

ENFORCEMENT HANDBOOK FOR LICENSEES



CALIFORNIA BOARD OF
ACCOUNTANCY

**CALIFORNIA BOARD OF ACCOUNTANCY
ENFORCEMENT DIVISION**

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CALIFORNIA BOARD OF ACCOUNTANCY

Mission

The mission of the California Board of Accountancy (CBA) is to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards.

Vision

The vision of the CBA is that all consumers are well informed and receive quality accounting services from licensees they can trust.

Authority

The CBA derives its authority from Business and Professions Code (BPC), Division 3, Chapter 1, Article 1 through Article 10 (Accountancy Act) and Title 16 California Code of Regulations, Division 1, Article 1 through Article 13 (CBA Regulations). The Accountancy Act and CBA Regulations are available on the CBA website at www.cba.ca.gov.

CBA Responsibilities

From its inception in 1901, the CBA has, by statute, been charged with regulating the practice of accountancy. The original law prohibited anyone from falsely claiming to be a certified public accountant, a mandate which exists today. By authority of the California Accountancy Act, the CBA:

- Ensures that only candidates who meet certain qualifications are allowed to take the national Uniform Certified Public Accountant (CPA) Examination
- Certifies, licenses, and renews licenses of individual CPAs and Public Accountants (PA)
- Registers accountancy partnerships and accountancy corporations
- Takes disciplinary action against licensees for violation of the Accountancy Act and CBA Regulations
- Monitors compliance with continuing education and peer review requirements
- Reviews work products of CPAs, PAs, and accountancy firms to ensure adherence to professional standards

The CBA website, www.cba.ca.gov, contains valuable information for licensees, practice privilege holders, examination candidates, licensure applicants, and consumers regarding CBA meetings, forms, enforcement matters, and the CBA publication UPDATE.

INTRODUCTION

The CBA regulates the practice of public accountancy in the State of California and may revoke, suspend, or refuse to renew any permit or certificate for violation of applicable statutes or regulations. The CBA, through its Enforcement Division, assisted by its statutorily established Enforcement Advisory Committee (EAC), receives and investigates complaints; initiates and conducts investigations or hearings, with or without the filing of a complaint; and obtains information and evidence relating to any matter involving the conduct of CPAs, PAs, and accountancy firms. The California Accountancy Act and the CBA Regulations provide the basis for CBA enforcement action.

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy in California, or the voluntary surrender of a license by a licensee does not deprive the CBA of the authority to proceed with an investigation, action, or disciplinary proceeding against the licensee or to render a decision suspending or revoking the license.

This handbook is designed to provide licensees with important and useful information regarding processing of complaints, conducting investigations, taking enforcement actions, and probation monitoring.

PROCESSING COMPLAINTS

The CBA receives complaints from consumers, professional societies, law enforcement agencies, and other governmental agencies. The CBA generates a large volume of internal referrals from the Licensing Division, CBA Committees, and within the Enforcement Division itself. Enforcement Division staff also regularly monitor news and social media for information regarding licensees or unlicensed practice that may suggest violations of the California Accountancy Act or CBA Regulations.

Common complaints/referrals received and reviewed by the CBA include:

- Negligence and incompetence
- Fraud, deceit, and misrepresentation in the practice of public accountancy
- Failing to perform services in accordance with professional standards
- Criminal convictions
- Administrative actions by other governmental agencies, including the Securities and Exchange Commission (SEC), Public Company Accounting Oversight Board (PCAOB), Internal Revenue Service (IRS), and California Franchise Tax Board (FTB)
- Administrative violations for failing to comply with license renewal requirements and unlicensed practice

External/consumer complaints are subjected to an initial screening process. The CBA can only investigate complaints within its jurisdiction. Complaints beyond the jurisdiction of the CBA are closed. These include, but are not limited to, matters concerning fee disputes, employer/employee relations, and complaints involving unsubstantiated allegations from anonymous sources.

