CALIFORNIA BOARD OF ACCOUNTANCY
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DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY

FINAL

MINUTES OF THE July 22, 2005 BOARD MEETING

Crowne Plaza Union Square
480 Sutter Street
San Francisco, CA 94108
Telephone: (415) 398-8900
Facsimile: (415) 989-8823

I. Call to Order.

President Renata M. Sos called the meeting to order at 12:30 p.m. on Thursday, July 21, 2005, at the Crowne Plaza Union Square in San Francisco and immediately convened into closed session to discuss Agenda Items XI.A-F. The Board adjourned at 1:28 p.m. The Board was again called to order at 8:04 a.m. on Friday, July 22, 2005, and the Board adjourned at 12:29 p.m.

Board Members	July 22, 2005
Renata M. Sos, President	8:04 a.m. to 12:00 p.m.
Ronald Blanc, Vice President	8:04 a.m. to 12:29 p.m.
Sally Flowers, Secretary-Treasurer	8:04 a.m. to 12:29 p.m.
Richard Charney	8:04 a.m. to 12:29 p.m.
Ruben Davila	8:04 a.m. to 12:29 p.m.
Donald Driftmier	8:04 a.m. to 12:29 p.m.
Charles Drott	8:04 a.m. to 12:29 p.m.
Sara Heintz	8:04 a.m. to 12:29 p.m.
Gail Hillebrand	Absent
Thomas Iino	8:04 a.m. to 12:29 p.m.
Clifton Johnson	8:04 a.m. to 12:29 p.m.

Olga Martinez	8:04 a.m. to 12:29 p.m.
David Swartz	8:04 a.m. to 12:29 p.m.
Stuart Waldman	8:04 a.m. to 12:29 p.m.

Staff and Legal Counsel

Albert Balingit, Legal Counsel
Mary Crocker, Assistant Executive Officer
Michael Granen, Deputy Attorney General, Board Liaison
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Aronna Wong, Legislation Analyst

Committee Chairs and Members

Roger Bulosan, Vice Chair, Qualifications Committee
Nancy Corrigan, Chair, Qualifications Committee
Harish Khanna, Chair, Administrative Committee

Other Participants

Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Steve Desdier, California Society of Accounting and Tax Professionals (CSATP)
Mike Duffey, Ernst & Young LLP
Nancy Hall, DCA, Deputy Director Board Relations
Ken Hansen, KPMG LLP
Bill Holder, Professor of Accounting, USC,
AICPA, Chair of the Board of Examiners
Art Kroeger, Society of California Accountants (SCA)
Craig Mills, Executive Director of Examinations, AICPA
Richard Robinson, Big 4 Accounting Firms
Hal Schultz, California Society of Certified Public Accountants (CalCPA)
Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)

II. Board Minutes.

A. Draft Board Minutes of the May 20, 2005, Board Meeting.

The draft Board minutes of the May 20, 2005, Board meeting were adopted on the Consent Agenda. (See Agenda Item XII.B.)

III. Report of the President.

The minutes of the May 19, 2005, EPOC meeting were adopted on the Consent Agenda. (See Agenda Item XII.B.)

G. Practice Privilege Task Force (PPTF).

1. Draft Minutes of the May 19, 2005, Practice Privilege Task Force Meeting.

   The minutes of the May 19, 2005, Practice Privilege Task Force meeting were adopted on the Consent Agenda. (See Agenda Item XII.B.)

H. Peer Review Task Force (PRTF).

Ms. Sos acknowledged Mr. Drott's terrific work on the Task Force. She noted that the issues have not been straightforward, there were strongly held views on all ends of the spectrum, and Mr. Drott's leadership allowed for a forum where all views were expressed fully and in a professional and considerate way. Ms. Sos thanked Mr. Drott for setting the right tone and having the issues fully vetted and ready to present to the Board. Mr. Drott thanked Ms. Sos for her kind words. He also thanked and offered his gratitude to each member of the Task Force and Board staff for their dedication.

1. Minutes of the February 11, 2005, Peer Review Task Force Meeting.

   The minutes of the February 11, 2005, Peer Review Task Force meeting were adopted on the Consent Agenda. (See Agenda Item XII.B.)

2. Report on the July 21, 2005, PRTF Meeting.

   Mr. Drott reported that the Peer Review Task Force met the previous day and discussed the agenda item below.

3. Adoption of the Peer Review Report.

   Mr. Drott reported that the Legislature had reached the position that peer review should be mandatory several years ago. In view of the collapses of Enron and WorldCom, the Legislature asked the Board to revisit the issue of whether peer review should be mandatory and report its position by September 1, 2005. Mr. Drott indicated that the Task Force had done a tremendous job that resulted in the draft report provided in the agenda packet. **(See Attachment 7.)**

State of California Department of Consumer Affairs

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Board Agenda Item VIII.G. 1
July 22, 2005

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
May 19, 2005

DRAFT

The Westin Horton Plaza
910 Broadway Circle
San Diego, CA 92101

CALL TO ORDER

Gail Hillebrand, Chair, called the meeting of the Practice Privilege Task Force to order at 9:00 a.m. and welcomed the participants. Ms. Hillebrand indicated that to ensure compliance with the Bagley-Keene Open Meeting Act, when a quorum of the Board is present at this meeting (eight members of the Board), Board members who are not serving on the Task Force must attend as observers only.

