

**DEPARTMENT OF CONSUMER AFFAIRS**

CALIFORNIA BOARD OF ACCOUNTANCY  
2000 EVERGREEN STREET, SUITE 250  
SACRAMENTO, CA 95815-3832  
TELEPHONE: (916) 263-3680  
FACSIMILE: (916) 263-3675  
WEB ADDRESS: <http://www.cba.ca.gov>



June 24, 2015

Diane F. Boyer-Vine  
Legislative Counsel  
State Capitol  
Sacramento, CA 95814

Dear Ms. Boyer-Vine:

This report is prepared in compliance with Business and Professions Code (BPC) section 5096.21(d) to report the California Board of Accountancy's (CBA) preliminary determinations made pursuant to BPC section 5096.21.

This information will be considered by the CBA as it makes its determination as to whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public. If the final determination substantiates public risk, following a rulemaking by the CBA, licensees of those particular states would revert to using the prior practice privilege program with its notice and fee provisions.

If you have any questions or require further assistance regarding this report, please contact Kathryn Kay, Legislative Analyst, at (916) 561-1742.

Sincerely,

A handwritten signature in blue ink that reads 'Patti Bowers'. The signature is fluid and cursive.

Patti Bowers  
Executive Officer

Enclosure

- c: Senator Jerry Hill, Chair, Senate Business, Professions and Economic Development Committee
- Assembly Member Susan Bonilla, Chair, Assembly Business and Professions Committee
- Daniel Alvarez, Secretary of the Senate
- E. Dotson Wilson, Chief Clerk of the Assembly
- Members, California Board of Accountancy
- Awet Kidane, Department of Consumer Affairs, Director

---

# CALIFORNIA BOARD OF ACCOUNTANCY



## PRACTICE PRIVILEGE: PRELIMINARY DETERMINATIONS REPORT JULY 1, 2015

---



## TABLE OF CONTENTS

Introduction .....	1
Program Overview.....	3
Background .....	5
Basis for Making Determinations.....	6
Preliminary Determinations .....	7
Timely and Adequately Addressing Enforcement Referrals.....	7
Disciplinary History Publically Available Through the Internet .....	7
Appropriate Discipline in Light of the Misconduct .....	8
NASBA’s Guiding Principles of Enforcement .....	10
Conclusion .....	11



## **INTRODUCTION**

This report is prepared in compliance with Business and Professions Code (BPC) section 5096.21(d) to report on the California Board of Accountancy's (CBA) preliminary determinations made pursuant to BPC section 5096.21. The information in this report will be considered by the CBA when it makes its determinations as to whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public. If this determination shows the public is at risk, the licensees of those particular states would, following a rulemaking by the CBA, revert back to using the prior practice privilege program with its notice and fee provisions. These determinations are to be made on and after January 1, 2016.

To the CBA, a practice privilege is the legal authority for an individual licensee of another state (defined, in BPC section 5032, as any state, territory or insular possession of the United States, or the District of Columbia) to practice public accountancy in California without the requirement to obtain a California certified public accountant (CPA) license. The CBA's mission is to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards; therefore, it is critical to the CBA that the California practice privilege law sufficiently protects California consumers. Likewise, the California Legislature placed certain protections into the practice privilege law found in BPC sections 5096 through 5096.21.



## PROGRAM OVERVIEW

If a CPA licensee's principal place of business is located outside California and he or she holds a valid and current license, certificate, or permit to practice public accountancy from another state, he or she may qualify to practice public accountancy in California under a practice privilege, without giving notice or paying a fee, provided one of the following conditions is met:

- They have continually practiced public accountancy as a CPA under a valid license issued by any state for at least four of the last 10 years.
- They hold a valid license, certificate, or permit to practice public accountancy from a state determined by the CBA to be substantially equivalent to the licensure qualifications in California under BPC section 5093.
- They possess education, examination, and experience qualifications which have been determined by the CBA to be substantially equivalent to the licensure qualifications in California.

A licensee is required to notify and receive written permission from the CBA prior to practicing public accountancy in California if, within the seven years immediately preceding the date on which he or she wishes to practice in this state, certain conditions apply as outlined in BPC Section 5096(i).

If any of those conditions apply, the licensee must submit a completed notification form and await written permission from the CBA prior to engaging in the practice of public accountancy in California.

If an individual exercises a practice privilege and subsequently acquires any condition disqualifying them from holding a California practice privilege, they must cease practicing immediately and notify the CBA in writing within 15 days of the occurrence of the cessation event using the "Notification of Cessation of Practice Privilege Form" (PP-11(1/13)).

