



**DEPARTMENT OF CONSUMER AFFAIRS**  
 CALIFORNIA BOARD OF ACCOUNTANCY  
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**DEPARTMENT OF CONSUMER AFFAIRS**  
 CALIFORNIA BOARD OF ACCOUNTANCY (CBA)  
 ENFORCEMENT ADVISORY COMMITTEE (EAC)

**MINUTES OF THE  
 OCTOBER 24, 2013  
 EAC MEETING**

**DRAFT**

Marriott Burbank Airport  
 2500 N. Hollywood Way  
 Burbank, CA 91505  
 Telephone: (818) 843-6000

I. Roll Call and Call to Order.

The regularly scheduled meeting of the EAC was called to order at 9:00 a.m. on October 24, 2013 by EAC Chair, Cheryl Gerhardt.

Enforcement Advisory Committee

Cheryl Gerhardt, Chair	9:00 a.m. to 5:00 p.m.
Mary Rose Caras, Vice Chair	Absent
Joe Buniva	9:00 a.m. to 5:00 p.m.
Gary Caine	10:00 a.m. to 5:00 p.m.
Nancy Corrigan	9:00 a.m. to 5:00 p.m.
Jeffrey DeLyser	9:00 a.m. to 5:00 p.m.
Bill Donnelly	9:00 a.m. to 5:00 p.m.
Robert A. Lee	9:00 a.m. to 5:00 p.m.
Mervyn McCulloch	9:00 a.m. to 5:00 p.m.
James Rider	9:00 a.m. to 11:30 a.m.
Joseph Rosenbaum	9:00 a.m. to 5:00 p.m.
Seid Sadat	9:00 a.m. to 5:00 p.m.
Michael Schwarz	9:00 a.m. to 5:00 p.m.

Staff and Legal Counsel

Rafael Ixta, Enforcement Chief  
 Paul Fisher, Supervising Investigative CPA  
 Allison Nightingale, Enforcement Secretary  
 Gogi Overhoff, Investigative CPA  
 Marla Weitzman, Investigative CPA  
 Tina MacGregor, Investigative CPA  
 April Freeman, Enforcement Analyst  
 Carl Sonne, Deputy Attorney General, Department of Justice

## Other Participants

Herschel Elkins, CBA Liaison

### II. Review Enforcement Files on Individual Licensees.

The EAC adjourned into closed session under provisions of Government Code section 11126(c)(2) and Business and Professions (B&P) Code section 5020. EAC members convened into closed session at 9:08 a.m. and reconvened into open session at 10:30 a.m.

### III. Report of the Committee Chair.

#### A. Approval of the July 11, 2013 EAC Meeting Minutes.

**It was moved by Mr. Caine, seconded by Mr. DeLyser, and unanimously carried to approve the minutes of the July 11, 2013 EAC meeting.**

The minutes for this meeting will be submitted to the CBA members for review and adoption at the next CBA meeting.

#### B. Report of the July 25, 2013 and September 26-27, 2013 CBA Meetings.

Mr. Ixta attended the July 25, 2013 CBA meeting. He reported that EAC members Mervyn McCulloch and Jeff DeLyser were both re-appointed to the EAC. Mr. Ixta also reported that effective January 1, 2014 all licensees who do not have an electronic record of fingerprints on file with the California Department of Justice will be required to submit fingerprints prior to their license expiration date.

Ms. Gerhardt attended the September 26-27, 2013 CBA meeting. She reported that the majority of the meeting involved committee discussions which will be reported later by her and Mr. Ixta. She did state the CBA did adopt the 2014 EAC meeting dates, as recommended by the EAC. The dates are as follows:

- January 30, 2014 – North
- May 1, 2014 – South
- July 10, 2014 – North
- October 23, 2014 – South
- December 11, 2014 – South

### IV. Report of the Enforcement Chief.

#### A. Enforcement Activity Report.

Mr. Ixta provided an overview of the report. Mr. Ixta reported that as of August 31, 2013, the average days to close a case increased from 73 in the previous fiscal year to 123. This is partly due to the small sample period of 60 days. Three cases have been open for more than 24 months; two investigations are pending referral to the Attorney General's (AG) Office following investigative hearings. Another is still undergoing investigation after the initial scope was expanded. The number of investigations pending has decreased since the last report. However, the average age and median age have increased slightly. Enforcement management continues to monitor and prioritize investigations to manage both the priority of cases and the age of the inventory. The report was provided in the EAC packets.