Present:
Gail Hillebrand, Chair
Thomas Iino
Hal Schultz
Renata Sos

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Greg Newington, Chief, Enforcement Program
LaVonne Powell, Legal Counsel
Carol Sigmann, Executive Officer
Liza Walker, Regulation Analyst
Jeannie Werner, Deputy Attorney General
Aronna Wong, Legislation Coordinator

Other Participants
Bruce Bialosky, CPA
Julie D'Angelo-Fellmeth, Center for Public Interest Law
Michael Duffey, Ernst and Young LLP
Bill Gage, Chief Consultant, Senate Committee on Business, Professions & Economic Development
Kenneth Hansen, Chief Operations Officer, KPMG LLP

Harish Khanna, Chair, Administrative Committee
Richard Robinson, Richard Robinson and Associates
Jeannie Tindel, California Society of Certified Public Accountants

Board Members Observing
Richard Charney
Donald Driftmier
Olga Martinez

I. Minutes of the March 17, 2005, Meeting

It was moved by Mr. Schultz, seconded by Ms. Sos, and unanimously carried to approve the minutes of the March 17, 2005, meeting.

II. Adoption of Appendix 1 to the Practice Privilege Notification Form.

Ms. Franz reported that at the September 2004 meeting the Board adopted the Task Force's recommendation that the Board accept the National Association of State Boards of Accountancy's (NASBA's) list of substantially equivalent states, subject to continuous monitoring by the Board, in lieu of the Board reviewing each individual state's requirements and developing its own list. She explained that Attachment 3 to her May 10, 2005, memo provided the current list of those states for consideration and action by the Task Force (see Attachment 1). Ms. Franz indicated that it is envisioned that the list of substantially equivalent states will become part of the instructions for the Notification Form.

Ms. Sos stated that she believed the second sentence on the list of substantially equivalent states is unnecessary. She noted that when she read the sentence, she did not believe it was quite accurate, and given that this will accompany the instructions, it is not necessary. She added that she believed deleting this sentence would improve the clarity of the narrative provided with the list.

After discussion, it was moved by Mr. Schultz, seconded by Ms. Sos, and unanimously carried to recommend Board approval of Appendix 1 with the change suggested by Ms. Sos.

Ms. Franz also reported that there was one outstanding issue related to Appendix 1. She explained that, as NASBA adds or deletes states from the list, some mechanism may be needed to enable the Board to add or delete states from Appendix 1 without action at a Board meeting. She indicated that staff suggest that the Task Force consider delegating to either the Executive Officer or the leadership of the Board the authority to act upon changes NASBA makes to its list rather than waiting for the next Board meeting.

Ms. Hillebrand stated that she would be inclined to delegate the authority to the Executive Officer. Ms. Sigmann explained that there would be a report to the Board at the meeting subsequent to any action taken by the Executive Officer.

After discussion, it was moved by Ms. Sos, seconded by Mr. Schultz, and unanimously carried to delegate the authority to the Executive Officer to maintain Appendix 1 as NASBA makes changes to its list of substantially equivalent states.

Ms. Hillebrand reported that at the last meeting, the Task Force had recommended that the Board suggest to NASBA that it undertake the job of making available to the profession information regarding practice privilege requirements in various states. She noted that staff have sent a letter communicating this request.

III. Consideration of an Approach to Address Issuance of Reports Under the Name of Non-Registered Firms.

Ms. Hillebrand introduced this agenda item by noting that at the last Task Force meeting there was discussion of various concerns related to the issuance of reports under the name of a non-registered firm and how that could best be addressed. This issue arose during the discussion of the "Q&As" related to practice privilege. One of the questions staff anticipated would be asked was "If I am an individual holding a practice privilege, can I sign a tax return on behalf of my firm?" It was noted that, under current law, after January 1, 2006, the firm would have to be registered in California, before that question could be answered affirmatively. Ms. Hillebrand added that after the discussion at the last Task Force meeting, she and Ms. Sos were tasked with responsibility for working with staff and legal counsel to explore how to address this issue.

Ms. Hillebrand then asked Ms. Crocker to describe the proposal that was developed. Ms. Crocker reported that after discussing the issue, it was concluded that the best approach would be to create a narrow exception from the requirements for firm registration in the area of tax prepartion. In pursuing a way to craft that exception, the working group first identified areas where no exception would be possible. It was determined that anytime an individual physically enters California to practice public accountancy as an agent of a firm, that individual must be affiliated with a California-registered firm. Also, any time a firm performs financial statement work there is sufficient consumer risk so the firm must be registered with the Board. Ms. Crocker explained that after further discussion, the working group concluded that an exemption from firm registration would only be reasonable in those instances in which the practitioner is preparing individual tax returns, does not physically enter California, does not solicit any California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California. Ms. Crocker added that this individual would be exempt from licensure and practice privilege requirements as well. She noted that draft statutory language provided is in the materials for this agenda item (Attachment 2).

