BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JEFFERY DESHON APPLEWHITE** P.O. BOX 8247 Inglewood, CA 90308 California Public Accountant License No. 41024 Respondent.	Case No.: AC-2013-6 OAH No.: 2013020834

DECISION AND ORDER

The attached Proposed Decision and Order of the Administrative Law Judge is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on December 27, 2013

It is so ORDERED on November 27th, 2013.

For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JEFFERY DESHON APPLEWHITE, Respondent.	Case No. AC-2013-6 OAH No. 2013020834

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on September 30, 2013, in Los Angeles.

Bora Song, Deputy Attorney General, represented Complainant.

Winston McKesson, Attorney at Law, represented Jeffery Deshon Applewhite.

At the request of Complainant's counsel, the Accusation was amended to strike the Third and Fourth Causes for Discipline. Respondent's counsel did not object to the amendment. The hearing went forward on the First and Second Causes for Discipline only.

Oral and documentary evidence was received, and argument was heard. The matter was submitted and the record was closed on September 30, 2013.

FACTUAL FINDINGS

1. On December 31, 2012, Patti Bowers (Complainant) filed the Accusation in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, State of California (Board or CBA).

2. On October 12, 1984, the Board issued certified public accountant certificate number 41024 to Jeffery Deshon Applewhite (Respondent). Pursuant to Business and Professions Code section 5070.5, the certificate was and is subject to renewal every two years. The renewal period for Respondent's certificate begins on July 1 of odd-numbered years. The certificate was most recently renewed on July 1, 2013, and will expire on June 30, 2015.

Subject Renewal Application

3. On July 25, 2011, the Board received a renewal application for Respondent's certificate which, at that time, had expired on June 30, 2011. This renewal application is the subject of the charges in the Accusation.

4. The renewal application submitted by Respondent was dated June 30, 2011. Respondent signed the renewal application and thereby certified, under penalty of perjury, "that all statements, answers, and representations on this form, including supplementary attached hereto, are true, complete, and accurate."

5. As a condition for renewing a certificate in an active status, a licensee of the Board must complete 80 hours of continuing education in the two-year period immediately preceding certificate expiration, and must meet the reporting requirements for continuing education. (Cal. Code Regs., tit. 16, §§ 87, subd. (a), and 89, subd. (a).) Thus, in order to renew his certificate, Respondent was required to complete 80 hours of continuing education between July 1, 2009, and June 30, 2011, and properly report his continuing education. Item 5 of the renewal application asked, "Did you complete the required total number of hours of continuing education (CE), including four hours of ethics education, to maintain active status?" Respondent answered Item 5 by checking the box for "Yes." This answer was false and misleading. As discussed in Findings 6, 7, and 9, below, Respondent did not complete the required 80 hours of continuing education within the two-year period immediately preceding June 30, 2011.

6. Part C of the renewal application is a Continuing Education Reporting Worksheet (CE Worksheet) on which the licensee is to report "CE information mandatory for active license renewal." The CE Worksheet has space for the licensee to report, among other things, the course title, date of completion, the name of the course provider, and the hours claimed for the course. The CE Worksheet indicates that a course must be completed by the licensee in order to be listed on the Worksheet.

7. (A) The CE Worksheet completed by Respondent shows 10 items for which he claimed a total of 120.5 hours of CE credit.

(B) The first two items on the CE Worksheet are for a total of six hours of CE that were completed on July 15, 2011. These CE hours were substantiated by a certificate of completion that Respondent submitted to the Board.

(C) The next five items listed on the CE Worksheet are for courses Respondent reported completing between July 17-26, 2011. The completion dates reported on the CE Worksheet do not match the dates on the completion certificates Respondent submitted to the Board. On the CE Worksheet, Respondent reported that he completed a course in advanced forensic techniques on July 17, 2011, but the course certificate shows a completion date of August 18, 2011. Respondent reported that he completed a course in forensic accounting on July 19, 2011, but the course certificate shows a completion date of

August 7, 2011. Respondent reported that he completed a course in estate planning on July 21, 2011, but the course certificate shows a completion date of August 1, 2011. Respondent reported that he completed a course in interactive charts in Excel on July 26, 2011, but the course certificate shows a completion date of July 20, 2011. The CE Worksheet states that Respondent completed a course in detection and prevention of fraud on July 26, 2011, but the course certificate shows a completion date of July 29, 2011. Based on the foregoing, it was established that Respondent reported false and misleading information on the CE Worksheet regarding the completion dates for these five courses.