If an individual is exercising a practice privilege in California, they are required to notify the CBA in writing of any pending criminal charges, other than for a minor traffic violation, within 30 days of the date they have knowledge of those charges.

If an individual intends to provide audit or attestation services for an entity headquartered in California, they may only do so through an accounting firm registered with the CBA.

An accounting firm that is authorized to practice public accountancy in another state and that does not have an office in this state must register with the CBA prior to performing attest services for an entity headquartered in California.

To register an out-of-state accounting firm, while there is no fee, an applicant must first complete the "Out-of-State Accounting Firm Registration Form" (PP-13(1/13)). The out-

of-state accounting firm registration must be renewed every two years in order for the out-of-state accounting firm to maintain practice rights in California. The out-of-state accounting firm must also notify the CBA of any change of address or change in ownership within 30 days of the change.

## **BACKGROUND**

Starting in 2006, the California practice privilege law required out-of-state CPA licensees to file a written notice and pay a fee to the CBA in order to obtain a practice privilege. A practice privilege differed from a California license in that the individual could not have a principal place of business in California and had to file for a new practice privilege every year.

Senate Bill 1405 (DeLeón, Chapter 411 of 2012) removed the notice and fee requirements and significantly amended the consumer protection provisions of the law. The new practice privilege law, which went into effect on July 1, 2013, grants a practice privilege to out-of-state licensees who meet certain requirements including holding a CPA license from a state which the CBA determines has substantially equivalent education, examination and experience requirements to California. The CBA designated such states when it adopted Division 1, Title 16 of the California Code of Regulations (CBA Regulations) section 5.5 listing the substantially equivalent states.

In order to ensure that the practice privilege program was protecting consumers, BPC section 5096.21(a) requires the CBA to determine whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public. If the determination is made that allowing individuals from a particular state puts consumers at risk, the CBA will need to require out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to provide the notice and pay the fees as required under the previous practice privilege program. This determination will be made by the CBA on a continuing basis on and after January 1, 2016 pursuant to BPC section 5096.21(a).

In BPC section 5096.21(b), the Legislature requires the CBA to consider the following three factors as it makes these determinations:

- (1) Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.
- (2) Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an Internet Web site to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.
- (3) Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

The purpose of this report is to provide the Legislature with the preliminary determinations the CBA will use as it determines whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public.

## **BASIS FOR MAKING DETERMINATIONS**

In making these preliminary determinations, the CBA relied on information provided by its Enforcement Division, an analysis of information available to the public through the Internet, and information provided by the National Association of State Boards of Accountancy (NASBA). It reviewed this information and this report at its March and May 2015 meetings.

To ensure that this information is accurate, the CBA has sent a letter to each state explaining California's practice privilege law and requesting the following information:

- Confirmation of information CBA staff have found online regarding information each state posts on the Internet about their licensees
- Additional information, not identified by CBA staff, that may be available online regarding enforcement
- The number of CPA licensees
- Whether the state has a mandatory peer review process
- The number of enforcement referrals that state has made to the CBA
- The state's responses to the CBA's enforcement referrals to that state
- Information on whether the state maintains disciplinary guidelines and how it maintains consistency of discipline.

As the CBA proceeds towards making final determinations on and after January 1, 2016, it will ask its staff to gather additional and current information so that the determinations will be based on the best available information.

## **PRELIMINARY DETERMINATIONS**

The following are preliminary determinations the CBA has made regarding the three factors the Legislature has identified.

### **Timely and Adequately Addressing Enforcement Referrals**

The CBA communicates enforcement referrals to other states through two separate methods, the Accountancy Licensing Database (ALD) and direct communication. ALD is a national licensing database for state boards of accountancy, and all CBA disciplinary actions are uploaded on a daily basis. In addition, the CBA sends disciplinary information directly to other states when it is determined that the licensee is licensed in another state.

Through these two methods, other states are made aware of disciplinary action taken by the CBA. Once a state receives this information, it may need to consider a number of factors before deciding whether to pursue its own enforcement action. Such considerations might include the nature of the violation, that state's laws and regulations, and risk to that state's consumers.

Since 2009, the CBA has referred 77 disciplinary matters to 37 states. These 77 licensees are prohibited from practicing in California under a practice privilege without written authorization from the CBA.

The CBA will initially be using California's current performance measures as a guideline for making this determination. Those performance measures are as follows:

- Intake: 10 days
- Intake and Investigation: 180 days
- Formal Discipline: 540 days

Intake is the average time from complaint receipt, to the date the complaint was assigned to an investigator. Intake and investigation is the average time from complaint receipt to closure of the investigation process, but it does not include cases sent to the Attorney General or other forms of formal discipline. Formal discipline is the average time to complete the entire enforcement process for cases resulting in formal discipline and includes intake and investigation by the CBA and prosecution by the Attorney General.