Ms. Hillebrand added that the working group was asked to develop a way in which someone could hold the practice privilege and sign a tax return on behalf of his or her firm without the firm being registered in California. The working group found that any solution it considered using this approach appeared to cause more problems than it solved, and it seemed more appropriate to carve out a very narrowly defined activity that would not require a practice privilege. She added that it is for this reason that the exemption is fairly narrow and the person would be required to meet all of the conditions described by Ms. Crocker.

Ms. Hillebrand then asked for comments or questions from Task Force members. Mr. Schultz stated that he believed that this approach is well thought out because an individual may establish a relationship with a CPA outside of California and should be able to continue that relationship. He stated that he did not believe that there was any consumer harm in allowing for this narrow exception. He then inquired about a situation in which an out-of-state firm sends someone to California to perform an inventory observation. Ms. Crocker indicated that she believed that since this is attest work it would not fit within the criteria for the exception.

Mr. Iino observed that the relevant terms in this proposal were "individual tax returns" and "physical entry into California." He asked about whether it would be permissible to complete partnership, corporate, sales tax, or property tax returns under the narrow exception. Ms. Crocker responded that the language as provided would not permit partnership or corporate tax returns.

Ms. Wong indicated that the working group chose this approach because individual tax returns seemed to be the area where the Board received the most comments from individuals regarding possible difficulty. Mr. Granen explained that the language provided solves a problem that has been raised at the national level. Ms. Hillebrand added that whatever place the Board chooses to draw a line, there will be close cases on both sides.

Ms. Hillebrand then invited any public comments regarding the proposal. Mr. Bruce Bialosky, CPA, provided oral comments regarding the proposal and provided a written summary of his remarks (Attachment 3). He explained that he was greatly concerned about the potential the problems practice privilege requirements could create and requested that the preparation of individual tax returns be exempted. He noted that many CPAs prepare tax returns for their client's children or prepare multi-state tax returns. Also, many consumers maintain a long-term relationship with the CPA from the state where they lived prior to moving to California. He noted that California rules are held in high regard in other states, and he was concerned that the practice privilege laws could result in reciprocal requirements in other states.

Mr. Schultz asked Mr. Bialosky whether he would like to see anything beyond proposed Section 5054. Mr. Bialosky responded that the proposed statute addressed his concerns with California practice privilege. Mr. Schultz observed that there appeared to be general agreement regarding the concept embodied in the proposed Section 5054.

The Task Force then considered whether there should be modifications to the language of proposed Section 5054 to specify particular types of tax returns or to specify a level of complexity. Mr. Newington noted that there are many other kinds of tax returns besides individual income tax returns – for example sales tax, property tax, and estate tax returns. Mr. Iino indicated that tax returns prepared for individual persons could still be very complex. Ms. Hillebrand indicated that the only reason the exemption was acceptable to her was that it applied to individual tax returns but did not permit the preparation of tax returns for corporations or other business entities. She suggested that the language could be revised to indicate "personal individual income tax returns." She added that she did not know of a way to address complexity. Ms. Sos suggested that rather than trying to address the type and complexity of the tax return in the statute, perhaps subdivision (b) could be revised to permit the Board to address these issues in regulations.

Ms. Hillebrand then summarized the discussion by noting that there appeared to be consensus regarding the general concept. She added that the remaining issues are whether the language should be revised to restrict it to personal, individual income tax returns and whether subdivision (b) should be revised to permit the nature and complexity of the tax return to be addressed in regulations. Ms. Hillebrand suggested a break so that draft language could be prepared for further discussion by the Task Force.

After the break, Ms. Hillebrand noted that language had been drafted related to estate tax returns. At Ms. Hillebrand's request, Mr. Granen read the following language to the Task Force:

> *Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may prepare tax returns for natural persons who are California residents <u>and the estate tax return for the estate of a natural person who was a client at the time of the client's death</u> without obtaining a permit to practice public accountancy issued by the Board under this chapter or a practice privilege pursuant to Article 5.1 of this chapter provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.*

The Task Force decided to delay action on this amendment until the other remaining issues had been addressed.

Mr. Iino suggested deleting the word "individual." Ms. Werner noted that the word "individual" could be interpreted as a discrete or single tax return which is the not the intention. Ms. Wong added that she believed that with the use of the term "natural person" the word "individual" was not necessary. It was the consensus of the Task Force to delete the word "individual."

Ms. Hillebrand raised the question of whether the proposed statute should be restricted to income tax returns or whether all types of tax returns should be included. She explained that this issue was raised by practitioners who would like to continue preparing income tax returns for clients who have moved to California or have family members in California. She stated she was concerned that permitting other kinds of returns may suggest a deeper connection with the client in California. She asked the licensee members of the Task Force to indicate the types of returns that would not be permitted if the word "income" was added. Mr. Iino explained that if the word "income" was added to the language, gift, property, and sales tax returns would not be permitted. After discussion, it was the consensus of the Task Force to not add the word "income."

Ms. Hillebrand noted that the concept of practice privilege was introduced as a way of ensuring that the Board knows who is serving California clients. She believed that, when proposing an exception, it was the Board's responsibility to keep that exception as narrow as possible while still making it workable.

