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

FINAL

MINUTES OF THE MARCH 21, 2008 BOARD MEETING

Westin Pasadena
191 North Los Robles Avenue
Pasadena, CA 91101
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I. Call to Order.

President Donald Driftmier called the meeting to order at 9:00 a.m. on Friday, March 21, 2008, at the Pasadena Westin and the Board immediately convened into closed session to deliberate Agenda Items XII.A-F. The meeting reconvened into open session at 9:55 a.m. and adjourned at 11:55 a.m.

Board Members	March 21, 2008
Donald Driftmier, President	9:00 a.m. to 11:55 a.m.
Robert Petersen, Vice President	9:00 a.m. to 11:55 a.m.
Rudy Bermúdez, Secretary-Treasurer	9:15 a.m. to 11:55 a.m.
Sally Anderson	9:00 a.m. to 11:55 a.m.
Richard Charney	9:00 a.m. to 11:55 a.m.
Angela Chi	9:00 a.m. to 11:55 a.m.
Lorraine Hariton	9:00 a.m. to 11:55 a.m.
Leslie LaManna	9:00 a.m. to 11:55 a.m.
Bill MacAloney	9:00 a.m. to 11:55 a.m.
Marshal Oldman	9:00 a.m. to 11:55 a.m.
Manuel Ramirez	9:00 a.m. to 11:55 a.m.
David Swartz	9:00 a.m. to 11:55 a.m.
Lenora Taylor	9:00 a.m. to 11:55 a.m.
Stuart Waldman	Absent

Staff and Legal Counsel

Patti Bowers, Chief, Licensing Division
Paula Bruning, Executive Office Technician
Dominic Franzella, Peer Review Analyst

Scott Harris, Deputy Attorney General, Department of Justice
Kris McCutchen, Licensing Manager
Greg Newington, Chief, Enforcement Program
Dan Rich, Assistant Executive Officer
George Ritter, Legal Counsel, Department of Consumer Affairs
Carol Sigmann, Executive Officer
Liza Walker, Practice Privilege Coordinator

Committee Chairs and Members

Harish Khanna, Chair, Administrative Committee
Tracy Garone, Chair, Qualifications Committee

Other Participants

Ken Bishop, NASBA
Mike Duffey, Ernst & Young LLP
Kenneth Hansen, KPMG LLP
Ed Howard, Center for Public Interest Law
Carl Olson
Richard Robinson, E&Y, DT, PWC, KPMG
Gregory Santiago, Legislative Analyst, Department of Consumer Affairs
Hal Schultz, California Society of Certified Public Accountants
Phil Skinner, Center for Public Interest Law
Jeannie Tindel, California Society of Certified Public Accountants

II. Board Minutes.

The draft Board minutes of the February 25, 2008, Board meeting were adopted on the Consent Agenda (See Agenda Item XIII.C.)

III. Report of the President.

A. Proposed 2009 Board Meeting Dates.

It was moved by Mr. Petersen, seconded by Mr. Oldman, and unanimously carried to adopt the proposed 2009 Board meeting dates (see Attachment 1). Ms. Taylor and Ms. Hariton were temporarily absent.

Mr. Ramirez requested that the Board consider moving one of its Los Angeles meetings to Orange County since many of the Board members live or work near that area.

Ms. Sigmann responded that the Board is restricted to the $84.00 State Government Rate in that area. Mr. Ramirez offered to assist in securing a facility in Irvine or the surrounding area.

2. Major Case Summary.

   Mr. Newington reported that there is one open matter in the major case category.

3. Report on Citations and Fines.

   Mr. Newington reported that as of March 7, 2008, 13 fines had been issued for a total of $16,250. The receivable balance was $28,100. Most of the receivable balance is tied to the renewal process, which would preclude an individual from license renewal until the fine has been satisfied.

4. Reportable Conditions Data.

   Mr. Newington reported that as of March 6, 2008, 227 reportable events had been received; 197 of those reportable events are restatements, with the majority related to publicly traded entities.

VIII. Regulations.

A. Update on Regulations.
(See Attachment 5).

IX. Committee and Task Force Reports.

A. Administrative Committee (AC).

There was no report on this agenda item.

B. CPA Qualifications Committee (QC).

There was no report on this agenda item.

C. Committee on Professional Conduct (CPC).

1. Minutes of the January 17, 2008, CPC Meeting.

   The minutes of the January 17, 2008, CPC meeting were adopted on the Consent Agenda (See Agenda Item XIII.C.)

2. Report on the March 20, 2008, CPC Meeting.

   Mr. Ramirez reported that the CPC met the previous day to discuss and take action on the following agenda items.

3. Discussion of Administrative Suspension and Other Enforcement Options Related to Cross-Border Practice.

Mr. Ramirez reported that the CPC discussed issues related to California's reliance on other states' enforcement practices, and the possibility that felony convictions that would result in automatic cancellation of cross-border privileges may be overturned.

Mr. Ramirez reported that the CPC recommended that the Board adopt the language as presented in 5096, 5096.1, and 5096.4 **(see Attachment 6)** with the following changes:

- For 5096 (c)(2), delete the wording "and ethics examination requirements."
- For 5096.1 (f), have language redrafted to address convictions overturned on appeal and automatic reinstatement of cross-border privileges.
- In addition to the felonies found in Section 5096.1 (b)(2), draft language to allow the Board to adopt through regulations additional felonies that would result in termination of cross-border practice.
- For 5096.4 (d), amend language to allow hearings to be conducted within 90 days as opposed to 45 days.