(D) The eighth item listed on the CE Worksheet is an entry for a course entitled "Bank Agency Training," which Respondent reported he completed on January 4, 2010, for eight hours of CE credit. The ninth item listed is an entry for "H&R Block Convention," which Respondent reported attending on October 19, 2009, for 32 hours of CE credit. The tenth item listed is an entry for another "H&R Block Convention," which Respondent reported attending on November 1, 2010, for 32 hours of CE credit. By letter dated September 16, 2011, the Board requested Respondent to provide certificates of completion for these three items and a syllabus for each of the H&R Block Conventions. In response, Respondent submitted the following to the Board: (1) a certificate of completion for a course entitled "HRB Bank Agency Training 2010," with a completion date of December 15, 2009, and zero hours of CE credit; (2) a certificate of completion for a course entitled "HSBC Bank Agency Training 2010," with a completion date of January 8, 2010, and zero hours of CE credit; (3) the program listing for the October 2009 convention and a confirmation receipt of Respondent's registration for the convention; and (4) a confirmation receipt of Respondent's payment for his registration to the November 1-4, 2010 convention. None of the documents submitted by Respondent substantiate his claim of 32 hours of CE credit for each of the two conventions, or his claim of 8 hours for the Bank Agency Training. Based on the foregoing, it was established that Respondent reported false and misleading information on the CE Worksheet by claiming CE credit of 64 hours for the two conventions and 8 hours for the Bank Agency Training.

8. In addition to the documents described in Findings 7(C) and 7(D) above, Respondent also provided the Board with two certificates of completion for courses and CE hours that were not listed on the CE Worksheet. One certificate of completion was for a 1040 Tax Workshop completed on August 21, 2011, for 39 hours of CE credit. The other certificate of completion was for a course in using Excel in financial analysis, completed on August 22, 2011, for 2.5 hours of CE credit.

9. At this hearing, Respondent admitted that he had not completed the required 80 hours of continuing education by June 30, 2011. However, the documentary evidence established that Respondent had completed 90 hours of continuing education as of August 22, 2011. Respondent's renewal application was processed as a "delinquent renewal." Respondent's certificate was expired and not valid from July 1, 2011, through July 18, 2011. According to the Board's Certificate of License History (Exh. 2), effective July 1, 2013, Respondent's certificate was renewed through June 30, 2015.

Respondent's Contentions

10. Respondent is self-employed. He has worked as a certified public accountant since 1984. He does tax work for individuals, corporations, and businesses.

11. Respondent and his office assistant, Jean Purifoy (Purifoy), testified at this hearing regarding the preparation of the subject renewal application, including the CE Worksheet. Based on the accepted portions of their testimony,[1] the following circumstances were established: On or about July 18, 2011, Respondent filled out a copy of the renewal application and the CE Worksheet by hand and left it on Purifoy's desk to type the information on a clean copy of the application and CE Worksheet. Respondent signed the clean copy of the renewal application that he left for Purifoy to type. Respondent traveled from Los Angeles to his other office in Oakland, where he worked from July 18-26, 2011. While Respondent was in Oakland, Purifoy typed the renewal application, including the CE Worksheet, based on the handwritten information left by Respondent. She typed the date "6-30-11" in the space provided under Respondent's signature. Purifoy mailed the renewal application to the Board. The Board received the renewal application on July 25, 2011.

12. Respondent testified that the renewal application that the Board received on July 25, 2011, was actually the second renewal application he sent to the Board. Respondent testified that he sent another renewal application, along with a check for the renewal fee, to the Board on or about June 30, 2011. He contends that the first application was lost when his mail was stolen from the Post Office, which then prompted him to prepare the second application. Respondent's testimony was not credible. He presented no documentation from the Post Office to corroborate his claim that his mail had been stolen and was lost. He admitted he took no action to stop payment on the check he claimed was sent with the first application. Respondent's testimony regarding an earlier renewal application established no mitigating circumstances for the false and misleading information reported in the renewal application and CE Worksheet received by the Board on July 25, 2011.

13. Respondent testified that he believed the two H&R Block Conventions, and the Bank Agency trainings he reported to the Board, were approved for continuing education hours. He contends he only learned afterwards that they were not approved for CE credit. Respondent presented no documentation to support a reasonable belief that the conventions and training were approved for CE credit. The certificates of completion Respondent submitted for the Bank Agency trainings indicate zero hours for continuing education credit. Similarly, the documentation he submitted for the two conventions contain no indication that the conventions were approved for continuing education credit. Providers of courses

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[1] The trier of fact may "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.)

approved for continuing education credit are required to issue a certificate of completion to the participants and attendees. (Cal. Code Regs., tit. 16, § 88.1.) As a Board licensee, it was Respondent's responsibility to receive and collect the CE certificates to substantiate the CE hours claimed and reported to the Board.