After further discussion, it was moved by Mr. Iino, seconded by Ms. Sos, and unanimously carried to recommend Board approval of proposed Section 5054 with the deletion of the word "individual" and the addition of the estate tax return language suggested by Mr. Granen.

Ms. Hillebrand thanked the Task Force members for all of their work to date and noted that the Q&As may need updating to reflect the policy decisions that were made this meeting. However, these changes were premature until the statutory language was enacted. Ms. Sigmann stated that staff will make every effort to pursue legislation, and it is possible that the statute will be in place by January 1, 2006, provided there is no opposition. Ms. Hillebrand indicated that the Task Force would reconvene in September to update the Q&As, and by that time the Board would know if the statute would be in place on January 1, 2006.

IV. Comments from Members of the Public.

Members of the public provided comments during the course of the meeting.

There being no further business, the meeting was adjourned at 10:55 a.m.

State of California
Department of Consumer Affairs

Attachment 1

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

Memorandum

Practice Privilege Agenda Item II.
May 19, 2005

Board Agenda Item VIII.F.3.
May 20, 2005

To : Practice Privilege Task Force Members
Board Members

Date : May 10, 2005

Telephone : (916) 561-1740
Facsimile : (916) 263-3676
E-mail : pfranz@cba.ca.gov

Theresa Siepert for

From : Patti L. Franz
Licensing Manager

Subject : Consideration of Appendix 1 to the Practice Privilege Notification Form

At its meeting of September 9, 2004, the Practice Privilege Task Force considered whether to accept the National Association of State Boards of Accountancy's (NASBA) list of "substantially equivalent" states in lieu of the Board developing its own list. The purpose of Appendix 1 is to identify the states from which out-of-state licensees who hold a valid, current license qualify for a California practice privilege pursuant to Section 27(a) of the regulations (Attachment 1).

Based upon the information provided by NASBA and NASBA Vice-Chair Diane Rubin at the meeting, the Task Force recommended and the Board agreed to accept NASBA's list of substantially equivalent states for California practice privilege while continuing to monitor and add or delete states as necessary. (Attachment 2 includes September Task Force and Board meeting minutes for background information.)

The practice privilege statutes give the Board the authority to adopt NASBA's determination that a state is substantially equivalent. It is for this purpose that staff have listed the states deemed substantially equivalent by NASBA in Appendix 1 for Task Force and Board member consideration and action (Attachment 3). It is anticipated that Appendix 1 will accompany the instructions to the Practice Privilege Notification Form.

Outstanding Issue to be Discussed by the Task Force
During the preparation of this agenda item, staff identified an outstanding issue related to Appendix 1.

As additional states are either added or deleted, NASBA will update the list. The Board needs to develop a procedure that provides for a timely response when changes are necessary. One option would be for the Board to delegate the authority to the leadership of the Board or the Board's Executive Officer to consider and approve any revisions to NASBA's list.

I will be at the meeting to answer any questions the Task Force or Board members may have.

Attachments

Section 27. Qualifications for the Practice Privilege.

To be eligible for a practice privilege, an individual whose principal place of business is not in California and who holds a valid, current license to practice public accountancy issued by another state shall meet the requirements of Business and Professions Code Section 5096 including, but not limited to, satisfying one of the following:

(a) Hold a current, valid license, certificate, or permit from a state determined by the Board to have education, examination, and experience requirements for licensure substantially equivalent to the requirements in Business and Professions Code Section 5093;

(b) Possess education, examination, and experience qualifications that have been determined by the Board to be substantially equivalent to the qualifications under Business and Professions Code Section 5093. Pursuant to subdivision (b) of Business and Professions Code Section 5096, the Board accepts individual qualification evaluations of substantial equivalency by the National Association of State Boards of Accountancy's (NASBA's) CredentialNet. Prior to seeking a practice privilege under this paragraph, an individual shall apply to NASBA's CredentialNet, pay the required fee, and obtain the required substantial equivalency determination. The individual shall report the NASBA file number on the Notification Form submitted pursuant to Section 28 and shall authorize the Board to review the NASBA file upon request; or

(c) Have continually practiced public accountancy as a Certified Public Accountant under a current, valid license issued by any state for four of the last ten years.

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Attachment 2

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING

September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Present:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Richard Charney, Board Member
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Baord Member
Michael Duffey, Ernst and Young LLP

Harish Kahnna, Administrative Committee Chair
Richard Robinson, Richard Robinson and Associates
Diane Rubin, NASBA Vice Chair-Elect
Jeannie Tindel, California Society of Certified Public Accountants

Board Members Observing
Richard Charney
Donald Driftmier
Olga Martinez

I. Minutes of the July 15, 2004, Meeting.

It was moved by Ms. Hillebrand, seconded by Mr. Schultz, and unanimously carried to approve the minutes of the July 15, 2004, meeting.