It was moved by Mr. Ramirez, seconded by Mr. Oldman, and unanimously carried to adopt the CPC's recommendations.

4. Consideration of Revised Statutory Language Related to Cross-Border Practice.

Mr. Ramirez reported that the CPC members discussed information available from other states and NASBA. Mr. Ken Bishop of NASBA provided an update on CPA mobility and NASBA's Accountancy Licensee Database. The CPC heard recommendations from Ms. Sigmann and from Mr. Howard, Senior Counsel from the Center for Public Interest Law (CPIL).

Mr. Ramirez reported that the CPC recommended that the Board adopt proposed revisions to B&P Code Section 5096 related to cross-border practice and related code sections as prepared by staff **(see Attachment 7)** with the following addition:

- Incorporate language that will reflect the Board's intent to provide access to other state boards' Web sites for consumer protection purposes.

It was moved by Mr. Ramirez, seconded by Mr. Bermúdez, and unanimously carried to adopt the CPC's recommendations.

5. Proposed Amendments to Section 87.7 Related to the Professional Ethics Continuing Education Requirement.

   Mr. Ramirez reported that the CPC recommended that a Board task force be established under the jurisdiction of the President to study other state board's ethics requirements; what would be appropriate for this Board with regards to its current ethics requirement, and to address the possibility of changing the renewal period from two to three years.

   It was moved by Mr. Ramirez, seconded by Mr. Swartz, and unanimously carried to adopt the CPC's recommendations.

   Mr. Rich indicated that the staff would need direction from the Board on the composition of the task force.

   Mr. Driftmier indicated that he will meet with Mr. Rich to provide such direction.

6. Consideration of Changing the Renewal Period From Two Years to Three Years.

   Mr. Ramirez reported that the CPC recommended that Board staff complete a study on the changing of the renewal period from two to three years, including consideration of automated tracking of CE, the possibility of pre-selected audits for continuing education, penalties for non-compliance, and adjusting the renewal fees.

7. Proposed Addition of Section 50.1 to Title 16 of the California Code of Regulations Regarding Client Notification of Firm Owners' Ability to Provide Attest Services.

   Mr. Ramirez stated that the CPC recommended that the Board adopt the draft regulatory language **(see Attachment 8)** based on a single owner, as opposed to a majority of owners possessing an "A" license, as being sufficient for the requirement of client notification.

   It was moved by Mr. Ramirez, seconded by Mr. Petersen, and unanimously carried to adopt the CPC's recommendation.

   Mr. Carl Olson provided comments related to the ethics requirement. He indicated that he supports education and reminding people about education in ethics and accounting related fields. He distributed to the Board copies of the cover and miscellaneous pages from the "Financial Accounting," "Introduction to Management Accounting," and

CPC Agenda Item II
March 20, 2008

Board Agenda Item IX.C.3
March 21, 2008

STATE OF CALIFORNIA

Memorandum

TO: **CPC Members**
Board Members

Date: March 13, 2008
Tel.: (916) 574-8220
Fax: (916) 574-8623

FROM: **George P. Ritter**
Senior Staff Counsel

SUBJ: **Discussion of Administrative Suspension and Other Enforcement Options Related to Cross-Border Practice**

Attached is draft proposed language to amend Business and Professions Code Section 5096.4 (Administrative Suspension) and add a new Section 5096.1 to cover forfeitures of the right to engage in cross-border practice where there are convictions of serious crimes or the individual loses legal authorization to practice in the State where his or her principal place of business is located. One of the primary reasons for redrafting Section 5096.1 was to narrow the list of serious crimes that can result in this type of forfeiture.

I will be available at the meeting to discuss any issues related to this agenda item.

Attachment

Attachment 1

Section 5096 of the Business and Professions Code is amended to read:

(a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under ~~a~~ cross-border practice ~~privilege~~ without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license, certificate, or permit issued by any state for at least four of the last ~~ten~~ 10 years.

(2) The individual has a license, certificate, or permit from a state ~~which~~ that has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure ~~which have been determined by the board to be~~ that are substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

~~(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:~~

~~(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.~~

~~(2) Pay a fee as provided in Article 8 (commencing with Section 5130).~~

~~(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.~~

~~(e)~~ (c) An individual who ~~holds a~~ practices under cross-border practice in this state ~~privilege under this article~~:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice ~~privileges~~ in this state, except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when ~~such~~ the individual has met the ~~examination and~~ continuing education requirements of the state in which the individual holds the valid license, certificate, or permit as provided in ~~Section 5096~~ subdivision (a) ~~on which the substantial equivalency is based~~.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does

not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of ~~the~~ each state ~~that issued~~ in which he or she holds a ~~the individual's~~ certificate, license, or permit ~~upon which substantial equivalency is based~~ as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that ~~the individual~~ he or she is not legally authorized to perform in ~~the individual's~~ his or her state of principal place of business.

~~(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.~~

~~(g)~~ (d) (1) No individual may practice under ~~a~~ cross-border practice ~~in this state privilege~~ without prior approval of the board if the individual has~~, or acquires at any time during the term of the practice privilege,~~ any disqualifying condition under paragraph (2) of this subdivision:

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater within the last 10 years.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

(4) In no event may the Board approve an application for cross-border practice if the applicant has been convicted of any of the felonies specified in Section 5096.1(b) within the past 12 months preceding the filing of his or her application.

(e) An individual who acquires any disqualifying condition described in paragraph (2) of subdivision (d) while practicing under cross-border practice in this state shall immediately notify the board in writing of the nature and details of the disqualifying condition.

