State of California Department of Consumer Affairs

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

FINAL

MINUTES OF THE November 14, 2003 BOARD MEETING

Holiday Inn Capitol Plaza
300 J Street
Sacramento, CA 95814
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I. Call to Order.

President Wendy Perez called the meeting to order at 8:12 a.m. on Friday, November 14, 2003, at the Holiday Inn Capitol Plaza in Sacramento. The Board went into closed session at 8:15 a.m. to consider Agenda Item III.A. The Board reconvened into open session at 9:30 a.m. and the Board and ALJ Denny R. Davis heard agenda items X.A-B and then convened into closed session to deliberate and discuss Agenda Item X.C. The Board reconvened into open session at 12:10 p.m. The Board broke for lunch at 1:35 p.m. and reconvened at 2:23 p.m. The Board adjourned at 5:15 p.m.

Board Members	November 14, 2003
Wendy S. Perez, President	8:12 a.m. to 5:15 p.m.
Ian Thomas, Vice President	8:12 a.m. to 5:15 p.m.
Joseph Tseng, Secretary-Treasurer	8:12 a.m. to 5:15 p.m.
Ronald Blanc	8:12 a.m. to 5:15 p.m.
Richard Charney	8:12 a.m. to 5:15 p.m.
Ruben Davila	8:12 a.m. to 5:15 p.m.
Charles Drott	8:12 a.m. to 5:15 p.m.
Sally A. Flowers	8:12 a.m. to 5:05 p.m.
Gail Hillebrand	8:12 a.m. to 5:15 p.m.
Thomas Iino	8:12 a.m. to 5:15 p.m.

Clifton Johnson	8:12 a.m. to 5:15 p.m.
Olga Martinez	8:12 a.m. to 5:15 p.m.
Renata Sos	8:12 a.m. to 5:15 p.m.
Stuart Waldman	8:12 a.m. to 5:15 p.m.
David Walton	8:12 a.m. to 5:15 p.m.

Staff and Legal Counsel

Julie Balangue, Disciplinary Technician
Kathleen Cook, Expenditure Tracking Analyst
Mary Crocker, Assistant Executive Officer
Mary Gale, Communications/Planning Manager
Michael Granen, Deputy Attorney General, Board Liaison
Aronna Granick, Legislation/Regulation Analyst
Dottie Hays, Licensing Analyst
Tina MacGregor, Investigative CPA
Robert Miller, Legal Counsel
Sara Narvaez-Smith, Enforcement Analyst
Greg Newington, Chief, Enforcement Program
Michele Santaga, Enforcement Analyst
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer

Committee Chairs and Members

Nancy Corrigan, Member, Qualifications Committee
Waldemar Faimann III, Vice Chair, Qualifications Committee
Olaf Falkenhagen, Chair, Administrative Committee
Paul Koreneff, Chair, Qualifications Committee

Other Participants

Noel Allen, NASBA Legal Counsel
Tom Chenowith
David Costello, NASBA President
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Katherine Demos, Department of Consumer Affairs (DCA)
Mike Duffey, Ernst & Young LLP
Bill Gage, Consultant, Senate Business & Professions Committee
Clark Gordin
Katy Gould, Society of California Accountants (SCA)
Art Kroeger, Society of California Accountants (SCA)
Cathy Landau-Painter, KPMG
Sarah Pickeral, Center for Public Interest Law (CPIL)
Richard Robinson, Big 4 Accounting Firms
Hal Schultz, California Society of Certified Public Accountants (CalCPA)

Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)
Michael Weatherwax, Chair, NASBA UAA Committee

II. Board Minutes.

A. Draft Board Minutes of the September 19, 2003, Board Meeting.

The draft minutes of the September 19, 2003, Board meeting were removed from the Consent Agenda and the following changes were recommended. Ms. Hillebrand indicated that it was extremely helpful and valuable to receive information from Mr. Schultz; however, she believed it was unusual and inappropriate to reprint the statement in full in the minutes. Ms. Hillebrand recommended extracting the statement on pages 11-15 and substituting "Mr. Schultz made remarks regarding the UAA and substantial equivalency describing the history and purpose of those provisions and the benefits of them."

It was moved by Ms. Flowers, seconded by Mr. Drott, and unanimously carried to approve the minutes of the September 19, 2003, Board meeting with the changes noted above.

III. Report of the President.

Ms. Perez welcomed the new Board members. Ms. Perez indicated that Ms. Olga Martinez was appointed by Governor Davis effective November 5, 2003, and that she was a sole practitioner who provides tax support services to other CPAs and the general public and has over twenty years experience in public accounting. Ms. Martinez received her Bachelor of Science in Accounting at CSU Chico and her Masters in Taxation at Golden State University and belongs to several professional organizations. She presently serves as chapter bulletin editor with the East Bay Chapter of CalCPA.