### **Disciplinary History Publicly Available Through the Internet**

An important part of disciplinary history is the current license status. The current status of a CPA license can be ascertained online for every state except for Maryland, which only posts its active status licensees on its website, and Washington, which does not differentiate between Suspended and Revoked.

In addition, many states provide an indicator either on their website or on CPAVerify that informs a consumer that a license has an enforcement action history regardless of the current status of a license. It is possible for a license in an active status to have had previous enforcement actions against it. Based on preliminary information gathered by the CBA, it appears that 31 states (California would make it 32) provide this indicator and an additional five states provide it for at least some of their licensees.

Finally, those states that provide the full disciplinary details online provide a consumer with the maximum amount of information regarding an enforcement action. This level of detail exceeds what was reported on the notification form under the prior practice privilege program. Based on preliminary information gathered by the CBA, three states (California would make it four) provide full disciplinary details and documents online. An additional 13 states provide at least some detail regarding their enforcement actions. This detail can range from dates of discipline to a full description of the violation just short of providing the disciplinary documents.

The CBA will be looking for the information that was previously available on the former practice privilege notification form that was used in the CBA's notice and fee practice privilege program.

Specifically, on the form, an applicant had to answer "Yes" or "No" to the following statement:

*"I have had a license, registration, permit or authority to practice a profession surrendered, denied, suspended, revoked, or otherwise disciplined or sanctioned except for the following occurrences:*

- (1) An action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses.*
- (2) The revocation of a license or other authority to practice public accountancy, other than the license upon which the practice privilege is based, solely because of failure to complete continuing education or failure to renew."*

Access to this information to the public will be the benchmark for what another state would need to make available on the Internet. Specifically, beyond standard licensing information, the CBA will be looking for whether prior discipline is indicated on the Internet.

### **Appropriate Discipline in Light of the Misconduct**

In order to make a preliminary assessment regarding whether the discipline of a particular state is appropriate, the CBA looked at whether a state has and uses written disciplinary guidelines of some kind (whether in law, rule or policy; and covering some or all violations) and the method used by the state for ensuring consistency of discipline. This information was derived from a survey of state boards of accountancy conducted by NASBA during the fall and winter of 2014-15.

Based on this preliminary assessment, 35 states currently rely on some kind of disciplinary guidelines with an additional state in the process of developing guidelines.

Based on the NASBA survey, it appears that 16 states rely on those guidelines to ensure consistency of discipline, one state uses a complaint committee, and 23 states primarily rely on precedent in ensuring consistency. For the three states with the lowest licensee population, consistency was not an issue as they had little to no discipline. The rest of the states evaluate each matter on a case-by-case basis.

When making this portion of the determination, the CBA will also consider the number of licensees in each state and each state's size, procedures and laws.

## **NASBA's GUIDING PRINCIPLES OF ENFORCEMENT**

BPC section 5096.21(a) requires the CBA to determine whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public on and after January 1, 2016. BPC 5096.21(c) provides another means that a state may be determined to be protecting the public, and thus may remain in the no notice, no fee practice privilege program.

To remain in the current program under BPC 5096.21(c), the following four statutory conditions must be met:

1. NASBA adopts enforcement best practices guidelines
2. The CBA issues a finding that those practices meet or exceed the CBA's own enforcement practices
3. A state has in place, and is operating pursuant to, enforcement practices substantially equivalent to the best practices guidelines
4. Disciplinary history of a state's licensees is publicly available through the Internet in a manner that allows the CBA to link consumers to a website. The information available must be at least equal to the information that was previously available to consumers through the practice privilege form that was used in the CBA's notice and fee practice privilege program

On May 12, 2015, NASBA released its Guiding Principles of Enforcement (Enforcement Guidelines), fulfilling the first condition above.

At its May 2015 meeting, the CBA held a public hearing and issued a finding that the NASBA Enforcement Guidelines meet or exceed the CBA's own enforcement practices, fulfilling the second condition above.

Going forward, the CBA will begin reviewing the enforcement practices of other states to determine if they are substantially equivalent to the NASBA Enforcement Guidelines. In addition, the CBA will be reviewing the level of information that each state makes publically available through the Internet.

## **CONCLUSION**

The information provided in this report, and any other additional information it requests to be collected, will be considered by the CBA as it makes its determinations as to whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public. The information in this report may change, or additional information may be requested by the CBA, over the next six months prior to the determinations being made. The CBA will rely on the most current information available in order to make its determinations regarding consumer protection.