, and independence concerns with respect to the review team. The PRB has revisited that guidance to evaluate whether the provisions it contains are aligned with the overall nature and objectives of the Peer Review Program.

   As a result of this examination, the PRB determined that certain changes and revisions were warranted. The primary concern was clarifying the stance on independence and objectivity with respect to providers of QCM and CPE programs by making revisions to the guidance explaining who may serve on the peer review team of a user firm undergoing its triennial peer review.

   Any person that is involved in the development or maintenance of a provider's QCM or CPE programs has an interest in a user firm. Because of the nature of QCM and CPE programs, a provider's success relies in part on the success of firms that use the provider's materials; by extension, the provider becomes a part of the user firm's system of quality control. Someone who participated in the development or maintenance of the materials or programs also becomes a part of the user firm's system of quality control. Further, the relationship between a provider and a user firm creates a conflict of interest with respect to the user firm, both in terms of the successfulness of the user firm and the economic dependency that a provider (and by extension, someone that is a part of the provider's system of quality control) has on its user firms. For peer review purposes, this becomes an issue when someone that is a part of the provider's system of quality control is also a peer reviewer that participates on the review team to peer review a user firm. The *Standards* define independence and objectivity in paragraph 22, stating that ~~"t~~he reviewing firm, the review team, and any other individuals who participate on the peer review should be free from an obligation to, or interest in, the reviewed firm or its personnel." With respect to objectivity, paragraph 22 further states ~~"t~~he principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest."

   This issue is already recognized in Interpretation 21-1, which addresses the independence impact when a peer reviewer, for example, performs a firm's preissuance reviews or internal inspection. From a peer review independence standpoint, those types of situations are remedied by ensuring they do not occur either in the year immediately preceding or the year of peer review. However, there isn't an adequate remedy to restore independence for a reviewer involved in the development or maintenance of QCM or CPE programs used by a firm subject to review. The current guidance attempted a remedy by requiring certain types of providers to undergo a triennial peer review of their system of quality control to develop and maintain the QCM and/or CPE programs, and the resulting materials or programs. However, having such a review does not remove the potential for a lack of objectivity in fact and/or appearance on the part of a peer reviewer that is also a part of the provider's

system of quality control. The PRB concluded that the consequence of allowing a peer reviewer that is also a part of the provider's system of quality control to peer review a user firm conflicts with a peer reviewer maintaining the independence, integrity and objectivity that the *Standards* embody. This was not the intent of the PRB. The proposed revisions would conform the guidance to the underlying intent of paragraphs 21 – 22 of the *Standards*. These revisions will apply to both provider firms and provider associations.

The proposed revisions would preclude any personnel from a provider firm from participating on the review team of a firm that uses QCM or CPE programs that provider firm developed, regardless of whether the review team is formed by a different reviewing firm or by an association (association formed review team). In addition, the proposed revisions would preclude any personnel from an association member firm that participated in the development or maintenance of the association's QCM or CPE programs from serving on the review team of a firm that uses the association's QCM or CPE programs, regardless of whether the review team is formed by a different reviewing firm or by the association. In other words, a provider firm or a firm affiliated to a provider (whether a firm or association) that assisted with the development or maintenance of the materials or programs cannot participate on the peer review team of a firm that uses the materials as an integral part of its system of quality control. Further, CPA owners of a provider (whether a firm or another entity) that are also peer reviewers cannot participate on the review team of a user firm.

While the PRB has reached the above conclusions based on the information it currently has, it is still open to the viewpoints of peer review stakeholders. The PRB has developed questions that follow later in this document to which interested parties are asked to provide responses.

The proposed change affects paragraphs 156, 159, 160, and 164 of the *Standards*. It also affects Interpretations 21-1, 21-7 and 21-9.

2. <u>Removal of the requirements for providers to undergo triennial peer reviews of the system to develop and maintain QCM or CPE programs, and of the resultant materials.</u>

The original intent of requiring peer reviews for certain classes of providers was to mitigate potential independence impairments. Provider firms were required to undergo peer reviews of their system to develop and maintain QCM or CPE programs, and the resultant materials or programs, in order to remove potential independence concerns if the provider firm wished to peer review a user firm. Similarly, provider associations were required to undergo peer reviews of their system and resultant materials or programs to remove independence concerns amongst its member firms if those firms chose to peer review each other or if the association formed review teams. As the proposed revisions clarifies the PRB's stance on independence and objectivity with respect to these types of reviews, there was no reason to continue to require either class of provider to submit to triennial QCM or CPE program peer reviews. Instead, providers may voluntarily elect to undergo QCM or CPE program peer reviews to provide reasonable assurance to user firms that the system to develop QCM or CPE programs are reliable aids to assist them in conforming to those professional standards the materials purport to encompass, and so that peer reviewers of user firms can place reliance on the QCM or CPE program peer review to reduce the scope of planning procedures in certain situations (which includes a review of the firm's QCM or CPE programs, among other procedures).

The proposed change affects *Standards* paragraphs 159 and 160.

3. Revises the procedures for performing a CPE program peer review for those providers that elect to undergo such a review.

   A CPE program is intended to increase or maintain the proficiency of an individual. The majority of CPE programs are presented as classes offered live or via the internet, with a course instructor that verbally provides much of the needed information. Any aids that are developed and used as a part of a CPE program are intended for use or reference during the CPE program, and generally cannot be used as a stand-alone aid absent the instruction or lecture it's meant to accompany. These aids can range from being very general and short to specific and lengthy. Therefore, a key component of any CPE program is the information and guidance provided by the course instructor. The delivery of information is an important difference between CPE programs and QCM (which are generally intended to be stand-alone aids for their specified purposes).

   The *Standards* do not address the instruction component of CPE programs. However, they do currently require the peer reviewer to evaluate and opine on the system to develop and maintain the CPE programs and the resultant aids. The PRB considered how users rely on peer review reports of CPE programs, and whether any further reliance is gained because the report opines on both the system to develop and maintain CPE programs and the resultant CPE program aids, absent of the accompanying instruction. The PRB determined that since the instruction component of a CPE program is key to the program as a whole, users of CPE program peer review reports are not served by an opinion on the program aids alone. Further, there is no practical and efficient way that the instruction component (which is often provided verbally) can be appropriately evaluated and opined upon. Yet, a peer reviewer can evaluate and opine on the system in place to develop and maintain the CPE program, which would include evaluating the provider's process for ensuring that the appropriate information is gathered and ultimately delivered to CPE program participants. As a result, the PRB determined that the report for CPE programs should be revised to only opine on the system to develop and maintain the CPE programs, and that the peer review procedures in the *Standards* performed in support of the report should similarly be revised so that the procedures focus on the system.

   The proposed revisions would result in separate yet similar procedures for peer reviews of CPE programs as compared to peer reviews of QCM. The procedures for peer reviews of QCM will continue to focus on both the system to develop and maintain the materials, and the resultant aids. The procedures for peer reviews of CPE programs will focus on the system to develop and maintain the programs; any review of aids or materials designed to be used during the program will be encompassed in the evaluation of the system and whether it was suitably designed and complied with during the period under review. The proposed revisions will also result in different report language for opining on peer reviews of CPE programs as compared to peer reviews of QCM.

   The proposed change affects *Standards* paragraphs 156, 158 – 160, 166, and 168 – 173, and renumbers the paragraphs beginning with 170.

4. Other Changes

   There are additional revisions throughout paragraphs 154 – 182 (as renumbered) of the *Standards* to provide clarification consistent with current practices to perform these types of reviews, fix minor

grammar errors, and correct inconsistencies between these paragraphs and the remainder of the *Standards*.

Guide for Respondents

The PRB is seeking comments specifically on the peer review relationship described in paragraph 159 of the *Standards* and whether there are any potential conflicts with the guidance provided in paragraphs 21 and 22 and related *Interpretations*. Respondents are asked to specifically respond to the following questions:

1. Do you believe that the peer review relationship currently permitted by paragraph 159 is appropriate (e.g. if Firm A develops and markets QCM or CPE programs that has been independently peer reviewed and Firm B uses those materials or programs, is it appropriate for Firm A to perform the peer review of Firm B)?

2. Are there any independence concerns that arise as a result of the peer review relationship currently permitted by paragraph 159?

    a) If no, please explain why you do not have any independence concerns.

    b) If yes, please list your concerns and discuss whether you believe they represent an impairment of independence in fact, appearance, or both.

    c) If yes, do the proposed revisions appropriately address your independence concerns?

3. Do you believe that the proposed revisions are necessary to serve the main goal of the AICPA Peer Review Program (promoting quality in the accounting and auditing services provided by AICPA members and their CPA firms in order to serve the public interest and enhance the significance of AICPA membership)?

4. Is it more appropriate to have safeguards instead of prohibition? For example, using the scenario in question #1 between Firms A and B, would independence concerns be mitigated if the peer reviewers from Firm A were not involved in any way in the development or maintenance of the QCM or CPE programs? Or if there were periodic oversight of reviews performed by Firm A when the reviewed firm uses Firm A's materials or programs? Please provide your suggestions as to any appropriate safeguards you believe mitigate independence concerns.

5. If the proposed revisions are implemented, do you believe there will be a negative impact on your firm's ability to obtain QCM or CPE programs and/or ability to find qualified peer reviewers?

Comments are most helpful when they refer to specific paragraphs, include the reasons for the comments, and, where appropriate, make specific suggestions for any proposed changes to wording.

When a respondent agrees with proposals in the exposure draft, it will be helpful for the PRB to be made aware of this view and the reasons for agreement.

Please limit any submitted comments to the items presented within this exposure draft.

Written comments on the exposure draft will become part of the public record of the AICPA and will be available for public inspection at the offices of the AICPA after August 31, 2010, for one year. Responses should be sent to LaShaun King at PR_expdraft@aicpa.org and received by August 31, 2010.

Comment Period

The comment period for this exposure draft ends on August 31, 2010.

Effective Date

Unlike previous revisions to the *Standards*, the effective date for the revisions related to the removal of the provisions 1) allowing provider firms to peer review user firms and 2) requiring provider firms to undergo triennial peer reviews is based on the scheduling date (instead of commencement date). This was done to avoid unfairly impacting those firms that use QCM or CPE programs and have potentially engaged peer reviewers that the revisions prohibit from being able to perform those peer reviews in the future.

After exposure and consideration of the comments received, revisions to the *Standards* that are adopted will be effective for peer reviews scheduled on or after November 1, 2010, with the exception of the revisions to the procedures for performing CPE peer reviews (item 3 above), which are effective immediately upon issuance of the revised *Standards*.

Proposed Revisions to the Peer Review Standards

Performing and Reporting on Peer Reviews of Quality Control Materials (QCM) and Continuing Professional Education (CPE) Programs

Introduction

.154 Quality control materials (QCM) are materials that are suitable for adoption by a firm as an integral part of that firm's system of quality control. Such materials provide guidance to assist firms in performing and reporting in conformity with professional standards and may include, but are not limited to, such items as:

a. Engagement aids, including accounting and auditing manuals, checklists, questionnaires, work programs, computer-aided accounting and auditing tools, and similar materials intended for use by accounting and auditing engagement teams

b. Personnel manuals, inspection checklists, hiring forms, ~~and~~ client acceptance and continuance forms, and other materials related to the functional areas of quality control.

.155 Occasionally, organizations (hereinafter referred to as *providers*) may sell or otherwise distribute to CPA firms (hereinafter referred to as *user firms*) QCM that they have developed. They may also sell or distribute CPE programs that they have developed.

.156 Providers may elect voluntarily ~~or be required (see paragraph 159)~~ to have an independent review of their system of quality control for the development and maintenance of the QCM ~~or CPE programs~~ they have developed, and of the materials themselves. Providers may also elect to have an independent review of their system of quality control for the development and maintenance of the CPE programs they have developed. The reasons for having such a review include but are not limited to:

a. Providing reasonable ~~To provide~~ assurance to user firms that the system used by the provider to develop and maintain QCM or CPE programs they ~~have~~ acquired is appropriately designed and complied with, and that the QCM themselves they acquire are reliable aids to assist them in conforming to those professional standards the materials purport to encompass.

b. Providing~~To provide~~ more cost-effective peer reviews for firms that acquire~~have acquired~~ or use such materials by allowing the peer reviewers of user firms to place reliance on the QCM or CPE review to reduce the scope of the review of the user firm's QCM or CPE programs in certain situations (see Interpretations).~~.~~

c. Providing reasonable assurance
~~*c.* To ensure~~ that independence and objectivity on peer reviews of user firms is maintained when such peer reviews are performed by ~~providers or other~~ user firms in the same association of CPA firms.

.157 A summary of the nature, objectives, scope, limitations of, and procedures performed on QCM or CPE programs is included in appendix A.

Objectives of a Peer Review of QCM or CPE Programs

.158 The objective~~objectives~~ of a peer review of QCM or CPE programs developed by a provider is determining~~are:~~

~~*a.* To determine~~ whether the provider's system for the development and maintenance of the QCM or the CPE programs was suitably designed and was being complied with during the period under review to provide user firms with reasonable assurance that the materials or programs are reliable aids to assist them in conforming with those professional standards the materials or programs purport to encompass.

In addition, a peer review of QCM has the further objective of determining~~*b*. To determine~~ whether the resultant materials are reliable aids.

Applicability

.159 An independent review of the system for the development and maintenance of QCM or CPE programs ~~(and the resultant materials (~~the *QCM peer review* or *CPE programs peer review*) and the resultant materials (*QCM peer review* only) is voluntary~~required~~ for all providers. The~~the following~~ classes of providers include: :

a. A firm providing QCM or CPE programs to other firms ~~another firm for which the provider firm will perform the peer review~~

b. An association of CPA firms providing QCM or CPE programs

c. A third party organization that provides QCM or CPE programs as~~firms' provider when~~ a primary function of its business.~~user firm in the association will perform a peer review of another user firm in the association~~

.160 A provider of QCM or CPE programs that voluntarily elects to have such a review~~falling into either of these categories~~ should consult with the National PRC A~~have a~~ QCM or CPE review should ordinarily occur once every three years, be ~~and should arrange to have such a peer review~~ administered by the National PRC, and be performed in accordance with these standards. In the event of substantial change in the system for the development and maintenance of the materials or in the resultant materials, the provider should consult with the National PRC to determine whether an accelerated peer review is warranted.

.161 Providers~~Any other provider of QCM or CPE programs~~ that voluntarily elect~~elects~~ to have a peer ~~QCM or CPE~~ review under ~~performed in accordance with~~ these standards must comply with all provisions~~should also consult with the National PRC. A provider may have a review voluntarily so that peer reviewers of user firms can place reliance on the QCM or CPE review to reduce the scope of the review of the firm's QCM or CPE programs~~.

.162 A QCM or CPE review under these standards may not include materials relating to audits of SEC issuers performed pursuant to the standards of the PCAOB.

.163 All providers that plan to have a QCM or CPE review performed in accordance with these standards must notify the National PRC in advance of that review so that the review team can be approved and the review~~it~~ can be appropriately scheduled. Once~~If~~ a QCM or CPE review has commenced, providers must also notify the National PRC before a review is terminated prior to completion.

Qualifications for Serving as QCM or CPE Peer Reviewers

.164 A QCM or CPE review team may be formed by a firm engaged by the provider under review or an association of CPA firms authorized by the board to assist its members in forming review teams (an association formed review team). Peer reviews of association QCM or CPE programs may not be performed by a member of the association whose materials or programs are being reviewed. The QCM or CPE review team is not considered qualified until approved by the NPRC. Furthermore, the National PRC will not appoint to the QCM or CPE review team a person with a firm that is a member of the association or a person or firm that may have a conflict of interest with respect to the QCM or CPE review, such as someone who assisted in the development or review of such materials, or uses the materials as an integral part of their ~~the~~ firm's system of quality control (see Interpretations). Final approval of QCM or CPE review teams is at the NPRC's discretion.

.165 A QCM or CPE reviewer shall possess the qualifications set forth in the paragraphs under ~~"~~Organizing the System or Engagement Review Team" and ~~"~~Qualifying for Service as a Peer Reviewer" (see paragraphs 26–35).

Procedures for Performing QCM Provider~~or CPE~~ Reviews

.166 The provider should identify the materials subject~~, whether QCM or CPE program materials,~~ to review~~be reviewed~~ and covered by the~~on which an~~ opinion. ~~is to be expressed.~~ A QCM ~~or CPE~~ review should include a study and evaluation of the system for the development and maintenance of the QCM ~~or CPE program~~ that have been identified and a review of the materials themselves. Where not otherwise addressed in the following list, the peer reviewer should refer to the guidance for performing and reporting on System Reviews (see paragraphs 36–101) and accepting System and Engagement Reviews (see paragraphs 132–140) for additional guidance on performing, reporting on, and accepting QCM ~~and CPE~~ reviews.

.167 A provider's system for the development and maintenance of the materials normally should include:

a. A requirement that the materials be developed by individuals qualified in the subject matter.

b. A requirement that the materials be reviewed for technical accuracy by a qualified person(s) other than the developer(s) to ensure that the materials are reliable aids to assist users in conforming to those professional standards the materials purport to encompass.

c. Procedures to ensure the currency and relevancy of the materials.

d. Procedures for soliciting and evaluating feedback from users of the materials.

e. Procedures for communicating the period and, where appropriate, the professional standards encompassed by the materials, and the provider's policy, if any, regarding the issuance of updates to the materials and, if a policy exists, the method of updating.

f. Procedures for ensuring that the materials are updated in accordance with the provider's policy when it has undertaken to update them.

.168 A study and evaluation of the system for the development and maintenance of the materials normally should include the following procedures:

a. Reviewing and evaluating the procedures established for developing and maintaining the materials.

b. Reviewing and evaluating the procedures established for updating (including distributing) the materials to ensure that the materials remain current and relevant when the provider has undertaken the responsibility for updating the materials. ~~(and for communicating any relevant changes in professional standards to program participants if new professional standards are issued prior to updating the CPE programs).~~

c. Reviewing the technical competence of the developer(s) or updater(s) of the materials.

d. Obtaining evidence that the materials were reviewed for technical accuracy by qualified person(s) other than the developer(s) or updater(s).

e. Determining whether the provider has appropriately communicated its policy regarding the period covered by the materials, the professional standards the materials purport to encompass, and the provider's intention to update the materials.

f. Reviewing the system developed for soliciting and evaluating feedback from users of the materials.