Ms. Perez welcomed Mr. Ruben Davila who was also appointed by Governor Davis. He is a professor of clinical accounting at USC Leventhal School of Accounting, a consultant, forensic accountant and an attorney. Mr. Davila earned his Bachelor of Science in Accounting at Loyola Marymount University, his Masters in Business Administration at USC and his Juris Doctorate at Loyola Marymount. Ms. Perez noted that he belongs to many professional organizations and is active in university and community service.

A. Executive Officer Evaluation **[Closed Session Government Code Section 11126(a)(1)].**

This matter was discussed in closed session.

2. NASBA's Presentation Related to the UAA.

Mr. Weatherwax reported that Section 23 was put into the UAA as a mechanism to accomplish two things: simplify the process in which practitioners can move between states to become licensed and to enhance and facilitate compliance for those people who are practicing across state borders. He added that the definition of substantially equivalent is that the exam, education and experience are comparable to or exceed the requirements of another state.

Mr. Weatherwax noted that last year the AICPA and NASBA adopted rules for the notification process. Although the notice responsibility rests with the licensee, firms can submit master lists.
Mr. Weatherwax reported that the UAA Committee has adopted a sample notification form. He indicated that they would like for states to adopt all, or as much of Section 23 as possible, but will accept whatever the states adopt.

Ms. Perez indicated that this Board was very interested in making sure that our enforcement ability is not hampered but enhanced by the notification process. Mr. Granen added that he would like to see temporary or incidental practice greatly reduced because there is no control at this point. Mr. Allen indicated that under substantial equivalency the home state would be the agent for service of any due process documents and that knowing who the licensee is and that they are consenting to the rules, laws and enforcement of your state is a huge improvement for enforcement.

Mr. Miller indicated that the UAA provisions would give California the right to file a complaint with the practitioner's home state board of accountancy for investigation. But California statutes could be amended to specify that the practitioner's privilege to practice in California would be summarily suspended during the investigation and disciplinary process of the home state.

The Board then held a question and answer session with the representatives from NASBA. Mr. Weatherwax cautioned the Board that the more difficult it makes the notification form, the less likely that licensees will comply.

Mr. Weatherwax reported that NASBA was in the process of creating a United States licensed database where information will be available on all 550,000 CPAs nationwide. Information would include in what states licensees have licenses, what states they have gone into by notification and what disciplinary actions have been taken

against them. Mr. Weatherwax reported that the database would be free for state boards to use, but there would be a charge for public access.

3. January 2003 Pacific Regional Meeting to Discuss UAA Related Matters.

   Ms. Flowers reported that the new Pacific Regional Director wanted to get the states in that region together to discuss reciprocity issues and that meeting has been tentatively scheduled for January 13, 2004.

4. Recommendation of Diane Rubin for the NASBA Vice Chair Position.

   It was moved by Ms. Hillebrand, seconded by Ms. Flowers, and carried to approve recommending Ms. Rubin for the NASBA Vice Chair position. Mr. Davila and Ms. Martinez abstained.

5. Use of Social Security Numbers on Applications for the Computer-Based CPA Examination.

   Mr. Costello reported that NASBA is facing a deadline of December 31, 2004, to have the database ready for the CBT program. One outstanding issue for California is having exam applicants provide social security numbers (SSN) to NASBA. Mr. Costello noted that if California candidates do not provide the SSN they will be charged a cost that no other jurisdiction will have to pay.

   Mr. Miller indicated that the Board cannot provide SSNs to NASBA except with the explicit voluntary consent of applicants.
   Ms. D'Angelo Fellmeth questioned whether the information in this database would be used for any other purpose. Mr. Costello indicated that NASBA was contractually bound in the three-party contract with the AICPA and Prometric as well as with the State of California that those social security numbers may not be used for any purpose other than the exam and cannot be commercialized.

   Ms. Sigmann questioned Mr. Costello as to whether this issue will be resolved for the foreign candidates. Mr. Costello indicated that it is being worked on and he is not sure whether that issue has been resolved.

   It was moved by Dr. Charney, seconded by Ms. Flowers, and carried to begin voluntary provision of social security numbers by CBT Exam applicants with adequate disclosure.
   Mr. Waldman voted no.

Ms. Sigmann indicated that the Board would need to obtain the actual costs that would be transferred to the candidate in the event they chose not to provide the social security number. Ms. Hillebrand emphasized she would like only actual costs to be charged and additionally requested a break down of the actual costs being incurred by NASBA relating to this issue.