II. Update on Status of Practice Privilege Legislation.

Ms. Sos reported that SB 1543 (Figueroa), the legislation containing the practice privilege provisions, was on the Governor's desk. She noted that the votes on the bill both in the Assembly and the Senate were closer than expected and many Republicans voted "no," however she believed the practice privilege provisions were not the source of their concern. Ms. Sigmann added that the Department of Consumer Affairs is finishing its analysis of the bill. It appears that the provision related to outsourcing and the Franchise Tax Board provisions in the bill are the most troubling.

III. Consideration of Whether the Board Should Accept NASBA's Designation of States as Substantially Equivalent (Subject to Board Review) or Develop its Own List.

A. Presentation by Diane Rubin of NASBA.

Ms. Sos welcomed Ms. Rubin. Ms Sos then indicated she would like the Task Force to consider Agenda Items III and IV together. In her introductory remarks, Ms. Sos noted that the National Association of State Boards of Accountanacy (NASBA) already makes determinations regarding which states are "substantially equivalent" and, through CredentialNet, performs a similar service for individuals who meet education, exam, and experience requirements substantially equivalent to the Uniform Accountancy Act (UAA).

Ms. Sos noted that the practice privilege statutes give the Board the authority, subject to its own continuous oversight and monitoring, to accept determinations made by entities such as NASBA. She indicated the issue before the Task Force is whether this is an appropriate course of action. She added that the guiding factors for this discussion are the same factors that guided the development of the practice privilege proposal: first and foremost to protect California's consumers; second to avoid unnecessary workload for staff and, for example by using resources that are already available; and also to promote uniformity across states and make the movement of qualified individuals across borders as seamless as possible.

Ms. Sos noted that after reviewing the materials that had been provided at previous Task Force meetings, it appeared to her that NASBA uses a very rigorous process to determine substantial equivalency, both for states and for individuals. She explained that Ms. Rubin was attending to help the Task Force sort through this information. Ms. Rubin was uniquely positioned to assist the Task Force because she is a former Board President and shares the Board's commitment to protection. In addition Ms. Rubin, as Vice Chair-elect of NASBA can provide a national perspective.

Ms. Rubin complimented the Task Force for its work in developing the practice privilege statutes which she described as a significant step forward beyond the temporary practice rules. She noted that practice privileges are consistent with the goal of maximizing consumer protection while at the same time having an efficient and effective cross-border procedure that encourages compliance.

Ms. Rubin explained that substantial equivalency focuses on the "3Es" of education, examination, and experience. For states, NASBA's National Appraisal Qualifications Services Board reviews a state's laws and regulations to determine if it is substantially equivalent to the UAA. This review is done on a very regular basis. Based on a recent review, Colorado had been removed from the list because it no longer has the 150 hour requirement. Also, Pennsylvania had been added.

Ms. Rubin noted that sometimes a state asks to be reviewed. For example, California requested to be reviewed because California law requires 150 hours of education at the point of licensure and not at the point of the examination. California was determined to be substantially equivalent in spite of this variation. The emphasis on "substantial" rather than "absolute" equivalency provides for consumer protection while at the same time facilitating efficient and effective cross-border practice.

Ms. Rubin indicated that the list of substantially equivalent states is available at no charge from NASBA. The alternative would be for Board staff or a Board committee to review the laws and regulations of all of the states and to repeat this review on a regular basis.

Ms. Rubin then discussed ethics and ethics education and indicated it is an important focus for NASBA even though it is not part of the substantial equivalency determination. She reported that the Education Committee of NASBA is proposing that ethics be a required component of the 150 hours of education. She also indicated that the Ethics Committee of NASBA is considering a continuing education course that will be acceptable to various state boards. She observed that most ethics courses are similar and emphasize independence which is the second Generally Accepted Auditing Standard (GAAS). She noted that questions related to independence make up a significant portion of the auditing section of the Uniform CPA Examination. Consequently, CPAs from other states are very familiar with this subject.

Ms. Rubin then explained that when making a determination of an individual's substantial equivalency, NASBA's CredentialNet conducts a very thorough review which includes reviewing college transcripts and verifying experience. She noted that CredentialNet tailors its services to the needs of a particular individual.

Ms. Rubin concluded her remarks by indicating she believed NASBA was doing a very thorough job and that its services facilitated cross-border practice while at the same time providing excellent consumer protection.

B. Discussion.

Ms. Flowers asked for more information regarding CredentialNet. Ms. Sos clarified that CredentialNet would be used by CPAs from non-substantially equivalent states who do not qualify for practice privileges under the "four of ten" rule. It is anticipated that there will not be many CPAs in this group. The CPA would provide CredentialNet with documents establishing his or her professional credentials and would pay the $100 fee. CredentialNet's review would take approximately six to eight weeks. After being deemed substantially equivalent by CrednetialNet, the CPA would make this assertion, under penalty of perjury, by checking the appropriate box on the practice privilege notification form. Ms. Rubin added that CrednetialNet is the only entity providing this service and that it is driven by what each state needs.

Ms. Hillebrand inquired if an ethics course becomes part of the 150 hour requirement, would ethics be required for substantial equivalency. Ms. Rubin indicated that this would be decided by the National Appraisal Qualifications Services Board. Ms. Rubin also indicated it would take time for it to become part of the curriculum at colleges.