.169 The scope of the~~A~~ QCM peer~~or CPE~~ review includes all of~~team should review~~ the resultant materials covered in~~, to~~ the opinion~~extent deemed necessary~~, to evaluate whether the materials are reliable aids to assist firms in conforming to those professional standards the materials purport to encompass. The extent to which individual manuals, guides, checklists, etc. are reviewed is subject to the peer review team's judgment and should be documented in the risk assessment.

Procedures for Performing CPE Provider Reviews

.170 A CPE review should include a study and evaluation of the system for the development and maintenance of the CPE programs. Where not otherwise addressed in the following list, the peer reviewer should refer to the guidance for performing and reporting on System Reviews (see paragraphs 36–101) and accepting System and Engagement Reviews (see paragraphs 132–140) for additional guidance on performing, reporting on, and accepting CPE reviews.

.171 A provider's system for the development and maintenance of the programs normally should include:

a. A requirement that the programs be developed by individuals qualified in the subject matter.

b. A requirement that the programs be reviewed for technical accuracy by a qualified person(s) other than the developer(s) to ensure that the programs are reliable aids to assist users in conforming to those professional standards the programs purport to encompass.

c. Procedures to ensure the currency and relevancy of the programs.

d. Procedures for soliciting and evaluating feedback from users of the programs.

e. Procedures for communicating the period and the professional standards encompassed by the programs (and for communicating any relevant changes in professional standards to program participants if new professional standards are issued prior to revising the CPE programs).

f. Procedures to ensure that instructors are qualified with respect to the program content and subject matter, and to evaluate the instructor's performance on a periodic basis.

.172 A study and evaluation of the system for the development and maintenance of the programs normally should include the following procedures:

a. Reviewing and evaluating the procedures established for developing and maintaining the programs.

b. Reviewing and evaluating the procedures established to ensure the programs are current and relevant.

c. Reviewing the technical competence of the programs' developer(s).

d. Obtaining evidence that the programs were reviewed for technical accuracy by qualified person(s) other than the developer(s).

e. Determining whether the provider has appropriately communicated its policy regarding the period covered by the programs and the professional standards they purport to encompass.

f. Reviewing the system developed for soliciting and evaluating feedback from users.

g. Reviewing the technical competence and qualifications of the program instructors.

.173 A CPE review team should make a risk-based selection of programs offered during the year and review them, to the extent deemed necessary, to evaluate whether the system to develop and maintain the CPE programs was complied with by determining that the CPE programs selected are an accurate reflection of the professional standards the programs purport to encompass, in all material respects. The extent to which individual manuals, guides, checklists, etc. are reviewed is subject to the peer review team's judgment and should be documented in the risk assessment.

Reporting on QCM or CPE Reviews

General

.174~~170~~ The QCM or CPE review team should furnish the provider with a written report and the final FFC forms within 30 days of the date of the exit conference or by the provider's review due date, whichever is earlier. A report on a review performed by a firm is to be issued on the letterhead of the firm performing the review. A report by a review team formed by an association of CPA firms is to be issued on the letterhead of the firm of the team captain performing the review. The report in a QCM or CPE review ordinarily should be dated as of the date of the exit conference. See interpretations for guidance on notification requirements and submission of peer review documentation to the administering entity.

Preparing the Report in a QCM or CPE Review

.175~~171~~ The standard form~~s~~ for a peer review report on QCM~~ or CPE programs~~ with a peer review rating of *pass*, *pass with deficiencies*, and *fail* are included in appendixes R, "Illustration of a Report With a Peer Review Rating of *Pass* in a Peer Review of Quality Control Materials~~ or CPE Programs~~;" S, "Illustration of a Report with a Peer Review Rating of *Pass with Deficiencies* in a Peer Review of Quality Control Materials~~ or CPE Programs~~;" and T, "Illustration of a Report with a Peer Review Rating of *Fail* in a Peer Review of Quality Control Materials," respectively. The standard form for a peer review report on CPE programs with a peer review rating of *pass*, *pass with deficiencies*, and *fail* are included in appendixes U, "Illustration of a Report With a Peer Review Rating of *Pass* in a Peer Review of CPE Programs;" V, "Illustration of a Report with a Peer Review Rating of *Pass with Deficiencies* in a Peer Review of CPE Programs;" and W, "Illustration of a Report with a Peer Review Rating of *Fail* in a Peer Review of~~ or~~ CPE Programs," respectively. Additional paragraphs included for scope limitations follow the illustrations for System Reviews with scope limitations (see appendixes D, G, and K).

.176~~172~~ A QCM or CPE report with a rating of *pass*, *pass with deficiencies*, or *fail* shall contain elements similar to those in a System Review report. As such, the written report in a QCM or CPE System Review should:

a. State at the top of the page the title "Quality Control Materials Review Report" or "CPE Programs Review Report."

b. In a QCM report, state~~State~~ that the system of quality control for the development and maintenance of the materials and the resultant materials in effect at the year-end covered by the peer review were reviewed.

c. In a CPE report, state that the system of quality control for the development and maintenance of the programs in effect at the year-end covered by the peer review was reviewed.

c. State that the peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants.

d. State that the organization is responsible for designing a system of quality control and complying with it to provide users of the materials or programs with reasonable assurance that the materials or programs are reliable aids to assist them in performing and reporting in conformity with ~~applicable professional standards in all material respects~~ those professional standards that the materials or programs purport to encompass, in all material respects.

e. State that the reviewer's responsibility is to express an opinion on the design of the system of quality control and the organization's compliance therewith based on the review.

f. State that the nature, objectives, scope, limitations of, and procedures performed in a Quality Control Materials review or CPE review are described in the standards.

g. Include a URL reference to the AICPA Web site where the standards are located.

h. Identify the different peer review ratings that the provider~~organization~~ could receive.

i. In a report with a peer review rating of *pass*:

- Express an opinion that the system of quality control for the development and maintenance of the quality control materials or CPE programs~~program~~ was suitably designed and was being complied with during the

year ended to provide users of the materials or programs with reasonable assurance that the materials are reliable aids to assist them in conforming with those professional standards the materials purport to encompass.

- Express an opinion that the quality control materials ~~or CPE program~~ were reliable aids at the year-end (QCM report only).~~.~~
- State at the end of the opinion paragraph that therefore the report reflects a peer review rating of *pass*.
- Include an additional paragraph, in~~In~~ the event of a scope limitation,~~ include an additional paragraph~~ before the opinion paragraph that describes the scope limitation, including the relationship of the excluded steps to the full system, and the affect on the scope and results of the review.
- Do not include~~Reports with a peer review rating of *pass* do not contain~~ any findings, deficiencies, significant deficiencies, or recommendations.

j. In a report with a peer review rating of *pass with deficiencies*:~~20~~

- Express an opinion that, except for the deficiencies described above, the system of quality control for the development and maintenance of the quality control materials or CPE programs~~program~~ was suitably designed and was being complied with during the year ended to provide users of the materials with reasonable assurance that the materials or programs are reliable aids to assist them in conforming with those professional standards the materials purport to encompass.
- State at the end of the opinion paragraph that therefore the report reflects a peer review rating of pass with deficiencies.
- Include an additional paragraph, in~~In~~ the event of a scope limitation,~~ include an additional paragraph~~ before the deficiencies that describes the scope limitation, including the relationship of the excluded steps to the full system, and the affect on the scope and results of the review.

k. In a report with a peer review rating of *fail*:

- Express an opinion that as a result of the significant deficiencies described above, the system of quality control for the development and maintenance of the quality control materials or CPE programs~~program~~ was not suitably designed and being complied with during the year ended to provide users of the materials with reasonable assurance that the materials or programs are reliable aids to assist them in conforming with those professional standards the materials purport to encompass.
- State at the end of the opinion paragraph that therefore the firm has received a peer review rating of fail.
- Include an additional paragraph, in~~In~~ the event of a scope limitation,~~ include an additional paragraph~~ before the significant deficiencies that describes the scope limitation, including the relationship of the excluded steps to the full system, and the affect on the scope and results of the review.

l. Include, for reports with a peer review rating of *pass with deficiencies* or *fail*, systemically written descriptions of the deficiencies or significant deficiencies and the reviewing firm's recommendations (each of these should be numbered).

m. Identify, for any deficiencies or significant deficiencies included in the report with a peer review rating of *pass with deficiencies* or *fail* any that were also made in the report[21] issued on the organization's previous peer review. This should be determined based on the underlying systemic cause of the deficiencies or significant deficiencies.

Forming Conclusions on the Type of Report to Issue in a QCM or CPE Review

.177~~173~~ The following circumstances ordinarily would be considered deficiencies or significant deficiencies and would require a report with a peer review rating of *pass with deficiencies* or *fail*:

\

a.~~a.~~ ~~The scope of the review is limited by conditions that preclude the application of one or more review procedures considered necessary.~~

~~b.~~ The provider's system of quality control for the development and maintenance of QCM or CPE programs, as designed, did not provide user firms with reasonable assurance that reliable aids had been developed to assist them in conforming with those professional standards the materials purport to encompass.

b~~c~~. The degree of compliance with the provider's system of quality control for the development and maintenance of QCM or CPE programs was not sufficient to provide user firms with reasonable assurance that reliable aids had been developed to assist them in conforming with those professional standards the materials purport to encompass.

c.~~d.~~ The resultant QCM~~ or CPE programs~~ are not reliable aids to assist user firms in conforming to those professional standards the materials purport to encompass (QCM review only).~~.~~

.178~~174~~ In those instances in which the QCM or CPE review team determines that a report with a peer review rating of *pass with deficiencies* or *fail* is required, all the reasons should be disclosed, and the QCM or CPE review team should consult with the National PRC prior to the issuance of the report.

Provider Responses on QCM and CPE Program Reviews

.179~~175~~ If the provider receives a report with a peer review rating of *pass with deficiencies* or *fail*, then the provider should respond in writing to the deficiencies and significant deficiencies and related recommendations identified in the report, if applicable. The letter of response should be addressed to the AICPA National PRC~~Peer Review Board~~ and should describe the action(s) planned (including timing) or taken by the provider with respect to each deficiency in the report. If the provider disagrees with one or more of the deficiencies or significant deficiencies, its response should describe the reasons for such disagreement. In the event that a material error or omission in the QCM or CPE programs is uncovered by the QCM or CPE review team, the response also should describe the provider's plan for notifying known users of that error or omission. The provider should submit the letter of response for review and comment to the team captain prior to submitting the response to the National PRC.

.180~~176~~ The provider should submit a copy of the report and its letter of response to the National PRC within 30 days of the date it received the report or by the provider's peer review due date, whichever date is earlier. Prior to submitting the response to the National PRC, the reviewed firm should submit the response to the team captain for review, evaluation, and comment. If the provider receives a report with a peer review rating of *pass* or *pass (with a scope limitation)*, a letter of response is not applicable, and the provider does not submit a copy of the report to the National PRC.

.181~~177~~ The provider should also respond on the FFC forms, if any are developed, to findings and related recommendations. These responses should describe the plan (including timing) the provider has implemented or will implement with respect to each finding. They should be submitted to the team captain no later than two weeks after the exit conference or by the peer review's due date, whichever is earlier. FFC forms are submitted by the team captain with the applicable working papers to the National PRC.

.182~~178~~ If, after a discussion with the team captain, the provider disagrees with one or more of the findings, deficiencies, or significant deficiencies, the reviewed firm should contact the administering entity for assistance in the matter (see paragraph 93). If the provider still disagrees with one or more of the findings, deficiencies, or significant deficiencies, its response on either the FFC form or in the letter of response, as applicable, should describe the reasons for such disagreement.

Appendix A
Summary of the Nature, Objectives, Scope, Limitations of, and Procedures Performed in System and Engagement Reviews and Quality Control Materials and Continuing Professional Education Program Reviews (as Referred to in a Peer Review Report) [excerpted]

Quality Control Materials or CPE Program Reviews

17. A Quality Control Materials (QCM) or CPE Program Review is a type of peer review that is a study and appraisal by an independent evaluator(s) (known as a *peer reviewer*)~~,~~ of an organization's (hereinafter referred to as *provider*) system of quality control to develop and maintain accounting and auditing quality control materials or continuing professional education programs. Materials or programs designed to aid practitioners with tax or other services is outside of the scope of this type of review.~~quality control materials ("materials").~~ The system represents the provider's policies and procedures that the provider has designed, and is expected to follow, when developing the materials or programs. The peer reviewer's objective is to determine whether the system is designed and whether the organization is complying with its system appropriately so that users of the materials or programs(~~,~~ primarily CPA firms and their employees)~~,~~ know that they can rely on the them. For instance,~~materials. The~~ materials can be part or all of a firm's documentation of their system, such as~~in the form of, for example,~~ manuals, programs, and practice aids (forms and questionnaires). As such, the users rely on the materials to assist them in performing and reporting in conformity with professional standards (as described in the preceding paragraphs) in conducting their accounting and auditing practices.

18. A QCM or CPE review is similar to a System Review. However~~ however~~, the focus is on the system for developing the materials, instead of on the system for the performance of accounting and auditing work. A reviewer obtains an understanding of the design of the provider's system, including its policies and procedures and how the provider checks itself that it is complying with them. The reviewer obtains this understanding through inquiry of provider personnel and review of documentation on the system. In a QCM review, the~~The~~ reviewer also reviews the materials to determine if they are reliable. The objectives of obtaining an understanding of the system and then reviewing the materials forms the basis for the reviewer's conclusions in the peer review report.

19. The extent of a provider's policies and procedures and the manner in which they are implemented will depend upon a variety of factors, such as the size and organizational structure of the provider and the nature of the materials provided to users. Variance in individual performance and professional interpretation affects the degree of compliance with prescribed quality control policies and procedures. Therefore, adherence to all policies and procedures in every case may not be possible.

20. When a provider receives a QCM or CPE review report from a peer reviewer with a peer review rating of *pass*, this means the system is designed and being complied with appropriately to provide users of the materials with reasonable assurance that the materials are reliable. If a provider receives a report with a peer review rating of *pass with deficiencies*, this means the system is designed and complied with appropriately to provide users of the materials with reasonable assurance that the materials are reliable, except in certain situations that are explained in detail in the peer review report. When a provider receives a report with a peer review rating of *fail*, the peer reviewer has determined that the provider's system is not suitably designed or being complied with to provide users of the materials with reasonable assurance that the materials are reliable, and the reasons why are explained in detail in the report.

21. There are inherent limitations in the effectiveness of any system and, therefore, noncompliance with the system may occur and not be detected. A QCM or CPE peer review is based on judgmental~~selective~~ review of the materials. It is directed at assessing whether the design of and compliance with the provider's system provides the provider with reasonable, not absolute, assurance of the materials conforming with the professional standards they purport to encompass. Consequently, it would not necessarily detect all weaknesses in the system, all instances of noncompliance with it, or that each aspect of the materials is accurate or reliable. Projection of any evaluation of a system to future periods is subject to the risk that the system may become inadequate because of changes in conditions or because the degree of compliance with the policies or procedures may deteriorate.

Appendix U
Illustration of a Report with a Peer Review Rating of *Pass* in a Peer Review of Continuing Professional Education Programs

Continuing Professional Education Programs System Review Report

April 30, 20XX

Executive Board
XYZ Organization
and the National Peer Review Committee

We have reviewed the system of quality control for the development and maintenance of the continuing professional education programs (hereafter referred to as *programs*) of XYZ Organization (the organization) in effect at December 31, 20XX. Our continuing professional education peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The organization is responsible for designing a system of quality control and complying with it to provide users of the programs with reasonable assurance that the programs developed under the system of quality control are reliable aids to assist them in conforming with those professional standards that the programs purport to encompass. Our responsibility is to express an opinion on the design of the system and the organization's compliance with that system based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a Continuing Professional Education Programs Review are described in the standards at www.aicpa.org/prsummary.

In our opinion, the system of quality control for the development and maintenance of the continuing professional education programs of the XYZ Organization was suitably designed and was being complied with during the year ended December 31, 20XX, to provide users of the programs with reasonable assurance that the programs developed under the system of quality control are reliable aids to assist them in conforming with those professional standards the programs purport to encompass. Organizations can receive a rating of *pass*, *pass with deficiency(ies)*, or *fail*. XYZ Organization has received a peer review rating of *pass*.

ABC & Co.[1]

[1] The report should be signed in the name of the team captain's firm for firm-on-firm reviews or association formed review teams.

Proposed Revisions to the Peer Review Interpretations

21-1 *Question* —Paragraph .21 of the standards states that independence in fact and in appearance should be maintained with respect to the reviewed firm by a reviewing firm, by review team members, and by any other individuals who participate in or are associated with the review and that the review team should perform all peer review responsibilities with integrity and maintain objectivity in discharging those responsibilities. What criteria have been established by the board?

Interpretation—**c. *Relationships With the Reviewed Firm***

Reviewing firms should consider any family or other relationships between the management at organizational and functional levels of the reviewing firm, affiliate relationships, and common ownership of entities that provide products or services and the firm to be reviewed, and should assess the possibility of an impairment of independence.

If the fees for any services provided between firms, whether paid by the referring firm or by the client, involving the reviewed firm and the reviewing firm or the firm of any member of the review team are material to any of those firms, independence for the purposes of this program is impaired.