B. Board Discussion Related to the UAA.

Ms. Perez indicated that the Board should provide the UAA TF some direction keeping in mind the timing should something need to be done prior to the February Board meeting. She noted that if the Board desires, the Task Force could proceed with drafting statutory language towards implementation of Section 23 in some form. If so, it would need to come before the Board in February to be successful. Ms. Hillebrand indicated that she would be more comfortable with the Board directing the Task Force to evaluate whether it should adopt Section 23, and if so how should we pursue it.

It was moved by Mr. Blanc, seconded by Ms. Flowers, and unanimously carried to direct the UAA TF to consider whether it is appropriate to pursue cross border practice, and if so, how to implement Section 23 and report back to the Board in February.

Mr. Thomas noted that it was important to include key legislative staff in these discussions. Mr. Weatherwax indicated that the resources of NASBA are fully available to the Board as a reference. Ms. Hillebrand believed that it was important to do this right rather than to accomplish it in this legislative session.

C. Consent Agenda.

It was moved by Ms. Flowers, seconded by Mr. Waldman, and unanimously carried to adopt the consent agenda with the removal of the September 19, 2003, Board minutes. (See Attachment 4.)

D. Officer Elections.

**Ms. Perez nominated Mr. Thomas for Board President.
Mr. Waldman seconded the nomination and it was approved.
Mr. Thomas and Mr. Davila abstained.**

Ms. Flowers nominated Ms. Sos for Vice President. Mr. Johnson seconded the nomination and it was approved. Ms. Sos and Mr. Davila abstained.

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Board Agenda Items XI.A.2 & XI.B
November 14, 2003

Uniform Accountancy Act – Substantial Equivalency Cross-Border Practice Issues

At the Board's September meeting we reviewed the background of the Uniform Accountancy Act (UAA) related to substantial equivalency and cross-border practice issues. It appeared that there was a general consensus that California rules should be reviewed to take into account the increasingly global nature of the accounting services being rendered by both large and small firms.

In response to the Board's request for 'talking points' regarding the UAA and cross-border practice issues, the following is a summary of the discussion.

What is the UAA?

- The UAA is a model law, one that states are free to adopt in whole or in part, with whatever revisions the state deems appropriate.
- A state can adopt only Section 23 of the UAA; by adopting only Section 23, a state is not bound by any other provisions of the UAA.

What California Has Now.

- A California resident CPA must have a CPA license issued by the California Board of Accountancy (CBA) in order to practice in California.
  - Licensure: 3E's must be met (**Exam, Education, Experience**).
    - CPA exam passed with minimum scores.
    - ***Pathway 0*** - education (120 hrs) and 2-4 years general experience with approximately 500 hours of attest experience; transitional rules only.
    - ***Pathway 1*** - education (BA degree with at least 120 hours) and 2 years of general experience. A minimum of 500 hours of attest experience is required <u>only</u> if the licensee intends to sign attest reports.
    - ***Pathway 2*** – education (BA degree with at least 150 hours) and 1 year of general experience. A minimum of 500 hours of attest experience is required <u>only</u> if licensee intends to sign attest reports.
    - The licensure process is currently taking an average of approximately 4 ½ months from receipt of a licensure application.
      - Fingerprinting and a background check are included in an extensive licensure process.
  - An ethics exam is part of the licensure requirements.
  - The "4 of 10" rule applies to experience obtained in another state.
  - Continuing education requirements include an ethics course every 6 years, 80 hours of education every 2 years, with specially designated courses for certain accounting services.

- CPAs licensed in other states may practice in California under one of two temporary practice statutes.
  - Temporary Practice under B& P Code Section 5050:
    - This does not require a pending application for California licensure, but practice is limited to "professional business incident to his regular practice in another state or country" (i.e. for inventory observations, etc).
    - No notice or application to CBA, so it is relatively easy for a non-resident CPA to stretch the definition of practice "incidental" to practice in another state.
  - Licensure under B& P Code Sections 5087 and 5088:
    - After providing evidence of qualifying continuing education, the applicant may practice until the license is granted or rejected by the CBA (license application required).
    - The out-of-state licensee must pay an application fee.

California law currently allows for multiple pathways to licensure. Because Pathway 1 requires only 120 hours of education and a BA degree, only California's current Pathway 2 licensees are considered by NASBA to be substantial equivalent. The CBA should consider whether or not is it advisable to support legislation eliminating Pathway 1 so that all California CPAs would be considered substantially equivalent.

- California would effectively raise the education requirements to be consistent with the requirements of most of other states.
- Pathway 2 is already substantially equivalent.
- Elimination of Pathway 1 would mean <u>all</u> California licensees can take advantage of Section 23 practice privileges in other states.
- If Pathway 1 is eliminated, substantial equivalency would in effect be determined at the state level instead of for each individual licensee if Pathway 1 is eliminated.

UAA Section 23 Without Expected NASBA Modifications.