V. Other Business.

A. Report of the September 26, 2013 Enforcement Program Oversight Committee Meeting.

Mr. Ixta reported that CBA staff presented proposed changes to the CBA Model Disciplinary Guidelines and Model Disciplinary Orders (Guidelines) to the Enforcement Program Oversight Committee (EPOC). Staff requested the EPOC to approve the additions and modifications that were presented to them at the meeting. The proposed additions and modifications to the current version of the Guidelines encompass new statutes and regulations enacted since the last revision of the Guidelines. Staff recommended six sections to be added to the Guidelines:

B&P Code sections

- 5058.3 – Retired Designation
- 5070.1 (b) – Practice With a Retired License Status
- 5071.2(b) – Practice With A Military License Status

CBA Regulations

- 37.5 – Fingerprinting
- 50.1 – Attest Client Notification
- 80 – Inactive License Status

Staff also made three additional changes to the Guidelines presented at the previous EPOC meeting, including modifying the restitution section, and changing the descriptions of B&P Code sections 5104 and 5105. The EPOC members adopted the proposed additions to the Guidelines.

B. Report of the July 24, 2013 and September 26, 2013 Taskforce to Examine Experience for CPA Licensure Meeting.

Mr. Ixta reported on the July 24, 2013 Taskforce meeting. The Taskforce discussed statistical information regarding the types of experience with which general and attest applicants are initially licensed, the percentage of California licensees in public versus non-public practice, peer review reporting information, and CBA enforcement-related disciplinary actions taken against licensees with general and attest licenses.

Ms. Gerhardt reported on the September 26, 2013 Taskforce meeting. The Taskforce discussed acceptance of academia as qualifying experience requirement for CPA licensure. The Taskforce recommended that the CBA explore the possibility for allowing academia to qualify as experience.

Ms. Gerhardt also reported that the Taskforce recommended the CBA to eliminate the two pathways to licensure and discontinue requiring completion of 500 hours of attest experience. There was discussion about how over 40 states have adopted the Uniform Accounting Act (UAA) model that requires one year of general accountancy experience and does not include completing experience in attest.

Mr. Elkins discussed that the role of the committee liaison is being revisited by the CBA president. He also solicited input from the EAC members regarding the

elimination of the 500 hours of attest experience and allowing academia to qualify as experience. He will report this information at the next CBA meeting.

C. Discussion of Travel and Reimbursement Rates Effective July 1, 2013 and September 1, 2013.

Mr. Ixta reported on new lodging and per diem rates that went into effect July 1, 2013 and September 1, 2013. The agenda item was provided in the EAC packets.

VI. Public Comments for Items Not on the Agenda.

There were no public comments offered during the meeting.

VII. Conduct Closed Hearings.

[Closed session as authorized by Government Code sections 11126(c)(2) and (f)(3) and B&P Code section 5020 conducted after the general meeting to interview individual accountants and to consider possible disciplinary action against accountants prior to the filing of an accusation.]

VIII. Adjournment.

The next EAC meeting is scheduled for December 12, 2013 at the Westin San Diego Hotel.

Having no further business to conduct, the EAC general meeting adjourned at approximately 11:30 a.m. to reconvene in closed session at 1:00 p.m.

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Cheryl Gerhardt, CPA, Chair  
Enforcement Advisory Committee

Prepared by: Allison Nightingale, Enforcement Secretary

## California Board of Accountancy Enforcement Activity Report

Report as of October 31, 2013

### Complaints

The Enforcement Division has received 1,946 complaints in fiscal year (FY) 2013/14 and assigned 1,894 for investigation. The increase in complaints received since the last reporting period is due to the Peer Review Program preparing to issue citations and fines to the final group of licensees who failed to respond to the CBA regarding the required Peer Review Reporting Form.