Section 5096.1 of the Business and Professions Code is amended to read:

~~(a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:~~

~~(1) Deemed to be practicing public accountancy unlawfully in this state.~~

~~(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.~~

~~(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.~~

~~(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.~~

(a) The right of an individual to engage in cross-border practice without prior approval of the Board is a privilege that, among other things, is conditioned on:

(1) The existence of legal authorization to perform professional services as a public accountant from the State in which his or her principal place of business is located; and

(2) The absence of any disqualifying conditions listed in Section 5096(d) or specified in regulations duly adopted by the Board.

(b) In order to protect the paramount interests of the public and the consumers of the State of California, the Legislature finds that if an individual fails to meet certain of these conditions, he or she should be considered conclusively disqualified from engaging in cross-border practice. In addition, an instant forfeiture of the individual's privilege to engage in cross-border practice will occur as a matter of law. No hearing shall be held, nor shall the Board have any discretion on whether or not to terminate the individual's cross-border practice when any of these conditions occur. Those conditions are as follows.

(1) The individual's legal authorization to perform professional services as a public accountant is revoked, canceled, suspended, or otherwise terminated by the State in which his or her principal place of business is located. A certified copy of the order, decision or judgment revoking, canceling, suspending, or otherwise terminating the legal authorization of the individual to perform professional services as a public accountant by the tribunal, court or agency in his or her principal place of business shall be conclusive proof of the fact that the individual no longer has authorization to provide professional services in that State.

(2) The individual is convicted of any of the following felonies:

(A) Murder;

(B) Robbery;

(C) Grand Theft;

(D) Embezzlement.

(c) For purposes of subdivision (b), a crime is a felony if it is specifically declared to be so by statute or is charged as a felony irrespective of whether in a particular case it may be considered a misdemeanor as a result of post-conviction proceedings.

(d) A certified copy of the criminal conviction shall be conclusive proof of the fact of the conviction.

(e) The individual whose cross-border privileges have been terminated under this section may petition the Board to be reinstated not less than one year from the date of termination.

(f) The individual may also, at any time, petition the Board to reinstate his or her privilege to engage in cross-border practice if either of the following occurs:

(1) The judgment of conviction is overturned on appeal.

(2) The individual's legal authorization to provide services as a public accountant is restored by the State where his or her principal place of business is located.

Section 5096.4 of the Business and Professions Code is amended to read:

(a) The right of an individual to engage in cross-border practice ~~in this state under a practice privilege~~ may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, ~~for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation~~ if the board or its executive officer finds that:

(1) The individual has:

(A) Acquired a disqualifying condition described in paragraph (2) of subdivision (d) of Section 5096; or

(B) Committed any act which if committed by an applicant would be grounds for denial of a license or if committed by a licensee would be grounds for discipline under Section 5100; or

(C) Committed any act outside of this state that would be a violation if committed within this state; and

(2) Serious injury will result to the public before the matter could be heard on notice.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing, ***and that failure to do so will result in the order becoming permanent***.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals ~~who are denied licensure~~ whose license is subject to revocation, ***suspension, limitation or imposition of conditions,*** including the filing of ~~a statement of issues~~ an accusation by the board setting forth the reasons for the administrative suspension of cross-border practice ~~privileges~~ and specifying the statutes and rules on which the action is based ~~with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of practice privileges~~.

(d) ~~The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.~~ Hearings shall be conducted

within 45 days of the board's receipt of the individual's appeal of the administrative suspension order. A final decision shall be issued no later than 45 days after submission of the matter. ***If the decision sustains the Board's suspension order, it shall become permanent. Otherwise, it shall be immediately vacated.***

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer ~~or expiration of the practice privilege under administrative suspension~~; however, any suspension order that has been appealed will dissolve by operation of law unless a final decision upholding the order is issued within 90 days of the appeal.

~~(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state or from applying for a new practice privilege upon expiration of the one under administrative suspension, except that the new practice privilege shall not be effective until approved by the board.~~

~~(g) Notwithstanding any administrative suspension, a practice privilege expires one year from the date of notice unless a shorter period is set by board regulation.~~

~~(h) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for denial or discipline of a practice privilege.~~

NOTES

1. Provision stating that certified copy of criminal conviction "shall be conclusive proof of the fact of the conviction" is based on B. & P. Code § 4311(d)(3) (Pharmacy Law).

2. Conviction of specified crimes deemed to be disqualifying as a matter of law is based on B. & P. Code §§ 4311(c)(4) & 2236.1(c) (Medical Practice Act).

3. Provision that "no hearing shall be held" regarding crime conclusively deemed to be disqualifying is based on B. & P. Code § 2236.1(c).

4. Designation of crime as a felony based on B. & P. Code § 4311(f).

5. Time frames for administrative appeal patterned after B. & P. Code §§ 494 and 2310.

State of California
Department of Consumer Affairs

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

Memorandum

CPC Agenda Item III
March 20, 2008

Board Agenda Item IX.C.4
March 20-21, 2008

To : CPC Members
Board Members

Date : March 10, 2008

Telephone : (916) 561-1754
Facsimile : (916) 263-3672
E-mail : lwalker@cba.ca.gov

From : Liza Walker, Coordinator
Practice Privilege Unit

Subject : Consideration of Revised Statutory Language Related to Cross-Border Practice

Attached for your consideration is the revised statutory language for cross-border practice in California. The language adopted by the Board at the November 2007 Board meeting is shown in the single underline/strike-out format. Edits approved at the November 2007 Board meeting are incorporated and reflected in the double underline/double strike-out format and provided for consideration.