Ms. Sos indicated that the question for the Task Force is, given that ethics are embedded in the professional standards and many states have some kind of ethics requirement, will California consumers be put at risk if CPAs from other states are permitted to practice here without meeting California's requirements. Ms. Rubin indicated she did not believe there was much risk to California's consumers since the practice privilege provisions provide greater consumer protection than the temporary practice rules they replace. Mr. Schultz agreed with Ms. Rubin, adding that a CPA practicing with a practice privilege is putting his or her home state license at risk. He noted that at a recent NASBA meeting every state appeared to have a different ethics requirement, however all states indicated ethics is a focus. He encouraged the Board to view the ethics requirements established by other state boards as valid. He further suggested that enforcing a specific California requirement would have little incremental benefit and could impede practice across borders.

Ms. Sos thanked Ms. Rubin for her input and indicated that the question before the Task Force is whether the Board should accept states on NASBA's list as substantially equivalent for the purpose of permitting practice privileges. The second question is whether the board should accept, for purposes of permitting practice privileges, individuals from non-substantially equivalent states who have been determined to be

substantially equivalent by CredentialNet. Both decisions will be reflected in regulations.

It was moved by Ms. Flowers and seconded by Mr. Schultz to accept NASBA's determinations in both areas. It was the intent of the motion that this would be the only method through which these determinations would be made. During the discussion Ms. Hillebrand asked if the Board could request that CredentialNet consider ethics requirements in making its determinations. Ms. Sos indicated that the Board could inform CrednetialNet that ethics is a priority and request that CredentialNet's review ensure that the ethics requirement in the CPA's home state has been met. Ms. Sos also indicated that it was her understanding that, consistent with the Board's obligation not to delegate its authority, the Board's acceptance of NASBA's list and credentialing program would be subject to continuous monitoring, and the Board would have the ability to add or subtract states from the list as appropriate. **After the discussion, the motion was unanimously carried.**

IV. Consideration of Whether the Board Should Accept NASBA's Determination of an Individual's Substantial Equivalency or Use Some Other Method for Assessing the Qualifications of CPAs from Non-Substantially Equivalent States
   A. Presentation by Diane Rubin of NASBA.
   B. Discussion.

See Agenda Item III.

V. Consideration of Whether There Should Be a "Safe Harbor" Period for Providing Notification to the Board.

Ms. Sos introduced this agenda item and Agenda Item VI together. She indicated that they relate to two questions: 1) When is notice due? and 2) What should the Board do when the payment is not received, is lost, or the payment check is dishonored? She noted that the statute authorizes the Board to address both issues in regulations.

With regard to whether there should be a "safe harbor" period, Ms. Sos indicated that the materials for the meeting include two memos (see Attachment __ and __) summarizing the arguments for and against establishing a safe harbor period. Ms. Sos indicated she would like to focus the discussion on the following issues: 1) the extent of the problem that would be created if notice were required at or before the practice begins, 2) the potential for consumer harm if practice is permitted for a specified time period before time before notification is required, 3) the risk of snaring people who have done nothing wrong if there is no safe harbor, 4) the impact of various alternatives in terms of providing an incentive for giving notice. Ms. Sos indicated she would appreciate input from the profession on these issues. Also, she encouraged the Task Force to be mindful of its general approach of not proposing regulations to address purely hypothetical situations or situations which would only impact a small percentage of the CPA population.

State of California Department of Consumer Affairs

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DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY

FINAL

MINUTES OF THE September 10, 2004 BOARD MEETING

The Hyatt Regency Hotel
1209 L Street
Sacramento, CA 95815
Telephone: (916) 443-1234
Facsimile: (916) 321-3099

I. Call to Order.

President Ian B. Thomas called the meeting to order at 8:35 a.m. on Friday, September 10, 2004, at the Hyatt Regency Hotel in Sacramento and immediately convened into closed session to consider Agenda Items X.A-E. The Board reconvened into open session at 10:10 a.m. The Board reconvened into closed session at 11:55 a.m., broke for lunch at 12:06 p.m., and reconvened at 1:30 p.m. The Board adjourned at 3:35 p.m.

Board Members	September 10, 2004
Ian B. Thomas, President	8:35 a.m. to 3:35 p.m.
Renata Sos, Vice President	8:35 a.m. to 3:35 p.m.
Stuart Waldman, Secretary-Treasurer	8:35 a.m. to 3:35 p.m.
Ronald Blanc	8:35 a.m. to 3:35 p.m.
Richard Charney	8:35 a.m. to 3:35 p.m.
Ruben Davila	Absent
Donald Driftmier	8:35 a.m. to 3:35 p.m.
Charles Drott	8:35 a.m. to 3:35 p.m.
Sally A. Flowers	8:35 a.m. to 3:35 p.m.
Sara Heintz	8:35 a.m. to 3:35 p.m.
Gail Hillebrand	8:35 a.m. to 3:35 p.m.
Thomas Iino	8:35 a.m. to 3:35 p.m.
Clifton Johnson	8:35 a.m. to 3:35 p.m.

The minutes of the July 15, 2004, Practice Privilege Task Force meeting were adopted on the Consent Agenda. (See Agenda Item XI.B.)