If arrangements exist between the reviewed firm and the reviewing firm or the firm of any member of the review team whereby expenses, office facilities, or personnel are shared, independence for the purposes of this program is impaired. Similarly, independence would be considered to be impaired by sharing arrangements involving, for example, frequent CPE programs, extensive consultation, preissuance reviews of financial statements and reports, or audit and accounting manuals. In such circumstances, the firms involved are sharing materials and services that are an integral part of their systems of quality control. ~~However, the impairment would be removed if an independent peer review was made aware of the shared materials (such as CPE programs or an audit and accounting manual) before the peer review commenced and if that independent peer review was accepted by an approved body (determined by the board) before that date.,,~~

If the reviewed firm uses quality control materials (QCM) or CPE programs that any member of the review team helped to develop or maintain, the independence of the reviewing firm is impaired. Development and maintenance activities with respect to QCM and CPE programs include but are not limited to authoring or writing the materials and programs or any portion thereof, performing technical reviews, assessments or evaluations of the materials and programs, performing any type of editorial services on the materials and programs, etc. This is applicable regardless of whether the materials or programs are provided by a CPA firm, association, or any other type of entity. Additionally, if an entity that develops and maintains materials or programs is affiliated with a reviewing firm, the independence of the reviewing firm to peer review a firm that uses those materials is impaired.

21-7 *Question*—Firm A has an arrangement with Firm B whereby Firm A sends its staff to CPE programs developed by Firm B. Can Firm B perform a peer review of Firm A?

Interpretation—No, ~~unless Firm B has had its CPE programs peer reviewed by an independent party (see standards for guidance in "Performing and Reporting on Peer Reviews of Quality Control Materials (QCM) and Continuing Professional Education (CPE) Programs"). If such a peer review is not undertaken and reported on before the peer review of Firm A commences,~~ Firm B would not be considered independent for purposes of conducting the peer review of Firm A. In addition, peer reviewers from Firm B cannot serve on Firm A's review team. However, occasional (infrequent and not part of Firm A's regular CPE training plan) attendance by representatives of Firm A at programs developed by Firm B would not preclude Firm B from reviewing Firm A.

21-9 *Question*—Firm B uses Firm A's accounting and auditing manual as its primary reference source. Can Firm A perform a peer review of Firm B, or can Firm B perform a peer review of Firm A?

Interpretation—No, ~~unless Firm A has had its accounting and auditing manual and any other of its reference material used by Firm B as a primary reference source peer reviewed by an independent party.~~

~~The peer review of the materials should be similar to the review of quality control materials in associations and should meet the same peer review performance and reporting standards. If such a peer review is not undertaken and reported on before the peer review commences,~~ Firm A would not be considered independent for purposes of conducting the peer review. In addition, no peer reviewers from Firm A can serve on Firm B's review team. In addition, if Firm B uses the manual as an integral part of its system of quality control, it would be precluded from performing the peer review of Firm A. However, if the manual is used only as a part of the firm's overall reference library (not an integral part of Firm B's system of quality control), independence would not be impaired. ~~This interpretation also applies to providers of quality control materials or CPE programs.~~

21-20 *Question*—Firm A purchases an accounting and auditing manual developed by an association that it belongs to as its primary reference source. Personnel from Firm B that are also peer reviewers aided the association with the development of the manual by authoring sections of the materials. The association forms review teams for its member firms. Can the association include reviewers from Firm B on the review team to peer review Firm A?

Interpretation—No, peer reviewers from Firm B would not be considered independent for purposes of serving on the peer review team for Firm A. This is applicable for both association-formed review teams and firm-on-firm review teams. However, if the manual is used only as a part of the firm's overall reference library (not an integral part of Firm A's system of quality control), independence would not be impaired.

26-1 *Question*—Paragraph .26 of the standards states that a review team may be formed by a firm engaged by the firm under review (a firm-on-firm review) or an association of CPA firms authorized by the board to assist its members in forming review teams (an association formed review team). What criteria have been established by the board for association formed review teams?

Interpretation—Associations of CPA firms include any group, affiliations, or alliances of accounting firms. The term also applies to two or more firms or a group of firms (whether a formal or informal group) that jointly market or sell services.

A member firm of an association may conduct a peer review of another association-member firm enrolled in the program, provided that the association receives annual approval from the board. The National PRC administers this process on behalf of the board. The association must submit an AIF to the National PRC that must be approved by the board prior to any aspect of the review being planned, scheduled, or performed.

The AIF contains questions regarding general information about the association, independence matters, and whether the association requests to be approved to assist its members in the formation of review teams, provide technical assistance to such review teams, or do both. All review teams must still be approved by the administering entity. The AIF is subject to oversight by the board.

The approval of the AIF specifically relates to AICPA members of an association having the ability to perform peer reviews of other AICPA members in the same association enrolled in the program. Furthermore:

a. Annual approval of the AIF does allow, where the association has answered the specific questions making such a request, the association the ability to assist its members in the formation of review teams (association formed review teams) or to provide technical assistance to such review teams.

b. The reviewed firm and administering entity, not the association, is ultimately responsible for ensuring that its peer review is scheduled, performed, and completed in a timely manner.

c. Annual approval of the AIF does not grant the association the authority to administer the program; therefore, the association is not deemed an approved administering entity.

d. Approval of the AIF is not an endorsement of, approval of, or has any applicability to a separate peer review program that an association may conduct or administer for non-AICPA members.

e. If the association makes any representations (in brochures, directories, pamphlets, Web pages, or any marketing or selling materials regarding its member firms in obtaining engagements) such representations are objective and quantifiable.

For a member firm of an association to conduct peer reviews of another association-member firm enrolled in the program, in addition to other peer review independence requirements, the association and its member firms must meet the following independence criteria:

a. The association, as distinct from its member firms, does not perform any professional services other than those it provides to its member firms or affiliates. For purposes of this requirement, *professional services* include accounting, tax, personal financial planning, litigation support, and professional services for which standards are promulgated by bodies designated by AICPA Council.

b. The association does not make representations regarding the quality of professional services performed by its member firms to assist member firms in obtaining engagements unless the representations are objective or quantifiable. However, member firms may independently publicize their membership in the association. In addition, an association may respond to inquiries and prepare promotional materials that firms may use to obtain professional engagements on their own behalf.

c. Referral or participating work among member firms is arranged directly by the firms involved.

d. The association does not have any direct or material indirect financial interest or involvement in its member firms in sharing fees generated by members through the sale of products or services.

e. The association does not exercise any direct or indirect management control over the professional or administrative functions of its member firms.

An ~~For a member firm of an~~ association may voluntarily elect to have an independent triennial~~conduct a~~ peer review of its system of quality control to develop and maintain~~another association member firm enrolled in the program when~~ quality control materials or CPE programs used by its member firms~~members constitute association materials, the association shall arrange for an independent triennial peer review of those materials~~ (see paragraphs .154-.182~~–.178~~ of the standards). An association may wish to have such a review to enable its member ~~Therefore,~~ firms that use the materials or programs it develops to have more efficient peer reviews. Associations that elect to have this type of review should ~~share such materials are advised to~~ consult with AICPA program staff ~~if an independent review of the shared materials appears necessary~~.

An association formed review team,

a. requires that a majority of the review team members, including the team captain in a System Review, and all members in an Engagement Review, be from association member firms.

b. performs peer reviews in accordance with these standards, interpretations, and other guidance and the peer review report is issued on the letterhead of the team captain or review captain's firm and signed in the name of the team captain or review captain's firm (not the association).

Peer reviews performed by association-formed review teams are subject to oversight by the board and the administering entities and other bodies agreed upon by the board and the administering entity.

42-2 *Question*—Many firms rely on third party quality control materials (QCM) and continuing professional education (CPE) programs as integral portions of the firm's system of quality control. As the system for developing and maintaining the third party materials lies outside of the reviewed firm, how should the review team evaluate the adequacy of the materials relied upon by the reviewed firm?

Interpretation—The review team should determine whether a provider of QCM or CPE programs had an independent peer review. This type of review would entail an assessment of the provider's system to develop and maintain the QCM or CPE programs, and in a QCM review, include an assessment of ~~and~~ the resultant materials. Since the review team ordinarily assesses the suitability of the QCM or CPE programs as a part of its evaluation of the design of the reviewed firm's system of quality control, placing reliance on the provider's peer review results affects the assessment of peer review risk and impacts the nature, timing, and extent of the review team's evaluation of the firm's system of quality control. The review team should obtain the peer review results (i.e. the report, LOR (if applicable), etc.) to consider the impact on the reviewed firm's system of quality control. The provider's peer review results may be obtained from either the AICPA's website, the provider's website or from the reviewed firm.

- If the provider received a pass report, then the review team can place reliance on the provider's peer review results with respect to that portion of the reviewed firm's design of its system.
- If the provider received a pass with deficiencies report, the review team should consider the reasons for the deficiencies identified in the report and assess their relevance to the reviewed firm. Once this assessment is made, the review team can determine the degree of reliance it can place on the provider's results.
- If the provider received a fail report, no reliance can be placed on the results, and the review team should determine the impact on the reviewed firm's system of quality control.

Peer reviews of providers of QCM or CPE programs generally occur on a triennial basis. If the report date is three years or older, it loses its usability and no reliance can be placed upon it.

In addition, the review team should consider 1) the version date of the materials relative to the period covered by the report, and 2) the amount of time that's passed since the period covered by the report in determining the degree of reliance that can be placed on the report. Factors to consider include:

- The issuance of new standards
- Changes in regulatory requirements
- Changes in economic conditions that impact the provider
- Limitations or restrictions on authors of the materials
- Any substantial changes to the materials used by the firm

Regardless of the degree of reliance placed on the provider's peer review results, the review team is still responsible for determining which forms, checklists, programs, etc. are used by the reviewed firm as a part of its system of quality control, how often the materials are updated, the degree of reliance placed on the materials, and assessing compliance with their use. The results of the provider's peer review should weigh in the assessment of control risk, and be documented in the risk assessment.

If a ~~peer review of the system to develop and maintain the~~ QCM or CPE peer review~~programs and the resultant materials~~ was not performed, the review team will need to perform its own evaluation to determine if the materials or programs were suitably designed. This includes third party materials as well as materials that were designed by the reviewed firm. This evaluation is a part of the review team's overall assessment of the design of the reviewed firm's system of quality control, and should be documented in the risk assessment.

For additional information on peer reviews of QCM or CPE programs, please see paragraphs .154-.182, and Appendix A of the Standards.

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September 23, 2010

LaShaun King, Technical Manager
AICPA Peer Review Program
American Institute of Certified Public Accountants
220 Leigh Farm Road
Durham, NC 27707-8110

Re: Peer Review Exposure Draft

Dear Ms. King:

On behalf of the California Board of Accountancy (CBA), I am pleased to submit our comments on the American Institute of Certified Public Accountants (AICPA) Exposure Draft titled "Proposed Revisions to the AICPA Standards for Performing and Reporting on Peer Reviews: Performing and Reporting on Peer Reviews of Quality Control Materials (QCM) and Continuing Professional Education (CPE) Programs."

Effective January 1, 2010, the CBA began requiring peer review for all California-licensed firms providing accounting and auditing services. Given that independence is a critical element of the peer review process, the CBA is supportive of any changes to the AICPA Peer Review Program that will increase consumer protection through enhanced independence and objectivity for those performing peer reviews.

To this end, the first notable change in the standards specifically addressed in the Explanatory Memorandum of the Exposure Draft states that "those involved in the development and maintenance of QCM or CPE programs … are not permitted to serve on review teams to peer review firms that use those QCM or CPE programs." This change speaks directly to the issue of independence and objectivity, and is supported by the CBA.

The second issue outlined in the Explanatory Memorandum of the Exposure Draft reads "Removal of the requirements for providers to undergo triennial peer reviews of the system to develop and maintain QCM or CPE programs, and of the resultant materials." This change appears to be focused on eliminating requirements perceived to be "unnecessary" in light of the increased independence and objectivity resulting from the change outlined in the paragraph immediately above. The benefit of this change, however, is not clear to the CBA as it appears the triennial review process will remain in place, with some providers voluntarily participating in the review while other providers "elect out" of the review process. This change would seem to undermine a "single standard" for providers – enabling some providers to have their system periodically

reviewed while other providers might choose to never again have an independent assessment of their system.

The final major topic spoken to in the Explanatory Memorandum of the Exposure Draft reads “Revises the procedures for performing a CPE program peer review for those providers that elect to undergo such a review.” This change appears to be administrative in nature, focusing on the actual procedures and content for peer reviews of CPE programs as compared to peer reviews of quality control materials. The CBA sees no controversy in these changes, and has no comment to offer with respect to these specific revisions.

Thank you for the opportunity to provide comment on the AICPA Exposure Draft “Proposed Revisions to the AICPA Standards for Performing and Reporting on Peer Reviews: Performing and Reporting on Peer Reviews of Quality Control Materials (QCM) and Continuing Professional Education (CPE) Programs.”

Regards,

Manuel Ramirez, CPA, President
California Board of Accountancy

c: Members, California Board of Accountancy

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item XIII.B.2.
September 22-23, 2010

To : CBA Members Date : September 13, 2010

Telephone : (916) 561-1713
Facsimile : (916) 263-3675
E-mail : drich@cba. ca.gov

From : Daniel Rich
Assistant Executive Officer

Subject : NASBA Regional Directors' Focus Questions

Attached for your information are draft responses to NASBA Regional Directors' Focus Questions, which were issued on August 2, 2010. These responses have been prepared for Laurie Tish, Pacific Regional Director and are due to Ms. Tish by October 6, 2010.

Staff has been informed that the quarterly Focus Questions are used to help NASBA regional directors stay apprised of each state's policies and procedures, and to see where improvements or adjustments might be made. The eight regional directors review the states' answers and then present their findings to NASBA.

Draft responses to the Focus Questions were prepared by CBA staff from the Enforcement, Licensing and Administration Divisions. Staff will be available at the September 2010 CBA meeting to answer any questions you may have, and to revise these responses based on any direction you might provide.

Attachment

NATIONAL ASSOCIATION OF STATE BOARDS OF ACCOUNTANCY, INC.

MEMORANDUM

August 2, 2010

To: State Board Chairs and Executive Directors
From: Donald H. Burkett - Chair, Committee on Relations with Member Boards
Re: Focus Questions

As Chair of the Committee on Relations with Member Boards, I would like to thank you for your participation at NASBA's Regional Meetings and your assistance with our past Focus Questions. Your continued support helps keep NASBA an organization that responds to its member boards.

I hope you are all making plans to attend NASBA's 2010 Annual Meeting, October 24-27 in San Antonio, TX. In the meantime, please do not hesitate to call your Regional Director to discuss the following questions or any other issues you feel NASBA should consider. We look forward to hearing from you.

Sincerely,

Donny Burkett

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REGIONAL DIRECTORS' FOCUS QUESTIONS

The input received from our focus questions is reviewed by all members of NASBA's Board of Directors, committee chairs and executive staff and used to guide their actions. We encourage you to place the following questions early on the agenda of your next board meeting to allow for sufficient time for discussion. ***Please send your Board's responses to your Regional Director by October 6, 2010****. Use additional sheets for your responses if needed.*

JURISDICTION: California **DATE:** 8/16/10
NAME OF PERSON SUBMITTING FORM: Dan Rich

1. NASBA's Continuing Professional Education Advisory Committee in conjunction with the Compliance Services Division has released over the years responses to CPE sponsors' Frequently Asked Questions (FAQs), in order to give guidance to them (see https://registry.nasbatools.com/download/6/FAQ41108.pdf). A task force has been formed to review the FAQs and the AICPA NASBA Standards for CPE Sponsors, as appended to the Uniform Accountancy Act. (a) Has your Board included the Standards in your rules by reference? (b) By specific language? (c) Has your Board viewed the FAQs and agreed with them? (d) Does your Board believe the information contained in the FAQs should be placed in the Standards or continue to stand alone as advisory interpretations that can be modified as quickly as needed? (e) Is there any area of the Standards that your Board would like to see reconsidered?

The California Board of Accountancy (CBA) does not include, nor reference, any specific language from the Standards in its statutes or regulations. The CBA has developed its own set of continuing education (CE) provider requirements and program measurements in regulations. While in some instances the regulations may mirror the Standards, in other instances the CBA-developed regulations differ from the Standards. The CBA does not pre-approve CE providers (except for providers of the newly established Regulatory Review course) and places the responsibility on licensees to select providers that meet the minimum provider requirements and program measurements established by the CBA in regulation. As such the CBA does not use the established Standard FAQs and, thus, has no comment regarding the FAQs.

The CBA would like to point out that during 2008 and 2009, it reviewed and updated many of its CE regulations, which include provider requirements and program measurements.

2. (a) Does your Board have a record retention (destruction) policy and, if so, has it been reviewed lately? (b) Does it include a document destruction policy for e-mail? (c) Is the policy being followed?

The CBA has a record retention policy which was last revised in August 2009. Although the CBA does not currently have a destruction policy for e-mail, the CBA is currently going through a transition to Outlook e-mail following which the CBA will be adopting the

California Department of Consumer Affairs' policy on e-mail destruction. This policy will require all e-mails not transferred to file folders to be automatically deleted in 90 days. E-mail messages retained in the "in-box," "sent," "drafts," and "trash" folders will be automatically deleted from the e-mail systems when they become 90 days old. All other e-mail folders will have a retention of 2 years.

3. Is your Board currently conducting a CPA swearing-in (or certificate distribution) ceremony? Did it ever? If so, has it been successful? Has it been done with the assistance of the state CPA society? Do you think it is something other Boards would benefit from?

The CBA does not conduct a swearing-in of CPAs. Once licensed, all California CPAs are mailed a 14 x17 wall certificate of their license. The wall certificate includes their name, license number, date the license was issued and is signed by the CBA President, CBA Secretary/Treasurer and Executive Officer.

4. Does your state allow for any CPA designation for a retired CPA? If so, what is the designation and how has this worked out in your state?

The CBA does not presently have a retired designation option for CPAs. At its July 2010 meeting, CBA began deliberations on the establishment of a retired option for CPAs, and will provide additional information to NASBA as it becomes available.

5. Has your Board incurred any problems that could be attributed to adopting mobility legislation?

California has not adopted mobility legislation.

6. What is happening in your jurisdiction that is important for other State Boards and NASBA to know about?

Senate Bill 819 (Chapter 308, Statutes of 2009) established a sunset date of January 1, 2014 for the CBA's Pathway 1 licensure option (baccalaureate degree and two years general experience), thus leaving the CBA with only its Pathway 2 licensure requirement (baccalaureate degree, minimum 150 semester units, and one year general experience). SB 819, however, requires the CBA to further define an additional 30 of the 150 semester units required under Pathway 2 - 20 units in accounting study and 10 units of ethics education.