<b>1.1 – Complaints/Records of Convictions</b>	FY 2011/12	FY 2012/13	FY 2013/14 <sup>1</sup>
Received	1,911	3,271	1,946
<i>Internal – Peer Review (Failure to Respond)</i>	872	1,800	1,483
<i>Internal – Peer Review (Other)</i>	58	508	125
<i>Internal – All Other</i>	503	510	210
<i>External</i>	478	453	128
Assigned for Investigation	1,626	2,951	1,894
Closed – No Action	294	329	51
Average Days from Intake to Closure or Assignment for Investigation	4	3	2
Pending	12	3	2
Average Age of Pending Complaints (days) <sup>1</sup>	16	3	8

<sup>1</sup> Represents point in time data as of October 31, 2013.

### Comments

- The CBA has received 338 non-peer review complaints in the current fiscal year.
- Peer Review (Other) complaints typically include investigation of failed peer review reports, failure to comply with the requirements of the deficiency process, and other violations that result from peer review.
- On average, staff assigned complaints to an investigator within two days of receipt.
- In the current fiscal year, approximately 97 percent of complaints received were opened for investigation, which is an increase from the previous fiscal year rate of 90 percent.

## Investigations

The CBA Enforcement Division assigned 1,894 cases for investigation in the current fiscal year. Enforcement staff closed 390 investigations, and there are currently 2,029 cases assigned for investigation.

<b>2.1 – Investigations</b>	FY 2011/12	FY 2012/13	FY 2013/14 <sup>1</sup>
Assigned	1,626	2,951	1,894
<i>Internal – Peer Review (Failure to Respond)</i>	872	1,794	1,483
<i>Internal – Peer Review (Other)</i>	58	437	125
<i>Internal – All Other</i>	335	361	170
<i>External</i>	361	359	116
Closed	1,525	2,872	390
Average Days to Close	85	73	113
Investigations Pending	439	518	2,029
<i>&lt; 18 Months</i>	384	500	1,994
<i>18-24 Months</i>	26	17	29
<i>&gt; 24 Months</i>	29	1	6
Average Age of Open Cases (days)	248	166	63
Median Age of Open Cases (days)	164	104	12

<sup>1</sup> Represents point in time data as of October 31, 2013.