Excerpts from the November 2007 Board meeting minutes related to the discussion of the draft statutory language are attached for reference purposes.

On February 21, 2008, Assembly Bill 2473 was introduced and included the cross-border language approved at the November 2007 CPC/Board meetings. Should there be edits to the proposed statutory language adopted by the Board at the March meetings, staff will submit the changes to the author for incorporation into the language of the bill.

Section 5096.4, Administrative Suspension, will also be discussed at the March 20-21, 2008 CPC/Board meetings and is not included in the attached document. Any edits to Section 5096.4 adopted by the Board will also be incorporated into the bill language as mentioned above.

Attachments

PROPOSED REVISIONS TO BUSINESS AND PROFESSIONS CODE SECTION 5096 RELATED TO CROSS-BORDER PRACTICE AND RELATED CODE SECTIONS

5096. Cross-Border Practice ~~Privilege General~~ Requirements

(a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under ~~a~~ cross-border practice ~~privilege~~ without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license, certificate, or permit issued by any state for at least four of the last ~~ten~~ 10 years.

(2) The individual has a license, certificate, or permit from a state ~~which~~ that has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure ~~which have been determined by the board to be~~ that are substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

~~(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:~~

~~(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.~~

~~(2) Pay a fee as provided in Article 8 (commencing with Section 5130).~~

~~(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.~~

~~(e)~~ (c) An individual who ~~holds a~~ practices under cross-border practice in this state ~~privilege under this article~~:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice ~~privileges~~ in this state, except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when ~~such~~ the individual has met the ~~examination and~~ continuing education requirements of the

state in which the individual holds the valid license, certificate, or permit as provided in ~~Section 5096~~ subdivision (a) ~~on which the substantial equivalency is based~~.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of ~~the~~ each state ~~that issued~~ in which he or she holds a ~~the individual's~~ certificate, license, or permit ~~upon which substantial equivalency is based~~ as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that ~~the individual~~ he or she is not legally authorized to perform in ~~the individual's~~ his or her state of principal place of business.

~~(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.~~

~~(g)~~ (d) (1) No individual may practice under ~~a~~ cross-border practice ~~in this state privilege~~ without prior approval of the board if the individual has~~, or acquires at any time during the term of the practice privilege,~~ any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater within the last 10 years.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

(e) An individual who acquires any disqualifying condition described in paragraph (2) of subdivision (d) while practicing under cross-border practice in this state shall immediately notify the board in writing of the nature and details of the disqualifying condition.

~~**5096.1. Practice Without Notice**~~

~~(a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:~~

~~(1) Deemed to be practicing public accountancy unlawfully in this state.~~

~~(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.~~

~~(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual' s agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.~~

~~(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.~~

5096.2. Denial of ~~a~~ Cross-Border Practice ~~Privilege~~

(a) An individual licensed out-of-state ~~Practice privileges~~ may be denied cross-border practice in this state for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny cross-border practice ~~privileges~~ in this state using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the ~~C~~cross-border practice ~~privilege~~ is denied.

(B) The ~~R~~reasons for denial.

(C) The ~~E~~earliest date on which the individual is eligible for ~~a~~ cross-border practice ~~privilege~~ in this state.

(D) ~~That~~ T~~t~~he individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act if a written notice of appeal and request for hearing is made within 15 ~~60~~ days.

(E) ~~That, if~~ Should the individual ~~does~~ not submit a notice of appeal and request for hearing within 15 ~~60~~ days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act.

(c) An individual licensed out-of-state who had been denied ~~a~~ cross-border practice ~~privilege~~ in this state may petition ~~apply~~ for board approval to practice under ~~a new~~ cross-border practice ~~privilege~~ not less than one year after the effective date of the

notice or decision denying ~~the~~ practice in this state ~~privilege~~ unless a longer time period, not to exceed three years, is specified in the notice or decision denying ~~the~~ practice in this state ~~privilege~~.

5096.3. Discipline of ~~a~~ Cross-Border Practice ~~Privilege~~

(a) ~~Practice privileges~~ The cross-border practice of ~~A~~an individual licensed out-of-state, practicing or who practiced in this state under cross-border practice, may be ~~are~~ subject to revocation, suspension, fines, or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

~~(b) Practice privileges An individual licensed out-of-state is are subject to discipline by the board during at any time period in which they are valid, under administrative suspension, or no longer valid expired.~~

~~(c)~~ (b) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against an individual who is licensed ~~out-of-state~~ in another state and who is practicing or ~~who~~ has practiced under cross-border practice in this state ~~the holder of a practice privilege~~.

~~(d)~~ (c) An individual licensed out-of-state whose cross-border practice ~~privilege~~ has been revoked may petition ~~apply~~ for ~~a new~~ board approval to practice ~~privilege~~ in this state not less than one year after the effective date of the board's decision revoking the individual's cross-border practice ~~privilege~~ unless a longer time period, not to exceed three years, is specified in the board's decision revoking ~~the~~ practice in this state ~~privilege~~.

~~(e)~~ (d) The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

(e) If the board takes disciplinary action against an individual licensed in another state who is practicing or practiced in this state under cross-border practice, the Board shall notify each state in which the individual holds a license, certificate, or permit of that action.

~~5096.5 Signing Attest Reports~~

~~Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.~~

5096.6 Delegation of Authority, Executive Officer

In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing a

notice of denial of ~~a~~ cross-border practice ~~privilege~~ and an interim suspension order, subject to the right of the individual licensed in another state ~~out-of-state~~ to timely appeal and request a hearing as provided for in this article.