SB 819 established two committees under the jurisdiction of the CBA to assist in developing regulations for the new 30 semester units - the Accounting Education Committee (AEC) for the 20 semester units of accounting study, and the Ethics Curriculum Committee (ECC) for the 10 semester units of ethics education. The AEC began meeting in April 2010 and has held three meetings regarding the 20 semester units of accounting study, while the ECC held its first meeting in September and began discussing the 10 semester units of ethics education.

JURISDICTION: California **DATE:** 8/16/10
NAME OF PERSON SUBMITTING FORM: Dan Rich

The CBA's mandatory peer review requirement is being implemented and a peer review reporting form is available online. Additionally, the Peer Review Oversight Committee has been appointed and will begin meeting soon.

7. NASBA's Board of Directors would appreciate as much input on the above questions as possible. How were the responses shown above compiled? Please check all that apply.

__ Input only from Board Chair
__ Input only from Executive Director
__ Input only from Board Chair and Executive Director
X Input from all Board Members and Executive Director
__ Input from some Board Members and Executive Director
__ Input from all Board Members
__ Input from some Board Members
__ Other (please explain):

State of California
Department of Consumer Affairs

California Board of Accountancy
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M e m o r a n d u m

CBA Agenda Item XIII.B.3
September 22-23, 2010

To : CBA Members

Date : September 9, 2010

Telephone : (916) 561-1713
Facsimile : (916) 263-3678

From : Dan Rich, Assistant Executive Officer

Subject : NASBA Exposure Draft – Semi-Autonomy for State Boards

On August 11, 2010 the National Association of State Boards of Accountancy (NASBA) released the attached exposure draft, titled *Semi-Independent State Boards of Accountancy* **(Attachment 1)**. The draft outlines how NASBA believes state boards of accountancy should be oriented in state government, and describes the advantages of making a board semi-independent. The NASBA State Board Relevance and Effectiveness Committee is seeking comments on the Exposure Draft by September 24, 2010 in order to have the final version of the report approved at the October meeting of the NASBA Board of Directors.

The current organizational and administrative framework of the CBA largely embodies the majority of the recommendations outlined in the Exposure Draft. For instance, the CBA already constitutes a semi-autonomous board with its members appointed by the Governor and Legislature. Further, those members are free to appoint whomever they choose as Executive Officer, the Executive Officer is free to direct staffing and workload as necessary, and CBA staff work only for this agency. Further, the CBA is a "special funded agency" in that it is completely self funded and draws no monies from the General Fund. Likewise, the Accountancy Fund is not generally accessible to the General Fund for other state business.

Still there are some areas in which the CBA not only departs from the Exposure Draft recommendations, but derives benefits from such diversions. A primary example of this is evidenced in the CBA working under the "umbrella" of the Department Consumer Affairs (DCA). Though this is not an arrangement supported by the Exposure Draft, working under the "umbrella" of the DCA provides many services of value to the CBA. For instance, the DCA assists the CBA with many administrative functions, including ensuring that state hiring processes and procedures are followed, processing travel reimbursements, aiding in contracting and procurement services, and providing training. Being a part of the DCA also allows the CBA to share ideas and strategies with other California boards and bureaus that license other professions. The CBA has experienced success in working with other boards and bureaus to improve licensing and enforcement procedures, and believes that the free flow of information from one regulatory agency to another is beneficial to all parties involved.

There are also some recommendations presented in the Exposure Draft that staff questions in terms of feasibility and organizational effectiveness. Staff questions the feasibility of NASBA's recommendation that self-supporting accountancy boards be removed from the cost of state government and excluded from the appropriation process. All California government employees, including CBA members and staff, are accounted for through the appropriations process. Further, all CBA employees are civil servants, and are compensated accordingly. No mechanism exists that staff is aware of to remove the agency from the cost of government and yet retain the civil service status of CBA employees. In fact, should the CBA be excised from state government and the State of California appropriations process, it is unclear what authority the Governor and Legislature might retain over the agency.

NASBA further suggests that each State Board of Accountancy maintain a separate bank account. It is California Law that all fees paid by licensees be deposited into the California Treasury to the credit of the Accountancy Fund. The CBA does not, however, independently maintain its own bank account. The current organizational arrangement is beneficial to the CBA because it allows the State of California to guarantee the funds held in the treasury, while eliminating the logistical and administrative workload of writing checks and maintaining bank accounts. Further, it ensures internal audit controls through the State Controller's Office having responsibility for the funds.

Should the CBA choose to make comment on the Exposure Draft, staff will draft a letter for approval and signature by President Manuel Ramirez next week.

Staff will be available at the meeting to answer any questions.

Attachment

EXPOSURE DRAFT
AUGUST 11, 2010
(Supersedes Exposure Draft Dated May 20, 2010)

National Association of State Boards of Accountancy

Position Paper

Semi-Independent State Boards of Accountancy

Submitted by

The State Board Relevance & Effectiveness Committee
Carlos E. Johnson, CPA, Chair

Rationale for Semi-Independent Board Subcommittee
Ellis M. Dunkum, CPA, Chair
J. Michael Barham, CPA
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Michael A. Henderson, CPA
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August 2010

National Association of State Boards of Accountancy
150 4th Avenue, North, Nashville, TN 37219-2417

Semi-Independent State Boards of Accountancy

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Semi-Independent State Boards of Accountancy

EXECUTIVE SUMMARY

The National Association of State Boards of Accountancy (NASBA)'s mission is to enhance the effectiveness of its member boards, the State Boards of Accountancy (Accountancy Boards). A significant concern of NASBA, that is shared by Accountancy Boards, state and federal governmental agencies, individual CPAs and other parties, is the consistent and effective enforcement of states' accountancy statutes and regulations.

NASBA has developed this position paper because it is deeply concerned that the authority, the resources, and the reporting relationship to the state legislature and Governor are inappropriate or inadequate for many Accountancy Boards. If an Accountancy Board is not able to satisfy its public protection responsibility because it lacks financial resources or operational autonomy, ordinary citizens and business owners can incur economic loss and financial distress. As a consequence, the state legislature and Executive Branch, along with the Accountancy Board, become subject to public criticism.

The attest services provided by CPAs are an integral part of creating trust in the financial system – not just in the critically important capital markets – but also in financial, banking and credit transactions where financial statements are relied upon every day by banks, insurance companies, investment funds, governments, private individuals, equipment and inventory suppliers and other grantors of capital and credit. Additionally, the income tax and broad array of advisory services provided by CPAs have a tremendous impact on a state's economic health and its citizens in terms of a state's GDP and tax collections. Thus, the public has a vital interest in the competence of CPAs and their adherence to Accountancy Board statutes and rules, rules of professional conduct, and standards of practice.

The dramatic collapse of prominent publicly-held companies in the early 2000s and, more recently, high-profile investment frauds, testify to the importance of high ethical and professional standards and Accountancy Boards' vigilance in protecting the public.

Accountancy Boards regulate the accountancy profession to fulfill their public protection mandate and to protect the credibility, validity and reliability of the CPA license on which the public relies - particularly the U.S. financial system. These objectives are met through determining initial qualifications and licensing, rule making, determining continued competency and compliance, and taking enforcement actions against CPAs who harm the public by violating these statutes and rules.

The proper and timely adjudication of enforcement cases is critical to protecting the public. Unfortunately, enforcement activity is not uniformly rigorous across the states due to a lack of resources and various other impediments, including:

- Reporting to, and having its authority usurped by, an umbrella agency that can include numerous regulatory boards as diverse as barbers, wrestlers, morticians, contractors, realtors, engineers as well as CPAs.

- Not having the authority to make personnel decisions consistent with state personnel policies and needs of the Board. The most important determinant of an Accountancy Board's success in carrying out its public protection responsibilities, in addition to an effective enabling legislative act, is the competency, responsiveness and dedication of the Executive Director and Accountancy Board staff.

- Being part of the state appropriation process and thus subject to having the Accountancy Board's funds spent for other general fund purposes rather than the purposes for which the applicants and licensees paid fees.

- Lacking the authority for financial and operational management of the Accountancy Board, such as setting fees, determining the expenditures needed for successful operations, deciding whether to use staff or outsource certain functions, budgeting, etc.

- Being subject to an arduous and excessively time-consuming process to adopt statute and rule changes.

- Not having Accountancy Board members with the appropriate backgrounds and experience needed to deal with the wide variety of services provided by CPAs and the complexity of the underlying practice standards, statutes and rules.

Mobility, which is a significant advancement in the ability of CPAs to practice anywhere in the United States without obtaining a license in every state is predicated upon the ability of all states to actively regulate their licensees. If states do not have the resources to investigate and enforce Accountancy Board statutes and rules, rules of professional conduct, and standards of practice, the willingness of other states to continue with mobility will be undermined.

An Umbrella Agency may serve a purpose under certain circumstances such as: the board's regulations are not complex; there is an insufficient number of exam applicants and licensees to generate the fees necessary to maintain its operations; the board's functions are closely interrelated with one or more other boards; the professions are similar, involved in a common trade or industry; and/or homogeneous in their goals and services. In these circumstances, sharing services, information, and resources may make these boards more efficient or effective.

However, Accountancy Boards have distinct differences in regulatory complexity, goals, licensee services, and in qualification and competency requirements than other boards that are generally grouped under an Umbrella Agency. The CPA profession is the only one with accountability to third parties and the general public who are dependent upon audited financial information in order to make investing, financial planning, and lending decisions. The Certified Public Accountant has ethical obligations of independence, integrity, and objectivity that directly relate to serving in the public interest. The word "Public" is even embedded in the CPA title.

Furthermore, most Accountancy Boards have sufficient licensees to support their own staff and generate the financial resources to operate in a self-governing, self-supporting manner.

NASBA believes it is essential for Accountancy Boards to have a high level of autonomy in operational and financial matters and the *authority* to operate at a level that is commensurate with their *responsibility* to act in the public interest (referred to as semi-independent). This view is supported by the U.S. Department of the Treasury, which has urged "the states to create greater financial and operational independence of their state boards of accountancy."

This position paper has been prepared by NASBA, whose express mission and purpose is to enhance the effectiveness of its member boards – the individual state boards of accountancy. This paper sets forth the facts and the rationale that make the compelling case that "semi-independent" Accountancy Boards are essential for the protection of the public.

NASBA strongly urges state administrations and legislatures to embrace the concept of a semi-independent board and to enact legislation that provides its Accountancy Board with an appropriate reporting relationship and operational and financial independence.

Semi-Independent State Boards of Accountancy

INTRODUCTION

The National Association of State Boards of Accountancy (NASBA)'s mission is to enhance the effectiveness of its member boards, the State Boards of Accountancy (Accountancy Boards). A significant concern of NASBA, that is shared by Accountancy Boards, state and federal governmental agencies, individual CPAs and other parties, is consistent and effective enforcement of states' accountancy statutes and regulations.

NASBA has developed this position paper because it is deeply concerned that the authority, the resources, and the reporting relationship to the state legislature and Governor are inappropriate or inadequate for many Accountancy Boards. If an Accountancy Board is not able to satisfy its public protection responsibility because it lacks financial resources or operational autonomy, ordinary citizens and business owners can incur economic loss and financial stress. As a consequence, the legislature and Executive Branch, along with the Accountancy Board, become subject to public criticism.

Accountancy Boards are responsible for regulating the accountancy profession to fulfill their public protection mandate. By fulfilling this responsibility, they enhance the credibility, validity and reliability of the CPA license on which the public and U.S. financial system rely. Our commercial world depends upon reliable public accounting and financial reporting.

Over the years, it has become apparent that an Accountancy Board's capacity to satisfy its public protection responsibilities is critically affected by its degree of financial and operational independence.

NASBA believes it is essential for Accountancy Boards to have a high level of autonomy in operational and financial matters and the *authority* to operate at a level that is commensurate with their *responsibility* to act in the public interest. This position is supported by the U.S. Department of the Treasury. (See the OTHER ADVOCATES FOR FINANCIALLY AND OPERATIONALLY INDEPENDENT ACCOUNTANCY BOARDS section below.)

THE NEED FOR EFECTIVE AND EFFICIENT ACCOUNTANCY BOARDS

PUBLIC NEED – ACCOUNTANCY BOARD ROLE IS ESSENTIAL TO COMMERCE AND THE EFFECTIVE FUNCTIONING OF THE U.S. FINANCIAL SYSTEM

Individuals, businesses and other organizations depend on CPAs for many services, including financial statement audits, income tax services, and a broad array of advisory services. These services have a tremendous impact on a state's commerce, economic health, and citizens in terms of a state's GDP and a state's tax collections. The attest services provided by CPAs are an integral part of creating public trust in the financial system – not just in the critically important capital markets – but also in financial, banking and credit transactions where financial statements are relied upon every day by banks, insurance companies, investment funds, governments, private individuals, equipment and inventory suppliers and other grantors of capital and credit. Capital investment and commercial loans for large and small entities are based, in large part, on the ability of providers of capital and loans to trust the information they use to make decisions. When this trust is misplaced or lacking, commerce is impeded and the financial system operates less efficiently, which raises the costs of capital and borrowing.

The need for continued public trust in our financial systems has been amply demonstrated by the dramatic collapse of prominent publicly-held companies in the early 2000s, recent high-profile investment frauds, and the most recent economic recession, all of which testify to the importance of high ethical and professional standards and Accountancy Boards' vigilance in protecting the public.

Because CPAs are an integral part of creating the public trust, the public has a vital interest in the competence of CPAs and their adherence to professional standards, as well as Accountancy Board statutes and regulations. Thus, states empower Accountancy Boards to ensure that persons entering the profession are competent and those holding the CPA license maintain high standards of personal conduct and competency and are held publicly accountable for their actions.

POTENTIAL IMPACT ON MOBILITY AND MULTI-STATE PRACTICE

Mobility, which is a significant advancement in the ability of CPAs to practice anywhere in the United States without obtaining a license in every state is predicated upon the ability of all states to actively regulate their licensees. If states do not have the resources to investigate and enforce accounting standards, then the willingness of other states to continue with mobility will be undermined.

ACCOUNTANCY BOARD DUTIES AND RESPONSIBILITIES

In order to effectively protect the public, an Accountancy Board must perform many duties. Typical powers and duties include the following:

Initial Qualifications and Licensing

- Establish the qualifications of applicants for licensure that are necessary to ensure competence and integrity.

- Examine the qualifications of each applicant for licensure, including the preparation, administration and grading of the Uniform CPA Examinations (CPA Exam).

- Issue licenses to CPAs and CPA firms.

- Ensure compliance with recurring licensing requirements.

Rule Making

- Promulgate rules and regulations necessary to prevent deceptive or misleading practices by practitioners, discourage discreditable conduct, and effectively administer the regulatory system.

- Establish applicable standards of conduct and practice for licensees.

- Establish competent continuing professional education requirements as a condition for issuance or renewal of a license.

Continued Competency and Compliance with Statute and Rules

- Determine compliance with continuing professional education requirements.

- Establish requirements for peer reviews of public accounting practices or for other quality assurance programs established to ensure that firms are conducting their practice in accordance with the standards of conduct and practice adopted by the Board and in the best interest of the public.

Enforcement

- Initiate or receive and investigate complaints concerning the conduct of persons and firms licensed by the Accountancy Board, as well as persons and entities violating the laws or rules of the state regarding the practice of public accounting (such as practicing without a license) and take appropriate remedial or disciplinary action as warranted.

- Revoke, suspend, restrict or not renew a certificate or license for just cause.

- Levy civil penalties.

Accountancy Board Operations

- Levy and collect CPA Exam fees and fees for licensure and renewal that are sufficient to cover the expenses for the administration and operation of the Accountancy Board.

- Levy special assessments on licensees when necessary to cover extraordinary expenses (e.g. complex enforcement case).

- Employ legal counsel, board staff, clerical and technical assistance, determine compensation, and incur such other expenses, including employee benefits, as may be necessary for the performance of their duties.

- Enter into contracts necessary or beneficial for carrying out the provisions of the Accountancy Act or the functions of the Accountancy Board.

- Perform other duties necessary to carry out the statutes and regulations adopted for and by the Accountancy Board.

Among the more important duties listed above are qualifying individuals to enter the CPA profession, administering the CPA Exam, monitoring licensees' continued ability to serve the public, and adjudicating alleged violations of professional standards and a state's accountancy statutes and regulations. These duties are critical to protecting the public because they ensure that only those individuals who have demonstrated their competency are permitted to practice public accountancy, and the public is protected by prompt adjudication of alleged violations of professional standards and rules.

THE ACCOUNTANCY BOARD'S REPORTING RELATIONSHIP, AUTHORITY AND RESOURCES NOT COMMENSURATE WITH ITS DUTIES AND RESPONSIBILITIES

Fulfilling the duties and responsibilities enumerated above requires board members and administrative staff with the appropriate backgrounds and the financial and operational means to fulfill the Board's purpose as set forth in statute by the state legislature. *It is absolutely essential that Accountancy Board members <u>not only have the responsibility but also the operational authority and personnel and financial resources</u> required to perform their duties in a responsive and timely manner.* Unfortunately, too many Accountancy Boards have inappropriate reporting relationships and severe restrictions on their authority and resources. This places board members in the untenable position of having the responsibility to adopt and enforce accountancy laws to protect the public but not having the authority and resources to determine and enforce compliance with these laws. Inadequate enforcement not only leaves the state's citizens vulnerable to economic loss, it subjects the Accountancy Board, the CPA profession, legislature and Executive Branch to public criticism.

RECOMMENDATIONS - ACCOUNTANCY BOARD REPORTING RELATIONSHIP, AUTHORITY AND RESOURCES

Accountancy Boards must have an appropriate reporting relationship, control over their financial and personnel resources as well as full, decision-making authority. The following sections describe the impediments to successful Accountancy Board operations and set forth the recommended reporting relationship, authority and resources.