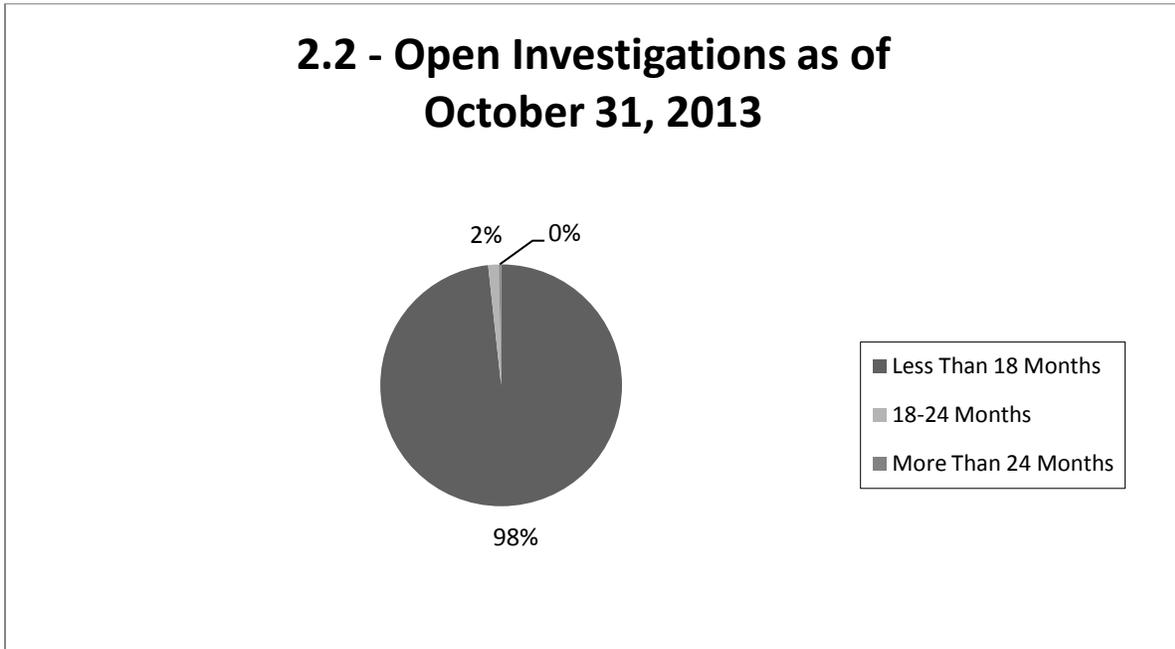
## Comments

- The Average Days to Close investigations has increased from 73 in the previous fiscal year to 113. The increase is primarily due to closing approximately 60 investigations that exceeded 200 days as investigative staff work to close aging cases.
- Six cases have been open for more than 24 months. The status for each of the cases is as follows:
  - Three investigations are ongoing. It is anticipated that at least one investigation will be completed in the next 30 days.
  - Two investigations are pending referral to the Attorney General's Office (AG), following Investigative Hearings.
  - One investigation is scheduled for an Investigative Hearing.

Enforcement management is actively working with staff to prioritize and complete cases that have been open for over 24 months. These cases are the more complex investigations and often require additional time to resolve.

- The number of investigations pending increased from 501 to 2,029 since the last report due to the Peer Review investigations. However, 1,483 cases will be closed when citations are issued on November 12, 2013.

Chart 2.2 illustrates the percentage of total open cases by length of time. Approximately 100 percent of investigations have been open for less than 24 months; two percent of investigations have been open for 18 to 24 months. It should be noted that six cases have been open for more than 24 months, however they represent less than one percent of the total, and therefore are rounded down to zero.



## Discipline

The Enforcement Division referred 16 complaints to the AG's Office in FY 2013/14. Twelve accusations have been filed. There are currently 63 cases pending at the AG's Office, with four pending for more than 24 months.