5096.7. Definitions

Except as otherwise provided in this article, the following definitions apply:

(a) ~~Anywhere~~ The ~~the~~ terms "license," "licensee," "permit," or "certificate" as ~~is~~ used in this chapter or Division 1.5 (commencing with Section 475)~~,~~ ~~it~~ shall include persons as defined in Section 5035 performing cross-border ~~holding~~ practice or practicing under an alternative firm registration ~~privileges~~ under this article, unless otherwise inconsistent with the provisions of the article.

~~(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the provisions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the denial, suspension and revocation of licenses.~~

(~~c~~) (b) ~~Anywhere~~ The ~~the~~ term "employee" as ~~is~~ used in this article ~~it~~ shall include, but is not limited to, partners, shareholders, and other owners.

5096.8. Investigative Powers

In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

5096.9. Authority to Adopt Regulations

The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

5096.10. Expenditure Authority to Implement Cross-Border ~~Practice Privileges~~

The provisions of this article shall only be operative if ~~commencing July 1, 2005, and continuing during the period provided in Section 5096.11,~~ there is an ~~continuing~~ appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

~~**5096.11. Sunset Date of This Article**~~

~~This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.~~

5096.12. ~~Limited~~ Alternative Registration for Out-of-State Firms Performing Attest Services ~~Practice~~

(a) An ~~certified public~~ accounting firm as defined in Section 5035.3, or sole proprietor, that performs attest services for entities headquartered in this state ~~is authorized to practice in another state and that does not have an office in this state~~ may engage in the practice of public accountancy in this state through an alternative firm registration ~~the holder of a practice privilege~~ provided that the firm or sole proprietor:

(1) ~~The practice of public accountancy by the firm~~ Is ~~limited to~~ authorized to practice in another state and does not have an office in this state ~~by the holder of the practice privilege~~.

(2) Has one partner, shareholder or owner who qualifies for cross-border practice in this state and ~~shall~~ provides to the board with his or her name, state of principal place of business, license number, and ~~the~~ firm identifying information ~~about the firm~~.

~~(2)~~ (3) ~~A firm that engages in practice under this section~~ Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(4) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to ~~individuals and firms practicing under~~ cross-border practice.

(5) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the firm or sole proprietor.

(6) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(7) Shall not perform any services in this state under alternative firm registration ~~cross-border practice~~ that the firm or sole proprietor is not legally authorized to perform in its or his or her ~~their~~ state of principal place of business.

(b) "Attest services" include any audit or other engagement to be performed in accordance with the Statements on Auditing Standards, any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements, and any engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board. "Attest services" for purposes of this Article does not include any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services.

(c) The board may revoke~~,~~ or suspend an alternative firm registration, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or sole proprietor for any act that would be grounds for discipline against a licensee or grounds for denial of a license ~~a holder of a practice privilege through which the firm practices~~.

~~(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.~~

5096.13. Out-of-State Firms Performing Non-Attest Services ~~Information~~

~~The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its federal taxpayer identification number.~~

(a) An accounting firm as defined in Section 5035.3, or sole proprietor, that performs non-attest services for entities headquartered in this state may engage in the practice of public accountancy in this state without any form of firm registration provided that the firm or sole proprietor:

(1) Is authorized to practice in another state and does not have an office in this state.

(2) Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(3) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice.

(4) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the firm or sole proprietor.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that the firm or sole proprietor is not legally authorized to perform in their state of principal place of business.

(b) The board may revoke~~,~~ or suspend authorization to practice under this section, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or sole proprietor for any act that would be grounds for discipline against a licensee or grounds for denial of a license.

~~5096.14. Safe Harbor Extension~~

~~The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of Regulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.~~

~~**5096.15. Practice Privilege Fees**~~

~~It is the intent of the Legislature that the board adopt regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege. These regulations shall ensure that the practice privilege program is adequately funded. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and, for purposes of that chapter, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.~~

5035.3. "Firm" Includes

For purposes of ~~subdivision (b) of~~ Sections 5050.2 ~~and Sections 5054 and~~, 5096.12 and 5096.13 "firm" includes any entity that is authorized or permitted to practice public accountancy as a firm under the laws of another state or country.

5050. Practice Without Permit, Temporary Practice ~~for an Individual or Firm With a License from a Foreign Country~~

~~(a)~~ Except as provided in Section 5050.2 ~~subdivisions (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 practicing in this state under cross-border practice ~~a holder of a practice privilege~~ pursuant to Article 5.1 (commencing with Section 5096).

~~(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.~~

~~(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that:~~

~~(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.~~

~~(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).~~

5050.2. Practice Without Permit, Temporary Practice, and Discipline of ~~Out-of-State or Foreign Accountant~~ an Individual or Firm With a License From a Foreign Country

(a) Nothing in this chapter shall prohibit a person or firm that holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that the individual or firm:

(1) Is regulated by the foreign country and is performing the temporary practice in this state under accounting or auditing standards of that country.

(2) Does not represent or hold himself, herself, or itself out as being the holder of a valid California permit to practice public accountancy.

(3) Is authorized to practice in another country and does not have an office in this state.

(4) Shall be deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state that the individual or firm is not legally authorized to perform in the country of principal place of business.