2. Report on the September 9, 2004, Practice Privilege Task Force Meeting.

   Ms. Sos reported that the Task Force met yesterday, had a very productive meeting, and discussed the agenda items listed below. She acknowledged and thanked the Task Force, Ms. Sigmann and staff, Ms. D'Angelo Fellmeth and Mr. Robinson.

3. Update on Status of Practice Privilege Legislation.

   No report was given on this agenda item.

4. Consideration of Whether the Board Should Accept NASBA's Designation of States as Substantially Equivalent (Subject to Board Review) or Develop its Own List.

   Ms. Sos reported that there are three ways for an individual to qualify for a practice privilege: qualify under the "4 of 10" rule, hold a license in a "substantially equivalent" jurisdiction, or be deemed "substantially equivalent" as an individual, for example through a review by CredentialNet. Ms. Sos noted that the legislation gives the Board the authority to determine what "substantially equivalent" means and to decide whether it will make those determinations or accept the determinations made by an entity such as NASBA. Ms. Sos reported that Ms. Rubin attended the meeting to talk with the Task Force about substantial equivalency from NASBA's perspective. Ms. Sos indicated that Ms. Rubin was the incoming Vice Chair of NASBA and a former Board member. One issue of concern to the Task Force was the role of ethics requirements in the substantial equivalency determinations. Ms. Rubin indicated that ethics considerations are already embedded in the exam, experience and education requirements as well as in professional standards.

   Mr. Blanc asked Ms. Sos to expand on the discussion related to ethics. Ms. Sos reported that the Uniform CPA Examination has an ethics component to it and that within the professional standards is GAAS 2, the independence standard which is one of the cornerstones of auditing standards. Ms. Sos noted that NASBA recognizes the disparity in the states, and its Education Committee is recommending to the full NASBA Board of Directors that the 150-hour education requirement in the UAA have an ethics component.

NASBA is also exploring the possibility of offering a uniform ethics course to be available in all states.

After discussion, it **was moved by Mr. Driftmier, seconded by Mr. Johnson, and unanimously carried to accept NASBA's designation of states as substantially equivalent while continuing to monitor and add or subtract states as necessary. The motion also included accepting NASBA's CredentialNet certification of individuals as substantially equivalent with the flexibility to reject or deny individuals if the Board determines that they are not substantially equivalent.**

5. Consideration of Whether the Board Should Accept NASBA's Determination of an Individual's Substantial Equivalency or Use Some Other Method for Assessing the Qualifications of CPAs from Non-Substantially Equivalent States.

   See Agenda Item VIII.F.4.

6. Consideration of Whether There Should be a "Safe Harbor" Period for Providing Notification to the Board.

   Ms. Sos reported that the practice privilege commences upon valid notification. However, issues came up as to whether there should be a period of time after practice begins and when the notification could still be submitted to the Board without penalty. Ms. Sos indicated that the Board wants to encourage compliance and notification, but also wants to ensure that no consumer harm could occur.

   It was moved by Mr. Blanc, seconded by Ms. Flowers, and carried that notice is due on or before commencing to practice but there will be no penalty if the notice is given within five business days of commencing practice. This regulation will remain in effect for two years for transition purposes. There will be a question added to the notification form asking for the reason for the late notification. The form will also require the date of notification and the date the practice privilege commenced. This information will be used to assess whether the "safe harbor" period should be continued, modified, or eliminated after the two-year transition period. If a notice is submitted after the five-business day "safe harbor" period, a fine will be imposed. The amount of the fine and the process for imposing it would be the subject of further staff review and recommendation.

Appendix 1

Substantially Equivalent States

The following 46 jurisdictions have CPA licensure requirements that are deemed by the California Board of Accountancy to be substantially equivalent to California's licensure requirements. Pursuant to Section 27 of Title 16, ~~Article 4~~ of the California Code of Regulations, you are authorized to practice public accountancy in California under the practice privilege provisions if you hold a valid, current license from a state identified below, unless you check "Y" to any of the disqualifying conditions on the Notification Form. Please see the instructions to the Notification Form for additional information.

Alabama*
Alaska
Arizona
Arkansas
Connecticut
District of Columbia*
Georgia
Guam
Hawaii
Idaho
Illinois*
Indiana
Iowa*
Kansas*
Kentucky
Louisiana*
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri*
Montana*
Nebraska*
Nevada
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota*
Tennessee
Texas
Utah
Virginia
Washington*
West Virginia*
Wisconsin
Wyoming*

* Permit Holders Only

State of California
Department of Consumer Affairs

Attachment 2

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

Memorandum

Practice Privilege TF Agenda Item III
May 19, 2005

Board Agenda Item VIII.F.4
May 20, 2005

To : Practice Privilege Task Force Members
Board Members

Date : May 4, 2005

Telephone : (916) 561-1788
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From : Aronna Wong - Aronna
Legislation/Regulations Coordinator

Subject : Consideration of an Approach to Address Issuance of Reports Under the Name of Non-Registered Firms

At the last Practice Privilege Task Force meeting, it was noted that most financial statement reports issued by licensees and most tax returns prepared by licensees are signed with the firm name. It was also noted that while the practice privilege provisions provide for cross-border practice by individuals, there are no comparable provisions for firms. Consequently, under current law, for a firm to practice public accountancy in California which would include performing activities such as reporting on financial statements or preparing tax returns for individual taxpayers or California companies, the firm would need to register with the Board.