Reporting Relationship and Oversight

Some Accountancy Boards are part of a state agency that can include numerous regulatory boards as diverse as barbers, wrestlers, morticians, contractors, realtors, engineers and CPAs (Umbrella Agency). Umbrella Agencies were created by state legislatures to provide administrative services for these boards. However, at least in some states, the Umbrella Agency goes beyond providing administrative services and assumes an oversight role that usurps the Accountancy Board's authority over its licensees and regulatory processes and makes decisions that should be made by the Accountancy Board.

An Umbrella Agency may serve a purpose under certain circumstances such as: the board's regulations are not complex; there is an insufficient number of exam applicants and licensees to generate the fees necessary to sustain its operations; the natural links and relationships in the qualifications and requirements of licensees; the professions are involved in a common trade or industry; and/or homogeneous in their goals and services. In these circumstances, sharing services, information, and resources may make these boards more efficient or effective.

However, Accountancy Boards have distinct differences in regulatory complexity, licensee services, and in qualification and competency requirements than other boards that are generally grouped under an Umbrella Agency. The CPA profession is the only one with accountability to third parties and the general public who are dependent upon audited financial information in order to make investing, financial planning, and lending decisions. The Certified Public Accountant has ethical obligations of independence, integrity, and objectivity that directly relate to serving in the public interest. The word "Public" is even embedded in the CPA title. Furthermore, most Accountancy Boards have sufficient licensees to support their own staff and generate the financial resources to operate in a semi-independent manner.

RECOMMENDATION

An Accountancy Board should not be part of an Umbrella Agency. Rather, the Accountancy Board should be a separate agency with annual reporting requirements directly to the Governor and the legislature.

Annually or biennially, the Accountancy Board should provide written reports to the Governor and the legislature that provide information that can be used by the Governor and the legislature

to evaluate the effectiveness and efficiency of the Accountancy Board's operations. Examples of information that could be submitted include: financial reports; descriptions of changes in licensing fees; the number and changes in the number of CPA Exam applicants, licensees, official complaints received involving licensed and unlicensed activity, disciplinary actions taken against licensees and non-licenses, licenses suspended or revoked; and the substance of changes to the accountancy statute and regulations since the last report.

Semi-independent board does not mean that an Accountancy Board is not subject to constraints and oversight. For example, consider that:

- The Accountancy Board annually reports to the Governor and legislature as described above.
- The Governor and/or the legislature appoint the Accountancy Board members.
- Accountancy Board meetings are subject to various state acts such as open meetings act, due process and review, freedom of information act, and administrative procedures act.
- Statute changes must be approved by the legislature and the Governor.
- The Accountancy Board's financial statements are audited by the State Auditor or a qualified CPA firm according to state requirements.
- Licensees and the CPA profession have a vested interest in the regulatory process and generally monitor the Accountancy Board's meetings and other activities.

Personnel Management

In addition to the an effective enabling legislative act, the most important determinant of an Accountancy Board's success in carrying out its public protection responsibilities is the competency and dedication of the Executive Director and staff. The relevant knowledge and leadership ability of the Executive Director is particularly critical to an Accountancy Board fulfilling its mission of protecting the public. The Accountancy Board's authority, and hence its ability to protect the public, is diminished when, due to either being part of an umbrella organization or through other state requirements, it lacks the ability to make employment decisions or lacks final authority related to the hiring and retention of the Executive Director and Accountancy Board staff.

The absence of direct reporting of staff to the Accountancy Board has many adverse effects. These adverse effects are likely to be exacerbated when the Accountancy Board is administered by another agency (e.g. Umbrella Agency). For example:

- The Umbrella Agency determines which employees will work for the Accountancy Board.

- The Accountancy Board cannot employ, evaluate and compensate staff needed to match the requirements of the tasks. The body of knowledge used by CPAs is technical and comprehensive as are the accountancy statutes and regulations. As result, enforcement cases can be exceedingly complex thereby requiring staff with a significant level of education, professional knowledge and experience in order to understand the significance of violations of professional standards.

- The assignment of staff to the Accountancy Board may be based on hiring or placement criteria another agency head believes are important but which may not be appropriate or adequate for the Accountancy Board's needs. Individuals can be competent for other state needs but may not have the required technical competencies (e.g. sufficient knowledge and experience with difficult accounting and auditing issues) to serve the Accountancy Board.

- The employees' goals are aligned with those of the state or hiring agency, which can be quite different from the goals of the Accountancy Board.

- The state or hiring organization, not the Accountancy Board, sets the staff's priorities rather than the Accountancy Board.

- The employees' allegiance is to the hiring agency – not the Accountancy Board.

Vesting the Accountancy Board with the authority and responsibility for personnel matters enables it to ensure that staff competencies and levels meet the operational needs of the Accountancy Board and that the employees' allegiance and goals are aligned with those of the Accountancy Board.

RECOMMENDATION

The Accountancy Board needs to have the discretion to make personnel decisions consistent with state personnel policies. Specifically, the Accountancy Board should have the authority to:

- Decide who qualifies for an available position
- Evaluate personnel performance
- Determine promotions
- Determine compensation
- Set personnel policies (e.g. job descriptions, tenure, pensions, healthcare) other than those uniformly applicable to all state employees

The Accountancy Board should employ an Executive Director who serves at its pleasure. The Executive Director in turn employs the staff responsible for carrying out the Accountancy Board's duties and responsibilities.

This authority ensures the alignment of the Executive Director's and staff's goals with the Accountancy Board's goals and encourages dedication to meeting those goals. Also, this

authority ensures that these individuals have the requisite backgrounds to proactively and effectively identify and understand issues and draft responses to those issues (e.g. changes to regulations; communications to licensees). This is particularly important with respect to an Accountancy Board's investigators. Furthermore, having employees that are properly matched to their jobs increases the Accountancy Board's effectiveness and efficiency.

Though the Accountancy Board and the Executive Director make the personnel decisions, the employees are state employees and eligible to participate in the state's benefit plans.

Financial and Operational Management

Appropriation Process; Use of CPA Exam and Licensing Fees for Other State Purposes

Most Boards of Accountancy collect fees from its licensees that are sufficient to cover its operating costs and, thus, are self-supporting. Even so, it is oftentimes subject to the annual appropriation process. This allows legislators to use an Accountancy Board's unrestricted net assets in their determination of overall state needs or lends itself to state-wide appropriation reductions which may hinder the Accountancy Board's operations.

In tight economic times, it is not uncommon for a state to sweep an Accountancy Board's funds for other endeavors without considering that the funds have been accumulated over a period of time to cover contingencies (e.g. an expensive enforcement case) or that should be used to reduce CPA Exam and licensing fees. In other states, the Accountancy Board is under an Umbrella Agency that uses the fees from CPA Exam applicants and CPAs to subsidize the Umbrella Agency's overhead and the operating costs of other boards.

Such actions may require the Accountancy Board to increase its fees resulting in double taxation for the Accountancy Board's CPA Exam applicants and licensees. More important is the negative impact on the Accountancy Board's ability to effectively perform their responsibilities. For example, there are a number of Accountancy Boards that do not have adequate staff (no staff in at least one state) to carry out their enforcement responsibilities. Thus, achieving a most basic Accountancy Board responsibility is hindered and a state's citizens may not be appropriately protected from unethical and unprofessional CPA conduct. This is an unsound situation for the Accountancy Board, the state and its citizens.

RECOMMENDATION

If an Accountancy Board is self-supporting, it should be removed from the cost of state government and should be excluded from the appropriation process yet retain responsibility to annually report to the Governor and legislature. Accountancy Board revenue should not be used for other state purposes. Similarly, no costs for the operations of the Accountancy Board shall be borne by other state funds.

Separate Bank Account

Cash kept in the state treasury makes it appear that an Accountancy Board is not self-supporting and increases the likelihood that such funds will be subject to appropriation for other state purposes.

RECOMMENDATION

An Accountancy Board's cash should be in maintained under its sole control in federally insured banks separate from the state treasury.

Revenue; Fee Setting Process

Accountancy Board funding comes primarily from three sources: fees from CPA Exam candidates; fees assessed on license applications and renewals; and disciplinary cost recoveries and fines.

States charge CPAs and CPA firms a fee to cover the cost of their regulation. It is logical and sound policy to obtain the funds for regulation from the licensees and to ensure that funds from licensing and enforcement are used only to support the mission of the Accountancy Board.

It is also important for the Accountancy Board to have the ability to raise fees under unusual circumstances, such as funding for a large, complex enforcement case.

RECOMMENDATION

To provide adequate resources, Accountancy Boards must have the authority to set fees and fines that are reasonable and necessary to cover operating costs and build reasonable surpluses that can be used for complex enforcement cases. Since fees represent a charge to CPA Exam applicants and licensees for the operation of the Accountancy Board, fees should be adjusted upward and downward from time to time so that CPA Exam applicants and licensees are paying the cost of the Accountancy Board but not fees in excess of such costs.

Expenditures; Restrictions on Expenditures

Accountancy Boards often find that they do not have the flexibility to use their resources in the most cost effective and efficient manner. For example, a state imposes requirements (e.g. "one size fits all" requirements) that are not relevant to the Accountancy Board, imposes restrictions that reduce the efficiency and effectiveness of the Accountancy Boards (e.g. requiring use of certain office space, exercising undue influence over IT decisions, prohibiting travel, limiting an Accountancy Board's right to employ its own IT staff or legal counsel as appropriate and necessary, and requiring an Accountancy Board to use certain state services).

RECOMMENDATION

The Accountancy Board must have the authority to determine expenditures needed for its successful operations.

There are numerous administrative functions of an Accountancy Board, such as receiving and disbursing cash, processing applications to sit for the CPA Exam, IT development, IT processing, accounting, financial reporting and employing legal counsel. The Accountancy Board needs the authority to determine whether to perform these functions using Accountancy Board staff or to outsource one or more of these functions to other state agencies or private vendors. For example, as of July, 2010 approximately thirty Accountancy Boards find it advantageous to outsource the administration of the CPA Exam process.

An Accountancy Board should not be subject to state-wide actions, such as restrictions on attending meetings that are necessary to keep abreast of new developments and issues. The Accountancy Board should have the authority to determine which members, staff, legal counsel, etc., should attend meetings significant to its mission.

In times of economic stress, it is important for the Accountancy Board to contain expenditures. However, since an Accountancy Board is self-supporting and has public protection responsibilities that should be met consistently and timely, the Accountancy Board should not be subject to "across the board" budget cuts, expenditure restrictions or sweeping of fund balances.

In order to carry out its objectives, an Accountancy Board needs the ability to enter into contracts such as leasing or purchasing real and personal property that are necessary for the administration of its affairs and attainment of its purposes.

Budgets

Without authority over fee setting, use of the resulting revenue and control over its expenditures, it is impossible for an Accountancy Board to prepare budgets that accurately reflect its needs and plans for the future. Further, it severely limits its ability to respond to change.

RECOMMENDATION

In order to ensure adequate revenue, provide for necessary expenditures, and plan for the future, an Accountancy Board must have authority over its budget.

Adopting Regulations

Some states have arduous, unproductive processes for the adoption of new or revised regulations. This can be caused by a review process that involves other state agencies or departments that have no direct knowledge of the accounting profession, but nevertheless create a time-consuming review process that does not add value.

State administrative procedures for rule making should provide an orderly process for public notice of proposed rules with adequate time to respond, the submission of comments from the public and from licensees, public hearings on the proposed regulations, and the consideration of these comments and final deliberations by the Accountancy Board. However, to effectively serve the public interest, the overall time period for final promulgation of Accountancy Board rules need not, and should not, be excessive.

Some states prohibit board members from appearing before legislative committees to explain their rationale for proposed changes to the statute. This deprives the legislators from hearing the rationale for changes from the most informed sources.

RECOMMENDATION

Statutory changes are, of course, the purview of the legislature and the Executive Branch. All regulations must be adopted within the constraints of the statutes. Accountancy Boards should promulgate regulations using appropriate due process procedures (e.g. issuing exposure drafts to all stakeholders, providing sufficient time for comment, holding hearings).

Boards should be allowed to adopt regulations without the intervention of other state agencies or departments that are not familiar with the accounting profession. The administrative procedures should provide an overall timeline and also include a reasonable time period for other government agencies, departments, or branches to review proposed rules. Inaction by a reviewing party within the time period allotted results in *de facto* approval.

Accountancy Board members should not be prohibited from testifying before the legislature.

Accountancy Board Composition and Appointment Process

Another important aspect of an Accountancy Board's effectiveness and efficiency relates to the competency and backgrounds of individual Accountancy Board members. The CPA profession provides widely diverse services with attest (e.g. audit and review engagements) and tax services being the most important from a public protection standpoint. The effectiveness of an Accountancy Board is impaired when members are appointed who do not have the required knowledge and experience.

RECOMMENDATION

The appointment process should be open and transparent. Irrespective of whether Accountancy Board members are appointed by the Governor, the legislature or some combination of the two, it is important that those selecting the Accountancy Board members consider the following:

- Experience of the appointees – Effective licensing, rulemaking, enforcement, etc. must be managed based upon an understanding of the issues. An Accountancy Board needs CPA members with tax experience, accounting and auditing experience with large and small companies.

- Due to the nature of their responsibilities and the complexity of accountancy statutes and regulations, at least a majority of the Accountancy Board members should be CPAs.

- Non-CPA members – As an added protection to the public, the Accountancy Board should include one or more non-CPA members. The non-CPA members should have sufficient and relevant business and financial experience to enable them to understand the services provided by CPAs and the high ethical and practice standards to which they are held.

Because of the special role that CPAs play in protecting the public interest and supporting the health of the overall financial system through their attest function, it is especially important that the Board of Accountancy include a sufficient number of CPAs with substantial knowledge and experience in that practice area.

Source of Accountancy Board nominations – It is important for the nominees to emanate from various sources (primarily the profession), backgrounds and experiences in an open and transparent process. Also, current Accountancy Board members can be a valuable resource in the nomination and evaluation of nominees as they are in the best position to know the type of background that is most needed at any given time.

OTHER ADVOCATES FOR FINANCIALLY AND OPERATIONALLY INDEPENDENT ACCOUNTANCY BOARDS

It is important to note that the Report of the Advisory Committee on the Auditing Profession issued October 2008 by the U.S. Department of Treasury (ACAP Report) referred to in the Introduction section above recognized the importance of financially and operationally independent boards and made the following recommendation (See Pages VII:7-VII:8):

> "(c) Urge the states to create greater financial and operational independence of their state boards of accountancy.
>
> The Committee is concerned about the financial and operational independence of state boards of accountancy from outside influences, such as other state agencies, and the possible effect on the regulation and oversight of the accounting profession. A number of state boards are under-funded and lack the wherewithal to incur the cost of investigations leading to enforcement. In addition, some state boards fall under the centralized administrative "umbrella" of other state agencies and lack control of financial resources and/or operational independence necessary to carry out their mandate of public protection. In some cases, board members are nominated by private associations whose constituencies are not necessarily focused on the protection of the public.
>
> The Committee believes that greater independence of state boards of accountancy would enhance their regulatory effectiveness. The Committee recommends that, working with NASBA, states evaluate and develop means to make their respective state boards of accountancy more operationally and financially independent of outside influences. The

Committee notes that this Recommendation to ensure the independence of state boards of accountancy is not meant to limit in any way the efforts of regulators and other governmental enforcement bodies to coordinate their regulatory and enforcement activities as recommended in Recommendation 2(b)."

CONCLUSION

The Introduction section above states: "NASBA believes it is essential for Accountancy Boards to have a high level of autonomy in operational and financial matters and the *authority* to operate at level that is commensurate with their *responsibility* to act in the public interest." It is NASBA's belief that the facts and rationale set forth above are compelling and that semi-independent Accountancy Boards are essential for the protection of the public in all states and territories of the U.S. Accordingly, if a state's Accountancy Board does not have the financial and operational independence described above, NASBA urges the state administrations and legislatures to embrace and advocate the concept of a semi-independent Accountancy Board and the enactment of legislation to provide operational and financial independence.

State of California
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

M e m o r a n d u m

CBA Agenda Item XIII.C.
September 22-23, 2010

To : CBA Members

Date : August 1, 2010

Telephone : (916) 561-1716
Facsimile : (916) 263-3674

From : Veronica Daniel
Executive Analyst

Subject : Participation on National Committees

The purpose of this memo is to identify additional opportunities for CBA members to actively participate on national committees, thereby ensuring that California maintains an active presence in the decision making process related to the accountancy profession. Identification of opportunities to serve on national committees is provided to help accomplish that goal, by equitably distributing CBA members' time and effort among these committees.

The memo further discusses assistance that staff will provide to facilitate CBA member success in these endeavors. This assistance will encompass committee nomination forms, travel requests, conference registrations, etc.

National Association of State Boards of Accountancy (NASBA)

NASBA's official committee recruitment process for its 24 committees begins every April. However, CBA members can apply throughout the year up until the annual meeting in October/November when appointments are made. The appointments are decided by NASBA's Chair and committee meetings are not open to the public. The committee interest form, which includes a listing of committees as well as their respective charges, is included as **Attachment 1** and is also available on NASBA's Web site at www.nasba.org.

CBA staff previously identified a process to assist CBA members in applying for membership on NASBA's committees. Once the CBA receives information from NASBA that it is beginning its committee appointment process, staff will communicate that information to the CBA members and will act as a liaison by receiving the applications and forwarding them to NASBA. Assisting CBA members in the committee appointment process will also help staff identify and request out of state travel for committee attendance, as necessary.

This year, the CBA has nine members/staff participating on the following NASBA committees:

Accountancy Licensee Database	Sally Anderson/Patti Bowers
Board Relevance & Effectiveness Committee	Marshal Oldman
Compliance Assurance	Robert Petersen
Education	Leslie LaManna

Global Strategies	Rudy Bermudez/Angela Chi
Uniform Accountancy Act (UAA)	Donald Driftmier
UAA Mobility Implementation	David Swartz

In addition to its various committees, NASBA also holds several conferences and meetings open to CBA members as well as interested stakeholders. Below is a listing of the upcoming events in 2010/11, which is also available on NASBA's Web site.