(b) The board may ~~revoke, suspend,~~ issue a fine pursuant to Article 6.5 (commencing with Section 5116), or revoke, suspend, or otherwise restrict the right to practice in this state or otherwise discipline a person with a license, registration, certificate, permit or other authority to practice public accountancy from a foreign country ~~the right~~ ~~the holder of an authorization~~ ~~to practice under subdivision (b) or (c) of Section 5050,~~ ~~subdivision (a) of Section 5054, or Section 5096.12~~ for any act that would be a violation of this code or grounds for discipline against a licensee ~~or holder of a practice privilege~~, or grounds for denial of a license ~~or practice privilege~~ under this code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice ~~under subdivision (b) or (c) of Section 5050,~~ ~~subdivision (a) of Section 5054, or Section 5096.12~~ has been revoked

under this section may apply for reinstatement of the authorization to practice ~~under subdivision (b) or (c) of Section 5050, subdivision (b) of Section 5054, or Section 5096.12~~ not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(c) The board may administratively suspend the authorization of any person to practice ~~under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12~~ under this section for any act that would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that section.

~~5054. Exception for Certain Tax Preparers~~

~~(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 tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) 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).~~

5088. Out-of-State Certified Public Accountant Applying for California License

~~(a)~~ Any individual who is the holder of a current and valid license, certificate, or permit as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application for a license is granted or denied, practice public accountancy in this state only under ~~a~~ the cross-border practice ~~privilege pursuant to the~~ provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from ~~a~~ cross-border practice ~~privilege~~ during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state. ~~The board may by regulation provide for exemption, credit, or proration of fees to avoid duplication of fees.~~

~~(b) This section shall become operative on January 1, 2006.~~

5092. Pathway 1

(a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements

specified in subdivisions (b), (c), and (d) or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

5109. Jurisdiction Over Expired, Cancelled, Forfeited, Suspended, or Surrendered License

The expiration, cancellation, forfeiture, or suspension of a license, ~~practice privilege,~~ or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

5116.6. Definition of "Licensee"

Anywhere the term "licensee" is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, individuals licensed out-of-state practicing in this state under cross-border practice, holders of alternative firm registrations, ~~holders of practice privileges~~, other persons licensed, registered, or

otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

5134. Fees

The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600). The board may charge a reexamination fee not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board' s contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

~~(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars ($125).~~

~~(2) On and after enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).~~

~~(j)~~ (i) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

~~(k)~~ (j) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

~~(l)~~ (k) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

It was moved by Mr. Ramirez, seconded by Mr. Swartz, and carried unanimously that the CPC recommend to the Board that the exclusion from mandatory peer review discussed in the September 2007 CPC and Board meetings be "any work subject to inspection" by the PCAOB. This was a change from the September recommendation that the exclusion be for "any work inspected by the PCAOB," as stated in the November 15, 2007, handout provided to CPC members.

The CPC agreed that peer review for out-of-state licensees would begin when mandatory peer review was initiated in California.

After comments from Ms. Hariton and Mr. Newington, and discussion by the CPC, **it was moved by Mr. Swartz, seconded by Mr. Ramirez, and carried unanimously that the CPC recommend to the Board that peer review not be required of out-of-state firms whose states of licensure do not require peer review, and that the Board accept for cross-border practice the requirements that the other states impose on their firms.** This decision reversed the earlier agreement referenced above that the CPC's and Board's intent was that firms in these circumstances be required to have peer review.

Mr. Bishop stated that the peer review requirement in the UAA does not apply to individuals crossing state lines. Mr. Bishop suggested that once peer review becomes mandatory in California, then out-of-state firms doing audits should be subject to peer review, so both in-state and out-of-state firms would have the same level of competency.

III. Consideration of Revised Statutory Language Related to Cross-Border Issues Discussed at July 2007 CPC Meeting.

Mr. Rich stated that the proposed statutory revisions for cross-border practice in the November 6, 2007, memorandum, and in the additional memoranda distributed at the CPC meeting, were based on the existing statutes for practice privilege. Mr. Rich indicated that it was not necessary for the CPC to take formal action on each section since the CPC and the Board would vote on the proposed language in its entirety **(see Attachment 3)**. However, the CPC chose to vote on each proposed statutory revision.

In Section 5096 – Cross-Border Practice ~~Privilege General~~ Requirements, Mr. Rich noted the addition of Section 5096 (c)(6), i.e., that a practitioner may not perform services under cross-border practice that the practitioner was not legally authorized to perform in the state of principal place of business.

Mr. Robinson suggested, and Mr. Duffey agreed with, striking out the language regarding substantial equivalency, "which have been determined by the board to be," in subsection (a)(3) and adding "are." Mr. Ritter stated that the suggested change was consistent with the concepts of "no notice" and the cross-border concept.

Mr. Howard expressed concern that if the Board's determination of substantial equivalence were eliminated, that enforcement actions against practitioners in violation of California laws would have to be taken after the fact. He asked what safeguards would be in place for consumers. Mr. Swartz stated that the Board did have the authority to determine which states are substantially equivalent, whether the suggested change was made or not. Mr. Ritter stated that the problem was that determination would be made after the fact, although the suggested change would be consistent with cross-border philosophy.

Mr. Ritter stated that with a "no notice" cross-border program, the Board can revoke a cross-border practice if the practitioner acquired a disqualifying condition during his or her cross-border practice within California. However, there was a due process issue when a suspension would be implemented without a hearing and when the notice to the practitioner would be sent after the suspension had taken effect. Mr. Ritter suggested that the suspension provision be taken out of this section, and that a provision for due process be added to the statutory language. Mr. Driftmier summarized that the second "small (e)" from **Attachment 4** would be incorporated into Section 5096.