14. During his testimony at this hearing, and during the Board's investigative hearing on May 3, 2012, Respondent offered no explanation for the discrepancy in the completion dates for the five courses listed on the CE Worksheet and the corresponding certificates of completion. His explanation that his assistant, Purifoy, typed the CE Worksheet does not excuse his failure to accurately report the completion dates on the CE Worksheet.

Cost Recovery

15. The reasonable cost of the investigation and prosecution incurred by the Board in this case is $18,421.49, consisting of $8,126.49 of investigation costs and $10,295 of prosecution costs. However, as explained in Legal Conclusion 7, below, the Board's cost recovery shall be reduced by one-half to $9,210.75, based on the striking of two of the four causes for discipline from the Accusation at the hearing, at Complainant's request.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 5100, subdivision (b), the Board may revoke or suspend any permit or certificate for unprofessional conduct, based on a violation of Business and Professions Code section 498. Section 498 provides: "A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

2. Cause exists to revoke or suspend Respondent's certificate, pursuant to Business and Professions Code sections 5100, subdivision (b), and 498, in that Respondent secured the renewal of his certificate by deceit and knowing misrepresentation of a material fact, based on Factual Findings 3-9.

3. Respondent made knowing misrepresentations of material fact in the subject renewal application, including the CE Worksheet. He misrepresented that he had completed the 80 hours of continuing education required to renew his certificate by his "Yes" answer to Item 5. This was not true or accurate. Respondent had not completed the 80 hours of CE in the two-year period immediately preceding the expiration of his certificate on June 30, 2011. He also misrepresented that he completed three CE courses on July 17, 19, and 21, 2011, when the certificates of completion showed that the courses were completed in August 2011. He failed to accurately report the completion dates for two other CE courses, reporting that he completed both courses on July 26, 2011, when the certificates showed that he completed the courses on July 20 and 29, 2011, respectively. He misrepresented that he completed a CE course on January 4, 2010 for 8 hours of CE credit. No documentation was submitted to

substantiate this claim. Respondent misrepresented that he earned a total of 64 hours of CE credit for attending two H&R Block Conventions. No documentation was submitted to substantiate this claim for 64 hours of CE credit.

4. Pursuant to Business and Professions Code section 5100, subdivision (g), the Board may suspend or revoke a certificate for unprofessional conduct, based on "[w]illful violation of this chapter or any rule or regulation promulgated by the Board under the authority granted under this chapter."

5. California Code of Regulations, title 16, section 89, subdivision (a), provides, in part: "Upon renewal, a licensee who is required . . . to obtain continuing education must provide a written statement, signed under penalty of perjury, certifying the requisite number of continuing education hours has been obtained." Subdivision (*l*) provides: "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."[2]

6. Cause exists to revoke or suspend Respondent's certificate, pursuant to Business and Professions Code section 5100, subdivision (g), and California Code of Regulations, title 16, section 89, subdivision (*l*), for unprofessional conduct, in that Respondent willfully violated California Code of Regulations, title 16, section 89, by willfully making false and misleading statements, in writing, regarding his continuing education, based on Factual Findings 3-9 and Legal Conclusion 3.

7. Cause exists to direct Respondent to pay the reasonable cost of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3. The reasonable cost of the investigation and enforcement of this matter is $18,421.49. (Factual Finding 15.) However, it is appropriate to direct Respondent to pay only one-half of that amount ($9,210.75) because, at Complainant's request, two of the four causes for discipline set forth in the Accusation were stricken, and the hearing went forward on only two of the causes for discipline. Thus, Respondent shall pay the Board the sum of $9,210.75 as the reasonable cost of investigation and enforcement of this matter, as set forth in the Order below.

8. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

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[2] The Accusation mistakenly cites subdivision (k) of section 89. The correct provision is subdivision (*l*).