- "Substantial Equivalency" under the UAA provides for recognition of licenses issued by other states that meet certain 'standard' requirements. The 3 E's of exam, education (150 hours), and experience (1 year) must be met. Practitioners who change their principal places of business to new states must apply and obtain licenses in those states.

- Key Provisions:
  - "Notification" to the state board is the only requirement for the CPA to be granted practice privileges.
  - Can be designed to allow for quick, online application and immediate authority to practice in California. This should encourage more out-of-state licensed CPAs (who might otherwise try to stretch the rules for temporary practice) to notify the state when entering California.
  - No application process, notification only.
  - Practice privileges are granted immediately upon notification.
  - Notification contains acknowledgement that the licensee is subject to discipline in both the state of residence and the state in which he or she is granted practice rights.
  - Under this section, CPAs licensed in other states may practice in California and California CPAs can service their clients in other states without the burden of a lengthy application process and waiting to hear back from the state board for approval to enter the state.
  - Does not expressly allow fees to be charged. Some states implemented the existing Rule 23 with fees.

UAA Section 23 With Expected NASBA Modifications.
NASBA is considering a proposal as part of the UAA Rules that would permit states to issue so-called "reciprocal practice rights" or "non-resident practice licenses," while recognizing that for enforcement purposes they carry all the rights and privileges of a "license," and also charge a fee. This would provide California with a vehicle for easing access to cross-border practice by qualified non-resident CPAs. This would ensure that discipline taken by California against persons practicing with non-residence practice licenses would be honored in -those states that currently only allow disciplinary action to be taken for a "license"

- Key Provisions:
  - Can be designed to allow for quick, online application and immediate authority to practice in California. This should encourage more out-of-state licensed CPAs (who might otherwise try to stretch the rules for temporary practice) to notify the state when entering California. Out-of-state practitioners, because they will hold practice rights now referred to as a non-resident practice 'license', will be more clearly subject to California's jurisdiction for violations occurring in this state and for purposes of enforcement actions in other states.

  - Discipline by CBA of out-of-state CPAs who are issued California non-resident practice licenses can be used as the basis of discipline in the licensee's home state. Under the Practice Privileges concept of the UAA (no license issued), reliance on a revocation of practice privileges by California to support discipline in another state may be less certain.
  - This approach would allow fees to be collected for administrative and enforcement purposes. Section 23, while silent on this issue, was originally designed to provide for practice privileges without the state being able to charge a fee. More recent interpretations appear to be that Section 23 will support a state fee.

Due to current (and expected long-term) staffing issues at CBA, it is important that any changes proposed for substantial equivalency allow the Board to preserve the quality of services in California and not increase the burden on our staff to perform additional/new procedures for approving what is expected to be an increase in notifications. While the fee for non-residence practice licenses should be set at a level to support the program, the CBA has to be cautious that the necessary staff are in place at the time non-residence practice licensure goes into effect.

Specific Questions for NASBA:

1. We understand that the New York Board of Accountancy has recently recommended that the state adopt UAA Section 23 in its entirety. Can you provide us with some background on what considerations were taken into account by the New York Board in coming up with this position?

2. Can you give us some examples of circumstances where discipline of a licensee engaged in cross-border practice was attempted? Are you aware of any specific instances in which a licensee engaged in cross-border practice could not be effectively disciplined by either the home state or the state the licensee entered? Was it more costly? Was it started and abandoned by the home state or by the non-resident license state? Did the two states cooperate in the investigation?

3. Would California be considered "substantially equivalent" if it allowed for immediate revocation of a practice privilege at any point the CBA becomes aware of a criminal conviction?

4. Is it consistent with Section 23 for each state to require each applicant to complete an ethics exam and/or fingerprints in order to be granted practice rights in a state?
   a. How are other states handling this issue?
   b. Does NASBA have any recommendations?

5. Many states do not require a "license" be granted in order to take enforcement action.
   a. Do you see any enforcement advantage to calling these "practice rights" a "license"?
   b. Do you see any disadvantages in making changes to require each state to call this practice right a "license"?
   c. In your opinion, would enforcement proceedings be less likely to be successful in any way if the word "license" were not used to define the non-resident rights to practice?

6. What changes is NASBA considering to UAA Section 23 rules at this point? Do you expect these changes to encounter opposition by the states?

7. In your opinion, will all/most states move to adopt something similar to Section 23 so that there is consistency among states?

8. Please explain your position on a "national license."

9. Please describe the experience of those states that have already adopted Section 23, with particular focus on the effect on:
   a. Enforcement.
   b. Professional quality.
   c. Competition.
   d. Board resources including staff time.

10. How do we avoid "lowest common denominator" licensing?

11. Would you require the on-line notification provide for self-disclosure of pending and past license denial, suspension, revocation, issuance of a citation, or conviction of any criminal offense?