The CBA Enforcement Division reviews and prioritizes cases using the following categories:

- High – These are cases/complaints in which the CBA believes ongoing consumer harm is present and, therefore, the promptness of the investigation is paramount. It is as part of these cases/complaints that the CBA evaluates whether to seek an Interim Suspension Order¹ or to recommend that the courts take action under Penal Code section 23².
- Standard – These are cases/complaints that do not pose an immediate threat of harm to consumers, unlicensed activity not posing an immediate threat of harm to consumers, fraud, and making false/misleading statements, such as matters referred from outside sources.
- Actionable – These are cases/complaints with only minimal investigation necessary and generally result in the issuance of citations and fines. Examples of these types of cases/complaints include failing to respond to CBA inquires and continuing education (CE) deficiencies.

A complaint is not public information unless the matter proceeds to hearing and the complaint is disclosed on the record.

CONDUCTING INVESTIGATIONS

Once jurisdiction has been established, complaints are assigned for investigation. The CBA uses a combination of resources to perform and complete its investigations. The Enforcement Division employs both technical (Investigative CPA (ICPA)) and non-technical (Enforcement Analyst) resources to perform the vast majority of its investigations. On occasion, the CBA will engage outside expert consultants via contract. For certain matters, especially those related to unlicensed practice, the CBA will engage the Department of Consumer Affairs Division of Investigation to assist in handling a case.³

¹ Interim Suspension Orders allow for a board or administrative law judge (sitting alone) to issue an interim order suspending a licensee or imposing license restrictions, including but not limited to, mandatory biological fluid testing, supervision, or remedial training.

² Penal Code section 23 allows a board to make recommendations regarding specific conditions of criminal probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee. This recommendation is made to the court

³ Certain staff within the Division of Investigation carry Peace Officer status.

Lastly, the Legislature authorized the CBA's establishment of the EAC. The EAC is comprised of CPAs who work in the profession and practice in a broad range of services. These individuals volunteer their time and expertise and are appointed by and serve at the pleasure of the CBA.

The less complex investigations are conducted by Enforcement Analysts and generally involve:

- Unlicensed practice
- CE deficiencies
- Criminal convictions
- Cancellation, suspension, revocation, or other right to practice as a CPA before any other governmental agency
- Other administrative violations

The more complex investigations are conducted by ICPAs and generally involve:

- Gross negligence
- Repeated negligent acts
- Embezzlement
- Non-conformity with professional standards

Once the investigation is initiated, the Enforcement Division will notify the licensee of the complaint. Included in the letter will be information on the nature of the violations being investigated and the specific information being requested. This could include producing documents, answering specific questions, or both. The letter will also provide specific information on where to send a response. In some instances this will be a specific Enforcement Division staff, while in other instances it may be a specific unit within the Enforcement Division.

Generally, a licensee is given 30 days to submit a written response to any request from the CBA. The purpose of the investigation is to gather facts and make assessments of whether violations of the California Accountancy Act and CBA Regulations have occurred. Enforcement Division staff may make multiple requests during the course of the investigation to obtain all necessary and relevant facts and documentation.

The Enforcement Division will make contact via the licensee's address of record by certified and first-class mail. It is important that licenses maintain a current address of record to help ensure receipt of official documents from the CBA that could affect the licensee's license. The CBA website has an easy to complete address change request form that licensees may download and send to the CBA via facsimile or mail.

As part of the investigation the CBA may require a licensee appear in person at an Investigative Hearing (IH).⁴ The purpose of an IH is both to gather evidence and

⁴ IHs are conducted pursuant to [BPC section 5103](#).

provide the licensee an opportunity to present his/her position on matters under investigation. An IH is generally conducted with the assistance of the EAC. At an IH, the licensee is placed under oath, with questions and answers being recorded by a certified court reporter. In some cases, there may be a need for multiple IHs to discover the facts. The licensee may have an attorney present at an IH.

The transcript of an IH is kept confidential as part of the CBA's overall investigation. An IH transcript will only be released as part of the discovery process should the matter result in the filing of an accusation for formal discipline.