- 3rd Annual International Regulators Forum; September 29 – October 1, 2010, Madrid, Spain

- 103rd Annual Meeting; October 24-27, 2010, San Antonio, TX

More information regarding NASBA committees may be obtained by contacting Anita Holt at (615) 880-4202 or aholt@nasba.org.

American Institute of Certified Public Accountants (AICPA)

The AICPA maintains a Web site that provides significant information on its 200 plus volunteer groups at http://volunteers.aicpa.org. The volunteer groups consist of the Institute's Governing Council, Board of Directors, committees, subcommittees, expert panels, resource panels, quality centers, boards, and task forces. **Attachment 2** is the "Overview of the AICPA Volunteer Environment", and pages two through eight of this attachment identify and further describe the large number and types of volunteer groups available.

Generally, the volunteer groups require a member to be a CPA and a member of the AICPA. The only AICPA volunteer groups that allow public participation are the Peer Review Board (PRB) and the Professional Ethics Executive Committee (PEEC).

There are a handful of AICPA volunteer groups where there has been an agreement with NASBA to appoint state board members to them. These volunteer groups include the Board of Examiners (BOE), the PEEC, the Auditing Standards Board (ASB), and the National Peer Review Committee (NPRC). NASBA nominates several state board members for each of these volunteer groups and then the AICPA fills vacancies from that list. With the exception of the BOE, there are two state board members on each these volunteer groups.

Participation on AICPA's volunteer groups begins in November. **Attachment 3** is the "Timeline for AICPA Volunteer Activities." Similar to NASBA, the AICPA will reimburse its members for their participation at meetings. It is important to note that participation in one of the AICPA volunteer groups requires completion of a "Lifetime AICPA Volunteer Service Policy and Copyright Agreement Statement", a copy of which is provided as **Attachment 4**.

The CBA currently has one member participating on the following AICPA volunteer group:

State Board Committee	Donald Driftmier

More information regarding AICPA volunteer groups may be obtained from AICPA's Volunteer Services by contacting either Andrea Singletary at (212) 596-6097 or asingletary@aicpa.org, or David Ray at (212) 596-6030 or dray@aicpa.org.

Out-Of-State Travel Process

Approval for out-of-state travel is a very drawn out process. Consequently, once a CBA member is notified of an appointment to a NASBA or AICPA committee, it is critical that this information gets communicated to me in order that staff can address out-of-state travel planning and any other CBA member needs.

The process begins in March of each year, when the CBA submits an out-of-state "Blanket Request" to the Department of Consumer Affairs (DCA) Budget Office that includes all trips being requested for the entire upcoming fiscal year, even trips that have no cost. "No cost" trips are those for which NASBA covers the cost, but the authority to travel must still be approved. The DCA Budget Office summarizes the requested out-of-state travel for all boards, which is then subject to the following process.

√ Requests are submitted to the DCA Executive Office for review/approval.
√ Approved requests are then submitted to State and Consumer Services Agency (Agency)
√ Following Agency review/approval, the requests are sent back to the DCA.
√ DCA then forwards all approved requests to the Department of Finance (Finance).
√ Finance forwards all approved requests to the Governor's Office where they are either approved or sent back to the DCA for adjustments.
√ If adjustments are needed, the DCA Budget Office and the DCA Executive Office make changes to the requests. These changes usually result in reducing the dollar amount approved for each request.
√ Adjusted requests are then sent back to the Governor's Office for final approval.

Individual trip requests are made when the need for a trip precedes the final approval on the out-of-state blanket, and are made to the Agency Secretary via DCA's Executive Office. DCA has informed CBA staff that Agency will not be considering any individual trip requests for fiscal year 2010/11.

It is possible for the CBA to request a trip substitution once the out-of-state blanket is approved. The CBA would notify DCA's Budget Office that an additional trip was needed, and that office would determine if other DCA boards have trip authority they will not use within the current year. An agreement can then be made between the boards to "substitute" that trip, which must be reviewed and approved by the DCA Executive Office. If no trips are identified, CBA staff can submit an individual

trip request after the out-of-state blanket has been approved, however, the chances of it being approved decline significantly.

As mentioned earlier, out-of-state travel involves a lengthy process. Historically the out-of-state blanket has taken approximately four months processing time before receiving approval. Any cost incurred in absence of out-of-state travel approval will be at the employee's expense.

Conference Attendance Requirements

Attachment 5 is a "Conference Attendance Request" form, which is to be used when CBA members or staff register for a conference or convention. The form is required in order to ensure compliance with Department of Personnel Administration regulations (CCP, Section 599.635) requiring DCA Executive Office approval to attend any conference or convention if the registration fees exceed $50.00, or when more than two individuals from the same department are attending the same convention or conference.

Fair Political Practices Commission (FPPC)

If you are already a member of either a NASBA or AICPA committee, those entities will need to reimburse you for any related travel costs you incur during this fiscal year. Please note that anytime you travel on behalf of the CBA and the trip is paid for by a third party, it needs to be reported on your Annual Statement of Economic Interest that is filed with the FPPC.

CBA staff stand ready and willing to offer any assistance through this process and I will also be available at the September meeting to answer any questions you may have.

Attachments

Attachment 1

COMMITTEE INTEREST FORM
NASBA Committee 2010-2011

Accountancy Licensee Data Base Task Force
Administration and Finance
Audit
Awards
Bylaws
Communications
Compliance Assurance
CPA Licensing Examinations
CPE Advisory
Education
Enforcement Assessment & Best Practices
Enforcement Resources
Ethics & Strategic Professional Issues
Executive Directors
Global Strategies
International Delivery of the CPA Exam
International Qualifications Appraisal Board
Nominating (elected)
Regulatory Response
State Board Relevance and Effectiveness
UAA
UAA / CPA Mobility Task Force

Complete the following if you would like to serve on a NASBA committee in 2010-2011.

Name _____ Board _____

Firm _____

Address _____

City _____ State _____ Zip Code _____

Telephone _____ Facsimile _____ E-mail _____

2009-10 NASBA Committee Service: _____

I would like to continue on this committee: (Circle) Yes No
(If circled YES this will be listed as your first choice unless otherwise noted)

Select each committee you are interested in from the above list and indicate whether it is your first, second, or third choice.

Committee Choice	First Choice	Second Choice	Third Choice

Please submit to:
NASBA
150 Fourth Avenue North, Suite 700 Nashville, TN 37219-2417
Telephone: (615) 880-4202 FAX: (615) 880-4291 Email: aholt@nasba.org
ATTN: Anita Holt

Deadline: May 10, 2010

NASBA

COMMITTEE CHARGES 2010/2011

Accountancy Licensee Data Base Task Force (ALD)

Promote and assist with implementation of the ALD in every state.

Administration and Finance Committee (A&F)

Oversee and monitor the financial operations of NASBA.

Audit Committee

Review the scope of the independent audit of the NASBA and PCS financial statements and recommend, to the NASBA Board of Directors, the audit firm to perform the following year's independent audit.

Awards Committee

Review nominees for the NASBA Distinguished Service Award, William H. Van Rensselaer Public Service Award and Lorraine P. Sachs Standard of Excellence Award. Recommend to the Board of Directors the proposed recipients of the awards.

Bylaws Committee

In response to suggestions from the boards of accountancy, Board of Directors and NASBA committees, review the Bylaws and Articles of Incorporation for clarity and consistency and recommend changes as needed.

CBT Administration Committee

Assist boards of accountancy in resolving administrative and operations issues for the computer-based exam system, and coordinate communications and surveys of State Board Executive Directors about issues related to the Uniform CPA Examination.

Communications Committee

Develop and promote innovative and unique programs and methods for communications by state boards of accountancy and NASBA with other agencies, consumers, the CPA profession, and legislative bodies.

Compliance Assurance Committee

Explore, develop and implement opportunities for state boards to become uniformly involved in standard setting and oversight of mandatory peer review or other compliance assurance review programs.

CPA Examination Review Board (appointed)

Review, evaluate and report on the appropriateness of the policies and procedures utilized in the preparation, grading and administration of the Uniform CPA Examination and other examinations in general use by boards of accountancy for the licensing of certified public accountants; examine such records, and make such observations, inspections and inquiries as it deems necessary; report annually to the boards of accountancy.

CPA Licensing Examinations Committee (CLEC)

On behalf of state boards of accountancy, monitor the progress and effectiveness of the Uniform CPA Examination and work collaboratively with the AICPA Board of Examiners and the Examination Review Board to advance the interests of the state boards.

CPE Advisory Committee

Monitor the statements on standards for continuing professional education to encourage implementation by state boards, develop aids and interpretations and oversee the sponsor membership appeal process. Lead the biannual CPE Conference.

Education Committee

Explore and define issues relating to educational requirements for entry into the profession, including effective implementation of UAA Model Rules 5-1 and 5-2 among the states. Work collaboratively with the education community and profession to proactively address issues relative to college curriculum. Research and address any unresolved issues cited in NASBA's 120/150 paper and address issues contained in ACAP's recommendations.

Enforcement Assessment & Best Practices Committee

Develop a "Best Practices" manual for state boards seeking and managing complaints and conducting investigations, hearings, Sanctions and appeals together with their disposition.

Enforcement Resource Committee

To assess and provide resource support to state boards in enforcement matters, including discovery, investigations, expert witness sourcing, etc.

Ethics & Strategic Professional Issues Committee

Monitor and evaluate the issues of AICPA's Professional Ethics Executive Committee (PEEC), to harmonize ethics standards of state boards with other regulatory bodies. To promote the development and adoption of UAA ethics provisions uniformly among the states, and to share with state boards emerging ethics and other professional issues.

Executive Directors Committee

Provide Executive Director a platform for education and information exchange among colleagues; provide NASBA with administrative and regulatory perspective; and facilitate cooperation and understanding among common-ground entities.

Global Strategies

Identify and assert state boards' influence on short and long term global issues affecting regulation in accounting principles, auditing standards, ethics and education, and other international aspects of the accounting profession. Manage and monitor NASBA's periodic International Accounting Regulators' Forum. Identify, monitor and refer issues appropriate NASBA committees and/or task forces for action.

International Delivery of the CPA Exam (iexam)

Develop and implement a program and process for the expansion of the administration of the Uniform CPA Examination to international locations.

International Qualifications Appraisal Board

Review accounting qualifications of other countries, negotiate reciprocity agreements with the professional accounting organizations and make mutual recognition recommendations to state boards of accountancy.

Nominating Committee (elected)

Nominate officers and directors for 2010-11 in accordance with Bylaw.

Regulatory Response Committee

Develop responses to regulatory issues embodied in accounting and auditing exposure drafts and statements, and request for comment of other entities that could impact the state boards' regulatory and enforcement responsibilities.

State Board Relevance and Effectiveness Committee

Develop a comprehensive model, and a supporting Model State Board Act, for enhancing state boards' relevance, effectiveness an operational & financial independence, consistent with the ACAP recommendations. Such efforts will include and assimilation of best practices in legislative management, organization and structure, policy and practice management, and interaction with professional groups, regulatory bodies, and the public.

UAA Mobility Implementation Sub-Committee

Assist state boards in making appropriate changes to state laws and rules to permit cross-border practice and mobility of the CPA licensee without notice. Assist in studying and promoting implementation issues consistent with the original design and interest of the mobility model statute.

Uniform Accountancy Act Committee

Monitor the need for revisions to the UAA and the Model Rules, including proposals from other NASBA Committees, and suggest appropriate new or revised provisions to the NASBA Board of Directors for approval and release for exposure and comment.

Overview of the AICPA Volunteer Environment

History of AICPA. The American Institute of Certified Public Accountants and its predecessors have a history dating back to 1887, when the American Association of Public Accountants (AAPA) was formed. In 1916, the American Association was succeeded by the Institute of Public Accountants, at which time there was a membership of 1,150. The name was changed to the American Institute of Accountants in 1917 and remained so until 1957, when it changed to its current name of the American Institute of Certified Public Accountants. The American Society of Certified Public Accountants was formed in 1921 and acted as a federation of state societies. The Society was merged into the Institute in 1936 and, at that time, the Institute agreed to restrict its future members to CPAs.

History of Committees. The use of committees began even before the AAPA was formed in 1887. At the first meeting of what would become the AAPA on December 22, 1886 those present authorized the appointment of a committee to draft rules and regulations. Beyond this first preliminary committee the first Bylaws of the AAPA in 1897 established three committees: Finance and Audit Committee, Committee on Elections, Qualifications and Examinations, and the Committee on Bylaws. The number of committees grew continually over the years. In the 1940s there were 34 committees, by 1960, there were 89, and by 1970, the number had grown to 109. In 1999 the nearly 120 existing committees underwent a re-organization with approximately half of the standing committees being replaced with a volunteer group model that placed an increased emphasis on the use of task forces. The increased use of task forces allowed for more targeted efforts with the task forces being given a specific assignment then disbanding upon completion of that assignment. Also, in 1999 the first tracking and management of task forces began. Collectively, more than 2,000 volunteers contribute to the AICPA's fulfilling its mission.

Need for Volunteer Groups. The AICPA organization consists of volunteer groups and staff working together to achieve the Institute's objectives. Volunteer Groups help present the interests, needs' and attitudes of the membership; and assist the Institute in maintaining high standards of professional practice, promoting the interest of CPAs, serving as a spokesperson for the profession, and providing appropriate services to members. An effective volunteer group structure can generate sound group judgment, provide continuity of thinking, and help bring together a cross section of member knowledge and experience. It also provides for leaders of the profession. The most important reason for organizing a volunteer group is the need for member guidance and representation.

Volunteering for Service. Prospective volunteers can apply for service on a volunteer group via the http://volunteers.aicpa.org website. State Societies, firms, firm associations or other members of the AICPA often recommend candidates for volunteer service. New volunteers should be aware of the time commitment volunteer group service entails. Considering attendance at volunteer group meetings, travel, and time for assignments and other meetings, members can expect to spend about 60-80 hours on volunteer work during the first year. Of course, the amount of time each volunteer member spends on volunteer group activities varies;

with each year of service, a member's time commitment often increases. By accepting appointment to the volunteer group, a volunteer member shows his or her willingness to devote the necessary time and effort to volunteer work.

Term of Appointment. In most cases, a volunteer is appointed for a one-year term, which can be extended to three years. Each year, the chairperson and the staff evaluate each member's contribution to their volunteer group. Customarily, a member cannot be reappointed for a fourth term unless he or she is appointed as chairperson of the volunteer group.

Appointing Volunteers. The appointment of volunteers can be divided into three main categories. The first appointment category (approximately 900 volunteers) includes all committees, subcommittees, expert panels, resource panels, boards and centers, whereby appointment to one of these groups are made during and annual appointments meeting held in July. The second appointment category (321 volunteers) includes the Board of Directors, Council, Joint Trial Board and Peer Review Board – appointments being made typically in February. The third and last appointment category (approximately 500 volunteers) includes all task force members in which appointment to a task force can occur at any time throughout the year as needed.

Volunteer Year. The AICPA Volunteer Year runs from October through October of the following year. The beginning of the Volunteer Year "officially" begins immediately following the Fall Meeting of Council.

TYPES OF VOLUNTEER GROUPS

All members of the Council, Boards, Committees, Subcommittees, Panels, Centers and Task Forces (hereinafter "**volunteer groups**")

Advisory Group – An advisory group is not responsible for policy-setting as are regular committees the purpose of an advisory group is typically to capture the views of membership groups or sections. There are currently six advisory groups, these groups usually meet virtually via conference calls although they may on occasion meet in person.

Audit Quality Center – The objectives of the Audit Quality Center include:

- Enhance the quality of member firms' audit practices in the specialized area.
- Provide a forum for member firms to address technical and regulatory matters involving the specialized area of audit practice.
- Develop relationships with, act as a liaison to, and communicate issues to regulators and others for the purpose of representing the auditing profession's views relating to the specialized area of audit practice.
- Advocate solutions and positions to regulators and standards-setters on behalf of member firms in the specialized area.

Board – Based on the Bylaws of the AICPA the term Board is used in conjunction with the following bodies:

- Board of Directors
- Board of Examiners
- Joint Trial Board
- Peer Review Board

Board of Directors - The Board of Directors acts as the executive committee of Council, directing Institute activities between Council meetings. The Board meets five times a year and is responsible for reporting to the Council as least semiannually. The Board of Director consists of:

- Chairman of the Board of Directors
- Vice Chairman of the Board of Directors
- Immediate Past Chair of the Board of Directors
- Regular Members of the Board of Directors (members of the AICPA)
- Public Members of the Board of Directors (non AICPA members)

Board Committees - Board committees are comprised of members of the Board of Directors. The Chair of the Board and the President are Ex Officio Members of all Board committees. The following committees are classified as Board Committees:

- *Accounting Research Association* – to provide best efforts commitment of financial support to the Financial Accounting Foundation.
- *Political Action Committee* – provides financial support for election campaigns of candidates for federal elective office whose views are consistent with AICPA goals.
- *Audit Committee* – is primarily concerned with the effectiveness of the audits conducted by the Institute's Internal Audit Staff and independent certified public accountants.
- *Compensation Committee* – establishes and monitors compliance with compensation policies for AICPA staff.
- *Finance Committee* – purpose is to maintain the relevance of the Institute's continuing objectives and contribute to their advancement by reviewing strategy, plans, budgets and material deviations in plans and budgets prior to discussion by the Board of Directors.