9. The Board's Disciplinary Guidelines set forth the recommended minimum and maximum penalties, and conditions of probation, for various violations.[3] For a violation of Business and Professions Code section 5100, subdivision (b), the Guidelines recommend a minimum penalty of revocation stayed with 180 days actual suspension and three years' probation, and a maximum penalty of revocation. (Guidelines, p. 28.) For a violation of section 5100, subdivision (g), based on a violation of California Code of Regulations, title 16, section 89, the Guidelines recommend a minimum penalty of correction of the violation, a maximum penalty of revocation, and conditions of probation including ethics continuing education, regulatory review course, continuing education course, and administrative penalty. (Guidelines, pp. 31 and 56.)

10. (A) The grounds for discipline against Respondent's certificate are based on his failure to comply with the Board's requirements for reporting continuing education information in his renewal application and CE Worksheet. Specifically, he reported false and misleading information on the renewal application and CE Worksheet. This violation is serious in that it undermines the Board's ability to carry out its public protection function of ensuring that its certificate holders have the necessary level of continuing education to properly perform the functions and duties of a certified public accountant. The Board must be able to rely on its certificate holders to provide truthful, accurate, and complete information regarding continuing education compliance. The Board's regulations make it a ground for discipline for a licensee to provide false or misleading continuing education information to the Board. (Cal. Code Regs., tit. 16, § 89, subd., (*l*).) Further, Respondent's violations raise concerns about his ability to properly perform the public accountancy duties of verifying and certifying information and documents. (See, Bus. & Prof. Code, § 5051.) Here, Respondent signed his renewal application, thereby certifying the truth and accuracy of the information provided in the renewal application and CE Worksheet, when, in fact, the application and Worksheet contained false and inaccurate information, which he knew, or reasonably should have known, was false and inaccurate.

(B) Nonetheless, there was no financial injury to any of Respondent's clients or other consumers from his violation of the CE reporting requirements, there is no evidence of previous similar conduct by Respondent in reporting his CE compliance, and he cooperated with the Board's investigation by appearing and testifying at the May 3, 2012, investigative hearing. Respondent eventually completed the CE requirements and his certificate was renewed.

(C) The appropriate level of discipline in this case is revocation stayed, with a three-year probation under the Board's standard terms and conditions, plus the optional conditions of an ethics course and regulatory review course. Outright revocation of Respondent's certificate is not commensurate with the CE reporting violations in this case. Nor is merely requiring Respondent to correct the violations. Revocation stayed and a three-

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[3] The Board's Disciplinary Guidelines are incorporated by reference in the Board's regulations at California Code of Regulations, title 16, section 98. A copy of the Disciplinary Guidelines, 7th edition, 2011, was marked as Exhibit 8.

year probation is the appropriate penalty. Respondent's compliance with the Board's standard probation terms should reinforce in him his obligation, as a certificate holder of the Board, to provide truthful, accurate, and complete information to the Board in all matters regarding his certification by the Board. The optional conditions of an ethics course and regulatory review course will further his understanding of that obligation. An actual suspension of any period would be unduly punitive under the circumstances. Respondent is self-employed. The issues raised by Respondent's CE reporting violations will be sufficiently addressed by the terms of probation set forth in the Order below.

ORDER

Certified public accountant certificate number 41024 issued to Jeffery Deshon Applewhite (Respondent) is revoked, pursuant to Legal Conclusions 1 through 10 separately and for all of them. However, the revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions:

1. 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.

2. Cost Reimbursement

Respondent shall reimburse the Board $9,210.97 for its investigation and prosecution costs. The payment shall be made in quarterly payments (due with quarterly written reports), the final payment being due one year before probation is scheduled to terminate.

3. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. 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 or its representatives.

4. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. Comply With Probation

Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of Respondent's compliance with probation terms and conditions.

6. Practice Investigation
Respondent shall be subject to, and shall permit, a practice investigation of Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. Comply With Citations
Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

8. 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 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 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.

9. Violation of Probation
If Respondent violates probation in any respect, the Board, 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 shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

The 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.

10. Completion of Probation
Upon successful completion of probation, Respondent's license will be fully restored.

11. 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, title 16, 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 CBA and shall cease practice until Respondent completes said courses,

has submitted proof of same to the CBA, and has been notified by the CBA that he 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.

12. Regulatory Review Course

Respondent shall complete a 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 the first year of probation. The course also will include an overview of historic and recent disciplinary actions taken by the CBA, highlighting the misconduct which led to licensees being disciplined. The course shall be a minimum of two hours.

If Respondent fails to complete said courses within the time period provided, Respondent shall so notify the CBA and shall cease practice until Respondent completes said courses, has submitted proof of same to the CBA, and has been notified by the CBA that he 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.