Tips for Assisting in an Investigation

It is important to fully cooperate with the CBA during the entire investigation process. Included in the California's Rules of Professional Conduct, specifically CBA Regulations section 52, a licensee may not take any action to obstruct any CBA inquiry, investigation, hearing, or proceeding. A licensee is required to respond to requests within 30 days and make available all files, working papers, and other documents. Below are some tips in assisting in the investigation:

- Respond promptly to any requests from Enforcement Division staff
- Provide true and accurate responses to questions and documentation requested by the Enforcement Division staff
- Provide as much documentation as possible to ensure Enforcement Division staff have a clear understanding of the facts and circumstances
- Ensure that the address of record is current

Timing

The nature and complexity of a case impacts the time it takes for the Enforcement Division staff to complete its investigations. Generally, the less complex cases can be resolved quickly through obtaining compliance or the issuance of a citation and fine. The more complex cases can involve a substantial amount of time to investigate. No matter the complexity of the case, the cooperation of the licensee during the course of the investigation will assist in reducing the amount of time it takes to complete the investigation. The CBA is committed to treating a licensee fairly and objectively during the course of the investigation to ensure it has all necessary and relevant facts and documentation to reach an outcome.

Conclusion of an Investigation

Cases conclude with one of the following outcomes:

- Closure – The matter is closed due to insufficient evidence of a violation of the California Accountancy Act or CBA Regulations, lack of jurisdiction, or compliance.
- Citation – The matter results in the issuance of a citation, including the issuance of an administrative fine.

- Formal Discipline – The matter results in the CBA referring the matter to the Office of the Attorney General (AG’s Office) requesting the filing of an accusation.

TAKING ENFORCEMENT OR FORMAL DISCIPLINARY ACTION

Citation

Citations are an effective means to deal with violations that do not rise to the level of unprofessional conduct. Citations are issued when the Enforcement Division identifies, by a preponderance of evidence, violations of the California Accountancy Act or CBA Regulations. Citations are not considered formal disciplinary action and are issued by the CBA’s Executive Officer.

The licensee will receive the Citation Order in the mail, along with the following:

- A statement informing the licensee of their right to appeal
- An explanation of the consequences of failing to either comply with or appeal the citation
- Contact information for the Enforcement Division staff handling the citation
- A detailed description of the violation(s)
- An order of abatement
- An order of correction, if applicable
- The amount of the administrative fine assessed
- A blank notice of appeal form
- Documentation regarding discovery

Failure to comply with a citation may result in the outstanding administrative fine being added to license renewal fees, and a licensee with an outstanding citation is unable to renew his/her license until the citation is cleared. While the initial violation may not constitute unprofessional conduct, failure to comply with the citation does constitute unprofessional conduct under [BPC section 5100\(g\)](#) and [CBA Regulations section 95.4](#), and may lead to formal discipline.

Formal Discipline

If an investigation finds, by clear and convincing evidence, a violation of the Accountancy Act, CBA Regulations, or both, the matter is referred to the AG’s Office for the preparation of an accusation. The licensee will receive a letter from the CBA notifying them of the specific laws that have been violated. The letter also includes the contact information for the enforcement manager who is handling the case. The licensee can contact the CBA with any questions until the case is formally assigned to the AG’s Office, at which point all communication will need to be with the assigned Deputy Attorney General (DAG). The licensee will receive a letter from the AG’s Office when the case has been formally assigned to the DAG.

Accusation

An accusation is a formal document that charges violation(s) of the laws under CBA's jurisdiction including the California Accountancy Act and/or CBA Regulations by a licensee. The charges in the accusation are allegations. Allegations are not a final determination of wrongdoing and are subject to adjudication and final review by the CBA.

Once the accusation is prepared and signed by the Executive Officer, it will be served on the licensee at their address of record with the CBA. The licensee has an opportunity to file a Notice of Defense and to request a hearing on the charges before an ALJ.

Representation by Counsel

A licensee has the right to be represented by counsel throughout the formal discipline process, including at the hearing if one is requested. The CBA does not provide counsel for a licensee.

Notice of Defense

The Notice of Defense is a document served concurrently with the accusation. This document allows the licensee to request a hearing, be considered for a stipulated settlement, surrender his/her license, and provide the CBA with his/her counsel's information if s/he is represented. The Notice of Defense must be mailed back to the AG's Office within 15 days of the date the accusation was mailed to the licensee. Failure to do so will constitute a waiver of the licensee's right to a hearing.