Board of Examiners - The Board of Examiners (BOE) is responsible for the supervision and preparation of the uniform CPA examination which may be adopted by state Boards of Accountancies for examining candidates for the certified public accountant certification. The BOE is also responsible for the conduct of the grading service offered by the Institute. The BOE forms the necessary rules and regulations for the conduct of its work, but all such rules and regulations may be amended, suspended, or revoked by the Board of Directors. The BOE may delegate to members of the Institute's staff or other duly qualified persons the preparation of examination questions and the operation of the grading service conducted by the Institute

Council - Council determines Institute programs and policies. It has approximately 263 members with representatives from every state and U.S. territory. The Council may exercise all powers requisite for the purposes of the Institute, not inconsistent with the AICPA Bylaws or with duly enacted resolutions of the membership, including but not limited to the authority to prescribe the policies and procedures of the Institute and to enact resolutions binding upon the Board of Directors, the officers, volunteer groups, and staff. The Council consists of the following members:

- At-Large Members of Council
- Board of Directors
- Designated Representatives of each state
- Elected Members of Council
- Ex-Officio Members (past Chairs of the Board)
- Members At Large of Council

Expert Panel - Following the AICPA's volunteer group restructuring effort in 1999 the Board of Directors approved the establishment of Expert Panels that focus on identifying industry-specific business reporting issues with an emphasis on audit and accounting. Panels have been established in areas in which the membership and the public have a high stake and in which the AICPA can add significant value. The Expert Panels enable standards setters, such as Accounting Standards Executive Committee, Auditing Standards Board, Financial Accounting Standard Board (FASB), and the General Accounting Standards Board (GASB) to continue to leverage the AICPA membership's industry expertise, as well as provide a means for the profession to liaise with outside groups, such as regulators. Current Expert Panels include:

- Depository Institutions Expert Panel
- Employee Benefits Plans Expert Panel
- Health Care Expert Panel
- Insurance (Life and P&L) Expert Panel
- Investment Companies Expert Panel
- State & Local Government Expert Panel
- Stockbrokerage and Investment Banking Expert Panel

Executive Committee - An executive committee is the standing parent group responsible for Policy-setting in an area of activity. The Board of Directors acts as the executive committee of Council, directing Institute activities between Council meetings. Other Executive Committees include:

- Accounting Standards Executive Committee
- Assurance Services Executive Committee
- Business and Industry Executive Committee
- Employee Benefits Audit Quality Center Executive Committee
- Forensic and Valuation Services Executive Committee

- Governmental Audit Quality Center Executive Committee
- Information Technology Executive Committee
- PCPS Executive Committee
- Personal Financial Planning Executive Committee
- Pre-Certification Education Executive Committee
- Professional Ethics Executive Committee
- Professional Practice Executive Committee
- Tax Executive Committee
- Women's Initiatives Executive Committee

Joint Trial Board – The Joint Trial Board consist of 36 members elected for a three year term by the Nominations Committee and ratified by Council. The Joint Trial Board provides for uniform enforcement of professional standards by adjudicating disciplinary charges against state society and AICPA members. Its decisions affect both AICPA and state society memberships.

Nominations Committee - As outlined in the Bylaws of the Institute the Nominations Committee is to be composed of eleven members of the Institute, elected by the Council in such manner as the Council shall prescribe. The responsibility of the Nominations Committee is to make nominations for the following:

- At-large Members of Council
- Board of Directors
- Peer Review Board
- Joint Trial Board

Peer Review Board - The Peer Review Board is responsible for establishing and conducting a peer review (program) for firms enrolled in the program. Quality in the performance of accounting and auditing engagements by its members is the goal of the program. The program seeks to achieve its goal through education and remedial, corrective actions. This goal serves the public interest and enhances the significance of AICPA membership. The Board also reevaluates the validity and objectives of the program to ensure the program continues to enhance the quality of accounting and auditing practices of public accounting firms and to explicitly recognize that protecting the public interest is an equally important objective of the program.

Senior Committees and Boards - The following committees and boards are designated senior by virtue of resolution of Council implementing the AICPA Bylaws. Note: that in a few instances some of these committees may also be designated as Senior Technical Committees.

- Accounting and Review Services Committee
- Accounting Standards Executive Committee
- Assurance Services Executive Committee
- AICPA Peer Review Board
- Auditing Standards Board
- Board of Examiners

- CPE Advisory Committee
- Employee Benefits Audit Quality Center Executive Committee
- Governmental Audit Quality Center Executive Committee
- Information Technology Executive Committee
- Personal Financial Planning Executive Committee
- PCPS Executive Committee
- Personal Financial Planning Executive Committee
- Professional Ethics Executive Committee
- Tax Executive Committee

Senior Technical Committees and Board - The following senior technical committees and boards are authorized to make public statements - without clearance from Council or the Board of Directors - on matters relating to their area of practice:

- Accounting and Review Services Committee
- Accounting Standards Executive Committee
- AICPA Peer Review Board
- Assurance Services Executive Committee
- Auditing Standards Board
- Professional Practice Executive Committee
- Forensic and Valuation Services Executive Committee
- PCPS Executive Committee
- Personal Financial Planning Executive Committee
- Professional Ethics Executive Committee
- Tax Executive Committee

Subcommittee - A subcommittee is a standing group which may be entirely or partially composed of some of the members of the related executive committee or may be composed entirely of other persons. The work of a subcommittee is subject to overall review by its related committee or executive committee.

Task Force - Since the Volunteer Group restructuring effort that took place in the fall of 1999 there has been an increased emphasis on task forces rather than formal "standing" committees, panels or boards. Also, beginning in 1999 the Volunteer Services Team began tracking and maintaining information on task forces. Task forces are intended to be fast paced groups that focus on a single issue or project.

Since the definition of what constitutes a task force has varied greatly from one individual to the next the following definition is provided:

Task forces are working groups that typically focus on a single issue or project. They operate in support of and under the auspices of another volunteer group (committee, panel or board). While the duration of task forces may vary considerably, they should be organized to have relatively short lives, accomplishing their objectives on single issues or projects rapidly, and then being disbanded. Also for purposes of definition the Volunteer Services Team will only track a task force with an intended working life of over three months and if the task force meets separately from the volunteer group the task force supports.

Since task forces do not follow the Volunteer appointments process the basic information on a task force must be provided to the Volunteer Services Team by the Staff Liaison as soon as the task force is created, members are added or removed, and notification must be provided when a task force disbands.

Tax Technical Resource Panel – Tax Technical Resource Panels (TRP's) act as a primary resource to the Tax Executive Committee (TEC) in representing members and the public interest by identifying issues, in developing technical and policy recommendations on those issues, and in suggesting or developing related practice aids to assist members in complying with the law; to recommend formation of task forces and assist the TEC and its constituent committees in monitoring task forces activities; and to maintain appropriate liaisons with government, industry and other professional organizations. TRP's are intended to be small and proactive, with members who are current and knowledgeable in the assigned technical areas.

Current Tax Technical Resource Panels:

- Corporations and Shareholders Taxation
- Employee Benefits Taxation
- Exempt Organizations Taxation
- Individual Income Taxation
- International Taxation
- Partnership Taxation
- S Corporation Taxation
- State and Local Taxation
- Tax Methods and Periods
- Trust, Estate and Gift Taxation

Volunteer Group - The term Volunteer Group is used as a general term to include the following types of groups; Committee, Subcommittee, Expert Panel, Technical Resource Panel, Board, Advisory Group and even Task Force (refer to their respective definitions for actual differences).

The most important reason for organizing a volunteer group is the need for member guidance and representation. Volunteer groups may be needed because staff do not have the authority for actions in a given area, or may be formed to insure that appropriate member interests are represented on a given issue or activity.

Virtual Group. Members may in some cases serve on a volunteer group in a virtual capacity, i.e. never meeting in person but rather conducting their work within an online internet / email based environment. One type of virtual member participation has entailed the online support to one or more specific volunteer group. A second form of virtual participation involves the online participation in various online surveys to provide targeted feedback in specialized areas.

PUBLIC STATEMENT AUTHORIZATION

Most of the AICPA's Volunteer Groups are composed of Institute members appointed by the chair of the board for a term of one year (reappointments may bring service total to three years). Of these Volunteer Groups, 16 have been designated as Senior Committees (appointments must be approved by the Board of Directors), and 12 of these 16 (known as Technical Committees) have the authority to make public statements on matters related to their areas of practice without clearance from the Council or the Board. The Senior Committees are listed in the following table.

Public Statement Authorization

	YES	NO
Accounting and Review Services Committee	X	
Accounting Standards Executive Committee	X	
AICPA Peer Review Board	X	
Assurance Services Executive Committee	X	
Auditing Standards Board	X	
Board of Examiners		X
CPE Advisory Committee		X
Employee Benefits Plans Audit Quality Center Executive Committee		X
Forensic and Valuation Services Executive Committee	X	
Government Audit Quality Center Executive Committee		X
Information Technology Executive Committee		X
Personal Financial Planning Executive Committee	X	
PCPS Executive Committee	X	
Professional Ethics Executive Committee	X	
Professional Practice Executive Committee	X	
Tax Executive Committee	X	
Women's Initiative Executive Committee	X	

DEFINITIONS OF VOLUNTEER ROLES

There are currently 35 volunteer roles available within the Volunteer System as shown below. In some cases a particular role, such as Treasurer should be self explanatory and therefore no definition is provided - where appropriate details on the functions of each role are provided.

Current Roles

Administrative Support	Executive Director	Secretary
Alternate	General Counsel and Secretary	Secretary-Treasurer
Alternate Chair	Immediate Past Chair	Senior Vice President
Assist. Treasurer	Member	Staff Liaison
Board Chair	Member At Large	State Reps
Board Liaison	Non-Member	Technical Advisor
Chair	Observer	Technical Secretary
Chairman	Past Chair	Treasurer
Co-Chair	President	Unknown
Director	Primary Contact	Vice Chair
Elected Members	Project Manager	Vice President
Ex Officio	Public Member	

Board Chair. The Chairman of the Board of Directors presides at key meetings of members of the Institute, the Council, and the Board of Directors. The chairman is responsible to appoint volunteer group members as provided for in the Bylaws. The Chairman also acts as a spokesperson for the Institute and appears on its behalf before other organizations. The Vice Chair of the Board is normally appointed to be Chair of the Board during the annual meeting of the Nominations Committee (usually held in February).

Board Liaison. Acts as the ears of the Board of Directors to certain volunteer groups.

Chair. The Chair of a Volunteer Group is responsible for presiding over the meetings of the group and to provide direction over the activities of the group. With the exception of task forces the Chair is also responsible during the Volunteer Year to recommend individual's for succeeding years, evaluate members of the group, and communicate any changes in the objectives or membership of the Group to the Volunteer Services Team at volunteerservices@aicpa.org.

Elected Members. Elected Members are members of Council who are directly elected by the membership in their respective states. The number of Elected Members is allocated in two ways, somewhat analogous to the allocation of senators and congressmen for each state whereby the first is a fixed amount and the second is based on population. First, each state by default is allowed to recommend one Elected Member of Council. Second, each state is allowed to recommend additional Elected Members, the number being based on the proportion of Institute members enrolled from each state. This second category of Elected Members based on proportion of AICPA members is set at 85 members, however the allocation of the seats is re-evaluated and adjusted if necessary every five years.

Ex-Officio. Past Chairs of the Board of Directors and Past Presidents of the AICPA.

Member-At-Large. Seven Institute members, without regard to the states in which they reside are elected annually by the Nominations Committee to serve as Members-At-Large to serve on Council.

Member. The term member is often used in a general sense to reflect any participant on a volunteer group.

President. The president of the AICPA has the responsibility for the execution of the policies and programs of the Institute, act as a spokesperson for the Institute, and perform such other services as may be assigned to the President by the Council and the Board of Directors

Public Members. Public Members are non-CPA volunteers who sit on the Board of Directors and various other volunteer groups.

Secretary of Institute. The secretary of the Institute has the usual duties of a corporate secretary and performs such other related duties as may be assigned by the president

Staff Liaison. The staff liaison is an AICPA staff member who assists the volunteer group at each meeting to the fullest extent possible by researching and providing background information. This includes providing appropriate reference materials for each meeting; identifying the elements of a problem; listing the questions that need answering; participating in the discussion; endeavoring tactfully to persuade members to adopt a sound decision; alerting the volunteer group when it is deviating from AICPA policy or exceeding its authority; and accepting whatever final decision is reached unless the issue is so important that a higher authority should be consulted. The staff liaison is responsible for preparing the agenda, drafting the minutes or highlights (including attendance), as appropriate, of each meeting (with review and approval by the volunteer group chair), and the staff liaison is responsible for coordinating volunteer group activities and sharing information with other AICPA volunteer groups and staff as appropriate. The staff liaison may also be called on to help the volunteer group identify goals, for us on major issues, create new programs, draft reports, and organize and implement activities approved by the volunteer group. The staff liaison should play an active role and can lead the volunteer group in the form of guidance and assistance toward a desired end.

State Rep. Each state society designates a single Institute member to represent it on the Council for a term of one year. A Designate Representative (state rep) can be reappointed each year for a combined term of service not to exceed six consecutive years.

Vice Chairman of the Board. The Vice Chairman of the Board shall be chairman- nominee of the Board of Directors and presides in the absence of the chairman at meetings of the Institute, the Council, and the Board of Directors. The Vice Chairman is currently assigned the responsibility to recommend appointments to all volunteer groups. These recommended appointments are subject to ratification during the annual Fall Council meeting. The Vice Chair is selected during the annual meeting of the Nominations Committee, usually held in February each year. Although there are no specific requirements to become the Vice Chair normally this individual will have been a member of the Board of Directors.

Time Line for AICPA Volunteer Activities

October

Volunteer Year Begins - The new Volunteer year coincides with the last day of the Fall Council Meeting. At this time a copy of each volunteer group's roster is moved to history (electronic records dating back to 1978 are maintained). All new rosters are then made available to review online via the Volunteer Central website at http://volunteers.aicpa.org.

Note: What can be viewed on this website is controlled via granted permissions, i.e. the level of detail can vary depending on whether the individual is a member of the general public, a staff liaison, committee chair, state society executive director, major firm representative, etc.

November – April

Volunteer Application Period Begins - The Volunteer Central website is open all year (for reference purposes) and the general public can view the approximately 180 active volunteer groups. For applications the website is opened, typically in late November to begin accepting applications for the following year. At this time approximately 90 volunteer groups are made available for accepting applications. The window for acceptance of applications extends from late November until May 15th. This application "period" is promoted in various newsletters such as the CPA Letter, Tax Letter, etc.

Note, in most cases applications are not accepted directly for task forces.

General Reports Issued to States and Firms – During this timeframe all state CPA societies and approximately 90 of the largest firms are provided reports of the volunteers from their respective state or firm

Nominations - Usually in mid February the AICPA Nominations Committee meets to decide appointments to the Board of Directors, Council Members at Large, Peer Review Board, and Joint Trial Board. Newly selected members are announced in the April edition of the CPA Letter. In the two months prior to this meeting various recommendation request are solicited from firms, state CPA societies, associations, committee chairs, staff liaison, and selected AICPA leadership.

April – June

State and Firm Recommendations Requested - Each state society executive director and each designated representative from a major firm are asked to visit the Volunteer Central website and review the current and prospective volunteers from their state or firm and make online recommendations as to which volunteers should be appointed. Recommendations originating from a firm or state society are

strongly taken into consideration when final appointments are made in July. Generally these recommendations are not solicited until after all of the volunteer applications have been received – typically by May 15th. The actual window of time for receiving recommendations from firms and states is normally about two weeks and once these recommendations are received then the chairs of each committee are solicited for their recommendations.

Volunteer Group Chairs and Staff Liaisons Recommendations - The chair of a volunteer group (with input from the staff Liaison) is required to provide his or her recommendations as to which members (current or proposed) should be appointed. These recommendations are made via the Volunteer Central website. The chairs window of time is typically two weeks and follows immediately after the state and firm recommendations are received.

Evaluations of Volunteers - The Chair of each volunteer group is required to evaluate each volunteer's contribution to his or her respective volunteer group. Each volunteer receives a simple rating of either; E=Excellent, S=Satisfactory, U=Unsatisfactory, or N/A (not enough information to provide an evaluation). All evaluations are done online via the Volunteer Central website.

Leadership Reports - The Volunteer Services Team readies all reports to be used during the annual Appointments Meeting; this meeting is typically held in early July.

July

Annual Appointments Meeting - The Leadership, Staff Liaisons and the Volunteer Services Team, hold a meeting in early July, where appointments to the majority of volunteer groups (committees, panels, boards, and centers) are made. For a variety of reasons some of the volunteer groups are appointed at other times of the year – however it is at this meeting that approximately 90 of the key standing committees have appointments determined. Note: the nearly 100 task forces do not go through an appointment process.

August – September

Appointment Confirmations and Closing of Open Issues - All open issues (if any) for each Volunteer Group have to be resolved by working with the Staff Liaison, committee Chair, or Leadership. A final "appointed" roster is sent to each staff liaison once the groups roster is deemed complete in order to get a sign-off from the liaison indicating that the roster is indeed correct – in short this is an extra check to make sure that the staff liaison, committee chair, Volunteer Services Team, and Leadership are all in agreement on the final appointments before any of

the members are contacted.

Notification of appointment / non-appointment

All volunteers, both appointed and non-appointed are contacted via emails that are generated by the Volunteer Services Website. The communication for each volunteer group is initiated by the Volunteer Services Team, group by group once the appointments for a given group are complete. The type of correspondence is released in the following order:

1. Appointed current and/or proposed new members are contacted first
2. Current volunteers that are rolling off the committee and ending their service are contacted second.
3. Proposed new volunteers that were not appointed are contacted last.

When a new appointee receives their acceptance email the email contains a unique "member specific" link that allows the member to automatically log into the Volunteer Services Website – which out having to use his or her UserID or Password. Once in the member can either accept appointment or decline appointment. If the member accepts appointment the system automatically checks to determine if the member has previously signed and provided a "lifetime" copyright agreement statement, and if a copyright statement is still required then the member is presented with the agreement via the website.

Attachment 4

Lifetime AICPA Volunteer Service Policy and Copyright and Confidentiality Agreement

To Volunteer Committee Members or Non-Members

Membership on a volunteer group in a member organization with more than 330,000 members such as ours provides an opportunity for you to network with your peers and serve your profession by working on various interesting and worthwhile assignments.

Your acceptance and ultimate participation on a volunteer group entails a responsibility to assist in achieving the objectives of the volunteer group through preparation for, and attendance at, its meetings and participating in its deliberations. All Volunteer Group members will be evaluated by the Chair of the group during the year regarding their attendance and participation at meetings.

We know that you have many demands on your volunteer time. We appreciate your willingness to use a part of that time to serve our profession. We hope you benefit as much by your volunteer service as the AICPA benefits from having members willing to volunteer.