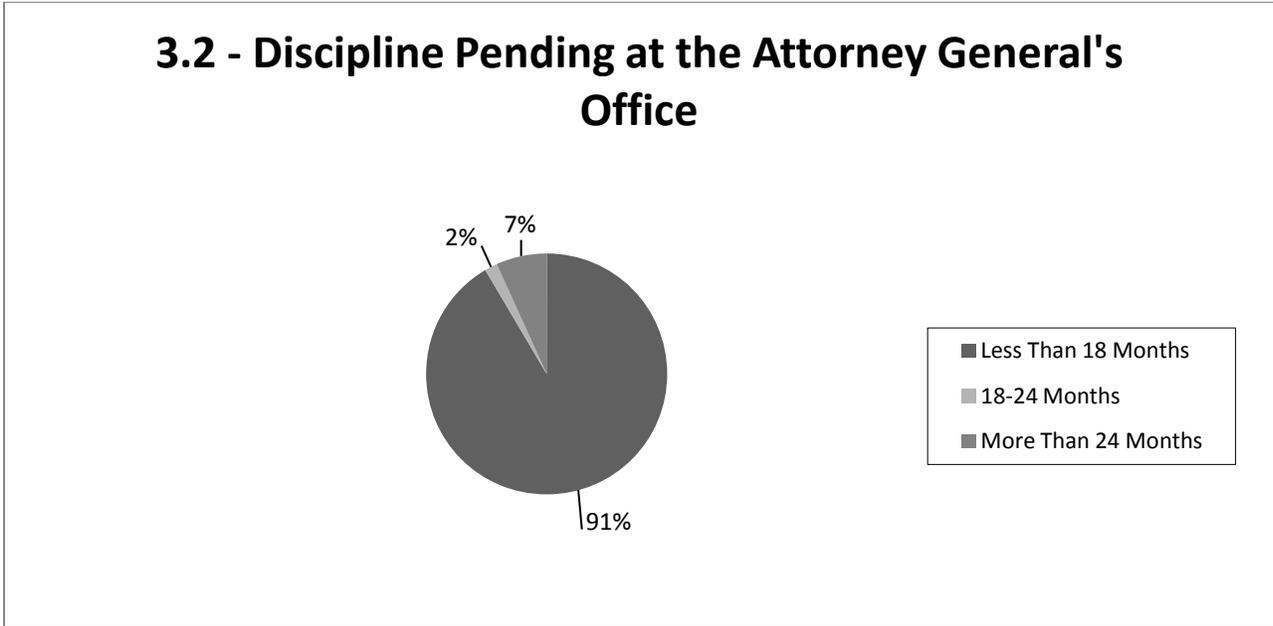
<b>3.1 - AG Referrals</b>	FY 2011/12	FY 2012/13	FY 2013/14
Referrals	50	62	16
Accusations Filed	37	50	12
Statements of Issues Filed	2	3	0
Petitions for Revocation of Probation Filed	3	3	4
Closed	26	58	12
<i>Via Stipulated Settlement</i>	19	39	8
<i>Via Proposed Decision</i>	3	5	0
<i>Via Default Decision</i>	4	14	4
Discipline Pending <sup>1</sup>	54	57	59
<i>&lt; 18 Months</i>	44	52	54
<i>18-24 Months</i>	3	2	1
<i>&gt; 24 Months</i>	7	3	4

<sup>1</sup> Represents point in time data as of October 31, 2013.

## Comments

- There are four cases that have been at the AG's Office for more than 24 months:
  - One of the cases had a writ filed with the California Superior Court, and a Superior Court hearing was held in June. The Court issued a tentative decision in September 2013, and staff is waiting for the final decision.
  - One will be considered by the CBA at the November 21-22, 2013, meeting.
  - Another case has been set for an administrative hearing in 2014.
  - Staff is actively working with opposing counsel on settlement terms for the final case. The administrative hearing is set for May 2014.
- The CBA has adopted eight stipulated settlements and four default decisions in FY 2013/14.

Chart 3.2 illustrates the number of cases pending at the AG's Office by percentage. Approximately 93 percent of all CBA cases at the AG's Office have been open less than 24 months, two percent have been pending 18-24 months, and seven percent have been pending more than 24 months.



## Citations and Fines

CBA Regulation 95 authorizes the CBA Executive Officer to issue a citation to licensees for violations of the Accountancy Act or CBA Regulations in lieu of formal disciplinary action. Since the beginning of FY 2013/14, twelve citations, with a total fine amount of \$10,750, have been issued by the Enforcement Division.

<b>4.1 – Citations</b>	FY 2011/12	FY 2012/13	FY 2013/14
Total Citations Issued	908	1,883	12
Total Fines Assessed	\$255,350	\$532,400	\$10,750
<i>Peer Review (Failure to Respond)</i>	872	1,800	0
<i>Peer Review Fines Assessed</i>	\$217,850	\$450,000	\$0
<i>Other Citations</i>	36	83	12
<i>Other Fines Assessed</i>	\$37,500	\$82,400	\$10,750
Average number of days from receipt of a complaint to issuance of a citation	22	67	309
Top 3 Violations			
1:	Response to CBA Inquiry (Reg 52)	Response to CBA Inquiry (Reg 52)	Response to CBA Inquiry (Reg 52)
2:	CE Basic Requirements (Reg 87)	CE Basic Requirements (Reg 87)	CE Basic Requirements (Reg 87)
3:	Name of Firm (B&P 5060)	Practice Without Permit (B&P 5050)	Name of Firm (B&P 5060)

### Comments

- The average number of days from receipt to citation has increased from the previous report. The previous two fiscal years include citations issued for failure to respond to CBA inquiry regarding peer review reporting. Those citations are generally issued within 30 days of opening the investigation, which results in lowering the average. Staff anticipates the number of days will normalize as the sample size increases.