Default Decision

A default decision results when a licensee does not file a Notice of Defense or fails to appear at a scheduled administrative hearing. Adoption of the default decision will result in action being taken by the CBA. Pursuant to [GC section 11520\(c\)](#), a licensee may serve a written motion requesting the CBA to vacate the default decision. The CBA may grant this request and grant a hearing on a showing of good cause, as defined in the statute.

Stipulated Settlement

A stipulated settlement is a negotiated agreement between the Enforcement Division, with the assistance of the AG's Office, and the licensee where both parties agree on appropriate discipline to resolve the accusation. The Enforcement Division uses the [CBA's Disciplinary Guidelines](#), adopted by the CBA, when drafting and negotiating stipulated settlements. The CBA must vote to approve all stipulated settlements.

Office of Administrative Hearings

A licensee who files a Notice of Defense and where a case is not settled, will proceed to a hearing at the Office of Administrative Hearings (OAH). A licensee can learn more about what to expect at the hearing at the [OAH's website](#). A Licensee has rights similar to those at a civil trial, including the right to subpoena relevant documents and

witnesses and to cross-examine witnesses. The ALJ will prepare a proposed decision, which will be provided to the CBA for its consideration.

Proposed Decision

A proposed decision is a decision drafted by an ALJ after a contested accusation has proceeded through an administrative hearing. Adoption of the proposed decision by the CBA will result in imposition of whatever sanctions are reflected in the proposed decision. Non-adoption would generally result in the CBA's later review of the hearing transcript and then the CBA reaching its own decision. The CBA could also adopt a proposed decision but reduce the penalty proposed by the ALJ, or remand a case back to an ALJ to further hearing and the taking of additional evidence.

Petition for Reconsideration

Pursuant to [GC section 11521](#), a licensee may request a reconsideration of all or part of the case. Petitions for reconsideration must be received prior to the effective date of the decision. Please be aware that the CBA needs approximately one week to process a petition for reconsideration. A licensee will receive a letter confirming receipt of the petition, and an Order informing licensees of the CBA's decision. If the CBA grants a petition, reconsideration of the case will typically occur at the next regularly scheduled CBA meeting.

Cost Recovery

The CBA's general practice is to pursue cost recovery where appropriate. All accusations include a plea for recovery of investigation and prosecution costs. A timely response and cooperation from the licensee results in less time spent on the case, and as a result, lower costs owed by the licensee.

In the cases in which cost recovery is ordered but not collected due to a revocation of the license, it is the CBA's policy to require reimbursement at the time the licensee petitions the CBA for reinstatement of their license.

Administrative Penalties

The CBA may order licensees to pay an administrative penalty as part of a disciplinary proceeding, of up to \$5,000 for the first violation and up to \$10,000 for each subsequent violation. In addition, any licensee who violates subdivision (a), (c), (i), (j), or (k) of section 5100 of the Accountancy Act may be assessed an administrative penalty of up to \$1,000,000 for the first violation and up to \$5,000,000 for any subsequent violation (note: the amounts for natural persons are \$50,000 and \$100,000, respectively).

Disciplinary Guidelines and Model Orders

[The Disciplinary Guidelines and Model Orders \(Disciplinary Guidelines\)](#) set forth recommended discipline for violations of CBA statutes and regulations. The Disciplinary Guidelines list each statute and regulation in numerical order with the recommended minimum and maximum penalties and conditions of probation. Also included in the Disciplinary Guidelines are model disciplinary orders, language for standard and optional terms of probation, and aggravating and mitigating circumstances that should

be taken into consideration. In addition, the Disciplinary Guidelines provide guidance on cost recovery, rehabilitation, administrative penalties, unlicensed activities, violation of probation, and injunctions.

The Disciplinary Guidelines are a valuable resource for ALJs in those cases that proceed to administrative hearing and for licensees and attorneys involved in settlement negotiations. However, as indicated in the title, it is a guideline. There are many circumstances that justify imposition of stronger penalties, just as there are circumstances that justify leniency.

The CBA's Disciplinary Guidelines have been adopted and incorporated by reference in [CBA Regulations section 98](#), which means that the Disciplinary Guidelines have been reviewed and approved by the Office of Administrative Law as meeting legal standards for clarity, consistency, authority, and necessity.