DATED: November 1, 2013

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JEFFERY DESHON APPLEWHITE** P.O. Box 8247 Inglewood, CA 90308 Certified Public Accountant Certificate No. 41024 Respondent.	Case No. AC-2013-6 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patti Bowers ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about October 12, 1984, the California Board of Accountancy issued Certified Public Accountant Certificate ("CPA") Number 41024 to Jeffery Deshon Applewhite ("Respondent"). The CPA Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

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JURISDICTION AND STATUTORY PROVISIONS

3. This Accusation is brought before the California Board of Accountancy ("CBA"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 5100 states, in pertinent part:

> "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:
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> ...
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> (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.
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> ...
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> (g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter."

5. Section 5050 states, in pertinent part:

> "(a) Except as provided in subdivision (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096.)."

6. Section 5051 states:

> "Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of [Chapter 1 of Division 3 (commencing with Section 5000)] if he or she does any of the following:
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> (a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.
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> (b) Maintains an office for the transaction of business as a public accountant.
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> (c) 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.

(d) Prepares or certifies for clients reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining credit, for filing with a court of law or with any governmental agency, or for any other purpose.

(e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.

(f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.

(g) Prepares or signs, as the tax preparer, tax returns for clients.

(h) Prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans.

(i) Provides management consulting services to clients.

The activities set forth in subdivisions (f) to (i), inclusive, are 'public accountancy' only when performed by a certified public accountant or public accountant, as defined in this chapter.

A person is not engaged in the practice of public accountancy if the only services he or she engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does not hold himself or herself out, solicit, or advertise for clients using the certified public accountant or public accountant designation. A person is not holding himself or herself out, soliciting, or advertising for clients within the meaning of this section solely by reason of displaying a CPA or PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than signs, advertisements, letterhead, business cards, publications directed to clients or potential clients, or financial or tax documents of a client."

7. Section 498 of the Code states:

"A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 63 provides:

"A licensee shall not advertise or use other forms of solicitation in any manner which is false, fraudulent, misleading, or in violation of Section 17500 of the Business and Professions Code."

9. California Code of Regulations, title 16, section 89 provides, in pertinent part:

"(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."

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COST RECOVERY

10. Section 5107(a) of the Code states:

> "The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: False Statement on License Renewal Application)

11. Respondent is subject to disciplinary action pursuant to section 5100, subdivision (b) of the Code in conjunction with section 498 of the Code on the grounds of unprofessional conduct in that Respondent secured his license by fraud, deceit, knowing misrepresentation of a fact or by knowingly omitting to state a material fact. Specifically, on or about June 30, 2011, Respondent's license to practice accountancy expired. On or about July 20, 2011, Respondent submitted a license renewal application in which Respondent indicated that he completed the required total number of hours of continuing education ("CE") to maintain active license status. However, four of the CE entries were dated after the postmark date and the certificates did not match the dates entered on his CE reporting worksheet. Furthermore, Respondent misrepresented earning 64 CE hours for attendance at two H&R Block conferences.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: False or Misleading Statement Regarding Continuing Education)

12. Respondent is subject to disciplinary action under section 5100, subdivision (g), in conjunction with California Code of Regulations, title 16, section 89, subdivision (k) on the grounds of unprofessional conduct in that Respondent willfully made false and misleading statements regarding his CE. The false and misleading statements are described in more particularity in paragraph 11 above, inclusive and hereby incorporated by reference.

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THIRD CAUSE FOR DISCIPLINE

(Practice Without Permit)

13. Respondent is subject to disciplinary action under section 5050, subdivision (a) of the Code as defined in section 5051 of the Code in that Respondent engaged in the practice of public accountancy in California without a valid permit to practice public accountancy issued by the CBA. Specifically, Respondent's license to practice public accountancy expired on or about June 30, 2011. He submitted his license renewal application on July 20, 2011, but his license was not reinstated until February 1, 2012. On or about December 7, 2011, the Enforcement Division conducted on online search of Respondent's company which indicated that he was advertising his services as a CPA.

FOURTH CAUSE FOR DISCIPLINE

(False, Fraudulent or Misleading Advertising)

14. Respondent is subject to disciplinary action under California Code of Regulations, title 16, section 63 in that Respondent advertised or used other forms of solicitation in a manner which is false, fraudulent and misleading. The false, fraudulent and misleading advertising is described in more particularity in paragraph 13 above, inclusive and hereby incorporated by reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 41024, issued to Jeffery Deshon Applewhite;

2. Ordering Jeffery Deshon Applewhite to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED: 12/31/2012

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
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