Mr. Ritter discussed that in practice privilege, a predetermination is made that an individual cannot practice in California if they had disqualifying conditions. There was no due process issue in that situation because nothing had yet been given to the practitioner that would then be taken away. He stated that, by contrast, there is a due process issue when a CPA is already in the state practicing. Mr. Ritter believed that due process concerns were raised if the Board automatically revoked the privilege to practice without an appeal process when a condition arose, such as an inquiry. Ms. Werner questioned what was being suspended or revoked under those circumstances.

Ms. Sigmann stated that the subject of administrative suspensions and due process, Section 5096.4, would be discussed in the January 2008 meeting after more legal input was obtained.

Mr. Howard reiterated his concerns and objection to eliminating notice, due to the preclusion of the state being able to check into the qualifications before the out-of-state practitioner causes harm to California consumers.

In response to questions from Dr. Charney, Mr. Newington stated that he believed that notification was preferable to "no notice." His belief was based on individuals being made aware of California rules and requirements in the notification process, and that the Board would have something to take away if enforcement actions became necessary.

Mr. Newington also expressed concern regarding the Board taking actions against out-of-state practitioners, and whether those individuals' states of licensure would also take effective disciplinary actions once informed by California of their licensee's violations. Mr. Bishop stated that the "no escape" concept was clear in the CPC's decisions on

cross-border policy, and that he had observed that disciplinary actions were taken by states when notified of their licensees' violations in other states. Ms. Werner stated to the CPC that prior to January 1, 2006, California had one of the most liberal "temporary and incidental practice" statutes in the nation, and there were no problems related to the statutes, since the Board resolved any issues that arose.

After thorough discussion, **it was moved by Mr. Swartz, seconded by Dr. Charney, and carried unanimously that the CPC recommend to the Board that Section 5096 – Cross-Border Practice ~~Privilege General~~ Requirements be accepted with the modifications discussed. It was moved by Ms. Anderson, seconded by Mr. Ramirez, and carried unanimously that the CPC recommend to the Board that Section 5096.1 – Practice Without Notice be eliminated as presented by staff.**

The CPC discussed Section 5096.2 – Denial of ~~a~~ Cross-Border Practice ~~Privilege~~, and the reason for the proposed change from 60 to 15 days for an individual to submit a notice of appeal and request for a hearing. Mr. Ritter indicated that the proposed change was in keeping with the Administrative Procedure Act (APA). After discussion, the CPC decided that 15 days was an adequate time within which a practitioner was required to notify the Board to appeal and request a hearing. **It was moved by Mr. Ramirez, seconded by Ms. Hariton, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.**

The CPC discussed Section 5096.3 – Discipline of ~~a~~ Cross-Border Practice ~~Privilege~~. To ensure that practitioners' original states of licensure be notified, the CPC recommended to the Board that a subsection (e) be added to read, "In the event the Board takes disciplinary action against a person with cross-border practice, the Board shall notify each state in which that person holds a license, certificate, or permit to practice." **It was moved by Dr. Charney, seconded by Mr. Ramirez, and carried unanimously that the CPC recommend to the Board that this section be accepted with the modification discussed.** Mr. Bishop added that the UAA does not require a state to notify the other state; however, it does require that if one state refers a complaint to another state, that other state shall investigate. Mr. Bishop stated that through this process, California's ability to investigate a complaint could be enhanced, and California would not be limited only to taking disciplinary action themselves.

The CPC noted that discipline of a California licensee is published on the Board's website. Ms. Sigmann added that the individual's other state or states of licensure are notified if the Board is aware of the license in other states.

With respect to Section 5096.5 – Signing Attest Reports, **it was moved by Ms. Anderson, seconded by Mr. Swartz, and carried unanimously that the CPC recommend to the Board that this section be eliminated as presented by staff.** Regarding Section 5096.6 – Delegation of Authority, Executive Officer, **it was moved by Dr. Charney, seconded by Ms. Hariton, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.**

Ms. Friberg stated that in using the term "person" in proposed statutory language, the definition included individual, a partnership, a firm, an association, a limited liability company, or a corporation. Mr. Ritter added that definitions for "principle place of business" or "home office" were problematic in trying to define, so he recommended that they not be defined in the proposed statutory language. For Section 5096.7 – Definitions, **it was moved by Mr. Ramirez, seconded by Ms. Anderson, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.**

After discussion regarding Section 5096.10 – Expenditure Authority to Implement Cross-Border ~~Practice Privilege~~, **it was moved by Mr. Ramirez, seconded by Ms. Hariton, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.** With respect to Section 5096.11 – Sunset Date of This Article, **it was moved by Mr. Ramirez, seconded by Ms. Hariton, and carried unanimously, that the CPC recommend to the Board that this section be eliminated as presented by staff.**

The CPC discussed Section 5096.12 – ~~Limited~~ Alternative Registration for Out-of-State Firms Performing Attest Services ~~Practice~~. Ms. Friberg pointed out that the proposed language included the word "headquarters," which was more easily understood than the term "home office." Mr. Shultz indicated that the comment section related to this Section was not correct. He stated that **Attachment 5**, which was emailed to Board Agenda recipients, listed UAA language that the Board might consider for this proposed statute. The CPC agreed to recommend to the Board that the proposed language in Section 5096.12 be redrafted to address attest services as defined in numbers 1, 3, and 4 of **Attachment 5. It was moved by Ms. Hariton, seconded by Mr. Swartz, and carried unanimously that the CPC recommend to the Board that this section be accepted with the modification discussed.**