PROBATION

The purpose of probation is to ensure consumer protection and assist in the rehabilitation of a licensee. The period of probation is generally three years. Upon successful completion of probation, an individual's license will be fully restored, unless otherwise restricted by the decision and order adopted by the CBA.

The terms and conditions of probation typically consist of two parts: standard conditions of probation and optional conditions of probation. The [CBA Disciplinary Guidelines](#) contain both the standard and optional terms and conditions. The standard terms of probation apply to nearly all licensees on probation.

Optional conditions of probation are determined on a case-by-case basis, and may include: taking additional continuing education courses (CE), supervised practice, administrative penalties, and maintaining an active license, to name a few.

Tolling of Probation for Out-of-State Residence/Practice

Tolling is a standard term of probation and is generally included in all of the disciplinary orders that place a licensee on probation. The tolling provision means that periods of non-California residency or practice outside the state of California shall not apply to the reduction of the probationary period or of any suspension. However, no other terms of probation are suspended or otherwise affected by such periods of out-of-state residency or practice, except at the written direction of the CBA.

The tolling provision can significantly extend the probationary period for a licensee who resides out of state and who does not have a desire to return to California to work or reside, as the probationary period never advances and s/he is permanently tolled. However, after a period of one year has passed from the date of the decision placing licensees on probation, licensees can petition the CBA to have the terms of probation modified, including the removal of the tolling provision.

Probation Monitoring

When the CBA adopts a Decision and Order placing a licensee on probation, s/he is assigned a probation monitor. The probation monitor reviews the terms and conditions of the probation and mails the licensee a packet of information that includes a summary of the terms and conditions and any forms s/he may need such as the Quarterly Report form. The Licensee is then scheduled for a probation orientation meeting with the probation monitor at which time the monitor is available to discuss each term and condition of probation. The probation orientation is intended to give the licensee a complete understanding of the requirements that must be met to successfully complete probation.

A licensee on probation is required to submit Quarterly Reports that detail any changes in the licensee's areas of practice and track compliance with the specific terms and conditions of the probation such as prescribed CE, notices to clients, payment of restitution, etc.

A licensee found to be out of compliance with any terms of the probation, including but not limited to submitting late certificates of completion for a CE requirement or restitution payments for investigation and prosecution costs, is mailed a letter detailing the violation(s) and a deadline to bring the licensee into compliance with the terms of the probation. A decision may be made to file a petition to revoke the licensee's license with a pattern of repeated violations or a singular egregious violation.

Petition to Revoke Probation

If a licensee violates probation in any respect, the CBA, after giving the licensee notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against the licensee during probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

PETITION FOR REINSTATEMENT/REDUCTION OF PENALTY

[BPC section 5115](#) allows a licensee on probation to petition the CBA to modify the terms of probation and/or terminate probation and also allows a person whose license was revoked or surrendered to petition for reinstatement.

Who is Eligible

The Petitioner may petition the CBA after a period of one year from the effective date of the disciplinary decision or a longer period of time as stated in the decision. To avoid delays in processing the request, the Petitioner should provide their full name, CPA license number, mailing address, and telephone number.

A petition should be filed at least 90 days prior to a CBA meeting.

How to Apply

A Petitioner can obtain the Petition Form for Reinstatement or Reduction of Penalty by contacting the Enforcement Division by email at enforcementinfo@cba.ca.gov and request that one be mailed to them.

A Petition for Reinstatement allows a Petitioner to request that the CBA reinstate a license that was revoked or surrendered.

A Petition for Reduction of Penalty allows a Petitioner to request that certain terms of probation are reduced or removed, or that probation be terminated in its entirety. When considering whether to request an outright termination of probation, a Petitioner may wish to consider whether the Petitioner also wishes to have the CBA consider any specific probation terms and conditions for reduction or elimination in the case that the CBA does not grant termination of probation in its entirety. To ensure the CBA properly considers all options at hearing, Petitioners must check the box for both reduction of penalty and termination of probation.