All volunteers on any type of Volunteer Group (includes Committees, Subcommittees, Boards, Panels, Centers, and Task Forces) are required to review the Volunteer Service Policy and provide their signature to this "Lifetime AICPA Volunteer Service Policy and Copyright and Confidentiality Agreement" (the "Service Policy Agreement). Your signature on the Service Policy Agreement indicates your agreement to abide by the Volunteer Service Policy (provided below) and the assignment of rights to copyright.

Any questions regarding the Service Policy Agreement should be directed to David Ray at 212-596-6030, Andrea Singletary at 212-596-6097 or via email at VolunteerServices@aicpa.org.

Volunteer Service Policy

Confidentiality

During the course of service as a member of a Volunteer Group, the member may have access to, or receive, information which is proprietary or confidential. Such information includes, but is not limited to; trade secrets, customer, employee or AICPA member data, information related to the operations or plans of the Institute or of firms, companies or individuals or which is otherwise personal, private or of a sensitive nature. Volunteer Group members must consider all information received or discussed during their service as confidential, and members may not use or disclose any such information without express permission from the Office of the Institute's President or its General Counsel or as permitted elsewhere in this Service Policy Agreement.

Lifetime AICPA Volunteer Service Policy
and Copyright and Confidentiality Agreement

Communications

During recent years the activities of the Institute have increased rapidly in scope and variety. Most of these activities are conducted by or under the supervision of Volunteer Groups. To avoid over-lapping or duplication of effort and to maintain consistency in general policies, it is essential for all activities to be coordinated as effectively as possible.

It is also important that statements to the press or communications with outside groups, which may result in published statements attributed to the Institute, be screened for conformity with policies laid down by the Board of Directors. The Chair of the Board, the President and designated members of senior management have been delegated the responsibility for this function. All press releases and similar communications with reporters and financial writers on behalf of the Institute should be channeled through or cleared with the Office of the President of the Institute. The Washington Office should receive advance information about statements to be made to any branch of the Federal Government.

The following senior Volunteer Groups are authorized to make public statements without clearance from Council or the Board of Directors, on matters related to their area of practice:

- Accounting and Review Services Committee
- Accounting Standards Executive Committee
- AICPA Peer Review Board
- Assurance Services Executive Committee
- Auditing Standards Board
- Center for Audit Quality Governing Board
- Management Consulting Services Executive Committee
- Forensic and Valuation Services Executive Committee
- Private Companies Practice Section Executive Committee
- Personal Financial Planning Executive Committee
- Professional Ethics Executive Committee
- Professional Practice Executive Committee
- Tax Executive Committee

All statements concerning policy or technical matters issued on the authority of such Volunteer Groups should be clearly identified as such.

Pronouncements and outside communications of all other Volunteer Groups must be cleared by the Board of Directors prior to issuance.

Lifetime AICPA Volunteer Service Policy
and Copyright and Confidentiality Agreement

Actions Which May Discredit the AICPA

Volunteer members should not engage in, promote, or participate in any activities which would reasonably be anticipated to discredit or result in damage to the AICPA's reputation or otherwise discredit the core standards and principles it or the CPA Profession represents.

Meetings

Care should be exercised in the decision to call a meeting and the selection of meeting sites to ensure effective meetings consistent with reasonable costs to the Institute and to the firms and other organizations of Volunteer Group members. Regarding meeting sites, meetings should be scheduled in locations that are easily accessible, are conducive to serious volunteer efforts, require a minimum of travel of Volunteer Group members and staff, and require the least expenditure of non-chargeable time compatible with Volunteer Group requirements. Considerations should be given to use of conference calls and use of computer technology which is available, such as teleconferencing in lieu of a meeting, whenever possible.

The purpose of a Volunteer Group meeting is to obtain the input of members and decisions on volunteer matters and where appropriate, produce material for use by the Volunteer Group and others. For effective Volunteer Group deliberations, and in fairness to other volunteer members, each member should spend whatever time is necessary to prepare for the meetings and then actively participate.

Ownership/Assignment of Copyright

From time to time, Volunteer Group members may be tasked with preparing various documents, guides, plans, standards and other material for use by the Volunteer Group and/or others outside of the group. (All such material is herein referred to as the "Work").

The Work and all updates and/or revisions thereof shall be considered as work made for hire for all purposes of the copyright Law. Accordingly, all of the rights comprised in the Work and the updates thereof shall vest in the AICPA, its successor and assigns, as the sole and absolute owner thereof. In the event it is determined that the Work is not considered as a work made for hire, the Volunteer Group member hereby assigns to the AICPA all of Volunteer Group member's rights, title and interest, including all rights of copyright in the Work to the AICPA. The AICPA shall have the sole right and power to apply for any and all copyrights in its name, in order that all copyrights so obtained shall vest in the AICPA, including the copyrights for any renewed or extended terms now or hereafter authorized by law. Whenever requested by the AICPA, the Volunteer Group member shall perform such acts and sign all documents and certificates which the AICPA may reasonably request in order to fully carry out the intent and purposes of this Paragraph.

Lifetime AICPA Volunteer Service Policy and Copyright and Confidentiality Agreement

Verification and Agreement

As a requirement of membership in an AICPA Volunteer Group (including without limitation, Committees, Subcommittees, Task Forces, Boards, Commissions, Panels, Expert Panels, Centers and Technical Resource Panels), I the undersigned hereby verify and state that I have read the above Service Policy Agreement, and I fully understand its terms. By affixing my signature below, I hereby agree to be bound by all of its terms and conditions including, without limitation, the sections dealing with Confidentiality and Ownership/Assignment of Copyright.

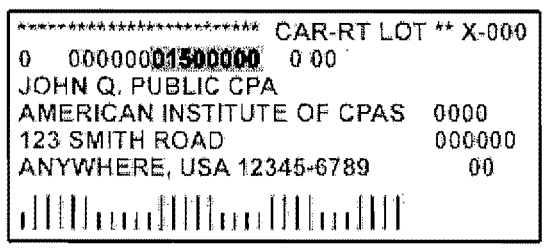
Please fax this signed document to the AICPA Volunteer Services Team at 212-596-6104 with the required information requested below.

Name (please print) First: _____ MI: ____ Last: _____

Signature: _____ Date: _____

Member Number *(mandatory)*: _____ *Member Number Lookup See Below*

How do I find my AICPA Member Number?
You can easily find your AICPA Member Number by looking at a recent issue of your Journal of Accountancy or The CPA Letter. Simply look at the mailing label on either publication – the last 8 digits in the first line on the label (right above your name) represents your membership number. Your membership number is also listed at the top of your dues bill.



Non-Members – Please contact us for assignment of a Customer Number, taking the place of a Member Number.

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* This agreement will remain on file for a lifetime of AICPA volunteer service

Any questions or assistance needed, please contact David Ray at 212-596-6030, or Andrea Singletary at 212-596-6097 or via email at VolunteerServices@aicpa.org

Print Form

STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

Attachment 5

Conference Attendance Request

Attendee Information

Board/Bureau/Division	Contact Name	Phone
Section/Unit	E-mail	
Address City State Zip	Supervisor Name	
The following employee(s) request approval to attend a conference.	Supervisor E-mail	

Name (Attach Listing if necessary)	Classification	Index #	PCA #	

Conference Information

Conference Title

Conference Provider/Vendor

Conference Location

Conference Date(s)	Start Time	End Time

Cost and Time Information

Registration Fees (per employee X no. attending) $_____ X _____ = $_____

Travel Estimate (per employee X no. attending) $_____ X _____ = $_____

Registration Includes Any Meals? ☐ Yes ☐ No

☐ Requisition attached ☐ Employee paid (to be reimbursed)

Conference Justification ***(attach conference registration form and agenda)***

Approvals

Supervisor Signature	Contact Number	*Date*
	Contact Number	*Date*
	Contact Number	Date

Distribution: Original to Board/Bureau/Division Contact

Copies: Submit to Accounting Office, Accounts Payable Unit, 1625 North Market Blvd., Suite S103 Sacramento, CA 95834 with Requisition and/or Travel Expense Claim (TEC)

Completing the Conference Request Form

The Department of Personnel Administration regulations (CCR §599.635) require advance approval to attend any conference or convention if the registration fees exceed $50.00, or when more than two individuals from the same department attend. Attendance at a conference should be limited to those directly concerned with the topic. A conference (or convention) is defined as a meeting with a formal agenda, of persons to discuss or consult on specific work related subjects with the purpose of exchanging views, providing lecture or dialog, or providing or gaining skills and or information for the good of the State.

Cost and Time Information - Include the dollar amount for the cost of the conference registration and the estimated travel cost per person and the extended total amounts.

Registration fees may include meals that are determined to be an integral part of the conference. **Any meals that are optional, organized for social purposes, or are attended strictly for public relations purposes must be excluded from approved registration fees**. Employees that wish to participate must do so at their own expense and may only be reimbursed, if they are on travel status, at the allowable meal reimbursement rates.

Travel costs include:

Transportation expenses**:** Airfare, rental car, shuttle, parking, and mileage reimbursement (when using a private car)

Lodging expense**:** Room rate plus tax per night. In cases where the lodging expense exceeds the allowable rates per DPA rules and/or Bargaining Unit Contracts, an Excess Lodging Rate Request form (STD 255c) must also be submitted for advance approval.

Meal expenses**:** Include meals at the allowable meal reimbursement rates less any meals included in the registration fees.

Indicate whether or not any meals are included in the conference registration fee.

Indicate the method of payment necessary to complete the conference registration request. If the vendor requires advance payment, prepare and attach a requisition form (99J-27) to this request. If the employee prepaid the conference registration fee and will be requesting reimbursement on a travel expense claim make sure to check the appropriate box and submit the approved Conference Request Form and a valid proof of payment with the travel expense claim.

Conference Justification - Include the purpose for attending. If more than two employees are attending, include the reason.

Copies of the Conference Registration form and Agenda, if applicable must be attached to the Conference Request form.

Approval – The Department's Executive Office must approve all requests where the registration fees exceed $50.00, or when more than two individuals from the same department attend. All approvals are required prior to attendance.

State of California

M e m o r a n d u m
Department of Consumer Affairs

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

CBA Agenda Item XIV.E.1
September 22-23, 2010

To : CBA Members

Date : September 9, 2010

Telephone : (916) 561-1789
Facsimile : (916) 263-3675
E-mail : lhersh@cba.ca.gov

From : Lauren Hersh
Information and Planning Manager

Subject : Recent Press Releases

At the request of the CBA President, staff have prepared copies of recent press releases for review by CBA members. This agenda item will continue as a standing item for future CBA meetings. Copies of press releases may also be found on the CBA Web site under the "What's New" link.

Since the last press release report was prepared for the July 2010 meeting, the CBA issued the following press releases:

- July 20, 2010 – California Board of Accountancy to Hold Regulatory Hearings to Reduce Fees **(Attachment 1).**
- July 30, 2010 – California Board of Accountancy Appoints Peer Review Oversight Committee **(Attachment 2)**.
- August 31, 2010 – CBA's Accounting Education Committee to Consider Draft Language on New Educational Requirements for Licensure **(Attachment 3).**
- (Note: A pre-CBA meeting press advisory is scheduled to be sent to news organizations on September 20, 2010.)

Additionally, information was provided to local newspapers related to the below enforcement actions **(Attachment 4)**:

<u>August 4, 2010</u>

- Murray, William Russell; CPA 31758
- Murray & Co.; COR 3097
- Murray & Young; COR 4969
  Sacramento, CA

September 4, 2010

- Decker, Erin Michal; CPA 85301
  San Francisco, CA

- Reed, Trudy Newberry; CPA 51681
  Stockton, CA

If an enforcement action has a statewide interest or impact, or is deemed newsworthy by virtue of the circumstances or monetary impact of the case, a news release is also issued.

CALIFORNIA BOARD OF ACCOUNTANCY

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Attachment 1

NEWS RELEASE

FOR IMMEDIATE RELEASE
7-20-10

Contact: Daniel Rich (916) 561-1713

CALIFORNIA BOARD OF ACCOUNTANCY TO HOLD REGULATORY HEARING TO REDUCE FEES

CBA to meet in Sacramento July 28, 2010

(Sacramento, CA) –The California Board of Accountancy (CBA) will hold a regulatory hearing next week regarding its proposal to reduce, for a four-year period, the cost of being licensed as California Certified Public Accountant. This public hearing will provide consumers and licensees with an opportunity to let their voice be heard with respect to renewal fees being reduced from $200 to $120, for the period of July 1, 2011 through June 30, 2015.

CBA members will also deliberate various consumer protection issues, including appointments to the newly formed Peer Review Oversight Committee, which is charged with oversight of peer review requirements that took effect on January 1, 2010, and consideration of the CBA taking action on enforcement cases through mail voting – thereby facilitating more timely implementation of discipline.

The CBA will meet Wednesday, July 28, from 10:30 a.m. – 4:30 p.m. at the Holiday Inn Express, 2224 Auburn Blvd, Sacramento, CA 95821.

The public and press are invited to attend. The meetings may also be viewed via live webcast, available on the CBA Web site, www.cba.ca.gov. A copy of the full CBA meeting agenda is available online at:
http://www.dca.ca.gov/cba/meetings/notices/2010/051210cba.pdf

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Created by statute in 1901, the CBA's mandate requires that protection of the public shall be its highest priority in exercising licensing, regulatory, and disciplinary functions. The CBA currently regulates more than 81,000 licensees, the largest group of licensed accounting professionals in the nation, including individuals, partnerships, and corporations.

More information about the California Board of Accountancy is available at www.cba.ca.gov

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Attachment 2

NEWS RELEASE

FOR IMMEDIATE RELEASE Contact: Daniel Rich (916) 561-1713
7-30-10

CALIFORNIA BOARD OF ACCOUNTANCY APPOINTS PEER REVIEW OVERSIGHT COMMITTEE

(Sacramento, CA) –The California Board of Accountancy (CBA) this week appointed six members to the legislatively mandated Peer Review Oversight Committee. This committee is vested with the responsibility of overseeing California's new mandatory review requirement and ensuring that peer review providers are administering the reviews in accordance with the standards adopted by the CBA.

The following individuals, all of whom by statute must maintain a Certified Public Accountant license in good standing, were appointed to the Peer Review Oversight Committee at the CBA board meeting on July 28, 2010: Nancy J. Corrigan, CPA, Partner, Jeffrey, Corrigan & Shaw, LLP; Katherine Allanson, CPA; Gary J. Bong, CPA, Partner, Macias, Gini & O'Connell, LLP; T. Ki Lam, CPA, Audit Partner, Vavrinek, Trine, Day & Co., LLP; Sherry L. McCoy, CPA, Partner, McGladrey & Pullen, LLP; Seid Sadat, CPA, Partner, Magidoff, Sadat & Gilmore, LLP.

Mandatory peer review for accounting firms in California became law on January 1, 2010. Under peer review statutes, all California firms providing accounting and auditing services are required to undergo a periodic review of their accounting and auditing practice by an independent Certified Public Accountant using professional standards.

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The California Board of Accountancy sees peer review as a way to protect consumers in an ever-changing financial climate by keeping accounting firms knowledgeable of current professional standards, thereby promoting consumer confidence in these firms.

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Attachment 3

NEWS RELEASE

FOR IMMEDIATE RELEASE
9-1-10

Contact: Lauren Hersh (916) 561-1789

CBA'S ACCOUNTING EDUCATION COMMITTEE TO CONSIDER DRAFT LANGUAGE ON NEW EDUCATIONAL REQUIREMENTS FOR LICENSURE

SACRAMENTO – The California Board of Accountancy's (CBA) Accounting Education Committee (AEC) will meet at the CBA's office located at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815 on Friday, September 3, 2010, from 10:00 a.m. – 5:00 p.m.

At the meeting, the AEC will be considering draft regulatory language for the additional 20 units of accounting study which will be required for CPA licensure beginning January 1, 2014. The committee will also be considering the impact the additional units will have on students earning education outside of California. The full AEC meeting agenda and materials are available on the CBA's Web site at http://www.dca.ca.gov/cba/calendar.shtml and the meeting may be viewed via a live webcast at www.cba.ca.gov.

The purpose of the AEC is to advise the CBA on accounting study requirements to enhance consumer protection through strengthening the competence of students as practitioners while considering the constraints and needs of stakeholders.

Created by statute in 1901, the CBA's mandate is to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards. The CBA currently regulates more than 81,000 licensees, the largest group of licensed accounting professionals in the nation, including individuals, partnerships, and corporations.

For more information on the CBA, please visit www.cba.ca.gov

California Board of Accountancy
Enforcement Action Press Release

Attachment 4

Sent to abuckman@sacbee.com, lgonzales@sacbee.com, ddavis@davisenterprise.net on August 4, 2010

William Russell Murray, Sacramento, CA (CPA 31758), Murray & Co., An Accountancy Corporation (COR 3097), and Murray & Young, An Accountancy Corporation (COR 4969) have been disciplined by the California Board of Accountancy. Please utilize the attached links to the California Board of Accountancy's Web page to access details of these enforcement actions. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding these enforcement actions.

http://www.dca.ca.gov/cba/discipline/decisions/index_m.shtml#534
http://www.dca.ca.gov/cba/discipline/decisions/index_m.shtml#564
http://www.dca.ca.gov/cba/discipline/decisions/index_m.shtml#563

Sent to rfujii@recordnet.com, dblount@recordnet.com, mlvellinga@sacbee.com on September 7, 2010

Trudy Newberry Reed, Stockton, CA (CPA 51681) has been disciplined by the California Board of Accountancy. Please utilize the attached link to the California Board of Accountancy's Web page to access details of this enforcement action. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding this enforcement action.

http://www.dca.ca.gov/cba/discipline/decisions/index_r.shtml#499

Sent to mchan@sfchronicle.com, mbillings@sfexaminer.com, sanfrancisco@bizjournals.com on September 7, 2010

Erin M. Decker, San Francisco, CA (CPA 85301) has been disciplined by the California Board of Accountancy. Please utilize the attached link to the California Board of Accountancy's Web page to access details of this enforcement action. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding this enforcement action.

http://www.dca.ca.gov/cba/discipline/decisions/index_d.shtml#546