After discussion regarding Section 5096.13 – Out-of-State Firms Performing Non-Attest Services ~~Information~~, **it was moved by Mr. Ramirez, seconded by Dr. Charney, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.** With respect to Section 5096.14 – Safe Harbor Extension, **it was moved by Mr. Ramirez, seconded by Ms. Anderson, and carried unanimously that the CPC recommend to the Board that this section be eliminated as presented by staff.** Regarding Section 5096.15 – Practice Privilege Fees, **it was moved by Dr. Charney, seconded by Mr. Ramirez, and carried unanimously that the CPC recommend to the Board that this section be eliminated as presented by staff.**

In Section 5035.3 – "Firm" Includes, the CPC discussed the deletion of the language "5054 and" which related to tax preparers. **It was moved by Ms. Anderson, seconded by Dr. Charney, and carried unanimously that the CPC recommend to the Board that this section be accepted with the modification discussed.**

The CPC discussed Section 5050 – Practice Without Permit, Temporary Practice for an Individual or Firm With a License from a Foreign Country. Mr. Robinson stated that this section should remain as it was, and that the "temporary and incidental" exception should remain for accountants from foreign countries. He went on to say that earlier the Board had decided and the Legislature had concurred that temporary and incidental practice in this situation should remain because it was not a problem. In addition, accountants from other countries were following the laws of, and working under the standards of, those countries. As such, those countries were independent entities with their own sets of laws. Ms. Werner suggested leaving the statute but relocating the portion related to foreign accountants to a different section. Dr. Charney added that the work done by foreign accountants was done for their own countries rather than for entities in the United States, so the work products had no effect in the states. Consequently, there would be no purpose served to apply restrictions. Ms. Sigmann stated that this section would be redrafted by staff to separate the general licensure requirements from the specific statutes related to foreign practitioners, and it would be presented in the January 2008 CPC and Board meetings.

Section 5050.2 – Discipline of ~~Out-of-State or Foreign Accountant~~ an Individual or Firm With a License From a Foreign Country was discussed. The CPC pointed out that since this dealt with foreign accountants possibly violating California laws, it was a separate issue from Section 5050. This section will be redrafted by staff for the CPC and Board meetings in January 2008.

With respect to Section 5054 – Exception for Certain Tax Preparers, **it was moved by Mr. Ramirez, seconded by Ms. Anderson, and carried unanimously that the CPC recommend to the Board that this section be eliminated as presented by staff.**

The CPC discussed the rationale behind Section 5088 – Out-of-State Certified Public Accountant Applying for California License. This section would allow the out-of-state practitioner who has applied for a California license and opened up an office in California, to practice under cross-border while he or she is waiting for the California license. Otherwise, out-of-state practitioners are prohibited from opening an office in California without a California license. The proposed statutory language would delete language that is no longer applicable. **It was moved by Mr. Ramirez, seconded by Mr. Swartz, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.**

The CPC discussed Section 5092 – Pathway 1, which proposes to postpone the sunset date of Pathway 1 until 2015. Ms. McCutchen discussed the staff's reasoning that the earlier sunset date of 2012 would create hardship for individuals who were following Pathway 1, by allowing only three years for them to complete the process. Mr. Bishop stated that 2012 was a trigger date whereby any state that passed that law with a 2012 date became substantially equivalent in other states. The substantial equivalency status would be a significant benefit to the state's CPAs. California currently is not considered substantially equivalent because of the existence of Pathway 1.

Mr. Driftmier stated his belief that it would be difficult to have the Legislature approve proposed mobility statutes if California itself would not be substantially equivalent until 2015. The CPC agreed that the sunset date for Pathway 1 should remain at 2012 and not be extended to 2015. **It was moved by Mr. Ramirez, seconded by Dr. Charney, and carried unanimously that the CPC recommend to the Board that this section be accepted with the modification discussed.**

Regarding Section 5109 – Jurisdiction Over Expired, Cancelled, Forfeited, Suspended, or Surrendered License, **it was moved by Dr. Charney, seconded by Mr. Ramirez, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.** With respect to Section 5116.6 – Definition of "Licensee", **it was moved by Mr. Swartz, seconded by Mr. Ramirez, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.** For Section 5134 – Fees, **it was moved by Mr. Ramirez, seconded by Mr. Hariton, and carried unanimously that the CPC recommend to the Board that this section be accepted as presented by staff.**

V. Consideration of Revised Statutory Language Related to Restatements.

Mr. Newington presented the proposed statutory language, and proposed deletion of the specific regulation, related to removal of the self-reporting requirements for restatements as was discussed at the July 2007 Board meeting **(see Attachment 6)**.

It was moved by Ms. Hariton, seconded by Mr. Swartz, and carried unanimously that the CPC recommend to the Board the removal of the self-reporting requirements for restatements in current Section 5063, as well as a regulatory change to delete Section 59 if the proposed statutory changes become law.

VI. Discussion Related to Whether a CPA with a General License Operating as a Sole Proprietor Could Complete an Attest Engagement if a CPA with an Attest License Signs the Report.

Mr. Newington explained the situation that led to this agenda item **(Attachment 7)**. Two "A" Licensed CPAs inquired whether they could sell their practice to a "G" Licensed CPA who wished to operate the business as a sole proprietor. Mr. Newington stated that current statutes do not prohibit this situation if the CPA who signs the reports had an "A" license.

Mr. Driftmier and Mr. Swartz expressed their concerns that this situation, however, misled consumers. Mr. Ritter will review this issue for consistency with current statutes, and he will draft a statute plus provide conditions regarding this situation for the CPC and Board meetings in January 2008.