What to Expect

Petitions are considered by the CBA at hearings scheduled during the CBA meetings. The Petition Hearings are webcast as part of open session at the CBA meeting.

An ALJ from the OAH will preside at the hearing to rule on legal and evidentiary matters. The DAG representing the People of the State of California will give a brief opening statement on the history of the Petitioner's original licensure, discipline, and current petition.

A Petitioner may have an attorney present, but this is not a requirement. In addition, persons may speak on a Petitioner's behalf; however, their testimony should be directed specifically toward Petitioner's competence and rehabilitation.

All testimony will be taken under oath. A Petitioner may make an opening statement regarding rehabilitation, efforts to maintain current practice knowledge, and to present additional information. The CBA members, DAG, and ALJ may ask questions to clarify the evidence presented.

A Petitioner will not be allowed to re-litigate any prior disciplinary action taken against the license. That matter has already been decided and is final. The purpose of the hearing is to provide an opportunity to prove that public safety would not be diminished by granting the petition.

After the hearing is completed, the CBA will adjourn into closed session to make a decision on the petition. The ALJ will prepare the written decision for the CBA, typically within 30 days of the hearing. A copy of the final decision will be sent to the Petitioner.

Burden of Proof

The CBA's rehabilitation criteria, set forth in [CBA Regulations section 99.1](#), are as follows:

- Nature and severity of the act(s) or offense(s)
- Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension, or revocation
- The time that has elapsed since commission of the act(s) or offense(s) referred above
- The extent to which the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee
- If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code
- Evidence, if any, of rehabilitation submitted by the licensee

Rehabilitation Evidence

Petitioners may submit rehabilitation evidence to the CBA to demonstrate their rehabilitative efforts and competency. This includes:

- A written statement from the Petitioner
- Letters from past or current employers
- Letters from medical personnel such as a psychiatrist addressing the likelihood of similar recurrences
- Letters of reference from professionals
- Letters showing the Petitioner's participation in volunteer or community events
- Any documentation of continuing education related to the practice of public accountancy

MISCELLANEOUS INFORMATION

Address of Record

The CBA sends all official correspondence to the licensee's address of record. [CBA Regulations section 3](#) requires a licensee to report in writing to the CBA any change in their address of record within 30 days after the change.

To submit an address change, a licensee may complete and sign the [Address Change Form](#), then mail or fax it to the CBA at (916) 263-3672. The Address Change Form is available on the CBA website or by contacting the CBA directly.

Bilingual Services

Licensees that require language assistance services can contact the CBA and request that they speak through an interpreter. The CBA, through the Department of Consumer Affairs (DCA), provides both telephonic and written interpreter and translation services at no cost to the licensee.

If the licensee needs an interpreter for a hearing at OAH, the licensee must immediately contact the AG's Office or OAH so that a certified interpreter can be provided. Normally, it is not sufficient to bring a friend or relative to interpret.

Publicly Available Enforcement Documents

Pursuant to [BPC section 27](#), the CBA posts copies of its enforcement actions on its [website](#). This includes all accusations, final disciplinary decisions and orders, and final citation orders. The CBA includes all formal disciplinary outcomes in [UPDATE](#), the CBA's triannual newsletter. The CBA on occasion will issue a [press release](#) regarding final disciplinary decisions and orders. The CBA also submits disciplinary decisions and orders to [CPAverify](#).⁵

The public may send in a written request for documents to: California Board of Accountancy, Attention: Disciplinary/Enforcement Actions, 2450 Venture Oaks Way, Suite 300, Sacramento, CA 95833-3291.

The CBA's investigative files are confidential under the Public Records Act ([California Government Code Section 6254\(f\)](#)). This means that the information generally is not available to the public. However, there are a variety of circumstances in which all or part of the investigation may become public or be provided to a government agency. Examples include information subpoenaed or obtained through discovery or offered as evidence at a disciplinary hearing. Information also may be disclosed to potential witnesses, experts, attorneys, or others in furtherance of the investigation.

⁵ CPAVerify is an online central repository of information about licensed CPAs and public accounting firms maintained by the National Association of State Boards of Accountancy (NASBA) to provide a single-search resource covering participating jurisdictions where a person or firm has been licensed.