

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

TITLE 16. DIVISION 1. CALIFORNIA BOARD OF ACCOUNTANCY

NOTICE IS HEREBY GIVEN that the California Board of Accountancy (CBA) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**California Board of Accountancy
2450 Venture Oaks Way, Suite 420
Sacramento, CA 95833
June 26, 2020
9:00 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the CBA at its office by **June 23, 2020** or must be received by the CBA at the hearing. The CBA, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference:

Pursuant to the authority vested by Sections 5010, 5018 and 5116 of the Business and Professions Code¹ (BPC); and Section 11400.20 of the Government Code (GC), and to implement, interpret, or make specific Sections 480, 481, 482, 486, 493, 5018, 5100, 5106, 5112, 5115, 5116, 5116.1, 5116.2, 5116.3, 5116.4, 5116.5 and 5116.6 of the BPC; Section 11425.50(e) of the Government Code, and Section 1203.4 of the Penal Code, the CBA is considering changes to Division 1 of Title 16 of the California Code of Regulations² (CCR), as described herein.

INFORMATIVE DIGEST

A. Informative Digest

The CBA is a board within the Department of Consumer Affairs (DCA) responsible for regulation of the public accounting practice in California. The CBA proposes to amend

¹ Unless otherwise specified, all sections refer to the Business and Professions Code.

² Unless otherwise specified, all California Code of Regulations sections refer to title 16.

sections 98, 99, 99.1, and 99.2 of title 16 of the CCR relating to the denial, suspension, and revocation of a certificate, permit or license (collectively, license³) issued by the CBA and the assessment of administrative penalties for violations of the Accountancy Act.

Existing law, BPC 5112, authorizes the CBA to deny a license based on the grounds described in Section 5100.

Existing law, BPC 5100, authorizes the CBA to revoke, suspend, censure or refuse to renew a license issued by the CBA.

Existing law, BPC section 5116, requires the CBA to establish criteria for assessing administrative penalties for violations of the Accountancy Act. This proposal would revise CBA regulations to update the disciplinary guidelines that establish criteria for assessing administrative penalties. GC section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule unless it has been adopted as a regulation. Current CBA regulation, CCR section 98, incorporates by reference the CBA's "A Manual of Disciplinary Guidelines and Model Disciplinary Orders, 9th edition, 2013" (Disciplinary Guidelines). The CBA is proposing to amend CCR section 98 to update its Disciplinary Guidelines.

As a result of updated statutory provisions in Assembly Bill No. 2138 (Chiu and Low, Chapter 995, Statutes of 2018) (AB 2318), the CBA is proposing to amend CCR sections 99 and 99.1, and adopt CCR section 99.2. On September 30, 2018, AB 2138 was enacted, amending provisions of the BPC relating to DCA boards' authority to deny, revoke, or suspend a license, effective July 1, 2020. AB 2138 requires boards to amend existing criteria regarding crimes substantially related to the regulated profession and rehabilitation criteria.

Currently, the CBA may deny an application for licensure based on a conviction of a crime or act that is substantially related to the qualifications, functions or duties of a certified public accountant or public accountant, with certain limitations, and suspend or revoke a license on the basis that the licensee was convicted of a substantially related crime. CCR section 99 of the CBA's regulations includes criteria relating to the identification of substantially related crimes, and CCR section 99.1 establishes criteria to evaluate a person's rehabilitation when considering the denial, suspension or revocation of a license.

In addition, AB 2138 authorizes certain specified boards, including the CBA, to deny a license if the applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of

³ Unless otherwise expressly provided, "license" means license, certificate, registration, or other means to engage in a business or profession. (Bus. & Prof. Code, § 23.7.)

the regulated profession. The CBA is proposing the addition of CCR section 99.2 to address the criteria for such financial crimes.

B. Policy Statement Overview/Anticipated Benefits of Proposal

This regulatory proposal incorporates the changes necessary to be compliant with AB 2138 and amends the Disciplinary Guidelines to provide a reference for the consistent enforcement of the laws under the CBA's jurisdiction. The anticipated benefits of this proposal include providing clearer and updated guidance for the CBA's licensing and disciplinary functions for protection of the public.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the CBA has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

- Disciplinary Guidelines and Model Orders (10th edition, 2019)

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The cost is insignificant as electronic distribution via the CBA's website and email are the predominant forms of dissemination of the CBA's regulations and Disciplinary Guidelines. A paper copy of the Disciplinary Guidelines is available only by request. In addition, the CBA may be reimbursed costs for probation monitoring if included as a condition of probation. The amount reimbursed would vary based on the number of probationers with this condition of probation and the actual conditions of probation being monitored by board staff.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The CBA has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

The CBA currently regulates approximately 108,000 licensees, including certified

public accountants, public accountants, and accounting firms. This regulatory proposal updates the Disciplinary Guidelines, which are referenced by the CBA and Administrative Law Judges (ALJs) when imposing discipline on licensees. Therefore, any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the CBA's laws or regulations. Any potential "adverse economic impact" may be avoided simply by complying with the law.

There are several amendments to the Disciplinary Guidelines that will have minimal economic costs, specifically, the inclusion of the ethics continuing education requirement and regulatory review course that will become standard conditions of probation. These terms are presently incorporated in the Disciplinary Guidelines as optional conditions of probation; however, as these provisions are being utilized in a majority of the CBA's disciplinary matters, the economic costs will impact only a limited number of licensees.

Cost Impact on Representative Private Person or Business:

The CBA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The CBA has determined that the proposed regulations would not affect small businesses. This regulatory proposal only affects individuals with a criminal history and individuals and/or businesses (accounting firms and sole proprietors) that are disciplined for violations of the Accountancy Act and CBA Regulations.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The CBA has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The CBA has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and state's environment:

This regulatory proposal would allow the CBA to provide clear guidance in its licensing and enforcement processes. The proposed regulations also ensure consumer protection by providing the CBA and ALJs with updated guidelines to reference when imposing disciplinary action on licensees and providing standards for the consistent and appropriate enforcement of the laws under the

CBA's jurisdiction.

This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.

This regulatory proposal does not affect the state's environment because it has nothing to do with the environment.

CONSIDERATION OF ALTERNATIVES

The CBA must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The CBA has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the CBA at 2450 Venture Oaks Way, Suite 300, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Melissa Winchell
Address: 2450 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone No.: 916-561-1726
Fax No.: 916-263-3673
E-Mail Address: melissa.winchell@cba.ca.gov

The backup contact person is:

Name: Dominic Franzella
Address: 2450 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone No.: 916-561-4310
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Website Access: Materials regarding this proposal can be found at:
<https://www.dca.ca.gov/cba/about-cba/laws-and-rules.shtml>.