### Probation Monitoring

Once the disciplinary process is complete, the matter is referred to a CBA Probation Monitor for tracking and compliance with the terms of probation. Staff held probation meetings in conjunction with the October Enforcement Advisory Committee (EAC) meeting, and met with five new probationers. The next probation meetings will be held in conjunction with the EAC meeting in December 2013. There are currently 60 licensees on probation.

## Peer Review

As of August 31, 2013, 61,243 Peer Review Reporting Forms have been submitted to the CBA. The reporting forms are categorized as follows:

<b>5.1 - Peer Review</b>						
License Ending In	Reporting Deadline	Peer Review Required	Peer Review Not Required	Not Applicable (Non-firms)	Total	Licensees Still Needing to Report
01-33	7/1/11	2,590	4,300	15,751	22,641	300
34-66	7/1/12	2,119	4,003	13,109	19,231	576
67-00	7/1/13	1,938	3,803	13,630	19,371	2,112
		6,647	12,106	42,490	61,243	2,988

### Comments

- Peer review staff mailed 4,146 letters to licensees who have not met their July 1, 2013 peer review reporting obligation. These licensees had 30 days to file the required form. Licensees who failed to file the required peer review reporting form will be subject to a citation and fine.
- On November 12, 2013, Enforcement staff will issue 1,483 citations to licensees who did not respond to CBA inquiries regarding peer review reporting. The citations will include a \$250 administrative fine.
- In accordance with CBA Regulation 40, effective January 1, 2014 reporting peer review will become a facet of license renewal.

### Performance Measures

**Attachment 1** is the performance measure report from the Department of Consumer Affairs (DCA). The CBA continues to meet or exceed all performance measures, with the exception of Goal 4, Formal Discipline. The CBA currently takes an average of 720 days to complete the entire disciplinary process, which exceeds the target of 540 days as set by the DCA. There are eight cases included in the performance measures report, with a median number of days of 800. Please note that the performance measure charts reflect data from July 1, 2013 to September 31, 2013, and therefore will not match this report.

## **Mobility**

Effective July 1, 2013, the CBA implemented a no notice, no fee practice privilege model in California. Staff has been working diligently to implement all of the requirements of Senate Bill 1405, including modifications to the CBA website, creation of a mobility tracking system, and the establishment of internal policies and procedures for when a complaint or practice privilege form is received. The table below depicts the enforcement aspects of mobility, including the receipt and investigation of Practice Privilege Pre-Notification Forms and Notification of Cessation Event forms.

<b>7.1 - Mobility</b>	<b>FY 2013/14</b>
Pre-Notification Form Received	6
Cessation Event Form Received	0
SEC Discipline Identified	10
PCAOB Discipline Identified	1
Out-of-State Accounting Firm Registrants That Reported Other Discipline	4
Complaints against Practice Privilege Holders	0

### **Comments**

- Of the six Pre-Notification Forms received, four were inadvertently completed by out-of-state licensees that did not have a pre-notification reporting requirement.
- Staff continues to monitor the Securities and Exchange Commission (SEC) and Public Company Accounting Oversight Board (PCAOB) websites for discipline information. Staff has drafted informational letters to all CPAs who were disciplined from either entity to inform them that they must seek CBA authorization prior to practicing in California.

## **Division Highlights and Future Considerations**

- The number of investigations open more than 24 months remains less than one percent of the total.
- Pending investigations have increased to 2,029, however that number will drop significantly once the citations for failure to respond to CBA inquiries regarding the peer review reporting requirement are issued.
- Approximately 1,483 citations for failure to respond to CBA inquiries regarding the peer review reporting requirement will be issued in mid November.