This does not pose a problem for larger firms because most larger firms are already registered and have a presence in California. However, it can be challenging for smaller firms since these firm would have to meet all of California's ongoing registration requirements including the requirement that a partner or shareholder hold a California license.

After discussion, the Task Force concluded the issue needed further consideration and a working group consisting of Renata Sos and Gail Hillebrand was appointed to work with staff to develop a proposal for consideration at the May 2005 meetings of the Task Force and the Board.

After evaluating the possibility of a practice privilege for firms and an expedited procedure for qualifying for firm registration, the working group concluded that because of the numerous statutory requirements that tie to registered firms, neither of these two options was practical. During the discussion it was also noted that the greatest concern in this area was expressed by tax practitioners.

After discussion, it was concluded the most workable solution would be to carve out a narrow exception from the firm registration requirement. The working group began crafting its proposal by first identifying areas where no exception was possible. It was determined that any time an individual physically enters California to practice public accountancy as an agent of a firm, that individual must be affiliated with a California-registered firm. It was also determined that any time a firm performs financial statement work, there is sufficient consumer risk so that the firm must be registered with the Board.

After further deliberation, the working group concluded that an exception from the firm registration requirement would be reasonable only in those instances in which the practitioner is preparing individual tax returns, does not physically enter California, does not solicit any California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California. It was further concluded that, for consistency, it would also be appropriate to provide an exception from the individual licensure and practice privilege requirements under the same circumstances.

Working group members noted that this approach would minimize the risk to California consumers and would also address the needs of those consumers who have recently moved to California from another state and would like to continue receiving tax return preparation services from the same public accounting professionals that prepared their tax returns in prior years.

Attached for consideration and action is draft statutory language to implement this approach.

Attachment

Proposed Business and Professions Code Section 5054.

(a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may prepare individual tax returns for natural persons who are California residents without obtaining a permit to practice public accountancy issued by the Board under this chapter or a practice privilege pursuant to Article 5.1 of this chapter provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(b) The Board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

STATEMENT TO BOARD OF ACCOUNTANCY

BRUCE L. BIALOSKY CPA

MAY 19, 2005

Thank you for the opportunity to speak to you this morning regarding the establishment of practice privilege rules for CPAs doing business in California.

First, let me introduce myself. I have been a CPA in the state of California since 1978. I am a presidential appointee to the U.S. Holocaust Memorial Council. I have never previously made a presentation to the Board of Accountancy on any matter, but felt compelled to on this issue.

The matter I am commenting on affects CPAs from other states that do business in California. I am greatly concerned because I have learned first hand the regard in which other states hold California's rules. In 1979, I moved to Reno, Nevada to enter a business with my family. I established a license in Nevada that I maintained for a long period. I found what California did in regard to its rules for CPAs was much a guiding light for Nevada. Thus, I am concerned that what is established in California will resonate throughout the rest of the states and thus create reciprocal requirements on California CPAs.

I would respectfully request that individual tax returns be exempted from the new practice privilege requirements. Let me outline my rationale.

1. Most states have piggyback systems; thus, the level of knowledge necessary to prepare a return is minimal. For those states, like California, that do not have a direct piggyback system, it has been my experience that state returns receive very little focus with the majority of adjustments being provided for through sophisticated software that most CPAs utilize.

2. If there were no exception for individual tax returns then in a case where a client asks you to prepare their child's simple return from a job while working in college would have to be turned down. The CPA would have to apply to the other state and pay a fee that would make it uneconomic to prepare this simple accommodation to a client.

3. If you were a local practitioner and had someone with a multi-state return you would have to apply to each state making it again uneconomic from a cost and time point-of-view. If you represented, for example, an athlete who has income from multiple states (often 10 or more), the CPA would have to apply to each state and then pass on the fees paid to each state

to the taxpayer. Thus, the client would be driven to a large national firm that is already operating in multiple states and would not have to bear the incremental fees for this particular client. Quite often, the national firm charges higher fees than the local practitioner, thus this would be a disservice to the public.

4. If a client relocates to another state, they may wish to maintain their long relationship with the CPA. This would be jeopardized by the cost and time necessary to apply to the new state.

5. Because of the nature of tax practices today, most every CPA does tax returns for multiple states. It is not unusual for a local CPA to prepare tax returns either to accommodate clients or because of relocations in ten states or more. These states may or may not be consistent between tax years. Each year the CPA would have to apply to each state, pay the fees and charge back to their clients the costs.

I understand the desire and encourage the Board's desire to protect the public. The Board will not be protecting the public either by significantly driving up costs that will be passed on to the public or so limiting the universe of qualified practitioners because of external costs that the market itself will drive up the cost to the public.

Thus, I respectfully request that the Board exempt individual tax returns from the requirement to register for practice privileges and thus set an example for the rest of the United States.

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